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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. Strategic Research and Analysis Department was created in the National Police

On February 3, representatives of the National Police announced creation of a new unit for fighting organized crime, the Department for Strategic Research and Analysis.

According to the First Deputy Head of the National Police, V. Abroskin, as of now the strategy for establishment of this unit has been approved, and it is expected that the creation process will be completed by the end of this year.

On February 6, the Head of the National Police, S. Kniaziev announced the beginning of the selection process for the new department. He also mentioned that the department will prevent activities of socially dangerous organized groups and criminal organizations, including crime bosses who influence socially important spheres of life.

It should be mentioned that before 2015, the Department for Fighting Organized Crime (UBOZ) was functioning in the structure of the MoI, which had a negative image because of its involvement in illegal pressure on businesses and violation of human rights and freedoms.

More details on the web-site of the National Police of Ukraine: <https://goo.gl/bFtZbH>, <https://goo.gl/3QcySk>

1.2. Competition for Positions of Heads of Detective Units Completed

On January 18, the Head of the National Police, Serhii Kniaziev, announced that the competition for positions of heads of detective units in regional police departments was completed. Based on the competition results, the selection commission selected the candidates for positions of heads of detective departments in all regions of the country.

In January 2017, the National Police jointly with international partners launched a pilot project in Boryspil Police Station in Kyiv Oblast on merging functions of investigators and operatives into a single position of a detective. In June, the pilot project was extended to eight oblasts: Kharkiv, Lviv, Odesa, Khmelnytskyi, Zaporizhzhia, Sumy, Poltava, and Kyiv. The pilot project involves one police station in each oblast. By March 31, 2018 the National Police promised to present the results of the pilot project and evaluate its success for further implementation in the entire territory of the country.

More details on the web-site of the National Police of Ukraine: <https://goo.gl/KvSfZh>

1.3. Government approved the Procedure for assessing the level of citizens' trust in police

On February 7, the Cabinet of Ministers of Ukraine approved Resolution № 58 On Approving the Procedure for Assessing the Level of Citizens' Trust in the National Police.

During two and a half years, the provisions of Part 3 Article 11 of the 2015 Law of Ukraine on the National Police were not implemented; according to them, the level of citizen's trust in police is the main criterion for evaluating efficiency of police activities.

The Procedure provides that at the national level, assessment has to be carried out minimum once a year. The items to be evaluated according to the Resolution is satisfaction of the citizens' need for police services and the processes that take place in the National Police as well as characteristics and results of its activities.

The Resolution takes into consideration the majority of civil society comments presented in 2017 for the draft Procedure for assessing the level of trust in police.

It should be mentioned that according to the MoI State Secretary, Oleksii Takhtai, the money for research to be carried out by independent sociological organization is available already this year.

The adopted Resolution contains basic rules for involving independent sociological organizations for evaluating trust, determining periodicity, etc. However, with regard to the indicators (variables that have to be repeated every year to enable monitoring of dynamics over the specified period) of evaluation, it refers to a document that has to be approved by the MoI at a later stage.

Information on the web-site of the Cabinet of Ministers of Ukraine: <https://goo.gl/ks8w37>

Procedure for assessing the level of citizens' trust in the National Police on the web-site of the Cabinet of Ministers of Ukraine: <https://goo.gl/qq7gWb>

RPR's statement concerning the draft procedure for assessing citizens' trust in police: <https://goo.gl/ZrNynS>

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. Procedure for conducting internal investigations against prosecutors came into force that violates requirements of the Law

Guidelines regulating the procedure for carrying out internal investigation in prosecution agencies came into force as approved by the PGO Order № 343 dd. December 6, 2017. After approval of a new Law on Prosecution in 2014 and creation of the Qualification and Disciplinary Commission of Prosecutors in 2017, all disciplinary powers were transferred to this Commission. Although this order refers to the applicable Law on Prosecution, it does not mention internal investigations at all. The guidelines grant powers and authorities to the heads of public prosecution offices that they are not entitled to according to the law.

At present, the grounds and procedure for bringing prosecutors to disciplinary liability are provided for in Section VI of the Law on Prosecution. The only agency that carries out disciplinary proceedings and brings prosecutors to disciplinary liability is the Qualification and Disciplinary Commission of Prosecutors. However, the Guidelines introduce an additional procedure for inspections that precedes

this process, which can be used as a tool for pressure by line managers with regard to their subordinates. Internal investigations will be used as a mechanism for illegal collection and accumulation of information about uncomfortable prosecutors, and at the same time – a reliable mechanism for turning the rest into silent implementers of the bosses' will.

More details can be found in an article, *Putting Prosecutors on Hook*, by Volodymyr Petrakovskiy, ex-prosecutor, manager of the RPR' Group on Law Enforcement Agencies Reform: <https://goo.gl/yBQLEC>

Guidelines regulating the procedure for carrying out internal investigations in prosecution agencies on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/xgK1DK>

2.2. Prosecutor General's Office announced Department for SBI Supervision was created

On February 21, Prosecutor General Yurii Lutsenko announced a decision to establish the Department for Procedural Oversight of Criminal Proceedings investigated by the SBI and by the agency that temporarily performs its functions. According to the Prosecutor General, this Department has to be created by April 15.

It should be reminded that experts had a discussion about the need to create specialized prosecution office for the SBI affairs using the model of the Specialized Anti-Corruption Prosecution. According to the results of the survey, State Bureau of Investigations: Priorities for Work (December 2017), carried out by the Association of Ukrainian Human Rights Monitors on Law Enforcement (UMDPL Association) and the Center of Policy and Legal Reform, creation of a specialized prosecution office was supported by 47.6% experts. At the same time 45.2% supported the position that this should be a task of the Prosecutor General and prosecutors authorized by him. Civil society had a different position – 72.6% of respondents supported creation of a special prosecution office using the model of SAP.

Results of the survey, State Bureau of Investigations: Priorities for Work: <https://goo.gl/wkiBFg>

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. A number of important documents on activities of the State Bureau of Investigations were approved

In January 2018, a number of documents were published necessary for the beginning of the SBI work:

- Regulation on the Public Oversight Council of the SBI and procedure for creation thereof (approved by the CMU Resolution № 1086 dd. December 20, 2017)

The Council is one of the mechanisms of democratic civil oversight of the SBI activities. The procedure for creation thereof, tasks, procedure for early termination of powers and authorities as well as other powers are provided for in the adopted Regulation and Procedure.

- Standard Procedure for an open competition for appointment to positions in the SBI (approved by the CMU Resolution № 1069 dd. December 20, 2017)

The Standard Procedure provides for a general procedure for an open competition for SBI positions, including the process for their creation, involving the public, format of work, etc.

- Rules of Procedure for performance of functions by the SBI Director (approved by the SBI Order №6 dd. January 31, 2018)

This procedure is necessary for clear coordination of activities of the management of this agency since, pursuant to Articles 10 and 12 of the Law, the Director exercises part of his functions in coordination with deputy directors, and not personally as in other law enforcement bodies). It is related to the key human resources issues, distribution to budget funds, and so on.

The Rules of Procedure significantly limit the powers of deputy directors for blocking certain decisions by setting forth clear and exhaustive grounds and timelines for a refusal to approve the orders of the SBI Director. This order of the Director has already been called the beginning of «war for powers and authorities in the SBI».

It should be said that the following provisions of the Rules of Procedure are unjustified: a possibility to disagree to approve a decision of the Director only if it violates requirements of three laws – On Combating Corruption, On Civil Service, On Purification of Government (without mentioning the possibility of violation of other laws, including the CPC and On the State Bureau of Investigations).

The Standard Procedure for holding a competition was also criticized by civil society since it provides that representatives of civil society only may be involved as members of such commissions, which can result in the practice of establishing commissions without involving them. The SBI promised that the future document will provide for mandatory involvement of civil society representatives in the work of selection commission (and this was done in practice).

There was also criticism of the Procedure of establishing the SBI Public Oversight Council since it replicated an inefficient procedure provided for by the Resolution of the Cabinet of Ministers of Ukraine № 996 as of November 3, 2010. It was introduced for establishing public councils in ministries and other central executive bodies. The process of creating the first public councils following this procedure demonstrated one of the significant shortcomings of such mechanism – a possibility of a “raider” seizure of a public council by «pocket» organizations that in fact exist only on paper. Such councils were created, for instance, in the MoI and consisted mostly of representations of associations, unions, etc. dependent on the MoI.

Instead, the SBI believes that limitations concerning the sphere (rights protection activities) and the length of activities (minimum two years) will be the safeguards protecting them from manipulations during voting through creating and involvement of fake organizations. The form of competition – preferential voting – was selected in the first place because of the cyber security risks. It was also done for the reasons of not impeding transparency and accountability of the process. Cyber security refers to the open voting in the Internet for candidates as it was done to create Public Oversight Councils in NAPC, NABU, and ARMA

RPR's statement calling upon changing the Procedure for establishing the SBI Public Oversight Council and involving civil society: <https://goo.gl/oDA2CM>

Article, Blurred Transparency of SBI, by the chief

expert of the RPR Group on Anti-Corruption, Oleksandr Lemienov, in Mirror Weekly: <https://goo.gl/kSnECC>

Public answer of the SBI on a Facebook page: <https://goo.gl/YVVCZn>

3.2. Internal commissions, members of which also include civil society representatives, were created in the SBI for selection of staff members

On January 30, the SBI Director R. Truba approved the Procedure for conducting a competition for appointment to positions in the State Bureau of Investigations, which regulates activities of internal commissions of the Bureau.

Pursuant to this procedure, a selection commission will consist of five individuals, three of which must be representatives of the SBI. Two other members of the Commission may represent the SBI or other state authorities or civil society associations.

The Bureau Director addressed recognized experts and mass media representatives asking them to create a committee and select candidates for committee members. The selected candidates are: editor-in-chief of LB.ua Oleh Bazar; Head of a CSO *Anti-Corruption Monitor* Dmytro Ostapchuk; Head of the *Eidos* Center, member of the Board of the Reanimation Package of Reforms Viktor Taran.

Therefore, among the committee members there is a representative of the mass media and members of well-known organizations (that did not nominate candidates for members of selection commissions), which fact demonstrates openness and a professional level of selection of candidates. In order to avoid pressure on committee members, their names were not disclosed before the decision was made.

Immediately after submission of proposals for including civil society representatives in selection commissions the State Bureau of Investigations announced the names of the committee members and their decision.

Despite this, the Association of Lawyers and the Bar Association published an open letter on non-transparency of creation of selection commissions. The grounds for this are non-inclusion of their representatives as commission members.

On February 8, the committee announced the names of selected candidates:

- Oleksandr Lemienov (*CSO Association of Ukrainian Human Rights Monitors on Law Enforcement*);
- Petro Varyshko (*CSO Public Lustration Committee*);
- Maksym Boldin (*CSO Center for Legal Analysis*

and *Political Risk Research*);

– Taras Boiko (*CSO Center of Policy and Legal Reform*).

Open letter from the Association of Lawyers and the Bar Association: <https://goo.gl/iLHiE5>

3.3. The State Bureau of Investigations announced a competition for establishing the Public Oversight Council

Till March 7, civil society associations that function in accordance with the Law of Ukraine on Civil Society Associations and have been involved in rights protection activities for minimum two years can nominate their candidates to the SBI Public Oversight Council.

The SBI Council will consist of 15 members elected for one year. Requirements for candidates and necessary documents to be submitted by civil society associations are specified in detail in the announcement on the competition for members of the SBI Public Oversight Council and a constituent meeting s approved by the SBI Order № 15 dd. February 21, 2018.

Members of the Council will be elected by preferential voting for each candidate at a constituent meeting that will take place on March 30. Every candidate personally present at the constituent meeting will be able to vote.

Announcement on the SBI web-site: <https://goo.gl/S1EC6J>

3.4. Committee discussed draft laws on the SBI that have to eliminate legislative gaps

On February 28, the Verkhovna Rada Committee on Legislative Support to Law Enforcement Activities discussed draft laws №6430 (submitted by the government) and №7450 (submitted by MPs Mustafa Naiem, Olena Sontyk and others). The Committee decided to adopt both draft laws as the basis, i.e. approved them in the first reading. At the same time, the draft law №7450 tabled by members of parliament received more votes in the Committee, which fact will be mentioned by the Committee Chair, Andrii Kozhemiakin, during the presentation in the session hall of the parliament, and therefore it has higher chances to be supported by MPs.

The draft laws provided for the following: clarification of investigative jurisdiction of the SBI, granting of powers and authorities to operative units and internal oversight units to carry out operative and search activities, change of location

of territorial units in order avoid influence from local authorities, etc.

Draft law №6430 on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/89WNCs>

Draft law №7450 on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/oVh1FS>

Article by Roman Truba, SBI Director, on necessary legislative amendments in LB.UA: <https://goo.gl/PNDemz>

Statement by the RPR Group on Law Enforcement Agencies Reform regarding the aforementioned draft laws: <https://goo.gl/YNLg5w>

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. Working Group on developing systemic changes to the CPC of Ukraine was created

A decision on creation of a working group was made during an international conference, Criminal Procedure Code of Ukraine 2012: Problems with Implementation and Prospects for Improvement, held on November 22, 2017: Later, on December 6, it was approved by a Committee decision, and Deputy Chair of the Committee, Mykola Palamarchuk, was elected the head of the working group. Representatives of state agencies, leading educational and science institutions, international experts, representatives of civil society organizations and other specialists were invited to participate in the working group.

On February 22, a constituent meeting of the working group took place, during which five sub-groups were created that will work on the following topics: mechanism of implementation of the legal status of participants of criminal justice; pre-trial investigation; measures for supporting criminal proceedings, especially bails; special features of pre-trial investigation and court examination of criminal offenses; conducting special pre-trial investigation and special court proceedings;

changing the current procedure for administration of justice by jurors; ensuring additional grantees of the right of participants of criminal proceeding to fair trial.

As of today, approximately one hundred draft laws were submitted to the Verkhovna Rada for consideration on improving provisions of the CPC of Ukraine. Out of them, 17 are related to the stage of pre-trial investigation, 25 draft laws address improvement of measures for supporting criminal proceedings, 11 draft laws refer to the rights of the criminal process actors. A large number of draft laws is registered on improving pre-trial restriction measures, including bail and custody. In total, from the day the new wording of the CPC was adopted, 569 amendments were introduced to the articles adopted by 52 laws and one decision of the Constitutional Court

More details on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/y2LmqK>

4.2. Draft laws that have to prevent collapse in investigation of crimes were registered

In the Verkhovna Rada of Ukraine, draft laws were registered №7547 (MP Olena Sotnyk and others) and 7547-1 (MP Anton Heraschenko) on correcting amendments to the CPC caused by «Lozovyi's amendment» that can result in a collapse in investigation of crimes.

On March 15, 2018 pursuant to the final provisions of the approved amendments to the CPC of Ukraine, the following amendments will come in force:

- granting an exclusive right to the court to request expert examinations, which deprives the defense of its adversarial right to involve experts independently;
- requests of investigators and judges will be examined exclusively by a court at the place of registration of the investigating agency (police has legal entities only in oblast centers, hence

investigators in the oblast will have to travel 50-100 kilometers every day, which will paralyze investigation of criminal proceedings);

- others.

The majority of these threats will be eliminated by the submitted draft laws, but there is a danger that by March 15 the Verkhovna Rada will not be able to adopt the necessary changes, and for some period, investigation of crimes, in the first place by the National Police, will be paralyzed.

On February 28, the Committee on Legislative Support to Law Enforcement Activities discussed the main draft law (№7547) and recommended to adopt it as a basis. At the same time, during the discussion the author of an alternative draft law agreed to withdraw it from discussion to ensure prompt adoption of necessary changes.

Draft law №7547 on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/JTfSaZ>

Draft law №7547-1 on the web-site of the Verkhovna Rada of Ukraine: <https://goo.gl/zPWkDW>

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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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