



Centre of Policy and
Legal Reform

FIRST YEARS OF SBI: EXTERNAL EXPERT ANALYSIS

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External expert analysis of the first years of the SBI activities was aimed at answering a number of questions such as Have goals the new law enforcement body was created for been achieved? Is its work effective? Are external management procedures effective? Is it independent from any influence, mostly political? Are the priorities in its activities outlined correctly? The publication is designed for a wide range of lawyers, scholars, law enforcement officers and anyone interested in the work of law enforcement agencies.



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Introduction

Creation of the State Bureau of Investigations (hereinafter referred to as the SBI) became an important stage in the reform of the system of criminal justice of Ukraine. Starting with adoption of the Constitution of Ukraine, the prosecutor's office was supposed to lose the function of pre-trial investigation, which was repeatedly stressed in concepts and transitional provisions of the Criminal Procedure Code of Ukraine. Eventually, that function was delegated to the SBI in 2017.

The competence of the SBI covers an important sphere of the functioning of the state i.e. misconduct of public officials of all ranks, including law enforcement officers. While considering the specialized law, many variants of the SBI competence design were being discussed in the process of considering the specialized law, starting with top-level corruption and ending with specialization solely in tortures and mistreatment on the side of law enforcement bodies. It is not surprising that experts and lawmakers are still discussing the role of the SBI in the system of law enforcement bodies with the view to achieving maximum effect from its activities.

In the first two years of its functioning the SBI (the first criminal proceedings were instituted in November of 2018) gained dubious reputation, primarily due to allegations of being politically biased, in particular in connection with investigations into alleged crimes of the fifth President. Eventually, in December of 2019 the body was "rebooted," with changes in its leadership changed and subordination of the SBI to the current President of Ukraine.

Impossibility to set up the Council of Civil Control in a due manner as well as public scandals related to this issue are tarnishing the SBI reputation. Accordingly, the SBI cannot establish the Disciplinary Committee, which would allow to hold SBI personnel committing disciplinary violations liable.

SBI reporting on its activities is contradictory. On the one hand, it publishes photos from sites of car accidents or detention of an official on suspicion of obtaining an improper advantage almost on the daily basis. On the other hand, it publishes statistical data which demonstrates that the bulk of its investigations has to do with "petty" military crimes (for example, violations of the procedure for military service). Undoubtedly, though the latter require attention, they overload qualified SBI detectives who could use their time to investigate serious misconduct which is by far more important for the society.

Respectively, the SBI needed independent analysis of its activities more than other criminal justice bodies.

External expert analysis of the first years of the SBI activities was aimed at answering a number of questions such as *Have goals the new law enforcement body was created for been achieved? Is its work effective? Are external management procedures effective? Is it independent from any influence, mostly political? Are the priorities in its activities outlined correctly?*

Hopefully, the conclusions and recommendation spelled out in this Report will facilitate further improvements in the work of the SBI, being accounted for while approving legislative changes in activities of this law enforcement body.

Methodology

The methodology of expert analysis of the SBI activities is based on the methodology elaborated for expert analysis of activities of the National Anti-Corruption Bureau of Ukraine (hereinafter referred to as NABU) which was conducted in 2017–2018 to an order of Ukraine’s international partners (US Embassy in Ukraine and EU Anti-Corruption Initiative in Ukraine) upon request of NABU. The methodology has been adapted to the sphere, functions and other peculiarities of the SBI activities.

The expert analysis does not include access to materials of criminal proceedings and does not assess them.

The research made use of both quantitative and qualitative methods. It was conducted in two stages:

- (1) office research
- (2) field research.

While conducting office research, the experts were analyzing generally available sources of information, in particular international and national legislations, criminal and judicial statistics, materials of the legislative branch of power relating to the history of launching the SBI, public speeches of the SBI leadership, etc.

While conducting field research, the experts requested from the SBI leadership information about their powers, operative activities, effectiveness, work results and influence of different factors, and proposed to conduct self-assessment of the SBI potential and challenges it is facing (questionnaire).

Also, half-structured interviews with the leadership and detectives of the SBI were held in the format of random focus-groups.

Investigators of different SBI divisions (32 overall from both the central office and territorial departments) as well as chiefs of its investigative units (11 overall both from the central office and territorial departments) additionally underwent online interviewing. Besides, online interviewing was taken by 27 procedural chiefs (prosecutors of the Prosecutor’s General Office and prosecution body of Kyiv oblast’) as well as 30 defense lawyers, graduates of the Defense Lawyers of the Future program who took part in criminal proceedings of the SBI as defenders.

Numerous changes in the SBI leadership caused problems with access to data and its verification, which negatively influenced results of the

research. Many issues were not examined as thoroughly as planned. The SBI often provided incomplete and matter-of-fact information, sometimes on a piecemeal basis. Apart from it, the SBI often delayed provision of information which influenced relevance of the received data (as of the moment the report was put to print).

Thus, the stance expressed in the Report by results of the expert analysis is based solely on the data which the experts have found relevant and appropriate as well as weighty and trustworthy.

Section I

General
Description of the
SBI

Preconditions of creation

In 1996, the Verkhovna Rada of Ukraine (hereinafter referred to as the VRU), while adopting the Constitution of Ukraine, laid a foundation for launching the SBI. The final provisions specified that the prosecution bodies would keep on performing the function of pre-trial investigation until a separate public body having respective functions is set up. As a result, there were several attempts to establish such a public body which would be delegated pre-trial investigation from the prosecutor's office.

The first out of these attempts goes back to the Decree On the National Bureau of Investigations No 371 of the then President Leonid Kuchma dated April 24, 1997. However, a number of provisions of that decree, in particular on determination of the structure of the body, payroll schedule and ultimate personnel numbers as well as direct subordination of the NBIU to the President were deemed unconstitutional by the decision of the Constitutional Court of Ukraine (hereinafter referred to as the CCU) No 10-np/98 dated July 6 of 1998.

The second attempt to create a respective pre-trial investigation body was made by Viktor Yushchenko in 2005. A working group to elaborate the concept of the National Bureau of Investigations was formed. However, the aforementioned advisory body never came into existence.

The third attempt turned out to be successful. In November of 2015, the VRU adopted the Law of Ukraine on State Bureau of Investigations No 794-VIII dated November 12, 2015.

The President Petro Poroshenko signed the approved law only in January of 2016. In May of 2016 a competition to fill the vacancies of the director and deputy directors of the SBI, which, being accompanied by a number of scandals, lasted for almost six months, was announced¹. On November 16, 2017, the competition committee determined the winners. Roman Truba became the director, Olha Varchenko and Oleksander Buriak became deputy directors. It was only in a year after the appointing of the director and deputy directors of the SBI, namely on November 27, 2018, when the body formally launched its work.

¹ SBI: Independent Leadership for an Independent Body (ДБР: незалежному органу – залежне керівництво // Dzerkalo Tyzhnia: https://zn.ua/ukr/internal/dbr-nezalezhnomu-organu-zalezhne-kerivnictvo-260437_.html

SBI: The Slowing Down of the Engine of Transformations (ДБР: загальмований двигун перетворень) // Dzerkalo Tyzhnia: https://zn.ua/ukr/internal/dbr-zagal'movaniy-dvigun-peretvoren-247137_.html

Status, functions and mission

As it was mentioned before, the Law of Ukraine on the State Bureau of Investigations No 794-VIII dated November 12, 2015 (hereinafter referred to as the Law), is the legislative basis of the SBI operation. The draft as well as the initial version of the law specified that the SBI was formed in the status of "the central executive body" (government decree No 127 of February 29, 2016). In the case of the SBI, the status of "the central executive body" did not imply any mechanisms of significant influence or control over the institution on the side of other central executive bodies or even the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU). In other words, the SBI was by far more autonomous than, for example, the National Police activities of which are directed and coordinated by the CMU through the Minister of Internal Affairs of Ukraine.

Further to the law 305-IX dated December 3, 2019, its status was changed into the "state law enforcement body" due to which the SBI left the system of executive bodies and subordination to the CMU². Such changes reinforced the role and, accordingly, influence of the President of Ukraine on activities of the SBI³. At the same time, the change of the status was initiated by the President of Ukraine and supported, in particular, by a number of parliamentary factions.

Immediately after that the CMU stated in its conclusion No 7-В/2019 dated December 16, 2019, that the SBI had features of an executive body and, therefore, had to be in the system of executive bodies headed by the CMU. As of today, the parliament has not implemented the position of the CMU⁴.

² The CCU expressed an analogous stance regarding NABU (which has similar functions) in its decisions No 9-p/2020 dated August 28, 2020, and No 11-p/2020 dated September 16, 2020. The CCU stated: "Given that the National Anti-Corruption Bureau of Ukraine has features of an executive body, with no alterations to the Law introduced since the day on which the Constitutional Court of Ukraine passed its Ruling No 9-p/2020 dated August 28, 2020, voidable provisions of the Law which set forth powers of the President of Ukraine regarding creation of this law enforcement body, appointment of its director and solution of other issues related to the functioning of the National Anti-Corruption Bureau of Ukraine make it possible to interfere with the competence of the Cabinet of Ministers of Ukraine (para 3.2 of the motivational part of the decision).

³ In particular, the President of Ukraine appointed Iryna Venediktova an acting chief of the SBI without any open competitive procedures. Iryna Venedyktova, in turn, selected her deputies, who, unlike her, were not acting SBI officials, without any competitive procedures either.

⁴ Since the beginning of September of 2020, after decision of the CCU No 9-p/2020 dated August 2020 was published, the lawmakers registered a number of draft laws intended to implement in part the aforementioned position of the CCU regarding the role of pre-trial investigation bodies in the system of government.

As far as its functions, the SBI is a body of pre-trial investigation delegated the tasks of preventing, detecting, stopping, solving and investigating crimes within its competence (jurisdiction). Similar functions are delegated, in particular, to NABU.

However, analysis of the information about SBI activities testifies that the institution does not have a mission in the direct meaning of this word. Formally, the mission of the SBI is specified in the Strategic Action Program for the period of 2017-2018. It has been spelled out as establishment of justice in society through independent and comprehensive investigation of crimes in order to hold the guilty liable as specified by law irrespective of their positions, connections and resources. However, the Strategic Action Program does not say anything else about the mission of the SBI on its pages. For example, the priorities of the SBI are outlined as follows:

1. crimes of current top officials
2. corruption offences which fall within competence of the Bureau
3. crimes related to violations of human rights in the work of law enforcement bodies
4. military crimes, etc.

The list merely describes competence of the SBI. In addition to it, though the SBI priorities include crimes relating to violations of human rights in the work of law enforcement bodies, this institution still does not have a specialized subdivision which would be in charge of investigating such crimes. Later we will demonstrate that the SBI personnel also don't support the idea of establishing such subdivision.

If we analyze news about the criminal proceedings which the SBI has completed or, in other words, achievements of the SBI, we will see that they are not related to the mission or even priorities of SBI either. They, of course, have to do with one of the priorities which covers corruption offences within the competence of the SBI⁵. However, the competence of the SBI includes corruption offences of only low-ranking officials and "minor" subject matter (value of the subject matter of the crime). Besides, as we have already mentioned, the mission of the SBI is spelled out as "establishment of justice in society" by conducting independent and comprehensive investigation of crimes with the view to holding the guilty persons liable irrespective of their positions, connections and resources, with crimes of current high-ranking officials being the top priority.

⁵ See Subsections *Competence and Communication of Progress and Results of Investigations in this Report.*

Eventually, as a reminder, according to Explanatory Note No 2114⁶ dated February 12, 2015, which later became the law, and its initial version, one of the main objectives of the SBI was outlined as prevention and investigation of cases of torturing and crimes related to cruel, inhumane or degrading treatment and punishment committed by law enforcement officers.

So, undoubtedly, the institution enjoys the powers specified by law according to its functional allocation and demonstrates certain results. However, it is still unclear whether the SBI is achieving its purpose or the priorities outlined in the strategic document are meaningful for it.

Recommendation:

- 1. For the Cabinet of Ministers of Ukraine** to draft and submit to the VRU a bill on full harmonization of the Law of Ukraine on the State Bureau of Investigations with the Constitution of Ukraine, decisions and conclusions of the CCU.
- 2. For the State Bureau of Investigations** to critically assess and, if needed, review strategic documents of the institution, its structure and working priorities.

Competence

Competence of bodies of pre-trial investigation outlined in Article 216 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPCU) is nothing else but outlined specialization of these bodies. Under the general rule, the competence is determined according to the subject matter which lies in certain elements of the criminal offences. The SBI is rather an exception from this rule, as its competence is rather subjective (apart from military crimes) as well as NABU the competence of which has object-subject character⁸.

⁶ The Draft Law of Ukraine on State Bureau of Investigations No 2114 of February 12, 2015 // the VRU web site: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=2114&skl=9

⁷ Standards for pre-trial investigation / Belousov Y., Wenger V., Griga R., Gulmagomedov D., Derkach S., Kravchuk E., Orlean A., Parkhomenko P., Petrakovskiy V., Pirogova O., Semak I., Yavorska V.; International Renaissance Foundation. – K., 2020. – p. 109.

⁸ However, even in the case of NABU an individual is the basic criterion to determine competence.

COMPETENCE

The State Bureau of Investigations is called to prevent, detect, stop, solve and investigate crimes committed by

TOP OFFICIALS*

- President of Ukraine whose competence is suspended
- Prime-Minister of Ukraine, a member of the Cabinet of Ministers of Ukraine, first deputy and deputy minister
- Member of the National Council of Television and Radio Broadcasting, head of the State Committee on Television and Radio Broadcasting of Ukraine
- Member of the National Commission for State Regulation of Financial Services Markets, National Committee on Securities and Stock Exchange, Anti-Monopoly Committee of Ukraine
- Head of the State Property Fund of Ukraine, his first deputy head and deputy head
- Member of the Central Election Committee
- People's deputy of Ukraine
- Director of the National Anti-Corruption Bureau of Ukraine
- Prosecutor General of Ukraine, his first deputy and deputy
- Chair of the National Bank of Ukraine, his first deputy and deputy
- Chair of the National Council of Security and Defence of Ukraine, his first deputy and deputy
- Permanent Representative of the President in the Republic of Crimea, his first deputy and deputy
- Advisor to or assistant of the President of Ukraine, head of the Verkhovna Rada of Ukraine, Prime Minister of Ukraine
- Law enforcement officer
- Person whose position is referred to Category 'A'

* Apart from cases when pre-trial investigation into these crimes is referred to competence of the National Anti-Corruption Bureau of Ukraine

NABU and SAPO officials**

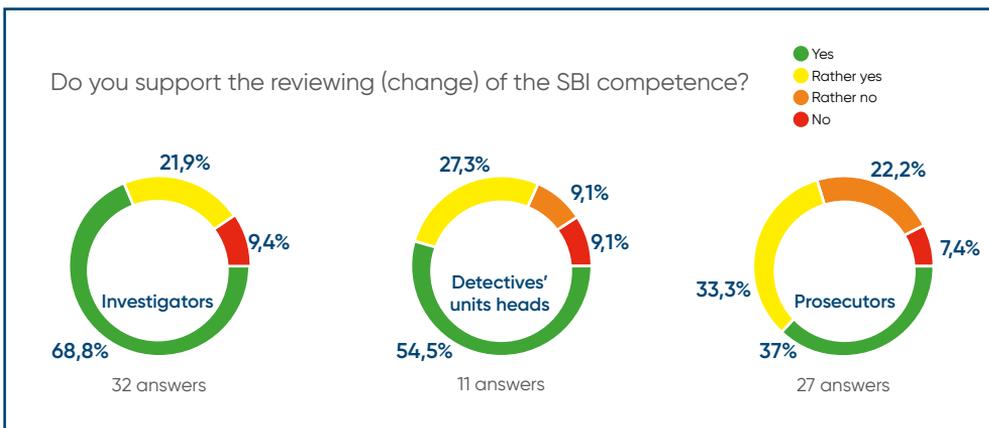
- Officials of the National Anti-Corruption Bureau of Ukraine
- Deputy of the Prosecutor General (chief of the Specialized Anti-Corruption Prosecution Office)
- Other prosecutors of the Specialized Anti-Corruption Prosecution Office

** Apart from cases when pre-trial investigation into these crimes is referred to competence of detectives of the Department of Internal Control of NABU

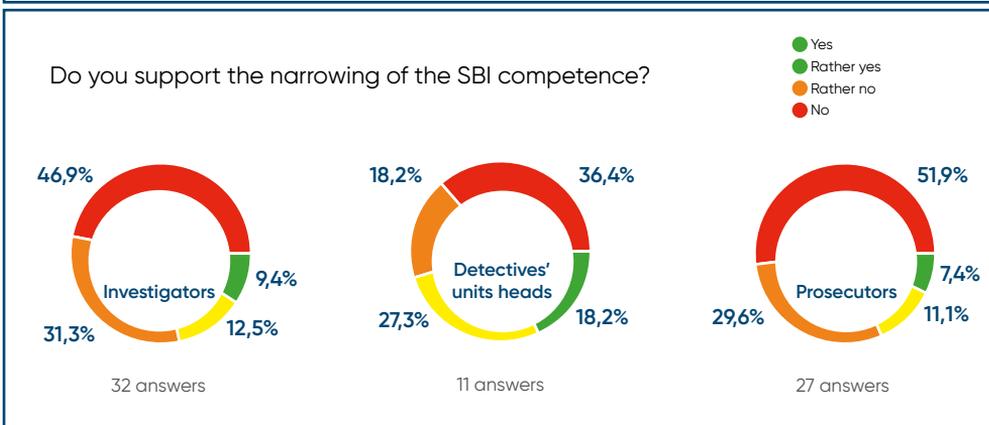
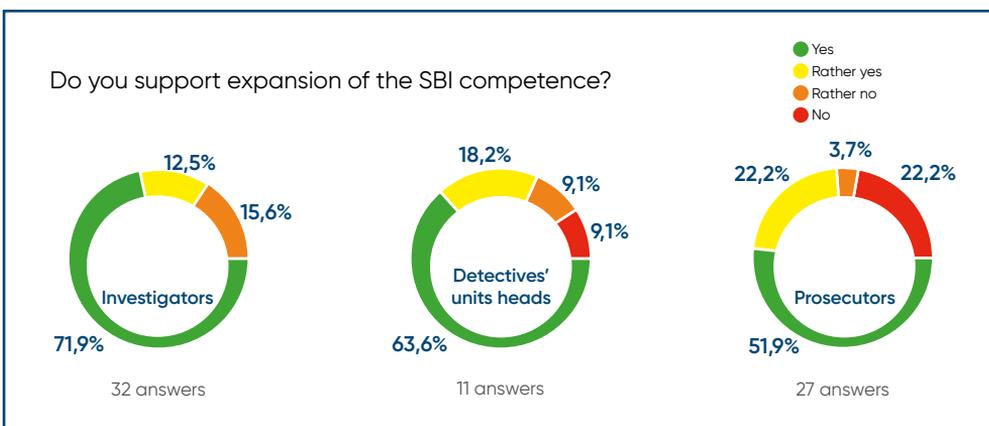
Persons who committed military crimes except for those specified by Article 422 of the Criminal Code of Ukraine

Hence, a person under SBI investigation being able to commit almost any crime, both the SBI and National Police are supposed "to specialize" in as wide specter of crimes as possible.

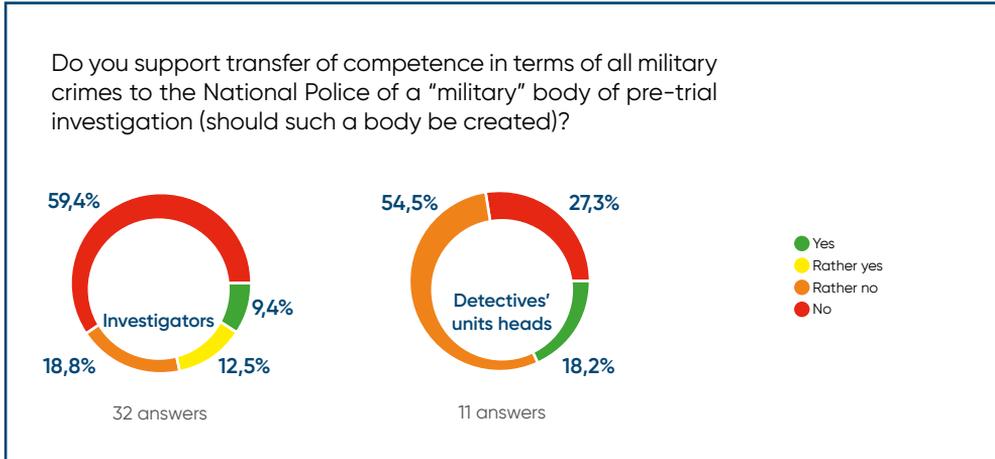
In opinion of the absolute majority of the surveyed chiefs of the SBI investigative units and investigators as well as supervising prosecutors who exercise procedural guidance in SBI cases, the SBI competence must be subject to reviewing.



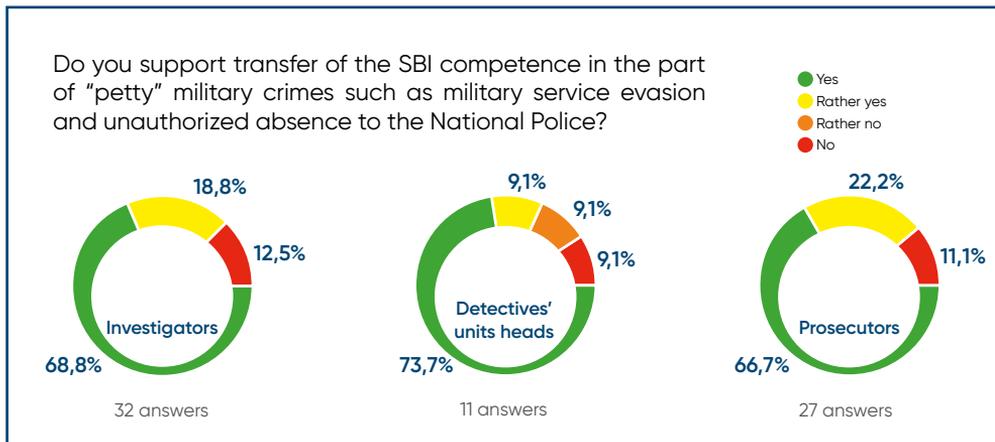
Indicatively, the majority of the surveyed chiefs of investigative units and absolute majority of supervisors of pre-trial investigations are supportive of SBI competence expansion⁹.



⁹ The data is interesting as the SBI personnel complain about the lack of investigators and support the increase in the number of both investigators and territorial departments. See Subsection SBI Structure and Maximum Personnel Numbers.



However, the most of the surveyed chiefs of investigative units, investigators as well as supervisors of pre-trial investigations support both transfer (downsizing) of competence to other bodies of pre-trial investigation, for example, in the aspect of "petty" military offences¹⁰ to the National Police.

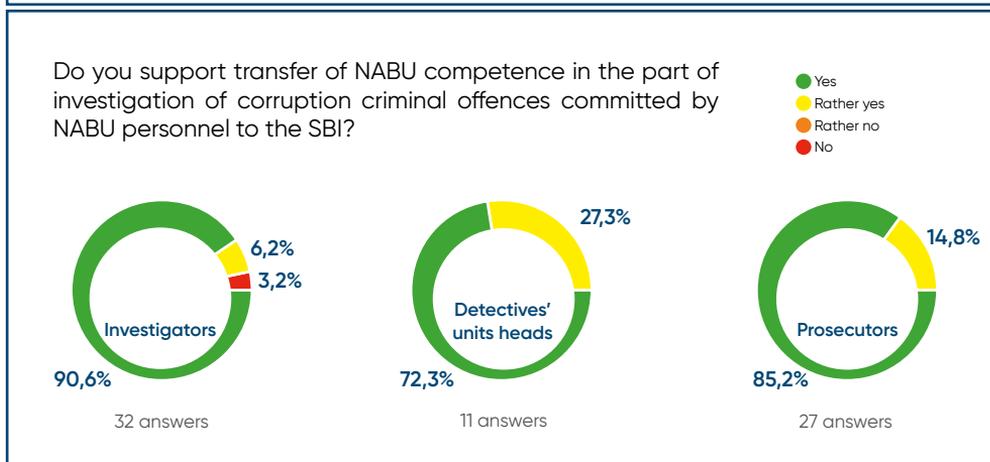
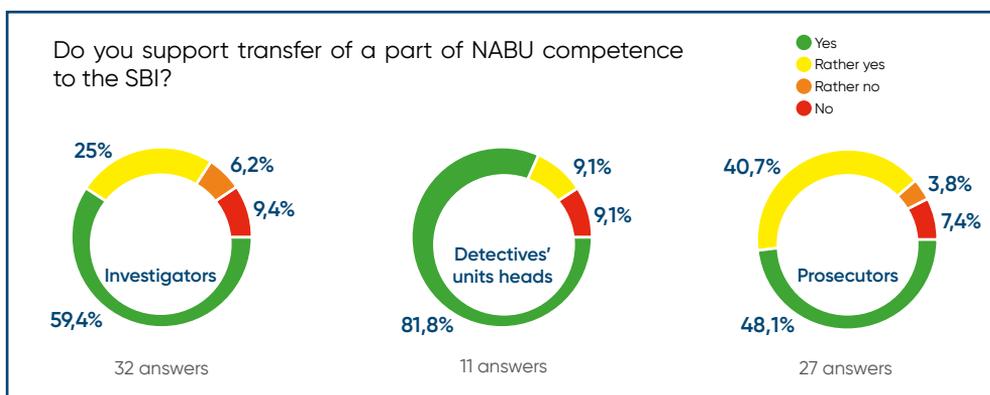


It must be stressed that this category of criminal proceedings is **the most 'popular' for the SBI¹¹**. While interviewed, investigators and chiefs of investigative units admit that such criminal proceedings "devour" the bulk of resources of the SBI territorial departments. Therefore, the SBI proposes to refer such criminal offences to jurisdiction of the body only when they are committed by commanding military personnel.

¹⁰ Crimes such as military service evasion and unauthorized absence are implied.

¹¹ See subsections SBI Structure and Maximum Personnel Numbers and Structure and Character of Criminal Proceedings of this Report.

In addition to it, even more surveyed chiefs of investigative units, investigators and supervisors of pre-trial investigations support transferring a part of NABU competence to SBO. While interviewed, investigators and chiefs of investigative units of the SBI called anti-corruption investigation to be of top priority.



Also, investigators and chiefs of investigative units complain that they often find themselves in situations when, pre-trial investigation launched and a number of investigative actions held, it turns out that a respective criminal offence lies within the competence of NABU (as a rule, after adjusting an amount of potential damage which resulted from a criminal offence). In other words, the SBI wastes its resources for pre-trial investigations it cannot accomplish on its own as it has to transfer them to the other body of pre-trial investigation.

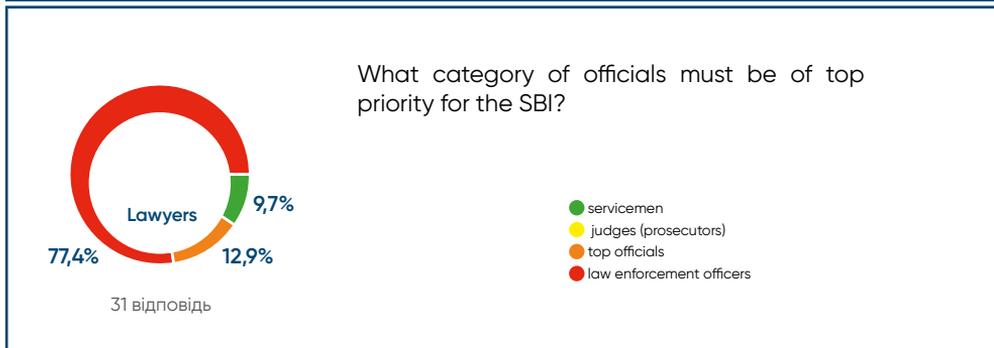
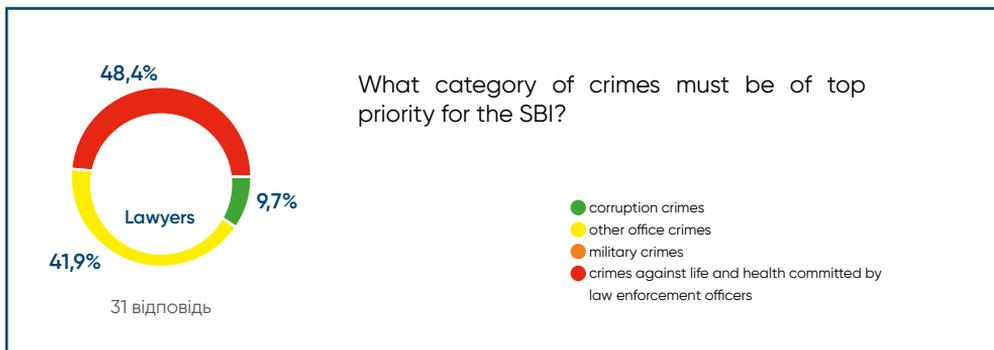
On the proposal of the SBI, the competence of the body must include corruption criminal offences which inflicted damage in an amount not exceeding 10 million hryvnas (if such criminal offences are committed by a public official, law enforcement officer, officer of a military formation, self-government, business entity a part of government property in statutory capital of which exceeds 50%). In other words, implementation

of such a proposal is virtually possible only when the competence of NABU is changed. Currently, under provisions of Article 216 of the Criminal Procedure Code of Ukraine and accounting for the minimum wage¹², NABU investigates corruption criminal offences which inflicted damage in an amount which exceeds 1.1 million hryvnas.

At the same time, NABU admitted¹³ that the body considered it to be admissible to increase the amount of damage inflicted by corruption criminal offences which would be under NABU investigation only twice rather than in 10 times as proposed by the SBI.

This data along with the information provided in other parts of the Report lead to an unambiguous conclusion that personnel of the SBI perceive the institution as the one dealing, first and foremost, with anti-graft investigations. Though, as it has already been mentioned above, investigation of such crimes is unlikely be thought of as the top priority of the SBI.

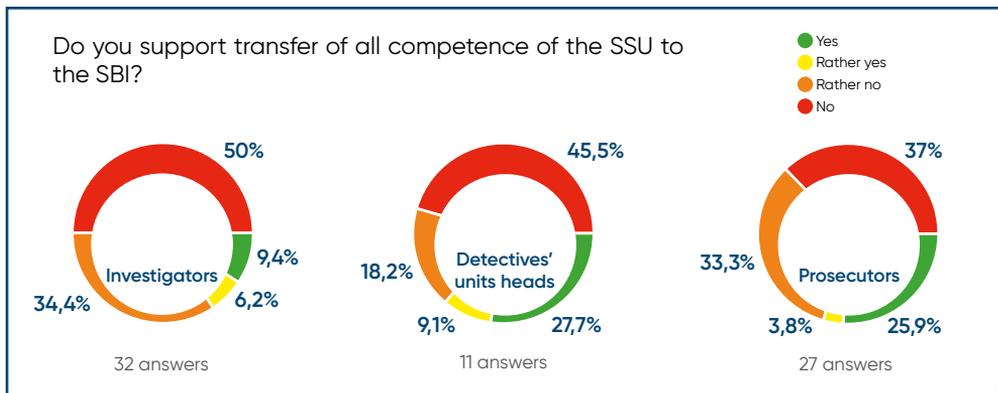
Of a bit different opinion are the surveyed lawyers who were defenders in criminal proceedings of the SBI: just a few of them consider corruption crimes to be the priority for the SBI. Instead, almost a half of them prioritizes investigation of crimes against life and health committed by law enforcement officers.



¹² In accordance with Article 7 of the Law of Ukraine on 2020 State Budget of Ukraine, the minimum wage is 2,189 hryvnas from December 1, 2020.

¹³ NABU letter No 11-204/43494 of 17.12.2020.

In addition to this, the majority of the surveyed chiefs of investigative units, investigators and supervisors of pre-trial investigations are not supportive of the idea to delegate all competence of the Security Service of Ukraine (hereinafter referred to as the SSU) to the SBI.



However, SBI does not account for the fact that the Law of Ukraine on National Security of Ukraine No 2469-VIII dated June 21, 2018, which is a framework for a new law on the SSU, does not delegate any powers of a pre-trial investigation body to SSU. It means that the future reform of SSU either in short or long term will imply full transfer of its competence as a counter-intelligence body to other bodies.

Recommendations:

1. **For the Verkhovna Rada of Ukraine** to consider likely transfer of a part of competence the SBI (downsizing its competence) in terms of 'petty' military crimes to the National Police.
2. **For the State Bureau of Investigations** to work out possible avenues to review the competences of the bodies via consultations with NABU.
3. **For the State Bureau of Investigations** to analyze scenarios of structural, organizational changes and respective needs, should competence of the SSU be transferred to the SBI (in full or in part).

Mechanisms of control

The **parliamentary, civil and internal control** are the main mechanisms of control over activities of the SBI. They are envisaged in a separate section of the Law – Peculiarities of Democratic Civil Control Over Activities of the State Bureau of Investigations. Ensuring Transparency of Activities of the State Bureau of Investigation.

Both the parliamentary and civil control constitute a part of the general system of the democratic civil control in the state specified by Part III of the Law of Ukraine on National Security of Ukraine. It is to be explained below. The Internal control will be dwelt upon in a separate subsection of this Report.

Parliamentary control

Activities of the SBI are controlled by the committee of the VRU which specializes in law enforcement activities or, in other words, Committee of the VRU on Law Enforcement Activities.

The main forms of such control are as follows:

- 1) participation of the SBI leadership in meetings of the committee, parliamentary hearings with the view to informing of its activities
- 2) annual submission to the President of Ukraine and the VRU of a written report on activities of the SBI during a previous year before April 1st.

The respective committee has submitted three reports on activities of SBI: for the period of 2017 – March 2018; the year of 2018 and the year of 2019. Their texts are available on the SBI website¹⁴.

The committee of the Verkhovna Rada the authority of which extends to law enforcement activities holds open public hearings on activities of the SBI, performance of tasks assigned to the SBI, observation by the SBI of the current legislation, human and civil rights and freedoms.

As of today, such hearings have been held twice:

1. *Activities of the State Bureau of Investigations, progress in performance of tasks assigned to the State Bureau of Investigations, abidance by the legislation, observation of human and civil rights and obligations* (May 29, 2019). Following the results of the hearing, a number of recommendations have been made¹⁵. However, these recommendations have been implemented neither by the previous, nor current SBI leadership.
2. *Activities of the State Bureau of Investigations, progress in performance of tasks assigned to the State Bureau of Investigations,*

¹⁴ Reports // SBI web site: <https://dbr.gov.ua/reports>

¹⁵ Recommendations after the hearings at the RRU Committee on Legislative Support of Law Enforcement Activities in Regard to SBI Activities, May 29, 2019: <http://komzakonpr.rada.gov.ua/uploads/documents/32337.pdf>

abidance by the legislation, observation of human and civil rights and obligations (September 17, 2020)¹⁶. Among the priorities outlined by SBI for the near future are the following: completing formation of the Civil Control Council at SBI, reinforcing investigative and operational units, reorganizing the existing territorial departments and creating new departments in each regional center, introducing by the parliament necessary changes into the legislation, establishing a centralized education and research body and expert institution, as well as developing cooperation with governmental and non-governmental organizations of Ukraine and foreign states on scientific, practical and methodological activities¹⁷. At the same time, SBI has not informed of reasons on non-implementation of the previous recommendations.

Also, the SBI took part in the hearings at the Committee of the VRU on Law Enforcement Activities on Readiness to Introduce the Institute of Criminal Offences into Practical Activities of Pre-Trial Investigation Bodies from January 1, 2020 (November 8, 2019). Following the results of the hearings, a number of recommendations have been made¹⁸.

Civil control

In order to ensure transparency and civil control over activities of the SBI the Council of Civil Control is formed (hereinafter referred to as the CCC), which is made up of 15 members (Article 28 of the Law) on the basis of an open and transparent competition.

The Council of Civil Control is a collegial advisory body which is formed with the aim to ensure transparency and civil control over activities of the SBI.

It has been assigned the tasks below. So, it:

- 1) hears information of activities, fulfillment of plans and objectives of the SBI

¹⁶ Committee hearings, September 17, 2020: https://www.youtube.com/watch?v=vjjqmX1JxP0&feature=emb_logo

¹⁷ Oleksander Sokolov: SBI Must Create Investigative and Operational Units in each regional center (ДБР потребує створення слідчих та оперативних підрозділів у кожному обласному центрі) // SBI web site: <https://dbr.gov.ua/news/oleksandr-sokolov-dbr-potrebuie-stvorenniya-slidchikh-ta-operativnikh-pidrozdiliv-u-kozhnomu-oblasnomu-centri>

¹⁸ Recommendations of hearings at the VRU committee on law enforcement activities regarding criminal wrongdoings on November 8, 2019, approved by decision of the Committee of November 13, 2019 (Minutes No 12): <http://komzakonpr.rada.gov.ua/uploads/documents/32458.pdf>

- 2) considers reports of the SBI and approves its conclusions in their regard
- 3) prepares and submits to the SBI proposals in regard to organizing and holding consultations with the civil society, takes part in such consultations
- 4) promotes civil discussion of draft legislative and other normative acts on activities of the SBI
- 5) discusses, with representatives of civil associations, media and citizens involved, issues of ensuring openness and transparency of activities of the SBI
- 6) collects, generalizes and submits to the SBI information concerning proposals of institutions of the civil society in regard to the need to improve forms and methods of cooperation
- 7) selects three representatives among members of the CCC to the Disciplinary Committee of the SBI and submits recommendation to the SBI chief to include such persons into the Disciplinary Committee
- 8) elaborates and approves the Rules of professional conduct of the SBI personnel
- 9) has the right to obtain upon its written request information from the SBI chief, his first deputy and deputy chiefs, public bodies, local governments, enterprises, institutions and organizations which is needed to ensure fulfillment of the tasks assigned to it except from information referred by the law to information with limited access
- 10) organizes and holds meetings, conferences, seminars, round table discussions and other events on issues within its competence.

Thus, the CCC is assigned three tasks:

- 1) prepares conclusion to the annual report of the SBI chief
- 2) delegates three members to the Disciplinary Committee of the SBI
- 3) elaborates and approves the Rules of Professional Conduct of the SBI personnel (this power appeared in May of 2019).

The members of the first composition of the CCC at the SBI were selected in March of 2018. In connection with the end of their tenure (1 year) their powers were terminated under a respective order No 97 dated April 26, 2019.

On March 20, 2019, to perform subpara 2 of para 3 of Article 18 of the Law the CCC provided the Report of the SBI chief on activities of the State Bureau of Investigations for 2018. Based on results of its consideration, the

CCC at the SBI gave its conclusions and recommendations, with results of activities of the ex-director of SBI Roman Truba assessed negatively. The report was approved under Minutes No 8 of the meeting of the CCC at the SBI dated March 21–26 of 2019¹⁹.

In 2019 the SBI took measures to form the second composition of the CCC. However, they turned out to be unsuccessful because of the blocking of its activities on the ground of the judicial decisions in April of 2019 (injunction by the Kyiv District Administrative Court) and October 2019 (challenging results of the online voting). At the same time, both the internal investigation and criminal proceeding into alleged violations during the last online-voting on October 3, 2018, made through mass organized voting during the selection of members of the CCC at the SBI in favor of the first 13 candidates in the rating, are still underway.

In connection with this, the Disciplinary Committee of the SBI was not formed and the Professional Rules of Conduct of the SBI personnel were not approved²⁰.

Already in 2020, with the view to correcting the situation, upon introduction of respective changes to the law by decree of the President No 42/2020 dated February 5, 2020, new provisions on the CCC at the SBI as well as the procedure under which it is formed were approved.

The law No 305-IX dated December 3, 2019, changed the powers of the CCC at the SBI and determined the subject to approve the provisions on the CCC and the procedure under which it is formed.

As of October 1, 2020, the competition committee, which announced the beginning of the open competition selection of 15 members of the CCC at the SBI, was set up. In accordance with Order of the SBI No 450 dated August 31, 2020, the committee is made up of:

- Vasul Pekhnio
- Yuriy Butusov
- Tetiana Kozachenko
- Roman Veresha
- Andriy Tsyhankov.

¹⁹ Minutes No 8 of the meeting of the CCC at the SBI on March 21–26 of 2019, pages 8–9: https://dbr.gov.ua/sites/default/files/2019-06/protokol8_rgk.PDF

²⁰ See Subsection Internal Control and Disciplinary Liability of this Report.

Recommendations:

1. **For the State Bureau of Investigations** to form the CCC under the transparent procedure without falsifications or other problems which undermine trust in it as soon as possible²¹.
2. **For the State Bureau of Investigations** to take into account recommendations of the annual parliamentary (committee) hearings concerning activities of the SBI and report on implementation of the recommendations or reasons of their non-implementation (in the event of their non-implementation).

"External" independence

The SBI did not inform of any interference with the work of the institution or its personnel in the context of one or several criminal proceedings. At the same time, the SBI informed of a number of acts and decisions of the public bodies which to a certain extent hamper development of the institution or prevent it from being more effective.

During 2018–2019 the SBI insisted on introducing changes to the Law. Of particular relevance was the issue of positions of the operational personnel. The proposals drawn up by the SBI were in part accounted for in Law No 2720–VIII of May 16, 2019, and Law 305–IX of December 3, 2019. However, procrastinated adoption of the changes significantly influenced the speed of filling vacancies at its operational units.

Also, during this period the SBI repeatedly sent for approval an act of the CMU on adoption of the list of informational systems of public bodies the SBI would obtain access to as a user. However, while the aforementioned act was under approval, the interested bodies, in particular the Ministry of Justice of Ukraine, etc., commented on impossibility of providing the SBI with such an access to informational systems of the respective bodies. According to the SBI, in such way other bodies groundlessly hampered provision of the SBI with access to informational systems of public bodies and, in some cases, prevented the SBI from receiving information in the amount necessary to fulfill tasks assigned to it.

²¹ While this report was being prepared for publication, a new composition of the CCC at the SBI was approved (see annex to Order of SBI No 866 of December 24, 2020): <https://dbr.gov.ua/assets/files/diyalnist/rgk/doc005-1.PDF>

However, the SBI is the most concerned with the decision of the VRU to change the amount and procedure under which the SBI is financed.

In fact, the draft law No 2260 dated October 11, 2019, envisages cancellation of fixed official salaries of the personnel specified by Article 20 of the law and proposes to set basic salaries of the CMU which could lead to their reduction at least by three times. The SBI considered such legislative initiative²² as an attack on one of the guarantees of its independence set forth in para 6, part 1, Article 4 of the Law.

It is also worth adding that the law No 553-IX dated April 13, 2020, has cut the financing of the SBI by 486 million hryvnas. It is explained by the reviewing of numerous state budget expenditures in connection with of the COVID-19 respiratory disease caused by coronavirus SARS-CoV-2.

It is worth noting that the SBI has not expressed its opinion concerning the role and influence of the President of Ukraine on the work of the institution. Though, even if the so called "Truba tapes"²³ accounted for, this is a rather serious issue. The aforementioned conclusion of the CCU No7-B/2019 dated December 16, 2019, says: "The Constitutional Court of Ukraine insists that indirect subordination of the National Anti-Corruption Bureau of Ukraine the State Bureau of Investigations to the President of Ukraine through appointing and dismissing their chiefs will threaten independence of these bodies and lead to concentration of the executive power with the President of Ukraine, his competition with the executive bodies and, as a result, dismantling guarantees of human and civil rights and freedoms <...>

One-sided (misbalanced) expansion of the competence of the President of Ukraine by delegating to him uncharacteristic powers contradict the fundamental provisions of the Constitution of Ukraine which set forth the status and powers of the Cabinet of Ministers of Ukraine, may cause competition and duplication of functions of the head of the state and the government as well as create preconditions for a conflict between them, since they presuppose analogous measures of the state regulation (control) both by the President of Ukraine and the Cabinet of Ministers of Ukraine. This also may create risks of ungrounded interference into the work of the executive bodies, violation of the constitutional principle of division

²² The aforementioned bill was approved by the VRU on December 6, 2019, and submitted for signature to the President of Ukraine. It has not been returned with the signature of the President of Ukraine.

²³ A number of published audio files in which a voice similar to the voice of the former SBI chief, Roman Truba, is talking to officials of the Presidential Office, promising them to actively prosecute the former President Petro Poroshenko.

of the state power, weakening the constitutional guarantees which ensure human and civil rights and freedoms." As mentioned before, this issue required legislative decision of the VRU.

Recommendation:

1. **For the Cabinet of Ministers of Ukraine** to draft and submit to the VRU a bill on complete harmonization of the Law of Ukraine on the State Bureau of Investigations with the Constitution of Ukraine as well as decisions and conclusions of the CCU.

Section II

Management of Resources

The Principle of undivided management along with collective exercise of separate powers of the SBI director

Background information

In the initial version of Article 4 of the Law one of the guarantees of independence of this body was "collegial important decision-making by leadership of the State Bureau of Investigations." According to it, the leadership of the SBI was made up of the director and two deputy directors selected under the competition procedure.

Thus, it is activities of the SBI that reflected for the first time in the history of Ukraine the legislative model of running a law enforcement body which did not imply a clear hierarchy of top management, when all key decisions were made solely by the chief. The law read that the SBI chief could make the most important decisions only upon their being approved by the deputy directors. Such a novation was explained by the fact that standard Ukrainian models of running law enforcement bodies included a large risk that a chief of an institution could be subject to influence of certain politicians or financial oligarchy groups as a result of which all activities of the body stopped being impartial. This is especially dangerous when it comes to the body authorized to investigate into almost all crimes committed by public officials, judges and prosecutors. That is why such idea of a kind of "triumvirate" in management of the SBI is capable of protecting the exercising by the SBI of its functions from external influence at least in part appeared to be substantiated to a certain extent. However, it is much more important how this instrument was used practically.

Thus, under the initial version of the Law, it is only upon approval of the two deputy directors that the director of the SBI had the right to exercise the following powers:

- to organize the work of the SBI, determine duties of the first deputy chief and deputy chiefs of the SBI
- to submit to the President of Ukraine recommendations for granting government awards to the private and commanding personnel, public officials and other SBI personnel, as well as other persons who facilitate performance of tasks assigned to the body
- to approve Provisions on ministerial awards (medals, badges, honorary certificates) granted to the private and commanding personnel, public officials and other SBI personnel, as well as other persons who facilitate performance of tasks assigned to the body

- to appoint and dismiss personnel of the central office of the SBI, directors and deputy directors of the territorial departments of the SBI
- to make decisions to allocate budget funds the SBI is a distributor of and approve reports on implementation of such decisions
- to approve perspective, current and operational plans of the SBI
- to establish the procedure under which information obtained by the SBI is registered, analyzed, stored and destroyed in accordance with the legislation; to take measures to prevent non-sanctioned access to information with limited access; as well as to ensure abidance by the legislation on access to public information the SBI distributes
- to solve issues related to commendation of the SBI personnel
- to grant permission to use funds from the Fund of special operational, detective and investigative activities of the SBI.

Let us draw special attention to the fact that the wording “organization of the work of the SBI” was extremely obscure and, if needed, could imply almost anything relating to activities of the SBI.

While adopting the Law, it was of primary importance to clearly spell out in its norms what procedures of approval had to be like and how to prevent the work of the body from being stopped if, for example, someone from its three chiefs started to undermine or deliberately impede the process of decision-making. Unfortunately, with that not done, the procedure of coordinating decisions by the SBI director with his deputy directors, which was later specified in the Regulations for SBI Director to Use His Powers (approved by the decision of the SBI director dated March 2, 2018), in fact enabled him to ignore opinions of his deputies.

For example, the Regulations envisaged that the director did not have to coordinate his decisions with the deputy director in the case when the latter was on a sick leave, vocation or business trip. The director coordinated his decisions by forwarding respective draft decisions to the deputy director (notice of an act). The deputy directors might refuse to approve (commit) a respective decision (act) on the grounds of newly discovered facts which enable approval (commission) of a respective decision (act) through its incomppliance with requirements of the laws such as the Law on Prevention of Corruption, Law on Public Service, and Law on Lustration. Non-approval of a respective decision (act) of the director on the ground of irrelevance and frivolousness is inadmissible. In the event of non-coordination within the period set by the Regulations (from one to three working days from the moment of obtaining a draft decision) such decision (act) of the director is deemed to be coordinated. The same will take place in the case of the

deputy directors' refusal to provide approval on the grounds which are contradictory to the Regulations. Finally, the extent of contradiction of the deputy director's refusal to approve a decision (act) is established by the director.

These norms of the Regulations provided the SBI director with powers which neutralized the safeguard in the form of approval of the director's decisions by the deputy directors. The law specified that decisions in regard to the aforementioned matters could be approved by the director only upon consent of the deputy directors. Otherwise, they did not come into effect. In spite of this the Regulations set forth that the SBI director might approve decisions irrespective of objections on the side of the deputy directors.

Thus, in this part the Regulations were drawn up in the way that the director could ignore almost all cases of disagreement on the side of the deputy directors except for a few cases when a draft decision clearly violated norms of the aforementioned laws. It meant that in practice the instrument of coordinating the director's decisions as a guarantee of the SBI independence did not work. For this reason, it is difficult to answer the question about effectiveness of the mentioned model as well as the extent to which it protected the practice of performance by the SBI of its functions from external political influence.

Current situation

In the current version of the Law the director makes decisions on almost all of the aforementioned issues at his own discretion.

Only two powers stand out as exceptions: (a) approval of the structure and personnel numbers of the central office and territorial departments of the SBI; (b) determination under the legislation within the maximum numbers of the list of vacancies at the territorial departments of the SBI which are to be filled in by private and commanding personnel, maximum special ranks under these positions. The aforementioned powers are exercised by the director upon recommendations of the respective territorial departments.

The Regulations of the SBI include a norm that the director approves (makes) a respective decision (act) or rejects a recommendation of the director of a territorial body (chief of a subdivision at the central office) in the cases specified by the law.

In our opinion, this wording is rather debatable as the relevant norms of the Law do not have specific norms on exceptions which allow the director to

reject the aforementioned recommendations. Besides, the Regulations of the SBI include a rather questionable provision that in the event a chief of a territorial department fails to submit a respective recommendation the SBI director approves (makes) a respective decision (act) at his own discretion.

Thus, the Regulations of the SBI include norms which in terms of relations of the SBI director with directors of its territorial departments provide the former more powers than the Law specifies.

In the expert survey conducted by the Center for Political and Legal Reforms along with the UMDPL Association in 2017, 45.5% out of the 115 surveyed spoke in support of the single-handed decision-making by the SBI director, because, to their mind, the "collegiality" would generate unnecessary bureaucracy and conflicts. Instead, 36.4% of the surveyed were supportive of the collegial model²⁴. Thus, effectiveness of the collegial model of running the SBI in the Ukrainian context was questioned by most experts.

Allocation of duties to the SBI director and deputy directors

According to the formal answer of the SBI to the inquiry about access to public information, as of the beginning of 2020 the duties are allocated between the SBI deputy directors pursuant to Order No 16 issued by the acting SBI chief on January 21, 2020. The order is based on the previous organizational structure and in part corresponds to the SBI structure approved by the President of Ukraine long before the answer was provided.

Thus, the acting SBI director is assigned to general management and organization of the work of the SBI as well as activities of such subdivisions:

- 1) department which is in charge of pre-trial investigation of crimes committed in connection with mass protests in 2013-2014
- 2) all territorial departments
- 3) almost all subdivisions we mentioned in the block "Units of Operational Support" (except for those mentioned below)

All subdivisions in charge of pre-trial investigations (except for one subdivision mentioned above) as well as the Department of Planning and Finance Operations, Accounting and Reporting, Department of Operational Support have been placed under the command of the first deputy acting director of the SBI.

²⁴ Results of the survey «State Bureau of Investigation: Priorities for Work». - Kyiv: UMDPL Association, CPLR, 2017. - p. 3.

All operative units as well as the Special Task Department have been placed under the command of the deputy acting director of the SBI.

Recommendation:

1. **For the Verkhovna Rada of Ukraine** not to change the model of single-handed management of the SBI.

SBI structure and its maximum numbers

In accordance with the changes to the Law of December of 2019, the maximum numbers of the central office and territorial departments of the SBI have been increased from 1,500 to 1,600 people. The given increase in the maximum number of the SBI personnel can be explained by the fact that the prosecution bodies have definitively lost the function of pre-trial investigation and, accordingly, transfer of materials in proceedings regarding crimes committed in relation to mass protests in 2013-2014, which previously had been under the jurisdiction of investigators of the Prosecutor's General Office, as well as changes to the Criminal Procedure Code of Ukraine which came into effect in October of 2019, having authorized the SBI to collect information from transportation telecommunication networks. Article 9 of the Law specifies that the system of the SBI is made up of its central office, territorial departments, special units, training and research institutions. The SBI also consists of investigators, operational units, units of internal control and other subdivisions.

Today, the organizational structure of the SBI is determined by the President of Ukraine²⁵. Prior to the latest changes introduced to the law, the organizational structure was approved by the SBI chief subject to approval of the CMU. The previous organizational structure was established by decree of the CMU No 938-p dated December 13, 2017. The Presidential Decree on Approval of Organizational Structure of the State Bureau of Investigations No 41/2020 dated February 5, 2020, established a new organizational structure of the SBI. In accordance with that decree structural subdivisions of the central office can conventionally be referred to three blocks, namely Pre-Trial Investigation, Operational Units, Units of Operational Support.

²⁵ For powers of the President of Ukraine see subsections Status, functions and Mission and External Independence in this Report.

The block **Pre-Trial Investigation** consists of the Main Investigative Department and Specialized Department of Investigation of Crimes Committed in Relation to Mass Protests in 2013–2014. The previous version of the structure envisaged three departments with such competence (First Department of Pre-Trial Investigations, Second Department of Pre-Trial Investigations, Third Department of Pre-Trial Investigations). It is evident that such change in the structure is determined by the fact that the SBI deputy directors currently impose much less legislative influence on “policy” of the body²⁶. However, based on directions the three departments of pre-trial investigations were in charge of, one can predict internal division of the current Main Investigative Department into (1) unit to investigate crimes in the field of official activities and corruption; (2) unit to investigate crimes committed by the officer of law enforcement bodies and in the sphere of justice; (3) unit to investigate military crimes.

The block **Operational Units** is represented by the Main Operational Department and Main Operational and Technical Department. The structure of this block approved by the CMU included four departments. Apart from the aforementioned departments, it included the Department of Technical Developments and Department of Informational and Technical Intelligence.

The block **Units of Operational Support**. This block has not undergone any changes, except from changes in some names: Department of Internal Control (the previous version of the structure also singled out the Department of Internal Audit), Department of Personal Security (the previous version named it the Special Task Department), Department of Legal Support, Department of International Cooperation, Department of Personnel Management and Public Service, Department of Secret Work and Protection of Information, Department of Financial Operations and Accounting, Department of Operational Support, Department of Informational Technologies (named in the previous version as the Department of Information Security and Protection), Public Relations and Mass Media Department, Department of Organizational and Analytical Support, executive support service.

Thus, having compared the previous and current structures of the central office of the SBI, we would like to indicate a significant increase in subdivisions of the operational block and subdivisions of pre-trial investigation. Interestingly enough, only 15% of the surveyed SBI private corps consider the new structure worse than the previous one.

²⁶ For reasons see subsection *Principle of undivided management in combination with joint exercise of some powers of the SBI director in this Report*.

As far as the territorial departments, the decree of the President of Ukraine duplicates respective provisions of the Law:

- 1) Territorial departments in the city of L'viv jurisdiction of which covers Volyn' oblast', Transcarpathia oblast', Ivano-Frankivsk oblast', L'viv oblast', Ternopil oblast';
- 2) Territorial departments in the city of Khmelnytskyi jurisdiction of which covers Vinnytsia oblast', Zhytomyr oblast', Rivne oblast', Khmelnytskyi oblast', Chernivtsi oblast';
- 3) Territorial departments in the city of Mykolaiv jurisdiction of which covers Kirovohrad oblast', Mykolaiv oblast', Odesa oblast';
- 4) Territorial departments in the city of Mykolaiv jurisdiction of which covers the Autonomous Republic of Crimea, Zaporizhia oblast', Kherson oblast', the city of Sevastopol;
- 5) Territorial departments in the city of Poltava jurisdiction of which covers Dnipropetrovs'k oblast', Poltava oblast', Sumy oblast', Kharkiv oblast';
- 6) Territorial departments in the city of Kramatorsk jurisdiction of which covers Donetsk oblast' and Luhansk oblast';
- 7) Territorial departments in the city of Kyiv jurisdiction of which covers the city of Kyiv, Cherkasy oblast' and Chernihiv oblast'.

The number and model of the territorial departments of the SBI appear to be optimal. Though the most of the surveyed SBI investigators (almost 85%) would like to see a territorial department of the SBI in each oblast' (the most of the supervisors of pre-trial proceedings are of the same opinion). They explain such an approach by the fact that a scene of a traffic accident might often be hundreds kilometers away from their territorial department, with fuel costs exceeding planned expenditures in such situations. Apart from it, the territorial departments are often overloaded with 'petty'²⁷ military crimes²⁸.

Such a decision can be explained by the idea that the more territorial departments are created, the more SBI personnel are recruited, resulting in less workload for each officer. At the same time, to form additional territorial departments requires additional spending from the state budget. Besides, there is no substantiated evidence that the increased number of territorial

²⁷ For powers of the President of Ukraine see subsections Status, Functions and Mission and External Independence of this Report.

²⁸ For reasons see Subsection Principle of undivided management in combination with joint exercise of powers of the SBI Director in this Report.

departments is going to significantly increase effectiveness of the SBI. The other way to solve the problems of workload and remoteness of territorial departments of the SBI is to review SBI competence.

At the same time, it is worth criticizing the fact that the personnel numbers of the departments within the block Pre-Trial Investigation of the central office as well as the general personnel numbers of the territorial departments have been determined evenly without accounting for specifics of regions and a number of crimes which are referred to this or that subdivision. In other words, there is a significant imbalance in the workload of SBI investigators depending on a region and unit in which they work.

The legislative decrease in the influence of the SBI director on the process of determining the structure of the central office of the SBI must be assessed negatively. Before the CMU used to approve the structure upon recommendation of the SBI director whereas under the current version of the Law such recommendation not required.

In addition to it, today the structure of SBI formally includes the Institute of Personnel Training and Research Institute of Forensic Examination. Their creation and operation requires separate financing..

SBI personnel numbers

According to the information provided by the SBI, as of December 31, 2019, there were 826 people on the SBI staff (55% from the total personnel of 1,500 people), including separate categories of the personnel:

- chiefs of investigative units and investigators: under the staffing table – 539, in fact – 441 (82%)
- operational officers: under the staffing table – 522, in fact – 44 (8%)
- public officials: under the staffing table – 338, in fact – 250 (75%)
- other personnel: under the staffing table – 101, in fact – 91 (86%).

Personnel numbers of the SBI by categories of personnel

(private and commanding personnel, public officials and other personnel)

as of December 31,2019, number of persons

| No | Name of category Name of category | Number | |
|----|-----------------------------------|----------------------|---------|
| | | Under staffing table | In fact |
| 1. | Total numbers | 1 500 | 826 |

| | | | |
|---------------|---|------------|------------|
| | private and commanding personnel | 518 | 31 |
| | public officials | 881 | 704 |
| | other personnel | 101 | 91 |
| 1.1. | Central office | 643 | 235 |
| | private and commanding personnel | 338 | 31 |
| | public officials | 305 | 204 |
| 1.2. | Territorial departments | 756 | 500 |
| | private and commanding personnel | 180 | – |
| | public officials | 576 | 500 |
| 1.2.1. | Territorial Department of the State Bureau of Investigations in the city of Kyiv | 110 | 81 |
| | private and commanding personnel | 25 | – |
| | public officials | 85 | 81 |
| 1.2.2. | Territorial Department of the State Bureau of Investigations in the city of Kramatorsk | 108 | 65 |
| | private and commanding personnel | 26 | – |
| | public officials | 82 | 65 |
| 1.2.3. | Territorial Department of the State Bureau of Investigations in the city of Mykolaiv | 108 | 72 |
| | private and commanding personnel | 26 | – |
| | public officials | 82 | 72 |
| 1.2.4. | Territorial Department of the State Bureau of Investigations in the city of L'viv | 108 | 69 |
| | private and commanding personnel | 26 | – |
| | public officials | 82 | 69 |
| 1.2.5. | Territorial Department of the State Bureau of Investigations in the city of Melitopol' | 106 | 68 |
| | private and commanding personnel | 26 | – |
| | public officials | 80 | 68 |
| 1.2.6. | Territorial Department of the State Bureau of Investigations in the city of Mykolaiv | 109 | 74 |
| | private and commanding personnel | 26 | – |
| | public officials | 83 | 74 |
| 1.2.7. | Territorial Department of the State Bureau of Investigations in the city of Khmelnytskyi | 107 | 71 |
| | private and commanding personnel | 25 | – |
| | public officials | 82 | 71 |

The surveyed SBI investigators are supportive of the idea to increase the number of investigators and operational officers, with the increase of the total number, in their opinion, being, accordingly, from 30% to 50%. Let

us remind that the survey was conducted in the conditions when, firstly, the staffing levels were 55% from the previous number established by the law (1,500 officers). Secondly, as of January 2020, the number of the SBI officers had been increased by 100 persons, which was mentioned at the beginning of this subsection.

It is indicative that more than 55% of the surveyed admitted that the numbers of the administrative personnel (public officials responsible for document flow, logistical support, etc.) are enough. As of the date of the survey, vacancies of the administrative personnel were filled up to 75%. Therefore, the leadership of the SBI has to study the issue of possible downsizing of the numbers of the administrative personnel in order to increase the number of vacancies of investigators and operational officers on staff. Along with this, there is no need for legislative changes of the total number of the SBI personnel.

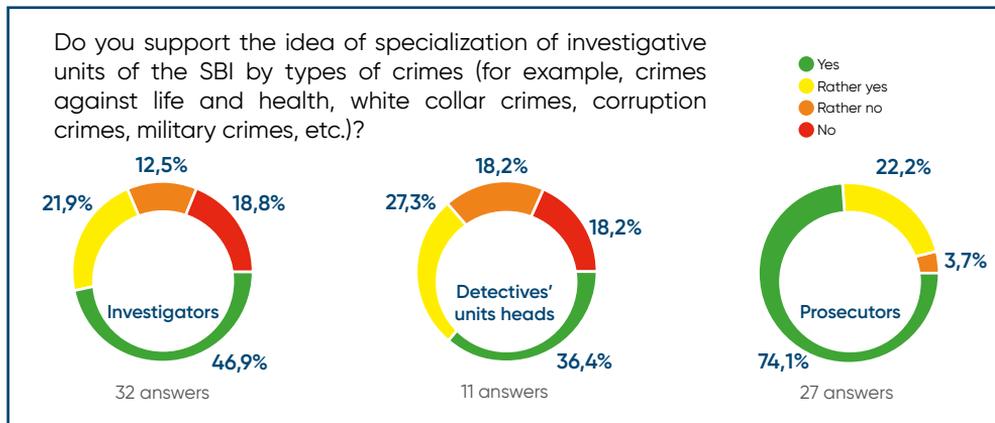
Recommendations:

1. **For the Verkhovna Rada** to consider delegating a part of its competence (downsizing its competence) to SBI in terms of "petty" military crimes to the National Police.
2. **For the Verkhovna Rada of Ukraine** to regulate the status of the Institute of the SBI personnel training in more detail, in particular to clearly indicate the role of this Institute in the system of regular further training of the SBI personnel, outline functions of this institutions, legal status of its faculty, make clear that the legislation on education does not apply to this institution.
3. **For the State Bureau of Investigations** to consider and study the possibility of transferring a part of its competence (downsizing its competence) in regard to car accidents caused by persons under investigation of the SBI to the National Police.
4. **For the State Bureau of Investigations** to initiate the reviewing of its structure and personnel numbers at the territorial departments and units (the central office in particular) so that they complied with the regional peculiarities and real work load of a certain activity or respective unit.
5. **For the State Bureau of Investigations** to consider increasing the number of positions and operational personnel at the cost of decreasing the number of public officials who are in charge of documents exchange, logistical support, etc.

Specialization of investigative units and investigators

The current structure of the SBI is approved by Decree of the President of Ukraine No 41/2020 dated February 5, 2020. Under the decree the subdivisions of the SBI which perform the main functions of the body are divided into investigative (Main Investigative Department) and operational (Main Operational Department, and Main Operational and Technical Department). The structure of the operational divisions of the Main Operational Department reflects the structure of subdivisions of the Main Investigative Department. Besides, there is a separate unit investigating crimes committed in relation to the mass protests in 2013–2014 (an independent structural division of the central office of the SBI).

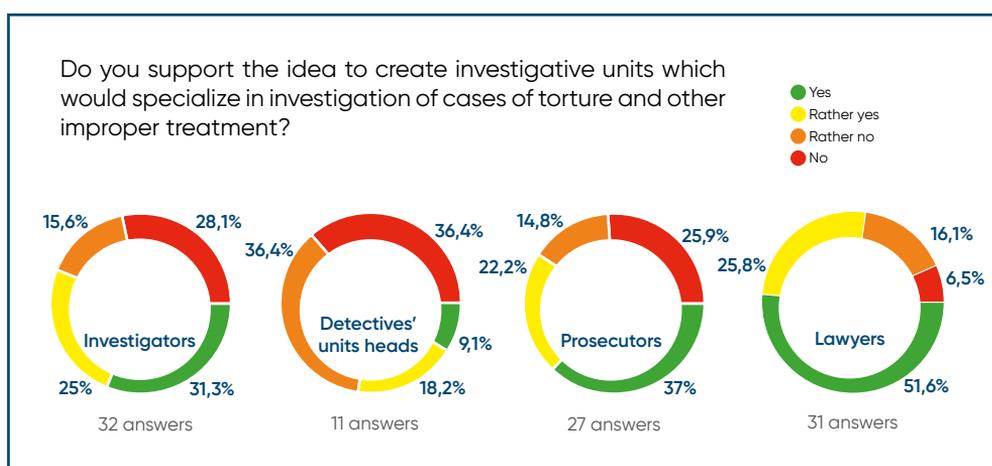
The internal division of the Main Investigative Department follows the division into three “universal” units as determined by Decree of the SBI No 1 dated December 21, 2017²⁹: (1) department to investigate criminal offences committed by public officials; (2) department to investigate criminal offences committed by law enforcement officers and judges; (3) department to investigate criminal offences committed by military servicemen. Also, there is also the department of organization of pre-trial investigations functioning within the structure of the Main Investigative Department. At the same time, the most of the surveyed chiefs of investigative units and most of the surveyed investigators support the idea of specialization of subdivisions by different types of crimes.



²⁹ Operational subdivisions at the SBI central office include: (1) subdivisions of support of operational units of pre-trial investigation; (2) subdivisions of support, operational and technical measures; (3) subdivisions of operational developments. Operational subdivisions at the SBI territorial departments include: (1) subdivisions of support of operational units of pre-trial investigation; (2) subdivisions of intelligence and information analysis. The area of investigation at the central office of the SBI and its territorial departments were divided into three subdivisions: (1) subdivision of investigation of white collar and corruption crimes; (2) subdivision of crimes committed by law enforcement officer and in the sphere of justice; (3) subdivision of investigation of military crimes.

Along with this, a little more than a half of the surveyed investigators and less part of chiefs of investigative units of the SBI support the idea to create investigative units which would specialize in investigation of cases of torture or other improper treatment³⁰. According to investigators and chiefs of investigative units, formation of such a unit is misappropriate in view of a relatively small number of proceedings within this category.

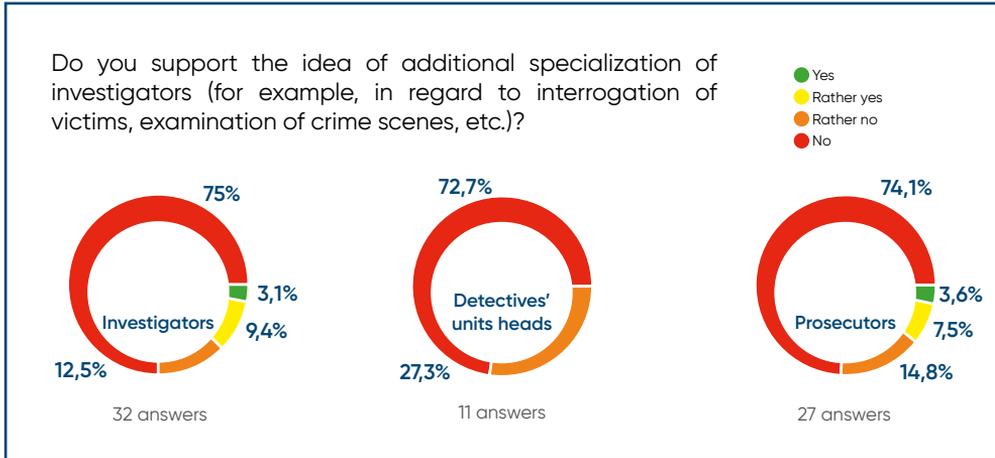
Of opposite opinion are the surveyed prosecutors and defence lawyers: the most of the former and absolute majority of the latter support the idea to establish SBI investigative units which would specialize in investigation of cases of torture and other improper treatment.



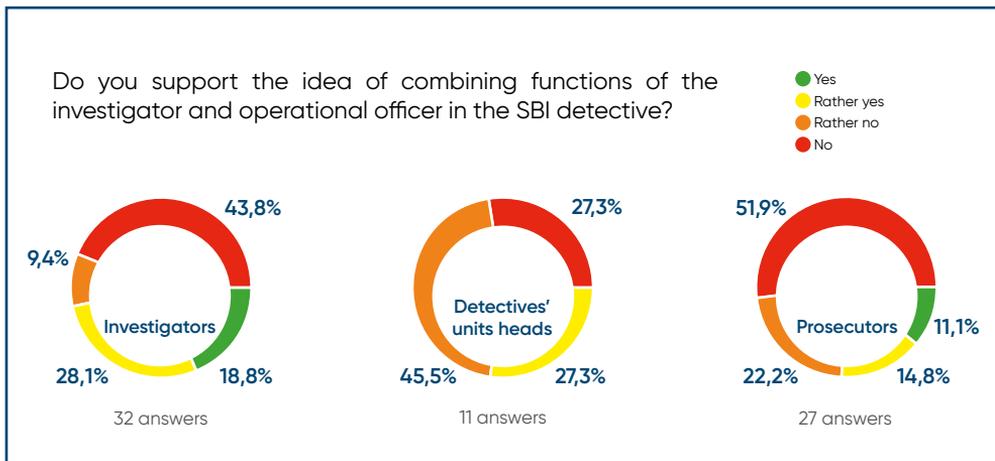
It is worth noting that SBI and other subdivisions of the prosecution bodies which provide procedural guidance in cases of the SBI also don't support the idea of additional specialization of investigators, for example, in interrogating victims, searching, examining crime scenes, etc.

Apart from it, as it was noted at the SBI, such an approach to specialization of investigators has not been introduced since it is not envisaged by the current legislation.

³⁰ As it has already been mentioned, the Strategic Program for 2017–2022 prioritizes crimes relating to violation of human rights in the work of law enforcement bodies. Under the explanatory note to draft law No 2114 dated February 2015, which later became a law, and its initial version, the main tasks of the SBI included prevention and investigation of cases of torture and crimes related to other cruel, inhumane or degrading treatment of punishment committed by law enforcement officers.



Combination of functions of the investigator and operational officer is not supported either: it is backed by less than a half of the surveyed investigators and third part of the chiefs of investigative units. Of analogous opinion is the bulk of the supervisors of pre-trial investigations.



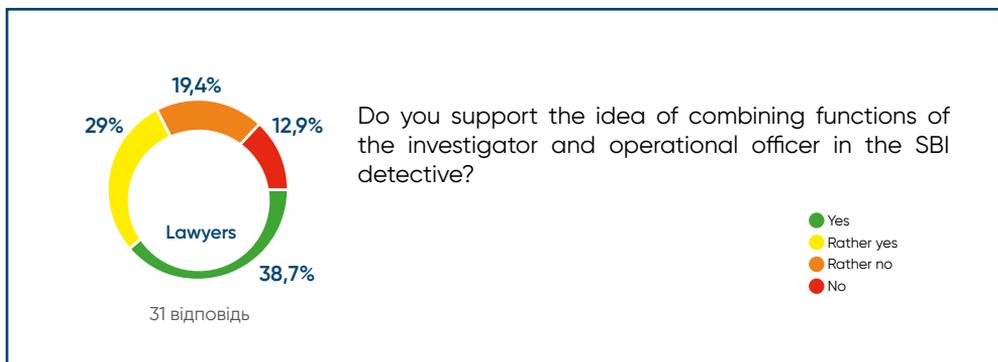
Communication with investigators and chiefs of investigative units has proved the initial impression that the SBI personnel lack understanding that specialization may have a wide range of forms and combinations of forms. One can also assume that the SBI officers don't consider the role of the investigator and operational officer as a certain form of specialization of the officer of a pre-trial investigation body.

The institute of detectives exists in the Scandinavian countries, Germany, USA and other sustainable democracies. They differ in the scope of their powers, models of cooperation with prosecutions bodies, etc. Along with it,

the fact of one official searching for and collecting evidence is common for all of them. The institute of detectives also is designed to solve the national problem of cooperation between investigators and operational officers. The problem lies in the systematic conflict – different understanding of the scope of work and role in investigation of a specific criminal investigation as well as different subordination, different work priorities, etc.

As of today, NABU is the only law enforcement body which has detectives within its structure. Its detectives carry out operational work, collect evidence and draft all procedural documents. In 2017-2020 the National Police was conducting an experiment of introducing detectives into its work, though it is not known of any results of such an experiment.

It is worth emphasizing that the idea to combine functions of the investigators and operational workers was supported by the majority of the surveyed defense lawyers.



Recommendations:

1. **For the State Bureau of Investigations** to initiate the reviewing of its structure and set up specialized subdivisions (by types of crimes), particularly units which would specialize in investigating acts of torture or other improper treatment.
2. **For the State Bureau of Investigations** to get familiar with the experience of the functioning of detective units at the national bodies of pre-trial investigation (NABU and the National Police).
3. **For the State Bureau of Investigations** to learn from the international experience which relates to the issue of additional specialization of investigators in interrogating victims, searches, examination of crime scenes, etc.

Selection of investigators and operational officers

Vacancies at the SBI except for the position of the SBI director, chief of the Unit of Internal Control at the central office of the SBI and chiefs of units of internal control of territorial departments of the SBI are filled by results of open competitions which are held by selection committees holding competitions to fill vacancies of the SBI personnel.

Accordingly, to recruit investigators and operational officers the SBI held a number of competitions in 2018–2019. **As of December 31, 2019, 819 vacancies were filled, with 681 positions remaining vacant.**

Investigators

395 investigators are currently working for the SBI (116 investigators are working at the central office of the SBI; 279 investigators are working at its territorial departments).

At the same time, in opinion of leading personnel at different levels, the SBI is lacking investigators (72.7% of the surveyed think there are not enough investigators; 18.2% of the surveyed think that their number is rather insufficient). However, all respondents agree that there must be more vacancies of investigators, should the personnel numbers of the SBI be increased.

According to the survey, the SBI investigators think that there are not enough of them in this body or pre-trial investigation (87.5% think that there are not enough of them; 12.5% think that their number is rather insufficient).

Operational officers

As of October 1, 2020, the staffing level of the special task units, operational and technical units, and operational units is 69.4%, in particular:

- special operations – 86.7%
- operational units – 69.7% (Main Operational Department – 63.5%; Department of Internal Control – 100%; Department of Personal Security – 84.9%)
- operational and technical – 51.8%.

It is worth noting that the law adopted in 2015 has a number of flaws, in particular in the part of legislative regulation of the work of operational officers, which remained unsolved for a long time.

The position of the SBI investigator has been attached the official salary in the amount of 20 minimum wages specified by the Law on State Budget for a respective year, whereas the position of the operational officer was not attached any official salary. Therefore, the operational officer was supposed to receive remuneration at the level of the public official, though without bonus payments which constituted the lion's share of his salary.

In fact, for this reason competitions to fill vacancies of operational officers were not issued until legislative changes were introduced in May of 2019. Prior to this, the SBI repeatedly stressed that such changes were needed³¹, with competitions held only to fill positions of investigators.

Eventually, the changes introduced by the law No 2720-VIII dated May 16 modified the procedure under which cash benefits of the SBI personnel were formed, introduced a new position of criminal investigator and established the same amount of official salary for them. Such a step of the lawmaker unblocked the possibility to hold competitions to fill vacancies of criminal investigators at the SBI.

Also, a subdivision of non-covert staff officers, having a special encrypt, was created within the SBI structure. As of today, a chief of this unit has been appointed and work in connection with preparation of respective regulations with the aim of keeping personal data of the personnel in secret, creating cover stories before infiltration, setting work priorities, threats and embedded objects was launched. The aforementioned subdivision is currently in the process of being formed.

Changes introduced to the procedure to hold competitions

On December 27, 2019, the Law of Ukraine 305-IX on Introduction of Changes to Some Laws of Ukraine in Regard to Improvement of Activities of the State Bureau of Investigations dated December 3, 2019, came into force. In particular, the SBI acquired the status of a state law-enforcement body, the principle of single management in the exercise of powers of the SBI was determined, and changes to Article 14 of the Law were introduced.

In accordance with the new version of part 3 of Article 14 of the Law, a Template Provision on the Competition Committee and Rules for Holding Open Competition are approved by the SBI director.

³¹ State Bureau of Investigations. Report (December – March of 2018), p. 11 // Урядовий портал: <https://dbr.gov.ua/report/zvit-pro-dialnist-gruden-2017-berezen-2018>

In connection with this, under Orders of the SBI No 347 and No 349 dated December 28, 2019, Order of the SBI on Approval of Procedure to Hold Competition to Fill Vacancies at the State Bureau of Investigations No 13 dated February 14, 2018, and Order on Approval of the Provision of the Competition Committee to Hold Competition to Fill Vacancies at the State Bureau of Investigations No 177 dated July 26, 2019, have lost their effect.

Order of the SBI No 22 dated January 24, 2020, approved a new Procedure under which open competitions to fill in vacancies of the SBI personnel are held. In accordance with Section X of the transitional provisions of the Procedure, competitions which are underway while the Procedure is approved are completed under its rules. Candidates who have passed the qualification and interview undergo psychophysiological detection of deception and interview with the newly-created competition committee according to a separate schedule.

Timeline to hold competitions to fill vacancies at the SBI

During 2018 competitions to fill 804 vacancies (219 vacancies at the central office, 455 vacancies at the territorial departments, 130 vacancies at the territorial departments which were filled by March of 2019) were held.

During 2019 competitions to fill 666 vacancies (306 vacancies at the central office, 360 vacancies at the territorial departments), which were participated by 5,445 persons overall, were held. 275 participants were selected and awarded contracts (filling 85 vacancies at the central office and 191 vacancies at the territorial departments).

In general, 368 persons were appointed to the SBI in 2019 (114 people were assigned to the central office and 254 people were assigned to the territorial departments).

In March of 2018 a competition was announced to fill 152 vacancies for investigators at the central office of the SBI, which was over in August of that year. As a result of the competition, 120 investigators were selected (Competition Committee No 1).

In April of 2018 a competition was announced to fill 231 vacancies for investigators at seven territorial departments of the SBI which was over in October of that year. As a result of the competition, 212 investigators were selected (Competition Committee No 2).

In October of 2018 the SBI announced a competition to fill 39 vacancies for investigators which was over in March of 2019. Following the competition,

7 investigators were selected (Competition Committee No 1). In October – November of 2018 a competition was announced to fill 35 vacancies for investigators at seven territorial departments of the SBI, which was over in February of 2019. Following the competition, 33 investigators were selected (Competition Committee No 2).

In February of 2019 competitions were announced to fill 92 vacancies for investigators at the central office and territorial departments of the SBI, which were over in August of 2019. Following the competitions, 65 investigators were selected (Internal Competition Committee).

In August of 2019 competitions were announced to fill 53 vacancies for investigators at the central office and territorial departments of the SBI, which were over in November of 2019. Following the competitions, 30 investigators were selected (Internal Competition Committee).

In September of 2019 closed competitions were announced to fill 422 vacancies at the SBI in regard to intelligence operations and official secrets in operational units. Following all stages of the competitions, 31 people were appointed to different positions at the Special Task Department.

To bring up the State Bureau of Investigations and its territorial departments to strength during 2020 a competition was organized and held to fill vacancies, in particular:

- 14 competition committees were set up and provided organizational and technical support
- 38 competitions were announced to fill 640 vacancies, in particular one of the biggest competitions to fill 397 positions simultaneously (in particular to fill 300 positions at operational units), which was announced on May 15 of 2020.

Following the results of the competitions held in 2020, 444 persons were recruited, among whom 323 represented the private and commanding personnel, 121 were public officials, in particular:

- 392 persons were recruited to the central office of the SBI, among whom 303 persons were private and commanding personnel, 89 were public officials.
- 52 persons were recruited to territorial departments of the State Bureau of Investigations, among whom 20 persons were private and commanding personnel, and 32 were public officials.

Competitive selection is held regularly, with at least 5 competitions having been planned at the central office. A number of regular events and

competitions have been planned to fill vacancies at the new structural subdivisions.

As of October 1, 2020, the number of vacancies at the State Bureau of Investigations is 497 out of which:

SBI central office – 202 positions, including:

- leadership – 1
- Main Investigative Department – 18
- Main Operational Department – 70
- Main Operational and Technical Department – 67
- Department of Investigation of Crimes Committed in Relation to Mass Protests in 2013-2014 – 5
- Department of Personal Security – 8
- Department of Legal Support – 2
- Department of International Cooperation – 1
- Department of Personnel Management and Public Service – 5
- Department of Secret Work and Protection of Information – 6
- Department of Financial Operations and Accounting – 2
- Department of Operational Support – 1
- Department of Informational Technologies – 8
- Public Relations and Media Department – 3
- Department of Organizational and Analytical Support – 3
- Executive Support Service – 2;

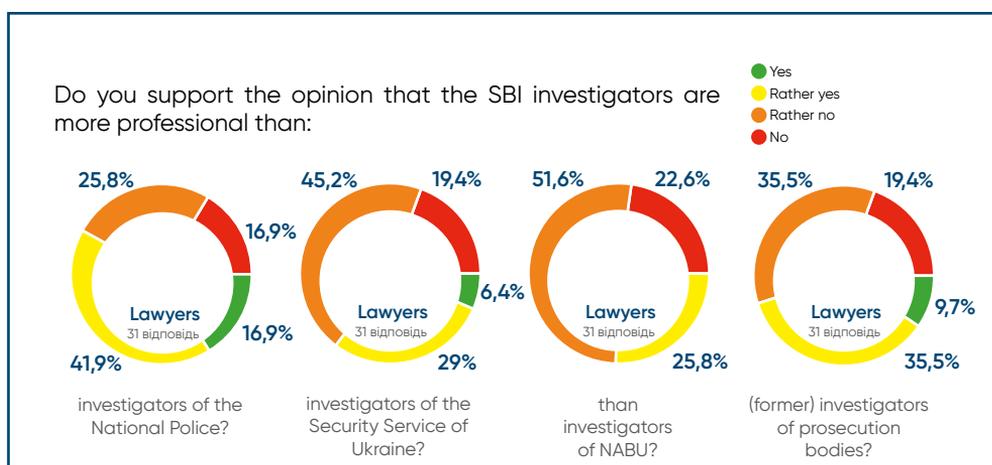
SBI territorial department – 295, among which:

- Territorial department in the city of Kyiv – 42 (operational officers – 25, investigators – 1)
- Territorial department in the city of Mykolaiv – 43 (operational officers – 25, investigators – 6)
- Territorial department in the city of L'viv – 42 (operational officers – 25, investigators – 6)
- Territorial department in the city of Poltava – 38 (operational officers – 25, investigators – 1)
- Territorial department in the city of Melitopol – 43 (operational officers – 25, investigators – 7)
- Territorial department in the city of Mykolaiv – 41 (operational officers – 26, investigators – 5)
- Territorial department in the city of Kramatorsk – 46 (operational officers – 26, investigators – 2).

Staffing is planned to have been completed by February of 2021.

In view of the limited number of research tools, the monitoring of quality (transparency) of competitions to fill vacancies at the State Bureau of Investigations has not been done.

It is worth noting that according to the majority of the surveyed defence lawyers the SBI investigators perform their work more professionally than investigators of the National Police, but, at the same time, less professionally than SSU investigators, NABU investigators and even (former) investigators of the prosecutions bodies.



Recommendation:

1. **For the State Bureau of Investigations** to finish the competitions to fill vacancies of investigators and operational officers as soon as possible to ensure effective functioning of the SBI.

Analysis of educational needs of investigators and their training

According to the SBI, in the period from the beginning of its work and until December of 2020 more than 150 trainings have been held for investigators of the central office and territorial departments. As one may conclude from the provided information, the absolute majority of such events were held not upon initiative of the SBI, with around half of the events initiated by the SBI dealing with public service³².

³² The inquiry was about the SBI investigators only, though it implied the educational component of the whole institution.

The bulk of the surveyed investigators and the absolute majority of the surveyed chiefs of investigative units admitted having attended trainings held for the SBI personnel and/or SBI personnel plus personnel of other law enforcement bodies/prosecutors *two, three or even more times*.



Two categories of entities – public bodies/institutions and international missions/ presentations – are operators of training events for the SBI investigators. The list of themes is rather wide and diverse, though it can be divided into three groups: (1) search for and work with evidence, sources of evidence; (2) methodology of investigation and interaction in the process of investigating different categories of crimes; (3) procedural aspects of investigation and proof (legal issues).

The bulk of the surveyed investigators and chiefs of investigative units admitted that they assessed the trainings held for the SBI personnel and/or SBI personnel plus personnel of other law enforcement bodies/prosecutors which they had attended rather positively.



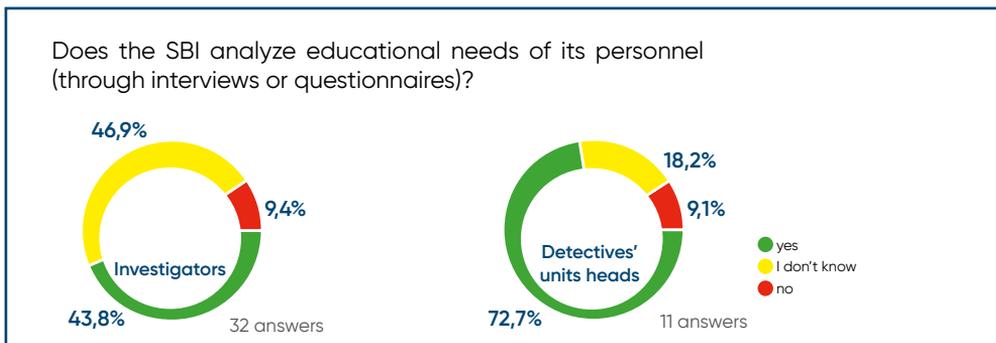
The main criteria to determine educational and training needs of the investigator is an individual program to raise the level of professional competence of the public official which is elaborated upon assessment of his performance. Along with this, educational needs are met upon generalization of such individual programs. In other words, educational needs of the SBI investigators are outlined by their chiefs and personnel service.

According to the SBI, the personnel service annually analyzed educational needs of investigators. The last results of such an analysis confirm the needs to engage international experts into the process of further training of the SBI investigators, detailed study of the practice of The European Court of Human Rights, specialized trainings in effective investigation of crimes in regard to violations of human rights in the work of law enforcement bodies (characterized with torture and violence).

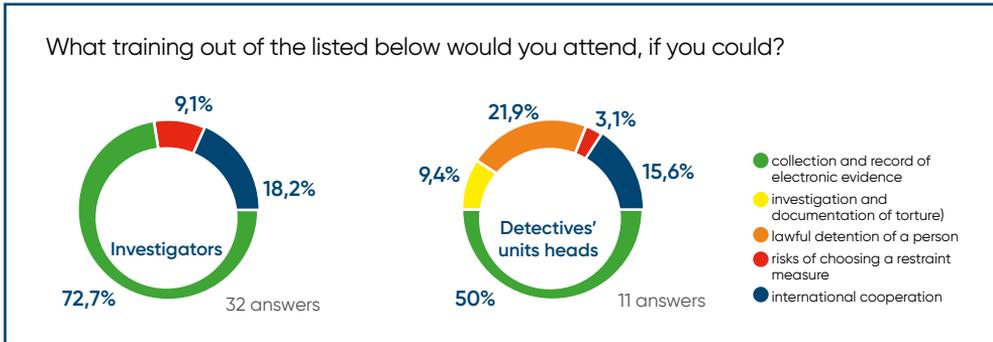
At the same time, the results of the survey held within the research contradict the aforementioned.

First, the most of the surveyed investigators indicated that they were not sure whether educational needs of the SBI personnel were analyzed (through interviews or questionnaires). This information was confirmed during interviews with investigators and chiefs of investigative units of the SBI.

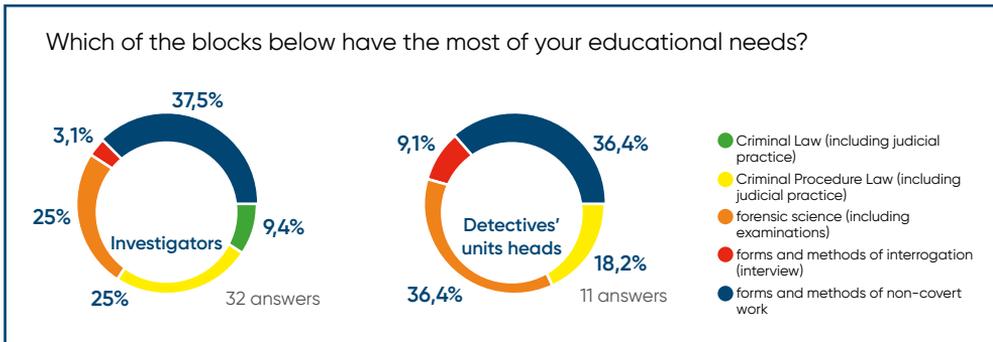
In fact, the most of the surveyed chiefs of investigative units indicated in the questionnaires that the analysis of educational needs was actually made at the SBI. While being interviewed, a chief of one of the investigative units admitted having provided at request of the senior officers a list of areas to hold trainings in. However, it had led to no consequences.



Second, none of the surveyed chiefs of the investigative units and less than 10% of the surveyed SBI investigators were willing to attend an educational event on Investigation and Documentation of Torture.



Third, the absolute majority of the surveyed chiefs of investigative units and most of the SBI investigators are not interested in trainings in legal aspects of their work (criminal law and criminal procedure). Instead, they are more interested in the so called "instrumental" aspects.



Finally, only few of the surveyed chiefs of investigative units and minority of investigators consider foreign experts to be desired coaches at training events.



The last diagrams look rather paradoxical, as, on the one hand, chief of investigative units and SBI investigators have educational needs in

“instrumental” aspects of their work, and, on the other hand, the judge or, in other words, expert in legal issues is the most desired coach for the latter.

While interviewed, investigators and chiefs of investigative units admitted that trainings, in particular, would take the operational practice of the SBI on the same page, as every investigator performs virtually basic operations (conducts search, interrogations, etc.), documenting their progress and results at his own discretion. In addition to it, the lion's share of trainings has to be practice-oriented (“instrumental”), held in the format of case-study. Currently, trainings are held in the format of lectures. As far as the so called soft skills, in their opinion, there are not enough trainings in crisis communication, crises management and approaches to reinforce stress resilience.

As of today, the SBI is using the system of further personnel training developed by the National university “Odesa Law Academy” with the help of the Main Investigative Department of the SBI within the project of international technical assistance of the European Union “Support of Reforms to Develop the Supremacy of Law in Ukraine”. 60 investigators of the central office and territorial departments of the SBI underwent further training in consistence with the elaborated further training program.

The SBI also informed that in January of 2020 creation of a new modern SBI educational platform in the form of a personalized educational environment with a wide range of functions (courses, curricular materials, further training programs, performance of assignments, discussion forums, assessment, exchange of messages, etc. integrated in the system) was launched.

We welcome such an initiative, but note that in view of the aforementioned the content of the “platform” has to be based on reliably collected and verified information about educational needs of the SBI personnel. It is not only about surveying the very personnel and analysis of proposals offered by operators of the services. The important component of the mass of information has to include analysis of both typical and untypical mistakes made by officers in their work as well as analysis of likely practical challenges which the SBI as an institution and its personnel, in particular, may face.

Recommendations:

- 1. For the State Bureau of Investigations** to develop and implement an effective system of studying educational needs of the SBI personnel.

- 2. For the State Bureau of Investigations** to develop and implement a system to support and reinforce knowledge, skills and habits of SBI officers which would be based upon needs of the SBI (as an institution), first and foremost, in the functional dimension and compliant with requests of the SBI personnel.

Disciplinary liability and internal control

Disciplinary liability

Apart from with control over subordinates by their chiefs, the main mechanism of internal control over activities of the SBI personnel is holding them liable for internal violations.

The Disciplinary Regulations of the National Police apply to the private and commanding personnel accounting for peculiarities specified by the specialized law. The SBI public officials are held disciplinarily liable in accordance with the Law of Ukraine on Public Service accounting for peculiarities specified by the law. Contracted SBI officers are held liable in accordance with the Labor Code of Ukraine.

Thus, elements of disciplinary offences are specified by the Law of Ukraine on Disciplinary Status of the National Police of Ukraine, Law on Public Service, and Code of Laws of Ukraine on Labor.

The changes introduced by the law No 305-IX dated December 3, 2019, supplemented the Law with a list of grounds in which the SBI officer is held disciplinarily liable. These grounds include:

- 1) non-performance or improper performance of duties
- 2) unlawful disclosure of information with limited access which became known to an officer in connection with him exercising his powers
- 3) abuse of power provided that such an abuse does not include elements of a crime or administrative offence
- 4) public statement which violates the presumption of innocence
- 5) negative results of good faith tests or the monitoring of the officer's way of life
- 6) violation of rules of professional conduct
- 7) use of powers in personal (private) interests or unlawful personal interests of other persons
- 8) other grounds specified by the Law of Ukraine on Public Service for the SBI officers who are public officials, Disciplinary Regulations of the

National Police for the SBI private and commanding personnel, and Labor Code of Ukraine.

These changes are important because the Law did not include any list of the kind before. In other words, the SBI personnel were not subject to disciplinary liability at all. While interviewed, investigators and chiefs of investigative units informed that in that period (prior to introduction of the disciplinary liability) the SBI leadership took a number of administrative measures to discipline their personnel of whom complaints had been received, starting with non-award of bonuses to increase of workload or ending vacation.

Internal investigations into independently discovered facts as well as complaints against the SBI personnel are conducted by a unit of internal control (Department of Internal Control) which went ahead with its work from the moment its chief was appointed i.e. from the middle of December of 2018. Internal investigations are held under the procedure established by the *Regulations for Holding Internal Investigations in Regard to SBI Personnel* approved by Order of the SBI No 9 dated 2020.

This procedure mostly replicates the procedure prescribed by the Law of Ukraine on Disciplinary Charter of the National Police of Ukraine. At the same time, one of its key provisions – the right of the policeman to resort to legal assistance (to have a lawyer / defense lawyer) – is not guaranteed to the SBI officer among the rights of a person in regard to whom an investigation is conducted (Section 690 of the Regulations). Though in comparison with the previous Disciplinary Charter of internal affairs bodies of Ukraine, which was in effect until 2018, and implementation of the direct requirement of the Declaration on Police No 690 (1979) approved by the Resolution of the Council of Europe the enshrinement of such a right became a significant progress.

In order to consider imposition of disciplinary sanctions on the SBI personnel, the Disciplinary Committee made of five persons three of whom (majority) are selected by the CCC at the SBI (Article 25 of the Law) is established.

The composition and provisions on the Disciplinary Committee at the SBI are approved by the SBI chief. As of today, such regulatory act has not been adopted.

The Disciplinary Committee, based on results of an internal investigation conducted by internal control officers, draws up a conclusion on presence of a disciplinary offence in activities of an SBI officer and grounds to hold him or her disciplinarily liable, with a recommended disciplinary sanction specified.

Based on a decision of the Disciplinary Committee, an officer of the main SBI office is imposed a penalty by the SBI director, and an officer of a territorial department is imposed a penalty by the director of a respective territorial department.

Accounting for the changes introduced by the law No 305-IX dated December 3, 2019, a decision of the director of any territorial SBI department to impose a disciplinary sanction may be challenged with the SBI director or directly with a court. A decision of the SBI director to impose a disciplinary liability may be appealed directly with a court.

In fact, the Disciplinary Committee has not been established yet. In the opinion of the SBI, it can be explained by the fact that under part 1 of Article 25 of the Law, such a committee is made up of five persons three of whom are selected by the CCC at the SBI, with activities of the CCC, in turn, being temporarily blocked.

Along with it, though the first composition of the CCC at the SBI selected in 2018 and approved by Order of the SBI director No 54 dated April 2018 delegated its three representative (Natalia Mamchenko, Yaroslav Romanenko and Oleksander Vol'vak) to the Disciplinary Committee on May 17 of the same year³³, no further actions on the side of the SBI director followed.

The-then SBI director, Roman Truba, repeatedly explained his position that in order to carry out its activities the Disciplinary Committee needed a respective provision on its activities. It is drafted on the basis of the Template Provision of the CMU which is currently missing and may not be approved without which the provision of the Disciplinary Committee, which, in turn, is the main warning on the side of the SBI director against commission of such acts³⁴. Such a position is predetermined by the-then current version of part 1 of Article 25 of the Law under which the composition and provisions on the Disciplinary Committee of the SBI are approved by the SBI director on the basis of the Template provision on the Disciplinary Committee of the central office of the executive power approved by the CMU.

³³ Minutes No 1 dated May 17 of 2019 року // Minutes of CCC at SBI: <https://dbr.gov.ua/sites/default/files/2018-06/Protokol%201.pdf>

³⁴ Why Does Not SBI Form the Disciplinary Committee // Судово-юридична газета, 6 лютого 2019 року; <https://sud.ua/ru/news/publication/134808-chomu-dbr-ne-stvoryuye-distsiplinarnu-komisiyu>

Resulting from such a policy of the SBI director in regions, initiatives to create a disciplinary committee on the basis of a territorial department under provisions of the Law of Ukraine on Public Service emerged. However, nothing is known of results of their activities.

Members of the CCC addressed the CMU on elaboration of the Template provision on the Disciplinary Committee of a central executive body the SBI director constantly referred to. The Cabinet of Ministers of Ukraine forwarded the petition to the National Agency of Ukraine on Public Service (hereinafter referred to as the National Agency). The National Agency, in turn, answered the applicants (letter No 743/20-19 dated February 12 of 2019) that elaboration of such a template provision is inappropriate as it may lead to replication of the norms already enshrined in the Law of Ukraine on Public Service and, in opinion of the CCC, there were no impediments for approval of the provision by the SBI director³⁵. However, such a conclusion of the National Agency did not have any influence on approval of a composition of the Disciplinary Committee including the members delegated from the CCC at the SBI.

Eventually, the changes introduced by the law No 2720-VIII dated May 16, 2019, approval of the provision on the Disciplinary Committee was referred solely to the competence of the SBI director. However, given the renewed composition of the CCC and injunction prohibiting to hold elections to the CCC at the SBI, which "blocked" the work of the CCC during almost all 2019, the situation has not changed.

Thus, SBI personnel have not been held disciplinarily liable as it is the Disciplinary Committee that decides whether a SBI officer has committed a disciplinary offence and whether there are grounds to hold him or her disciplinarily liable.

At the same time, according to the Report on activities of the SBI in 2019, two officers were dismissed in the reporting period after information of their involvement into commission of offences was verified. It is not known whether it happened because the court judgment under which they were convicted for a corruption offence entered in force.

It is likely that they were held undisciplinarily liable. For example, on September 10, 2020, an authorized representative of the National Agency for Prevention of Corruption (hereinafter referred to as the NAPC) drew

³⁵ Para 2 of Minutes No 7 of the meeting of the CCC at the SBI on February 27 of 2019: <https://dbr.gov.ua/sites/default/files/2019-03/%D0%9F%D0%A0%D0%9E%D0%A2%D0%9E%D0%9A%D0%9E%D0%9B%20%D0%A0%D0%93%D0%9A.pdf>

up a report into violation by an investigator of requirements of financial control (Article 172-6 of the Code of Ukraine on Administrative Offences). In connection with the fact that the investigator repeatedly evaded showing up at the NAPC to provide some explanations the report was served on him by the Department of Internal Control of the SBI. Thus, the SBI informed³⁶ that the investigator was held liable (such cases are likely to be reported on).

Internal control

Mechanisms of internal control are envisaged in tasks and functional duties of the unit of internal control, which operates within the structure of the State Bureau of Investigations.

For example, the Department of Internal Control (hereinafter referred to as the DIC) takes measures in terms of its operation, financial control, fact-checking of information in regard to involvement of the SBI personnel in commission of offences, in particular by conducting internal investigations, psycho-physiological detection of deception, the monitoring of way of life and testing for good faith.

The subdivision is working on improvement of results of activities of the State Bureau of Investigations. Therefore,

- Regulations on Procedure for Internal Investigations into Activities of the SBI personnel have been approved
- Provisions on Department of Internal Control (accounting for recommendations of the National Agency for Prevention of Corruption) have been approved
- list of positions at the State Bureau of Investigations the occupying of which has to do with state secrets in connection with direct operational and search activities has been approved and units responsible for acceptance of written declarations have been determined
- by-laws of the SBI regulating the work with information received from exposers about alleged corruption offences or wrongdoings related to corruption have been drafted
- procedure under which a way of life of the SBI personnel is monitored has been elaborated

³⁶ SBI investigator held liable for untimely submission of declaration // SBI web site: https://dbr.gov.ua/news/slidchogo-dbr-prityagnuto-do-vidpovidalnosti-za-nesvoechasne-podannya-deklaracii?fbclid=IwAR2-u07GIfkNYhXutZ0X93dReTEZ0Y_48rQZ1rw16majUjs0hXtWYP403kk

- main provisions of the draft Rules of Moral Conduct for personal of the State Bureau of Investigations to be forwarded to the Council of Civil Control on the day following approval of its composition under a relevant procedure have been drafted.

In 2020 the DIC advised the SBI personnel on electronic declarations.

In February of 2020, the DIC organized a seminar (training) for the SBI personnel on issues related to declaration of property, income, expenditures and financial obligations, with the NAPC representatives attending. The subdivision also prepared a reminder about the informing chairs and members of competition committees by a member of the competition committee holding a competition to fill vacancies at the SBI of a conflict of interest.

According to the SBI, the DIC has the following results:

1. 10 materials have been identified and forwarded to the National Agency for Prevention of Corruption for drawing up reports on the SBI personnel whose acts allegedly violated the Law of Ukraine on Prevention of Corruption and contained elements of administrative offences (article 172-6 of the Code of Ukraine on Administrative Offences) within the financial control and measures taken to expose corruption offences and offences related to corruption.

Based on results of their consideration by the National Agency for Prevention of Corruption and Department of Strategic Investigations of the National Police of Ukraine, 3 reports on administrative offences relating to corruption of former SBI officers have been drawn up and sent to the court.

2. In the period from January of 2020 the DIC has initiated and conducted 30 internal investigations (5 are still underway) by results of which:
 - 1) two criminal proceedings have been instituted (suggesting offences specified by part 1 of Article 365 of the Criminal Code of Ukraine into abuse of authority and office, and under part 2 of Article 367 of the Criminal Code of Ukraine into neglect of duties or, in other words, improper performance by an officer of his or her duties)
 - 2) 10 persons have been dismissed
 - 3) the Disciplinary Committee has been recommended to raise issues of:

- dismissal – 4 persons
- warnings of incomplete adequacy – 2 persons
- issuing reprimands – 18 persons
- issuing remarks – 1 person.

The issue of holding the personnel disciplinarily liable will be considered after the Council of Civil Control at the SBI goes into action and delegates its representatives to the Disciplinary Committee.

3. The Department of Internal Control has developed a system to manage anti-corruption measures intended to create additional safeguards to prevent the SBI personnel from committing corruption and corruption-related offences which laid the foundation of the Anti-Corruption Program of the SBI.
4. The Department of Internal Control has completed 120 special background checks of candidates running for positions of SBI investigators and leadership.
5. The SBI personnel are subject to psychophysiological detection of deception under the Regulations approved by Decree of the Cabinet of Ministers of Ukraine No 449 dated May 11, 2017, when recruited and also not less than once a year. **In 2019, 567 psychophysiological detections of deception were held** (for 355 candidates to positions, 191 were held for the SBI personnel, 21 were held during investigative and operational activities in accordance with assignments of investigative units and court rulings commissioning expert examinations). In 2020 more than 800 of such examinations were held with the view to identifying corruption risks, involvement in separatism and other negative signs incompatible with moral and professional qualities of the SBI personnel.

Results of psychophysiological detection of deception are accounted for while sizing up a candidate and help to make an unbiased decision in solving personnel matters. Based on results of such consideration, in particular accounting for information provided by the DIC, 44 persons have been denied occupying positions at the SBI.

Monitoring way of life and testing good faith

Функції УВК з перевірки на добросовісність працівників розглядаєThe SBI considers functions of the DIC to test good faith of its personnel to be preventive measures aimed at preventing corruption. However, negative results of good faith tests or a way of life monitoring may serve as the

ground to conduct an internal investigation. A future officer is informed of such probability to be tested and monitored while being appointed to a position at the SBI.

For the SBI the monitoring of way of life is a complex of organizational and legal, search and analytical measures which lie in establishing a real level of life, ownership and real (market) value of property (assets) and income of its officer and members of his or her family, analysis of correlation of the living of the officer and his or her income as well as correlation between monitoring information and information specified in a declaration of the person authorized to perform public or self-government functions in the respective period.

In 2020, based on results of the discovered inconsistencies and likely declaration of false information, the NAPC received 11 materials to fully check such declarations and hold the SBI personnel administratively or criminally liable.

At the same time, the information provided by the SBI gives the impression that the personnel and prospective personnel have not taken any good faith tests.

Recommendations:

- 1. For the State Bureau of Investigations** to set up the Disciplinary Committee as soon as the CCC is formed.
- 2. For the State Bureau of Investigations** to summarize and publish information about the disciplinary practice of the Disciplinary Committee based on results of the first six months, and later to do it annually.
- 3. For the State Bureau of Investigation** to publicly report on effectiveness of using psychophysiological detection of deception (PDD).
- 4. For the State Bureau of Investigations** to elaborate and implement the mechanism for the SBI personnel as well as persons running for positions at the SBI to take good faith tests.

Logistical support, pay service and needs

According to the answer provided by the SBI, expenditures rise annually disproportionately to the increase in functions and assigned tasks. For example, 640,684.9 hryvnas were included into the 2017 SBI budget. Simultaneously, this body of pre-trial investigation was not virtually functioning at that time. It must be related to the fact that the competition to fill the vacancies of the director and deputy directors started on May 10, 2016. For this reason, when the budget was being drafted, nobody could predict that the selection of the SBI leadership would be delayed until November 2017.

In 2018, with the personnel of the central office and territorial departments selected, the amount of 651,567.3 hryvnas was allocated in the state budget. For example, the first investigators were appointed only in the summer of 2018 upon the work of Competition Committees No 1 and No 2 and signature of the order to appoint Roman Truba as the SBI director.

In 2019 the amount of 1,111,261.1 hryvnas was allocated in the state budget for the functioning of the SBI. This is almost twice as much compared to the previous year. Along with it, as of the moment of receiving the respective funds the staffing level was only 60%. Let us note that the SBI had submitted its 2019 budget request within the margins set by the Ministry of Finance of Ukraine for 2019 in the amount of 699,033.3 hryvnas, with an additional need in funds to maintain the SBI in the amount of 623,347.1 hryvnas specified. The total amount of the needed expenditures for 2019 constituted 1,331,380.4 hryvnas. In other words, the chiefs asked to include into the 2019 budget by 220 million more than they actually received.

The SBI had submitted its 2020 budget request within the margins set by the Ministry of Finances of Ukraine for 2020 in the amount of 1,902,748.1 hryvnas, with an additional need in funds to maintain the SBI in the amount of 639,651.7 hryvnas specified. The total amount of the needed expenditures for 2020 constituted 2,542,399.8 hryvnas. In other words, the expenditures grew by three times without a significant increase of the personnel (the personnel number grew only from 1,500 to 1,600 persons) and the unchanged functions of this body of pre-trial investigation.

*Allocation of budget expenditures by key SBI activities,
thousands of hryvnas*

| Expenditure | 2018 | 2019 | 2020 (before sequestration) | 2020 (after sequestration) |
|---|------------------|-----------------|-----------------------------------|----------------------------------|
| Labor remuneration | 350 894,9 | 518 120 | 1 274 083 | 1 056 136 |
| Salaries | 232 447,5 | 498 120 | Not allocated | Not allocated |
| Pay allowances | 118 447,4 | 20 000 | Not allocated | Not allocated |
| Labor remuneration accruals | 98 188,9 | 92 211,4 | 252 000 | 209 947 |
| Items, materials, equipment and appliances | 21 600 | 68 533,8 | Not allocated | Not allocated |
| Service charges | 13 763,1 | 59 308,6 | Not allocated | Not allocated |
| Business travel expenditures | 682 | 3 830 | Not allocated | Not allocated |
| Public utilities and energy charges | 4 201,5 | 7 871,8 | 14 022 | 14 022 |
| Heating charges | 2 134 | 3 212,8 | Not allocated | Not allocated |
| Water consumption charges | 189 | 631,7 | Not allocated | Not allocated |
| Electricity charges | 1 751,9 | 2 674,3 | Not allocated | Not allocated |
| Natural gas charges | 126,6 | 1 260 | Not allocated | Not allocated |
| Separate events within government programs which are not referred to development events | 24,4 | 238,2 | 2 000 | 2 000 |
| Charges for energy carries and other utilities | – | 93 | Not allocated | Not allocated |
| Other running expenditures | 2 612,5 | 3 780,3 | Не надано | Not allocated |
| Purchase of equipment and long-term used items | 158 260 | 265 672,8 | Not allocated | Not allocated |
| Capital construction of other projects | – | 17 058 | Not allocated | Not allocated |
| Capital repair of other objects | 1 060 | 47 752,2 | Not allocated | Not allocated |
| Reconstruction and restoration of other objects | 215 | 5 234 | Not allocated | Not allocated |
| Restoration of cultural, historic and architectural heritage | – | 21 650 | Not allocated | Not allocated |
| Purchase of land and intangible assets | 65 | – | Not allocated | Not allocated |

The SBI answered to our enquiry that, according to the available information, 1,111,261 hryvnas were allocated from the budget program 6421010 Operational Support of the State Bureau of Investigations approved by the Law of Ukraine on State Budget of Ukraine. However, only 869,125.2 hryvnas were used during the year, including 222,875.9 hryvnas out of the planned 265,672.8 hryvnas used to buy equipment and items of long-term use in 2019. In turn, 91,694.2 hryvnas were allocated for capital construction (purchase), capital repair, reconstruction and restoration of premises in 2019 out of which only 72,918.8 were used.

The answer did not contain any other information about planned or used financial resources of the in 2018–2019.

Consequently, the SBI fund of labor remuneration has been reduced from 1,274,083,400 hryvnas to 1,056,136,300 hryvnas. The budget item Other Expenditures has also been cut from 345,642,000 hryvnas to 119,429,800 hryvnas. According to the answer of the SBI, other items have not been reduced.

Recommendation:

1. **For the State Bureau of Investigations** to make information about financial resources more available, in particular to publish analytical reviews of needs and impact of expenditures as well as their being decreased or increased on effectiveness of the SBI.

Main By-Laws (Internal Regulations)

Despite two enquiries made by the experts, the SBI has failed to provide names of all current general regulatory acts approved by the SBI director, not to mention their list.

Currently, the official web site has texts of the following regulatory acts approved by the SBI director which relate to the SBI personnel:

1. Rules for the director of the State Bureau of Investigations to exercise his powers (as of the beginning of October of 2020, the text is missing on the web site)
2. on approval of the Procedure under which private and commanding personnel of the State Bureau of Investigations are sworn in
3. on approval of the List of positions at the central office and territorial Departments of the State Bureau of Investigation which are subject

to replacement by private and commanding personnel, special ranks by these positions

4. on approval of the Procedure under which trainees without practical experience in their professional fields serve their internships
5. on approval of the Provision on Physical Training tests undertaken by candidates running for positions at the Special Task Department of the State Bureau of Investigations
6. on approval of the Procedure to prepare and keep personal files of private and commanding personnel of the State Bureau of Investigations
7. template provision on the competition committee of the State Bureau of Investigations
8. Procedure for Open Competition to Fill Vacancies at the State Bureau of Investigations
9. on approval of the Regulation of the procedure for considering enquiries and requests as well as organization of personal acceptance of citizens at the central office of the State Bureau of Investigations and its territorial bodies
10. on approval of Fire Regulations at the central office of the State Bureau of Investigations and its territorial departments
11. on approval of the Procedure for Undertaking Comprehensive Medical Examinations (standard check ups) by Private and Commanding Personnel of the State Bureau of Investigations
12. on approval of the Regulations on Procedure for Internal Investigations regarding personnel of the State Bureau of Investigations
13. Rules to organize access control in the territory of the State Bureau of Investigations
14. Provision on the official ID of the SBI personnel and its template
15. Provision on ministerial awards at the SBI
16. Procedure for organization and internal control at the SBI.

It must be noted that normative acts approval of which by the SBI director is mandatory under the law are missing, in particular:

- 1) Provisions on territorial departments of the SBI
- 2) Qualification requirements and criteria of professional efficiency to fill positions at subdivisions of the SBI
- 3) Provisions on the Disciplinary Committee at the SBI.

Recommendatio:

1. **For the State Bureau of investigations** to ensure that regulatory acts of the SBI director adoption of which is specified by the Law are published on its official web site.

Internal Reporting

As of December 31, 2019, the central office of the SBI wrote the following statistical reports:

- on work of pre-trial investigation bodies
- on registered criminal offences and results of their pre-trial investigation
- on persons who committed criminal offences.

Such information was sent out to e-mails of the personnel of the Department of Organizational, Methodological and Analytical Support of Pre-trial Investigation at the First Department of Organization of Pre-Trial Investigations of the SBI in the form established by this department. The Procedure under which such reports had to be written was envisaged by order of the SBI director No 182-ОД dated October 23, 2019 (no copy was provided).

The SBI failed answer the enquiry to provide sample reports, in particular on "the work of bodies of pre-trial investigation." A copy was not provided either.

The Department of Planning and Finance, Accounting and Reporting analyzed, checked and consolidated financial statements, budget and statistical reports submitted by territorial departments of the SBI with the view to forwarding them to the State Treasury of Ukraine, Accounting Chamber of Ukraine, Ministry of Finances of Ukraine, Main Department of Statistics in Kyiv.

The results of the analyzing of internal reports on work of pre-trial investigation bodies were further used by:

- the SBI leadership to obtain comprehensive, unbiased and impartial information about state and organization of the work with the view to detecting, preventing, stopping, solving and investigating systematic criminal offences, assessment of activities of units of the central office and territorial departments of the SBI, exercise of proper control over the SBI performing tasks which were assigned to it

- the department of organizational, methodological and analytical support of pre-trial investigation to write analytical and statistical reports on activities of investigative units of the central office and territorial departments of the SBI

Financial, budget and statistical reports on the central office and territorial departments as well as consolidated report on the SBI in general were submitted to the SBI leadership with the view to informing about the financial state of the institution.

It is indicative that the surveying of private SBI investigators revealed paradoxical situation. The number of those who consider the system of internal reporting at the SBI burdening and excessive is equal to those who want to simplify the form of submission of reports without considering it to be burdening and excessive (43.8%).

Recommendation:

- 1. For the State Bureau of Investigations along with external experts to carry out an audit of the process of drafting the set forms of reports and assessment of the used methods as well as approaches to its analysis.**

Section III

Pre-trial
investigation and
its results

Structure and character of document flow

The issue of document flow in the central office of the SBI is regulated by the *Paperwork Management Guidelines* approved by order of the SBI No 27 dated February 6 of 2019. This document sets forth general requirements to documenting management information and organization of work with paper documents including their preparation, registration, management and control over implementation. Territorial departments of the SBI, in turn, have approved their own paperwork guidelines.

Apart from it, in some paperwork issues the SBI is guided by the *Regulations of Procedure for Consideration of Enquiries and Requests as well as for Organization of Personal Reception of Citizens at the Central Office of the State Bureau of Investigations and its Territorial Bodies* approved by order of the SBI No 258 dated September 13, 2019, and the *Regulations of Procedure for Accounting, Storage, Usage and Destruction of Documents and other Material Carriers of Information which Contain Internal Information at the Central Office of the State Bureau of Investigation and its Territorial Bodies* approved by order No 250 dated September 9 of 2019.

As far as its structure is concerned, the flow of documents at the SBI is not different from document flows at other law enforcement bodies. At the same time, according to the current tendencies in the sphere of criminal justice in the world, the SBI is planning to introduce new forms of document management, primarily electronic.

In November of 2019 a new software for the electronic document flow system intended for automated management of the document flow processes, was bought. It was a computer program (software) "System of Electronic Document Flow and Automation of *Business Processes Megapolis.DocNet*" (hereinafter referred to as the SEDF) supplied by Intecracy Venture Ltd³⁷.

It is important to note that the IT-infrastructure at the SBI in 2018-2019 did not meet technical specifications which would enable to introduce and operate the SEDF, as under provisions of the Law on Protection of Personal Data and Law on Protection of Information in Informational and Telecommunication Systems introduction of such a system has to make use of a complex system of protection of information with proved compliance.

As of today, the IT infrastructure using a complex system of information protection with proved compliance, within which SEDF will properly function, is being developed. Eventually, it is expected to positively

³⁷ Services for introduction of the system of electronic document flow and automation of business processes "Megapolis.DocNet": <https://dozorro.org/tender-UA-2019-11-19-001709-a#tender>

influence the SBI effectiveness due to improvement of the processes of internal management.

Thus, the system of electronic document flow is currently being introduced. However, as of December 31, 2019, electronic document flow at the SBI is missing.

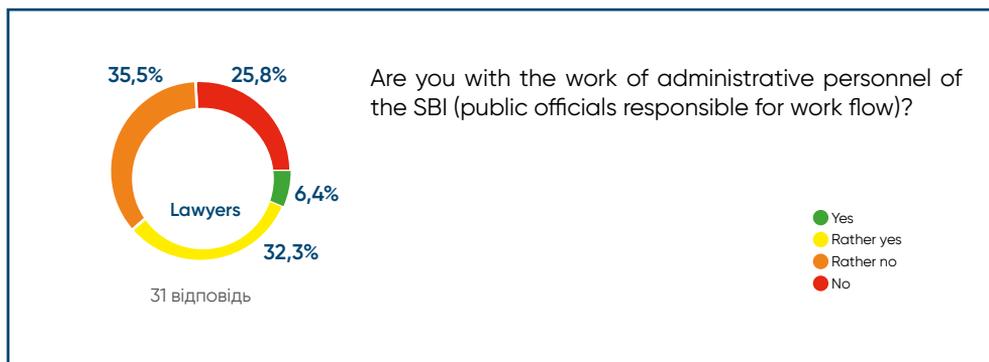
The results of the questionnaire filled in by chiefs of investigative units and investigators of the SBI testify to the fact that this instrument is perceived differently. The majority of the SBI investigators consider its introduction to be necessary (supported by 78.1% and objected to by 21.9%), whereas the position of chiefs of investigative units in respect of such a need is divided (supported by 54.5% and objected to by 45.5%).

As far as the content of the electronic document flow is concerned, it is about three functions supported by both chiefs of investigative units and investigators of the SBI, namely:

- 1) *exchange of information within SBI* (63.6% of chiefs of investigative units; 62.5% of investigators)
- 2) *exchange of materials of a criminal proceeding and information between the investigator and prosecutor* (45.5% of chiefs of investigative units and 68.8% of investigators)
- 3) *exchange of materials of a criminal proceeding and information between the investigator and investigating judge* (54.5% of chiefs of investigative units and 78.1% of investigators).

At the same time, the function such as *exchange of criminal proceedings materials (Articles 226, 290 of the Criminal Procedure Code of Ukraine and information between the investigators and defender (defense lawyer)* is less needed (it is supported by only 27.3% of chiefs of investigative units and 28.1% of investigators), and the function such as *exchange of criminal proceedings materials and information with other bodies of pre-trial investigation* (supported by only 9.1 chiefs of investigative bodies and 21.9% of investigators).

The majority of the surveyed defense lawyers are rather unsatisfied with the work of the administrative SBI personnel (public officials in charge of the document flow).



Recommendation:

1. **For the State Bureau of Investigations** to introduce a system of electronic document flow within the SBI, and later to introduce such a system between the SBI and prosecution bodies, the SBI and judges, the SBI and defense lawyers.

Structure and character of criminal proceedings

The number of criminal proceedings investigated by the SBI as well as description of their structure can be counted from the very first day when the SBI started its work (on November 27, 2018). As far as statistical data, it is easier to refer to 2019 overall, as the first month of its work (December 2018) was not relevant enough.

Number of criminal proceedings

In 2019 the SBI registered 34,366 claims and reports of crimes referred to its jurisdiction, out of which the central office of the SBI has registered 9,486 claims, Kyiv Territorial Department has registered 6,636 claims, Khmelnytskyi Territorial Department has registered 5,031 claims, L'viv Territorial Department has registered 2,512 claims, Mykolaiv Territorial Department has registered 4,181 claims, Poltava Territorial Department has registered 1,495 claims, Kramatorsk Territorial Department has registered 1,730 claims, and Melitopol Territorial Department has registered 3,295 such cases.

In general, as of December 31, 2019, the SBI has investigated 37,128 criminal proceedings (including criminal proceedings under its competence delegated to it from other bodies of pre-trial investigation).

Structure of criminal proceedings

Criminal proceedings by offices of public officials (the number of proceedings is not equal to the number of public officials, as one person may be a participant to several proceedings and the other way round):

- 1) crimes committed in the sphere of official activities and corruption (7,979), which include:
 - offences committed by the President of Ukraine whose powers have been suspended (20)
 - offences committed by people's deputies of Ukraine (55)
 - offences committed by members of the CMU, first deputy ministers and deputy ministers (45)
 - offences committed by persons whose positions are referred to category A of public service (50)
 - other offences (7 809);
- 2) crimes committed by law enforcement officers and crimes committed in the sphere of justice – 13 246:
 - personnel of prosecution bodies (1,054)
 - personnel of the SSU (365)
 - personnel of the National Police (6 808)
 - personnel of the National Guard of Ukraine (414)
 - personnel of NABU (188)
 - personnel of SAPO (64)
 - personnel of the State Border Service of Ukraine (347)
 - personnel of the State Emergency Service of Ukraine (48)
 - personnel of the State Criminal Executive Service of Ukraine (91)
 - personnel of the State Forest Service (115)
 - personnel of the SBI (159)
 - personnel of bodies overseeing abidance by tax legislation (360)
 - personnel of bodies which oversee taking goods through customs (307)
 - judges (1 029);
- 3) military crimes – 15,542;
- 4) other crimes – 1,862.

It is also worth noting that one SBI investigator has different workload depending on his unit's venue.

Average workload of one SBI investigator is: the central office – 15 proceedings, Kyiv Territorial Department – 163, Kramatorsk Territorial

Department – 127, L'viv Territorial Department – 94, Melitopol Territorial Department – 50, Mykolaiv Territorial Department – 180, Poltava Territorial Department – 127, Khmelnytskyi Territorial Department – 81.

It is important remind that the personnel numbers in territorial units are the same. In other words, work load is predetermined not only by regional peculiarities, but also quite debatable approach to determining staffing positions at territorial departments and subdivisions.

Structure and character of criminal proceedings in which notices of suspicion have been served

The number of notices of suspicion in criminal proceedings pre-trial investigation in which is conducted by the SBI investigators is 13,302 (as of December 31, 2019).

Along with it, in 2019 notices of suspicion were served:

| Territorial department | Number of proceedings | Number of persons |
|-------------------------------|------------------------------|--------------------------|
| Kyiv | 2 193 | 2 231 |
| Kramatorsk | 532 | 583 |
| L'viv | 537 | 543 |
| Melitopol' | 916 | 1 749 |
| Mykolayiv | 502 | 595 |
| Poltava | 656 | 1 596 |
| Khmelnytskyi | 528 | 540 |
| Central office | 68 | 123 |
| Total | 5 932 | 7 960 |

Structure and character of completed pre-trial investigations

The number of completed criminal proceedings pre-trial investigation in which was conducted by the SBI investigators is 9,074 (as of December 31, 2019), with 3,017 indictments directed to court.

The number of indictments directed to court (as of December 31, 2019):

- Kyiv Territorial Department – 399
- Kramatorsk Territorial Department – 516
- L'viv Territorial Department – 495
- Melitopol Territorial Department – 168
- Mykolaiv Territorial Department – 456

- Poltava Territorial Department – 461
- Khmelnytskyi Territorial Department – 498
- Central Office – 24;
- Total – 3 017.

These are only 300 of the total number of indictments which were returned to be finalized. This indicates high quality of indictments made by prosecutors based on results of the work of the SBI investigators.

Results of pre-trial investigations in the first three months of the work of the SBI (as of the beginning of March of 2019) are also representative: 499 indictments and 11 pleas of guilty, 94% of which related to military crimes, were taken to the court³⁸. It means that it is too early to talk about changes for better in terms of impunity of law enforcement officers which took place during decades of non-ineffective investigation by investigators of prosecution bodies, which was stressed in decisions of the European Court of Human Rights.

These are only 28 out of the total number of indictments which relate to law enforcement officers (National Police – 1, Border Service – 5, National Guard of Ukraine – 2, State Emergency Service – 1, State Fiscal Service of Ukraine – 1). Though the number of 510 cases directed to the court may seem impressive, one has to understand specifics of military crimes and their share in all proceedings of the SBI, which was set up, first and foremost, to fight against violations of human rights and freedoms by law enforcement bodies.

As of October 1, 2020, the SBI is investigating 38,952 criminal proceedings. The number of completed criminal proceedings, pre-trial investigation within which was conducted by investigators of the SBI, is 15,410 (as of October 1, 2020). Indictments against 3,131 persons were sent to the court.

The following indictments were sent to the court (as of October 1, 2020):

- Kyiv Territorial Department – 303
- Kramatorsk Territorial Department – 454
- L'viv Territorial Department – 546
- Melitopol Territorial Department – 167
- Mykolaiv Territorial Department – 456
- Poltava Territorial Department – 507
- Khmelnytskyi Territorial Department – 365

³⁸ State Bureau of Investigations. Report (December – March of 2018) // Урядовий портал: <https://dbr.gov.ua/report/zvit-pro-dialnist-gruden-2017-berezen-2018>

- Central Office – 75 ;
- Total – 2,783.

Only 7 out of these indictments were returned to be finalized.

Recommendations:

1. For the State Bureau of Investigations to initiate the reviewing of a number of staffing positions at territorial departments and units (central office, in particular) for the latter to comply with regional peculiarities and actual workload within an “area of work” or respective subdivision.

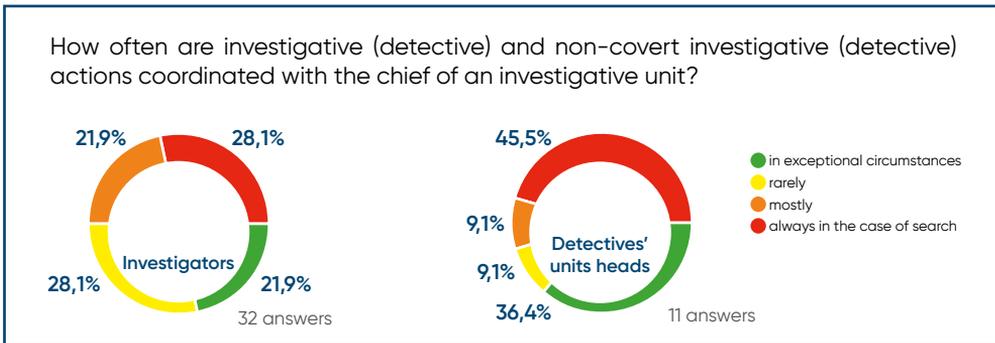
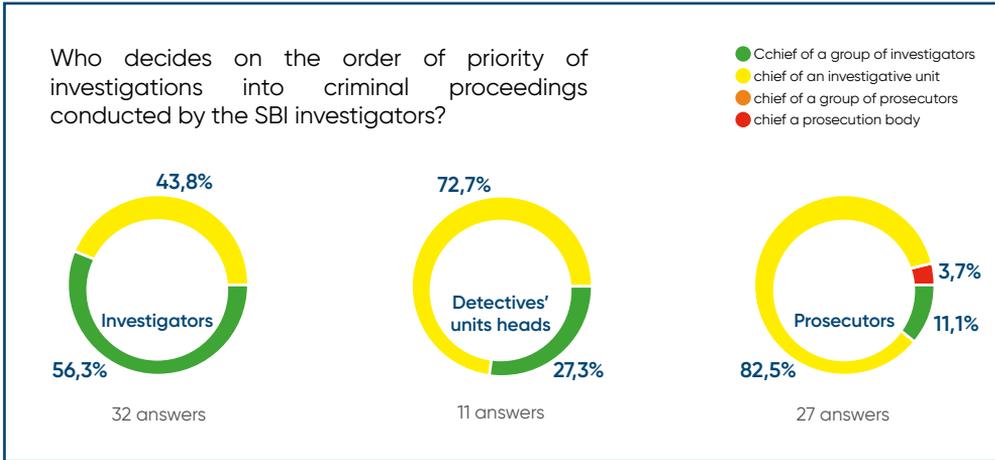
2. For the State Bureau of Investigations to consider likely increase in positions of investigators and operational officers resulting from the cut in the number of public officials in charge of document work flow, logistical support, etc.

Management of investigations and “internal” independence of investigators

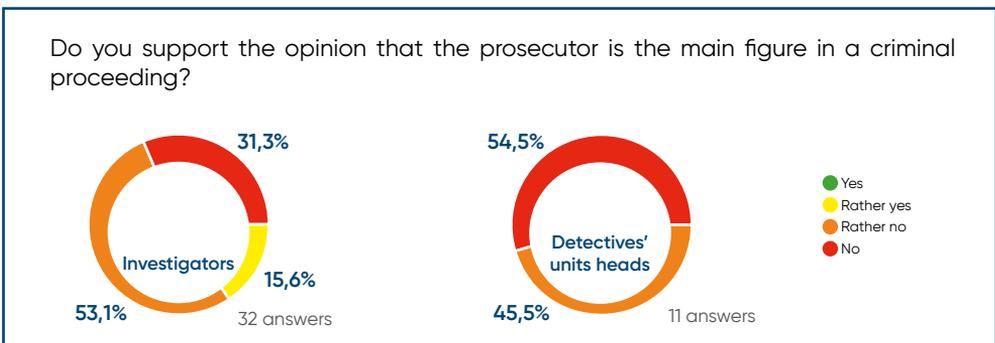
According to the SBI, the chief of an investigative unit is in charge of general organization of the work of investigators, control over the performing by them of their functional duties, assignments and instructions, their abidance by provisions of the Criminal Procedure Code of Ukraine, the Law on Prevention of Corruption and Law on Public Service. Besides, the chief of an investigative unit ensures proper interaction of subordinate investigators with prosecutors exercising procedural guidance, operational officers, expert institutions and public bodies. As of December 31, 2019, chiefs of the investigative units have provided 2,011 written recommendations³⁹ to their subordinates regarding investigative (detective) activities.

Such an information testifies to the fact that it is the chief of an investigative unit rather than prosecutor who is the key person in investigations conducted by the SBI. This conclusion is confirmed by data collected while surveying chiefs of investigative units, the SBI investigators and, in part, prosecutors.

³⁹ According to the SBI investigators, procedural supervisors give instruction primarily to fulfill departmental ‘norms’ and gain ‘evidence’ of having worked on a criminal proceeding, though it is rare when written instructions of prosecutors are means of communication with the investigator. Such instructions present a different form to outline an investigation plan jointly made by the prosecutor and investigator in rare occasions.

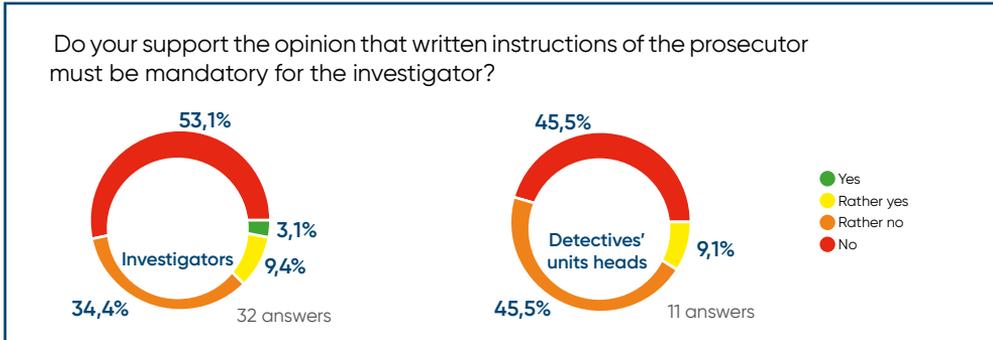


It is only a minority of the surveyed investigators and no chiefs of investigative units who agree that the prosecutor is the main person in criminal proceedings.



Respectively, the absolute majority of the surveyed chiefs of investigative units and investigators object to instructions of the prosecutor being mandatory.

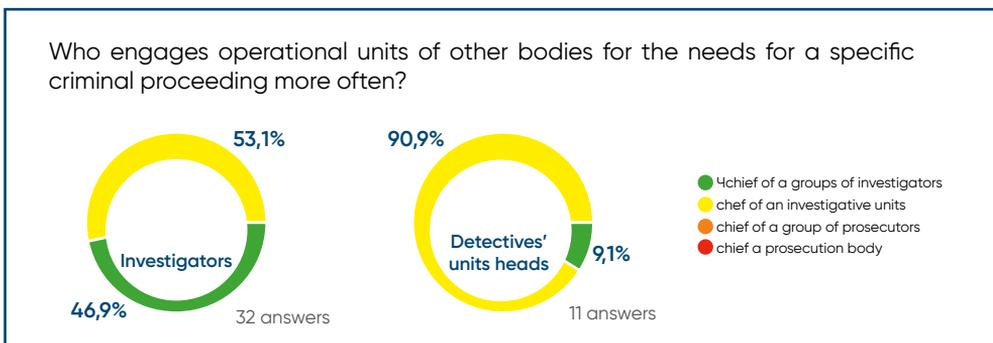
In other words, "the center" of investigations management lies within the SBI.



The information provided by the SBI makes it clear that "the system" of management is made up of a formal hierarchical structure of the institution which exploits two managing "instruments" – recommendations of the chief of an investigative unit and meetings (operational meetings) during which the state of pre-trial investigations in criminal proceedings is considered and respective decisions "with the aim of ensuring lawful, effective and timely pre-trial investigation" are made.

Such an approach to management lead to two obvious consequences:

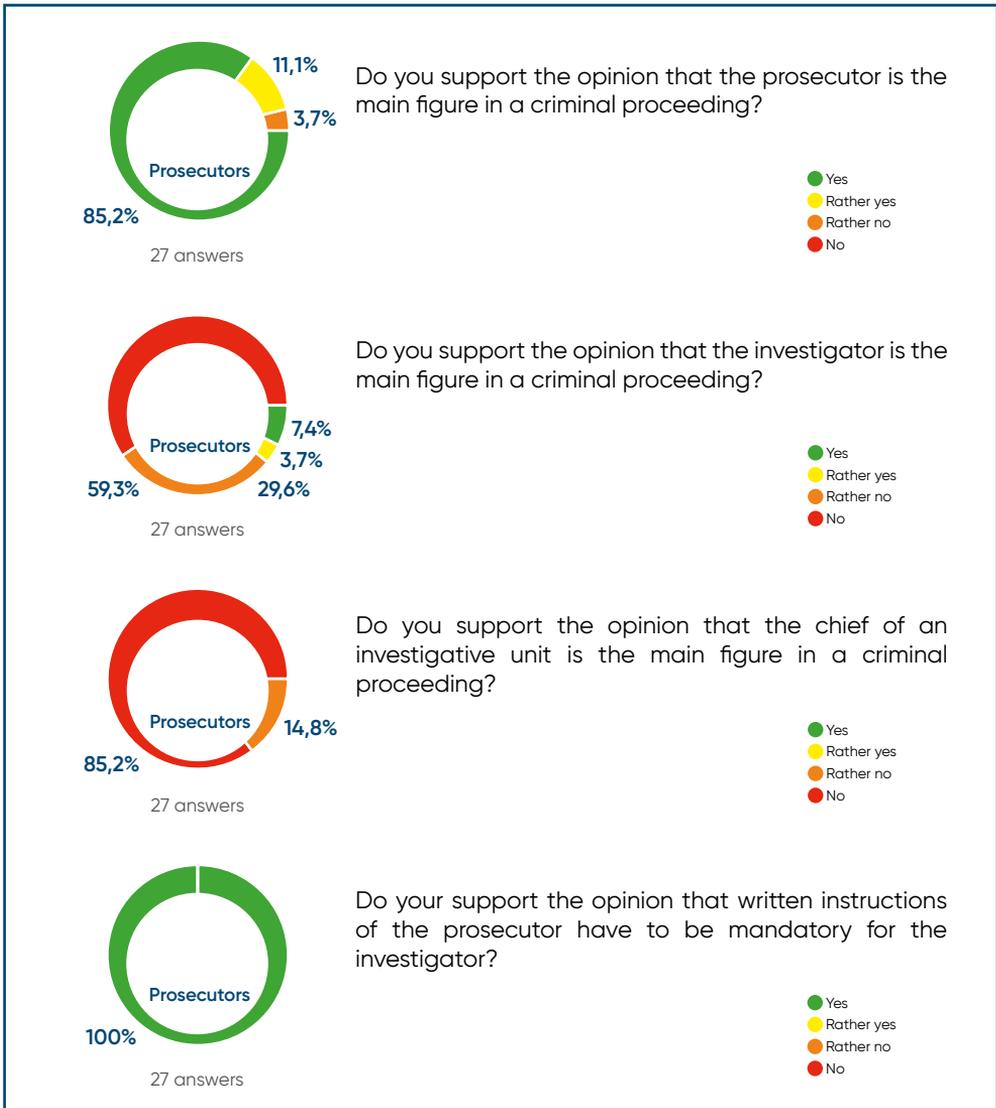
- 1) Investigators are fully dependent on chiefs of investigative units and act to implement a "vision" of the latter. Investigators depend on their chiefs, in particular, because they use operational resources more often or, as a rule, through their chiefs;



- 2) Due to actual "dominance" of the chief of an investigative unit in a criminal proceeding the interaction of the pre-trial investigation body and prosecutor is always at the brink of conflict⁴⁰. As a matter of

⁴⁰ Прокурор: керує? координує? наглядає? розслідує : Звіт за результатами дослідження «Роль прокурора на досудовій стадії кримінального процесу» / Белоусов Ю., Венгер В., Мітько В., Орлеан А., Сущенко В., Яворська В. ; за заг. ред. Белоусова Ю. – К. : СТ-Друк, 2017. – С. 63–68, 87.

fact, under the Constitution of Ukraine and Criminal Procedure Code of Ukraine, it is the prosecutor who is in charge of organization and procedural guidance in a criminal proceeding.



Recommendation:

1. For the State Bureau of Investigations and Office of the Prosecutor General for draw up a memorandum of cooperation and allocation of organizational duties to the investigator, prosecutor and chief of an investigative unit in regard to a criminal proceeding.

Access to electronic data bases, exchange of information and other forms of cooperation with public bodies

Access to electronic data bases

As of March of 2020, the SBI has access to the following data bases and registers:

- 1) State Register of Proprietary Rights to Immovable Property access to which enables investigators to obtain information about registered rights in rem to immovable property of persons within the SBI competence
- 2) State Register of Encumbrances over Movable Property
- 3) Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations
- 4) Unified State Register of Pre-Trial Investigations access to which ensures registration of criminal offences (proceedings) as well as the accounting of decisions approved during pre-trial investigations and persons who committed them
- 5) Unified State Register of Court Decisions used to analyze the judicial practice and control over decisions made by courts regarding the SBI

At the same time, legal connection has been established with a number of managers of state registers and data bases. The SBI personnel has been ensured access to information in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, the State Register of Proprietary Rights to Immovable Property, the State Register of Encumbrances over Movable Property via direct access to the aforementioned registers by virtue of a joint decision (agreement) concluded between the Ministry of Justice of Ukraine and the SBI. Also, there was concluded an agreement on informational cooperation between the State Fiscal Service of Ukraine and the SBI of August 20, 2019, under which the access to the information and telecommunication systems Single Window of Submission of Electronic Reporting and Tax Block has been regulated.

Along with it, in order to function properly, the SBI lacks access to several state registers (data bases) such as

- **The Ministry of Internal Affairs of Ukraine:** *The Record of Fingerprints, Unified State Register of Vehicles, Integrated Information Retrieval System, Personal Inquiry Record*

- *The Ministry of Finance of Ukraine: The Automated Informational System of Keeping State Budget, Register of State Debt and State-Guaranteed Debt*
- *The Ministry of Justice of Ukraine: The Automated System of Executive Proceeding, Unified Register of Powers-of-Attorney, Unified Register of Enterprises into Which Bankruptcy Proceedings Are Instituted, State Civil Register, Register of Deceased Estates*
- *The Ministry of Education of Ukraine: The Unified State Electronic Base on Education*
- *The Pension Fund of Ukraine: The Register of Insures Persons of the State Register of Mandatory Social Insurance*
- *The Land Registry of Ukraine: The State Land Registry*
- *The State Border Service of Ukraine: The Integrated Interdepartmental Informational and Telecommunication System of Control of Persons, Vehicles and Cargoes That Cross the State Border of Ukraine*
- *The State Tax Service of Ukraine: The State Register of Individual Tax Payers*
- *The State Customs Service of Ukraine: The Unified Automated Informational System*
- *NACP: The Unified State Register of Declarations of Persons Authorized to Perform Functions of the State or Local Government (unlimited access)*
- *The Central Election Commission: The State Voter Register*
- *The National Agency of Ukraine for Finding, Tracing and Managing Assets Obtained from Corruption Offences (ARMA): The Unified Register of Assets Seized in Criminal Proceedings*
- *The National Police: ITC The Informational Portal of the National Police of Ukraine*
- *The Kyiv City State Administration: The Informational and Analytical 'Safe City' Complex.*

In order to grant access to informational systems of public bodies, the list of which is determined by the CMU, to the SBI as a user, the CMU has drafted a respective act. However, while approving the aforementioned act, the interested bodies, the Ministry of Justice of Ukraine in particular, raised some comments that the access to informational systems of public bodies were regulated by laws and other normative acts.

There have been established other forms of cooperation of the SBI with public bodies. The SBI cooperates with the National Bank of Ukraine, State Property Fund, Anti-Monopoly Committee of Ukraine, bodies of the State

Border Service of Ukraine and other public bodies. The SBI may conclude agreements (memoranda) on cooperation and exchange of information with other public bodies.

Cooperation with the Asset Recovery and Management Agency, and other bodies

According to the information provided by the SBI, as of the beginning of March of 2020, memoranda of cooperation have been signed with the following public bodies:

1. Memorandum of cooperation in the area of scientific, informational and analytical measures ensured to combat organized crime between the Cross-Agency Research Center on Fight with Organized Crime at the Council of National Security and Defence and State Bureau of Investigations dated May 22, 2018.
2. Agreement on interdepartmental and information cooperation between the State Bureau of Investigations and State Service of Financial Monitoring of May 24, 2018.
3. Memorandum of cooperation between the State Bureau of Investigations and National Prosecution Academy of May 25, 2018.
4. Memorandum of cooperation and information exchange between the National Anti-Corruption Bureau and State Bureau of Investigations of July 27, 2018.
5. Memorandum of cooperation between the State Bureau of Investigations and National Academy of Internal Affairs of October 2, 2018.
6. Memorandum of cooperation and exchange of information between the Accounting Chamber of Ukraine and State Bureau of Investigations of January 31, 2019.
7. Memorandum of cooperation between the State Bureau of Investigations and Electronic Democracy non-governmental organization of February 11, 2019.
8. Agreement on cooperation between the State Bureau of Investigations and Kyiv Mohyla Academy National University of April 18, 2019.
9. Memorandum of understanding between the European Union Advisory Mission and State Bureau of Investigations on competitive selection to fill vacancies at the State Bureau of Investigations dated May 23, 2019.
10. Agreement on cooperation between the State Bureau of Investigations and National university "Odesa Law Academy" dated June 3, 2019.

11. Supplementary agreement to the Memorandum of cooperation and exchange of information between the National Anti-Corruption Bureau of Investigations and State Bureau of Investigations dated July 27, 2019.
12. Agreement on informational cooperation between the State Fiscal Service and State Bureau of Investigation of August 20, 2019.
13. Memorandum on cooperation and exchange of information between the State Bureau of Investigations and State Property Fund of August 28, 2019.
14. Memorandum of cooperation between the State Bureau of Investigations and Security Service of Ukraine on competitive selection to fill vacancies at the State Bureau of Investigation and further training of personnel of special task units dated October 7, 2019.
15. Regulations of technical access of the State Bureau of Investigations to information of the Unified State Demographic Register dated October 21, 2019.
16. Agreement on cooperation between the State Bureau of Investigations and Ivan Franko National University of L'viv dated October 25, 2019.
17. Memorandum of understanding between the European Union Advisory Mission and State Bureau of Investigations on competitive selection to fill vacancies at the State Bureau of Investigations dated October 29, 2019.
18. Memorandum of cooperation between the State Cyber Protection Center at the State Service of Special Communication and Protection of Information and State Bureau of Investigations in the area of cyber security and protection dated December 2, 2019.

Cooperation of the SBI with the Asset Recovery and Management Agency (hereinafter referred to as ARMA) is carried out within criminal proceedings in accordance with requirements of the Criminal Procedure Code of Ukraine and the Law of Ukraine on National Agency of Ukraine for Finding, Tracing, and Managing Assets Obtained from Corruption and Other Crimes by submitting enquiries to the aforementioned organization in accordance with Article 93 of the Criminal Procedure Code of Ukraine on search and identification of the suspects' property and in other cases with the aim of timely seizure of such property. Assets in the total amount of 40,993.3 have been placed into management of ARMA within criminal proceedings from the moment the SBI was launched until December 31, 2019.

Recommendations:

1. **For the Cabinet of Ministers of Ukraine** to assist the SBI in obtaining automated access to a wider circle of informational resources and

data bases of executive bodies (to maximize access of the SBI to state registers and data bases).

- 2. For the State Bureau of Investigations** to initiate conclusion of a memorandum of cooperation with ARMA.

Communication of progress and results of investigations

SBI statement of progress and/or results of pre-trial investigations are drafted by the Public Relations and Mass Media Department, a structural department of the central office. Officers of the department who analyze the obtained information and draft respective statements are responsible for preparation of information statements on the official web site of the SBI. Under the Procedure for filling the official web site approved by Order of the SBI No 42 dated February 15, 2019, information about progress and/or results of pre-trial investigations, the department, photo and video materials, and investigator's order to disclose information about pre-trial investigation is provided by chiefs of independent structural departments of the central office and directors of territorial departments.

Also, the SBI has approved its communication strategy which envisages a wide range of measures to ensure cooperation with its target audiences to establish reputational characteristics of the organization and its mission in the informational space. Besides, the communication strategy specifies a number of desirable characteristics⁴¹ to be referred to the body in its target audiences, namely reputational characteristics of the roles of the bureau spokesmen and ways to establish these roles in target audiences through channels of communication with the SBI⁴², including recommendations concerning the procedure of external communications with key target audiences⁴³ of the SBI.

At the same time, the SBI has not adopted (approved) normative acts or regulatory documents which would specify rules/criteria of selection of

⁴¹ SBI is trying be associated with the image of a modern, professional, technological, independent law enforcement body trusted by citizens of Ukraine, which has positive reputation among international partners.

⁴² According to the SBI, the official web site of the body is visited around 350 thousand times a month. The official Facebook page of the SBI has more than 38 thousand subscribers; its Twitter has 2.3 thousand subscribers; the YouTube channel has 4 thousand subscribers, the Telegram channel has almost 3 thousand.

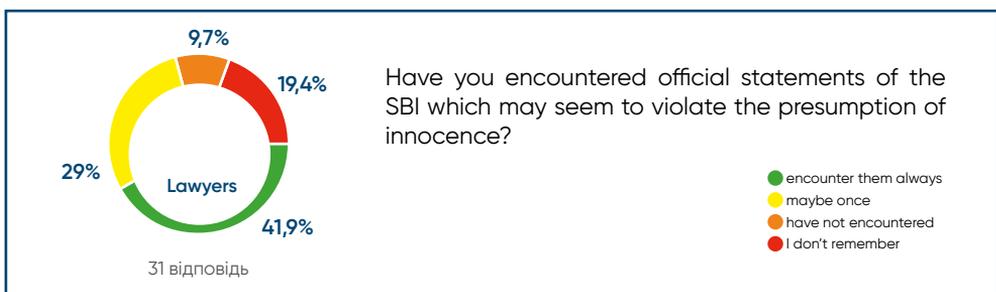
⁴³ The SBI has determined its key target audiences as follows: proactive audience, reporters, bloggers and leaders of opinion, experts (lawyers, defenders, judges), civil activists, potential applicants, international partners, politicians, law enforcement officers.

pre-trial investigations or separate investigative / procedural acts which have to be commented from outside (information of which has to be made public). Also, the SBI lacks rules / criteria formal notices of progress and/or results of pre-trial investigations.

One can conclude from the structure of statement about progress and/or results of pre-trial investigations on the web site that criminal proceedings into cases of corruption and other white-collar crimes are priorities. It is also obvious that the SBI is rather serious about informing about progress in criminal proceedings from the conventional group of the so-called Maidan Cases: the web site has a separate page (available from the main page) with all relevant news and information⁴⁴.

The content-analysis of the SBI web site has testified that official messages about the progress and/or results of pre-trial investigations are in line with traditional style and content pertaining to Ukrainian law-enforcement bodies. However, such approach undermines the constitutional principle of presumption of innocence: as a rule, the "body" of a publication contains stigmatic lexis or its content is spelled out in a way which leaves no doubt that a person has committed a crime (rather than is suspected or accused of having committed a crime). The same refers to the preview image as publications do not have a warning: "In accordance with part 1 of Article 62 of the Constitution of Ukraine a person is deemed to be innocent of commission of a crime and may not be subject to criminal punishment unless his or her guilt is proved under the lawful procedure and judgement of conviction."

More than a half of the surveyed defence lawyers confirmed that they encountered official SBI notices which could seemingly violate the presumption of innocence, a half of whom, in turn, admitted that they saw such notices on the regular basis.



⁴⁴ Section Investigation into Maidan cases // Web site of the SBI: <https://dbr.gov.ua/rozsliduvannya-sprav-maydanu>

Apart from its, it is worth mentioning the situation around criminal proceedings initiated in connection with acts and decisions of the fifth President of Ukraine Petro Poroshenko. Though the web site includes just few materials about this issue, regular "leakages" of photo copies, procedural documents and information on the progress of respective pre-trial investigations, video comments⁴⁵ and other video materials⁴⁶ as well as comments of the "ruling party," in particular the current President of Ukraine, which were far from cautious, contributed to the public opinion about guilt of Petro Poroshenko⁴⁷ before it is proved or refuted in court⁴⁸.

It is also worth adding that recently the SBI joined dubious practice of other bodies of pre-trial investigation and started publishing materials which result from non-covert investigative (detective) activities⁴⁹. Such practice is warned against, first and foremost, by the European Court of Human Rights⁵⁰ and provisions of Articles 14 and 15 as well as articles in Section 21 of the Criminal Procedure Code of Ukraine.

⁴⁵ *SBI: Law Applies to Everyone without Discrimination (ДБР – закон один для всіх)* // Web site of the SBI: <https://dbr.gov.ua/news/dbr-zakon-odin-dlya-vsikh>

⁴⁶ *A People's Deputy is Served a Notice of Suspicion (Народному депутату України повідомлено про підозру)* // Web site of the SBI: <https://dbr.gov.ua/news/narodnomu-deputatu-ukraini-povidomleno-pro-pidozru-video?fbclid=IwAR0aDLuGTSSPgjDspn8xhYxj8wSeoWwDqyGM0JMSuPQBvORioXlrnelqWoE>

⁴⁷ *Zelenskyi threatens Poroshenko with criminal prosecution (Зеленський пригрозив Порошенку судовим переслідуванням)* // Espresso TV channel: <https://espreso.tv/video/276163>

⁴⁸ *While confirming the progress made by Ukraine in observation of human rights, bodies of the Council of Europe, however, repeatedly expressed its concern with observation by public officials of the principle of presumption of innocence. See, in particular, Resolution No 1466 (2005) of the Parliamentary Assembly of the Council of Europe on Performance by Ukraine of its Duties and Obligations (para 13.12); case Panteyeienko vs Ukraine (claim 11901/02); Dovzhenko vs Ukraine (claim 36650/03); Shahin vs Ukraine (claim 20437/05); Tymoshenko vs Ukraine (claim 49872/11); Lutsenko vs Ukraine (claim 6492/11 and 29334/11), on the latest, Korvan vs Ukraine (claim 26744/16).*

⁴⁹ *SBI Exposes Secrets of Investigation into Embezzlement Scheme of the Leadership of the Eastern Customs Office of the State Customs Service (ДБР розкриває таємницю розслідування схеми одержання неправомірної вигоди керівництвом Східної митниці Держмитслужби)* // Web site of the SBI: <https://dbr.gov.ua/news/dbr-rozkrivae-taemnicyu-rozsliduvannya-skhemi-oderzhannya-nepravomirnoi-vigodi-kerivnictvom-skhidnoi-mitnici-derzhmitsluzhbi-video>

⁵⁰ *See, for example, Apostu v. Romania (claim 22765/12).*

*Structure of publications about
pre-trial investigations on the SBI web site
2020
(as of the end of July)*

| Subject matter and number of statements on the SBI web site | Crimes of violence (bodily injuries, assaults) | Torture, unlawful detentions, other unlawful actions of law enforcement bodies | Corruption offences (abuse of office) | Car accidents | Other crimes |
|--|--|--|---------------------------------------|---------------|--------------|
| Regarding criminal proceedings | 47 | 46 | 314 | 39 | 105 |
| Regarding criminal proceedings into Petro Poroshenko | | | 7 | | |
| Regarding criminal proceedings into the Cases of Maidan | | | 53 | | |
| Regarding other aspects of activities of the SBI (statements, addresses, appointments, contests, visits, briefings, reports) | | | 102 | | |

*Structure of publications about
pre-trial investigations on the SBI web site
2019*

| Subject matter and number of statements on the SBI web site | Crimes of violence (bodily injuries, assaults) | Torture, unlawful detentions, other unlawful actions of law enforcement bodies | Corruption offences (abuse of office) | Car accidents | Other crimes |
|---|--|--|---------------------------------------|---------------|--------------|
| Regarding criminal proceedings | 56 | 24 | 161 | 39 | 121 |
| Regarding criminal proceedings into Petro Poroshenko | | | 6 | | |
| Regarding criminal proceedings into the Cases of Maidan | | | 6 | | |

| Subject matter and number of statements on the SBI web site | Crimes of violence (bodily injuries, assaults) | Torture, unlawful detentions, other unlawful actions of law enforcement bodies | Corruption offences (abuse of office) | Car accidents | Other crimes |
|--|--|--|---------------------------------------|---------------|--------------|
| Regarding other aspects of activities of the SBI (presentations, visits, briefings, meetings of the director with representative of embassies, the CCC, elections, internships, announcements, contests, information, communication, cooperation, trainings) | | | | | |

Recommendations:

- 1. For the State Bureau of Investigations** to determine rules /criteria under which pre-trial investigations or separate investigative / procedural actions to be commented outside (information of which has to be made known for the public) as well as rules / criteria official statements about progress and/or results of pre-trial investigations must comply with are selected.
- 2. For the State Bureau of Investigations** to bring the practice of publishing materials which result from non-covert investigative (detective) activities in conformity with the practice of the European Court of Human Rights and provisions of the Criminal Procedure Code of Ukraine.

Impact of 'Lozovyi amendments' and normative impediments in activity

The new Supreme Court began its work in December of 2017. Under the transitional provisions of the law No 2147-VIII dated October 3, 2017, which had been approved earlier, changes in the CPCU, including the so called "Lozovyi amendments," which negatively influenced effectiveness of the criminal process, became effective only in three months – on March 15, 2018. Since that time:

- (a) examinations in criminal proceedings** were held upon decisions of the investigative judge (alterations in Articles 242–244 of the CPCU),

which refers to both general examinations, for example, forensic, and special ones for certain types of crimes. Prior to that all examinations were scheduled by parties to a criminal proceeding at their own discretion

- (b) **monopoly to hold examinations in a criminal proceeding at public institutions has been introduced.** Prior to that each party to a criminal proceeding had the right to address both private expert institutions / experts and public institutions with a decision ordering examination.
- (c) **other rules to determine pre-trial investigation periods in criminal proceedings have been introduced:**
- calculation of investigation period starts from the moment when information of a criminal offence is entered into the Unified Register of Pre-Trial Investigations (hereinafter referred to as the URPTI). Previously, it started from the moment when a notice of suspicion of commission of a criminal offence was served on a person.
 - the period between entry of data to the URPTI and service of a notice of suspicion is 6 months for a criminal wrongdoing, 12 months for crimes of medium gravity, and 18 months for grave or especially grave crimes. Previously, the CPCU did not specify any investigation period before a person was served a notice of suspicion. It was only due to the statute of limitations in terms of holding a person criminally liable specified by Article 49 of the Criminal Code of Ukraine (2, 3, 5, 10 and 15 years depending on gravity of a crime) that the need to close a criminal proceeding emerged. Periods of pre-trial investigation before a person was served a notice of suspicion can be repeatedly prolonged. In order to extend such periods, the prosecutor or investigator must address the investigative judge upon consent of the prosecutor with respective substantiation under the procedure established by Article 295-1 of the CCU;
- (d) **there is a possibility to cancel the notice of suspicion in accordance with a ruling of the investigative judge** in two months after receiving such a notice (alterations in Articles 303, 307 of the CPCU). Previously, it was not possible to cancel the notice of suspicion.

One can get familiar with criticism of these provisions in the publication *Analysis of Legislative Regulation of the Procedure to Conduct Pre-Trial Investigation 'before' and 'after' Lozovyi 'amendments' to the Criminal Procedural Legislation of Ukraine*⁵¹, written, in particular, by authors of this Report regarding NABU activities.

The whole list of the "Lozovyi amendments" remained effective until November of 2019 when the Law of Ukraine on Introduction of Changes

⁵¹ *Analysis of the legislative regulation of the procedure for pre-trial investigation 'before'*

to Some Legislative Acts of Ukraine to Improve Certain Provisions of the Criminal Procedure Legislation No 187-IX was approved. It cancelled a part of the "Lozovyi amendments," namely: 1) commissioning examinations through the court (today they are again commissioned by the investigator / prosecutor); 2) state monopoly of examinations in criminal proceedings. At the same time, things such as 3) cancelation of the notice of suspicion as a result of an appeal and 4) a new system of calculating periods of pre-trial investigation remain effective.

Based on its practice, the SBI answered that the "Lozovyi amendments," particularly those which envisaged the need to address the investigative judge to commission an examination, only **delayed pre-trial investigation in criminal proceedings, which led to repeated prolongation of pre-trial investigation periods.** Also, in order to investigate criminal proceedings in the sphere of commercial activities (economic crimes) or criminal offences committed by organized groups, more time is needed than the CPCU specified after adoption of the aforementioned "Lozovyi amendments," which is connected, first and foremost, to the need to conduct a great number of examinations, study a great number of primary sources, written sources in particular.

In most cases **possibility to carry out these activities simultaneously is missing** as a conclusion of one study or examination is a basis for conducting another study or examination. An average period to conduct one examination in connection with additional workload of expert institutions resulting from the state monopoly being two months, investigation of the criminal proceeding is slowed down many times.

At the same time, there have been no cases of cancelation of a notice of suspicion in criminal proceedings under investigation of the SBI. It is worth noting that investigative judges have not almost used the institute of challenging a notice of suspicion. According to the information provided by the head of the VRU Committee on Law Enforcement Activities during the plenary session of the parliament on October 4, 2019, investigative judges cancelled only 42 notices of suspicion in the whole period of existence of such a procedure⁵². Thus, it is clear that appealing a notice of suspicion with its indefinite legal implications did not influence any activities of the SBI.

and 'after' the "Lozovyi amendments" to the Criminal Procedure Code of Ukraine (Аналіз законодавчого регулювання порядку здійснення досудового розслідування «до» та «після» «поправок» Лозового до Кримінального процесуального законодавства України) // NABU website: <https://rgk-nabu.org/uk/diyalnist-rhk/korysni-dokumenty/analiz-zakonodavchogo-regulyuvannya-poryadku-zdiysnennya-dosudovogo-rozsliduvannya-do-ta-pislya-popravok-lozovogo-do-kriminalnogo-protseusualnogo-zakonodavstva-ukraini>

⁵² *Transcript of the plenary session of the VRU of October 4, 2019: https://portal.rada.gov.ua/meeting/stenogr/show/7235.html?fbclid=IwAR1_tXQ6LssNMC48Y3pqD-ZSmZPP4RX1qGMRjREXg4X9RJLMUApa476rz98*

Section IV

Procedural guidance and indictments

Allocation of duties to the investigator and prosecutor

The constitutional changes in the area of justice in 2016 established that it was the prosecutor who played the key role in a criminal proceeding by performing the function of procedural guidance. His role lies in organization, coordination and planning a pre-trial investigation. At the same time, the role of the investigator is to collect evidence using tactics determined by the prosecutor. The role of the chief of a pre-trial investigation body, in its turn, is to ensure organizational and technical conditions for the investigator to work in.

However, practically, the understanding of the roles of the investigator and prosecutor differs. On the one hand, this is a legacy of established practices which existed under the Criminal Procedure Code of Ukraine of 1960 and, on the other hand, attempts of investigators and their chiefs to demonstrate activity during investigations, establish institutional superiority, which often results into competition between the prosecutor and investigator, negatively influencing effectiveness of pre-trial investigation.

Practically, participation of the prosecutor in a criminal proceeding can be different. Results of the research testify that more than a half (51%) of the surveyed prosecutors of general prosecution bodies confirmed that the prosecutor digs into investigation details only at the stage of preparing an indictment⁵³. Other prosecutors go deep into investigation details at the stage of sending a notice of suspicion or even at the state of detention or entering information into the Unified Register of Pre-Trial Investigations. It is obvious that it determines the scope of written instructions received by the investigator, workload of the prosecutor and responsibility for the final result of the investigation. As far as the SBI is concerned, the questionnaire enables one to come to the conclusion that the prosecutor emerges upon serving a person a notice of suspicion (answer by 36.4% of chiefs of investigative units and 40.6% of investigators), which differs from template cases. This is likely to be connected with the fact that a part of the SBI proceedings are complicated and, therefore, require digging into content of materials as soon as possible.

Based on the questionnaires filled in by chiefs of investigative units and investigators of the SBI, one can conclude on cooperation between the investigator and prosecutor in criminal proceedings investigated by the SBI.

⁵³ Прокурор: керує? координує? наглядає? розслідує : Звіт за результатами дослідження «Роль прокурора на досудовій стадії кримінального процесу» / Белоусов Ю., Венгер В., Мітько В., Орлеан А., Сущенко В., Яворська В. ; за заг. ред. Белоусова Ю. – К. : СТ-Друк, 2017. – С. 121–131.

First, chiefs of investigative units and investigators of the SBI don't accept the concept that it is the prosecutor who is the main figure in a criminal proceeding. In fact, chiefs of investigative units do not support this idea at all (45.5% of the surveyed rather do not support this idea and 54.5% of the surveyed do not support this idea at all) and a small part of the SBI investigators (15.6% of the surveyed) consider the prosecutor to be the main figure in a criminal proceeding (53.1 rather do not think so and 31.3% do not think so at all). It is clear that in such a case, in opinion of the SBI personnel, the investigator is the main figure in a criminal proceeding (45.5% of chiefs of investigative units share this opinion, 45.5% of chiefs of investigative units rather share this opinion, 50% of investigators share this opinion, 34.4% of investigators rather share this opinion). At the same time, as one could assume, the chief of an investigative unit is not the main figure in a criminal proceeding (54.5% of chief disagree, 36.4% rather disagree, 40.6% of investigators disagree, 43.8% rather disagree). However, as it has already been and will be mentioned, other information in this Report proves that it is the chief of an investigative unit who is the "center" managing pre-trial investigation.

The focus-groups with chiefs of investigative units of the SBI and their investigators accentuated the idea that everything depended on a specific investigator in a criminal proceeding. The larger outlook he has, the better he is in jurisprudence and wider sees his role (not only follows instructions regarding collection of evidence), the more often he gets into a legal dispute with the prosecutor. In opinion of participants of the focus-groups, it has positive influence on investigation results.

Second, it is the chief of a pre-trial investigation body (investigative unit) of the SBI who determines order of priority of investigations into criminal proceedings by investigators (this opinion is held by 72.7% of the surveyed chiefs and 43.8% of the surveyed investigators). The answer that order of priority of investigations into criminal proceedings is determined by the chief of a group of investigators in a criminal proceeding (this opinion is held by 27.3% of the surveyed chiefs and 65.3% of the surveyed investigators) is less popular. It is important that neither prosecutors, not investigators of the SBI support the idea that it is the prosecutor who is responsible for setting priorities. In our opinion, it is the prosecutor who is supposed to set priorities as the criminal policy is an integral constituent of the constitutional function of procedural guidance.

Third, it is the chief of a group of investigators who has the final say on a plan of investigation into criminal proceedings. This opinion is held by 72.7% of the surveyed chiefs and 71.9% of the surveyed investigators or, in other words, the most of the SBI personnel. At the same time, only 3.1% of

the SBI investigators indicated that the chief of a group of prosecutors has the final say on the matter.

Fourth, it is **the chief of a group of investigators who organizes and runs the work within a criminal proceeding** rather than the prosecutor, as it is conceptually set forth by the procedural legislation. This opinion is held by 63.6% of the surveyed chiefs and 87.5% of the surveyed SBI investigators. The chief of the prosecution body (subdivision of the prosecution body was not mentioned at all).

It is also important to clarify whether the SBI investigators have regulatory acts which would regulate the issue of cooperation or standards/ algorithms/guidelines. Unfortunately, **there have been drawn up no institutional acts on cooperation of the SBI investigator with the prosecutor who is in charge of procedural guidance in a criminal proceeding**. The SBI personnel hesitate whether such methodological documents are needed (18.8% of chiefs and 27.3% of investigators consider them to be needed; 34.4% of chiefs and 18.2% of investigators consider them to be rather needed; the other half – 31.3% of chiefs and 27.3% of investigators think that they are rather not needed; 18.8% of chiefs and 27.3% of investigators are not supportive of this idea).

It is also worth noting that, apart from the SBI investigator, the process of collecting evidence is participated by the operational officer (Article 40 of the Criminal Procedure Code of Ukraine), who fulfills his assignments and exercises the rights of the investigator within such an activity. Since the Criminal Procedure Code of Ukraine was approved in 2012, the role of the operational officer has been significantly reduced, with the SBI having no own operational personnel due to the legislative problems mentioned above.

Recommendation:

1. For the State Bureau of Investigations and Office of the Prosecutor General to hold consultations to draft a memorandum of cooperation and allocation of organizational duties to the investigator, prosecutor and chief of an investigative unit in regard to a criminal proceeding on the partner basis.

Cooperation between investigators and prosecutors

The talk about investigators and prosecutors of the SBI is worth starting with explication of respective units set up at the Office of the Prosecutor General. As of today, there is the Department of Organization and

Procedural Guidance of Pre-Trial Investigation of the SBI Bodies which has two divisions having three subdivisions each.

The aforementioned structural division of the Office of the Prosecutor General supervises criminal investigations conducted by the SBI investigators, excluding criminal proceedings in which a prosecution body officer is an alleged perpetrator. At the same time, there is the Department of Organization of Procedural Guidance of Pre-Trial Investigation and Support of Public Prosecution of the General Inspectorate functioning within the structure of the Prosecutor General. This structural division oversees criminal proceedings conducted by the SBI investigators in which a prosecution body officer is an alleged perpetrator.

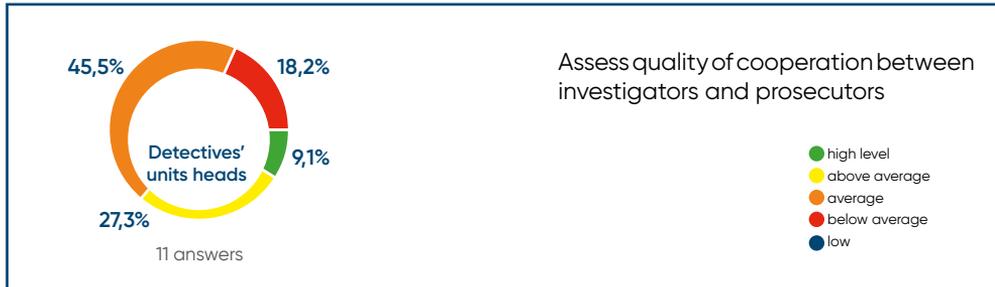
As the SBI stated, the main problem in cooperation between the SBI investigator and prosecutor is a long-term failure of the Office of the Prosecutor General to appoint the latter in criminal proceedings. That is what chiefs of investigative units and investigators accentuated while being surveyed.

As far as the number of prosecutors involved into procedural guidance in criminal proceedings of the SBI investigators is concerned, the SBI leadership considered them to be sufficient.

In regard to public prosecution in criminal proceedings in which the SBI is a body of pre-trial investigation, its position is the following: no assessment of such an activity is correct as in accordance with Article 36 of the Criminal Code of Ukraine the prosecutor, performing his duties in compliance with requirements of the respective Code, is independent in his procedural activity and, therefore, interference with this process of persons, if they don't have lawful grounds to do that, is prohibited. The SBI leadership believes that assessment of the prosecutors' activities is beyond their competence. While interviewed, investigators and chiefs of investigative units also were not willing to assess their colleagues from the prosecution bodies. According to them, everything depends on a "man" to a great extent.

As far as improvement of legislative and by-law regulation in the context of boosting effectiveness of cooperation between investigators of the SBI and prosecutors is concerned, the position of the SBI is the following: the CPCU is specific about the procedure under which the investigator and prosecutor interact. In accordance with part 1 of Article 1 of the CPCU a procedure of a criminal investigation in the territory of Ukraine of determined only by the criminal procedure legislation of Ukraine, which excludes changes in cooperation between the SBI investigators and prosecutors at the by-law level.

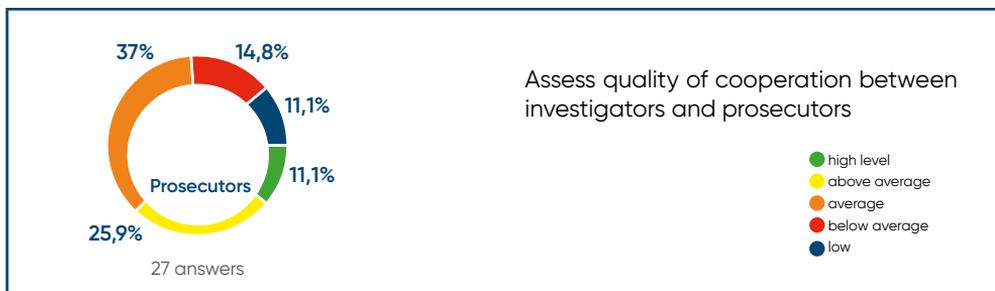
At the same time, chiefs of investigative units at the SBI, when anonymously surveyed, evaluated the level of cooperation between the SBI investigators and prosecutors in the following way:



The cooperation was highly assessed by 9.1% of the surveyed, it was assessed above average by 27.3%, it was as average by 45.5%, it was assessed below average by 18.2%. Eventually, this demonstrated more realistic state of affairs. At the same time, the SBI investigators assessed the cooperation in a bit different way:



Prosecutors have also assessed the quality of cooperation between them and investigators of the SBI. The results here are a bit different:



Generally, however, these assessments of quality of cooperation between investigators and prosecutors more or less coincide.

It is worth noting that improper cooperation between the investigator and prosecutor or lack of such cooperation does not always mean deterioration of statistical data about the work results. The final decision in a criminal proceeding (taking an indictment to the court or another form of completing a pre-trial investigation) is made by the prosecutor in view of sufficiency of the collected evidence and, accordingly, readiness to prove facts of the criminal proceeding during public prosecution in the court.

In the event conflicts between the investigator and prosecutor arise, the latter sometimes exercises powers of the investigator to carry out procedural and investigative actions. To put it simpler, the prosecutor investigates into the proceeding independently and makes a decision instead of the investigator.

Accounting for the fact that key decisions in a criminal proceeding are made by the prosecutor, this is not a problem if the prosecutor has resources to carry out such an investigation independently or independently in part.

Along with it, it is worth considering probability to borrow positive experience of NABU i.e. to conclude a memorandum of cooperation between NABU detectives and SAPO prosecutors. Such a memorandum includes key provisions on cooperating and overcoming difficulties in work if such difficulties arise.

Recommendation:

1. For the State Bureau of Investigations and Office of the Prosecutor General, along with external experts, to carry out meticulous research of reasons and conditions which negatively influence quality of cooperation between investigators and prosecutors.

2. For the State Bureau of Investigations and Office of the Prosecutor General to consider possibility to conclude a memorandum of cooperation between investigators of the SBI and prosecutors of the prosecution bodies who provide procedural guidance in criminal proceedings investigated by the SBI (analogous to the memorandum between NABU and SAPO).

Plea agreements

As of December 31, 2019, the total number of the concluded plea agreements between the prosecutor and suspect or accused is 404 (as of October 1, 2020, the number of such agreements was 309). At the same time, the SBI

has not provided any information about articles of the Criminal Code of Ukraine within which agreements were made.

Apart from it, the SBI has informed that as of December 31, 2019, statistical data of a number of judgments made by courts of first instance following plea agreements between the prosecutor and suspect or accused was not kept record of. Information of a number of judgements made by courts of first instance following plea agreements between the prosecutor and suspect or accused which were appealed has not been provided either. Information about a number of judgments made by courts of first instance following plea agreements between the prosecutor and suspect or accused, judgments made by appeal courts upon consideration of appeals to such judgments which were challenged in cassation is also missing.

Such a situation confirms the opinion that the SBI leadership does not analyze the practice of applying such agreements. In connection with it, any organization or educational events aimed at the SBI personnel using such agreements is very complicated.

37.5% of the surveyed private SBI investigators consider the level of using the potential of plea agreements by the SBI to be average. While interviewed, chiefs of investigative units and SBI investigators expressed loyalty to the institute of agreements with the prosecution. However, according to them, the rules to impose sentences under the Criminal Code of Ukraine limit possible punishments the prosecution can offer to the suspect.

Recommendations:

1. For the State Bureau of Investigations to introduce statistical and comprehensive record of agreements within proceedings of the SBI (for example, by parameters such as the article of the Criminal Code of Ukraine, contractual terms and conditions, appeal of a judgment, refusal of the court to approve an agreement, etc.) or regularly request respective information from the Office of the Prosecutor General.

2. For the State Bureau of Investigations to analyze reports on agreements and, depending on results, to take organizational and educational measure for the SBI personnel to use such an institute.

Structure and character of indictment results in SBI cases

The number of judgements of conviction in criminal proceedings pre-trial investigation in which was conducted by investigators of the SBI is 1,177, with courts having passed no verdicts of no guilty (as of December 31, 2019). Along with it, 1,016 verdicts of guilty have already been enforced (Kyiv Territorial Department – 130, Kramatorsk Territorial Department – 194, L'viv Territorial Department – 128, Melitopol Territorial Department – 61, Mykolaiv Territorial Department – 109, Poltava Territorial Department, Khmelnytskyi Territorial Department – 219, central office – 6).

The main reason why courts have considered less than a half of the indictments is long-period consideration of cases because of judges being overloaded with work, abuse by the defence of its procedural rights, which leads to procrastination of hearings and final judgement.

In the last eight months of 2020 indictments have been made in 2,342 proceedings, with judgments of conviction having been enforced in 800 cases. Thus, the number of completed pre-trial investigations has increased twice.

Recommendation:

1. For the State Bureau of Investigations to publish information about a number of judgments and their structure (by types of criminal offences, gravity of criminal offences, participants of criminal offences).

Section V

Conclusions and recommendations

Conclusions

1. Organization and management processes at the SBI follow the example of typical non-reformed law enforcement bodies rather than a proper design. Undoubtedly, the institution uses powers specified by the law in consistence with its functional purpose and demonstrates certain results in its work. However, it is not clear whether the SBI is achieving its aim and the priorities set in the strategic document are meaningful for it.
2. Due to the analysis of official documents, available information as well as acts and statements of high-ranking officials of the state one can conclude that independence of the SBI is threatened, first and foremost, by the VRU and President of Ukraine.
3. The collegial model of the SBI management, which was questioned by experts in terms of its ineffectiveness from the very beginning, has proved to be ineffective just in one year. Apart from it, it has failed to become an efficient measure to prevent the SBI director from abusing his powers.
4. The mechanisms of the parliamentary and civil control over activities of the SBI don't have influence on the institution. The conclusions and recommendations provided by the VRU and CCC have been ignored. One of the mechanisms of internal control – the institute of disciplinary liability – does not function because a new composition of the CCC at the SBI has not been formed.
5. There are no convincing arguments or data which would testify to the need to increase the overall numbers of the SBI personnel. At the same time, a number of internal organizational decisions can significantly overcome misbalance in workloads of investigators representing different regions or different SBI units.
6. Although competences of the SBI and NABU are differentiated in the Criminal Procedure Code of Ukraine, the SBI virtually competes with NABU. Such state of affairs threatens at least effective use of resources by these bodies. Besides, due to the current scope of its competence the SBI is overloaded with 'petty' military crimes which might be easily delegated to the National Police.
7. The process of filling vacancies is slowed down. At the same time, in opinion of defence lawyers' corps, the SBI investigators are not more professional than investigators of other bodies.
8. SBI is lacking the system of training and professional development of its personnel. First and foremost, it means the lack of proper procedures to evaluate training needs and preparation of respective requests

to operators and sponsors of training services. Further training of the personnel is inappropriate without introducing such a system.

9. Effectiveness of the SBI activities is negatively influenced by the fact that it has not been provided with automated access to informational resources and electronic bases of a number of executive bodies. Apart from it, the SBI still does not have a memorandum of cooperation with ARMA.
10. Cooperation between investigators and procedural supervisors, which is a basic element of effectiveness of the SBI, is characterized with a typical drawback which lies in the lack of their understanding of the roles of the investigator and prosecutor in a criminal proceeding. Another problem which is characteristic of Ukraine may be added here: the chief of an investigative unit has not only administrative, but also procedural powers, the exercising of which adds fuel to the conflict between the SBI investigators and prosecutors.
11. Public communication by the SBI of progress and results of pre-trial investigations is unpredictable as normative or instructive documents for preparing materials for the official web site are missing. Besides, the SBI incorporated a number of debatable communication practices which violate the presumption of innocence.

Recommendations (summarized)

For the Verkhovna Rada of Ukraine:

- to consider delegating a part of its competence (downsizing its competence) to the SBI in terms of "petty" military crimes to the National Police
- not to change the model of single-handed management of the SBI
- to regulate the status of the Institute of the SBI personnel training in more detail, in particular to clearly indicate the role of this Institute in the system of regular further training of the SBI personnel, outline functions of this institutions, legal status of its faculty, make clear that the legislation on education does not apply to this institution.

For the Cabinet of Ministers of Ukraine:

- to draft and submit to the VRU a bill on full harmonization of the Law of Ukraine on the State Bureau of Investigations with the Constitution of Ukraine, decisions and conclusions of the CCU.
- to assist the SBI in obtaining automated access to a wider circle of

informational resources and data bases of executive bodies (to maximize access of the SBI to state registers and data bases).

For the State Bureau of Investigations:

- to critically assess and, if needed, review strategic documents of the institution, its structure and working priorities.
- to work out possible avenues to review competences of the bodies via consultations with NABU
- to analyze scenarios of structural, organizational changes and respective needs, should competence of the SSU be transferred to the SBI (in full or in part)
- to set up the Disciplinary Committee as soon as the CCC is formed.
- to elaborate and implement a mechanism for the SBI personnel as well as persons running for positions at the SBI to take good faith tests
- to summarize and publish information about the disciplinary practice of the Disciplinary Committee based on results of the first six months, and later to do it annually
- to take into account recommendations of the annual parliamentary (committee) hearings concerning activities of the SBI and report on implementation of the recommendations or reasons of their non-implementation (in the event of their non-implementation).
- to publicly report on effectiveness of using psychophysiological detection of deception (PDD)
- to ensure that regulatory acts of the SBI director adoption of which is specified by the Law are published on its official web site
- to make information about financial resources more available, in particular to publish analytical reviews of needs and impact of expenditures as well as their being decreased or increased on effectiveness of the SBI
- to introduce statistical and comprehensive record of agreements within proceedings of the SBI (for example, by parameters such as the article of the Criminal Code of Ukraine, contractual terms and conditions, appeal of a judgment, refusal of the court to approve an agreement, etc.) or regularly request respective information from the Office of the Prosecutor General
- to analyze reports on agreements and, depending on results, to take organizational and educational measure for the SBI personnel to use such an institute

- to publish information about a number of judgments and their structure (by types of criminal offences, gravity of criminal offences, participants of criminal offences)
- to consider and study the possibility of transferring a part of its competence (downsizing its competence) in regard to car accidents caused by persons under investigation of the SBI to the National Police
- to initiate the reviewing of its structure and personnel numbers at the territorial departments and units (the central office in particular) so that they complied with the regional peculiarities and real work load of a certain activity or respective unit
- to initiate the reviewing of its structure and set up specialized subdivisions (by types of crimes), particularly units which would specialize in investigating acts of torture or other improper treatment
- to learn from the international experience which relates to the issue of additional specialization of investigators in interrogating victims, searches, examination of crime scenes, etc.
- to consider increasing the number of positions and operational personnel at the cost of decreasing the number of public officials who are in charge of documents exchange, logistical support, etc.
- to finish the competitions to fill vacancies of investigators and operational officers as soon as possible to ensure effective functioning of the SBI.
- to finish the competitions to fill vacancies of investigators and operational officers as soon as possible to ensure effective functioning of the SBI
- to get familiar with the experience of the functioning of detective units at the national bodies of pre-trial investigation
- to develop and implement an effective system of studying educational needs of the SBI personnel
- to elaborate and introduce a system to support and reinforce knowledge, skills and habits of the SBI personnel based on needs of the SBI (as an institution), first and foremost, in the functional dimension and compliant with requests of the SBI personnel
- to carry out, along with external experts, an audit of the process of drafting the set forms of reports and assessment of the used methods as well as approaches to its analysis.
- to introduce a system of electronic document flow within the SBI, and

later to introduce such a system between the SBI and prosecution bodies, the SBI and judges, the SBI and defense lawyers

- to hold consultations to draft a memorandum of cooperation and allocation of organizational duties to the investigator, prosecutor and chief of an investigative unit in regard to a criminal proceeding on the partner basis.
- to carry out, along with external experts, an audit of the process of drafting the set forms of reports and assessment of the used methods as well as approaches to its analysis.
- to initiate conclusion of a memorandum of cooperation with ARMA
- to determine rules /criteria under which pre-trial investigations or separate investigative / procedural actions to be commented outside (information of which has to be made known for the public) as well as rules / criteria official statements about progress and/or results of pre-trial investigations must comply with are selected
- to bring the practice of publishing materials which result from non-covert investigative (detective) activities in conformity with the practice of the European Court of Human Rights and provisions of the Criminal Procedure Code of Ukraine.

Office of the Prosecutor General:

- to carry out, along with external experts, meticulous research of reasons and conditions which negatively influence quality of cooperation between investigators and prosecutors
- to hold consultations to draft a memorandum of cooperation and allocation of organizational duties to the investigator, prosecutor and chief of an investigative unit in regard to a criminal proceeding on the partner basis
- to consider possibility to conclude a memorandum of cooperation between investigators of the SBI and prosecutors of the prosecution bodies who provide procedural guidance in criminal proceedings investigated by the SBI (analogous to the memorandum between NABU and SAPO).

