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UDC 342.92:342.98:35.075.3:341.232

## ISSUES OF COMPLIANCE OF THE ANTI-CORRUPTION BODIES SYSTEM IN UKRAINE WITH THE REQUIREMENTS OF INTERNATIONAL ACTS RATIFIED BY UKRAINE

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#### SUMMARY

The article reflects the theoretical study of the compliance of the anti-corruption bodies system in Ukraine with the requirements of international acts ratified by Ukraine. Provisions of international acts ratified by Ukraine have been studied with the help of a spectrum of scientific methods in part of the development of anti-corruption bodies, and provisions of normative-legal acts, which constitute the anti-corruption bodies system in Ukraine. The anti-corruption bodies system is created in accordance with the international acts ratified by Ukraine, and according to the anti-corruption bodies system in Ukraine is presented. It has been substantiated that among the issues of compliance of such system with the requirements of international acts ratified by Ukraine there is a partial implementation of the provisions international acts ratified by Ukraine into domestic law. It has been proposed implementation of the provisions international acts ratified by Ukraine into domestic law in part of the development of anti-corruption bodies, to develop the Law of Ukraine “On the Anti-Corruption Bodies System of Ukraine” and to amend the Law of Ukraine “On Prevention of Corruption”.

**Key words:** corruption, anti-corruption bodies system, international acts, anti-corruption legislation of Ukraine, anti-corruption bodies, specialized law enforcement agencies, judicial bodies.

## ПРОБЛЕМЫ СООТВЕТСТВИЯ СИСТЕМЫ АНТИКОРРУПЦИОННЫХ ОРГАНОВ В УКРАИНЕ ТРЕБОВАНИЯМ РАТИФИЦИРОВАННЫХ УКРАИНОЙ МЕЖДУНАРОДНЫХ АКТОВ

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#### АННОТАЦИЯ

В статье проведено теоретическое исследование системы антикоррупционных органов в Украине в соответствии с требованиями ратифицированных Украиной международных актов. С помощью спектра научных методов изучены положения ратифицированных Украиной международных актов в части создания антикоррупционных органов, а также положения национальных нормативно-правовых актов, которыми создана система антикоррупционных органов в Украине. Выведена система антикоррупционных органов согласно ратифицированным Украиной международным актам, в соответствии с которыми создана система антикоррупционных органов в Украине. Обосновано, что среди проблем соответствия такой системы требованиям ратифицированных Украиной международных актов – частичная имплементация положений, ратифицированных Украиной международных актов в национальное законодательство. Предложено имплементировать положения ратифицированных Украиной международных актов в части создания антикоррупционных органов в полной мере, а также разработать Закон Украины «О системе антикоррупционных органов в Украине», внести изменения в Закон Украины «О предотвращении коррупции».

**Ключевые слова:** коррупция, система антикоррупционных органов, международные акты, антикоррупционное законодательство Украины, органы предупреждения коррупции, специализированные правоохранительные органы, судебные органы.



**Problem formulation.** Corruption is one of the most dangerous threats to democratic values and proper development of any country in the world. According to the UNO News Center, the annual amount of bribes in the world is estimated at one trillion dollars. The UNO Development Program shows that the global economics loses 2.6 trillion dollars a year as a result of corruption, and in developing countries corruption-related losses exceed the amount of official development assistance 10 times [1]. In this regard, fight against corruption is one of the most important issues on the agenda of the international community as a whole, as well as on national ones in particular.

**The topicality of the investigated theme.** In its turn, our state according to reports of reputable international organizations for many years has been characterized as the one, which since its independence has been under the significant influence of corruption [2, p. 2]. In particular, according to the results of the most famous study of the corruption level measurement around the world, conducted by the Transparency Anti-Corruption Network International, – “Corruption Perceptions Index”, in 2017 Ukraine scored 30 points out of 100 possible, in which the index is rated from 0 (very high level of corruption) to 100 (very low level of corruption), and ranked 130th out of 180 countries [3].

It should also be noted, that after the events which took place in Ukraine in 2014 and the full entry into force of the Association Agreement on September 01, 2017 [4], our state, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, established the fight against corruption among other things as the main principle for strengthening relations between the Parties (Article 3). Article 22 of this document entitled “Fight against Crime and Corruption” stipulates that the parties shall cooperate in the fight against the criminal and illegal organized or other activities, as well as in order to prevent it. Thus, it is noted that such cooperation is aimed at solving, inter alia issues, such as:

corruption in both the private and public sector; UNO conventions are indicated such as: against transnational organized crime, corruption, etc., to the efficient implementation of which the parties are committed.

For implementation of the agreements reached, a number of normative legal acts were adopted on combating corruption both in general and in part of creating new anti-corruption bodies. At the same time, as the researchers point out, during the year so many anti-corruption bodies appeared in Ukraine that we can be confused, what does which of them and whom to address if necessary [5, p. 16; 6].

In this regard, the issue of compliance of the anti-corruption bodies system of Ukraine with the requirements of the ratified international acts is particularly relevant.

**State of the research.** Among the scientists whose works are dedicated to the study of anti-corruption bodies in Ukraine are: Ye.V. Vandin, Ye.V. Hlushko, V.M. Drahan, D.H. Zabroda, Z.A. Zahynei, V.H. Kozlenko, V.I. Lytvynenko, D.S. Mashliakevych, K.I. Khromova, O.N. Yarmysh and others. At the same time the above problem remains insufficiently researched in the scientific doctrine.

Thus, the aim and objective of the article is to study the provisions of international acts ratified by Ukraine using philosophical spectrum, general and special-scientific methods, including formally-legal one in part of the development of anti-corruption bodies, and the provisions of the national legal acts, which established the system of anti-corruption bodies in our country with the aim of identifying by means of analysis, synthesis, comparison and generalization methods, the issues of compliance of the anti-corruption bodies system of Ukraine with the requirements of international acts ratified by Ukraine.

**Presentation of the basic material.** Ukraine has ratified a number of international acts in the field of combating corruption, while within the scope of this article we will focus only on some of them, which in their turn, we consider conceptual. First of all, the United Nations Organization

Convention against Transnational Organized Crime [7] and Corruption [8], referred to in the Association Agreement above, and the Criminal Convention on Combating Corruption (ETS 173) dated January 27, 1999 [9] (ratified by the Law of Ukraine “On Ratification of the Criminal Convention on Combating Corruption” No. 252-V dated October 18, 2006 [10]).

Among the provisions of the United Nations Organization Convention against Transnational Organized Crime dated November 15, 2000 [7] (ratified by the Law of Ukraine “On Ratification of the United Nations Organization Convention against Transnational Organized Crime and its Protocols Supplementing It” No. 1433-IV dated February 04, 2004 [11]) Article 9 refers to take legislative, administrative, etc. measures against corruption in order to ensure efficient actions of its bodies in the field of prevention and detection of corruption among public officials and punishment therefore, including by providing such bodies with sufficient independence to prevent undue influence on their actions.

In our opinion, bodies may be distinguished from the article analysis, whose activities are aimed at preventing corruption, bodies, whose activities are aimed at identifying corruption, in this case, we have special subjects – revealing corruption among “public officials” and, based on the content of the article – judicial bodies.

An important content characteristic of such bodies is the emphasis on independence from unlawful influence.

According to the Part One of Article 6 of Chapter II of the United Nations Organization Convention against Corruption [8] (ratified by the Law of Ukraine “On Ratification of the United Nations Organization Convention against Corruption” No. 251-V dated October 18, 2006 [12]) each Member State shall ensure in accordance with the fundamental principles of its legal system the existence of a body or, as appropriate, bodies that prevent corruption through such means, as: an efficient coordinated anti-corruption policy that promotes public participation and which reflects the principles of rule



of law, proper management of public affairs and public property, fairness and integrity, transparency and accountability, and where appropriate, overseeing and coordinating the implementation of such policies; expansion and dissemination of knowledge on preventing corruption.

When analyzing this article, the necessity of creating a body, and even bodies in the field of preventing corruption, is clearly regulated. At the same time, they may be distinguished according to the main function to those whose activities are aimed at conducting anticorruption policy; those who oversee and coordinate the implementation of such policy; those whose activities are aimed at expanding and disseminating knowledge on preventing corruption.

It should be noted, that the meaningful characteristics of such bodies, in contrast to the previous Convention, are expanded. In particular, such sign as independence is supplemented with such features as material resources, specialized staff and the possibility of staff training.

At the same time, Article 36 of Chapter III of this Convention provides for the need to establish specialized bodies, "Each Member State shall ensure in accordance with the fundamental principles of its legal system the presence of a body or bodies or persons specializing in the fight against corruption through law enforcement measures".

It is indicated that such body or bodies are provided with the necessary independence, in accordance with the fundamental principles of the legal system of the Member State to fulfill their functions efficiently and without any undue influence. Among other meaningful features of such bodies are requirements for the qualification of officials and the availability of resources for proper performance of the tasks assigned to them.

Thus, the UNO Convention against Corruption has established the need for anti-corruption bodies, which may include agencies whose activities are aimed at: conducting anti-corruption policy; overseeing and coordinating the implementation of such policies; expanding and disseminating knowledge

on preventing corruption, as well as specialized law enforcement agencies.

With regard to the court and the prosecutor's office bodies, Article 11 of the above-mentioned Convention establishes the need to take measures to enhance fairness and integrity of representatives of such bodies and to prevent corruption among them, in particular, these measures include the rules of conduct.

In the Criminal Convention on Combating Corruption [9] in accordance with Article 20 entitled "Specialized Bodies" it is indicated, that each Member State shall take necessary measures to ensure specialization of the personnel and bodies in combating corruption, and again among other Conventions the need to ensure the independence of such bodies is emphasized, which in its turn will contribute to the efficient performance of their functions, and the exclusion of any unjustified pressure. In particular, the focus is on ensuring proper training of personnel of such bodies and financial resources that will be sufficient to fulfill the assigned tasks.

After analyzing the provisions of the above-mentioned international acts ratified by Ukraine in the part of building up anti-corruption bodies in general, we may assume that the latter form a system that includes:

1. Bodies combating corruption, among which are those: a) which conduct an efficient coordinated anti-corruption policy promoting the participation of the society and reflecting the principles of law and order, proper governance of state affairs and state property, fairness, integrity, transparency and accountability; b) which supervise and coordinate the implementation of such policy; c) whose activities are aimed at expanding and disseminating knowledge on preventing corruption.

2. Specialized law enforcement anticorruption bodies, among which are those: a) detect corruption among public officials; b) detect corruption among other officials etc.

3. Judicial bodies.

Thus, in order to determine the issues of compliance of anti-corruption bodies

system in Ukraine with the requirements of international legal acts ratified by Ukraine, we will analyze the provisions of the national legal acts, which created the anti-corruption bodies system in our state.

In general, during the period from 2014 to 2018 a number of laws and subordinate normative legal acts in Ukraine were adopted to combat corruption on the whole and to create new anti-corruption bodies in particular. However, we consider it appropriate to dwell only on the laws of Ukraine.

Thus, the Law of Ukraine "On Preventing Corruption" [13] defines, as noted by the legislator, "legal and organizational principles of functioning of the system of preventing corruption in Ukraine", etc., and therefore, in our opinion, the anti-corruption bodies system in Ukraine, whose activities are aimed at preventing corruption, is to be defined.

At the same time, it is already established by Clause 14 of Part 1 of Article 1 of this Law that specially authorized subjects in the field of combating corruption shall be the Prosecutor's Office, the National Police of Ukraine, as well as the National Anti-Corruption Bureau of Ukraine and the National Agency for Prevention of Corruption.

It may be assumed that the "specially authorized subjects in the field of combating corruption" are specialized law enforcement anti-corruption bodies themselves.

In addition, we should note that the notion of a counteraction is much wider than the notion of prevention. In particular, an appropriate approach of M.I. Melnyk to the notion of counteraction to corruption seems to be favourable, which is cited by D.H. Zabroda in his study. The author considers counteraction to corruption in the broad and narrow meanings. Thus, the first one is any activity in the field of social management aimed at reducing opportunities for corrupt social relations, ensuring the rule of law, implementing other principles of law, promoting the development of a democratic society and establishing a rule of law state; the second is the system of political, legal, organizational and managerial,



ideological, socio-psychological measures aimed at reducing its amounts, changing the nature of corruption manifestations, increasing the risk for corrupt officials, removing social preconditions for corruption, causes and conditions of corruption, detecting, terminating and investigating corruption, prosecuting perpetrators of corruption offenses, legal liability, renewing rights and interests of individuals and legal entities, eliminating consequences of corruption [14, p. 88]. Thus, counteraction, in our opinion, includes prevention.

At the same time, returning to the determination of the place of the bodies included in the specially authorized entities, in the anti-corruption bodies system in general, let us look at the legislator's interpretation of the definitions of these bodies.

Thus, Article 1 of the Law of Ukraine "On the National Police" [15] defines this body as the central body of executive power, which serves society by ensuring the protection of human rights, combating crime, maintaining public security and order.

The Prosecutor's Office of Ukraine in accordance with Article 1 of the Law of Ukraine "On the Prosecutor's Office" [16] is a unified system, which pursuant to the procedure stipulated by Law performs functions on the protection of human rights, common interests of the society and state established by the Constitution of Ukraine. As part of the Prosecutor's Office of Ukraine (as a structural unit) the Specialized Anti-Corruption Prosecutor's Office has been established, however, its definition by the legislator is not provided. At the same time, among the functions, in particular, the following function is given: "to monitor the observance of laws during the pre-trial investigation by the National Anti-Corruption Bureau of Ukraine" etc.

According to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" [17] the latter is a state law enforcement agency, which is responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses falling within its jurisdiction, as well as preventing the commission of new ones.

In its turn, the National Agency for Prevention of Corruption is defined by Article 4 of the Law of Ukraine "On Prevention of Corruption" [13] as a central executive body with a special status that ensures the formation and implementation of state anti-corruption policy.

Summarizing the above, it is obvious that only Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau of Ukraine from this list may be included in the specialized law enforcement agencies. The activities of the National Police of Ukraine in the field of combating corruption are an integral part of counteracting crime in general, on that needed to be clarified.

National Agency for Prevention of Corruption should belong to the corruption preventing bodies, which contributes to the society's participation and which reflects the principles of rule of law, proper management of public affairs and public property, fairness and integrity, transparency and accountability. As well as monitors the implementation and coordination of this policy.

In this regard, in our opinion, the provisions of the Law of Ukraine "On Prevention of Corruption" as part of the definition of specifically authorized subjects in the field of combating corruption require either correction, or an exclusion at all. It seems appropriate to outline the analyzed provision of this law in the following wording: "the subject in the field of preventing corruption is the National Agency for Prevention of Corruption", which in fact will correspond to the specifics of the current law.

Regarding the activities on the expansion and dissemination of knowledge on preventing corruption, it seems necessary to create a unit within the structure of the National Agency for Prevention of Corruption, which will exercise the right to educational activities. Indeed, the amount of anti-corruption legislation is new and significant, therefore it remains incomprehensible to the society what acts constitute the composition of corruption offenses, and the practice of judicial practice is also relevant.

Among other established anti-corruption bodies in Ukraine there are:

- 1) the State Bureau of Investigation, which is the central executive body, which carries out law-enforcement activities for the purpose of prevention, detection, termination, disclosure and investigation of crimes attributed to its competence;
- 2) National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes is a central executive body with a special status that ensures the formation and implementation of state policy in the field of detection and tracing of assets that may be subject to arrest in criminal proceedings and/or asset management, which is subject to seizure or confiscation in the criminal proceeding;
- 3) Supreme Anti-Corruption Court.

**Conclusions.** To take everything into the consideration according to the requirements of international acts ratified by Ukraine the anti-corruption bodies system of Ukraine, in our opinion, is formed by: 1. The anti-corruption authority is the National Agency for Prevention of Corruption. 2. Specialized law enforcement anti-corruption bodies are Specialized Anti-Corruption Prosecutor's Office; National Anti-Corruption Bureau of Ukraine; State Bureau of Investigation; National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes. 3. Judicial bodies include the Supreme Anti-Corruption Court.

At the same time, the issues of compliance of such system with the requirements of international acts ratified by Ukraine there is partial implementation of the provisions international acts ratified by Ukraine into domestic law. As V.M. Trepak appropriately notes, "The process of creating special anti-corruption bodies largely reminds of "chaotic accumulation" [18, p. 193]. In our opinion, it is necessary to implement the provisions of international acts in full, there is a need for drafting of the Law of Ukraine "On the Anti-Corruption Bodies System of Ukraine", which will clearly outline the conceptual foundations of their activities and maintain meaningful signs of their formation in accordance with international acts ratified by Ukraine.



In addition, in the context of the above, it seems necessary to make the proposed amendments to the Law of Ukraine “On Prevention of Corruption”.

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#### ИНФОРМАЦИЯ ОБ АВТОРЕ

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