*Sofiia Zabrodotska*

***Expediency of functioning of the High Anti-Corruption Court***

Corruption is undoubtedly one of the biggest problems in Ukraine. It has penetrated all spheres of society, from the political system to the economy, impeding progress and development. The issue of fighting corruption has been discussed for years. A number of judicial and law enforcement agencies have been established to combat this negative phenomenon, including: the National Agency for the Prevention of Corruption (NAPC), the National Anti-Corruption Bureau of Ukraine (NABU), the Specialised Anti-Corruption Prosecutor’s Office (SAP), the State Bureau of Investigation (SBI), and the High Anti-Corruption Court (HACC).

**The main reasons for the establishment of the High Anti-Corruption Court of Ukraine were, in particular:**

- high level of corruption,

- insufficient effectiveness of the judicial system in fighting corruption,

- the need to create a separate court to adjudicate corruption cases, and

- the support of international organisations (the establishment of the High Anti-Corruption Court was supported by international organisations, such as the European Union, NATO, and the World Bank. These organisations believe that the establishment of the High Anti-Corruption Court is an important step in the fight against corruption in Ukraine).

*The creation of this court was announced during the judicial reform in 2016.* The HACC was established with the large-scale support of anti-corruption activists, international governmental and non-governmental organisations, as well as with the use of international experience in establishing specialised anti-corruption judicial institutions. The status and organisational structure of the Anti-Corruption Court is a subject of ongoing debate among Ukrainian politicians and experts, but *the new court began its full-fledged work only in September, 2019,* when it was to consider only cases of *high-ranking officials* under the NABU’s jurisdiction. The Venice Commission in its Opinion CDL-AD(2017)020 of 9 October 2017, while assessing the draft law, supported this position and noted that the *HACC should have jurisdiction not only over corruption offences, but also over related crimes such as abuse of power or position, illicit enrichment and money laundering.*

In view of this, **in July 2018, amendments were adopted according to which the Anti-Corruption Court should consider all cases of corruption offences, regardless of who completed the investigation.** Thus, **on 5 September 2019**, the High Anti-Corruption Court and the Appeals Chamber of the High Anti-Corruption Court (HACC) began their procedural work. I was curious about what was written and said in September 2019 about the newly created HACC. Thus, in numerous publications and interviews, it was emphasised that this is the first court in Ukraine to be established from scratch under new legislative rules and with a special approach to recruitment. The Anti-Corruption Court’s website emphasised that the legal community and the public have high expectations of this judicial institution. The former expects fair decisions, the latter, obviously, punitive ones. However, the former and the latter are united in the belief that corruption cannot be eradicated by the court alone, it can only be overcome by the entire Ukrainian community.

According to the available data in open sources, including the HACC’s official website, the following results have been achieved **over the 4 years of its work:** for example, during the monitoring of cases, it is known that the court **delivered 139 verdicts**, of which the Appeals Chamber of the High Anti-Corruption Court reviewed **55** and upheld **28**. Since the beginning of its work, the HACC has acquitted **23** people accused of corruption offences and convicted **157 people**. Some of the most high-profile cases during this time include:

- The *verdict of 23 February 2022 in case No. 910/1257/21.* The HACC sentenced the former Deputy Minister of the Temporarily Occupied Territories and Internally Displaced Persons **Yuriy Hrymchak** to 6 years in prison for extortion of $1.1 million in bribes. This sentence was welcomed by society as an important step in the fight against high-level corruption;

- Verdict of *14 March 2023 in case No. 910/1271/21.* The HACC rejected the petition of the NABU and the SAP to arrest the former CEO of Naftogaz of Ukraine, **Andriy Kobolyev**. This verdict caused a mixed reaction in the society, as Kobolyev was accused of corruption and embezzlement of budget funds.

In the course of the HACC’s judgements, in **43 cases**, the result was achieved through **plea agreements** between the accused and the investigation, including high-profile convictions, for instance, former MP **Oleksandr Trukhin** and former Minister of Ecology **Mykola Zlochevskyi**.

The figures on the HACC’s use of **special confiscation**, a mechanism that allows for the confiscation of criminal assets and the transfer of proceeds to the state budget, are also extremely interesting. Thus, over the past 4 years, we have witnessed 19 proceedings in which special confiscation was applied in the amount of **UAH 137,546,142 (it’s about 3 656 514,26 USD).**

In addition, it has been established that as of 12 December 2023, the High Council of Justice of Ukraine **has cancelled 31 verdicts delivered by the HACC**. Among them, 16 were cancelled due to violations of the criminal procedural law, 12 – due to the failure to prove the guilt of the accused, and 3 due to non-compliance of the verdict with the requirements of the law.

The cancellation of sentences due to violations of the criminal procedure law, in particular, are as follows:

- On *16 November 2023, the Supreme Court of Ukraine (SCU) cancelled the HACC verdict, which sentenced the former director of Lutsk Combined heat and power plant (CPP) No. 2,* ***Andriy Hrytsenko****, to 10 years in prison for embezzling over UAH 100 million of budget funds.* In this case the High Council of Justice found that the HACC had committed a number of violations of the criminal procedure law during consideration of the case, which resulted that А. Hrytsenko’s right to a fair trial was violated. In particular, the HACC failed to properly examine the evidence, assess the defence arguments, and failed to take into account the mitigating circumstances;

- *On 20 October 2023, the SCU cancelled the HACC verdict, which sentenced the former Deputy Head of the State Customs Service of Ukraine* ***Serhii Rudko*** *to 8 years in prison for taking a USD 100,000 bribe.* The High Council of Justice found that the HACC had not committed any violations of the criminal procedure law, but the court’s conclusions about Rudko’s guilt were unjustified. In particular, the court did not take into account that the witness’s testimony, on which the prosecution was based, was contradictory and not supported by other evidence.

**Cancellation of verdicts due to failure to prove the accused’s guilt:**

- *On 20 October 2023, the SCU overturned the HACC verdict, which sentenced* ***Artur Palatnyi****, former head of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA), to 7 years in prison for embezzling over UAH 200 million of budget funds.* The High Council of Justice found that the HACC had failed to prove A. Palatnyi’s guilt beyond reasonable doubt. In particular, the court did not take into account that the witness’s testimony, on which the prosecution was based, was contradictory and not supported by other evidence.

- *On 12 July 2023, the SCU cancelled the HACC verdict, which sentenced former Minister of Finance of Ukraine* ***Ihor Dubilet*** *to 6 years in prison for embezzlement of budget funds.* The High Council of Justice found that the HACC had failed to prove Dubilet’s guilt beyond a reasonable doubt. In particular, the court did not take into account that the statements of the witness on which the prosecution was based were contradictory and not supported by other evidence.

*Summing up these results, it can be concluded that for the highest anti-corruption instance in the judicial system, these results look modest, and for ordinary citizens they are not sufficient to achieve a high degree of public trust in the activities of the High Anti-Corruption Court of Ukraine.*

*Over the years of its existence, the High Anti-Corruption Court has been repeatedly criticised for its lack of efficiency, political influence and corruption within the court itself.* Therefore, the question arises as to whether such a court should exist, given the fact that the state spends considerable funds on its functioning. Let’s take a closer look at the HACC funding by year:

2019 – UAH 247.2 million (6 565 867,57 USD).

2020 – UAH 278.5 million (7 403 618,94 USD).

2021 – UAH 309.8 million (8 235 695,32 USD).

2022 – UAH 341.1 million (9 067 771,70 USD).

2023 – UAH 341.1 million (9 067 771,70 USD).

The total amount of funding for the HACC over the years of its existence is **UAH 1.1 billion (29 242 301,00 USD)**. For comparison, the amount of confiscated property over 4 years is only **UAH 137.5 million** (approximately USD 3.5 million). It means that the amount of confiscated property is only **about 12% of the HACC budget for one year.**

At the same time, the High Anti-Corruption Court of Ukraine has territorial jurisdiction, which means that criminal proceedings in cases of corruption offences committed in Ukraine are conducted by the HACC, which is actually located in Kyiv. This leads to certain logistical problems that complicate the consideration of cases by the HACC. One of these problems is that parties to the proceedings who live or work outside the city of Kyiv are usually required to travel to the capital to attend court hearings. Difficulties may also arise when dealing with motions for preventive measures, which have a very limited timeframe for review.

Another problem is that holding court hearings in Kyiv may make it more difficult for the public to access them. This is because not all people are able or willing to travel to the capital of Ukraine.

In 2022, the Verkhovna Rada of Ukraine (the Parliament) adopted amendments to the **Law of Ukraine “On the High Anti-Corruption Court”,** which provide for the establishment of **territorial branches of the HACC in the regions of Ukraine.** These changes are expected to improve access to justice in corruption cases for citizens living or working outside of Kyiv. However, these updates have not yet been implemented. Therefore, **logistical problems** remain one of the challenges that the HACC currently faces in its consideration of cases.

I would also like to point out that the High Anti-Corruption Court of Ukraine has **the power to impose sanctions on suspects and defendants in corruption offences**, including:

*- detention;*

*- prohibition to travel outside Ukraine; and*

*- seizure of property.*

These sanctions are aimed at ensuring the proper conduct of pre-trial investigations and court proceedings in cases of corruption offences. However, in practice, the application of sanctions by the High Anti-Corruption Court is often inefficient and time-consuming. This can lead to suspects and accused continuing to hold positions that they are prohibited from holding or to use confiscated property.

Summing up my report, I conclude that it is the current challenges and the need to overcome corruption that have contributed to the emergence of such judicial bodies as the High Anti-Corruption Court and the Appeals Chamber of the High Anti-Corruption Court. At the same time, in my personal opinion, after significant changes to increase the level of effectiveness of the fight against corruption, a corresponding reduction in corruption in society and a corresponding reform of the judicial system of Ukraine, it would be more appropriate for the judiciary to administer justice in cases of corruption in accordance with the territorial jurisdiction. In this way, a number of urgent problems can be solved:

- logistical, during the consideration of cases;

- access to public participation in court hearings;

- the ability to accumulate funds allocated for the HACC’s activities; and

- increasing the staff of local courts, which has been needed for a long time, given the workload of local courts.

Therefore, I believe, these changes will have a positive impact on the efficiency of the courts, including the increase in the confiscation of corrupt officials’ property in favour of the state.

A few days before the Brussels Summit, where a decision was to be made on the opening of negotiations on Ukraine’s accession to the EU, an expert Kyiv-Brussels teleconference was held. The topic was: “Fighting Corruption: Ukraine’s Path to the EU”. Two speeches caught my attention: by Oleksiy Zhmerenetskyi, a member of the Verkhovna Rada Committee on Anti-Corruption Policy, and Bohdan Kryklyvenko, Chief of Staff of the HACC. Member of Parliament Zhmerenetskyi, in particular, said: “Ukraine has adopted the most complex, most stringent legislation in the area of PEPs [in financial regulation, a politically exposed person] compared to other EU member states. Now Ukraine has the most developed anti-corruption infrastructure in terms of legislation among all European countries.” The HACC Chief of Staff Bohdan Kryklyvenko added: “The anti-corruption system in Ukraine is truly unique. American and European officials confirm that the progress that Ukraine has made in the face of a pandemic and a full-scale war is impressive”. The HACC representative also recalled that two weeks ago Moldova adopted the law on the Anti-Corruption Court in the first reading, and the draft was prepared on the basis of consultations and study of Ukraine’s success story.

Therefore, we can talk about a success story in the fight against the “octopus”. But we are still far from a complete victory over this insatiable monster.

**The ancient word “corruption” comes from Latin and means “to spoil”. It means to spoil, to ruin everything and everywhere: the fate of people and countries, good neighbourly relations and rules of coexistence, moral and ethical norms and the basis on which states, nations and peoples grow.**

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