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**V. Yu. Halushka**

PhD in Public Administration,  
Senior Instructor of the Department of Command  
and Control of Troops (forces) in Peacetime  
National Defense University of Ukraine named after Ivan Cherniakhovskiy

## THEORETICAL AND LEGAL ASSESSMENT OF CORRUPTION RISKS IN THE DEFENSE SECTOR

*If fraudsters knew all the benefits of good faith, they would  
stop cheating for the sake of profit.*

**B. Franklin**

*This statement is now very relevant for the current Ukrainian state, since situations of open misunderstanding constantly arise in all branches of government and indeed in all sectors of society. "Ukraine is now one of the key platforms for the fight against corruption, not only in Europe, but throughout the world. If anti-corruption activity in Ukraine is defeated, this will call into question the ability of the entire world civil society to change common abuses in countries with economies in transition", said Delshiiia Ferretra, chairman of the Transparency International board (an international public organization for combating corruption and the study of corruption in the world).*

*It is proven, that given the complexity of the political situation, as well as Russian aggression in the east of the state, corruption in Ukraine is an urgent problem that threatens to reduce economic development. The analysis of Transparency International suggests that the oil and gas industry, construction, and defense are among the most corrupt areas of activity. It was determined that the main sectors affected by corruption in the defense are budgeting, management, finance, procurement, disposition of property, the use of excess equipment and infrastructure, military operations, as well as the involvement of personnel and equipment in economic activities. It is characterized that the main common causes of corruption are economic, institutional, social and cultural. It was determined that the main consequences of corruption in the defense sector are: limitation of the armed forces combat effectiveness; misappropriation of public resources by private individuals; deterioration of attitude and a decrease in the level of public respect for military organizations; a threat to the security of the state and citizens as well as the integrity of borders and even a threat to the existence of the state itself.*

*There are three types of corruption: needs – based corruption (petty) – common among lower – and middle – level military personnel who cannot meet their needs because of low salaries; greedy (elite) – common among high-ranking military and government officials; pyramidal – connects high – level government and military officials with lower – and middle – level military personnel through the redistribution of illicit income and the flow of corrupt money from the bottom up.*

**Key words:** *corruption, corruption risk, national defense, national security, transparency, civil society.*

**Problem statement.** In present-day conditions, corruption has become a factor that really threatens national security and the constitutional system of Ukraine. This phenomenon negatively affects various spheres of public life: politics, economics, management, legal, social, public consciousness, international relations. Corruption is a problem, the solution of which is extremely important for Ukraine.

**Recent research and publications analysis.** Problems and approaches to solving corruption

issues in the defense sector have been covered not only by many domestic scientists, but also by foreign scientists, including M. Paiman, S. Rouz-Akerman, Mats R. Berdal and David M. Mallow, who have highlighted 3 types of corruption: petty, greedy (elite), pyramidal. Among the domestic scientists who identify aspects of corruption issues are A. Balanda [6], Z. Varnaliia [7], M. Holoshyn [8], O. Kotliarenko, L. Poliakov and others.

**Purpose of this paper.** Investigate the theoretical and legal risks in the defense sector. Iden-

tify the consequences of corruption and propose basic approaches to such risks, as well as develop ways for the scientific development of law to combat corruption.

**Statement of the basic material.** The word “corruption” (lat. *corruptio*) – bribery, corruption; damage, decomposition; corruption (lat. *corrumpere*) – to corrupt. Based on the foregoing, the term “corruption” is understood as “bribery, venality of public and political figures, officials”. Corruption means fooling someone by money or other material goods. In Roman law, the definition of “*corrumpere*” was interpreted as follows: “to damage, break, destroy, bribe” and meant illegal actions in judicial practice, in particular, obstructing the normal course of the judicial process or the process of managing the affairs of society.

Corruption can be seen as a form of social corrosion that corrodes and destroys authorities, the state and society as a whole. It is based on such traditions of interaction in society as “service for service”, “do ut des” (“I give for you to give”) [10].

The United Nations Concept against Corruption, adopted on 10/31/2003, states that corruption undermines not only democratic institutions and values, but also ethical standards and justice, and damages sustainable development. Art. 7-b of Resolution 34/169 of the UN General Assembly notes, despite the fact that the term “corruption” itself must be defined with the national law of each individual state, as corruption should be understood as committing or not committing any action in the performance of official duties or due to these obligations as a result of receiving gifts that require or received, promises or incentives or their illegal receipt whenever they commit such an action or inaction.

At the same time, the Law of Ukraine “On the Prevention of Corruption”, namely, Art. 1 determines that corruption is the use by a person specified in the first part of Art. 3 of this Law of the authority granted to him or his associated capabilities in order to obtain undue benefits or accepting such a benefit or accepting a promise / offer of such benefit for oneself or others or, respectively, a promise / offer or providing undue benefit to the person specified in the first part of Section 3 of this Law, or of the requirements of other natural or legal person am to persuade that person to the illegal use of official powers granted to him or related features [1].

Corruption risks represent the most tangible threat in modern conditions. It became apparent that the existing organizational and management systems created in the last century are no longer

able to manage the risks of the 21<sup>st</sup> century. Based on this, all systemically important financial organizations, markets and instruments should be subject to appropriate regulation and supervision precisely in the context of minimizing corruption risks.

Since 1995, Transparency International has been conducting a corruption perception index – this is an annual rating of countries according to the level of corruption. In 2017, Ukraine took 130<sup>th</sup> place from 180 countries, this position is higher than it was in 2016 – 131<sup>st</sup> place from 176 countries.

In the world CPI ranking of Ukraine in 2017, surpassed Russia for the first time since 2010, but the results of other neighboring states are higher than in Ukraine: Poland – 60, Slovenia – 50, Romania – 48, Hungary – 45, Belarus – 44, Moldova – 31 place.

The Government Defense Anti-Corruption Index defines the level of corruption risks in government defense agencies around the world. Evaluation was carried out on a scale from A to F, where A is low risk and F is critical. So Ukraine in 2013–2015 was in group D, shows a very high risk of corruption. This group also included Kuwait, Serbia, Lebanon, Mexico, Nepal, Thailand, South Africa, but Group A (very low corruption risk) includes Germany and Australia. F (critical level) includes Algeria, Egypt, Libya, Syria, and Yemen. The highest risk for Ukraine is the procurement sector in the defense sector.

In general, the level of corruption in the global military-industrial complex, Transparency International, estimated at \$20 million annually.

M. Paiman stated that corruption in the defense sector is dangerous and expensive. All citizens pay corruption, but most states do nothing to prevent corruption.

The absence of national effective mechanisms for forecasting and preventing danger factors and reducing the likelihood of risk realization leads to the fact that the consequences of corruption in the defense sector pose threats at the global level.

In the Anti-corruption Strategy for 2014–2017. It is noted that one of the main problems associated with a high level of corruption in the activities of the executive branch is the lack of well-known anti-corruption programs. The annual plans for the prevention of corruption existing in executive bodies are part of the formal ones and reproduce the provisions of the relevant top-level acts. The identification of corruption factors has actually been nullified, since the absence of a system for detecting and analyzing the risks of corruption procedures, as well as mechanisms for reporting

suspicions of corruption and protecting people are reported. Units (persons) responsible for the development and implementation of departmental measures to identify and prevent corruption do not have the appropriate specialty and level of independence, basically these powers are vested in personnel units [2].

Officially, the fight against corruption in the Ministry of Defense and the Armed Forces is recognized as a strategic task and the corresponding section on the official website of the ministry informs about the state of this fight.

The Order of the Ministry of Defense "On the work system formation for preventing corruption in the Ministry of Defense and the Armed Forces of Ukraine" dated November 24, 2015 No. 646 defines systemic approaches to improving the effectiveness of measures to prevent corruption.

The main goal is to ensure the education (determination) and functioning of units (persons) on the prevention and detection of corruption in all structures of the Ministry of Defense and the Armed Forces of Ukraine, as well as at enterprises, institutions and organizations that belong to the sphere of government of the ministry.

Such measures are provided for by the Decree of the Cabinet of Ministers of Ukraine dated 04.09.2013 No. 706 "Issues of Corruption Prevention and Detection" in the structural divisions of the Ministry of Defense, military administration bodies, enterprises, institutions and organizations that are part of the ministry's sphere of control, ensuring and monitoring the implementation of measures preventing and detecting corruption [3].

A Directorate for the Prevention and Detection of Corruption of the Ministry of Defense of Ukraine was created directly in the structure of the apparatus of the Ministry, which is an independent structural unit of the Ministry and is directly subordinate to the Minister of Defense of Ukraine.

The department coordinates and monitors the activities of units, officials (officials) on the prevention and detection of corruption created in the military command and control bodies, at enterprises, in institutions and organizations that are part of the Ministry of Defense.

The main tasks of the Department are:

- preparation, provision and monitoring of measures to prevent corruption implementation;
- providing methodological and advisory assistance on compliance with anti-corruption laws;
- participation in information and research provided the implementation of measures to prevent

and detect corruption, as well as international cooperation in this field;

- conducting organizational and explanatory work and preventing, detecting and combating corruption;

- checking the facts of timely submission of declarations of property, income, expenses and financial liabilities, checking such declarations for the existence of a conflict of interests and also exercising their logical and arithmetic control;

- monitoring compliance with anti-corruption laws, conflict of interest;

- participation in the identification, and in cases established by law, in the implementation of measures to suppress corruption offenses, restore violated rights or interests of individuals and legal entities, state interests [4].

The main objective of the Department in accordance with the plan of activities in 2019 are:

- maximum reduction of defense budget losses from corruption offenses, consistent identification and elimination of corruption threats, ensuring transparency in the activities of the Ministry of Defense and the Armed Forces of Ukraine;

- regulatory support, organization and implementation of measures to prevent and detect corruption in the Ministry of Defense and the Armed Forces of Ukraine, state enterprises and organizations, refers to the field of administration of the Ministry of Defense, the settlement of conflicts of interest;

- control over Compliance with the requirements of anti-corruption legislation defined in the National Security Strategy of Ukraine, the Military Doctrine of Ukraine, the Concept of Development of the Security and Defense Sector of Ukraine, and the Strategic Defense Bulletin of Ukraine.

In accordance with the requirements of the order of the Ministry of Defense No. 646 dated 11/24/2015, the respective commanders (chiefs) are obligated annually by constituent orders to determine (clarify) the names of authorized officials (officials) on issues of preventing and combating corruption.

The activities of the Ministry of Defense of Ukraine, the General Staff of the Armed Forces of Ukraine, all bodies of the military command to prevent and detect corruption in the defense sector are based on the fact that society must be confident in the virtues of military personnel and civilian personnel of the Armed Forces of Ukraine and their ability to effectively manage the defense budget guaranteed to fulfill social obligations to the military personnel and members of their fam-

ilies, to promptly and efficiently carry out tasks for their intended purpose [11].

Achieving this goal is impossible without the persistent introduction of systematic measures to create an institutional mechanism for preventing corruption, strengthening the ability to combat corruption in state enterprises, ensuring integrity, eliminating corruption-related factors in the areas of procurement, the use of budget funds, and working with staff.

**Conclusions and propositions.** Theoretical and legal research once again proves that corruption has acquired all the signs of a global chronic disease, and this actualizes the need for a systematic study of its root causes, signs and search and implementation of the most effective tools to overcome.

The inevitable punishment by the state must be supplemented by the influence of civil society, and in the long run, society itself should become the main carrier of the idea of confrontation and not the adoption of corruption, due to which it is possible to minimize manifestations of systemic corruption risks.

A real fight against corruption is possible only if it is considered as a systemic phenomenon, which includes a whole range of social, economic, organizational and other problems. An important role in the fight against corruption should be executed by measures of a preventive nature, consisting in improving state regulation and control in areas of activity where the tendency to corrupt ideas and deeds is chronic.

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## Галушка В. Ю. Теоретико-правова оцінка корупційних ризиків в оборонному секторі

*Якби шахраї знали всі переваги доброчесності, то вони заради вигоди перестали б шахраювати.*  
**Б. Франклін**

Це висловлювання нині дуже актуальне для сьогодення Української держави, оскільки постійно виникають ситуації відвертого непорозуміння у всіх гілках влади та і взагалі у всіх прошарках суспільства. «Україна зараз є одним із ключових майданчиків боротьби проти корупції не лише в Європі, а й в усьому світі. Якщо антикорупційна діяльність в Україні зазнає поразки, це поставить під питання здатність і всього світового громадського суспільства змінювати загальноприйняті зловживання у країнах із перехідною економікою» – так оцінила ситуацію Делшія Ферретра, голова правління *Transparency International* (міжнародна громадська організація з боротьби з корупцією та дослідження питань корупції у світі).

Досліджено, що, враховуючи складність політичної ситуації, а також російську агресію на сході держави, корупція в Україні є актуальною проблемою, яка загрожує зниженню економічного розвитку. Проведений аналіз «*Transparency International*» свідчить, що до найбільш корумпованих сфер діяльності належать нафтогазовидобувна промисловість, будівництво та сфера оборони. Визначено, що основними галузями, яких торкнулася корупція у сфері оборони, є такі: бюджетування, управління, фінанси, закупівлі, відчуження майна, використання надлишкового обладнання та інфраструктури, військові операції, а також залучення особового складу й обладнання до господарської діяльності. Охарактеризовано, що основними загальними причинами виникнення корупції є економічні, інституційні, соціально культурні. Визначено, що основними наслідками корупції в оборонному секторі є такі: обмеження боєздатності збройних сил; привласнення приватними особами державних ресурсів; погіршення ставлення та зменшення рівня поваги суспільства до військової організації; загроза безпеці держави та громадян, а також цілності кордонів і навіть загроза існуванню самої держави.

Виділяють три типи корупції: корупція (дрібна), що ґрунтується на потребах – поширена серед військовослужбовців нижньої та середньої ланки, які не можуть задовольнити свої потреби через невисоку заробітну плату; жадібна (елітна) – поширена серед високопоставлених військових і державних чиновників; пірамідальна – пов'язує високопоставлених урядових і військових чиновників із військовослужбовцями нижньої та середньої ланок через перерозподіл незаконних доходів і потік корумпованих грошей знизу вгору.

**Ключові слова:** корупція, корупційний ризик, національна оборона, національна безпека, прозорість, громадське суспільство.