

ДЕРЖАВНЕ УПРАВЛІННЯ

Вусаха К.В.

Student,

University of Exeter, Great Britain

ANALYSIS OF THE PROBLEM OF MISAPPROPRIATION OF PUBLIC FUNDS BY OFFICIALS AND ITS IMPACT ON THE EXISTENCE OF A LEGAL STATE

Budget and financial sector of each country is criminalised by corruption and abuse of power by officials that are responsible for the legality of management of budget resources. Misappropriation of public funds by officials is the problem, which is a result of self-confidence of the governing structures of the state concerning the issue that all officials perform their duties according to the law and not violate it. The problem of misappropriation of public funds is a complex problem, which is in the case of its neutralization has the influence on other areas in the state [8, p. 71].

According to independent observers, the consequences of this situation for the economy of Ukraine in the case of absence of changes will be unfavourable. Now, Ukraine loses opportunities in investor sector, as foreign investors are looking toward for less corrupt and less criminalization countries with more transparent economies and stable political situation. This is despite the fact that in recent years, many amendments were made to the Act of Ukraine on Regime of Foreign Investment [5]. It is only one example of how the negative status of government directly affects the entire country in general [12].

Another problem is caused by serious mistakes and miscalculations in implementing reforms and the lack of adequate counteraction on the part state and its law enforcement agencies and regulatory agencies, which allows organized crime in the form of officials shy away from responsibility for their offences. It should be noted that the legal description of misappropriation of public funds lies in the fact that officials turn into some criminal environment. Officials in their work in Ukraine are focused on long joint criminal activity in order to obtain significant revenues that are disguised by the use of official economic and administrative structures of the state [10].

This situation leads to the fact that, in recent years, because of the feeling of impunity, ex-government (2010-2014) of Ukraine began to admit mistakes that significantly undermine the authority of the state. For instance, in 2012 State Agency for Investment and National Projects of Ukraine (central executive body, whose activities are governed by the Cabinet of Ministers of Ukraine) whose chairman at that moment was Vladyslav Kaskiv, signed an agreement of creation of a consortium for construction of LNG-terminal with Spanish company Gas Natural Fenosa. An interesting fact was that the government of Ukraine, definitely were not prepared for this deal and did not properly check the person who is about to sign a contract with the government. On the part of the Spanish company the agreement was signed by Jordi Sarda Bonvehi, a man who spoke Spanish and was recognized by the Head of State Agency. An agreement was signed in the presence of Prime Minister Mykola Azarov and Minister of Fuel and Energy Yuriy Boyko [16].

However, officials of Gas Natural Fenosa said that they did not know any Jordi Sarda Bonvehi and he does not represent their interests or those of their subsidiaries. The company added that they did not sign any agreements with Ukrainian government. Several days after this scandal Spanish company declared that Mr. Jordi Sarda Bonvehi done so at his own sole discretion and exceeded his authority. Nevertheless, Ukrainian government continued to stress that the agreement was in force. Several weeks after the scandal with this agreement, it was re-signed by authorized persons on both sides [13].

Nonetheless, after this scandal Ukrainian government did not resign and no minister or official has been dismissed. The Head of the State Agency for Investment and National Projects of Ukraine was reprimanded for the scandal surrounding the signing of the agreement for the construction of the LNG terminal [17].

This is despite the fact that his actions and actions of the Prime Minister of Ukraine clearly fall under the Article 367 of the Criminal Code of Ukraine, [1] which provides liability for the negligent service. In order a crime to be committed, an official must be irresponsible, show poor attitude of his/her duties, and therefore do them inappropriately (surface, absently, bad faith) or do not perform them at all [1]. Such features could be seen in actions of officials, who signed the agreement and who were prepared to sign it, because it had national significance. Of course, such acts should not be left without adequate response from the state and law enforcement agencies need to conduct uncompromising struggle with such cases.

The opposite situation had happened in the UK with MP Andrew Mitchell. He resigned from his post after he insulted a policeman. In a verbal dispute with police Mitchell got involved when leaving the government building on the Downing Street. He asked a police officer to open the gate, and then, exasperated by a policeman's actions he started swearing and called a police officer 'plebeian' [15]. It is hard to imagine this situation in Ukraine, when even more serious offences by MPs and Ministers cannot lead to the following steps.

Besides, lack of government control inevitably leads to the increase of crimes in the sphere of economic activity including money laundering, embezzlement and misappropriation, illegal export of capital and, as a result, disruption of social balance. It becomes an impetus to a sharp social stratification and differentiation of the population by income level. For example, in Ukraine there is almost absent the middle class. In terms of undue enrichment of others, it causes a sharp social disparity with enormous criminogenic potential [9].

Ignoring of the problem of embezzlement and misappropriation of public funds leads to the fact that government authorities begin to write laws for certain political parties and it has questioned the existence of legal state as such. A good example that proves this may be the fact, that in recent years the main act of Ukraine – Constitution was changed for five times. Changes were made in 2006 [3], 2010 [7], 2011 [4], 2013 [2] and 2014 [6]. Each time changes were related to the term of office of the President or Parliament of Ukraine, changing the form of government, changes in powers of public authorities, procedure of deputies' elections. Each new government tried to establish comfortable conditions for its existence. Unfortunately, the experience has shown that this did not go in the public interest [14].

These actions cause material and moral damage to the system of government, reputation of political power and prestige of the country, negatively affect the authority of the state, calling into question the rule of law, effective operation of government agencies and branches of government interaction. Renowned economist Becker G. convinced that an individual commits an offence if the expected benefit

exceeds the benefits that he could get by using his/her own time and resources in a different kind of activity. In his opinion, individuals do not become criminals because their motivation is different from the motivation of others, rather because they could get different benefits and costs [11, p. 8-9].

The state has not taken any serious and effective measures to combat misappropriation of public funds by officials. So, it is not surprising that in Ukraine this problem has still stayed pretty acute.

References:

1. Criminal Code of Ukraine [2001], Bulletin of the Verkhovna Rada of Ukraine 29.06.2001, № 2341-II
2. Act of Ukraine on Amendments to Article 98 of the Constitution of Ukraine [2013], Bulletin of the Verkhovna Rada of Ukraine 14.03.2014, № 586-VII
3. Act of Ukraine on Amendments to the Constitution of Ukraine [2004], Bulletin of the Verkhovna Rada of Ukraine 14.01.2005, № 2222-IV
4. Act of Ukraine on Amendments to the Constitution of Ukraine on Holding the next parliamentary election in Ukraine, President of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, town and city mayors [2011], Bulletin of the Verkhovna Rada of Ukraine 11.03.2011, № 2952-VI
5. Act of Ukraine on Regime of Foreign Investment [1996], Bulletin of the Verkhovna Rada of Ukraine 07.05.1996, № 93/96-BP
6. Act of Ukraine on The restoration of certain provisions of the Constitution of Ukraine [2014], Bulletin of the Verkhovna Rada of Ukraine 14.03.2014, № 742-VII
7. Constitutional Court of Ukraine, Decision of the Constitutional Court of Ukraine in the case of the constitutional petition of 252 deputies of Ukraine regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine «On Amendments to the Constitution of Ukraine» of 8 December 2004 N 2222-IV (case of compliance procedures for amending the Constitution of Ukraine), 30.09.2010, № 20-пп/2010
8. Kravchuk S., Economic crimes in Ukraine (Kiev, Kondor, 2009)
9. Korystin O.E., 'Money laundering: theoretical and legal framework to combating and prevention in Ukraine' (Monograph, Kyiv, NUIA 2007) 222
10. Kuzmenko B., 'Corruption and Economic criminality in modern Ukraine: impact on national security' (Law of Ukraine № 7, 1997) ISSN 0132-1331
11. Revak I.O., Corruption: theoretical and methodological bases of research (Lviv, LDUVS 2011)
12. Jan Noytse, Adrian Karatnycky, 'Corruption, Democracy and Investments in Ukraine' (KAS Policy Paper, Kyiv, April 2008) <http://www.kas.de/wf/doc/kas_13705-1522-1-30.pdf?080513111155> accessed 13 September 2014
13. Oleg Varfolomeyev, 'Scandal Mars Launch of Ukrainian LNG Terminal Project' (4 December 2012) Eurasia Daily Monitor Volume: 9 Issue: 221 <[http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=40199&tx_ttnews\[backPid\]=7&cHash=7655aff2a1c592a5e22be983249c8eec#.U9WZX7GW7cg](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=40199&tx_ttnews[backPid]=7&cHash=7655aff2a1c592a5e22be983249c8eec#.U9WZX7GW7cg)> accessed 27 September 2014
14. Razumkov Centre, 'Political corruption in Ukraine: actors, manifestations, problems of countering' (2009) National Security & Defence № 7 <http://www.razumkov.org.ua/eng/files/category_journal/NSD111_eng_1.pdf> accessed 14 September 2014
15. BBC website, 'Andrew Mitchell under mounting pressure in 'police insult' row' (21 September 2012) <<http://www.bbc.co.uk/news/uk-politics-19675297>> accessed 27 September 2014
16. iPress.ua website, 'Unknown signed an agreement with the government of Ukraine for \$ 1 billion, Azarov said it is historic moment' (28 November 2012) <http://ipress.ua/news/nevidomyy_rozviv_uryad_ukrainy_na_1 mln_azarov_nazvav_tse_istorychnym_momentom_12068.html> accessed 27 September 2014
17. Liga website, 'Kaskiv was reprimanded for scandal with the LNG terminal' (15 January 2013) <http://news.liga.net/news/economics/796201-kaskiv_poluchil_vygovor_za_skandal_s_lng-terminalom.htm> accessed 27 September 2014