



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



**Borys Malyshev, chief expert of the group**  
Doctor of Laws (Dr. Habil.), Expert in Public Law and Human Rights

This publication is a translation of Chapter 1 of report  
«Human rights in the activity of the Ukrainian police – 2016”  
(in Ukrainian)

March, 2017  
[police-experts.info](http://police-experts.info)

## **LEGAL REGULATION OF THE POLICE IN THE REFORM CONTEXT**

The Law of Ukraine “On the National Police” (hereinafter – the Law) has been in force since November 2015. It establishes conditions, criteria and objectives of the most large-scale and significant law enforcement reform in the national legal system since the Ukrainian Independence.

Hence, provision of the Law is a normative core of all reformative efforts. Nevertheless, it is not perfect and has to be improved and developed within regulatory and other normative acts.

Goal of this article is to describe main problems in normative regulation of the police activities in detail and provide ways to address them.

1. The Law was adopted by the Parliament in a rush after unfounded rejection of an alternative draft law proposed by the public. It didn't take into account any major amendment prepared by independent experts. As a result, the Law was not perfect in terms of European standards of such values as openness, political freedom and guarantees of human rights in relations with police officers.

Relevant comments of the Council of Europe Directorate General Human Rights and Rule of Law made after adoption of the Law pointed out its disadvantages.

Pursuant to this comments the draft law on amendments to the Law of Ukraine “On the National Police of Ukraine” (regarding realization of recommendations stated in the comments of the CoE Directorate

General on Human Rights and Rule of Law) was registered by national deputies in the Verkhovna Rada of Ukraine with the No. 4753 of 02.06.2016. The explanatory note clearly demonstrates problems of the Law that have to be fixed.

However, unfortunately, as of January 2017 the consideration of this draft law in the Verkhovna Rada of Ukraine is being dragged.

In particular, mentioned draft law proposes to introduce the following amendments to the Law of Ukraine “On the National Police of Ukraine” which are clearly stated in the relevant comments of the Directorate General:

- In *articles 13, 22 of the Law* to exclude pre-trial authorities (mandate is duplicated with that of the criminal police) and security police (goes beyond the limits of police activity) from the structure of the police;
- In *article 14 of the Law* to transfer the mandate of approving the budget to the chief of police (in order to increase the independency of the police chief);
- In *article 21 of the Law* to provide exclusive mandate to appoint the first deputy and deputy police chiefs (with the aim of improved coordination of the police leadership) to the police chief;
- In *article 26 of the Law* to exclude the possibility of processing databases with information on persons regarding whom police officers conduct preventive work (with the aim to protect rights of persons and avoid violations of presumption

of innocence by collecting their personal data). Moreover, it is proposed to introduce the term for keeping personal information in databases;

- In *article 31 of the Law* to add the reason for checking documents (to ensure that police interventions are founded);
- In *article 32 of the Law* to add circumstances for legal inspection of a person's documents. Moreover, it is proposed to introduce the guarantee of human rights in detention;
- In *article 33 of the Law* to exclude the possibility to invite a person for interrogation to police premises (with the aim to avoid cases of illegal detention of a person, misleading or imposing psychological pressure upon a person);
- In *article 34* to add the guarantee of human rights by obligatory video recording;
- In *article 37 of the Law* to guarantee the right of a person to be informed of his/her location. In addition, it is proposed to define specific terms during which the police can restrict person's movement, hold a vehicle or personal belongings (with an aim to guarantee rights of persons);
- In *article 40 of the Law* to provide persons the right to access video materials containing records of them (such material is regarded as personal data);
- In *articles 43, 46 of the Law* to exclude the possibility to apply police coercive measures when it is not justified as well as to detail cases of applying firearms (absence of criterion to define the "invalidity" and risk of inflicting damages to persons);
- In *article 45 of the Law* to guarantee the right of a person to life and standards of the European Union regarding the use of non-lethal weapons and equipment;
- In *article 47 of the Law* to introduce a competitive approach to appointment of police officers (with the aim to ensure objective and transparent appointment process);
- In *articles 48, 51, 52, 57 of the Law* to introduce additional recruitment process of police officers in accordance with European standards – exclusively by competition and with engagement of civil society;
- In *articles 76, 80 of the Law* to change military police ranks to European, since as of today they are quasi-military which is not in line with the European tendency of forming a civil character of the police service;
- In *article 81 of the Law* to exclude powers of the President of Ukraine regarding appointment of special ranks to representatives of the highest police hierarchy (this contradicts the Constitution of Ukraine and the mandate of the President of Ukraine);

- In *articles 82, 83 of the Law* to exclude the possibility of assigning ranks based on years of service (exclusively based on qualification);
- In *article 86 of the Law* to introduce the mechanism of control over the activity of the National Police;
- In *article 87 of the Law* to provide a possibility to a head of the police agency (unit), regarding whom it is considered to adopt a resolution on mistrust, to make a statement at a meeting of the relevant council during the discussion of the draft resolution on mistrust (in order to ensure objectiveness and transparency);
- In final and transitional provisions of the Law to foresee the transfer of healthcare institutions and higher educational institutions, subordinate to the Ministry of Internal Affairs of Ukraine, to the Ministry of Healthcare of Ukraine and the Ministry of Education and Science of Ukraine.

Despite the fact, that abovementioned comments of the CoU Directorate General on Human Rights and Rule of Law had been made a long time ago, the society didn't get any public reaction from the MIA and the Cabinet of Ministers. It is striking, because basically, mentioned comments encourage introducing changes to the Law and making the reform more complex: limit arbitrariness of police officers; ensure more effective guarantees of the public control over the police; limit political influence on the police; establish a wider use of competition procedures in personnel matters; etc.

Yet the experience has shown that heads of the MIA and the National Police in 2016 were guided by other priorities regarding improvement of the law on the police. They gave a strong preference for conservation of existing legislative norms and promoted initiatives, which basically violated human rights, hiding it under slogans about necessity of provision the police officers with more rights for protection of the public order. And only deep public indignation stopped the idea of the MIA to restore proved "police" instruments, which gives the law enforcement an absolute systemic impact on the society under the theme "first, obey – then appeal!".

2. Major shortcomings of the Law are: 1) lack of legislative conditions on necessary competition to fill the position of the Head of the National Police; 2) overdependence of the Head of the National Police from the Ministry of Internal Affairs in personnel and financial questions.

According to the paragraph 2 article 21 of the Law, the Cabinet of Ministers of Ukraine appoints a candidate for the position of the Head of the National Police upon the proposal of the Minister of the MIA. The Law doesn't provide for any obligatory contest procedures. So, according to the Law, the Minister

gets legal ability to promote anyone close to him/her to the post of the Head of the National Police behind-the-scene evading the contest procedures, providing no reasons to the society and no selection criteria.

The following are decisions, which the Head of the Police according to the Law cannot approve without relevant approval from the Minister of the MIA:

- appoint and dismiss his/her deputies (*section 4 article 21 of the Law*);
- appoint and dismiss heads of territorial police departments (*section 5 article 15 of the Law*);
- approve a structure of the police department central body (*section 1 article 14 of the Law*);
- approve a budget of the police (*section 3 article 14 of the Law*);
- approve a structure of territorial police bodies (*section 3 article 15 of the Law*).

It is also noteworthy that all regulatory acts dealing with the police activities are developed and approved by the Minister of the MIA.

Hence, according to the Law the Head of the National Police cannot approve decisions on all personnel and financial questions without relevant approval of the Minister of the MIA.

To summarize we can say that relationships between the Minister of the MIA and the Head of the National Police are absolutely unbalanced and can transform the Head of the National Police into a peculiar political prisoner in the Minister's hands.

It must be noted that mentioned norms of the Law virtually frustrated the main goal of the reform – to transform the National Police into the body independent from the executive power, which provide the society with a service – defend the rule of law and protect citizens from authorities' abuse.

Therefore, unfortunately, all the conditions are present for realization by the police of politically motivated orders directed against interests of the society and human rights.

Today, in order to protect the public interests we have to introduce changes to the Law, aimed at legislative regulation of the open competition procedure for the post of the Head of the National Police. It includes regulation of the competition commission's composition (which has to engage representatives of the civil society), openness and publicity of the work. Only then we will have a chance to see the Head of the National Police presented by a professional with a high level of public trust, what will help him/her to resist a pressure on the police aimed at realization of different orders and avoid transformation of the police into a tool of political persecution.

Current Law states that any person, appointed to the post, will be extremely dependent on the MIA. That is

why the only solution is to introduce relevant changes to the Law, which will significantly reduce competencies of the Minister of the MIA regarding the National Police. It is necessary to exclude all norms, which make the Head of the National Police get approval of the most important personnel and financial questions from the Minister of the MIA. Because acting Law restricts authorities of the Head of the National Police too much – it prevents him/her from creating a team, development of internal structure of the central apparatus, allocation of the budget.

3. Before approval of the Law police officers often abused their powers during mass public meetings. The fact that police uniform lacked any identification elements only contributed to it. Even with irrefutable video record, proving abuse of power by law enforcement officers during mass actions, it was too difficult to identify offenders. Taking advantage of the situation, police officers restricted rights to peaceful assembly, sometimes by beating protesters, acting violently, unreasonably using coercive measures up to the use of firearms.

Article 20 of the Law was designed to change the situation by a reference regarding a plate on the police uniform with a clear indication of a personal badge. Police officers must not take off or hide the badge, or prevent from reading or recording (by technical facilities) the information by any means. Police officers of special units wear badges on their uniforms and helmets so that they can be read and recorded by technical means, except for secret missions.

At the same time, use of the mentioned article of the Law showed next problems: 1) numbers on badges turned out to be hardly readable, especially in the dark; 2) police officers were fastening badges to their belts, where they were almost hidden, referring to the lack of guidance in the Law regarding the place to attach identification signs; 3) the National Police provide information about owners of the badges reluctantly.

Considering this, the draft Law No. 5700 "On amending the Law of Ukraine "On the National Police (regarding identification of police officers)" was presented to the Verkhovna Rada in January 2017. An explanatory note to the law proposed next solutions to mentioned problems:

- to develop requirements on readability of information on police badges and state that it has to be attached to the chest;
- to indicate individual number in the police ID and duplicate it on personal protection equipment not by printing the number on the surface of the equipment, but on a special stripe, fastening to the personal protection equipment by a velcro;

- to introduce personal disciplinary sanctions for violations of identification rules by police officers;
- to create a unified base of individual police numbers and organize free access to the base in the web by providing information to requests on particular numbers.

From a psychological point of view, a police officer, who knows that it is easy to identify him/her, will be less willing to violate the law on a subconscious level. And vice versa – feeling the anonymity the person is more willing to go beyond the limits.

Every police officer has only one individual number, which is added to the unified base of the police individual numbers. At the same time, the draft law provides for approval of the norm on development of the data base by the Cabinet of Ministers of Ukraine.

This data base will contain information about all Ukrainian police officers according to their individual numbers. Individual numbers are assigned forever, what will help to avoid duplicating the numbers because of dismissal of police officers and their possible further reinstatement.

At the same time, people will have free access to the data base in the Internet and be able to request information earmarked for the individual number. As an answer to a request people will get a surname, name and father's name of the police officer, his/her position, special rank and information that confirms authority of the officer, granted by the Law of Ukraine "On the National Police" (suspended or dismissed officer). Information about police officers, whose work is protected by the Law of Ukraine "About the State Secret", cannot be provided.

This innovation won't threaten police officers, because information about surname, name and father's name of any officer is available from a declaration of the person, authorized to fulfill functions of the government or local government, submitted by police officers according to the Law of Ukraine "On Prevention of Corruption".

4. The Law includes many provisions that are important for the society, but which stay only on a paper because of omission of the Cabinet of Ministers of Ukraine, the MIA and the National Police that don't adopt necessary regulatory acts.

According to *article 11 of the Law*, public trust level in the police is the main criteria for performance evaluation of police bodies and units. Independent sociological services evaluate public trust level in the police in the order specified by the Cabinet of Ministers of Ukraine.

However, the relevant Decree of the Cabinet of Ministers on evaluation of the public trust in police in 2016 wasn't adopted, therefore the process of defining police work effectiveness in accordance

with new standards, based on qualitative but not quantitative indicators, wasn't implemented. Thus, the soviet system of quantitative indicators of the police work is still used. It can be easily manipulated and contains information that people cannot check.

By the way, lack of the order blocks realization of another important provision – article 87 of the Law. This article contains a provision according to which regional, city and district councils are authorized to express mistrust to the heads of territorial police units only based on the police unit performance evaluation.

The MIA and the National Police haven't also approved a reporting order of the police chief and heads of territorial police units before citizens. This order has to be adopted to implement the provision of article 86 of the Law, which states that the chief of the police and heads of territorial police departments shall prepare and publish reports on the police activity on official web pages once a year in order to inform the public of its work. Annual report on activities of the police and territorial police units has to include analysis of the crime rate in the country or regions accordingly, information on measures, taken by the police and results of such activities, as well as information on fulfilling priority goals of the police and police territorial units set before them by police commissions.

5. Some regulatory acts of the Cabinet of Ministers of Ukraine, designed to detail and develop a provision of the Law, contradict it by the content.

Thus, article 13 of the Law lists next police departments:

- 1) criminal police;
- 2) patrol police;
- 3) pre-trial authorities;
- 4) security police;
- 5) special police;
- 6) SWAT.

At the same time the Cabinet of Ministers of Ukraine created a number of interregional territorial police departments, which are not legally established.

We are talking about the Department for Economy Protection (established by a Decree of the CMU of 13.10.2015 No.830), Department for Cyber Police (established by a Decree of the CMU of 13.10.2015 No. 831) and Department for Combating Drug-related Crimes (established by a Decree of the CMU of 28.10.2015 No. 887). These departments are not foreseen by the Law and their work raises concern from the legal point of view.

Moreover, creation of the abovementioned authorities as interregional (besides, when mentioned Decrees of the Government were approved, the Law didn't foresee "interregional" type of agency, relevant

amendments to the Law were adopted only in May 2016) has distorted decentralized model of mass control over the personnel policy of territorial police units established by the Law. It also has deviated norms of mass approval of work priorities for relevant territorial police bodies.

It should be reminded that according to the Law provision for transparent selection (competition) and promotion of police officers based on objective evaluation of a professional level and personal qualities of each police officer, relevance of their positions, identification of service perspectives in the police bodies, standing commissions should be established. They should be comprised of (in case of territorial police bodies) public representatives selected by a relevant regional council, the Verkhovna Rada of the Autonomous Republic of Crimea, Kyiv City Council, Sevastopol City Council.

Thus, abovementioned units that will realize, probably, one of the most important goals of the National Police, are established as interregional and all personnel issues of their territorial units all around Ukraine will be in competence of committees and public representatives, delegated by the Kyiv City Council.

6. An important factor hampering introduction of new standards in police work is a lack of a new Disciplinary Statute of the National Police that has to provide for the transparent and objective procedure of consideration of complaints against actions of police officers and the order of imposing sanctions for offences committed by them. The draft law on the Disciplinary Statute of the National Police of Ukraine is registered in the Verkhovna Rada of Ukraine (No. 4670 of 16.05.2016) and was submitted by the Cabinet of Ministers of Ukraine and approved by the Parliament in the first reading in November 2016. Its major drawback, however, is the limited possibility for civil society to control the legality and objectiveness of disciplinary investigations of offences committed by police officers. We hope that the draft law will be amended on the second reading and the police will get modernized code of transparent and democratic rules regarding offences instead of a copy of previous Disciplinary Statute with small insignificant corrections.

7. In 2015 the Law of Ukraine «On amendments to some legal acts of Ukraine regarding improvement of regulation of relations in the sphere of traffic safety» also came into force, which lets the police to impose fines for violation of traffic regulations recorded automatically. However, after a year since the law has been in force the MIA and the National Police haven't take any substantial steps to introduce the system of video and photo cameras to record violations. Representatives of mentioned authorities

state that the main reason of this is a lack of funds to install and ensure functioning of relevant equipment, as in terms of the whole country subsequent costs can reach quite substantial amounts of the budget money. In our opinion, this doesn't impede measures on installment of the new system of recording violations in certain cities of Ukraine, which means introduction of the new model of imposing fines on a step by step basis.

Thus, we see an outright sabotage by the MIA of their functions established by the Law.

An important condition that may delay introduction of the new model of offences recording is that mentioned Law was adopted without taking into consideration the fact that its main provisions complementing articles of the Code of Ukraine on Administrative Offences do not correspond with the Constitution of Ukraine. These provisions were thoughtlessly copied by the MIA from a similar law, which was deemed unconstitutional by the Constitutional Court of Ukraine of 22.12.2010. Besides that, some of its provisions contradict also to the European standards of bringing a person to administrative responsibility, what may become a reason enough to address the European Court of Human Rights.

Therefore, we have to admit the unwillingness of the MIA, the National Police and of the Cabinet of Ministers of Ukraine from the one side (as the main administrator of the budget funds) to implement a provision of the legal act important for public security, and from the other side – delay in development of amendments to the Law, that would prevent it from the destiny of the predecessor that was deemed unconstitutional.

8. Some acts of the MIA, instead of introducing novelties in spheres of internal police functioning, which will raise its effectiveness compared to militia, anchor conservative and clearly outdated regulatory models.

For example, the Instruction on organization of control over execution of documents within the National Police of Ukraine (approved by a Decree of the MIA of 13.06.2016 No.503) doesn't have provisions introducing at least the elements of electronic documents circulation in work of the National Police.

The same could be said about the Order of forming and processing personal files of police officers (approved by a Decree of 12.05. 2016 No.377) that preserved the practice of data formation on police officers in paper. Such form of keeping personal data is vulnerable to physical damage or elimination without the possibility of renewal and allows of uncontrolled access to relevant information by a wide group of people.

In this context we should also point out the Instruction on organization of accounting and flow of criminal proceedings within the pre-trial investigation authorities of the National Police of Ukraine (approved by a Decree of the MIA of 14.04.2016, No.296), which indicates that “each investigator keeps the book of records of investigative work (on the flow of criminal proceedings), including information on the flow of all criminal proceedings where he conducts pre-trial investigation. It is allowed to keep such records with the help of electronic equipment having a duplicating character”.

Thus, the Decree clearly indicates on the secondary role of modern informational means of recording information. At the same time keeping records of investigative activity in the electronic form would allow the leadership to effectively control actions of investigators, define priority tasks, quickly approve

actions of investigators, etc. Informational form of keeping records of investigative actions can also make reporting on each criminal proceeding easier.

In general, a wide of use of digital technologies within internal document flow of the National Police is a factor that can make the work of this authority faster, more comfortable and less corrupt. New technologies are able to increase effectiveness of work of every police officer and the whole system, and this will save the budget funds since a number of internal structures, that are busy with mainly paperwork according to standards of the previous century, will vanish.

However, regulatory acts of the MIA show that in fact these regulations don't promote spread of digital technologies within internal organizational and administrative processes of the National Police.

---

### © 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.

**Founders:**

**Association UMDPL**

**Center of Policy and Legal Reform**

**Expert Center for Human Rights**