

TERESA ASTRAMOWICZ-LEYK, TETYANA NAGORNYAK,  
NATALIIA NATALINA, ANNA OSMOLOVSKA, VOLODYMYR YURKOVSKYI

# Anti-Corruption Policy in Ukraine During the War with Russia

Anti-corruption policy indicates the maturity of the political system in conditions of uncertainty. In times of war, anti-corruption principles and mechanisms become decisive for achieving victory over the enemy and successfully reviving the state. According to the authors, Ukraine should urgently resolve corruption issues in such sectors (institutions) as health care, judiciary, prosecutor's office and law enforcement agencies, customs and tax service, state regulation of the economy and interaction between the state and the private sector, and activities of political parties. Moreover, in conditions of Russia's armed aggression against Ukraine, solving corruption issues in the defence sector and preventing corruption in state-owned enterprises, considering the significant damage caused by corruption in this sector, is of primary importance.

**TERESA ASTRAMOWICZ-LEYK** associate professor

University of Warmia and Mazury in Olsztyn

ORCID – 0000-0001-5881-2325 / e-mail: teresa.astramowicz@uwm.edu.pl

**TETYANA NAGORNYAK** associate professor, National University of Kyiv Mohyla Academy

ORCID – 0000-0002-6416-5774 / e-mail: t.nagornyak@ukma.edu.pl

**NATALIIA NATALINA** PhD in political science, Vasyl' Stus Donetsk National University

ORCID – 0000-0003-2951-6425 / e-mail: n.natalina@donnu.edu.ua

**ANNA OSMOLOVSKA** PhD in political science, Educational Academy „UAdvise”

ORCID – 0000-0002-8795-8910 / e-mail: a.osmolovska@uadvise.com.ua

**VOLODYMYR YURKOVSKYI** postgraduate student

Vasyl' Stus Donetsk National University

ORCID – 0009-0007-6121-9259 / e-mail: v.iurkovskiy@donnu.edu.ua

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# 1 | Introduction

Their vulnerability ensures the maturity of modern political systems due to political development factors such as transparency of the electoral process, legitimacy of state power, publicity of decisions in the territorial communities management, and level of corruption, migration, or poverty. In 2022, Ukraine received 33 points out of a possible 100 in the Corruption Perceptions Index (CPI)<sup>[1]</sup>. In conditions of war and post-war reconstruction of Ukraine, the anti-corruption policy becomes one of the priorities of state administration. Effective implementation of anti-corruption mechanisms and practices in all areas of the state's life will determine the success of Ukraine's restoration after the victory. It will become a guarantee of the trust of investors, partners, and those Ukrainians who were forced to leave the country due to the war and those who have defended the national sovereignty and European security for nine years of war in the fields of brutal battles and their workplaces.

The article aims to present legal norms and institutions for combating corruption in Ukraine, particularly emphasising the wartime period. The author's research hypothesis is as follows: due to severe corruption before the war, Ukrainian society and state authorities will intensify the fight against it. Being aware of the threats in domestic and foreign policy, it will also take measures to strengthen the trust of partners who are ready to act as donors during the war and in the process of post-war restoration. The main research problems are:

- What does corruption stand for?
- In which areas does Ukraine take anti-corruption measures?
- Does Ukrainian legislation rely on international law in defining corruption?
- In which spheres does Ukrainian society experience corruption?
- What is the role of civil society and mass media in the fight against corruption?
- What actions do anti-corruption institutions in Ukraine take?
- What role does the political elite of Ukraine play in the fight against corruption?

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<sup>1</sup> Transparency International, *Corruption Perceptions Index*. 2022. <https://www.transparency.org/en/cpi/2022>. [accessed: 06.03.2023].

- What is the importance of combating corruption by the Ukrainian state and society in relations with international partners?

The primary research method used in the article is the institutional-legal method.

## 2 | Methodological framework

The fight against corruption in Ukraine during a full-scale war can be considered a process in which none of the actors has a decisive influence on its dynamics and sporadic transformations under the influence of interests among individual subjects and external circumstances. In this article, „a political subject” is an agent of effective political decisions and actions, which can transform the political space, forming collective meanings and values, institutionalizing processes, and constructing social reality. The main criteria of political subjectness are not only the intention for political action and availability of appropriate resources but also the effectiveness of such actions and their ability to cause political changes. With the availability of certain political subjects in Ukraine and outside its borders who are interested in developing an anti-corruption policy, their actions must be consistent with the internal properties of the system itself, and transformations will be random and unpredictable. Accordingly, an anti-corruption policy can be considered as „subjectless”. In political science, the subjectlessness of order is contrasted with the subjectness of social changes<sup>[2]</sup>.

As per Article 1 of the Law of Ukraine On the Prevention of Corruption<sup>[3]</sup>, „corruption” is defined as the misuse of official powers or related opportunities to gain an unlawful benefit for oneself or others. Corruption also involves accepting or promising to accept such a benefit or its offering. The intention is to encourage them to use their official powers or related

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<sup>2</sup> Tetyana Nagornyak, Nataliia Natalina, Mykola Polovyi, „Political Subjectivity in the Conditions of New World Order Formation” *Politology Bulletin*, No. 87 (2021): 218–240. <https://doi.org/10.17721/2415-881x.2021.87.218-240>.

<sup>3</sup> Law of Ukraine On the prevention of corruption, Verkhovna Rada of Ukraine. October 10, 2014. <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

opportunities illegally or, at their request, to other individuals or legal entities. In turn, the first part of Article 3 of the Law outlines a broad spectrum of individuals to whom this law applies. These include persons authorized to execute state or local self-government functions, as well as candidates for the presidency or People's Deputies of Ukraine, who are registered in compliance with the law.

Additionally, individuals equivalent to those authorized to perform state or local self-government functions fall under the scope of this law. This encompasses people who serve on supervisory boards of state-owned banks, enterprises, or organizations to make a profit, business partnerships with over 50 per cent of their shares (parts) owned by the state, individuals who are not government employees or local government officials but provide public services, representatives of public associations, scientific and educational institutions, qualified experts, and individuals with significant economic and political influence in public life (oligarchs). Moreover, individuals who hold positions that involve organizational, managerial, administrative, or financial responsibilities or are explicitly authorized to undertake such duties in private legal entities, regardless of their legal and organizational form, are also included.

Although the concept of „corruption” is defined by the norms of national law, its definition is also reflected in international legal documents. Thus, the UN Convention against Corruption, dated October 31, 2003<sup>[4]</sup>, and ratified by Ukraine in 2006<sup>[5]</sup>, defines corruption indirectly by defining socially dangerous forms of activity and establishing them as criminally punishable. Such forms of activity, in particular, include bribery of national public officials (Article 15) or foreign public officials and officials of intergovernmental organizations (Article 16), embezzlement, misappropriation or other inappropriate use of the property by a public official (Article 17), abuse of influence (Article 18) or official position (Article 19), unjust enrichment (Article 20), bribery in the private sector (Article 21), obstruction of justice (Article 25).

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<sup>4</sup> United Nations: Office on Drugs and Crime, *United Nations Convention Against Corruption*, October 31, 2003. <https://www.unodc.org/unodc/en/corruption/uncac.html>.

<sup>5</sup> Verkhovna Rada of Ukraine, *Law of Ukraine On Ratification of the United Nations Convention Against Corruption*. October 18, 2006. <https://zakon.rada.gov.ua/laws/show/251-16#Text>.

Furthermore, the Council of Europe Criminal Law Convention on Corruption (1999)<sup>[6]</sup>, ratified by Ukraine in 2006<sup>[7]</sup>, contains explicit norms to establish features of the above-mentioned legal category in a generalized form. Thus, according to the definition of the Convention, corruption is the receipt by officials, directly or indirectly, of any unlawful advantage, for them personally or for any other persons, or acceptance of an offer or promise to provide such an advantage to fulfil or not fulfil their official duties.

In the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in 1979<sup>[8]</sup>, corruption is interpreted as the commission or failure to commit any act by an official in the performance of duties or because of these duties as a result of required or accepted gifts, promises or inducements, or their unlawful receipt whenever such act or omission occurs. The expression „act of corruption” mentioned in the international legal act is understood as an attempt at bribery. According to the provisions of Article 8 of the UN Convention against Transnational Organized Crime (2000)<sup>[9]</sup>, ratified by Ukraine in 2004<sup>[10]</sup>, corruption is defined as a person’s use of their official position to receive an illegal benefit.

The definition of corruption in international legal acts may differ depending on their context and purpose. However, overall, corruption is considered an illegal and morally wrongful use of power or official authority for personal gain. At the same time, all these documents aim to fight corruption and place responsibility on the states for its prevention and eradication.

By analyzing the above provisions of national legislation and international legal acts related to preventing and countering corruption, it becomes apparent that corruption is a criminal act committed by individuals who misuse their power, official authority, or other resources to benefit themselves, often at the cost of public interests. Corruption can manifest

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<sup>6</sup> Council of Europe, *Criminal Law Convention on Corruption*, European Treaty Series – No. 173, January 27, 1999. <https://rm.coe.int/168007f3f5>.

<sup>7</sup> Verkhovna Rada of Ukraine, *Law of Ukraine On ratification of the Criminal Law Convention on Corruption*, October 18, 2006. <https://zakon.rada.gov.ua/laws/show/252-16#Text>.

<sup>8</sup> United Nations General Assembly, *Code of Conduct for Law Enforcement Officials*, resolution 34/169, December 17, 1979.

<sup>9</sup> United Nations, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2225 UNTS 209. November 15, 2000.

<sup>10</sup> Verkhovna Rada of Ukraine, *Law of Ukraine On the ratification of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, February 4, 2004. <https://zakon.rada.gov.ua/laws/show/1433-15#Text>.

in several forms, such as bribery, money laundering, conflicts of interest, abuse of power, and more. Nevertheless, a crucial characteristic of corruption is that any illegal behaviour performed by civil servants or other individuals authorized to perform state functions or individuals under the purview of the law is only regarded as corruption when it is motivated by self-interest or the interest of third parties.

### 3 | Results and Discussion

Corruption in any of its manifestations damages individual interests and the economy, democracy, legal system, and public trust in the state. Violating the fundamental principles of a democratic state, corruption leads to inequality, a crisis of confidence, failure to make decisions in the interests of citizens, and the alienation of foreign investors, which, in general, threatens the stability and legitimacy of the political system (especially for young democracies)<sup>[11]</sup>. Therefore, the fight against corruption and its causes is an essential task for any country. The need to tackle corruption is reflected in national legislation and numerous international documents and agreements, particularly since corruption practices often have a global impact. The most relevant results of research on corruption in Ukraine<sup>[12]</sup> indicate that:

- Citizens are most affected by corruption when accessing medical and educational services or interacting with law enforcement agencies, the prosecutor's office, the judicial system, and the patrol police.
- Businesses that interact with public institutions face the most corruption when dealing with law enforcement agencies, the prosecutor's office, energy companies, state authorities, local self-government bodies, executing court decisions, and dealing with the judicial system.

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<sup>11</sup> Wayne Sandholtz, Rein Taagepera, „Corruption, Culture, and Communism” *International Review of Sociology*, No. 15:1 (2005): 109–131. <https://doi.org/10.1080/03906700500038678>.

<sup>12</sup> For instance, World Bank Group, *Enterprise Surveys Indicators Data. Ukraine 2019 Country Profile*. <https://www.enterprisesurveys.org/en/enterprisesurveys>. [accessed: 6.03.2023].

- Businesses face corruption in various areas, such as connecting to communication services, obtaining licenses and permits, interacting with the tax service, and securing government contracts.
- According to citizens, businesses, and experts, the most corrupt institutions in Ukraine include customs, courts, parliament, the prosecutor's office, and the police (excluding the patrol police).
- Businesses and experts consider the following areas to be the most corrupted: land relations, urban planning, construction of extensive infrastructure facilities, energy sector, privatization of enterprises, and public procurement.

Within the framework of the study of the anti-corruption policy in Ukraine during the war, the subjectness of the following actors will be reviewed (Table 1):

**Table 1. The main subjects of anti-corruption policy in Ukraine as of 2022\***

<b>Main actors</b>	<b>Factors of influence</b>	<b>Limiting factors</b>
Broad layers of the population	<ul style="list-style-type: none"> <li>– Public opinion on corruption;</li> <li>– Having trust in the political regime (legitimization)</li> </ul>	<ul style="list-style-type: none"> <li>– Temporary absence of elections;</li> <li>– Prohibition of political rallies and protests during the war to put pressure on the authorities to investigate corruption cases;</li> <li>– The problem of corruption recedes into the background compared to personal security.</li> </ul>
Active public groups and media representatives	<ul style="list-style-type: none"> <li>– Articulating the problem and bringing it to the general public;</li> <li>– Drawing the attention of the elite and the international community to corruption cases by announcing investigations.</li> </ul>	<ul style="list-style-type: none"> <li>– Opposition from the political elite (state apparatus);</li> <li>– Closure of registries because of the war and limitation of public control;</li> <li>– Self-censorship regarding the disclosure of corruption cases during the war.</li> </ul>
Business	<ul style="list-style-type: none"> <li>– Interaction with the authorities at various levels and in various forms (work in public councils, consultations on the development of legislation and participation in dialogues with the government);</li> <li>– Sponsorship and charity (growth of the economy and social well-being);</li> <li>– Transparency and openness of one's activities (publication of financial reports and declarations, open tenders and property details);</li> <li>– Growth of competition</li> </ul>	<ul style="list-style-type: none"> <li>– High risks: speaking against corruption, business risking its interests, in particular, contracts, licenses, land lots, etc.;</li> <li>– High costs (investment in control systems to ensure compliance with legislation and prevent corruption);</li> <li>– Lack of support and, in some cases, pressure from state authorities;</li> <li>– Imperfect legislation</li> </ul>

Main actors	Factors of influence	Limiting factors
Anti-corruption institutions	<ul style="list-style-type: none"> <li>– Legislative powers and infrastructure to fight corruption;</li> <li>– Support of international partners</li> </ul>	<ul style="list-style-type: none"> <li>– Slow progress in appointing heads of institutions and approving necessary legislation;</li> <li>– Political pressure from the elite and “shadow” arrangements</li> </ul>
Political elite (state apparatus)	<ul style="list-style-type: none"> <li>– The political will to investigate high-profile corruption cases;</li> <li>– Means of facilitating the systematic and unhindered work of anti-corruption institutions;</li> </ul>	<ul style="list-style-type: none"> <li>– No need for mandatory declaration of income during the war</li> <li>– Relatively low transaction costs from corruption practices compared to expected benefits.</li> </ul>
International partners (elite)	<ul style="list-style-type: none"> <li>– Macro-financial assistance and arms supply</li> <li>– Ukraine’s declared desire to join NATO and the EU</li> </ul>	<ul style="list-style-type: none"> <li>– Lack of direct levers of influence and the need to exercise remote control and pressure through tools of public diplomacy and civil activists</li> </ul>

\* Compiled by the authors

### 3.1. Ukrainian society (broad layers of the population)

In martial law conditions imposed on Ukraine’s territory on February 24, 2022, society has instead limited levers of influence on the political field, including developing and implementing anti-corruption policy. Citizens can temporarily not express their political position by participating in elections or organizing protests. They are partially restricted in their freedom of movement and other constitutional rights. On the other hand, high levels of public trust in the authorities are critically important for the organization of effective resistance to Russia and the functioning of the state in wartime. That is why the political elite seeks to avoid any emotional triggers that can cause public discontent, such as high-profile corruption scandals and inadequate responses to them by the authorities.

The latest research results indicate that the problem of corruption, as before, remains one of the most pressing challenges for the population of Ukraine. According to the study conducted in the spring of 2020 using the Methodology of a standard survey on corruption in Ukraine, 91.2% of the Ukrainian population considers corruption very serious (69%) or a rather serious problem (22.2%). On the same level as this challenge, only the war in Donbas can be singled out, as evidenced by the corresponding survey



indicator – 72.7% of respondents considered this problem very serious, and another 17.1% – rather serious<sup>[13]</sup>.

The results of various sociological studies for 2021–2022 similarly indicate that while Ukrainians perceive corruption as one of the most pressing problems, they primarily do not consider it a personal problem. Thus, according to a poll by the Rating Group in November 2021<sup>[14]</sup>, only 25% of respondents mentioned corruption in state bodies as a personal problem. Furthermore, only 19% indicated that during the last two years, they or their acquaintances had to make gifts, give, or pay bribes to representatives of local authorities to receive some services or documents from the latter. 79% answered that they had not encountered such a problem. In part, such results can be explained by the success of the digitalization of several state and administrative services through the «Diya» portal and other online applications during 2019–2022, reducing citizens' need to deal with the bureaucratic apparatus and decreasing household corruption.

After the start of a full-scale war, protection against corruption and smuggling remained important from the point of view of personal security for only 18% of respondents, according to the results of a Rating Group survey in May 2022<sup>[15]</sup>. Safety of life and protection from terrorism and military threats came first for Ukrainians (52% of respondents), and social protection came second (20%). The largest group of respondents, for whom protection against corruption remains an important issue of personal security, are men, mainly from the western regions of Ukraine. Such results might be partially explained by mobilization and border crossing bans for Ukrainian men during the war, which corrupt practices can potentially resolve.

At the same time, the fight against corruption remains part of most Ukrainians' long-term vision of the future. Thus, in June 2022<sup>[16]</sup>, 48% of respondents indicated it as the most important goal of Ukraine for the next ten years. Overcoming corruption is the second most important task

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<sup>13</sup> National Agency on Corruption Prevention, *Corruption in Ukraine 2020: Understanding, Perception [in Ukr.], Prevalence*. <https://bit.ly/405wcV8>. [accessed: 06.03.2023].

<sup>14</sup> Rating Group, *Socio-political attitudes in Ukraine: an IRI survey [In Ukr.]*, December 12, 2021. <http://bit.ly/3Lmkrp2>.

<sup>15</sup> Rating Group, *Eleventh National Survey: Personal Freedom, Security and the Issue of Weapons [In Ukr.]*, May 23, 2022. <http://bit.ly/3ldrvgw>.

<sup>16</sup> Rating Group, *IRI survey: Socio-political attitudes in Ukraine (June 2022) [In Ukr.]*, August 15, 2022. <http://bit.ly/3zJ0duY>.

after restoring territorial integrity (49%) and even ahead of strengthening the country's defence capabilities (35%) and joining the European Union (EU) (33%).

Such a perception of corruption by Ukrainian society is facilitated mainly by the formed media discourse and anti-corruption activists. Thus, in the Ukrainian segment of Google from February 2022 to February 2023, the word "corruption" was mentioned in 348,000 online sources on the „News” tab. At the same time, the number of searches for the word “corruption” in the Ukrainian segment of Google varies from 25 to 100 per day, according to data from the Serpstat.com service. That is, users' interest in searching for information about corruption is almost ten times lower than the attention that news media and other online sources pay to its coverage. More than half (54%) of all searches by users of the Ukrainian segment of Google in the year since the start of the full-scale war were related to anti-corruption legislation and another 20% – with reference searches for the definition of the categorical apparatus. As for search queries about the word “corruption”, most were related to manifestations of administrative or academic corruption, bribery of voters, etc.

### 3.2. Active public groups and media representatives

The function of active public groups and journalists in the anti-corruption system is to form public opinion and articulate the position of broader layers of society regarding corruption. At the beginning of the full-scale invasion, there was some self-censorship on the part of journalists in exposing facts of corruption in the state apparatus so as not to contribute to enemy propaganda and not to weaken the country's defence capabilities. However, at the end of the first year of the war, journalists exposed the most high-profile corruption scandals, which impeded relevant staff decisions and criminal cases.

At the same time, to make noticeable changes in the system, such journalistic revelations, as a rule, should coincide with the interests of other subjects and favourable circumstances. Notably, during the entire war, the most noticeable reaction of the authorities to corruption was recorded on the eve of the Ukraine-EU Summit in Kyiv on February 3, 2023, and the adoption of important decisions regarding the start of European integration negotiations. For example, K. Tymoshenko, the deputy head of the Office of the President, wrote a resignation letter only on January 24, 2023.

However, a corruption scandal surrounding his name arose as early as October 2022 after journalists discovered that the official drives an expensive off-road vehicle given to Ukraine as charitable aid for transporting citizens from the war zone and humanitarian missions<sup>[17]</sup>. On the eve of the Summit, the National Agency on Corruption Prevention (NACP) announced the beginning of an investigation into the signs of illegal enrichment of P. Halimon, People's Deputy from the pro-presidential party „Servant of the People”. An investigation into his purchase of luxury real estate during the war was previously made public<sup>[18]</sup>.

In January 2023, the Ministry of Defense of Ukraine's leadership was embroiled in a scandal following the release of documents confirming the procurement of food supplies for military units at prices higher than market rates<sup>[19]</sup>. After the significant spread of this news in the Ukrainian and international media, the authorities were forced to initiate a series of high-profile resignations. Law enforcement agencies searched several high-ranking officials, including oligarch I. Kolomoiskyi and a former minister A. Avakov. In addition, the government dismissed the management staff of the State Customs Service, and searches were conducted in several regional tax offices.

It is possible that, in some instances, drawing public attention to individual corruption cases may be an element of internal political struggle between different interest groups among political and law enforcement incumbents. However, it is the publicity and comprehensive disclosure of corrupt practices that, according to Ukrainian practice, is probably the only effective mechanism for starting investigations.

The war also strains the ability to carry out public control of corruption risks. After the start of the full-scale invasion, public access to important registers and databases, including the Unified State Register of State Property, which records more than one million objects of state property, was closed or partially restricted. In addition, the Cabinet of Ministers allowed the conclusion of direct contracts for public procurement and

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<sup>17</sup> „Why Yermak's deputy drives a humanitarian car from General Motors [In Ukr.]" *Bihus info*, (2022). <https://www.youtube.com/watch?v=P7gi4Hq-iNQ>.

<sup>18</sup> Mykhailo Tkach. „A servant at a house on the Pechersk Hill. As deputy head of the SN faction, he bought a mansion in the centre of Kyiv" [In Ukr.] *Pravda.com.ua*. January 23, 2023. <https://www.pravda.com.ua/articles/2023/01/23/7386031/>.

<sup>19</sup> Yuriy Nikolov, „Defence Ministry's rear rats make more money on food for the Armed Forces during the war than in peace" *zn.ua.*, January 23, 2023. <http://bit.ly/3ycBP1n>.

limited their publication. According to Transparency International<sup>[20]</sup>, the number of published contracts decreased by 2.6 times compared to 2021, and the number of auctions – decreased by four times.

In addition, due to restrictions on the operation of open data portals, websites of local self-government bodies and their divisions, the amount of available information about the operation of city councils decreases. At issue are lease agreements, residential premises provision, land cadasters' functioning, purchases, etc. On the other hand, restricting those open channels of information available to the general public before the full-scale invasion of Russia is also connected with objective reasons – national security, the vulnerability of electronic systems to cyber-attacks, and the need to protect the country's strategic communications.

### 3.3. Ukrainian and international businesses

A 2019 World Bank survey of Ukrainian entrepreneurs<sup>[21]</sup> found that corruption was the biggest obstacle to doing business, with 74% of business entities citing it as a major issue – ranking behind only political instability at 25.4% and significant restrictions at 56%. Additionally, 32.3% of business representatives identified the state of the country's judicial system as a “significant limitation”. These figures are high compared to the regional and global averages of 12.7% and 15.4%, respectively.

In a separate survey conducted by the American Chamber of Commerce in Ukraine in October 2019<sup>[22]</sup>, 41% of business representatives reported experiencing corruption in the past year. Furthermore, 42% of respondents believed that corruption in Ukraine had increased in 2019 compared to 2017. Respondents identified implementing effective judicial reform (85%) and fighting corruption (54%) as the most important steps for improving the business climate and attracting foreign investment. These measures were also deemed necessary by business leaders, the government, the business ombudsman, business associations and international partners.

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<sup>20</sup> Transparency International Ukraine, *Trust and Corruption during Full-Scale War*, December 09, 2022. <https://ti-ukraine.org/en/blogs/trust-and-corruption-during-full-scale-war/>.

<sup>21</sup> World Bank Group, *Enterprise Surveys Indicators Data. Ukraine 2019 Country Profile*.

<sup>22</sup> American Chamber of Commerce in Ukraine, *Results of the business climate survey. October 2019* [in Ukr.]. <https://bit.ly/3fbrdnG>. [accessed: 06.03.2023].

Given the information mentioned above, it is essential to consider the results of annual surveys conducted among foreign investors in Ukraine, which reveal the following key aspects:

- The most significant obstacles to foreign investment in Ukraine are widespread corruption and mistrust of the judicial system. These two obstacles are far ahead of all other problems.
- The severity of corruption and mistrust of the judicial system has not changed significantly. In surveys conducted between 2016 and 2019, the importance of these issues ranged from 7 to 8.5 points on a 10-point scale.
- When asked about necessary steps the authorities should take, investors primarily pointed to the need to evaluate incumbent judges and appoint new ones, prosecute high-ranking officials and judges for corruption, and ensure law enforcement agencies comply with the rule of law.
- In 2018, the survey showed that demonstrating effective anti-corruption efforts and changing the judicial system significantly impacted investment decisions.
- In 2019, investors noted that the newly elected President of Ukraine should take adequate measures to fight corruption to positively impact investment and business decisions.

In 2021, a sociological survey conducted by Info Sapiens among the population and businesses in Ukraine<sup>[23]</sup> revealed that 85.4% of the population and 84.2% of businesses consider corruption prevalent in the country. The corruption prevalence index on a 5-point scale was 4.39 for the population (a slight increase from 4.46 in 2020) and 4.34 for businesses (a slight decrease from 4.26 in 2020). However, the index was lower at 2.25 on a 5-point scale in the specific field where the surveyed businesses operate. The population identified the judicial system, customs, and land relations as the top three areas with high levels of corruption. Businesses reported that permitting, mining, and customs were the most corrupt areas, followed by the privatization of enterprises, forestry, public procurement,

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<sup>23</sup> National Agency on Corruption, *Prevention Corruption in Ukraine 2021: Understanding, Perception, Prevalence* [In Ukr.]. <https://bit.ly/3FnmNAS>. [accessed: 06.03.2023].

and land relations. These areas received a corruption prevalence index above four on a 5-point scale.

As one of the main subjects of anti-corruption policy in Ukraine as of 2022, businesses should focus on developing and implementing anti-corruption strategies containing clear rules and procedures to prevent corruption and identify cases of its manifestation. Ukrainian business has vast potential, which can become an essential source of income for the state budget and job creation. Because the war creates uncertainty, entrepreneurs must adhere to the rules of compliance control and ethical business conduct to avoid problems with remedial restrictions and law violations. In these challenging times, adherence to ethical principles and responsible behaviour is vital to ensure the success of Ukrainian businesses and their contribution to the country's development.

Restoration of Ukraine does not mean a return to its condition before the war. Instead, it is crucial to build an integrated and sustainable economy within the framework of the European community, paying attention to the principles of sustainable development and fair business. The private sector should play an essential role in ensuring these principles, which will contribute to a faster transformation of the country on the way to European integration. The recovery and reform process must be transparent, mutually accountable, and occur under national legislation and European standards. Modernization and transparency are critical components of a set of changes that will allow the country to develop and reach the next level of development.

### 3.4. Anti-corruption institutions

As a member state of the UN Convention against Corruption (2003)<sup>[24]</sup>, Ukraine is obliged to develop and implement an effective and coordinated anti-corruption policy, which will promote public participation and reflect the principles of law and order, proper management of state affairs and state property, honesty and incorruptibility, transparency and responsibility. A key anti-corruption infrastructure began to take shape in Ukraine during 2015–2016 and was still in its infancy at the start of the full-scale war. With direct functions and tools to fight corruption, these new institutions

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<sup>24</sup> United Nations: Office on Drugs and Crime, *United Nations Convention Against Corruption*.

remain vulnerable primarily to political pressure from various interest groups in the state apparatus, law enforcement agencies, and large businesses. It is reflected, for example, in procrastination regarding legislative support for the activities and measures of anti-corruption institutions.

An anti-corruption policy of a state usually comprises legal, economic, educational, organizational, and other measures aimed at establishing an effective system to prevent and counter corruption and address its root causes. An anti-corruption strategy, a strategic document, is a key tool to ensure balance, efficiency, and coordination among state authorities, local self-government bodies, and other public institutions in preventing and countering corruption. Developing and implementing a corresponding state program for the anti-corruption strategy is also crucial. By approving an effective anti-corruption strategy, a country can address corruption and significantly increase its socio-economic growth. Many countries, including Great Britain, Singapore, Vietnam, Jordan, Romania, Egypt, and Armenia, have anti-corruption strategies that facilitate coordinated efforts of all authorities to combat corruption, making it a widespread tool for ensuring coordination.

According to Article 18 of the Law of Ukraine, On Prevention of Corruption, the Verkhovna Rada of Ukraine is responsible for establishing the principles of state anti-corruption policy for a given period in the Anti-Corruption Strategy, which is approved by law. The Anti-Corruption Strategy of Ukraine for 2021–2025<sup>[25]</sup> was initially approved by parliament in November 2020 in the first reading, but it was only adopted in the second reading on June 20, 2022<sup>[26]</sup>. The Strategy's main objective is to make significant progress in preventing and countering corruption while ensuring coherence and a systematic approach to anti-corruption efforts among all state authorities and local self-government bodies. Successful implementation of the Strategy is crucial to achieving this goal.

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<sup>25</sup> National Agency on Corruption Prevention, *Anti-corruption strategy for 2021–2025 [In Ukr.]*. <https://nazk.gov.ua/wp-content/uploads/2022/08/Antykoryuptsiyna-strategiya-na-2021-2025-rr.pdf>. [accessed: 06.03.2023].

<sup>26</sup> Verkhovna Rada of Ukraine, *Law of Ukraine On the Principles of State Anti-Corruption Policy for 2021–2025*, June 20, 2022. <https://zakon.rada.gov.ua/laws/show/2322-20#Text>.



The Strategy is based on five main principles:

1. Optimization of the state and local self-government functions, in particular, by depriving authorities of excessive powers and eliminating duplication of their functions;
2. Reducing the „human factor” and increasing transparency and efficiency in the state’s relations with citizens and organizations (introduction of general administrative procedure rules and digitization of most processes and services);
3. Creation of convenient and legal alternatives to corrupt practices;
4. Ensuring effective state control over compliance with the rules of ethical behaviour and the requirements of anti-corruption legislation by public officials;
5. Establishing the inevitability of liability for corruption and other offences directly related to corruption.

The Strategy covers the functioning of the general corruption prevention system, defines priorities for corruption prevention in specific public administration sectors, and pays great attention to the liability for corruption. Based on the analysis of the research (surveys) on the level of corruption in Ukraine, the Strategy defines the following priority sectors of public administration: court, prosecutor’s office, police; state regulation of the economy; public and private sectors; defence sector; taxes and customs; construction, land and infrastructure; health care and social protection; system of preventing and countering corruption.

The approval and proper implementation of the Strategy can lead to a reduction in corruption in Ukraine. This can be achieved by minimizing corruption risks, decreasing the number of corruption and corruption-related offences, eliminating corruption experiences of citizens and businesses, and increasing the willingness of public officials, citizens, and businesses to report known corruption cases. Moreover, it can reduce the tolerance of corruption among public officials, citizens, and businesses. These changes will indirectly enhance the protection of rights and interests of citizens, businesses, and the state, accelerate economic growth, strengthen institutional capacity, and improve the efficiency of state authorities and local self-government bodies.



However, according to the Public Analytical Center Institute of Legislative Ideas<sup>[27]</sup> estimates, People's Deputies removed several important amendments during the adoption of the Strategy, thereby weakening the anti-corruption influence on law enforcement. Moreover, the government delayed the State Anti-Corruption Program for implementing the Strategy for a long time and was adopted only on March 04, 2023<sup>[28]</sup>. The Program is supposed to regulate coordination and monitor the effectiveness of the Strategy and the state program for its implementation.

Delay in appointing directors of anti-corruption institutions is another factor that weakens the fight against corruption in wartime in Ukraine. The Specialized Anti-Corruption Prosecutor's Office of Ukraine did not have a chief for almost two years (from August 2020 to July 2022), and the National Anti-Corruption Bureau of Ukraine – from April 2022 to March 2023. The chairperson of the High Anti-Corruption Court of Ukraine, which was formed following the judicial reform of 2016 and began its operation in September 2019, could not be appointed for almost ten months. As of March 2023, the Asset Recovery and Management Agency (ARMA) director has not been appointed since December 2019.

### 3.5. Political elite (state apparatus)

Since the first years of his presidency, Volodymyr Zelenskiy has been trying to create a discourse of zero tolerance for corruption („get out of here, you robber”), maximum distancing from oligarchs. He is taking demonstrative steps to „clean up” his team. As examples can be provided, the resignation of A. Bohdan, First Head of the Office of the President, in February 2020 or K. Tymoshenko, Deputy Head of the Office of the President, in January 2023. For the current Ukrainian political elite, the fight against corruption is important from the point of view of maintaining the credit of trust on the part of the general population and international partners and allies during the war. Anti-corruption policy is considered necessary, first of all, for Ukraine's preparation for joining the European Union and NATO. There

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<sup>27</sup> „The Anti-Corruption Strategy has been Adopted: What was Missing Before the Vote?” *Pravda.com.ua*. June 21, 2022. <https://www.pravda.com.ua/columns/2022/06/21/7353744/>.

<sup>28</sup> Cabinet of Ministers of Ukraine, *Resolution On approval of the State Anti-Corruption Program for 2023–2025*, March 4, 2023. <https://bit.ly/3FMQJGV>.

is an understanding among Ukrainian officials that maintaining the trust of our partners and receiving financial and military aid depends on this. It causes a certain inconstancy in adopting important anti-corruption bills and prosecution of high-ranking officials whose corrupt activities have been exposed by civil society.

Due to high expectations regarding the fight against corruption by society, the general results of the anti-corruption policy are extrapolated to the evaluations of the government's activities. According to the survey of the sociological group „Rating” conducted in November 2022<sup>[29]</sup>, the assessment index of the fight against corruption in the country (3.1) is the highest for the last five years: it was 1.9 in 2018, increasing to 2.9 in 2019 (the year of the victory of President Zelenskiy in the elections), then it remained at the level of 2.5 in 2020–2021.

However, for Ukrainian officials, the transaction costs and potential criminal liability associated with corrupt practices are still not as high as the expected benefits. The analysis of prosecution statistics<sup>[30]</sup> shows that in 2019, almost 4,000 corruption and corruption-related criminal offences were submitted for trial (similar figures were in 2017–2018). At the same time, the number of cases in this category that the courts considered in 2019 is almost 1,000 less than the number of those received. This state of court proceedings is unacceptable, especially considering that many proceedings of this category have been pending since previous years. As of the end of 2019, about 9,000 cases were pending in court regarding relevant criminal offences. Among the criminal proceedings under trial in 2018 and 2019, verdicts were passed in only 53% and 57% of cases.

In previous years, the speed of judicial review of criminal proceedings, the pre-trial investigation performed by detectives of the National Anti-Corruption Bureau of Ukraine (NABU), remained particularly unsatisfactory<sup>[31]</sup>. As of 2019, the NABU referred 245 criminal proceedings to court,

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<sup>29</sup> Rating Group, *The 19th National Survey. Results of the Year. Expectations for the Future (20-21 November 2022)* [In Ukr.], December 12, 2022. <http://bit.ly/3FmKPM2>.

<sup>30</sup> National Agency on Corruption Prevention, *National Report on the Implementation of the Anti-Corruption Policy Framework for 2019* [In Ukr.]. <https://nazk.gov.ua/wp-content/uploads/2020/05/Proyekt-Natsdopovidi-2019.pdf>. [accessed: 06.03.2023].

<sup>31</sup> Centre of Policy and Legal Reform, *Report on the Results of Monitoring Court Proceedings in Cases Where a Pre-trial Investigation was Completed by NABU Detectives*, September 02, 2019. <https://www.slideshare.net/CentrePravo/ss-168396947>.

but only 38 people were sentenced. At the same time, most of them were plea agreements. This state of affairs is intended to be corrected by the High Anti-Corruption Court, which began functioning in September 2019.

It is worth noting that individuals are usually given a relatively mild punishment for the commission of corruption or corruption-related criminal offences. For example, imprisonment was applied to only 45 people among 1,032 convicted of relevant crimes nationwide in 2018<sup>[32]</sup>.

As for bringing people to administrative responsibility for corruption-related offences, 11,970 cases were brought to the court for consideration in 2019, which is 14% more compared to the previous year. Most administrative offences are related to violations of financial control requirements (Article 172–6 of the Code of Administrative Offences). At the same time, 11% of cases were returned for proper processing. Penalties were imposed in only 45% of the considered cases. Analysis of the reasons to close respective cases shows that in more than 50% of instances, the cases were closed due to the expiration of the penalty terms, in 33% – due to the absence of the event or composition of the offence, in another 12% – in connection with the exemption from responsibility in the case of minor offences. Only 2 cases were closed concerning transferring the case to the prosecutor or pre-trial investigation body<sup>[33]</sup>.

Analysis of judicial practice in cases of administrative offences related to corruption shows that both the bodies authorized to draw up protocols on such offences and the courts often misinterpret the provisions of anti-corruption legislation<sup>[34]</sup>. Analysis of judicial practice regarding corruption and corruption-related criminal offences also testified to problems in law enforcement<sup>[35]</sup>.

Starting in 2020, the National Agency on Corruption Prevention (NAPC) began to analyze the information in the Unified State Register of persons who have committed corruption or corruption-related offences. Thus, in

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<sup>32</sup> „Alternative report on the assessment of the effectiveness of the state anti-corruption policy”. Reanimation package of reforms 11 March 2021. <http://bit.ly/3YHxeW9>.

<sup>33</sup> National Agency on Corruption Prevention, *National Report on the Implementation of the Anti-Corruption Policy Framework for 2019*.

<sup>34</sup> Oleksandr Dudorov, „Generalization of judicial practice in cases of administrative offences related to corruption (Articles 172–4–172–9 of the Code of Administrative Offences)” [In Ukr.] *Centre of Policy and Legal Reform*, 2019. <http://bit.ly/42cw343>. [accessed: 06.03.2023].

<sup>35</sup> *Corruption schemes: Their criminal law and legal qualification and pre-trial investigation*, ed. Mykola Khavroniuk (Kyiv, 2019). <https://bit.ly/401fN3S>.

the first half of 2020, the most significant number of persons from among the officials of the National Police (175 persons) and the State Criminal Enforcement Service (102 persons) were included in this Register, while 2018 persons in total were prosecuted for relevant offences during this time. Most often, officials of these bodies were prosecuted for untimely submitting property declarations<sup>[36]</sup>.

Between January 1, 2021, and February 1, 2023, the Register of Corruption Perpetrators received 10,505 entries related to individuals prosecuted for corruption offences. Of these, 2,908 were for criminal offences, 7,255 were for administrative liability, and 342 were for disciplinary offences. According to the NAPC website's interactive graphics<sup>[37]</sup>, in 2022, court decisions regarding 1,370 people who committed corruption offences became legally binding. This number is similar to the previous year. Of the 1,370 individuals, 1,107 were convicted (80.8%), 29 were acquitted, and 234 criminal proceedings were closed. The majority of guilty verdicts (851, or 76.8%) were found under Article 369 of the Criminal Code of Ukraine (ccu), which concerns the offering, promising, or providing unlawful benefits to officials. The second-highest convictions (87, or 7.8%) were related to Article 369-2 of the ccu, which pertains to the abuse of influence. Article 368 of the ccu, which deals with accepting an offer, promise, or receipt of an illegal benefit by an official, only accounted for 65 convictions (5.8%). Therefore, according to judicial practice, the likelihood of punishment for corruption is at least five times higher for those who offer a bribe than those who accept it.

It is impossible to establish what real punishments those convicted for "corruption" received since, as representatives of public organizations discovered, since the beginning of the war, almost all sentences for criminal offences in the past three years disappeared from the Unified Register of Court Decisions. As it turned out, data was removed from cases where the names of military units were mentioned and those related to the corruption of officials, including verdicts that were found even before the war. When focusing on the results of the analysis of court decisions in criminal cases related to corruption in 2014-2018 conducted by USAID<sup>[38]</sup>, the primary

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<sup>36</sup> Press release of National Agency on Corruption Prevention. July 24, 2020. <http://bit.ly/406NFWj>.

<sup>37</sup> National Agency on Corruption Prevention, *Interactive graphics: Criminal prosecution of persons for corruption offences (court decisions that entered into force in 2016-2022)* [in Ukr.]. <http://bit.ly/3zK1hhi>. [accessed 06.03.2023].

<sup>38</sup> Ukrainian Centre for Public Data, *Statistical Analysis of Court Decisions in Criminal Cases Related to Corruption 2014-2018* [in Ukr.]. <https://bit.ly/3YN15WV>.

punishment in court decisions for bribery (Article 368 of the CCU) was fine, which was issued in almost 51% of cases. Imprisonment accounted for 20% of all final decisions, but at the same time, real terms of imprisonment appeared in 9.7% of verdicts; the rest – were conditional imprisonments. Fines were also issued in 68% of convictions for offering illegal benefits to officials (Article 369 of the CCU).

It is also worth noting that the number of court cases regarding corruption-related administrative offences decreased significantly after the full-scale war. According to the data from the NACP website<sup>[39]</sup>, in 2022, only 2,773 cases regarding administrative offences were submitted to the courts, and 3,783 were pending (against 9,878 and 10,774 in 2021, respectively). The pending cases decreased to 2,602 in 2022 compared to 8,620 in 2021. The majority of cases were considered under Article 172–6 of The Criminal Procedural Code of Ukraine (CPCU), „Violation of Financial Control Requirements” (1,702 cases), and Article 172–7 of the CPCU, „Violation of Requirements for the Prevention and Settlement of Conflict of Interest” (702 cases).

Abolishing the mandatory declaration during the war also contributes to the growing feeling of impunity for corruption among the elite and officials. This anti-corruption procedure started in Ukraine only in August 2016, with the following significant restriction in October 2020. Then, by its decision, the Constitutional Court of Ukraine was exempted from responsibility for the unreliable declaration of high-level state officials, other officials, and judges<sup>[40]</sup>. After February 24, 2022, the Register of Electronic Declarations suspended its public operation, and reporting income is no longer mandatory for officials. According to the NACP<sup>[41]</sup>, as of February 2023, 67.6% of approximately 700,000 declarants reported their income for 2021. Mainly, declarations were submitted voluntarily by category „B” civil servants. Of the documents submitted to the Register of Declarations, only 33,000 are officials holding responsible and mainly responsible positions.

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[accessed: 06.03.2023].

<sup>39</sup> National Agency on Corruption Prevention, *Interactive Graphics: Court Proceedings for Administrative Offences Related to Corruption (2018–2022)* [In Ukr.]. <http://bit.ly/3YOH6xm>. [accessed: 06.03.2023].

<sup>40</sup> The decision of the Constitutional Court of Ukraine No. 13 – r/2020. October 27, 2020. <https://zakon.rada.gov.ua/laws/show/v013p710-20#Text>.

<sup>41</sup> Press release of National Agency on Corruption Prevention. February 16, 2023. <https://bit.ly/3FMTPKD>.

Although the public insists on restoring financial control, and the petition to the President in just a few days gained the necessary 25,000 votes, the corresponding bill, registered by parliamentarians in the fall of 2022, was not considered in the parliament as of March 2023.

### 3.6. International partners and allies of Ukraine

Anti-corruption policy and strict control over corrupt practices in Ukraine are essential for Western elites from the point of view of preserving their political capital. Thus, according to the Ukrainian government, since the beginning of the war, the state budget managed to attract macro-financial assistance from international partners of more than \$32 billion, of which \$14 billion was in the form of grants. In 2023, it is planned to attract macro-financial assistance of at least \$39,5 billion to finance expenses. In addition, the state needs \$17 billion to implement reconstruction projects<sup>[42]</sup>.

The biggest motivation for the active implementation of an anti-corruption policy in Ukraine for high-ranking officials of the EU, the USA and other international partners is the socio-political attitudes of their citizens. Thus, according to the Eurobarometer survey (winter 2022/2023)<sup>[43]</sup>, EU citizens continue showing unwavering solidarity with Ukraine. 91% of respondents agree with providing humanitarian support, and providing financial support to Ukraine is approved by 77%. Europeans also continue to largely favour the EU financing the purchase and supply of military equipment to Ukraine (65%). However, EU citizens consider rising prices/inflation/cost of living as one of the two most important issues facing the EU at the moment (32%), followed by the international situation (28%) and energy supply (26%). Almost half of EU citizens (46%) have already faced a decrease in their standard of living and find it difficult to live on their current income (45%), having difficulty paying their bills (39%). Thus, EU public opinion toward Ukraine may change in case of high-profile corruption scandals involving Ukrainian officials or investigations into allocating support misuse.

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<sup>42</sup> Vitaliy Nabok, „Money that Ukraine is waiting for in 2023” *zn.ua*. January 10, 2023. <https://zn.ua/ukr/macrolevel/hroshi-na-jaki-chekaje-ukrajina-u-2023-mu.html>.

<sup>43</sup> European Commission, *Standard Eurobarometer 98 – Winter 2022–2023*. <https://europa.eu/eurobarometer/surveys/detail/2932>. [accessed: 06.03.2023].



In addition, taking into account the experience of military actions in Afghanistan and Iraq, the opinion prevails in NATO's internal policy and media discourse that it is corruption in countless cases that underlies the inability of states to respond to danger and the inability of international actors to provide them with assistance<sup>[44]</sup>. Thus, widespread corruption and „privatization” of the state by criminal networks undermined the legitimacy of the Afghan government, reduced its effectiveness, and created a source of discontent among the country's population. It contributed to increasing the influence of the Taliban, which made it much more difficult for the NATO-led International Security Assistance Force (ISAF) (2003–2014) to provide security and effective governance. Back in 2016, former US Secretary of State John Kerry called on governments to make corruption a „top national security priority”, calling it a „social danger”, a „radicalizer”, and a „destroyer of opportunities”<sup>[45]</sup>.

As noted by Transparency International<sup>[46]</sup>, seven of the ten countries with the lowest scores in the 2016 Corruption Perceptions Index were also among the ten least peaceful countries in the 2017 Global Peacefulness Index. The Institute of Economics and Peace (IEP) claims that there is a „tipping point” during which any (even slight) increase in the level of corruption leads to an increase in the risk of internal conflict and violence<sup>[47]</sup>. The World Bank also concluded that corruption could fuel conflicts<sup>[48]</sup>. Therefore, considering this experience and research, international partners and allies consider the fight against corruption in Ukraine as part of efforts to strengthen its military potential and is of fundamental importance, including for world security.

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<sup>44</sup> Karolina MacLachlan, „The Fifth Column. Understanding the Relationship Between Corruption and Conflict”. *Transparency International UK*. July 2017. [https://ti-defence.org/wp-content/uploads/2017/09/The\\_Fifth\\_Column\\_Web.pdf](https://ti-defence.org/wp-content/uploads/2017/09/The_Fifth_Column_Web.pdf).

<sup>45</sup> John Kerry, „Remarks at the World Economic Forum” *us Department of State*, January 22, 2016. <https://2009-2017.state.gov/secretary/remarks/2016/01/251663.htm>.

<sup>46</sup> MacLachlan, „The Fifth Column”.

<sup>47</sup> Institute for Economics & Peace, *Peace and Corruption 2015 (Report)*. <http://www.economicsandpeace.org/wp-content/uploads/2015/06/Peace-and-Corruption.pdf>. [accessed: 06.03.2023].

<sup>48</sup> World Bank, *World Development Report 2011: Conflict, Security, and Development – Overview*. <http://documents.worldbank.org/curated/en/806531468161369474/World-development-report-2011-conflict-security-and-development-overview>. [accessed: 06.03.2023].

## 4 | Conclusions

The analysis proved the scientific hypothesis the authors put forward at the beginning of the article. The institutional and legal dimension of the study of the anti-corruption policy of Ukraine allowed to provide answers to questions about the content of the category „corruption”, directions of anti-corruption measures of Ukraine during the war, correlation of Ukrainian and international legislation, participation of the public, government institutions and partner institutions in the mentioned field. The key conclusions were the following:

1. Anti-corruption policy in Ukraine can be seen as a subjectless political process, as its planning and implementation (as well as its counteraction) are influenced by diverse and multi-level actors. However, none of them has a decisive influence on the outcome. Adopting necessary legislation or the public exposure of high-profile corruption cases is most often the result of a combination of the interests of several actors and external circumstances.
2. The full-scale war in Ukraine has somewhat overshadowed the importance of anti-corruption policy in the general population and political elites' perception. On the other hand, the state of war makes elites react more decisively to corruption cases and implement necessary anti-corruption measures to maintain the support of the population and international partners.
3. Activist groups and media representatives, despite restrictions on public access due to martial law and inevitable self-censorship observed at the beginning of the war, remain one of the main drivers of corruption exposure and contribute to the non-tolerance of corruption in Ukrainian society.
4. Due to the uncertainty created by the war, entrepreneurs must abide by compliance controls and ethical business practices to avoid problems with remedial restrictions and legal violations. The recovery and reform process should be transparent, mutually accountable, and adhere to national legislation and European standards. Modernization and transparency are vital components of a comprehensive plan of changes that will enable the country to develop and reach new levels of progress.



5. Despite some movement towards developing an anti-corruption infrastructure and adopting the Anti-Corruption Strategy of Ukraine for 2021–2025, the activities of the leading anti-corruption institutions remain constrained by the existing legal system and political pressure from various political interest groups and oligarchs. Strengthening institutional capacity is quite a challenge in times of full-scale war, but with political will, the state can move forward.

The European and international community support for Ukraine towards strengthening its anti-corruption fight and defeating the Russian aggressor is critical. Best practices and institutional support for Ukrainian authorities and civil society in their anti-corruption efforts should be provided.

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