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RESTRICTIONS FOR ACCEPTING GIFTS AS A MEASURE TO PREVENT CORRUPTION: A CRITICAL VIEW ON IMPLEMENTATION IN UKRAINE

Of course, corruption has been and unfortunately remains one of the main problems of Ukrainian state and society. According to the results of the International Foundation for Electoral Systems (IFES) conducted survey of public opinion in late 2013, corruption was in the list of the largest problems of the population and caused particular concern in 47 percent of citizens. According to the research of the Corruption Perceptions Index, Ukrainians consider their country as one of the most corrupt in the world: in 2012 and 2013 the state took 144 place out of 176 countries, where the study was conducted [1].

In turn, a number of regulations are devoted to the fight against corruption on the official (regulatory) level. Not considering the characteristics of the stages of anti-corruption legislation's formation, we note that October 14, 2014 the basic foundations of preventing and combating corruption were defined in the so-called "anti-corruption package of laws", the list of which includes the Law of Ukraine "On the Principles of State Anti-Corruption Policy in Ukraine" (Anti-corruption strategy) for 2014–2017 years", "On Preventing Corruption" [2] (hereinafter — the Law), "On the National Anti-Corruption Bureau of Ukraine". The adoption of the latter and the gradual implementation of their provisions, according to representatives of Transparency International, have become one of the main reasons for raising Ukraine in terms of perceiving corruption in 130 place out of 168 countries in 2015 [3].

The Law "On Prevention of Corruption" determines the key legal and organizational principles of functioning of the system of preventing corruption in Ukraine, including the content and the procedure of using preventive anti-corruption mechanisms. This Law de facto is a well revised the previous Law

“On Prevention and Combating Corruption” [4], which had to promote the increase of effectiveness of some measures to prevent and combat corruption and eliminate pointless severe restrictions, the implementation of which hardly assisted the prevention of corruption, and under certain circumstances on the contrary caused its origin. A special demonstration place in the context of the above statement take “restrictions for accepting gifts” (the Art. 23 of the Law) among the measures of preventing corruption. Furthermore we try to analyze the main contradictory issues concerning implementation of this measure.

Persons authorized to perform state functions or local self-government, as well as persons equal to them for the purposes of the Law (hereinafter — persons having restrictions) can accept gifts that fit generally accepted notions of hospitality, if the value of such gifts does not exceed one minimum wage established on the date of accepting the gift, once (in 2016 this value is from January to April — 1378 UAH., from May to November — 1450 UAH., from December — 1550 UAH. [5]), and the total value of such gifts received from one person (group of persons) during one year was less than two subsistence minimum for able-bodied person on January 1 of the same year, when the gifts were received (in 2016 the value of gifts should not exceed 2756 UAH.). In fact, these persons are prohibited directly or through other persons to require, request, receive gifts for themselves or persons close to them from legal entities or individuals: 1) in connection with such persons activities related to performance of functions of the state or local self-government; 2) if the person providing a gift is subordinated to that person.

Positive is a new approach of the Law to increasing the value of a gift in approximately two times compared to the provisions of the previous Law. However, as we can see there is still the provision, according to which the subjects of liability for corruption offenses can receive gifts that except the value restrictions must meet the “generally accepted notions of hospitality”. Obviously, this category is largely estimated, so its “generally accepted notions” can still be quite controversial, which directly depends on the financial level of persons. Providing explanations about the possibility of receiving gifts according to the Law “On the Principles of Prevention and Combating Corruption” the Ministry of Justice of Ukraine describes the category of “gifts that fit generally accepted notions of hospitality” as gifts that can be received on the occasion, such as birthday, anniversary, or a recognized holiday (New Year, International Women’s Day). The gifts that are allowed to receive by officials may include business gifts (souvenirs), hospitality manifestations (invitation for coffee or dinner) in a modest scale, widely used for establishing good business relationships and strengthening working relationships [6].

Thus, the material component of “generally accepted notions of hospitality” is actually determined by the Law.

Restrictions on the value of gifts are not applied to gifts that: 1) are granted by close persons; 2) received as public discounts on goods, services, public winnings, prizes, awards, bonuses (p. 2 of the Art. 23 of the Law). According to the stated above it is quite naturally that those entrusted restrictions can often put them to absurd situations. Thus, based on the content of the concept of “close persons” (the Art. 1 of the Law) persons entrusted with the restrictions have to refuse the gift, which comes from uncle (aunt) or brother-cousin (sister-cousin), if its value exceeds a specified amount. Extrapolating these provisions of the Law on the possibility of getting the engagement ring by the person entrusted with the restriction, this person should also abandon the proposal, except cases when that person lives together, is bound by common life and have mutual rights and duties with a man, who gives a proposal. It is clear that the cost of the ring in most cases will exceed the cost of a gift determined by the Law. Strange, is not it?

Moreover in accordance with the definition of a gift (the Art. 1 of the Law) persons entrusted with the restrictions have no rights to enter into contracts of purchase and sale of a property, which value is under the minimum market one, if purchase and sale is realized in connection, when customers implement the activities related to the state functions or local self-government, or the seller is subordinated to the buyer, etc. As we can see the definition of a gift under the provisions of the Law is in direct conflict with the civil and legal rights of individuals (the Art. 717 of the Civil Code of Ukraine).

On the other hand restrictions on receiving gifts “in connection of realizing by such persons the activities related to performance of functions of the state or local self-government” may be used as a legal mean of avoiding criminal liability for receiving improper benefits (the Art. 368 of the Criminal Code of Ukraine), because the notion of improper benefit is almost identical with regard to the concept of a gift.

The relevant and interesting in the context of the researched issue is international experience. In particular, several of European countries at the legislative level have implemented mandatory declaration of gifts by persons holding political positions, and in some countries — by all officials. For example, in Poland mandatory declaration of gifts is provided for holders of political positions and local elected officials [7], in Hungary — for members of the Parliament, in the UK, Spain and Germany — for members of the government and holders of political positions, in Latvia — by all public officials. Members of the British Parliament are required to declare gifts, which value exceeds 1% of their salary, members of the German Parliament — if the value

of the gift exceeds EUR 5,000, members of the French Parliament — any gift, regardless the value [6].

Corruption is a problem for businesses operating in Poland, although its levels have decreased in recent years. Political corruption constitutes a challenge to fair business as politicians use their positions to gain benefits, and practices of nepotism and cronyism are widespread. Poland's Criminal Code offences include active and passive bribery, bribery of foreign officials, extortion and money laundering. However, the government does not prosecute these offences effectively, and officials engage in corruption with impunity. Sectors most prone to corruption are public services and public procurement. Despite facilitation payments and gifts being criminalized, these practices are widespread.

As a conclusion, we note that the existence of the stated restrictions in Ukraine contributes more to violations of the law, but not effective prevention of corruption. Considering co-author's pedagogical experience we accumulate that despite the relatively long existence of restrictions on receiving gifts in Ukrainian legislation, a significant part of persons who are subject to restrictions unaware of their content, which is charitably speaking not responsible to common ideas against corruption. Unfortunately, this situation contributes to the spread of corruption relations between persons entrusted with restrictions and special-authorized subjects in the sphere of combating corruption. We believe that the mentioned international experience on declaring gifts is prosperous. It should provide the basis for effective verification of actual appointment of received gifts by persons entrusted with restrictions, but not formal identification of "corrupt officials", who even de jure not committing corruption offenses are often the subjects of liability for offenses related to corruption due to ignorance of the provisions intricate Ukrainian legislation.

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ОБМЕЖЕННЯ ЩОДО ОДЕРЖАННЯ ПОДАРУНКІВ ЯК ЗАХІД ЗАПОБІГАННЯ КОРУПЦІЇ: КРИТИЧНИЙ ПОГЛЯД НА ЗАСТОСУВАННЯ В УКРАЇНІ

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Ключові слова: подарунок, корупція, обмеження, корупційні правопорушення, запобігання корупції.