

HUMAN RIGHTS

AND UKRAINIAN POLICE • 2017
general review



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Publication is dedicated to review of the state of human rights observance in the activity of Ukrainian police during a year and contains a general description of systemic problems in its activity as well as the role of the reform in overcoming them.

Main focus of a publication this year is on the analysis of observance of human rights and freedoms by police related to the blocks of police work which are now under scrutiny of civil society and undergo reform – criminal, public security, informational.

Analysis is based on different sources of information – official statistics of state authorities, results of sociological research, scientific publications, individual appeals of citizens and reports in mass media.

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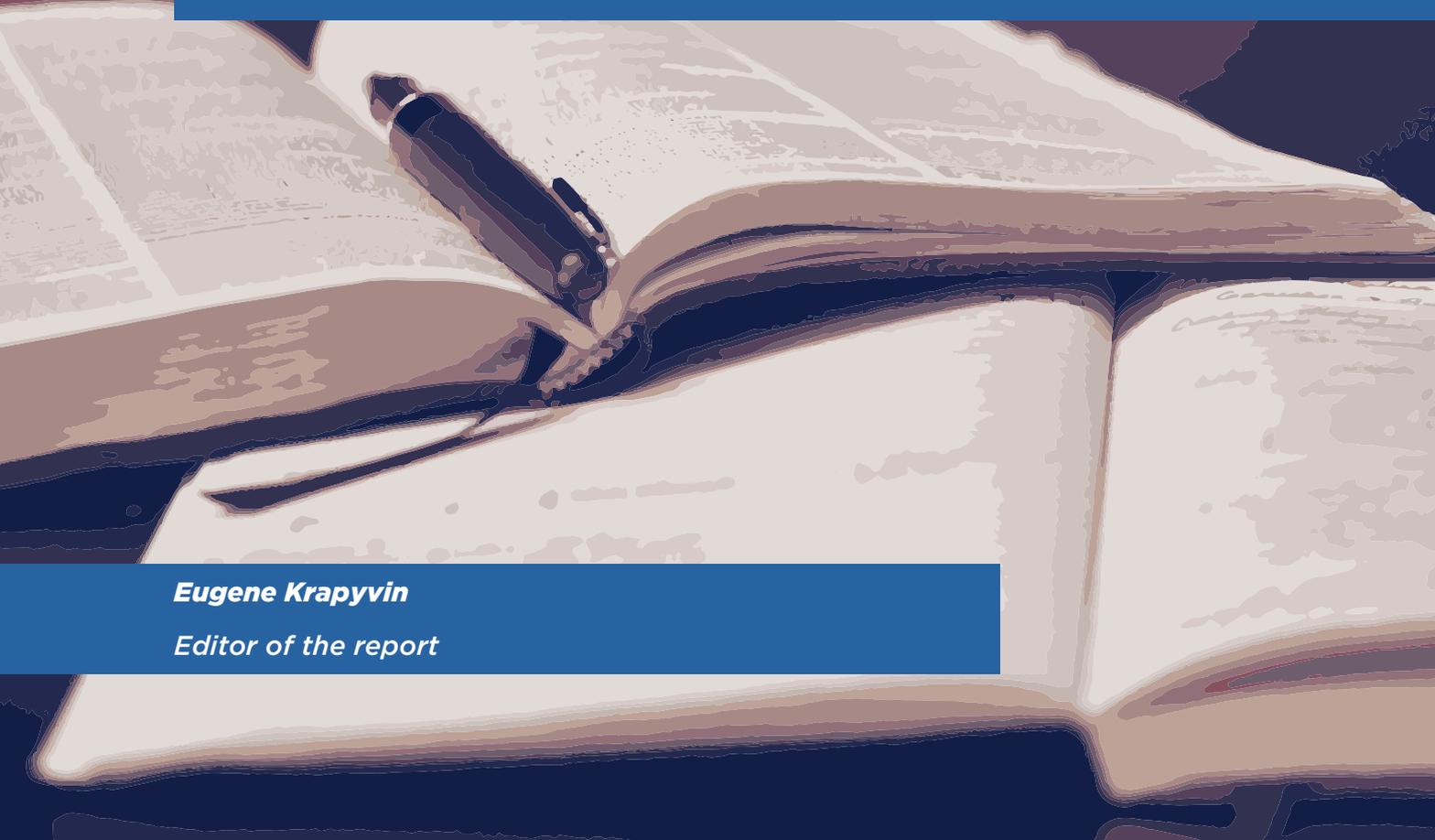
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INTRODUCTION



Eugene Krapyvin

Editor of the report

Association UMDPL continues the tradition of making annual reviews of human rights observance in the activity of police which was started in 2008 by the existing at that time Department for Monitoring Human Rights Observance (UMDPL) of the Ministry of Internal Affairs of Ukraine, which was liquidated in 2010 upon appointment of the new minister. Part of the team of the Department created a civil organization which is still working today — Association UMDPL. For nearly 10 years we keep up the tradition, established back then in the Ministry of Internal Affairs, of publishing annual reviews of human rights observance by police. The one you are reading at the moment is already the ninth issue.

This year the main focus of the issue is on the analysis of human rights and freedoms observance by police related to those blocks of police work which are now under scrutiny of civil society and undergo reform — criminal, public security, informational.

The general course of reforms in the National Police is described in the first Section “Reform of Police and Human Rights: review of main initiatives in 2017”. It provides the information about the main stages of reform of police and problems connected with them — planning and evaluation of the reform in general, introduction of the institute of detectives, change of the system of evaluation of effectiveness of police from the Soviet indicators to trust of the population, institutional changes in part of ensuring order during peaceful assemblies etc. It is worth mentioning that each of these spheres had minor developments, which is of course not that much in comparison to previous years, however, absolutely, gives the right to say that the reform continues and is not finished.

Second section is dedicated to systemic problems which prevent effective functioning of police. First of all, after the Revolution of Dignity the issue of personal identification, meaning the possibility to bring to personal responsibility those police officers who commit crimes, for example in «grey/black» group of Special Forces officers, became of outmost importance. That is why all the country remembers Euromaidan, after which «Berkut» fighters avoided responsibility wearing helmets and being dissolved in the mass of other fighters. Generally, a police officer who knows that he can be easily identified, will subconsciously be less inclined to violate the law. And on the contrary — feeling anonymity one will be more inclined to abuse the limits of his powers. That is why it is an important stage of reform that is still not

done. Secondly, mechanisms of disciplinary investigations of misconduct, committed by police officers, have almost not changed since the Soviet times.

The supervisor alone brings the subordinate to responsibility who does not have the means to protect oneself from unreasonable accusations. Thirdly, in part of the rights of a police officer, an important step in the course of reform would be to change the system of formation of salary (remuneration) of a police officer in order to avoid the practice of «bonus reduction» as an instrument of disciplinary pressure. Fourthly, police work with outdated legal instruments which for a long time need quality changes. All of the above-mentioned issues are reviewed in detail in the relevant section.

Third section continues the traditional topic for this issue — freedom and personal immunity in the activity of police. This year the focus was made on legislative problems of regulation of limitation of freedom of movement (detention) by police. Ukraine, besides traditional procedural order of detention of a person, foreseen by the criminal legislation and legislation on administrative offences, has the so called «quasi-detentions» — delivery, police custody etc. Existing state of legislative regulation of limitation of freedom of movement needs systematization and unification. At the same time, consequences of such a low-quality legislative regulation and, moreover, existing traditions in the practice of its application, traditionally leave Ukraine with a big number of human rights violations. Along with this, criminal statistics does not reflect that, and police officers do not face any responsibility for their actions, which can be seen from the results of the recent scientific researches. At the moment the system of investigation in prosecution is extremely ineffective and, possibly, this situation can be changed by the launch of the State Bureau of Investigations.

The fourth section is dedicated to the freedom of peaceful assembly, main role in observance of which plays the National Police as well as the servicemen of the National Guard. In 2017 the procedure of judicial limitation of freedom of assembly was substantially liberalized. Along with this, observance of guarantees of freedom of assembly has several minor problematic issues in the legislative and judicial spheres, as well as major problems in actions of representatives of executive power. Section describes the problems of legislative regulation of peaceful assembly. A separate attention is paid to legislative initiatives

regarding extension of powers of the National Guard in part of protection of public order.

Fifth section continues highlighting the situation with police work during public events, and at the same time is dedicated to more specialized issues in the sphere of demilitarization of peaceful assemblies. Under conditions of de-facto war, Ukraine tends to increase militarization of law enforcement authorities regardless of the territory of their activity – be it the zone of Operation of United Forces, or the cities that live a peaceful life. The year of 2017 was marked by attempts to provide the National Guard with police functions in the sphere of public order, by the operation of the Corps of Operative and Immediate Response (KORD), gradual return to the peaceful life of battalions of the Ministry of Internal Affairs, creation of municipal guards and other civil formations who tried to take on certain functions of police in the sphere of protection of public order. These phenomena also have a significant impact both on safety situation in Ukraine and on the state of observance of human rights. It is on these issues and consequences of such actions that this section of annual issue focuses on.

The author of the last sixth section analyzes the situation with observance of informational human rights by police, first of all the issue of access to public information based on the example of All-Ukrainian monitoring campaign conducted in 2017. Ukrainian Parliament Commissioner for Human Rights, acting as a controlling body in the sphere of access to information and protection of personal data, elaborated the Methodology of Evaluation of Level of Access to Public Information by the Subjects of Power. According to its provisions, Association UMDPL developed an adapted Methodology for the Evaluation of the National Police. In general, access to information encompasses not only classical inquiries for information, but also the completeness of information in institutions, for example on informational stands, accessibility and usefulness of web-sites etc. Any person, when addressing the police, has to receive quality services, and a person has to understand where, at what time and who to go to in order to get the needed information. And the main thing – a person has to receive the information, except in cases for which the legislation foresees limitations. This section is dedicated to all mentioned above issues, in particular, it provides the rating of police units in this sphere.

A stylized illustration of a group of police officers in dark uniforms and caps, standing in a line. The background is a light blue sky with a building visible in the distance. A dark blue horizontal band is overlaid across the middle of the image, containing white text.

**Reform of police and human rights:
review of main initiatives of 2017 (brief summary)**

Section I.

Eugene Krapyvin

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Speaking about the reform of police, we have to acknowledge, that we have long been running in a closed circle — leadership of police constantly informs the society about new pilot projects on reorganization of existing units, subordination of one unit to another, procurement of new equipment etc. Along with this, they ask to unconditionally trust new line police officers, support potentially dangerous initiatives concerning expansion of mandate of police officers and to not doubt that sooner or later the reform will reach its logical end. At the same time, no one speaks of results.

The most prominent stages of the reform have already become history — separation of the National Police from the Ministry of Internal Affairs (depoliticization), launch of patrol police, reattestation of police officers. To tell the truth, separation happened more on paper, because the minister together with his advisors always shows good knowledge of traditional police affairs, particularly, regarding the state of investigation of crimes. Though the purpose of separation was to deprive the minister of the right to operatively control police leaving him with the mandate to form the state policy in law enforcement sphere. Reattestation has also happened more on paper, since its result was the lay off of only 7,7% former militia officers. Among them nearly a half have renewed in their positions and received compensations from the state for the time of forced absenteeism in the amount of 55 million UAH. Thus, now the majority of police officers are the former militia officers. We can make a conclusion, that with the old staff and political influence of the minister taken together it is still a long way to walk till systematic reforms.

I. Planning of the reforms and evaluation of its results

In reality police has no clear plan regarding development of police and one-time changes are not only united by common goals but often contradict each other. There is a number of documents in the sphere of state policy which touch upon reform of police, however, none of them contains specific information — clear deadlines and measures, instruments for measuring the progress or effectiveness of reform, indicators for non-performance of which one can criticize the leadership of police.

(I) after the Revolution of Dignity and till Arsen Avakov was appointed as the Minister — till arrival of “Georgian team”

Minister Avakov created a Civil Council which started to elaborate the plan of reforms.

The result of this work became the Strategy of Reforming Internal Affairs Authorities and the Action Plan to it. The Strategy was planned up to 2018 but the Action Plan was foreseen only till 2015. Even half of this document was not implemented, and the Pilot projects, solemnly started within the framework of the Strategy, as for example “Sambir Experiment”, have ended long ago without leading to any major changes.

(II) from the arrival of the “Georgian team” – till Sergiy Knyazev was appointed as Chief of National Police

In May – June 2016 President of Ukraine invited a team of Georgian reformers to Ukraine. In the sphere of police activity, it was first Eka Zguladze, Deputy Minister, who created the Patrol Police and played a key role in adoption of the Law on National Police. Later Khatia Dekanoidze became the first Chief of National Police. She initiated the process of reattestation of former militia officers. Khatia had her own plan of changes – “100 days of quality of the National Police”. It was a short document with ambitious goals. Among them, for example, were elimination of “indicator system” and introduction of a new system of evaluation of effectiveness of police oriented on a business-model. Unfortunately, this document had the same destiny – even the third part of the plan has not been implemented.

(III) from the appointment of Sergiy Knyazev as the Chief of National Police – and till today

In February the new Chief of National Police announced a course on strengthening activities to combat crime and reform the “core” of police – criminal block. However, after the start of the experiment with creation of detectives’ units it became clear that even for such kind of task police lacks a systemic approach. Knyazev does not have a plan of reform at all, and the program with long-term goals for five years (obligatory document which he as the candidate for a position of Chief of National Police submitted to the competition board) has never been published.

The Decree of the Cabinet of Ministers of Ukraine of 15 November 2017 adopted the Strategy of Development of the Ministry of Internal Affairs of Ukraine till 2020 (Strategy of the Ministry of Internal Affairs – 2020). The final text of the Strategy was published in

the “Official Bulletin of Ukraine” only on 23 March 2018. Along with this, there is still no Action Plan prepared on how to implement the Strategy, which the Government ordered the Ministry of Internal Affairs to develop in three months’ term, meaning till 15 February 2018. This plan has to include clear measures, term of their implementation, responsible persons and indicators for evaluation of performance of these measures to reform the agency.

II. Main initiatives in the sphere of reform of police in 2017

2.1. Introduction of the institute of detectives

As of the beginning of 2017 the criminal block of police was absolutely not reformed. In January 2017 the National Police of Ukraine together with international partners initiated a pilot project in Boryspil Police Unit of Kyiv Region which put the functions of investigators and operative officers under one subordination and in one position of a detective. In June the pilot project was disseminated to eight regions: Kharkiv, Lviv, Odessa, Khmelnytsk, Zaporizhzhya, Sumy, Poltava and Kyiv regions. One police unit from each region takes part in the experiment. On 12 April 2018 Sergiy Knyazev informed of the start of the third phase of introduction of detectives’ service. As of April detectives’ units work in each regional police department.

In general, institute of police detectives exists in Scandinavian countries, Germany, USA and other states of sustainable democracy. They have a number of differences in terms of their mandates, model of cooperation with prosecution etc. Along with this, they are all united by the fact that it is one person who collects evidence and records them in procedural documents as well as carries the responsibility for the quality of conducted work – preparation of documents and submitting an indictment act to the court. This makes a detective interested in quality work with a criminal case which he processes from A to Z.

Along with this, for an effective work of detectives it is not sufficient to just unite 2 functions (positions) into one – this has to be a comprehensive reform of the criminal block (pre-trial investigation authorities and criminal police). It has to be based on legislative and institutional reforms. Elements that can be considered as institutional

reforms are optimization of the system of distribution of criminal proceedings and decrease of workload of a detective; dropping evaluation of work based on quantitative and statistical indicators, main of which is still the dynamics of “solved cases”, in favor of a comprehensive system of evaluation based upon quantitative and qualitative criteria; introduction of an electronic system of case management (electronic workflow between a pre-trial authority, prosecution and court) etc. It is very important to introduce an institute of criminal misconduct, meaning a differentiated procedure of investigation of crimes based on the level of severity. This will unload the work of investigation service for quality investigation of severe and particularly severe crimes. Today Verkhovna Rada of Ukraine considers the draft Law №7279d which introduces necessary changes (on 7 June 2018 the draft law was adopted in 1st reading).

2.2. Change of the system of evaluation of effectiveness of police from Soviet indicators to trust of population

Since Soviet times a problem of first of all investigative and operative units has been the so called “indicator system”, meaning the system of evaluation of effectiveness of police based on “cases solved” indicators. It works as follows: your region has to have constantly positive dynamics — otherwise it is believed that you are working ineffectively, which means negative managerial consequences — starting from accusing the personnel to decrease of bonuses and even dismissal. Deprivation of bonuses is quite an effective mechanism of putting informal pressure by the leadership, because it can amount to half of the salary (major part of remuneration of police officers is still a monthly bonus) during several months in a row.

Thus, if a pre-trial authority works badly, it means that “necessary” indicators have to be somehow fulfilled. As a result, police officers start using techniques to make their job “easier” — promise suspects (and don’t fulfil the promise) conditional punishment, apply psychological pressure and even use physical force. This also explains the practice when victims are being rejected in filing a crime report to police (avoiding registration), evidence is being falsified, detentions are being conducted illegally, procedural guarantees

of suspects are being manipulated with etc. Common people become victims. It is very often that we don't hear about such irregularities, because they are not being reported by mass media, and police rejects accusations by all means.

Such a system of evaluation is traditionally supported by politicians and high-profile officials. They understand increase of solved cases as effective work and no one cares how it is being achieved. A story worth mentioning is the one that happened with the Prime-Minister V.Groisman in 2017. At the joint collegium of the Ministry of Internal Affairs of Ukraine he threatened to fire three heads of regional police departments who had the worst indicator of solved cases. What these chiefs had to do in order not to be fired — is very easy to understand.

Law of Ukraine “On the National Police”, which came into force in November 2015, foresees, that the level of trust of population in police is the main criteria for evaluation of effectiveness of activity of bodies and units of police (part 3 of article 11 of the Law). At the same time, for this provision to work, the Government had to adopt relevant decree with the methodology of such evaluation.

On 7 February 2018 the Government adopted the Order of Conducting Evaluation of Level of Trust of Population in National Police. This document with two pages includes basic rules of engagement of independent sociological organizations to evaluation of trust, identification of periodicity etc. As to the indicators (variables that must be repeated each year in order to track the dynamics for a specific period) of evaluation the document refers to the regulatory act that the Ministry of Internal Affairs has to adopt. Thus, a step towards introduction of a new system of evaluation has finally been done. At the same time, it's worth mentioning that a number of measures are still to be done in order to establish this system for it not to turn into the profanation.

Following the Order National Police of Ukraine issued a Decree №449 “On Determining the Criteria of Evaluation of Activity of Bodies and Units of National Police of Ukraine” of 07 May 2018. It approves new criteria of evaluation of police work. At the same time, according to the words of Chief of National Police Sergiy Knyazev during the departmental

conference call, it is already in July 2018 that a tender for conducting a study of the level of trust of people in police will be announced.

2.3. Institutional changes in part of ensuring order during peaceful assemblies

An important novelty which police started to implement in part of working with protesters — is the introduction of “anti-conflict groups”. This is the so called “dialogue police” which has the following tasks: facilitate mass events, protect the right of citizens to peaceful assembly, support constant dialogue with participants, prevent possible confrontations and help in their de-escalation. Human rights defenders have for many years been indicating on the necessity of making this step, particularly in reports on observance of a right to peaceful assembly by police.

At the same time police creates a new unit — tactical police, which mandate includes conducting preventive measures to protect public security and order, particularly, during mass events and assemblies (de-escalation of conflicts during such events). Unit of tactical and operational response (TOR) of Patrol Police serves today as a force unit during assemblies, however, it is being used when there are cases of small violence. Meaning, when there is no such level of insecurity for people demanding the use of KORD.

Experience of 2017 showed, that there is no effective cooperation and communication between the dialogue police, TOR, patrol police, KORD, military servicemen of National Guard of Ukraine. First of all, there are no algorithms for joint actions (standard operation procedures) depending on the situation and necessity of intrusion, limitation of rights of citizens to peaceful assembly.

III. Instead of conclusions

Due to the fact that it is hard to give a definition of “reform” one can not say for sure whether it’s finished, failed or continues. One year, three or five years — these are mostly conditional numbers which cannot serve as the beacon for finishing reforms. It is particularly hard to evaluate under the conditions when spheres of reforms are constantly changing,

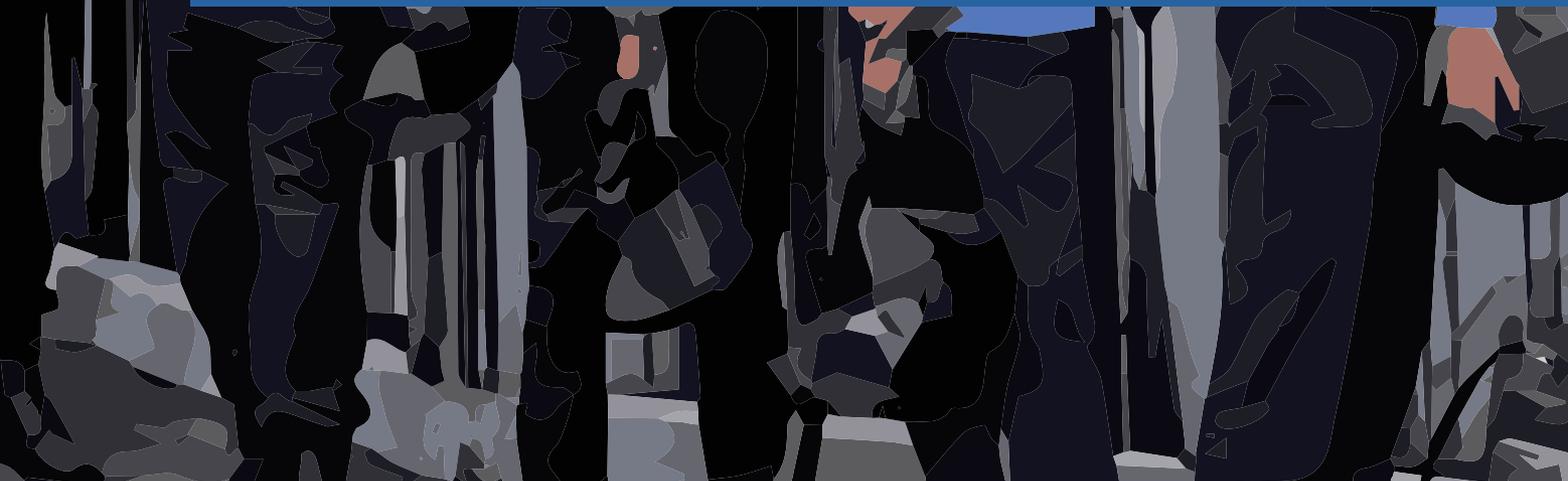
and there is no clear, approved by all responsible for this state officials plan of action and indicators of change. One thing is clear: till the the “core” of police — criminal police and investigation — is not reformed, it is too early to speak about the completeness of reform. This includes reform of internal security, launch of State Bureau of Investigations and new evaluation system — most of the things that we paid our attention to.

[Abstract] trust in police does not allow to evaluate how the society really treats the reform of police. At the same time, the level of typical human rights violations: illegal detentions, illegal violence, deprivation of the right to protection, pressure on business etc. — stays almost at the same level as before. In addition to that, new challenges, first of all, growth of organized crime, property crimes etc., as a result of social and economic problems, war, increased number of non-registered fire arms etc., make police make even louder statements. We have returned to the old times when police report on a monthly basis about decreased number of registered crimes (which most likely reflects the widespread practice of hiding crimes from registration), as well as constantly reports about increased number of solved cases. Such a “bubble” always blows —new leadership of police and Ministry of Internal Affairs have to know that. Observance of human rights in the system of coordinates which top leadership of the state find themselves in, unfortunately, is not the priority — absence of “political will” to conduct reforms shows that. If you read previous publications of this issue, you’ll see it by yourself — similar systemic problems are being described year after year which no one wants to solve.

In the end, we have to, unfortunately, say that the process for the sake of the process is, obviously, fine for political leadership of the Ministry of Internal Affairs. Since small pilot projects and experiments bring quick reputational dividends. Under the circumstances of short political cycles — this is an understandable and desired goal. And systemic changes would inevitably lead to ruination of existing corruption schemes and traditional practice of work, and therefore — result in discontent of the middle-management and old vertical of police going out of control of the Minister.



**Systemic problems that impede
the efficiency of the police activity**



Section II.

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A problem with police impunity exists as long as police itself. The task of the state and civil society is to minimize this impunity. This section describes main points which reforming can have a substantial impact on the problems in this sphere.

1. Personal identification of law enforcement officers

Before adoption of the Law of Ukraine «On the National Police» old militia had only service IDs that identified them. Upon request, law enforcement officers did not show their service IDs and stayed unpunished if they committed an offence on duty. Experts and civil activists insisted on necessity of introduction of effective identification of law enforcement officers.

Even after the abovementioned law was published, which contains separate provisions regarding identification of all police officers, there were problems caused by the fact that relevant provisions of the law were not perfect and lacking detailing. Improvement of the system of personal identification of police officers will allow citizens to easily see, remember and record with the help of technical means individual numbers of police officers in case of their unlawful actions or when a police officer refuses to introduce him/herself or show service ID. A police officer, who knows that he/she can be easily identified, will subconsciously be less inclined to violate the law. And on the contrary — feeling anonymity, police officers will be more inclined to abuse given powers.

2. Mechanism of investigation of disciplinary misconduct, committed by police officers

A problem of the Disciplinary Statute of internal affairs authorities, which provisions temporarily cover police, is that its procedures are closed for participation of civil society and even public control, with the disciplinary proceeding depending only on the will of police officer's supervisor. Besides that, legislative regulation of bringing police officers to disciplinary responsibility does not meet ECHR standards.

Provisions of the draft law №4670 do not differ much from the Disciplinary statute of internal affairs authorities. And even though the text was substantially improved for the 2nd reading the main problem could not be solved — closed type of procedure which leaves the supervisor with the right to more or less decide the fate of subordinates.

Generally, the draft law №4670 cannot be considered as totally new and progressive regulation of bringing to disciplinary responsibility. The most needed change is the introduction of, independent from police, authorities for disciplinary investigation and bringing to responsibility. Besides the formally existing and anchored in the legislation system of bringing to disciplinary responsibility there is another parallel system which fully excludes the possibility of appeal and judicial control – this is, in particular, assignment to walking patrols and deprivation of part of a bonus which is part of the salary of a police officer.

3. Formation of salary (remuneration) of a police officer

Remuneration of police officers consists of a regular position salary, special rank salary, monthly additional types of remuneration (increase of position salary, bonus, additional payments which have a constant character), premiums and one-time additional types of remuneration. Along with this, some premiums can amount to 100% of regular position salary together with special rank salary and a premium for years of service. A situation, in which the biggest part of remuneration of police officers is a premium, amount of which depends on the will of the supervisor and amount of budget funds, creates major corruption risks and does not satisfy righteous expectations of police officers. It is a common practice to deprive a police officer of premium by the decision of his supervisor which cannot be appealed against. It is also highly possible that there can be a situation when a State Budget of Ukraine will not have funds allocated for remuneration of police officers in amounts foreseen by current premiums. In this case, police officers will be deprived of premiums and transferred to just regular position salaries with additional payments foreseen by the law.

4. Outdated legal instruments

Patrol police was formed anew according to new standards and mostly with new people who weren't part of the system, but it also received an outdated Code of Ukraine on Administrative Offences, adopted in 1984 and amended nearly thousand times since then.

We provided a more detailed information about the Code of Ukraine on Administrative Offences in the report for 2016. Among the key points were – short terms for bringing to

administrative responsibility upon «criminal» offences, the possibility of exemption from liability for minor severity offences etc. Another problem is the absence of prosecution part in cases regarding «criminal» offences as a result of which judges take the function of prosecution and stop being neutral in the process. Impossibility in many situations to defend own right in court because of the outdated and low-quality legislation demotivates patrol officers, majority part of whose work thus goes in vain.

Solution of this global problem has to become the adoption of two codes instead of the Code of Ukraine on Administrative Offences — on Criminal Misconduct (or by incorporating its provisions to the Criminal Code) and on Administrative Offences.

In addition to that, activity of patrol officers on the level of regulatory acts is regulated only in part of carrying out duties of bringing to administrative responsibility. The rest is not regulated by anything. In previous decades there was a regulatory act that established rules of activity of patrol police precursors — patrol and post service. Absence of this kind of regulatory act leads to the fact that the activity of patrol police is chaotic and depends on a certain constantly changing tradition and vision of different level of supervisors, which is unacceptable for a police body with thousands of personnel.

There is also a number of other problems — paper document flow, departmental system of healthcare instead of insurances etc. An effective model of promotion in service has not been introduced, because competitions for vacant positions in the system of police are mainly not announced for the leadership positions, for which they often use the attestation procedure, which allows to appoint a person wanted by the higher leadership.

All of the described above shows the systemic incapability of legislative power to provide for the quality legislative regulation of law enforcement authorities and reluctance of executive authorities to fix existing problems at their level.

For four years after the Revolution of Dignity, unfortunately, the reform of police has not been completed, besides certain small changes. We have a huge amount of tasks to be fulfilled ahead of us, before one will be able to say about creation of police with a fundamentally new quality.



**Right to liberty and security:
problematic issues**

Section III.

Eugene Krapyvin

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The right not to be arbitrarily deprived of liberty is part of any modern society — from Anglo-American traditionally modernist societies to traditional ones. Its scope differs from that adopted in Western legal tradition, but one can confidently say about certain universal human understanding of the necessity to protect a person from arbitrariness of state in issues of physical immunity. Detention without court decision is, first of all, a measure of ensuring criminal proceedings and consideration of cases on administrative offences, which in its turn regulated by the relevant legislation. There also the so called quasi-detentions, a list of which is exhaustive. Thus, Ukrainian legislation foresees such orders of legal detention of a person:

- a)** Detention without a decision of an investigative judge, court upon suspicion of crime as foreseen by article 208 of the Criminal Procedure Code of Ukraine (classic detention immediately after committing a crime);
- b)** Detention without a decision of an investigative judge, court upon suspicion of a crime as foreseen by article 207 of the Criminal Procedure Code of Ukraine (the so called «civil detention», which is a physical limitation of freedom of movement until police arrives);
- c)** administrative detention as foreseen by 261 of the Code of Ukraine on Administrative Offences;
- d)** Quasi-detentions. Namely: police custody as foreseen by article 41 of the Law of Ukraine «On the National Police», delivery of a person as foreseen by article 259 of the Code of Ukraine on Administrative Offences. In the court practice of Western countries stopping cars can also be put under this category (Canada, see.: R. v. Hufsky).

In the activity of the National Police illegal detentions stay a common practice which can be seen from the results of thematic researches published in 2017.

At the same time, any illegal detention is a crime but there is no real responsibility for such actions, as well as actions accompanying them — deprivation of right to protection, abuse of power or duties, torture etc. Data of criminal statistics show that year after year Prosecutor General's Office initiates 100-200 criminal proceedings according to these articles, among which 20-30 end up in court with convictions (punishments that do not necessarily mean deprivation of liberty). Along with this, for illegal detentions this number is extremely small — up to 10 criminal proceedings registered per year, only a few end up in court. Such a situation can fundamentally be changed for better together with the start of work of the State Bureau of Investigations on 01 September 2018, however, its creation is accompanied by a number of problems which can keep everything at the existing level.



Freedom of assembly



Section IV.

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Peaceful assemblies continue being topical and necessary instrument for civil society which allows to protect own rights and interests.

In 2017 the procedure of court limitation of freedom of assembly was substantially liberalized.

Observance of guarantees of freedoms of assemblies has a few minor problematic issues in the legislative and court spheres along with major problems with actions of representatives of executive power.

The Index of European Integration which covered 2015-2016 shows that, from among the countries of Eastern Partnership, Ukraine is the leader in the sphere of observance of freedom of assembly. Ukraine has one of the best situations with freedom of assembly from among all countries that have a common border with it. But this also means there are negatives tendencies in bordering states which poses a threat in the long run.

Main systemic problems and negative tendencies which took place in the sphere of freedom of peaceful assembly in previous years after the Revolution of Dignity stayed the same.

There is still a post-revolutionary trend to move the focus from the judicial level to simply the practice of application of regulations by the authorities of the National Police of Ukraine.

One can note the stable commitment to the old tactics of escalating violence rather than negotiation. A newly created «dialogue police» has still not demonstrated its effectiveness. It is for the first time in court practice of higher judicial instances that there was no referral as on acting document to the Decree of the Presidium of the Verkhovna Rada of Ukrainian SSR of 28 July 1988 № 9306-XI “On the Order of Organization and Conducting Assemblies, Meetings, Street Walks and Demonstrations in the USSR”.

At the same time, there are still referrals to this Decree made by the law enforcement authorities and local authorities.

It is for the first time for many years that freedom of assembly was almost pushed away from the focus of interests of legislators. Two drafts of special law lay untouched in the Parliament.

There are attempts to extend the mandate of the National Guard of Ukraine in the sphere of protection of public order which raises serious concerns. In general, engagement of military servicemen to performing police functions can be violation of the Constitution of Ukraine and needs to be stopped as soon as possible in this way or another. There are no regulatory acts regarding activity of law enforcement authorities in the sphere of ensuring freedom of assembly. Despite declarations of necessity of such regulation state authorities don't take any real steps in this sphere.

Presidential and governmental strategies, that have provisions related to freedom of assembly, are not implemented in practice.

There are still acts of local authorities limiting the possibility to realize the right to peaceful assembly. At the same time, there is a perspective to cancel such acts in courts.

There is an increased number of cases of bringing to administrative responsibility according to the article 185-1 of the Code of Ukraine on Administrative Offences despite of the fact that this is unacceptable according to decisions of the European Court of Human Rights in cases «Verenzov vs Ukraine» and «Shmushkovych vs Ukraine», as well as a decision of the Supreme Court of Ukraine.

The number of registered criminal proceedings initiated for unlawful interference with peaceful assembly has significantly increased which does not show that the situation has worsened in general, but rather indicates on the decrease of latency of this offence. Other indicators regarding received information of suspicion and cases with indictment acts submitted to court stayed at the same level.

Police continues to irrationally fear installment of tents and burning tires, but in general does not interfere with blocking roadways during peaceful assemblies.

Identification of police officers and military servicemen of the National Guard of Ukraine during peaceful assemblies stays at the low level.

A position that a special law on freedom of assembly is not needed stays dominant among the society. Peaceful assemblies will be protected not by the law but by absence of arbitrariness.





**MILITARIZATION OF PUBLIC ORDER:
challenges for human rights and freedoms**

Section V.

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The year of 2017 was marked by attempts to provide the National Guard of Ukraine with police functions in the sphere of protection of public order, operations of Corps of Operative and Immediate Response (KORD), gradual return to peaceful life of battalions of the Ministry of Internal Affairs of Ukraine, creation of municipal guards and other public formations that tried to take part of police functions in the sphere of protection of public order. These cases have a substantial influence both on safety situation in Ukraine and on the state of observance of human rights. In a certain way, some of these processes contradict with documents of state policy foreseeing demilitarization of police and clear separation of law enforcement authorities from military forces. However, a systematic analysis of the totality of these events has not yet been carried out.

The theory of militarization, given in the section, allows to make a certain clarification of the above mentioned phenomena. Professor Peter Kraska shows difference between «militarism» of police and «militarization». When «militarism» is an ideology which underlines that use of force and relevant equipment is the most effective instrument in solving problems; «militarization» — serves as implementation of such ideology. Researcher also points out the following parameters of militarization of police forces: material (firearms and equipment), cultural (existence or absence of military ranks, views and opinions of police officers), organizational (existence of special units) and operational (how strategies and tactics of police differ from or similar to those of military forces).

The quintessence of police militarization is a threat that the attitude to potential offender of public order will be the same as to the «enemy». First of all, we are talking about criminalization of a wide spectrum of minor non-violent offences without observing the principle of proportionality. However, the most colorful example of militarization of law enforcement authorities can be seen during public protests, because military formations which are being engaged to protection of public order during peaceful assemblies due to their institutional formation have preconditions for escalation of conflict, in particular, their centralization and anonymity. Militarization can also push law enforcement authorities to adopt the vision «purpose justifies the means», in which principles of legality and proportionality will be undermined by the necessity and effectiveness.

National Guard of Ukraine

Created on the basis of internal forces of the Ministry of Internal Affairs of Ukraine — National Guard received the status of military formation with law enforcement functions. This definition became the foundation for development of an institution in two different directions: as in army the National Guard of Ukraine is equipped by heavy weaponry and machinery, the soldiers pass combat training, and the leadership declares the transition to NATO standards; as in police the National Guard of Ukraine is engaged to participation in providing for public security, protection of peaceful assemblies and street patrol. Different directions are not always coordinated which leads to contradictory legislative initiatives called to «bring in correspondence» regulations of activity of formation and push leadership of the institution to put servicemen of the national guard on the same level with police. The draft law № 6556 (of 08.06.2017) was agreed by representatives of the National Guard of Ukraine, however, was not supported by the Ministry of Internal Affairs which provides for the formation of state policy of the institution. Incorrect strategy of development of the National Guard reflects on the quality of ensuring security and public order, proper observance of human rights and freedoms as well as on the safety of life and health of military servicemen themselves.

Special police units

After «Berkut» and other special units of the Ministry of Internal Affairs were disbanded, the concept of reforming was in creation of one unit of special purpose — KORD (Corps of Operative and Immediate Response). At first sight an easy structure that would have to include one element was complicated by the fact that KORD itself is not the only unit in this chain: Special Police Forces (which structure includes KORD), today also have Regiments of Special Forces.

In 2017 Unit of Tactical and Operational Response (TOR) became operational as part of patrol police. Using enhanced equipment, helmets and sometimes shields — TOR becomes in fact a new «riot police» of Ukrainian law enforcement authorities.

A separate novelty is Patrol Service of Special Police Forces. Its creation is mostly caused not by the Anti-terrorist operation in the East of Ukraine, but with gradual decrease in intensity of military collisions, rotation and return of some units to the territory controlled by Ukraine, so the issue of mandate of such formations becomes topical.

Public formations and law and order

After 2013-2014 Ukraine had an outburst of creation of municipal guards and other public formations which in this or another way declare protection of public order in their activity. Such structures can have different legal status: security firm, civil organization, public formation. Today processes of their creation and activity have a chaotic and uncoordinated character. Necessity of their creation is being explained by the decentralization of security of communities which lies in the concept of community policing. The practice has also the opposite side of the stick which lies in approving of force methods in solving complex public issues by community.

The year of 2017 was marked by reinforced rhetoric of «making order» by separate formations that in practice was followed by episodes of violence against vulnerable groups: roma and drug-dependent persons. There were many cases of attacks on participants of peaceful assemblies, who raise issues of equality of genders, discrimination of sexual minorities. Attackers were usually the members of certain public formations or organizations. A number of clashes between different organizations indicates more on the fact that certain formations are guided by interests of those who finance them rather than by security of the whole community.

Public order and perspectives of demilitarization

In 2017 a «dialogue police» was created. It aims to support de-escalation of conflicts and promote realization of peaceful assemblies. At the heart of activity of anti-conflict groups is the tactic of «negotiation management». Initiative in the long run can decrease tensions during protest actions and prevent cases of use of force: both by police and participants of assemblies. Creation of «dialogue police» itself is part of declared demilitarization of police.

At the same time coordination between different structures of the Ministry of Internal Affairs of Ukraine and units of the National Police of Ukraine could be better. Separate units receive reinforced equipment, have combat experience and are being engaged to protection of public order in peaceful environments. However, reliable mechanisms of protection from abuse of powers and office by law enforcement authorities are still not created.



ACCESS TO PUBLIC INFORMATION
in the activity of Ukrainian police

Section VI.

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The right to access information is an instrumental right, meaning the one that is needed for realization of other human rights and freedoms, — without access to certain information which is in possession of authorities or other subjects, a person often cannot realize other rights (for example, participation in elections and in management of state affairs, etc.). The right to access information demands from the state not retention from interference but active actions — providing for regulatory, organizational and technical conditions for realization of the right to information, including proper consideration of inquiries for information and initiatively publishing socially important information.

During 2017 experts of Association UMDPL in cooperation with regional monitors conducted evaluation of the level of openness of institutions of the National Police of Ukraine. Sample of research was formed in a way to maximize coverage of institutions of the National Police of Ukraine on different levels all over Ukraine. Thus, among those to undergo evaluation were the Central Secretariat of the National Police of Ukraine, 25 departments of the National Police of Ukraine in the regions and in the city of Kyiv, as well as 5 territorial (separate) units of Departments of the National Police of Ukraine in each region and in the city of Kyiv — altogether 125 departments and units. Instrument of the research was the «Methodology for Evaluation of Level of Access to Public Information by Subjects of Power» (hereinafter referred to as — Methodology), elaborated by a number of specialized civil organizations in cooperation with the Secretariat of Ukrainian Parliament Commissioner for Human Rights, adapted to the specifics of activity of the National Police of Ukraine.

1. 1. Ensuring access to public information on the level of regulatory acts

Among general problems detected during the analysis of provided regulatory acts, the following are worth mentioning:

- 1) absence or ineffective regulation for reconsideration of «For Internal Use» classification and running a «three-component test»;
- 2) procedure for collecting actual costs for copying and printing does not meet the

requirements of acting legislation, amount of actual costs is not calculated but taken from the Decree of the Cabinet of Ministers on Maximum Amounts; accounts for reimbursement (except one case) are not defined; therefore – upon existing normative regulation National Police has to provide any volume of information free of charge;

- 3) in most cases an official responsible for access to public information is not identified, in such cases manager of information refers to Regulation on department of documentary support and department of communication in National Police of Ukraine, in some cases – to job descriptions of certain persons; thus, a number of issues stay out of control;
- 4) in most cases, regulatory acts are not given on the level of the head of an institution, that would be governing issues in question; as a result – most of the issues that were researched are not regulated. In other words, in relevant regulatory acts of the Ministry of Internal Affairs and National Police of Ukraine there is no direct obligation to regulate a number of questions on the level of regulatory decisions of the leadership of institutions of the National Police. Along with this, it would be logical to prepare standard regulations with a list of obligatory issues to be regulated and formulate ways how to solve them.

2. Provision of public information in response to inquiries

There are only 8 institutions of the National Police of Ukraine that could overcome the barrier of openness (80% by the scale of Methodology) in part of ensuring access to public information by providing it in response to inquiry, and this is only 5% of the total sample. The most closed one is Dnipropetrovsk region, because out of 30 inquiries that were submitted to 6 institutions of the National Police in the region (including the Directorate General of the National Police of Ukraine), answers were given only to 9 inquiries. Second and fourth waves of inquiries were fully ignored by all institutions of this region, and the first wave of inquiries were answered only by the Directorate General of National Police.

The most open region is Ivano-Frankivsk region, however, it could not go higher than the «middle level» (67,5%) according to the scale of evaluation.

The most common unlawful rejections were:

- failure to refer the inquiry according to the topic — violation of part 3 of article 22 of the Law of Ukraine «On Access to Public Information»;
- classification of information as «for service use» — violation of part 2 of article 6 of the Law of Ukraine «On Access to Public Information»;
- referral to generally accessible sources — violation of part 3 of article 22 of the Law of Ukraine «On Access to Public Information»;
- improper formulation of inquiry (absence of signature on inquiries sent via e-mail, absence of patronymic and a telephone number of requestor) — violation of part 5 of article 19 of the Law of Ukraine «On Access to Public Information».

3. Filling of official website with public information

At the end of 2017 National Police of Ukraine launched its new website that became the prototype for website of regional departments of the National Police of Ukraine. It is important to mention, that a new website has a number of positive changes in the sphere of navigation accessibility and implementation of additional services. Along with this, quite a lot of information foreseen by the structure of the website is still absent. In addition to that, a number of requirements of acting legislation are still not foreseen by the existing structure of the website. In April 2018 there was another analysis of the website of the Central Secretariat of the National Police of Ukraine conducted according to provisions of the relevant part of the Methodology. It's worth mentioning, that a new website received lesser score (110 points, which makes 27% of the total foreseen by the Methodology amount of parameters), than during the last analysis conducted in September 2017 (154 points, 38%).

Thus, during elaboration of a new website, leadership of the National Police of Ukraine did not consult specialized civil organizations. This, in its turn, was the reason for detected by the monitoring situation, namely, instead of increasing the general score of the website we saw its significant decrease. A number of important requirements of the legislation were not implemented.

4. Access to public information in the premises of administrators of information

Monitoring campaign showed that organization and ensuring access to public information in the premises of institutions of the National Police directly depends on the policy of the Head of this institution. Thus, the level of observance of the right to access public information in the Directorate General of the National Police of Vinnitsia region is 96,9%, when the same indicator in Directorate General of National Police of Kyiv Region is only 21,9%. Results of the rest of institutions are spread around the scale from the highest, almost a 100% level of observance, to the lowest when it is almost impossible to receive the requested information by a regular person using this tool.

When we speak of the general rating, which accounts for the level of organization and ensuring access to public information in the premises of territorial units of departments in the regions (departments and units of police), the situation is constantly worse. However, there is a tendency, that if at the regional level organization of access to public information in the premises of administrator received a score of not less than 50%, territorial units organize the issue at question generally on the same level.

Such a situation is caused by the fact, that, first of all, there are no or improper regulations for this issue at the level of regional departments, and there is a low understanding of the issue of access to public information by officers and, as a result, lack of relevant training for persons whose job descriptions foresee the work with inquiries and controlling their execution.

This problem can be solved by preparation and approval on the level of Central Secretariat of the National Police of standard regulations which would foresee all raised by the Methodology issues. Thus one could guarantee quality observance and incorporation of requirements of acting legislation into departmental regulatory acts. It is also necessary to conduct specialized training for police officers who deal with appeals and inquiries of citizens.



