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WSPÓLDZIAŁANIE DETEKTYWÓW NARODOWEGO BIURA ANTYKORUPCYJNEGO UKRAINY W ZAKRESIE WSPÓŁPRACY MIĘDZYNARODOWEJ W DOCHODZENIU W SPRAWIE LEGALIZACJI (PRANIA) MIENIA UZYSKANEGO W SPOSÓB PRZESTĘPCZY

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Adnotacja. Artykuł poświęcono badaniu głównych kierunków międzynarodowej współpracy detektywów Narodowego Biura Antykorupcyjnego Ukrainy z organami ścigania w Europie i Euroatlantyku podczas dochodzenia w sprawie legalizacji (prania) mienia uzyskanego w sposób przestępczy. Na podstawie analizy odpowiednich przepisów prawa Ukrainy i własnych doświadczeń autora zidentyfikowano i ujawniono główne kierunki międzynarodowej współpracy detektywów Narodowego Biura Antykorupcyjnego Ukrainy wraz z problemami, które pojawiają się podczas takiej współpracy. Pogląd autora na wyżej wymienione problemy.

Słowa kluczowe: współdziałanie, współpraca międzynarodowa, przestępstwa, działalność, detektyw.

INTERACTION OF NABU DETECTIVES WITHIN INTERNATIONAL COOPERATION IN THE INVESTIGATION OF LEGALIZATION (LAUNDERING) OF PROPERTY OBTAINED

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Abstract. The article is devoted to the study of the main directions of international cooperation of NABU Detectives with European and Euro-Atlantic law enforcement agencies during the investigation of legalization (laundering) of criminally obtained property. Based on the analysis of the relevant legislation of Ukraine and the author's own experience, the main areas of international cooperation of NABU detectives were identified and disclosed along with the problems that arise during such cooperation. The author's view on the aforementioned issues.

Key words: interaction, international cooperation, crimes, activity, detective.

ВЗАЄМОДІЯ ДЕТЕКТИВІВ НАБУ В СФЕРІ МІЖНАРОДНОГО СПІВРОБІТНИЦТВА У РОЗСЛІДУВАННІ ЛЕГАЛІЗАЦІЇ (ВІДМИВАННЯ) МАЙНА ОТРИМАНОГО ЗЛОЧИННИМ ШЛЯХОМ

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Анотація. Стаття присвячена дослідженню основних напрямів міжнародної співпраці детективів НАБУ з правоохоронними органами Європи та євроатлантики під час розслідування легалізації (відмивання) майна, одержаного злочинним шляхом. На основі аналізу відповідного законодавства України та власного досвіду автора визначено та розкрито основні напрями міжнародної співпраці детективів НАБУ разом із проблемами, які виникають під час такої співпраці. Пogląd автора на вищезазначені проблеми.

Ключові слова: взаємодія, міжнародне співробітництво, злочини, діяльність, детектив.

Cooperation with domestic and international colleagues is a key factor in a successful investigation. Close communication between different agencies helps to agree on priorities, a holistic understanding of the investigation and each agency's awareness of the roles and capabilities of others.

The activity of NABU detectives in the investigation of legalization (laundering) of property obtained by criminal means is impossible without cooperation with law enforcement agencies of other states in the framework of international cooperation.

In-house experience shows a significant, sometimes even unvalued contribution to cooperation and exchange of information with law enforcement agencies of other countries. There have been cases when the investigation has been initiated by spontaneous reports from other competent authorities, which emphasizes the importance of such practices.

The information provided by other competent authorities has helped to reveal the methods used to conceal funds, identify those involved and identify beneficial owners of legal entities from abroad, financial assets, real estate, etc. In addition, the importance of the competent authorities' ability to freeze accounts or transactions helped to gain time for further analysis and for law enforcement to obtain the necessary court decisions.

Establishing personal ties with foreign colleagues is the key to effective interaction. A phone call, a letter sent by e-mail, a video conference or a face-to-face meeting greatly contribute to the progress of the case. Such communication is important at all stages: when obtaining information and data, making strategic decisions, making requests for mutual legal assistance or monitoring the execution of requests. Thus, delays can be minimized, especially by eliminating misunderstandings caused by differences in terminology and legal tradition. Personal connections also help to demonstrate the seriousness of the approach, interest in the work progress, promote trust between the parties and stimulate increased attention to the case (Chernyavsky, Korystin, Nekrasov, 2017: 153-154).

When investigating the legalization (laundering) of criminally obtained property, it is important to ensure cooperation between the competent and authorized authorities of all countries through which the funds were transferred. To this end, the Egmont Group was established, providing a platform for the secure exchange of information on financial investigations, experience and opportunities to combat money laundering.

The Egmont Group is a global body that includes 155 financial intelligence units. The Ukrainian SDFM's investigation into corruption was recognized as the best in the world (The investigation of the Ukrainian SDFM on corruption was recognized as the best in the world, 2018).

At the same time, some transit countries are not members of the Egmont Group, while others do not have financial investigation bodies at all. This greatly complicates the investigation process. Moreover, even if the scheme has been successfully identified and the assets are frozen, further cooperation between the competent authorities must be ensured in the process of mutual legal assistance, otherwise, the assets may be unfrozen and the case will be lost.

NABU has the right to apply to the competent authorities of foreign countries through Interpol with requests for detention and extradition. Through the General Secretariat of Interpol, NABU detectives can obtain information on the official name of a foreign business entity, its legal address, authorized capital, information on changes in ownership, grounds for termination, conclusion of agreements, and presence of doubtful origins on the accounts of individual banks.

During the interaction of NABU detectives with the relevant authorities of foreign countries, as experience shows, some difficulties arise. These are issues related to compensation for damages caused by crimes, in particular, the problem of returning money obtained in Ukraine by criminal means and settled in other countries. Among the reasons that hinder the execution of detectives' orders abroad are some features of criminal proceedings in some states. For example, in the countries of the Anglo-American legal system, it is possible to provide assistance at the request of foreign courts. Therefore, the appeal of the investigating authorities to such subjects does not receive a response. Quite often, requests are executed over a long period of time, which makes it impossible to try to gather evidence quickly and efficiently. Not any less serious a problem is the reluctance of law enforcement to reconcile differences in legislation of different states. The procedure for disposal of property confiscated on behalf of one state in the territory of another has not been clarified.

Interaction can also take place in scientific and practical seminars on combating legalization. This practice has already proven itself in many countries. In particular, in the United States, on the pages of some specialized publications, experts share experiences in identifying errors, factors that contributed to the crime, the occurrence of losses in financial institutions and more. They suggest creating computer programs that allow to record and control more than half a million daily transactions with electronic money transfers within the country; conducting a thorough inspection at the level of registration and control bodies of persons who have been previously convicted and do not have a permanent place of residence, in order to restrict creation of business entities by them or with the involvement of their documents; creating official websites on the Internet of the specified state bodies where information on all registered firms will be displayed (Holovina, 2005: 142-145).

According to Akhtyrskaya N., digital technologies use virtual space, and therefore the carrier of information can be a material object, but it should be clarified that even the information itself in cyberspace should also be considered evidence (Akhtyrskaya, 2016).

International co-operation in criminal proceedings on the basis of inquiries should be carried out only in the event that the independent receipt of information could harm the sovereignty of the state, and therefore is executed only by authorized foreign bodies. When the necessary information is contained in an open virtual space, which has no defined boundaries, then only the electronic form of the fact is sufficient. This also applies to the posting on

the Internet on the official websites of state bodies of foreign countries of photographs depicting high-ranking officials that give or receive valuable gifts. This is a basis for further verification of whether the case is referred to an institution represented by an official during an official visit (as required by law) or appropriated by him (which shows signs of a corruption offense) (Khalin, 2018: 186).

In accordance with Part 1 of Article 264 of the CPC of Ukraine, search, detection and recording of information contained in the electronic information system or parts thereof, access to the electronic information system or part thereof, as well as obtaining such information without the knowledge of its owner or holder on the basis of the decision of the investigating judge, if there is data about the availability of information in the electronic information systems or their parts, which is relevant for a particular pre-trial investigation. The permission of the investigating judge is not required in order to obtain information from electronic information systems or parts thereof, access to which is not limited to its owner or holder, or is not related to overcoming the system of logical protection (part 2) (Criminal Procedure Code of Ukraine, 2012).

If it is necessary to obtain information from private sources or disclose the IP address of users, the decision of the investigating judge on access to such data is required (Khalin, 2018: 187).

In case of non-execution of the decision on temporary access to things and documents, the investigating judge, the court, at the request of the party to the criminal proceedings, which is granted access to things and documents on the basis of the decision, has the right to issue a decision on permission to search and seize the needed things and documents. However, for example, the administration of Yahoo (California office) does not provide such information, considering such instructions on access to information a violation of sovereignty, and decisions of foreign courts unfounded, because the imperative decisions of national courts operate within national borders. This situation is explained by the fact that the Convention on Cybercrime (which provides for the procedure of urgent storage of computer data, urgent disclosure of stored data on the movement of information; mutual assistance in accessing computer data; cross-border access to data stored when they are publicly available, mutual assistance in collecting data on the movement of information in real time; Mutual assistance in intercepting information content data (Convention on Cybercrime of the Council of Europe, 2001)) has unfortunately been ratified in only 46 of the 195 countries worldwide.

Within the framework of international cooperation it is necessary to intensify the use of electronic methods of information transfer, directly electronic virtual information. Convergence of legal concepts, changes in the legislation of other states significantly affect the national law-making in the context of globalization, have a positive effect on the development of legislation in Ukraine. The practice of law enforcement agencies and the court makes it possible to identify gaps in the rules that determine the process of collecting evidence (including electronic), which will serve as an incentive for changes in criminal procedure law (Akhtyrskya, 2016).

It should also be noted that forms of international cooperation do not always find a positive response in the professional environment and are often criticized. So, for example, Baganets O. commenting on one of the NABU operations, stated as follows, "NABU and SAPO administration have repeatedly confirmed the fact that law enforcement officers of another state, namely the US special services – the FBI, took part in operational and investigative measures: documenting illegal actions, including MPs."

Analysis of the current legislation of Ukraine, namely the laws: "On operational and investigative activities", "On the National Anti-Corruption Bureau", "On State Secrets", as well as the Criminal Procedure Code of Ukraine, shows that the participation of law enforcement agencies in other countries investigative measures to register a crime in the Unified Register of Pre-trial Investigations and, moreover, covert investigative actions in criminal proceedings, is illegal, and accordingly the evidence collected in this way is inadmissible with all the ensuing consequences (FBI agents in NABU: legality and grounds for cooperation. 2018).

Indeed, the legal regulation in this part needs further research and improvement. For example, Article 5 of the Law of Ukraine "On operational and investigative activities" contains an exclusive list of operational units that have the right to carry out such activities, namely: National Police, State Bureau of Investigation, Security Service of Ukraine, Foreign Intelligence Service of Ukraine, State Border Guard Service of Ukraine, Department of State Protection, Revenue and Duties, Penitentiary Bodies and Pre-Trial Detention Centers of the State Penitentiary Service of Ukraine, Intelligence Body of the Ministry of Defense of Ukraine, National Anti-Corruption Bureau of Ukraine (Detectives, Operational and Technical and of Internal Control) (On operative search activity: the Law of Ukraine, 1992).

At the same time, Article 7 of this Law stipulates that operational units must cooperate with relevant bodies of foreign states and international anti-terrorist organizations in order to quickly and completely prevent, detect and stop crimes, but only in accordance with Ukrainian legislation and international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine (On operative search activity: the Law of Ukraine, 1992).

The Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" as well as the CPC of Ukraine do not provide such powers to law enforcement officers of other states.

The only thing provided by the CPC of Ukraine in Article 569 is the right of a representative of a law enforcement agency of a foreign state to be present during the interrogation of persons in Ukraine during the execution of their request for international legal assistance. However, they have no right to independently conduct any procedural actions on the territory of Ukraine. Even if present during the proceedings, such representatives of foreign law enforcement agencies have the right only to observe the proceedings or make comments and suggestions on their

conduct, as well as with the permission of the investigator and prosecutor to ask questions and make notes (Criminal Procedure Code of Ukraine, 2012).

Despite the legislative limitations described above, understanding the importance and effectiveness of international cooperation in the investigation of corruption crimes, NABU detectives effectively implement the tools provided for in Article 571 of the CPC of Ukraine by establishing and operating a joint investigation team.

Thus, according to such an authoritative publication as Deutsche Welle, in July 2020, as a result of the joint investigation team, a number of people were prosecuted in Ukraine and the Republic of Poland.

According to the Prosecutor's Office, this is the result of an international investigation conducted by a joint group of prosecutors from Poland and Ukraine, the Central Anti-Corruption Bureau and the National Anti-Corruption Bureau of Ukraine (Former Ukravtodor chairman Slavomir Novak was detained in Poland, 2020).

Consequently, investigations into the legalization (laundering) of criminally obtained property often go beyond national borders, so it is important to ensure timely formal and informal international cooperation during investigative activities. This requires a well-developed system of international cooperation that will ensure a swift, complete and impartial pre-trial investigation.

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