

Теоретичні та практичні аспекти функціонування системи кримінальної юстиції в Україні

SOME ACTUAL ISSUES OF OFFENCE PREVENTION IN UKRAINE

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Ukraine's intended European integration and the on-going reforms in the principal areas of public life irresistibly call for countering corruption in its various manifestations that of late have turned into an acute problem. The current realities indicate that corruption infects and affects every area of Ukrainian public concern. This situation directly threatens not only the stability, but the very existence of democratic institutions, hampers the successful development of the country, hinders reforming the economy and, unfortunately, discredits the public authorities. Despite government efforts to the contrary, notwithstanding the existence of well-developed anti-corruption legislation and newly created anti-corruption state agencies, the number of corrupt acts and abuses does not decrease. The most dangerous corruption forms and manifestations exhibit elements of criminally punishable acts and within a legal framework are defined as criminal, or termed corruption-related crimes. These latter are listed in the present Ukrainian Penal Code (see the note to Article 45), yet obviously, the list of corruption-related acts and abuses is not comprehensive. As a rule, such criminal activities are committed not by separate, independent offenders, but by large-scale, ramified networks based on well-established links of corruption and using well-developed illicit techniques. These networks become entrenched in the economy and financial system, thus influencing public policies as a whole.

Apart from the offences listed in the Ukrainian Penal Code, these networks commit a number of other crimes. Characteristically, corruption offences tend to remain latent, for their perpetrators are steadily becoming more «professional» while the legislation remains imperfect. Moreover, individuals in possession of substantial amounts of money establish close contacts with senior government officials. Given the above-mentioned factors, some of these crimes may be included under economic offences, under offences against property, against official duties or public authorizations, against local government agencies, against citizens' associations, against justice, etc. Today, prevention of corruption-related offences is a priority, an essential condition for the establishment of a state based on the rule of law and, evidently, a major concern for this country.

To prevent and control corruption, the society and the State should act in concert along three main directions, aiming the joint efforts at: bridling corruption as a social phenomenon; preventing corrupt practices; providing criminal justice response to the already committed corruption-related offences. Crime prevention is treated in academia along with the notions of «responses to crime», «addressing criminality», «crime-fighting», «forensic prophylaxis» etc.

The notion of crime prevention stands in both general and specific relation to the above-listed notions. We support the view that crime prevention is a range of activities targeting individuals or groups having criminal intent, planning to commit offences, or just admiring criminal lifestyle. The aforementioned activities should shine light on and establish the ugly truth about the criminal behaviour, thereby making such persons change their lives and not offend. In addressing criminality, forensic *prophylaxis*, prevention and suppression of crime serve as the principal building blocks.

The integrative framework of anti-crime activities comprises various measures implemented at three different levels, viz. society-wide, special (expert criminology) and individual. At the society-wide level, crime prevention must be effected by the State, local authorities and administrations, as well as by various civil society organizations, that have no direct responsibilities related to the fight against crime. Forensic *prophylaxis* includes, among other aspects, development and implementation of various social and economic projects and programmes, that indirectly contribute to the application of special measures involving expert criminological interference.

At the special (expert criminology) level, crime prevention is effected by the government agencies whose professional duty is the protection of citizens' rights and crime-fighting. In the process, these specialist actors produce a significant impact on criminogenic factors, identify the causes and circumstances conducive to acts of crime and take measures to address them.

At the individual level, crime prevention is effected as a result of ad hoc activities that target individuals or groups having criminal intent and help eliminate the causes and conditions that result in the preparation of and attempts to commit offences.

The society-wide patterns of crime prevention should be regarded as a complex of long-term economic, social, cultural and educational measures and actions intended to assist on the one hand social improvement and development, and elimination of the causes and conditions conducive to negative social phenomena in general and to criminal offences in particular on the other.

Aside from the question of political will that is essential to establish an reliable system intended to counteract and prevent corruption, Ukraine needs to provide an adequate legislative support for this system, create an effective system of governance, shape an efficient and well-coordinated anti-corruption regulatory framework. The principal anti-corruption measures permitting to implement and monitor anti-corruption strategies would be: 1) monitoring of the conduct and professional contacts of state officials or public servants; 2) periodic monitoring of their activities; 3) identification of the officials and citizens with whom a public servant has random or systematic contacts for the wrong reasons or financial gain; 4) conducting interviews with such public

servants; also with their superiors or colleagues, to discuss a broadly or tightly defined sets of issues; 5) performing planned audits or evaluations of the public servant's performance, of its legality and validity; 6) analyze available operational data, statistics, etc.; 7) perform assessments and monitoring of management procedures; also of decision-making processes that most commonly turn into elementary driving forces behind corruption offences. The everyday behaviour of decision makers should not be left unattended either.

At the regulatory level, the legal anti-corruption framework is outlined in the Decree «On the Strategy for Sustainable Development «Ukraine – 2020». A key element of the development strategy is the security vector that provides, among other issues, for an anti-corruption reform primarily aimed at reducing the corruption level in Ukraine and the national budget and business losses resulting therefrom or entailed thereby. Prevention of political corruption requires fundamental reforms of funding systems for political parties, along with the use of state-of-the-art technologies для обеспечения государством to enhance public access to information in the so-called open data of the government format.

The Law of Ukraine «On Prevention of Corruption» defines basic measures and mechanisms for prevention and suppression of corruption-related offences. Listed among these measures and mechanisms are the following restrictions and prohibitions: a) public servants shall not use their official authority for the improper advancement of their personal or financial interest; b) the receipt of gifts or benefits by public servants by virtue of their function shall be restricted; c) obtaining unlawful benefits or gifts shall be precluded; d) merging of several functions shall be limited; e) after separation from performance of public or local administrative functions, certain restrictions and constraints shall be imposed on former public servants; f) the right of close relatives to work together shall be limited; g) any conflicts of interest shall be prevented and resolved; h) the public servants will have to declare their financial standing and property status; i) government and local authorities shall not be eligible for obtaining benefits, services and assets; j) legal and regulatory acts shall be subject to anti-corruption reviews and assessments; k) thorough screening of public officials aspiring for sensitive positions, jobs with elevated risks of corrupt practices, etc. shall be performed.

These measures are not directly targeting crime, yet they produce a significant impact on criminality.