



## IMPLEMENTATION OF EXPERIENCE OF ESTABLISHMENT AND OPERATION OF ANTI-CORRUPTION PROSECUTOR'S OFFICES IN EUROPE

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### Summary

The article presents a scientific study of organizational principles of anti-corruption prosecutor's offices of Ukraine. The author conducted a comparative analysis of similar prosecutor's offices in Spain, Romania and Croatia. The main differences and similarities in the organizational structure of these bodies, as well as their belonging to the state authorities were defined. The author's position on the implementation of European experience regarding the construction and operation of specialized anti-corruption bodies was formulated and proved.

**Key words:** corruption, prosecutor's office, specialized anti-corruption prosecutor's office, public authorities, European experience.

### Анотація

В статті здійснено наукове дослідження організаційних основ діяльності Спеціалізованої антикорупційної прокуратури України. Проведен порівняльний аналіз аналогічних прокуратур Іспанії, Румунії та Хорватії. Визначено основні загальні та відмінні риси в організаційній структурі даних органів, їх належність до органів державної влади. Сформульована та обґрунтована позиція автора щодо імплементації досвіду європейських країн щодо побудови та функціонування спеціалізованих антикорупційних органів.

**Ключевые слова:** коррупция, прокуратура, Специализированная антикоррупционная прокуратура, органы государственной власти, европейский опыт.

### Formulation of the problem.

At the end of the 20th century, the international community recognized that corruption is a global problem in each country, and in Ukraine, it has become one of the threats to national security and democratic development. This is confirmed by the results of the study "Global Corruption Barometer" by Transparency International and Gallup International Association [9]. Last year the country was in the 142nd place out of 175 positions.

**Formation of purposes.** The purpose of the article is to study the organizational rules for the Specialized Anti-Corruption Prosecutor's Offices of Ukraine and some European countries.

Presenting main material. For real anti-corruption changes, the public organization Transparency International Ukraine encouraged the government, the parliament and the president to take five steps [9]. One of them is to immediately provide the work of independent anti-corruption bodies. To launch the National Agency for Corruption Prevention

and to initiate the system of electronic declaration. To provide for adequate funding of this body in the budget. To ensure transparent functioning of the National Anti-Corruption Bureau and Specialized Anti-Corruption Prosecutor's Office.

That is why an active and effective fight against corruption and its complete eradication of the Ukrainian public life was reforming the state authorities. Specially authorized bodies, whose activities are aimed at preventing and combating corruption, were created. Thus, one of the key steps of the state anti-corruption policy was the adoption of the new Law of Ukraine "On Prosecution" on October 14, 2014. A novelty was the creation of a fundamentally required structural unit of the prosecution – anti-corruption prosecutor's office. Thus, according to cl. 5 p. 1 Art. 7 of the profile legislation, this prosecutor's office was first fixed at the legislative level. The law-making body included the Specialized Anti-Corruption Prosecutor's Office to the Prosecutor General's Office of Ukraine (on the rights

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of a separate structural unit), and gave specific functions to it:

1) supervision of the observance of laws during operational and investigative activities, pre-trial investigation by the National Anti-Corruption Bureau of Ukraine;

2) support of public prosecution in appropriate proceedings;

3) representation of interests of citizens or the state in court in cases stipulated by this Law and related to the corruption or corruption-related offenses.

As part of the implementation of its functions, the Specialized Anti-Corruption Prosecutor's Office carries out international cooperation [6].

The apparent willingness of Ukraine to become an equal member of the international community, laying the foundations of legal, social and democratic state requires ensuring the appropriate level of law enforcement, which in turn necessitates a serious study and implementation of the international experience in the development of civil society, political, economic, social, legal mechanisms to overcome corruption, which have proved their effectiveness. Adaptation of foreign programs aimed at combating corruption opens great prospects in the fight against this phenomenon, especially in the absence of its own real efficient mechanism of fighting corruption.

A striking example can be special anticorruption prosecution services in foreign countries. Let us focus our attention on the experience of Spain, Romania and Croatia.

Corruption in Spain is quite a complex phenomenon. The recent history of the country and its transition to democracy largely can serve as an explanation of changes in understanding of this phenomenon by the Spanish society.

Special Prosecution Service to Stop Economic Crimes Related to Corruption – ACPO was founded in 1995. Ukraine has reached such a decision 19 years later. Officially, the ACPO is a structural subdivision of the State Prosecution Service (SPS), with which it is associated by various common features, including a broad legal framework provided by Article 124 of the Spanish Constitution and the Law on Public Prosecution Service of the Kingdom of Spain. However, the interdisciplinary nature

of the ACPO distinguishes it from other prosecution bodies [13]. The creation of such a specialized body, according to the legislator, was to facilitate the collection of evidence in cases of corruption and ensure more effective protection of public interest.

Independence of the ACPO is not formally enshrined, in practice it has a certain autonomy within the SPS [8]. In turn, Ukraine went further and strengthened the independence of the Specialized Anti-Corruption Prosecutor's Office by law. It is not only the existence of guarantees against unlawful political, financial or other impact on the prosecutor to adopt its decisions on duty, but that the Prosecutor General of Ukraine, his first deputy and deputies have no right to give instructions to prosecutors of the Specialized Anti-Corruption Prosecutor's Office or carry out other activities that directly relate to the prosecutors of the Specialized Anti-Corruption Prosecutor's Office exercising their powers [6].

Head of the ACPO is a Chief Prosecutor to be appointed by the Government on the proposal of the Prosecutor General, after consultation with members of the Prosecutor General's Council (a representative body of prosecutors). The Chief Prosecutor of the ACPO has the same rights and duties as chief prosecutors of other units of the Prosecution Service of the same rank. The ACPO staff consists of 22 employees, including 13 special prosecutors. A candidate for this position must be professionally trained in the field of economic and tax crimes; most prosecutors have professional experience in investigating economic offenses before joining the ACPO. The ACPO prosecutor may be dismissed from his post on the basis of a reasoned decision in the same manner as set for his appointment. The Prosecutor General can assign a prosecutor of another Prosecution Service for the investigation of a case in the ACPO. In this case, the prosecutor assigned retains submission in a permanent place of service. In addition, staff of the ACPO is supported by specialists of other departments – the Department of Taxation, the General Administrative Inspectorate of the State Service, Civilian Police or gendarmerie and the Judicial (Criminal) Police, where special departments to assist the ACPO were created. Under the tax laws, the SPS and judicial authorities have the right

to collect any information necessary to conduct a criminal investigation. With the help of a subsidiary department of the Agency of Tax Crimes, the ACPO has direct access to databases of the Tax Inspectorate, which contains all the information about taxes of individuals and legal entities of Spain over the last six years. Based on the general provisions stipulated by various regulatory acts, the ACPO is also entitled to access the databases of other government agencies, including the databases of law enforcement authorities. The ACPO is obliged to notify the Prosecutor General of all the cases that are under its proceedings and of any related changes, including possible changes in competence. The Prosecutor General sends biannual reports on the cases investigated by the ACPO to the Board of Judicial Prosecutors and to the Council of the Prosecutor General [13].

We also deem it appropriate to consider the experience of Romania, which demonstrated effectiveness in combating corruption offenses by creating a specially authorized body.

Thus, the decision to establish a strong specialized body for the investigation and prosecution of corruption was adopted in 2000, when it became clear that the existing national bodies, which were created under the Government or the President and in charge of coordinating efforts to combat corruption, not able to achieve serious success in preventing corruption, which has become a serious problem for Romania.

In 2002, the National Prosecution Service Combating Corruption (NPPSC) was created in Romania, which as a result of the reorganization carried out in 2006, was transformed into the National Anti-Corruption Directorate – NACD. The Directorate is a structural unit of the Prosecution Service at the High Court of Cassation and has powers of investigation and prosecution of corruption cases of particular importance. NACD prosecutors conduct preliminary investigations, including manage and supervise the pre-trial investigation conducted by officers of the judicial police, assigned to the NACD. If there is a need to provide technical assistance in the investigation of the case, prosecutors of the NACD administer and supervise technical measures conducted by the NACD specialists and experts



in economics, finance, information technology and other fields. Prosecutors of the NACD also support the prosecution in court [11].

The legal status of the NACD is defined in the Resolution of the Government No. 43/2002, which was later confirmed by the Law No.503/2002 with subsequent amendments. The Law uses a broad approach to the definition of corruption. Accordingly, the subject matter jurisdiction of the NACD includes both traditional formulations of corruption offenses such as bribery and the number of offenses related to corruption and crimes against the financial interests of the European Union. Changes consistently made to the law were designed to focus the measures of the NACD on the fulfillment of tasks to fight against the corruption among senior officials. Less important corruption cases remain under the jurisdiction of conventional prosecution bodies.

The NACD central office is located in Bucharest. Fifteen regional offices territorially submit to appellate courts and are directly subordinate to the Chief Prosecutor of the NACD. The organizational structure of the NACD has many departments and services [13]. In our view, a large number of special structural subdivisions ensure the effective implementation of tasks entrusted to this body by law, meanwhile we have to note that the order of the Prosecutor General of Ukraine dated September 22, 2015 established a Specialized Anti-Corruption Prosecutor's Office in the structure of the Prosecutor's General Office of Ukraine (which acts as an independent structural unit) as part of the procedural management, maintenance of public prosecution and representation in court, and two divisions: analytical and statistical. We consider it necessary to offer the legislators to review the structure of the SACPO, to the side of the branch staff and engagement of experts from various fields (economics, finance, banking or customs, information technology) for an indefinite term for technical assistance during investigations, for more efficient and qualitative performance of obligations assigned to them by law.

The NACD is headed by a prosecutor who is the Deputy Prosecutor General at the Supreme Court of Cassation. The NACD Chief Prosecutor, his deputies and

chief prosecutors of territorial divisions of the NACD are appointed by the President of Romania on proposal of the Minister of Justice after consultation with the High Council of Judges for three years with the right of one reappointment [8].

Another striking example of an effective state anti-corruption policy is Croatia.

Administration to Stop Corruption and Organized Crime – ASCOC was established in 2001 as a specialized agency within the structure of the State Prosecutor's Office of Croatia, which administers the police investigation of crimes related to corruption and organized crime and the prosecution of these cases. The tasks of the Administration include collecting data, functions of investigation, prosecution and prevention of corruption. ASCOC is responsible for international cooperation and exchange of information in complex cases.

According to the Law "On the Administration to Stop Corruption and Organized Crime", the ASCOC is a specialized prosecution service established for the activities on the whole territory of Croatia. The head of the ASCOC has the rank of Deputy Prosecutor General and is appointed by the Prosecutor General for a 4-year term (with a right of re-appointment). A distinction of the Ukrainian legislation is just the term of office of the head of the Specialized Anti-Corruption Prosecutor's Office, which is 5 years (paragraph 5 part 4 Art. 39 of the Law of Ukraine "On Prosecution") [6]. Before deciding on the appointment, the Prosecutor General of Croatia must ask the opinion of the Minister of Justice and Council of State Prosecutors [12]. In Ukraine, there is an open competition to fill the position. Persons selected by the competition commission are submitted to the Prosecutor General of Ukraine only after the competition commission confirm their compliance with the laws of Ukraine "On Lustration" [5] and "On Prevention of Corruption" [3], as well as on obtaining access to state secrets according to the Law of Ukraine "On State Secrets" [2]. Competition for occupying administrative positions in the Specialized Anti-Corruption Prosecutor's Office is conducted in public, with free access of the media and journalists to the meeting of the competition commission and with broadcasting in real time of

video and audio information of the meetings of the competition commission in the Internet. Time and place of the meeting of the competition commission is published on the official website of the Prosecutor General of Ukraine no later than 24 hours before the meeting. Therefore, one could argue that in Ukraine, there are clear conditions for the appointment of a person to such a responsible position. In addition, the civil society is given the ability to control and influence the results of the competition, which promotes Ukraine's desires to establish genuine democratic principles and acknowledges the determination of European transformations in the country [6].

From the organizational point of view, ASCOC is an autonomous prosecution service in the structure of the Prosecutor General. The head office is located in Zagreb. Since 2005, the structure of ASCOC has included four departments to ensure compliance with its basic functions provided by law. In Ukraine today, the Lviv Regional Branch of the National Anti-Corruption Bureau of Ukraine (with the spread of authorities in Lviv, Volyn, Zakarpattia, Chernivtsi, Ternopil, Ivano-Frankivsk, Rivne, Khmelnytsky Regions), the Odessa Regional Branch of the National Anti-Corruption Bureau of Ukraine (with the spread of authorities in Odessa, Kherson, Mykolayiv, Kirovohrad Regions) and the Dnipropetrovsk Regional branch of the National Anti-Corruption Bureau of Ukraine were created [4]. Analyzing standards of the national law, we found that the head office and regional branch of the Specialized Anti-Corruption Prosecutor's Office are in the same cities, where there are territorial directorates of the National Anti-Corruption Bureau of Ukraine (p. 4. Art. 8-1 of the Law of Ukraine "On Prosecution") [6]. Based on the above, one can state the violation of the principles of accessibility and independence of the Specialized Anti-Corruption Prosecutor's Office of Ukraine.

Conclusions. Having examined the basic structural and organizational issues of the specialized anti-corruption bodies in some European countries, making their comparative characteristics with the Specialized Anti-Corruption Prosecutor's Office of Ukraine, we can reach the following conclusions: the Special



Prosecution Service to Stop Economic Crimes Related to Corruption in Spain is a subdivision of the State Prosecution Service and part of the judiciary system of the Kingdom. The same pattern exists in Croatia. Today, the constitutional reform is conducted in Ukraine, under which the legislator secured belonging of the prosecution bodies to the judiciary branch, by which they put an end to a long scientific debate about the place of prosecution in the system of public authorities [1].

In Romania, the legislators went the other way, assigning the Prosecution Service at the Supreme Court of Cassation to the executive branch. Place of prosecution bodies in the system of public authorities directly affects the activities and geographical location of anti-corruption units, which is associated with the respective courts. In Romania, even the location of prosecutor's offices is due to the location of courts. In Ukraine, the location of territorial subdivisions of the Specialized Anti-Corruption Prosecutor's Office directly depends on the location of regional branches of the National Anti-Corruption Bureau. Despite the fact that the Ukrainian legislators departed from the practice of European countries and identified the location of the body in the offices of the National Anti-Corruption Bureau of Ukraine or at the offices of the Prosecutor's General Office of Ukraine (regional or local prosecutor's office) located separately from the other premises of the Prosecutor General of Ukraine (regional or local prosecutor's office), but this does not mean that it creates the basis for this body to be ineffective.

Creation of a specialized anti-corruption body is primarily due to a pressing need to address the problem of coordination in preventing and combating corruption, the need for centralizing the collection, synthesis and analysis of information on corruption. Such a body should be a link of public anti-corruption bodies, ensuring its integrity and effectiveness. However, according to the international experience, in addition to the undoubted achievements, there are certain risks associated with the creation of anti-corruption bodies. Thus, a newly formed body may be ineffective and become another bureaucratic level in the system of government; resources allocated for the establishment and functioning of this

body would be diverted from existing monitoring bodies and other areas that require transformation; without proper legislative regulation, there are risks of conflicts of jurisdiction with other government agencies; an anti-corruption body can be used as a means of pressure on political opponents.

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