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THE INSTITUTIONALISATION OF PUBLIC RELATIONS IN THE FIGHT AGAINST CORRUPTION: THE EXPERIENCE OF COUNTRIES OF EASTERN AND WESTERN LEGAL TRADITIONS (UNIVERSAL THEORETICAL FRAMEWORK FOR RELEVANT ANTI-CORRUPTION LAW OF UKRAINE)

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scientific and methodological justification
of ensuring the effectiveness and efficiency
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INTRODUCTION

Of course, corruption was and, unfortunately, remains one of the main problems of the Ukrainian state and society. The legal aspect of corruption is manifested in the fact that, on the one hand, it violates law as an objective category, that is, it violates the Law, and on the other, the state takes legal and other measures provided for by law to combat this negative social phenomenon. In a legal state there can be no other means of fighting corruption, except legal ones. Thus, an impressive update of anti-corruption legislation has undergone as a result of the adoption on October 14, 2014 of the so-called "anti-corruption package of laws". The key among the latter is the Law of Ukraine "On the Prevention of Corruption"[1], which defines the legal and organizational basis for the functioning of the system of preventing corruption in Ukraine, the content and procedure for the use of preventive anti-corruption mechanisms, and the rules for eliminating the consequences of corruption offenses.

A special place among corruption prevention measures is occupied by the "restriction on the receipt of gifts" (Article 23 of the Law of Ukraine "On the Prevention of Corruption"). However, as research and law enforcement showed, the current provisions of the law in the context of the implementation of restrictions on the receipt of gifts should be considered somewhat controversial[2].

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[1] Про запобігання корупції : Закон України від 14.10.2014 № 1700-VII. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/1700-18 (дата звернення: 15.07.2019).

[2] Коломоєць Т.О. Подарунок для публічного службовця: доцільність нормативної заборони чи обмеження. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції* : матеріали міжнар. наук.-практ. конф., (Одеса, 18 травня 2018 р.). у 2-х т. Т. 2. Одеса : Гельветика, 2018. С. 15–17.

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Vladymyr O. Ivantsov, Grzegorz Makowski Restrictions for accepting gifts as a measure to prevent corruption: a critical view on implementation in Ukraine. *Кримінально-правові та кримінологічні засади протидії корупції* : матеріали IV Міжнародної наук.-практ. конф., (Харків, 15 квітня 2016 р.) Харків : ХНУВС, 2016. С. 75–79.

It is worth noting that the implementation of restrictions on the receipt of gifts significantly depend on the clarity of the content of the conceptual and terminological apparatus of the said right restraint, which is obviously reflected in law-enforcement practice, which in turn leads to problems in the latter. This led to the formulation of the first part of our question.

We consider it necessary to solve the described problems by referring to the principles of administrative law as a kind of "meganorm", which can be used as a prism for assessing deficiencies in the implementation of restrictions on the receipt of gifts, which, in turn, based on the objectives of the principles of administrative law[3], provide opportunity to work out ways to solve the problems of the implementation of restrictions on the receipt of gifts. Among them they can be: development of proposals for amending the regulatory and legal acts in the field of preventing and combating corruption; filling gaps in the field of administrative and legal regulation of the implementation of restrictions on the receipt of gifts, including the attraction of relevant persons to administrative and/or disciplinary responsibility for the violation of these restrictions; creating a basis for judicial control over administrative actions to implement restrictions on the receipt of gifts.

1. Gift as subject to restrictions on their receipt

Restrictions (prohibitions) regarding the receipt of gifts are given in Article 23 of the Law of Ukraine "On the Prevention of Corruption". However, before proceeding to their characteristics, we define the concept and content of the term "gift" as the subject of appropriate restrictions.

In the Law of Ukraine "On the Prevention of Corruption" a gift means cash or other property, advantages, benefits, services, intangible assets that are provided (received) for free or at a price below the minimum market.

At the same time, the term "gift" by its semantic meaning is similar to such concepts as "gift" and "donation".

According to Article 718 of the Civil Code of Ukraine[4], a gift is the subject of a deed of gift. They can be movable things, including money and securities, as well as immovables and property rights that the donor owns or may have in the future.

In accordance with Article 717 of the Civil Code of Ukraine, under a deed of gift, one party (donor) transfers or undertakes to transfer in future to the second party (donee) donated property (gift) into ownership. It is important

[3] Мельник Р.С., Бевзенко В.М. Загальне адміністративне право : навчальний посібник / за заг. ред. Р.С. Мельника. Київ : Ваіте, 2014. С. 66.

[4] Цивільний кодекс України від 16.01.2003 № 435-IV. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/435-15 (дата звернення: 15.07.2019).

that, in accordance with paragraph 2 of Article 717 of this Code, the contract establishing the obligation of the donee to perform any action of a property or non-property nature in favor of the donor is not a gift agreement.

Despite the fact that the Law of Ukraine "On the Prevention of Corruption" established a restriction on the receipt of "gifts" (unlike the previous law, which provided for a restriction on the receipt of "gifts"), we believe that the form of expression of a gift agreement and receipt of a gift are identical. In fact, it is about establishing restrictions on the implementation of certain civil rights of a certain category of persons provided for by the Law of Ukraine "On the Prevention of Corruption". From the position of T.O. Kolomoyets, the regulatory model of settling relations "public servant and gifts" indicates its "prohibitive-restrictive-permissive" content[5].

Therefore, it is impossible to agree with the position that the provisions of the Civil Code of Ukraine do not apply to the relationship of receiving a gift[6]. On the contrary, their distribution can be traced as follows.

Persons who have entered into a deed of gift (without having any unlawful intent) are governed by the rules of the Civil Code of Ukraine, which leads to their mutual rights and obligations. At the same time, only the donee, acting also as a subject of public relations (the person to whom restrictions on receiving gifts are entrusted) may violate the norms, but not of a dispositive, but imperative nature. As a result of the assessment of the norms of the Law of Ukraine "On the Prevention of Corruption", a corresponding gift in a civil-legal sense can be recognized as a gift only in relation to the donee as a person who is subject to restrictions regarding the receipt of gifts. As a result, it is the recipient who will be liable in case of violation of restrictions on the receipt of gifts. But the donor is not a subject of tort public-law relations in this case. Such a person only realizes his own civil law capacity provided for by law.

It seems that the described position of the legislator is due to the need to establish specific preventive measures, one of which is a "restriction on receiving gifts", securing such restrictions, in particular in the area of civil legal personality, creates conditions that act as barriers to corruption.

In contrast, in terms of "donations", the provisions of the Law of Ukraine "On the Prevention of Corruption" cannot be applied to relations regulated by the Civil Code of Ukraine (Articles 729, 730) and the Law of Ukraine

[5] Коломоєць Т.О. Подарунок для публічного службовця: доцільність нормативної заборони чи обмеження. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції* : матеріали міжнар. наук.-практ. конф., Одеса, 18 травня 2018 р.: у 2-х т. Т. 2. Одеса : Гельветика, 2018. С. 17.

[6] Адміністративна відповідальність за правопорушення, пов'язані з корупцією : науково-практичний посібник / К.Л. Бугайчук, О.І. Безпалова, О.В. Джафарова, В.О. Іванцов, С.О. Шатрава. Харків : ХНУВС, 2016. С. 26.

"On Charitable Activities and Charitable Organizations"[7]. After all, firstly, the Law of Ukraine "On the Prevention of Corruption" does not provide for a restriction regarding the receipt of donations (as opposed to the Law "On the Principles of Preventing and Combating Corruption" (became invalid on September 1, 2016)); secondly, for the contract of donation it is necessary to have a definite, predetermined goal, which is determined by the person receiving the donation; thirdly, the donor has the right to control the use of donations for the purposes established by the donation agreement, in particular, the donor or his successors have the right to demand that the donation agreement be terminated if the donation is used for purposes other than intended.

The Law of Ukraine "On Charitable Activities and Charitable Organizations" defines the general principles of charitable activities in Ukraine, provides legal regulation of relations in society aimed at the development of charitable activities, approval of humanism and mercy, provides favorable conditions for the formation and activities of charitable organizations.

In particular, charitable activity is defined as voluntary personal and/or property assistance in order to achieve the goals specified by this Law, which do not provide for the beneficiary to make a profit, or pay any remuneration or compensation to the benefactor on behalf of or on behalf of the beneficiary. The objectives of charitable activities are to assist in promoting the legitimate interests of the beneficiaries in the areas of charitable activities, as well as developing and supporting these areas in the public interest.

The concept of a beneficiary is defined as the purchaser of charitable assistance (an individual, non-profit organization or territorial community) who receives assistance from one or more benefactors to achieve the goals defined by the Law of Ukraine "On Charitable Activities and Charitable Organizations".

The above demonstrates the need to assess the provisions of the Law of Ukraine "On Charitable Activities and Charitable Organizations" and the content of the gift as a subject of restrictions on their receipt through the prism of the principle of humanism.

At first glance, the principle of humanism has nothing to do with the issue we are studying. But in modern philosophical literature, humanism determines the release of human capabilities, is a criterion for assessing social institutions, and humanity – the norm of relations between individuals, ethnic and social groups, states[8].

[7] Про благодійну діяльність та благодійні організації : Закон України від 05.07.2012 № 5073-VI. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/5073-17 (дата звернення: 15.07.2019).

[8] Філософський енциклопедичний словник / В.І. Шинкарук (голов. ред.). Київ : Абрис, 2002. С. 134.

Considering humanism as a legal principle, M.V. Kostitsky notes that humanism in law affirms the value of the human person, human existence, dignity, rights, and the freedoms of each person[9]. As we see, we are talking about all the rights and freedoms of a person, and not just those associated with ensuring the right to life, health, prevention of torture, cruel, inhuman or degrading treatment.

The position of A.N. Kolodiy, who comes to the conclusion that humanism is the principle according to which the intrinsic value of each person, together with his inalienable rights, is the most valuable, looks good. The components of this principle are kindness, mercy, sympathy, empathy, attention to the person, the desire to help him take a worthy place in life, get rid of all the negative[10].

At the same time, humanism is directly embodied in all branches of the law of Ukraine, thereby guaranteeing the rights and freedoms of man and citizen[11]. For example, from the position of T.O. Kolomoyets, among the basic general principles of administrative law, a special place is occupied by humanism and justice in the relationship between the individual and the state[12]. In the context of this, we recall that the violation of restrictions on the receipt of gifts entails responsibility in accordance with Art. 172-5 of the Administrative Offenses Code of Ukraine[13] and/or disciplinary responsibility[14].

Based on the above, we believe that there can be no limited (prohibited) (especially administrative burden) the legal possibility of implementing legal relations in the field of humanism and mercy (for example, the possibility of receiving donations (charitable assistance) due to the need for treatment, the occurrence of a natural disaster or emergency that caused damage to property (fire, flood, etc.)).

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[9] Костицький М.В. Гуманізм права як прояв вищих (космічних) законів у суспільстві. *Принципи гуманізму та верховенства права як умова розвитку демократичної, соціальної, правової держави (пам'яті професора В.В. Копєйчикова) :* матеріали міжвуз. наук.-теорет. конф. Київ : КНУВС, 2009. С. 13.

[10] Колодій А.М., Олійник А.Ю. Права, свободи та обов'язки людини і громадянина в Україні : підручник. Київ : Правова єдність, 2008. С. 208.

[11] Чеботарьов С.С. Гуманізм як принцип права України. *Актуальні проблеми держави і права*. 2012. № 65. С. 208.

[12] Коломоєць Т.О. Адміністративне право України. Академічний курс : підручник. Київ : Юрінком Інтер, 2011. С. 47.

[13] Кодекс України про адміністративні правопорушення : Закон України від 07.12.1984 № 8073-X ВР. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/80731-10 (дата звернення: 18.07.2019).

[14] Іванцов В.О. Зміст та принципи реалізації дисциплінарної відповідальності у разі порушення норм Закону України «Про запобігання корупції». *Науковий вісник публічного та приватного права*. 2018. № 5. Том 2. С. 94–95.

Настюк В.Я., Синявська О.Ю., Мартиновський В.В., Іванцов В.О. Юридична відповідальність за корупційні правопорушення : підручник / за заг. ред. В.Я. Настюка. Харків : Право, 2019. С. 350–352, 411–412.

At the same time, it is necessary to understand that entering into a donation contract, a donation, or carrying out charitable activities can be a format for covertly committing not only actions related to the violation of restrictions on the receipt of gifts, but also corruption offenses related to obtaining unlawful benefits.

2. Problems of determining the content of prohibitions regarding the receipt of gifts and the role of the principles of administrative law in solving them

According to Part 1 of Article 23 of the Law of Ukraine "On Prevention of Corruption", persons authorized to perform state functions and persons equivalent to them are prohibited directly or through other persons from requesting, receiving, or receiving gifts for themselves or persons close to them from legal entities or individuals:

1) in connection with the performance by such persons of activities related to the performance of the functions of the state or local self-government;

2) if the person who gives is subordinate to such person.

The content of Article 23 of the Law of Ukraine "On the Prevention of Corruption" gives grounds to refer these cases to a total ban on receiving gifts. Consider them in more detail.

1. The wording "in connection with the exercise by such persons of activities related to the performance of the functions of the state or local self-government" may be given a completely different interpretation. However, any explanation regarding its content is not provided by legal regulations or provisions of an advisory nature. Thus, based on examples of judicial practice regarding accountability for violating restrictions on the receipt of gifts, we can conclude that they are controversial in the context of the understanding of the prohibition – "in connection with the exercise of such persons activities related to the performance of state or local government functions".

Example 1

The Taraschansky District Court of the Kiev Region by its resolution of August 25, 2015 (case No. 379/1230/15-p) brought to administrative responsibility the public inspector of environmental protection of the State Environmental Inspection in the Kiev region for being the subject of responsibility for corruption and corruption offense violated the restriction on receiving gifts, which is set p. 1, Art. 23 of the Law of Ukraine "On the Prevention of Corruption". Namely, the court found that the public inspector, using his official authority, received a gift from a citizen in the form of coupons for 200 liters of A-95 gasoline of the Avias gas station network, because the inspector would not draw up a protocol on the identified

environmental violations by an individual entrepreneur legislation, which entails the imposition of a fine[15].

Example 2

Novodnestrovsk city court of Chernivtsi region by a decree of June 22, 2016 (case No. 719/183/16-p) brought to administrative responsibility the head of the State Executive Service (GIS) for being the subject of responsibility for corruption and corruption related to corruption receiving gifts, which is set p. 1 Article. 23 of the Law of Ukraine "On the Prevention of Corruption". In particular, the court found that the head of the GIS acting in his own interests on February 8, 2016, being in his office during the enforcement proceedings for the recovery of alimony from the FACE_1 in his favor, received from the latter as a gift for proper and timely fulfillment of his obligations funds in the amount of 300 UAH. The offender used these funds for his own needs[16].

From the given examples of judicial practice, it follows that the implementation of activities related to the performance of state functions means receiving a gift for the use of official authority by such a person in their own vested interests. This position cannot be accepted for the following reasons.

First, if we turn to the concept of corruption in accordance with Art. 1 of the Law of Ukraine "On the Prevention of Corruption", then such actions of persons authorized to perform the functions of the state or local self-government, contain signs of corruption, which means they constitute a corruption offense, not an offense related to corruption, which is an administrative offense under Art. 172-5 Administrative Offenses Code of Ukraine. In turn, the substantive content of the above-mentioned plots of court decisions, in our opinion, contains the corpus delicity provided for by Article 368 of the Criminal Code of Ukraine[17].

Secondly, the mercenary motive of using official authority or position to a greater extent indicates violations in the described examples of judicial practice of restrictions on the use of official authority or its position, enshrined in Article 22 of the Law of Ukraine "On Prevention of Corruption".

Thirdly, such an approach to the interpretation of the limitation on receiving a gift "in connection with the activities of such persons to perform

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[15] Справа про адміністративне правопорушення від 25.08.2015 № 379/1230/15-п. Єдиний державний реєстр судових рішень / Судова влада України URL: http://www.reyestr.court.gov.ua/Review/49058912 (дата звернення 18.07.2019).

[16] Справа про адміністративне правопорушення від 22.06.2016 № 719/183/16-п. Єдиний державний реєстр судових рішень / Судова влада України URL: http://www.reyestr.court.gov.ua/Review/49058912 (дата звернення 16.07.2019).

[17] Кримінальний кодекс України : Закон України від 05.04.2001 № 2341-III. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/2341-14 (дата звернення: 16.07.2019).

functions of the state or local self-government" can be used as a legal means of avoiding criminal responsibility for obtaining illegal benefits (Art. 368 of the Criminal Code of Ukraine) because the concept of unlawful benefits (par. 8 p. 1 of Article 1 of the Law of Ukraine "On the Prevention of Corruption") is almost identical with respect to the concept of a gift (par. 10 p. 1 of Article 1 of the Law of Ukraine "On Prevention of Corruption").

The described points out that the judicial practice of assessing restrictions on the receipt of gifts within the administrative-tort industries grossly violates one of the constituent elements of the rule of law principle – "equality before the law". The latter means that all persons are subject to the same laws, and no person or group of persons has special legal privileges. This requirement concerns both the admission of individuals to certain goods or resources, and legal liability (all persons are responsible for the offenses committed by them under the same conditions)[18]. The principle of equality of all citizens before the law – a constitutional guarantee of the legal status of a person, extends, in particular, to the imposition of criminal punishment[19].

Inherent in the principle of the rule of law is legal certainty, which is often referred to as a principle. The latter requires that any legal acts adopted by the public administration be predictable. Predictability means that a legal act must be, if possible proclaimed in advance – to its application, and must be predictable as to its consequences. Such an act must be formulated with a sufficient degree of clarity (to be easily accessible) so that the person has the opportunity to shape his behavior. That is, every subject who is subject to legal acts must clearly understand the consequences that their application will have for him. Of particular importance is the rule in the area of limiting the fundamental rights of a person and citizen[20]. Thus, in the case of "Kruslen v. France" of April 24, 1990 (The Case of Kruslin v. France), it was determined that the wording of the law should be sufficiently clear and understandable in order to provide citizens with the necessary information regarding the circumstances and conditions under which the public power is vested with the power to covert and potentially dangerous interference with the enjoyment of human rights[21].

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[18] Мельник Р.С., Бевзенко В.М. Загальне адміністративне право : навчальний посібник / за заг. ред. Р.С. Мельника. Київ : Ваіте, 2014. С. 77.

[19] Рішення Конституційного Суду України від 02.11.2004 № 15-рп/2004 у справі за конституційним поданням Верховного Суду України щодо відповідності Конституції України (конституційності) положень статті 69 Кримінального кодексу України (справа про призначення більш м'якого покарання). *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/v015p710-04 (дата звернення: 15.07.2019).

[20] Мельник Р.С., Бевзенко В.М. Загальне адміністративне право : навчальний посібник / за заг. ред. Р.С. Мельника. Київ : Ваіте, 2014. С. 70.

[21] Решение по делу «Крюслен против Франции» : Решение Европейского Суда по правам человека от 24.04.1990. / Европейский суд по правам человека. *Избранные решения* : в 2 т. Москва : Норма. URL: http//www.echr.ru.

2. To receive a gift from a person who is subordinate to a person authorized to perform the functions of the state or local self-government and persons equivalent to them, it should be noted that the nature of the subordination itself does not matter: direct or indirect. Paragraph 3 of Part 1 of Article 1 of the Law of Ukraine "On Prevention of Corruption" defines direct subordination as a relationship of direct organizational or legal dependence of a subordinate person on its leader, including through decision (participation in the decision) on issues of hiring, dismissal from work, applying incentives, disciplinary action, provision of instructions, instructions, etc., control over their execution.

3. Problems of establishing the content of individual characteristics of "authorized" gifts and the role of principles of administrative law in solving them

The general ban on receiving gifts has exceptions – "authorized" gifts. These include gifts that:

– meet the generally accepted notions of hospitality;

– the cost of such gifts does not exceed one subsistence minimum for able-bodied persons, established on the day of receiving the gift, once;

– the aggregate value of such gifts received from one person (group of persons) during the year does not exceed two living wages established for an able-bodied person on January 1 of that year in which the gifts are received.

The Law of Ukraine "On the Prevention of Corruption" establishes cases to which the aforementioned rule on the limited value of gifts does not apply. This applies in particular to:

1) gifts that are given by close persons. To close persons, the Law of Ukraine "On the Prevention of Corruption" includes: persons who live together, are linked by a common life and have mutual rights and obligations with persons for whom there are special restrictions regarding the receipt of gifts (except for persons whose mutual rights and obligations are with the subject have no family character), including persons who live together, but are not married, and regardless of the specified conditions – husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, sibling native sister, grandfather, woman, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son-in-law, sister-in-law, father-in-law, mother-in-law, adopter or adopted person, guardian or trustee, person under guardianship or trusteeship;

2) gifts received as public discounts on goods, services, public winnings, prizes, bonuses.

Based on the rules of legal technology, special attention in determining the format of "authorized gifts" is taken up by the question of establishing the content of such a characteristic as "a generally recognized notion of hospitality". Obviously, this category is largely evaluative, so its "universality" can be quite controversial, which directly depends on the level of material support of the persons concerned.

Giving explanations about the possibility of receiving gifts in accordance with the Law on the Principles of Preventing and Combating Corruption, the Ministry of Justice of Ukraine describes the category "gifts that correspond to generally accepted notions of hospitality" as gifts that can be received on the occasion of, for example, a birthday, anniversary, or generally accepted holiday (New Year, International Women's Day). Gifts that can be accepted by public servants can include business gifts (souvenirs) and hospitality (an invitation to coffee or dinner) on a modest scale, which are widely used to establish good business relationships and strengthen working relationships[22].

The difficulty of defining this issue is evidenced by the fact that the National Agency for the Prevention of Corruption (NACP) in the existing methodological recommendations on preventing and resolving conflicts of interest dated 29.09.2017 avoids the assessment of such a characteristic of the "authorized" gift as opposed to the Methodological Recommendations adopted by NACP 14.07. 2016 (expired). Thus, according to the Methodological Recommendations on the prevention and settlement of conflicts of interest in the activities of persons authorized to perform the functions of the state or local government, and persons equated to them from 14.07.2016 to gifts that correspond to generally accepted notions of hospitality, NACP attributed business gifts (souvenirs) and other manifestations of hospitality (an invitation to coffee or dinner), which are widely used to establish good business relations and strengthen working relationships, but not from subordinates and within the money limits defined by the Law, preventing them from receiving such gifts one person or group of persons on a regular basis[23]. That is, the absence of the definition of such an important characteristic as compliance with the generally accepted notions of hospitality significantly affects the inconsistent law enforcement practice of

[22] Одержання подарунків особами, уповноваженими на виконання функцій держави або місцевого самоврядування : роз'яснення Міністерства юстиції України від 28.07.2011. *Баланс-Бюджет*. 2011. № 36. Ст. 11.

[23] Методичні рекомендації з питань запобігання та врегулювання конфлікту інтересів у діяльності осіб, уповноважених на виконання функцій держави або місцевого самоврядування та прирівняних до них осіб : Рішення Національного агентства з питань запобігання корупції від 14.07.2016 № 2. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/rada/show/v0002884-16 (дата звернення: 17.07.2019).

the courts, and obviously violates the principle of legal certainty, the content of which we have revealed above.

At the same time, such a position that contradicts the provisions of the Law of Ukraine "On Preventing Corruption" looks like the current position of the NACP that the Typical Anti-Corruption Program of a Legal Entity provides for the possibility of the cost of gifts, which correspond to generally accepted notions of hospitality, to determine (establish) the corresponding anti-corruption program. Moreover, clause 10 of the notes to the Type Anti-Corruption Program of a legal entity establishes that the relevant legal entity may determine additional cases where the receipt of gifts is prohibited[24].

This state of affairs is a gross violation of the principle of hierarchical superiority of the law, according to which legal acts that contradict the law are considered illegal and, accordingly, do not apply on the territory of Ukraine.

As we noted earlier, the current provisions of the Law of Ukraine "On the Prevention of Corruption" in the context of the implementation of restrictions on the receipt of gifts should be considered somewhat controversial. Regarding the legal possibilities of obtaining "authorized" gifts, we can give the following examples.

Example 1

Based on the content of the concept "close persons", persons who are imposed restrictions are obliged to refuse a gift that comes from a uncle (aunt) or cousin (sister) if its value exceeds the amount stipulated by the Law of Ukraine "On the Prevention of Corruption" .

Example 2

Extrapolating the described provisions of the Law of Ukraine "On Preventing Corruption" to the possibility of obtaining an engagement ring by a person who is restricted, he also has to refuse such a proposal, except when such a person lives together, has a common life and has mutual rights and obligations with a man who makes her an offer. After all, it is clear that in the overwhelming majority of cases, the cost of a ring will exceed the allowable value of a gift, as defined by the Law "On the Prevention of Corruption".

Example 3

Based on the definition of a gift, persons who are subject to restrictions are not entitled, in particular, to enter into contracts for the sale or other property whose value is lower than the minimum market value, if the purchase and sale is carried out in connection with the purchasers' activities related to the performance of state functions or local government, or the seller is

[24] Про затвердження Типової антикорупційної програми юридичної особи : рішення НАК від 02.03.2017 № 75. *База даних «Законодавство України»* / Верховна Рада України. URL: https://zakon.rada.gov.ua/laws/show/z0326-17 (дата звернення: 17.07.2019).

subordinate to the buyer, which however does not provide for administrative liability under Art. 172-5 of Administrative Offenses Code of Ukraine. In this context, the definition of a gift according to the provisions of the Law of Ukraine "On the Prevention of Corruption" is in direct conflict with the civil rights of individuals (Article 717 of the Civil Code of Ukraine).

The described examples, fully responding to the provisions of the Law of Ukraine "On the Prevention of Corruption" look to a certain extent "absurd" and do not comply with the principle of equality before the law, the content of which, as we noted, is that all individuals are subject to the same laws. At the same time, contradictions arise not in the context that a certain group of persons has certain privileges, but on the contrary, that a certain group of persons is limited in their rights (cannot exercise their civil procedural legal personality). In this context, to a certain extent, one can speak about the elements of discrimination against persons who are subject to restrictions regarding the receipt of gifts. So, for example, R.S. Melnik considers the prohibition of discrimination and equality before the law as a separate integral element of the rule of law principle[25].

CONCLUSIONS

The study of the conceptual and terminological apparatus of restrictions on the receipt of gifts showed the existence of a number of problems in determining the content of some of them. In turn, the decisions of the latter became possible due to the appeal to the principles of administrative law as a kind of meganorm, on the basis of which "ordinary" norms of administrative law should be formed and developed, resulting in the following conclusions.

1. The term "gift" as an object of restriction on their receipt by the semantic meaning is similar to such concepts as "gift" and "donation".

As a result of the assessment of the norms of the Law of Ukraine "On the Prevention of Corruption", it was proved that a gift in a civil-legal sense can only be recognized as a gift in relation to the donee as a person subject to restrictions regarding the receipt of gifts. In turn, the donor sells his own, provided by law, civil legal capacity.

Having studied the norms of the laws of Ukraine "On the Prevention of Corruption" and "On Charitable Activities and Charitable Organizations" through the prism of the principle of humanism and justice in the relationship between the individual and the state, it was proved that there can be no limited (prohibited) legal possibility of implementing legal relations in the field of humanism and mercy.

[25] Мельник Р.С., Бевзенко В.М. Загальне адміністративне право : навчальний посібник / за заг. ред. Р.С. Мельника. Київ : Ваіте, 2014. С. 76–77.

2. Analysis of the law enforcement practice of prohibiting the receipt of gifts by persons authorized to perform the functions of the state or local self-government, and persons equivalent to them in connection with the activities of such persons related to the functions of the state or local self-government often revealed a gross violation of the rule of law principle (in particular, legal certainty and equality before the law as mandatory elements of the rule of law).

It was noted that ensuring the implementation of legal certainty of the described prohibition can be ensured by disclosing their contents to NACP, guided by the powers enshrined in clause 15 of part 1 of Article 11 of the Law of Ukraine "On Prevention of Corruption".

We propose the following approach to the interpretation of the phrase "persons authorized to perform the functions of the state and persons equivalent to them are prohibited from receiving gifts in connection with the activities of such persons related to the performance of the functions of the state or local self-government", which may well be borrowed by the NACP, namely:

1) it is prohibited for persons authorized to perform the functions of the state or local self-government and persons equivalent to them, directly or through other persons, to require, request, receive gifts for themselves or their close persons from legal entities or individuals in case of their receipt as the subject of establishing informal relations, which with a certain probability may affect the commission of actions (inactions) or decision-making by such a person in the interests of the donor or another person determined by him. At the same time, both parties, both the person who receives the gift and the person who accepts it, understand that the corresponding gift is a "symbol (pledge)" of building such informal relationships (for example, birthday entrepreneurs try to give a gift to the employee (manager) controlling body in the amount stipulated by law, the latter, in turn, during the implementation of control measures draws attention to who came to congratulate on his birthday (other holiday), that is, it evaluates the format of their "preliminary communication", which can be the basis for the commission of a corruption offense);

2) It is prohibited for persons authorized to perform the functions of the state or local self-government and persons equivalent to them, directly or through other persons, to require, request, receive gifts for themselves or their close persons from legal entities or individuals if received as a subject of "gratitude" for completely lawful realization of official or representative powers (for example, the person who applied for state services tries to thank the official for providing the relevant service at its discretion, the estimated present).

3. It has been established: 1) the uncertainty of individual characteristics of "authorized gifts", which requires amending the Law of Ukraine "On the Prevention of Corruption" to exclude them or provide clear explanations in the

framework of the NAPC Guidelines; 2) Violation of the provisions of the Model Anti-Corruption Program of a Legal Entity approved by the Decision NACP dated March 2, 2017 No. 75 of the principle of hierarchical superiority of the law, which requires making changes to them taking into account the norms of Art. 23 of the Law of Ukraine "On the Prevention of Corruption", which defines the uniform rules for determining the amount of "authorized gift"; 3) the inconsistency of the content of the concept of "gift" to such an important element of the rule of law principle as "the prohibition of discrimination and equality before the law", which requires amendments to the Law of Ukraine "On the Prevention of Corruption" in terms of adjusting the concept of "gift" as such, which will be related to the restriction of "family-private" relations that are not related to the performance of state or local government functions.

SUMMARY

Attention is focused on the study of restrictions on the receipt of gifts, under Art. 23 of the Law of Ukraine "On the Prevention of Corruption". It was noted that the current provisions of the law in the context of the implementation of restrictions on the receipt of gifts should be considered somewhat controversial. In turn, the implementation of restrictions on the receipt of gifts significantly depend on the clarity of the content of the conceptual and terminological apparatus of the said right restraint, which is obviously reflected in law enforcement practice, which in turn leads to problems in the field of the latter. This led to the formulation of the first part of the question posed by the authors.

Proposed solutions to the implementation of restrictions on the receipt of gifts to implement by referring to the principles of administrative law as a kind of "meganorm", which can be used as a prism to assess the shortcomings of restrictions on the receipt of gifts, which, in turn, based on the principles of administrative law.

The characteristic is given to the concept of a gift as a subject of restrictions on their receipt. The problems of determining the content of prohibitions regarding the receipt of gifts and the problem of determining the content of individual characteristics of "authorized" gifts are identified. Discloses the role of principles of administrative law in their decision.

As a result of the assessment of the norms of the Law of Ukraine "On the Prevention of Corruption", it was proved that a gift in a civil-legal sense can only be recognized as a gift in relation to the donee as a person subject to restrictions regarding the receipt of gifts.

Analysis of the law enforcement practice of prohibiting the receipt of gifts by persons authorized to perform the functions of the state or local self-government and persons equivalent to them in connection with the activities of

such persons related to the functions of the state or local self-government has often shown a gross violation of the rule of law (in particular legal certainty and equality before the law as mandatory elements of the rule of law).

It was noted that ensuring the implementation of legal certainty of the described prohibition can be ensured by disclosing their contents to the NACP, guided by the powers enshrined in clause 15 of part 1 of Article 11 of the Law of Ukraine "On Prevention of Corruption".

The author's approach to the interpretation of the wording "persons authorized to perform the functions of the state and persons equivalent to them is prohibited to receive gifts in connection with the activities of such persons related to the performance of the functions of the state or local self-government", which can be borrowed by the NACP.

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