

DOI: <https://doi.org/10.34069/AI/2022.52.04.18>

How to Cite:

Maletov, D., Pidberezykh, I., Ivanishchuk, A., Halunko, V., & Zubov, O. (2022). Improving the administrative and legal status of the high anti-corruption court. *Amazonia Investiga*, 11(52), 165-174. <https://doi.org/10.34069/AI/2022.52.04.18>

Improving the administrative and legal status of the high anti-corruption court

Удосконалення адміністративно-правового статусу Вищого антикорупційного суду

Received: February 14, 2022

Accepted: March 30, 2022

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Abstract

The High Anti-Corruption Court is a relatively recently established anti-corruption body in Ukraine. We would like to note that the study of the legal and organizational principles of its activities has allowed us to identify some controversial or imperfect issues that, in our opinion, need to be eliminated and revised. The purpose of the article is to define and characterize the areas of improving the administrative and legal status of the High Anti-Corruption Court in Ukraine. The object of this research is the range of public relations connected to the activities of this court as a whole. And the subject of the study is to improve its administrative and legal status. Achieving this goal in the study became possible through the use of a set of research methods: logical semantic method, documentary analysis method, system-structural method, formal legal method, forecasting method, and more. It was emphasized that the efficacy of the High Anti-Corruption Court, as an essential component of the institutional structure of anti-corruption institutions, determines the effectiveness of anti-corruption reform in general. The key areas for improving the administrative and legal status of

Анотація

Вищий антикорупційний суд України є відносно нещодавно створеним антикорупційним органом в Україні. Поза тим, хотіли б зауважити, що дослідження правових та організаційних засад його діяльності дозволило нам виявити ряд спірних чи недосконалих моментів, які, на нашу думку, потребують усунення та законодавчого перегляду. Метою статті є визначення та характеристика перспективних напрямків покращення адміністративно-правового статусу Вищого антикорупційного суду в Україні. Об'єктом дослідження виступає коло суспільних відносин пов'язаних з діяльністю цього суду в цілому. А предметом дослідження є удосконалення його адміністративно-правового статусу. Досягнення поставленої мети в дослідженні стало можливим завдяки використанню комплексу методів наукового дослідження: логіко-семантичного методу, методу документального аналізу, системно-структурного методу, формально-юридичного методу, методу прогнозування тощо. Наголошено, що від ефективності діяльності Вищого антикорупційного суду, як важливої

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the High Anti-Corruption Court have been analyzed.

Keywords: anti-corruption, institutional reform, the High Anti-Corruption Court, areas for improvement, judges.

Introduction

Corruption is a obstructive socio-economic occurrence that will manifest itself in all countries without exception (Bondarenko, Reznik, Yevgen, Andriichenko, Stohova, 2020). That is why states are trying to take all possible countermeasures. Institutional transformations play a crucial role in anti-corruption reform. The High Anti-Corruption Court (further in the text HACC) is one of the relatively recently established anti-corruption bodies in Ukraine. On June 7, 2018, was adopted the Law of Ukraine “On the High Anti-Corruption Court” as the main act containing its normative regulation. The appointment of the Anti-Corruption Court is to be the last loop in the framework of Ukrainian anti-corruption bodies that which should ensure the principle of «inevitable punishment» of corruption offenses. (Bondarenko, Utkina, Dumchikov, Prokofieva-Yanchylenko, Yanishevskaya, 2021). Of course, in initiating the formation of the HACC in Ukraine, the initiators of judicial reform and the legislature relied on the current realities of judicial administration in Ukraine (Myshchak, 2021).

In addition, we would like to note that the study of the legal and organizational principles of the HACC has allowed us to identify several controversial or imperfect issues that, in our opinion, need to be eliminated and revised. After all, the effectiveness of the HACC, as an essential component of the institutional structure of anti-corruption institutions, determines the effectiveness of anti-corruption reform in general. In addition, the interest of the public and the international community in this judicial body is crucial. On the one hand, such attentiveness performs control and preventive function, but it often interferes with the court’s work (Transparency International Ukraine, 2021). For example, there are regular complaints about the court’s foreign influence or “external leadership” and articles or stories about judges appear in the

складової інституційної структури антикорупційних установ, залежить ефективність реалізації антикорупційної реформи в цілому. Виокремлено та проаналізовано ключові перспективні напрямки покращення адміністративно-правового статусу Вищого антикорупційного суду.

Ключові слова: протидія корупції, інституційна реформа, Вищий антикорупційний суд, напрями вдосконалення, судді.

media in which actual events are deliberately distorted by artificially giving them a negative connotation. (Tanasevych, 2021).

Moreover, some scholars emphasize that the role of courts in criminal proceedings is decisive, unlike other bodies whose main task is to investigate and gather evidence; in criminal proceedings, courts decide whether a person is found guilty of wrongdoing or not and appoint punishment. The purpose of the article is to define and characterize the areas of improving the administrative and legal status of the HACC in Ukraine. The object of this research is the range of public relations connected to the activities of this court as a whole. And the subject of the study is to improve its administrative and legal status.

Theoretical framework

Issues of functioning of anti-corruption institutions in general and anti-corruption courts, in particular, are of scientific interest to many Ukrainian and foreign scholars. For example, Harvard Law School professor Matthew Stevenson and senior counselor U4 Anti-Corruption Resource Centre Sophie Schütte presented the results of her study “Specialized Courts: Comparative Analysis” (Lishchyshyn, 2021). Accordingly, the authors provided a reasonably broad definition of the “anti-corruption court” category. They suggested defining him as a judge, court, division (subdivision) of a court or tribunal specializing mainly (but not exclusively) in corruption cases. Analyzing the organizational structure of such courts, it should be noted that in foreign countries, they can be included in the system of general courts (in particular, in the form of courts of the first instance with primary jurisdiction in corruption cases) or as separate courts

(empowered in such cases only in local courts of general jurisdiction).

Drozd O., Nikitiuk Yu., Dorofeieva L., Andriiko O., Sabluk S. point out that the international experience of creating anti-corruption judicial institutions is quite contradictory. Not in all countries where it was implemented, it has become a capable enough tool to combat corruption occurrence. So in this article, we tried to find out whether the work of the anti-corruption court will be effective in Ukraine (Drozd, Nykytiuk, Dorofeieva, Andriiko, Sabluk, 2020).

Good governance, which includes answerability and clarity, enables citizens to approximate government responsible for better development outcomes, as it stimulates public participation in policy-making and increases transparency. (Gurkan, 2010). It is essential to create an inadequate state body to ensure an independent judiciary in corruption cases.

Measures to promote anti-corruption, transparency, and accountability in policy-making are also highly relevant. In particular, the expediency of the establishment and existence of the HACC in Ukraine is given special heed in the research literature. A. Slyusar believes that the mere establishment of a specialized anti-corruption court will not be enough to solve the existing problem of overcoming corruption with the help of criminal procedural mechanisms. Instead, in his opinion, this may be a temporary decision. After the end of such a transitional period, should be created first instance anti-corruption courts on the principle of the specialty of the judiciary. Their jurisdiction should extend to the whole spectrum, without exception, of corruption offenses. (Slyusar, 2017).

Summing up the opinions of scientists, we would like to note that the establishment of the HACC in Ukraine is timely and essential. Inspired by international experience and recommendations of the international community in Ukraine, the HACC was established. The establishment of this court completes the formation of the vertical of anti-corruption institutions and will help reduce the level of corruption in Ukraine.

The authors identify and describe the main directions of improving the activities of the HACC in Ukraine: enhancing the organization of the court, eliminating “artificial” restrictions on the candidacy of a judge of the HACC, technology ad hoc, immunity of judges, raising

the professional level, adjusting the jurisdiction of the HACC in Ukraine

Methodology

A set of research methods was used to achieve this goal. Using the documentary analysis method, the provisions of legal acts were identified, which set out the basic principles of the HACC in Ukraine (subdivision Elimination of “artificial” restrictions on the candidacy of a judge of the HACC). Using the logical-semantic method, the information in the sections Application of ad hoc technology and Inviolability of judges was summarized. Thanks to the system-structural method, the grounds for improving the territorial structure of the court in Ukraine (Improving the organization of the High Anti-Corruption Court) were identified. Based on the formal-legal method and the method of forecasting, shortcomings and problems of administrative and legal status of the HACC were identified, as well as possible areas for their improvement (Adjustment of the High Anti-Corruption Court jurisdiction and Professional Development). Other general scientific and unique legal methods were used in the research, contributing to the study’s complexity, system, and completeness.

The article contains references to 28 sources, including articles indexed on the scientometric basis of Web of Science, including seven normative sources.

Results and discussion

Improving the organization of the High Anti-Corruption Court

According to scientific sources, because the Appeals Chamber is in the same court, they do not send documents. It is immediately forwarded to the Appeals Chamber, whose judges schedule hearings when someone files an appeal. This saves time and money (Zheltukhin, 2018).

In our subjective opinion, such an approach contradicts the principles of justice, as it contributes to the possibility of corrupt administrative influence on judges by the chairman of the court and other judges. The judges’ acquaintance and unwillingness to overturn the “comrade’s” decision can play a negative role here. In addition, many procedural documents are not appealed in cassation (Zheltukhin, 2018).

Among the factors that also lead to corruption among judges in the Conclusion of the Advisory

Council of European Judges “On the prevention of corruption among judges” (Advisory Board of European Judges, 2018) that a judge may be the victim of undue pressure from colleagues or influential groups in the judiciary. It seems pretty standard that judges, due to their specific role and position, cannot adequately defend themselves against such pressure. Therefore, it is imperative to note that such “cooperation” is possible when judges are geographically distant.

In addition, given the principle of territoriality, it would be more effective to form anti-corruption courts and other anti-corruption public authorities (Specialized Anti-Corruption Prosecutor’s Office, National Anti-Corruption Bureau of Ukraine). Implementing this measure would allow more prompt resolution of preventive measures, investigative actions, etc. As a result, the pre-trial investigation process would be more productive.

Of course, the establishment of chambers of the HACC in each region is economically impractical, especially given the HACC’s clear and rather limited jurisdiction to hear cases of “top corrupt officials”. Given the above, we believe that the chambers of the HACC should function in Odesa, Lviv, and Kharkiv oblasts.

The scientific literature is also quite revolutionary, according to which the existence of the HACC does not make sense at all. Therefore, the justice issue in corruption cases is updated by local competent courts under whose local jurisdiction the crime was committed. In the first instance, criminal proceedings are carried out by local courts of general jurisdiction, in the appellate instance - competent courts of appeal, in the cassation instance - the High courts (Yevtushenko, Udod, 2020).

In our opinion, such a position contradicts the anti-corruption aspirations of our state. It cannot be implemented, especially in supporting the establishment of this institution, both by representatives of the international community and leading politicians of today. After all, among others, the establishment of the HACC was supported by M. Jovanovich (then Ambassador Extraordinary and Plenipotentiary of the United States to Ukraine), J. Yurchyshyn (public figure, anti-corruption expert, at that time Executive Director of Transparency International Ukraine”), P.O. Poroshenko (then President of Ukraine), A.P. Yatsenyuk (ex-Prime Minister of Ukraine), V.B. Groyzman (then Prime Minister of Ukraine) (Yevtushenko, Udod, 2020).

Elimination of “artificial” restrictions on the candidacy of a judge of the High Anti-Corruption Court in Ukraine

The following principle in the work of the HACC, which in our opinion needs to be improved, is the legislative approach to the fact that a person who held a position in certain public authorities for the last ten years, before appointment, and in the Prosecutor’s Office of Ukraine, Internal Affairs of Ukraine, National Police of Ukraine, State Bureau of Investigation, other law enforcement agencies, tax police, Security Service of Ukraine, customs authorities, National Anti-Corruption Bureau of Ukraine, National Agency for Prevention of Corruption, National Agency of Ukraine for Detection, investigation and management of assets obtained from corruption and other criminal offenses, the Antimonopoly Committee of Ukraine, the Accounting Chamber, the central executive body that ensures the formation and implementation of state tax and customs policy, the main administrative body that implements state policy in the field of prevention and counteracting the legalization (laundering) of proceeds from crime or terrorist financing may not be appointed a judge of the HACC.

In addition, lawyers who, on the other hand, maybe judges of the HACC. We are convinced that such restrictions are a blatant disregard for the principles of equality of citizens. After all, people with significant practical experience, mainly if they worked in units that conducted pre-trial investigations or provided procedural guidance in criminal proceedings to study corruption offenses, can not apply the acquired knowledge and skills and become a judge of the HACC. This thesis is substantiated by Article 24 of the Constitution of Ukraine, according to which citizens have equal constitutional rights and freedoms and are equal before the law. «There may be no privileges or restrictions based on race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, residence, language, or other characteristics» (Constitution of Ukraine, 1996).

We agree with the position of D.O. Yevtushenko and A.M. Udod that the analyzed restrictive regulations are similar to lustration (Yevtushenko, Udod, 2020). In the modern sense, lustration is understood as an institution of transitional justice, which aims to overcome the negative consequences of totalitarian (authoritarian) regimes. This term is from the late ’80s of the twentieth century. This applies mainly to the post-communist states of Eastern Europe,

where lustration has been used to high-ranking officials of the communist regime, former security and police agents, and sometimes to all members of communist parties. As the experience of European countries shows, lustration is an effective legal mechanism for the legitimate change of the political elite (Kovalchuk, Pivovar, 2017).

Lustration in Ukraine provides for the dismissal of specific categories of persons from civil service positions, local self-government if they held a particular variety of classes for a certain period, and a ten-year and five-year ban on being an official or official of public authorities or local self-government (parts 1, 3, 4 Article 1 and Articles 2, 3 of the Law of Ukraine: “On Purification of Power” of September 16, 2014, № 1682-VII) (Law of Ukraine № 1682-VII, 2014). However, it should be noted that the national legislator, who wanted to carry out the lustration procedure in Ukraine as soon as possible, did not consider the existing experience of the lustration procedure in Eastern Europe. This discredits the significant potential of existing theoretical developments of foreign experts in the field of general jurisprudence, constitutional, municipal, and administrative law (Zinoviev, 2018).

This is confirmed by paragraph 107 of the judgment of the European Court of Human Rights in the field “Fields and Others v. Ukraine,” which states that at the 101st Plenary Session (12-13 December 2014), the Venice Commission approved an interim opinion on the Law of Ukraine “On cleansing of power”, which determined that party affiliation, political and ideological reasons should not be used as a basis for the application of lustration measures; if the very fact of belonging to a party, organization or administrative body of the old regime is the basis for a ban on holding civil service positions, such a ban is reduced to a form of collective and discriminatory punishment incompatible with human rights norms. The Commission concluded that the Law of Ukraine “On Purification of Power” contains several serious shortcomings, in particular, guilt must be proved in each case and cannot be assumed based on belonging only to the category of public authorities; the criteria for lustration need to be revised (Decisions on the merits of Polyah and Others v. Ukraine - February 24, 2002). Thus, the provisions of this legislative act are ambiguous, which in turn is confirmed by numerous decisions of judges regarding the reinstatement of “lustrated” workers at work and compensation for forced absences.

Therefore, in an attempt to create a genuinely effective and transparent judiciary, the legislator, in our opinion, should introduce more effective mechanisms for the competitive selection of candidates, rather than restricting the rights of certain categories of persons by banning them from participating. After all, now there is a situation when highly qualified and experienced specialists do not even have the opportunity to submit documents for their candidacy. In our opinion, to apply extrapolation in the context of corruption of all former employees of certain public authorities contradicts the presumption of innocence enshrined in Article 62 of the Constitution of Ukraine.

Given the above, we propose to remove this restriction from the text of Part 4 of Article 7 of the Law of Ukraine “On the High Anti-Corruption Court”. It is also advisable to oblige all candidates for a judge of the HACC to undergo a polygraph examination.

Application of ad hoc technology

Another area of the administrative and legal status of the HACC which should be improved is the possibility of involving representatives of the scientific community and public figures in the administration of justice as an ad hoc technology implementation. Of course, following Article 124 of the Constitution of Ukraine, the delegation of functions of courts and the assignment of these functions to other bodies or officials are not allowed (Constitution of Ukraine, 1996). At the same time, the task of combating corruption and thus bringing criminals to justice is so important that it requires the use of non-standard solutions. Of course, the current procedure for selecting a judge of the HACC and the qualification requirements are pretty meticulous. In addition, people with professional disabilities may be admitted to the position of a judge due to a reasonably acceptable attitude to corruption in our country. Moreover, judges can often veiledly lobby the interests of individual political parties or politicians. From this perspective, the ability to involve highly qualified individuals in the administration of justice guarantees independence, objectivity, and impartiality of the HACC judges.

Thus, ad hoc technology determines how to solve specific problems or tasks that cannot be adapted to solve other tasks and do not fit into the overall decision strategy. For example, an ad hoc law is passed in connection with a qualitatively specific incident or to address particular tasks that do not

fit into legal practice and do not address other similar issues.

Moreover, in our opinion, implementing this technology is essentially an analogy to jurors, whose involvement in the administration of justice is not considered a violation of constitutional requirements. After all, the principle of citizen participation in the management of public affairs is enshrined in Art. 38 of the Constitution of Ukraine creates a legislative basis for implementing various forms of public participation in the functioning of the judiciary. Still, it should be noted that there is no unity on the need, feasibility, and prospects of some of them among lawyers (Kravchuk, Kravchuk, 2016).

In our opinion, jurors involved in the HACC should have some training and have practical experience in the anti-corruption field, such as research or experience as a member of a non-governmental organization aimed at anti-corruption activities or understanding public activities outside the general organization. We are convinced that the desire of those concerned to carry out reforms and the availability of specialized knowledge and knowledge of the law is essential for the administration of fair justice. All this will allow, on the one hand, to ensure the objectivity of the trial and reduce corruption risks for judges. On the other - the professionalism and validity of court decisions.

Yu. Dubina aptly notes that the work of jurors in Ukraine, in particular in corruption cases, will be primarily positive. Eventually, public participation in this process will increase public confidence in public authorities. In addition, the involvement of citizens in the administration of justice is designed to increase their legal awareness (Dubina, 2020).

At the same time, given the importance of combating political and high-ranking corruption, it is still advisable to involve not just members of the public but specially designated individuals who would undergo special training. This training will be aimed at studying the features of substantive and procedural law, which is necessary to consider cases of corruption offenses. In addition, the involvement of jurors should be mandatory, not just at the defendant's request.

Inviolability of judges

The next step in ameliorating the administrative and legal status of the HACC is to review the

approach to bringing judges to justice. Judge immunity is one of the most pressing and controversial issues in studying immunity in criminal proceedings. The complexity of this issue lies precisely in the peculiarities of the content of this immunity and the procedural position of judges in criminal proceedings. Under these conditions, the state faces the task of regulating this area of criminal procedure as correctly as possible to find a balance between the smooth functioning and operation of the entire judicial system and minimize the possibility of abuse of immunity guaranteed by the judiciary. (Ganenko, 2019).

Judicial liability is part of their legal status. Therefore, a stable beginning of the judge's responsibility for the crime is, on the one hand, an effective means of ensuring the rule of law in this particular area of public relations, and on the other hand - a factor in the independence of the judge (Goncharenko, 2011).

To clarify the nature of the controversy over the immunity of judges, we propose to analyze the legal requirements. Thus, Article 126 of the Basic Law states that «without the consent of the High Council of Justice, a judge may not be detained or remanded in custody or arrested pending a conviction by a court, except for the detention of a judge during or immediately after a serious or severe crime». Also, the legal status of a judge provides immunity from legal liability for court decisions, except for the commission of a crime or disciplinary misconduct (Constitution of Ukraine, 1996). In addition, Article 48, "Independence of Judges" of the Law of Ukraine "On the Judiciary and the Status of Judges" (Law of Ukraine № 1402-VIII, 2016) it is pointed out that the guarantee of a judge's independence is ensured through the observance of immunity and inviolability, which are defined in the legal status of a judge. Article 49 of the Law of Ukraine "On the Judiciary and the Status of Judges" details this provision and stipulates that a judge may not be prosecuted or forcibly taken to anybody or institution other than a court, except as provided in part two of this article. The only person in power who can inform a judge about suspicion of a criminal offense is the Prosecutor General or his Deputy. According to the law, a judge may be temporarily suspended from justice for a period not exceeding two months, in connection with the criminal prosecution. The decision on the temporary suspension of a judge from the administration of justice is made by the High Council of Justice (Law of Ukraine № 1402-VIII, 2016).

During the pre-trial investigation in criminal proceedings against a judge of the HACC, the petition of the participants in the criminal proceedings shall be considered by the investigating judge, i.e., a judge of the court of the first instance. criminal proceedings, and in the case provided for in Article 247 of this Code - the chairman or, in his opinion, another judge of the relevant appellate court. The assembly of judges elects the investigating judge (investigating judges) in the first instance from this court's judges (Criminal Procedure Code of Ukraine № 4651-VI, 2012).

Analysis of this legal requirement causes some contradictions. In particular, the High Council of Justice does not agree with the legal wording in its explanation. It emphasizes the application to a judge of a measure of restraint in the form of detention or house arrest, especially in cases where a judge is detained during or immediately after committing a serious crime or a grave crime before a conviction by a court without the consent of the High Council of Justice is a gross violation of the constitutional guarantees of the immunity of a judge (Berezovskyi, 2017). Instead, I.G. Ganenko notes that the normative criterion of detention of a judge without the consent of the relevant state bodies, regardless of the gravity of the crime committed by him, is more relevant than defined in paragraph 2 of part 1 of Article 482 of the Criminal Procedure Code only a serious or severe crime. Because of this, it is expedient to amend Article 482 of the Criminal Procedure Code of Ukraine and paragraph 2 of part 1 of this norm and to read as follows: «Without the consent of the High Council of Justice except for the detention of a judge during or immediately after the commission of a crime» (Ganenko, 2019). In our opinion, such an author's proposal should be clarified, given the establishment of the institution of "criminal offense" in the text of the Criminal Code of Ukraine.

It is also noteworthy that in most countries of the world, the principle of the inviolability of judges is also observed, as the Constitutional Court allows a judge to be prosecuted. The Prosecutor General (Bulgaria, Lithuania) or the Parliamentary Ombudsman (Sweden) initiate charges against a judge in other countries (Vynogradova, 2014).

Thus, we believe that the institution of immunity of judges, especially judges of the HACC, who more often than other judges may be victims of manipulation, provocation, and attempts at undue influence, given the special status of "top corrupt

officials", should be preserved. At the same time, it should be noted that the gravity of a criminal offense committed by a judge should not be taken into account for the formation of measures of influence that may be specially applied to him. Therefore, it is expedient to amend Article 482 of the Criminal Procedure Code of Ukraine and paragraph 2 of part 1 of this norm and to read as follows: «Without the consent of the High Council of Justice except for the detention of a judge during or immediately after the commission of a criminal offense».

Improving the professional level

The next direction of upgrade the administrative and legal status of the HACC is the introduction of effective measures of continuous professional development and control over the transparency and objectivity of the judges of the HACC. During the establishment of the HACC, it was pointed out that the main shortcoming in the work of the HACC is that the requirements for candidates for judges of the court are so strict and excessive that it will be challenging to find people in Ukraine. (Prokopiv, 2018). At the same time, the HACC is now active. Forming a judiciary has been quite successful, involving the public and the international community members. However, in this context, it is essential to note the position of S.O. Alekseev, Deputy Chairman of the Verkhovna Rada Committee on Legal Policy and Justice, who believes that the formation of the court should be on an equal footing with judges of courts of general jurisdiction and judges of the HACC. The politician is convinced that "elite" courts should not be created in Ukraine, and some judges should be put above others. One court cannot be made more transparent, and another - on the contrary. The formation of the court should be based on the same principles: objectivity, impartiality, transparency. There is no objective justification that the formation of an anti-corruption court could be qualitatively different from the formation of other courts (Zheltukhin, 2018). At the same time, in our opinion, as already noted, the particular approach was due to exceptional attention to the formation of a virtuous composition of this court, because the purpose of its activities is to implement a priority for our state - overcoming corruption in our country is deep and systemic.

Adjusting High Anti-Corruption Court jurisdiction

Another aspect that, in our opinion, needs to be improved to improve the work of the HACC is to

adjust the jurisdiction of this court. The jurisdiction of the HACC extends only to the so-called “top corrupt officials”. It should be implemented concerning criminal offenses under NABU, as creating these anti-corruption institutions was the most complex and closed circle of anti-corruption bodies. At the same time, in practice, all NABU detectives are prosecuted by the HACC, but NABU detectives prosecute not all NABU detectives. In other words, the competence of the HACC is much broader than the competence of NABU. For example, the HACC has jurisdiction over criminal proceedings against Ukraine for criminal offenses under Articles 262, 308, 312, 313, 320, 357, 364-1, 365-2, 368-2, 368-3, 368-4 of the Criminal Code, however, the pre-trial investigation under these articles is not the responsibility of NABU, but other law enforcement agencies.

It seems unclear what the legislative approach to delineating the number of subjects of corruption offenses under the jurisdiction of the HACC, defined in paragraph 2 of part 5 of Article 216 of the Criminal Procedure Code of Ukraine, according to which criminal proceedings are subject only to the HACC. Provided that the size of the subject of the criminal offense or the damage caused by it is 500 times more than the subsistence level for non-disabled persons established by law at the time of the criminal offense (if the criminal offense was committed by an official of a state body, law enforcement agency self-government, business entity, in the authorized capital of which the share of state or municipal property exceeds 50%) (Criminal Procedure Code of Ukraine № 4651-VI, 2012). In our opinion, such an approach to the priority of combating corruption in the functioning of public authorities and local self-government and secondary anti-corruption in the functioning of private legal entities, regardless of legal form, directly contradicts Article 12 of the UN Convention against Corruption. Each State Party shall take measures, following the fundamental principles of its domestic law, to prevent corruption in the private sector, to strengthen standards of accounting and auditing in the private sector, and, where appropriate, to establish practical, relevant, and deterrent civil legal, administrative or criminal sanctions for failure to take such measures (Verkhovna Rada of Ukraine, 2003). Instead, while outlining the jurisdiction of the HACC, it seems that the state protects only its interests and the interests of its institutions. At the same time, corruption cases in the private law sphere are widespread, and the amount of illegal profit is quite significant. That

is why we are convinced that the legislative wording “of an economic entity in the authorized capital of which the share of state or municipal property exceeds 50%” is inappropriate. Therefore, it should be replaced by the wording “legal entity of private law, regardless of an organizational and legal form”.

Conclusions

Summarizing the above, we would like to emphasize that the study of the legal and organizational principles of the HACC allowed us to identify some controversial or imperfect issues that, in our opinion, need to be eliminated and revised. After all, the effectiveness of the HACC, as an essential component of the institutional structure of anti-corruption institutions, determines the effectiveness of anti-corruption reform in general. In our opinion, promising spheres for improving the administrative and legal status of the the HACC are: a) update the organization of the HACC through the creation of territorial chambers, which will help increase the efficiency and effectiveness of cooperation with other anti-corruption bodies; b) introduce more effective mechanisms for the competitive selection of candidates, rather than restricting the rights of certain categories of persons by banning them from participating, for example by polygraph testing to establish corruption risks and tendencies to deviant behavior; c) involve jurors in the process of administering justice, who would have undergone special training; d) Improve the current legislation governing the detention of judges, namely amend paragraph 2 of part 1 of Article 482 of the Criminal Procedure Code of Ukraine; e) introduce effective measures for continuous professional development of judges of the HACC; f) using the best international developments, to expand the scope of powers of the HACC in accordance with international legal acts, namely Article 12 of the UN Convention against Corruption.

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