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НЕПОТИЗМ ЯК ПОЛІТИКО-ПРАВОВА ПРОБЛЕМА УКРАЇНСЬКОГО ДЕРЖАВОТВОРЕННЯ

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Проаналізовано феномен «непотизму» в українській політичній, економічній та управлінській практиці, виявлено його характерні прояви і форми. Враховуючи високий показник України за індексом держав, у яких процвітає кумівство, стверджується про необхідність боротьби з цим явищем, що є однією з перших передумов ефективного та успішного державотворення в європейському розумінні.

Ключові слова: корупція, непотизм, кронізм, кланова економіка, політична, управлінська система України.

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NEPOTISM AS POLITICAL AND LEGAL PROBLEM OF UKRAINE'S STATEBUILDING

The article analyses the phenomenon of «nepotism» in political, economic and administrative practice of Ukraine, defines its distinctive manifestations and forms. Taking into account the high rate of Ukraine according to the index of the states where nepotism prospers, the necessity to fight this phenomenon is proclaimed. This is one of the first prerequisites for effective and successful state development in the European understanding.

Key words: corruption, nepotism, cronyism, crony capitalism, political and administrative system of Ukraine.

Being unusual for an average Ukrainian, words «nepotism» and «cronyism» represent usual for the Ukrainian economic, political and administrative system phenomena of nepotism, clanship, favouritism, which, in other words, are different manifestations of corruption. All the citizens of Ukraine realize existence of corruption; however, the question is in definition and explication of multi-sided configurations of corruption and searching the ways of surmounting these phenomena. This is really serious theoretical and practical challenge, because, according to F. Lewis, corruption is easier to be recognized than to be defined [10, p. 5].

The complexity of situation in this field is proved, in particular, by the ratings by the British magazine «The Economist», in which Ukraine has been included into "The Top Ten" states where nepotism prospers similarly to such countries as Hong Kong, Singapore and Taiwan. Our country is the fourth in the rating of countries with «crony, clannish» economies (Eng. Crony capitalism) – societies where business success depends on private businessman's relations with government officials [25]. Thus, Ukraine is similar to the «Asian Tigers» not by successful attempt of borrowing from their history experience and methods of reforms that may lead the state to prosperity, but, primarily, this exactly negative phenomenon, to fight with which is one of the first prerequisites of effective and successful state in the European understanding.

The phenomenon of nepotism as one of manifestations of corruption, which means abuse of empowered authority in private interests [30, p. 8], is peculiar to many political systems, including a polyarchal ones. For example, John F. Kennedy appointed his brother Robert to the Attorney-General of the United States of America [32]. At the same time, authoritarian and totalitarian regimes are more vulnerable to such malfeasance because officials are not under public control and usually come from a certain surroundings (for example, members of a ruling party).

In Ukraine, nepotism facilitates establishment and consolidation of clannish relations, because representatives of different political forces are fairly often linked by family ties, that transform the hierarchy of political system into «tangle» of intricate family relationships. This does not contribute to effectiveness of representative institutions, including political parties [15, p. 255-256]. Some researchers indicate that among the corruption transactions during 1991-2013's favouritism, nepotism, cronyism, backstairs influence, patronage and clientelism, bribes and traffic of authority became especially widely-spread [7].

A. Illarionov, the former economic consultant of V. Putin, names such mode of manpower policy as "svoism" ("ownism"), that is clannish-caste practices of the government when all of the key posts are held

with people who are guided not by interests of the majority of the commonwealth, but by the internal corporative standards of personal loyalty to the chief officials or their nearest companion-in-arms. The primary criterion of such policy's selection is accordance with the system of crony identification «friend – stranger», and an extent of the authority of the official is determined by its proximity to the «body» of bureaucratic and empowered leader of «the pride» (pluralistically – the state), not by its formal responsibilities and powers [9].

According to H.-J. Lauth, corruption in its manifestations of nepotism, patronage, mafia and autocratic cliques impedes the tide of democracy [31, p. 28]. Yu. Matsiyevskyi mentions that these phenomena and other informal practices under conditions of low social immunity and deficiency of effective formal institutions, primarily the Constitution, are parasitizing on the social order until its destruction [12]. Thus, nowadays, investigations of obstacles on the way of solving the cardinal problems of the Ukrainian state are **topical**, and, therefore, in this context detailed analysis of historical precedents and present-day examples of malfeasance in state office and in higher levels of managerial and political elites of Ukraine becomes necessary. Such researches of means for overcoming the problems of the Ukrainian state could be an important theoretical supplement to the practical actions in the struggle with the malfeasance in the Ukrainian ruling elite. Moreover, it is particularly necessary to analyze the peculiarities of transformation of political and legal culture of the population and political elites for whom the «post-Soviet features» are immanent (according to A. Bobruk) as an unnatural symbiosis of professedly declared commitment to democratic institutions and putting into undemocratic practices [26].

The analysis of information sources displays a considerable attention of researchers to the problem of corruption and its varieties, to anti-corruption activities, etc. In particular, the papers of M. Fomina and V. Kuzmenko, Y. Matsiyevsky, L. Bilinska, I. Valyushko and their comprehensive approach to the ascertaining the typology of corruption have to be mentioned. However, when researchers distinguish more complex defining of the typology of corrupt conducts, they fail to conduct more detailed study of instances related to corruption and manifested in the Ukrainian society, and to carry out investigation from the standpoint of transformation of Ukrainian political culture.

Struggle with nepotism, which has been practised in Ukrainian politics on a large scale, obtained an appropriate normative regulation. The UN Convention against Corruption [6] considers nepotism to be a manifestation of corruption that inflicts damage to the society and the state. Nepotism is defined as assuming new positions or superiorities by a person not because of his high professional capabilities but due to his complicity in specific surroundings.

The Ukrainian Law «On the Principles of Prevention and Counteraction of Corruption» (art. 1.9 «Restrictions on work of near relations») indicates that public servants have been banned to make immediate subordinate to near relations or be directly subordinated because of being in authority of their near relations [18]. The law, entered into force in January 1, 2010, threatens lawbreakers with both penalties and imprisonment, and enrolling into the unified register of corrupt officials [23]. This law will lose its validity in April 2015 due to the adoption of the law «On Prevention of Corruption», in which the norm of law that limits teamwork of near relations is duplicated in the article 27. The Ukrainian Laws «On Public Service» (art. 12) [16] and «On Service in Municipal Government» (art. 12) [19] should also be mentioned in course of struggle with nepotism. The law has referred "spouses, children, parents, own brothers and sisters, grandfathers, grandmothers, grandchildren, adoptive parents, adopted children and other people who live together and are connected by common life and have mutual rights and obligations" to the concept of "near relations" [20].

Summing up, it should be underlined the lack of conceptual researches (which might have replaced publicist works and essays of people who care about the future of Ukraine) which would not only include recorded cases of nepotism and other manifestation of corruption at all levels of the state power hierarchy, but also would suggest a specific courses of institutional reformation and transformations in psychological and behavioural componential parts of the political system of Ukraine.

The **objective** of the article is to identify characteristic features of nepotism in Ukrainian politics, to search the courses of reduction and overcoming malfeasance in office concerned with the status of a person and its friends / relatives in the political, and, especially, administrative hierarchy in the context of the Ukrainian state and transformation of the Ukrainian political culture.

The appearance of nepotism in Western Europe dates back by the period of the Middle Ages (the 14th-15th centuries), when Popes granted the highest church positions or lands to relatives, firstly to illegal sons, who were called «nephews» (Latin. "nepos" – family, "nepotism" – grandson, nephew) [34]. Under the present-day conditions, the most extended examples of nepotism are granting the posts in official structures, business organizations on the ground of family, friendly relations. The researchers also elicit this phenomenon in polyarchal, authoritarian or hybrid regimes when electoral lists of nominees for various levels of elections are formed, and the nominees for public positions by political parties are suggested, etc.

Nepotism is defined as favouritism, i.e. favour to certain people (family, friends) which grants them advantages during work placement, especially in appointing to key posts, obtaining statuses regardless of their professional qualities, competence and qualifications. De jure, the attention should be concentrated on experienced, highly skilled candidates in appointing to key posts; de facto less qualified relatives, friends, and party members are appointed [32]. Nepotism and clan system occur when the one who appoints and the one who is appointed have certain social contact. Moreover, sometimes appointment of a person who cannot take a certain post takes place since this he/she would not undermine the authority of the leader or express contradictory attitude / opinion.

Therefore, nepotism is a manifestation of corruption in state structures. In particular, political top officials and functionaries at lower levels are often accused of nepotism, as they spend public resources. Usually, politicians are surrounded by highly skilled officials, subordinates, and, therefore, sometimes develop social, business and political friendship that henceforth leads to their appointment to public positions as friends (cronyism) and helps to provide them with profitable government contracts. The thing is that a group of friends is exactly the «power» which «holds» an official at his/her influential position. In Great Britain, a phenomenon of cronyism is described by established word-combinations like «old school ties» or «club of old friends». In Ukraine, cronyism is defined as «nepotism» [14].

Nowadays, nepotism often becomes obvious; however, as it was already mentioned, it is a fact which is difficult to aver legally or demonstrate in the mass media. Thus, appointments, in which cronyism and friendship is traced, are legally and (or) professionally disputable, often provoke conflicts in the political and administrative fields, as they result in ineffective decision making, loss of motivation and decreasing of productivity [27]. Though, such appointments could be approved or disregarded by the society, depending on the level of freedom in it.

The term «nepotism» is also often used for description of an economy type in which success in business does not depend on efficiency of the executive but on his family and friendly relations with government officials. In such a case, the superiorities of favouritism are shown in allocation of legislative licences, government grants or special tax abatements. In the economic field, nepotism, clan system is overthrowing the principles and rules of market economy; consequently, the interaction occurs between influential people from various organizations or institutions united by business information and social ties. Afterwards, we are talking about frequent and unfair business practices in societies with ineffective legal system.

In order to legally secure and ensure economic self-interest gain under any circumstances, businessmen establish crony contacts with representatives and officials. As a result, officials can provide (or lobby) for certain enterprises (with friends or relatives as its executives) more propitious business climate, donations and other benefits, not available to others. Afterwards, unjust privileges granted to politically biased executives by government undermine the free competition, which is the «heart» of economic freedom. Independently choosing the conquerors and losers in this way, officials overthrow free market, create the state of corporate, not general, welfare, and attract politicians and businesspersons to corruption and «kickbacks».

In this context, researchers speak about state's «usurpation» or «buying up». Therefore, the formation of an oligarchic-clannish state system is substantiated by the fact that oligarchs hold a real state power, form the «rules of the game», appoint ministers and cabinets altogether, and monitor the contentment of their own interests under the existing system. They form a new ruling, legislative and bureaucratic class in the centre, in the regions and abroad [29, p.1].

The nepotism and cronvism is manifested in the following configurations:

- rendering donations public funds which are provided to a company or sector when it is needed to adjust the market considered by the government as a 'failure'; this allows a certain company or sector to obtain higher profit than under 'customary' conditions or increase their profitability;
- refinancing, when the government spends money to support a business which has problems, trying to stave off the consequences which can cause these problems;
 - rendering state loans or payments on concessionary terms to specific companies or sectors;
- sizing tariffs by the government (taxes on import or export, state determined prices and creation of market barriers) which protect certain industries or enterprises;
- protection of particular interests due to malfeasance of laws for approval and preservation of business interests:
- phenomenon of «revolving door», that is relations between legislators or governors and industries regulated by them who foresee the transfer of individuals engaged in the regulatory authorities to work at enterprises once regulated by them, and vice versa;
- licensing of professional activity, that is permission of the leading body required to exercise certain activities [28].

Economic and social costs of this kind of malfeasance are incurred to the society altogether. It refers to reduction of market openness, the capacity of thumping majority of people to transaction of business, increasing in prices for commodities, diminution of budgetary revenues, inefficient investments and unproductiveness of economic activities. In addition to these economic consequences, such manifestation of corruption affects establishment of a certain method of political decision-making process, and, thus, negatively influences the formation of a certain model of political regime.

Indices of various ratings and indexes which monitor and compare dynamics of political processes in different countries certify a fact of our country's approaching to democracy or putting away from it (taking into consideration various indices of corruption, cronyism and nepotism manifestation). The point is about the projects of *The Freedom House* (the USA), the Centre of Applied Political Research and the Bertelsmann Foundation (Germany), weekly *The Economist* (Great Britain) etc. [24]. For example, the report of *Freedom House* American organization (July, 2012) drew attention to "the most worthy of notice standpoint of so-called "familysation" – the role of blood ties in consolidation of authority and corruption in Ukraine" [8, p.16]. According to the Corruption Perceptions Index 2013, the situation in Ukraine is unfavourable: this year our country occupied the 144th place out of 176 countries included in the research, gaining 26 points out of 100. Eventually, according to figures of the international organization *Transparency International*, if the country is gaining less than 30 points, such a result should be supposed as "a disgrace to the nation" [21].

The above-mentioned rating of the crony, clannish capitalism propounded by weekly «The Economist» points out the results for 23 countries: five of them are the most developed countries, 10 – developing ones, and 8 – where nepotism is one of the significant threats (Table 1) [33]. The higher is the index for a particular state, the larger is probability that its economy is suffering from a significant crony capitalism.

Table 1. The Crony-Capitalism Index

No	Index 2014 (2007)	Institutional ability
•	Index 2011 (2007)	(1 = the weakest)
1.	Hong Kong (1)	22
2.	Russia (2)	3
3.	Malaysia (3)	18
4.	Ukraine (4)	2
5.	Singapore (5)	23
6.	Philippines (9)	7
7.	Mexico (7)	6
8.	Taiwan (10)	17
9.	India (6)	9
10.	Indonesia (18)	11
11.	Argentina (16)	1
12.	South Africa (11)	16
13.	Brazil <i>(14)</i>	4
14.	Turkey (8)	12
15.	Britain (15)	21
16.	Thailand (23)	10
17.	United States (12)	15
18.	Poland (13)	8
19.	China (19)	13
20.	France (20)	14
21.	Japan (17)	20
22.	South Korea (22)	5
23.	Germany (21)	19

Among the world's biggest economies, Russia's scores are the worst according to this index. The period of transition from communism is an evidence of how the political elite grabbed natural resources in the 1990s, and, then, its oligarchs became richer as commodity prices soared. This experience also pertains to Ukraine [33].

It should be taken into consideration that low-ranked countries generally have better bureaucracies and institutions. However, an efficient government is not the only guarantee of a good crony index score. For example, Hong Kong and Singapore are packed with billionaires related by friendly or other near relations with administrative bureaucracy, but still are high-ranked according to institutional ability.

Therefore, despite some shortcomings of Crony-capitalism Index calculation, the Ukraine's indices and rank is absolutely unfavourable. The personnel policy of the President of Ukraine Viktor Yushchenko, which was based on emotions and caprices of the "first person" in the country and his surroundings, is called by analysts a striking instance of nepotism in the Ukrainian politics. As a result, the phrase «dear friends» has spread in the Ukrainian political discourse to refer to the administrative system with widespread nepotism and clientele associated with the head of state. Thus, declared requirements to the managerial personnel, such as professionalism, patriotism and honesty (policy of «PPH») were overshadowed. In the forefront remained those who complied with the primary and a substantial requirement to any candidate for leading posts – that is affiliation to "own people" predominated over all of other characteristics and virtues [9]. During V. Yanukovych's governance, a specific personalized entity, designated as a presidential «Family» in information and analytical editions, was formed in the political and economic system of Ukraine during respective time [20].

Unfortunately, it is very difficult to investigate how nepotism affects state policy and how it works schematically, but it should be definitely asserted that nepotism's 'web' is not decreasing, but spreading. Superiority in nepotism is held by V. Yushchenko who has ex-President of Georgia M. Saakashvili, current president of Ukraine P. Poroshenko and more than ten well-known Ukrainian politicians and bankers as godfathers for his children [5; 23]. Today, godfathers of P. Poroshenko's children – Y.Stec' and O.Bilozir – work in his team. It is also important that various political disputes do not interfere with crony relationships in the Ukrainian politics. A common practice in Ukraine is filling a vacant post of official by his own children, wives or godparents [11].

Nepotism and friendship are constant people's traits, and this does generate culture of nepotism which restricts implementation of the principle of justice, 'common wealth'. All in all, it is great challenge to the public, because the practice of hidden favouritism and nepotism undermines transparency of public administration, regulation, recruitment to public service and conclusion of government contracts, etc. As a result, nepotism not only weakens the morale of people at public service but, first of all, public confidence in the integrity of government, top officials, and officials at various levels.

Modern political practice shows that defence mechanisms are extremely important to warn against malfeasance in office by personal relationships of public servants, against promoting cronyism and unofficial decision-making process at the state and regional levels in the interests of only a small team of people related by kinship or intentional relations.

In this case it is necessary to limit such activities of near relations who hold public positions and could influence their business, contracting of grants, subventions, state subsidies, loans or benefits; facilitate appointing of officials who do not have advantages over other candidates; show preference for natural and (or) judicial persons in connection with preparation (promulgation) of regulatory and normative acts, etc.

In spite of increasing malfeasances connected with cronyism and clannish, there are grounds and resources for changes. Thus, it is considered to be necessary to harshly regulate the fields where nepotism prospers; severely punish the officials, including a top-ranking officers for «helping» friends / relatives to improve financial standing of their business. The captiousness and attentiveness of investors, who will not invest money in a state with non-market relations and ineffective administration is of high importance. Afterwards, in future prospects, overcoming of this kind of malfeasances will be a requirement to the countries with considerably shadow economy.

Summing up, it should be mentioned that the experience of some countries, for example Taiwan, shows that there are no universal methods of political and economic development and prosperity. Sometimes corruption, isolation and dependence on exports and nepotism could be the right road to economic prosperity, and, therefore, later on to democratization as a result of the «economic miracle». In case of Ukraine, nepotism, as a manifestation of nationwide corruption, is an evidence of a peculiar interpretation of each new authority of country's «renewal». It means that they view such a situation as «filling voids» by their relatives and friends who have arisen from the resignation or scuttle of the competitors – former high-ranking persons [11]. This desire of officials can be understood, but excuses cannot be found for the imperturbability with which such an appointment and renewal are perceived by Ukrainian society; in national consciousness, however, corruption is a standard of modern times, an easy way of solving problems. Thus, this comprehensive two-way process of overcoming the corruption should be considered as one of the most important stages of the Ukrainian state formation.

Forming the power «dynasties», inheriting of elite status of a deputy (according to V. Fesenko), shows that nepotism and cronyism is not a merely Ukrainian phenomenon; it is inherent to many countries and societies and constantly transforms and adapts to the conditions of development of a society and a state. Bad influence and consequences of these phenomena require not only a specific anti-corruption measures, but also transformation of social consciousness in general which would respond accordingly to such manifestation of corruption by destroying already established rules of lobbying and decision making,

beneficial for the public agents or near people, "façade" features of democracy of the Ukrainian society and political elite, increase efficiency of political institutions functioning. Therefore, we consider as promising some researches on overcoming manifestations of corruption of the political elite and the population of Ukraine from the standpoint of transformation in political consciousness and behaviour, reducing the authoritarian trends of the political regime which is being formed.

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