

ARTÍCULO DE INVESTIGACIÓN

CONCEPTUAL FOUNDATIONS FOR
CONDUCTING ANTI-CORRUPTION EXPERTISE
IN PUBLIC ADMINISTRATION IN UKRAINE

MARCO CONCEPTUAL PARA LA REALIZACIÓN DE PERITAJES
ANTICORRUPCIÓN EN LA ADMINISTRACIÓN PÚBLICA DE UCRANIA

MARCO CONCEITUAL PARA A REALIZAÇÃO DE PERÍCIA
ANTICORRUPÇÃO NA ADMINISTRAÇÃO PÚBLICA DA UCRÂNIA

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Abstract

In the article, the authors research the conceptual foundations for conducting anti-corruption expertise in public administration in theoretical and practical aspects. The relevance of the research is due to the fact that today the corruption-prone properties of normative legal acts are a problem which requires coherence and systematic anti-corruption activities of all authorized subjects of power. The authors define the legal nature, concept, features and types of anti-corruption expertise in public administration. The subjects of anti-corruption expertise in public administration are identified. The procedure and stages of anti-corruption expertise are analysed. It is concluded that the procedure for conducting anti-corruption expertise in public administration is a procedure established by law for the activities of authorised entities to analyse, verify and evaluate current regulations and draft regulations for compliance with corruption-related factors.

Keywords: public administration, anti-corruption expertise, corruption, anti-corruption policy, administrative procedure.

Resumen

En el artículo, los autores investigan los fundamentos conceptuales para llevar a cabo la pericia anticorrupción en la administración pública, teniendo en cuenta tanto aspectos teóricos como prácticos. La relevancia de la investigación radica en que, en la actualidad, las propiedades propensas a la corrupción de los actos normativos legales son un problema que requiere actividades anticorrupción coherentes y sistemáticas por parte de todos los sujetos de poder autorizados. Los autores definen la naturaleza jurídica, el concepto, las características y los tipos de pericia anticorrupción en la administración pública. Identifican los sujetos de la pericia anticorrupción en la administra-

ción pública. Analizan el procedimiento y las etapas de la pericia anticorrupción. Y concluyen que el procedimiento para realizar la pericia anticorrupción en la administración pública es un proceso establecido por ley para que las entidades autorizadas analicen, verifiquen y evalúen las normativas vigentes y los proyectos de normativa en función de su cumplimiento con los factores relacionados con la corrupción.

Palabras clave: administración pública, pericia anticorrupción, corrupción, política anticorrupción, procedimiento administrativo.

Resumo

No artigo, os autores investigam os fundamentos conceituais para a realização da perícia anticorrupção na administração pública, tanto em aspectos teóricos quanto práticos. A relevância da pesquisa reside no fato de que, atualmente, as propriedades propensas à corrupção dos atos normativos legais constituem um problema que exige atividades anticorrupção coerentes e sistemáticas por parte de todos os sujeitos de poder autorizados. Os autores definem a natureza jurídica, o conceito, as características e os tipos de perícia anticorrupção na administração pública. São identificados os sujeitos da perícia anticorrupção na administração pública. O procedimento e as etapas da perícia anticorrupção são analisados. Conclui-se que o procedimento para a realização da perícia anticorrupção na administração pública é um processo estabelecido por lei para que as entidades autorizadas analisem, verifiquem e avaliem as normativas vigentes e os projetos de normativas quanto ao seu cumprimento com os fatores relacionados à corrupção.

Palavras-chave: administração pública, perícia anticorrupção, corrupção, política anticorrupção, procedimento administrativo.

INTRODUCTION

Corruption is a dangerous phenomenon that poses a threat to Ukraine's national security and democratic development, and has a negative impact on all spheres of public life. In order to overcome corruption, the state must carry out effective activities aimed at preventing corruption and eliminating the causes and conditions for the spread of corruption.

Corruption can be of different types, public or private, individual or multi-person, and it can be white-most people do not consider it corruption, black-everyone considers it corruption, or grey-some people consider it corruption and others do not. It can also be grand corruption, when it affects central levels of government, or petty corruption, when it involves exchanging small amounts of money, providing small services, employing family members or friends, etc. (Madrid, 2023, p. 203).

One of the main factors that may contribute to the emergence of corruption in the state is regulatory acts. Today, the corruption-prone properties of normative legal acts are a problem that requires coherence and systematic anti-corruption activities of all authorised public authorities. Anti-corruption expertise is intended to identify and eliminate corruption-prone factors in legal acts as a preventive measure to prevent corruption, aimed at eliminating the causes that facilitate the commission of corruption or corruption-related offences.

The existence of corruption norms in legal acts is due to legal uncertainty of the essence and peculiarities of anti-corruption expertise. Reducing the level of corruption by eliminating the preconditions for corruption through the use of such a preventive tool as anti-corruption expertise is possible provided that proper legal regulation of this special type of activity in the field of public administration in general and improvement of anti-corruption expertise in public administration in particular is established.

THEORETICAL FRAMEWORK AND LITERATURE REVIEW

The issues of preventing and combating corruption are covered by the works of such scholars of various branches of law as Filatov (2022), Garashchuk (2010), Dashkovska (2015), Zayats (2021), Ivanov (2019), Kolomoyets (2019), Lysenko (2014), Luhovyi (2023), Maslova (2022), Nevmerzhytskyyi (2008), Novikov (2020), Odyntsova *et al.* (2021), Oliynyk & Onishchuk

(2023), Onishchuk (2023), Romaniuk (2018), Rostovska (2019), Smetanina & Maaluli (2019), Trepak (2020), Khabarova (2019), Shatrava (2012), Zari-chanskyi (2023), etc.

Despite the considerable interest of scholars in the issues of preventing and combating corruption, many issues still remain fragmented and require scientific study, and this fully applies to anti-corruption expertise as one of the measures to prevent corruption. All of the above circumstances in their entirety necessitate a study of the conceptual foundations of anti-corruption expertise in public administration in Ukraine.

METHODOLOGY

The research was conducted using general scientific and special methods. The formal logical method was used to study the prevention of corruption as a special type of activity in public administration, and the peculiarities of forming the conceptual and categorical apparatus of the theory of the State's anti-corruption policy. Using the dialectical method, the author defines the legal nature, concept, features and types of anti-corruption expertise in public administration, and also clarifies the procedure for conducting anti-corruption expertise in public administration. The structural-functional method was used to determine the specific features of legal regulation of subjects of anti-corruption expertise in public administration. The comparative legal method was used to analyse the powers of the subjects of anti-corruption expertise in public administration. The methods of modelling, analysis and synthesis were used to develop the directions for improving the legal regulation of anti-corruption expertise in public administration.

RESULTS AND DISCUSSION

Legal Understanding of the Concepts of “Procedure” and “Administrative Procedure”

One of the most important guarantees of effective anti-corruption expertise is a clear regulation of its procedural aspect.

In the terminological literature, the definition of “procedure” is interpreted as a series of actions (Busel, 2002, p. 997); the course of doing something (New explanatory dictionary of the Ukrainian language, 2003,

p. 828); an officially established or customary procedure for carrying out, performing or processing something (Slipushko, 2007, p. 63); the order, succession, sequence in performing relevant actions to achieve a certain result (Shemshuchenko, 2003, pp. 185-186).

In the legal literature, the category of “procedure” is defined as follows: a procedure regulated by law and other legal acts, consisting of sequential actions and aimed at achieving a legal result; an independent integral formation regulated by legal norms, which determines the procedure for the implementation of socially and legally significant actions by the subjects of specific social relations and ensures normatively ordered regulation of social relations (Galitsyna, 2010, pp. 163-177).

Legal procedure is characterised by the following features (Nikolina, 2012, p. 45.): 1) focused on achieving a specific legal result; 2) consists of acts of behaviour that constantly change each other, and, like activities, is internally structured by legal relations; 3) has a model (programme) of its development, previously established at the normative or individual level; 4) hierarchically constructed; 5) constantly in dynamics, development; 6) has a service character: it is a means of realisation of the main relation; 7) legal procedure is a special type of legal relations of a procedural nature; 8) it is holistic in nature, as it consists of a certain sequence of actions of the subjects of legal procedure; 9) it arises on the basis of the law and has an official legal nature; 10) the procedure for carrying out legal procedure is regulated by the relevant procedural rules of law; 11) it has its own purpose, which is to change legal reality; 12) has an intellectual and volitional character, as it depends on the consciousness and will of the subject of legal procedure; 13) determines the sequence of activities of the subjects of legal procedure; 14) the result of the legal procedure is the exercise of rights, freedoms, legitimate interests of the subject of law or the fulfilment of legal obligations; 15) is manifested in legal activity; 16) is a set of consecutive acts of behaviour, each of which causes relevant local consequences, which affects the content and effectiveness of the entire legal procedure.

The procedure for conducting anti-corruption expertise in public administration is administrative in nature, since it is inherent in its public law nature and one of the mandatory participants in such expertise is a subject of administrative relations.

The science of administrative law has different approaches to understanding the concept of “administrative procedure”. Thus, according to Shko-

lik (2007, p. 123), administrative procedure is a procedure for performing actions by public administration bodies enshrined in the rules of administrative law. Tymoshchuk (2003, p. 198) argues that administrative procedure is a procedure established by law (officially) for consideration and resolution of administrative cases by administrative bodies aimed at adopting an administrative act or concluding an administrative agreement. In turn, Kolo moyets (2011, p. 220) believes that administrative procedure is a procedure established by administrative procedural rules for the activities of authorised subjects to consider and resolve individually determined cases. Instead, Galitsyna (2010) understands administrative procedure as the rules, procedure and conditions established by law for performing procedural actions for consideration, resolution and adjudication of a specific administrative case in the field of public administration. Administrative procedure is also defined as the procedure established by law for consideration and resolution of individual administrative cases by public administration bodies in order to ensure the rights and freedoms, legitimate interests of individuals and legal entities, and the normal functioning of civil society and the State (Galunko, 2011, p. 276).

In the Methodology for Conducting Anti-Corruption Expert Examination of Draft Regulatory Legal Acts, approved by the Cabinet of Ministers of Ukraine on 8 December 2009, No. 1346, administrative procedure was defined as a procedure established in an act for individuals and legal entities to act in order to exercise their rights and perform their duties or to determine the powers of a state body, its official and employee (CMU, 2009). Art. 2 of the Law of Ukraine “On Administrative Procedure” (2022) establishes that administrative procedure is a procedure for consideration and resolution of a case determined by law.

Today, the procedure for conducting anti-corruption expertise is reflected in CMU Resolution No. 950 “On Approval of the Regulations of the Cabinet of Ministers of Ukraine” dated 18 July 2007, Order of the Ministry of Justice No. 383/5 “Some Issues of Anti-Corruption Expertise” dated 18 March 2015, Order of the Ministry of Justice No. 1395/5 “On Approval of the Methodology for Conducting Anti-Corruption Expertise” dated 24 April 2017, Order of the NACP dated 29 July 2020 No. 325/20 “On Approval of the Procedure for Conducting Anti-Corruption Expertise by the National Agency on Corruption Prevention”, Order of the NACP dated 18 May 2023 No. 109/23 “On Approval of the Methodology for Conducting Anti-Corruption

Expertise by the National Agency on Corruption Prevention”. The current legislation does not regulate the procedure for conducting an anti-corruption assessment by the Anti-Corruption Committee and the public.

It should be noted that the relevant orders of the Ministry of Justice do not detail the procedure for conducting an anti-corruption expert assessment. For example, the Order of the Ministry of Justice of 18 March 2015 No. 383/5 “Some Issues of Anti-Corruption Expertise”, which approved the Procedure for Conducting Anti-Corruption Expertise, refers to the objectives of anti-corruption expertise, general issues of anti-corruption expertise of existing regulatory legal acts, anti-corruption expertise of regulatory legal acts subject to state registration, and anti-corruption expertise of draft regulatory legal acts. Order of the Ministry of Justice No. 1395/5 of 24 April 2017 “On Approval of the Methodology for Conducting Anti-Corruption Expertise” defines typical types, criteria and methods of assessment, as well as ways to identify and eliminate corruption factors in regulatory acts and draft regulatory acts.

Procedure for Conducting Anti-Corruption Expertise in Public Administration by the Ministry of Justice of Ukraine

The anti-corruption expertise of existing regulations is carried out in accordance with an annual plan approved by the Ministry of Justice by 31 December. The plan for conducting anti-corruption expertise of current regulatory legal acts for the respective year is prepared by the structural unit responsible for conducting anti-corruption expertise on the basis of proposals justified by the need for anti-corruption expertise submitted by structural units of the Ministry of Justice and formed taking into account proposals received from state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, enterprises, institutions, organisations independently of the Ministry of Justice. If additional proposals are received that are justified by the need for anti-corruption expertise, the approved annual plan is subject to appropriate adjustment. The anti-corruption expertise of current regulatory legal acts formed on the basis of proposals received from state bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies, enterprises, institutions, organisations regardless of ownership and citizens is carried out by structural units of the Ministry of Justice in accordance with their competence. Based on the

results of the anti-corruption expertise of the current legal act, the Ministry of Justice prepares a conclusion of the anti-corruption expertise of the current legal act and sends it to the CMU for consideration. In order to conduct anti-corruption expertise of existing legal acts, the Ministry of Justice may engage, in accordance with the established procedure, experts from state bodies, other enterprises, institutions, organisations, as well as experts from international organisations and representatives of public associations (upon consent). The results of the anti-corruption expertise of existing legal acts are published on the official website of the Ministry of Justice within ten calendar days (Ministry of Justice of Ukraine, 2015).

The anti-corruption expertise of regulatory legal acts of state bodies whose regulatory legal acts are subject to state registration is carried out during such registration. The results of the anti-corruption expertise of a regulatory legal act are indicated in the conclusion on state registration, revision, or refusal of state registration of the relevant act (Ministry of Justice of Ukraine, 2015).

The anti-corruption expertise of draft legal acts is carried out as an integral part of their legal expertise by the structural units of the Ministry of Justice whose powers include legal expertise. The results of the anti-corruption expertise of a draft legal act are reflected in the opinion of the Ministry of Justice on the results of its legal expertise, which makes a general conclusion about the presence of corruption factors and provides suggestions on possible ways to improve the draft legal act if they are identified (Ministry of Justice of Ukraine, 2015).

In the course of anti-corruption expertise, the Ministry of Justice identifies and assesses the following corruption-prone factors: 1) unclear definition of functions, rights, duties and responsibilities of state and local authorities, persons authorised to perform state or local government functions; 2) creation of excessive burdens for recipients of administrative services; 3) absence or unclear administrative procedures; 4) absence or shortcomings of competitive (tender) procedures. When assessing the identified corruption-prone factors, the expert must take into account the type of law-making activity and, accordingly, the type of legal act or draft legal act containing corruption-prone factors. From this point of view, all legal acts are divided into four groups (depending on the threat of corruption factors, starting with the lowest): laws of Ukraine; legal acts of the President of Ukraine; legal

acts of the Cabinet of Ministers of Ukraine; legal acts of other state authorities and local self-government bodies (Ministry of Justice of Ukraine, 2017).

If the above corruption-prone factors are identified, the expert is obliged to formulate recommendations for their elimination. The identified corruption-prone factors may be eliminated by: specifying the provisions of a legal act or draft legal act; including in the legal act or draft legal act reference provisions that require the use of provisions of other legal acts; reflecting in the legal act or draft legal act detailed (complete) procedures (Ministry of Justice of Ukraine, 2017).

To identify corruption-prone factors in a legal act or a draft legal act, corruption-prone indicators are established. When identifying corruption-prone factors in a legal act or a draft legal act, the expert must take into account that the characteristics of most of these factors are interrelated. Thus, one and the same corruption potential indicator (a specific regulatory provision) may indicate the presence of different corruption-prone factors in a legal act or draft legal act. For example, a regulatory provision that gives a person authorised to perform the functions of the state or local self-government the right to request additional materials and information from individuals and legal entities at their discretion, without specifying the purpose, timeframe and grounds for making such a decision depending on the content of the regulatory act or draft regulatory act, may be an indicator of unjustified discretionary powers and imperfect administrative procedures. In this case, the assessment of a regulatory provision is carried out in relation to each corruption-prone factor to which it can be attributed (Ministry of Justice of Ukraine, 2017).

Instead, the Methodology for Conducting Anti-Corruption Expertise of Draft Legal Acts, approved by CMU Resolution No. 1346 of 8 December 2009, states that anti-corruption expertise of draft acts is carried out in three stages: the first is a general assessment of the draft act; the second is an anti-corruption assessment of the provisions of the draft act; the third is the preparation of a conclusion and the development of recommendations for eliminating corruption factors. The first stage determines whether the draft act belongs to projects with a potentially high degree of corruption risks, provides a general description of the draft act, assesses the level of justification for its adoption, determines whether the draft act complies with the requirements of the Law of Ukraine “On Principles of Preventing and Combating Corruption”, and analyses the results of a public anti-corruption expert review, if conducted. At the

second stage, each provision of the draft act is assessed for corruption-prone factors, the completeness of the regulation of social relations that are the subject of the draft act, as well as the degree of internal consistency and accessibility of the provisions of the draft act, the identified corruption-prone factors are identified and their impact on the possibility of creating preconditions for committing a corruption offence is assessed. At the third stage, a conclusion is drawn up in the form established by CMU Resolution No. 1057 of 16 September 2009 “Issues of Implementation of the State Anti-Corruption Policy”, as well as recommendations for eliminating corruption factors and possible ways to eliminate them (CMU, 2009).

The Procedure for Conducting Anti-Corruption Expertise in Public Administration by the National Agency on Corruption Prevention

The general issues of conducting anti-corruption expertise are contained in the NACP Order No. 325/20 of 29 July 2020 “On Approval of the Procedure for Conducting Anti-Corruption Expertise by the National Agency on Corruption Prevention”.

The NACP may conduct anti-corruption expertise of draft acts submitted to the VRU or the CMU on its own initiative. The NACP monitors legislative acts and draft acts submitted to the VRU or the CMU for consideration in order to identify corruption-prone provisions. The NACP monitors legislative acts and draft acts submitted to the VRU or the CMU in accordance with the Methodology for Conducting Anti-Corruption Expertise approved by the NACP. If the monitoring of draft acts submitted to the VRU or the CMU reveals corruption-prone provisions, the NACP conducts an anti-corruption expert review of such draft acts. The NACP informs the relevant VRU or CMU committee of the anti-corruption expertise of the relevant draft act, which is the basis for suspending the procedure for its consideration or adoption, but for a period not exceeding 10 calendar days. The NACP Head or the person performing his/her duties informs the relevant VRU or CMU committee about the anti-corruption expertise of the relevant draft act. The starting date of the anti-corruption expertise of the draft act is the next calendar day after the day of such notification. The anti-corruption expertise of the draft act must be completed within no more than 10 calendar days from the date of its commencement (NACP, 2020).

Representatives of the Public Council under the NACP are involved in the anti-corruption review of draft acts. The NACP informs the Public Council of the anti-corruption expertise of the relevant draft acts no later than the next business day after the start of the anti-corruption expertise. The Public Council submits substantiated proposals to the NACP no later than 4 calendar days before the end of the anti-corruption expertise of the draft act. The proposals submitted by the Public Council are considered when preparing the NACP's anti-corruption expertise conclusions. The NACP may engage experts from state bodies, enterprises, institutions, organisations, as well as experts from international organisations, representatives of public associations, with their consent, to conduct anti-corruption expertise of draft acts (NACP, 2020).

The results of the anti-corruption expertise of the draft act are set out in the conclusion of the anti-corruption expertise, which includes: the full name of the draft act, its registration number (if any), date and initiators of submission to the VRU or the CMU; the essence of the main provisions of the draft act with a list of issues to be regulated by it; provisions of the draft act containing corruption-related factors, with appropriate justification, as well as forecasting possible negative consequences of the implementation of such provisions; recommendations on possible ways to The conclusion of the anti-corruption expertise is signed by the Head of the NACP or a person acting as such. The NACP sends the conclusions of the anti-corruption expertise to the relevant committee of the VRU or the CMU no later than the next day after the date of their signing. The conclusion of the anti-corruption expertise is subject to publication within 5 days after its signing on the official website of the NACP (2020).

However, the NACP Order of 18 May 2023 No. 109/23 “On Approval of the Methodology for Conducting Anti-Corruption Expertise by the National Agency on Corruption Prevention”, in addition to the standard criteria, methods of assessment, identification and elimination of corruption-prone factors in draft legal acts submitted to the VRU or the CMU, also defines the procedure for conducting anti-corruption expertise by the NACP of draft acts and existing legal acts.

According to Section II of the NACP Order of 18 May 2023 No. 109/23 “On Approval of the Methodology for Conducting Anti-Corruption Expertise by the National Agency on Corruption Prevention”, the anti-corruption expertise procedure carried out by the NACP consists of the following stages:

monitoring of draft acts (existing acts) for signs indicating the need for an expertise; expertise of the draft act (NACP, 2023).

Monitoring is carried out in relation to: draft acts submitted to the NACP in accordance with § 37-2 of the CMU Regulations, approved by the CMU Resolution of 18 July 2007 No. 950, by the bodies that submit draft acts to the CMU; draft acts submitted to the VRU for consideration, prepared for the first or second reading; draft acts submitted to the CMU that have not been submitted to the NACP for examination; and existing acts (NACP, 2023).

Monitoring of draft acts (effective acts) is carried out by the NACP experts in accordance with Annex 1 to this Methodology. If the monitoring reveals signs indicating the need for an expert review, the draft act (current act) is analysed in accordance with Annexes 2, 3 to this Methodology and one of the following decisions is made: the NACP conducts an expert review of the draft act (part five of Article 55 of the Law of Ukraine “On Prevention of Corruption”); the NACP submits proposals to the Ministry of Justice to include the current act in the plan for conducting an anti-corruption expert review (part nine of Article 55 of the Law of Ukraine “On Prevention of Corruption”) (NACP, 2023).

The examination of the draft act involves sending a letter on the commencement of the examination of the draft act to: the Main Committee of the VRU and the Anti-Corruption Committee; the CMU in the manner and within the time limits specified in paragraph 2 of § 37-1 of the CMU Regulations; and the Public Council under the NACP. At the same time, the draft act, comparative table (if any) and explanatory note received by the NACP in accordance with § 37-2 of the CMU Regulation are additionally sent to the Public Council (NACP, 2023).

The day of the beginning of the term for the examination of the draft act is the next calendar day after the day of such notification. The examination of the draft act must be completed within no more than 10 calendar days from the date of the start of the examination period. Based on the results of the examination, recommendations are developed on possible ways to eliminate the corruption-prone factors identified in the draft act, indicating specific ways to eliminate them in accordance with Section V of this Methodology. The results of the examination of the draft act are set out in the conclusion of the anti-corruption expertise. The conclusion is sent to the main committee of the VRU and the Anti-Corruption Committee, or to the CMU and the developer (NACP, 2023).

Communication of the expertise and its results is carried out through: posting information on the start of the expertise of the draft act on the NACP website, as well as informing the interested parties; publication of the conclusion on the NACP website; preparation of analytical reviews, infographics and publication on the NACP website; public discussion of the results of the expertise, etc. The effectiveness of the expert review is determined by assessing whether the subject of the relevant act has taken into account the NACP's recommendations aimed at eliminating the corruption-prone factors identified in the draft act. The NACP's recommendations are considered to have been taken into account if the draft act is revised to take into account the recommendations provided by the NACP (, 2023).

Corruption-prone factors that may be contained in the provisions of the draft act include: 1) establishing or expanding discretionary powers of a state or local government body or a person authorised to perform state or local government functions, in the absence of defining exhaustive cases, grounds, forms, terms, procedure for exercising such powers, control over their exercise and liability for possible abuses in their exercise; 2) vesting powers that are already vested in other state or local authorities or persons authorised to perform state or local government functions (duplication of powers), which creates competition between the authorities concerned and uncertainty about the entity on which they are vested; 3) delegation of powers of public authorities or local self-government bodies to private entities, as well as to advisory, consultative and other auxiliary bodies established on a permanent or temporary basis; 4) unreasonable establishment of provisions of a referential nature by means of lower-level legal acts; 5) creation of conditions for mandatory personal contact of individuals (legal entities) or their representatives with the subject of authority; 6) unclear, in violation of the principle of legal certainty, regulation of the rights, duties or responsibilities of individuals (legal entities) in any area of legal regulation; 7) creation of obstacles for recipients of administrative, educational, social or other public services, absence or restriction of the right to appeal against a decision of a public authority; 8) unjustified establishment of privileges, advantages for individuals (legal entities); 9) legal conflict in legislation: a contradiction between different provisions of the same legal act or between provisions of different legal acts of equal legal force in resolving the same issue, which allows for different interpretation of the provisions; 10) inconsistency of the provisions of a legal act with the provisions of a legal act

with higher legal force or international treaties of Ukraine; 11) use of legal constructions of an evaluative nature and words that allow for non-exhaustive regulation; 12) complication of implementation of measures to prevent or combat corruption provided for by law; 13) unreasonable application of exceptions to anti-corruption requirements, prohibitions and restrictions to certain categories of persons, restrictions on control, monitoring and other measures to prevent or combat corruption; 14) introduction of legal regulation that will allow avoiding criminal, administrative, disciplinary and civil liability; 15) unreasonable narrowing of the content or scope of the existing powers of specially authorized entities in the field of anti-corruption; 16) non-compliance with the procedure for development, approval and adoption of regulatory legal acts of the executive body, including restriction of participation of individuals (legal entities), their associations in public discussion; 17) unreasonable and inappropriate provision of advisory and/or intermediary services in any area of regulation; 18) the draft act was developed in the absence of a justified need for state regulation in the proposed area (NACP, 2023).

The NACP's Methodology for Conducting Anti-Corruption Expertise also identifies corruption factors in certain areas of regulation, namely: corruption factors in corporate governance; non-transparent procedure for appointing/dismissing managers and members of governing bodies of state unitary enterprises and business companies in which more than 50 per cent of shares (stakes) are owned by the state; unclear distribution of powers of governing bodies and/or officials and/or complications in bringing them to legal liability.

The identified corruption factors can be eliminated by: excluding provisions of the draft act that contain corruption factors, either alone or in combination with other provisions; improving the provisions of the draft act in light of the recommendations provided by the NACP; preparing a new draft act that takes into account the recommendations provided by the NACP at the development stage.

In order to eliminate the corruption-prone factors identified in the draft act, the NACP makes the following recommendations: to exclude from the draft act provisions that give the authority excessive, uncharacteristic discretionary powers, as well as provisions that allow for discretionary decision-making; to provide for the basic requirements for regulating the provision of administrative services when using discretionary powers, including

the timing, grounds and procedure for making decisions; to exclude from the draft act provisions of a referential nature-to formulate the relevant requirements and rules, and to define the procedures directly in the draft act; exclude provisions relating to the delegation of powers of public authorities or local self-government bodies to private entities; exclude provisions that provide for personal contact of individuals (legal entities) or their representatives with a public authority; specify the regulation of the rights, duties or responsibilities of persons applying for an administrative service; to define or clarify the procedure for appealing a decision of a public authority; to exclude from the draft act provisions that give administrative service providers the right to demand from individuals (legal entities) documents or information in the possession of the administrative service provider or in the possession of state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, enterprises, institutions or organisations under their management; define an exhaustive list of types and forms of decisions to be made by the public authority, as well as the terms and procedure for decision-making; ensure that the public authority properly (in advance) informs individuals (legal entities) about certain actions, decisions concerning their rights, obligations and legitimate interests; eliminate legal conflicts by excluding relevant provisions from the text of the draft act; other recommendations aimed at eliminating identified corruption factors (NACP, 2023).

Procedure for Conducting Anti-Corruption Expertise in Public Administration by Public Experts

Regarding the procedure for conducting a civic anti-corruption assessment, it should be noted that in 2012, a number of Ukrainian non-governmental organisations led by Transparency International Ukraine with the support of the United Nations Development Programme in Ukraine developed the Methodology for Conducting a Civic Anti-Corruption Assessment (Osyka *et al.*, 2012), which describes the concept, subject, object, subjects and grounds for conducting a civic anti-corruption assessment; the concept and features of a regulatory legal act; the main corruption-prone factors contained in regulatory legal acts; preparation of a conclusion based on the results of a public anti-corruption expert assessment.

The activities of public experts in conducting anti-corruption expertise include several steps: 1) analysis of compliance of the draft legal act with

formal features (details of the act undergoing public anti-corruption expertise; developer of the legal act; grounds for reviewing the act; subject matter of the act under review; assessment of the competence of the public authority that adopted the act; compliance of the act's content with the Constitution of Ukraine and its laws); 2) analysis of the procedure for drafting a regulatory act, including interaction with civil society (draft regulatory acts of important public importance and relating to constitutional rights, freedoms, interests and obligations of citizens; acts that provide for the granting of benefits or restrictions for business entities and civil society institutions, exercise of local self-government powers delegated to executive authorities by the relevant councils; draft regulatory acts of consultations); 3) holding consultations with experts in the field of regulatory legal acts (the results of consultations with industry experts are reflected in the expert opinion, including information on specific and illustrative examples of corrupt practices in the application of existing legal acts); 4) assessment of the act for corruption factors (analysis of corruption factors, in particular: a list of provisions in which corruption factors are identified; description of corruption factors identified in the provisions; description of possible manifestation of corruption factors in the application of a particular legal provision; indication of positions held by persons who may use this corruption factor to commit corruption; recommendations for the elimination of corruption-prone factors and the elimination (correction) of corruption-prone norms; the presence of preventive (warning) anti-corruption norms in the analysed legal act and recommendations for their inclusion (Osyka *et al.*, 2012).

The following main corruption-prone factors are identified in the course of a public anti-corruption expertise: 1) incorrect definition of functions, powers (duties) and responsibilities of certain subjects (state authorities, local self-government bodies, their officials and employees, other persons covered by the Law "On Prevention of Corruption"): definition of competence by the formula "has the right"; breadth of discretionary powers; excessive freedom of by-law rule-making; lack of liability for offences; 2) conflicts and flaws in legislative technique: conflicts; corruption-generating flaws in legislative technique; 3) gaps in regulation: gaps in substantive law; lack or insufficiency of control and transparency; lack or insufficiency of administrative and judicial procedures; lack or insufficiency of competitive (auction) procedures; 4) incorrect definition of the conditions for exercising the right belonging to the person receiving public services (unjustified bur-

dens in its exercise) or the conditions for fulfilling an obligation; 5) false objectives of the draft law (Ukrainian Law Society, 2014).

Stages of Anti-Corruption Expertise in Public Administration

The procedure for conducting an anti-corruption expertise consists of certain stages. A stage is a relatively independent set of sequentially performed, interrelated procedural actions that are united by the purpose of obtaining a certain legal result (Goncharuk, 2004, p. 93). A stage can also be described as a relatively independent part of successive procedural actions, which, along with general tasks, has inherent goals and features relating to the participants to the process, their rights and obligations, the timing of procedural actions and the nature of procedural documents that are drawn up in the relevant administrative act (Kuzmenko, 2005, p. 17). The stages are of particular importance because they reflect the logical sequence of development of the relevant administrative proceedings. The stages follow each other, and each previous stage lays the foundation for the next one. Stages differ from each other in terms of their goals, objectives, circle of participants, range of procedural actions, legal consequences of the stage, etc. (Guberska, 2015, p. 13).

Khomenko (2015, p. 145), studying the procedure for the adoption of normative acts by local self-government bodies, identifies the following stages of their adoption: a) initiation and preparation of a draft normative act; b) consideration and adoption of a normative act; c) registration of a normative act; d) publication of a normative act.

Y. Maslova notes that the procedural anti-corruption expertise of draft legal acts submitted to the Verkhovna Rada of Ukraine by MPs includes the following stages: 1) initial, which begins with the receipt of the draft legal acts by the Anti-Corruption Committee and includes the following procedural steps: fixing the receipt by registration by the secretariat, transferring the draft legal act by the head of the Anti-Corruption Committee secretariat (or his deputy) to the direct executor with a preliminary mark in the registration documents; 2) the main one, which starts from the moment the direct executor of the draft legal act receives it and includes the following procedural steps: replicating the draft by sending it to the members of the Anti-Corruption Committee, preparing a draft expert opinion on the compliance of the draft act with the requirements of anti-corruption legislation, conducting

additional consultations on the provisions of the draft law with the subject of the right of legislative initiative and other entities, comparing the provisions of the draft with the provisions of legislative acts of Ukraine related to anti-corruption legislation; 3) final, which begins from the moment the draft decision of the Anti-Corruption Committee is formed on the compliance of the draft legal act with the requirements of anti-corruption legislation or the presence of corruption factors and includes the following procedural steps: drafting a decision of the Anti-Corruption Committee, notifying the subject of the right of legislative initiative and inviting him/her to participate in the meeting of the Anti-Corruption Committee to consider the relevant draft act, sending a conclusion to the Anti-Corruption Committee on the draft act as intended (Maslova, 2021, pp. 279-280).

The activities that form the content of the mandatory anti-corruption expertise are set out in the Methodology for Conducting Anti-Corruption Expertise, approved by Order of the Ministry of Justice No. 1395/5 of 24 April 2017. Accordingly, during the anti-corruption expertise, the existing corruption indicators are identified, which is a sign of a regulatory prescription that certifies the presence of corruption factors in a regulatory act or draft regulatory act (e. g., inadequate definition in a legal act or draft legal act of the functions, rights, duties and responsibilities of state and local authorities, persons authorised to perform state or local government functions, which may result in unjustified establishment or excessive expansion of discretionary powers, creating conditions for potential or actual conflicts of interest and opportunities for abuse of their powers). The latter reflect the ability of a regulatory legal structure (a separate regulatory provision or a set of them), independently or in interaction with other norms, to facilitate the commission or increase of corruption or corruption-related offences. One and the same indicator of corruption potential may indicate the presence of different corruption factors (Maslova, 2021, p. 280).

The NACP conducts optional anti-corruption expertise on its own initiative in relation to draft legal acts submitted to the VRU or the CMU. The selection of draft legal acts submitted to the VRU or the CMU for anti-corruption expertise is based on the use of monitoring. In terms of content, monitoring of draft legal acts for the purposes of anti-corruption expertise means activities aimed at identifying signs in the draft act that indicate the need for an expertise (Maslova, 2021, p. 280).

The procedure of optional anti-corruption expertise is characterised by the following features: mandatory notification of its commencement is sent to the relevant VRU committee and the Anti-Corruption Committee, or to the CMU, with simultaneous posting of relevant information on the NACP's official website and other information resources; representatives of the Public Council under the NACP are involved in the examination; based on the results of the examination, the expert proposes recommendations on possible ways to eliminate the identified corruption factors, indicating specific ways to eliminate them; the effectiveness of the examination is determined by assessing whether the subject of the relevant regulatory act takes into account the NACP recommendations; the conclusion of the anti-corruption examination is subject to publication within 5 days after its signing on the official website of the NACP (Maslova, 2021, p. 280).

CONCLUSIONS

In view of the above, the procedure for conducting an anti-corruption expertise in public administration is a procedure established by law for authorised entities to analyse, review and assess current regulations and draft regulations for compliance with corruption-related factors. The procedure for conducting anti-corruption expertise in public administration consists of the following stages: 1) initiation of an anti-corruption assessment of existing regulations and draft regulations; 2) analysis, verification and assessment of existing regulations and draft regulations for compliance with corruption factors; 3) preparation of a conclusion and development of recommendations for eliminating corruption factors.

Each stage of the procedure for conducting anti-corruption expertise in public administration contains stages depending on the entity that carries it out. A stage is an element of the stages of the procedure for conducting anti-corruption expertise in public administration, during which procedural actions and decisions are taken to address their individual tasks (for example, forming a plan for conducting anti-corruption expertise of current regulations, monitoring draft regulations, obtaining a draft regulation, etc.)

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