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Legal Liability for Corruption and Related Offenses in the Field of Land Relations

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Abstract

Corruption in its various manifestations still remains an acute problem for Ukraine, as a brake on its economic development and effective European integration activities. The opening of the market of agricultural lands in itself provokes the growth of the use of corruption tools, therefore, improving the legal responsibility for corruption and related manifestations in this area is extremely important at the present stage of statehood. The purpose of the study is to analyse the problems of corruption in the land sector and the types of legal liability for such offenses under Ukrainian law. The use of logical-semantic, system-structural, historical and comparative-legal methods of scientific cognition served as an effective method of analysis of research problems. In the context of the study, an analysis of the types of legal liability for corruption and related offenses in the field of land relations; their specific features at the present stage of construction of the normative basis in the researched sphere are clarified. Administrative, criminal, civil and disciplinary liability for corruption in the field of land relations is analysed. A relatively new institution of Ukrainian law, namely, civil confiscation, including the types of offenses under study are also considered. At the same time, regulatory gaps remain significant, in particular, inconsistencies and conflicts between the so-called anti-corruption terminology contained in related regulations, which should be unified by amending the basic Ukrainian anti-corruption law

Keywords: administrative responsibility, criminal responsibility, civil responsibility, disciplinary responsibility, corruption, land sphere, anti-corruption legislation

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Introduction

High levels of corruption threaten the development of society as a whole and individual areas of its activities, including land, while preventing effective investment in new projects that could bring the country to a higher level of development and ensure prosperity and well-being of its citizens.

Therefore, it is important to provide adequate legal safeguards, aimed primarily at preventing and then counteracting corruption of various legal qualifications. These are, first of all, the so-called anti-corruption restrictions presented in the Basic Anti-Corruption Law of Ukraine (hereinafter — the Law) “On Prevention of Corruption” [1] and the norms of Ukrainian legislation that: 1) define the so-called “corruption categorical apparatus”; 2) regulate liability for actions/omissions that can be interpreted within the same “corrupt categorical apparatus”.

A separate and most noticeable corruption risk in the area under study is the opening of the market for agricultural land, which is a moving mechanism for the development of new corruption schemes. Because land relations are perhaps the most popular area for the practice of “illicit enrichment.” In particular, the main anti-corruption body of the state (National Agency for the Prevention of Corruption) identified “top 30 corruption schemes in the land sphere” and proposed algorithms to minimise them.

The opening of the market for agricultural land, in itself, already increases the corresponding corruption risks. After all, land is an object of increased interest for all citizens, because, according to the Constitution of Ukraine [2], it is the object of property rights of the Ukrainian people. Given the relatively recent adoption of the Law “On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land” [3] and the corresponding amendments to the Land Code of Ukraine [4], the above thesis is particularly relevant.

The issue of legal liability for corruption and related offenses in the field of land relations was directly or indirectly studied by a whole cohort of scientists, in particular: L. Shestopalova studied the issues of delimitation of corruption offenses and those related to them [5]; O.V. Shkuropat in his the dissertation level analysed the features of anti-corruption policy in the field of land relations [6]; A. Sira studied the issue of administrative liability for offenses related to corruption in the land sphere [7]; A. Halai, V. Halai and S. Marchenko analysed the topic under study through the prism of the organisation of social work in rural communities of Ukraine [8]; V. Ladychenko and Yu. Danyliuk — in terms of ensuring sustainable development of local self-government [9]; L. Kurylo, I. Horodetska and Ye. Shulga — through the need for public awareness of the basics of environmental legal culture [10]; L. Golovko, O. Uliutina and O. Yara conducted a comparative analysis of environmental

responsibility in Ukraine and the EU [11]; V. Kurylo, T. Gurzhii, V. Mushenok and S. Sliusarenko conducted an analysis, including compliance with anti-corruption legislation in the implementation of financial payments sent to the budget of the territorial community by agribusiness entities [12]; V. Yermolenko, O. Hafurova, M. Krasnova and Y. Krasnova studied the legal basis of environmental accounting as a tool to ensure both sustainable development and prevention of corruption in Ukraine [13], O. Piddubnyi analysed the legal support for the expansion of land powers of local governments [14], and M. Deineha — features of legal regulation in the context of preventing land flooding in Ukraine, which also has significant corruption risks [15].

The purpose of the article is to identify issues in the context of ensuring legal liability for corruption and related offenses in the field of Ukrainian land relations, its analysis and the development of author’s conclusions and proposals.

Materials and Methods

General scientific and special scientific methods of cognition were used during the research. In particular, the logical-semantic method was used to analyse the categorical apparatus considered in the research (“corruption offenses”, “corruption-related offenses”, “criminal corruption offenses”, “criminal offenses related to corruption”, “administrative offenses related to corruption”, etc.). The method of hermeneutics allowed analysing the current Ukrainian anti-corruption legislation and relevant land legislation to determine its effectiveness at the present stage and identify regulatory gaps, shortcomings and conflicts (in particular, the Constitution of Ukraine [2], Law of Ukraine “On Prevention of Corruption” [1], Anti-Corruption Strategy [16], Code of Ukraine on Administrative Offenses [17], Criminal Code of Ukraine [18], Civil Procedure Code of Ukraine [19], Land Code of Ukraine [4], etc.). The historical method allowed considering both the actual development of the general Ukrainian anti-corruption legislation and the types of legal liability for “corruption and corruption-related offenses in the field of land relations” (“criminal, administrative, civil property and disciplinary”) and the introduction of “civil confiscation”). The comparative legal method helped to analyse the types of legal liability for the investigated offenses and their relationship. The system-structural method contributed to the complex development of the vision of the research issue, highlighting its general component (“legal liability for corruption and related offenses in the field of land relations”, shortcomings of anti-corruption legislation in general) and partial (criminal liability for corruption and corruption-related offenses”, “administrative liability for corruption-related offenses”, “civil liability for corruption and corruption-related offenses”, “disciplinary liability for corruption and corruption-related

offenses”, shortcomings of normative anti-corruption safeguards in the field of land relations), etc. The statistical method allowed to get acquainted with the database of international and Ukrainian public organisations in terms of collecting information on corruption, which would objectively and independently reflect the state of anti-corruption activities in Ukraine, based on the opinion of citizens (annual reports of Transparency International and Transparency International in Ukraine) and official data of Ukraine, which are published at the level of annual anti-corruption reports, for which the National Agency for the Prevention of Corruption is responsible, highlighting relevant anti-corruption statistics, The National Police, the Prosecutor’s Office, the Supreme Anti-Corruption Court, local governments and a number of other bodies).

Results and Discussion

Corruption is a widespread phenomenon that has been known to mankind since the development of the first state formations. It is the establishment of a certain kind of advantage of one group of people over another and became a prerequisite for the emergence of such a concept, because in conditions of social inequality is best seen the possibility of “stronger” by attracting material factors to defend their own needs and interests. Today, Ukrainian realities have not undergone significant transformations. The main difference is that the essence of modern legal views on the state and law eliminates any discrimination, and corruption, in its original form, serves as a tool for its spread, and thus — appears as a socially negative factor.

Currently, the regulatory field enshrines this term in Article 2 of the Law “On Prevention of Corruption” [1], understanding it as two basic components: 1) “receiving/offering to obtain an illegal claim” and 2) “by abusing the official position provided by the state/local community”. Similarly, the term “illegal benefit” has received

its normative consolidation, embodying any benefits and requirements, both material and other.

At the same time, the legislator enshrined in this notion the action aimed at “proposing such an immeasurable benefit” (Article 369 of the Criminal Code [18]) and “provocation to implement such an action” (Art. 370 of the Criminal Code [18]), in particular, by providing for criminal liability in the relevant articles of the Criminal Code.

The social danger associated with obtaining illegal benefits lies in its prevalence among the subjects of power — those whom we trust to make important decisions for citizens, which in fact leads to distrust of society.

An important element in creating a positive image for Ukraine is the development of a set of measures to, above all, “prevent corruption”, which are a set of state-sanctioned remedies aimed at establishing preventive measures to prevent corruption risks and impose sanctions for abuse of power in public administration. Accordingly, legal means are an important indicator of minimising corruption risks in any sphere of public life, especially in land, as it is for Ukraine the main natural resource and wealth of the Ukrainian nation.

As the sphere of land relations has been in the process of reform throughout Ukraine’s existence, especially during the opening of the land market, the progression of corruption risks is growing rapidly, and thus necessitates effective ways to overcome them. One of the precautionary elements of corruption-dangerous situations is the awareness of responsibility for illegal actions.

At the same time, the analysis of statistical data showed [20] that the number of persons against whom verdicts/rulings on corruption offenses came into force in 2020 – 524. And the distribution of the National Agency for the Prevention of Corruption according to their areas of activity gives us reason to say that “corruption risks in the field of land relations” are among the highest (Table 1) [20].

Table 1. Information on registered criminal corruption offenses in 2020 according to the spheres of activity of the perpetrators

Persons who have committed offenses in the system	Financial and credit system	1
	Banking system	2
	Fuel and energy complex	7
	Agro-industrial complex	1
	Education	4
	Health care	5
	Transport	6
	At the enterprises of the defense-industrial complex	–
Persons who have committed offenses in the system	Budget	4
	Land relations	8
	Privatisation	–
	Health care	2

Source: [20]

The Law “On Prevention of Corruption” [1], adopted on October 14, 2014 within the framework of the so-called anti-corruption package of laws, which the Verkhovna Rada dared to adopt only under pressure from the international community and protesters under the walls of the legislature, became current and essentially new with unprecedentedly strict anti-corruption norms. This legal act “determines the legal and organisational basis for the functioning of the anti-corruption system in Ukraine, the content and application of preventive anti-corruption mechanisms, rules for eliminating the consequences of corruption offenses” in general [1].

At the same time, the Law “On Principles of Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017” [16] was adopted, which is completely new for Ukraine and the most comprehensive and systematic in relation to the most important spheres of public life. It is worth noting that the implementation of the strategy should have been and adopted the relevant State Programme for its implementation, however, much later. To date, the Verkhovna Rada of Ukraine has failed to adopt a new Anti-Corruption Strategy, which is developed annually and submitted to the appropriate authorities by the National Agency for the Prevention of Corruption.

In summary, we can safely say that in the period since 2014, anti-corruption legislation has reached a fundamentally new level and began to be implemented in practice. At the same time, the instruments, including the basic anti-corruption law, have not yet been implemented at a high effective level, and the minimisation of corruption risks remains extremely important in the exercise of their respective powers. Despite the active fight against illicit enrichment, there is a need to improve and harmonize the system of anti-corruption laws.

Despite the development of appropriate anti-corruption legislation that ensures the practical implementation of the rules and does not create only a “visible” effect, an important element of understanding the issue in full is its theoretical component. To fully understand the problem, it is necessary to pay attention to the essence and delimitation of concepts that identify the degree of responsibility for illegal corruption.

The Law on Prevention of Corruption of 2014, which is the “flagship” in modern anti-corruption legislation, presents a number of important legal terminology and legal concepts for combating corruption, namely: “anti-corruption expertise”, “corruption”, “corruption offense”, “illegal gain”, etc. This law introduced a new concept of “corruption-related offenses” into social and legal circulation (Article 1) [5, p. 194].

“Corruption” is the basic definition for bringing to justice, and in accordance with Article 65-1 of the Law “On Prevention of Corruption”, for committing corruption or corruption-related offenses provides for all four types of legal liability: criminal, administrative, civil legal and disciplinary [1].

The newly mentioned Ukrainian anti-corruption law regulates two types of relevant offenses: “corruption-related offenses” and “corruption offenses”, which are different. Because, “corruption offense” is defined as an illegal act with signs of corruption, and its feature is the presence of three types of legal liability: criminal, civil and disciplinary.

At the same time, “corruption-related offense” does not include any signs of corruption (as a criminal offense), but such an act violates the requirements of the Law “On Prevention of Corruption” [1]. It is no coincidence that this normative act in the transitional provisions contained an updated version of Chapter 13-A of the Code of Ukraine on Administrative Offenses (hereinafter KUpAP) [17] with a list of articles providing administrative liability for these offenses, which, in fact, correspond/should correspond with the requirement/prohibitions established by the Law “On Prevention of Corruption” in relation to the entities listed in Article 3 [1].

On the grounds of corruption offenses in general, in particular L.M. Shestopalova, like many other scholars, note that the jurisdiction over them should be within the competence of anti-corruption government agencies, special departments and authorised leaders [5, p. 195]. The authors of this study do not support this view, because: 1) there are clearly defined subjects of anti-corruption, of which only half are the bodies of purely anti-corruption; 2) the system of newly created anti-corruption bodies is unreasonably inflated and unjustified.

Returning to the subject of the study, we note that the unifying component of both illegal acts is the subject — a person who commits a criminal offense or an offense related to corruption through the use/abuse of office/authority.

Legal regulation of preventing and combating corruption in the field of land relations is the application of legal liability, where the most common is administrative, in fact, for corruption-related offenses, where offenses in the field of land relations are their component, ratified by the current version of Chapter 13 and the Code of Administrative Offenses entitled “Administrative Offenses Related to Corruption” [17] and the Law “On Prevention of Corruption” [1].

Analysing the sanctions provided for in Chapter 13-A of the Code of Administrative Offenses, the following types of liability can be stated: 1) fine; 2) confiscation of income, rewards of gifts received by committing an administrative offense and 3) deprivation of the right to hold certain positions/engage in relevant activities [5].

Administrative liability for corruption-related offenses in the field of land relations has two components: “land relations” and “administrative liability for corruption-related offenses”. Similarly, corruption offenses in the field of land relations include two definitions: “land relations” and “criminal liability for corruption offenses”.

The key in both terms is “land relations”, because they determine the specifics of responsibility. At the

same time, as noted by O. Shkuropat, the Ukrainian anti-corruption regulatory framework does not provide acts that would draw attention to the need for a special type of public administration in the field of land relations. The researcher pays special attention to the negative impact of corruption on the ecological and territorial integrity of the state, so given the above problems, the priority is to approve a programme that could soon create a tool to identify corruption and corruption-related offenses in land relations [6, p. 144].

Since the institution of civil liability belongs to the sphere of private law, which regulates personal non-property/property relations based on the principles of legal equality of their participants, as opposed to the basics of service law as part of a more complex, administrative law, in terms of public relations inequality of the parties and their certain hierarchy, the list of corruption articles in civil law is not given. At the same time, at the end of 2019, the so-called mechanism of "civil confiscation of assets obtained illegally" was introduced. In particular, the Law "On Amendments to Certain Legislative Acts of Ukraine on Confiscation of Illegal Assets of Persons Authorised to Perform State or Local Self-Government Functions and Punishment for Acquisition of Such Assets" [21], adopted at that time, provides for amendments to a number of laws Ukraine regarding the implementation of such a mechanism. The most significant of them were the updated norms of the CPC of Ukraine, in particular Chapter 12 with the new title: "Specific features of litigation in cases of unfounded assets and their recovery in state revenue" and Art. 290, which regulates the procedure for filing claims for unfounded assets persons authorised to perform public functions, and the collection of such in state revenue [19].

Significant changes in connection with the adoption of the above law and received the Criminal Code of Ukraine, which appeared Article 368-5 [18], which actually defined the term "illegal enrichment", its features and the degree of responsibility for such corruption offenses with implementation mechanism, regulated already in Article 290 of the CPC, and in a number of other regulations both on the prevention and direct counteraction to corruption and its manifestations.

Therefore, civil liability for the relevant type of offense arises from the contractual or contractual law, and the specific feature of such offenses is the infliction of material damage by acts of corruption. Violation of labour or official discipline in connection with the violation of corruption legislation entails disciplinary liability. At the same time, such a terminological description of corruption offenses is absent in the anti-corruption regulatory framework.

At the same time, the widest range of such violations, and hence liability, provided for in the Criminal Code of Ukraine, however, in contrast to, in particular, the Code of Administrative Offenses, and neglecting the rules of rulemaking, without systematic and presented

in one structural element. Thus, the note to Article 45 of the Criminal Code of Ukraine establishes a list of articles that establish criminal liability for corruption offenses, distinguishing only those, according to two criteria: 1) the presence/absence of "abuse of office" in the commission of corruption offenses; and 2) committing an actual "criminal offense related to corruption", to which only two articles are absolutely rightly attributed, namely: on liability for false data in e-declarations (as a result of the Constitutional Court of Ukraine decision of October 27, 2020 for No.13 [22], including the inexpediency of criminal liability for an offense that does not contain signs of "criminal corruption violation").

It is this norm (Article 45 of the Criminal Code) that regulates the impossibility of releasing a person from criminal liability for effective repentance if the latter has committed a corruption criminal offense and a criminal offense related to corruption for the first time. This imperative is explained, in particular, by the threat of corruption as a phenomenon and the interest of the state in overcoming it as soon as possible [18].

In accordance with the amendments made on June 29, 2021, the note to the said article of the Criminal Code was supplemented by a list of articles that are considered "criminal offenses related to corruption." This update established an additional terminological conflict, as the previous version of the article used only the meaning of corruption offenses [18], and the Law of Ukraine "On Prevention of Corruption" [1] does not contain such a term.

And no matter how society as a whole relates to the rather controversial decision of the Constitutional Court of Ukraine of October 27, 2020, which actually paused and canceled a significant work of the National Agency for Prevention of Corruption and a number of other anti-corruption bodies, including associated with the prosecution of such corruption offenses, however, the decision of the Ukrainian constitutional body has a legal basis, despite the fact that as a state, Ukraine, in the international arena has received negative reactions and suffered significant reputational risks conditioned upon its adoption.

At the same time, it should be noted that in 2018, the legislator, with the relevant amendments to the Criminal Code of Ukraine [23], changed the essential approach to the category of "crime" within the regulatory field, replacing it with "criminal offense", which, in turn, is divided into "criminal offenses" and "crimes", thus, so to speak, unified the holistic system of offenses of any legal nature.

In fact, bringing a perpetrator to disciplinary responsibility for corruption and related offences, including in the land sphere, is carried out through such a legal instrument as an official investigation conducted in accordance with the "Procedure for conducting an official investigation of persons authorised to perform functions of the state or local self-government, and persons who for the purposes of the Law "On Prevention

of Corruption” [1] are equated to persons authorised to perform the functions of state or local self-government”, defined by the Cabinet of Ministers, where paragraph 8 stipulates that the members of the commission that conducted the official investigation shall draw up an act describing all the circumstances of the investigation, statements and explanations of the person under whom the investigation was initiated, and conclusions and proposals to eliminate identified violations, etc. [24].

In particular, disciplinary liability may “accompany” other types of liability, penalties in accordance with which are imposed on a person for committing relevant acts of corruption, or be imposed separately. In any case, if there is relevant information, the head of the body is obliged either on his own initiative or in accordance with the instructions of other specially authorised entities, to initiate an official investigation and make decisions upon its fact.

The issue of amending Art. 1 of the Law of Ukraine “On Prevention of Corruption” [1], because despite the existence of “legal liability for corruption offenses and offenses related to corruption in the form of criminal, administrative, civil and disciplinary”, there is no clear terminological definition for each type. As the current regulatory framework for the offenses we are investigating is quite complex and conflicting, as it operates in a number of categories: “corruption offense”; “offense related to corruption” (Article 2 of the Law “On Prevention of Corruption” [1]); “corruption criminal offense”; “criminal offense related to corruption” (Article 45 of the Criminal Code of Ukraine [18]) and “administrative offense related to corruption” (Chapter 13-A of the Code of Administrative Offenses [17]) and needs to be systematised in the basic anti-corruption law.

Conclusions

Legal liability for corruption and related offenses in the field of land relations includes all four types: criminal,

administrative, civil property and disciplinary. Administrative liability for offenses related to corruption in the field of land relations is regulated by Chapter 13-A of the Code of Administrative Offenses “Administrative Offenses Related to Corruption” and the Law of Ukraine “On Prevention of Corruption”. The list of “corruption articles” in respect of which criminal liability is applied is enshrined in the Criminal Code, namely, the note to Art. 45, and contains a clear distinction between articles that provide for liability for corruption-related offenses and corruption offenses themselves. Disciplinary responsibility is characterised by a low level of public danger, and its basis is labour discipline. Civil liability is compensation for material and moral damage caused by corruption-related offenses/corruption offenses. A rather new institution has been introduced for the system of Ukrainian law — civil confiscation, which actually regulates the procedure for filing a lawsuit to declare unfounded assets of persons authorised to perform public authority functions and collect them in state revenue.

The sphere of Ukrainian land legal relations is characterised by quite significant corruption risks. “Opening the market of agricultural land” actually increases them by an order of magnitude. At present, the current Ukrainian anti-corruption legislation, although in historical retrospect — in good condition, including the mechanism of its implementation — still needs significant improvement, change and the presence of political will to strictly comply with it. Despite the active fight against corruption, there is a need to improve and harmonize the system of anti-corruption laws, in particular, the terminology, the adoption of a topical Anti-Corruption Strategy with a structural unit to prevent and combat it, especially in land relations, and strict compliance with anti-corruption legislation concerning bringing the perpetrators to justice.

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Юридична відповідальність за корупційні та пов'язані з нею правопорушення у сфері земельних правовідносин

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Анотація

Корупція у різноманітних її проявах й досі залишається гострою проблемою для України, будучи гальмівником у її економічному розвитку та ефективній євроінтеграційній діяльності. Відкриття ринку земель сільгосппризначення саме по собі провокує ріст застосування корупційних інструментів, відтак, удосконалення юридичної відповідальності за корупційні та пов'язані з такими проявами у вказаній сфері є вкрай важливим на сучасному етапі державотворення. Мета дослідження полягає у аналізі проблематики корупційних проявів у земельній сфері та видів юридичної відповідальності за такі правопорушення в межах українського законодавства. Ефективній методиці аналізу проблематики дослідження послугували використання логіко-семантичного, системно-структурного, історичного та порівняльно-правового методів наукового пізнання. У розрізі дослідження здійснено аналіз видів юридичної відповідальності за корупційні, та пов'язані з такими, правопорушення у сфері земельних правовідносин; з'ясовано їх особливості на сучасному етапі побудови нормативної основи у досліджуваній сфері. Проаналізовано адміністративну, кримінальну, цивільну та дисциплінарну відповідальність за корупційні прояви у площині земельних правовідносин. Розглянуто і відносно новий інститут українського права, а саме, цивільної конфіскації, у тому числі і щодо досліджуваних нами видів правопорушень. Водночас, значними залишаються і нормативні прогалини, зокрема, невідповідність та колізійність так званої антикорупційної термінології, що міститься в суміжних нормативно-правових актах, які мають бути уніфіковані шляхом внесення відповідних змін у базовий український антикорупційний закон

Ключові слова: адміністративна відповідальність, кримінальна відповідальність, цивільна відповідальність, дисциплінарна відповідальність, корупція, земельна сфера, антикорупційне законодавство
