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SYSTEM OF SPECIALIZED PUBLIC ANTI-CORRUPTION INSTITUTIONS IN UKRAINE: PROBLEM OF CLASSIFICATION

The article is devoted to the problem of classification of specialized anti-corruption state bodies. It considers the opinions of scientists, domestic anti-corruption legislation in this sphere and the classification of foreign state bodies for combating corruption. The classification of state bodies for the prevention and counteraction of corruption was made in accordance with the type of their formation and the nature of their activity.

Key words: system of anti-corruption institutions, classification, specialized anti-corruption state bodies, combatting corruption, subjects of counteraction to corruption, subjects of counteraction to corruption crime.

Formulation of the problem. According to the Constitution of Ukraine [1], state power is exercised on the basis of its division into legislative, executive and judicial one. The legislative, executive and judicial bodies exercise their powers within the limits established by the Basic Law and in accordance with the Laws of Ukraine. The state bodies that carry out activities for counteraction and prevention of corruption in Ukraine are not precisely classified because they have not developed clear criteria for their establishment and functioning. In this case, it's appropriate to be guided by the understanding of what is actually included in the content of the work on the prevention of corruption, because it can be carried out by the bodies both directly (this is the main function and tasks of a certain subject's activity) and indirectly (as just one of the other functions). Counteraction against corruption is a system of legal, organizational, social, ideological, psychological measures that are carried out both at the state and local levels, that are taken in complex or separately, and are aimed at minimizing the dangerous impact of corruption manifestations on the development of society. The "counteraction against corruption" includes measures carried out by all members of society in the person of its institutions, individuals and legal entities that are aimed at minimizing corruption, eliminating or neutralization of its consequences and conditions in accordance with these bodies' responsibilities for exercising state functions, as well as being carried out based on their own initiative [2, p. 184; 3]. Anti-corruption subjects are divided into specialized and general ones. The activities of specialized subjects arise from their responsi-

bilities stipulated by law or by public authority, which are stated in regulatory legal documents. General subjects should be considered all others, whose activities are aimed at countering criminal corruption. The Law of Ukraine "On Prevention of Corruption" [4] defines a specific list of subjects that take measures to prevent and combat corruption. For the general understanding and well-defined use by all entities, the term "subjects of counteracting corruption" as well as for the purposes of this Law [4] is defined by the author of the article as "a society represented by its institutions, all individuals and legal entities who take measures aiming at minimization of corruption, elimination or neutralization of its consequences and conditions, in accordance with the Law of Ukraine "On Prevention of Corruption", in accordance with their responsibilities for performing state functions, as well as being carried out based on their own initiative" [3, p. 23].

Given the definition by the author of the term "criminal corruption" as a statistically determined set of criminal acts of individuals and groups which, according to the criminal law, are corruptive crimes [3, p. 23], it is logical to assume that anti-corruption authorities as the subjects of counteracting corruption can be classified as: 1) state bodies for combating corruption; 2) state bodies for combating criminal corruption. The second group, in view of its tasks and functions, includes specialized anticorruption bodies as follows: the National Anti-Corruption Bureau of Ukraine, the State Investigation Bureau, the Specialized Anti-Corruption Prosecutor's Office as an independent structural unit of the General Prosecutor's Office of Ukraine.

Quite a wide range of problems of state bodies for combating corruption and criminal corruption requires their generalization and system classification. This will enable, in the specific circumstances of a single body activity, to analyze the impact on its activities of the individual functional constituents of other bodies.

Analysis of recent research and publications.

The classification of specialized anti-corruption state bodies of foreign countries was provided by B.V. Romanyuk, O.Yu. Busol [5] in their writings. The conclusion of O.V. Shevchenko goes in line with the previous studies of the author of this article, which states that the clear principles of organization of the system of state bodies for the prevention of criminal corruption are based on their clear hierarchy and structuring, the division of their competences, the comprehensive nature of their activity, the inadmissibility of unlawful interference in their activity, as well as the obligation of sharing information between them. In order to positively influence the legal consciousness of society, the principle of openness and transparency of the activity of state authorities and local self-government bodies can be considered as the basic one [6]. E.D. Skulysh considered the State Investigation Bureau as a specially authorized subject in the field of combating corruption [7], but at the same time he did not touch upon the classification problems of all state anti-corruption bodies in Ukraine. In the meantime, for example, S.O. Shatrava, while analyzing domestic normative acts in the field of preventing corruption, classifies the subjects, which the state authorizes to take measures to prevent and counteract corruption and which outline the general directions of exercising their powers, into three following groups: 1) subjects with general authority; 2) subjects with special powers; 3) subjects with powers of participation in anti-corruption measures [8]. However, the author raises the question if such classification can be guided by considering bodies fighting corruption and criminal corruption as a system. The purpose of this article is to provide a general classification of anti-corruption state bodies of Ukraine, which, according to the author, should form an integral system.

Presentation of basic material of research.

According to scientific research and development [8], *the first group of subjects* involved in preventing and combating corruption includes entities with general powers that were not specifically established to directly counteract corruption, but were empowered to counteract corruption as follows: the President of Ukraine, who within the limits of his authority approves national programs, concepts, etc.; The Ver-

khovna Rada of Ukraine, as the only legislative body in Ukraine; The Cabinet of Ministers of Ukraine, as the supreme body in the system of executive power bodies, which creates and liquidates structural subdivisions of executive bodies, in particular subdivisions whose activities are aimed at preventing and combating corruption; Attorney General of Ukraine in the implementation of his constitutional status. This classification is somewhat not consistent with the authors' definitions of subjects counteracting corruption, who believes that the list provided by S.O. Shatrava is not entirely correct. Thus, the above-said scientist placed in one line both officials and the anti-corruption institutions themselves. In addition, not all subjects are included in the group of subjects with general authority. Therefore, the principle of inclusion in the specified category by S.O. Shatrava precisely these subjects as mentioned above is not very clear.

The second group of subjects with special powers is made up of specially authorized subjects countering corruption. These subjects are defined by the Law of Ukraine "On Prevention of Corruption" [4] which take measures to prevent and counteract corruption and which also directly detect, stop, or investigate corruption or related offenses, namely: 1) the prosecutor's office; 2) the bodies of the National Police of Ukraine; 3) National Anti-Corruption Bureau of Ukraine; 4) National Agency for the Corruption Prevention. The specified group also raises similar questions mentioned before about placement of these bodies in one line. So, if the public prosecutor's offices and National Police's bodies are actually state bodies that carry out their functions not only to counteract corruption but also others, that is, they are not specialized ones, then the National Anti-Corruption Bureau is a specialized law enforcement body that is responsible for prevention, detection, cease, investigation and disclosure of corruption crimes. As for the National Agency for the Corruption Prevention, in our opinion, it does not relate either to the first or the second type, but it only performs a preventive function in ensuring the facilitation and implementation of state anti-corruption policy and which is not investigating criminal offenses itself.

The Specialized Anti-Corruption Prosecutor's Office operates separately within the structure of the Prosecutor General's Office of Ukraine, whose very name indicates that it is of particular importance in the hierarchy of the subjects countering criminal corruption.

The Law of Ukraine "On Prevention of Corruption" [4] does not define the State Investigation Office as a specially authorized subject of anti-corruption,

but, on the basis of its tasks and functions, it plays an important role in the disclosure of corruption crimes. It is obvious that measures to prevent corruption within the scope of their competence are also taken by other law enforcement agencies, for example, the Security Service of Ukraine.

The third group consists of the subjects who “have the right to participate in the prevention and fight against corruption”. However, in certain cases, they have also the right to take measures to stop corruption offenses, to promote the restoration of violated rights or interests of the state, individuals and legal entities, to participate in information and research provision of measures aimed at prevention and counteraction of corruption and to be involved in such measures as follows: a) state authorities; b) local self-government bodies; c) enterprises, institutions, organizations irrespective of their subordination and form of ownership, their officials and officers; d) officials and officers of legal entities of public law, their structural divisions; e) citizens (on their own initiative), associations of citizens (with their consent) [8].

It should be also separately distinguished a group of state bodies that counteract corruption or contribute to the fight against corruption as a special research institutions. These include, inter alia, the Interdepartmental Scientific Research Center for Combating Organized Crime under the National Security and Defense Council of Ukraine; National Institute for Strategic Studies, which provides scientific support to the work of the National Council on Anti-Corruption Policy as an advisory body under the President of Ukraine. The National Anti-Corruption Policy Council occupies quite an important place in the system of anti-corruption institutions itself.

The last two of these institutions can be attributed to *a group of subjects – government agencies developing strategies and tactics to combat corruption.* Such a division of special subjects is considered quite possible, given the author’s early research on specialized anti-corruption bodies in foreign countries and, consequently, their division into multi-purpose state anti-corruption bodies that combine preventive and repressive functions within one institution; institutions in the structure of law enforcement agencies, and institutions for policy, strategy and tactics development, as well as coordination of state bodies in the field of combating corruption [5].

Currently, Ukraine is in the active process of forming the newly formed Higher Anti-Corruption Court of Ukraine, which adds even more importance to the problem of classification of state anti-corruption institutions, as well as the determination of the place

of such a new body in the anticorruption hierarchy. To do this, we will focus on the functions performed by these government agencies.

In order to organize its activities, the National Police ensures, within the limits of the powers provided for by law, the implementation of measures aiming at prevention of corruption, violations of the law or the official discipline and control over such measures implementation in the central administration of the National Police, territorial bodies, enterprises, institutions and organizations belonging to its scope of management [9]. The National Police of Ukraine approves and applies an anti-corruption program on yearly basis [10]. The National Police, as a specially authorized anti-corruption body, aims to counteract this phenomenon both within an internal organizational activity of the central authority of the National Police, in territorial bodies, in enterprises, in institutions and organizations belonging to its scope of management, as well as outside this sphere in order to ensure the protection of human rights and freedoms [8].

The State Bureau of Investigation (SBI) is the central executive body that carries out law enforcement activities to prevent, detect, cease, disclose and investigate crimes within its competence, which in turn is determined by the Criminal Procedural Code of Ukraine. The aforesaid public authority solves the problem of preventing, detecting, ceasing, disclosing and investigating the following: 1) crimes committed by officials who occupy a particularly responsible position in accordance with part 1 of the Article 9 of the Law of Ukraine “On Civil Service”, also by persons whose positions are assigned to the 1st – 3rd category of civil service positions, by judges and law enforcement officers, except when these crimes are attributed to the investigative jurisdiction of detectives of the National Anti-Corruption Bureau of Ukraine; 2) crimes committed by officials of the National Anti-Corruption Bureau of Ukraine, by Deputy Prosecutor-General, head of the Specialized Anti-Corruption Prosecutor’s Office or other prosecutors of the Specialized Anti-Corruption Prosecutor’s Office, except when pre-trial investigation of these crimes is attributed to the investigative jurisdiction of detectives of the internal control unit of the National Anti-Corruption Bureau of Ukraine, etc. [11].

The National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the National Bureau) is a state law enforcement agency, which is responsible for preventing, detecting, ceasing, investigating and disclosing corruption offenses attributed to its jurisdiction, as well as preventing the new ones. This state

body is formed by the President of Ukraine in accordance with this and other laws of Ukraine. The task of the National Bureau is to counteract criminal corruption offenses committed by senior officials authorized to perform state or local government functions and which are endangering national security [12].

In the anti-corruption block of the Visa Liberal Action Plan the key point is in forming an anti-corruption prosecutor's office in accordance with procedures that are in line with EU requirements. In pursuance of this plan, by the Order of the Prosecutor General of Ukraine dated September 22, 2015 the Specialized Anti-Corruption Prosecutor's Office was established within the structure of the General Prosecutor's Office of Ukraine. The specialized anti-corruption prosecutor's office is an independent structural unit of the General Prosecutor's Office of Ukraine, which has the following functions:

1. Supervision over observance of laws during conducting of operational-search activity of pre-trial investigation by the National Anti-Corruption Bureau of Ukraine.
2. Maintaining public prosecution in relevant proceedings.
3. Representation of the interests of a citizen or a state in court in cases provided for by law, which are related to corruption or corruption-related offenses [13].

The National Agency for the Prevention of Corruption (hereinafter referred to as the National Agency) is a central body of executive power with a special status, which ensures the formation and implementation of state anti-corruption policy. According to the law, the notification of suspicion of a criminal offense may only be submitted by the Attorney General (the Acting Prosecutor General) to a member of the National Agency. Anticorruption strategy is exercised through the implementation of a state program developed by the National Agency and approved by the Cabinet of Ministers of Ukraine. The State Program for the implementation of the Anti-Corruption Strategy is subject to an annual review, taking into account the results of the implementation of certain measures, conclusions and recommendations of parliamentary hearings on the situation regarding corruption [14].

The National Anti-Corruption Policy Council (hereinafter referred to as the National Council) in its activities is guided by the Constitution and laws of Ukraine, acts and instructions of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, legislative acts and the Regulation on the National Council. Scientific support of the National Council

activities is carried out by the National Institute of Strategic research [15].

Interagency Scientific and Research Center on problems of combating organized crime (ISRC) is a working body under the National Security and Defense Council of Ukraine, which carries out the study of the problems of combating organized crime being of cross-sectoral nature and which provides scientific-analytical and forecast support of the activities of the Council of National Security and Defense of Ukraine on these issues. One of the important activities of the ISRC is to identify and study the main trends in transnational organized crime, threats and risks in this area with a purpose of development of socio-political and socio-economic processes in Ukraine, also the development of scientifically sound proposals for new forms and methods for combating organized crime, as well as development of methodological recommendations for state bodies that carry out such a counteract, taking into account international experience [16].

In pursuance of the action plan for liberalizing the European Union visa regime for Ukraine, the National Agency of Ukraine for the Detection, Investigation and Asset Management obtained through Corruption and Other Crimes was established, which is a central executive body with a special status that ensures the formation and implementation of state policy in the area of detection and prosecution of assets that may be seized in a criminal proceeding and/or asset management that is seized or confiscated in a criminal proceeding [17]. It should be noted that it is quite problematic to establish, freeze and confiscate criminal assets without active participation in the anti-money laundering process, the law enforcement agencies of the states where the primary crime took place. It can be concluded based on the above-said that the agency's activities will inevitably overlap with the functions of other anti-corruption institutions, including the activities of investigators and detectives in search of assets. The author adheres to the point of view that, most likely, the creation of an agency in Ukraine will not lead to any real change as for the collection of foreign assets. The problem today is not so much in the search for the assets of corrupt officials as in their seizure, that is, in making a well-founded court sentence under a criminal case [18]. That is, the main volume of work, again, falls not on the agency, but on the domestic authorities of the pre-trial investigation.

According to the Article 125 of the Constitution of Ukraine [1] the judicial system in Ukraine is based on the principles of belonging to the specific territory and its specialization, which is determined by law. However, the Anticorruption Court of Ukraine

has already been established in our state. Specialized anti-corruption courts are a relatively new phenomenon. As part of the judicial reform, the Law of Ukraine "On the Judiciary and Status of Judges" [19] provides for the creation of the Supreme Anti-corruption Court. In accordance with the Law [19], within the system of the court are operating the higher specialized courts as first instance courts for consideration of certain categories of cases as follows: the Supreme Anticorruption Court and the High Court for Intellectual Property. It should be noted that scientific literature and mass media mention the existence of specialized anti-corruption courts around the world that have had some success in minimizing corruption only in the three states, such as Serbia, Slovakia and Guatemala. In general, another 19 jurisdictions can be identified where there are specialized anti-corruption courts, i. e.: Afghanistan, Bangladesh, Botswana, Bulgaria, Burundi, Cameroon, Croatia, Indonesia, Kenya, Malaysia, Nepal, Pakistan, Palestine, Philippines, Senegal, Uganda, Mexico, Tanzania, Thailand [20, p. 89, 90]. Consequently, the popularity of such institutions is not inherent in Europe.

Conclusions. The above-said classification of state bodies (according to their type of formation and nature of their activity), which forms the system of specialized anti-corruption institutions, can be considered only conditional. Nevertheless, I would like to consider it necessary to distinguish two types of state anti-corruption institutions in Ukraine within the limits of the general classification, which, however, are still not forming quite a well-balanced system:

I. State bodies for the prevention and counteraction of corruption:

1. The National Police of Ukraine.
2. State Bureau of Investigations.
3. National Anti-Corruption Bureau of Ukraine.
4. Specialized Anti-corruption Prosecutor's Office.
5. National Agency for the Corruption Prevention.

II. State bodies for developing strategies and tactics for combating corruption:

1. The National Anti-Corruption Policy Council as an advisory body under the President of Ukraine.
2. Interagency Research Center on Problems of Combating Organized Crime at the National Security and Defense Council of Ukraine.
3. National Agency for the Detection, Investigation and Management of Assets obtained through Corruption and Other Crimes.
4. Anticorruption court of Ukraine.

It should be noted that the presence of anti-corruption bodies is not a deterrent for officials to commit corruption crimes. It should not be also considered the superiority of one type of specialized institution for combating corruption over the others [3]. Repressive nature of the state agencies can never be effective on its own. Scientists have proven that minimizing corruption in Ukraine can only be achieved through a combination of legislative measures, criminal justice and educational methods that should enhance the social culture of citizens [3; 21]. A large number of anti-corruption institutions do not always contribute to a real minimization of corruption and sometimes even prevents it, which is manifesting in gaps in legislation and unfairness of officials, duplication of some of the functions of the above-mentioned bodies, the emergence of controversies over the definition of jurisdiction, rivalry for superiority in crime disclosure, concealment of corruption, etc. That is why the classification given here above is designed to promote further improvement of the system of anti-corruption state bodies, which will enable to avoid confusion in determining their functions, forms and scope of authority, and the nature of their interaction itself. At the same time, we would like to note that the proposed classification approach is not exhaustive and unchanged, as in the future, other state institutions will appear in the state, and new features of their systematization will appear as well.

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СИСТЕМА СПЕЦІАЛІЗОВАНИХ АНТИКОРУПЦІЙНИХ ІНСТИТУЦІЙ В УКРАЇНІ: ПРОБЛЕМА КЛАСИФІКАЦІЇ

Статтю присвячено проблемі класифікації спеціалізованих антикорупційних державних органів. Класифікацію державних органів із запобігання й протидії корупції здійснено за видом створення та характером діяльності. Розглянуто вітчизняне антикорупційне законодавство в цій сфері та класифікації зарубіжних державних органів із протидії корупції.

Ключові слова: система антикорупційних інституцій, класифікація, спеціалізовані антикорупційні державні органи, протидія корупції, суб'єкти протидії корупції, суб'єкти протидії корупційній злочинності.

СИСТЕМА СПЕЦИАЛИЗИРОВАННЫХ АНТИКОРРУПЦИОННЫХ ИНСТИТУЦИЙ В УКРАИНЕ: ПРОБЛЕМА КЛАССИФИКАЦИИ

Статья посвящена проблеме классификации специализированных антикоррупционных государственных органов. Классификация государственных органов по предупреждению и противодействию коррупции осуществлена по типу создания и характеру деятельности. Рассмотрено отечественное антикоррупционное законодательство в этой сфере и классификации иностранных государственных органов по противодействию коррупции.

Ключевые слова: система антикоррупционных институций, классификация, специализированные антикоррупционные государственные органы, противодействие коррупции, субъекты противодействия коррупции, субъекты противодействия коррупционной преступности.