РОЗДІЛ ІІІ. АДМІНІСТРАТИВНЕ ТА ФІНАНСОВЕ ПРАВО

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RESTRICTIONS AFTER TERMINATION OF THE ACTIVITIES RELATED TO THE USE OF STATE OR LOCAL SELF-GOVERNMENT FUNCTIONS, SPECIFIC TYPE OF SPECIAL ANTI-CORRUPTION RESTRICTION

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The article justifies a unique nature of restriction resource after termination of the activities related to the use of state or local self-government functions as a type of special anti-corruption restriction. The expediency of introduction and statutory regulation of the principles of this type of restriction is conditioned by the need to prevent triggers for using benefits of the public service in the private sector after the termination of direct affiliation with it. The purpose of the paper is to analyse the provisions of the national legislation which consolidates frameworks for using this kind of restrictions, to single out those whose application cause diversity of the results of interpretation and application and to formulate proposals concerning their improvement. The research justifies the fact that the unique nature of this type of special restriction is caused by its following features: a) special subject is a person who terminated or made the implementation of the activities related to exercising state or local self-government functions impossible through other means ("former", "ex-functionary"); b) coverage of the activities which may be done (which are refrained from) after the termination of the activities related to the use of state or local self-government functions; c) holistic character of the restriction on labour, business, civil relations in the "private sector", on disclosure of information got out while implementing the activities related to the use of state or local self-government functions, executive activities where one of the parties is a body, institution, organization, enterprise where a person had relations at the moment of activities termination; d) predominant promptness (concerning information disclosure – unlimited, concerning other restrictions – during one year since the termination of the activities related to the use of state or local self-government functions); e) diversity of legal consequences and the opportunity to bring a guilty person to different types of responsibility. Extended nature of the scope of the possible use of the benefits of a public service by a person after termination of affiliation with it and the diversity of actions and the plurality and variety of potential subject of legal relations in the future considerably complicate law enforcement and determine the expediency to formulate proposals concerning improvement of domestic anti-corruption legislation in terms of defining the principles of the relevant restriction. The paper justifies reasonability to use the results of comparative and legal researches of the experience in rule-making and law-enforcement in the mentioned sphere in foreign countries in order to improve principles for corruption prevention in all its manifestation including the use of benefits of the public service by a person after the termination of his affiliation with it. The article analyses an experience of different foreign countries and proposes to borrow the experience of France, Spain, the USA, Portugal, and Korea in the context of differentiation of the subjects of restrictions, restrictions' duration, introduction of the obligation for a person to inform about any relations which were at the moment of the termination of the activities related to the use of state or local self-government functions during action term in order to eliminate preconditions for illegal use of the benefits of the public service and to establish administrative responsibility for infraction of the obligation.

Key words: corruption offence, corruption-related offence, restrictions, public servant, activities on performing state or local self-government functions, public service, duration, ex-functionary, responsibility.

ОБМЕЖЕННЯ ПІСЛЯ ПРИПИНЕННЯ ДІЯЛЬНОСТІ, ПОВ'ЯЗАНОЇ З ВИКОРИСТАННЯМ ФУНКЦІЙ ДЕРЖАВИ АБО МІСЦЕВОГО САМОВРЯДУВАННЯ, ОСОБЛИВИЙ РІЗНОВИД СПЕЦІАЛЬНОГО АНТИКОРУПЦІЙНОГО ОБМЕЖЕННЯ

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У статті обґрунтовується унікальність ресурсу обмеження після припинення діяльності, пов'язаної із здійсненням функцій держави або місцевого самоврядування, як виду спеціального антикорупційного обмеження. Доцільність впровадження та нормативної регламентації засад цього виду обмеження зумовлені потребою попередження виникнення підстав використання особою переваг публічної служби у приватному секторі вже після припинення безпосереднього зв'язку із нею. Метою роботи є аналіз положень національного законодавства, яке закріплює засади використання цього виду обмеження, виокремлення тих із них, застосування яких зумовлює різноваріативність результатів тлумачення та застосування, й формулювання пропозицій щодо їх удосконалення. У роботі обґрунтовується те, що унікальність ресурсу цього виду спеціального обмеження зумовлена його наступними ознаками: а) спеціальним суб'єктом, яким є особа, яка припинила або в інший спосіб унеможливила здійснення діяльності, пов'язаної із здійсненням функцій держави або місцевого самоврядування («колишній», «екс-функціонер»); б) поширенням на діяння, які можуть бути вчинені (від яких утримуються) після припинення діяльності, пов'язаної із здійсненням функцій держави або місцевого самоврядування; в) комплексний характер обмеження – щодо трудових, господарських, цивільно-правових відносин у «приватному секторі», щодо розголошення інформації, яка стала відома під час виконання діяльності, пов'язаної із здійсненням функцій держави або місцевого самоврядування, представницька діяльність, в якій однією із сторін є орган, установа, організація, підприємство, в якому особа перебувала у відносинах на момент припинення діяльності; г) переважна строковість дії (щодо розголошення інформації – безстроково, щодо решти обмежень – протягом одного року з моменту припинення діяльності, пов'язаної з виконанням функцій держави або місцевого самоврядування); г) розмаїття правових наслідків й можливість притягнення винної особи до різних видів відповідальності. Широта сфери можливого використання переваг публічної служби особою після припинення зв'язку із нею, різноваріативність дій та множинність й розмаїття потенційних суб'єктів правовідносин у майбутньому істотно ускладнюють правозастосування й зумовлюють доцільність формулювання пропозицій щодо удосконалення вітчизняного антикорупційного законодавства у частині визначення засад відповідного обмеження. У роботі обґрунтовується доцільність використання результатів порівняльно-правових досліджень досвіду нормотворення та правозастосування у зазначеній сфері відносин у зарубіжних країнах для удосконалення засад запобігання корупції у всіх її проявах, в т.ч. й щодо удосконалення використання переваг публічної служби особою після припинення нею зв'язку із нею. У статті аналізується досвід різних зарубіжних країн й пропонується запозичення досвіду Франції, Іспанії, США, Португалії, Кореї щодо диференціації суб'єктів обмежень, строкової дії обмежень щодо них, впровадження обов'язку особи повідомляти про будь-які відносини, які були на момент припинення діяльності, пов'язаної із виконанням функцій держави або місцевого самоврядування, протягом строку дії обмеження задля усунення передумов для неправомірного використання переваг публічної служби й встановлення адміністративної відповідальності за невиконання цього обов'язку.

Ключові слова: корупційне правопорушення, порушення, пов'язане з корупцією, обмеження, публічний службовець, діяльність з виконання функцій держави або місцевого самоврядування, публічна служба, термін дії, екс-функціонер, відповідальність.

The search for effective means for corruption prevention in all its manifestations leads to an in-depth study of all resource, without exception, including special restrictions aimed at preventing a conflict of interest in the activities of persons authorized to perform functions of the state or local self-government. The legislation of Ukraine consolidates a number of such restrictions, although a detailed analysis of its provisions confirms somewhat simplified and rather shallow approach of the legislator to resolving this issue. In turn, this causes problems in law enforcement – different approaches to the interpretation of legislative provisions, diversification of practical solutions of standard issues in relation to different individuals, thus the possibility to evaluate typical actions of various actors in a different way ensuring legal liability of some persons and dismissal of others. It does not contribute to the improvement of the effectiveness of corruption prevention in all its manifestations but creates the preconditions for its existence and diversification of external forms of manifestation. Restriction after the termination of the activities related to the implementation of the

state or self-government functions takes a prominent place among special restrictions aimed at standardising actions of special subjects (hence their name origins) empowered to exercise the functions of the state or local self-government. It can be considered as a kind of manifestation of "restrictions on official authority abuse" formed during the direct execution of the above functions, "abuse of the benefits of public service" after the termination of a direct connection with it. Even the fact that now a person does not perform such functions directly cannot be considered as an obstacle that he could not use the resource of "previously collected powers", "previously acquired power" for own himself or other people (due to information available for him, the results of exercising control, supervisory and other powers, etc.), "previously formed sphere of future employment" (providing preferences for financing from state or municipal budgets, etc.). A person may prepare "the sphere of his further realisation" in advance and use the official powers stipulated by exercising the functions of the state or local self-government for this purpose. And in the future, he, not being a public official, may illegally use the benefits that have been formed during the implementation of the above-mentioned functions. It is impossible to say that sort of state of affairs is feasible because it is formed the base for a conflict of interests directly related to the interests of the state and other subjects of public relations. In order to eliminate this situation, it is introduced a special restriction directly focused on the inability of a person, who already hasn't perform the functions of the state or local self-government, to use his "previous job position" in order to receive incentives, benefits etc. To ensure effective implementation of anti-corruption legislation in the context of regulation of the provision of relevant special restriction there must be statutory provision perfect in the content, which consolidates such restriction, a unified practice of its application that causes formulating the purpose of this research. The goal of the study is to analyse provisions of the national legislation which determines the fundamentals of the restriction after the termination of the activities related to the implementation of state and local self-government functions, to specify challenges which cause lack of efficacy of the use of the resource of a particular restriction, to formulate proposals, taking into account foreign experience for issue solution, for improving legislative provisions of identification of this restriction in order to prevent preconditions for determination of corruption acts in all diversity of their manifestation.

Issues of special anti-corruption restrictions drew the attention of legal scholars both collectively and discretely as confirmed by available scientific, journalistic sources (for example, papers of T. Berdnikova, I. Koliushko, M. Khavroniuk, O. Shymon, R. Kuibida, T. Khabarova, O. Dudorov, S. Kivalov and others), scientific and practical commentaries [1], scientific and practical essays [2], results of comparative and legal topic studies (for example, papers of O. Hladun, K. Hoduieva, R. Kukurudza, L. Hladchenko, V. Vasylieva, S. Zymneva [3] etc.). At the same time, there are no papers directly devoted to detailed analysis of restriction resource after termination of the activities related to the implementation of the state or local self-government identifying its specific nature in comparison with other special restrictions, analysis of its legal frameworks and formulation of proposals for their improvement. This fact updates the topic of the research, confirms novelty and practical importance of the paper. In the context of activation of rulemaking activity of anticorruption content-related focus, the issue of developing its new scientific basis, which is in line with the provisions of modern domestic doctrine, acquires top-priority importance. This, in turn, determines the topical orientation of modern scientific researches that play in favour of the appropriate topic and the possibility of considering the paper as a component of the above scientific basis.

Special restrictions of anti-corruption direction are consolidated in the Section IV "Prevention of Corruption Offences and Corruption-Related Offences" of the Law of Ukraine "On Prevention of Corruption" dated October 14, 2015. Among them there are restrictions on the use of official authority or job position (Article 22), restrictions on gifts acceptance (Articles 23-24), restrictions on double jobholding and combination with other activities (Article 25), restrictions on employment of close relatives (Article 27) and restrictions after termination of the activity related to the implementation of state and local self-government functions (Article 26). It should be noted that, despite their duty, the latter is distinct in a certain specific nature among their diversity that gives grounds for considering it as a specific restriction. Specific nature of this restriction is conditioned by its features which form the resource of restriction as a whole causing uniqueness, originality, and

variation from other restrictions, which are also aimed at "preventing corruption and corruption-related offenses". In order to find out distinct specific nature of the resource of this kind of restrictions, it is necessary to focus on its features. First of all, it would be expedient to turn attention to the regulatory formulation of the name for this restriction. If the legislator uses a typical phrase in relation to other kinds of restrictions: "restrictions on…" ("…the use of official authority or job position", "… restrictions on gifts acceptance", "… restrictions on double jobholding and combination with other activities", "…employment of close relatives"), in the context of this type of restriction the legislator uses another approach and lays emphasis not on particular actions but on the duration of the limitation ("restrictions after the termination of the activity…"). In other words, in relation to other restrictions it is quite possible to raise the question "what is subjected to restriction?", "what does restriction cover?" while in the context of this type of restriction the relevant question has to be formulated in the following way: "when is restriction applied?". The legislator clearly defines its position in the name that the attention is drawn to the duration in relation to the latter restriction.

Compared to other special restrictions, the restriction after the termination of activities related to the execution of state or local self-government functions is oriented towards a special subject. The latter is not a person authorized to perform functions of the state or local self-government, but "a person ... who has retired or ceased activities related to the exercise of functions of the state or local self-government" (para. 1 p. 1 Article 26 of the Law). In other words, the subject is "….a person who was empowered to perform the above-mentioned functions. This is a person "… as of next day after the termination of his activity related to the exercise of state of local self-government functions" [1, p. 220]. As a result, it is possible to find out such phrases that are used to define subjects of this restriction – "former public servants", "ex-functionaries", "ex-servants", etc. in scientific, research and practical sources. Moreover, the subject of such a restriction is a person who "actually" "fell" within the scope of paras. 1,2, p. 1, Article. 3 of the Law of Ukraine "On Prevention of Corruption" due to his features during performance of the above functions. While, for example, restrictions on gifts reception are applied to the persons specified in paras. 1, 2 p. 1 Art. 3 of the same Law, and, for example, the restriction of joint employment of close persons – to persons specified in the subsections "а", "в" – "з" para. 1 p. 1 Art. 3 of the same Law. Consequently, a person, who was treated as persons authorized to perform state or local self-government functions while exercising his authority, cannot be considered as a person subjected to a relevant restriction after termination of his activity.

Analysis of Art. 26 of the Law indicates that although the legislator uses the word "restriction" in the title of the article, the text actually refers to the prohibition ("taboo", "imperative requirement"). In para. 1 part 1 of Art. 26 of the Law the legislator uses the term "it is prohibited" when enumerating actions covered by the mentioned article, which actually creates the preconditions for raising the question on the consistency of the title and content of the article with respect to the relevant type of restriction in relation to the relevant restriction. Despite certain "proximity" of the prohibition and restriction, one must not identify them because the prohibition stipulates "impossibility of actions and the restriction allows actions within the limits which are statutorily enshrined" [4, p. 77]. What did the legislator stipulate formulating the provisions of Art. 26 of the law? The title is "restrictions…" but para. 1 p. 1 of this Article marks "… it is prohibited…", and p. 2 Art. 26 again indicates "… restrictions". Analysis of the content of the article confirms that the legislator actually identifies "prohibition" and "restriction". Moreover, taking into account the consequences of non-compliance with the requirements of Art. 26 of the Law of Ukraine "On Prevention of Corruption", it is quite possible to discuss the fact that the legislator really identifies them, since there is no connection between Art. 26 of the Law and Art. 172-8 of the Code of Administrative Offenses of Ukraine, which stipulates responsibility for the disclosure or use of information by a person for own benefits if this information was found out due to the performance of his official duties (and such actions are defined as a component of the content of the particular special restriction), (the subject of the offense identified by Article 172-8 of the Criminal Code of Ukraine is "an acting" person but not "a person after the termination of the activity"). However, an analysis of the provisions, which consolidate other types of restrictions, indicates that along with

"imperative requirements" the legislator establishes the limits of those actions which can be carried out in the case of compliance with the relevant limits. There are no such "limits" for potential actions in a formulation of the restriction after the termination of activities related to the performance of the functions of the state or local self-government. Restriction upon termination of the activity related to the implementation of state or local self-government functions are complex in their content since it stipulates: a) mandatory provisions on the prohibition of labour, civil-law relations, business relations with legal subjects of private law and sole proprietors in relation to which the subject of restriction exercised the powers of supervision, control, preparation or decision-making. Mandatory provisions of that sort can be referred to "those which are oriented towards the impossibility of using the benefits of the public service by a former public servant in the private sector"; b) mandatory provisions on the prohibition of the disclosure or use of the information, which became available to the subject in the context of the performance of official powers, to their own advantage (they may be called "informational"); c) mandatory provisions on interest intermediation in the cases where other party is an establishment, body, enterprise or organization where the subject has worked at the moment of termination of relevant activity related to the implementation state or local self-government functions, so-called "representative" (p. 1 Art. 26 of the Law). It is a quite "wide" spectrum of actions which are covered by the act of "restriction after the termination of the activity", and forms of their external manifestation are diverse that also distinguishes this type of restriction from others and creates challenges in law-enforcement (either information that may be "disclosed" or "used by a person in a different way, both complications of deals, labor agreements, labor contracts and interest intermediation in various bodies). It is diversity of different actions, which a person can do, and spheres of such actions and subjects, which can have relations with the person, complicate law-enforcement determining variability of the results.

A peculiarity of this type of restriction is its predominant duration of action while other restrictions "accompany" a person during his activity related to the performance of the functions of the state, local self-government. Special nature of the latter is caused by the specificity of a person's status and distinguishing characteristic of his activity. They cease to be effective when a person lost his status and terminated implementation of such kind of activity. At the same time, "restriction after termination" comes into action when a person lost the status and ceased to exercise the functions of the state or local self-government. However, it should be mentioned among three components of subject of regulation of Art. 26 of Law, two envisage duration of restriction and one – indefinite duration. Thus, the requirements for employment, civil and business relations as well as for interest intermediation of any person in the cases (including legal cases) are restricted by one year term until termination of person's activity related to the implementation of the state or local self-government functions. Mandatory provisions for disclosure of information remain in force without limit of time. Duration of mandatory nature is quite justified in the context of the fact that a person may change the sphere of business taking into account facts of life or have to find workplace in order to provide own welfare or support persons who deepened on him.

In the course of time, the preconditions for the origin, change, termination of public relations alter, the preconditions for the emergence of a conflict of interests of a person and public administration melt as well as the preconditions for preserving such kind of restriction for a person who "has ceased activities long before". Is it expedient to implement the one-year term for operation of this restriction? To answer this question, it is necessary to take into account those fundamental changes that are taking place in public administration, which substantially modify the principles of its informational, personnel, organizational and functional support, and therefore it significantly reduces the "connections of a person with its "former" activities associated with the functions of the state or local self-government" during the year, eliminates the prerequisites for a conflict of interests of public administration and "ex-functionary" [1, p. 221]. Implementation of a longer term could be considered as a certain manifestation of the violation of the right of a person to "decent work", "fair wage", "decent working conditions", although, as evidenced by the analysis of foreign legal system, the terms of various durations are widespread. In addition, it should be kept in mind that ", for example, civil servants who hold civil service positions in the category "B" and those who hold political positions may be "former". Due to the fact that their "service resource" is

somewhat different way, hence the "future opportunities" for using them in the "private sector" after the termination of activities related to such a service also differ. In this context, there is the question on the possibility of differentiating terms of the duration of such a restriction concerning persons who have been holding political positions and those who have not hold such positions.

The legal consequences of a violation of the restriction after the termination of activities related to the exercise of state or local self-government functions are: a) termination of an employment contract (p. 2 Art. 26 of the Law); b) invalidation of transactions (p. 2 Art. 26 of the Law); c) responsibility (taking into account the facts of the case) under Arts. 132, 145, 163, 168, 182, 359, 159, 231, 232, 328, 381, 432, 330, 387, 209-1, 387 of the Criminal Code of Ukraine; d) responsibility (taking into account the facts of the case) under Arts. 51-2, 163-9, p. 3 Arts. 164-3, 166-9, 185-11 the Code of Administrative Offences of Ukraine; e) compensation of losses, damage to the state; e) reversal or invalidation of a decision, statutory legal act issued (accepted) in contravention of the law; e) renewal of the violated rights of legal entities and individuals, compensation of losses to them; e) confiscation or special confiscation of illegally acquired property [1, p. 224]. Consequently, in the framework of determining the legal consequences, non-compliance with the "restriction after termination of activity" is also complex and stipulates the possibility of bringing the person to different types of legal liability. However, compared to other types of special restrictions where there is a liability for their violation in the articles of the codified tort acts eliminating the grounds for a diverse interpretation of the statutory instruments and narrowing the limits for subjective discretion of the subject of application, the grounds for liability for violation of "restriction after termination activities" are dispersed in numerous multi-branch legal acts, which provide the possibility of bringing a guilty person to different types of legal liability. At the same time, the diversity of external forms of manifestation of violation of "restriction after termination" causes the possibility of manifestation of subjective discretion in the process of interpretation, qualification, decision-making on the kind of legal liability, type and size of the reaction to violation of the relevant restriction. Due to this fact, the practice of law-enforcement in relation to this restriction is quite diverse both in terms of compliance with the provisions and in respect of non-compliance. Diversity is conditioned by the specifics of the subjects of non-compliance, manifestations of non-compliance and the specifics of the applicable activities of various actors of reaction including adequacy of the response (type, size of response) to violation of the "restriction after termination of activity". In particular, it is quite possible to agree with the fact that there is a variation in the results of resolving the issue of the responsibility of a person for non-compliance with the requirements for non-disclosure of information that comes to person's notice when performing his duties on the exercise of state or local self-government functions. As already noted, the subject of responsibility is a special entity ("acting functionary") according to Art. 172-8 of the Code of Administrative Offences of Ukraine. At the same time, many articles of the Criminal Code of Ukraine also envisage the principles of liability for acts similar to reasons which are consolidated in Art. 172-8 of the Code of Administrative Offences of Ukraine. It is quite logical that in practice it leads to the issue that "there are almost no grounds for the application of Art. 172-8 of the Code of Administrative Offences of Ukraine practically" [1, p. 223] as such opportunity can be provided if only offenses do not cause criminal liability. In order to eliminate such a state of affairs, it is urgent to unify the practice of law enforcement in this sphere of relations, which is possible only if the legal fundamentals of the "restriction after the termination of activity" is worked out in detail (first of all, the introduction of amendments and additions to Article 26 of the Law of Ukraine "On Prevention of Corruption"). It is also possible to propose specific recommendations by the virtue of the analysis of foreign experience of statutory regulation of such relations and practice of application of the legislation which was tested by time and practice.

It should be noted that foreign countries extensively use the resource of "restriction and monitoring of work in the private or non-governmental sector after dismissal from the public service" [5, p. 19]. However, the degree of specification of its principles is different. The common thing lies in the fact that the restriction is applied to those who "ended the relations of the public service" and in the future are oriented towards the "private sector" ("non-governmental", "private" relations) that

causes grounds for origin of a conflict of interest ("private interest of the person" and "public interest"). The main principle of the introduction of such restriction lies in the fact that "... to restrict and control the work of officials in business activities or non-governmental organizations after left of public positions because they are expected to be refrained from inappropriate use of the benefits of the public service or the positions they have occupied earlier when seeking employment or appointment after their discharge from service" [5, p. 44-45]. The legislator of different countries approaches to the settlement of this issue differently, both in terms of demarcation of civil servants and persons, who have been holding political offices, as subjects of such restriction and in terms of determination of restriction's duration and the source fixing such a restriction and the consequences of non-compliance with it.

For example, Portugal and Spain apply this restriction only to persons holding political offices and, accordingly, it operates within three or two years. In Poland, the restriction covers both former civil servants and persons holding political offices and operates within one year since the termination of the relevant relationship. In France, the rules for the further employment of persons, who were a part of the public service, are regulated in detail with the identification of "acceptable posts", "unacceptable posts", "acceptable posts under certain conditions", and special commission on professional ethics provides "former functionaries" with the permission to occupy these posts. This kind of the procedure of "permission for employment" is valid over a period of five years since the termination of public-official relations. Violation of such restriction is considered "illegal security of own interest" and involves criminal liability [5, p. 19-20, 29]. The offence is also considered as the consent of the "former functionary" to hold positions in a company that "was under the control of such a person during the last five years" [5, p. 29]. In Great Britain, civil servants are obliged to reform about any attempts of third parties to offer them work, including non-governmental organizations, for the future [5, p. 20]. Canadian legislation distinguishes the principles of "restriction after termination of activities" in relation to persons who have been holding political posts and civil servants according to the duration, namely: restriction is valid during two years regarding the former, and one year is for others. The two-year term of the restriction is also stipulated in Korean legislation [6, p. 33-39]. The legislation of Spain includes the duty of "ex-functionaries" to inform about all types of previous activity, including "based on advisory and other ground", when getting a job [5, p. 41]. As a rule, in defining the content of "restriction after termination of activity", possible spheres of employment are listed with an emphasis on the previous control, supervisory or financial relations of the person with these spheres. For example, in France, the restrictions are applied to "... those institutions, organizations, companies, corporations that are granted by the government or with whom agreements were concluded as well as in property sale establishments or savings institutions" [6, p. 35]. Canadian legal system uses a generalized phrase, namely: "... with whom a person had significant official relations" [6, p. 33]. As well as in the legislation of Korea "...a person was connected with during the performance of functions occupying the post" [6, p. 37]. The US law also consolidates "restriction after cessation of service", however, the delineation of the principles of compliance with it is carried out with an emphasis on: a) person and his special status ("senior officials", "public servants") that stipulates the terms and content of the restriction – "three years for the first and two years for others in relation to any relations in the private sector and relations with companies for which functional responsibilities have been performed; b) "degree of connection" in the process of activity with a person – if the person "personally and substantially" participated "in solving specific issues" as an official, in general, he can't represent interests in relations with executive authorities in resolving such issues" [7, p. 104]. If the person "personally and essentially" did not take part in solving such issues, the person "loses the right to be engaged in practice for the duration of two years after being discharged" [7, p. 104]. Thus, it is referred to distinguishing the grounds for restrictions in relation to persons holding political posts and civil servants, which are applied in the "private sector" and differ in time limits. In addition, in foreign countries "restrictions after termination of activity" cover the relations of representation, the frameworks of which are differentiated depending on the nature of the previous official activities of the person. An analysis of the legislation of foreign countries permits to suggest that, for Ukraine, it is quite logical to borrow the provisions on the

delimitation of the principles for "restrictions after termination of the activities" towards persons, who have been occupying political positions, and civil servants taking into account the specifics of their special status as well as their activities and their resources, therefore, the restrictions must differ for them. The difference should be in time limits of the duration of such kind of restriction in relation to persons mentioned – this period may be equal to two years with regard to persons holding political positions, and as for civil servants – it may remain unchanged, that is equal to one year. This will permit to bring domestic anti-corruption legal requirements closer in terms of the consistency of the content of the restriction after the cessation of activities related to the functions of the state or local self-government with the "real public service resource" that can be used by ex-functionaries, with European and global standards of fight corruption, which have already been tested by time and practice and have made a good showing. It is inappropriate to use estimative concepts when formulating the content of the restriction (for example, "personally and substantially", "acceptable", etc.). It is sufficient to note that a person performed the functions of the organization, control, supervision, coordination with regard to the relevant institution, organization, enterprise, company ("legal entity of private law or individual entrepreneur") when formulating a legal provision that lies in exercising functions of the state or local self-government. It is advisable to envisage the principles of responsibility of the person who has ceased to perform the functions of the state or local government for violation of the relevant restriction in the single article of the Code of Administrative Offenses of Ukraine separating from the similar principles the responsibility of a civil servant or equivalent person as a special subject, as well as from the principles of criminal liability (first of all, in the form of guilt and the consequences of non-compliance). Accordingly, it is necessary to amend p. 1 of Art. 26 of the Law of Ukraine "On Prevention of Corruption" differentiating the restrictions on persons who have been holding political positions and other persons engaged in activities related to the exercise of state or local government functions providing limitation of actions for two years for the first group and one year from the moment of termination of activity on performance of state or local self-government functions for others. It is essential to envisage the obligation for the persons to inform about all types of activities and positions that they have occupied at the moment of termination of activities related to the exercise of state or local self-government functions when getting a job in the "private sector" during restriction operation. This will allow finding out the reasons for a conflict of interest during the employment of a person in the "private sector" and resolving this issue in time. It is expedient to amend p. 2 Art. 26 of the Law, Clause 4 by the provisions indicating that there is administrative liability (for example, Article 172-8-1 of the Code of Administrative Offenses of Ukraine) for violation of the established restriction in the part of person's failure to notify other relations in the "private sector" when concluding labour contracts, civil deals, as well as in the case of the establishment of representative relations where the other party may be represented by the body, institution, organization, enterprise where the person worked at the time of the termination of activities related to the exercise of state or local self-government functions.

In comparison with other special restrictions, the restriction after the termination of activities related to the exercise of functions of the state or local self-government differs by a number of specific features that determines the uniqueness of its resource. Taking into account the latter, the effectiveness of using this restriction in corruption prevention and corruption-related offenses depends on the certainty of its statutory principles in many respects, which makes it impossible to manifest subjective discretion in interpreting, law enforcement and eliminates the grounds for a diverse resolution of issues of non-compliance with this restrictions by different persons. The achievemnts of positive foreign rule-making and law-enforcement experience regarding the use of the resource of this type of restriction makes it possible to formulate proposals for: delimitation of the principles of this restriction in relation to persons holding political positions and other persons who carried out activities related to functions of the state and local self-government; with regard to duration differentiation of the effect of this restriction depending on the subject it is orientated on; the introduction of the obligation for the aforementioned persons to inform about any activities they have been performing at the time of the termination of the special status during the restriction period and in case of relations one of the parties with legal entities of private law, sole proprietors

and relations of representation in their relations where there may be the body, institution, enterprise, organization with which the person had relations at the time of termination of the special status; introduction of administrative responsibility for breach to fulfill such a duty. The introduction of such actions will contribute to the certainty of the legal framework of the relevant restriction, simplification of the use of its resource in preventing corruption in all its manifestations and eliminating the grounds for subjective arbitrary discretion in law enforcement.

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ПОВНОВАЖЕННЯ СУБ'ЄКТІВ ПУБЛІЧНОГО УПРАВЛІННЯ У СФЕРІ ПРОТИДІЇ КОРУПЦІЇ В УКРАЇНІ: ПРОБЛЕМИ БОРОТЬБИ ТА МЕХАНІЗМИ ПОСИЛЕННЯ

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Формування шляхів вирішення проблем у боротьбі з корупцією та протидії корупції в контексті повноважень суб'єктів публічного управління зумовлене тим, що система таких суб'єктів набула значного розширення в Україні за останні чотири роки за рахунок новостворених антикорупційних органів. Незважаючи на велику кількість праць, присвячених дослідженню різних аспектів боротьби з корупцією та протидії корупції в Україні, необхідно констатувати, що в