

ANTI-CORRUPTION EXAMINATION
of the Draft Law amending Article 233 of the Criminal Procedure Code of Ukraine
regarding the clarification of the grounds for entering a person's home or other
possession in urgent cases

Context

A group of Members of Parliament have proposed, through [Draft Law](#) No. 15488 amending Article 233 of the Criminal Procedure Code of Ukraine regarding the clarification of the grounds for entering a person's home or other possession in urgent cases (hereinafter – the Draft Law), to introduce additional restrictions on conducting urgent searches, which may negatively affect the investigation of corruption-related cases.

Corruption-Generating Factors

1. Unjustified narrowing of the scope or extent of the existing powers of specially authorized entities in the field of combating corruption

1.1. Imposition of additional restrictions on the application of the mechanism for entering a person's home or other possession in urgent cases

Under Article 233 of the Criminal Procedure Code of Ukraine, as currently in force, there are several grounds for entering a person's home or other possession without a prior ruling of an investigating judge: (1) urgent cases involving the rescue of human lives; (2) cases involving the rescue of property; and (3) cases involving the immediate pursuit of persons.

At the same time, Draft Law No. 15488 proposes to clarify the grounds for entering a person's home or other possession in urgent cases for the purpose of rescuing property. In particular, it proposes supplementing Part 3 of Article 233 of the Criminal Procedure Code with the following provisions: 1) to establish that the grounds for conducting an urgent search are a **reasoned resolution of an investigator, an inquiry officer, or a prosecutor**; 2) to limit the application of this ground to cases involving **specific, individually identifiable property**; 3) with regard to such property, sufficient evidence must have been collected indicating that the property **has or may have the characteristics of an item of evidence**; 4) the existence of a **real, specific, and immediate threat** of destruction; 5) **obtaining a ruling** of an investigating judge authorizing entry into a person's home or other possession was **objectively impossible** without the risk of losing such property.

We recognize that, in practice, law enforcement authorities frequently abuse the "rescue of property" grounds, and that urgency cannot substitute for the ordinary procedure for conducting a search. The search conducted by the State Bureau of Investigation at Vyriy Industries without a prior court ruling is illustrative. During the search, cash was among the items seized, which, as subsequently established by the court, was not related to the criminal proceedings.

At the same time, the possibility of conducting an urgent search is essential in corruption cases investigated by NABU, as there is often a real risk that specific evidence may be destroyed, damaged, or concealed before a court ruling can be obtained. Moreover, court

rulings authorizing searches often end up in the hands of persons involved in the criminal proceedings, thereby obstructing the investigation as such.

The Criminal Procedure Code of Ukraine currently provides for a mechanism of judicial review to assess the lawfulness of entering a person's home or other possession without a corresponding court ruling. An investigator, prosecutor, or inquiry officer is required to substantiate the necessity of conducting an urgent search by submitting a relevant motion immediately after the completion of the investigative action, while the investigating judge, upon consideration of the motion, verifies whether the statutory grounds for conducting the search existed and examines the circumstances that made the search urgent.

Therefore, the amendments proposed by the Draft Law do not address the issue of abuse but instead introduce additional restrictions on conducting searches before a ruling is issued by an investigating judge. This may negatively affect the effectiveness of corruption investigations, particularly in situations where investigative actions need to be carried out while following an active lead.

It is evident that an urgent search aimed at the prompt collection of evidence and preventing its destruction is often conducted at a stage when information regarding the "specific, individually identifiable" characteristics of the property is not yet available. Therefore, the application of the urgent search mechanism would become more difficult if the Draft Law were adopted in its proposed form.

Case law interprets the concept of "property" within the meaning of Part 3 of Article 233 of the Criminal Procedure Code of Ukraine more broadly than the corresponding civil-law concept. The category of property encompasses tangible objects that have or may have the characteristics of items of evidence.

The Criminal Procedure Code of Ukraine requires the subject matter of the search to be specified. Pursuant to Paragraph 7 of Part 3 of Article 234 of the Criminal Procedure Code of Ukraine, a motion for a search must specify **the individual or generic characteristics of the things**, documents, other property, or persons sought, as well as their connection to the criminal offense committed. Therefore, the current legislation does not require the property sought to be identified individually in advance in every case.

At the same time, the Draft Law's requirement that the property be specific and individually identifiable fails to take into account the particularities of urgent situations: the prosecution may have information about the specific location of the property and a real risk of its destruction or concealment, while lacking an objective opportunity, prior to entering the premises, to individually identify all items that may have evidentiary value. In addition, the Ministry of Justice's guidance states that the concept of "other possession of a person" encompasses vehicles, land plots, garages, as well as buildings and premises intended for residential, official, economic, industrial, and other purposes. This is particularly significant given that corruption-related offenses are often committed precisely on official premises.

The specific nature of investigating corruption-related criminal offenses, particularly those involving high-ranking officials as persons under investigation, also makes it especially important to maintain the confidentiality of information concerning planned investigative actions. For example, NABU has repeatedly reported, including at its most recent press briefing, attempts to exert pressure on the agency and monitor information that may

concern its investigations. In such cases, the issue is not the difficulty of obtaining a court ruling, but rather ensuring the confidentiality of the information until the search is conducted.

Therefore, addressing the issue of abuse in the application of Part 3 of Article 233 of the Criminal Procedure Code requires a comprehensive approach, including ensuring the confidentiality of court rulings authorizing searches and effective judicial oversight. Accordingly, the proposed amendments to Article 233 of the Criminal Procedure Code should not be considered in isolation, but rather in conjunction with the issue of access to investigating judges' rulings authorizing searches. If the legislature establishes stricter criteria for entering a person's home or other possession without a prior court ruling in urgent cases, it must also ensure an adequate level of confidentiality of information concerning planned searches.

Otherwise, excessively restricting the possibility of entering a person's home or other possession in urgent cases may undermine the very purpose of this exceptional mechanism. As a result, this may create real risks to the effectiveness of investigations into corruption-related offenses.

Conclusion: The clarification of the grounds for entering a person's home or other possession proposed by the Draft Law entails risks and is not recommended for adoption.