ANTI-CORRUPTION RESTRICTIONS ON RECEIVING GIFTS FROM OFFICIALS OF STATE BODIES IN CONDITIONS OF CONFLICT OF INTEREST: EU EXPERIENCE

Abstract. As the experience of European countries shows, the first step towards committing corrupt acts is the ability of a government official to receive gifts. Anti-corruption restrictions on receiving gifts for government officials in foreign countries to avoid conflicts of interest include both administrative and criminal measures. Attention is drawn to the fact that the UN Convention against Corruption (2003) enshrines provisions on restrictions on the receipt of gifts related to the use of official powers or official position both during their performance and after the termination of activities related to the performance of state functions. Such restrictions are stated to include the filing of government declarations of non-official activities, occupations, investments, assets, and significant gifts or income that may create a conflict of interest in the performance of their functions as government officials. And also include restrictions on the professional activities of former public officials in the private sector after their resignation or retirement, if such activities or work are directly related to the functions that the public officials performed during their tenure or for which they were responsible. Observation. It was found that in some EU countries, at the legislative level, mandatory declaration of gifts has been introduced by persons holding political positions, and in some countries - by all public employees in order to avoid conflicts of interest. An analysis of court decisions in Ukraine on the receipt of gifts by healthcare officials subject to the Law of Ukraine “On the Prevention of Corruption” was carried out. It is concluded that, according to the legislation of Ukraine, the above-mentioned persons may not have a conflict of interest at any time of receiving a gift, but only if this occurs before or during the performance of their duties in the interests of the donor. For categories of government officials, national legislation should provide clearer parameters for
receiving gifts related to hospitality, where each case should be assessed according to special criteria.

**Keywords:** administrative and legal support, conflict of interest, restriction of gifts, prevention of conflicts of interest, settlement of conflicts of interest, prevention and settlement of conflicts of interest, civil servants, foreign experience, healthcare.

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АНТИКОРУПЦІЙНІ ОБМЕЖЕННЯ ЩОДО ОТРИМАННЯ ПОДАРУНКІВ У ПОСАДОВИХ ОСІБ ДЕРЖАВНИХ ОРГАНІВ В УМОВАХ КОНФЛІКТУ ІНТЕРЕСІВ: ДОСВІД ЄС

Анотація. Як свідчить досвід європейських країн, першим кроком на шляху до вчинення корупційних дій є можливість посадової особи державного органу отримувати подарунки. Антикорупційні обмеження щодо отримання подарунків для посадових осіб державних органів у зарубіжних країнах з метою уникнення конфлікту інтересів включають як адміністративно-правові, так і кримінально-правові заходи. Акцентовано увагу, що у Конвенції ООН проти корупції (2003) закріплено положення щодо обмежень отримання подарунків, пов’язаних з використанням службових повноважень чи службового становища як під час їх виконання, так і після припинення діяльності, пов’язаної з виконанням функції держави. Указано, що такі обмеження включають подання державних декларацій про позаслужову діяльність, про заняття, інвестиції, активи та про суттєві дарунки або прибутки, у зв’язку з якими може виникнути конфлікт інтересів під час виконання ними функцій як державних посадових осіб. А також включають обмеження стосовно професійної діяльності колишніх державних осіб у приватному секторі після їхнього виходу у відставку або на пенсію, якщо така діяльність або робота безпосередньо пов’язана з функціями, які державні посадові особи виконували в період їхнього перебування на посаді або за виконанням яких вони здійснювали нагляд. З’ясовано, що в окремих країнах ЄС на законодавчому рівні запроваджено обов’язкове
Таким чином, обов'язки з проведення звіту і з'ясування ситуації здаються доречно віднести до засобів внутрішньої ревізії. Окрім того, у випадку, якщо змінено правила визначених точок зустрічей, Провідник повинен зазначити це в звіті.

Ключові слова: адвокати, право, внутрішня реформа, внутрішнє ревізійне, внутрішнє ревізійне, інтереси."
counteraction of corruption, primarily regarding the introduction of the institute for the protection of honest informants; (e) formation of the image of Ukraine as a state that actively opposes manifestations of corruption, and obtaining international support for this activity [4]. The State Anti-Corruption Program for 2023-2025 emphasizes the fact that the legal regulation of prohibitions and restrictions on receiving gifts is imperfect in Ukraine, and not in all cases the prohibitions are backed by measures of legal responsibility [5]. For Ukraine, the issue of determining the illegality of gifts is extremely relevant, because in many cases, people give gifts to public officials in order to resolve issues in one's own interests [2]. The above indicates the relevance and need to clarify the content and features of foreign experience of administrative legal regulation of restrictions on receiving gifts, accepted in conditions of conflict of interests and establishing the possibilities of its use in the legislation of Ukraine.

**Analysis of recent research and publications.** Separate works are devoted to the study of administrative and legal support for the prevention and settlement of conflicts of interest in the activities of the judicial authorities [1], the prevention and settlement of conflicts of interests as a way of countering corruption [6], conflicts of interests in the field of public service [7, p. 407-427], prevention and settlement of conflict of interests in the field of health care [8, p. 387-398], anti-corruption bans and restrictions on the activities of police officers in Ukraine [9], legal settlement of conflicts of interests in the system of anti-corruption law [10], regarding the limitation of gifts to public officials [11, p. 222], [12], etc. indicate that research on the legal support for restrictions on receiving gifts that are accepted in conditions of conflict of interests is not sufficient and point to the need for further analysis of foreign experience on these issues.

**Presenting key material.** When studying anti-corruption restrictions on the procedure for receiving gifts by public officials in foreign countries related to conflicts of interest, it is important to consider them both in the system of administrative and criminal legal measures. However, we are interested in the experience of regulating such restrictions precisely from the point of view of administrative law. Thus, in order to limit such a form of concealment of corruption manifestations as receiving gifts, clause 5 of Article 8 of the UN Convention against Corruption (ratified by Ukraine) emphasizes that each participating State strives, in appropriate cases and in accordance with the fundamental principles of its domestic law, to introduce measures and schemes that oblige public officials to submit declarations to the relevant bodies, including about significant gifts, in connection with which a conflict of interests may arise [13]. As international experience shows, it is quite difficult to distinguish between a "gift" and a "bribe" (unlawful benefit) in practice, so the issue of receiving and giving gifts by public officials, in order to
prevent the emergence of corruption in their activities, must be regulated at the legislative level [1].

In particular, certain provisions of the UN Convention against Corruption contribute to establishing restrictions on gifts related to the use of official powers or official position both during their performance and after the termination of activities related to the performance of state functions: 1) on the submission of state declarations about outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials (Part 5 of Article 8); 2) on restrictions to prevent conflicts of interest and on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure (clause «e» of Part 2 of Article 12); (3) regarding the criminalization of acts of public officials in case of non-compliance with the requirements of anti-corruption restrictions related to the receipt of gifts during the performance of official duties [13].


Thus, the International Code of Conduct for Public Officials contains a number of provisions, failure to comply with which indicates a violation of anti-corruption restrictions on the use of official powers during and after their termination, as well as regarding the receipt of gifts, services, and property. State officials must strictly: 1) observe impartiality and not abuse the given powers and authority in the performance of their functions (clause 3); 2) avoid personal financial and commercial benefit or personal and financial benefit for their families (clause 4), etc. [14]. Article 7 of the Code of Conduct for Law Enforcement Officials introduces restrictions on abuse of office, requires not to receive gifts, benefits, or other incentives while performing one's duties [15]. Among the main instruments for the
prevention of conflicts of interest, according to the study of policies and practices for the prevention of conflicts of interests in the EU countries, conducted by the OECD (hereinafter - the Organization for Economic Cooperation and Development), certain restrictions include the obligation to declare gifts, declare personal interest in decisions that are made, as well as the possibility of applying the right to recuse or standard procedures for the release of public officials from the performance of official duties, if participation in the discussion or adoption of a specific decision may cause a conflict of interests, etc. [16, p. 11].

The national legislation of Ukraine defines certain rules and restrictions on receiving gifts, for the persons specified in clauses 1, 2 of Part 1 of Art. 3 of the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII [17], also administrative responsibility is provided for in the Code of Ukraine about Administrative Offenses (Article 172-5) [18]. The National Agency on Corruption Prevention [19] provides certain recommendations and examples of the application of legal restrictions on the receipt by public officials of gifts, which are accepted in conditions of conflicts of interests, however, in practice, problematic issues remain in their application, there is ambiguous judicial practice on these issues. Thus, violations of the legal restrictions on the receipt of gifts by officials in the field of health care, which are subject to the Law of Ukraine "On Prevention of Corruption" [17] entail administrative responsibility, provided for in Art. 172-5 of the Code of Ukraine about Administrative Offenses [18]. However, inept application of legislation leads to certain troubles. As an example, the court decision in case No. 727/286/18 on bringing to administrative responsibility the senior nurse of the city clinical hospital under Art. 172-5 of the Code of Ukraine about Administrative Offences (violation of restrictions on receiving a gift). The grounds for opening the proceedings were "repeated facts of the senior nurse receiving gifts from subordinates as a sign of gratitude for her conscientious performance of her functional duties", which were recorded in the administrative offense protocol [20, p. 106]. At the court hearing, it was proved that the gifts were received in connection with the performance of official duties. Consequently, subject to the exercise of such powers, officials of legal entities of public law in the field of healthcare are subjects of administrative liability for offenses related to corruption. However, for a corruption offense to exist, a causal connection must be established between the act (receiving a gift) and the performance by the person who committed it of the functions of the state or local government. If there is no such connection (and here it is absent), there is no basis for administrative liability under 172-5 of the Code of Ukraine about Administrative Offenses [18].

At the legislative level, national legislation provides for the term "gift" (Article 1). An explanation of this term is provided in the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII. It includes:
1) money, 2) other property; 3) advantages; 4) benefits; 5) services; 6) intangible assets. Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII also stipulates that restrictions on receiving gifts consist of three categories, namely: 1) prohibited; 2) permitted with certain restrictions; 3) allowed. In Ukraine, at the legislative level, the conditions, grounds and extent of the "legality" of the gifts receipt are provided. Based on the provisions [17], [8, p. 391], [11, p. 227], [1], of recommendations of the National Agency on Corruption Prevention [19], the components of a conflict of interests (real, potential) are: 1) private interest, 2) discretionary official or representative powers (at that, the professional duties of a public official and his/her powers as a manager are also important), 3) the presence of a conflict between private interest and powers. In the presence of such conditions, a decision made by an official in favor of the person from whom he/she or his/her relatives received a gift is considered to have been made under conditions of a conflict of interests and is subject to cancellation. In particular, O.M. Shevchuk points out that a conflict of interest in public officials is a situation in which a public official, performing his/her duties, has a private interest (personal interest), which although not necessarily causes the adoption of an illegal decision or the commission of an illegal act in the sphere of public service, but can lead to this in the case of making decisions, or performing or not performing actions when executing official powers [7, p. 425].

Let's find out the definition of the "unlawful benefit" and "gift" categories, which are given in Art. 1 of the Law of Ukraine "On Prevention of Corruption" [17]. "Unlawful benefit" is money or other property, advantages, benefits, services, intangible assets, any other benefits of an intangible or non-monetary nature that are promised, offered, given or received without legal grounds; recall that the category "gift" is money or other property, advantages, benefits, services, intangible assets that are given/received free of charge or at a price lower than the minimum market price [17]. Therefore, the difference between them lies in the fact that in the case of unlawful benefit, money or other property, advantages, benefits, services, intangible assets, any other benefits of an intangible or non-monetary nature are obtained without legal grounds.

In some European countries, mandatory declaration of gifts by persons holding political positions, and in some countries - by all public officials, has been introduced at the legislative level. Thus, in Poland, the obligation to declare gifts is provided for persons holding political positions, as well as local elected positions, in Hungary - for members of Parliament, in Great Britain, Spain and Germany - for members of the Government and persons holding political positions, and in Latvia - for all public officials. Members of the German Parliament must declare gifts if their value exceeds 5,000 euros [1]. In addition, it is generally prohibited in Finland for public officials to receive any gifts or entertainment services from persons whose
cases are under consideration, if this may affect the consideration of such cases. An absolute ban on gifts for public officials is provided for in French law, with the threat of being prosecuted in case of violation of the ban. Similar prohibitions are characteristic of the legislation of Canada, China and other foreign countries [21, p. 93]. In particular, in France, on December 29, 2011, Law No. 2011-2012 "On strengthening the safety of medicines and health care products" was adopted, which establishes a fine of 30,000 euros for an expert who hid information about his/her connections with the commercial sphere [22, c.169].

In Singapore, both the public and private sectors are restricted from receiving business-related gifts. The "due diligence" approach, which is usually considered as integrity, involves an original rule that can be defined as "no gifts and displays of generosity" [23, p. 16]. In Singapore, a public official who has a specific private interest is prohibited from participating in any discussion, vote or decision on a matter of interest, from attending any meeting or working session in a matter where he/she has a conflict of interest, he/she is not authorized to sign any document on a financial transaction in a case where such public official has a potential interest; he/she cannot be a participant in any collegial meeting if it provides for a quorum to make a decision in the event of a conflict of interest [24].

In Great Britain, gift restrictions refer to the general regulation of the principles of integrity, possible payments related to "generous hospitality" where each case will be evaluated according to special criteria. [25, p. 59]. In the United States of America, a gift is anything that can be expressed in monetary terms, namely: money, goods, various services (for example, such as travel, hotel accommodation, meals, tuition fees, etc.). Exceptions to this rule are clearly defined at the legislative level (for example, soft drinks or coffee, greeting cards or similar souvenirs of insignificant value are not considered gifts) [1]. In Italy, members of the Italian government and their relatives are prohibited from keeping for personal possession so-called "entertainment gifts" received from official occasions worth more than 300 euros. Gifts worth more than 300 euros remain at the disposal of the administration or members of the government can keep them, provided they pay the difference (over 300 euros). And since 2013, the limit of the permissible value of "courtesy gifts of small value" is equivalent to a maximum of 150 euros [26].

**Conclusion.** The condition for restriction on receiving gifts for persons engaged in activities related to the performance of the state or local self-government functions in national legislation is exhaustive. At that, there should obligatory be an appropriate legal connection of such persons with public functions in the understanding of “activities related to the performance of functions of the state or local self-government”. According to the legislation of Ukraine, a conflict of interest in the above-mentioned persons may arise not at any time of receiving a gift, but only if this occurs before or during the performance of their duties in the interests of
the grantor. For categories of public officials, national legislation should provide clearer parameters for receiving gifts related to "hospitality", where each case should be assessed according to special criteria. Such criteria will help to "highlight" the "lack of transparency" in the receipt of such gifts or the concealment of improper benefits.

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