

INTERNATIONAL COOPERATION AS AN EFFECTIVE TOOL FOR COMBATING CORRUPTION: A PRACTICAL EXAMPLE

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The category of cases investigated by the National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the National Bureau) is quite complex and requires high professional and analytical skills. It can be notionally named as the “top-class cases” category, since crimes in this category are committed by high-ranking officials or with their participation, and, as a rule, such crimes involve the most advanced technical and analytical resources. Analytical resources should be understood as professionals in the fields of economics, taxes and international commercial transactions, who are able to build well-designed corruption schemes that at first glance may seem legitimate—but only from the outside. If you look more intently, you can see the intricate system of interrelations between the participants of such schemes, the network of shell companies involved in them, the whole raft of offshore companies specially created in the foreign territories favourable for tax avoidance.

In order to successfully investigate and solve such “top-class” crimes, law enforcement agencies should not only constantly improve the strategies of investigations and involve a range of technical means that will allow them to be at a level higher than the technical equipment of crime, but also to establish close cooperation with investigative and other relevant agencies of foreign countries.

In such circumstances, international cooperation with foreign states and international organizations is becoming more and more important. It includes both international legal assistance and operational cooperation between law enforcement agencies and other competent authorities of two or more countries.

The National Bureau’s practice in investigation of corruption-related crimes has shown that every third crime committed in Ukraine has an “international component”. Criminals understand that the transfer of their criminal activities to the territory of a foreign country (for example, the continuation or completion of a crime away from the national law enforcement agencies, the laundering of illegally obtained funds in the foreign territory) significantly complicates the detection and further investigation of such crimes. That is why their criminal activities are actively going beyond Ukraine.

Thus, during the activity of the National Bureau (since 2015), the body has sent more than 600 requests for international legal assistance. Almost every one of these requests is based on the UN Convention against Corruption of 2003. There are cases where the criminal proceeding has been brought to court only thanks to international cooperation with foreign colleagues, which had allowed the gathering of all key evidence. Therefore, in schemes with an extensive system of offshore companies and their bank accounts scattered around the world, close international cooperation is the key to successfully combating corruption and bringing the corrupt officials to justice.

One example of the positive National Bureau’s experience in investigating cases with a “foreign component” is the case of embezzlement of funds of the state-owned enterprise “Ukrainian Sea Ports Authority”. Seeking evidence, the National Bureau has sent a lot of requests for international legal assistance in these criminal proceeding. Thanks to the help of foreign colleagues, this case is currently in court.

I. THE “UKRAINIAN SEA PORTS AUTHORITY” CASE

The Ukrainian Sea Ports Authority (hereinafter referred to as the USPA) is one of the largest state-owned enterprises of Ukraine with strategic importance for the Ukrainian economy and security. The main tasks of the enterprise are efficient management of state property in seaports, maintaining the required

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depth of the water areas of the ports, ensuring the safety of maritime navigation.

From October 2015 to January 2016, detectives of the National Bureau checked the procurement procedures performed by state-owned enterprises of the Ukrainian maritime industry. As a result, they revealed signs of criminal corruption offences during the USPA's procurements of services on operational dredging of approach channels and water areas of Berdyansk and Mariupol seaports.

Detectives drew attention to the regular victories of a company that did not have its own equipment and sufficient staff. In addition, the winning company had previously been sanctioned by the Antimonopoly Committee of Ukraine and submitted to the tax and customs authorities' rental contracts of vessels with a hidden cost of services. Subsequently, the National Bureau's detectives, thanks to the testimony of witnesses and information obtained from open sources, received additional arguments in favour of the version about the existence of a corruption scheme in the state procurement of the USPA. An additional argument was the analysis prepared by the detectives of the Analytics and Information Processing Department of the National Bureau who found violations in customs declarations submitted by a successful tenderer.

The investigation team found that the management of the enterprise started to develop a corruption scheme in February and March 2015. The hierarchy of the participants in the crime includes the chairman of the USPA, his first deputy, who controlled the procurement department and the tender committee, the head of the procurement department – the chairman of the tender committee, the deputy head of the procurement department – the secretary of the tender committee, other members of the tender committee. In addition, the investigation established the so-called supervisor of the corruption scheme, who was not from the USPA staff.

Prior to the announcement of the tender, the supervisor met with representatives of the companies-potential participants of the USPA's procurements and offered them the "loyalty" of the USPA tender committee in exchange for a certain benefit. Tender victory could cost 10-30% of the contract amount, the share in the business or such participants had to give a bribe. For those who disagreed criminals created all sorts of obstacles during the tender. For example, the documents submitted suddenly turned out not to meet the requirements of the tender, the tender could be cancelled for unclear reasons.

Thus, in summer 2015 and at the beginning of 2016, the USPA announced the procurements of services on operational dredging of approach channels and water areas of Berdyansk and Mariupol seaports. Only two tender participants took part in each of the tenders. In the first one, there were Company A and Company B; in the second one, Company A and Company C. Company A was chosen as the winner of both tenders of the USPA. In August 2015 and March 2016, the USPA entered into two contracts with Company A for the amount of UAH 290 million (approximately equal to USD 12 million) and UAH 712 million (approximately equal to USD 30 million), respectively.

Subsequently, the investigation established that the victory of Company A was decided in advance and that the other participants of the procurement procedures were a sham and specifically involved in the tenders. The documents of such sham competitors included rental contracts of equipment (vessels), which were not actually concluded. There was no agreement on the use of these vessels with their real owners.

Moreover, as a result of searches, the National Bureau's detectives obtained important information contained on the seized data storage devices. One of the most important pieces of material evidence is the laptop and mobile phones of the supervisor of the corruption scheme, which were seized as a result of searches by the Security Service of Ukraine. Retrieving and proper fixation of information from these devices were managed by the crime lab of the National Bureau.

Messages in the messenger application installed on the phone of the beneficiary of Company A confirmed the participation of Company A representatives in the preparation of the tender offers of Company B and Company C and in obtaining bank guarantees necessary for its participation. Documents submitted to the tenders by Company B and Company C were also found on a computer seized at the office of Company A.

During the search, detectives also seized the hand receipt of the Company A beneficiary owner drawn up in the name of the Company B director. The receipt stated that the beneficiary of the Company A

guarantees to solve all Company B's problems that may arise due to taking anticompetitive concerted actions during the participation in the tender.

The tender winner and other tenderers had pre-agreed tender offers. The cost of the USPA purchases substantially exceeded the current rental rates for the vessels. In order to mask the artificial overpricing of the dredging services, the members of the criminal scheme built a chain of intermediary companies, which leased the vessels to each other, increasing the value of the freight each time. Thus, for the purposes of dredging in Berdyansk and Mariupol seaports, Company A used two vessels: Vessel 1 and Vessel 2.

A. Scheme of the Rent Overpricing of Vessel 1

The owner of Vessel 1 entered into a time-charter agreement with Company D. The rental cost of the vessel was USD 15 000 per day. At the same time, Company A concluded a rent contract with Company D, according to which the rent value of the same vessel was already USD 24 000 per day.

B. Scheme of the Rent Overpricing of Vessel 2

The owner of Vessel 2 entered into a charter agreement with Company E. The rental cost of the vessel was USD 15 500 per day, the cost of transportation was USD 290 000. Subsequently, Company E entered into a rent agreement with Company F. The rental cost was USD 20 000 per day. In its turn, Company F signed a rent contract with Company A, according to which the rental rate was already USD 35 000 per day. Thus, for each day of the lease, the USPA unreasonably overpaid for each of the vessels from USD 9 000 to USD 19 500. Forensic and economic expertise established that due to the overpricing of the cost of leasing and mobilization of vessels, the USPA overpaid for dredging services UAH 231,3 million (approximately equals to USD 10,05 million). The total amount of USPA's damages caused by the crime is UAH 247 million (approximately equal to USD 10,7 million).

II. THE ROLE OF INTERNATIONAL COOPERATION IN THE CASE INVESTIGATION

In order to check the relationship between the USPA's officials, beneficiaries of Company A and non-resident companies involved in the scheme, as well as to further investigate the legalization of the crime proceeds, the National Bureau sent a number of requests for international legal assistance to a string of countries, among which: Latvia, Montenegro, Hong Kong, the United Kingdom, Belize, the British Virgin Islands and the Russian Federation. The materials obtained from the competent authorities of Latvia and Montenegro became the main evidence of the financial part of the investigation. They and other international legal assistance materials helped to establish the fact that the rent cost of vessels was overpriced, to determine the amount of damages and persons involved in the corruption scheme. Thus, the beneficiaries of the foreign companies were established—participants of the embezzlement scheme of the USPA's funds, their relationship with officials of the USPA and Company A, as well as the further money flows from the accounts of Company A to the accounts of companies controlled by participants of the criminal scheme. Thanks to the documents obtained from the foreign banking institutions (in particular, the IP-addresses from which the accounts were managed, questionnaires of authorized companies' representatives, client statements submitted to the bank), detectives were able to identify the final recipients of the USPA's funds and the real beneficiaries of the non-resident companies involved in the crime. Besides, it was found that the difference in the rent cost of vessels was sent abroad under the guise of repairing vessels and purchasing spare parts for them. At the same time, such work, spare parts had not been carried out (supplied).

III. RESULTS OF THE INVESTIGATION

The investigation has established a circle of 10 people involved in the implementation of the corruption scheme. An indictment against seven of them was sent to the court. The actions of all these persons were qualified under Part 5 of Article 191 of the Criminal Code of Ukraine (embezzlement of property through abuse of office in a particularly large size).

In addition, the beneficiary of Company A, the beneficiary of the non-resident company and the representative of the non-resident company have also been accused of committing crimes under Part 3 and Part 4 of Article 358 of the Criminal Code of Ukraine (forgery and use of official documents by a prior-agreed group of persons). The last person cooperated with the investigation and gave incriminating testimony.

The former deputy chairman of USPA on finance also admitted his guilt (in committing the criminal offence under Part 2 of Article 367 of the Criminal Code of Ukraine—failure to perform or improper performance of official duties by an official, which caused grave consequences). He gave incriminating testimony and compensated damages caused by his activities in the amount of UAH 734,1 thousand (approximately equals to USD 28 thousand).

The location of the supervisor of the corruption scheme is unknown. Currently he is wanted.

In addition to the above mentioned, in April 2017, on the basis of established violations of the legislation requirements of Ukraine, the National Bureau filed a lawsuit in the Ukrainian court in order to invalidate the contracts between the USPA and Company A. The National Bureau's claims are satisfied—now the said contracts are invalidated and it provides a possibility to return funds to their rightful owner.

The above-described example clearly demonstrates the benefits of using foreign partners' assistance during investigations, since it is unknown whether the National Bureau would be able to complete investigations in this and other cases without the assistance of its foreign colleagues. At the same time, it should be pointed out that quite often cases of the National Bureau receive their continuation in the territory of foreign states, because the National Bureau's requests for international legal assistance are a sort of a beacon light for foreign law enforcement agencies to start their own investigation of the same case. And this significantly increases the chances of law enforcement systems of both countries in uncovering of crimes. However, in order to use such an investigative tool successfully and effectively, it is still necessary to overcome certain technical and legislative obstacles that may sometimes arise in the course of cooperation.