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Ukrainian Law Enforcement Reform Digest

Digest is dedicated to the process of reform of law enforcement authorities in Ukraine, first of all of police, prosecution authorities, State Bureau of Investigation and criminal justice legislation. It is published with the aim to better inform the society, expert community and international institutions on the state of reforming mentioned authorities and spheres of their activity.

I. NATIONAL POLICE

System of law enforcement authorities in Ukraine undergoes a long transformation process from soviet system of internal affairs authorities directed at protection of state security to law enforcement agencies with European standards, which should be oriented on provision of services to population and human rights observance.

However, as of the beginning of 2017, changes occurring in police have a more non-systemic character as a result of the lack of detailed, step-by-step roadmap for conducting a reform elaborated in the form of one comprehensive document, and the very process of reforming is sometimes oriented on the interests of the institution itself rather than on the needs of people.

1.1. National Police continues to reform civil security units involved in policing peaceful assemblies

On June 22, the fourteenth ceremony of graduation of service members of special purpose police units, the Operative-Rapid Action Corps (KORD), took place in Cherkasy and Ternopil oblasts. According to the First Deputy Head of National Police, Viacheslav Abroskin, this event marked completion of the process of formation of territorial units of KORD.

At the same time, the process of launching special units of the Patrol Police Department, Tactical-Operative Response Squadron (TOR), is in progress. The recent launch took place on May 16 in Zhytomyr region. The “tacticians” will be responsible for ensuring public order during mass events.

The third component in the system of units involved for policing peaceful assemblies is Dialog Police. As of the end of June, there were 11 dialog police units functioning in Ukraine. These anti-conflict groups have to be

the first line of contacting the protesters. If the negotiators fail to resolve a conflict, then “tacticians” are involved. However, in practice, such approach lacks coordination since Dialog Police officers were trained according to the Scandinavian model whereas the TOR units were trained according to the US and Canadian program. As a result, these two forces have different methods of work and use different equipment.

More details about the launch of territorial units of KORD can be found on the web site of National Police: <https://goo.gl/fLNFTL>

1.2. Experiment of creating functions of detectives in National Police continues

On June 20, the results of this experiment were presented by the leadership of National Police and the EUAM in the Verkhovna Rada Committee on Legislative Support of Law Enforcement Activities. Since April, detective units have been functioning in each regional department of police. In each region, they work in five areas: overall crime rate, internal security, drug trafficking, cyber security, and trafficking in human beings. However, representatives of police mention certain problems with introducing the functions of detectives at a territorial level.

Those operatives who stayed in their offices continue to perform their immediate duties as criminal police: operative and covert intelligence work, operative search activities, identification of unknown corpses and search for missing persons. In other words, within the framework of this experiment the function of operative officers was not completely eliminated, which leaves a possibility for detectives to give instructions to them. This fact has a negative impact on the quality of experiment.

During the discussion of the experiment results, the Committee members did not make any decision. At the same time, at a conceptual level, legislative amendments related to introducing the function of detectives were not supported, and therefore existence of detective

departments in police in the future remains questionable.

More details can be found on the web site of the Committee on Legislative Support of Law Enforcement Activities: <https://goo.gl/RpGLbF>

1.3. National Police identifies criteria for performance evaluation of its agencies and units

On May 7, National Police determined the criteria for performance evaluation of its agencies and units. The criteria are set forth in the Order of National Police of Ukraine №449 dd. May 7, 2018 to ensure implementation of the Law of Ukraine On National Police, and the Resolution of the Cabinet of Ministers of Ukraine №58 dd. February 7, 2018 concerning the procedure for assessing citizens’ trust to police.

Pursuant to the Order №449, they include:

- 1) level of citizens’ trust to police as the main criterion;
- 2) results of internal survey of police officers as to their level of satisfaction with the service, their motivation, and the work of their managers;
- 3) efficiency and effectiveness of activities of National Police agencies and units with regard to implementation of priorities identified in the Main Action Plan for the respective year.

It should be reminded here that as of today, the provision of the Law On National Police concerning citizens’ trust being the main criterion for assessing efficiency of police work is still not implemented. We mentioned this fact in almost every previous newsletter. For July, it is planned to announce a tender procedure for sociological organizations for carrying out the first survey to determine the level of citizens’ trust in accordance to legislation approved by the Cabinet of Ministers of Ukraine and National Police.

News on announcing a tender procedure on the web site of National Police: <https://goo.gl/D8AbPY>

II. PROSECUTOR'S OFFICE

Reform of prosecutorial bodies started only after the Revolution of Dignity, although it was one of the commitments to the Council of Europe from the times of accession to this organization and adoption of the Constitution of Ukraine. For a long time, prosecution preserved its centralized and militarized structure with absolute internal subordination of prosecutors to their line managers established back in the Soviet times.

Over the last three years, a new Law on Prosecution was adopted (2014), prosecution lost its general oversight function (2014), the General Inspectorate was created (2015), prosecutorial self-government bodies and the Qualification and Disciplinary Commission began their work (2017), and public prosecution offices were deprived of their powers to carry out pre-trial investigation of crimes (2017). At the same time, several initiatives were not completed, and no evaluation of overall reform efficiency was done.

2.1. Qualifications and Disciplinary Commission of Prosecutors celebrates one year anniversary of its work

On June 18, the Qualifications and Disciplinary Commission of Prosecutors celebrated a one-year anniversary of its work by holding a round table, *Important Aspects of QDCP Activities in Reform Conditions*.

During the event, results of the QDCP activities during the first year of its work were summarized. More specifically, in 2017-2018, 139 prosecutors were brought to disciplinary liability. Furthermore, achievements and certain shortcomings that need to be eliminated were also discussed.

The main aspects of cooperation between the Council of Prosecutors of Ukraine as the prosecutorial self-government body with the QDCP were addressed. In addition to this, the need for special training was discussed as an important stage of formation of the professional staff pool for public prosecution.

News on the web site of the Prosecutor General's Office of Ukraine: <https://goo.gl/vH7sf6>

Information on decisions adopted by the Commission in the web site of the QDCP: <https://goo.gl/nXq9UR>

III. STATE BUREAU OF INVESTIGATION (SBI)

An important reform in law enforcement must be the creation of the State Bureau of Investigation – the main controller of all law enforcement officers, high-level officials and judges.

The State Bureau of Investigations is a pre-trial investigation body authorized to investigate crimes committed by politicians, members of Parliament, civil servants, judges, prosecutors, police officers and other staff members of law enforcement agencies.

3.1. Selection of staff for the State Bureau of Investigation continues

Competitions for filling positions in the central apparatus and territorial offices of the SBI are in

progress. At present, candidates take the tests aimed at assessing the level of their knowledge of legislation in order to proceed to the second stage of qualification exam – solving practical tasks.

It should be reminded here that competitions for leadership positions (167 positions, out of which competitions were announced for only 27) are held by an external commission created on the basis of political quotas that has already selected the SBI Director and Deputy Directors. Competitions for 674 other positions are held by two internal commissions, members of which also include representatives of civil society.

The problem of selecting the SBI mid-level managers remains unresolved. Given

the amount of workload of the external commission, competitions for 27 positions is the maximum it can complete by September 1. The SBI leadership has no tools to influence this commission, and as a result, the SBI will start its work on September 1 without a sufficient number of managers.

Another problem related to staffing is that the Law on the SBI does not provide for monetary remuneration (salaries) for operative officers. Therefore, no competition for positions of operative officers has been announced as of today. At the same time, Roman Truba said that in September, the State Bureau of Investigation would have enough staff members in order to start its work.

Roman Truba's presentation at a conference on the problems with launching the SBI and future priorities in its work: <https://goo.gl/xhXUDX>

On problems related to the SBI competitions, read articles by the Leading Experts of the RPR Anti-Corruption Group, Oleksandr Lemienov, How to receive the SBI driving license, and Who is striving to be the SBI mid-level managers? on <https://goo.gl/pRf1Ma>, <https://goo.gl/vK3s5h>

3.2. Verkhovna Rada of Ukraine adopts draft law №5395-d as a basis that amends the Law On SBI

Members of parliament of Ukraine with 265 votes “for” adopted draft law №5395-d *On Amending Some Legislative Acts of Ukraine for Improving Activities of the State Bureau of Investigation* in the first reading and as a basis. At present, the draft law is prepared for the second reading by the law enforcement committee of the Verkhovna Rada.

The draft law provides for a number of amendments to the laws on the SBI and operative-search activities, and more specifically it:

- introduces a function of a special operative agent. Because of its absence on the list of positions included in the law *On State Bureau of Investigation*, the Bureau could not announce a competition for the entire operative block;

- defines specific SBI units as units carrying out operative-search activities. According to the current legislation, such activities may be carried out only by internal security and personal security departments;
- specifies the possibility for the SBI financing within the framework of Ukraine's international treaties or international technical assistance projects;
- changes location of some of territorial departments;
- provides for a possibility to bring SBI officers to disciplinary liability.

At the same time, the need for some of the changes is dubious. For instance, changing locations of territorial offices when Mykolaiv is replaced with Odesa or Poltava – with Kharkiv. This entails corruption risks and may endanger objectivity of examination of cases presented by the Bureau in courts. The model of location of territorial offices that is provided for in the current law intentionally transfers the jurisdiction in the cases involving top-level officials from cities with over one-million population to courts located in smaller towns. Another example is that the draft law envisages establishing strict requirements for candidates for the position of a director of a territorial office of the Bureau (10 years of professional experience) and a head of unit in the central apparatus (7 years of professional experience). Such requirements do not create conditions for involving young specialists from legal practice for working in the Bureau, but will be beneficial for the “old” officers from law enforcement agencies.

Card for the draft law on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/KDywUK>

3.3. Chair of Scientific Advisory Board of the Bureau elected

On June 16, members of the Scientific Advisory Board (SAB) during its first meeting adopted a decision to elect Doctor of Law, Professor Mykola Khavroniuk, as the Chair of the Board.

Mykola Khavroniuk has identified the main areas of the Board's work: analysis of the current legislation and development of necessary draft amendments, preparation of proposals on solving problems emerging in the courts of establishment and work of the SBI, communication with international organizations, and other. He called upon the researchers to support establishment of the Bureau, «We have to distribute our capacity, and work in different areas».

During the meeting, the plan of work of the Scientific Advisory Board was approved for the year of 2018.

It should be reminded that the SBI SAB was created in April this year. It consists of 23 professionals in the legal sphere, including researchers, members of parliament, and civil society experts.

News on the web site of the State Bureau of Investigation: <https://goo.gl/Aq3J4M>

IV. CRIMINAL JUSTICE

There is still a problem with harmonization and approximation of criminal and criminal procedural legislation with the European standards. Since adoption of the CPC in 2012, this law has been go in through chaotic and unsystematic changes (such as Lozovyi's amendment), which necessitates systematization of changes. Both amendments to the CPC of Ukraine and the CC of Ukraine have a strong impact on fighting corruption that today is one of the largest challenges faced by Law Enforcement agencies. More specifically, introducing misdemeanors influences efficiency of activities of the criminal justice bodies in general, more specifically – workload of investigative and operative units, efficiency of the criminal law, and adherence to the principle of inevitability of punishment.

4.1. The Verkhovna Rada passed draft law on misdemeanors as a basis

On June 7, members of parliament adopted a draft law №7279-d introducing misdemeanors in the first reading. The draft law envisages introduction of a differentiated procedure for investigating criminal offenses depending on the gravity of crime. More specifically, misdemeanors will include low-gravity crimes and some medium-gravity crimes. At the same time, such form of pre-trial investigation of a criminal offense will be implemented as inquiry, which is provided for in the 2012 CPC of Ukraine. This will make it possible to use

new tools for investigating non-grave crimes. At the same time, powers and authorities related to investigating criminal offenses will be transferred from investigators to inquiry officers, which will decrease the investigators' workload for investigating grave and especially grave crimes. As of today, one investigator can be dealing with approximately 300 cases while the optimal workload is 40-50 proceedings.

At present, the draft law is prepared for the second reading. In its current wording, the draft law contains provisions posing a threat for human rights and freedoms – understated timelines of inquiry, additional extra-procedural sources of evidence, possible conviction of a person found guilty without the participation of a lawyer, etc. More specifically:

- *violation of a right to individual freedom* (Article 298-2 of the draft law) – new grounds for apprehending a person are introduced, which directly contradict the Constitution, more specifically, the ground for apprehending a person include an attempt to leave the scene (without specifying, which), alcohol intoxication, etc.;
- *violation of the principles of legal certainty* (Article 298 of the CPC) – the draft law contains provisions that make it possible to question persons before the beginning of investigation, seize the means and tools, etc. At the same time, neither the current wording of the CPC nor the suggested

amendments define the respective procedures;

- *violation of the right to protection* – criminal proceedings should be terminated within 72 hours from the moment of notification of suspicion, or 20 days if a person does not admit guilt. This will be a clear signal for law enforcement officers to receive admission of guilt by all means. Within the framework of a simplified procedure for carrying out criminal proceedings, participation of a defense lawyer and consent of the victim are not necessary. The prosecutor's desire and admission of guilt by a person who has not received legal aid will suffice;
- *violation of presumption of innocence* – the main objective of the simplified procedure for investigating misdemeanors will be pushing the suspect to admitting guilt. It will be allowed to prove the person's guilt with the help of new "sources of evidence" – the person's explanations, medical examination, specialist's conclusion, and readings of technical devices.

One should remind that the first draft law that suggested introduction of misdemeanors appeared back in 2014 but it failed to receive the necessary amount of votes. The new draft law was not put to the vote for a long time: the delay was caused by a large number of stakeholders, which include National Police and the Ministry of Interior, the Prosecutor General's Office and courts. One of the reasons is that at present, there is no uniform vision in the sphere of reforming national law enforcement agencies.

Card for the draft law №7279-d on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/BSzGYS>

Article by an expert of the Association of Ukrainian Human Rights Monitors, Yevhen Kravchyn,

***Misdemeanors: A Panacea for Minor Crimes, or Restriction of Rights?* on <https://goo.gl/tGYWV5>**

4.2. Draft Law on Protection of Participants of Criminal Justice Process registered

On June 8, a draft law №8457 *On Ensuring Protection of Participants of Criminal Justice Process* was registered in the Verkhovna Rada of Ukraine (initiated by Andrii Kozhemiakin, Anton Heraschenko, and others).

The draft law provides for significant changes in the system of protection of witnesses, victims, whistleblowers and other persons who are in danger resulting from their participation in investigation of a crime. The current law with the same name was adopted back in 1993, and it needs to be updated with due regard to contemporary needs. At the same time, the biggest inefficiency problem of this system is caused not by the quality of this law but by the practice of its implementation.

The draft law №8457 envisages creation of a law enforcement agency – the National Protection Service, which will belong to the Mol structure and be coordinated through it. At the same time, the current system of protection provided by the agencies involved in investigating the proceedings, in which the person participates, will be partly preserved. The National Protection Service will provide protection only in the cases of investigation of crimes against the fundamental principles of national security, grave and especially grave crimes, and corruption involving civil servants of Category A. In other cases, protection will be provided by the same agencies that carry out investigation – National Police, NABU, SSU, and others.

Card for the draft law №8457 on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/XwKA2i>

V. NATIONAL SECURITY SECTOR REFORM

5.1. Draft Law on National Security of Ukraine adopted as a whole

On June 21, the parliament adopted the Law on National Security of Ukraine (registration № 8068), which was initiated by the President of Ukraine. The Law was developed to replace outdated legislation in the sphere of security sector management.

The President of Ukraine and the parliamentary majority believe this Law will enable them to bring the system of national security of Ukraine in compliance with the standards of the member states of NATO.

The adopted Law still contains significant incompliances with the European standards and provisions of the Constitution that were not eliminated before the second reading. More specifically:

- including ministries and other executive bodies (police, migration service, transport service, and others) in the security sector is

a direct violation of the European standards (PACE Recommendation 1713 (2005) on democratic oversight of the security sector in member states). More specifically, this Recommendation reads that legislation should clearly distinguish between security and intelligence services on the one hand, and law enforcement agencies on the other, given their different mandate and competences;

- preserving law enforcement functions by the Security Service is not in line with the counter-espionage mandate of this agency;
- granting unconstitutional powers to the President to appoint and dismiss top commanders of the military forces, general management of intelligence agencies, etc.

PACE Recommendation 1713 (2005) Democratic oversight of the security sector in member states:
<https://goo.gl/kaTQHi>

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Association of Ukrainian human rights monitors on Law Enforcement (Association UMDPL) – non-governmental human rights organization implementing systemic all-Ukrainian monitoring of human rights and fundamental freedoms on law enforcement agencies activity.

Activities (programms):

- Expertise and Analytics programm;
- Development of civic control;
- Education;
- Penitentiary programm.

More about organization and results of work – www.umdpl.info/police-experts

Centre of Policy and Legal Reform (CPLR) – is a Ukrainian think-tank that promotes reform in the law and politics of Ukraine. The organization has its general goals the strengthening of democracy, the rule of law and good governance in our country. The Centre was established in 1996.

CPLR works through research, policy advising, monitoring of public decision making and via civic education. The work of CPLR is focused on the following policy areas: constitutionalism, public administration, judiciary, and criminal justice. The issues of human rights, combating corruption and gradual adaption of the Ukrainian legal system to the standards of the European Union are cross-cutting themes throughout all policy areas.

More about organization and results of work – <http://pravo.org.ua/en>

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