



EXPERT GROUP
**POLICE UNDER
CONTROL**

Expert group “Police under control” – is a platform of human rights organizations carrying out a comprehensive study of human rights in work of Ukrainian police



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ACCREDITATION¹ OF THE POLICE IN UKRAINE: OUTCOMES AND CONCLUSIONS

Introduction

Accreditation (reaccreditation) of the police – is a part of the most memorable reform of 2015-2016 in Ukraine. Accreditation procedure was even more famous than its results, which is why effectiveness of the accreditation remains uncertain.

The police assesses the accreditation not like the public activists, who participated in the accreditation process. Results reported by the police (20% of dismissed are regular police officers and 80% are police officers holding chief positions) are beneath criticism.

Today we are sure that the accreditation has finished, although we have a number of cases in courts and even ongoing litigations.

Thereby, considering great differences in the estimates and huge amount of information needed for evaluation of this part of the reform, we decided to devote it a section in this edition. It includes information on the police accreditation results, accreditation procedure and its problems, position of courts regarding the accreditation, dynamics of changes during the accreditation process over a year.

We hope that systematic description of the information will help readers to assess effectiveness of the accreditation and conclude whether the police had applied adequate efforts to succeed.

Participation of the Expert group “Police under control” in the police accreditation

In our opinion it is important to highlight participation of the Expert group “Police under control” in the police accreditation process.

First of all, representatives of the Expert group participated in the accreditation commissions in Kyiv, but they reviewed not only Kyiv city, Kyiv region, board of the NPU, but also head chiefs of different units all around Ukraine.

Second, the Expert group was reporting on the accreditation process – mechanism, commissions' agenda, legislative regulation problems and application issues.

Next publications were prepared ([more information: http://police-experts.info/legislation/results-commissions](http://police-experts.info/legislation/results-commissions)):

“The accreditation: first findings and impressions” (03.02.2016);

“Expert comment on reasons for abolition of the police accreditation results by the court” (06.05.2016);

“Accreditation of the police is about to fail: three solutions to the problem” (30.06.2016);

[“7.7% of police officers released of service – how to understand the results of the attestation of the Ukrainian police”](#) (notes on the accreditation results, 12.10.2016).

Third, experts of the group participated in preparation of amendments to normative acts regulating the accreditation procedure that were developed by the National Police. But, unfortunately, no steps were taken to finalize it.

¹ Ukrainian definition «atestatsiya/attestation» we've translated as “accreditation”, because it is more accurate translation that reflects the inherently to professional competencies evaluation.

I. Accreditation: objectives and tasks

Accreditation of the personnel is usually understood as periodic evaluation of the workers' qualification, professional competency and suitability for occupied position. Primary purpose of the accreditation is to improve quality of the personnel, first of all – specialists and heads on different levels. Regarding the police, we are talking about evaluation of suitability for occupied positions of every officer, including regular officers and head chiefs of the police.

According to *article 57 of the Law of Ukraine "On the National Police"*, accreditation of the police officers is aimed at assessment of their competencies, professional, personal qualities, education and qualification levels, physical training in order to examine their qualities, determine suitability for corresponding positions and career perspectives.

Besides, the accreditation is not an "initial one-time" procedure – it is not a reaccreditation of all "militsiya" officers initiated in 2015-2016, but it can be performed on a regular basis, because it is an individual assessment mechanism for every police officer that enhances effectiveness of the police.

Among the police and disciplinary commissions (should be established according to the project), accreditation commission is not just an evaluation instrument applying to a particular police officer, it also provides opportunity for the public to influence personnel issues in the police. Participation of the public in the accreditation is a form of public control over the police.

We have to point out that regular accreditation of the police personnel is a common procedure abroad², that is why it is important to establish this high quality mechanism for further successful work.

According to the Law, accreditation of the police personnel should be applied in next cases:

- 1) when a person is appointed to a higher position that is not to be filled through competitive selection;
- 2) when a person has to be downgraded because of incompetency;
- 3) when a person is going to be dismissed because of its professional incompetency.

Decision to carry out the accreditation shall be made by the Head Chief of the police, heads of the police units (institutions, organizations) regarding persons, who are appointed to the office by their orders (*p. 2, 4 article 57 of the Law of Ukraine "On the National Police"*).

Listed reasons don't explain "total reaccreditation" described here, what resulted in a substantial

discussion inside expert and scientific circles. We will pay attention to opinion of the court regarding this issue, which seems to be the most grounded.

II. Legal regulation

Main normative acts regulating the accreditation process are:

- a) the Law of Ukraine "On the National Police" (article 57);
- b) Guidance Note on implementation of accreditation of the police officers approved by the Decree No.1465 of the MIA of Ukraine of 17.11.2015 (hereinafter – Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine).

It is noteworthy that in accordance with position of the Supreme Administrative Court of Ukraine (hereinafter – SACU) we can also add to this list the Law of Ukraine "On Professional Development of Employees" No.5067-VI of 05.07.2012. Article 12 of this law is general (basic) for regulation of relations regarding accreditation of employees and is applicable for relations regarding accreditation of the police officers³.

Accreditation – is a mechanism applied to the police officers in certain circumstances and according to a decision of the Head Chief of the police and heads of the police units (organizations, institutions).

With certain reservations large-scale accreditation process carried out in 2015-2016 can be called "primary" accreditation within establishment of the new Central Executive Body – the National Police of Ukraine.

Nevertheless, it doesn't mean that the accreditation procedure will be not used again as far as the accreditation mechanism provided for by the *article 57 of the Law of Ukraine "On the National Police"* doesn't have time limits. Respectively, under the right circumstances, any police officer may be subject to the accreditation in the order provided for by the law. It requires grounded decision of relevant head officer and doesn't require public mentioning in the media.

In our opinion next problems in legal regulation of the accreditation order, which were mentioned by experts and scholars, can be marked out:

a) reasons for the accreditation and general logic of the process

P.2 article 57 of the Law of Ukraine "On the National Police" provides for reasons for accreditation of the police officer (when a person is appointed to a higher position that is not to be filled through competitive

² Дьв.: Otsinka efektyvnosti roboty politzii v Ukrayini: vid «palyts'» do novoi systemy (na prykladi orhaniv dosud. rozsliduvannya). Naukovo- praktychne vydannya / Krapyvin Ye. O. – Kyiv: Sofiya-A, 2016. – S. 78-94.

³ Postanova Plenumu «Pro sudovu praktyku oskarzhennya rishen' atestatsiynykh komisiy orhaniv (zakladiiv, ustanov) Natsional'noyi politsiyi Ukrayiny pro zvil'nennya pratsivnykiv politsiyi vnaslidok neprokhodzhennya nymy atestatsiyyi» vid 29.09.2016 № 11 Elektronnyy resurs / Ofitsiynyy veb-sayt VASU. Rezhym dostupu: http://www.vasu.gov.ua/plenum/post_plenum/postanova_plenumu_11_29-09-2016.

selection; when a person has to be downgraded because of incompetency; when a person is going to be dismissed because of its professional incompetency). This provision must be understood in a way that stated list of reasons for accreditation of the police officer is exhaustive (this position was supported by the SACU⁴).

The Law doesn't provide for other reasons for accreditation of the police officer. That is why any evaluation of competencies, professional and personal qualities, education and qualification levels of the police officers carried out by the National Police on its own discretion and without proper argumentation stated in *p.2 article 57 of the Law*, will be recognized as unjustified and illegal by the court.

The police administration cannot initiate accreditation of all police officers (regardless of personal progress), what makes legal status of the so-called "primary accreditation" very uncertain.

Opinion of Dmytro Abramchuk – a lawyer and ex-police officer – is very significant in this situation: "General accreditation of the police officers is illegal. If an employee is applying for the highest position; if demotion of an employee is not considered; if results of internal review don't prove incompetency and there is no need to dismiss an employee – he/she is not subject to reaccreditation. Nor the Law of Ukraine "On the National Police", nor the Decree of the MIA No.1465 provide for a total reaccreditation. Most of the police officers, who have to be dismissed according to "activists" (members of the accreditation commissions), will go to the law and will be reinstated"⁵.

Head Chief of the police or heads of the police units (organizations, institutions) decide to carry out accreditation of persons, who have been appointed by their orders in accordance with the law and other regulations. Taking into consideration provision of *p.2 article 57 of the Law* we have to understand that relevant decree of the head of the police unit on establishment and administering of the accreditation should include: name of the police officer (list of names) subject to accreditation; **reason for accreditation of each police officer** included in the list of police officers subject to accreditation.

Police officers holding chief positions of all levels should ensure high organizational and legal level of

the accreditation following the principle of openness (except as provided by law) and objectiveness in evaluation of professional duties of police officers subject to the accreditation (*Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine*).

These requirements should be met before speaking of validity of reasons for the accreditation of the police officer – this provision gives dismissed police officers an ability to be reinstated by administrative courts;

b) duration of the accreditation

Deadline for accreditation of former police officers, who expressed a desire to work in the National Police, became a problem because of lack of reasons, provided for by *p.2 article 57 of the Law of Ukraine "On the National Police"*.

According to *p.9 section XI "Final and transitional provisions" of the Law of Ukraine "On the National Police" within three months after publication* (06.08.2015p.⁶) of the Law of Ukraine "On the National Police" **police officers, who expressed a desire to work in the police**, provided that they meet requirements applicable to the police officers, **can be hired** by appointment (**with their consent** or by competitive selection) to posts replaced by police officers in any police unit (organization, institution).

At the same time, positions offered to such police officers, can be equivalent, higher or lower than positions, which they've held during their service in "militsiya".

Thereby, it is about the fact that **the accreditation in the form, in which it was realized (automatic accreditation of all police officers, who expressed a desire to serve in the police)**, could have been implemented in a period between publication of the Law "On the National Police" (06.08.2015) and its entry into force (07.11.2015).

c) lack of clear requirements for approval of a decision to dismiss the police officer according to results of the accreditation

Criteria, which should be taken into account by the commission when making decision, are stated in *p.16 Section IV of the Guidance Note, approved by the Decree No. 1465 of the MIA of Ukraine*: performance progress, encouragements, etc. At the same time, in motivation part of their decisions courts often underline prejudice of the commissions regarding dismissal of the police officers, when the only thing they didn't like about the officer was interview (see more in the part of this section about case law).

But it is about evaluation of the employee by the police administration, which was mostly positive, because the head chief is also subject to the accreditation and interested in positive feedback. It means

⁴ Дyv.: Постанова Пленуму «Pro sudovu praktyku oskarzhennya rishen' atestatsiynykh komisiy orhaniv (zakladiv, ustanov) Natsional'noyi politysiyi Ukrainy pro zvil'ennya pratsivnykiv politysiyi vnaslidok neprokhodzhennya nymy atestatsiyi» vid 29.09 № 11 Elektronnyy resurs / Ofitsiyny veb-sayt VASU. Rezhym dostupu: http://www.vasu.gov.ua/plenum/post_plenum/postanova_plenumu_11_29-09-2016.

⁵ Pereatestuvaty ne mozhna pomyluvaty? [Elektronnyy resurs] / Veb-sayt mizhfraktsiynе deputats'ke ob'yednannya «Na zakhyst porushenykh konstytutsiynykh prav hromadyan ta proty politychnykh represiy» «Zaboroneno zaboronyaty» 06.04.2016. Rezhym dostupu: <http://forbiddentoforbid.org.ua/uk/pereatestuvati-ne-mozhna-pomiluvati/>

⁶ Persha publikatsiya dokumentu: Holos Ukrainy vid 06.08.2015 – /№ 141-142/.

that such evaluation is not usually objective and cannot be considered equivalent to the interview results.

Thus, adoption of the *Guidance Note*, approved by the Decree No.1465 triggered a situation, when any decision (conclusion) of the commission is unfounded and dismissal from the National Police can be successfully litigated in the administrative court. The problem is in quality of this regulation, which was fairly criticized by expert and scientific society. These problems were clear to the police and its representatives, who claimed many times, that the Guidance Note was slipped to them and they “couldn't do anything”. But it is clear, that taking mistakes into account they could have prepared a new Guidance Note or amended the current one, what would have ensured adequate accreditation of the police officers.

List of factual (organizational) issues includes:

a) particular categories of police officers, who are not subject to the accreditation: maintenance staff, technical support stuff. These positions could have been taken by police officers, who performed duties of other police officers subject to the accreditation (for instance, a member of the response team, who occupied the position of a driver and wasn't subject to the accreditation – a participant of resonated events in Kryve ozero⁷);

- **lack of adequate recording of the accreditation commission's meetings**, first of all – audio recording and recording of motivation of the commissions' members, who approved a decision. There is a certain progress in resolution of the problem, for example unification of the recording and registering records about meetings of the commission and introduction of the video recording (but only during the last month of the accreditation);
- **accreditation in absentia** available for certain categories of persons because of the lack of resources and time, what erodes the idea of interview and multidimensional evaluation of the police officer, who is subject to the accreditation. Examination of the appraisal sheet, prepared by the Head Chief, indicating criteria of professional duties, personal features, doesn't afford to evaluate the person in detail;
- though decisions of the accreditation commissions are mandatory and binding for **Head Chiefs authorized to appoint the police officers to positions and dismiss them from the office or from the police, in practice decisions of the commissions are implemented improperly.**

Estimations made by few heads of accreditation commissions showed that a decision to dismiss was made in regard of about 40% of reviewed persons. Such data calls into question compliance of enforcement of the commissions' decisions. Public statements of the Head of the NPU, Head of the MIA and public organizations (first of all PO “Avtomaydan”⁸) also prove “recommendation” nature of the commissions' decisions.

Academic publication provides us legal reasoning of the problem: according to the Law of Ukraine “On the National Police” decision of the accreditation commission doesn't oblige the Head to enforce it, he/she can disagree with conclusions of the accreditation commission. Such discretion (right to choose) can be restricted only by changes of the Law. Therefore, provision of the *p.28 section IV of the Guidance Note*, according to which Heads of the police units authorized to appoint to the office and dismiss from the office or from the police, have to ensure enforcement of the appraisal sheet within 15 days after the signing by enacting a decree as direction to a regulation. This provision diminishes rights of the Head, provided for by the Law⁹;

- organization of the accreditation procedure was changed (from total accreditation to separate accreditation of the Head Chiefs), what dragged out the accreditation procedure and created service uncertainty for the police officers. These changes must be public and foreseeable, in particular for persons, who are subject to accreditation.

III. Accreditation process: mechanisms and changes

According to plans, announced by the National Police, accreditation had to be carried out within¹⁰ the Conception “100 days of quality of the National Police of Ukraine”¹¹ – during three months after the Law “On the National Police” came into force – “transition period for adaptation of all units and employees of the National Police to a new standard

⁸ Krakh protsesu atestatsiyi politysiyi: khto vynen ta prychyny vynyknennya Elektronnyy resurs / Veb-sayt hromads'koyi orhanizatsiyi «Vseukrayins'ke Ob'yednannya “Avtomaydan”», 06.06.2016. Rezhym dostupu: <http://www.automaidan.org.ua/06062016.html>

⁹ Lelet S.M. Problemy administratyvno-pravovoho rehulyuvannya provedennya atestuvannya ta prokhodzhennya sluzhby v Natsional'niyi politysiyi Ukrayiny / Nauka i pravookhorona, 2016, №2(32). – S. 77.

¹⁰ «Pershi kardynal'ni zminy my pobachymo cherez 100 dniv», – Khatiya Dekanoyidze Elektronnyy resurs / Ofitsiyyny veb-sayt Natsional'noyi politysiyi Ukrayiny, 20.11.2015. Rezhym dostupu: <https://www.npu.gov.ua/uk/publish/article/1719850>

¹¹ Kontseptsiya «100 dniv yakosti Natsional'noyi politysiyi Ukrayiny» Elektronnyy resurs / Ofitsiyyny veb-sayt Natsional'noyi politysiyi Ukrayiny. Rezhym dostupu: <https://www.npu.gov.ua/uk/publish/article/1714126>

⁷ Yevheniya Zakrevs'ka. Kryve Ozero. Shcho «ne tak» z mykola-yivs'koyu politysiyeyu Elektronnyy resurs / Ukrayins'ka pravda, 30.09.2016. Rezhym dostupu: <http://www.pravda.com.ua/articles/2016/08/30/7119011/>

of quality and performance evaluation". Unfortunately, most plans, mentioned in the Conception, were not realized – nor during 100 days, nor during a year¹².

Process (procedure) of the accreditation was changed during the realization, but key mistakes were not admitted by the police and no substantial steps were taken to correct them. First of all, we are talking about amending the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine or adoption of a new regulatory act.

Further we will concentrate on main elements of the accreditation procedure – material basis, forming of commissions, testing candidates.

Recruiting center

Recruiting Center was established in Kyiv city for selection of candidates – it is an independent structure, which is not included into the National Police. The Recruiting Center was staffed with professionals, who had been selected by the ICITAP¹³ international technical support project. The goal of the Center is to provide technical support in selection and accreditation of employees of the National Police.

Unfortunately, we don't have much information about the Center. In our opinion, it would be appropriate that the Police reports on its work, because performance of the Center as a material base for the accreditation has to be understandable and open for the society.

Forming of commissions

According to *p.4 section II of the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine*, the accreditation commissions shall include employees of human resources departments, Department of Internal Security of the National Police of Ukraine, practical psychology and other employees of the National Police of Ukraine or Police units, and also national deputies of Ukraine, employees of the MIA, public, human rights organizations, representatives of projects on international technical support, the public and the media.

Thus, commissions include police officers and representatives of the public.

It is the main distinction between the accreditation and other previous processes of the personnel changes in the law enforcement, which have never involved the public. But in practice we have seen abuse of these powers, what will be described below. Of course, it is not a reason to reject the current

system, but it is enough to improve it taking into account mistakes, create conditions to prevent abuse by committed persons and politically motivated actors.

Candidates were proposed by public and human rights organizations, projects on international technical support and the media. Information on recruitment was published on official web sites of the MIA and the NPU. It is also important that certain organizations provided letters of introduction for each candidate. Later natural persons, who didn't represent any organization or media, got an opportunity to join the accreditation commission.

Next criteria were important for selection of partner organizations: reputation of the organization and its leadership; recognizability of the organization; scale and range of realized programs or projects; activities for last 3 years; human rights experience; discretion and political neutrality. For the public representatives selection next criteria were used: motivation to participate in work of the accreditation commissions; authority in the public sector; desire to contribute reformation of the law enforcement in Ukraine; knowledge in the sphere of law enforcement/jurisprudence; interviewing experience.

In practice the situation was uneven: commissions in Kyiv included mostly human rights activists, journalists and lawyers, who didn't arouse doubts about their openness and impartiality, but regional centers faced a problem of "pocket activists" – controlled by a certain political group or persons close to the power, public organizations, which were mostly created within the accreditation commissions. Naturally, results of their work were different. That is why a decision was made in May to carry out accreditation of the leadership in Kyiv regardless of territorial unit, where these persons work¹⁴.

More information on the matter in the section on the accreditation results.

Testing police officers

Accreditation of the police consists of three key components:

- 1) general skill test (test of logical and verbal abilities, ability to process information and make conclusions, analyze data);
- 2) test of professional skills (differentiated regarding the unit, where the police officer works);
- 3) interview with representatives of the public.

In order to evaluate theoretical and practical skills, competency, ability to realize its potential, the accreditation commission tests police officer, who is subject to accreditation (*p.10 Section IV of the*

¹² Дyv.: Yevhen Kravyvin. Kontseptsiya «100 dniv yakosti Natsional'noyi politsiyi»: nevykonani obitsyanky? Elektronnyy resurs / Veb-sayt Ekspertnoyi hrupy «Politsiya pid kontrolem», 29.12.2016. Rezhym dostupu: <http://police-experts.info/2016/12/29/kontseptsiya-100-dniv-yakosti-natsionalnoji-politsiji/>
¹³ International Criminal Investigative Training Assistance Program (ICITAP)

¹⁴ Rozpochynayet'sya atestatsiya kerivnoho skladu politsiyi p'yaty oblastey Elektronnyy resurs / Ofitsynnyy veb-sayt MVS Ukrayiny, 10.05.2016. Rezhym dostupu : http://mvs.gov.ua/ua/news/1222_Rozpochinatsya_atestatsiya_kerivnogo_skladu_policii_pyat_i_oblastey_FOTO.htm

Guidance Note, approved by the Decree No. 1465 of the MIA of Ukraine).

Both tests are developed by police officers by means of the computer equipment – with elements of personal encryption and interference control.

Police officer can score 60 points maximum. Minimum is 25 points for each test (“passing score”), which will be taken into account by the accreditation commission when making decision regarding the particular police officer.

Conception, approved by the National Police, provides for an interview as a core stage of the accreditation. Those officers, who got over 25 points are not admitted to the interview¹⁵.

Police officers, who got 60 points and more for the professional test and test for general skills, have the right to appeal.

Accordingly, these persons, who didn't get minimum points, cannot appeal, what is also criticized. We are talking about such cases as technical failure of equipment used for the test; bad general condition of the police officer (for instance, it is well-known situation, when young police officers were tested after twenty four-hours duty and a journey to Kyiv).

Interviewing police officers

Interviewing is a core stage of the accreditation because only in personal conversation members of the commission can assess such important competencies of the police officer as motivation, readiness to accept changes, honesty and degree of belief.

Commission gets next documents regarding each police officer subject to the accreditation: employment sheet; extract from the personal file; copy of the income statement; reference from a previous employer; test results (general and professional knowledge – *p.10 Section IV of the Guidance Note, approved by the Decree No.1465 by the MIA of Ukraine*); results of the midot test (test shows propensity to violation of the law, embezzlement, corruption) and information about a particular candidate in the electronic base (if available) filled out by anyone, who has information about illegal actions of the police officer (information can be added by filling out a form (via the reference) and posting to the Internet)¹⁶.

Before the meeting the accreditation commission gets a list of police officers for the day. **Police officers are automatically divided among different accreditation commissions**, what exclude the possibility that members of commissions will know name of persons, who will be reviewed by them. If a member of the commission has a **conflict of interests** or any reasons, which arouse doubts in his/her impartiality, he/she must be removed (rejection) (*p.4 Section III of the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine*).

Candidate is asked **typical questions** (not always typical, but appropriate for evaluation of the police officer) in order to assess three semantic sets: 1) honesty; 2) motivation; 3) understanding of changes (readiness to changes). Answers to these questions allow to make one of **four final decisions**:

- a) candidate meets requirements of the office (leave at the current position);
- b) candidate meets requirements of the office, deserves the promotion (promote);
- c) candidate doesn't meet requirements of the office, deserves demotion (demote);
- d) candidate doesn't meet requirements of the office, is subject to dismissal from the Police because of professional incompetence (*p.9 Section IV of the Guidance Note, approved by the Decree No.1465 by the MIA of Ukraine*).

All assessments are recorded by a secretary of the accreditation commission and are signed by all members of the commission. Later (in 5 days or less), police officer can know results of the accreditation (*p.25 Section IV of the Guidance Note, approved by the Decree No.1465 by the MIA of Ukraine*).

Whether the commission has doubts and cannot make a decision, it can ask the police officer **to pass the polygraph**, but only **with the consent** of the police officer (*p.13 Section IV of the Guidance Note*). Usually police officers agree to pass the polygraph. Accordingly, popular phrase “send to pass the polygraph” is not correct, even though rejection to pass the polygraph is considered equivalent to dishonesty of the police officer and results in negative accreditation.

Final stage doesn't relate to the commission, – **appointment or dismissal of the police officer (issue of a relevant order) has to be realized in 15 days after signing accreditation document with conclusions** (*p.28 Section IV of the Guidance Note, approved by the Decree No.1465 by the MIA of Ukraine*)

If the police officer disagrees with decision of the Commission, he/she has a right to appeal. A statement of appeal must be **submitted within 5 working days** after familiarization with the results (or their publication) to the accreditation commission (*p.5 Section IV of the Guidance Note, approved by the Decree No.1465 by the MIA of Ukraine*).

¹⁵ За резултатом атестації звільняють понад третину колегії міліціонерів Києва і області – Арсен Авakov Електронний ресурс / Офіційний веб-сайт Національної поліції України, 27.11.2015. Режим доступу: <https://www.npu.gov.ua/uk/publish/article/1730096>

¹⁶ До речі, якщо однієї організації (фактично) проблемою є надання відомостей, що потрапляють у тисю бажу, членів комісії, оскільки доступ до неї майже завжди протиприродно. Центру рекрутингу. Причому такою наданням може бути як брак часу чи технічні збої або віднесення інформації до малозначущої, так і навмисне приховування відомостей, які нехотівно характеризують особу.

IV. Accreditation results

General result of the accreditation – **7.7% of ex-police officers were dismissed** (68 135 persons were subjected to the accreditation, 5 256 of them were dismissed).

92.3% of former personnel continue to work in the police (pic.1, pic.2).

The Police demonstrates two indices: 1) 14% of persons didn't pass the accreditation (5257 – didn't pass and 4766 persons were demoted); 2) 26% of police officers holding chief positions were dismissed, what impresses but makes us understand that former police officers constitute the new Police.

We are not talking about general composition of the police (for instance, rotation in the patrol service provides for recruitment of people, who have just come to work in the police) – police is really replenished by new personnel, but **a great number of former officers results in preservation of informal corporate police practices, which had become normal for “militsiya-politsiya” officers.**

We also want to attract your attention to next indices:

a) **Apparatus of the NPU** – 5055 employees were subjected to the accreditation, 590 of them were dismissed (11.7%) – though it is the number of the

Apparatus employees that must be questioned. We assume that it is necessary to start not with the accreditation of this unit, but with diagnosis of problems, reorganization and anticorruption expertise of the Apparatus;

b) **Department for Combating Drug Related Crimes** (former DCIDT, which was closed down and its functions were delegated to departments on combating drug related crimes, which are established within each regional department of the National Police) – 418 were subjected to the accreditation, 68 (16.2%) were dismissed;

c) **Department for Protection of the Economy** (former DCEC) – 2053 officers were subjected to the accreditation, 313 persons were dismissed (15.3%).

It is hard to evaluate the accreditation results of these departments, as well as performance of the whole criminal block in general, because systemic problems of these departments have existed for decades and don't yield to reforms. Personnel changes (that unfortunately didn't happen) won't substantially change the situation and institutional practices are easier to reform by renewal of the personnel and initiation of simultaneous organizational and legislative changes.

Pic. 1.



PERSONNEL OF THE NATIONAL POLICE OF UKRAINE

Personnel of the National Police numbers 130 000 employees including:

Police officers – 118 000

Officials and public officers – 12 000

Actual deployment of the National Police is 109 628 employees including:

Police officers – 99 125

Officials and public officers – 10 503

Police officers (99 125) including:

83 939, who were subjected to accreditation and recruitment, including:

- **assessed police officers;**
- **patrol police;**
- **graduates from educational institutions**

15 186, who were not subjected to accreditation, including:

- **DGNP in Donetsk and Luhansk regions;**
- **personnel of special units (involved in the ATO);**
- **maintenance staff and technical support workers.**



ACCREDITATION RESULTS OF THE NATIONAL POLICE OF UKRAINE

Pic. 2

Total number of officers subject to the accreditation is 68 135 persons

5 257 persons didn't pass the accreditation

Senior positions didn't pass accreditation **26%** **Mid-level managers** didn't pass accreditation **14%**

Officers recommended for promotion **4479** **Officers recommended for demotion** **4766**

Staff of 130 000	Shortfall – 20 372	Actual deployment – 109 628	Recruited to the police for the first time (patrol police, graduates of educational institutions) – 15 670
Police officers – 118 000	Police officers – 18 875	Police officers – 99 125	
Public officers – 12 000	Public officers – 1 497	Public officers – 10 503	

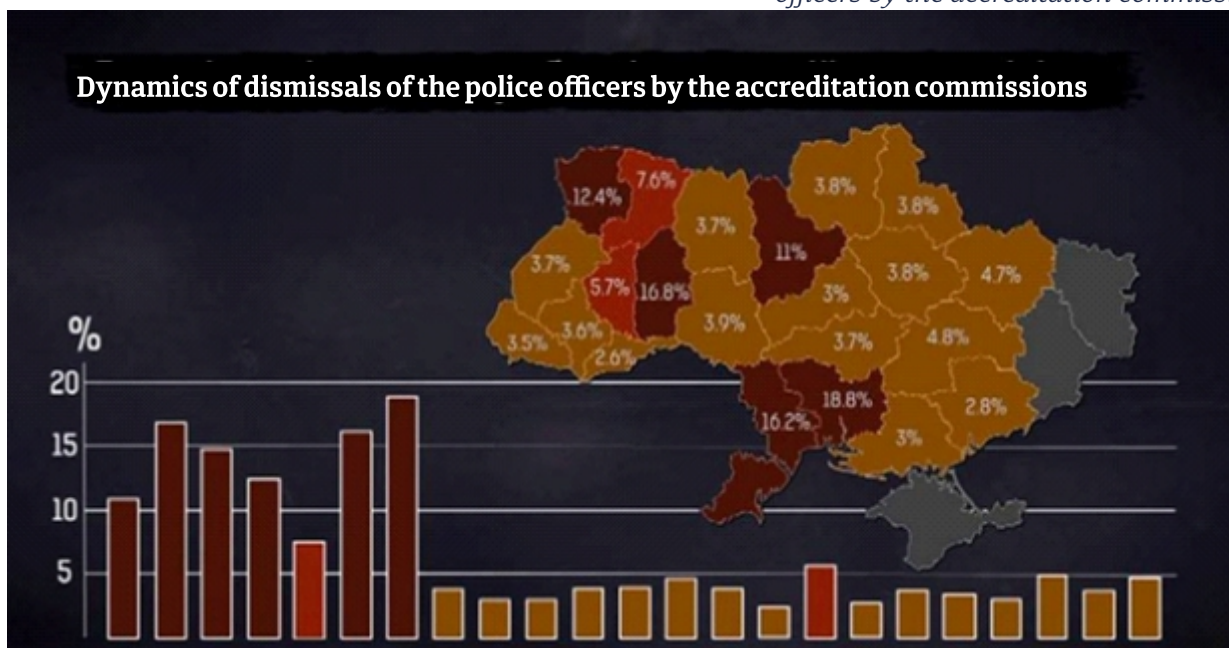
68 135 persons were subjected to the accreditation and 13 180 representatives of special units in the ATO zone.

As for publication of the accreditation results it has to be noted that officially this data was published after the accreditation, but partly it was known after responses to requests on access to public information. However, taking into consideration public interest, official results by regions and intermediate results in the country¹⁷ would have been published to show the society direction of the accreditation.

In particular, it would have showed dynamics by regions that was changing towards positive assessment of the police officers. *Pic.3* demonstrates

the dynamics caused by commitment of the public and representatives of the MIA in commissions, and also by a general idea of the police to keep “the best of the worst” because they cannot provide appropriate work conditions, what would help to attract people from the outside. In first regions, where the accreditation took place, a number of dismissed persons made up to 11-18% of the general quantity. But later this index didn't exceed 5%, what proves these results to be unrealistic.

Pic. 3: Dynamics of dismissals of the police officers by the accreditation commissions¹⁸



Result of the accreditation is low and doesn't meet its goals and tasks – estimation of competencies, personal professional qualities of the police officers, their education and qualification levels based on deep and comprehensive analysis, assessment of the suitability for positions and perspectives of the career. So either the majority (90%) of former police officers, who wasn't credible, are professional and respectable, or the mechanism of the accreditation provided for biased assessment of all mentioned qualities.

The first case raises a question – for what do we need “total reaccreditation” if the problem is not in the police personnel? The second case underlines ineffective use of taxpayers' money and funds of international technical assistance that were invested in the accreditation of the police – was there a reason to involve business structures to the Recruitment Center? Were efforts of the police aimed at promotion of the process really necessary? There is no need to mention support of the public that participated in work of commissions from start to finish.

V. Position of courts

In our opinion, special attention should be paid to practice of courts in litigation of decisions of the accreditation commissions on dismissal of police officers, because the judicial system together with former police officers were blamed in “destroying the police reform”¹⁹.

We have actually observed satisfaction of major appeals from officers dismissed on the basis of the accreditation results, what happened because of systemic problems that we've mentioned earlier. First of all, we are talking about the law (legal status of the accreditation in general) and organization of the accreditation process. Resolution of these problems in favor of an applicant made it possible to satisfy such claims. At the same time we have to remember that the court doesn't resolve the main

problem (assessment of the police officer), so it cannot substitute for the accreditation commission, which means that the court is not the one to blame, unlike organizers of the low-quality accreditation process – the National Police.

Regulatory act No.11 “On cases of appeals against decisions of the accreditation commissions of units (organizations, institutions) of the National Police of Ukraine on dismissal of the police officers, who failed the accreditation”²⁰ was adopted on the plenary of the SACU on September 29, 2016. This act contains analysis of the case law regarding mentioned legal cases.

In general it is destructive towards the police that failed to ensure an adequate accreditation process.

First of all, we have to underline that the court makes final call on compulsory decisions (conclusions) of the accreditation commission. Review of the *p.28 section IV of the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine* indicates that **decision (conclusion) of the accreditation commission** about nonconformity of the police officer with requirements of the position and his/her dismissal from the police because of professional incompetence, **is an unconditional reason for dismissal of such police officer.**

Second, we have to note that provision of the *p.2 article 57 of the Law “On the National Police of Ukraine”* should be understood in a way that the list of reasons for the accreditation of the police officers, stated in the paragraph, is exhaustive. Considering *p.2 article 57 of the Law* provision of the *p.4 article 57 of the Law*, which states that decision on organization of the accreditation should be made by the Head of the Police, heads of units (organizations, institutions) of the police in relation to persons, who according to the law and other regulations are appointed to the office by their decrees, stipulates that relevant decree of the Head of the police unit on organization of the accreditation should include: name of the police officer (list of names) subject to the accreditation; **need and reason for the accreditation of each police officer included in the list of police officers subject to the accreditation.**

Third, the question about unfounded decisions (conclusions) of the commission is also important and the most part of compilation of the case law is devoted to it.

Considering *p.3 p.3 article 2 of the Code of Administrative Legal Proceeding of Ukraine* (hereinafter – CALPU), which states that in relation to appeals

¹⁷ Pro zatyahuvannya oholoshennya rezul'tativ ta shkod, yaku nanosyt' politsiya suspil'stvu svoym movchanniam svidchyt', zokrema, elektronna petytsiya № 41/000399-16ep do KMU vid 06.09.2016 «Opublikuvaty rezul'taty vsikh provedenykh atestuvan' politseys'kykh poimennenno. Vnesty zminy do Instruktsiyi pro poriyadok atestuvannya, vkazavshy, shcho publikuvatysya mayut' rezul'taty vsikh provedenykh atestuvan'» (<https://petition.kmu.gov.ua/kmu/Petition/View/399>).

¹⁸ «Moyastara politsiya». Material Dmytra Bondarya dlya «Slidstva. Info» Elektronnyy resurs / Kanal «Hromads'ke Telebachennya» na YouTube, 07.12.2016. Rezhym dostupu: <https://www.youtube.com/watch?v=6D9Ky-K8lus>

¹⁹ «Ya vidchuvayu revansh militsiyi, revansh tykh spivrobitnykiv, yaki ne proyshly pereatestatsiyu. Mayzhe vsi vony zvernulysia do sudu. Konveyerom vidbuvayut'sya zakryti zasidannya, i ya duzhe boyusya, shcho stara suddivs'ka systema zrobyt' use, shchob znyshchyty reformu politsiyi» (Kh. Dekanoyidze). Dyv.: Hlava Natspolitsiyi zayavlyaye pro «revansh staroyi militsiyi's'koyi systemy» Elektronnyy resurs / Radio Svoboda, 07.04.2016. Rezhym dostupu: <http://www.radiosvoboda.org/a/news/27660340.html>.

²⁰ Postanova Plenumu «Pro sudovu praktyku oskarzhennya rishen' atestatsiynykh komisiy orhaniv (zakladiv, ustanov) Natsional'noyi politsiyi Ukrayiny pro zvil'nennya pratsivnykiv politsiyi vnaslidok neprokhodzhennya nymy atestatsiyi» vid 29.09.2016 № 11 Elektronnyy resurs / Ofitsiynyy veb-sayt VASU. Rezhym dostupu: http://www.vasu.gov.ua/plenum/post_plenum/postanova_plenumu_11_29-09-2016.

against decisions, actions or inaction of authorities administrative courts check grounds for the decisions. Regarding this category of cases the court has a right and must check reliability of challenged decision (conclusion) of the accreditation commission.

At the same time, the European Court of Human Rights developed a position²¹ regarding judicial supervision of discretion administrative acts, according to which national courts have to refrain from verification of reliability of such acts, but courts should check whether outlined conclusions of administrative bodies regarding conditions of the case are loose and irrational, unfounded by evidence or fallacious; anyway courts have to control such acts, if their objectivity and validity are main reasons of the legal issue.

Nor the Law, nor the Guidance Note give members of the accreditation commissions the right to make decisions on further work of the person in the police exclusively on the basis of personal, biased perception, because such approach to evaluation can cause impartial, unfounded and illegal decisions. According to the Constitution of Ukraine any state body shall be obliged to act only on the grounds, within the powers, and in the way determined by the Constitution and the laws of Ukraine (article 19 of the Constitution of Ukraine). Strict compliance with this provision of the Main Law of the state guarantees the rule of law and observance of provisions, stated in the European Convention on Human Rights and Fundamental Freedoms²².

At the same time, since negative decision of the accreditation commission results in legal consequences like dismissal of persons from the police because of professional incompetency, such **decision, regardless of its form (protocol, separate act), has to be motivated, detailed and complete, reflect all essential circumstances, which impacted the decision**²³.

²¹ Dyv.: p. 111 rishennya vid 31 lytnya 2008 roku u spravi «Druzhstevni zalozhna pria ta inshi proty Ches'koyi Respubliky» (CASE OF DRUŽSTEVNÍ ZÁLOŽNA PŘIA AND OTHERS v. THE CZECH REPUBLIC); p. 157 rishennya vid 21 lytnya 2011 roku u spravi «Sihma radio televizhn ltd. proty Kipru» (CASE OF SIGMA RADIO TELEVISION LTD. v. CYPRUS); p. 44 rishennya vid 22 lystopada 1995 roku u spravi «Brayen proty Ob'yednanoho Korolivstva» (CASE OF BRYAN v. THE UNITED KINGDOM); p. 156-157, 159 rishennya vid 21 lytnya 2011 roku u spravi «Sihma radio televizhn ltd. proty Kipru» (CASE OF SIGMA RADIO TELEVISION LTD. v. CYPRUS); p. 4 rishennya Yevropeys'koyi komisiyi z prav lyudyny shchodo pryynatnosti vid 8 bereznia 1994 roku u spravi «ISKCON ta 8 inshykh proty Ob'yednanoho Korolivstva» (ISKCON and 8 Others against the United Kingdom); p. 47-56 rishennya vid 2 hrudnia 2010 roku u spravi «Putter proty Bolhariyi» (CASE OF PUTTER v. BULGARIA).

²² Ukhvala Odes'koho apelyatsiynoho administratyvnoho sudu vid 6 lytnya 2016 roku u spravi № 815/1657/16, YeDRSR – 58923692 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58923692>.

²³ Ukhvala Kyiv's'koho apelyatsiynoho administratyvnoho sudu vid 7 lytnya 2016 roku u spravi № 810/809/16, YeDRSR – 58812388 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58812388>.

Decision of the accreditation commission should be considered unfounded and liable to cancellation in next cases:

a) defendant didn't provide the court with evidence proving circumstances that the accreditation commission considered established in its decision (conclusion). In particular, there is no information gathered during conversation with the police officer and information from open sources, which are used by the accreditation commission as evidence of low motivation of the police officer to work, low professional level/potential of the police officer, poor knowledge off the law;

b) decision (conclusion) of the accreditation commission lack findings on circumstances provided for in the p.16 section IV of the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine, and the fact of compliance with the police requirements, which apply to the person holding the office. We have to remind that according to this provision the accreditation commissions should take into consideration next criteria when making a decision concerning the police officer:

- 1) full implementation of professional duties (service regulations);
- 2) indicators of professional performance;
- 3) level of theoretical knowledge and professional qualities;
- 4) assessment of professional and physical training;
- 5) encouragements;
- 6) disciplinary sanctions;
- 7) testing results;
- 8) polygraph testing results (if available).

Dnipropetrovsk Appeal Administrative Court showed very indicative position on a case No. П/811/119/16, which supported decision of the Kirovograd District Administrative Court on cancellation of the accreditation commission's decision due to the fact that described circumstances (unclear motivation of the police officer regarding further work, low professional level/potential, poor knowledge of the law) were not supported by reliable and proper evidence²⁴. Same example took place in Kyiv, where Kyiv Appeal Administrative Court made a decision on a case No. 825/556/16 that decision (conclusion) of the accreditation commission was unfounded, based on the fact that defendant didn't provide evidence to prove low motivation of the claimant for further work in the police²⁵.

²⁴ Ukhvala Dnipropetrovs'koho apelyatsiynoho administratyvnoho sudu vid 16 chervnya 2016 roku u spravi № P/811/119/16, YeDRSR – 58430004 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58430004>.

²⁵ Postanova Kyiv's'koho apelyatsiynoho administratyvnoho sudu vid 5 lytnya 2016 roku u spravi № 825/556/16, YeDRSR – 58861675 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58861675>.

Review of the case law shows that accreditation commissions based their decisions first of all on information got during interviews with the police officers and information from open sources. Although, the accreditation commissions didn't provide this information to courts as evidence. Courts considered lack of such evidence as reasons to recognize decisions of the accreditation commissions as unfounded. Courts based their conclusions about unfounded decisions of the accreditation commissions on the fact that defendants didn't get lists of questions that were asked by the commission on interview, along with answers to these questions and information from open sources, references to which were in records of meetings of the accreditation commissions²⁶.

Position of the SACU seems surprising in this situation. According to this position “lack of the accreditation commission's conclusions on all circumstances (p.16 section IV of the Guidance Note, approved by the Decree No.1465 of the MIA of Ukraine) is a reason for considering decision (conclusion) of the accreditation commission unfounded”.

c) negative assessment of competencies, professional, personal qualities of the police officer, his/her education and qualification, made by the accreditation commission, together with total ignoring of positive reference on each mentioned fact stated in the appraisal sheet of the reviewed officer, cannot be defined well-founded. Thus, Kyiv Appeal Administrative Court recognized decision of the accreditation commission, which had negatively assessed competencies and personal qualities of the claimant, as unfounded (case No. 826/2010/16). The court underlined that this assessment didn't comply with positive evaluation of the claimant's qualities, stated in the appraisal sheet; at the same time the accreditation commission didn't disprove an assessment, stated in the appraisal sheet, by appropriate and acceptable evidence²⁷.

d) bad tests score (less than minimum level) or negative results in the polygraph testing were assessed by the accreditation commission regardless of other evidence. In the court's opinion, consideration of the only one argument is a wrong approach to assessment of evidence – results of tests are not crucial and have to be assessed together with other materials that were provided for the accreditation²⁸. The same applies to negative results of the polygraph testing;

e) information from the Internet on the police officer was taken into consideration by the accreditation commission despite the fact that its reliability wasn't proved and supported by relevant evidence and conclusions of competent authorities. Kyiv Appeal Administrative Court expressed an indicative position on the issue, when underlined that information from the Internet about the claimant cannot prove negative behavior of the claimant, possession of property obtained illegally, because such data is not checked and its reliability is not recognized and proved by relevant evidence and conclusions of competent bodies²⁹ (!).

It is also important to mention the situation regarding the claim³⁰ of the Trade union of employees of the MIA of Ukraine, who have passed the accreditation, where it asked to recognize the Decree of the MIA of Ukraine No.1465 “On adoption of the Guidance Note on implementation of accreditation of the police officers” of 17.11.2015. For a long time District Administrative Court in Kyiv city was trying this written proceeding. As a result, the court refused to satisfy the claim, what the Head of the National Police defined as a “victory”³¹ and underlined absolute legitimacy of the accreditation.

But we have to understand that the fact that this Trade union have nothing to do with the new police was decisive for recognition of legitimacy of the accreditation, approved by the Decree No.1465 of the MIA of Ukraine – “materials of the case indicate that

²⁶ Postanova Dnipropetrovs'koho apelyatsiynoho administratyvnoho sudu vid 10 travnya 2016 roku u spravi № P/811/180/16, YeDRSR – 57781380 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/57781380>; Postanova Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 5 lypnya 2016 roku u spravi № 825/556/16, YeDRSR – 58861675 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58861675>; Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 7 lypnya 2016 roku u spravi № 810/581/16, YeDRSR – 58812362 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58812362>; Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 7 lypnya 2016 roku u spravi № 810/809/16, YeDRSR – 58812388 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58812388>.

²⁷ Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 26 travnya 2016 roku u spravi № 826/2010/16, YeDRSR – 58040914 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58040914>. Analohichna pozytsiya – Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 7 lypnya 2016 roku u spravi № 810/581/16, YeDRSR – 58812362 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58812362>.

²⁸ Shchodo rezul'tativ testuvannya dyv.: Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 7 lypnya 2016 roku u spravi № 810/581/16, YeDRSR – 58812362 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/58812362>; shchodo rezul'tativ polihrafu dyv.: Ukhvala Odes'koho apelyatsiynoho administratyvnoho sudu vid 13.07.2016 u spravi № 821/274/16, YeDRSR – 59017414 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/59017414>.

²⁹ Ukhvala Kyivs'koho apelyatsiynoho administratyvnoho sudu vid 19 lypnya 2016 roku u spravi № 826/2008/16, YeDRSR – 59163551 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/59163551>.

³⁰ Postanova Okruzhnoho administratyvnoho sudu m. Kyieva vid 28 veresnya 2016 roku u spravi № 826/27744/15, YeDRSR – 61680370 / Rezhym dostupu: <http://www.reyestr.court.gov.ua/Review/61680370>.

³¹ Khatiya Dekanoyidze. Dopys u sotsial'niy merezhi Facebook vid 30.09.2016 Elektronnnyy resurs / Rezhym dostupu: <https://www.facebook.com/khatiadekanoidze/posts/1765470687056115>.

examination of the Statute of the trade union showed its nonconformity with representation criteria, stated in the *article 6 of the Law of Ukraine "On the Public Dialogue"* and it doesn't have an authority to represent interests of the police officers in collective negotiations on a sectoral treaty with the National Police of Ukraine". At the same time the decision stated that "during the proceeding the claimant didn't provide evidence of violations of rights of the Trade union members when the disputed decree was made".

VI. Summary

It is hard to establish a brand new police with 92.3% of former police officers, and it is absolutely impossible to do with political "determination" showed by the NPU and the MIA today.

The accreditation of the police should have provided vacancies for new people, who wanted to become a part of a new police and came to work there for the first time. These people should have been selected via a competition by the police commissions. But it didn't happen and there are not so many new people

in the police as we've expected.

For those, who attentively followed the accreditation process, low result that was published wasn't unexpected. The main problem is that general inefficiency of the accreditation order was already clear in February 2016 and was criticized by experts, scholars and members of the accreditation commissions. That moment everybody realized that if that uncorrected mistake would cause low result of the accreditation, many claims to administrative courts that would be satisfied.

Unfortunately, the police didn't respond to criticism and until the end of the accreditation it didn't admit its mistakes. But what is more important – it didn't introduce substantial changes to the accreditation procedure and sabotaged accreditation of the former police officers. Instead – the police blamed others (courts) for assistance in "*rematch of the militsiya system*" (H. Dekanoidze) or blamed predecessors in the MIA, who developed the Guidance Note on the accreditation order, in accordance with which they had to work.

© Expert group "Police under control"

The publication "Human Rights in the activities of Ukrainian police – 2016" is annual report in sphere of observance of the human rights by the police, which carried experts since 2008. It contains recommendations for improving the situation with human rights in the activity of the Ukrainian police.

Expert group "Police under control" – is a platform of human rights organizations carrying out a comprehensive study of human rights in work of Ukrainian police. Investigation of respect for human rights by police officers covers lawmaking and use of law. Mission of the group is to facilitate respect for human rights in work of the police by studying police practice and compliance of its activities with the law. Another objective is to inform top management about results of the study, provide recommendations, organize round tables, develop strategic recommendations, etc.

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