

*Васюта Юлія Володимирівна,  
ад'юнкт кафедри криміналістики та судової медицини  
Національної академії внутрішніх справ*

## **INVESTIGATION OF CORRUPTION CRIMINAL OFFENSES BY JOINT INVESTIGATION TEAMS: CERTAIN ASPECTS**

States are now increasingly confronted with criminal offenses that cross national borders. In this regard, enhanced international cooperation is an important component of a criminal investigation or prosecution. Since criminal activity transcends national borders, it is clear that the international community has recognized the need for increased cooperation, especially in gathering evidence located beyond national state borders.

The effects of corruption criminal offences are far-reaching; it can undermine political, social and economic stability and ultimately threaten the safety and security of society as a whole. Corrupt operations can cross multiple jurisdictions, making the ensuing police investigation both time-consuming and complex.

A Joint Investigation Team (JIT) is an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors and investigative judges) and law enforcement authorities – of two or more states, established for a limited duration and for a specific purpose, that conducts criminal investigations in one or more of the states involved [2, p. 7].

Compared with traditional forms of police and judicial cooperation, JITs have the following added value: they enable the direct gathering and exchange of information and evidence without the need to use traditional channels of mutual legal assistance; seconded members of the team (those originating from a state other than the one in which the JIT operates) are entitled to be present and to take part – within the limits provided for by national legislation and/ or specified by the JIT leader – in investigative measures conducted outside their state of origin. For these reasons, JITs constitute a very efficient and effective cooperation tool, which facilitates the coordination of investigations and prosecutions conducted in parallel across several states. A JIT can be established between competent authorities of at least two states [2, p. 8].

Let's consider the main steps to setting up a JIT between the member states:

1) definition of the criminal offence: to collect and analyze all available information about the cross-border criminal offence to confirm that investigation into that criminal offence requires coordinated and concerted action in all involved states and consequently to make an informed decision about setting up a JIT;

2) it is necessary to determine the legal basis on which the JIT agreement will be based (an international legal instrument, a bilateral agreement, a multilateral agreement, national legislation). In particular, The Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters, 1959 (Article 20), UN Convention against Transnational Organized Crime, 2000 (Article 19), UN Convention against Corruption, 2003 (article 49), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005 (Chapter IV, Section 2 – Article 16) etc. For example, the Criminal Law Convention on Corruption (Council of Europe, 1999) has become a very

important tool aimed at the coordinated criminalization of a large number of acts of corruption. It also provided for additional criminal law measures and improved international cooperation in the prosecution of corruption offenses. The Convention established enhanced international cooperation (mutual assistance, extradition and provision of information) in the investigation and prosecution of corruption offenses. However, given the latest forensic approaches and the complication of criminal activities with an innovative component, this document is gradually becoming archaic and needs a fresh view of cross-border investigation of crimes [4, p. 153];

3) next step is establishing contact with the authorities from the other potential JIT members to exchange information about the case and explore the possibilities of establishing of a JIT in concrete case. Europol and Eurojust can help EU Member States and non – EU Member States in this activities;

4) request for setting up a JIT: after obtaining an informal consent to set up a JIT from all the countries involved, the prosecutor's office prepares a formal request to set up a JIT. It is recommended that investigators, prosecutors and/or judges from the States considering the setting up a JIT, together with officials from Eurojust and Europol, meet to discuss the matter at the earliest opportunity before a formal request is made;

5) drafting the formal agreement: due to the fact that a JIT is a “contract” between at least two States or more, with certain goal, for a certain period of time, set up in order to conduct joint investigation, it is necessary to prepare the formal agreement for a JIT. The crucial elements of a JIT agreement are: the purpose of a JIT, legal possibilities and/or limitations, JIT leader, members and participants, financing and possible support from Europol and Eurojust, that are available at any time to assist in drafting an agreement;

6) signing the Agreement: when the final draft of the agreement is agreed by all participating Countries, the formal procedure of signing the agreement can be carried out;

7) carrying out the agreement – operational action plan (OAP): OAP is a document in which it is foreseen how the work in a JIT will be carried out. In OAP we should define the practical, operational aspects of the agreement (description of the purpose of the JIT; identifications of locations; description of the role of members and participants; list of special operations/ investigative techniques that will be used; description of the way of communication and formation exchange; decision on information collection, analysis, and tasking; decision about financial investigation and prosecution etc.) [1, p. 7-10].

We focus on the practical aspect of the activities of the joint investigative team during the investigation of a corruption criminal offence.

«On July 20, 2020, the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) jointly with the Central Anti-Corruption Bureau (CBA) and District Prosecutor's Office of Warsaw detained a criminal group led by the Former Acting Head of the State Road Agency of Ukraine (Ukravtodor). The Group pursued the goal of obtaining improper advantage from representatives of companies in the road sector. This is the first case in the history of Ukraine when the international joint investigation team has exposed a particularly

serious corruption crime. Due to coordinated measures, evidence of corrupt actions of citizens of Ukraine, the Republic of Poland and other countries was collected. The complexity of the investigation was that the Former Head of Ukravtodor used his official position in Ukraine and expressed a request for an improper advantage, but its receiving took place in Poland. The European Union Agency for Criminal Justice Cooperation (Eurojust) provided an international platform for effective coordination of work of two anti-corruption bodies — NABU and the CBA. In November 2020, the Prosecutor General of Ukraine signed an agreement with the Prosecutor General of the Republic of Poland to continue the work of the joint investigation team established by the countries' anti-corruption agencies. This allowed the Detectives of the National Bureau and their Polish colleagues to obtain new evidence in the case. In January 2021, the materials of the criminal proceedings against the ex-head of Ukravtodor were sent to Poland to complete the pre-trial investigation, since he is a citizen of this state. The National Anti-Corruption Bureau (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAPO) have issued an indictment against the beneficiary of a group of companies charged with giving improper advantage to the former acting head of the State Road Agency of Ukraine (Ukravtodor). His actions are provided for in part 4 Article 369 of the Criminal Code of Ukraine» [3]. «The accused personally and via his intermediaries systematically gave an improper advantage to the acting head of Ukravtodor. The latter, in turn, green-lighted payments to the company under the agreement for the capital repair of the Kyiv-Odesa highway, as well as agreed to postpone the deadline for such works and did not take measures to terminate the agreement over the existing violations. In total, as established by NABU and SAPO, USD 575 thousand and EUR 70 thousand was transferred during 2017-2019» [5].

In conclusion, international practice shows that the creation of joint investigative teams is one of the most effective forms of international cooperation and ways of providing mutual legal assistance. In view of the above, it is worth noting that this experience opens a wide path for effective procedural actions during the investigation of international criminal offenses, in particular, corruption criminal manifestations; collection of evidence and prompt exchange of information.

### References

1. Guidelines on the use of joint investigation teams. 12 p. URL: <https://rm.coe.int/16806f720a>.
2. Joint investigation teams practical guide. Luxembourg: Publications Office of the European Union, 2021. 100 p.
3. NABU and the Poland Anti-Corruption Bureau exposed criminal group. National Anti-Corruption Bureau of Ukraine. URL: <https://nabu.gov.ua/en/novyny/nabu-and-poland-anti-corruption-bureau-exposed-criminal-group>.
4. Tymoshenko, Y. P., Kozachenko, O. I., Kyslenko, D. P., Horodetska, M.S., Chubata, M. V., & Barhan, S. S. (2022). Latest technologies in criminal investigation (testing of foreign practices in Ukraine). *Amazonia Investiga*, 11 (51), 149-160.
5. «Ukravtodor» case sent to court. National Anti-Corruption Bureau of Ukraine. URL: [https://nabu.gov.ua/en/novyny/ukravtodor case-sent-court](https://nabu.gov.ua/en/novyny/ukravtodor-case-sent-court).