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THE ROLE OF AUTHORITY OF DETECTIVES OF NATIONAL ANTI-CORRUPTION BUREAU OF UKRAINE IN DETECTING AND INVESTIGATING OF CORRUPTION OFFENCES: A COMPARATIVE STUDY

Corruption nowadays is being sophisticated and is usually done secretly by a group of persons domestically or cross-border, hence, gathering of information is very crucial on the part of law enforcement organizations because the outcome of the prosecution and adjudication of a case is solely based on the quality of investigation conducted and credibility of evidence gathered.

For the above-stated reason the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) during 08.10–16.11.2018 held special training program in order to explore ways to strengthen the capacity of criminal justice authorities of each country against corruption, in line with the requirements under the United Nations Convention against Corruption (hereinafter referred to as «UNCAC»). Specifically, this program was focused on: (1) effective anti-corruption investigation, prosecution and adjudication in cooperation with relevant agencies; (2) international cooperation to fight against corruption; and (3) preventive measures against corruption in cooperation with civil society and the private sector.

Through a variety of lectures, presentations, discussions, observation tours as well as intensive group workshops, participants from 28 countries were able to learn the theories, principles and practical experiences of other counterparts, as well as to discuss and share challenges and best practices in their respective countries on the topic «Criminal Justice Response to Corruption».

It was established that most of participants in their respective countries face a lot of challenges and difficulties in detention and investigation of corruption, particularly in gathering the initial information about corruption-related crimes and obtaining of necessary evidence.

Owing to the fact that corruption offences are often committed in secret without leaving any trace or evidence, it is quite burdensome proving these offences in court. For the said reason, whistle blowers play a very important role in the fight against corruption.

Considering the opinion of majority of participants, it is quite sad to note that in many jurisdictions very little or nothing has been done for protection of whistleblowers and witnesses. They are normally put in such a situation that they fear for their lives, the lives of their family members, their sources of livelihood to mention a few. They therefore shy away from

rendering much needed help to the various bodies involved in the fight against graft. The other problem is an absence of legislative regulations of whistleblowers' protection procedures and rules as well as questions of financial and human resources to be involved for such protection.

It was also discussed that for gathering initial information as for obtaining information for further investigative activities, investigators and prosecutors are required to obtain information from public registries and databases. Mostly it takes a lot of time in spite of the fact that most corruption-related crimes demand quick conducting of criminal procedures.

Participants of training course exchanged their experience on special investigative techniques that are being used during investigation of corruption-related crimes. During discussion it was concluded that undercover operation and techniques are the most important among investigative activities and techniques for obtaining strong, relative and admissible evidence during pre-trial investigation. However, in several countries like Japan and Philippines undercover operations in corruption cases are not allowed to be used.

In most jurisdictions court warrant is necessary for undercover operations. In some home countries as Brazil the time limit for such court warrants is only 15 days that is not enough for sufficient investigation.

In some countries, there is an immunity for top-officials from investigation and prosecution that makes almost impossible to charge them for criminal corruption offences. Therefore, it's quite difficult to adopt some amendments to existing laws because of law-makers' immunities.

Among other challenges, it was also mentioned that obtaining evidence through MLA requests and international cooperation is highly important for investigation, but most of participants are facing the problem of long terms of fulfilling of such requests. The other problem is refusing in conducting of criminal procedures because of different provisions in criminal legislations of the countries.

During active discussions participants of the training agreed on some of best practices of counterparts that should be used as examples for possible improvement of domestic criminal justice systems.

Using of centralized databases for LEA's investigators, like in Brazil and Ukraine (experience of National Anti-Corruption Bureau of Ukraine, hereinafter referred to as «NABU»), could make easier and faster process of gathering of necessary information at any stage of criminal proceedings. Introducing the electronic asset disclosure and e-procurement systems also could help to achieve high level of transparency.

It's also useful to make legal procedure for possibility of anonymous report of corruption for further admissibility of such evidence in the court. Plea agreement from offenders could also be used for receiving initial information about corruption crimes as well as about potential suspects.

It is quite important to use all possible complex of undercover activities and techniques for gathering evidence, such as electronic surveillance, undercover audio and video recording of suspects, wiretapping,

physical surveillance, communications interception by installing video recording to offices and houses of suspects, communications interception by installing audio recording to clothes/goods of suspects, interceptions of e-mail communications.

It was also underlined that it is highly recommended to most of countries to adopt special legislation about whistleblowers' protection, which will underline necessary procedures for involving and protection of whistleblowers and witnesses. Positive experience from Madagascar and Philippines could be used, especially the practice of limitation of numbers of parties in the criminal proceedings who has access to identities of whistleblower. Also, to protect whistleblowers, provisions must be put in place for holding court in camera, distorting the voices of witnesses when they testify, provision of immunity from civil and criminal lawsuits for witnesses, provision of penalties for harming whistleblowers, security of job tenure of witnesses, giving benefits such as housing facilities, free medical treatment and so on whilst he serves as a witness.

Among other, experience of NABU was taken into consideration about using of confidential agents for gathering information and further disclosure of criminal schemes and organizations.

It was concluded that improving the welfare of citizens is impossible without structural reforms in many areas. Reforms of criminal justice systems should become the key priority for every government. It may increase professional standards for judges, prosecutors, investigators and detectives, and improve efficiency of investigation of corruption-related crimes. Therefore, it is highly recommended for all parties of the workshop to proceed with following recommendations:

1. It is necessary and beneficial to construct a system that promotes whistleblowing for the acquisition of information but at the same time, being cautious that there is the possibility of receiving false information.
2. It is important to notify the public of the whistleblower protection unit so as to develop their confidence in reporting corruption and also to sensitize them about the dangers of making a false or malicious report.
3. Governments should establish central databases for LEA and apply electronic asset disclosure and transparent e-procurement systems.
4. There is a need for amendments to criminal procedural legislation to provide LEA with possibilities of conducting full complex of undercover activities.
5. It is highly recommended to make equal legal provisions in criminal legislations of the countries, such as criminalization of certain corruption-related offences for increasing of efficiency of obtaining evidence through MLA requests and international cooperation.
6. It is also necessary to exchange experience and best practices among LEA officers through international seminars, trainings, conferences and workshops.