



№1314 6 December 2024

Commission

for Conducting External Independent
Evaluation (Audit) of the Effectiveness
of the National Anti-Corruption Bureau
of Ukraine

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Dear Members of the Commission,

We express to you highest consideration and, realizing the importance of the mission entrusted to the Commission, we are writing to contribute to the completeness and comprehensiveness of the external independent evaluation (audit) of the effectiveness of the National Anti-Corruption Bureau of Ukraine.

The anti-corruption reform is undoubtedly one of the most important in Ukraine. The successful launch and active work of anti-corruption institutions, including the National Anti-Corruption Bureau of Ukraine (hereinafter referred to as **the National Bureau, NABU**), have demonstrated significant progress of Ukraine in terms of compliance with the criteria for accession to the European Union.

On 14.12.2023, the European Council decided to open negotiations on Ukraine's membership in the EU, and the anti-corruption vertical has made a significant contribution to this historical decision for our country.

It is also worth noting the transparency of the National Bureau in informing the society about the current results of its activity, which maintains a high level of trust in this law enforcement body and contributes to the development of legal awareness of the public.

The Problem That Requires the Attention of the Commission

However, unfortunately, over the years, the facts of **non-procedural communication of the NABU with unauthorized persons, primarily journalists, and providing them with information and materials of criminal proceedings, the pre-trial investigation of which is ongoing**, have become a systemic problem. Subsequently, such information received is often presented by the media in a distorted form and with wording that, in the opinion of defense attorneys, **grossly violates the presumption of innocence** and the rights of third parties.

In some cases, such non-procedural communication between the personnel of the National Bureau and media representatives seems to be a form of prejudice on the part of detectives

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and substitution of measures and procedures provided for by the Criminal Procedure Code of Ukraine (hereinafter referred to as **the CPC of Ukraine**). **Negative PR around a person caused by "leaks" of the investigation secrecy, effectively turns into a "punishment" in cases where there are no real results of the investigation.**

It should be noted that the official communication by the National Bureau regarding high-profile investigations through press releases, comments of authorized persons, notices on the nabu.gov.ua website and social networks is certainly very important and ensures the transparency of the NABU. We appreciate the National Bureau's diligence in respecting the presumption of innocence in official comments, having respective reservations and references to Article 62 of the Constitution of Ukraine in press releases, etc.

At the same time, the community of attorneys of the Ukrainian Bar Association is deeply concerned about the situation that has developed due to the **unofficial communication of the NABU** with media, sometimes including familiarization of unauthorized persons with the materials of criminal proceedings, which is unacceptable. Disclosure of the investigation secrecy in such cases is often accompanied by the disclosure of confidential information about participants of criminal proceedings, their personal data and private life details.

According to Art. 32 of the Constitution of Ukraine, no one shall be subject to interference in his/her private and family life, except in cases envisaged by the Constitution of Ukraine. The collection, storage, use, and dissemination of confidential information about a person without his/her consent shall not be permitted, except in cases determined by law and only in the interests of national security, economic welfare, and human rights.

Art. 15 of the CPC of Ukraine establishes the general principle of criminal proceedings as non-interference in private life. According to parts 1-4 of this article, during criminal proceedings everyone shall be guaranteed non-interference in private (personal and family) life. No one shall be allowed to collect, store, use and impart information on private life of an individual without their consent, except as prescribed by this Code.

Information on private life of an individual obtained in accordance with the procedure established by the CPC of Ukraine shall not be used otherwise than for the purpose of achieving the objectives of criminal proceedings. Everyone who has been granted access to information on private life shall be required to prevent disclosure of such information.

Failure by the NABU officials to comply with the above-mentioned constitutional principles and the general principles of criminal procedure grossly violates the rights of participants in the relevant criminal proceedings and undermines the authority of both the National Bureau and the entire anti-corruption vertical.

With the aim of strengthening the lawfulness of the National Bureau's activities for review and possible consideration by the Commission, we provide examples of relevant cases that demonstrate the systemic nature of the problem in the annex to this letter. The provided list of examples is likely not exhaustive.

It is important to note that the Committee **does not take any position on the cases** and circumstances of specific investigations **specified in the annex to this letter** but provides the relevant examples solely for the purpose of informing.

The examples presented in the annex may indicate a systematic lack of control by the NABU officials over such a problem as frequent non-procedural disclosure of the pre-trial investigation secrecy and personal data of individuals involved in such investigations, which violates both the rights and legitimate interests of these individuals, and causes damage to the relevant criminal proceedings, as well as the reputation of the National Bureau itself.

The above necessitates addressing the Commission with this letter.

In view of the above, we kindly ask the Commission to take into account the systemic problem of disclosure by officials of the National Bureau of information of the pre-trial investigation in criminal proceedings, as well as personal data of persons participating in such criminal proceedings.

Should you require any additional information or documents, please do not hesitate to contact us.

Best regards,

**Head of Committee on Criminal
and Criminal Procedural Law of the
Ukrainian Bar Association**

Maksym SHEVERDIN