provisions of civil law that reveal the essence of the principle of freedom of contract do not correspond to modern realities in the field of concluding a number of contracts, in particular a public contract, as it provides for the unconditional implementation of this principle in conjunction with the recommendation to take into account the norms of civil law and generally accepted rules. That is, a person is not obliged to comply with the rules and regulations, since they are advisory in nature, which is unreasonable, because compliance with the rule of law is an obligation, not a right. According to the identified problem in order to solve it, the author proposed to amend the current civil law.

Keywords: *freedom of conntract, principle, parties, civil law.*

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THE HIGH ANTI-CORRUPTION COURT OF UKRAINE IN THE MECHANISM OF ANTI-CORRUPTION: ADMINISTRATIVE AND LEGAL ASPECTS

Андрій Андреєв. ВИЩИЙ АНТИКОРУПЦІЙНИЙ СУД УКРАЇНИ У МЕХАНІЗМІ ПРОТИДІЇ КОРУПЦІЇ: АДМІНІСТРАТИВНО-ПРАВОВІ АСПЕКТИ. У статті розкрито місце Вищого антикорупційного суду України у протидії корупції з метою розробки пропозицій щодо його діяльності.

Головним кроком для проведення антикорупційної політики було створення ефективної системи антикорупційного правосуддя, зокрема, створення відповідної інституції – антикорупційного суду. Антикорупційні суди як інститут зарекомендували себе з позитивного боку по всьому світі. Закордонний досвід свідчить, що така інституція переважно є одним з найефективніших засобів у боротьбі з корупційними правопорушеннями.

Практика функціонування ВАКС має позитивну динаміку розгляду антикорупційних справ, що підтверджується низьким рівнем порушень процесуальних норм у професійній діяльності суддів під час розгляду справ та ухвалення відповідних рішень. Водночас ефективність роботи ВАКС у контексті запобігання корупції в органах публічної влади залежить від зовнішніх чинників, тому одним з основних завдань громадянського суспільства сьогодні є підтримка незалежності Суду та унеможливлення спроб тиску на суддів з боку осіб, які підозрюються чи обвинувачуються у вчиненні корупційних правопорушень.

Без наукової уваги досі залишається цілий пласт питань, які розкривають соціальне призначення ВАКС поза межами судової гілки влади, насамперед, в антикорупційному механізмі, невід'ємним елементом якого на сьогодні він є. В цьому ми вбачаємо потенційні напрями подальших досліджень.

Ключові слова**:** *корупція, антикорупційна діяльність, Вищий антикорупційний суд України, верховенство права, суб'єкти протидії корупції.*

Relevance of the study. Corruption as a social phenomenon is a significant threat to the rule of law, and democratic development of the state increases instability in society, levels social justice, and hinders the implementation of necessary reforms in the country. Corruption destroys good governance and is a nationwide problem.

One of the complex problems that prevented Ukraine from overcoming corruption was the low institutional capacity and the lack of a system of particular institutions in anti-corruption. After the Revolution of Dignity, such a system was created, but creating a unique anti-corruption judiciary was problematic and complicated.

Recent publications review. The issue of the creation and functioning of anti-corruption institutions and, in particular, the High Anti-Corruption Court of Ukraine was comprehended in the works of domestic scholars- administrators. Among them: D. Aminov, O. Bezpalova, Y. Busol, V. Gapotiy, O. Kosytsia, O. Lemak, D. Maletov, M. Melnyk,

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O. Menyailov, I. Miroshnikov, J. Nikityuk, T. Podorozhna, B. Prokopiv, K. Rostovska, P. Rudyk, V. Trepak, V. Tymoshenko, M. Khavronyuk, A. Khudyk, N. Shaptala, J. Yurchyshyn and others. But the administrative and legal status of this important anti-corruption institution needs constant scientific attention due to the active development of anti-corruption policy. In addition, the post-war reconstruction of Ukraine and the implementation of the course of European integration require a greater concentration of efforts to eradicate corruption as a social phenomenon in Ukraine. In this context, the role of the High Anti-Corruption Court of Ukraine is growing.

The research paper's objective is to reveal the place of the High Anti-Corruption Court of Ukraine in combating corruption in public authorities to develop proposals for its activities.

Discussion. One of the main factors in the spread of corruption in Ukraine is the lack of a clear and coherent process of reforming the law enforcement and judicial systems; merger of power and business; undemocratic conditions for the functioning of the party system; non-compliance with anti-corruption legislation, low level of efficiency of institutions in preventing and combating corruption, as well as the lack of established cooperation between public authorities and civil society institutions. After 2014, Ukraine was covered by numerous reforms, but one of the priority problems as corruption, so most efforts have been made to overcome it.

A characteristic feature of the next stage of anti-corruption reform, which began in 2014, was strengthening administrative and criminal liability for corruption offences and expanding the system of bodies entrusted with specific tasks and functions in combating corruption [1]. However, despite all the measures taken and resources involved, no significant improvement in the fight against corruption has occurred. The public and the international community have never seen objective verdicts in the most high-profile corruption cases.

The growing public attention to corruption causes Yurchyshyn's critical attitude toward Ukrainians to anti-corruption reform and indicates the need to strengthen the reform. He noted that due to the establishment of anti-corruption institutions and new tools to prevent corruption, information about corruption has become available to the general public. As a rule, the only consequence of a corruption crime for an official is public condemnation and a negative impact on reputation [2]. Given the above, the primary step in conducting an anti-corruption policy was to create an effective system of anti-corruption justice, in particular, the creation of an appropriate institution – anti-corruption judges.

Anti-corruption courts as an institution have established themselves on the positive side worldwide. Foreign experience shows that such an institution is mainly one of the most effective tools in the fight against corruption. For example, for the judicial systems of Slovakia, Bulgaria, the Philippines, etc., anti-corruption courts are not a novelty.

To better understand the functioning of anti-corruption courts in foreign countries, it is advisable to divide them into specific categories conditionally. Thus, A. Slyusar proposed the following models of specialised anti-corruption courts, namely: individual specialised judges – individual judges are appointed or appointed by technical anti-corruption judges in courts of general jurisdiction, while the appeal procedure remains unchanged (Bangladesh, Kenya); courts of the first instance – a specialised anti-corruption court enjoys exclusive jurisdiction over cases of corruption crimes with the possibility of appealing its decisions to the Supreme Court (Slovakia, Croatia); hybrid courts – the anti-corruption court can act as a court of the first instance for some (more complex) corruption cases, and also serves as an appellate court for other corruption cases that are heard in courts of general jurisdiction. Appeals against anti-corruption court decisions are filed with the Supreme Court (Philippines); parallel courts – the system of anti-corruption courts includes both courts of the first instance and courts of appeal (Bulgaria, Indonesia) [3]. In most of these countries, judges of the relevant specialised courts are equated with judges of general jurisdiction of the appropriate level and undergo similar stages of selection.

The idea of creating anti-corruption courts in Ukraine first appeared in the recommendations of the Organization for Economic Cooperation and Development as one of the components of anti-corruption reform in Ukraine as a whole. The proposals indicate that the creation of specialised judges will isolate the National Anti-Corruption Bureau and its cases from ordinary judges, given the high level of corruption [4, p. 84-85]. Ukraine's international partners and domestic anti-corruption NGOs in establishing the HACC were primarily due to the desire to build an independent, impartial and objective judicial institution that would play a vital role in the domestic anti-corruption mechanism [5]. The most innovative feature of HACC is the role of international experts in the selection process.

According to the Law of Ukraine «About the High Anti-Corruption Court» of 07.06.2018, the task of the national model of the highest level of anti-corruption court is to administer justice by statutory principles and procedures to protect individuals' society and the state from corruption and corruption. Crimes and judicial control over the pre-trial investigation of these crimes, respect for the rights, freedoms and interests of persons in criminal proceedings, and resolve the issue of unfounded assets and their recovery into state revenue in cases provided by law in civil proceedings [6].

HACC cannot be considered solely as part of the judiciary. First of all, it is a critical element of the domestic anti-corruption mechanism [7, p. 42]. The primary purpose of the HACC and other aspects of the anti-corruption mechanism is to achieve a state of protection of the state, public and private interests from such a negative social phenomenon as corruption [8, p. 36]. The allocation of anti-corruption jurisdiction in Ukraine is natural, conditioned by the realities of the country's social development and a well-considered decision to establish an effective democracy. It is important to understand that the logic of HACC reproduces, in fact, the logic of creating specialised courts in Ukraine; the idea of the need for their existence in continental Europe was based on recognising the low potential capacity of courts of general jurisdiction to effectively deal with corruption offences [9; 10, p. 47; 17]. These ideas and principles are the basis of the Law of Ukraine «About the High Anti-Corruption Court», which incorporates internationally recognised trends in the legal status of such a judicial institution.

The Law of Ukraine «About the High Anti-Corruption Court» is a long-awaited and necessary step in eradicating corruption. This court is hoping for proper consideration of corruption cases by high-ranking officials. The law is the final mechanism for creating an effective anti-corruption system. It is an element of the NABU triangle – Anti-Corruption Prosecutor's Office – Anti-Corruption Court. The Law regulates the most problematic issues: the procedure for selecting judges (unrealistic requirements for candidates for judges have been removed) and the participation of international experts who play a vital role in the selection process. The court's jurisdiction is limited to the top corruption cases under investigation by NABU. Judges will be guaranteed financial independence and personal security [11]. However, not everyone positively assesses the implementation process of this instance; in particular, it emphasises the lack of a separate procedural law in this area and others.

The anti-corruption orientation of the HACC and the specific nature of the cases to be attributed to it were the basis for formulating the official name of the newly established court. The key role is played by the adjective «anti-corruption», i.e., «aimed at combating corruption». As we have found, this adjective today has a fairly wide scope. In particular, it is used in the names of several newly created bodies (for example, the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office), in the names of some policy documents (anti-corruption strategy, anti-corruption policy, anti-corruption program) and events (anti-corruption initiative, anti-corruption summit). concepts to denote a set of state institutions (anti-corruption bodies), regulations (anti-corruption legislation), certain areas, forms and methods of activity (anti-corruption reform, anti-corruption expertise, anti-corruption supervision, anti-corruption restrictions), etc. [12]. In all cases, without exception, the use of the prefix «anti-corruption» is due to the specific legal nature of the object (object, phenomenon, etc.) and its focus on certain tasks in the field of anti-corruption.

The advantages of creating specialised anti-corruption courts in the scientific literature are 1) efficiency (consideration of criminal proceedings for high-level corruption in non-specialized courts is usually significantly delayed; specialised anti-corruption courts, as a rule, do not have this disadvantage); 2) integrity (ensuring that corruption cases are heard by an independent and impartial tribunal, free from corruption and the influence of politicians or other influential figures, as far as possible); 3) jurisdiction (many corruption cases, especially those involving complex financial transactions or well-thought-out schemes, may be more complex than other cases pending before many non-specialized court judges) [9; 10, p. 45; 16]. At the same time, the Ukrainian model of the High Anti-Corruption Court is characterised by issues in its activities, organisation and institutional capacity.

Experts note the main problems in the work of HACC. Yes, the success of HACC depends on the quality of work performed by NABU and SAP. HACC can pass a conviction only if investigators find and prosecutors provide sufficient evidence of guilt that will be beyond «reasonable doubt.» The parties may appeal the decision of the High Administrative Court to the High Court of Cassation of the High Court because the judges of the High Court did not go through such an examination process as the judges of the HACC. The number of

cases may be excessive relative to the number of HACC judges. The situation is complicated by the fact that HACC judges hold meetings collectively. There are also unrealistic expectations from the HACC regarding the speedy sentencing of officials. Unrealistic expectations can lead to justified dissatisfaction if the HACC does not have an immediate transformational impact [13, p. 9; 15]. Another issue that deserves attention is the harmonisation of public control over the activities of the Court.

According to V. Solovyov, the most critical problem in achieving positive results in combating corruption is the improper organisation of anti-corruption institutions, government agencies and NGOs [14, p. 311]. Developing the scientist's opinion, we note that it is essential not only the proper organisation of these institutions but also their proper coordination and interaction, especially in the exchange of the public and public authorities.

Analysing the activities of the High Anti-Corruption Court of Ukraine, most scholars focus on characterising its place in the domestic judicial system, researching its tasks, clarifying the legal nature of its external and internal systemic relations, identifying the legal nature of its external and internal systemic links ways to improve efficiency. It's functioning, etc. At the same time, a whole range of issues that reveal the social purpose of the HACC outside the judiciary remains out of focus, primarily in the anti-corruption mechanism, an integral element of which it is currently. In this, we see potential areas for further research.

Conclusions. Anti-corruption courts as an institution have established themselves on the positive side worldwide. Foreign experience shows that such an institution is primarily one of the most effective tools in the fight against corruption. For example, for the judicial systems of Slovakia, Bulgaria, the Philippines, etc., anti-corruption courts are not a novelty. The Ukrainian model of the High Anti-Corruption Court is also characterised by problems in its activities, organisation and institutional capacity.

The practice of functioning of the HACC has positive dynamics in anti-corruption cases, which is confirmed by the low level of violations of procedural norms in the professional activities of judges during the consideration of issues and the adoption of appropriate decisions. At the same time, the effectiveness of HACC in preventing corruption in public authorities depends on external factors, so one of the main tasks of civil society today is to support the independence of the Court and to avoid pressure on judges suspected or accused of corruption.

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ABSTRACT

The article reveals the place of the High Anti-Corruption Court of Ukraine in combating corruption to developing proposals for its activities.

The primary step in conducting an anti-corruption policy was to create an effective system of anti-corruption justice, in particular, the creation of an appropriate institution – the anti-corruption court. Anti-corruption courts as an institution have established themselves on the positive side worldwide. Foreign experience shows that such an institution is mainly one of the most effective tools in the fight against corruption.

The practice of functioning of the HACC has positive dynamics in anti-corruption cases, which is confirmed by the low level of violations of procedural norms in the professional activities of judges during the consideration of circumstances and the adoption of appropriate decisions. At the same time, the effectiveness of HACC in preventing corruption in public authorities depends on external factors, so one of the main tasks of civil society today is to support the independence of the Court and avoid pressure on judges suspected or accused of corruption.

A whole range of issues that reveal the social purpose of the HACC outside the judiciary is still without scientific attention, primarily in the anti-corruption mechanism, of which it is now an integral element. In this, we see potential areas for further research.

Keywords: *corruption, anti-corruption activity, High Anti-Corruption Court of Ukraine, the rule of law, anti-corruption entities.*

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СУЧАСНІ ПРАКТИЧНІ ПРОБЛЕМИ НЕПРАВИЛЬНОГО УКЛАДЕННЯ ЦИВІЛЬНО-ПРАВОВИХ ДОГОВОРІВ

Досліджено та проаналізовано сучасні практичні проблеми неправильного укладення цивільно-правових договорів. Зазначено, що розвиток Української держави сприяє розвитку рівноправних правових договірних зобов'язань, їх удосконаленню та узгодженню з європейськими стандартами, враховуючи євроінтеграційний напрям розвитку нашої країни. Договір є універсальним юридичним інструментом, правова природа якого полягає в процесі волевиявлення сторін та закріпленні її в умовах договору як консенсусу. Досліджено, що поняття договір знайшло своє закріплення у національному законодавстві не так давно, проте загалом воно виникло ще до часів римського права, а з його розвитком удосконалювалось.

Наголошено на значенні та ролі цивільно-правових договорів у сьогоденні, що полягає в тому, що вони застосовуються у більшості сфер суспільного життя та допомагають вирішувати питання та задовольняти потреби. Проте зауважено на тому, що незважаючи на розуміння значущості цивільно-правових договорів та наявності детальної регламентації головних питань щодо них, на сьогодні контрагенти все одно допускають низку помилок, що потім мають негативні правові наслідки.

Проаналізувавши низку можливих проблем, які загалом поділено на технічні та правові, узагальнено, що технічні проблеми (до яких належать: посилання на неактуальну нормативну

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