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THE ROLE OF CIVIL SOCIETY AND STANDARDS OF THE FATF¹ IN FIGHTING POLITICAL CORRUPTION IN UKRAINE

Abstract

Corruption in Ukraine is currently a serious and as of yet unresolved problem. The article is devoted researches of role of civil society in combating political corruption in Ukraine. The author analyzed the mechanism which is known as Recommendations of FATF, an intergovernmental body establishing global anti-money laundering standards. Corruption prevention by civil society has priority over other methods of controlling this phenomenon, specifically, over the repressive ones. Permanent public awareness is a key element. Informed public organizations can be the most effective driving forces of any anti-corruption company.

Key words: Corruption; Money laundering; Perceptions Index; Anticorruption Action Centre

With every passing year the situation in this area becomes worse despite numerous declarations about the threat posed by this phenomenon.

In the world corruption rating Ukraine has been downgraded from the 134th place in 2010 to the 144th place in 2012, according to the Transparency International annual Corruption Perceptions Index [10]. Results of the investment climate of Ukraine research show that in 2011 businesses spent on corruption composed about 10 percent of their profit [5].

A special feature of corruption of the “Ukrainian model” is that this is a corruption of a crisis type. It is generated by the crisis of the modern Ukrainian society (not just by imperfect criminal justice); it may aggravate a crisis of society having a capacity to destroy any political, economic, legal and moral reforms. It is a threat for national security of Ukraine [3].

The most dangerous form of corruption is political corruption. It defined as an abuse of office by subjects endowed with political authority (political figures and statesmen, high-ranking public employees/public officials/civil servants), directed towards political goals achievement (to hold and consolidate power, to extend authorities) and/or with the purpose

¹ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

of enrichment [4].

Political corruption is present in all spheres of political life in Ukraine, first of all, in the election process and activity of political parties, at all levels of state governance and in all bodies of state power, local self-government bodies, courts and law-enforcement bodies without exception [6].

Under M. Melnyk, political corruption is a determining factor of corrupt process in the state in general, since it is inherent in the subjects which form the factor fundamental for the whole state activity – the political will, hence the degree of these subjects' corruption involvement determines the essence and content of public policy in all spheres of social life including the sphere of counteraction to corruption [6].

We may conclude that corrupted powerful people firmly cemented by corruption networks in all branches of power and in law enforcement agencies, consider themselves to be “untouched”.

The latest parliamentary elections in Ukraine (on October 28, 2012) showed that, in fact, they were neither free nor democratic because we have seen the mass subornation of voters that is a manifest example of political corruption since it involves influence on citizens' will, encouraging its exercise in a way conducive to keeping power by a certain political parties or its candidate.

We have observed widespread use of the administrative resource that may be defined as an “influence of officials using their powers on political developments in Ukraine, in particular the course, results and other elements of the election process with the purpose of staying in power” [7]. While free expression of will and objective determination of presidential and parliamentary elections results create system political and legal prerequisites for decrease in political corruption rate.

It can be stated that the top officials of Ukraine do not have enough political will to fight corruption now. All above mentioned circumstances necessitating more action of civil society that can force powers that be play by the rules.

Providing the citizens with access to information is one of the components of a successful strategy directed against corruption. International legal acts, in particular, the Convention against Corruption of the UN (2003, article 13) encourages countries to promote active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as enhancing the transparency of and promoting the contribution of the public to decision-making processes; ensuring that the public has effective access to information; under-taking public information activities that contribute to non-tolerance of corruption; respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption [11].

For this reason special attention should be paid to the targeted information companies aimed at informing people about threats of corruption and citing certain examples of how a crime with no evident consequences reduces incomes of citizens. It is necessary to constantly inculcate ideas in the Ukrainians that due to people making an honest living there is an unfair redistribution of money on behalf of a small layer of oligarchic groups and corrupted officials of different branches of power. The latter would not prosper without the aid of ordinary people and their displays of active corruption.

It is worth mentioning that motivation of crime and favorable factors for their commission is directly dependent. The presence of such possibilities (in-adequate legislation which regulates different aspects of economic life; high tolerance of citizens to some crimes, for example, bribery; possibility to use large amount of cash, obtained by a criminal way, in subsequent legal and illegal activity; absence of clear standards of conduct officials, judges, deputies of all levels; a lack of control mechanisms in relation to verification of profits and charges of official persons) considerably facilitate the commission of the corruption offenses. Minimal risk of bearing criminal responsibility creates the habit of such activity.

In this regard, we consider it is appropriate to pay attention to such method of informing the public about the most hazardous crime as independent journalistic investigations. There is a list of Internet editions where the journalists conduct objective high-quality investigations facts of corruption, in particular, the political ones in Ukraine. First of all, these are the “Ukrainian Pravda” (the Ukrainian Truth²), the “Our money”³, the “Maidan” (Square)⁴, as well as some individual journalists.

For example, journalists-experts in the sphere of public procurement from the web platform “Our Money” daily monitor the web-portal the “Bulletin of Public Procurement”, which is an official edition of the state and where, according to the law, the information is published about all state tenders (which constitute one of the major sources of corruption in Ukraine). As a result of monitoring, hundreds of publications on political corruption in tenders went out on the pages of the Ukrainian newspapers, Internet editions and on some of the Ukrainian TV channels (those which are considered as opposition). In accordance with the materials of the project “Our Money” a few most kick-up journalistic investigations

² See <pravda.com.ua/>

³ See <nashigroshi.org/about/>

⁴ See <maidan.org.ua/>

got international resonance. In particular, after the series of publications and plots about the opaque purchase by a state enter-prise “Chornomornaftogas” (Blacksee Petroleumgas) of the oil boring setting at the price above the market at 150 million dollars and through the network of off-shore firms, the prosecutor office of Great Britain has initiated the criminal case [2].

Another demonstrative example is the work of the Ukrainian non-profit civic organization – the Anticorruption Action Centre (AntAC)⁵ which unites experts from legal, media and civic-political sectors having a purpose to re-duce political corruption in Ukraine. This organization cooperates closely with the “Our Money” in matters of monitoring governmental procurement contracts. Materials of investigations of the site “Our Money” have already formed the basis of more than two hundred Members of Parliament addresses to law enforcement bodies of Ukraine, initiated and developed by this organization. Having been established just a year ago, this organization has prevented embezzlement of nearly a billion UAH (approximately 124 million U.S. dollars) as a consequence of holding such tenders.

ANTaC believes that the most efficient method of fighting corruption in Ukraine would be identification of the state officials involved in the corruptactivities in Ukraine, documenting their alleged crimes, following their assets abroad and applying the FATF standards and other international instruments, which should help with filling the gap of the Ukrainian national law with regard to the PEPs (Political Exposed Persons) and their overseas assets and economic activities. The state procurement tenders represent the best documented cases, and, therefore, this organization has chosen to monitor them, follow the laundered money abroad and make endeavours to recover them to Ukraine. For these purposes the ANTaC will plan to conduct an informational campaign with distribution of the database on the Ukrainian PEPs having assets overseas in the foreign media. Much data for such fruitful cooperation can be obtained from the investigative journalism.

Various countries to a lesser or greater extent have got past the stage of development which Ukraine is proceeding with now. All of them dealt with such phenomena as organized crime and with its integral attribute – corruption, first of all with a political one. The analytical results in Buscaglia and Jan Van Dijk (2003) drew on the example of more than five dozen countries worldwide attest to the deep ties between the growth of organized crime and the growth of public sector corruption. Since they “feed” each other, it explains why there are common countermeasures [1].

It is clear that a lot of transnational aspects of corruption as well as organized crime require measures developed and implemented by the global community. Any transaction involving laundering of black money outside of Ukraine cannot occur without support from foreign financial institutions. The cores of numerous international legal instruments, as well

⁵ See < antac.org.ua/pro-nas/ >

as practical actions of the criminal justice system, financial institutions, civil society in many European countries, as well as the United States, are increased risks for corrupt leaders of being caught and punished, and depriving them of opportunities to use the criminal incomes. Proceeds deriving from abuse of political power and public office in Ukraine are being carefully cleaned up through the system of network of fictitious companies, nominal directors and offshore corporations, so political corruption and money laundering are also intrinsically linked.

We have been witnesses to more and more schemes of budget money laundering from Ukraine just to the West. By some estimates during the years under the present government (2010 - 2012) more than 70 billion of dollars have been transferred from Ukraine to offshore, most of all to Cyprus [6].

It should be emphasized that banks and other Western financial institutions are contributing to the flourishing of political corruption in Ukraine. There is, however, international legal mechanism aimed at cleaning the global financial sector of providing services for corrupt public officials. This mechanism is known as Recommendations of FATF, an intergovernmental body establishing global anti-money laundering standards [12].

FATF is called upon to make an “Achilles’ heel” of criminal dealers – crime income – more vulnerable. Key instruments of FATF are set forth in the Forty Recommendations of that organization.

The financial institutions, volunteering their services to unfair clients offer an opportunity to conceal crime income by legalizing it, are placed by the FATF at the cutting edge of the Global Programme against Money Laundering.

“Financial institutions should undertake customer due diligence measures including identifying and verifying the identity of their customers” as per the tenth FATF Recommendation [13], [10].

As to the clients and financial transactions with a higher risk, the FATF separately requires stricter rules of due diligence from financial institutions. Financial institutions should conduct additional due diligence with regard to PEPs, defined by the FATF as “individuals who are or have been entrusted with prominent public functions in a foreign country...” [13], [10]. The FATF has recently changed this provision (February 12, 2012), including to the PEPs national politicians. Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials [13], [10].

Financial institutions are obliged to create such management system of risks that should allow determining which clients of bank attribute to PEP. They are required to take measures for determination of the enriching sources of the clients - PEP and sources of their financing; to get approval of top management to set business relationships with such clients and to conduct the permanent monitoring of business relationships with them [8, 6].

Standards of the FATF are legally incorporated in the European Union Law, namely in the EU Directives on counteraction to money laundering, which create a single legal field for implementation of the FATF recommendations by the community countries. In particular, the Directive 2005/60/EC [15] of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing significantly tightens the requirements for financial institutions to identify the client: the law obliges beneficiaries to identify and thoroughly check their identity (similar to the tenth FATF recommendations).

Persons who hold or held important public positions in countries with high levels of corruption, the Directive refers to the categories of customers that carry higher risk of money laundering. Business relationships with such persons create serious reputational and legal risks for financial institutions of the EU [15].

At present in a number of leading countries in the world we may observe a tendency to wider application of legal provisions of crime assets confiscation. It is mainly associated with the fundamental position in the sphere of counteraction to organized crime and corruption according to which primary attention is focused on the destruction of criminals' economic basis.

To sum up, it should be noted that further expansion of political corruption in Ukraine, without taking effective measures for its curbing, can have ruinous effects on democratic fundamentals of political system of the country as well as on its social and political stability and development.

Corruption prevention by civil society should take priority over other methods of controlling this phenomenon, specifically, over the repressive ones. Permanent public awareness is a key element. Informed public organizations can be the most effective driving forces of any anti-corruption company.

The real fight against corruption in Ukraine is impossible without measures to minimize the manifestations of this shameful phenomenon, especially in the higher echelons of power. The corrupted political and public figures are uninterested in its exposure, since the main levers of influence may become international standards that aim at blocking capabilities laundering the proceeds of crime and their confiscation.

So the core of numerous international legal norms as well as practical actions of criminal justice agencies, financial institutions, and civil society of many developed countries in the world is to put corrupted powerful people at increased risks of being caught and punished as well as to deprive them of the opportunities to use crime incomes.

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