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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. Legislation regulating police activities

1.1. Draft law on granting police functions to the National Guard

The draft law of Ukraine №6556 On Amending Certain Legislative Acts of Ukraine for Improving Legal Framework Regulating Activities of the

National Guard of Ukraine (initiated primarily by members of parliament belonging to the parliamentary committee on law enforcement) is aimed at increasing the capacity of the National Guard of Ukraine to perform tasks related to protection of public order. On September 6, 2017 the Committee on Legislative Support of Law Enforcement recommended the Verkhovna Rada should adopt the draft law №6556 as a basis in the first reading.

At the same time, the draft law received the following negative conclusions. The Main Scientific Expert Department of the Verkhovna Rada recommended the draft law should be returned for finalization whereas the Ombudsman expressed a concern that if adopted, the law can present serious threats of violation of human rights and freedoms. Several human rights protection organizations and experts spoke about the need to reject the document since the proposed amendments will result in duplication of powers of the National Guard and the National Police in the sphere of public order protection.

Representatives of the National Guard repeatedly said that they support provisions of the draft law and think it needs to be adopted in order to solve the existing problems. At the same time, the Ministry of Internal Affairs that coordinates and directs work of both the National Guard and the National Police of Ukraine stated they did not support the draft law № 6556 and were not its authors.

Analysis of the draft law №6556 by policy analyst of the Association UMDPL Serhii Bahlai: <https://goo.gl/PKfzUN>

Police Functions for the National Guard: For or Against, an article by expert of the Association UMDPL Eugene Krapyvin: <https://goo.gl/mnGuE7>

Position of the Ombudsman of Ukraine: <https://goo.gl/aSFLwq>

Position of the Ministry of Internal Affairs of Ukraine: <https://goo.gl/RmtE3o>

Position of the National Guard of Ukraine: <https://goo.gl/1PyMSq>

1.2. A working group was created on preparing the rules of determining the level of trust in police

On October 12, 2017 a round table was held in the MIA, at which a working group was created to look into the level of the public trust in law enforcement. It should be mentioned that this is the second working group created by the Ministry of Internal Affairs for finalizing the draft Resolution of the Government on the procedure of assessment of trust in police.

The Government has been examining the draft since April 2017. At that time, the group on reform of the law enforcement agencies of the Reanimation Package of Reforms presented a number of methodological comments for the draft document, and in June a joint meeting of sociologists, experts, and representatives of the National Police, the MIA, and representatives of the Secretariat of the Cabinet of Ministers of Ukraine was held.

According to Part 3 Article 11 of the Law of Ukraine On National Police of Ukraine, the level of the population's trust in police is the main criterion for assessing the efficiency of work of police agencies and units. However, this provision of the Law remains a declarative norm. We described the previous developments in this sphere in Issue № 2 of the Digest

News on creation of a working group on the official web-site of the MIA of Ukraine: <https://goo.gl/aYt3JZ>

2. Reform of investigative and operative units

2.1. Crime Analysis Department was established in the National Police

The Department will consolidate all operative information and provide its following analysis. At present, there is a lot of sources of segmented information in the police system, which is analyzed autonomously by the staff of various services.

The newly created unit will work in three directions: operative analysis, tactical analysis, and strategic analysis. Operative analysis involves collection of data on committed crimes in order to coordinate activities of the investigative and operative groups. The purpose of tactical analysis is to identify the areas with increased risks of burglaries, robberies, assaults, and street crimes using crime mapping in order to strengthen such hot points by sending additional police patrols there or by recommending targeted workouts for operative staff. Strategic analysis focuses on assessment of activities of organized criminal groups.

News on the official web-site of the National Police of Ukraine: <https://goo.gl/7EDroj>

3. Reform of police education

Changes in the system of police education stopped at the stage of presenting the concept of introduction of an education model for police officers according to a graded principle with colleges as the main educational institutions.

Educational institutions in the MIA system that provide higher education (lawyers, psychology, law enforcement activities) remained unreformed. At the same time, except for patrol police, new staff is still trained using old curricula and methodologies, which results in a low level of professional competency of police officers and their inability to perform their tasks.

3.1. Establishment of Police Academy

The state-owned institution, Patrol Police Academy, will start enrollment of cadets in November 2017. This is an element of police education reform, which according to the position of the NPU leadership will become the first step in professional education with the following internship and service in patrol police. Afterwards, a police officer will have a possibility to receive higher education and be promoted. According to this model, each next level of educational qualification will be followed by a period of service in the position that corresponds to

the completed level.

The first enrolment will consist of 500 cadets who will be trained, among other things, on human rights and freedoms, fundamental principles of constitutional law, professional ethics, community policing, prevention of domestic violence, and first aid.

Order № 691 on establishing the state-owned institution, Police Academy, was adopted on July 5, but later, on October 5, the institution was re-named as Patrol Police Academy. On September 19, police lieutenant colonel Vadym Lisnychuk was appointed the head of the academy. One should mention here that those willing to apply for this position could submit their applications only during five days (from August 29 to September 3), and only currently serving police officers could participate in the competition. The RPR Group on Law Enforcement Agencies Reform called upon a transparent competition, and emphasized the need to publish the Concept of MIA Education Reform developed in June 2017. As of today, institutional education in the MIA remains unchanged, and therefore it is difficult to speak about a systematic approach to reform of the training for Ukrainian law enforcement officers in general.

More details on the first enrolment of cadets can be found on the official web-site of the MIA of Ukraine: <http://goo.gl/Xniu25>

Statement of the RPR Group on Law Enforcement Agencies Reform: <http://goo.gl/LekGNC>

4. Strategic documents and reform evaluation

4.1. MIA Presented Strategy 2020

Representatives of the Ministry of Interior presented the Strategy of System Development till 2020 (Strategy 2020) in different towns and cities of Ukraine. The majority of provisions of the new document in the sphere of state policy refer to the National Police, and a smaller part – to the State Migration Service. Other agencies, activities of

which are coordinated and directed through the MIA (National Guard, State Border Guard Service, and State Service for Emergency Situations) are almost never mentioned in the document.

The Majority of activities included in the Strategy do not contain specific results and evaluation criteria for measuring them (the results) in the course of implementation of this document in the future.

At the same time, in September the RPR Group on Law Enforcement Bodies Reform prepared its comments and proposals on improving the Strategy.

Text of Strategy 2020 on the official web-site of the MIA of Ukraine: <https://goo.gl/xkG81f>

Reform.LIVE page of the MIA of Ukraine: <https://goo.gl/DDw29j>

4.2. Fraser Institute increased the reliability rating of Ukrainian police

In its annual report, Fraser Institute (Canada) that measures the level of economic freedom increased the rate of reliability of Ukrainian police to of 4.21. This rating is developed taking into consideration the following main components: 1) dependence of economy on the government; 2) legal system and property protection; 3) access to finances, freedom of international trade; 4) regulation of loans, labor market, and business.

The recent study conducted in 2017 contains information about 2015 when the National Police was not yet created as a separate executive body. For comparison, in 2014 this indicator totaled 2.75, and in 2005 when such rating was measured for the first time for Ukrainian militia, the indicator was 3.96.

As of 2015, the police reliability rate in Moldova totals 3.68, in Russia – 4.16, in Poland – 5.15, in Lithuania – 6.20, in Estonia – 8.45, and in Canada – 8.78.

News on the official web-site of the MIA: <https://goo.gl/dxL5Cp>

II. PROSECUTOR'S OFFICE

1. Legislation in the sphere of prosecutor's activity

1.1. A draft law was registered regulating the number of staff members of public prosecution office

The draft law on amending the Law of Ukraine On Prosecution (concerning optimization of the number of staff members of public prosecution office) №7160

dated October 3, 2017 is aimed at cancelling a legal provision on decreasing the number of prosecutors to 10 000 starting January 1, 2018.

As of October 2017, the overall number of prosecutors totaled 11 313. In the opinion of the authors of the draft law, decreasing this number to 10 000 will result in increasing their already unjustified workload.

Furthermore, unlike prosecution offices in the European countries, the Ukrainian public prosecution office still performs other functions not related to the criminal process. In view of this, the authors of the draft law believe the current number of prosecutors should be increased (or preserved unchanged).

However, non-criminal functions of the public prosecution office (representation of interests in courts, oversight of detention facilities) have to be transferred to other bodies according to the amendments to the Constitution of Ukraine as of June 2, 2016.

1.2. Draft laws were registered on regulation of activities of the Qualification and Disciplinary Commission of Prosecutors

The Commission began to function properly only in summer this year. At the same time, already after several months of the work of the Commission some shortcomings became obvious in the legislation regulating its activities. Among the main problematic issues, one can name: 1) complete financial independence from the Prosecutor General's Office of Ukraine; 2) absence of anti-corruption control and requirements for the Commission members; 3) non-compliance of the provisions on selection of candidates for positions of military prosecutors, etc.

On October 4, 2017 a draft law on amending certain legislative acts of Ukraine was registered in relation to adoption of the Law of Ukraine On Amending the Constitution of Ukraine (regarding justice) (in the part related to improvement of activities of the Qualification and Disciplinary Commission of Prosecutors) №7165 dd. October 4, 2017. The law was drafted by the Commission members and provides for increased guarantees and powers of the Commission, clarifies the status of an assistant to the prosecutors, and introduces the procedure for assessment of prosecutors.

At the same time, its provisions partly violate requirements of the Constitution of Ukraine, run contrary to the basic concept of prosecution reform, do not comply with the objective of the Commission's activities, and make it impossible to bring the Prosecutor General to disciplinary liability (which is a violation of the principle of equality of all persons before the law). Some of the major shortcomings of the draft law № 7165 are: 1) exclusion of the Prosecutor General from the scope of disciplinary powers of the Commission; 2) significant increase of salaries for the Commission members; 3) introduction of positions of assistants to prosecutors, which will become one of the ways

to avoid the uniform procedure for competition to be selected for a prosecutor's position; 4) restriction of the possibilities to submit a disciplinary complaint for individuals because of the provision on "abusing the right to complain".

On October 18, an alternative draft law № 7165-1 dd. October 18, 2017 was registered; advantages of this draft law include: 1) identification of the Commission as a manager of state funds, which will decrease the risk of dependence on the Prosecutor's General Office of Ukraine; 2) extension of anti-corruption restrictions to include the Commission members in order to avoid possible grounds for their making unjustified decisions; 3) introduction of a procedure for competitive selection of military prosecutors, which will ensure a unified approach to employment of staff of the public prosecution office.

1.3. Draft law was registered on possibility of the Prosecutor General to identify a list of public prosecution offices

The draft law on amending the Law of Ukraine On Public Prosecution Office on the procedure for determining the list and territorial jurisdiction of local and military prosecution offices № 7199 dd. October 12, 2017 provides for the right of the Prosecutor General to approve the list and territorial jurisdiction of local and military prosecution offices.

At present the list and territorial jurisdiction of local prosecution offices is approved by the Verkhovna Rada. Approval of the list of prosecution offices by the Law enabled a significant decrease of the network of prosecution offices at a local level (from approximately 650 raion, town, and district public prosecution offices to 175 local public prosecution offices), which made it possible to decrease administrative expenses related to maintenance of the technical staff of prosecution bodies, to decrease the number of prosecutors, to carry out open competitions for vacant positions of prosecutors in the newly created local prosecution offices. Correctness of this decision was also confirmed by amendments to the Constitution of Ukraine as of June 2, 2016 following which public prosecution office was transformed into an agency belonging to the justice system. Furthermore, pursuant to Part 2 Article 125 of the Constitution of Ukraine, courts (as well as the prosecution bodies according to the respective Law) should be created, reorganized and eliminated by law. Therefore, the structure of courts and prosecution that, according to the new wording of the Constitution, belong to the justice bodies, should continue to be determined by adopted laws, and not by a decision of the Prosecutor General.

2. Work of the Qualification and Disciplinary Commission of Prosecutors

The beginning of work of prosecution self-government bodies and agencies supporting activities of the prosecution became possible after coming in force of the respective provisions of the Law of Ukraine On Public Prosecution Office (adopted as far back as in 2914) on April 15 this year.

The bodies of prosecution self-government include the All-Ukrainian Conference of Prosecutors, and the Council of Prosecutors of Ukraine. The agency responsible of support of activities of the public prosecution offices is the Qualification and Disciplinary Commission of Prosecutors. Its main tasks are examination of disciplinary proceedings against prosecutors, selection of candidates for the position of a prosecutor, and transfer of prosecutors from one prosecution body to another.

The Qualification and Disciplinary Commission of Prosecutors actively examines disciplinary cases against prosecutors. It is also dealing with a disciplinary complaint against the Prosecutor General and the Chief Military Prosecutor.

More details can be found in the interview, There is currently no mechanism for bringing the Prosecutor General to liability, of the Chair of the Qualification and Disciplinary Commission of Prosecutors, Viktor Shemchuk to Internet outlet LB.ua: <https://goo.gl/iwkPAC>

2.1. Qualification and Disciplinary Commission of Prosecutors began the selection of candidates for the position of prosecutor of the local prosecutor's office

From August 7 to September 15, 2017, the QDCP received documents from those willing to take vacant positions in local prosecutors offices. This is the first competition, which is being held under the new procedure, which was introduced by the Law "On Prosecutor's Office" (2015). This procedure

provides the competition for all those participants with a higher law degree and experience in the field of law for at least two years. All candidates who successfully pass the qualifying examination and undergo a special examination will be credited to the reserve for filling vacant posts of prosecutors, after which during one year they will receive special training at the National Academy of Public Prosecutor's Office. After passing special training, reserve candidates, according to the rating, may apply for vacant positions at the local prosecutor's office.

582 candidates were admitted to the qualifying examination, which will start testing on the knowledge of legislation from November 6th. The next stage of the exam will be the tests of practical tasks.

3. Remuneration of prosecutors

After several months of pressure from the leadership of public prosecution office, on August 30, 2017 the Cabinet of Ministers of Ukraine adopted the Resolution № 657 on remuneration for the staff of public prosecution office.

Article 81 of the Law of Ukraine On Prosecution contains clear and unambiguous provisions on salaries for all prosecutors – on the remuneration structure and amount. This norm has to become an important guarantee of independence of each prosecutor, because their salary should not depend on the Government, the head of the public prosecution office or other persons.

However, the Prosecutor General with the help of a decision of the Government turned remuneration into the means of increasing loyalty of prosecutors.

More details can be found in the article, When More Does Not Mean Better, by an expert of the Center of Policy and Legal Reform, Oleksandr Banchuk, in Novoie Vremia: <https://goo.gl/NCeMTx>

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.

Investigators of this newly created authority will investigate all crimes (except for severe corruption crimes), committed by any law enforcement officer,

including the detectives of National Anti-Corruption Bureau of Ukraine.

Investigations, and they are responsible for the recruitment of officers and the formation of structure of this body, therefore the transparency of the competition is crucial.

However, the process is accompanied by direct

violations of legislation which can obstruct a timely and transparent formation of the State Bureau of Investigations. As any decisions of the commission adopted by the current members, can be later appealed against in court. In particular, two members of the commission could not prove that they have higher legal education which is an obligatory legislative requirement for all members of the commission. Their participation in conducting interviews and further adoption of decisions puts the legitimacy of the whole process of appointment of the leadership of the State Bureau of Investigations under question.

The process of creation of the State Bureau of Investigation will only be started after its Head and his/her two Deputies are selected. Other officers will have to be recruited on a competitive basis. In addition to that, a sectoral law foresees 7 territorial departments of the State Bureau of Investigations.

As we already mentioned in our previous digests, at present, the competition that has been lasting for more than a year now got stuck at the level of polygraph examination.

On October 18, the Selection Commission selected a specialist (Tetiana Romanivna Morozova) who will carry out polygraph examination of participants of the final stage of the competition for the position of the Bureau Director and Deputy Directors.

More details about selection of a candidate can be found in the article, Person selected to carry out polygraph examination of would-be director of the State Bureau of Investigation, by Denys Monastyrskyi in a blog on Censor.net: <https://goo.gl/qKSMFG>

On October 24, the Selection Commission had a meeting, at which the commission agreed on the polygraph examination details (schedule, procedure, list of questions, etc.) On October 30, the polygraph examination will start for 19 candidates for the positions of the State Bureau of Investigation Director and Deputy Directors.

It is important that during the examination, candidates are supposed to provide information about the presence (or absence) only of the following circumstances (Paragraph 15 of the Procedure of

Psychophysiological Examination Using Polygraph in the State Bureau of Investigation approved by the Resolution of the Cabinet of Ministers of Ukraine №449 dd. May 11, 2017):

- 1) commitment of illegal actions by the subject of examination, initiation of criminal proceedings against him/her;
- 2) belonging to an agent service in the intelligence agency of another state;
- 3) participation in activities of public associations prohibited by law or by court, membership in political parties, participation in the establishment or activities of political parties;
- 4) citizenship of another country or existence of a document issued by the authorized bodies of another country stating that the subject of examination will receive citizenship if his/her Ukrainian citizenship is terminated;
- 5) disclosure of confidential, secret or proprietary information.

Based on this list, the Commission has agreed on the list of questions prepared by the polygraph specialist.

Polygraph examination is the final stage of work of the Selection Commission before selection of the Bureau Director. At the same time, on November 20, the CPC provision on investigative jurisdiction of the State Bureau of Investigation will come in force. From that day on, the public prosecution office will not have the power to investigate criminal proceedings.

More details on the options of launching the Bureau can be found in the following articles:

- **State Bureau of Investigation: Is Success Story Possible? by a member of the Selection Commission, expert of the Ukrainian Institute for the Future, Denys Monastyrskyi, in Mirror Weekly: <https://goo.gl/zgahJy>**
- **State Bureau of Expectations: Two Years in Abyss, by the Leading Expert of the RPR Anti-Corruption Group, Oleksandr Liemenov, in Mirror Weekly: <https://goo.gl/AWhVPS>**

IV. JUSTICE LEGISLATION

There is a problem of harmonization and approximation of criminal and criminal procedural legislation with the European standards. Efficiency of activities of criminal justice bodies in general depends on the introduction of the notion of criminal

misconduct, more specifically it will influence the workload of investigation and operative units, efficiency of criminal law application, and adherence to the principle of inevitability of punishment.

1. Procedural codes were adopted

On October 3, 2017 the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Amending the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings, and Other Legislative Acts (draft law № 6232) as a whole.

This Law contains extremely dangerous amendments to the Criminal Procedure Code that can paralyze the criminal justice system. More specifically:

1) amendments to Articles 242 – 244, 332 of the CPC provide that only a court will be able to order expert analysis, also upon its own initiative. This means that the side of defense is deprived of its adversarial right to independently involve experts whereas the prosecution side will have to wait for the court's permission in order to carry out the necessary expert analysis, for instance, to determine the cause of death.

At the same time, only specialized state-owned institutions will have the monopoly on carrying out forensic analysis (amendments to Article 7 of the Law On Forensic Expert Analysis). This will result in a significant restriction of the right to defense and of the principle of adversariality provided for in the Constitution;

2) amendments to Article 132 of the CPC provide that investigators and prosecutors should submit a request concerning the measures to support the proceedings to a court at a place of registration of the investigation body as a legal entity. For police, the lowest level of registered territorial bodies is the regional headquarters. The majority of police investigators will be forced to constantly go to the oblast centers 100-200 kilometers away, and will not be able to investigate cases during this time.

3) amendments to Article 303, 307 reinstate the 1960 CPC norms concerning the possibility to appeal to the investigating judge against the decision (notice) of suspicion. This measure will enable courts to block any criminal investigation and the process of establishing the facts of criminal offenses. This norm will give rise to new corruption challenges during investigation of criminal proceedings.

The RPR addressed the President of Ukraine asking him to use his right to veto the Law of Ukraine on Amending the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings, and Other Legislative Acts.

More details can be found in the RPR statement:
<https://goo.gl/ZxT3nc>

2. Harmonization of the procedure for using a preventive measure in the form of detention with the ECHR practice was suggested

Draft law on amending the Criminal Procedure Code of Ukraine regarding harmonization of the procedure for using preventive measures with the practice of the European Court of Human Rights № 7089 dd. September 7, 2017 (initiated by the Cabinet of Ministers of Ukraine).

The draft law was developed in view of the need to improve application of the preventive measure in the form of detention and to avoid detention of a person without legal grounds. To solve these problems, it is suggested that when the period of detention before the preliminary court hearing expires, the prosecutor should submit a request for extending the period of detention not later than five days before the end of validity of the previous ruling on keeping the person in detention.

3. Draft law was registered on fundamental legal principles of cooperation with the International Criminal Court

Draft law on amending certain legislative acts of Ukraine on cooperation with the International Criminal Court № 7179 dd. October 5, 2017 (initiated by the Cabinet of Ministers of Ukraine)

According to the draft law, a separate article should be added to the CPC of Ukraine specifying the fundamental legal principles of cooperation with the ICC, more specifically: the scope and procedure of such cooperation, the procedure for provision of legal assistance upon the ICC request, making decisions on arrest, transfer and temporary transfer of individuals to the ICC, etc.

It is envisaged that the Prosecutor General's Office of Ukraine will be responsible for cooperation with the International Criminal Court at the stage of investigation by the Prosecutor of the International Criminal Court, whereas the Ministry of Justice of Ukraine will be responsible for cooperation with the International Criminal Court at the stage of court examination and appeal cases in the International Criminal Court.

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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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