

# Corruption in Ukraine: Essence, Scale, and Influence

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## Introduction

Corruption is a social phenomenon that has a vividly pronounced political background. Historical experience bears witness to the fact that the heights of power have often been achieved with the aid of corruption. At the same time, corruption has often caused the careers of politicians and governmental figures to end, and governments to fall. It has led to the change of political regimes and the decline of states.

Over the course of recent decades, corruption has been a characteristic feature of contemporary politics in many countries of the world. Some analysts think that corruption has become the fundamental political problem of the early-21st century. Corruption and government are eternal antagonists. Corruption, as a form of social corrosion, “eats away” at governmental structures, while governmental authority in turn strives to destroy corruption.

This article will provide a definition of the concept of corruption, and will analyze the level of corruption and its influence on the socio-political, social, and economic development of Ukraine. A short survey of measures taken is conducted, and basic lines for battle with this negative phenomenon are proposed.

## A definition of the concept of corruption

As various dictionaries testify, the word *corruption* derives from the Latin word *corruptio*, meaning “spoilage.” For the purposes of this article, it can be understood as the subornment of individual officials in the governmental apparatus. It should be noted that a precise definition of the concept of corruption does not exist, either among Ukrainian legal scholars or among practitioners.

The basic approaches to an understanding of corruption can be reduced to the following:

1. Corruption is understood as the bribery and venality of governmental employees.
2. Corruption is regarded as the abuse of power or official position, performed for personal interests.

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3. Corruption includes the use of official powers or the status of one's position, and also the authority of such a position, for the satisfaction of personal interests or of the interests of third persons.
4. Corruption is regarded as a feature of organized crime.<sup>2</sup>

The regulatory legal acts of Ukraine also do not give a unified definition of the concept of corruption. Thus, in Ukraine's Law "On the Battle with Corruption," the following formula is given: "corruption is understood in this law to be the activities of persons authorized to carry out governmental functions, which actions are directed at the illegal utilization of the powers granted them for the obtaining of material goods, services, privileges, or other advantages." A different definition of corruption is given in the Presidential document "Concept of the Battle with Corruption for 1998–2005".<sup>3</sup> "In a legal regard, corruption comprises the totality of corrupt acts and other violations of law (criminal, administrative, civil, and disciplinary), and also violations of ethics of behavior by officials, which violations are connected with the accomplishment of these acts; these acts, violations of law, and violations of ethics of behavior being various in nature and degree of social danger, but single in their essence."

An analysis of international jurisprudential documents also testifies to the existence of various approaches to understanding corruption. Thus, in the Resolution "Practical Measures for the Battle with Corruption" disseminated at the Eighth Congress of the UN on the Prevention of Crime (Havana, 1990), corruption is defined as "violations of an ethical (moral), disciplinary, administrative, or criminal nature which manifested themselves in the illegal utilization of one's official position as an actor in corrupt activities." Another UN document (which is a reference document on the international battle against corruption) formulates the concept of corruption as "abuse of public authority for private gain."<sup>4</sup>

Thus, corruption is a complex social phenomenon that has a negative influence on all aspects of the political and socio-economic development of society and the state. It manifests itself in both illegal acts (or inaction) and unethical or immoral deeds.

Corruption can be defined as a complex social—and, in its essence, antisocial, immoral, and illegal—phenomenon which arises in the process of the exercise of authority by individuals and is characterized by the use of such authority for the satisfaction of personal interests (or interests of third persons), and also for the

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<sup>2</sup> For more detail, see I. Mel'nik, *Koruptsiia: sutnist', poniattia, zakhody protydiv* (Corruption: essence, concepts, measures for counteraction), (Kyiv, 2001), 113–116.

<sup>3</sup> Confirmed by Decree of the President of Ukraine, "O kontseptsii bor'by s koruptsiei na 1998-2005" (On the Concept of the Struggle with Corruption for 1998-2005), dated 24 April 1998, No. 367.

<sup>4</sup> *Mizhnarodni pravovi akty ta zakonodavstvo okremykh krain pro koruptsiuu* (International legal acts and the legislation of individual countries on corruption) (Kyiv, 1999), 102.

creation of conditions for the commission of corrupt acts, their concealment, or their facilitation.

### **The scale and influence of corruption in Ukraine**

Corruption in Ukraine has turned into one of the primary threats to national security. In essence, two subsystems are functioning in society, one official and the other unofficial, that are for all practical purposes equal in their influence. Society and the state as a whole experience the negative influence of corruption. It subverts the economic foundations of the state, discourages foreign investment, and leads the population to distrust authority structures. Corruption has a negative effect on Ukraine's international image, leads to a "shadowing" of the economy, and facilitates the growth of the influence of organized crime groups.

Ukraine's population rates the scale of the spread of corruption in Ukraine as very high. The results of sociological polls by the Aleksandr Razumkov Memorial Ukrainian Center for Economic and Political Studies (UCEPS) show that only two percent of respondents think that "almost no one in the country takes bribes," while the majority hold the opposite point of view. Twelve percent of those polled think that "almost everyone takes bribes, using their position of employment," while 49 percent think that "many" take bribes and 29 percent think "some" do.

The citizens of Ukraine have to resort to corrupt acts and the giving of bribes even to exercise their legitimate rights. According to data from a UCEPS sociological poll, 60.5 percent of respondents know of instances where bribes were given in exchange for a legitimate decision, and 47.5 percent of those polled know of instances of bribery in exchange for an illegitimate decision.

A brief analysis of the influence of corruption on the formation and functioning of governmental authority, and its influence on the implementation of governmental policies and on society as a whole, is given in this subsection. It is shown how slogans from the battle with corruption are utilized in political struggles. Individual estimates of the scale of corruption in Ukraine are also given.

Corruption renders a substantial influence on the formation of governmental authority in Ukraine. In the *executive branch* this occurs primarily by means of either payment for appointment to office (buying and selling of positions) or appointment to office independent of a person's professional qualifications, proceeding from one's family ties or personal allegiance, according to the principle "it doesn't matter who you are; what matters is whose you are,"

Most dangerous are manifestations of corruption in personnel policies at the highest levels of executive authority, insofar as leaders at the highest level can create an entire pyramid of corrupt relations penetrating all levels of government. Under such conditions it becomes impossible for an office to be filled proceeding only from the professional and personal qualities of the candidate. What becomes decisive is payment for appointment, or family (or friendly) relations with high-level leaders or other persons of influence. Not infrequently, personnel decisions

are only *formally* made immediately within authority structures. In reality, however, they are made outside the offices of those in authority, by influential businessmen or by leaders of organized crime formations who control a certain region or sphere of activity. Such instances have been reported by the domestic and foreign mass media, by the leaders of countries and law-enforcement agencies, and by well-known Ukrainian politicians.

Thus, speaking to law-enforcement agency leaders, President of Ukraine Leonid Kuchma stated, “The following materials were made available to me prior to today’s conference: about twenty-five hundred permanent criminal groups are on the books of the internal affairs [police] agencies! Just think about it, friends: twenty-five hundred groups armed and ready for anything! And you never cease to assure the country’s leadership and public opinion that you know about them and their spheres of influence and that you have the situation under control.”<sup>5</sup> Speaking of the corruption of Ukrainian authorities, People’s Deputy of Ukraine O. Moroz pointed out, “It is not the official structures which exercise authority, but the oligarchs and clans.”<sup>6</sup> According to data from the Security Service of Ukraine, sixty percent of Mafia clans have corrupt ties to agencies of governmental authority and administration.<sup>7</sup>

In the *judicial branch*, the assortment of corrupt means that can be deployed during the exercise of authority is rather extensive. First of all, there is a risk of bribery of officials at the governmental agencies that select candidates for judges’ positions, prepare materials for their appointment (or election), and decide the appointment of judges to administrative positions in the courts (qualifying commissions for judges, justice agencies, the Supreme Council for Justice). Other risks include the counterfeiting of documents, concealment of materials compromising to candidates for judges’ positions, and so on.

During the formation of *representative organs of authority*, it is also difficult to avoid the influence of corruption. In this instance, one could mention the violation of fundamental principles for organizing and conducting elections, such as the bribery of candidates, government representatives, and members of election committees; the illegal financing of election campaigns; the abuse of office while a campaign is being conducted; the falsification of election results; the creation of obstacles to the free exercise of citizens’ voting rights; and so on.

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<sup>5</sup> Leonid Kuchma, “Tak dal’she dlit’sia ne mozhet” (This can’t go on), Speech at a session of the Coordination Committee on the battle with corruption and organized crime at the Administration of the President of the Ukraine, 16 February 1998, in *Uriadovi kur’er*, 19 February 1998, 4.

<sup>6</sup> “Chitaite i sravnivaite, reshaite i golosuite” (Read and compare, decide and vote), *Kreshchatik*, 29 October 1999, 6.

<sup>7</sup> M. Kamlyk, P. Gega, V. Biletskii, “O proiavleniakh organizovanoi prestupnosti v proizvodstvennoi i upravlencheskoi sferakh ekonomiki” (On manifestations of organized crime in production and managerial spheres of the economy), in *Borot’ba z organizovanoi zlochinnistiu i koruptsieiu* (The battle with organized crime and corruption), No. 1 (2000): 23–24.

It should be noted that many Ukrainian politicians, international organizations, and foreign observers think that the most recent election campaigns in Ukraine were conducted utilizing undemocratic methods and were tainted by corrupt acts. According to the results of sociological studies conducted on the eve of the last Ukrainian presidential elections (1999), every second voter in Ukraine doubted the honesty of the conduct of the elections and their results even before the election campaign had begun. The population thought that the conduct of an honest election campaign was being hindered by the Central Election Committee (sixteen percent of those polled), the Mafia and organized crime (twelve percent), members of precinct election commissions (six percent), and the President of Ukraine, political parties, and business representatives (five percent).<sup>8</sup>

According to data from Ukraine's law-enforcement agencies, in the 1998 elections for representative organs of government, a significant number of persons with connections to criminal activities were elected. In some cases, these were organizers or active participants in criminal groups, and in other cases people that, by the time of their election, had committed crimes of a nature characteristic of corruption. Thus, according to information from the Center for Social Ties at the Chief Administration of the Ministry of Internal Affairs (MVD) of Ukraine in the Crimea, nine active members of organized criminal groups are deputies on the Kerch city council.<sup>9</sup> In 1999, four deputies in the Yevpatoriia city council were arrested for committing various crimes.<sup>10</sup>

During the formation of authority structures, corruption leads, in the first place, to authority being given to persons to whom it has not in fact been delegated by voters, or who should not occupy governmental positions due to their professional and personal qualities. Essentially, the issue at hand is the illegal conferral of authority. In the second place, representatives from a criminal milieu, including leaders of criminal groups, come to power. In the third place, government formed in this way is illegitimate and will be utilized by its representatives for criminal purpose—for illegal enrichment, evasion of responsibility, persecution of opponents, and so on.

Corruption also influences the functioning of governmental authority. Corruption is predicated on the exploitation of public authority for private gain. The state is deprived of that portion of authority which the corrupt person has taken advantage of for his own selfish interests. As Hegel noted, "that portion of governmental

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<sup>8</sup> "Naselenie ne verit v chestnye vybory" (The population doesn't believe in honest elections), *Vechernie vesti*, 4 August 1999, 2.

<sup>9</sup> L. Budzhurova, "Kriminal'noe chtivo s goroskopom" (Criminal pulp fiction with a horoscope), *Stolichnie novosti*, 2 March 1999, 1,5.

<sup>10</sup> "Arestovan eshche odin deputat Evpatoriiskogo gorsoveta" (One more deputy in the Yevpatoriya city council has been arrested), *Fakty*, 9 February 1999, 1.

authority which a separate individual has acquired for himself has been lost to the general authority.”<sup>11</sup>

Much has been said in recent times about the unlawful use of power by governmental figures at the highest level. Thus, as a result of the publication of information about involvement by individual People’s Deputies in the commission of corrupt acts, a firm opinion has taken hold in society regarding the spread of corruption within the walls of the Ukrainian Supreme Soviet.

In the summer of 1998, information about corruption among parliamentarians spread particularly intensively. This was during the election of the Chairman of the Supreme Soviet of Ukraine. It was repeatedly reported (both during public speeches at plenary sessions of Parliament and in the mass media) that some candidates for this position, or members of structures which supported these candidates, were resorting to bribery of individual deputies. There was also talk of the bribery of deputies in connection with the formation of deputy groups and factions and the movement of deputies from one faction to another.<sup>12</sup> It went so far that on 25 June 1998, the Supreme Soviet of Ukraine adopted a special resolution, “On statements by People’s Deputies of Ukraine about bribery during voting for candidates to the position of Chairman of the Supreme Soviet of Ukraine.” A Temporary Investigative Commission for verification of statements by deputies about facts relating to bribery during voting was created, and the Office of the Prosecutor General of Ukraine was enlisted to participate in the verification.

At the time, neither the Temporary Investigative Commission nor law-enforcement agencies were able to establish concrete evidence of bribery of deputies or of persons involved in it. However, statements about bribery of deputies continue, on the part of parliamentarians themselves, as well. A statement that bribery is utilized in Ukrainian politics in general and parliamentary activities in particular was made by People’s Deputy of Ukraine L. Kravchuk: “Government now lives according to commercial laws, and this is awful! The position of Chairman of the Supreme Soviet was acquired by trading. There was a trade, there was no voting, ballots were on sale.... Representatives of government have begun living according to the law of mercantilism and trade: ‘You give to me, I give to you.’ You give me votes and ballots, and I’ll give you.... Everything is sold for money: movement from faction to faction, positions.”<sup>13</sup>

The statements of this politician should be taken extraordinarily seriously, insofar as during that period he himself was a candidate for the position of Chairman

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<sup>11</sup> G. Hegel, “Konstitutsiia Germanii” (The Constitution of Germany) in *Politicheskie proizvedeniia* (Political works) (Moscow, 1978), 184.

<sup>12</sup> “Pervaia sessiia Verkhovnoi Rady Ukrainy” (First session of the Supreme Soviet of Ukraine) in *Biulleten’* (Bulletin) 46:1 (Kyiv: Izdatel’stvo Verkhovnoi Rady Ukrainy, 1998), 42, 52.

<sup>13</sup> L. Kravchuk, “Ochen’ strashno, chto vlast’ seichas zhivet po zakonam torgovli” (It’s awful that government now lives according to the laws of commerce), *Den’*, 3 February 1999, 4-5.

of the Supreme Soviet of Ukraine, which means he was well informed about the political auction that took place in 1998 in Parliament.

In 1998, the Office of the Prosecutor General of Ukraine made representations to Parliament about obtaining an agreement to institute criminal proceedings against People's Deputies of Ukraine P. Lazarenko and N. Agafonov for commission of crimes involving corruption. In March 2000, the Security Service of Ukraine presented for Parliament's consideration materials on six People's Deputies of Ukraine. The Security Service discovered actions on the part of these six individuals that violated the principles contained in Ukraine's Law "On the battle with corruption."<sup>14</sup> In addition, the Security Service reported a violation of election legislation by another People's Deputy of Ukraine (through the use of counterfeit documents during registration as a candidate).<sup>15</sup>

Information on the entrepreneurial activities of parliamentarians was made public on 20 April 2000 at a session of the Coordination Committee on the Battle with Corruption and Organized Crime at the Office of the President of Ukraine. According to this report, composed of data from the Government Tax Administration, 364 People's Deputies of Ukraine receive official income from commercial structures. Parliamentarians head 202 enterprises and are founders of 473. Overall, People's Deputies have a direct or indirect relation to the economic activities of 3,105 enterprises. In 1999, these enterprises imported into Ukraine raw materials and consumer goods worth 13.2 billion grivnas (corresponding to 25.3% of Ukraine's imports), and exported raw materials and consumer goods worth 5.2 billion grivnas (10.1% of Ukraine's exports). According to these figures, for 1999 alone the enterprises mentioned are in arrears to the budget in the amount of 4.1 billion grivnas.<sup>16</sup>

Although some of the facts mentioned above, and others that have been published in the mass media, have not been confirmed officially (or are still being verified), it may be asserted that such information as has been made public by parliamentarians and governmental leaders is an admission of corruption among high-level politicians.

For the sake of fairness, it should be noted that, in comparison with the other branches of government, the legislative authority cannot objectively be the most corrupt. The executive authority is *potentially* the most corrupt, insofar as it is

<sup>14</sup> In accordance with Article 1 of the Law of Ukraine "On entrepreneurship," participation in setting up entities for entrepreneurial activities and possession of corporative rights are not recognized as being entrepreneurial activities, which means they are not a violation of the Law of Ukraine "On the battle with corruption."

<sup>15</sup> A. Primachenko, "Delo 'zelenykh'" (The case of the "greens"), *Zerkalo nedeli*, 25 March 2000, 2.

<sup>16</sup> I. Desiatnikova, "V proshlom godu nashi sograzhdane priobreli svyshe piati tysiach prestizhnykh 'shestisotykh' mercedesov po tsene ot 100 do 300 tysiach dollarov" (Last year our fellow citizens acquired over five thousand prestigious Mercedes 600s costing from one hundred to three hundred thousand dollars) *Fakty*, 22 April 2000, 4.

the representatives of the executive authority who have the opportunity to manage monetary resources, real estate, and things of material value, and to decide questions of apportioning plots of land and rent, calling to legal and financial account, and issuing permits, licenses, and credits guaranteed by the Government. This is also confirmed by court practice in applying anti-corruption legislation; the overwhelming majority of persons called to account for bribery, abuse of authority, and violation of the Law of Ukraine "On the battle with corruption" are representatives of the executive authority. Incidentally, the absence among them of members of government and high-ranking officials is more likely to be evidence of the high level of corruption of the executive structures, insofar as highly-placed members of the government have greater possibilities not only to abuse authority, but also to "come out of the water dry."<sup>17</sup>

As for the judicial authority, the question of abuse of authority by judges is raised rather rarely. The Supreme Council of Justice was formed in 1998. During the next two-year period, only nine judges were dismissed for violation of their oath upon representations made by that agency, and criminal proceedings have been instituted against five judges for taking bribes.<sup>18</sup> In the preceding years, criminal proceedings against judges were also instituted extremely rarely, and as a rule only for taking bribes.<sup>19</sup>

The political essence of corruption is also manifested in the fact that corruption can be a weapon in the battle for power (or retention of power). On the one hand, authority structures can use slogans from the battle with corruption to try and achieve political goals, including conducting reprisals against political opponents utilizing the criminal law, repressive means, and discrediting opponents. On the other hand, the political opposition can accuse the government of corruption for the purpose of achieving its own political goals. Surprising as it may seem, the opposition may thus have an interest in corrupting authority structures (or individual governmental figures), insofar as the exposure of facts of corruption and their publication in the mass media increases the opposition's chances of coming to power.

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<sup>17</sup> The corruption cases even of mid-level leaders, in particular of Chief of Consulate Administration at the Ministry of Foreign Affairs of Ukraine V. Koval' and the mayors of the cities of Kherson, Nezhin, and Kremenchug, are an exception to the general rule.

<sup>18</sup> "Po dvum sud'iam bylo polucheno soglasie Verkhovnoi Rady Ukrainy na privlechenie ikh k ugolovnoi otvetstvennosti, otnositel'no drugikh trekh materialy eshche ne rassmotreny parlamentom. Div.: Vaulina O. A sud'i kto?" (Agreement has been received from the Supreme Soviet of Ukraine to institute criminal proceedings against two judges; materials on the other two have not yet been considered by Parliament. O. Vaulina, 'And who are the judges?'), *Golos Ukrainy*, 19 January 2000, 5.

<sup>19</sup> For example, in 1995 Chairman of the Leninsk District Court of the Crimean Autonomous Republic, V. Chernishov, who was accused of receiving and demanding bribes in the amount of \$2,150, was called to account. In 1997 proceedings were instituted against Iu. Farat'ev, a judge at the October District Court in the city of Lugansk, who the Prosecutor's Office accused of taking a bribe in the amount of \$500.



The most typical variants of using slogans from the battle with corruption for battle with political enemies are given below:

1. The selective application of the criminal law and other repressive legal means to governmental figures and politicians (as a rule, from the opposition). Even when there are grounds for such an approach, the decision may be taken not because such grounds exist, but mainly due to political considerations. That is, calling such persons to account for committing violations of law relating to corruption is accomplished not as a result of systematic anti-corruption activities by the authorities, but proceeding from the principle of political expediency. The very process of calling the guilty to account is accompanied by broad propaganda measures for the purpose of convincing society and the international community that the use of the legal process is absolutely devoid of a political subtext and is directed exclusively at securing legality in the country.<sup>20</sup>

In such instances, law-enforcement agency representatives can apply the law with a clear conscience, even while recognizing the political aspect of the situation. However, there can be a material change in the situation if what is involved is a calling to account of other officials (or political figures) for similar acts, officials not in political opposition to the country's leadership, or who are even close to those in power. In such instances, law-enforcement agency representatives who deem their task to be not assuring legality, but rather servicing the existing political regime, are compelled to violate the law, insofar as non-application of the law when there are grounds for its application is an abuse of authority.

2. The use of juridical reprisals against political opponents by means of charging them with corruption (or other illegal acts) when there are no legal grounds to do so. The goal and means in such instances remain the same as those described above, but grounds for their application are absent.

This was particularly the case in countries of the former USSR, where the authorities not infrequently wreaked reprisals on political figures, and in particular on opposition parliamentarians. Some politicians and lawyers who had an opportunity to acquaint themselves in detail with the materials of the criminal case brought in April 1997 by Prosecutor General of Ukraine G. Vorsinov against Chairman of the Parliamentary Committee on Questions of the Fight with Organized Crime and Corruption G. Omel'chenko, who was accused of abuse of authority (without grounds, as became clear in time), think this was one such instance.

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<sup>20</sup> In the opinion of many well-known politicians and experts, particular political circumstances were by no means the least important factor in the appearance of the most notorious corruption case in Ukraine—the "Lazarenko case".

In such instances, law-enforcement agency representatives have occasion to act illegally. Ungrounded criminal prosecution (or application of other repressive measures) is a job-related crime; that is, the topic now expands to include corrupt behavior by law-enforcement agency representatives.

3. The application of repressive means for the same motives to persons surrounding political figures that the authorities wish to discredit. As far as law enforcement agencies are concerned, their actions, depending on the presence (or absence) of grounds for applying the appropriate measures, may be either legal or illegal. However, that fact has no significance in principle insofar as the motivating force for the application of legal means in such instances is not the battle with corruption, but political expediency.<sup>21</sup>

One of the most dangerous factors in using slogans of opposition to corruption in political battle is the enlistment of law enforcement agencies in the political process. In these circumstances, the law enforcement agencies themselves become combatants in the political fight.

4. The rhetoric of the fight against corruption can also be invoked by particular representatives of government for the purpose of creating a positive image among citizens and in the eyes of the world community, or in order to retain one's position. Traditionally, statements about intensifying the fight against corruption resound ever more frequently and loudly prior to regular elections.

Essentially, such actions by corrupt politicians are directed at solving a two-fold problem: first, to stay in power at any cost; and second, by remaining in power, to avoid any liability for crimes committed while in office.<sup>22</sup>

In this connection, it is necessary to take a closer look at the advisability of maintaining parliamentary immunity. In a legal and political situation where the prosecution of parliamentarians for political motives is not unknown, parliamentary immunity ought to be looked upon as a means of protecting democracy. The basic purpose would be to provide legal guarantees for the proper execution by deputies of their duties. It is apparent that the limited application of parliamentary immunity can be considered useful under these conditions if it facilitates the fight with corruption.<sup>23</sup> The elimination (or substantial limitation) of parliamentary immunity proceeding from political goals may turn into a sort of "vaccination" against political opposition that will not facilitate the development of democracy in Ukraine.<sup>24</sup>

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<sup>21</sup> N. Mel'nik, "Poniatie korruptsii" (The concept of corruption), in *Korruptsiia i bor'ba s nei* (Corruption and the battle with it) (Moscow, 2000), 218–19.

<sup>22</sup> *Ibid.*, 21–23.

<sup>23</sup> M. Aznar, "Vospitanie referendumom" (Education by referendum), *Den'*, 13 April 2001, 4.

<sup>24</sup> I. Chemeris, "Dos'e dlia golosovaniia" (A dossier for voting), *Den'*, 11 April 2000, 4.

Nor can instances be ignored of a corrupt individual being a People's Deputy who was exposed as having committed abuses or taken bribes and who then attempted to represent accusations directed at him as political persecution. As practice has shown, a political defense of this kind can be rather effective.

Corruption also manifests itself in that it can substantially influence the implementation of domestic and foreign policy. As far as the latter is concerned, the high level of corruption in the country, and the fact that corruption exists at high levels, can be used by other states to put pressure on the country's leadership when it is in the process of reaching decisions on issues of either foreign or domestic policy. The ruling elite of the state falls into political dependence on the leaders of other states and international organizations if these external actors are informed about the real state of affairs and about the scale of corruption of the country, particularly regarding individual politicians or high-level leaders.

Knowledge about such corruption can create problems in relations with other states or international organizations during the process of concluding international treaties and contracts, receiving credits, investment of foreign capital, or restructuring debts. The possibility should not be ruled out that corrupt officials could fall into dependence on representatives of foreign states or international organizations and be used by them in their own interests, as "agents of influence."<sup>25</sup>

The fact that problems of corruption have acquired a political nature in Ukraine and are an important factor in the attitude taken toward Ukraine by the international community is remarked upon by specialists as an indisputable fact and is confirmed by numerous polls of Western experts.<sup>26</sup> This is affirmed both by the evaluation of Ukraine made by the leading international organizations on which the political image of our country in the world in significant measure depends, and by individual instances of pressure on Ukraine's political leadership.

By indices of corruption, Ukraine is a stable member of the group of world "leaders." In the analytical reference work prepared by the U.S. for one of the recent economic forums in Davos, it was emphasized that Ukraine is one of the leaders among countries with the highest level of bribery, corruption in politics, and tax evasion.<sup>27</sup> At the end of 2000, the World Bank named Ukraine as one of the most corrupt countries in the CIS.<sup>28</sup>

<sup>25</sup> A. Ben', "Segodnia – vziatochnik, zavtra – agent?" (Today a bribe-taker, tomorrow an agent?), *Golos Ukrainy*, 3 October 1996, 7.

<sup>26</sup> "Mezhdunarodnyi imidzh Ukrainy: mify i realii (Analiticheskii doklad Ukraineskogo tsentra ekonomicheskikh i politicheskikh issledovaniy)" (The international image of Ukraine: myths and realities [An analytical report by the Ukrainian Center for Economic and Political Studies]), *Natsional'na bezpeka i oborona*, 2000, No. 3, 25.

<sup>27</sup> "Obrashchenie Verkhovnoi Rady Ukrainy k Kongressu Soedinennykh Shatov Ameriki" (An appeal from the Supreme Soviet of Ukraine to the Congress of the United States of America) *Golos Ukrainy*, 19 October 1999.

<sup>28</sup> S. Gorban', 'Bor'ba s korruptsiei: osennee obostrenie' (The battle with corruption: autumnal exacerbation) in *Novyi vek*, November 25, 2000.

Political pressure on the part of other states prompted by their worries over the level of corruption in Ukraine can take on various forms, including diplomatic ones. One may adduce as an example the statements of members of the U.S. government and diplomats regarding corruption in Ukraine on the eve of President Leonid Kuchma's visit to the U.S. in the fall of 1999. U.S. Deputy Secretary of State Strobe Talbott, characterizing the state of corruption in Ukraine, pointed out that "corruption has become one of the greatest obstacles to achieving economic prosperity and democracy in Ukraine.... If Ukraine wishes to restore investor confidence, which serves as the basis for economic prosperity, then success in the battle with corruption is vitally important."<sup>29</sup> U.S. Ambassador to Ukraine Steven Pifer expressed himself even more explicitly in this regard. He stated that the highest leaders of Ukraine "must break their ties with persons involved in corrupt activities or having a relation to criminal groups."<sup>30</sup>

According to reports in the mass media, during President Leonid Kuchma's stay in the U.S. one of the basic issues that arose in talks with the leadership of the U.S. was the issue of the need for a concerted effort against corruption in Ukraine. Moreover, there were reports that, during the meeting of the President of Ukraine with the Vice President of the U.S., there was talk of particular Ukrainian politicians and businessmen having links to corruption. According to information from the weekly *Zerkalo nedeli*, in April 2000 President Bill Clinton sent a letter to President Leonid Kuchma in which he made the recommendation that those forces "which are a brake on the road to market reforms and which pursue personal interests in parliament" be put in their place.<sup>31</sup>

It is apparent that one of the conditions for fruitful cooperation between the United States and Ukraine, including the granting of credits to Ukraine by the U.S. and the IMF, is the need for the government of Ukraine to implement decisive anti-corruption measures, including measures against identified individuals currently at the apex of Ukrainian political life. That, in turn, will entail changes in Ukraine's legal policies and personnel changes at the highest levels of power in our country.<sup>32</sup>

Corruption is one of the basic factors dividing society. Symbolically speaking, society is divided into an official society and an unofficial—and partially criminal—society. As a consequence, two social subsystems exist in parallel within its framework. One subsystem is oriented toward legal and moral norms,

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<sup>29</sup> Strobe Talbott, "My ozabocheny nekotorymi problemami v nyneshnei kampanii" (We are concerned about certain problems in the current campaign), *Zerkalo nedeli*, 23 October 1999, 1.

<sup>30</sup> A. Iurchuk, "Stalker v parlamentskoi zone" (Stalker in the parliament zone), *Zerkalo nedeli*, 4 December 1999, 1.

<sup>31</sup> *Ibid.*

<sup>32</sup> George Soros stated this frankly on the eve of President of Ukraine Leonid Kuchma's visit to the U.S. The American businessman tied granting of financial assistance to Ukraine to a resolution of the problem of "cleaning out the government stables."

the other toward the utilization of illegal means. As far as corruption is concerned, such means are bribery, abuse of official position, granting or receiving unlawful privileges and advantages, and abuse of authority for illegally taking possession of property. The perpetrators of corruption function in an unofficial environment that is ruled by their own system of values and with their own goals and means of achieving them, where life is constructed not by laws, but by “understandings.” Due to the unlawfulness of their activities, they cannot “reveal” their corrupt relations to society, because in that event, at least according to the logic of civil society and the rule of law, a reaction to their acts on the part of law-enforcement community would ensue.

At the same time, the perpetrators of corruption cannot exist without the official subsystem. This subsystem is a necessary prerequisite for them to establish corrupt relations; in order to abuse authority, one must first possess it. One must have been appointed to an appropriate position within the agencies of central governmental authority (or local self-government), and must have both actual powers and the opportunity to use them officially. Besides that, the official subsystem serves as a cover for the unofficial one. In the first place, the perpetrators of corruption use the powers granted them by the law to achieve their unlawful goals. In the second place, they use official status to evade the responsibility provided for by law.

It probably is impossible to completely eliminate the system of unofficial relations, including corrupt relations, in any society or state. Statements about the complete eradication of corruption, bribery, and crime are naïve to say the least. The socio-political climate in a society depends on what place is held by the various subsystems discussed above, and on which of them is the dominant subsystem. Opposition to corruption can be implemented in part by the localization of unlawful relations and the curtailment of the influence of the unofficial subsystem on the functioning of society.

If one is to evaluate the state of affairs in Ukraine proceeding from this position, then it ought to be noted that the correlation of the official and unofficial subsystems warns of an extraordinarily dangerous situation that has taken shape.

The criminalization of all spheres of economic and political life by mass corruption—including the highest echelons of governmental authority—is a fact that has been established by the country’s legislative body.<sup>33</sup> According to official statements by the country’s leadership, the portion of Ukraine’s economy that is dominated by the “shadow economy” stands between 45 and 60 percent; it has become at least equal to the official part of the economy. Millions of Ukraine’s citizens work in this shadow sector of the economy. According to data from the “Intellectual Perspective” Fund and the Center for Social Expertise at the

<sup>33</sup> “Postanovlenie Verkhovnoi Rady Ukrainy ot 13 ianvaria 1998 g. No. 12/98-VR” (Resolution of the Supreme Soviet of Ukraine dated 13 January 1998. No. 12/98-VR), *Golos Ukrainy*, 27 January 1998, 2.

Institute of Sociology of the National Academy of Sciences of Ukraine, which conducted a poll of Ukraine's citizens on the topic of the population's employment in the shadow economy, 45 percent of those polled claimed to work in the "shadow."<sup>34</sup> According to calculations by specialists, the aggregate shadow capital of Ukrainian citizens amounts to approximately US\$40 billion.<sup>35</sup> About half the money supply is outside of bank turnover and, according to estimates by experts, the illegal turnover of domestic currency in Ukraine reaches about US\$12 billion. The minimum amount of freely convertible currency illegally taken beyond the borders of the country and deposited in accounts in foreign banks is estimated at US\$20 billion.<sup>36</sup>

Such a situation has been brought about, on the one hand, by excessive tax pressure on domestic producers, and on the other by the cultivation of corrupt relations in Ukrainian society. Such a development was brought about by the activities of those political leaders who did not restrain, and in some cases even stimulated, the transformation of corruption from a social anomaly into the social norm.

### Conclusions and proposals

The effectiveness of opposition to corruption depends, first of all, on the attitude toward this problem taken by the leading figures in the nation and on their moral and legal purity. Political will is the decisive factor in counteracting corruption. The manifestation of political will means that, where there are legal grounds, the law can be applied to any person, regardless of the position he holds, his political views, his proximity to the leadership of the state, or other subjective elements. In the absence of political will, even the most perfect anticorruption legislation is doomed to a purely declaratory existence, and the activities of law enforcement structures, to only the pretense of fighting corruption.

In the estimation of foreign investigators, not a single serious step has been taken in the battle with corruption. All that has been done is to make some gestures for show such as, for example, the creation of the government "Clean Hands" program, in order to calm Western critics. The only ones who, in the opinion of foreign investigators, have undertaken a serious battle with crime and corruption in Ukraine are the law enforcement agencies of the United States, Switzerland,

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<sup>34</sup> G. Dolzhenko, "“olo dlia predprinimatelia v soprovozhdenii kontroliruiushchikh i kriminal'nykh struktur" (Solo for an entrepreneur accompanied by controlling and criminal structures), *Uriadovi kur'er*, 25 February 2000 4.

<sup>35</sup> L. Povolotskaia, "Ukrainu ozhidaet provedenie nalogovoi amnistii" (Tax amnesty awaits Ukraine), *Fakty*, 6 April 2000, 7.

<sup>36</sup> Povolotskaia. Leonid Kuchma, "Gosudarstvo ne budet donorem korrumpirovannykh khapug" (The state is not going to be a donor to corrupt thieves), *Pravitel'stvennyi kur'er*, 16 December 1999, 3-4.

and Belgium.<sup>37</sup> Radical though such a statement may be, that point of view is not without foundation.

Corruption threatens the national security and the social order of Ukraine, influences the formation and activities of governmental institutions, subverts the trust of citizens in government, and complicates Ukraine's relations with foreign partners. Therefore, the battle against corruption is a task of the highest priority, and is tied to the achievement of the following basic goals:

- a decrease in the number of so-called “bribery-intensive” functions of governmental control (issuance of permits, licenses, certificates, etc.)
- a precise legislative definition of procedures for making governmental decisions
- assuring transparency of decision-making by means of competitive bids and other mechanisms
- increasing criminal liability for corrupt activities.

To achieve these goals, it is advisable to undertake the following measures. At the legislative level, a Code of Behavior for government employees needs to be adopted in which a system of principles and values for government service and models of behavior for government employees in specified situations would be defined. The Code could contain, in particular, recommendations on the correct actions to be taken by an official in the event a material interest arises, or someone attempts to give him a bribe, etc. An official responsible for questions of government employee ethics should be appointed in all government agencies.

It is essential to define in legislation and render transparent the procedures for granting contracts guaranteed by governmental agencies, as well as to define the procedures for the utilization of budget resources. Assuring the execution of the laws already adopted is also essential.

Government guarantees for foreign credits received by enterprises, including private establishments and organizations, must be granted only as an exception and only with the agreement of Parliament. It would be advisable to introduce obligatory public accounts by the head of government—and to require their presentation from the parliamentary rostrum—of the effectiveness of utilization of such credits, with dissemination of detailed information in the mass media.

It is essential to simplify the system of registering enterprises. The registration of subjects of economic management should begin and end in one office over the course of a maximum of two weeks. In addition, it would be worthwhile to unify

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<sup>37</sup> R. Chiapka, “Rynok gaza v Ukraine—pole dlia aktivnosti vorov, vziatochnikov i drugikh nechestnykh liudei” (The gas market in Ukraine is a field for the activities of thieves, bribe-takers, and other dishonest people), *Svoboda*, 3 April 2000, 8, 11.

and stabilize tax legislation—to adopt a unified Tax Code understandable to everyone in which a simple procedure for paying taxes would be defined. Proposed changes should be published well ahead of time.

The practice whereby governmental agencies receive financing from the fines that they levy ought to be renounced once and for all. Fiscal agencies should be financed only from the budget. Officials, including employees of the State Tax Administration, should be criminally liable for illegal interference in entrepreneurial activities, and property sanctions for losses caused to entrepreneurs should be established.

Precise legislative definitions of conditions for and limitations on allotment of funds from the reserve fund of the Cabinet of Ministers should be implemented, and regular accountings for the utilization of these resources should be introduced.

Sanctions in the form of fines—among others—should be applied to managers guilty of misuse of budgetary resources, for example to an amount of five to ten percent of the sum of the expenditures from the budget that were misused.

Obligatory declaration of gifts (of a value, for example, of more than ten dollars) should be introduced, in order to limit the opportunities for illegal enrichment of government employees. It is essential to make public the names of officials convicted of corrupt activities, such as abuse of authority and embezzlement of public funds. It is advisable to ban for life such persons from occupying positions in government service.

Concomitantly, it is essential to increase the prestige of government service. According to data from an UCEPS sociological poll, the desirable size of an average monthly income today is approximately 800 grivnas. It would be a good idea to orient ourselves toward a base salary of that amount for mid-level government employees. If we don't pay adequately, officials will "get theirs" any way they can. It would also perhaps be wise to consider the proposal made relative to establishing salaries for ministers at a level of one to two thousand dollars per month, taking into account the high level of their work load and their personal responsibility.

Along with increasing salaries, it is essential to increase accountability for work performed. For example, criteria should be established for evaluating the work of leaders of local governmental administrations. The criteria should include the number of new jobs created, the volumes of domestic and foreign investments attracted to development in the region, the growth of the population's real income, the level of the birth and death rates, and the dynamics of the population's migration.

It would be advisable to create a unified, transparent, and competitive national system for recruitment to government service, and simultaneously to develop a separate program for training personnel abroad. The main conditions would be openness and the competitive selection of candidates. Training should begin at the lowest levels—district government administrations and organs of local self-



government. Contracts should be concluded with persons who are going to study abroad, in which an obligatory period of government service for a period of five to seven years after completion of training abroad would be stipulated, and also a mechanism for reimbursement of state expenditures in the event of non-fulfillment of that condition.

We emphasize once more that political will at the highest levels of governmental leadership, along with provisions for transparency in government, are obligatory and fundamental conditions for counteracting corruption; their absence will render any gestures against corruption futile.