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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, public dialogue 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.

Government approved Action Plan for Implementation of the MoI Strategy till 2020

On August 21 at its last meeting, the Government chaired by Volodymyr Groysman approved the Action Plan for Implementation of the Strategy on Development of Agencies within the System of the Ministry of Interior till 2020, which identifies specific tasks, activities, performance indicators, a list of responsible executive bodies, the need for financing, and basic spheres where the financial resources will be used.

The Action Plan was developed in cooperation with experts from civil society, international organization and the states that are strategic partners of Ukraine.

The methodology that was used for development of the Plan was approved by the EU Advisory Mission to Ukraine for the Civilian Security Sector Reform, and it envisages

systematization of activities that will be carried out to achieve priorities of the Strategy into a logical cycle (stratagem): research, study of the advanced international experience – normative regulation – pilot project (where practicable) – establishment of a system.

It should be mentioned that the Cabinet of Ministers of Ukraine approved the Strategy back in November 2017, and the MoI was expected to develop the action plan by mid-February 2018, yet the plan was approved only now.

Hence, the document covers only a half of the initially envisaged period of implementation.

National Police's Department of Economic Protection was eliminated

On August 23, at a meeting of the panel of the Ministry of Interior a decision was made to eliminate the Department of Economic Protection of the National Police of Ukraine, and already on September 2, the Government endorsed this decision.

It is expected that the eliminated Department will be replaced with a separate newly created unit for inquiring into financial crimes – Service (Bureau) of Financial Investigations – an independent agency that will assume the functions of inquiry into economic crimes that

are currently investigated by police and tax militia (the State Fiscal Service).

As of today, the Chair of the VR Committee on Finance, Tax and Customs Policy has registered a draft law *On Bureau of Financial Investigations* (№ 1208 as of August 30, 2019), and representatives of the European Solidarity faction tabled an alternative draft law *On National Bureau of Financial Security of Ukraine* (№ 1184 as of August 29, 2019).

It should be mentioned that before the launch of the new law enforcement agency, procedural jurisdiction of some economic crimes stays with the National Police as provided for in the provisions of Article 216 of the CPC of Ukraine. Thus, it is not important whether police replaces the Department with another unit or whether its officers are transferred to general investigative and operative units.

More details can be found on the web-site of the National Police: <http://bit.ly/2kHFngt>

More details can be found on the web-site of the Government: <http://bit.ly/2kfvgPI>

Draft law № 1184 on Bureau of Financial Investigations: <http://bit.ly/2maTUl6>

Draft law № 1208 on National Bureau of Financial Security of Ukraine: <http://bit.ly/2klsO4w>

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.

President of Ukraine appointed new Prosecutor General

On August 29, at the first plenary session of the Verkhovna Rada of Ukraine the parliament gave its consent to the President for dismissal of Yurii Lutsenko from the position of the Prosecutor General of Ukraine and appointment of Ruslan Riaboshapka to the position of the Prosecutor General.

Immediately after this, President Volodymyr Zelensky issued respective decrees.

Before his appointment to this position, Ruslan Riaboshapka worked as the Deputy Minister of Justice of Ukraine (2014-2016), and a member of the National Agency for Preventing Corruption (2016-2017). In May 2019, he was appointed the Deputy Head of the Administration (later – the Office) of the President of Ukraine. Mr. Riaboshapka is a holder of the Honored Lawyer title.

Decree № 637 on appointment of Ruslan Riaboshapka: <http://bit.ly/2m7B2n0>

Military prosecution offices will probably be eliminated

In early August, Deputy Head of the Office of the President of Ukraine Ruslan Riaboshapka said he saw no need for military prosecution offices.

He was speaking not only against military prosecution offices but also against possible development of military justice, in particular specialized courts, the idea of which was supported by the Chief Military Prosecutor, Anatolii Matios.

Military prosecutors, like their civilian colleagues, in 2017 lost the right to launch investigations on their own. They provide oversight of activities of other agencies (police, SSU, SBI, NABU), represent prosecution and citizens' interests in court.

At the same time, activities of military prosecution offices should be aimed in the first place at the areas related to performance of military duties. These include preservation of military property, security of arsenals, social

and legal protection of military personnel, state defense procurements, prevention and elimination of corruption and organized crime.

On August 29, on the first day of work of the Verkhovna Rada of Ukraine of the IX convocation, the President of Ukraine submitted a draft Law of Ukraine On Amending Some Legislative Documents of Ukraine Concerning Primary Measures to Reform Prosecution Agencies (№ 1032 as of August 29, 2019), which among other things provides for elimination of military prosecution offices.

On September 2, the newly appointed Prosecutor General, Ruslan Riaboshapka, issued an order dismissing Anatolii Matios from the position of the Chief Military Prosecutor.

Draft law № 1032 on priority measures to reform prosecution agencies: <http://bit.ly/2kycdAw>

President initiated renewal of the prosecution system

On August 29, President of Ukraine Volodymyr Zelensky registered a draft law on primary measures to reform prosecution agencies (№ 1032 as of August 29, 2019). In addition to the changes related to military prosecution offices, the President suggest the Ukrainian prosecution system should be significantly renewed.

The principal provisions of the draft law envisage:

- establishing the Office of the Prosecutor General, regional (oblast) prosecution offices, and district (okrug) prosecution offices. Granting a right to the Prosecutor General to eliminate and re-organize district and regional prosecution offices;
- eliminating military prosecution offices, but at the same time vesting a right in the Prosecutor General to create specialized prosecution offices when necessary with the rights of a structural unit of the Office of the Prosecutor General, regional prosecution offices, district prosecution offices;
- decreasing the maximum size of the

prosecution staff from 15, 000 to 10, 000 individuals;

– granting powers and authorities to the Prosecutor General to approve: prosecution development strategy; system of performance evaluation for prosecutors; procedure for measuring and regulating prosecutors' workload; procedure for examination of complaints concerning improper performance of respective administrative functions by the prosecutor holding an administrative position;

– creating possibilities for all candidates with higher legal education and experience of work in the legal sphere to take part in a competition for filling in positions in all prosecution agencies;

– transforming the National Prosecution Academy into the Ukrainian Training Center for Prosecutors;

– increasing the base official salary for a prosecutor from 12 to 15 minimum subsistence incomes of employable persons. Establishing the limit of 25% for the maximum size of the bonus for a prosecutor based on the results of a calendar year that has to be calculated exclusively on the basis of the results of prosecutor's performance evaluation;

– prosecutors who, as of the day of the Law coming in force, held the positions of prosecutors in the Prosecutor General's Office or in prosecution offices may be transferred to the positions of prosecutors in the Office of the Prosecutor General, in regional and district prosecution offices only provided they have demonstrated positive attestation results. Prosecutors of the Special Anti-Corruption Prosecution Office are not subject to attestation.

– attestation of prosecutors will be carried out by HR commissions;

– attestation of prosecutors has to include the following stages: 1) an exam in the form of an anonymous written test aimed at assessing the level of knowledge and skills necessary for applying the law, compliance with the requirements for performing the functions of a prosecutor; 2) an interview aimed at

assessing the prosecutor's compliance with the requirements concerning professional competencies, professional ethics, and integrity. For determining the level of practical knowledge and skills, prosecutors are requested to solve a practical task. In the event of a failure at attestation, a prosecutor will be dismissed from office;

– persons who did not hold the position of a prosecutor as of the moment of the Law coming in force have a right – provided they have higher legal education and experience of work in the legal sphere – to take part in an open competition for filling in vacant positions of prosecutors;

– on a temporary basis, till September 1, 2021 powers and authorities of the Qualification and Disciplinary Commission of Prosecutors are suspended, and the Prosecutor General receives the rights to: determine the procedure for selection of candidates by the HR commission for filling in vacant positions of prosecutors; determine the procedure for filling in temporarily vacant positions of prosecutors in prosecution agencies; appoint candidates to administrative positions in the Office of the Prosecutor General of Ukraine and to the position of the head of a regional prosecution office (upon approval by the Commission for Selection of Heads of Prosecution Agencies); determine the procedure for examination of disciplinary complaints by HR commissions on disciplinary offenses committed by prosecutors, and carrying out disciplinary proceedings; determine the procedure for making decisions by HR commissions based on the results of disciplinary proceedings and availability of the grounds provided for in the Law of Ukraine On Prosecution, on imposing a disciplinary fine on a prosecutor or a decision on impossibility to continue to hold the position of a prosecutor by the individual.

Draft law № 1032 on priority measures to reform prosecution agencies: <http://bit.ly/2kycdAw>

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.

Oath of office and special ranks for SBI: Bureau responds to legislative amendments

In the previous issue of our bulletin, we wrote that the parliament adopted a law that allows the State Bureau of Investigations hire operative officers as its staff.

In order to ensure implementation of this law, on July 1 Roman Truba, the SBI Director, issued an order approving the procedure for taking the oath of office by privates and managers of the State Bureau of Investigations, and on August 21 the Government regulated the size of fringe benefits to the official salaries for special ranks of privates and managers of the State Bureau of Investigations.

As expected, this will facilitate the Bureau's activities and ensure proper adherence of its officers to the Ukrainian legislation and performance of their official duties.

Order № 144 on the procedure for taking the oath of office: <http://bit.ly/2lTshg9>

Resolution № 767 on regulating payment of salaries in the SBI: <http://bit.ly/2lMrC0g>

A petition on unconstitutionality of individual provisions of the law on SBI was submitted to the Constitutional Court

In On August 28, 2019 a constitutional petition was submitted to the Constitution Court of Ukraine by 45 members of parliament of Ukraine of the VIII convocation concerning

compliance with the Constitution of Ukraine (constitutionality) of Part 1, Paragraph 1 Part 3 Article 11, Paragraphs 1, 3 Part 2 Article 23 of the Law of Ukraine *On State Bureau of Investigations* № 794-VIII as of November 12, 2015.

According to the petition, powers and authorities of the President of Ukraine to appoint to and dismiss from office the SBI Director and to appoint three members of the Selection Commission on Appointing Managers of the Bureau are unconstitutional since the Constitution of Ukraine does not vest such powers and authorities in the head of state.

Instead, already on August 29 the President of Ukraine registered draft amendments to the Constitution of Ukraine at parliament, which provide for the powers and authorities of the President of Ukraine to establish independent regulatory agencies, the National Anti-Corruption Bureau of Ukraine, appoint to and dismiss from office Director of the National Anti-Corruption Bureau and Director of the State Bureau of Investigations (№ 101 as of August 29, 2019). However, the registered draft law does not address the inconsistency in the powers and authorities of the President regarding appointment of members of the "external" Selection Commission.

Constitutional petition: <http://bit.ly/2lUaoOj>

Draft law № 1014 on powers and authorities of the President: <http://bit.ly/2kfvYfQ>

Competition for positions of operative officers of the SBI was launched

On September 4, a competition was announced to fill in 268 positions in operative units of the central apparatus of the State Bureau of Investigations. Deadline for submission of applications is September 26 (till midnight).

The launch of selection of operative officers was expected for 1.5 years because the Verkhovna Rada was for a long time not able to correct

a technical mistake in the law on the SBI that made selection of operative officers in the Bureau impossible. During this entire period, operative support in the SBI proceedings was

provided by law enforcement officers from other agencies. With the beginning of work of its own operative officers, the SBI will be able to carry out its own operative and search activities.

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 going 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. There has been currently working group established under the Committee for the Legislative Support of the Law Enforcement of the Verkhovna Rada conducting comprehensive review of the CPC and developing systematic amendments of the Code.

President vetoed the adopted law on mandatory chemical castration of individuals who committed sexual crimes against minors

The Verkhovna Rada of Ukraine adopted amendments to legislative documents strengthening liability for crimes committed against minors, underage persons and persons who have not attained puberty. The draft law number 6449 was supported as a basis and as a whole at an extraordinary plenary session of the parliament on July 11 by 247 members of parliament. With the adopted law, the VR added an article to the Criminal Code on mandatory chemical castration, and obliged

the Government to create a public register of individuals who committed respective crimes.

On September 4, the President of Ukraine vetoed this law as such that violates human rights suggesting instead that the parliament should re-consider Draft Law 6607, which was also adopted by the Verkhovna Rada on July 11 but only in the first reading.

Draft law 6607 provides for voluntary chemical castration as a medical measure but not as part of the punishment, and it also envisages creation of a closed register of individuals who committed crimes against minors, underage persons and persons who have not attained puberty. However, Draft Law 6607 contains several shortcomings, namely concerning a range of persons who will have access to it, and deficiencies in the drafting of criminal legal norms.

Proposals of the President of Ukraine:
<http://bit.ly/2kdm8eo>

Draft law № 0887 (№ 6607 in the VIII convocation):
<http://bit.ly/2mekmdJ>

Verkhovna Rada will return to consideration of repeat criminalization of illicit enrichment

In the Verkhovna Rada of Ukraine of the IX convocation, a legislative initiative has been registered on repeat criminalization of illicit enrichment.

This is a presidential draft law on confiscation of illegal assets of individuals authorized to perform the state or local self-government functions, and on punishment for acquisition of such assets (№ 1031 as of August 29, 2019).

President Zelensky submitted this draft law twice during the previous convocation, but for the first time the parliament did not

include it into the agenda for the session and rejected it.

We would like to remind the reader that the President's initiative that will most probably be approved by the parliament, in addition to criminal liability for illicit enrichment, provides for civil forfeiture of assets received as a result thereof. Therefore, given the overall period of limitation in civil legal relations, which is three years, the NABU and the SAP will be able to bring to liability those individuals who were suspected or accused in criminal proceedings closed pursuant to the Decision of the Constitutional Court of Ukraine.

Draft law № 1031 on confiscation of illegal assets of public servants and on punishment for acquiring such assets: <http://bit.ly/2mcRfHD>

Parliamentary immunity will be lifted starting from January 1, 2020

On September 29, the Verkhovna Rada of Ukraine gave its preliminary approval, and on September 3 approved as a whole the draft law submitted by the then President Poroshenko on amending the Constitution of Ukraine regarding parliamentary immunity.

Starting from January 1, 2020 consent of the Verkhovna Rada of Ukraine will no longer be necessary for apprehending or arresting a member of parliament of Ukraine.

At the same time, MPs will preserve their indemnity after the amendments have come in force, which means they will not be liable for the results of voting and their speeches in parliament except for the liability for insult and defamation (liability for which is not envisaged at present).

The law has been already signed by the Chair of the Verkhovna Rada of Ukraine and forwarded to the President for his signature.

This law was adopted without taking into consideration the comments of the Venice Commission saying that complete elimination of parliamentary immunity can be harmful for Ukraine as a young democracy.

Law № 27-IX on amending Article 80 of the Constitution of Ukraine (on immunity of members of parliament of Ukraine): <http://bit.ly/2lSqBUa>

Conclusion of the Venice Commission: <http://bit.ly/2lKPCAN>

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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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