

POLITICAL CORRUPTION IN UKRAINE: THE STATE, FACTORS AND COUNTERMEASURES¹

TWO THINGS ARE IMPORTANT FOR FIGHTING CORRUPTION: POLITICAL WILL AND RESOLUTION TO ACT



Heike DÖRRENBÄCHER,
Head of Friedrich Naumann
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in Ukraine

First of all, I wish to thank you for the initiative of this discussion on the critical issue that should be resolved as soon as possible. We believe that democracy and corruption are incompatible, and if someone wants to stabilise democracy, he should fight corruption. That is why we are very happy that we could help to arrange this expert discussion.

If a society is full of corruption, it penetrates into politics and begins to ruin democracy. And if we wish to fight corruption, political will is needed for that in the first place. Georgia is a very good example, it managed to stop corruption within three years. Now, Georgia is 67th in the *Transparency International* rating, and Ukraine, unfortunately – far lower.² Last summer, the *Transparency International* leader Mr. Eigen visited Kyiv. His words were very simple: “Don’t talk – act, work. Start fighting from your own house, your school, your quarter”. ■

Expert discussion, November 27, 2009



I think that two things are important for fighting corruption: political will and resolution to act, not talk. I look at the results of this study with hope and expect an interesting and fruitful discussion.

PROBLEM OF POLITICAL CORRUPTION DEALS WITH LEGITIMACY OF GOVERNANCE



Eleonora VALENTINE,
Parliamentary Development
Project Director³

We focus on law-making policy development. The Verkhovna Rada of Ukraine is our main partner, but we also expanded cooperation with the Presidential Secretariat and the Government, and continue cooperation with civil society.

Our main goal is to identify “bottlenecks” together with our partners, and look for ways to remove them and strengthen the institutes of governance and democracy in Ukraine. We are trying to apply methods of problem statement, conduct a study, review that study and use it then – to find mechanisms of problem solution for attainment of positive results.

In the recent years, a lot has been said about corruption in Ukraine. There were many attempts to study that phenomenon. But when Razumkov Centre turned to us with a request for assistance in the study of political corruption proper, we provided such assistance – since, indeed, there were great many surveys of corruption, but this survey of political corruption is among the first. We supported that initiative, since the problem of political corruption in fact touches the legitimacy of governance in Ukraine. If the structures of power are affected by corruption – how can they work, with their legitimacy questioned?

I hope that presentation of the survey and expert discussion of its conclusions will help our partners in Ukraine to do away with negative phenomena and achieve good results for the country. ■

¹ The expert discussion was held on November 27, 2009. The texts are cited according to the records, in an abbreviated form, in the order of presentation in course of the discussion.

² According to the *Transparency International* survey, Ukraine ranked 146th among 180 countries in 2009.

³ The Parliamentary Development Project II: Legislative Policy Development Programme is implemented with support from the Democracy and Governance programme of the USAID Mission to Ukraine, Belarus and Moldova.

UNLESS WE DEFEAT CORRUPTION, THE UKRAINIAN STATE WILL CEASE TO EXIST...

Volodymyr STRETOVYCH,
*National Deputy of Ukraine,
Deputy Chairman of the
Verkhovna Rada of Ukraine
Committee for Legislative Support
for Law-Enforcement Activity*

I wish this discussion were attended not only by representatives Presidential Secretariat but also by advisers to the Prime Minister and the Supreme Court Chairman. Since the problem of corruption is a problem of the state governance, state machinery. And everybody should know how to cure that disease.

Yet in 2002, when I chaired the Parliamentary Committee for Fighting Organised Crime and Corruption, we understood that the causes should be fought, rather than effects. It was evident that the country sank in corruption due to the proportional system and oligarchisation of parties and political life, when a few groups of the strong and mighty make lists for money, an MP turns from an exponent and defender of the popular will into a “button-pusher”. Just one example. When I asked MPs from Donetsk why they did not support recognition of the Holodomor as genocide, knowing that Donetsk region suffered the most, I heard in response: We were so instructed. In other words, an MP fulfils not his own will but the will of those who instruct him.

This is another reason for what is going on in Ukraine now: MPs no longer have their opinion, their stand, they obey to the party leadership. Voting to override the presidential veto on the law on enhancement of fighting corruption was one example. The Party of Regions refused to vote, and the chairperson laid the issue on the table, although 423 MPs voted for the Law in the first reading. That is, the leadership’s stand changed: what if that law is applied to us? Who knows what may happen...

Where is the difference between political and “ordinary” corruption? In the size of bribes. But I would not divide corruption, because the issue of political corruption and corruption as such is the issue of authority. And authority means policy. They should not be divided. All done on the Pechersk hills (where Government and Parliament are situated — Ed.) and on a district level – all is political corruption, since it undermines authority as such and sows public mistrust in the institutes of governance.

Regarding the depth of corrupt affection. Today, all branches, institutes, agencies are equally affected by it! The Supreme Court alone stood firm, when chaired by Boiko who staunchly resisted President Kuchma. But as soon as he left... There is no Supreme Court today. No court as such. Today, people understand that “he is right who has more rights”. And rights ever more go with those who pay more. I speak frankly about that, proceeding from my personal experience – today, one actually cannot defend himself in the supreme judicial instance.

By the way, if we analyse data of the real estate market, it appears that the list of buyers of expensive estates is topped by judges. Tax officers go second, public prosecutors – third, militiamen – fourth, and businessmen – only fifth.

Another example: the [Lviv Regional] Court of Appeal Chairman Zvarych. Soon, there will be one year after Ukraine learned about that grafter. But the Security Service recorded on a video 10 (ten!) episodes where judges of the same court give him bribes. I asked more than once: why is the Court of Appeal not dissolved yet? Grafters who took bribes and carried them to the Court Chairman continue to exercise justice! “Check is underway. We are investigating...”. What can an MP do in such situation? Chain himself with handcuffs to the Supreme Court or the Presidential Secretariat in protest? What can we say about ordinary citizens then?...

Next: the worst thing we did was that we mixed crime with politics. As soon as a high-ranking official appears in the hands of justice, “friends” immediately raise their banner – political persecution! Be logical – there would be no political persecution, if there were no crime. Be pure, unstained, and no one will persecute you. Be a model of conduct, but as soon as you appear in the hands of justice, one law is for all! Right? Is this our slogan of the day? No, not one for all. There are those holding [MP] mandates, and ordinary citizens who cannot defend themselves.

And there is no belief that we can do something. According to the results of the study presented here, 63% of citizens are sure that nothing will change in the future. Because we do not fight effectively. National Bureau of Investigation, prevention of corruption – all remained good intentions...

And the last thing. What are the means to oppose corruption? In 2005, I told the President: if you want to make a law-ruled state – make perfect courts. They are the least numerous, only 7,500. They are formalised, all judicial procedures are prescribed. Any departure from a provision should automatically influence the status of a judge. Give them high salaries, but for a deliberately wrongful verdict – deprive of the status, pension, and right to ever be re-established on the post. This is not our experience, this is the easiest thing to do. Unless we defeat corruption, the Ukrainian state will cease to exist, there will be only Ukrainian territory. ■

EFFECTIVE FIGHTING CORRUPTION CAN BE ACHIEVED ONLY THROUGH JOINT EFFORTS

Serhiy MISHCHENKO,
*Chairman of the
Verkhovna Rada of Ukraine
Committee for Legal Policy*

I draw attention to political corruption starting from 2005, when nobody spoke of it. Only now, the subject came into the forefront, and this gives hope. Analysis of the corruption phenomenon lets me say the following.



Expert discussion, November 27, 2009



First: political corruption is a specific form of struggle for power, since it enables conversion of money into power, of power into money. This is a reciprocal and inseparable process: money fights for power, power – for money.

I would term “ordinary” corruption differently – “criminal-domestic”. Criminal-domestic and political corruption should be distinguished and defined separately. One example: if a tax officer comes to a businessman and requests money, this is criminal-domestic corruption. But if the same tax officer gets instructions and goes to the same businessman requesting him to make contribution to one or another political party, one or another candidate for MPs, or make the employees of his company to vote in a certain way, that is not domestic corruption but political. Its main danger is that it affects entire society. When ordinary citizens get relevant information from mass media, from journalist investigations, they follow the principle: if the strong and mighty may do that, why can't we?

Second: political will is the main thing for countering corruption. I mean not only politicians – all of them have their skeletons in the closet. Effective fighting corruption can be achieved only through joint efforts of all institutes and public structures.

Indeed, we passed three laws on countering corruption. But the political will lacked to legislatively introduce the very term of political corruption and relevant amendments to the election, criminal, administrative legislation, to establish responsibility for politically corrupt acts.

Even worse: we lack not only the definition of political corruption – you will nowhere find a definition which criminal offences involve corruption, except statistical reports of law-enforcement bodies that decide for themselves which criminal offence is corrupt. Murder of journalist Gongadze – was that political corruption, or not? That is, murder cannot deal with corruption. But what if a man, a journalist, a political figure is killed for political motives – is that political corruption?

So, the legislation should be improved, for us to be aware what we fight. There is some international experience of the election legislation, the legislation on political parties, their reporting to voters, there is a practice of MPs codes of conducts. That experience should be used.

Finally, it is an issue of not only criminal responsibility but also of responsibility of a politician to oneself. You broke the Code – resign, as politicians in the West do. In this country, unfortunately, violation is normal, there are no resignations, scandal may even make good publicity. So, we should all unite and aim all efforts at fostering political will to finally get off the ground. ■

THERE IS A DANGER THAT CONTENDERS FOR THE “STRONG ARM” WILL LEAD CORRUPTION, INSTEAD OF REMOVING IT...⁴



Ihor POPOV,
Deputy Head of the
Presidential Secretariat

Corruption is the main problem of the Ukrainian politics and authorities. So, it makes sense to speak not about definitions but about phenomena now – we all understand what is meant.

Political corruption begins with elections: closed lists, trade in seats. Unfortunately, my forecast here is pessimistic: we will not change the system in the near future.

Elections are a very expensive show campaign, in fact, a race of very big budgets. And at the forthcoming elections, direct purchase of votes is planned. Many signals arrive on how the purchase is being prepared, strikingly big sums are reserved, I did not expect that – \$100 for a vote. That figure is mentioned in all regions, by different mediators from different political parties. The trends are too sad, one of the reasons being that now, nobody campaigns but money is reserved for direct subornation. Early parliamentary elections may also be held using corrupt schemes – with closed lists and purchase and sale of seats.

What sectors are affected by corruption the most? According to the expert assessments I have, in the executive branch – tax and customs, so-called “resource” ministries, along with the judicial and law-enforcement sectors. And elected authorities “cover” all that, since they influence appointments of all persons immediately engaged in siphoning budget funds.

Great many instances may be cited: from state procurement and privatisation of state residences to the latest example – creation of an intermediary to accept reports to state tax administrations, to which every legal entity was to pay a thousand hryvnias... Allocation of land plots by local councils is an example of collective irresponsibility. Since a decision is collective, nobody may be punished for it, and it is next to impossible to cancel it. This happens openly in many cities, but nobody fights this... The case of Lozinskyi is not only another signal for immediate limitation of immunity. What is not detained, what is hidden and not searched for, is even worse...

How to fight? Such a difficult problem cannot be solved overnight. And a “strong arm”, much spoken about today, will not help, because all current contenders for it do not look like enlightened monarchs or dictators. There is a very strong threat that they will lead corruption, instead of removing it. Redistribute cash flows, instead of fighting.

We face another road. It involves the balance and mutual control of the authorities, not usurpation of power.

⁴ At the beginning of his presentation Mr. Popov made a remark that he spoke as an expert and did not present an official position.

It involves free media, journalist investigations. Without them, corruption will be even more terrible than now. It involves gradual reformation, not populist laws, such as the law on enhancement of responsibility for bribery up to life imprisonment. Corruption cannot be restrained by punitive measures alone, only the amounts of “reward” will grow, due to a higher risk.

Instead, there are effective measures that show that corruption in education can be gradually restrained, for instance, by independent external assessment. Not being ideal, it still removed many problems; others arise, that should also be removed. With respect to elections, it involves removal of limitations on election funds, which legalises money. State servants should declare their expenses. Transparency is highly important. There should be those gradual steps, plus obligatory education of society, since we are too tolerant to corruption. And political resignations, where necessary. Along with punishment, of course, first of all, in publicised cases. According to the letter of the law. ■

WILL OF CIVIL SOCIETY AND RESPONSIBLE POLITICAL ACTORS SHOULD BE TRANSLATED INTO CONCRETE ACTS



Ihor KOHUT,
*Chairman of the Board,
Laboratory of
Legislative Initiatives*

The problem lies not in legal or academic definition of political corruption but in search for safeguards and countermeasures. Attempts of implementation of such measures have been made since 2001, in particular, in political party funding. The first step that we managed to make in 2003 was to propose a bill and secure its passage by Parliament and signing by the President. However, no government respected that law all those years, and the government established after the early elections of 2007 cancelled it, with the Law on State Budget for 2008.

I realise that it is insufficient to introduce state funding of political parties in the proposed form. Evidently, we should also speak about the sources of funding and their publicity, as well as about internal party democracy and activity of a democratic party. Just recall how happy we were 18 years ago, when the multi-party system was introduced. But have we created the institute of true political parties over those years?

The issue of the election system is issue No. 2, discussed at least since 2002. Who and how finances elections? The issue of open lists or any modification of the election system also arose not yesterday. Parliament registered a

number of innovations. However, there is no movement at all. Is any of the politicians motivated to introduce those changes?

Issues of conflict of interests and lobbying also remain unsettled. Today, lobbying perceived very negatively and creates a bad background for the institute of parliamentarianism in general and for the other branches, since the issue of political corruption deals with the issues of establishment of all institutes...

Or maybe the effective laws should be followed, instead of passing new ones? For instance, the effective law on political parties – with financial reports published annually. I wonder if at least the parliamentary parties released reports for 2008? Did the Ministry of Justice accept them, at least for itself, for review?

There were many proposals and recommendations for countering corruption, some of them were even adopted – but never reached the stage of practical implementation. The new legislation is to enter into effect from the 1st of January, but I am afraid that it may be refuted by some other law. Everything may happen in this country.⁵

So, to sum up – I would love to see our will of civil society and responsible political actors translated into concrete actions... ■

COUNTERING CORRUPTION REQUIRES AN INTEGRAL APPROACH



Denys KOVRYZHENKO,
*Law Expert,
Laboratory of
Legislative Initiatives*

I do not guess that distinction between “ordinary” and political corruption is required in principle. There is a definition of corruption, and who commits corrupt acts is an issue of the level of public danger. Maybe the political status of the persons committing corrupt acts, in particular, MPs or the President, should be taken into account. They should be subject to specific measures of influence, since the measures applied to state officers are not applicable to them. But those two notions should not be separated, because the notion of corruption, in fact, covers public and state officers, local self-government officials and politicians alike.

What institutes are affected by corruption the most? This cannot be assessed statistically, in percent. All are affected equally – and the problem lies in the policy domain. We have already spoken about the system of Parliament formation, whereby candidates for MPs are proposed by parties financially dependent on a limited circle of “donors”. There are also problems of non-transparency of the authorities, lack of basic reforms,

⁵ The Laws “On Principles of Prevention and Countering Corruption” (basic), “On Responsibility of Legal Entities for Commitment of Corrupt Offences”, “On Amendment of Some Legislative Acts Concerning Responsibility for Corrupt Offences”. As we noted above, those laws were to enter into effect on January 1, 2010, but Parliament postponed their effectiveness till April 1, 2010.



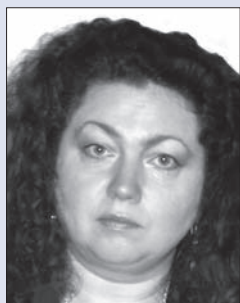
they are much spoken about, but things did not get off the ground: neither the public service has been reformed, not the judicial branch... The bills pursuing the judicial system reform are actually stalled.

Regarding concrete proposals, I agree that we should start with parties and the election system. What should go first – party funding or the election system? I guess, both. That is, first, limitation of private funding and, respectively, compensation of the decline in proceeds at the expense of the state budget. It is often speculated on – they say, money is not enough even for pensions. But it is not enough for pensions exactly because decisions are passed non-publicly and under the influence of different factors of corruption. Hence, mechanisms of transparent funding of parties and elections are needed. We know that money is spent on election campaigns, but who does specifically give contributions, how do funds move from parties to election funds, from what persons?

The role of mass media in countering corruption should be raised. For instance, it is proposed that candidates should report on the results of their activity. But in absence of true mass media, such reports will have no sense. Many try to report now, telling what effective leaders they are. But in reality, this is nothing but eyewash, conditioned, among other things, by the fact that mass media are actually controlled by the same people who now control the entire political process. Here, reforms are also needed, including privatisation of the mass media owned by the state.

Finally, a systemic approach to the public administration reform should be introduced. It involves the judicial reform and the public service reform. Business should be deregulated, which was also discussed. Ownership should be protected, for big owners not to interfere into politics to lobby their interests and defend their gains. That is, there should be a set of measures, while their priority will depend on the political expediency. ■

POLITICAL CORRUPTION IS AN INDICATOR OF THE NATIONAL ELITE'S ABILITY TO RULE THE STATE



Oksana MARKEYEVA
Head of Department
of Corruption Fighting Problems
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member of Interdepartmental
Working Group for
Countering Corruption

[A few words] on the difference of political corruption from general and criminal. The danger primarily lies in its very serious consequences.

First, political corruption has a multiplicative effect, corrupt behaviour is followed on the lower levels. This looks as kind of a stepped scheme. First, client groups non-transparently finance political parties and election

campaigns. Next, they form the demand for distribution of some resources – and in that way make “their” politicians to act the way they need. And since the “top-level”, political corruption is not just evident but absolutely unpunished, whole society begins to act like that, legal nihilism becomes all-embracing.

Second, what is dangerous is that the most valuable public resources go to unknown pockets: today – land, tomorrow – possibly, water... or we see this even now, in southern regions.

On the other hand, work in the most publicly valuable sectors is remunerated in corrupt way – so-called capitulatory salaries now paid in education, public health and, the most important, in the judicial and law-enforcement sectors. Indeed, one can live with such salaries very modestly or poorly. It is presumed that one will somehow make ends meet through exaction. In that way, bribery and corruption sweep over whole sectors...

Next – political corruption and impunity cause criminalisation of power and politics. We already see not just a corrupt but a flatly criminal way of life and thinking. Instances are many when people involved in crimes come to power.

Corrupt society lives by mutual oppression. Some roll in poverty and match the top mainly by their criminality. We now see colossal growth of crime, noted at the September meeting of the Security Council. In turn, the top stratum, living at the expense of unlawful, corrupt and/or criminal proceeds, is continuously subjected to blackmail. Everybody blackmails it: tax officers, politicians, judges. And have gains from that, making the basis for the formation of a parasitical stratum. Today, we see a parasitical stratum made up of executives highly interested in the maintenance of “grey”, unsettled rules of the game. By the way, this bars formation of the middle class, making the core of the most developed nations. The niche of the middle class in this country is occupied by the stratum of executives.

Noteworthy, that parasitical group is in a very difficult situation, in which it itself put it. The total legal nihilism makes representatives of that group to be in terror for their property that at any time may be corruptly redistributed. That is, all the time one needs to hide, conceal his money and wage a half-legal life.

Finally: where is the limit of our tolerance of corruption, the threshold of its acceptance? As we know, corruption is found in all societies to a smaller or lesser degree. But there is a serious difference between effective and ineffective corruption. Evidently, the limit will be reached when corruption ceases to be effective here, when it gets into the pocket and personal life of everyone. I guess that we are approaching that limit.

Summing up, I can say that political corruption is an indicator of the national elite's ability to rule the state. Today, we must state that our elite cannot rule the state in transparent and legitimate conditions. ■

THE MOST EFFECTIVE WAY TO FIGHT POLITICAL CORRUPTION IS TO REMOVE POLITICISATION OF ORDINARY CORRUPTION

Volodymyr RUSSKOV,
*Prosecutor of the
General Prosecutor's
Office of Ukraine Department
of Supervision of Observance
of Corruption Laws*

Having studied the presented materials, I can say that as a citizen I fully agree with what is written. But as a lawyer, I have a slightly different stand.

A few words about the legislative definition of corruption. Really, the 1995 Law on Fighting Corruption remains valid. Its main drawback is that its notion of corruption is confined to administrative offences involving relevant measures of responsibility. So, the laws set to enter into effect on January 1 were needed – since if corruption is described from the viewpoint of public threat (and we all admit that the public threat of that kind of offences is the strongest), it is not enough to establish administrative responsibility for corrupt acts. Indeed, the effective legislation dealing with such criminal offences as bribery, abuse of power or official duties does not specify them as corrupt offences. This is mentioned only in statistical bulletins, on logical grounds. The legislation set to enter into effect from January 1, despite all its imperfection, still more widely treats that problem, gives a wider definition of corruption and clearly establishes the kinds of responsibility, up to criminal. That is, everything is legislatively defined. But I fully agree that corruption can be fought even using the current legal framework.

Should one distinguish between political and ordinary corruption? The question is disputable. I think that if we managed to do away with ordinary corruption, there would be no political one. For what is political corruption? It is a politicised variety of ordinary corruption.

And it would be much easier for law-enforcement bodies to fight ordinary corruption if they were not politicised. It would be fair to say that more or less publicised cases affecting someone's interests are immediately politicised, presented as political persecution. Although they may involve ordinary criminal offences.

It was also rightly said that if a tax officer exacts money – this is ordinary corruption, if he exacts it for some political force – this is political corruption. But why does a tax officer begin to exact money for a political force? If he is appointed for that force. So, in that way, ordinary corruption is politicised in many sectors of governance, especially in the executive branch. Replacement of a principal – and principals are replaced dependent on the quota of one or another political force – involves a reshuffle of the whole team. In the recent years, such reshuffling has led to replacement of not only executives of the middle level – department and section heads – but also specialists. New people come by quotas,

they are engaged, in the first place. Second – those who remained in their jobs are not sure that they will not be replaced tomorrow and begin to “justify” their posts. This is one of the factors of ordinary corruption growth.

So, it makes sense to speak about politicisation of ordinary corruption. The distinction is hard to draw, but this must be done. Who imposes such politicisation? A very narrow stratum that we call the political elite. Everybody is well aware of that. Lawyers have a saying: the main thing during investigation is not to track oneself. That is, the circle of the persons politicising ordinary corruption is very narrow.

Therefore, the effectiveness of fighting political corruption will be higher if we manage to do away with this politicisation. First of all, this refers to law-enforcement bodies and courts. The effectiveness of their fighting corruption immediately depends on their de-politicisation. They should be granted legislative guarantees of independence from political influences, but so as not to cross the red line where they can hide behind those laws as fences and be afraid of nothing and no one. This is a very difficult issue, but I still think that the most effective way to fight political corruption is to remove politicisation of ordinary corruption. ■

THE CORE OF ANTICORRUPTION STRATEGY SHOULD LIE NOT IN FIGHTING BUT IN PREVENTION AND AVOIDANCE OF CORRUPTION AS A PHENOMENON

Roman ZVARYCH,
*National Deputy of Ukraine,
Chairman of Subcommittee
on Standards of Lawmaking
Activity and Planning of the
Verkhovna Rada of Ukraine
Committee for Legal
Policy Issues*

I see the problem we discuss today as the most threatening not only for democracy development but also for further establishment of our state and society in general. That is why I hail the very fact of raising the issue of political corruption.

However, I tend to believe that introduction of the notion of political corruption in legal circulation at this stage is inexpedient. On the contrary, it may even be dangerous to an extent, since it remains unclear what is meant by “removal of political corruption” from the legal viewpoint. Will introduction of that term give us an opportunity to eradicate instances of corruption in society? I am sure that it will not.

Much of what was said today dealt with political party activity. Since I used to be a party functionary myself, I must say that this was not always true, the criticism largely stems from the critics' unawareness how parties work. Why do I make such maybe harsh comments? The question should be raised as follows: is corruption inherent in political and party activity, or introduced on the personal or corporate levels by persons empowered to take decisions, including for corrupt motives, because of their political and party activity? I want to be heard: this is a very fine but fundamental distinction.



It was more than once said here that fish rots from its head. I am sorry, the fish is so rotten that this means nothing. Instead, I would agree that the fish should be cured from the head. That is, we realise that today, the greatest threat to our state stems not from corruption in the top echelons of governance and imperfection of laws but from that entire society, all citizens see corruption as a fact (as witnessed, by the way, by the results of the sociological survey presented here), while anticorruption laws are seen as small barriers that can be easily bypassed, if not overjumped. That is, the problem of corruption is not a legal but a social and moral one.

Regarding the fight with this phenomenon: in 2005, the Ministry of Justice set up a working group to study that issue, its participants analysed anticorruption programmes of 12 states. The conclusion was that in the states that fought corruption through, for instance, toughening criminal responsibility for corrupt acts, gains were minimal. The most effective were the programmes of the states that tried to prevent the phenomenon of corruption, resorting mainly to preventive measures. Noteworthy, this approach was not sufficiently covered in the presented report. It would be nice if the authors examine the mentioned work by the Ministry of Justice. They should be made public – and I think that Razumkov Centre could effectively do this.

Next: I agree with the need of legislative provision of declaration by different categories of persons – including state servants and politicians – of not only incomes but also expenditures, along with verification of such declarations. But who will verify them? We should admit that we have failed to set up a single anticorruption body, present in every country that successfully fought corruption, or successfully avoided it. And we for years speak of that anticorruption bureau, of bureau of investigation, or something of the kind.

It is also absolutely rightly proposed to establish networks of special prosecutors. However, they should not be vested with the function of preliminary investigation. Those two functions should be separated, although the public prosecutor's offices disagree. The thing is that a prosecutor who, according to the Constitution, is to make a charge against a specific person on behalf of the state cannot simultaneously conduct preliminary investigation.

Regarding courts. There is a problem. According to the effective legislation, the Minister of Justice has the exceptional right to file petitions to disciplinary or qualifying commissions, or the Higher Council of Justice, in connection with corrupt acts or signs of corrupt acts found in decisions made by some judges. When the Minister of Justice in 2005, I filed 96 petitions to different commissions (by the way, my predecessor filed seven within three years). Only five of them were sustained. Even when I, for instance, filed a petition with respect to a concrete judge signing a writ of execution without a trial, the qualifying commission overruled the petition. Why does this happen? Qualifying commissions, by the way, on the Council of Europe demand, are 66% made up of judges – a corporate interest is evident. That is, something should be done in this domain.

On the issue of state procurement: I stood against cancellation of the Law of state procurement, although I sharply criticised the Tender Chamber, because removal of that sector from the legislative framework and its passage into the hands of state servants of one agency within the Cabinet of Ministers' system means conscious creation of a much deeper corrupt scheme. And the present statistics prove this: nearly 65% of state procurements are arranged with only one participant in the Ministry of

Economy. Hence, there may really be signs of political, and purely political corruption there. Something must be done with this.

To sum up – one thesis we should think over. If we write an anticorruption strategy, we should decide what its core will be. I am absolutely positive: if we make fighting corruption the core of that strategy, instead of its prevention and avoidance, our steps will be vain. ■

AFTER GAINING FREEDOM, RULE-MAKING IS ON THE AGENDA



Taras STETSKIV,
National Deputy of Ukraine

The materials presented today are more than enough to conclude that corruption in the top echelons of governance is all-embracing. And it makes no sense to name one branch or institute of governance.

Political corruption is an act committed by bearers of power with the purpose of getting a monetary reward or other material benefits. That act may be unlawful or lawful – because of skilfully used gaps in the legislation. I believe that political corruption should be differed from ordinary, since, *first*, corruption in the top echelons of power has much stronger negative effects than, say, corruption in business, education, public health, etc. *Second*, political corruption results in de-legitimisation of authority – since the society that sees the authorities not following laws written by those authorities is free to act in the same way. The so-called “corrupt consensus” arises.

Probably, political corruption derives from ordinary, but now, it dominates and shows society that one cannot live like that. This is the worst of all. If this Gordian knot is not cut, the country may face outside rule, in one or another form.

If we analyse Ukraine's modern history, probably, political corruption began to rise in 1992 from the executive branch, in particular, through export and re-export licences. Somewhere at the juncture of 1997-1998, it affected Parliament – through the influence of big financial/industrial groups, already formed at that time, lobbying laws on privatisation of big enterprises. Courts seem to be the last link in that chain, but the corruption that affected them was much deeper than in the other branches.

And today, we are to realise what we should start with, to ruin that corrupt system. I agree that prevention is better than fighting. But today, we are in a situation that makes us to do both. Ideally, the winner of this presidential election should display the political will. But if this is not the case, I hope that the “post-Maydan” potential will go out from the bottom, in some forms of civic action. And if this is also not the case, I say again: Ukraine may face outside rule, as a failed state.

We may start with amendment of the legislation, but here is one purely Ukrainian nuance: today, Ukraine is not

a nation that got used to live by the law, we are to learn this yet – the authorities and citizens alike. So, amendment of the legislation is important, but not enough.

I guess that we should start with parties and the judicial system.

Why parties? *First*, I think that parties active at the current presidential elections are clannish, fueder-oriented. But society needs parties that are programme-based, if not ideological, proposing some ideas and massing up supporters around them. If we finally implement the principle of state funding of political parties, their susceptibility to corruption will drop drastically. *Second*, we may adopt the majoritarian election system, since nothing prevents the three democratic factions in Parliament making the majority to introduce majoritarian elections on the local level – and in that way seriously reduce corruption locally.

Why the judicial system? *First*, this step will be supported by society. *Second*, we have the best tested concept of its reform. Furthermore, there is a good experience of Georgia that made anticorruption steps in such sequence. And if at least one branch begins to work transparently, others will follow.

To sum up, let me remind of the Orange Revolution, that was a great act of success for the Ukrainian people – but not completed. After gaining freedom, rule-making, implementation of the rule of law is on the agenda. This task is both for the authorities and society. ■

THE PROBLEM OF TOTAL CORRUPTION CAN BE SOLVED ONLY BY TRUE DEMOCRACY



Vyacheslav KOVAL,
National Deputy of Ukraine,
Secretary of the Verkhovna Rada
of Ukraine Committee
for Procedures, Parliamentary
Ethics and Support for
the Verkhovna Rada Activity

I regretfully note one thing: the nice document presented here existed even earlier, maybe in a less perfect form. Within the framework of the Ukraine-US Policy Dialogue programme, in 2005, recommendations for the new authorities were drawn up, including on corruption problems. But... five years passed, and we are again at the beginning.

Political corruption is the extreme instance of corrupt acts, enabled by the inertia of state governance and wilful inaction of the state authorities. The general reason for that, I guess, is that the “wild” process of accumulation of capitals is not over yet, and no one, including the first persons, is interested in demonstration of political will and establishment of order. This brings total corruption.

Political corruption may be compared to the process of corrosion – slow, imperceptible, but persistent – that in the end result inevitably leads to ruination. As we know, empires broke apart and passed away because of corruption, since corruption affects not only the authorities, it leads the nation to a moral decay.

Our situation indeed may lead to tyranny, although no tyranny can solve the problem of corruption. It can be solved only by true democracy that has clearly defined

procedures and ensures their strict observance. The power of democracy lies in following procedures. If procedures are not followed, there appear incidents like a person with a fake diploma occupying the post of the Security Service Deputy Head.

Regarding proposals: it was proposed here to start with elections – either to reinstate the majoritarian system, or to introduce open lists... As a man experienced in party activity, I state: if we introduce open lists, national democrats will buy seats in Western Ukraine, regionals – in Donetsk. Nothing will change, only MPs elected in Lviv region will not be recognised in Donetsk, and vice versa. This means federalisation of Ukraine, a split...

So what to do? I think, to improve the provisions of the law regarding qualification of a corrupt act. To legalise procedures of parliamentary lobbying. To clearly define combination of elected posts with private and business activity, to separate business from power... To legislatively regiment the procedures of drawing MP candidate lists by parties, to provide for their democratic election. The critical factors include enhancement of the political culture of society, including better awareness of civil rights and duties; enhancement of the role of mass media for public control of the authorities’ and officials’ activity; simplification of licensing and registration procedures.

But first and foremost – the political will should be found in the person that, I hope, will appear in Ukraine and say: we will establish order... ■

THE MAIN THING IS TO REFUSE FROM CORRUPT POLITICAL PRACTICES



Volodymyr FESENKO,
Chairman of the Board,
Penta Centre for Applied
Political Studies

I strongly oppose identification of corruption with political corruption, since this results in “dissolution” of the problem. If there is no political corruption – there is no need to fight it. The distinction of political corruption is that it means employment of corrupt mechanisms in the political process. It is not struggle for power but keeping power, or, rather, purchase of power. Political corruption is the core reason for deformation of the political and economic systems.

Without fighting political corruption we will never defeat corruption as such. Lawyers and public prosecutor offices should think if it makes sense to legislatively prescribe, say, how to counter purchase and sale of seats in election lists, employment of a political status for corrupt acts, etc.

What institutes of governance are the most corrupt? I would put the question differently: what sectors and institutes of governance are of key importance for the spread of political corruption and for its countering? Here, I fully agree that they are political parties, courts and law-enforcement bodies. Parties – because we see excessive partisanship in the system of governance, whereby most appointments and dismissals are made through parties, mainly built on the principle of clientelism in this



country. Judicial and law-enforcement bodies – because they are the main actors of fighting corruption.

What hinders this fighting now? Lack of political will? It is especially strange to hear this from MPs, representing the authorities. In my opinion, kind of an unofficial corrupt contract hinders it, or unofficial recognition of corrupt mechanisms by all leading political forces, as well as the unofficial corrupt contract between politicians and voters. For instance, according to the survey presented here, 60% of citizens are interested in fighting corruption. But how many are ready to sell their vote at elections?

Preconditions for true fighting political corruption include: *first*, the crisis of legitimacy of authority, for when the authorities are considered legitimate, it is very difficult to fight corruption there. The process of de-legitimation is underway, but it is not over yet... *Second* – political will. I agree, and not only to fight corruption but also to employ incorrupt political practices. If there is no such alternative – there will be no real fighting corruption.

Corrupt judges and officials will not fight corruption. So, the first step lies in purification of law-enforcement bodies and courts from corruption. How? One should think about it, I have no simple answer, but there is foreign experience...

The second – application of strict legal sanctions against corruption in the authorities and politics. Here, I support the idea of a special anticorruption body. The problem is how to avoid its transformation into a tool of political struggle, instead of fighting corruption.

The third and the main one – refusal from corrupt political practices and formation of new, incorrupt ones. This refers to the election process, funding current party activity, and drawing election lists alike... This also involves the development of internal party democracy and correction of the behaviour of politicians, starting from repudiation of boasting about their estate... Boasting is inadmissible for a modern civilised European politician. Just unacceptable. If they allow this, they allow political corruption.

To sum up: the example of new political practices must be given either by new political forces, or by those that now claim readiness to change policy, make it European – just do it! Or you will fall victim to degradation of the present corrupt policy. There is no other way. ■

ATTRIBUTES OF POLITICAL CORRUPTION: A CLOSED STRATUM OF EXECUTIVES AND POLITICIANS, AND MUTUAL PROTECTION



Yuliya TYSHCHENKO,
*Chair of the Board,
Ukrainian Center for
Independent Political Research*

Distinction between political and ordinary corruption, from the viewpoint of legal definitions, is difficult. But from the viewpoint of a public discourse, it is clear that political corruption means use of an official status by a person empowered to discharge some political functions

to obtain some gains for himself or the political force he represents. Attributive of political corruption is the hierarchy of mutual protection now formed in every agency and among them. It ties together those agencies, public prosecutor offices, courts, finally, Parliament... There is a closed stratum of executives and politicians benefiting from corrupt schemes. So, I think that political corruption means struggle not for power but for resources. It means investments of business in politics with the purpose of a further increase in profits.

As a result, two parallel worlds are being formed: of those who can distribute and use resources – and those who have to accept corrupt rules of the game, since ordinary citizens simply cannot solve their problems in a different, legal way.

How to fight this? Many reasonable but sometimes too apparent and somewhat naïve proposals were put forward here. Naïve, because neither parties nor institutes of governance show signs of political will to refuse from corrupt practices and introduce transparency, publicity, controllability...

In each case, this disease should be treated differently in each sector. Maybe really take some evolutionary measures, modernise political parties, reform law-enforcement bodies... But first of all, everyone should mind his own business and not boast about affiliation with clans actually dividing the administrative resources that later can be converted into material ones. ■

CORRUPTION SHOULD BE EFFECTIVELY COUNTERED YET AT THE STAGE OF ITS POSSIBLE EMERGENCE



Oleksiy KHMARA,
*President, TORO
Creative Union (Transparency
International Contact
Group in Ukraine)*

Our discussion gives grounds for some intermediate conclusions. First: officials speak of the lack of political will, so, they will change nothing. Law-enforcement officers – of absence of a definition, so, there is nothing to fight. Only the third force remains, civil society, that should start the second phase of the revolution.

I am not an adherent of such radical steps, since I represent an organisation that believes that corruption should be countered yet at the stage of its *possible* emergence. For that, seven simple steps have been worked out, first proposed by us yet in 1999.

The first three steps deal with elected officials – the President, members of Parliament and local councils. The most effective way to avoid corruption here, or the first step, lies in the existence of and abidance by ethical codes. This may sound naïve to someone but if there are established rules of the game observed by political actors, the task is reduced to fighting only concrete corrupt officials, not corruption as a total phenomenon. The second step: existence of controlling bodies monitoring observance of the ethical code – internal, within the concerned institutes,

and external, vested, in particular, with the functions of punishment for non-abidance by the code. And the third step – proportionality of punitive sanctions.

The four following steps deal with the election process. They include transparency and accountability of the process itself, declaration of incomes and expenditures by all its participants at all stages of the process and afterwards (annually). This, by the way, is required by the national legislation, but it is not applied... And another, purely national aspects. Equal access of all actors of the election process to media and other canvassing and propaganda resources must be provided. However, in this country, quarantine may be imposed for three weeks – then, only one person can use the resources, all other wait... And the last step – practical application of the anticorruption legislation concerning prevention of a conflict of interests.

So, to sum up: if politicians and officials say that they lack political will, if the business currently sees no sense in financing anticorruption activity, since corruption has not yet attained the critical limit when it becomes disadvantageous, indeed, the third party remains, which is ready to fight. It is civil society. Judging by the ideas I heard today, I see that civil society is ready to do this. Probably, you are the only hope... ■

IF COUNTERING CORRUPTION IS TREATED SERIOUSLY, THERE WILL BE A POSITIVE RESULT



Mykhaylo BUROMENSKYI,
Director, Institute for Applied Humanitarian Research (Kharkiv)

Studying corruption for some 10 years, I believe that we should treat it as a general phenomenon that may have a political dimension. It makes no sense distinguishing ordinary and political corruption, since it has one main element – a personal interest. Even appointments by party quotas bear that interest, because they in fact mean promotion of decisions later translated either into cash flows or in immaterial preferences. It cannot happen that ordinary corruption is removed, while political one persists, or vice versa.

But I support the idea of this study, because it enables identification of critical aspects of corruption in Ukraine. Demonstration of a corrupt way of use of tools of state governance to secure the interests of a group of people who came to power and will never give it up voluntarily...

Who should fight corruption, and how? Just two points. First, continuous public discussion of the problem of corruption creates an atmosphere that later involves politicians and can have some influence on the public. And the public, in turn, can effectively provide for limitation of corruption – as witnessed, for instance, by the experience of Hong Kong.

However, another thing is required here – free press. Today, we face problems even there, all the press is bought up and involved in political corruption. However, there are two or three publications in Ukraine that may be termed really independent. But this is not for good. If public institutes or at least individual politicians, individual publications work seriously to counter and fight any corruption, then, I think, we will approach positive results. ■

ONE SHOULD PROCEED FROM COUNTERING CORRUPTION, NOT FIGHTING IT



Oleksandr LYTVYENKO,
Adviser to the Institute of National Security Problems Director

A few points that seem to be of fundamental importance for me. *First*, there is a very strong factor of corruption, not mentioned here – the external dimension of corruption, strongly related with security issues, with the fact that some of our partners, and strategic partners, work with our authorities for the implementation of their foreign policies in a purely corrupt way. I would like to cite J.Sherr here, who says that corruption itself becomes one of the mechanisms of the foreign policy of one of our strategic partners. One should keep this in mind.

Second: it is very difficult to speak about fighting corruption in the country where the state machinery is degrading. One should first of all normalise the situation in the state machinery, and it is fundamental to refuse from the political principle of appointment to state positions, now dominating here, whereby professionalism is absolutely neglected, while “good”, or “friendly”, or “somebody’s” men are appointed.

Third. I may be misunderstood, but I am sure that this must be said. I will say a word in defence of corruption. Today, corruption is the only mechanism enabling operation of the state system in its present form. It’s kind of “oil” letting its gear work. And as long as corruption is rational and people see a rationale of corrupt acts in absence of a practicable alternative, corruption will spread further and further.

Fourth. We should speak not of changes in institutes but of establishment of new institutes, since our institutes have the same name but are essentially different.

Fifth. I realise the fallacy of a purely law-centred approach, but anticorruption examination of legislation, just introduced, gives a fundamental opportunity to prevent corrupt acts.

And the last point. One should proceed from countering corruption, not fighting it, and a special anticorruption body is needed for that. Maybe – very important – with functions of prevention, rather than law-enforcement. ■



THE PROBLEM MAY BE SOLVED ONLY THROUGH IDENTIFICATION OF ITS CAUSES



Mykhaylo SEMENDIAY,
Chair Head at the Security
Service of Ukraine Academy

For me, with my professional activity, the term “fighting” corruption is more acceptable. So, I am sure that the term “political corruption” should be defined in the legislation. The first reason: the huge danger of political corruption is that it is conditioned by good will, so, actors of political corruption make a closed circle. Forgive me this analogy but if a political force wants meat, it is highly naïve to demand vegetarianism from it.

Second: it has been said here that the notion of corruption is a general one, encompassing political corruption – indeed, the general definition of corruption is wide enough. But even a comment to the Law on Fighting Corruption says that the definition cited in it is not exhaustive and may be used only within the context of implementation of that Law.

And the last: we should identify, analyse and assess not only instances of corruption, that is, effects, but also the in-depth causes that originate them. A problem may be effectively solved only through identification of the causes. For instance, if the ceiling of use of funds for preparation and conduct of elections is set – there may be a chain reaction, a political force may think: does it make sense to employ one or another investor and then work off some of his interests? Or the effect may be different: political forces will appear in equal conditions, irrespective of their ability to attract funds. ■

FOCUS IN COUNTERING CORRUPTION SHOULD BE ON BRIBE-INTENSIVE SECTORS



Serhiy DRIOMOV,
Deputy Director,
National Institute
of Strategic Studies

Searching for differences between political and ordinary corruption, we are trying to solve the issue of the difference of the general and the particular. I believe that political corruption is a manifestation of general corruption. Delimitation may be needed only to study this phenomenon, since it has specific traits. I agree with

professor Melnyk who says that political corruption is only the top of the iceberg. It is the highest point, “apotheosis”, reached by general corruption.

Our discussion proves that the notion of corruption in our legislation and in our consciousness is rather vague. There are no limits, we cannot decide where corruption starts and where it ends. The same is witnessed by sociological surveys. Citizens believe that it refers to both a district militia officer taking cigarettes away from people illegally selling them and to the developments in the top echelons of power.

In this connection, I would like to refer to the positive experience of Germany, where corruption problems are done away with rather successfully, since the concerned bodies focus on its countering in the sectors deemed bribe-intensive. Corruption is clearly defined there, and the state focuses on those key sectors. In principle, the conclusion suggests itself that political corruption is what should be in focus, while the rest probably requires attention but political corruption needn't be associated and compared with general.

Regarding the political will. Studying the problem of corruption, me and my colleagues paid attention to election programmes of candidates for the President of Ukraine. Most of them contain common phrases. There are however rather interesting turns, too. One candidate proposes a return to the death penalty, I quote: “Not justified people’s confidence – behind bars, with confiscation of property. Did not help – death penalty”...

The person who occupied the post of the Security Service Deputy Head with forged education documents was mentioned here. The Law gives two months for investigation of a criminal case, the case of that guy might be passed to court within a month, maybe even a week. Much more time has passed, but the materials are still absent. This deals not just with the political will but with normal observance of the law by the bodies designed for that...

There is one proposal: to clearly define corruption on the legislative level. To limit that notion, not to dilute it – and concentrate all efforts on countering it in those, so to speak, bribe-intensive functions of the state. ■

CORRUPTION CAN BE EFFECTIVELY COUNTERED ONLY ON THE CONDITION OF TRUE, NOT SHAM POLITICAL WILL



Hryhoriy USATYI,
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Department of Strategies
of Civil Society Development
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of the National Institute
of Strategic Studies

First, one should realise that corruption cannot be totally defeated, it can only be minimised. For that, one should first of all decide on the notions. And I share the

opinion that political corruption and corruption as legal categories should not be differentiated, there should be one definition.

We heard here also rather an unusual opinion of “useful” corruption, being kind of “oil” in the mechanic gear. But that “oil” works until the critical mass is reached. It’s like the road situation: when children of the high-and-mighty began to die along with ordinary people, they realised that nobody can feel safe from a road accident and began to raise fines. Similarly, nobody can feel safe from corruption. Any corrupt official may once become a victim of corrupt encroachment. Or will have to pay in court not for an unlawful but for a *lawful* ruling. Accumulation of the “critical mass” of corruption will promote its limitation even for the persons now involved in corrupt schemes.

But one should not wait for that. Corruption should be opposed now. First of all, through creation of mechanisms of fulfilment of the effective laws and their steadfast observance, instead of obstruction. However, as it was noted here, corruption can be effectively countered only on the condition of true, not sham political will. I think that people will be thankful to any politician who will assume this mission. ■

RISKS OF CORRUPTION SHOULD BE HIGHER THAN ITS BENEFITS



Roman SHLAPAK,
Project Manager,
Support to good governance:
Project against corruption
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In my opinion, legal definition of political corruption is unnecessary. Definition of corruption as such is found in the framework law of the anticorruption package. At the same time, corruption certainly should be viewed in the economic, social, and political domains. Corruption in the political sector is indeed very costly and ineffective from the viewpoint of public interests. I guess, society is well aware of this, which is witnessed, in particular, by slogans (including rather radical) of many political parties. Slogans of eradication of corruption reflect social attitude, proving that society is tired of life in the situation of permanent uncertainty and discord. Rules of political life are deregulated. The public and private sectors are not clearly separated. The issue of de-legitimisation of authority, its actual corrosion is high on the agenda. Society and the authorities are similarly tired...

Regarding political corruption. I guess that one of the central issues is that of political party and election campaign funding. There are international standards, including of the Council of Europe, regimenting those issues. With their account, the Government adopted the general rules of prevention of corruption at political party and election campaign funding. Now, a new anticorruption strategy is being worked out (expected to be approved by the Government on December 9),

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but its draft did not specifically mention prevention of political corruption.

Now, on the proposals made here. Of course, democratisation of political life, including of political parties, is needed, along with their abidance by the principles of transparency and controllability. We should ensure steadfast abidance of the legislation on political party funding. There should also be sanctions – effective, adequate and valid. Legislative regimentation of state procurements is badly needed, since risks of corruption in that sector are rather high.

Reformation of the judicial system is very important, along with the entire system of public administration – this issue is often overlooked. Meanwhile, if some political force comes to power, it will not be able to implement its slogans without public administration, that is, the administration working in the interests of society. Therefore, political and administrative sectors, political and functional posts should be separated.

To reform the public administration, it is very important to pass a law thoroughly regulating the issue of the conflict of interests. The relevant bill is in Parliament, along with the bill on financial control of the public service. We strongly hope that they will be considered shortly. And, of course, law-abidance is of critical importance – both the effective laws, and those and pending consideration. Relevant mechanisms should be employed, using the positive international experience to the utmost.

To sum up. At one anticorruption event, a journalist termed corruption as the most profitable and the most risky kind of business. Now in this country, unfortunately, corruption is the least risky and the most profitable business for public officers, including those discharging political functions. So, that business should be made risky, for its risks exceeding gains. ■