

# Public Participation in the Mechanism of Prevention and Anti-corruption in Ukraine

*Ihor Nalivayko<sup>1</sup>*

Recent events in the country have shown that many changes to legislation take place without public participation. Most of these changes concern the prevention of corruption. At the same time, it is considered a vital component of the country's national integrity system. The involvement of the public in this system makes it possible to create a more stable and effective anti-corruption system. In addition, public involvement opposes corruption in all forms: official crimes, abuse of power and theft of property. Although more people have recently become involved in public participation, there is still scepticism about its effectiveness.

It should be noted that the methods and tools used by the public in its fight against corruption are dynamic and often change. Recently, advocacy and lobbying are considered new methods; In addition, new tools to prevent crime are being sought. It was also noticed that the public uses new methods of forming anti-corruption policies. In addition, it has been observed that state authorities allow members of the public to formulate anti-corruption policies and even hold public discussions. Changes to the Law of Ukraine "On Prevention of Corruption" are necessary. We believe that the changes should include the obligation of the National Agency for the Prevention of Corruption to act as an independent observer. This would make public anti-corruption efforts twice what they are now due to the lack of responsible and conscious stakeholders in public anti-corruption organisations. Many opportunities for corruption have arisen because business or political forces control these organisations.

**Keywords:** public, prevention of corruption crimes, advocacy, public control.

## I. Introduction

The events of recent years in Ukraine confirm that significant legislative changes took place with the public's participation. In particular, this concerns the field of combating corruption crimes, as this sector of public relations is currently one of the keys to the further advancement of our country on the path of Ukraine's accession to the European Union. Public participation in a national integrity system will help build a sustainable system that effectively prevents corruption crimes as part of a broader response to abuse of power, official crimes, and various forms of misappropriation [1].<sup>2</sup> So far, we have seen an increase in this involvement, but the question of the effectiveness of this process remains open.

Practical public cooperation with state authorities and local self-government bodies in the areas of consultation, participation and partnership is an essential and effective tool:

- systematic interaction between the authorities and the public in the form of dialogue;
- Involvement of citizens in the management of state affairs;
- free access to information about the activities of authorities;
- Ensuring transparency, openness and transparency of the activities of state bodies;

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<sup>1</sup> Ihor Nalyvaiko, lecturer, Department of General Disciplines, Educational and Scientific Institute of Law and Innovative Education, Dnipropetrovsk State University of Internal Affairs, E-mail: [nalyvaikoio@gmail.com](mailto:nalyvaikoio@gmail.com), <https://orcid.org/0000-0003-1532-2996>.

<sup>2</sup> Research. 'National integrity system of Ukraine', 2015, <https://ti-ukraine.org/research/doslidzhennya-natsionalna-systema-dobrochesnosti-ukrajina-2015/>.

- Public monitoring and control [2].<sup>3</sup>

As we have repeatedly noted, the public participates in developing and implementing the anti-corruption policy by providing consultations. Based on this, we suggest considering these two phases separately.

## **II. Advice on the development of anti-corruption policy**

In the scientific literature, there is no single methodology for determining measures by which the public can participate in the development of anti-corruption policy. But after summarising all existing understandings, they can be grouped in one direction - implementation of explanatory work or agitation. Advocacy (citizen representation) represents citizens' interests through their participation in the decision-making process aimed at changing policy at the local or state level, the consciousness of process participants, and legislation. We note that today there is a draft of the Law of Ukraine "On Public Advocacy", which also defines advocacy, namely: the activity of an advocacy entity, which is aimed at supporting the adoption, amendment or repeal of laws, other regulatory legal acts, and the formation of their drafts, bodies of state power of Ukraine, bodies of local self-government of Ukraine, other subjects of power of Ukraine, their officials and officials, as well as deputies of all levels. Based on the above concepts, we can state that such civic representation programs can be aimed at policy change (public lobbying), systemic (change in decision-making practice) and democratic transitions.

The previously mentioned draft of the Law "On Public Advocacy" contains a list of the rights of an individual who carries out advocacy activities. Unfortunately, the rights of a legal entity of private law, a public association or an association of public associations that have the status of a legal entity are not provided for. However, based on the practical analysis of the activity of public anti-corruption organisations, we can highlight the following directions of their advocacy activities: a) initiating and conducting a public anti-corruption examination of the activities of public authorities, laws and draft laws; b) formation of anti-corruption initiatives; c) participation in the formation of anti-corruption institutions and re-certification of law enforcement officers; d) public discussion of decisions of state authorities, projects of normative legal acts; e) formation of joint consultation and advisory bodies of state authorities and expert institutions; e) conducting peaceful meetings.

Due to their importance, the above measures became the main ones in the formation of the national anti-corruption policy. Based on the implementation of the mentioned measures, the public informs the relevant bodies about changes in the national anti-corruption policy.

The main task of the public anti-corruption examination is to identify factors in current normative legal acts, draft normative legal acts that contribute or may contribute to the commission of corruption crimes and develop recommendations for their elimination. Scientists and experts agree that conducting a public examination is one of the most effective measures for identifying corruption incentives in existing laws or draft laws. According to the research, only about half (46 per cent) of the surveyed public experts noted that general anti-corruption expertise is one of their activity areas. Average citizens ignore the tool - only 20% consider it effective. The legislation regulates the procedure for conducting such inspections: Article 55 of the Law of Ukraine "On Prevention of Corruption" specifies that at the initiative of individuals, state and legal entities, conducting state inspections against corruption can lead to the adoption of normative legal acts and norms. The public anti-corruption examination of current legal actions, draft laws and their results is carried out at the expense of a physical, social group, legal

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<sup>3</sup> OSCE, Existing cooperation mechanisms between state authorities and civil society organisations in implementing the National Strategy for the Promotion of Civil Society Development in Ukraine 2016–2020 (Kyiv, 2016).

entity or from another source not prohibited by law. The results of the anti-corruption inspection, including the public one, were submitted by the subject of the issuance (acceptance) of the relevant decree, its legal successor, or the matter of the appropriate regulatory authorities in this area [3].<sup>4</sup> At the same time, the law is limited to general issues of public anti-corruption inspection and does not define procedural issues of its conduct. The Ministry of Justice of Ukraine approved a unique method of anti-corruption assessment [4].<sup>5</sup> This legal act regulates the process of conducting state and national anti-corruption inspections. It answers the question of how to run a detailed analysis of legislative acts and how to draw conclusions from the completed review.

It should be noted that the Regulations of the Cabinet of Ministers of Ukraine [5] also provide the right to conduct public anti-corruption audits: during such audits, the developer, at the request of citizens or associations of citizens, provides them with a draft of the project. An account with the necessary materials, informing about the conditions of completion of its preparation (§42).<sup>6</sup> In addition, this clause obliges the Cabinet of Ministers during the project's development to consider the proposals received due to the public anti-corruption examination [6].<sup>7</sup> Law of Ukraine dated June 19, 2003 [7] No. 975-IV "On Democratic Control of State Military Organizations and Law Enforcement Bodies." 19 Provisions within the framework of public control of public organisations In the process of reforming the components of the military organisation of the state and law enforcement bodies, the possibility of public review of draft laws, decisions and plans is guaranteed, and their conclusions and recommendations are submitted for consideration by the relevant state bodies.<sup>8</sup> Resolution of the Cabinet of Ministers of Ukraine dated November 5, 2008, No. 976, "On approval of the Procedure for public examination of the activities of the executive authority," also emphasises the importance of such an examination in a democratic state administration. The mechanism for regulating the activities of social groups over the executive power body Assess the effectiveness of its decision-making and implementation and prepare recommendations for solving the main social problems for consideration by the administrative power body in its work [8].<sup>9</sup>

However, public organisations do not often use the above behaviour as a model (for example, the same approach as the Ministry of Justice). That is why several public organisations led by Transparency International Ukraine, with the support of the United Nations Development Program in Ukraine, developed methodological proposals for developing general anti-corruption expertise aimed at helping less experienced people in public control. The method is accompanied by a manual outlining the basic rules for using the technique [9].<sup>10</sup> The objects of anti-corruption checks, in general, can be:

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<sup>4</sup> 'On Prevention of Corruption: Law of Ukraine No. 1700-VII', October 14, 2014, <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

<sup>5</sup> 'On the approval of the Methodology for conducting an anti-corruption examination: Order of the Ministry of Justice of Ukraine No. 1380/5', June 23, 2010, <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC203083/>.

<sup>6</sup> 'On approval of the Regulations of the Cabinet of Ministers of Ukraine: Resolution of the Cabinet of Ministers of Ukraine dated 07/18/2007 No. 950', July 18, 2007, <https://zakon.rada.gov.ua/laws/show/950-2007-п#Text>.

<sup>7</sup> Novikov O, 'Anti-corruption public expertise features of regulatory legal acts in Ukraine', *Public administration improvement and development*, no 10 (2015).

<sup>8</sup> 'On democratic civilian control over the military organisation and state law enforcement agencies: Law of Ukraine, No. 975-IV', June 19, 2003, <https://zakon.rada.gov.ua/laws/show/975-15#Text>.

<sup>9</sup> 'On the approval of the Procedure for facilitating public examination of the activities of executive authorities: Resolution of the Cabinet of the Ministers of Ukraine No. 976.', November 5, 2008, <https://zakon.rada.gov.ua/laws/show/976-2019-п#Text>.

<sup>10</sup> Osyka I, Khavronyuk M, Khmara O and Yatskiv T, *Methodology of public anti-corruption examination* (Kyiv, 2012).

- 1) Legislative act of Ukraine and its draft. These are the laws of Ukraine, international treaties valid in Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, and resolutions and orders of the Cabinet of Ministers of Ukraine.
- 2) Clarification of the application of the legislation of Ukraine. It is about providing appropriate clarifications regarding: the Verkhovna Rada of Ukraine by the Law "On the Verkhovna Rada of Ukraine"; Courts carrying out legislative activities by the Law "Judicial System and Status of Judges" and procedures; Ministry of Justice of Ukraine and other state authorities;
- 3) Regulatory and legal acts of state bodies and their projects. - acts: ministries, other central management bodies, management and control bodies; other state authorities; ministries and republican councils of the Autonomous Republic of Crimea (from now on - ARC); districts, cities of Kyiv and Sevastopol, districts. State administration, its departments, other links, local economic management bodies and control bodies [10, p.206-207].<sup>11</sup> Norms and legal acts of national bodies also recognise acts adopted (issued) by authorised subjects in the form and procedure established by law, but: not signed by relevant officials; not registered, but need registration; not yet entered into force; although they have entered into force, they have not yet entered into force; complete failure, despite the ability to trace certain connections;
- 4) International treaties that have not yet entered into force for Ukraine. Experts note that the choice of the object of public anti-corruption examination is also important. They should be selected according to the following criteria: the status of the document (legal force), the subject of the legislative initiative through which the relevant document was adopted, the subject of the legal provision, the implementation of the legislative proposal and other circumstances. [10, p.207-209].<sup>12</sup>

### **III. Formation of public initiatives**

An equally effective measure to prevent corruption crimes is the formation of public initiatives. Such initiatives include coalitions of public organisations (Reform Recovery Program, Initiative 11, etc.), public campaigns, information platforms, educational programs, etc. Examples of successful public initiatives include the creation of the Prozorro and Dozorro platforms, online services for monitoring public procurement, and the introduction the electronic declaration system for civil servants. The popularity of this approach to the prevention of corruption among public activists is evidenced by research data: 50 per cent of employees surveyed by public anti-corruption organisations noted that by participating in coalitions of public organisations, they were able to influence the formation of national anti-corruption policy. At the same time, the weaknesses of public initiatives at the local level should be noted compared to the national level. In one of their analytical articles, experts of the National Institute of Strategic Studies noted that this is due to social inertia of public organisations at the local level, inadequate legal support for the implementation of public initiatives, the reluctance of local councils to involve the public in joint decision-making [11].<sup>13</sup> One of the most successful public initiatives today is the creation of the public procurement information system Prozorro, which could save 22 billion UAH of budget funds.

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<sup>11</sup> Kalmykov D, Sinchenko D, Soroka O, Khavronyuk M and Shvedova G, *Prevention of corruption: methodological recommendations for local activists* (Kyiv: FOP Moskalenko, 2017), 206-207.

<sup>12</sup> Kalmykov, Sinchenko, Soroka, Khavronyuk and Shvedova, *Prevention of corruption: methodological recommendations for local activists*, 207-209.

<sup>13</sup> Matviychuk A, 'The civil initiative as a factor of self-organization of civil society in modern Ukraine', *Proceedings*, no 3-4 (83-84), 288-298.

The "Joint anti-corruption" initiative, launched at the "International Day of Combating Corruption in Ukraine 2016" forum, should become a cooperation model between the authorities, the public and businesses. The initiative was joined by Ukrainian public anti-corruption organisations, such as Package of Reforms for Revival (RPR), Public Organizations "Joint Anti-Corruption", Transparency International Ukraine, Project Office of NKREC, International Development Law and other organisations, Deloitte, EVA, ACC, Public Committees at various ministries and more than 30 public associations [12].<sup>14</sup>

Participate in the formation of anti-corruption bodies and re-certification of law enforcement officers. Shortly after the Revolution of Dignity ended, the public began actively promoting new legislative anti-corruption bills. In particular, the package mentioned above of anti-corruption reforms was adopted, establishing norms for creating two new institutions: NABU and NAZK. For NABU, for example, the public accumulated funds from Western partners. Thanks to their pressure, the process of creating NABU is transparent and democratic (it indirectly participates in the institution's formation). As for the NACC, Part 4 of Article 5 of the Law of Ukraine "On Prevention of Corruption" 5 states that the Competition Commission, which selects candidates, will include four persons proposed by public associations with experience in combating corruption crimes. Members of NACC.

In addition, the public can participate in the selection of candidates for the NPU (clause 46 of the Model Provisions) [13] (direct participation).<sup>15</sup> Of course, involving public members in the Competition Commission is timely, given the development of civil society in our country, but it has not been fully implemented. The authorities tried various ways to deprive public activists of participation in the Competition Commission. During 2015-2016, a competitive selection of members of the NAKC took place, and the agency started its work. Manipulation took place during the election of public representatives to the Competition Commission during the competition for the election body. Also, according to public experts, the appointment of a member of the NACC could violate the law. Even though the activity of the agency was planned for August 2015, it started only on August 15, 2016, with a delay of one year, so all the tasks that determine the implementation of the anti-corruption strategy and the national plan by the agency are subject to threats of timely and high-quality implementation [14].<sup>16</sup> It should also include establishing national agencies and national bureaus of investigation to investigate and manage assets derived from corruption and other crimes.

As a rule, public discussions of decisions and projects of regulatory legal acts of state bodies are held in the form of general discussions. The order and procedure for the implementation of this event are determined by the resolution of the Cabinet of Ministers of Ukraine dated October 3, 2010, No. 996 [15],<sup>17</sup> "On ensuring public participation in the formation and implementation of state policy." The resolution approved the procedure for conducting consultations with the public on issues of formation and implementation of state policy. Defines the main requirements for the Administration when conducting such consultations: explains the main issues on which talks can be conducted; forms of consultations - discussions, electronic consultations with the public (direct) and research of public opinion (indirect); discussion methods, etc. The law stipulates those consultations with the public in the form of public discussions and electronic

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<sup>14</sup> Havronyuk M, Koliushko I and Tymoshchuk V, *Alternative report on the assessment of the effectiveness of the implementation of the state anti-corruption policy* (Kyiv, 2017), 445.

<sup>15</sup> 'Standard procedure for conducting a competition for police service and filling a vacant position: Order of the Ministry of Internal Affairs of December 25, 2015 No. 1631.', December 25, 2015, <https://zakon.rada.gov.ua/laws/show/z0050-16#Text>.

<sup>16</sup> 'Evaluation of the implementation of the Anti-Corruption Strategy: achievements and problems.', August, 2017, <https://nazk.gov.ua/wp-content/uploads/2021/02/2.1.-Assessment-Implem-UKR-1-2014-2017.pdf>.

<sup>17</sup> 'Resolution of the Cabinet of Ministers of Ukraine "On ensuring public participation in the formation and implementation of state policy" No. 996', November 3, 2010, <https://zakon.rada.gov.ua/laws/show/996-2010-п#Text>.

consultations with the public are mandatory in the form of public consultations on draft laws: it provides for the implementation of regulatory activities in certain areas (in our case, anti-corruption). Therefore, the authorities should involve the public in the discussion of the adopted draft laws in the field of combating corruption crime. It should also be noted that public talks can be initiated at the request of the public itself. There are known cases when draft laws on amendments to anti-corruption legislation, prepared by public activists, were presented to the public. In public discussions and public opinion, the survey results were prepared, and the law drafters had to consider these results. One of the examples of general discussion was the proposal of a new draft anti-corruption strategy for 2018-2020.

#### **IV. Establishing joint advisory and advisory bodies of state bodies and expert bodies**

During the development of the new anti-corruption strategy, advisory bodies under the authorities began to be actively created: the National Council on Anti-Corruption Policy under the President of Ukraine and the Working Group on Reforms under the Ministry of Justice of Ukraine. The Commission of the Verkhovna Rada of Ukraine on Prevention and Counteraction of Corruption was established earlier. Still, after the Revolution of Dignity and the election of a new member of the Verkhovna Rada, it started working with an unknown force. Public experts and citizens evaluate the effectiveness of such participation poorly: only 13 per cent of experts claim that thanks to their participation in the National Council on Anti-Corruption Policy under the President of Ukraine, the Council for Prevention and Counteraction of Corruption of the Verkhovna Rada of Ukraine, the Group of Efforts "Anti-Corruption Reform", they can influence the formation anti-corruption policy, only 23% of citizens believe that public participation in the work of ministerial oversight committees and the sector is an effective measure to prevent corruption crimes. All of this shows that the state authorities limit themselves to the admission to participate in the work of such institutions without granting fundamental rights to the representatives of the public. The proposition that deliberative and deliberative bodies are controlled and managed remains relevant. The prevailing opinion in the Internet media is that most public committees fall into two categories: those that do not understand the institutions in which they operate, and those that are entirely under the control of state bodies and operate on their terms. He is interested in and comments only on the information allowed by the curator. Of course, in this case, it is not about public control [16].<sup>18</sup> Attention should also be paid to activities such as peaceful assemblies, protests and strikes to influence the authorities. Of course, public organisations strive to preserve the status of "peaceful" actions - rallies under different names and slogans. The latter, for example, can be a legislative consolidation of NABU's powers during a pre-trial investigation or a campaign to encourage high-ranking officials to fill out electronic documents. Implementing such measures will contribute to an informative analysis of the prevention of corruption crimes, as it will increase the understanding of the country's population and the dynamics and needs for preventing corruption [17, c.242].<sup>19</sup>

#### **V. Conclusion**

Analysing all existing measures of public participation in the formation of the national anti-corruption policy, it can be said that the public mostly did not encounter obstacles in the consultation process on the formation of such a policy. According to the research data, 60% of

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<sup>18</sup> 'Public councils: why they are needed and how they work in Ukraine', May 25, 2021, <https://prosvita.nazk.gov.ua/blog/gromadski-rady-dlya-chogo-potribni-ta-yak-pratsyuyut-v-ukrayini>.

<sup>19</sup> Shakun V, *Society and crime* (Kyiv: Atika, 2003), 242

public experts said that recommendations based on the results of anti-corruption research/public anti-corruption initiative were accepted and considered by authorities, and 60% answered that a set of legislative initiatives (President of Ukraine, Ukrainian anti-corruption industry), Cabinet of Ministers, public representatives of Ukraine) took into account the public's suggestions regarding improving anti-corruption legislation and considered them within the framework of the draft law. It is logical to assume that the main obstacles to implementing

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