

# **PRINCIPLES OF ADMINISTRATIVE LAW AS THE BASIS OF THE FORMATION OF THE FOUNDATIONS OF PREVENTING AND COMBATING CORRUPTION IN UKRAINE**

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## **Summary**

The author justifies the position that the principles of administrative law are the basis for the formation of the foundations (principles) of preventing and combating corruption. As a result, the article identifies a specific list and discloses the content of the principles of preventing and combating corruption in Ukraine.

Keywords: principles of administrative law, corruption, rule of law, legality.

**Formulation of the problem.** The obligation regarding the need to reform anti-corruption legislation was the result of Ukraine's accession to the UN Convention against Corruption [1] and the Criminal Convention against Corruption [2]. Accordingly, back in 2002, the President of Ukraine was instructed to develop a draft law on principles for preventing and combating corruption. October 14 2014 can be characterized as a new stage of reforming the anti-corruption legislation of Ukraine, because on this day the Verkhovna Rada of Ukraine adopted a new so-called "anti-corruption package of laws", namely: Laws of Ukraine "On the Basics of State Anti-Corruption Policy in Ukraine (Anti-corruption strategy) for 2014-2017" [3], "On the prevention of corruption" [4] and "On the National Anti-Corruption Bureau of Ukraine" [5].

It is interesting that, unlike the law "On the principles of preventing and combating corruption", the current Law of Ukraine "On the prevention of corruption" does not define a list of principles of preventing and combating corruption. Such an approach of legislative regulation looks, to put it mildly, strange, given the modern legal technique of forming legislative acts. At the same time, we believe that any

state-imperious activity is based on certain principles (foundations), regardless of whether they have a direct textual consolidation or not.

Based on the content of the object of administrative and legal regulation [6, p. 27; 7, p. 70], we can state that the state system for preventing and combating corruption is the object of administrative and legal regulation. Therefore, the definition of the foundations (principles) of preventing and combating corruption makes it necessary to refer to the list and principles of administrative law.

**The state of the study.** Despite the fact that the research works of leading scientists was devoted to the study of the characteristics of prevention and means of countering various types of corruption activities, the question of the principles (foundations) of preventing corruption and combating it almost did not find its proper coverage.

In turn, the principles of administrative law to one degree or another devoted their attention: V. B. Averyanova, A. F. Andriyko, A. M. Bandurka, Y. P. Bityak, I. P. Golosnichenko, L. E. Kisel, M. I. Kozyubra, I. B. Kollushko, V. K. Kolpakov, E. B. Kubko, R. A. Kuybida, R. S. Melnik, Y.S. Pedko, A. Y. Sinyavskaya, V.F. Opryshko and others. The works of these authors form the basis for determining the list and determining the content of the principles of preventing corruption and fighting it in Ukraine.

**The purpose of the article.** So, the purpose of this article is to determine the list and content of the principles of preventing and combating corruption based on the principles of administrative law.

**Presentation of the main material.** Based on the research of leading administrative scientists who drew attention to the study of the principles of administrative law, we must declare that their system is experiencing a fundamental transformation as it introduces a “people-centered” approach to understanding key state-legal phenomena, categories, which necessitates a revision of the content and key requirements, formed by Soviet science, the principles of administrative law, which actually determined the principles of the Soviet state management of social processes, organizations, people as subordinate subjects [8, p. 75]. One cannot but

agree with this position. At the same time, the key point of the above is the fact that the principles of law and, accordingly, administrative law are not a permanent category, the latter are in constant transformation depending on the conditions of the development of society.

Now the issue of combating corruption is one of the pressing problems of Ukrainian society. According to research, it is corruption is one of the reasons that led to mass protests in Ukraine at the end of 2013 – at the beginning of 2014 [3]. According to the results of the “Global Corruption Barometer” from the Transparency International and the Gallup International Association, in 2013, 68% of Ukrainians were ready to protest against corruption, in particular, 36% agreed to go outside for this [9].

From the above it follows that the traditional principles of administrative law should be assessed through the prism of priority state and imperious activity in preventing and countering corruption. This a key aspect of determining the list (in particular of specific principles) and the content of traditional principles of preventing and combating corruption.

As a result, the following principles can be attributed to the principles of preventing and combating corruption in Ukraine.

*The principle of the rule of law* means priority of human rights in society first and foremost. A person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value; human rights and freedoms and their guarantees determine the content and focus of the activities of the state (article 3 of the Constitution of Ukraine). At the same time, this principle is manifested in such features of state and public life: the consolidation of fundamental human rights in the Basic Law and other laws of the state; domination in public and state life of laws, expressing the will of the majority or the entire population of the country, while embodying universal human values and ideals – above all, human rights. In addition to respect for human rights, this principle also provides for: legal certainty; prohibition of arbitrariness; prevention of discrimination and equality

before the law; access to justice in independent and impartial courts, including judicial review of laws.

The court applies the principle of the rule of law, taking into account the jurisprudence of the European Court of Human Rights. Guaranteed appeal to the court to protect the rights and freedoms of man and citizen directly on the basis of the Constitution of Ukraine. At the same time, refusal to consider and settle the case for reasons of incompleteness, ambiguity, inconsistency or lack of legislation regulating the disputed relations is prohibited.

**The principle of legality**, which is an integral principle of the rule of law, implies that:

- legislative, executive and judicial authorities exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine; public authorities and local governments, their officials are obliged to act only on the basis of, within the limits of authority and methods stipulated by the Constitution and laws of Ukraine (part 2 of article 6, part 2 of article 19 of the Constitution of Ukraine);

- the Constitution of Ukraine has the highest legal force. Laws and other legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. The norms of the Constitution of Ukraine are the norms of direct action. Laws and other legal acts defining the rights and obligations of citizens should be communicated to the public in the manner prescribed by law. Laws and other legal acts defining the rights and obligations of citizens that were not communicated to the public in the manner prescribed by law are invalid (article 8, parts 2 and 3, article 57 of the Constitution of Ukraine);

- the court decides cases in accordance with the Constitution and the laws of Ukraine, as well as international treaties, consent to be bound by the Verkhovna Rada of Ukraine, and applies other legal acts adopted by the relevant body on the basis, within the limits of authority and methods stipulated by the Constitution and laws of Ukraine; in the case of non-compliance of a legal act with the Constitution of Ukraine, the law of Ukraine, and an international agreement, the consent to which is

bound by the Verkhovna Rada of Ukraine, or another legal act, the court applies a legal act that has the highest legal force; if a law or other legal act contradicts the Constitution of Ukraine, the court applies the norms of the latter as norms of direct action; if the international agreement, the consent to which is necessarily provided by the Verkhovna Rada of Ukraine, establishes other rules, rather than those provided for by law, then the rules of the international treaty (Article 7 of the Code of Administrative Procedure of Ukraine) apply;

- laws and other regulatory legal acts have no retroactive effect in time, unless they soften or cancel the responsibility of a person; no one can be responsible for acts that at the time they were committed were not recognized by the law as an offense; a more severe punishment cannot be imposed than that which was applicable at the time of the commission of the criminal offense; No one can be twice brought to legal responsibility of the same type for the same offense; a person is considered innocent of committing a crime and cannot be criminally punished until his guilt has been proven in law and established by a court conviction; ignorance of the law does not exempt from legal liability; only laws define the basis of civil liability; acts that are crimes, administrative or disciplinary offenses, and the responsibility for them is determined by law (article 58, 61, 62, 68, paragraph 22 part 1 of article 92 of the Constitution of Ukraine, article 7 of the Convention for the Protection of Human Rights and freedoms [11]; article 4 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms [12]);

- no one can be subjected to a measure in connection with an administrative offense except on the grounds and in the manner prescribed by law; an administrative offense (misdemeanor) is recognized unlawful, guilty (intentional or careless) action or inaction, encroaching on public order, property, rights and freedoms of citizens, encroaching on the established procedure of management and for which the law provides for administrative liability (article 7 and article 9 of the Code of Ukraine on Administrative Offenses [13]).

- the basis of criminal liability is the commission by a person of a socially dangerous act containing the elements of the crime provided for by the Criminal

Code of Ukraine; a person is considered innocent of committing a crime and cannot be criminally punished until his guilt has been proven in law and established by a court conviction; no one can be prosecuted for the same crime more than once; the laws of Ukraine on criminal liability, adopted after the entry into force of this Code, are included in it after entry into force; the criminality of the act, as well as its punishability and other criminal and legal consequences are determined only by this Code; the application of the law on criminal liability by analogy is prohibited; Criminal laws of Ukraine should comply with the provisions contained in existing international treaties, the consent to which must be granted by the Verkhovna Rada of Ukraine (articles 2, 3, 4 of the Criminal Code of Ukraine);

- the application of any law on legal liability by analogy is prohibited; in other cases, in the absence of a law regulating the relevant legal relations, the court may apply the law regulating such legal relations (analogy of the law), and in the absence of such a law, the court proceeds from the constitutional principles and general principles of law (analogy of law).

*The principle of the integrated implementation of legal, political, socio-economic, informational and other activities* is based on the provision of the UN Convention against Corruption, which states that the States that are parties to this Convention are convinced that a comprehensive and integrated approach is necessary to effectively prevent and combat corruption. That is why the Convention defines not only specific types of corruption offenses and responsibility for them, but also the bodies for preventing and combating corruption and specific measures to prevent it, in particular, the adoption of codes of conduct for public officials, regulation of public procurement and public financial management, government reporting, measures for the judiciary and prosecution services, public participation, measures to prevent money laundering, suspension of operations (freezing), arrest and confiscation, protection witnesses, experts and victims, protection of reporting persons, compensation for harm, cooperation with law enforcement agencies, between national authorities, as well as between national authorities and the private sector, extradition and mutual legal assistance, joint investigations, special

investigative techniques, asset recovery measures, financial intelligence units, bilateral and multilateral treaties and agreements, training and technical assistance, the collection and analysis of information about corruption and the exchange of such information and etc.

*The principle of prioritization of precautionary measures* provides that the law itself primarily determines precautionary measures (the current key anti-corruption law is even called «On the Prevention of Corruption»), and specially authorized subjects in the sphere of combating corruption should focus their efforts primarily on precautionary measures, and not on the activities of punishment (recovery).

*The principle of inevitability of responsibility for committing corruption and corruption-related offenses* means that every person who commits such an offense is subject to punishment and / or other legal measures of influence; exemption from liability, punishment (recovery) or serving of a sentence, as well as replacement of punishment (recovery) with a milder one is allowed only in cases provided by law.

According to the *principle of openness and transparency* of the activities of public administration (state authorities and local governments), it is based on the following principles:

- ensuring the smooth movement of information about phenomena and processes in the state-legal and municipal spheres, as well as informing the public about the adoption of measures to prevent and combat corruption;

- persons involved in the prevention and counteraction of corruption cannot be restricted in the right to receive information on preventing and counteracting corruption from state authorities and local self-government bodies;

- a person held accountable for a corruption offense or an offense related to corruption cannot be restricted in the right to receive oral or written information on the results of the consideration of his case in a law enforcement body and court, and anyone who is not a party to the case of the relevant offenses has the right to free access to a court decision in the manner prescribed by law; this right may be restricted in accordance with the law in the interests of non-disclosure of confidential information about a person, state or other secret protected by law;

- the consideration of cases of corruption offenses and offenses related to corruption in courts is open, except in cases established by procedural law. Participants in the trial and other persons present at the open court session may use portable audio equipment. Photographing and filming, videotaping, and also broadcasting of the court session on radio and television are allowed in the courtroom in the manner prescribed by the procedural law (article 11 of the Law on the Judicial System and Status of Judges) [14]; a court decision taken in open court is proclaimed publicly; if the trial was held in a closed court session, the operative part of the decision is publicly proclaimed.

Violation of the *principle of transparency* may be a form of violation of the right to a fair court, as provided for in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. According to part 1 of this provision, «everyone has the right to a fair and public hearing of the case by an independent and impartial court, established on the basis of a law that will establish the validity of any criminal charge against him. The court decision is announced publicly, but the press and the public may not be allowed to meet during the entire trial or part thereof for reasons of morality, public order or national security in a democratic society, if the interests of minors demand or in order to protect the private life of the parties, or to the extent that is recognized by the court as strictly necessary when, under special circumstances, the publicity of consideration may harm the interests of justice. [11].

*The principle of public participation in activities to prevent and combat corruption and the principle of state protection of persons assisting in the implementation of such activities (accusers)* is, in fact, two different principles. At the same time, «the public» means one or more individuals or legal entities, their associations, organizations or groups that act in accordance with national legislation or practice (article 2 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on environmental issues [15]).

The first principle is to inform the public concerned about the main features of the important proposed solutions to prevent and combat corruption at the initial stages of the decision-making process, while respecting the requirements for



adequacy, timeliness and potential effectiveness of this information, and ensuring the participation of members of the public in the preparation and adoption of relevant decisions, taking other appropriate measures. Specific rights of associations of citizens, their members and authorized representatives, as well as individual citizens in the activities to prevent, detect and counter corruption offenses are provided for in Art. 13 of the UN Convention against Corruption and Art. 14, 21, 53 of the Title Law.

In particular, public associations, their members or authorized representatives, as well as individual citizens in the activities to prevent corruption have the right to:

1) to report on the revealed facts of corruption or offenses related to corruption, a real or potential conflict of interests to specially authorized subjects in the sphere of fighting corruption, the National Agency, leadership or other representatives of the body, enterprise, institution or organization in which these offenses were committed or employees who have a conflict of interest, as well as the public;

2) request and receive from state bodies, bodies of the Autonomous Republic of Crimea, local authorities in the manner prescribed by the Law of Ukraine “On Access to Public Information”, information on activities to prevent corruption;

3) carry out, order the conduct of public anti-corruption expertise of normative legal acts and draft normative legal acts, submit proposals to the relevant authorities based on the results of the examination, receive information from the relevant authorities on the accounting of submitted proposals;

4) to participate in parliamentary hearings and other activities to prevent corruption;

5) make proposals to the subjects of the right of legislative initiative to improve the legislative regulation of relations arising in the field of preventing corruption;

6) conduct, order research, including scientific, sociological, etc., to prevent corruption;

7) carry out public awareness activities on the prevention of corruption;

8) to exercise public control over the implementation of laws in the field of preventing corruption, while using such forms of control that do not contradict legislation;

9) implement other measures not prohibited by law to prevent corruption.

Cooperation with accusers of corruption» (by individuals, if they are reasonably convinced that the information is reliable, they report a violation of the requirements of the Law of Ukraine “On the Prevention of Corruption” by another person) is an extremely effective means of identifying corruption offenses. According to the current legislation, a number of guarantees of state protection of accusers are provided, namely:

1) guarantees of protection for anonymity and non-disclosure of information about accusers:

- the law provides for the possibility to report information anonymously (part 5 of article 53 of the Law of Ukraine “On the Prevention of Corruption”);

- information about the accuser may be disclosed only with his consent, except in cases established by law (par. 2 of part 3 of article 53 of the Law of Ukraine “On Prevention of Corruption”);

2) guarantees of protection in the presence of a threat to life, housing, health and property – if, in connection with a perfect report on violation of the requirements of the Law of Ukraine “On Prevention of Corruption”, there is a threat to life, housing, health and property of persons who provide assistance in preventing and countering corruption, or their loved ones, law enforcement agencies may apply legal, organizational, technical and other measures to protect them from unlawful encroachments provided for by the Law of Ukraine “On ensuring the safety of persons involved in criminal proceedings” [16] (part 2 of article 53 of the Law of Ukraine “On the prevention of corruption”);

3) guarantees in the field of protection of labor rights:

- the following measures cannot be applied to the person who has reported on the violation of the requirements of the Law of Ukraine “On the Prevention of Corruption” or a member of his family: dismissal or coercion to dismiss; disciplinary

proceedings; other negative measures (transfer, certification, change of working conditions, refusal to appoint to the highest position, reduction of salary) (par. 1 part 3 of article 53 of the Law of Ukraine “On the Prevention of Corruption”). At the same time, in the event of dismissal without a legal basis or illegal transfer to another job due to a report on violation of the requirements of the Law of Ukraine “On Prevention of Corruption” by another person, the employee must be reinstated in his previous job by the body considering the labor dispute (part 1 of Art. 235 of the Labor Code of Ukraine [17]);

- if there are grounds for reinstatement of an employee who was dismissed due to a report by him or a family member on violation of the requirements of the Law of Ukraine “On Prevention of Corruption” by another person, and if he refuses to reinstate, the body considering labor dispute, decides on the payment of compensation to him in the amount of six-month average earnings (part 4 of article 235 of the Labor Code of Ukraine);

4) guarantees of protection in the administrative process – the NAPC may be brought in as a third party who does not declare independent claims regarding the subject of the dispute, on the side of the claimant in cases where the manager or the employer applies negative measures to the claimant or the creation of a threat of use (Dismissal, coercion to dismissal, bringing to disciplinary responsibility, transfer, certification, change of working conditions, refusal to appoint to the highest position, salary reduction, etc.) in connection with the message by him or his family members about violation of the requirements of the Law of Ukraine “On Prevention of Corruption” by another person (part 2 of article 49 of the Code of Administrative Procedure of Ukraine);

5) protection guarantees in civil proceedings:

- the NAPC may be brought in as a third party who does not declare independent claims regarding the subject of the dispute, on the side of the claimant in cases where the manager or the employer applies negative measures to the claimant or the creation of a threat of use (Dismissal, coercion to dismissal, bringing to disciplinary responsibility, transfer, certification, change of working conditions,

refusal to appoint to the highest position, salary reduction, etc.) in connection with the message by him or his family members about violation of the requirements of the Law of Ukraine “On Prevention of Corruption” by another person (part 2 of article 53 of the Civil Procedure Code of Ukraine) [18].

- on cases where the manager or the employer applies negative measures to the claimant or the creation of a threat of use (Dismissal, coercion to dismissal, bringing to disciplinary responsibility, transfer, certification, change of working conditions, refusal to appoint to the highest position, salary reduction, etc.) in connection with the message by him or his family members about violation of the requirements of the Law of Ukraine “On Prevention of Corruption” by another person, the duty of proving the legality of the decisions taken in this case, committed actions are assigned to the defendant (part 3 of article 81 of the Criminal Procedure Code of Ukraine).

*The principle of ensuring the restoration of violated rights and legitimate interests, compensation for damages, harm caused by corruption or corruption-related offenses* is reflected in the provisions of articles 66-69 of the Title Law, which says, in particular, about: compensation of losses and damages caused to the state as a result of committing a corruption offense or related to corruption; cancellation of legal acts, decisions issued (taken) as a result of committing a corruption offense or related to corruption, or declaring them illegal in court; restoration of rights and legitimate interests; compensation of losses and damages caused to individuals and legal entities as a result of committing a corruption offense or related to corruption; confiscation of property illegally obtained as a result of committing a corruption or corruption-related offense, and penalties in favor of the state, funds in the amount established by the court of the cost of illegally obtained services or benefits.

**Conclusions.** Our study shows that the basis for the formation of the list and content of the principles of preventing and combating corruption in Ukraine is the principles of administrative law, as a natural display of values, fundamental principles of organization and activities of subjects of public administration, which are mainly aimed at meeting the needs of the realization and protection of the rights

and freedoms of citizens by preventing and suppressing corruption and corruption related offenses. In turn, the activities to prevent and combat corruption is based on the following principles: the rule of law; legality; integrated implementation of legal, political, socio-economic, informational and other activities; prioritization of precautions; inevitability of responsibility for the commission of corruption and corruption-related offenses; openness and transparency of public administration activities (state authorities and local governments); public participation in activities to prevent and counter corruption, state protection of persons assisting in the implementation of such activities (accusers); ensuring the restoration of violated rights and legitimate interests, compensation for damages, harm caused by a corruption offense.

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