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**ADMINISTRATIVE AND LEGAL SUPPORT FOR COMBATING
CORRUPTION AND COORDINATION OF THE ACTIVITIES
OF THE FRENCH ANTI-CORRUPTION AGENCY
AND THE NATIONAL AGENCY ON CORRUPTION PREVENTION**

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In the world, there are numerous specialized institutions on combating corruption, which perform different functions and legal activities. However, until 2014, performance of anti-corruption bodies in Ukraine, as well as their interaction and coordination, was problematic because those functions were exercised by the entities, whose main function was not anti-corruption activities (President of Ukraine, the Verkhovna Rada of Ukraine, prosecutor’s offices of Ukraine, who were engaged in preventing and combatting corruption within their authorities, adopted by the Constitution of Ukraine), and by the specialized entities, authorized in the field of combating corruption (prosecutor’s offices, specialized agencies on fighting organized crime of the Ministry of Internal Affairs of Ukraine, on fighting corruption and organized crime of the Security Service of Ukraine). Therefore, the French Republic is taken as an example for analyzing legal aspects of the activities of specialized institutions on corruption prevention, and the example of the French Anti-Corruption Agency is used for development of the policy and coordination of the activities of anti-corruption agencies during reforming the anti-corruption bodies in Ukraine and for regulation of the administrative and legal support for combating corruption and coordination in their professional activities.

It is stressed that the foreign experience cannot be easily applied in our country. That is because Ukraine has rather unique system of anti-corruption institutions, which has no analogues in other countries, whereas France has a single specialized anti-corruption institution. The problems of legal regulation of the administrative and legal support for coordination of the entities on combating corruption in our country confirms relevance of the search for the ways of the problem solution. Therefore, the positive experience of foreign countries can be useful for domestic legislators.

Key words: administrative and legal support, fight against corruption, French Anti-Corruption Agency, National Agency on Corruption Prevention.

Problem formulation. In the process of anti-corruption agency establishment, domestic legislators referred to the experience of the countries, which had achieved positive results in that field and where such institutions had been successfully performing for a long time. The analysis of foreign countries’ experience is one of the most effective methods for comparing the domestic anti-corruption legislation with the

legislation of the foreign countries and thus, the foreign experience can be used for making proposals on improvement of the legislation base for the effective combating corruption, search of the ways for better coordination of anti-corruption entities in order to improve their inter-departmental cooperation, exchange of information, etc.

Analysis of the problem study. In the domestic scientific literature on the activities of anti-corruption agencies, considerable attention is paid to the models of anti-corruption bodies, which perform in foreign countries. Those aspects are studied in the works of such scientists as O. I. Vasylieva, Yu. V. Dmytriiev, D. H. Zabroda, S. A. Zavadskyi, N. Yu. Zadyraka, O. V. Ivanov, R. S. Melnyk, Ye. V. Nemerzhytskyi, O. V. Novikov, O. I. Parkhomenko-Kutsevil, B. V. Romaniuk, T. M. Suprun, I. V. Chemerys, O. Yu. Cherednychenko, O. N. Yarmysh and others. However, the works of domestic scientists are mainly devoted to studying the models of anti-corruption body establishment, whereas the issue of their coordination has been left out. Thus, the analysis of foreign experience on legal regulation of the administrative and legal support for coordination of anti-corruption entities is quite actual.

The aim of the article is to study specificity of the activities of the French Anti-Corruption Agency and the National Agency on Corruption Prevention in the field of anti-corruption activities, as well as the administrative and legal support for coordination of the anti-corruption entities, as well as to use the foreign experience to identify optimal ways for improvement of the domestic legislation in that field.

Presenting main materials. Ukraine is a member of numerous international agreements in the field of combating corruption, which set requirements to the state party to create specialized bodies on fighting and preventing corruption. In particular, the Article 6 of the United Nations Convention against Corruption of 31 October 2003 [3] declares that each state party shall endeavor to establish and promote effective practices aimed at the prevention of corruption on its territory. Moreover, the Council of Europe's Criminal Law Convention on Corruption No. ETS173 of 27 January 1999, ratified by Ukraine, sets standards for the specialized law enforcement agencies.

For a long time, our country ignored such requirements, and the anti-corruption activities were conducted by the prosecutor's offices, specialized agencies on the fight against organized crime of the Ministry of Internal Affairs of Ukraine, entities on the fight against corruption and organized crime of the Security Service of Ukraine. However, since 2014, after the Revolution of Dignity, Ukraine has initiated creation of independent specialized institutions against corruption.

Up to 2022, the country has already established a system of agencies, which are engaged in preventing and combating corruption, namely the National Agency on Corruption Prevention, the State Bureau of Investigation, the Specialized Anti-Corruption Prosecutor's Office, the High Anti-Corruption Court of Ukraine.

In those processes, a significant contribution was done by foreign countries, which shared their experience with Ukraine, and a great impact was made by the donor and international organizations, like the International Monetary Fund, the European Commission on liberalization of visa regime for Ukraine and the European Union. Nevertheless, our domestic experience, as well as experience of many other countries, confirms that establishment of such agencies is not always a guaranty of corruption reduction. To secure effective performance of each of the mentioned agencies, they should be provided with all necessary tools, approved in the United Nations Convention against Corruption of 31 October 2003 [3], the Council of Europe's Criminal Law Convention on Corruption No. ETS173 of 27 January 1999 [4] and other international standards. They should be independent, have clear specialization, as well as be appropriately coordinated to prevent conflicts between the specialized anti-corruption institutions. In fact, many countries experience difficulties while implementing the effective coordination of anti-corruption agencies, and Ukraine is among them.

In the world there is a great number of specialized institutions on combating corruption, having various functions and legal activities. In particular, the French Republic established a specialized institution against corruption, called the French Anti-Corruption Agency (L'Agence française

anticorruption (AFA), which was also engaged in development of the policy and coordination of the activities of anti-corruption bodies.

It is not a law enforcement agency, but it performs the specialized control functions and is assigned with specific rights. That Agency coordinates activities of the whole branch of combating corruption in France.

The French Anti-Corruption Agency (L'Agence française anticorruption (AFA) was established in 2016 by adopting the Law of France "On transparency, fight against corruption and modernization of economic life" No. 2016-1691 of 9 December 2016 (LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique) [5]. Establishment of that Agency forced liquidation of the Central Service on Corruption Prevention (Service Central de Prévention de la Corruption (SCPC). The Central Service on Corruption Prevention (Service Central de Prévention de la Corruption (SCPC) had long performed such important functions as coordination of anti-corruption activities; centralization of information, required for prevention and detection of the facts of active and passive corruption, abuse of official position both by officials and individuals, bribery; assistance for courts in case they appeal on such facts [2, p. 122].

The French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is endowed with preventive and control powers, as well as is authorized to execute juridical measures. According to O. V. Ivanov, that body currently performs the functions, focused on the unified fight against corruption in the French Republic [6, p. 276].

The Article 1 of the Decree "On French Anti-Corruption Agency" No. 14-2017 of 14 March 2017 (Décret n° 2017-329 du 14 mars 2017 relatif à l'Agence française anticorruption) [7] declares that the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is engaged in anti-corruption administrative coordination, which involves preparation of the national plan on combating corruption, assistance for other agencies on the issues of combating corruption, raising public awareness of corruption issues, etc. Both the French Republic and Ukraine are characterized by a branched system of anti-corruption bodies, which includes different specialized services, such as the Commission on Financial Publicity of Political Life, which controls property status of the Parliament members; the National Commission on Election Campaign Accounts and Political Party Funding (performing oversight functions); law enforcement agencies, such as organization of fight against money laundering TRASFIN, the Ministry of Justice of Ukraine, the Department of Fight against Corruption (DFC) subordinated to the Office of Fighting Economic and Financial Crimes of the Judicial Police [8, p. 200; 9, p. 77].

The French Anti-Corruption Agency (L'Agence française anticorruption (AFA) cooperates its work with each of the mentioned bodies, shapes the anti-corruption policy, which should be followed by all anti-corruption institutions, actually coordinates their activities.

According to the Article 3 of the Decree "On French Anti-Corruption Agency" No. 14-2017 of 14 March 2017 (Décret n° 2017-329 du 14 mars 2017 relatif à l'Agence française anticorruption) [7], the structure of the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) includes the Strategic Council, regulated by the Agency Magistrate, which actually develops the Anti-corruption strategy as a basic vector of the anti-corruption sphere in France. The French Anti-Corruption Agency (L'Agence française anticorruption (AFA) primarily carries out coordination activities on combating corruption, activities on development of the state anti-corruption policy, preventive activities in the anti-corruption sphere (particularly, by collecting information, consulting, providing information and education support).

That body is not authorized to deal with administrative or criminal offences, does not provide assistance for people, who suffer from corruption, whereas its functions are of preventive, monitoring and protective character.

In Ukraine, the body, which performs functions similar to the French Anti-Corruption Agency (L'Agence française anticorruption (AFA), is called the National Agency on Corruption Prevention. According to the Article 11 of the Law of Ukraine "On Corruption Prevention" No. 1700-VII of 14 October 2014 [1], the Agency develops projects of the Anti-corruption strategy and the state program of its fulfillment, shapes and implements the anti-corruption policy, develops projects of regulatory acts on

the issues; organizes investigations of the corruption situation, and performs other functions, approved by the Article. The mentioned functions are close to those, assigned to the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) according to the Article 1 of the Decree "On French Anti-Corruption Agency" No. 14-2017 of 14 March 2017 (Décret n° 2017-329 du 14 mars 2017 relatif à l'Agence française anticorruption) [7].

Referring to the Article 5 of the Law of Ukraine "On Corruption Prevention" No. 1700-VII of 14 October 2014 [1], the Chairman of the National Agency on Corruption Prevention is appointed and dismissed by the Cabinet of Ministers of Ukraine and is actually subordinated to the body. However, according to the Article 2 of the Law of France "On transparency, fight against corruption and modernization of economic life" No. 2016-1691 of 9 December 2016 (LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique) [5], the Magistrate of the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is appointed by the Decree of the Republic President, although the Agency does not belong to any power hierarchy, neither legislative nor judicial system, and its powers can be terminated in two cases: expiration of the term of authorities or the Magistrate's voluntary dismissal. It means the Magistrate of the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is independent in its activities and is assigned with the special status, which allows to stay outside the impact of state powers. Independence of the Magistrate of the French Anti-Corruption positively influences coordination of the anti-corruption entities, as no impact can be made on the process and the anti-corruption policy of the state in the direction that contradicts with the national interests.

Considering the experience of the French Republic in terms of regulating the body that is close by its competences to the domestic National Agency on Corruption Prevention, which is engaged in coordination of the fight against corruption in the state, it is necessary to change the status of the Chairman of the National Agency on Corruption Prevention and secure his/her independence from the Cabinet of Ministers of Ukraine. It will provide autonomy while exercising the functions and will prevent any impact on his/her decisions, particularly concerning coordination of the anti-corruption entities.

In general, the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is close by their functions to the Ukrainian National Agency on Corruption Prevention. Moreover, regulations of the Law of Ukraine "On Corruption Prevention" No. 1700-VII of 14 October 2014 [1] in many aspects are similar to the regulations of the Law of France "On transparency, fight against corruption and modernization of economic life" No. 2016-1691 of 9 December 2016 (LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique) [5]. The principal difference in the legal status of both bodies and their impact on coordination of anti-corruption entities is primarily in the status on the chairmen of those Agencies. The Magistrate of the French Anti-Corruption Agency (L'Agence française anticorruption (AFA) is more independent in his/her activities than the Chairman of the National Agency on Corruption Prevention. That experience can be used by the domestic legislators.

Conclusions. The foreign experience cannot be easily applied in our country. That is because Ukraine has rather unique system of anti-corruption institutions, which has no analogues in other countries, whereas France has a single specialized anti-corruption institution. The problems of legal regulation of the administrative and legal support for coordination of the entities on combating corruption in our country confirms relevance of the search for the ways of the problem solution. Therefore, the positive experience of foreign countries can be useful for domestic legislators.

REFERENCES

1. *Pro zapobihannia koruptsii* [On the prevention of corruption] : Zakon Ukrainy vid 14.10.2014 No. 1700-VII. Vidomosti Verkhovnoi Rady Ukrainy (VVR). No. 49 [in Ukrainian].
2. Zavadskyi, S. A. (2016) *Koordinatsiina diialnist orhaniv prokuratury z pytan zapobihannia ta protydi koruptsii: pytannia sohodennia* [Coordination activities of the prosecutors office on preventing and combating corruption: current issues]. Naukovyi visnyk publichnoho ta pryvatnoho prava. No. 4. S. 120–124 [in Ukrainian].

3. *Konventsia Orhanizatsii Obiednanykh Natsii proty koruptsii* [United Nations Convention against corruption]. Mizhnarodnyi dokument vid 31.10.2003. Vidomosti Verkhovnoi Rady Ukrainy. 2007. No. 49. S. 2048 [in Ukrainian].

4. *Kryminalna konventsia pro borotbu z koruptsiieiu* [Criminal Convention against corruption]: Mizhnarodnyi dokument vid 27.01.1999 No. ETS173. Vidomosti Verkhovnoi Rady Ukrainy. 2007. No. 47–48. S. 2028 [in Ukrainian].

5. **LOI n° 2016–1691** du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique. URL : <https://legifrance.gouv.fr/jorf/id/JORFTEXT000033558528> (data zvernennia: 17.01.2021) [in French].

6. Ivanov, O. V. (2018). *Diialnist subiektiv publichnoi administratsii u napriami zapobihannia koruptsii v zarubizhnykh krain* [Activities of public administration entities in the direction of preventing corruption in foreign countries]. Naukovyi visnyk publichnoho ta pryvatnoho prava. No. 6. T. 1. S. 274–279 [in Ukrainian].

7. **Décret n° 2017-329** du 14 mars 2017 relatif à l'Agence française anticorruption. URL : <https://legifrance.gouv.fr/loda/id/JORFTEXT000034187670/2021-01-23/> (data zvernennia: 17.01.2021) [in French].

8. Suprun, T. M. (2017). *Zarubizhnyi dosvid zapobihannia ta protydii koruptsii* [Foreign experience in preventing and combating corruption]. Mizhnarodnyi yurydychnyi visnyk: aktualni problemy suchasnosti (teoriia ta praktyka). No. 2–3. S. 199–204 [in Ukrainian].

9. Parkhomenko-Kutsevil, O. I. (2019). *Formuvannia ta rozvytok suchasnykh antykoruptsiinykh orhaniv derzhavnoi vlady yak osnova zapobihannia ta podolannia koruptsii: teoretyko-metodolohichniy analiz* [Formation and development of modern anti-corruption public authorities as a basis for preventing and overcoming corruption: theoretical and methodological analysis] : monohrafiia. DP “Vyd. dim “Personal””. 308 s. [in Ukrainian].

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АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ПРОТИДІЇ КОРУПЦІЇ ТА КООРДИНАЦІЇ У ДІЯЛЬНОСТІ ФРАНЦУЗЬКОГО АНТИКОРУПЦІЙНОГО АГЕНТСТВА ТА НАЦІОНАЛЬНОГО АГЕНТСТВА З ПИТАНЬ ЗАПОБІГАННЯ КОРУПЦІЇ

Здійснено аналіз специфіки діяльності Французького антикорупційного агентства та Національного агентства з питань запобігання корупції у галузі антикорупційної діяльності та адміністративно-правового забезпечення координації суб'єктів протидії корупції, і встановлення на основі іноземного досвіду оптимальних шляхів для удосконалення вітчизняного законодавства у цій сфері. Визначено, що французьке антикорупційне агентство (L'Agence française anticorruption (AFA)) наділене превентивними та контрольними повноваженнями, а також на нього покладено відповідальність за виконання судових заходів, а найближчим за функціями органом в Україні, подібним до Французького антикорупційного агентства (L'Agence française anticorruption (AFA)), є Національне агентство з питань запобігання корупції.

Доведено, що для України характерна доволі унікальна система антикорупційних інституцій, яка не має аналогів в інших країнах. Натомість, у Франції функціонує лише одна спеціалізована антикорупційна інституція. Наявність у нашій державі проблем правового регулювання адміністративно-правового забезпечення координації суб'єктів протидії корупції актуалізує пошук шляхів для їхнього вирішення, тому позитивний досвід іноземних держав у цьому контексті може стати вітчизняному законодавцю у нагоді.

Ключові слова: адміністративно-правове забезпечення, протидія корупції, Французьке антикорупційне агентство, Національне агентство з питань запобігання корупції.