

INTERAGENCY COOPERATION. CHALLENGES FOR UKRAINE

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Abstract. *The author of this research paper is going to analyse challenges for Ukraine on inter-agency cooperation among the civilian security sector actors during conducting criminal intelligence activity and the pre-trial investigation stage of the criminal process. It is a very important factor for the national security of the country. it does not matter the country's location. It might be Asia; it might be Europe. Good inter-agency cooperation mechanism paves solid ground for ensuring country's security and maintaining public order and the rule of law, bringing offenders to justice for wrongdoings. The author of this paper uses a wide range of methods to analyse and assess the main issues for successful cooperation among the main players of the civilian security sector of Ukraine and their counterparts abroad.*

Keywords: *criminal intelligence activity, inter-agency cooperation, pretrial investigation, the civilian security sector.*

Introduction

There is always competition for influence, but there are also opportunities for cooperation.

Lee Hsien Loong

The Revolution of Dignity 2014 implies the beginning of huge changes in Ukraine, including the buildup of the new legal system in the Ukraine and succession of the best values of Western (the term „Western” is used here as well as an intellectual and cultural rather than a geographical meaning) legal traditions. At the same time, it can be the starting point for the legal system of Ukraine from which it has been beginning and developing in the direction of respect for human rights and for fundamental freedoms. This is clearly reflected in the Constitution of Ukraine. The Constitution of Ukraine aspires to ensure human rights and freedoms and living conditions worthy of human dignity. This aim means that Ukraine must be under the rule of law and the most important values are human rights and fundamental freedoms. Each democratic country based on the rule of law is responsible and accountable for ensuring human rights and fundamental freedoms enshrined in international and domestic law. One of the conditions for ensuring human rights and fundamental freedoms is inter-agency cooperation in prevention



and detection of law offenses.

This academic paper aims to introduce the challenges of inter-agency cooperation that are facing the main players of the civilian security sector of Ukraine. The author of this paper uses a wide range of methods to analyse and assess the main issues for successful cooperation among the main players of the civilian security sector of Ukraine and their counterparts abroad. The following research methods were used to achieve the aim of this research: content analysis, textual analysis, structured, semi-structured and unstructured interviews; analytic induction, authors' observation in the field of inter-agency and international cooperation in prevention, detection and investigation of cross-border crimes during pre-trial investigation, operational search activity/criminal intelligence and sharing information. Structured, semi-structured and unstructured interviews were done by the author of this academic paper in 2023-2024. The target audience of these interviews were: police officials from prevention and criminal police structural units at the National Police of Ukraine, officials from the State Border Guard Service of Ukraine, the Office of General Prosecutor of Ukraine, the Economic Security Bureau of Ukraine, the State Customs Service of Ukraine. All respondents (50) before conducting interviews had been informed about the aim of such interviews. The questionnaire for structured and semi-structured interviews was created by the author of this research paper in compliance with ethical and data protection standards prescribed by the law. Also, unstructured interview method was used where questions were not arranged in advance. The author maintains respondent anonymity during the interview. This means that no information which allows them directly or indirectly to identify the respondents above-mentioned interviews. Thus, participants reflected on the highlights and lowlights of their inter-agency cooperation in tackling cross-border crimes and discussed separate cases of successful cooperation as well as addressing the challenges. The outcomes of this paper are going to be important considering reform in the civilian security sector of Ukraine launched and still going on after the Revolution of Dignity of 2014.

Main part of research

Efficiency is doing things right; effectiveness is doing the right things.

Peter Drucker

The author of this academic paper analyses data on inter-agency cooperation tackling cross-border crimes and other law offenses that the

author received during structured (12 respondents), semi-structured (10 respondents) and unstructured interviews of 28 respondents, and he presents the findings of this research below.

During interviews, the respondents highlighted numerous instances of effective collaboration among various Ukrainian civilian security sector actors, as well as with non-governmental organizations (hereinafter referred to as “NGOs”), particularly in handling cases related to human trafficking for sexual exploitation, drug trafficking, counterfeit stamps for foreign residency on passports of Ukrainian males seeking to avoid mobilization, and illegal border crossings by conscription-aged men. Currently, for instance, in the regional public prosecutor's offices located in the West part of Ukraine, regional inter-agency working groups are functioning analyse on daily basis crimes related to the usage of state budget funds, fraud related to humanitarian aid, corruption, trafficking in human beings, illegal transportation the small arms from war zones etc. These inter-agency working groups include not only representatives from the civilian security sector of Ukraine, but also representatives from the mass media, banks, local authorities and local communities, and NGOs. It is an excellent example of how the civilian security sector players in the Western part of Ukraine cooperate with civil society in tackling cross-border crimes, and it has considered to create such inter-agency working groups in other countries, especially with fragile democratic institutions. Despite the positive things presented above, there is room for improvement in inter-agency cooperation.

The author of this academic paper highlights the areas for improvement of international cooperation in tackling cross-border crimes: 1) criminal matters, 2) criminal intelligence area, 3) sharing information for detection of crimes and/or creating in effective prevention policy.

The author of this research paper presents its findings on the challenges for the civilian security sector players in the Western part of Ukraine below:

1. International cooperation within criminal procedure laws is highly centralized and time-consuming, apart from cooperation with Poland and Moldova, where bilateral agreements allow in some areas prescribed in laws direct cooperation between the law enforcement agencies located in the Western part of Ukraine and counterparts from the Republic of Poland and the Republic of Moldova. It allows us to speed up conducting the pre-trial investigative actions in criminal matters, sharing information. On the contrary, requested pre-trial investigative actions and information from

some European Union Member States (hereinafter referred to as “EU MS”) can last for years. There are no feasible tools to foster the effectiveness and timeliness of international cooperation at the regional level. However, it is very important to facilitate the process in a way to legally authorise regional institutions. For example, grant permission to the regional Public Prosecutor’s Office to maintain international cooperation in criminal proceedings directly.

2. Joint Investigative Teams (hereinafter referred to as “JIT”) are not sufficiently implemented at the regional level, but only on national in the Office of Prosecutor General of Ukraine. Thus, on regional level, it is something unfamiliar, although it could be useful and widely applicable for trans-border crime investigations. According to Article 571 of the Criminal Procedure Code of Ukraine on “Establishment and activities of joint investigative groups` (hereinafter referred to as “CPC”) *“joint investigative groups may be set up to conduct pre-trial investigation of circumstances of criminal offences committed in the territories of several states, or where the interests of such states were affected. The Prosecutor-General’s Office of Ukraine shall consider and decide the issue related to setting up joint investigative groups, upon request of Ukrainian pre-trial investigation agency’s investigator, public prosecutor, and foreign competent authorities”*. The tool of Joint Investigation Teams should be used at a regional level and the procedure of its implementation should be simplified and encouraged. This requires legislation amendments including adjustments to the standard operation procedures (hereinafter referred to as “SOP”) on the JIT.

3. Also, there are cases where, due to the formal limitations within the law of Ukraine “About operative search activities” a crime, like organized drug trafficking, cannot be investigated trans-nationally, but must be interrupted on the territory of Ukraine. Thus, according to above-mentioned law, all information obtained during conduction operative search activity (the author’s note – a criminal intelligence investigation) is the state secret. It doesn’t allow the officials to share this type of information with foreign law-enforcement agencies from EU MS or third countries. For this reason, controlled organized crime must be stopped in the territory of Ukraine. This results in the loss of the organizers of the criminal group, or the criminal association, as contracting authorities usually originate from EU MS, while the suppliers of drugs are mostly from third countries. For example, Kazakhstan, Georgia. In given example, Ukraine usually serves a transitional territory for transporting drugs from the third country to the EU MS, or third country. While being transnational organized crime, it is investigated and

completed in Ukraine without disclosure of all the criminal chain.

4. Exchange of information among the different players of the civilian security sector of Ukraine is highly centralized. It means, that communication has gone mainly through central bodies. There is a lot of bureaucracy. Namely, overregulated internal rules for exchanging information within an institution and the important role of heads of different levels of structural units within the institution affects the process, or even hinder the process of exchange of information.

5. Also, there is no single operative/criminal intelligence information collection and sharing centre/database. Each player of the civil security sector of Ukraine seeks to have his own database and access to it is only through the central institution. The above describes the existing and functioning model of collection and sharing information in Ukraine among the main players of the civilian security sector of Ukraine must be it change into a single database for all players of the civilian security sector of Ukraine. For example, the Republic of Estonia has one database for all players of the civilian security sector and access to a single database has each law enforcement agency according to the procedure prescribed by the legal acts of the Republic of Estonia. It depends on the type of information (ordinary, or information received through usage of methods to collect information based on the criminal intelligence law).

6. There are also concerning obstacles to effective investigation when the judge issues an order for getting information from operators of mobile network operators or the internet service providers within the Criminal Procedural Code timeframe limits. For example, the validity of a court order on getting information is two months. It is acceptable if a mobile network operator is in the country, although another situation occurs, if the operator is abroad, and it takes much more time to obtain information. Two months period is not enough due to long international communication procedures. If the answer comes after two months, this data will by then be not admissible as evidence in a criminal case.

7. The civilian security sector players in the regions even don't know the institute of liaison officers or police attaché of foreign countries located at the embassies in Ukraine. It is another effective instrument to speed up international cooperation in criminal matters, exchanging information with counterparts from abroad for the purposes of investigation of cross-border crimes. There is a need for regional players of the civilian security sector to have a connection with liaison officers, police attaché' working at the embassy of a foreign country in Ukraine in a way to get information from

other foreign law-enforcement institutions.

8. There is a lack of exchange of information between different departments of police. For example, between prevention and investigation units of the National Police of Ukraine. For example, if investigators reveal the *opus operandi* of fraudsters during criminal proceedings, this may be valuable for structural units coping with crime prevention. They can raise awareness in society about the most popular fraud schemes, methods for recruitment of persons for labour and sexual exploitation. Sharing it with the local authorities, local communities allow them to prevent or minimize harmful effects on some types of crime.

9. The primary and the main measurement for evaluating the performance of the civilian security sector players of Ukraine still continues to be statistical data, specifically the detection of criminal offenses and number of criminal cases forwarded to court. This method, however, has led to concerns about false efficiency. The driving force behind the criminal investigation process is the quota of criminal cases that need to be investigated within a specific timeframe, typically a quarter of the year. Consequently, this does not accurately reflect the real criminological situation, as the number of criminal cases remains static, unaffected by actual crime rates. The civilian security sector players often adhere to the case numbers reported in the previous period's statistical report. An increase in criminal investigations reported in one period necessitates reporting a similar number in subsequent periods to avoid the appearance of decreased efficiency. This approach not only misrepresents the true state of play, but also incentivizes the civilian security sector players to focus not on serious, complicated, latent crimes but on simpler, less complex cases committed not by the members of organized groups, or criminal associations, not professional criminals. Performance evaluation strategy of the civilian security sector players must be changed for reasons mentioned above.

10. There is a lack of clarity in the delineation of responsibilities of the pre-trial investigation bodies when it comes to investigating specific categories of crimes, such as economic crimes, smuggling of goods. This ambiguity often leads to overlapping authority among agencies. The Criminal Procedure Code offers some flexibility in establishing jurisdiction, but this often results in the civilian security sector players withholding operational/criminal intelligence information from one another. Consequently, the focus tends to shift towards handling high-profile cases and achieving investigative primacy, especially in the mass media coverage,

rather than enhancing quality inter-agency cooperation aimed at achieving substantive results.

11. From May 2024, Ukraine withdrew from the Minsk Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, adopted in Minsk on 22 January 1993. The Convention regulates cooperation in legal matters among members of The Commonwealth of Independent States (hereinafter referred to as “CIS”) (the author notes, the signatories of Minsk Convention are the Russian Federation, Belarus, Uzbekistan, Armenia, Kazakhstan, Tajikistan, Kyrgyzstan etc.). The main platform for international cooperation remains European Convention and additional protocols, while not all CIS states aren’t signatories/parts of the European Conventions.

Conclusions and suggestions

1. International cooperation within criminal procedure laws is highly centralized in Ukraine. Suggestion should be following - modification of existing international agreements through amendments or preparation and ratification the new bilateral agreements that allow for direct interaction between the regional civilian security players in bordering regions of Ukraine and counterparts from the European Union Members States, the Republic of Moldova. This will enable quicker and more efficient detection of cross-border crimes.
2. Revision of SOPs must be done, and it has to grant more operational autonomy to regional actors of the civilian security sector, especially in cooperation with the EU MS, third countries bordering with Ukraine. Enhancements to SOPs should also focus on improving the exchange of information between different units within the regional civilian security sector players, thus expediting criminal investigations.
3. Development of specific competencies to address identified needs of the regional civilian security sector players should be one of the priorities in inter-agency cooperation, such as creation of educational programs, advanced training on specific topics related to prevention activities, detection and investigation of cross-border crimes.
4. Establishment of an inter-agency coordination center. It might be governed by a legal act, and it aims to ensure proper cooperation and coordination in the activities among various bodies. These agreements should cover all aspects of cross-border cooperation, such as joint risk analysis, experience and information exchange, and investigative collaboration.

5. Establishment of regional inter-agency working groups on relevant phenomena. It comprises of actors from the civilian security sector, private businesses including airlines, ferry operators, cargo carriers, railway companies, and other logistics services, local authorities and civil society. This group will coordinate the implementation of decisions by higher-level working groups, resolve cooperation issues, and identify areas for increased collaboration.

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