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## THE PECULIARITIES OF THE ADMINISTRATIVE-LEGAL STATUS OF ANTI-CORRUPTION BODIES IN UKRAINE

Pavlo KRAINII

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# THE PECULIARITIES OF THE ADMINISTRATIVE-LEGAL STATUS OF ANTI-CORRUPTION BODIES IN UKRAINE

Pavlo KRAINII<sup>1</sup>

## Abstract

*The review of specially created Ukrainian anti-corruption bodies shows that their system, status and powers face a few problems of applied nature. Among them, we might differentiate country's complicated economic situation; reluctance of state's political leaders to drastically change the paradigm of ensuring the effective functioning of anti-corruption bodies; mistakes in forming the bodies of public power; irrelevance of the results in the work of certain anti-corruption bodies compared to initial expectations; a critically low level of society's and citizens' trust to the above bodies and to the anti-corruption policy on the whole.*

*The present-day paradigm of anti-corruption activity is based on the analysis of the structure of such bodies, their powers, and the efficiency of their functioning. The effectiveness of anti-corruption bodies is determined not only by their powers, but primarily by the effectiveness of their interaction. It may be ascertained through not only the assessment and analysis of statistical data, but also through a comparison of the powers, these bodies are entitled with. The latter are an integral part of the administrative and legal status. Therefore, in this paper, we have made an attempt to investigate the system of anti-corruption bodies in Ukraine in a combination with their administrative-legal status.*

## Key words:

*Anti-corruption activities; special bodies; Anti-Corruption Bureau of Ukraine; Anti-Corruption Prosecutor's Office; State Bureau of Investigation; The National Agency of Ukraine for Detection; Search and Management of Assets Resulting from Corruption and Other Crimes.*

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<sup>1</sup> Pavlo Krainii—Assistant Professor of the Department of Public Law, Faculty of Law, Yuriy Fedkovych Chernivtsi National University, Ukraine, [p.krainiy@chnu.edu.ua](mailto:p.krainiy@chnu.edu.ua)

## 1. Introduction

Anti-corruption activities is one of the most ambitious, complex and extremely necessary objectives of any democratic state. After Ukraine has gained its independence, the issue of combating this negative phenomenon is as important as overcoming poverty, attracting foreign investment, creating an effective system of publicbodies of power, increasing the level of citizens' social protection, etc. What is more, the effective fight against corruption proves the state's and the society's desire to develop the generally accepted "rules of the game", whereby gaining any illegal benefit, as well as receiving tangible or intangible assets will fall under a certain type of legal liability. To achieve such a result is possible only if an effective system of special anti-corruption bodies is created. Over the past years, Ukraine has established a system of special bodies, whose main task is to ensure the effective anti-corruption activities. Consequently, the purpose of this study is to investigate the efficiency of the powers of anti-corruption bodies in the aspect of administrative and legal status.

## 2. Theoretical Background

The creation of special bodies that would be authorized to carry out anti-corruption activities in Ukraine is actively discussed among scientists, politicians, practitioners, law enforcement officers, judges, etc. The present-day paradigm of anti-corruption activity is based on the analysis of the structure of such bodies, their powers, and the efficiency of their functioning. As an example, we can cite the opinion of scholars on the generalization of the list of key actors in the formation and implementation of anti-corruption policy (Zabroda & Kashkarov, 2013). In addition, at present, quite often attention is drawn to the study of international experience in forming the national anti-corruption policy, as well as to the characteristics of the system of anti-corruption bodies in foreign countries (Seriohin, 2009). A separate area of debate is the study of the effectiveness of anti-corruption bodies in Ukraine, the characteristics of certain models of anti-corruption, which are relevant for the countries of a particular legal family (Novak, n.d.). A very essential peculiarity of our state is that despite the introduction of legal mechanisms to combat corruption and the adoption of a large number of regulatory-legal acts, some state institutions actually block the implementation of such activities because of their decisions. In this way, they undermine the authority of the state in anti-corruption activities and question the state's actual implementation of public commitments regarding the intensification of anti-corruption measures (Verkhovna Rada of Ukraine, 2020a).

It is also important that Ukrainian scholars debate on determining the objective and subjective causes of corruption in Ukraine, as well as on identifying the main trends in the system of public bodies of power and special anti-corruption bodies. Besides, they discuss the basic stages of formation,

development and functioning of anti-corruption bodies and carry out a comparative analysis between the systems of anti-corruption bodies of the European Union, Great Britain, the United States of America, South America, Asia (Parkhomenko-Kutsevil, 2019).

A significant disadvantage of the above scientific positions of Ukrainian and foreign scientists is the fact that they ignore the peculiarities of corruption in our country, the level of civil society, and the quality of procedural mechanisms in bringing those, guilty of corruption, to administrative, criminal, and civil liability. They also do not take into account the dependence of the judiciary in making decisions in this category of cases. As a result, the identification of the causes of corruption in Ukraine directly depends on the reasons that are typical only for our country. In our opinion, when assessing the effectiveness of anti-corruption bodies, first of all, it is necessary to comprehend and outline the peculiarities of their functioning with a due regard to the specifics of the country's legal system, the level of citizens' legal consciousness, the features of the system of the bodies of public power, and the extent of independence of the judiciary.

### **3. Argument of the paper**

This research rests on the analysis of such categories as corruption, anti-corruption activities, the system of specialized anti-corruption bodies, the administrative and legal status of the body authorized to combat corruption. In the course of the research, we have applied the dialectical method, which helps to trace the development of the system of anti-corruption bodies and to single out the problems of their functioning and efficiency. The method of a systematic analysis identifies and points out the elements of the administrative and legal status of special anti-corruption bodies, the interrelationship between the elements of the administrative and legal status. The doctrinal method has enabled us to carry out a detailed study of current legislation that regulates the activities of anti-corruption bodies in Ukraine. The statistical method made it possible to analyze the effectiveness of anti-corruption bodies by studying the information on the specific results of their activities over certain periods of time.

### **4. Arguments to support the thesis**

The category “administrative-legal status of the body of power” plays a significant role in the anti-corruption activities since it: 1) allows to identify the advantages and disadvantages of the newly established body of power, body of control or body of law enforcement; 2) determines the quality of legal regulation of the status of anti-corruption bodies; 3) promotes a better understanding of the relationship between such bodies at different levels; 4) demonstrates the effectiveness of interaction between such bodies to achieve their ultimate goal –

to bring the guilty person to legal liability; 5) allows to make up the list of necessary changes that need to be made in order to enhance their efficiency.

The effectiveness of anti-corruption bodies is determined not only by their powers, but primarily by the effectiveness of their interaction. It may be ascertained through not only the assessment and analysis of statistical data, but also through a comparison of the powers, these bodies are entitled with. The latter are an integral part of the administrative and legal status. Therefore, in this paper, we have made an attempt to investigate the system of anti-corruption bodies in Ukraine in a combination with their administrative-legal status.

## **5. Arguments to argue the thesis**

Apart from numerous demands that society placed on a new political elite, the Revolution of Dignity in Ukraine has brought to the fore the pervasive problem of corruption that the country had been living with for many years. The state faced a difficult and multifaceted task: to combat corruption at all levels, to create a system of new specialized anti-corruption bodies, to ensure their effective interaction, to develop effective procedural mechanisms for their activities. All this resulted in adopting a considerable number of regulatory-legal acts in the area, in auditing the powers of the already existing anti-corruption law enforcement agencies, in getting familiar with the international experience in combating corruption.

Various sociological surveys are annually held in Ukraine. They provide the opportunity to trace the problematic aspects of a public life. Among the most crucial questions in such surveys are the ones related to corruption, anti-corruption activities of public authorities, the citizens' attitude and the assessment of the effectiveness of state's anti-corruption activities, as well as its individual bodies. For example, a nationwide survey, conducted by the I. Kucheriv Democratic Initiative Foundation in January 2020 (within the framework of the Program on Promoting Public Activity "Get Involved!"), has revealed certain trends in citizens' attitude to the problem of combating corruption. According to citizens, the leadership in combating corruption in Ukraine now belongs to anti-corruption bodies (37.9%), whereas the President of Ukraine ranks second among the main fighters against corruption (31.5%). At the same time, almost one in five Ukrainians believes that success in combating corruption depends on ordinary citizens. Only 6.3% of the respondents believe that the government of Ukraine effectively combats corruption, and 71.0% of Ukrainians see no or almost no changes in the progress of the anti-corruption reform.

Approximately 15.7% of the respondents replied that the level of corruption had increased over the past 12 months, and every third Ukrainian (32.9%) is ready to participate in collective protests against high-level corrupt

officials and politicians (Ilko Kucheriv Democratic Initiatives foundation, 2020). As we can see from the survey, there are significant problems in Ukraine in terms of combating corruption and the effectiveness of the anti-corruption system. In our opinion, one of the possible ways to solve this problem is to analyze the administrative and legal status of public bodies of power, authorized to combat corruption.

The review of specially created Ukrainian anti-corruption bodies shows that their system, status and powers face a few problems of applied nature. The latter problems seem to be characteristic not only for domestic bodies. Among them, we might differentiate country's complicated economic situation; reluctance of state's political leaders to drastically change the paradigm of ensuring the effective functioning of anti-corruption bodies; mistakes in forming the bodies of public power; irrelevance of the results in the work of certain anti-corruption bodies compared to initial expectations; a critically low level of society's and citizens' trust to the above bodies and to the anti-corruption policy on the whole.

It is worth agreeing with the opinion of O. Novikov, who indicates that “when creating a new anti-corruption body, it is important to take into account the potential risks, associated with its creation. After all, insufficient study of both the leading experience of foreign countries and the real Ukrainian conditions of functioning of the future institution can lead to the creation of another bureaucratic body, which will only make the already overburdened bureaucratic machine more complicated. In addition, the creation of a new body can cause a conflict of jurisdictions, especially when the necessary legislation is adopted in a short time, without sufficient legal, technical and systematic elaboration, extra duplication of functions, etc. Eventually, the new law enforcement body might become an instrument of political reprisals, particularly in the case of an active retrospective investigation of corruption” (Novikov, 2015). This reasoning fully conforms to modern realities and is reflected in the fact that the persons responsible for committing corruption offenses rather frequently avoid legal liability.

The current stage of formation of anti-corruption bodies in Ukraine is very intensive. In 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” (Verkhovna Rada of Ukraine, 2020b). The body was set up to demonstrate the reform of special institutions that will conduct pre-trial investigations and prosecutions for corruption and corruption-related offenses. Besides, the international experience and advice of Ukraine's international partners were used in establishing this body.

In compliance with Art. 1 of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine”, the National Anti-Corruption Bureau of Ukraine (hereinafter - NABU) is a state law enforcement agency, which is

responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses under its jurisdiction. The task of the National Bureau is to counteract criminal corruption offenses committed by high-level officials, who are authorized to perform state or local government functions and pose a threat to national security, as well as to take other measures provided by law to combat corruption (The National Anti-Corruption Bureau of Ukraine, 2020).

According to Art. 16 of the Law, the powers of the NABU include not only the pre-trial investigation of criminal offenses, but also the implementation of operative-investigative measures to prevent, detect, terminate and disclose criminal offenses under its jurisdiction; taking measures to search and arrest funds and other property that may be subject to confiscation or special confiscation in criminal offenses; ensuring (on confidential and voluntary bases) cooperation with persons who report corruption offenses, etc.

It is interesting that the NABU jurisdiction is marked with the following specific features: it can be administered in relation to criminal offenses that fall under the jurisdiction of other law enforcement agencies (especially if it involves prevention, detection, disclosure and termination of such offenses). Here lies the procedural interaction with another anti-corruption body - the Specialized Anti-Corruption Prosecutor's Office, for the prosecutor of this institution makes procedural decisions of this type.

The NABU has an appropriate structure, to exercise its powers. It is composed of two sections: central and territorial administrations. The law provides for a specific number of territorial subdivisions (not more than seven). Such subdivisions are formed by the decision of the NABU Executive. Territorially, they ensure the implementation of tasks envisaged by the Constitution and entitle the Executive to define the number of such subdivisions. In other words, the legislator allows the NABU Executive to be flexible in determining the specific oblasts that will be under the jurisdiction of the territorial division.

Today, there are three territorial administrations: Lviv Territorial Administration - the first Territorial Administration of the National Anti-Corruption Bureau of Ukraine, whose jurisdiction extends to Lviv, Volyn, Zakarpattia, Chernivtsi, Ternopil, Ivano-Frankivsk, Rivne, Khmelnytsky oblasts; Odesa Territorial Administration, which extends its powers to Odesa, Kherson, Mykolaiv and Kirovohrad oblasts; Kharkiv Territorial Administration - the territory of Kharkiv, Sumy, Poltava, Dnipro, Zaporizhia, Luhansk, Donetsk oblasts (including the territory of the Joint Forces Operation) (The National Anti-Corruption Bureau of Ukraine, 2020).

At the head of the NABU is an Executive, who is appointed with the consent of the Verkhovna Rada of Ukraine and dismissed by the President of Ukraine. The candidacy of the Executive is selected on the basis of a competitive selection, conducted by a specially created Competition Commission. Such a

mechanism partially guarantees the body independence in exercising its powers and ensures transparency in the appointment of the head of the NABU. The principle of competitive selection is also applied for the appointment of NABU detectives.

However, this mechanism also carries a potential threat because the procedure of appointment and dismissal of the Executive of this anti-corruption body depends on both the President of Ukraine and the Verkhovna Rada of Ukraine. This may cause certain “immunity” from being prosecuted for committing corruption offenses by high-level officials, who exercise the powers of state or self-government bodies. It is worth considering the opinion of O. Parkhomenko-Kutsevil, who states that NABU mechanisms and specific actions in terms of cooperation with other law enforcement agencies, authorities and local self-government bodies are not legislatively defined. This, in turn, provokes problems in terms of ensuring the implementation of anti-corruption mechanisms (Parkhomenko-Kutsevil, 2019). The above conclusion is reflected in the statistical information posted on the official website, which contains the following statistical data about the NABU activities: on June 30, 2020, 986 criminal proceedings were initiated; 390 suspicion reports were made; 265 cases were taken to court; 41 guilty verdicts were issued against the individuals (The National Anti-Corruption Bureau of Ukraine, 2020). To put it differently, with such a set of powers and detailed administrative and legal status, the efficiency of this special anti-corruption body should be somewhat higher.

The Specialized Anti-Corruption Prosecutor's Office (hereinafter - SAP) is a logical extension of the anti-corruption mechanism in the system of anti-corruption bodies of Ukraine. The structure of this body is clearly defined by the Regulation on the Specialized Anti-Corruption Prosecutor's Office of the Prosecutor's General Office of Ukraine, approved by the respective order of the Prosecutor General of Ukraine № 125 dated March 5, 2020 (hereinafter - Regulation on SAP) (Verkhovna Rada of Ukraine, 2020c). According to paragraph 1.1. of the Regulation, the SAP is an independent structural unit of the Prosecutor's General Office (with the rights of the Department), subordinate to the Deputy Prosecutor General - the head of the Special Anti-Corruption Prosecutor's Office. According to paragraph 2.1. of the Regulation, the structure of the Specialized Anti-Corruption Prosecutor's Office includes: Department of Procedural Management, which supports the public prosecution and representation in court. It is composed of: the First Branch of Procedural Management, which supports the public prosecution and representation in court; the Second Branch of Procedural Management, which supports the public prosecution and representation in court; the Third Branch of Procedural Management, which supports the public prosecution and representation in court; the Fourth Branch of procedural management, support of public prosecution and representation in court; the Fifth Branch of Procedural



Management, which supports the public prosecution and representation in court; the Sixth Branch of Procedural Management, which supports the public prosecution and representation in court; the Analytical-Statistical Department; the Department of Documentary Support (Verkhovna Rada of Ukraine, 2020c). The Specialized Anti-Corruption Prosecutor's Office is headed by the Deputy Prosecutor General, who has a first deputy and a deputy.

Paragraphs 3.1 – 3.10 of the Regulation envisage the main tasks and functions of the SAP. Among the basic ones, we can single out the monitoring of how the operative-investigative activities and pre-trial investigation of criminal offenses, conducted by the National Anti-Corruption Bureau of Ukraine, comply with the law; ensuring the compliance with legal requirements when accepting, registering, investigating and resolving complaints and notifications on criminal offenses, as well as timely entry of information into the Unified Register of Legal Proceedings; ensuring that the National Anti-Corruption Bureau of Ukraine conducts timely, complete and unbiased investigations of criminal offenses and cancels unlawful court decisions at the stages of pre-trial and in-court investigations; support of the public prosecution of criminal cases investigated by the National Anti-Corruption Bureau of Ukraine, etc.

Let us look at the specifics of the SAP competence in more detail. It is responsible for the organization and procedural management of the pre-trial investigations, resolution of other issues in accordance with the law during criminal proceedings, supervision over covert and other investigative and search actions of the NABU, in compliance with the jurisdiction of the latter. In juridical theory, such activity is referred to as specialized procedural management, which is intended to guarantee the legality of implementation of all aspects of criminal procedural relations that arise during the pre-trial investigation of criminal proceedings regarding certain categories of crimes. Part 5 of Article 216 of the Criminal-Procedural Code of Ukraine (CPC) establishes the subject jurisdiction of the NABU, which constitutes the subject field of the procedural management of the SAP. One of the major regulatory shortcomings of NABU investigation is that the list of criminal offenses, directly investigated by NABU detectives, does not correspond to the list of corruption-related offenses, mentioned in the note to Article 45 of the Criminal Code of Ukraine (CC). A. Savchenko and O. Klymenko point out that in this way, the incompatibility of the articles of the CPC of Ukraine and the CC of Ukraine causes a paradoxical situation (Savchenko & Klymenko, 2015). This may lead to the case, when persons under NABU investigation will appeal the results of procedural actions in court.

At the same time, the activity of the SAP is focused on the representation of state interests in court in cases provided for by the Law. Such cases regard exclusively the corruption-related offenses. The latter are defined in the Law of

Ukraine “On Prevention of Corruption”, whereas their specified list can be found in the note to Article 45 of the CC of Ukraine (on corruptive offences) and in Chapter 13-A of the Code of Ukraine on Administrative Offences (on administrative offences).

M. Rudenko and O. Melnyk refer to this sphere of representation such things as the prosecutor’s claims for compensation of damages, caused to the state as a result of corruption offences; cancellation of illegal acts and legal proceedings (Articles 66-68 of the Law of Ukraine “On Prevention of Corruption”), as well as recognition of assets as unrecoverable and their recovery (Articles 233 of the Civil-Procedural Code of Ukraine) (Rudenko & Melnyk, 2015). We agree with the above idea. Moreover, in case the SAP does not perform the function of representation properly, there might occur a conflict between it and the National Agency for Prevention of Corruption (NAPC).

Part 3 of Article 23 of the Law allows the prosecutor to represent the legitimate interests of the state in court if the subject of power, whose competence suggests having the correspondent authorities, improperly exercises protection of these interests, as well as in case such a body is absent. A. Savchenko and O. Klymenko emphasize that the SAP will be able to exercise its powers only provided that the NAPC does not perform or improperly performs its duties. The scholars describe the above phenomenon as a substantial reason for representation in court, which might provoke a conflict between the two anti-corruption bodies (Savchenko & Klymenko, 2015).

In our opinion, the implementation of the functions of representation of the NAPC and the SAP should be distinctly separated. Protecting the interests of the state in courts by the SAP has to be limited to the possibility of filing criminal charges within criminal proceedings for corruption-related offenses. At the same time, in case the NAPC or another authorized body does not represent or improperly represents the interests of the state, the SAP must remain the body that will protect the interests of the state in courts. We believe that the SAP is an important body in the anti-corruption mechanism in terms of the pre-trial investigation of the corruption-related criminal offenses, in terms of bringing guilty persons to legal liability prescribed by law, and in terms of compensation for the damage caused to the state. Apart from that, it exercises the power to monitor the NABU as a body of the pre-trial investigation and operative-investigative activities. The administrative-legal status of this body meets generally accepted international standards, yet there are certain problematic issues that require legislative regulation. This regards, first of all, a detailed division of powers in terms of SAP’s performing the representation function.

In compliance with the Law of Ukraine “On the State Bureau of Investigation”, the State Bureau of Investigation (SBI) is a state law enforcement agency, which is responsible for preventing, detecting, terminating, disclosing and investigating criminal offences within its competence (The Law of Ukraine,

2020). This body performs law enforcement activity, which is aimed at solving tasks in terms of prevention, detection, termination, disclosure and investigation of crimes.

This activity is carried out in relation to the crimes committed by specific subjects, who have a special administrative-legal status. These are: officials who occupy a particularly important positions in accordance with Part 1 of Article 9 of the Law of Ukraine “On State Service”; the persons whose positions belong to the first - third categories of public service positions; judges and law enforcement officers, except when these crimes are investigated by detectives of the National Anti-Corruption Bureau of Ukraine. The scope of cases that fall under the jurisdiction of the SBI, also include the crimes committed by employees of the National Anti-Corruption Bureau of Ukraine, the Deputy Prosecutor General (the Head of the Office of the Specialized Anti-Corruption Prosecutor), or other prosecutors of the Office of the Specialized Anti-Corruption Prosecutor, except in cases the pre-trial investigation of these crimes is assigned to detectives of the Internal Control Department of the National Anti-Corruption Bureau of Ukraine. Here also belong the crimes against the established procedure of military service (military crimes), except for the cases falling under Article 422 of the Criminal Code of Ukraine (The Law of Ukraine, 2020).

In order to ensure the proper performance of the SBI tasks, there have been set its territorial departments: Lviv Territorial Department, which extends its powers to the Volyn, Zakarpattia, Ivano-Frankivsk, Lviv, and Ternopil oblasts; Khmelnytsky Territorial Department, which extends its powers to the Vinnytsia, Zhytomyr, Rivne, Khmelnytsky and Chernivtsi oblasts; Mykolayiv Territorial Department, which extends its powers to the Kirovograd, Mykolayiv and Odessaoblasts; Melitopol Territorial Department, which extends its powers to the Autonomous Republic of Crimea, Zaporizhia and Kherson oblasts, the city of Sevastopol; Poltava Territorial Department, which extends its powers to the Dnipropetrovsk, Poltava, Sumy and Kharkiv oblasts; Kramatorsk Territorial Department, which extends its powers to the Donetsk and Luhansk oblasts; Kyiv Territorial Department, which extends its powers to the city of Kyiv, the Kyiv, Cherkasy and Chernihiv oblasts.

In accordance with Articles 9-10 of the Law, the system of the State Bureau of Investigation consists of the central office, territorial departments, special units, educational and scientific-research institutions. The composition of the SBI includes investigators, as well as operative, internal control and other divisions. The structure of the State Bureau of Investigation is determined by the President of Ukraine. At the head of the Bureau is an executive, who has a first deputy and a deputy. However, there are a number of organizational and legal problems. One of them concerns possible disputes that may arise between the SBI and the NABU. The jurisdiction of the National Anti-Corruption

Bureau of Ukraine is determined with a due regard to both personal and subject jurisdictions. Therefore, it is necessary to review the provisions of Article 216 of the CPC of Ukraine in the part relating to the jurisdiction of the SBI bodies, and to provide a list of criminal offenses falling under it.

It is worth mentioning that since the adoption of the Law of Ukraine “On the State Bureau of Investigation”, there has been a debate on its administrative and legal status. According to the latter, the SBI is defined as a central body of executive power that administers the law enforcement activity with the purpose of preventing, detecting, terminating, disclosing and investigating crimes that fall within its scope of competence (The Law of Ukraine, 2020). Such a definition allows to assert that the newly established anti-corruption body belongs to the bodies of executive power with a special status and indefinite range of authorities, which could jeopardize the achievement of expected results by this anti-corruption body. O. Busol emphasizes that “... the law does not ensure an unambiguous answer to the question of whether the SBI has a special status or not because the provisions of the special law define it as: 1) the central body of executive power (Article 1); 2) the body that is entitled with law enforcement powers (Article 1); 3) the body with a special status (Article 4). Such inconsistency in determining the legal status of the SBI may affect the results of its work in the future, as well as entitles it with too unlimited powers” (Busol, 2020). Therefore, certain amendments were introduced into the Law in March 2019. Today, the SBI is defined as a state law enforcement agency assigned with the task of preventing, detecting, terminating, disclosing and investigating crimes within its competence, which has stopped all discussions and debates.

We can also analyze the current statistical information posted on the official website of the SBI. For example, during 2019, the Bureau registered 34,366 complaints and notifications on crimes. By December 2019, the SBI had investigated the following criminal offenses: crimes committed in the field of service activities and corruption - 7,799, including: offenses committed by the President of Ukraine, whose powers were suspended – 20; offenses committed by the people’s deputies – 55; offenses committed by the ministers of the Cabinet of Ministers of Ukraine, First Deputies and Deputies of ministers – 45; offences committed by the persons with category ‘A’ positions – 50; other categories - 7,809 offences; crimes committed by the law enforcement officers - 13,246, of which: 1,054 by the prosecutors, 365 by the officers of the Security Service of Ukraine, 6,808 by the officers of the National Police, 414 by the officers of the National Guard, 188 by the NABU detectives, 64 by the officers of the Special Anti-Corruption Prosecutor's Office, 347 by the employees of the State Penitentiary Service of Ukraine, 48 by the employees of the State Service for Emergency Situations, 91 by the employees of the State Criminal-Investigative Service of Ukraine, 159 by the employees of the SBI; 360 by the

officers of the bodies exercising control over the implementation of tax legislation, 307 by the officers of the bodies exercising control over the transfer of goods through the customs border, 1029 by the judges, 15,542 by the military officers, others - 1862 (Report on the activity of the State Bureau of Investigation in 2019, 2020).

Having analyzed the current statistical data, we can state that the SBI performs its duties in the way they are specified in the legislation. However, there are a number of problematic aspects that need to be solved. It is important to take into account the opinion of V. Komashko, who points out that for successful functioning of the SBI, it is necessary to ensure: a) its structural independence; b) its accountability both to the state authority and to the community; c) the legal basis for its activities, development and adoption of internal regulatory-legal acts; d) its exclusive competence; e) the adequate financing from budgetary funds and the ability to independently accumulate and spend its own budget; f) the internal organizational structure; g) the development of the criteria for assessing its activities; h) the development of a special training program for its employees (Komashko, 2014, pp. 132–137).

For a long time since the beginning of the reforms in the field of combating corruption in Ukraine, a lot of politicians, lawyers and scientists have been coming up with the idea of founding a separate judicial body that would investigate corruption-related cases. Among the countries, where such judicial institutions have already been established, are Afghanistan, Bangladesh, Bulgaria, Cameroon, Croatia, Indonesia, Kenya, Malaysia, Nepal, Pakistan, Palestine, Philippines, Senegal, Slovakia, Uganda (Euinfocenter, 2020). In our state, the functions of such a judicial body are performed by the High Anti-Corruption Court of Ukraine (hereinafter referred to as HACC). Its creation was extremely necessary since the public confidence in judicial institutions and their effectiveness in corruption combat was at a low level. Quite often, in high-profile court cases, where the central figures were high-ranking officials who represented various branches of power, decisions were frequently made either to terminate the proceedings, or to indefinitely delay the process of hearing the case. Obviously, these problems served as a pretext for active discussion of the proposal to create a specialized anti-corruption court.

It is essential that the administrative-legal status of the HACC has been determined by the Law of Ukraine “On the High Anti-Corruption Court”. According to part 1 of Article 1 of the Law, the High Anti-Corruption Court is a permanently acting specialized high court of Ukraine’s judiciary. In compliance with part 1 of Article 3 of the Law, the mission of the High Anti-Corruption Court is to administer justice in accordance with the provisions of the law and judicial procedures. Its purpose is to protect individuals, society and the state from corruption-related and criminal offenses, as well as to control judicially the pre-trial investigation of these criminal offenses. The HACC has also to ensure

citizens' rights, freedoms and interests in a criminal proceeding, as well as is supposed to decide on the recognition of unjustified assets and their forfeiture to the state in cases envisaged by law. The Law suggests that the HACC shall administer justice as a court of appeal in criminal proceedings on criminal offenses that fall under its jurisdiction according to Procedural Law (Verkhovna Rada of Ukraine, 2020d). That is why HACC is the only judicial institution authorized to hear cases.

If we have a look at the statistical data on the activity of the HACC (as a court of original jurisdiction), we will see that in the first half of 2020, 203 criminal proceedings were issued against 409 persons. 201 of these were criminal proceedings pursuant to an indictment, 2 were initiated by a prosecutor requesting that the criminal proceedings be terminated. 54 of these proceedings, involving 84 persons, were brought to trial during the reported period. According to types of criminal offenses, criminal cases under review were divided as follows - 42 cases of committing crimes against property, or 21% of the total number of criminal cases considered by the HACC during the reported period; 18 cases - offences in the field of economy (9%); 143 cases - offences in the field of service activity and professional activity related to the provision of public services (70%) (Verkhovna Rada of Ukraine, 2020d).

It is interesting that the most intense debate, which arose and kept going when the activity of the HACC has already been in a full swing, regarded the implementation of a special procedure for the selection of judges. Nevertheless, this procedure is quite detailed and transparent. For example, audiovisual fixation is used during the qualification assessment of candidates for the position of a judge of the High Anti-Corruption Court. Audiovisual fixation is also used during the assessment of candidates' results. In addition, the sessions of the Supreme Court of Justice are broadcast online on its official website (Verkhovna Rada of Ukraine, 2020d).

O. Parkhomenko-Kutsevil indicates that "... it would be reasonable for the Supreme Qualification Commission of Judges of Ukraine only to conduct consultations and testing of professional knowledge and skills, as well as to consider the issues of the candidates' integrity and morality. Then, to form a list of those candidates who meet the set requirements of the current legislation for professionalism, morality, integrity, experience and qualification. Further, to propose that the election of judges to the High Anti-Corruption Court should be conducted by the population of the country through electronic voting. The electronic identification of an individual may be an electronic signature (e.g., an electronic signature used for filling an electronic declaration of an individual, authorized to perform the functions of the state or local self-government). This will enable people to elect the judges, who they consider honorable, unprejudiced, and professional" (Parkhomenko-Kutsevil, 2019). However, we believe that such drastic changes should take place only if they are reflected in

the amendments to the Constitution of Ukraine because today, judges in Ukraine are elected not by the citizens, but by the state institutions that are authorized to do so.

The National Agency of Ukraine for Detection, Search and Management of Assets Resulting from Corruption and Other Crimes (hereinafter - ARMA) is the central body of the executive power with a special status. It ensures the formation and implementation of state policy in the field of detection and search of assets that may be arrested in the course of criminal proceedings, as well as management of assets that are arrested or confiscated in the course of criminal proceedings (Verkhovna Rada of Ukraine, 2020e). The reason why this body was set up was the need for implementation of effective mechanism to search for assets that were illegally removed from the territory of Ukraine as a result of committing corruption-related offences. The ARMA is also authorized to control the fulfillment of Ukraine's obligations within the framework of the Action Plan on liberalization of the EU visa regime for Ukraine, as well as the fulfillment of mandatory recommendations of the Organization for Economic Cooperation and Development (OECD).

The creation of this type of anti-corruption bodies is stipulated by the decision of the Council of the European Union on cooperation between Offices for the recovery of assets of member states in the field of search and detection of profits gained in a fraudulent way (the Law No. 2007/845/JHA of December 6, 2007). In accordance with the above law, each member state establishes or designates a national office for the recovery of assets, with the purpose of facilitating the detection and recovery of profits gained in a fraudulent way. These profits may be the object of the order of the competent judicial authority on freezing, arrest or confiscation in the course of criminal investigations or civil proceedings, in compliance with the national law of the Member State concerned (Council of the European Union, 2020).

Today, we can say that the ARMA has achieved the first successes in its activities. On examining the 2019 appeals, the ARMA has detected and found assets both on the territory of Ukraine and outside its borders, for the purpose of their arrest and confiscation. The respective information was submitted to the law enforcement bodies (subjects of appeal), in particular regarding: shares in statutory capitals - 30412.74 million UAH; 7.7 million Euros; 16.59 million Dollars; securities in the amount of 3535,79 million UAH (including bonds of domestic state securities of Ukraine with the total nominal value of 900 million UAH), etc. (ARMA, 2020).

## **6. Conclusions**

Thus, we may distinguish the following bodies of state power that affect and implement the anti-corruption policy: the Specialized Anti-Corruption

Prosecutor's Office of Ukraine; the National Anti-Corruption Bureau of Ukraine; the National Agency for Prevention of Corruption; the State Bureau of Investigation; the High Anti-Corruption Court and the National Agency of Ukraine for Detection, Search and Management of Assets Resulting from Corruption and Other Crimes. Particular emphasis should be laid on the fact that even though certain anti-corruption bodies have been created in Ukraine, their activities require further improvement. Firstly, the newly founded anti-corruption bodies have been functioning not long enough. Secondly, the inadequacy of the regulatory framework that establishes the basis of their administrative and legal status. Thirdly, the inconsistency of legislation in terms of distributing the powers among these bodies. Fourthly, the lack of proper interaction, which should be regulated in the current normative-legal acts.

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