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THEORY OF "RATIONAL CRIME" AS THE BASIS OF NATIONAL ANTI-CORRUPTION STRATEGY

The approaches to the formation of anti-corruption strategies were analyzed and the factors that negatively affect their implementation were identified. On the basis of the theory of "rational crime" by G. Becker strategic directions for the construction of relationship of integrity and anti-corruption policy development in Ukraine were proposed.

Keywords: corruption, national anti-corruption strategy, the theory of "rational crime," corruption prevention and counteraction.

Соловьев В. Теория "рационального преступления" как почва национальной антикоррупционной стратегии. Проанализированы подходы к формированию антикоррупционных стратегий и выявлены факторы, которые негативно влияют на их реализацию. На основе положений теории "рационального преступления" Г. Беккера предложены стратегические направления развития отношений добропорядочности и разработки антикоррупционной политики в Украине.

Ключевые слова: коррупция, национальная антикоррупционная стратегия, теория "рационального преступления", предотвращение и противодействие коррупции.

Background. Corruption in Ukraine, which has long been turned into a "chronic evil", has signs of systemic effects, the negative impact of which extends to all areas of public life. Despite the adoption of new anti-corruption laws and appropriate subordinate legislation, the level of corruptibility in Ukrainian society is critically high, which is a priori makes impossible to effectively implement the reforms initiated by the President of Ukraine, and threatens the national government security.

This requires immediate actions, including the development of scientific and theoretical foundations for the implementation of efficient mechanisms not only combating corruption by strengthening the accountability of perpetrators of corruption, but also reduction of the risk of its rise and prevention through the development of the national integrity system.

Analysis of recent research and publications. The basis for this article were the findings, theoretical statements set out in the works of such national scientists as M. Melnyk, E. Nevmerzhitsky, S. Stetsenko [1–4] and others, as well as the results of studies of G. Becker, D. Hellman, D. Jones, D. Kaufmann, S. Rose-Ackerman, R. Klithard [5–9] and other foreign scholars who studied corruption in its various forms and aspects.

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During the studying of the mechanisms of preventing and counteracting corruption the works of such scientists as T. Popchenko, A. Prokhorenko, S. Seregin [10–12] and others became very useful.

Despite a number of scientific works and publications devoted to corruption topics that deserve a positive assessment, the issue of developing an adequate to modern realities scientific and theoretical basis for the implementation of mechanisms for the realization of the disposition of the Law of Ukraine "On Principles of Preventing and Counteracting Corruption" [13], of the National Anti-Corruption Strategy for 2011–2015 years [14] are currently insufficiently studied.

The aim of the study is a theoretical justification of provisions of the national anti-corruption strategy. To achieve the goal the following *objectives* are set: to analyze the approaches to the formation of anti-corruption strategies and to identify factors that affect the implementation of the national anti-corruption strategy; to identify major shortcomings in the relationship of virtue in Ukraine, to offer strategic directions of their development and the elaboration of anti-corruption policy on the basis of the theory of "rational crime" by G. Becker.

Results. A manifestation of determination and political will to counteract corruption of the President of Ukraine is his proposal of anti-corruption legislation and a relevant package of legal acts. The adoption in 2011 of the relevant anti-corruption law and strategies, making the appropriate changes and additions to a number of legal acts was the turning point in the reform of the national anticorruption legislation. However, according to international experts' opinion, the grave disadvantage is its failure to comply with the provisions of the Convention [15], in particular Art. 26, which imposes liability for corrupt law-violation.

As is generally known, the national anti-corruption strategy is a legal act that outlines priority areas, solutions to the problem of corruption and defined goals. In order to achieve them there exist a clear program of specific anti-corruption measures. Development of a national anti-corruption strategy is seen as one of the ways of organization of joint efforts of the state and society to prevent and to oppose corruption. The priority areas of anti-corruption policies defined by the Strategy [14], include identifying and eliminating conditions that promote or could contribute to corruption and also preventing attempts to create them. The basic principles of its implementation are giving priority to preventive anti-corruption measures. It is foreseen that the strategy will be implemented through the development and adoption of the State Program on Preventing and Counteracting Corruption for 2011–2015, which corresponds to the structure of the Strategy and will include a list of activities, amount and sources of financing, expected results, indicators, deadlines, responsible executors as well as partners in the implementation of measures.

Requirements and standards of the Strategy are not set internationally, and the following factors are usually taken into account during its formation and implementation: the relevant best practices accumulated in the country and abroad; historical background, national characteristics and specificity of society development; political environment, economic and social factors; the extent of corruption coverage; the development of public and private institutions, their financial backstop and peopleware, the ability to effectively fight corruption and so on. As a result, in the world there are different approaches to developing strategic legal acts to resist corruption and to implement them. Thus, the strategic anti-corruption legal instrument in the Russian Federation (RF) is the National Strategy for Combating Corruption, adopted by the Presidential Decree of April 13, 2010, № 460 [16].

Comparing Russian and our national anti-corruption strategy, the benefits of the first is the fact that along with the strategy the National Plan for combating corruption was approved by. Serious shortcomings of both Russian and domestic anti-corruption strategies can be considered the fact that their projects were not discussed previously with the public and international experts. Analysis of Russian anti-corruption strategy allows selecting other conceptual drawbacks, including: ignoring international standards and guidelines on access to the information; "blur" in formulating of expected results, course of activities, mechanisms for implementation, monitoring and reporting on certain areas; drawing only the executive branch of government to the implementation of the national strategy and others.

According to the international experience, the effective institution combating and preventing corruption is a national integrity system, which consists of key institutions of state power, which fight against corruption. The effectiveness of countermeasures is to a large extent determined by the design and implementation of anti-corruption policy grounded on scientific and theoretical basis which is adequate to modern conditions of social development (*figure 1*).

Success of strategies of building up relationship of integrity and anti-corruption policy is determined primarily by the political will of the leadership of state as well as by consolidation of efforts of the legislative, executive and judicial branches of government, systematic character of relevant measures developed and implemented by them. As the domestic and international experience shows, in case of shortage of at least one component, the process of implementation of anti-corruption policy becomes complicated, if not impossible.

The confirmation of this can be the excursus to Ukraine's independence, during which series of concepts, programs and regulations were passed to combat corruption, and none of them gave the expected results. Thus, the analysis of the Concept of fighting corruption for 1998–2005, approved by the Decree of the President of Ukraine on April 24, 1998, № 367/98, [17] and the Concept of combating corruption in Ukraine "On

the Way to Integrity" approved by the Decree of the President of Ukraine on September 11, 2006, № 742/2006 [18], indicates the relative quality of the provisions of the anti-corruption activities. However, analysis of the outcomes of these concepts gives rise to state low efficiency and effectiveness of their implementation in practice: according to the annual data surveys carried out by national socio-logical services, and the results of expert examination of international organizations, levels of perception and extension of corruption in Ukraine remain consistently high, approaching the critical point.

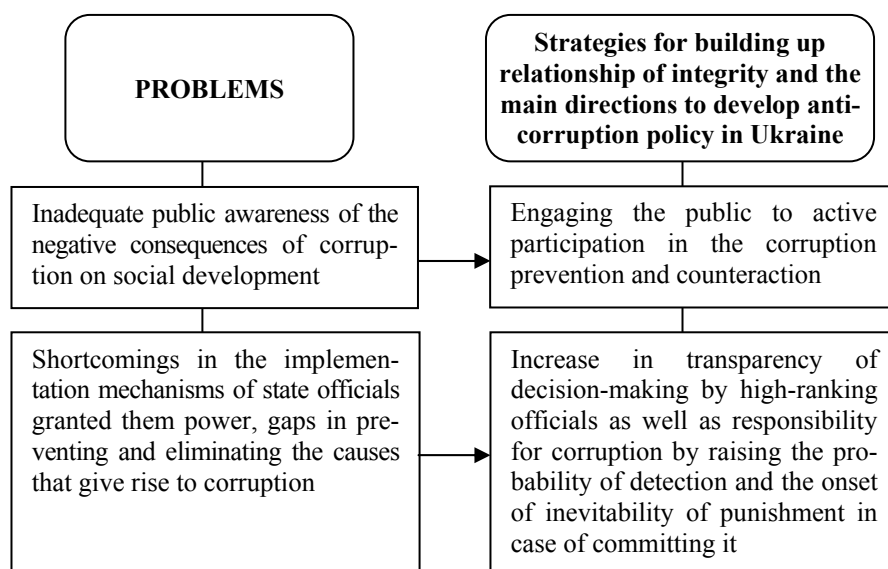


Figure 1. Matrix of problems and strategies for building up relationship of integrity, areas of development of anti-corruption policy in Ukraine

The foregoing confirms that the key flaws in combating corruption in Ukraine are the problems, referred to *figure 1*. In this context, it is necessary to agree with the position of M. Melnyk on the necessity of development of anti-corruption policy by increasing the risk of committing a corrupt act and reducing preconditions for corruption [1, p. 285]. This position is consistent with the proposed ways of building up integrity and reducing the risk of corruption rise.

The theory of "rational crime" worked out by Gary Stanley Becker, professor of the University of Chicago is proposed to consider the research and theoretical basis for the development of anti-corruption measures and building integrity. The main statements of this theory are described in the publication "Crime and punishment: an economic approach " [5, p. 169–217], for which G. Becker received the Nobel Prize in 1992. Nowadays economic models of human behavior offered by G. Becker are classified as classical theories. They are the basis for scientific research, development of new directions of economic theory, in particular the economy of discrimination, human capital theory, crime economics and so on.

Looking in more detail the theory of "rational crime", at first glance, it is rather difficult to find a correlation between economic risk and criminal behavior of a corrupt person. In addition, the term "risk" is mainly used in economics, finance and means awareness of the possibility of danger, loss, failure in some business, and is understood as the act in the hope of achieving success, positive outcome. However, G. Becker argues that committal of corrupt offense is nothing but a weighted under risk and uncertainty choice and adoption by the criminal of "investment decision". In his opinion, corrupt person is a psychopathological individual and social life victim, as well as the "rational investor", economist-analyst, who thoroughly compares the benefits (profit, advantages, benefits of the crime) and threats (negative consequences that may occur as a result of the crime and the likelihood of bringing him to justice) before committing offense, which, in fact, is the cornerstone of G. Becker's theory. This gives reason to believe that the level of corruption of officials depends on the ratio of current benefits (tangible and intangible) to potential corrupt individuals. This level is determined by the difference of profits from legal and illegal activities, the likelihood of exposing crime and incurring punishment, the severity of punishment and so on.

"Investing" of corrupt officials who "reasonably" respond to current opportunities, limits as well as the probability of punishment is entirely predictable. Phased commitment of "rational crime" by corrupt person has a certain sequence (figure 2). Conventionally following this algorithm, the potential corrupt individual consciously decides to commit corruptive offense or reject it: if the benefits prevail over the losses from crime, there appear prerequisites for its perpetration for him.

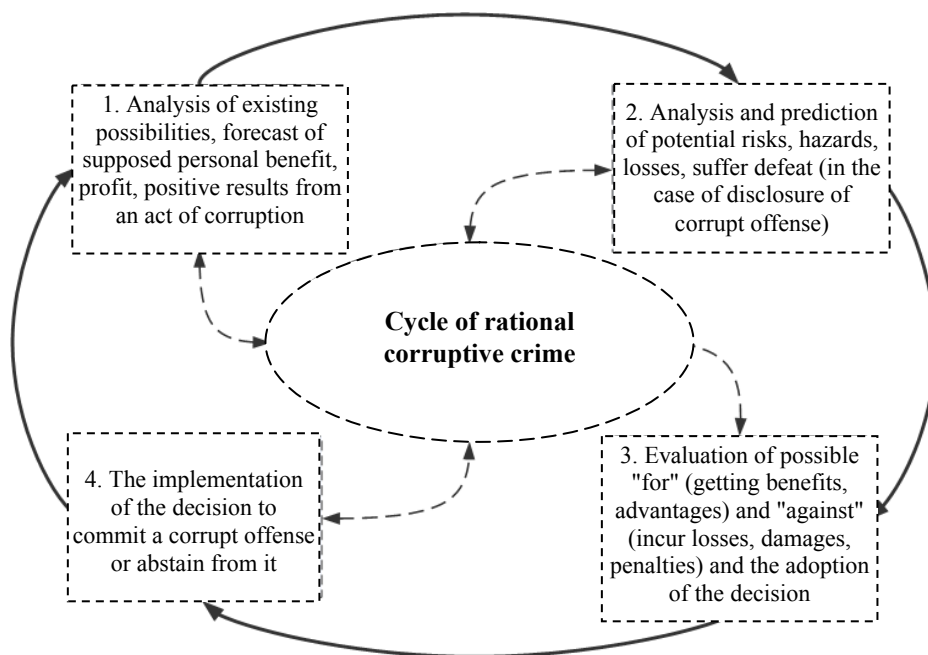


Figure 2. Scheme of rational stages of corrupt crime (developed by G. Becker [5])

According to the theory of G. Becker there are two key factors which determine the behavior of corrupt officials, either restrain them from committing or, conversely, lead to the corruptive offenses [5, p. 170–209]: moral and ethical condemnation of corrupt behavior that is socially determined – the realization that corrupt actions contradict the established rules of morality, ethics, and the inevitable negative attitude, condemnation of the corrupt person from the public (when committing his crime and incurring penalties); fear of exposure and the onset of the inevitability of punishment for the perpetration of corrupt act committed with appropriate consequences – a threat of imminent prosecution and severe penalty of confinement (imprisonment), confiscation of illegally obtained profits.

Coincidence of three circumstances leads to dissemination of corruption, namely:

- *concession of a large discrete power to an official* as to making personal important decisions, giving rise to high and minimum justifiable level of income from corruption;
- *low level of responsibility*, giving rise to a low level of risk and expected losses;
- *corruptibility of the system of state bodies*, which are aimed at preventing and combating corruption, thus avoiding or reducing liability for corrupt offenses.

Considering stated above, it is necessary to admit that building up relationship of integrity and developing policy to prevent and combat corruption should take place in two orientations (*figure 3*):

- *reducing the potential advantages and benefit from corruptive behavior (reducing the minimum justified level of income);*
- *increase of expected losses (increasing level of maximum justified potential losses), which can be compounded in such a way:*

$$\text{Expected losses} = \text{moral burden} + \text{expected punishment}$$

where *the expected punishment* = *probability of exposure* × *probability of conviction if the exposure* × *punishment*.

The implementation of the above stated approach to building up and developing anti-corruption measures should lead to changes in the behavior of officials that will result in reduction of losses incurred by the society due to corruption. Scheme analysis presented in *figure 3* also gives rise to the grounds to refer measures of improving transparency, accountability and responsibility of officials to priorities of anti-corruption policy. Within this analysis we should pay attention to:

- *the introduction of ethics among officials, that will increase the moral condemnation of corruptive behavior and reduce the potential benefits of corrupt actions (this includes the introduction of codes of professional ethics and conduct, taking of anti-corruption awareness and educational activities, etc.);*

- increasing the standards of transparency and openness in the activities of public authorities, which increases the likelihood of exposure of corruption committed by officials and punishment they incur; transparency in decision-making minimizes the possibility of making individual decisions, reducing the potential benefits from corruption;

- raising standards of accountability and responsibility through a legal settlement and reform of enforcement policy and judicial system that will increase (in the case of exposing corruptive crime) chance of making an objective verdict of guilty and punishment (increasing the probability of punishment for corrupt behavior). This will ultimately lead to higher expected losses and reduce of potential sources of income from corrupt offense.

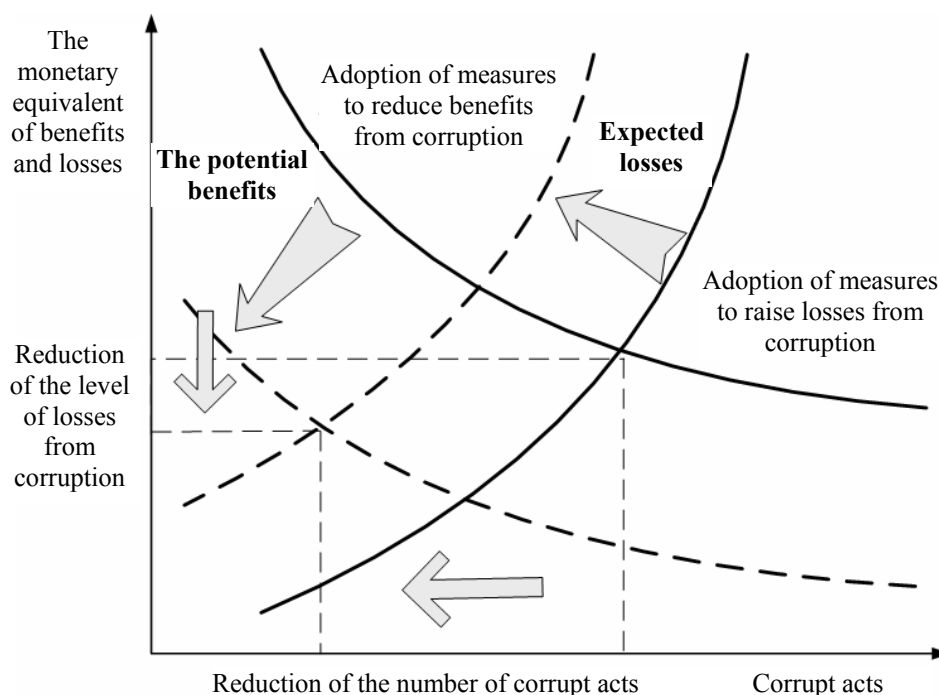


Figure 3. The scheme of building up relationship of integrity and developing strategic policies to prevent and combat corruption
(In theory of G. Becker [5, p. 182])

Conclusion. The obtained research results allow to state that the development of system of integrity and reducing the risk of corruption has to become a "foundation" for preventing and combating corruption. It was determined that the main imperfections in the relationship of virtue in Ukraine are: inadequate public awareness of the consequences of corruption; shortcomings in mechanisms of implementation by state officials granted them authority as well as in mechanisms of prevention and elimination the causes that give rise to corruption.

On the basis of the analysis done we can offer the following strategic directions of building up relations of integrity and anti-corruption policy development: the involvement of public in active participation in the prevention and combating corruption; enhancing transparency procedures of decision-making of high-ranking officials as well as responsibility for corruption by increasing the probability of crime clearance and the inevitability of punishment in the event of its perpetration.

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Соловійов В. Теорія "раціонального злочину" як підґрунтя національної антикорупційної стратегії.

Постановка проблеми. В Україні однією з проблем, що потребують невідкладного вирішення, є корупція, яка являє значну загрозу демократії, реалізації принципу верховенства права, соціальному прогресу, національній безпеці, становленню громадянського суспільства. Зважаючи на це, пріоритетами державної політики є створення дієвої системи запобігання корупції, ефективна протидія корупційним явищам, виявлення їх передумов та подолання наслідків.

Реалізація цієї мети неможлива без ґрунтовного вивчення соціально-економічних аспектів корупції та формування на цій основі теоретичних засад національної антикорупційної стратегії.

Метою статті є інтеграція наукових ідей видатного американського вченого Г. С. Беккера в національну доктрину боротьби з корупцією.

Результати дослідження. На основі аналізу теорії "раціонального злочину", розробленої Г. С. Беккером, визначено чинники, які детермінують корупційну поведінку суб'єктів владних повноважень та сприяють поширенню корупції в управлінському середовищі. Встановлено, що основними напрямками національної антикорупційної стратегії України мають стати зниження потенційних вигод і переваг, обумовлених корупційною діяльністю, а також актуалізація пов'язаних з нею ризиків (викриття, покарання, осуд громадськості тощо). У рамках цих стратегічних напрямів пропонується здійснити комплекс заходів, спрямованих на запровадження системи доброчесної поведінки посадових осіб, підвищення стандартів прозорості та відкритості в діяльності органів державної влади, вдосконалення правових та організаційних засад протидії корупції.

Висновки. Доведено, що впровадження теорії Г. С. Беккера дозволить істотно підвищити ефективність національної антикорупційної політики та досягти помітного прогресу в боротьбі з корупційними явищами.

Ключові слова: корупція, національна антикорупційна стратегія, теорія "раціонального злочину", запобігання та протидія корупції.