

EFFECTIVE CORRUPTION INVESTIGATION UTILIZING INTERNATIONAL COOPERATION

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Since gaining independence in 1991, Ukraine has always had significant problems with corruption. Only over time the citizens of Ukraine understand what a dangerous phenomenon corruption is and that it must be fought. Real changes in Ukraine regarding the fight against corruption began only after 2014, when the Revolution of Dignity took place. At that time, everyone understood that the old methods in the fight against corruption do not work, and new agencies are needed that would professionally engage in this activity.

[The establishment of] the National Anti-Corruption Bureau [(NABU)] was one of the requirements set by the IMF and the European Commission for relaxation of visa restrictions between Ukraine and the European Union. On 14 October 2014 Verkhovna Rada of Ukraine (Parliament) adopted the Law "On the National Anti-Corruption Bureau of Ukraine". In January 2015 for the first time in history of modern Ukraine an open competition for position of director of a state agency was announced. 186 candidates applied for the position of Director of the National Anti-corruption Bureau of Ukraine. The winner of the competition was Artem Sytnyk. On 16 April 2015 the President of Ukraine Petro Poroshenko signed two decrees: No. 217/2015 - decree on founding the National Anti-corruption Bureau of Ukraine and No.218/2015 - decree on appointing Artem Sytnyk the Bureau's Director. This provided a starting point for a new state agency. . . . On 30 November 2015 the competition for the position of the Head of the Specialized Anti-Corruption Prosecutor's Office [(SAP)], on which the start of the NABU work depended, was over. Nazar Kholodnitskiy took the position. On 4 December [2015] the NABU detectives entered the first three criminal proceedings concerning the theft of state owned companies' funds to the value of 1 billion UAH into the Unified Register of Pre-Trial Investigations.¹

Since that time, NABU has always been on the front line of the fight against corruption in Ukraine. The number of detectives investigating corruption crimes is not very large, as only about 250 detectives investigate corruption of high-ranking officials in Ukraine. Considering that there are about 40 million people living in Ukraine, this is not a very large number. NABU is a central executive agency with a special status responsible for preventing, detecting, terminating, investigating and disclosing corruption and other criminal offences within its jurisdiction.

It must be clearly understood that in the 21st century corruption has become an international phenomenon that has no borders and does not distinguish between countries, nations and peoples. Corruption should be considered as an international crime of the nature determined by the content of international treaties. Ukraine ratified special international treaties on the fight against corruption: the Council of Europe's Criminal Law Convention on Corruption of 1999 with Additional Protocol of 2003 and the UN Convention against Corruption (UNCAC) in 2003. Ukraine obliged to ensure proper fight against corruption, in particular, we are talking about various forms of abuse by state officials. Committing corruption crimes in many cases is characterized by the presence of international connections and to ensure their effective investigation without enforcement measures of international cooperation are impossible.

Corruption crime is increasingly becoming more international in nature, and the fight against it in within the borders of the State do not give the expected result. Today it is important to pay attention to the actual, even a problematic issue of the implementation of international measures cooperation in the investigation of corruption crimes, to form directions for their solution, in particular, what concerns conducting procedural

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¹ The National Anti-Corruption Bureau of Ukraine official website: <https://nabu.gov.ua/en/about-the-bureau/struktura-ta-kerivnitctvo/istoriya-stanovlennya/>

actions in accordance with international law assistance, provision of extradition (surrender) of suspects and criminal proceedings in the order of adoption regarding corruption crimes. For example, there are cases when implementation of international cooperation is “blocked” due to refusal of the requesting party from fulfilling the request for provision international legal aid. Based on the characteristics of corruption crime, the presence of connections of suspected persons from political circles, selfish orientation of criminal actions and financial abuses, legal norms can be used for the benefit of the corrupt.

Law enforcement activities should take into account specified and other risks and should be governed by the international agreements of Ukraine, which are aimed at ensuring anti-corruption efforts. For example, UNCAC is applicable for the purpose prevention, investigation and prosecution for corruption and for suspension of operations, arrest, confiscation and return of proceeds from recognized crimes.

In order to implement measures of international cooperation, the provisions of the Council of Europe’s Criminal Law Convention on Corruption of 1999 with the Additional Protocol of 2003 and the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000 are important. Also, in connection with the cases that address investigation, prosecution or trial in one or more participating states, concerned competent authorities may establish bodies conducting joint investigations.

The above do not exhaust all the problematic issues under the conditions of implementation of international cooperation during the investigation of corruption crimes. Analysis of practice information that in a number of cases of fulfilment of requests for provision of international legal aid is accompanied by shortcomings, which is related to objective reasons (significant volume of requested procedural actions, increase in the number of appeals to judges with appropriate requests within the framework fulfilling international requests, increasing the number of documents that must be attached to the requested materials and types of procedural actions that require court permission).

In order to strengthen transnational cooperation, the country must comply with international standards, in particular those specified in the OECD and UN conventions. When a state complies with the provisions of the documents, other countries know they can trust foreign law enforcement agencies, and that the requested data is intended to establish facts necessary for the investigation, not political motives.

Regular review of implementation by the participating states ensures the effectiveness of UNCAC. For example, in 2019, representatives of Latvia and Paraguay analysed the state of implementation of UNCAC in Ukraine. Instead, on 4 June 2019, Ukrainian experts, including a representative of NABU Ukraine, together with their Czech colleagues, assessed how the Convention is being implemented in Croatia.

I. INTERNATIONAL COOPERATION

Next, I would like to dwell on a specific practice that has developed in NABU in the field of international cooperation. Corruption is increasingly becoming international, and those involved in cases in Ukraine are increasingly committing crimes on the territory of other states. Therefore, it is impossible to do without fast and effective interaction with fellow law enforcement officers abroad. Since 2016, NABU has been trying to actively use the mechanisms of international legal assistance, since many cases investigated by detectives relate to money-laundering abroad, the purchase of real estate in various countries of the world, the use of foreign citizens and companies in illegal activities, etc.

Over the entire period of activity, NABU has the following results in the field of international cooperation: *total as of 06/30/2023 NABU sent 1,501 requests for international legal assistance and received 1,033 fulfilled requests. In 2023, NABU sent 169 such requests and received a response to only 88 of them.* Thus, we see that approximately every third request for international legal assistance is not fulfilled, which usually leads to negative consequences in the investigation of corruption cases.

The reasons for non-fulfilment are different, but of course we would like all parties who receive such requests to be more responsible in their fulfilment. Perhaps in the future it would be good to develop at the international level a stricter procedure for fulfilling requests for international legal assistance and accountability

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for those who ignore them. *For example, during the same time NABU received 132 requests for international legal assistance and fulfilled 123 of them (some are still in the process of implementation). In 2023, NABU received 13 such requests and fulfilled 12 of them.* That is, NABU understands the importance of such requests for law enforcement agencies of other countries.

Ukraine ratified UNCAC, which encourages member states to strengthen cooperation through the conclusion of bilateral and multilateral agreements between competent authorities. As of 2023, NABU concluded more than 20 interdepartmental agreements with foreign competent authorities, as a result of which it was possible to improve the exchange of operational information. The following points can be noted among the advantages of the Convention for NABU:

- Participating states should provide information upon request, regardless of the presence or absence of a mutual recognition of the relevant act for which information is requested as a crime. It becomes especially useful during identifying of submission of false data by e-declaration by top officials;
- Bank secrecy is not a reason to refuse to provide legal assistance. This is extremely important for the NABU, as most of the requests relate to information and documents on bank accounts, movement of funds and final beneficiaries;
- The Convention allows speeding up the exchange of confidential information without prior request. As of May 2019, NABU sent more than 500 requests for international legal assistance to more than 50 countries of the world.²

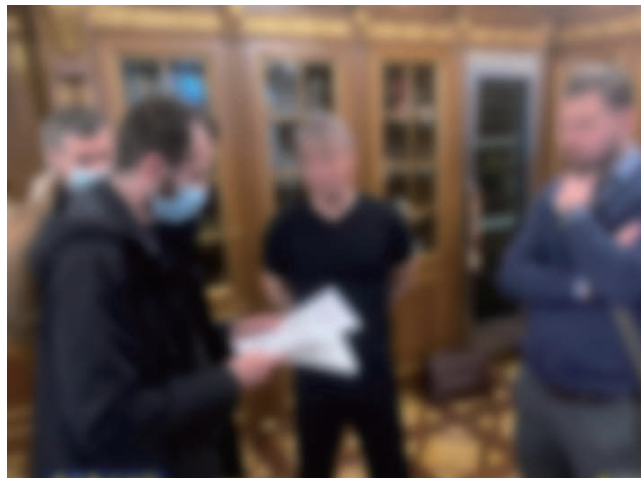
Thus, we can see that NABU is trying to make maximum use of the advantages of international cooperation in its activities.

II. CASE STUDIES

If we talk about specific examples of cooperation in the international sphere, I would like to dwell on the following cases of NABU.

A. The “Highway” Case

This is a case in which all advantages of international cooperation were fully applied. Detectives of the National Bureau have been investigating corruption in “Ukravtodor” since September 2019.



² National Anti-Corruption Bureau of Ukraine. (4 Jun. 2019). Regular peer review by participating States ensures the effectiveness of UN Conventions Against Corruption. Available at <https://nabu.gov.ua/en/news/novyny-regulyarnyy-vzayemnyy-kontrol-z-boku-derzhav-uchasnych-zabezpechuye-diyevist-konvenciyi-oon/>.

The suspect personally and through persons under his control systematically provided an unlawful benefit to the acting head of the State Agency of Highways of Ukraine (hereinafter referred to as “Ukravtodor”). In exchange for funds, the latter agreed to the continuation of payment by Ukravtodor under the contract agreement for the performance of work on the capital repair of the M05 highway Kyiv-Odesa, and also agreed to postpone the delivery of the work and did not take measures to terminate the agreement early, despite the existing violations. In total, as established by NABU and SAP, about USD 575,000 and EUR 70,000 were illegally provided from 2017 to 2019.

This crime has an international character: for the actions that the former head of Ukravtodor committed in Ukraine, the illegal benefit was also transferred to the territory of the Republic of Poland. Because of this, in November 2019, a joint investigative team was created, which included NABU detectives and SAP prosecutors from Ukraine, and employees of the Central Anti-Corruption Bureau and the Warsaw District Prosecutor’s Office from Poland. The coordination of the actions of both parties took place with the participation of Eurojust.

In the summer of 2020, as a result of a joint operation conducted by NABU detectives with representatives of the Central Anti-Corruption Bureau of the Republic of Poland, under the procedural guidance of the SAP and the Warsaw District Prosecutor’s Office. In January 2021, the materials of the criminal proceedings against the Ukravtodor were handed over to the competent authority of the Republic of Poland for the continuation of the pre-trial investigation, due to the impossibility of extraditing him to Ukraine due to his Polish citizenship. Currently, the case is at the stage of court proceedings, and one of the members of the criminal group, having entered into a deal with the investigation, has already received a sentence.

It should be noted that in November 2020, the Prosecutor General of Ukraine signed an agreement with the Prosecutor General of the Republic of Poland on the continuation of the activities of the joint investigative group created between anti-corruption agencies. This allowed the detectives of the National Bureau, with the assistance of the Central Anti-Corruption Bureau of the Republic of Poland, to obtain new evidence of involvement in the illegal activities of individual citizens of Ukraine.

In turn, in September 2022 NABU and SAP referred the case to the court on the charge of the beneficiary of the group of companies in providing an illegal benefit to the former acting head of the State Highway Agency of Ukraine. Thanks to the cooperation with the Central Anti-Corruption Bureau (Poland) and the Warsaw District Prosecutor’s Office, it was possible to investigate the Ukravtodor case. The exchange of information was carried out promptly, the conduct of investigative actions made it possible to obtain evidence, and it is proper and admissible. This all helped a lot in the investigation. The head of the Central Anti-corruption Bureau of the Republic of Poland noted the high efficiency of international investigative teams. “Our cooperation in the mentioned case clearly demonstrates considerable potential in investigations of corruption, fraud, money laundering, etc. We hope for even deeper cooperation with Ukraine and NABU,” said Andrzej Struzhny, head of the Central Anti-Corruption Bureau of the Republic of Poland.

B. The Case of the “Chairman of the Supreme Court”

This case is unique in many ways. In the history of the world, there have been practically no cases of arrest of the head of the Supreme Court (as far as is known, such a case took place only in Nigeria many years ago). On 15 May 2023, NABU and SAP implemented one of the most high-profile operations in their history: they exposed the Chairman of the Supreme Court for bribery. He, together with an intermediary attorney, is suspected of receiving USD 2.7 million for making the “necessary” decision in the interests of the owner of the “Finance and Credit” group. The judge’s “services” were estimated at USD 1.8 million, and another USD 900,000. The money was to be distributed among mediators.

On 19 April 2023, after agreeing on all “financial issues” between the participants of the crime, the Supreme Court made the “necessary” decision – it returned more than 40 per cent of the shares of the Poltava Mining and Processing Plant, which were sold 20 years ago.



The fateful meeting had to be postponed for a month – in order to collect the necessary amount of cash, because only the first tranche amounted to USD 1.35 million. When receiving the second tranche in the amount of USD 450,000, the Chairman of the Supreme Court and the lawyer were caught in the act.

In order to minimize the possibility of information leakage, the exposure operation took place in the mode of maximum secrecy and without the use of wiretapping devices. During the last stages of the operation, the exposure itself and 30 searches, about 100 NABU employees were involved. During the searches, the phone of the chairman of the Supreme Court was also seized, but it was protected by a password. Since it was an iPhone of the latest model, NABU specialists were unable to crack the password and examine the phone's contents, which was very important. But our colleagues from Poland had such ability. That is why a request for international legal assistance was prepared, and the phone was immediately delivered to Poland. Colleagues from Poland did their job successfully, and we received an unlocked phone and were able to examine its contents. This greatly helped the pre-trial investigation of this case.



C. The Case of the “Odesa Criminal Organization”

On 25 April 2023, NABU participated in investigative actions by British law enforcement officers from the National Crime Agency of Great Britain (the National Crime Agency), which were initiated by detectives with the approval of the SAP within the framework of international legal assistance. Such cooperation is an example of effective use of opportunities for international legal cooperation and information exchange. As a result, detectives obtained the necessary evidence for the investigation. The investigative actions were authorized and carried out within the framework of the investigation into the activities of the criminal organization in Odesa that was exposed in the fall of 2021. Ten people are suspected of illegally taking over the assets of the territorial community of the city and laundering income.



Such cooperation is carried out in accordance with the Memorandum on Cooperation in the field of information exchange to combat organized crime, which NABU and the British law enforcement agency concluded in April 2021.

D. The Case of the “Forgetful Judge”

On 6 February 2023, a former judge of the Northern Commercial Court of Appeal of NABU and SAP were notified of the suspicion of entering unreliable information into the e-declaration for 2020.



In particular, the judge hid two apartments and a garage in Prague and Karlovy Vary. She also “forgot” about 5.3 million Czech crowns, which she received from the sale of an apartment, a basement and a garage in Prague. The total amount of undeclared wealth is almost UAH 14 million. During the investigation of this case, several requests for international legal assistance were sent to the Czech Republic. Thanks to the proper fulfilment of these requests by the law enforcement agencies of the Czech Republic, it was possible to obtain the necessary documents that confirmed the judge’s ownership of real estate.

III. CONCLUSION

Summarizing all of the above, one can see how important international legal assistance was in these cases. Without the cooperation of law enforcement officers from different countries, these cases could have failed and not gone to court, and criminals could avoid punishment and continue to commit new crimes.

Even small help to colleagues from another country can contribute to their activities. I remember a case when my colleague from the Lithuanian police approached me. He made inquiries about one company that worked in Ukraine, as it was also planning to enter into a large contract with the Lithuanian police. But this company was well known in Ukraine, and its reputation was not very good. It was a fraudulent company that cheated and cooperated with the Russians. Lithuanian colleagues did not know this and were very surprised by this information. As far as I know, after that they completely stopped working with this company and may have saved themselves from trouble.

All this confirms the ever-increasing role of international cooperation between law enforcement agencies in the modern world.