

OŁEKSANDR W. SKRYPNIUK¹, VLADISLAV FEDORENKO²

Parliament, Head of State and Government as Entities Forming and Implementing National Anti-Corruption Policy (through the example of Ukraine)

Abstract

The success of further development of Ukraine as sovereign and independent, democratic, social, constitutional state now, more than ever earlier, depends on determination of politicians, statesmen and public employees and adherence to principles of each citizen and civil society in general in fight against the external and internal enemy. Among internal enemies of Ukraine corruption which makes impossible effective economic, social and humanitarian development of Ukraine is high on the list, slows down the European integration of Ukraine, and at the end advantageous of external foes of our state. Therefore, eradication of corruption is one of the most important functions of the Ukrainian state now.

The important place in system of subjects of forming and implementation of the state anti-corruption policy belongs to the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ukraine. So, the parliament in Ukraine creates legal including the legal framework of the state anti-corruption policy, and also participates in forming of contest committees on election of special subjects of the prevention and counteraction. The head of state in Ukraine also defines essence and the maintenance of the state anti-corruption policy in the decrees, and also participates in forming of the commissions on selection and appointments of officials of specially authorized bodies according to the prevention and counteraction of corruption, and provides independence in activity of some of these bodies. The government of Ukraine provides complex implementation of the state anti-corruption

¹ Prof. dr hab. Oleksandr W. Skrypniuk – deputy director of Koretsky Institute of State and Law, National Academy of Sciences of Ukraine; e-mail: skrypnyuk@mail.ru.

² Prof. Vladislav Fedorenko – National Academy for Public Administration under the President of Ukraine, Ukraina; e-mail: fedorenko_2008@ukr.net; ORCID: 0000-0001-5902-1226 attached.

policy, has own representation in contest committees which carry out forming of specially authorized bodies of prevention and counteraction of corruption (National Anti-Corruption Bureau of Ukraine, etc.), And also performs the common directorship and coordination of activity of National police of Ukraine and National Agency for Prevention of Corruption. At the same time, the success of prevention and counteraction of corruption in Ukraine depends on efficiency of interaction of the supreme bodies of the government in the field of forming and implementation of the state anti-corruption policy.

Keywords: state anti-corruption policy, prevention and counteraction of corruption, anti-corruption legislation, Verkhovna Rada of Ukraine, President of Ukraine

OŁEKSANDR W. SKRYPNIUK, VLADISLAV FEDORENKO

Parlament, głowa państwa i rząd jako organy kreowania i stosowania krajowej polityki antykorupcyjnej (na przykładzie Ukrainy)

Streszczenie

Sukces dalszego rozwoju Ukrainy jako suwerennego, niezależnego i demokratycznego państwa bardziej niż kiedykolwiek wcześniej uzależniony jest od determinacji zarówno polityków, jak i urzędników państwowych oraz poszanowania zasad społeczeństwa obywatelskiego. Jednym z najpoważniejszych zagrożeń jest korupcja, która uniemożliwia skuteczny rozwój gospodarczy, społeczny i humanitarny, spowalnia proces integracji europejskiej Ukrainy i – co nie bez znaczenia – działa na korzyść wrogów zewnętrznych państwa. Walka z korupcją jest zatem jednym z najważniejszych zadań państwa ukraińskiego.

Istotne miejsce w kształtowaniu i realizacji państwowej polityki antykorupcyjnej zajmują Rada Najwyższa, prezydent i rząd Ukrainy. Parlament określa ramy prawne, głowa państwa – cel i sposób prowadzenia, zaś rząd zapewnia kompleksową realizację państwowej polityki antykorupcyjnej, w tym koordynuje działania policji i Narodowej Agencji Zapobiegania Korupcji.

Podkreślić należy, że powodzenie zapobiegania i przeciwdziałania korupcji na Ukrainie w dużym stopniu zależy od efektywności współdziałania naczelných organów państwa w zakresie tworzenia i wdrażania państwowej polityki antykorupcyjnej.

Słowa kluczowe: stan polityki antykorupcyjnej, zapobieganie i zwalczanie korupcji, prawo antykorupcyjne, Rada Najwyższa Ukrainy, prezydent Ukrainy

Corruption prevention and counteraction in Ukraine, as in any other state of the world, depends primarily on effective and mutually agreed activities in this area of the highest bodies of state authority – parliament, head of state, and government. Proceeding from common in domestic science division of the entities preventing and counteracting corruption into general and specialized³, the highest bodies of state authority may be referred to general entities.

At the same time, parliament, head of state and government carry out an independent constitutive mission as to formation and implementation of national anti-corruption policy. At that, on the one hand, the highest bodies of state authority must demonstrate common approaches and positions when forming and implementing national anti-corruption policy, and on the other hand – differentiation of appropriate functions and powers of parliament, head of state, and government is important to the success of carrying out national anti-corruption policy.

Thus, the Verkhovna Rada of Ukraine forms the legal, including legislative, framework of national anti-corruption policy, as well as participates in forming interviews panels charged entrusted with selecting special corruption prevention and counteraction entities; the President also determines the essence and content of national anti-corruption policy in his decrees, takes part in forming boards charged with selecting and appointing officials of the specially authorized corruption prevention and counteraction bodies, as well as ensures independence in activities of some of these bodies (National Anti-Corruption Bureau of Ukraine, Special Anti-Corruption Prosecutor); the Cabinet of Ministers ensures comprehensive implementation of national anti-corruption policy, has its own representation in interview panels and boards that form the specially authorized corruption prevention and counteraction bodies (National Anti-Corruption Bureau of Ukraine and others), as well as provides overall direction and coordination of the activities of the National Police of Ukraine and National Agency for Prevention of Corruption⁴.

Consequently, the Constitution and laws of Ukraine strengthened by the so-called “Anti-Corruption Legislative Package” of 2014 established the principle of unity of national anti-corruption policy and functional differentiation of the

³ O.Y. Busol, *Corruption-Related Crime Counteraction in Ukraine in the Present Period: A Monograph*, Kyiv 2014, p. 485.

⁴ Y.V. Kovbasiuk, V.L. Fedorenko (eds.), *National Anti-Corruption Policy and Corruption Prevention and Counteraction in the Public Service in Public Authorities and Local Government Bodies*, Kyiv 2016, p. 142.

powers of parliament, head of state and government in its implementation. It is not an overstatement to claim the establishment of a checks and balances system in Ukraine among the corruption prevention and counteraction entities. This system is designed to make it impossible for parliament, state of head or government to concentrate (and possibly usurp) full potential of the corruption prevention and counteraction bodies, or to form a new, extra-constitutional “anti-corruption branch of power”.

Let us consider the specifics of the legal status of the Verkhovna Rada of Ukraine, President of Ukraine and Cabinet of Ministers of Ukraine (the Basic Law specifies precisely this sequence of the highest bodies of state authority and determines the essence and content of the parliamentary-presidential form of government restored in Ukraine since 2014) as constitutional authorities that are important entities involved in corruption prevention and counteraction in our state.

As is known, the existence of parliaments and parliamentarianism represent the determining feature of today’s democratic states, including Ukraine. As a social phenomenon, parliamentarianism is a weighty achievement of politico-legal thought and practice, since effective operation of parliament is only possible in the context of a democratic political regime named parliamentarianism.

The ideas of parliamentarianism became fundamental for establishment and development of European constitutionalism. They were grounded on combination of two root ideas of constitutionalism – those of popular sovereignty and popular representation. Works by such thinkers as W. Blackstone, A. Dicey, S. Law, C.L. Montesquieu, J.S. Mill, and G. Jellinek substantiated various approaches to the essence and content of parliamentarianism as a politico-legal regime and form of government. In particular, G. Jellinek wrote: “the people and parliament form legal unity. Parliament is an organized people in the legal sense”⁵.

Such Ukrainian thinkers as M. Volodymyrsky-Budanov, M. Hrushevsky, S. Dnistriansky, B. Kystiakivsky, M. Kovalevsky, B. Chycherin and others shared the ideas of parliamentarianism. However, prior to declaration of Ukrainian independence in 1991, a real opportunity to create a full-fledged Ukrainian parliament existed only in 1917–1920⁶ and was associated with the activities of the Ukrainian Central Rada.

In Soviet times, theory and practice of domestic constitutionalism developed in the tideway of state-building of the former USSR. Only in 1990, the first convocation of the Verkhovna Rada took place and became crucial for development of the contemporary Ukrainian parliament and parliamentarianism.

⁵ G. Jellinek, *General Theory of the State*, St. Petersburg 2004, p. 557.

⁶ V.S. Zhuravsky, *The Becoming and Development of Ukrainian Parliamentarianism (theoretical and organizational-legal problems)*, Kyiv 2002, pp. 52–66.

It is apparent that parliamentarianism is a complex constitutional and politico-legal phenomenon. Parliamentarianism is traditionally thought of as supremacy of parliament in the state. At the same time, parliamentarianism may not be identified solely with parliamentary monarchies or republics. It stands to reason that parliamentarianism can successfully exist in presidential republics (Brazil, USA) and mixed republics (Poland, France) as well. Parliaments' supremacy is primarily ensured by quality and effectiveness of laws passed by parliament, its successful performance of oversight functions and protection of human rights and freedoms, as well as parliament's high prestige in society and the state.

Now then, parliamentarianism represent a special constitutional legal regime secured by parliament's high prestige in the country and evidenced in parliament's ability to effectively ensure popular representation, in a timely and good manner perform legislative regulation of all sphere of life in society and the state, establish and guarantee human rights and freedoms and promote consolidation of the nation around the ideals of democracy and the rule of law. But now, formation of effective anti-corruption policy sought-after by civil society and its institutions is an important task for domestic parliamentarianism.

The Verkhovna Rada of Ukraine is the only elected collegial national permanent representative body of legislative power in Ukraine. Now in Ukraine, there are no other legislative authorities except for the Verkhovna Rada of Ukraine. No provision is also made for delegating its legislative powers to other public authorities or local government bodies, their officials.

The Verkhovna Rada of Ukraine is the national representative body of state power since it has the right to represent all the Ukrainian people – citizens of Ukraine of all nationalities and act on behalf of all the people. This follows from both the preamble to the Constitution and its content, and the parliament's name – the Verkhovna Rada – Supreme Council – of Ukraine.

The collegial nature of the Verkhovna Rada as a parliament of Ukraine consists primarily in its composition and procedure. The Verkhovna Rada is composed of 450 national deputies and is plenipotentiary subject to election of no less than two thirds of its constitutional membership. The Verkhovna Rada adopts its decisions by voting at its plenary meetings (art. 84 of the Constitution).

These and other parliament's features determine a place within the system of public authorities unique to it. The parliament of Ukraine is one of the foreground bodies within the system of Ukrainian public authorities in that it exercises an important kind of state power – legislative power, takes part in forming bodies of executive and judicial power, and is the general representative of the people and exponent of its will. The parliament of Ukraine has many-sided relations with other public authorities and with entities of the political system – political parties and so on.

The Verkhovna Rada of Ukraine performs a number of functions, carries out a variety of activities and has for that end appropriate powers set by the Constitution. Defining parliament as a body of legislative power is primarily due to the name of one of its functions (legislative), which is the overriding, leading but by no means only function⁷. Therefore, the functions of the Verkhovna Rada of Ukraine represent the main established areas and types of activity of the Ukrainian parliament.

The multiplicity of parliament's functions is compatible with its nature as a body of legislative power. It is due to the fact that parliament, like the other public authorities, takes part, in its characteristic forms, in performing a number of state functions, both object, determined by the content of the state activities (political, economic, social, cultural, information, and environment-related), and other functions, in particular "technological" power functions (legislative, constitutive and so on).

The following primary functions of the Verkhovna Rada of Ukraine are distinguished today – representative, constitutive, legislative, program, security and defense, foreign-policy, fiscal, supervising, arbitration, human resources management and others. Appropriate functions of the Verkhovna Rada of Ukraine are complementary, continued, and really embodied in law-making and law-enforcing activities carried out in order to exercise the system of powers specified in article 85 and other articles of the Basic Law⁸.

The above are the primary but not exhaustive functions of the Verkhovna Rada of Ukraine. Various challenges in politico-legal development of the state at every individual stage of its historical development determine particular priorities in parliament formation. In particular, the well-known events of 2014–2016 related to the annexation of the Autonomous Republic of Crimea and temporary occupation of some areas of Donetsk and Luhansk regions have brought to the fore the relevance of the parliament's security and defense functions. Simultaneously, the state's top leadership started in 2014 a new stage in anti-corruption fight in Ukraine, since just corruption has become "the second front" against the Ukrainian state and civil society.

The foregoing has put on the front burner the anti-corruption function of the Verkhovna Rada of Ukraine that is implemented through forming national anti-corruption policy within the so-called "Anti-Corruption Legislative Package". This is about the Laws of Ukraine passed by the Verkhovna Rada on October 14, 2014 "On the Fundamentals of Anticorruption Policy in Ukraine (Anti-Corruption Strategy) for 2014–2017", "On Prevention of Corruption", "On Making Amendments to Certain Legislative Acts of Ukraine with Respect to Determination of Ultimate

⁷ V.M. Shapoval, *The Foundations of the Theory of Parliamentarianism*, Kyiv 2015, p. 83.

⁸ V.F. Pohorilko, V.L. Fedorenko (ed.), *Constitutional Law of Ukraine: A Textbook*, 4th edition, revised and completed, Kyiv 2012, p. 330.

Beneficiaries – Legal Entities and Public Officials”, “On the National Anticorruption Bureau of Ukraine”, “On Making Amendments to Certain Legislative Acts of Ukraine with Respect to Bringing National Legislation in Line with the standards of the Corruption Criminal Law Convention”. Just the abovementioned acts of current legislation determined the essence and content of national anticorruption policy represented in such components as a) the Anti-corruption Strategy for 2014–2017; b) international anti-corruption standards and their integration into current legislation of Ukraine; c) the system of specially authorized corruption prevention and counteraction bodies and their legal status; and d) the specifics of legal liability for corruption-related crimes and offenses and so forth.

A separate note should be made of the activities within the 8th Verkhovna Rada of Ukraine of the Committee on Corruption Prevention and Counteraction. The activities of this relevant Committee favor the previously expressed view that to date the parliament’s anti-corruption function is not only crucial but independent as well.

The anti-corruption function of the Verkhovna Rada of Ukraine has also gained traction in the jurisdiction of the Committee on Corruption Prevention and Counteraction. According to the Resolution of the Verkhovna Rada of Ukraine of December 4, 2014 No. 22-VIII, the jurisdiction of this parliamentary Committee includes:

- anti-corruption policy formation and implementation,
- anti-corruption expert examination of bills introduced by holders of the right to initiate legislation,
- corruption prevention and counteraction,
- corruption prevention in activities of legal entities,
- prevention and resolution of conflicts of interest,
- the rules of ethical conduct in the public service,
- financial oversight over the persons authorized to perform the functions of the state and local government,
- liability for commission of corruption and corruption-related offenses,
- legal regulation of the activities of the National Anti-corruption Bureau,
- legal regulation of the activities of the National Agency for Prevention of Corruption,
- activities of other law-enforcement and public authorities relating to their powers in the area of corruption prevention and counteraction,
- state protection of the persons facilitating corruption prevention and counteraction⁹.

⁹ On the List, Number of Members and Jurisdictions of the Committees of the Eighth Verkhovna Rada of Ukraine: Resolutions of the Verkhovna Rada of Ukraine December 4, 2014, No. 22-VIII, Bulletin of the Verkhovna Rada of Ukraine 2015, No. 1, p. 10.

The **head of state – President of Ukraine** traditionally is the next crucial entity forming and implementing national anti-corruption policy.

As is known, the institution of the presidency became an important doctrinal and state-building achievement of the bourgeois-democratic revolutions and independence wars that took place in the USA, France and other states in the late 18th – early 19th centuries. The term “head of state” was first legally constituted in the French Constitutional Charter of 1814. Although in that constitutional act this term referred to the king of France who was defined as “the supreme head of state”, with time, however, it became a generic term for both monarchs and presidents. At first, the head of state institution was introduced to the constitutions of Bavaria of 1818, a number of German principalities and Italian kingdoms in the 19th century and later on – in many others states of the world as well¹⁰.

The idea of a publicly and nationally elected and removable head of state as the advocate and defender of human rights and freedoms became a constructive alternative to the then monarchies. What is more, introduction of the head of state position enabled to fully use potential of the principle of separation of powers and the system of checks and balances among branches of power for state-building purposes.

At one time, the US Supreme Court, in its judgment delivered in July 1974 in the case *United States vs. Richard Nixon* articulated its vision of the principle of separation of powers: “While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity”. The president is, indeed, the cornerstone of the state power mechanism ensuring and guaranteeing full authority of the state (state sovereignty) both at home and abroad.

Concerning the essence of the institution of the presidency and its distinctions from monarchy, famous Ukrainian constitutional scholar S.A. Kotliarevsky wrote in 1907 in his work “*A Constitutional State*” that “the president is a head of state, like the monarch, and therein he differs from ministers and other cabinet members; his power follows directly from the constitution. The president’s difference from the monarch comes to electivity and a temporary nature”¹¹. This thesis proves its relevance to this day, more than 100 years after the publication of the cited work by S.A. Kotliarevsky.

The institution of the presidency is now fairly common and legally constituted in about 150 states worldwide out of 198 existing to date in the world and recognized

¹⁰ V.F. Pohorilko, V.L. Fedorenko (ed.), op. cit., p. 381.

¹¹ S.A. Kotliarevsky, *A Constitutional State. The Legal Prerequisites for the Russian Basic Laws*, Moscow 2004, p. 151.

by the UN. This institution first arose in the USA in the 18th century because of the pursuit of establishing strong but actually democratic state power and a state as a whole as opposed to monarchy.

The institution of the presidency in its modern sense gained a foothold in Ukraine on the eve of declaration of our state's independence in 1991. The first Ukrainian presidential election was held on December 1, 1991 – the same day when the Act of Declaration of Independence of Ukraine was approved in the national referendum. L.M. Kravchuk was elected the first President of Ukraine; he continues to this day vigorous statist and public activities.

However, institutionalization of the institution of the President of Ukraine took also place during the constitutional process associated with preparation of a new Constitution of Ukraine and making amendments to the then working Constitution. This is evident from, in particular, draft Constitutions of Ukraine as worded in 1992, 1993, 1995 and the Constitutional Agreement concluded between the President of Ukraine and Verkhovna Rada on June 8, 1995. Under those draft Constitutions of Ukraine and the Constitutional Agreement, the President of Ukraine acquired the head of state and chief executive status. The Constitution of Ukraine of June 28, 1996 finalized the legal status of the President of Ukraine.

The constitutional legal status of the president differs from state to state of the world depending on different kinds of the republican form of government (parliamentary, presidential or mixed). Even if one does not go beyond the western democratic countries, there are presidents in both presidential (USA) and semi-presidential (France), as well as in parliamentary (Germany) republics, but their objectives, functions and powers essentially differ.

As a head of state, the president embodies in most countries across the world national unity, continuity of state power; he is the guarantor of state independence and territorial integrity and sometimes is also declared arbiter, coordinator of activities of public authorities and so on. Regardless of forms of government, the president represents the state at home and abroad. In particular, he makes international treaties, appoints diplomatic representatives, and receives foreign diplomatic representatives. On behalf of the state, the president awards state decorations, confers honorary titles, grants state citizenship to individuals, and authorizes renunciation of citizenship, grants pardon to convicts and so on.

In most states of the world, presidents have a number of powers as to organization and activities of the bodies of legislative power. They assign days for parliamentary elections, convene their sessions, may prematurely dissolve parliaments unfailingly scheduling new elections, endorse and promulgate (sign and make public) laws, are vested with the veto right – the right to return laws for their reconsideration by parliament along with substantiated objections. Presidents have also

the right to initiate legislation, the right to address messages to the people and parliament that may not be debated and so forth.

President also has considerable powers regarding formation of bodies of state power and appointment of senior government officials. This is primarily the case of forming (appointing) governments, appointing judges, forming or taking part in forming constitutional justice agencies, proposing to parliament candidacies for appointment to senior positions etc.

In a number of foreign states, the president may issue legal acts having the force of law. Regulatory acts are passed (issued), as a rule, based on delegation of powers by parliament. At the same time, presidents are entitled to declare state of emergency or martial law, introduce direct presidential rule in constituent entities of federations, autonomies or individual administrative territorial entities.

Presidential powers in the national security and defense realm also are considerable. Constitutionally, presidents in all countries are commander-in-chiefs, responsible for security of the state as guarantors of its integrity. Presidents exercise these powers through the Security Council or similar bodies.

Under constitutions of most states of the world, presidents have a ramified system of safeguards on their activities in the form of checks and balances and are responsible for their actions. In particular, presidents have at their disposal such institutions of checks and balances with respect to the other branches of state power as the right to dissolve parliament (the right to prematurely terminate its powers), right of veto, right to call referenda, right to prematurely terminate the powers of judges, right to recall diplomats and so on.

As to Ukraine, the presidential functions and powers detail and amplify his legal status, identify the main areas and types of the activity of the head of state and his competence. Domestic scholars even advance an opinion that implementing his functions the President implements the functions of the state itself¹².

The functions and powers of the President of Ukraine derive from his tasks specified in art. 102 of the Basic Law, which establishes that the President of Ukraine is the Head of State and acts in its name. The President of Ukraine is the guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, rights and freedoms of man and citizen. According to art. 106 of the Basic Law, the Head of State in Ukraine has also to ensure state independence, national security and legal succession of the State. Exactly these tasks determine the main mission of the President of Ukraine in society and the state.

The above tasks of the President of Ukraine are accomplished through a number of his functions. The functions of the President of Ukraine should be understood

¹² V.V. Sukhonos, *The Institution of the Head of State in Constitutional Law*, Sumy 2011, p. 86.

to mean the main areas and types of the activity of the head of state aimed at guaranteeing state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, rights and freedoms of man and citizen, as well as ensuring state independence, national security and legal succession of the Ukrainian state.

The functions of the President of Ukraine are quite varied given the multiplicity and complexity of the tasks specified by the Constitution of Ukraine. Scholars classify these functions differently. It is evident that in terms of their orientation they may be divided into internal and foreign-policy; in terms of the sphere of legal activity – into law-making and law-enforcing; according to their content – into functions related to state-building and public administration; performing management of military organization of Ukraine; carrying out foreign policy; implementing personnel policy; securing checks and balances among the branches of power through mechanisms of politico-legal arbitration and so forth.

However, analysis of relevant provisions of the Constitution, in particular, part 1 art. 106 and others, gives the fairest idea of the main functions of the President of Ukraine and their system. The major functions of the President of Ukraine are as follows: representative, constitutive (state-building), security and defense, foreign-policy, advocacy, program, law-making, control and arbitral, personnel-related, award-conferring¹³ and others. These functions are in complex doctrinal, substantive, functional, structural and other legal relations and form the system of functions of the President of Ukraine.

It is obvious that the foreign-policy and security and defense functions of the President of Ukraine have become the most important since the well-known processes military and political processes of 2014. Implementation of successful European integration, defense and security policies, which covers virtually all areas of foreign and domestic policies are now crucial tasks of the President of Ukraine.

Implementation of these main functions enables to distinguish the independent anti-corruption function of the President of Ukraine without successful implementation of which effective foreign and security policies are impossible. The point is that corruption tears up the foundations of national security and defense and materially tarnishes the international image of Ukraine, allows Kyiv's opponents to manipulate the thesis about Ukraine as a *Failed State* or "State-404.". Consequently, the anti-corruption function or the fighting corruption function is for the day one of the priority functions of the President of Ukraine, who, according to part one art. 106 of the Basic Law, is bound to ensure state independence and national security of Ukraine, as well as provide leadership in the national security and defense areas.

¹³ V.F. Pohorilko, V.L. Fedorenko (ed.), op. cit., p. 398.

In conformity with art. 106 and 107 of the Constitution of Ukraine, the President establishes the National Security and Defense Council (NSDC) to successfully implement his functions and powers in the sphere of national security and defense, as well as fighting corruption. As is known, the NSDC coordinates and controls activities of the executive branch authorities in the area of national security and defense of Ukraine and makes decisions to that effect put into execution by decrees of the Ukrainian President.

The importance of the anticorruption area of activity of the President of Ukraine is also evidenced by the National Security Strategy of Ukraine approved by the NSDC's decision of May 6, 2015 and put into execution by the Decree of the President of Ukraine of May 26, 2015 No. 287/2015. Section 3 "Actual Threats to National Security of Ukraine" of this Strategy mentions among such threats "the spread of corruption, its entrenchment in all spheres of public administration"¹⁴.

The Strategy specifies among the focal points of national security policy of Ukraine (Section 4):

- cleaning authorities of corrupt officials and agents of foreign special services, lay public, political timeserving, making impossible prevalence of personal, corporate, regional interests over national ones;
- ensuring inevitability of punishment for corruption offenses;
- completing formation and ensuring effective operation of the National Anti-Corruption Bureau of Ukraine and National Agency for Prevention of Corruption, as well as ensuring interaction, as part of the tasks and structure specified by legislation, between the National Anti-Corruption Bureau of Ukraine and the State Bureau of Investigation of Ukraine;
- intensifying interaction with international anti-corruption organizations, in particular with the Council of Europe's Group of States against Corruption (GRECO), implementing best practices;
- implementing the principles of the NATO's initiative to build integrity, transparency, accountability and reduce the risk of corruption in the security and defense sector"¹⁵ and so on.

In our opinion, thereby the National Security Strategy of Ukraine details the anti-corruption function of the President of Ukraine as the guarantor of state so-

¹⁴ On the Decision of the National Security and Defense Council of Ukraine of May 6, 2015 "On the National Security and Defense Strategy of Ukraine": Decree of the President of Ukraine of May 26, 2015, No. 287/2015, Official Bulletin of the President of Ukraine, 2015, No. 13.

¹⁵ Ibidem.

vereignty and territorial integrity of Ukraine, as well as the Chairman of the National Security and Defense Council.

But along with this, the President of Ukraine is vested with considerable powers to independently determine the essence and content of individual aspects of anti-corruption policy. One can remember, for example, the decrees of the President of Ukraine of November 26, 1993 No. 561 “On the Coordinating Committee for Combatting Corruption and Organized criminality”; August 27, 1994 No. 484 – “The Issues Related to Intensifying Fight against ion and other Crimes in the Sphere of Economic Safety”; February 9, 2004 No. 175 – “On the System of Measures Aimed at Eliminating the Causes and Conditions Encouraging Criminal Manifestations and Corrupt Practices”; February 26, 2010 No. 275 – “On Establishing of the National Anti-Corruption Commission”; October 21, 2011 No. 1001 that approved the National Anti-Corruption Strategy of Ukraine for 2014–2017; October 14, 2014 No. 808 – “On the National Council for Anti-Corruption Policy” and others.

At that, the President of Ukraine may create, within his powers and according to para 28 part one art. 106 of the Constitution of Ukraine, consultative, advisory bodies in the area of forming national anti-corruption policy. In particular, the head of state set up by his Decree of October 14, 2014 No. 808 “On the National Council for Anti-Corruption Policy” a similarly-named advisory and consultative body the major tasks of which are as follows:

- ❑ formulation and submission to the President of Ukraine of proposals on determining, updating and improving the anti-corruption strategy;
- ❑ carrying-out of system analysis of the state of corruption prevention and counteraction in Ukraine, anti-corruption strategy implementation effectiveness, and measures taken to prevent and counteract corruption;
- ❑ formulation and submission to the President of Ukraine of agreed proposals on improving coordination and interaction among the entities carrying out measures in the area of corruption prevention and counteraction;
- ❑ assessment of the state and facilitation of implementation of the recommendations made by the Group of States against Corruption (GRECO), Organization for Economic Cooperation and Development (OECD), other leading international organization on corruption prevention and counteraction, enhancement of effectiveness of Ukraine’s international cooperation in this area;
- ❑ assistance in scientific and methodological support concerning corruption prevention and counteraction issues¹⁶.

¹⁶ On the National Council for Anti-Corruption Policy: Decree of the President of Ukraine of October 14, 2014, No. 808, Official Bulletin of the President of Ukraine, 2014, No. 41, p. 1736.

Commissioner of the President of Ukraine for the Affairs of Crimean Tatars M. Dzhemilev is now the Head of the National Council for Anti-Corruption Policy.

It is unlikely that fight against corruption in Ukraine will be effective without successful implementation of national anti-corruption policy by the government – **the Cabinet of Ministers of Ukraine**.

As is known, government in public administration theory is a kind of top of the executive power system and one of the highest agencies of the state, whose competence can generally be reduced to making arrangements for execution of laws, forming and implementing national policy in the socioeconomic, fiscal and other spheres of the state's activity, and ensuring effective public administration. For many states of the world, this is just the function of governments concerning corruption prevention and fighting.

The Cabinet of Ministers of Ukraine – Government of Ukraine – is the highest body within the executive branch in Ukraine. It exercises full executive authority in the state directly and through ministries, other central executive bodies, as well as their territorial, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, directs, coordinates and controls the activities of these bodies.

The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and under control of and accountable to the Verkhovna Rada of Ukraine within the limits envisaged in the Constitution (part 2 art. 113 of the Constitution of Ukraine). The government of Ukraine is a collegial body making decisions after discussion of relevant issues at its meetings.

In its activities, the Cabinet of Ministers of Ukraine is guided by the Constitution and laws of Ukraine, acts of the President of Ukraine. Among the acts of current legislation regulating the activities of the Government of Ukraine, special mention should primarily go to the Law "On the Cabinet of Ministers of Ukraine" of February 27, 2014¹⁷ and others.

The Cabinet of Ministers of Ukraine is the highest collegial body within the executive branch responsible to the President of Ukraine and Verkhovna Rada of Ukraine, under control of and accountable to the Verkhovna Rada of Ukraine, guided in its activities by the Constitution and laws of Ukraine, decrees of the President of Ukraine and regulations of parliament, and fulfills tasks, exercises functions and powers vested in it by the Basic Law.

Under art. 116 of the Constitution of Ukraine, the major tasks and functions of the Government of Ukraine are as follows: 1) ensuring state sovereignty and

¹⁷ On the Cabinet of Ministers of Ukraine: Law of Ukraine of February 27, 2014, No. 794-VII, Official Bulletin of Ukraine, 2014, No. 20, p. 619.

economic independence of Ukraine, implementation of domestic and foreign policy of the State, execution of the Constitution and laws of Ukraine, acts of the Head of State; 2) taking measures to ensure the rights and freedoms of man and citizen, creation of favorable conditions for free and all-round development of personality; 3) ensuring implementation of financial, pricing, investment and tax policies, as well as policy in the spheres of labor and employment of population, social protection, health care, education, science and culture, nature protection, environmental safety and nature management; 4) development and implementation of national programs of economic, scientific and technological, social, cultural development, environmental protection and other purpose-oriented programs; 5) ensuring development of and State support for scientific engineering and innovation potential of the State; 6) ensuring equal conditions for development of all forms of ownership and exercising management of state-owned property items according to law; 7) taking measures to ensure the defense capability and national security of Ukraine, public order, fighting crime, and elimination of the consequences of emergency situations; 8) organizing and ensuring implementation of foreign economic activity and the operation of customs; 9) direction and coordination of the operation of ministries, other executive bodies, as well as establishment, reorganization and liquidation of ministries and other central executive bodies, appointment to offices and dismissal of their heads; 10) performance of other functions specified by the Constitution and laws of Ukraine, acts of the President of Ukraine.

However, part one art. 19 of the Law "On the Cabinet of Ministers of Ukraine" specifies that "the activities of the Cabinet of Ministers of Ukraine are aimed at promoting the interests of the Ukrainian people by executing the Constitution and laws of Ukraine, acts of the President of Ukraine, as well as the Program of Activities of the Cabinet of Ministers of Ukraine approved by the Verkhovna Rada of Ukraine, solving issues of public administration in the area of economic and financial affairs, social policy, labor and employment, health care, education, science, culture, sports, tourism, natural environment protection, environmental safety, nature management, legal policy, legality, ensuring rights and freedoms of man and citizen, corruption prevention and counteraction, solving other tasks of domestic and foreign policies, civil protection, national security and defense capability."¹⁸ It is easily seen that the Law of Ukraine "On the Cabinet of Ministers of Ukraine", unlike the Basic Law, clearly refers "solving issues of public administration in the area of... corruption prevention and counteraction" to the functions of the Government of Ukraine.

¹⁸ Ibidem.

As the highest executive body, the Cabinet of Ministers of Ukraine is also charged with lawmaking functions that may relate to individual aspects of national anti-corruption policy. This can be exemplified by regulations of in the area of corruption prevention and counteraction – those of January 4, 2002 No. 3 “On the Procedure for Disclosing on the Internet Information on the Activities of Executive Bodies”; June 4, 2008 No. 532 “Some Issues of Realization of National Anti-Corruption Policy”; December 8, 2009 No. 1338 “On Measures to Intensify Resist of Corruption”; December 4, 2013 No. 949 “On Approval of the Regulations on the Government Commissioner for Anti-Corruption Policy” and others.

Thus, it can be concluded that the content of the anti-corruption function of the Cabinet of Ministers of Ukraine consists primarily in forming and ensuring implementation of national anti-corruption policy, as well as in securing coordination of and control over the activities of executive bodies associated with corruption prevention and counteraction. Such central executive bodies, which are at the same time referred to special corruption prevention and counteraction entities by the Anti-Corruption Strategy, include the National Police of Ukraine, newly created National Agency on Corruption Prevention and State Bureau of Investigation that will start operating in January 2017.

In our opinion, ensuring constructive relations with the Verkhovna Rada of Ukraine, President of Ukraine, regular courts and prosecutor’s offices in the area of corruption prevention and counteraction is another important aspect of the anti-corruption activities of the Cabinet of Ministers of Ukraine. This is because imperfection of individual provisions of current legislation of anti-corruption, uncoordinated activities of law-enforcement authorities and controversial court practice in corruption-related cases can substantially reduce performance of the already mentioned central executive bodies in the area of corruption prevention and counteraction.

In sum, it can be concluded that mutually agreed and complementary activities of the Verkhovna Rada of Ukraine, President of Ukraine, and Cabinet of Ministers of Ukraine in the sphere of forming and implementing national anti-corruption policy is one of the most important guarantees for effective operation of the other corruption prevention and counteraction entities in Ukraine.

Bibliography

- Busol O.Y., *Corruption-Related Crime Counteraction in Ukraine in the Present Period*, Kyiv 2014.
- Jellinek G., *General Theory of the State*, St. Petersburg 2004.

- Kotliarevsky S.A., *A Constitutional State. The Legal Prerequisites for the Russian Basic Laws*, Moscow 2004.
- Kovbasiuk Y.V., Fedorenko V.L. (eds.), *National Anti-Corruption Policy and Corruption Prevention and counteraction in the Public Service in Public Authorities and Local Government Bodies*, Kyiv 2016.
- On the Cabinet of Ministers of Ukraine: Law of Ukraine of February 27, 2014, No. 794-VII, Official Bulletin of Ukraine, 2014, No. 20.
- On the Decision of the National Security and Defense Council of Ukraine of May 6, 2015 "On the National Security and Defense Strategy of Ukraine": Decree of the President of Ukraine of May 26, 2015, No. 287/2015, Official Bulletin of the President of Ukraine, 2015, No. 13.
- On the List, Number of Members and Jurisdictions of the Committees of the Eighth Verkhovna Rada of Ukraine: Resolutions of the Verkhovna Rada of Ukraine December 4, 2014, No. 22-VIII, Bulletin of the Verkhovna Rada of Ukraine 2015, No. 1.
- On the National Council for Anti-Corruption Policy: Decree of the President of Ukraine of October 14, 2014, No. 808, Official Bulletin of the President of Ukraine, 2014, No. 41.
- Pohorilko V.F., Fedorenko V.L., *Constitutional Law of Ukraine: A Textbook*, 4th edition, revised and completed, Kyiv 2012.
- Shapoval V.M., *The Foundations of the Theory of Parliamentarianism*, Kyiv 2015.
- Sukhonos V.V., *The Institution of the Head of State in Constitutional Law*, Sumy 2011.
- Zhuravsky V.S., *The Becoming and Development of Ukrainian Parliamentarianism (theoretical and organizational-legal problems)*, Kyiv 2002.