



CUIAVIAN UNIVERSITY IN WLOCLAWEK

**CHALLENGES AND PROSPECTS FOR THE
DEVELOPMENT OF LEGAL SYSTEMS IN UKRAINE
AND EU COUNTRIES: COMPARATIVE ANALYSIS**

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PERSONS AUTHORIZED TO PERFORM STATE OR LOCAL SELF-GOVERNMENT FUNCTIONS: CATEGORICAL AND SPECIES CHARACTERISTICS AS BASIS FOR DETERMINING BOUNDARIES OF THE SUBJECT DISSEMINATION OF THE NORMS ANTI-CORRUPTION LEGISLATION

Syniavska O. Y., Ivantsov V. O.

INTRODUCTION

According to the article 3 of the actual Law of Ukraine “On the Prevention of Corruption”¹ its action extends to limited number of people. From the perspective of definition of notions “corruption offense” and “offense, related to corruption” (Par. 5, 10 P.1 of Art. 1 of the Law of Ukraine “On the Prevention of Corruption”), forenamed persons are at the same time liable parties of this kind of offenses. As a result, persons on which extends the action of the Law of Ukraine “On the Prevention of Corruption” – liable parties of corruption and related to corruption offenses were combined by the legislator into five separate groups among which persons, authorized to perform state or local self-government functions, seems to be the most extensive group by its content.

The analysis of the Article 3 of the Law of Ukraine “On the Prevention of Corruption” points that the statement of specific individuals (subjects) by the legislator was made in such a manner that allows to fully disclose the list of persons, who performs state or local self-government functions. Such a lead-up contributed even to the situation when some categories of persons, authorized on performing state or local self-government functions were assigned twice to different constituents, set as a norm by regulators, of relevant persons (subjects). For example, part 3 Article 19 of the Law of Ukraine “On the Central Executive Bodies”² explicitly provides that the chiefs of the central executive body and their deputies are civil servants. Herewith chiefs of the central executive bodies are assigned to persons, authorized to perform state functions in accordance with Subparagraph “a)” Paragraph 1 Part 1 Article 3 of the Law of Ukraine “On the Prevention of Corruption” while civil servants are named as the separate type of persons, authorized to perform state functions, according to Subparagraph “b)” of forenamed provisions.

¹ Про запобігання корупції : Закон України від 14.10.2014 р. № 1700-VII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1700-18> (дата звернення: 18.02.2019).

² Про центральні органи виконавчої влади : Закон України від 13.03.2011 р. № 3166-VI. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/3166-17> (дата звернення: 21.02.2019).

Central Election Commission is defined as the permanently acting collegiate state body (Art. 1 of the Law of Ukraine “On the Central Election Commission”³). Whereas the Law of Ukraine “On the Prevention of Corruption” assigns members of the Central Election Commission to the persons, authorized to perform state functions according to Subparagraph “ж)” Paragraph 1 Part 1 Article 3, while Subparagraph “і)” assigns them to the persons, authorized to perform state functions, “members of state collegial bodies” etc.

On the other hand, it’s obvious that definition of content and classification of persons, authorized to perform state or local self-government functions, is the basis for delimitation of boundaries of subject dissemination of the provisions of the Law of Ukraine “On the Prevention of Corruption”, which directly ensues from the content of the Article 3 of the forenamed law.

The above statement confirms that the division of persons, authorized to perform state or local self-government functions, into certain groups seems to be, to put it mildly, complicated. At the same time, we consider that the characterization of persons, authorized to perform state or local self-government functions, is appropriate to be made within the certain components (types, groups etc).

From the name of the group of persons, authorized to perform state or local self-government functions, follows that general list of persons, which compose the group on a provisional basis could be defined into two subgroups: persons, authorized to perform state functions and persons, authorized to perform local self-government functions.

1. Persons authorized to perform state functions

The functions of the state reflect its social purpose and official role. The category of “state functions” is one of the basic concepts in the theory of state and law. Among the definitions of the concept of “state functions” in terms of its prevalence, the following prevails: the main activities of the state, expressing its essence and social purpose in the management of the affairs of society⁴; the main directions and activities of the state, due to its objectives and goals and characterizing its essence⁵; the main activities of the state, which reflect and concretize its tasks and goals, manifest the essence and social purpose of the state in society⁶.

³ Про Центральну виборчу комісію : Закон України від 30.06.2004 р. № 1932-IV. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1932-15> (дата звернення: 21.02.2019).

⁴ Цвік М.В., Ткаченко В.Д., Богачева Л.Л. Загальна теорія держави і права : підручник для студ. юрид. спец. вищ. навч. закл. / за ред. М.В. Цвіка, В.Д. Ткаченка, О.В. Петришина. Харків, 2002. С. 68-79.

⁵ Скакун О.Ф. Теория государства и права : учебник. Харьков : Консум, 2000. С. 51.

⁶ Кириченко В.М., Куракін О.М. Теорія держави і права: модульний курс : навчальний посібник. Київ : Центр учбової літератури, 2010. С. 36.

The legislation does not provide a specific list of functions of the state, but this fact does not deny the fact that some of them can be derived from the provisions of current legislation. For example, the content of the social function of the state follows from the provisions of Articles 1, 3, 13, 24, 43, 46, 47, 49, 85 of the Constitution of Ukraine⁷; the content of the political function of the state – Articles 1, 5, 6, 15, 36, 39, 85, 102, 105 of the Constitution of Ukraine; economic functions of the state – Articles 13, 14, 41, 42, 85 of the Constitution of Ukraine.

As a result, the necessity of conditional systematization and classification of state functions looks quite reasonable. It is necessary to agree with O.F. Skakun, who proposes to divide the latter according to the mode of state activity into: legislative, executive (managerial), judicial, law enforcement and informational. The spheres (objects) of the state's activities are divided into internal (political, economic, taxation and financial control functions, social, environmental, cultural (spiritual), information, law enforcement) and external (political (diplomatic), economic, environmental, cultural (humanitarian), information, defense of the state, maintenance of the world order)⁸.

The functions of the state should not be identified with the functions of individual branches of state power and the functions of individual state bodies⁹. Of course, the functions of the state and the functions of state bodies are interconnected concepts, since the main purpose of state bodies is the implementation of state functions. At the same time, it cannot be stated unequivocally that the functions inherent in state bodies may well correspond in terms of the functions of the state, that is, the functions of individual state bodies have a narrower, local character compared to the functions of the state.

Organically connected with the state, its role and place in society is public service. In the activities of civil servants, the tasks and functions of the state are implemented, since each position is a circle of official powers that form part of the competence of the relevant body. It is inextricably linked with its structure and, at the same time, aims to organize the organization of the personnel of a state body or its staff – state employees. Thus, if the public service is considered taking into account the place it occupies in a state organization, then it begins where the position is established.

The possibility of separation of persons authorized to perform the functions of the state, depending on the positions they occupy, is of fundamental importance. For example, the “police” according to Art. 17 of the Law of Ukraine “On the

⁷ Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр> (дата звернення: 18.02.2019).

⁸ Скакун О.Ф. Теория государства и права : учебник. Харьков : Консум, 2000. С. 51–53.

⁹ Кириченко В. М., Куракін О. М. Теорія держави і права: модульний курс : навчальний посібник. Київ : Центр учбової літератури, 2010. С. 36.

National Police” is a citizen of Ukraine, who took the oath of a police officer serving in the relevant position in the police and who was awarded the special title of police¹⁰. It follows from the above that they are not policemen and, accordingly, persons to whom the Law of Ukraine “On the Prevention of Corruption” applies, police officers seconded to state (interstate) bodies, institutions, and organizations, leaving police service, but discharged from their posts and subsequently appointed to positions in accordance with the list of positions that may be replaced by police officers in state bodies, institutions, and organizations. The list of such posts is determined by the President of Ukraine¹¹.

The civil service should not be viewed as a simple combination of civil servant positions, but as a structure with its own hierarchy. Positions provide for the personification of managerial functions, responsibility and their unification. In the legal aspect, a position is characterized by the range of rights and obligations assigned by position, and is part of the rights and obligations of a state body.

In the legislation on public service, only the concept of a public service position is clearly defined, namely, the primary structural unit of a state body determined by the structure and staffing table of the official authority established in accordance with the first part of Article 1 of the Law of Ukraine “On Public Service”¹².

As similar to the concept of “civil servant position” it seems possible to use the category of “civil servant position”. As for the concept of “public office”, its content is somewhat broader. Ukraine provides for the establishment of three types of government positions – political, administrative and patronage.

Regarding political positions, the Decree of the President of Ukraine dated May 29, 2001 “On Regular Measures for the Further Implementation of Administrative Reform in Ukraine”¹³ (Art. 9) of the post of Prime Minister of Ukraine, First Vice Prime Minister, Vice Prime Minister and ministers on the nature of the authority, the order of appointment and dismissal of positions recognized political and those that do not belong to the category of positions of civil servants. In accordance with the Law of Ukraine “On the Cabinet of

¹⁰ Про Національну поліцію : Закон України від 02.07.2015 № 580-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/580-19> (дата звернення: 19.02.2019).

¹¹ Про перелік посад, які можуть бути заміщені поліцейськими в державних органах, установах та організаціях : Указ Президента України від 09.12.2015 р. № 691/2015. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/691/2015> (дата звернення: 19.02.2019).

¹² Про державну службу : Закон України від 10.12.2015 р. № 889-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/889-19> (дата звернення: 18.02.2019).

¹³ Про чергові заходи щодо подальшого здійснення адміністративної реформи в Україні : указ Президента України від 29.05.2001 р. № 345/2001. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/345/2001> (дата звернення: 21.02.2019).

Ministers of Ukraine”¹⁴ (article 6), the posts of members of the Cabinet of Ministers of Ukraine are political posts that are not covered by labor legislation.

In a theoretical sense, under the public service it is customary to understand the professional activities of persons occupying positions in government bodies and their apparatus in order to practically carry out the tasks and functions of the state and who receive wages at the expense of public funds. But in accordance with the provisions of the Law of Ukraine “On Civil Service”, civil service is a public, professional, politically impartial activity on the practical implementation of the tasks and functions of the state, namely: 1) analysis of state policy at the national, sectoral and regional levels and the preparation of proposals for its formation, including the development and examination of draft programs, concepts, strategies, draft laws and other regulatory acts, draft international treaties; 2) ensuring the implementation of state policy, the implementation of national, sectoral and regional programs, the implementation of laws and other regulatory acts; 3) ensuring the provision of affordable and high-quality administrative services; 4) the implementation of state supervision and control over compliance with the law; 5) management of state financial resources, property and control over their use; 6) personnel management of state bodies; 7) the implementation of other powers of the state body determined by law.

The Law of Ukraine “On the State of Service” does not apply to: 1) the President of Ukraine; 2) the Head of the Presidential Administration of Ukraine and his deputies, the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea and his deputies; 3) members of the Cabinet of Ministers of Ukraine, first deputies and deputy ministers; 4) the Chairman and members of the National Council of Ukraine on Television and Radio, the Chairman and members of the Antimonopoly Committee of Ukraine, the Chairman and members of the National Agency for the Prevention of Corruption (NAPC), the Chairman and members of the Accounts Chamber, the Chairman and members of the Central Election Commission, the chairmen and members other state collegial bodies; 5) the Secretary of the National Security and Defense Council of Ukraine and his deputies; 6) the Chairman of the State Committee for Television and Radio Broadcasting of Ukraine and his deputies, the Chairman of the State Property Fund of Ukraine and his deputies; 7) people’s deputies of Ukraine; 8) the Commissioner of the Verkhovna Rada of Ukraine for Human Rights and their representatives; 9) employees of the National Bank of Ukraine; 10) deputies of the Verkhovna Rada of the Autonomous Republic of Crimea (ARC), the Chairman of the Council of

¹⁴ Про Кабінет Міністрів України : Закон України від 27.02.2014 № 794-VII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/794-18> (дата звернення: 19.02.2019).

Ministers of the Autonomous Republic of Crimea and his deputies, ministers of the Autonomous Republic of Crimea; 11) deputies of local councils, officials of local self-government; 12) judges; 13) prosecutors; 14) government employees who perform maintenance functions; 15) employees of state enterprises, institutions, organizations, other business entities of the state form of ownership, as well as educational institutions established by state bodies; 16) military personnel of the Armed Forces of Ukraine (AFU) and other military formations formed in accordance with the law; 17) private officers and officers of law enforcement agencies and employees of other bodies who are assigned special ranks, unless otherwise provided by law; 18) patronage employees.

As a result, persons authorized to perform state functions can be divided into the following types:

1.1. Persons, who are in political public posts:

The President of Ukraine is the guarantor of state sovereignty, the territorial integrity of Ukraine, compliance with the Constitution of Ukraine, human and civil rights and freedoms (Article 102 of the Constitution of Ukraine); Chairman of the Verkhovna Rada of Ukraine, his First Deputy and Deputy; Prime Minister of Ukraine, First Vice Prime Minister of Ukraine, Vice Prime Minister of Ukraine; ministers; people's deputies of Ukraine;

1.2. Civil servants as representatives of the “public service” in the theoretical meaning.

1.2.1 Civil servants in the understanding of the Law of Ukraine “On Civil Service”.

In accordance with the provisions of Part 2 of Article 1 of the Law of Ukraine “On Civil Service”, a public servant is a citizen of Ukraine who holds a public service position in a state authority, another state body, his office (secretariat), receives wages from the state budget. and exercises the powers established for this position, directly related to the fulfillment of the tasks and functions of such a state body, and also adheres to the principles of public service.

The effect of the Law of Ukraine “On Civil Service” applies to civil servants: 1) the Secretariat of the Cabinet of Ministers of Ukraine; 2) ministries and other central executive bodies; 3) local state administrations; 4) the prosecution authorities; 5) military authorities; 6) foreign diplomatic institutions of Ukraine; 7) government agencies, especially the passage of public service in which are defined by Article 91 of the Law of Ukraine “On Public Service”; 8) other state bodies.

Public service positions in state bodies are divided into categories depending on the order of appointment, nature and scope of authority, and the qualifications and professional competence of public servants necessary for their fulfillment (Article 6 of the Law of Ukraine “On Civil Service”).

Based on the list of persons (positions held), who perform the functions of the state, according to the Law of Ukraine “On the Prevention of Corruption”, public servants, in addition, include:

- service and officials of the National Anti-Corruption Bureau of Ukraine (NABU specialists in the sense of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”¹⁵ (Article 10));

- officials and officials of the diplomatic service (diplomatic workers and administrative and technical personnel of the diplomatic service in the sense of the Law of Ukraine “On the diplomatic service”¹⁶ (Article 9));

- officials and officials of the State Bureau of Investigation (civil servants in the sense of the Law of Ukraine “On the State Bureau of Investigation”¹⁷ (Art. 14));

- officials and officers of the central executive body, which ensure the formation and implementation of state tax policy and state policy in the field of state customs (officials of regulatory bodies in the understanding of the Tax Code of Ukraine¹⁸ (Art. 342));

- officials and officers of the Secretariat of the High Qualification Commission of Judges (employees of the Secretariat of the High Qualification Commission of Judges in the sense of the Law of Ukraine “On the Judicial System and Status of Judges”¹⁹ (Article 102));

- officials and officers of the Secretariat of the High Council of Justice (heads and other officials of the Secretariat of the High Council of Justice in the understanding of the Law of Ukraine “On the High Council of Justice”²⁰ (Art. 27));

- officials and officers of the State Judicial Administration of Ukraine (officials of the State Judicial Administration of Ukraine, its territorial administrations in the sense of the Law of Ukraine “On the Judicial System and Status of Judges”²¹ (Article 151)).

¹⁵ Про Національне антикорупційне бюро України : закон України від 14.10.2014 р. № 1698-VII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1698-18> (дата звернення: 19.02.2019).

¹⁶ Про дипломатичну службу : Закон України від 07.06.2018 р. № 2449-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2449-19> (дата звернення: 18.02.2019).

¹⁷ Про Державне бюро розслідувань : Закон України від 12.11.2015 р. № 794-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/794-19> (дата звернення: 18.02.2019).

¹⁸ Податковий кодекс України : Закон України від 02.12.2010 р. № 2755-VI. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2755-17> (дата звернення: 18.02.2019).

¹⁹ Про судоустрій і статус суддів : Закон України від 02.06.2016 р. № 1402-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1402-19> (дата звернення: 20.02.2019).

²⁰ Про Вищу раду правосуддя : Закон України від 21.12.2016 р. № 1798-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1798-19> (дата звернення: 18.02.2019).

²¹ Про судоустрій і статус суддів : Закон України від 02.06.2016 р. № 1402-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1402-19> (дата звернення: 20.02.2019).

1.2.2 Officials of the militarized civil service – persons serving in state bodies and who have been assigned military or special ranks:

- military officials of the armed forces of Ukraine, except for military servicemen, cadets of higher military educational institutions, cadets of higher educational institutions with military institutes, cadets of faculties, departments and departments of military training (hereinafter referred to as previously mentioned persons);

- military officials of the State Service for Special Communications and Information Protection of Ukraine, except for the previously mentioned persons;

- military officials of other military formations formed in accordance with the laws, except for the previously mentioned persons;

- military service personnel (including officials) of the Security Service of Ukraine, except for the previously mentioned persons;

- Private and commanding officers of the State Penal Service;

- persons of the private and commanding staff of the tax police;

- persons commanding officers of civil protection units;

- persons of the commanding staff of the State Bureau of Investigation

- persons of the commanding staff of the National Anti-Corruption Bureau of Ukraine;

- the police.

The servicemen are defined by the current legislation as persons serving in the military (Ab. 4, Part 9, Art. 1 of the Law of Ukraine “On Military Duty and Military Service”²²). In turn, servicemen holding full-time positions related to the performance of organizational or administrative duties, or those specifically authorized to perform such duties in accordance with the law, the Law of Ukraine “On Military Duty and Military Service” calls military officials. A similar definition is given in the note to article 425 of the Criminal Code of Ukraine, namely: “military officials” as military commanders, as well as other military personnel who hold permanent or temporary positions related to the performance of organizational or administrative duties, or perform such duties on special instructions from the plenipotentiary command. This concept in its main features coincides with the concept of an official, defined in paragraph 3 of Article 18 of the Criminal Code of Ukraine²³. But from the content of art. 14 of the Code of Ukraine on Administrative Offenses²⁴, it follows that the concept of “officials” and “officials” is used to a greater extent as identities.

²² Про військовий обов’язок і військову службу : Закон України від 25.03.1992 р. № 2232-XII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2232-12> (дата звернення: 18.02.2019).

²³ Кримінальний кодекс України : Закон України від 05.04.2001 р. № 2341-III. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14> (дата звернення: 18.02.2019).

²⁴ Кодекс України про адміністративні правопорушення : Закон України від 07.12.1984 р. № 8073-X ВР. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/80731-10> (дата звернення: 18.02.2019).

The military commanders are military personnel, to perform certain tasks, they have subordinates who are authorized to give the latter orders, orders and other mandatory requirements for execution, and apply disciplinary authority to them. The military commanders in military regulations and other acts of military legislation are understood to be: chiefs of official position, that is, military personnel who are assigned to permanently or temporarily manage the official activities of other military personnel or workers and employees (subordinate) chiefs of military rank.

A military formation is an aggregate of military associations, formations of units and their control bodies created in accordance with the law, which are staffed by military personnel and are intended to defend Ukraine, protect its sovereignty, state independence and national interests, territorial integrity and inviolability in the event of armed aggression, armed conflict or threats of attack by directly conducting military (combat) actions (Article 1 of the Law of Ukraine “On Defense of Ukraine”²⁵). In addition to the Armed Forces of Ukraine, the military formations are the State Border Guard Service of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the State Security Directorate of Ukraine. According to the military officials, any military formations formed in accordance with the established procedure are persons authorized to perform the functions of the state.

Regardless of the position and military unit in which the soldier is staffed, the latter will not be a person authorized to perform the functions of the state in the case of the passage of military service and training of cadets of higher military educational institutions, as well as higher educational institutions with military institutes, faculties of military training, departments of military training, branches of military training (higher military educational institutions and military training units in higher educational institutions).

Military service is one of the types of military service that citizens of Ukraine undergo in accordance with the laws of Ukraine in the Armed Forces of Ukraine and other military formations in order to obtain a military specialty, the acquisition of practical skills for the armed defense of the Fatherland.

Training of cadets of higher military educational institutions and military educational subdivisions of higher educational institutions is one of the types of military service to which persons with full secondary education aged from 17 years to 21 years are accepted under the contract, including those who are 17 years old year of commencement of military service, military personnel, reservists, and persons liable for military service under the age of 23 years, who have complete secondary education and do not have military ranks of officers, in

²⁵ Про оборону України : Закон України від 06.12.1991 р. № 1932-XII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1932-12> (дата звернення: 19.02.2019).

the case of enrollment in the first and next courses of study, and same persons under the age of 25 years who have a basic higher education, in the case of enrollment at the graduation course and military personnel under military service under the contract, under the age of 30 years.

1.2.3 Representatives of administrative authority – employees whose actions apply to persons who are not subordinate to them:

- Officials and officials of the prosecution authorities (officials of the prosecutor's office are persons holding administrative positions (Art. 39 of the Law of Ukraine "On the Prosecutor's Office"²⁶), in turn, prosecutors must be recognized as officials of the prosecutor's office (Art. 15 of the Law of Ukraine "On the Prosecutor's Office" (except for those who occupy administrative positions);

- officials of the State Forest Guard (a list of officials of the State Forest Guard is given in the Appendix to the Regulations on State Forest Guard, approved by Resolution of the Cabinet of Ministers of Ukraine of September 16, 2009 No. 976²⁷);

- officials and officials of the state protection of the natural reserve fund (the list of officials of the state protection service of the natural reserve fund of Ukraine is given in the Appendix to the Regulations on the state protection service of the natural reserve fund of Ukraine, approved by the Cabinet of Ministers of Ukraine dated July 14, 2000. No. 1127²⁸).

The isolation of a separate subspecies of civil servants as representatives of the "civil service" in the theoretical sense – "representatives of administrative authority" is due to the principle of the distribution of persons authorized to perform the functions of the state. Thus, in particular, police, officials and officials of the State Fiscal Service bodies are also possible to attribute to representatives of administrative authority. However, for other more significant characteristics, the attribution of the persons concerned to other groups seems justified.

1.2.4 Heads and members of state collegial bodies

Collective bodies are executive bodies of general competence, in which the management process is carried out collectively, but with the head headed. Such a collegial way of leadership found its expression in the very name of these bodies – council, cabinet, board, committee, and the like. Each member of this body has certain powers, and his opinion is taken into account when making a

²⁶ Про прокуратуру : Закон України від 14.10.2014 р. № 1697-VII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1697-18> (дата звернення: 19.02.2019).

²⁷ Про затвердження Положення про державну лісову охорону : Постанова Кабінету Міністрів України від 16.09.2009 р. № 976. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/976-2009-п> (дата звернення: 19.02.2019).

²⁸ Про службу державної охорони природно-заповідного фонду України : Постанова Кабінету Міністрів України від 14.07.2000 р. № 1127. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1127-2000-п> (дата звернення: 20.02.2019).

decision, which is made only if there is a necessary quorum and is expressed in the form of legal acts – resolutions, decisions, orders²⁹. The collegial bodies include the Cabinet of Ministers of Ukraine, the Council of Ministers of the ARC, government committees, various state commissions, and the like.

Based on the list of persons (positions held by persons) authorized to perform the functions of the state, according to the Law of Ukraine “On the Prevention of Corruption” to the state collegial bodies include: The Accounts Chamber; NACP; Central Election Commission; Supreme Council of Justice; The highest qualification commission of judges of Ukraine.

1.2.5 Judges, judges of the Constitutional Court of Ukraine

The judge is a citizen of Ukraine who, according to the Constitution of Ukraine and the Law of Ukraine “On the Judicial System and Status of Judges”, is appointed a judge, holds a full judicial position in one of the courts of Ukraine and administers justice on a professional basis. Judges in Ukraine have a single status regardless of the place of court in the judicial system or administrative position, which the judge holds in court (Article 52 of the Law of Ukraine “On the Judicial System and Status of Judges”³⁰).

1.2.6 Employees of executive support service

In the sense of the Law of Ukraine “On the Prevention of Corruption”, it is necessary to attribute to them, in particular: the inspectors of the High Council of Justice; inspectors of the High Qualification Commission of Judges of Ukraine;

1.3 Jury, while performing the state functions

A jury is a person in cases determined by procedural law, and with his consent decides cases in a court with a judge or is brought to justice (Article 63 of the Law of Ukraine “On the Judicial System and Status of Judges”³¹). It is during the execution of duties in court that the jury will perform the functions of the state, in particular the judicial function.

1.4 Human-rights ombudsman of the Verkhovna Rada of Ukraine

The Commissioner is an official whose status is determined by the Constitution of Ukraine, the Law of Ukraine “On the Representative of the Verkhovna Rada on Human Rights” and other laws of Ukraine (Article 4 of the Law of Ukraine “On the Representative of the Verkhovna Rada of Ukraine on Human Rights”³²).

1.5 Head of the National Bank of Ukraine

²⁹ Малиновський В.Я. Державне управління : навчальний посібник. 2-ге вид., доп. та перероб. Київ : Атіка, 2003. 576 с.

³⁰ Про судоустрій і статус суддів : закон України від 02.06.2016 р. № 1402-VIII. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/1402-19> (дата звернення: 20.02.2019).

³¹ Там само.

³² Про Уповноваженого Верховної Ради України з прав людини : Закон України від 23.12.1997 р. № 776. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/776/97-вр> (дата звернення: 21.02.2019).

The National Bank of Ukraine is the central bank of Ukraine, a special central government body, the legal status, tasks, functions, powers and principles of organization of which are determined by the Constitution of Ukraine, the Law of Ukraine “On the National Bank of Ukraine” and other laws of Ukraine.

The Chairman of the National Bank is an official, heads the Board of the National Bank and is responsible for its activities to the President of Ukraine and the Verkhovna Rada of Ukraine³³.

1.6 Public servants and officials of the ARC authorities

The government of the ARC is the Council of Ministers of the ARC. The Chairman of the Council of Ministers of the ARC is appointed and dismissed by the Verkhovna Rada of the ARC in coordination with the President of Ukraine.

The Council of Ministers of the Autonomous Republic of Crimea exercises executive authority in the Autonomous Republic of Crimea directly and through the ministries of the Autonomous Republic of Crimea, republican committees of the Autonomous Republic of Crimea, other executive authorities of the Autonomous Republic of Crimea, directs, coordinates and controls the activities of such bodies (Article 1 of the Law of Ukraine “On the Council of Ministers of the Autonomous Republic of Crimea”³⁴).

The Council of Ministers of the ARC is a collegial body that is formed by the Verkhovna Rada of the Autonomous Republic of Crimea for the term of its powers and is headed by the Chairman of the Council of Ministers of the Autonomous Republic of Crimea (Article 5 of the Law of Ukraine “On the Council of Ministers of the Autonomous Republic of Crimea”).

1.7 Public servants and officials of other bodies of state

In the sub-clause “i” of clause 1 of part 1 of article 3 of the Law of Ukraine “On the Prevention of Corruption”, officials and officers of other state bodies are understood to be all other persons who occupy positions in state bodies and their staff, receive wages at the expense of state funds, but at the same time, they are not civil servants, officials of local self-government, military officials and other persons listed in sub-clauses “a” – “z” of clause 1 of part 1 of article 3 of the Law of Ukraine “On the prevention of corruption.”

The distinguishing features of these officials (official) persons are that they: permanently, temporarily or by special powers, perform the functions of government representatives or permanently or temporarily occupy enterprises, institutions or organizations of state authorities (but not local governments or legal entities of private rights) positions related to the performance of organizational and administrative functions; they are not civil servants, officials

³³ Про Національний банк України : Закон України від 20.05.1999 р. № 679-XIV. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/679-14> (дата звернення: 19.02.2019).

³⁴ Про Раду міністрів Автономної республіки Крим : Закон України від 16.06.2011 р. № 3530-VI. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/3530-17> (дата звернення: 20.02.2019).

of local self-government, military officials and other persons listed in subparagraphs “a” – “z” of paragraph 1 of part 1 of article 3 of the Law of Ukraine “On the Prevention of Corruption”; receive wages at the expense of public funds.

2. Persons, authorized to perform local self-government functions

Local self-government in Ukraine is a state-guaranteed right and real ability of a territorial community – residents of a village or voluntary association into a rural community of residents of several villages, township, city – independently or under the responsibility of local government bodies and officials to solve local issues within the Constitution and laws Of Ukraine.

Local self-government is exercised by territorial communities of villages, towns, cities, both directly and through village, town, city councils and their executive bodies, as well as through district and regional councils, which represent the common interests of territorial communities of villages, towns, and cities³⁵.

The system of local government includes: a territorial community; rural, town, city council; village, town, city chairman; executive bodies of village, settlement, city council; warden; district and regional councils, which represent the common interests of territorial communities of villages, towns, cities; self-organization of the population³⁶.

At the same time, the local government system, first of all, is determined by its main functions. These categories are interrelated: the system determines the organizational structure of local self-government, and the functions – the main directions and types of local government activities³⁷.

Despite the fact that the Law of Ukraine “On Local Self-Government in Ukraine” constantly operates with the category “functions of local self-government”, the latter does not provide its definitions or their list. At the same time, an analysis of the provisions of the Constitution and the Law of Ukraine “On Local Self-Government in Ukraine” gives grounds for their list to include the following: involvement of the population in participation in solving issues of local and national importance; management of communal property; ensuring the comprehensive socio-economic and cultural development of the relevant territory; the provision of social services to the population; ensuring the rule of law, public safety, law and order, the protection of the rights, freedoms and legitimate interests of citizens; social protection of the population, promotion of

³⁵ Про місцеве самоврядування в Україні : Закон України від 21.05.1997 р. № 280/97-ВР. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/280/97-вр> (дата звернення: 19.02.2019).

³⁶ Там само.

³⁷ Погорілко В.Ф., Федоренко В.Л. Конституційне право України: підручник / за заг. ред. В.Л. Федоренка. 4-те видання, переробл. і доопр. Київ : Ліра-К, 2012. 576 с.

employment of citizens; foreign economic; environmental protection; regulation of land relations; accounting; idly registration; informational.

Based on the provisions of the Law of Ukraine “On the Prevention of Corruption”, the persons authorized to perform the functions of the local self-government should include:

2.1 Deputies of local councils

The deputy of the local council (deputy of the village, settlement, city, district in the city, district, regional council) is a representative of the interests of the territorial community of the village, village, city or their communities, which in accordance with the Constitution of Ukraine and the law on local elections is elected on the basis of universal, equal, direct suffrage by secret ballot for a period established by the Constitution of Ukraine³⁸.

2.2 Head and deputies of the Verkhovna Rada of ARC

The Autonomous Republic of Crimea is an integral part of Ukraine and, within the limits of authority determined by the Constitution of Ukraine, resolves issues within its competence (Article 134 of the Constitution of Ukraine).

The representative body of the Autonomous Republic of Crimea is the Verkhovna Rada of the ARC, whose deputies are elected on the basis of universal, equal, direct suffrage by secret ballot. (Art. 136 of the Constitution of Ukraine).

The Verkhovna Rada of the ARC consists of 100 deputies elected on the basis of universal, equal and direct suffrage by secret ballot. The Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, his first deputy and deputy chairmen of the standing committees of the Verkhovna Rada of the ARC exercise their powers on a permanent basis³⁹.

2.3 Public servants of local self-government

The legislation defines the category “service in local governments” as a professional, ongoing activity of citizens of Ukraine who occupy positions in local governments aimed at the realization by the territorial community of their right to local self-government and certain powers of the executive authorities provided by law⁴⁰.

In turn, the official of local self-government is a person working in local self-government bodies, has corresponding official powers to carry out organizational, administrative and consultative and advisory functions and

³⁸ Про статус депутатів місцевих рад : Закон України від 11.07.2002 р. № 93-IV. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/93-15> (дата звернення: 20.02.2019).

³⁹ Про Верховну Раду автономної Республіки Крим : Закон України від 10.02.1998 р. № 90/98. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/90/98-вр> (дата звернення: 18.02.2019).

⁴⁰ Про службу в органах місцевого самоврядування : Закон України від 07.06.2001 р. № 2493-III. База даних «Законодавство України» / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2493-14> (дата звернення: 20.02.2019).

receives salary at the expense of the local budget. The positions in local governments are: elective offices for which persons are elected at local elections; elective offices for which individuals are elected or approved by the relevant board; positions to which persons are appointed by village, town, city mayor, chairman of district, district in the city, regional council on a competitive basis or according to another procedure stipulated by the legislation of Ukraine (Article 1–3 of the Law of Ukraine “On service in local governments”⁴¹) .As a result, local government officials are: village, town, mayor, elders; the chairmen and deputy chairmen of the district, district in the city, the regional council, the deputy mayor – the secretary of the Kiev city council, the secretary of the village, settlement, city council, the chairman of the standing commission on budget issues of the regional, Kiev and Sevastopol city councils; deputy village, town, mayor for the activities of the executive bodies of the council, business manager (secretary) of the executive committee of the rural, town, city, district council in the city; the head of the secretariat (business manager) of the district and regional council, the manager of the executive office of regional and district councils, heads of departments, departments and other local government officials are appointed respectively by village, town, city mayor, and the chairman of the district, district in the city, regional council.

CONCLUSIONS

The definition of functions of state and local self-government gave the possibility to articulate the semantic content, borders and focus of authorities of persons, assigned by Paragraph 1 Part 1 Article 3 of the Law of Ukraine “On the Prevention of Corruption” to subjects of distribution of the anticorruption legislation norms, therefore persons, authorized to perform state or local self-government functions is proposed to divide within certain species groups:

1. Persons, authorized to perform state functions, namely:

1.1) persons, who are in political public posts;

1.2) civil servants as representatives of “public service” in theoretical meaning, among which is essential to set apart: civil servants in the understanding of the Law of Ukraine “On the Civil Service”; officials of militarized civil service; representatives of the administrative authorities; heads and members of state collegial bodies; judges, judges of the Constitutional Court of Ukraine; employees of executive support service;

1.3) jury, while performing the state functions;

1.4) Human-rights ombudsman of the Verkhovna Rada of Ukraine;

1.5) Head of the National Bank of Ukraine;

1.6) public servants and officials of the ARC authorities;

1.7) public servants and officials of other bodies of state;

2 Persons, authorized to perform local self-government functions, namely:

⁴¹ Там само.

- 2.1) deputies of local councils;
- 2.2) head and deputies of the Verkhovna Rada of ARC;
- 2.3) public servants of local self-government.

The proposed by us approach excludes the possibility of duplication while allotment of persons, authorized to perform state or local self-government functions, into different species groups, which is one of the key tasks of defining the range of relevant persons as subjects covered by the ambit of anti-corruption legislation action.

At last, we should note that within the framework of the paper is impossible to fully examine the issue of defining of a complete scope of persons covered by the ambit of anti-corruption legislation action. At the same time, we should point out that we initiated the new way of the coverage of a certain problem. As a result, the research will be the foundation for providing categorical and species characteristics as basis for determining boundaries of the subject dissemination of the anti-corruption legislation norms to the persons, who, for the aims of the Law of Ukraine “On the Prevention of Corruption”, equates to the persons, authorized to perform state or local self-government functions and other persons which are subject to the Law of Ukraine “On the Prevention of Corruption”.

SUMMARY

There is noted that definition of the content and classificatory allotment of persons, authorized to perform state or local self-government functions, is the basis for the determining boundaries of the subject dissemination of the Law of Ukraine “On the Prevention of Corruption” norms. There are framed terms and is defined the list of functions of state and local government. There is traced the connection between the content of state and local government functions and definition of subjects covered by the ambit of anti-corruption legislation action.

As a result, the characteristics of persons, authorized to perform state or local self-government functions, is given within the boundaries of two different groups: persons, authorized to perform state functions and persons, authorized to perform local self-government functions. In particular, there is substantiated the expediency of the division of persons, authorized to perform state functions into: persons, who are in political public posts; civil servants as representatives of “public service” in theoretical meaning, among which is essential to set apart: civil servants in the understanding of the Law of Ukraine “On the Civil Service”; officials of militarized civil service; representatives of the administrative authorities; heads and members of state collegial bodies; judges, judges of the Constitutional Court of Ukraine; employees of executive support service; jury, while performing the state functions; Human-rights ombudsman of the Verkhovna Rada of Ukraine; Head of the National Bank of Ukraine; public servants and officials of the ARC authorities; public servants and officials of other bodies of state. Categorical characteristic of persons, authorized to perform

local self-government functions was conducted in such subgroups as: deputies of local councils; head and deputies of the Verkhovna Rada of ARC; public servants of local self-government.

There is summarized that the approach proposed in the research excludes the possibility of duplication while allotment of persons, authorized to perform state or local self-government functions, into different species groups, which is one of the key tasks of defining the range of relevant persons as subjects covered by the ambit of anti-corruption legislation action.

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