



# 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

**S**ystem 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 in the sphere of police activity

On 2 July 2015 the Verkhovna Rada of Ukraine adopted the new Law “On the National Police of Ukraine” (as a replacement of the Law “On Militia” of 1990), which came into force on 7 November 2015. The Law includes many positive provisions,

particularly, on depolitization of police, service-oriented character of its work etc. At the same time the Law has a number of drawbacks as being indicated both by representatives of expert community and the Council of Europe that made 29 of such considerations.

*Council of Europe has critical considerations to the Law of Ukraine “On the National Police”. Among them: Lack of competitive selection to all positions, Preservations of Military Ranks, existence of healthcare establishments within the system of the ministry of internal affairs and a number of other problems that are not solved by the new law*

Among them: the lack of competitive selection to all positions, analogues of military ranks in police and non-transparent order of their awarding; disproportional application of certain police measures – checking documents, seizure of property, restriction of movement of persons and entry into private ownership, as well as use of weapons and impact munition etc.; unlimited periods of keeping

\* first issue includes a short review of reforms in general and a summary of a 3-months period

information in police databases, existence of healthcare establishments within the system of the ministry of internal affairs etc..

Besides that, the Code of Ukraine on Administrative Offences of 1984 is outdated. Its provisions are being used in practice first of all by patrol police in cases on administrative offences. The effectiveness of holding the guilty liable for violations of public or traffic security is very decreased due to a number of drawbacks of the outdated administrative and delict legislation, which policemen and judges themselves complaint about. More about problems with legal regulations: <https://goo.gl/EML1yb>

### March-May 2017

#### **1.1. Profile Committee of the Verkhovna Rada recommended to adopt in the second reading the draft Law “On Disciplinary Statute of the National Police of Ukraine”**

On 15 March the Committee on Legislative Support of Law Enforcement recommended to adopt in the Verkhovna Rada of Ukraine the draft Law “On Disciplinary Statute of the National Police of Ukraine” (reg. № 4670) in the second reading.

Along with this, the most important amendments, submitted by a group of members of parliament and elaborated with participation of the public, were taken into account. For example, obligatory inclusion of civil society representatives to such commissions in cases when a departmental investigation is carried out based upon a complaint of a natural or legal person or guarantee of the right to protection of a policeman against whom a departmental investigation is conducted.

*A profile committee recommended to adopt a draft law “On Disciplinary Statute of the National police of Ukraine” without taking into consideration crucial amendments provided by the civil society, which, in particular, concern the right to protection of a policeman against whom a departmental investigation is conducted*

Main amendments provided by the civil society:

<https://goo.gl/uOkIU3>

Analytical article “Disciplinary statute of the National Police: are policemen not humans?” prepared by the expert of the Center of Policy and Legal Reform Mr. Olexander Banchuk and published in Ukrainian Pravda: <https://goo.gl/wOCQxc>

#### **1.2. The profile committee considered draft laws on identification of policemen and military servicemen**

#### **of the National Guard and recommended them for adoption by Verkhovna Rada in the first reading**

Committee on Legislative Support of Law Enforcement of the Verkhovna Rada of Ukraine recommended to adopt draft laws №5700 and №5701 on identification of policemen and military servicemen of the National Guard of Ukraine in the first reading.

Relevant draft laws were registered in January 2017 after a preliminary hearing with participation of civil society, representatives of the National Police and National Guard, as well as with the Ukrainian Parliament Commissioner for Human Rights.

*Draft laws №5700 ma №5701 on identification of policemen and national guard servicemen aim to overcome the anonymity of law enforcement officers. Absence of personal identification leads to arbitrariness and makes it harder to hold policemen liable for abuse of power*

Main provisions proposed in the draft laws: 1) individual number shall be indicated on a badge in a way to ensure the possibility to identify the number on a distance, as well as in the official ID. Introduced is the disciplinary responsibility for hiding a badge when on duty; 2) for units of the National Guard if they were engaged to ensuring public security same standards shall be applied as to the police: a badge, number, possibility to identify; 3) a unified online database shall be created where individual numbers are registered and with citizens having full access to service information indicated in the official ID.

Details on the provisions proposed by the draft laws: <https://goo.gl/xOrNbQ>

#### **1.3. A draft Law №6479 regarding improvement of the order of judicial review of certain categories of cases on administrative offences, particularly drunk driving, is registered in the Verkhovna Rada of Ukraine**

Draft Law №6479 “On Amendments to the Code on Administrative Offences (regarding improvement of the order of judicial review of certain categories of administrative cases)” is aimed to improve the procedure of bringing to responsibility for certain categories of administrative offences. The draft law partly eliminates drawbacks of the Code on Administrative Offences of 1984, using which offenders today have the possibility to avoid responsibility: consideration of cases on disorderly conduct, malicious disobedience to legal requirement of a police officer during one day,

impossibility for police to appeal against a court a decision based on its materials. Thus, it's about the effectiveness of guarantees for ensuring traffic and public security by police, first of all by patrol service.

Amendments mentioned above are only “stand-alone” measures – such that can slightly improve the work of police and court already tomorrow. This is not a cure from all problems police and citizens face during consideration of cases on administrative offences. A comprehensive, systemic update of administrative-delict legislation, including the introduction of an institute of criminal misdemeanors, stays a topical issue in the context of European integration.

Briefing with the initiators of the draft law in the Verkhovna Rada of Ukraine (UA): <https://goo.gl/mr8wgX>

Presentation of the draft law in the Ukrainian Crisis Media Center (UA): <https://goo.gl/G79WIX>

#### ***1.4. The draft Decree of the Cabinet of Ministers of Ukraine “On Approval of the Order for Assessing the Level of Trust of Population in Police” is being under consideration of the Government ”***

A working group on Law-Enforcement reform of the Reanimation Package of Reforms considered the draft of this document and identified a number of serious problems that need to be solved. In particular, they concern the following:

- » Availability of exclusively quantitative method of a sociological research (representative interviewing of citizens), which excludes the possibility to use a qualitative method (thematic focus-groups with representatives of civil organizations cooperating with police, comprehensive interviews etc.);
- » Possibility of police to influence the objectivity of a research;
- » Inconsistency with other regulations;
- » Publication of only a summarizing document on results of analysis of sociological information on the level of trust of population in the National police without the method of research and analysis of such information.

Taking the above mentioned into account, experts of the group on Law-Enforcement reform of the Reanimation Package of Reforms called for the Government not to adopt a document as it is now, but to substantially develop it after consultations with representatives of civil society.

In details (UA): <https://goo.gl/v5gbKI>

#### ***1.5. A draft decree of the Cabinet of Ministers on Approval of an Action Plan regarding realization of the***

#### ***Strategy and Concept of Reform of the System of the Ministry of Internal Affairs is being considered by the profile Governmental committee***

On 17 May during its meeting a Governmental committee on economic, financial and legal policy, development of fuel and energy, infrastructure, defense and law enforcement activity considered a draft decree of the Cabinet of Ministers of Ukraine “On Approval of Action Plan regarding the realization of the Strategy for development of internal affairs authorities of Ukraine the Concept of Immediate Measures on Reforming the system of the Ministry of Internal Affairs”. Mentioned documents in the sphere of state policy were approved by the Cabinet of Ministers in 2014 and elaborated as a result of activity of the Public Council under the Ministry of Internal Affairs.

A draft decree has a number of necessary elements of reform, particularly introduction of an electronic document management, electronic recordation, introduction of algorithms of actions in regular and emergency situations, introduction of a new system of police work effectiveness evaluation etc. At the same time, mentioned measures can be initiated, however their full implementation in 2017 is impossible. In addition to that, the general course of reforms of the National Police, as defined by the document, is correct and supported by civil society.

## **2. Reform of investigative and operative units**

Criminal police as a part of the National Police of Ukraine stays absolutely unreformed. It still has old staff using old methods of work. Besides that, the old Soviet system of work effectiveness evaluation of investigative and operative units continues to exist with dynamics of solving cases, meaning cases submitted to court, being its main indicator. In practice, it leads to filtration of cases at the stage of registration, in contradiction to requirements of the Criminal Procedure Code of Ukraine, forgery of evidence etc.

Another problem is the breakdown of functions of an investigator and operative unit officer who cooperate with each other during the investigation, and communication between them is carried out through documenting a criminal proceeding. Thus, it comes to a bureaucratic dragging of investigation of a criminal proceeding which directly influences its quality

***Criminal police as a part of the National police of Ukraine stays unreformed: positions of an investigator and an operative officer are still separated, and the central indicator of work effectiveness stays the soviet evaluation system of solving cases***

Introduction of the institute of detectives is a logical step and is foreseen by a number of political documents in the sphere of reform, however, the Ministry of Internal Affairs and the National Police, despite numerous announces, still did not elaborate and provided the draft law, that would allow to unite functions of an investigator and an operative police officer in one position of a detective, for the Cabinet of Ministers to consider its adoption and its further registration in the Verkhovna Rada of Ukraine.

### March - May 2017

In March – April in Kyiv and Odessa regions (Podil Police Station) a pilot project was launched with the aim to unite functions of operative officers and investigators. According to an EU Advisory Mission (EUAM) it has to increase the effectiveness of solving crimes and decrease the bureaucracy.

In practice this project would mean that functions of operative officers and investigators will be united under one subordination. EUAM reports that such an approach was successfully tested in EU countries, particularly in Czech Republic, Lithuania, Poland and Romania.

A pilot project is introduced with the aim to reorganize a criminal block of police and create an institute of detectives as one of the spheres of police reform.

More details about the project: Kęstutis Lančinskas “Criminal Investigations: complex process – simple goal”: <https://goo.gl/OfzksN>

In May started the experiment of implementation detectives in 7 regions of Ukraine - Khmelnytsky, Zaporizhia, Lviv, Odessa, Poltava, Sumy and Kharkiv. Police investigators from departments and operative workers of the criminal police were trained in April and started work as detectives. According to National Police we can evaluate the effectiveness of the experiment on March 30, 2018, which will become the foundation of detectives-model throughout the country.

### 3. Staff issues

Due to a number of organizational problems and drawbacks of legislative regulation it was only 7,7% of policemen who were fired as a result of attestation. It showed a low effectiveness of the process and ineffective use of resources spent on it.

Besides that, some of those officers who were released of duty as a result of attestation returned to service according to court decisions due to legal

inconsistencies and drawbacks in a regulatory act – Order №1465 of the Ministry of Internal Affairs of Ukraine – based on which commissions adopted decisions on release of duty. Details: <https://goo.gl/wXW4a6>

*7,7% of policemen were fired as a result of an attestation. Ministry of internal affairs has not yet regulated a number of organizational problems and legal inconsistencies that arouse during the reattestation. Some of those officers who were released of duty already returned to service according to court decisions*

## 4. Reforming police education

Reforming police education stopped on the stage of announcement of a concept that introduced a modern European model of police officer education based on step principle with colleges being the main educational institutions. The implementation stage has, however, not started.

Educational institutions within the system of the Ministry of Internal Affairs providing higher education stayed without reorganization. Along with this, apart from patrol police, preparation of new staff and units continues to be carried out according to old programs and methods which leads to a low level of professionalism among police officers and their unpreparedness to perform duties put on them.

### March - May 2017

#### 4.1. International institutions addressed the Ministry of Internal Affairs of Ukraine with a consolidated position regarding reform of police education

International institutions providing donor support to reform of law enforcement authorities addressed the Ministry of Internal Affairs with a consolidated position regarding the separation of professional education, training and raising the qualification of police officers, according to the best international practices, from higher education which is based on the rule of law.

In particular, the position addresses the following spheres of reform:

1. Training of police officers has to be separated from higher education.
2. Leadership of police has to acquire additional skills and education in higher educational institutions that are not part of the Ministry of Internal Affairs of Ukraine.
3. Legal education has to be provided only by higher educational institutions subordinated to the Ministry of Education and Science of Ukraine,



and graduate law students have to pass a unified qualification test.

4. System of institutions of the Ministry of Internal Affairs of Ukraine has to be reformed through adoption of new programs and their transfer to National Police.

A respective letter was published by the Deputy Minister of Justice on European integration Mr. Serhiy Petukhov on his Facebook page (UA): <https://goo.gl/h7Cjb6>

#### **4.2. The threat of entry of graduates lawyers in departmental high school outside the general procedure**

On 25 April ex-First Deputy Minister of Education and Science of Ukraine Ms. Inna Sovsun informed of introducing amendments to draft order of the Ministry of Education and Science of Ukraine, according to which external independent evaluation when applying to legal Master programs shall not be applicable to the departmental universities of internal affairs within the system of the Ministry of Internal Affairs, Security Service of Ukraine, Ministry of Defense and Foreign Intelligence Service.

Reanimation Package of Reforms reacted with an appeal calling the Ministry of Education and Science and the Ministry of Justice of Ukraine not to undermine the reform of legal education. It was mentioned that in such a case “departmental higher educational institutions will be able to further use corrupt schemes of giving specialized diplomas to people lacking necessary knowledge since external independent evaluation as a system of control over quality of legal education will not be applicable for graduates of such higher educational institutions. Such people in the future will be able to become lawyers, prosecutors, judges etc.”.

Let us remind you that last year there was a pilot project conducted in nine leading legal higher educational institutions, and this year the Ministry of Education and Science of Ukraine planned to expand it to all universities, particularly the departmental ones. Analytics from Mykhailo Zhernakov “How [political party] People’s Front kills legal education” (UA): <https://goo.gl/d6OCly>

At the same time, the Minister of Education Lilia Grynevych informed, that a draft document, which the Ministry of Education and Science of Ukraine submitted to the Ministry of Justice on 11 April, did not mention that institutions subordinated to departmental educational institutions shall not be obliged to conduct selection of candidates to

master programs through the external independent evaluation on law.

On 5 May the Order №579 of the Ministry of Education and Science of Ukraine adopting relevant Regulations on Conducting a Unified Specialized Entry Exam Using Organizational and Technological Processes of External Independent Evaluation for Enrollment into Master’s Program of Higher Education with the Major 081 “Law” in 2017 was registered in the Ministry of Justice of Ukraine and published.

Final version of the document does not have any exclusions mentioned above, therefore the introduction of a unified exam for all universities has to become a huge step towards a quality system of legal education and access to legal profession in Ukraine.

The Order №579 at the official website of the Ministry of Education and Science of Ukraine (UA): <https://goo.gl/6NOL3T>

## **5. Depolitization of police**

Creation of a National Police in 2015 as a separate executive authority within the system of the Ministry of Internal Affairs of Ukraine became a huge step towards police depolitization. According to the European standards of work of law enforcement authorities the model of separation of functions of a minister-politician and chief of the National Police-manager was put in the basis of a new Law “On National Police”.

However, the Law anchors provisions which limit to a great extent the mandate of the Chief of National Police – since appointments to key positions (chiefs and deputy chiefs of structural units of the central secretariat, chiefs of territorial bodies) have to be approved by the minister-politician. This has caused a number of nontransparent appointments to leading positions in police in 2016.

*Influence of politics on police is still tangible. The chief of National police has to approve with the minister of internal affairs key managerial issues, particularly staff appointments to positions of his own deputies, chiefs of territorial units etc.*

## **6. Human rights observance**

In 2016 a Department for Human Rights Observance was created within the structure of the National Police. Its activity is directed at control over the observance of human rights and freedoms in the

activity of departments, police stations, specialized establishments and convoy units by police officers.

As of today, the Department for Human Rights Observance pursues several complex tasks aimed at establishing coordination of work on complaints of citizens with internal security and personnel inspection, prosecution office as well as informational and analytical, educational and other activities.

A number of documents in the sphere of state policy adopted in 2014-2015 foresee the introduction of additional measures regarding the observance of rights of detained and arrested persons according to European norms, particularly the practice of video recording first interrogation of a detained person and a unified electronic custody record, as well as individual bags for keeping things of the detained persons.

However, as of beginning of 2017 such tasks were not fulfilled, even though the relevant concept was announced by police and already has a number of elaborations for its realization.

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### 6.1. A report was published with a review of the state of observance of human rights by National Police in 2016

In March a annual report “Human Rights in the Activity of Ukrainian Police – 2016” was published, dedicated to the state of observance of human rights in the activity of Ukrainian police during 2016, as well as to the key events in the sphere of police activity – reform of police and attestation (re-attestation) of police officers.

Sections regarding police reform (<https://goo.gl/Ovcwod>) and attestation (re-attestation) (<https://goo.gl/OfgKou>) are available in English language.

The electronic version of the publication can be accessed following the link (UA): <https://goo.gl/flWbzo>

### 6.2. Introduction of “dialogue police” – mediators of

### *the National Police during peaceful assembly*

National police is introducing “dialogue police” – mediators of the National Police preventing the escalation of violence during peaceful assembly. Human rights defenders were stressing on the necessity of such a step during many years, particularly in reports on observance of a right to peaceful assembly by police.

As of now the methodology of conducting negotiations with the aim to prevent violence during protests and mass events has been mastered by 120 police officers from 11 regions of Ukraine within the framework of trainings organized by EUAM. Using the model of “dialogue police” is a timely measure in connection with Eurovision contest and World Hockey Championship to be conducted in Kyiv.

Details in the article: <https://goo.gl/QvkOj1>

Infographics about the project: <https://goo.gl/rblcTt>

### 6.3. Presented was a concept of informing citizens of their rights by policemen

On 11 May there was a presentation of results of an experiment on informing detained, witnesses and victims of their rights by policemen. Within the experiment mentioned categories of persons received informational notes about rights in the period from end of January to March 2017 which positively influenced the quality of consideration of cases on administrative offences. According to the Deputy Chief of the National Police Mr. Kostiantyn Bushuev, till the end of 2017 such practice of informing will be spread on all the territory of Ukraine. Such an initiative is a result of joint efforts of the National Police of Ukraine, Secretariat of the Ukrainian Parliament Commissioner for Human Rights and of the Ukrainian Legal Aid Foundation.

At the same time the issue of improving the quality of hand-outs and control over the execution of such an instruction by regular police officers stays topical.

Informational notes can be viewed following the links (UA): <https://goo.gl/OEOzHz> ; <https://goo.gl/lAmGow> ; <https://goo.gl/72skk6> ; <https://goo.gl/VgOCFd>

## II. PROSECUTION OFFICE

**R**eforming prosecution authorities stays one of the unperformed obligations of Ukraine given to the Council of Europe in 1995. The Law “On Prosecution Office” of 1991 stayed unchanged for a long period of time and kept a centralized, militarized structure

of a post-soviet prosecution office with internal unconditional subordination of prosecutors to their supervisors and efforts to cover all spheres of life of a person, society and state with prosecutor control. The new law “On Prosecution Office”, which was

adopted on 14 October 2014, foresees depriving prosecution office of general oversight functions, conducting a competition to positions in the newly created local prosecution offices in all regions of the country and existence of bodies of prosecutor self-government.

## 1. Pre-trial investigation in the prosecution office

The Law of Ukraine “On Prosecution Office” foresees the transfer of functions of conducting pre-trial investigation to a new body – State Bureau of Investigation. However, as of the beginning of May 2017 the State Bureau of Investigation has not yet been formed. Thus, cases against law enforcement officers, judges and high-level officials are still being investigated by the investigative authorities of prosecution offices. International institutions have many times indicated on the low effectiveness of such investigations since pre-trial investigation of a case and procedural leadership within one authority have a systemic conflict of interests.

*Cases against law enforcement officers, judges and high-level officials are still being investigated by the prosecution offices. Pre-trial investigation of cases and procedural leadership within one authority have a systemic conflict of interest*

## 2. Bodies of prosecutor self-government

The idea of a new law on prosecution office foresaw that the bodies of prosecutor self-government would have to be created only after the staff of prosecution authorities is renewed (undergoes re-attestation) at all levels. However, the re-attestation and open competitions were conducted only for the positions in local prosecution offices. Regional prosecution offices and the General Prosecutors Office of Ukraine generally still have the the same people who have for many years been forming the image of the prosecution authorities as corrupt and political body. Appointments of new people on regional level and at the General Prosecutors Office stayed nontransparent and often politically motivated. Under such conditions, both the conference of prosecutors conducted in 2016 and the conference summoned against the Law by the Prosecutor General in 2017, consisted mostly of the delegates who were used to working in a centralized system of prosecution authorities. Thus, the representatives of bodies of prosecutor self-government, who were elected by them, do not have a public trust.

### 2.1. Ukrainian Parliament Commissioner for Human Rights approved the candidates to Qualification and Disciplinary Commission of Prosecutors with law enforcement Committee of the Verkhovna Rada of Ukraine

On 12 April during the meeting of the Committee on Legislative Support of Law Enforcement of the Verkhovna Rada of Ukraine candidates for the Qualification and Disciplinary Commission of Prosecutors proposed by the Ukrainian Parliament Commissioner for Human Rights were approved. Those candidates are Arkhipov Valeriy Ivanovych, Pizyk Yuriy Mykolayovych and Shemchuk Viktor Viktorovych.

According to item 4 of part 1 of article 74 of the Law of Ukraine “On Prosecution” three of eleven candidates of the Qualification and Disciplinary Commission of Prosecutors shall be appointed by the Ukrainian Parliament Commissioner for Human Rights with approval of the Committee of the Verkhovna Rada of Ukraine dealing with organization and activity of prosecution authorities.

Protocol of the meeting of the Committee (UA): <https://goo.gl/bjHj8R>

Video footage of the approval (UA): <https://goo.gl/tQxcuU>

### 2.2. The All-Ukrainian Conference of Prosecutors selected members of the Council of Prosecutors of Ukraine and the Qualification and Disciplinary Commission of Prosecutors

On 26 April 2017 the All-Ukrainian Conference of Prosecutors started its work within the General Prosecutors Office Ukraine pursuant to provisions of the Law of Ukraine “On Prosecution” regarding functioning of bodies of prosecutor self-government and Qualification and Disciplinary Commission of Prosecutors that came into force on 15 April 2017.

According to the Law of Ukraine “On Prosecution” the All-Ukrainian Conference of Prosecutors has a number of important tasks, first of all: appointment of the members of the Council of Prosecutors of Ukraine for a 5-year term and of the Qualification and Disciplinary Commission of Prosecutors for 3 years. According to the provisions of the Law it is within the mandate of the Council of Prosecutors of Ukraine to recommend the appointment and release of prosecutors from administrative positions, to introduce measures ensuring independence of prosecutors, social and legal protection of prosecutors, their families etc. Among main tasks of the Qualification and Disciplinary Commission of

Prosecutors is to conduct disciplinary proceedings against prosecutors, select candidates to positions of a prosecutor and transfer of prosecutors between different prosecution authorities.

Besides that, the Conference adopted a number of legal regulatory acts: Rules of work of the All-Ukrainian Conference of Prosecutors, Regulations on the Council of Prosecutors of Ukraine, Code of Professional Ethics and Conduct of Prosecution Officers, Regulations on the Work of the Qualification and Disciplinary Commission of Prosecutors.

More details (UA): <https://goo.gl/tLJIRE>

Along with this in April 2016 there was already an All-Ukrainian Conference of Prosecutors which selected relevant delegates and approved the Code of Professional Ethics and Conduct of Prosecution Officers, the Rules of work of the All-Ukrainian Conference of Prosecutors, Regulations on the Council of Prosecutors of Ukraine and Regulations on the Work of the Qualification and Disciplinary Commission of Prosecutors.

However, according to the amendments to the Law “On Prosecution” introduced in May 2016, enactment of provisions of the law on the activity of bodies of prosecutor self-government and bodies ensuring the activity of prosecution office was postponed from 15 April 2016 to 15 April 2017.

At the end of 2016 the adopted draft Law “On High Council of Justice” included the provisions stating that the All-Ukrainian Conference of Prosecution Officers shall be called the All-Ukrainian Conference of Prosecutors. In addition to that, there was also a provision regarding the fact that the Conference Prosecutors shall be summoned in a fortnight after 15 April 2017. This let the Prosecutor General to create another Council of Prosecutors and the Qualification and Disciplinary Commission of Prosecutors disregarding the fact that the term of mandate of the selected delegates was not overdue, and the All-Ukrainian Conference of Prosecutors can be summoned only by the Council of Prosecutors.

To our opinion, using the analogy of the law, after changing the name of the body members selected by the Conference shall keep their status and can be excluded from them only based upon grounds foreseen by the Law of Ukraine “On Prosecution”.

Therefore, having the legitimate candidates and regulatory documents approved by the All-Ukrainian Conference of Prosecution Officers, processes regarding the creation of bodies of prosecutor self-government seem quite dangerous and put further activity of the mentioned bodies under question

## 2. Staff issues

In two years after adoption of the new Law the aim of the comprehensive reform of prosecution was not fulfilled. As a result of a competition conducted in 2015, 84% of ex-chiefs of district prosecution offices were again appointed by the Prosecutor General to positions of chiefs of the newly created local prosecution offices. Disregard the promises of the current and former Prosecutor Generals open competitions to positions in regional and General Prosecutors offices have not been started.

*According to the results of a large-scale inspection of prosecutors' righteousness none of the prosecutors were released of duty, out of more than 11 thousand prosecutors who passed the inspection, only five received a severe reprimand*

A large-scale inspection of prosecutors' righteousness announced in summer of 2016 had in fact no results, since out of more than 11 thousand of prosecutors who filled out the applications of righteousness only five prosecutors received a severe reprimand, none of them were released of duty.

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Upon enactment of amendments to the Law of Ukraine “On Prosecution” mentioned above, starting from 15 April the Prosecutor General lost the mandate to independently appoint or release staff in prosecution authorities. As of that moment this mandate belongs to the Council of Prosecutors (makes recommendations on appointment and release of prosecutors from administrative positions) and the Qualification and Disciplinary Commission of Prosecutors (selects the candidates for positions of prosecutors, takes part in transfer of prosecutors, considers disciplinary complaints and carries out disciplinary proceedings).

## III. STATE BUREAU OF INVESTIGATION (SBI)

**A**n important reform in law enforcement has to become the creation of the State Bureau

of Investigation – 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. We are talking about abuse of office, torture, traffic incidents that caused severe consequences etc.

In 2015 the Law of Ukraine “On State Bureau of Investigation” was adopted, and in 2016 the competition commission on selection of a director of the State Bureau of Investigation and his/her Deputies started its work. However, the process is accompanied by direct violations of legislation which can obstruct a timely and transparent formation of the State Bureau of Investigation. 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 Investigation under question.

Other violations concern the failure to publish CVs

and declarations on the property of candidates, submitted by them for participation in the competition, lack of free access to information on candidates etc.

In general, around 80 persons submitted their documents to take part in the competition, 65 of them were deemed eligible to take part in further steps. After conducted testing of knowledge of legislation and general skills, as well as after a series of interviews in December 2016 a competition commission selected 19 finalists of the competition. However, before conducting a polygraph testing and final interviews all candidates had to pass a special inspection. Usually, it lasts 30-40 days, however, as of beginning of May the competition commission did not receive its results, meaning the competition was in fact put on hold.

It is the director of the State Bureau of Investigation and his/her deputies who have to become the guarantors of independence and apolitical character of the State Bureau of Investigation, they are responsible for selecting staff and formation of the structure of this body, therefore the transparency of the competition is of utmost importance.

## IV. CRIMINAL JUSTICE LEGISLATION

**H**armonization and consistency of criminal and criminal procedure legislation with European standards stays a problematic issue. On introduction of criminal misdemeanor depends the effectiveness of activity of bodies of criminal justice in general, particularly the workload of investigative and operative units, efficiency of criminal legislation and observance of the principle of inevitability of punishment.

Introduction of the institute of criminal misdemeanors is foreseen by most of the documents in the sphere of state policy (Agreement on Coalition of Deputies' Factions “European Ukraine” of 27 November 2014, Concept of Reforming Criminal Justice, approved by the Decree of the President of Ukraine of 08 April 2008 etc.) and means classification of minor crimes into a separate category of offences with simplified procedure of investigation as it is foreseen by the Criminal Procedure Code of Ukraine, which will help reduce the workload of prosecutors and investigators, will let them spend more time on the work with more complex cases, and the simpler ones shall be investigated without wasting tons of paper on the unnecessary bureaucratically procedures.

*The soviet Code of Ukraine on Administrative Offences of 1984 is still in force. It foresees the responsibility for offences in fact having criminal character. Amendments to the legislation are still not introduced despite a number of elaborations done by the expert and scientific society*

Relevant draft law №2897 is registered in the Verkhovna Rada of Ukraine and stays untouched, the leadership of law enforcement authorities declare their intentions to introduce such an institute.

In 2016 both the Minister of Internal Affairs and the new Prosecutor General declared that this would be a priority sphere of reforms, however, these declarations have not been implemented in practice.

May 23 by a vote in parliament this draft of law was rejected. According to ch. 2, Art. 107 of the Rules of the Verkhovna Rada a similar draft can be registered only in the next session (starting in September), which means that the implementation of criminal misdemeanors again postponed indefinitely.

## March-May 2017

**4.1. A draft law №5610 concerning the charge in absentia was adopted**

On 16 March the Verkhovna Rada of Ukraine adopted as a whole the Law № 5610 «On amendments to the Criminal Procedure Code (regarding the improvement of mechanisms of observance of tasks of a criminal proceeding)”.

A draft law had a number of dangerous provisions violating rights of people: prolongation of the term of detention and the term of pre-trial investigation, postponement of the start of activity of the State Bureau of Investigation etc. Some of them were neutralized during further elaboration of this document for the second reading.

However, the adopted Law still has a number of provisions limiting constitutional rights of citizens, contradicting with standards anchored in the European Convention on Human Rights and basics of a proceeding guaranteed by the Criminal Procedure Code. We are talking about the exclusion of the time to familiarize with materials of proceedings from the general term of pre-trial investigation (*violation of the right to protection and adequate term of proceedings*); new rules of counting term of investigation when combining and separating proceedings (*violate the principle of adequate terms of criminal proceedings*); conclusion of agreements on recognition of guilt in all categories of cases on specially severe crimes, including those having victims (*will violate a right to protection and rights of victims*); absence of rules for application of provisions of the Law to the ongoing criminal proceedings in the transitional provisions of the Law (*violating the principle of legal certainty as part of the rule of law*).

Despite the position of the expert and civil society on 11 April the President of Ukraine signed the draft Law №5610, it has already come into force.

More details on this:

Statement of the working group on Law-Enforcement reform of the Reanimation Package of Reforms: <https://goo.gl/Lcl9Mn>, as well as infographics (UA) <https://goo.gl/RH15ei>

Statement of the Ukrainian National Bar Association (UA): <https://goo.gl/dMv7Xk>

Analytics from the Olexander Banchuk “Charge in Absentia: Poroshenko continues to attack the rights of Ukrainians” (UA): <https://goo.gl/OMsAfY>

**4.2. Another draft Law №6284 on detective operations was registered**

On 4 April another draft Law “On Detective Operations” was registered in the Verkhovna Rada of Ukraine (reg. №6284). It has to replace the outdated law on detective operations (in Ukrainian – ORD) of 1992 – a legislative act adopted before the Constitution of Ukraine.

However, the last attempt to adopt a similar draft of Law on Detective Operations №4778 was voted down in December 2016. One of the reasons for such a decision was the conclusion of experts of Council of Europe saying that a draft law “had a number of drawbacks and gaps which needed to be corrected in order to ensure the conformity to European standards and requirements of the Criminal Procedure Code of Ukraine”.

A group on Law-Enforcement reform of the Reanimation Package of Reforms called for MPs (UA) (<https://goo.gl/BvrHUh>) to vote the respective draft law down and initiate the preparation of the new legislation on covert actions of law enforcement authorities in compliance with requirements of the Constitution of Ukraine and international standards with an obligatory engagement of European experts.

The reason for that was that the bill ignored the latest amendments to the Constitution of Ukraine of 2 June 2016, according to which “Detective Operations” were transformed into “secret surveillance of law enforcement agencies”. At the same time a draft law had risks for human rights and freedoms – unlimited in time terms of conducting special investigative cases; new type of activity of special investigative units – search measures; different scope of guarantees for human rights and freedoms protection during special investigative measures and covert investigative (search) actions etc. A full list and argumentation are given in the statement of the group (UA) <https://goo.gl/503Jxl>.

More details on the necessity of existence of the institute of Detective Operations which was formed in the Soviet Union and its correspondence with European standards of secret surveillance you can read in the analytical note of Eugene Krapyvin “Why doesn’t Ukraine need a new law on Detective Operations?”: <https://goo.gl/bsafwd>

**4.3. The draft Law №6220 regarding the change of order of including information to the Unified State Register of Pre-Trial Investigations and grounds for closing criminal proceedings was adopted in the first reading**

On 13 April the draft Law №6220 “On Amendments to the Criminal Procedure Code of Ukraine regarding inclusion of information to the Unified State Register of Pre-Trial Investigations and grounds for

closing criminal proceedings” was adopted in the first reading. A draft law proposes to introduce the procedure of checking the Unified State Register of Pre-Trial Investigations for unrevoked resolutions on closure of criminal proceedings before including information to the register on the new criminal offence.

According to experts of the working group on law enforcement reform of the Reanimation Package of Reforms in case this draft law is adopted investigations of cases of ex-leaders of the state (Yanukovych and others) will be blocked. This will also create serious problems for anti-corruption investigations of the National Anti-Corruption Bureau of Ukraine and Specialized Anti-Corruption Prosecutor Office and will lead to massive violations of victims’ rights.

More details in the statement of the group: <https://goo.gl/hQqG6d>

According to provisions of the draft Law, violated is the principle of automatic registration of criminal proceedings upon an appeal of a victim or a complainant - one of the achievements of the Criminal Procedure Code of 2012 which is to overcome the practice of filtration of “unwanted” for a pre-trial investigation body proceedings through conducting a pre-trial check.

At the same time the anti-corruption group of the Reanimation Package of Reforms called for MPs to vote the draft law №6220 down having indicated that it creates the possibility for deliberate closure of any investigation of the National Anti-Corruption Bureau of Ukraine in the interests of high-level corrupt officials. In particular, according to the group, adoption of this draft law will threaten the investigation of the National Anti-Corruption Bureau of Ukraine against Yuriy Ivaniushenko, Roman Nasirov, Olexander Onyshenko and others.

See also an article of the Head of the Board of the Anti-Corruption Center Vitaliy Shabunin “A near kill: draft law 6220 disengages the National Anti-Corruption Bureau of Ukraine and strengthens the Prosecutor General’s Office and Security Service of Ukraine” in blog on Ukrainian Pravda (UA): <https://goo.gl/82xVZ2>

Before the meeting of the profile Committee against the draft law №6220 the following state authorities made their statements:

- » **General Prosecutors Office of Ukraine** (see statement (UA) <https://goo.gl/53rmHD>) indicated that “failure to include information when there are resolutions on closure (of criminal proceeding)

can become an instrument for manipulations, since possibly unjustified and even illegal decision that was once made blocks and makes it fully impossible to investigate a criminal proceeding. Such an order is unacceptable”. Above that, the proposed check before the beginning of a pre-trial investigation is simply technically impossible taking into consideration the peculiarities of functioning of the Unified State Register of Pre-Trial Investigations as well as peculiarities of access of users to information included in it.

- » **National Anti-Corruption Bureau of Ukraine** (see statement (UA) <https://goo.gl/Tpj9cx>) indicated that “in practice investigators of pre-trial investigation bodies and detectives of the National Anti-Corruption Bureau of Ukraine have access to information included in the Unified State Register of Pre-Trial Investigations only regarding those criminal proceedings that are being processed by them”. Accordingly, under such conditions it is physically and technically impossible to conduct a check within rather tight terms defined by the law to include the information to the Unified State Register of Pre-Trial Investigations (within 24 hours from the moment a claim was received). And therefore, including the proposed provision to the Criminal Procedure Code will not bring necessary results and making it ineffective in practice;
- » **Ministry of Justice of Ukraine** (see statement (UA) <https://goo.gl/BUBO1n>) indicated that acting text of the Criminal Procedure Code of Ukraine, particularly, its article 217 in part of provisions regulating the order of joining materials of pre-trial investigations, as of today provides for a sufficient mechanism for solving problems that the respective draft law is aimed at. This was indicated by the Deputy Minister of Justice of Ukraine Andriy Vyshnevskiy.

On 17 May during its meeting the Committee on Legislative Support of Law Enforcement adopted a decision to postpone consideration of the draft law and create a working group for its further elaboration.

#### **4.4. Review of amendments to criminal procedure legislation during the last three years threatening human rights**

Analytics from Olexander Banchuk “Freedom that we loose” on legislative changes adopted by the Verkhovna Rada of Ukraine during the last years because of authorities’ neglect of constitutional rights and freedoms of citizens (charge in absentia, e-declarations etc.) in chronological order: <https://goo.gl/8rOKEs>

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**Expert group “Police under Control”** – platform of human rights organizations carrying out a comprehensive study of human rights in the activity of Law-Enforcement Agencies.

The Expert group engages to its work human rights defenders, lawyers, sociologists, political scientists, assistants to MPs and other experts in the sphere of Law-Enforcements activity.

**Organizations-founders:**

Association of Ukrainian Human Rights Monitors  
on Law Enforcement  
**(Association UMDPL)**

Center of Policy and Legal Reform  
**(CPLR)**

Expert Center for Human Rights  
**(ECPL)**

**Experts of group are active members of the Law-Enforcement reform group of Reanimation Package of Reforms (RPR)** – the largest coalition of leading non-governmental organizations and experts who have pooled their efforts to facilitate and implements reforms in Ukraine

More details about the group and results of work – [police-experts.info](http://police-experts.info).

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