

Ukraine back on talking about fighting corruption

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Ukrainian politicians, analysts and commentators have received at least two reasons to start talking about fighting corruption again. First, the Transparency International had published its corruption perception index some time ago, traditionally ranking Ukraine as one of the most corrupt states.

Occupying 82nd out of 91 positions, Ukraine was seen as doing slightly better than the previous year, but the improvement is really barely visible. In 1999, the TI's corruption perception index for Ukraine was 2.6 (with 10 meaning there is practically no corruption and 0 meaning the highest level of corruption), and Ukraine occupied 77th position out of 99 countries, with Finland perceived as the least corrupt, followed by Denmark, New Zealand, Iceland, Singapore, Sweden, Canada, the Netherlands, Luxembourg and Norway. The USA occupied line 17 of the index, and Russia occupied line 81.

Another reason to talk about corruption was the parliamentary hearing «On Implementation of Laws of Ukraine on Fighting Corruption» on July 4, 2001. The parliamentary hearing was attended by members of the parliament, Prime Minister Anatoly Kinakh and members of his the Cabinet, and representatives of law-enforcement ministries.

Participants of the hearing, particularly Yuri Karmazin, MP, stressed that Ukraine had sufficient legal framework for countering corruption effectively. Real experience of all declared anti-corruption campaigns has proved that good intentions were not so easily (and eagerly) converted into practice.

First attempts to counter corruption were declared at the early stage of Ukraine's independent statehood. In December 1992, then Prime Minister Leonid Kuchma announced that «the government of Ukraine will introduce strict control over illegal profits, [it has already] engaged in hard struggle against corruption...» Gradually, the process of fighting corruption in Ukraine began to institutionalize. During the presidency of Leonid Kravchuk, in November 1993, the establishment of the Coordination Committee for Fighting Corruption and Organized Crime was decreed (decree № 561/93) and chaired by the President himself. The first steps in forming anti-corruption legislation were made by the 12th parliament of Ukraine (1990-1994). The key law in the field, «On Fighting Corruption», was enacted by the parliament's resolution on October 5, 1995. The law defined corruption as «activity of individuals, authorized to perform state functions, that aims at receiving material benefits, privileges and other advantages.» Subsequently the law was repeatedly amended. On April 3, 1997, the list of «subjects of corrupt practices» liable for corruption was expanded to include members of the parliament of Ukraine, members of the parliament of the Crimea, elected officials of local councils, mayors and heads of district and regional councils.

A number of programs were adopted to facilitate the anti-corruption campaign. In February 1998, President Leonid Kuchma announced measures to counter corruption and compared them to the earlier Polish campaign, «Clean Hands». On April 24, 1997, the session of the presidential Coordination Council for Fighting Corruption and Organized Crime announced that the President decreed the establishment of the National Bureau of Investigation (subsequently liquidated by the same president's decree on December 15, 1999). The next step in the anti-corruption campaign was the «Concept of Fighting Corruption in 1998-2005», signed by the president on April 28, 1998. The document provided that the decree and the concept would add to the existing legal provisions for countering corruption and specified key measures to be taken as limiting opportunities for the usage of money received through violations of the law, primarily the notorious «analysis of anonymous hard currency accounts». Furthermore, the decree announced the need of «abolishing parliamentary immunity, providing for transparency of political party financing, establishing control over incomes and spending of political party leaders and activists», as well as of introducing a mechanism that would enable voters to control legitimacy of those incomes and spending. A Council for Foreign Investment of representatives of leading multinational companies active in Ukraine was formed at the president's office and was supposed to meet twice a year to discuss issues of concern for foreign investors. However, the problems remained, and some of them (like the Gala Radio case of 1998) got broad attention in the

international community and proved that decrees and laws were not enough to solve the corruption problem.

In July 2000 the Ukrainian leadership broke its habit of addressing corruption in February only (which was the case with most of anti-corruption initiatives). On July 3 the Cabinet of Ministers approved a plan of anti-corruption measures to be taken in 2000. New resolutions on the issue were approved in 2001, yet, the problem of corruption did not become less acute.

Some noteworthy figures were quoted by a variety of officials during the recent parliamentary hearing on countering corruption. Specifically, it was announced that in 2000 special divisions of the Security Service of Ukraine, SBU, filed and submitted to courts as many as 1,089 administrative protocols on corruption charges against civil servants, and the court verdicts were issued on 881 of them. In 5 months of 2001 the SBU investigative actions had resulted in filing 585 administrative protocols of corruption charges, and the courts had made their judgements on 239 of them. Reportedly, some of civil servants found guilty of corruption occupied senior positions in national and local bodies of power, but no names or details have been given so far.

The Office of Attorney General of Ukraine offered its own anti-corruption statistics: 2,300 corrupt civil servants were brought to court in 2000 (UNIAN, July 4, 2001). All in all, on-site verifications of the observance of the Law «On Fighting Corruption» by the Office of Attorney General of Ukraine in January 2000 - May 2001 resulted in 463 protests, 2.6 thousand orders and appeals and liability of 3.7 thousand of individuals found guilty of corruption. Meanwhile, the official memorandum, prepared by the Office of Attorney General of Ukraine for the parliamentary hearing, referred to multiple instances of closing down administrative lawsuits on corruption charges by the courts for inadequate reasons (for instance, by arguing that the cases were of minor importance), as well as multiple delays after which the cases might be closed down due to the expiry of the term of liability. Last year alone, local prosecutors ordered to close down 767 cases on similar grounds, i.e., 30 percent of all the cases filed.

According to Yuri Smirnov, in 2000 his ministry disclosed almost 22.8 thousand serious economic crimes, 18.1 thousand of which were committed by civil servants. Of over 5.6 thousand officials brought to trial on corruption charges, 2.25 thousand were top managers of enterprises and heads of institutions and 540 civil servants (Uriadovyi Kurrier, July 6, 2001).

The fact that the high-ranking law-enforcement officials quote different data and offer different figures regarding the number of disclosed corruption cases may point to the difficulty of calculation of the real scope of corruption as well as to discrepancy in the evaluation techniques used.

Participants of the parliamentary hearing noted that the most common manifestations of corruption remained unchanged. The list was opened by illegal acquisition of material benefits or, more simply, bribery. According to the report of the Ministry of the Interior, its actions in 2000 resulted in disclosure of 1,443 cases of bribery. Compared to the 1999 records, interesting dynamics can be observed. Last year, speaking at the session of the Coordination Council for Fighting Corruption and Organized Crime, Attorney General of Ukraine Mykhailo Potebenko announced that over 2.6 thousand cases of bribery had been disclosed in 1999. Of 768 lawsuits that had been sent to courts, 200 involved charges of bribery against middle-ranking civil servants, mostly of 5th to 7th rank (out of 14 ranks, 1st rank being the highest in the Ukrainian bureaucratic hierarchy) (Ukraina Moloda, January 12, 2000). Hence, the number of «counted» bribes decreased in 2000 compared to the year before.

Another component of corrupt practices is civil servant's engagement in «part-time enterprise». Under the current law, a Ukrainian civil servant may not engage in any profit-making activity, but the reality shows that is not the case. The result is the incentive to conceal real income figures and report false or incomplete data about annual personal or family income. Yet another common corruption practice is abuse of powers in order to cause obstacles (or create unjustified preferences) for others.

As the SBU analysis of corruption in Ukraine suggested, the scope of corruption remains sweepingly high notwithstanding the measures taken and campaigns announced. The causes, quoted in the SBU report, include «excessively large governing apparatus with unjustifiably extensive powers». According to the State Committee of Statistics, by January 1, 2001 the Ukrainian state bodies employed 254,000 staff. An interesting observation that, in our view, is indirectly linked to the number and scope of authority of governing and administrative personnel in the context of creation of corruption

opportunities was offered last year by then Governmental Secretary Victor Lysytsky. Commenting on some peculiarities of circulation of documents in the Ukrainian government, Lysytsky noted that «in 1999 (short of the last three days) the circulation of documents in the apparatus of the Cabinet of Ministers reached 942.2 thousand of pieces, which is almost 19 tons of paper.» According to Lysytsky, the figures were shocking and could be seen as a descriptive of corruption. He announced that in 1999 the Cabinet of Ministers received about 28.2 thousand of petitions from enterprises and organizations, ministries and committees. About 36 to 40 percent of those were requests for appropriation of funds that were not earmarked in accordance with the law. Hence, «one can hardly be sure that none of those petitions involved some version of corruption.» Lysytsky said (Ukraina Moloda, January 6, 2001).

According to experts of law-enforcement agencies, other causes that contribute dramatically to the growth of the level of corruption in Ukraine include «frequent changes in the legislation in the field of regulation of entrepreneurship, drawbacks in the taxation policy, the lack of necessary checks of professional and moral qualities of individuals accepted to the civil service, a formal nature of the system of disclosure of incomes by civil servants, and loop-holes in the legislation» (UNIAN, July 4, 2001).

One of the causes of corruption that should be mentioned in this context of the proliferation of shadow economy in Ukraine. The problem can be well described by a comment made by Deputy Head of the SBU Yuri Vandin: «... imagine, almost 100 state bodies are entitled to verify some aspects of business activity. Corruption as a phenomenon is a derivative of shadow economy, they are inseparably linked, and [shadow] profits in the form of «prizes» and services are estimated by experts as worth over UAH 3 billion a year...» (Holos Ukrainy, July 6, 2001). Hence, the huge shadow economy remains a steady source of growth for Ukrainian corruption and in direct proportion to each other. Add to that instability of the Ukrainian legislation, the number of bureaucrats and inspection agencies, loop-holes in the taxation laws - and the picture will be clear. Yet, hardly any expert will risk giving any exact figures of the rate of shadow economy. It is believed to amount to about 45% of the GDP - this figure was quoted by Minister of the Interior Smirnov at the recent parliamentary hearing. He also added that as many as 13.3 thousand of serious economic crimes had been registered within the past five months, and almost 5.7 thousand of criminal cases had been filed to courts.

There are other direct reasons that undermine the anti-corruption efforts. According to Yuri Karmazin, the 1994-1998 and the 1998-2002 parliaments so far «have failed to overcome the resistance of the executive branch that is doing everything possible to take the law-enforcement bodies out of the parliament's control. That is why a number of corruption cases, reported to them by the parliament, have not been completed» (Holos Ukrainy, July 6, 2001). This problem can be related to other challenges faced by anti-corruption activists. «The key effort in fighting corruption, as our analysis has shown, so far has been wasted on minor manifestations of corruption and not targeted at removing factors and conditions that cause them,» Yuri Karmazin stated in his report to the parliamentary hearing (Holos Ukrainy, July 6, 2001). The conclusion is very clear: «...that method has not helped to overcome corruption anywhere in the world.»

The general claim (well-founded, in fact) that the Ukrainian law-enforcement authorities only deal with «petty cases» was refuted by Minister of the Interior Yuri Smirnov, who argued that «fighting corruption will be done not only at the level of minor bureaucrats; the key tool will be bringing to the clear waters high-ranking officials, big capital lobbyists, managers of loans and financial resources» (Ukraina Moloda, July 6, 2001). Well, the plans are ambitious, but the implementation remains to be seen...