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# PROCEEDINGS IN ADMINISTRATIVE OFFENSES RELATED TO CORRUPTION: KEY MOMENTS

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**This article addresses the key points and issues related to the conduct of administrative corruption cases. After all, the responsibility for and counteraction to corruption and corruption-related offenses continues to be one of the elements of the anti-corruption system. At the same time, an important component of this mechanism are the rules that establish responsibility for committing not only acts of corruption, but also different from acts of corruption, which are the background phenomena that cause corruption, and therefore counteract both legal and law enforcement levels.**

**Given the lower level of public danger of corruption-related offenses compared to corruption offenses, their commission provides for administrative liability, regulated by the rules consolidated in Chapter 13-A of the Code of Administrative Offenses. The latter established liability for such offenses related to such types of corruption as: violation of restrictions on combination and combination with other activities (Articles 172-4); violation of the restrictions established by law on the receipt of gifts (Article 172-5); violation of the requirements of financial control (Articles 172-6); violation of the requirements for the prevention and settlement of conflicts of interest (Articles 172-7); illegal use of information that became known to a person in connection with the performance of official duties (Articles 172-8); failure to take measures to combat corruption (Articles 172-9), violation of the ban on placing sports bets related to the manipulation of official sports competitions (Articles 172-9-1), violation of legislation in the field of environmental impact assessment (Article 172 -9-2).**

**Key words: corruption; acts of corruption; proceedings; administrative responsibility; administrative offenses; human and civil rights and freedoms.**

**Formulation of the problem**. Administrative legislation has an important role to play in combating corruption, as overcoming corruption in Ukraine is a serious problem, the unresolved and exacerbation of which determines the international position of our country and political image in the world.

When dealing with cases of administrative offenses related to corruption, several issues that cannot be unambiguously resolved arise, and the procedure of administrative proceedings cannot be recognized as fully satisfying the needs of the theory and practice of combating corruption.

It is important to recall that the main legislative act on administrative liability in Ukraine is the Code of Administrative Offenses, which given its fundamental importance and "respectable" age for a legal act is difficult to consider an effective means of legal regulation in modern conditions. The multiplicity of problematic issues that accompanies proceedings in administrative offenses today requires a comprehensive solution. At the same time, until the reception of a new codified act or systematic renewal of the current Code of Administrative Offenses, it is necessary to consider the peculiarities of legal regulation of proceedings in certain areas. First, it is necessary for the proper protection of human rights and freedoms, as the highest social value proclaimed by the Constitution of Ukraine. Secondly, to achieve the tasks of proceedings in administrative offenses, which are defined: timely, comprehensive, complete and objective clarification and conditions that contribute to the commission of administrative offenses, prevention of offenses, education of citizens in the spirit of compliance with laws, strengthening of law (Article 245 of the Code of Administrative Offenses).

This is also emphasized by V. V. Ishchenko, noting that the proceedings in administrative offenses are settled mainly by the Code of Administrative Offenses in 1984, which is very outdated and therefore requires constant changes and additions until the conceptually new The Code of Ukraine on Administrative Offenses [1, p. 63]. The above also applies to proceedings in administrative offenses related to corruption, which, along with the general algorithm of implementation, has several peculiarities inherent in it.

**The purpose of the study.** The purpose of this article is a theoretical and legal analysis of the features of proceedings in administrative offenses related to corruption in Ukraine, the characteristics of the procedure for bringing to it, the detection of gaps and conflicts in the current legislation, as well as the development of proposals and recommendations for its improvement.

**The state of the study.** Problems concerning proceedings in administrative offenses related to corruption were investigated by such scientists as: V. A. Babich, O. M. Bandurka, I. S. Bachinskaya, V. V. Belevtseva, Yu. P. Bytyak, T. E. Vasilevskaya, A. V. Gayuk, V. M. Garashchuk, V. D. Gvozdetsky, Yu. A. Dorogova, V. S. Zhuravsky, V. A. Zavgorodniy, N. G. Kalugina, V. A. Konovalov, Yu. A. Lavrenyuk, N. P. Matyukhina, V. Ya. Nastyuk, A. O. Selivanov, V. M. Solovyov, S. E. Channov, I. S. Chaukin and others. However, the problems of proceedings in cases of administrative offenses related to corruption remain poorly researched.

**The statement of the main provisions.** One of the tools for combating corruption in Ukraine is administrative responsibility for violation of the requirements, prohibitions and restrictions provided in the Law of Ukraine of October 14, 2014, No. 1700-VII "On Prevention of Corruption" (Law).

It is this Law, as well as the Code of Administrative Offenses that establish and regulate the procedure for proceedings in administrative offenses related to corruption. Specificity of committing individual procedural actions and drafting procedural documents is also regulated by by-laws, such as the Instruction of the Ministry of Internal Affairs of Ukraine on registration of materials on administrative offenses [2], the procedure for drawing up protocols on administrative offenses and enrolment with the National Agency for Corruption Agency [3].

Concerning understanding of corruption offenses, T. V. Khabarova under this concept understands the regulated administrative and procedural norms of the stage activity of authorized entities in establishing the illegality in the actions of a person who has committed an offense related to corruption, should be deprived of goods obtained by corruption and other restrictions moral or material nature [4, p. 16].

I. N. Grabets believes that proceedings in cases of administrative offenses related to corruption are a type of proceedings in cases of administrative offenses, which is a system of statutory procedural actions carried out by authorized officials of public authorities and the court in order to identify and termination of an administrative offense related to corruption, persons listed by law, providing an objective legal assessment of the actions of persons, bringing the perpetrators to administrative responsibility, enforcing

the decision, identifying the causes and conditions that contributed to the administrative offense related to corruption [5, p. 7–8].

It is known that proceedings in cases of administrative offenses related to corruption are in essence the implementation of the method of coercion and belong to the so-called ordinary type of proceedings. The usual type of proceedings is detailed and typical for most cases, where the presence of a protocol is mandatory, the content of procedural measures, the procedure for their application, a clear procedure for consideration of cases, etc. are determined. In turn, some scholars suggest that this type of proceedings should be attributed to anti-corruption proceedings [6, p. 13].

Administrative proceedings begin with the drawing up of a report on an administrative offense related to corruption. This procedural document records the event of the offense (a set of factual circumstances that indicate the presence in the act of an administrative offense). This protocol is also a procedural basis for consideration of the case in court.

According to Art. 255 of the Code of Administrative Offenses (as amended by the Law of Ukraine of 12 February 2015 No. 198-VIII [7]) protocols on administrative offenses related to corruption (Articles 172-4-172-9 of the Code of Administrative Offenses) have the right to draw up authorized officials: law enforcement agencies (National Police); National Agency for the Prevention of Corruption (National Agency). It should be emphasized that the only category of officials of the National Police of Ukraine who have the right to draw up reports on corruption-related offenses are authorized employees of the Department of Economic Protection of the National Police of Ukraine and its territorial bodies [8].

The procedure by which the National Agency submits protocols on administrative offenses related to corruption also has its own peculiarities. Thus, in case of detection of signs of an administrative offense related to corruption, the authorized persons of the National Agency for Prevention of Corruption, in accordance with Part 3 of Art. 12 of the Law draw up a report on such an offense, which is sent to court in accordance with the decision of the National Agency [9]. However, it is seen that the provisions of the Law on sending a protocol on an administrative offense solely based on a separate decision of the National Agency are in no way justified, contrary to Art. 257 of the Code of Administrative Offenses and in some cases contribute to delays in sending the protocol to court. For example, due to the lack of a quorum, the meeting of the members of the National Agency does not take place on the scheduled date, and the minutes with the collected materials are not sent to court without good reason [10].

The peculiarity of administrative liability for administrative offenses related to corruption is also that during the proceedings in the case of an administrative offense under Art. 172-4-172-9, the participation of the prosecutor in the court proceedings is mandatory (Article 250 of the Code of Administrative Offenses).

Proceedings in the case of an administrative offense related to corruption can be initiated only if there are appropriate grounds. At the same time, they are not defined in the Administrative Code. Analysis of the provisions of current legislation and the practice of its application shows that legitimate reasons for initiating administrative proceedings may be statements and notifications of enterprises, institutions, organizations, officials, government officials, the public, citizens; press releases; direct detection by the authorized subject of signs of an offense related to corruption.

It should be noted that as Part 3 of Art. 38 of this Code, and paragraph 3 of section II of the Procedure for drawing up protocols on administrative offenses and making instructions to the National Agency for Prevention of Corruption of June 9, 2016 No. 5 [3] provides that an administrative penalty for committing an offense related to corruption (Articles 172-4-172-9 of the said Code), shall be imposed within three months from the date of its discovery, but not later than two years from the date of its commission. Thus, the legislator neither in the Code of Ukraine on Administrative Offenses, nor in the above-stated Procedure didn't provide, during what term after detection of the specified offense the authorized subject should make the corresponding report.

Therefore, in our opinion, such a report should be drawn up immediately after the establishment of sufficient data indicating that a person has committed an administrative offense related to corruption. After all, untimely drawing up, delay or intentional delay in drawing up the report may lead to evasion of the

offender from liability or inability to impose an administrative penalty due to the expiration at the time of the administrative offense of the terms provided for in Art. 38 of this Code.

Another feature of such proceedings is that the case of an administrative offense related to corruption may be closed under paragraph 7 of Art. 247 of the Code of Administrative Offenses only if the court based on the evidence in the case found the person guilty of an offense, but at the time of the case expired the deadline for imposing an administrative penalty provided for in Art. 38 of the Code of Ukraine on Administrative Offenses.

However, sometimes cases of administrative offenses related to corruption are closed without a proper analysis of the person's guilt in connection with the expiration of the time limit for imposing an administrative penalty at the time of their consideration.

In our opinion, such a practice is unacceptable, as it violates the rights of persons prosecuted, victims, their legal representatives, and defenders. When considering cases of this category, all the circumstances listed in Art. 247 and 280 of the Code of Administrative Offenses, including by questioning witnesses and, if necessary, appointing experts. The content of the judge’s decision must meet the requirements provided for in Art. 283 and 284 of the Code of Administrative Offenses. It must contain the evidence on which the person's conclusion of an administrative offense related to corruption is based, and state the reasons for rejecting other evidence referred to by the offender or the arguments expressed by him.

**Conclusions:** The state of the legislation regulating proceedings in cases of administrative offenses related to corruption has been recognized by scientists as far from perfect and quite contradictory. In practice, some of its provisions have been or have been criticized and need to be improved.

Given the requirements of Art. 251 of the Code of Administrative Offenses to improve the mechanism of administrative proceedings in cases of administrative offenses related to corruption, the Code of Administrative Offenses of Ukraine should provide for the procedure of examination, the procedure for recognizing certain items as material evidence, criteria for determining the relevance, admissibility, and sufficiency of evidence. Also for this category of cases it is necessary in the Code of Ukraine on Administrative Offenses to determine the time of conflict of interest in accordance with the requirements of subparagraphs “a”, “b” of paragraph 1 of Part 1 of Art. 3, paragraphs 1, 2, part 1 of Art. 28 of the Law of Ukraine “On Prevention of Corruption”; grounds and sufficiency of data for the obligatory occurrence of negative consequences for bringing a person to justice under Art. 172-4-172-9 of the Code of Ukraine on Administrative Offenses.

In addition, in this Code and in the Procedure for drawing up protocols on administrative offenses, it is necessary to specify that the protocol on administrative offenses related to corruption must be drawn up by an authorized entity immediately after establishing sufficient data indicating the commission of administrative corruption offense. However, in the said Procedure, among the information about the identity of the violator, specified in the protocol and in the decision to impose an administrative penalty for its commission, it is necessary to indicate the registration number of the taxpayer’s account card.

Summarizing the above, it should be noted that the stages of proceedings in cases of administrative offenses related to corruption are characterized by the presence of problematic aspects, the solution of which requires appropriate changes to existing legislation.

**REFERENCES**

1. Ishchenko V. V. (2015). Deiaki pytannia zmistu ta obsiahu protsesualnykh prav deiakykh uchasnykiv provadzhennia u spravakh pro administratyvni pravoporushennia [Some issues of the content and scope of procedural rights of some participants in proceedings on administrative offenses]. Stan dotrymannia prav liudyny v umovakh suchasnosti:teoretychni ta praktychni aspekty. P. 63–65. URL: http://elar.naiau.kiev.ua/ jspui/handle/123456789/8727 (in Ukrainian).

2. Instruktsiia z oformlennia materialiv pro administratyvni pravoporushennia v orhanakh politsii [Instruction on registration of materials on administrative offenses in police bodies]: zatverdzhena nakazom Ministerstva

vnutrishnikh sprav Ukrainy vid 6 lystopada 2015 roku No. 1376. Ofitsiinyi visnyk Ukrainy. 2015. No. 99. Art. 3405 (in Ukrainian).

3. Poriadok oformlennia protokoliv pro administratyvni pravoporushennia ta vnesennia prypysiv Natsionalnym ahentstvom z pytan zapobihannia koruptsii [Procedure for drawing up protocols on administrative offenses and submitting instructions by the National Agency for the Prevention of Corruption]: zatverdzhenyi rishenniam Natsionalnoho ahentstva z pytan zapobihannia koruptsii vid 9 chervnia 2016 roku No. 5. Ofitsiinyi visnyk Ukrainy. 2016. No. 62. Art. 2128 (in Ukrainian).

4. Khabarova T. V. (2017). Administratyvno-protsesualni zasady zapobihannia koruptsii v Ukraini [Administrative and procedural principles of corruption prevention in Ukraine]: dys. … kand. yuryd. nauk: 12.00.07. Kharkiv. 216 p. [in Ukrainian].

5. Hrabets I. N. (2005). Administratyvno-pravovi zasady diialnosti prokurora shchodo protydii administratyvnym pravoporushenniam, poviazanym z koruptsiieiu v Ukraini [Administrative and legal bases of the prosecutor's activity on counteraction to administrative offenses related to corruption in Ukraine]: avtoref. dys kand. yuryd. nauk. Kyiv. 20 p. (in Ukrainian).

6. Iatskiv I. I. (2011). Administratyvno-pravovi zasady protydii koruptsii v Ukraini [Administrative and legal principles of anti-corruption in Ukraine]: avtoref. dys. ... kand. yuryd. nauk: 12.00.07 / Vidkrytyi mizhnar. un-t rozv. liudyny "Ukraina". K. 16 p. (in Ukrainian).

7. Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo zabezpechennia diialnosti Natsionalnoho antykoruptsiinoho biuro Ukrainy ta Natsionalnoho ahentstva z pytan zapobihannia koruptsii [On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption]: Zakon Ukrainy vid 12 liutoho 2015 roku No. 198-VIII. URL: http://zakon3.rada.gov.ua/laws/show/198-19/ print1484673396547946 (in Ukrainian).

8. Pro utvorennia terytorialnoho orhanu Natsionalnoi politsii [On the establishment of a territorial body of the National Police]: postanova Kabinetu Ministriv Ukrainy vid 13 zhovtnia 2015 roku No. 830. Ofitsiinyi visnyk Ukrainy. 2015. No. 84. Art. 2810 (in Ukrainian).

9. Perelik upovnovazhenykh osib Natsionalnoho ahentstva z pytan zapobihannia koruptsii [List of authorized persons of the National Agency for Prevention of Corruption]: zatverdzhenyi rishenniam Natsionalnoho ahentstva z pytan zapobihannia koruptsii vid 11 serpnia 2016 roku No. 9 "Pro vyznachennia upovnovazhenykh osib Natsionalnoho ahentstva z pytan zapobihannia koruptsii" (iz zminamy ta dopovnenniamy). Ofitsiinyi veb-sait Natsionalnoho ahentstva z pytan zapobihannia koruptsii. URL: https://nazk.gov.ua/11-serpny (in Ukrainian).

10. Pozacherhove zasidannia NAZK, pryznachene na sohodni, ne vidbulosia u zviazku z vidsutnistiu kvorumu [The extraordinary meeting of the NAPC scheduled for today did not take place due to lack of quorum]. Ofitsiinyi veb-sait Natsionalnoho ahentstva z pytan zapobihannia koruptsii. URL: https://nazk.gov.ua/news/pozachergove-zasidannya-nazk-pryznachene-na-sogodni-ne-vidbulosya-u-zvyazku-z-vidsutnistyu (in Ukrainian).

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## ПРОВАДЖЕННЯ У СПРАВАХ ПРО АДМІНІСТРАТИВНІ ПРАВОПОРУШЕННЯ, ПОВ'ЯЗАНІ З КОРУПЦІЄЮ: КЛЮЧОВІ МОМЕНТИ

**Розглянуто ключові моменти та проблемні питання, що стосуються здійснення провадження у справах про адміністративні правопорушення, пов'язані із корупцією. Адже відповідальність за корупційні правопорушення і правопорушення, пов'язані із корупцію, та протидія їм за**

**допомогою правоохоронної діяльності продовжують залишатись одним із елементів системи запобігання корупції. Важлива складова зазначеного механізму – норми, які встановлюють відповідальність за вчинення не лише власне корупційних діянь, а і відмінних від корупційних діянь, які є фоновими явищами, що спричиняють виникнення корупції, а відтак протидіяти їм необхідно як на законодавчому, так і на правозастосовному рівнях.**

**Враховуючи нижчий ступінь суспільної небезпеки правопорушень, пов'язаних із корупцією, порівняно з корупційними деліктами, за їх вчинення передбачено адміністративну відповідальність, регламентовану нормами, консолідованими у главі 13-А КУпАП. Останньою встановлено відповідальність за такі правопорушення, пов'язані з корупцією, як: порушення обмежень щодо сумісництва та суміщення з іншими видами діяльності (ст. 172-4); порушення встановлених законом обмежень щодо одержання подарунків (ст. 172-5); порушення вимог фінансового контролю (ст. 172-6); порушення вимог щодо запобігання та врегулювання конфлікту інтересів (ст. 172-7); незаконне використання інформації, що стала відома особі у зв'язку з виконанням службових повноважень (ст. 172-8); невжиття заходів щодо протидії корупції (ст. 172-9), порушення заборони розміщення ставок на спорт, пов'язаних із маніпулюванням офіційним спортивним змаганням (ст. 172-9-1), порушення законодавства у сфері оцінювання впливу на довкілля (ст. 172-9-2)4.**

**Ключові слова: корупція; корупційні діяння; провадження; адміністративна відповідальність; адміністративні правопорушення; права і свободи людини та громадянина.**