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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.

Cabinet of Ministers Approves Procedure for Maintaining Register of Domestic Violence Cases

On March 20, 2019 the Cabinet of Ministers of Ukraine approved the Procedure for Compilation, Maintenance and Access to the Uniform State Register of Cases of Domestic Violence and Gender-Based Violence.

Adoption of the resolution was necessitated by the need to ensure timely detection of the facts of violence and response to them, prevention of repeat instance of violence, provision of comprehensive and timely support to victims, and registration of the cases of violence.

One can be remind here that on January 11, 2019 amendments to the Criminal Code of Ukraine came in force concerning liability for crimes related to domestic violence and crimes against sexual freedom. These amendments are part of the reform in the sphere of combating domestic violence that began in the end of 2017 after the respective Law was adopted.

National police of Ukraine have already started using the measures of responding to domestic violence, in the first place – issuing urgent restraining orders. Creation of the Uniform Register should facilitate efficient fight against domestic violence, including prevention of instances thereof through control of the actions of perpetrators.

CMU Resolution № 234 dd. March 20, 2019 on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/kmu234>

KhISR and KhHRPG Present Results of Sociological Survey on Police Activities

On March 12 in Kyiv, the Kharkiv Institute for Social Research jointly with the Kharkiv Human Rights Protection Group presented the results of evaluation of police activities in 2018. For the first time, police activities were assessed with the help of large-scale public opinion survey – 19 500 respondents were surveyed in all 24 regions of Ukraine and in the city of Kyiv. Citizens were asked about the level of trust in police, efficiency of police work, fears, expectations, basic police performance indicators in the country and in the regions, etc.

This survey in fact is a tool for implementation of the mechanism of evaluation of police work based on the level of citizens' trust to police as provided for in Article 11 of the Law of Ukraine on National Police of Ukraine. As of today, the system of evaluation of activities is based on the dynamics of quantitative statistic indicators of solved cases, which is obsolete and leads to a range of negative outcomes, including violations of human rights.

Over a quarter of respondents (26%) said that, in their opinion, the crime rate increased, whereas 50% of respondents believe that the crime rate in their locality did not change over the last 12 months.

According to the survey results, a significant number of respondents assess police activities as inefficient. Thus, 49.4% respondents are not satisfied with local police work, while 52.7% –

with police work in general. Those satisfied with activities of local police account for about one third – 33.7%, and with activities of national police in general – 29.5%.

Police today enjoys trust of 30.4% respondents. At the same time, 50% respondents said they do not trust police. Therefore, police in general has negative trust balance (-19.6%). At the same time, this is the highest trust level among state agencies except for the army, and in two regions of the country (Transcarpathian and Khmelnytskyi oblasts) the majority of population trusts police.

There is still a problem of working with victims of crimes – only 14.8% respondents mentioned they received complete information about the course of investigation. Some (17.1%) said they did not receive sufficient information, while 29.3% did not receive any information. As a result, 77.2% victims of crimes said they would like to be better informed about the course of investigation.

National Report on Evaluation of National Police Activities Based on Public Opinion Survey: <http://tiny.cc/khisr>

Ministry of Internal Affairs of Ukraine Cancels the Statute of Police Patrol and Checkpoint Service

On March 5, the Order of the MoIA of Ukraine № 110 dd. February 18, 2019 *On Recognizing Invalid the Order of the Ministry of Internal Affairs of Ukraine № 404 dd. July 28, 1994* came in force. The invalidated Order № 404 approved the Statute of Police Patrol and Checkpoint Service, which formally was applicable during three and a half years of work of the National Police.

In addition to the fact that the PPCS Statute regulated activities of no longer existing militia, it also violated the Constitution of Ukraine – a whole chapter thereof described activities of police during unauthorized peaceful assembly although the Constitution requires giving a notice on gathering, and hence no authorization is required for peaceful assembly.

However, experts point out that, regardless of all shortcomings, the PPCS Statute played an important role in police work. This document regulated in detail the work of those units that were replaced by new patrol police. Clarity of procedures is very important in the work of state agencies and officers since they should act not at random but within a clearly set framework

following clearly defined rules.

Invalidation of the PPCS Statute should lead to development of new regulations that will not contain threats for human rights.

MolA Order № 110 dd. February 18, 2019 on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/mvs110>

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.

Council of Prosecutors Prepared Draft Regulations on the Procedure for Responding to Threats for Independence of Prosecutors

On April 16, 2019 a round table was held, Independence of Prosecutor: European Standards and Ukrainian Experience, which was organized by the Council of Prosecutors and the Office of the Council of Europe in Ukraine. During the round table, draft regulations were presented on the procedure for responding to threats

for independence of a prosecutor and taking measures to protect it.

Independence of a prosecutor is viewed in two aspects:

- objective threats, for avoiding which the state has to create such conditions for work of the prosecution office that minimize possibilities for illegal interference;
- subjective threats that are divided into internal (prosecutors have to feel that they are independent when carrying out tasks vested into them) and external – citizens should be convinced that prosecution agencies function without illegal interference with their organization and activities.

The drafted procedure provides for cooperation of a prosecutor with the Council of Prosecutors in order to avoid pressure on him through prompt response to reports on the threats for his independence and taking measures for it. This refers to illegal influence, pressure or interference with the exercise of powers and authorities of a prosecutor by prosecutors who are not managers of the prosecutor or leaders of a group of prosecutors, etc. The document was drafted in accordance with recommendations of the Report on European Standards as Regards the Independence of the Judicial System adopted by the Venice Commission №13 (2018) CCPE on independence, accountability, and ethics of prosecutors.

Information on the web-site of the Council of Prosecutors: <http://tiny.cc/a6jt5y>

Office of Prosecutor General of Ukraine Approves Procedure for Organizing Activities of Prosecutors and Investigators of Prosecution Office

On March 28, the Office of the Prosecutor General of Ukraine by its Order №51 approved the Procedure for organizing activities of prosecutors and investigators of prosecution office in criminal proceedings.

The procedure regulates issues related to organization and procedural oversight of pre-trial investigation, solving other issues in accordance with the law during criminal proceedings, oversight of covert and other investigative and search activities of pre-trial investigation agencies, support of public prosecution in court, appeal against court decisions, exercise of other powers and authorities within the framework of the terms of reference of prosecution agencies.

It should be reminded here that, according to the amendments to the Constitution of Ukraine as of June 2016, prosecution agencies lost their pre-trial investigation function that was transferred to the State Bureau of Investigation. The transition was completed on November 20, 2017 which is five years after the day the Criminal Procedure Code of Ukraine came in force. At the same time, according to the transitional provisions of the Law of Ukraine on the State Bureau of Investigation, prosecution agencies have two years to complete their proceedings, pre-trial investigation of which started before the beginning of work of the State Bureau of Investigation. Therefore, investigators of the prosecution office continue their work in a reduced mode, and their coordination with prosecutors was normatively regulated.

Order of the Office of the Prosecutor General of Ukraine №51 dd. March 28, 2019 on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/gpu51>

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.

Government Approves New Procedure for Establishing Civil Oversight Council under SBI

On March 13, the Cabinet of Ministers of Ukraine approved a revised Procedure for Forming Membership of the Civil Oversight Council under the State Bureau of Investigation. A respective decision was made in view of the need to modernize this procedure, namely formation of the Council membership based on the results of rated Internet-voting.

Such new regulation of activities of the SBI COC is similar to the same procedures in the NABU COC. Voting will take place on the SBI web-site with authentication through a mobile phone and e-mail.

Furthermore, certain provisions on the Civil Oversight Council were improved, including additional grounds for early termination of powers and authorities of a council member, clarification of procedure for electing a council member to replace the member whose powers and authorities were early terminated, newly introduced possibility to make certain decisions of the Council without convening a meeting, distance participation of the council member in a meeting, and some others.

CMU Resolution № 258 dd. March 27, 2019 on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/kmu258>

Article by an analyst of the UMDPL Association, Stepan Zolotar, Taking SBI under Civil Control: Second Attempt, New Rules, for LB.ua: <http://tiny.cc/rgk-lb>

District Administrative Court of Kyiv Stops Process of Electing New Members of COC under SBI

On April 18, 2019 Internet voting on candidates for positions of new members of the Civil Oversight Council under the State Bureau of Investigation had to take place.

However, following a decision of the District Administrative Court of Kyiv, the State Bureau of Investigation stopped the competition process by issuing a warranty order in the administrative case, and respectively stopped the Internet voting.

An active member of the SBI COC filed a petition with the District Administrative Court asking it to recognize illegal and invalid the Resolution of the Cabinet of Ministers of Ukraine as of March 13, 2019 on amending the Provisions on the Civil Oversight Council and the Procedure for Its Formation.

The Court opened proceedings on the petition and prohibited the SBI from conducting and

determining the results of the competition for selection of new COC members. A preparatory meeting on the case will take place on May 23, 2019.

In this way, after expiration of the period of powers and authorities of the present COC members on April 27, the State Bureau of Investigation will work without the COC until the District Administrative Court of Kyiv adopts the final decision.

The position of the State Bureau of Investigation: the resolution of the Government introducing election of members of the Civil Oversight Council under the SBI based on the results of open online-voting is legal. Amendments thereto were drafted in cooperation with civil society organizations.

Information on the web-site of the District Administrative Court of Kyiv: <http://tiny.cc/rgk-oask>

Position of the State Bureau of Investigation on the web-site of the Bureau: <http://tiny.cc/rgk-dbr>

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. It should be mentioned that draft of law №7279-d on criminal misdemeanours has gone through first reading in Verkhovna Rada. Also there has

been currently working group establish 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.

Working Group on Drafting Law on Illicit Enrichment Established in Parliament

On 26 February, the Constitutional Court of Ukraine ruled unconstitutional Article 368-2 of the Criminal Code of Ukraine on illicit enrichment on the grounds of its incompliance with presumption of innocence and violation of the principle of legal certainty. We addressed it in more detail in the previous digest stating that such position is controversial. Immediately after this, the President of Ukraine and a number of members of parliament registered 13 draft laws on restoring this article in the Criminal Code.

US Embassy in Ukraine, offices of the EU and IMF in Ukraine and the World Bank pointed out that the submitted draft laws have to be revised and meticulously discussed.

On March 20, the Verkhovna Rada Committee on Legislative Support to Law Enforcement Activities established a working group on finalizing draft laws, and appointed a member of parliament of Ukraine, Valerii Karpunets, as the head of the working group.

Based on the results of five meetings, the working group developed the reconciled wording of the article on illicit enrichment that will be soon discussed by the Committee.

Decision of the Constitutional Court of Ukraine № 1-r/2019 dd. February 26, 2019: <http://tiny.cc/ksu1r>

Letter of the US Embassy in Ukraine, offices of the EU and IMF in Ukraine and the World Bank in Ukraine, Belarus, and Moldova on draft laws on restoring criminal liability for unjust enrichment: <http://tiny.cc/ldkt5y>

Report of the working group: <http://tiny.cc/hekt5y>

ECtHR Adopts Decision on Right to Hope for People Sentenced to Life in Prison

The Chamber of the European Court of Human Rights in its decision as of March 12 in the case of *Petukhov v. Ukraine* (№ 2) concluded that in our country people sentenced to life imprisonment do not have a real prospect of release. Presidential pardon does not solve the problem since it is neither transparent nor predictable. This is a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Today, people sentenced to life imprisonment in Ukraine have almost no possibility to be released. Sometimes those sentenced for life in prison are released because of the health condition. However, since it is usually the case of terminal illness, the Court did not view this procedure as a possibility to be released.

Regulations on the procedure for granting pardon emphasizes that *persons sentenced for committing grave or especially grave crimes, or persons who have more than two prior criminal convictions for committing premeditated crimes,*

or who served an insignificant period of their sentence may be pardoned in exceptional cases provided there are extraordinary circumstances. The European Court mentioned that it is not clear, which *exceptional cases* and *extraordinary circumstances* are meant. Therefore, prisoners simply do not know, on which grounds they can receive a right to be released.

The ECtHR also mentioned non-transparency of the pardon system, since the respective Commission under the President of Ukraine does not have to provide explanation for refusals; its decisions are not public and may not be appealed. In the opinion of the ECtHR judges, the institute of presidential pardon is a modern equivalent of *royal pardon* – humane but not offering any procedural guarantees to the convicted. Therefore, Ukraine has to reform its entire system of revision of life sentences.

The decision will acquire the final status on June 12 provided the Ukrainian Government does not ask to submit the case for consideration to the Grand Chamber of the ECtHR.

Decision on the case of *Petukhov v. Ukraine* (№ 2) on the web-site of the ECtHR: <http://tiny.cc/bcot5y>

President Appoints Judges of High Anti-Corruption Court

On April 11, the President of Ukraine signed the Decree appointing 38 judges of the High Anti-Corruption Court. Nominations for appointment of judges were submitted by the High Council of Justice on March 18 and 28 on the basis of recommendations of the High Qualification Commission of Judges.

During the following 30 calendar days from the day of appointment of judges of the High Anti-Corruption Court, the oldest judge has to convene a meeting of judges of the High Anti-Corruption Court to decide on the day of the beginning of work of the High Anti-Corruption Court, addressing issues related to organization of the court activities, and appointment of investigating judges. The High Anti-Corruption Court will start its work on the date determined at the meeting of judges of this court. A respective decision of the meeting of judges has to be published on the judiciary web-portal and in the *Holos Ukrainy* newspaper.

One of the first problems most likely to be encountered by judges of the High Anti-Corruption Court is solving the problem of the court's jurisdiction over criminal proceedings. The construction used in Article 33-1 of the Criminal Procedure Code that defines the subject-matter jurisdiction of the High Anti-Corruption Court allows various interpretations of the requirements of this norm.

It should be reminded here that appointment of judges of the High Anti-Corruption Court was the final stage of the almost three-year saga. The first idea to introduce specialized anti-corruption courts or positions of specialized judges was voiced by the OECD experts in spring 2015. Creation of the High Anti-Corruption Court as a specialized court was envisaged in the new wording of the Law on Judiciary and Status of Judges that was approved in June 2016. After this, a wide circle of persons, including representatives of civil society and international institutions, actively advocated the idea of the promptest possible establishment of the court and the need to involve international experts in the process of selection of judges. In June 2018, the Law on High Anti-Corruption Court was adopted, and already in August the process of collection of documents for a competition of position of judges of the HAC began. Appointment of judges of the High Anti-Corruption Court opens a possibility for the beginning of the court work after all organizational activities are completed, a meeting of judges is held, and a decision is adopted by them on the date of the beginning of the court work.

Decree of the President of Ukraine № 128/2019 dd. April 11, 2019 On Appointment of Judges of the High Anti-Corruption Court on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/pr128>

Decree of the President of Ukraine № 129/2019 dd. April 11, 2019 On Appointment of Judges of Appeal Chamber of the High Anti-Corruption Court on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/pr129>

Court Security Service Receives the Head and Set Amount of Financial Remuneration

On March 21, the High Council of Justice appointed Valerii Bondar to the position of the Head of the Court Security Service. Before, he held a position of the Deputy Commander of the National Guard of Ukraine on Civil Security.

Pursuant to Part 3 Article 161 of the Law of Ukraine on Judiciary and Status of Judges, management of activities of the Court Security Service is provided by the Head of the Court Security Service who is appointed to the position on the basis of the results of an open competition and is dismissed from office by the High Council of Justice.

On March 3, the Cabinet of Ministers of Ukraine regulated the issue of financial remuneration for officers of the Court Security Service. The payment procedure has to be approved by the State Judicial Administration. More specifically, financial remuneration of officers of the Court Security Service includes basic salary, salary for a special rank, additional types of monthly financial allowance (basic salary increase, benefits, premiums that are permanent), bonuses, and non-recurrent additional types of remuneration.

It should be reminded that the final and transitional provisions of the Law of Ukraine on Judiciary and Status of Judges envisage establishment of the Court Security Service. Until that moment, court security had to be ensured by the National Guard of Ukraine.

Decision of the High Council of Justice № 886/0/15-19 dd. March 21, 2019: <http://tiny.cc/vrp886>

CMU Resolution № 289 dd. April 3, 2019 on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/kmu289>

President Signs Law on Misdemeanors

On April 19, the President of Ukraine signed the Law of Ukraine on Amending Some Legislative Acts of Ukraine Concerning Simplification of Pre-Trial investigation of Certain Categories of Criminal offenses approved by the Verkhovna Rada back in November 2018. The law will come in force on January 1, 2020.

As we mentioned in the previous issues of the digest, the Law on Misdemeanors will make it

possible to investigate minor crimes under a simplified procedure, which will significantly decrease the workload of investigators. Before the draft law was adopted, only investigators carried out pre-trial investigation of all complaints and reports containing data about criminal offenses. After the notion of a criminal misdemeanor was introduced together with the simplified procedure for its investigation, investigators will be able to focus on solving grave and especially grave crimes.

We would like to remind the readers that in 2018 experts of the Council of Europe rendered a negative opinion on this document. Among other things, it reads that: The need to handle mass criminality regarding minor infringements efficiently should not allow for the disregard of fundamental procedural safeguards. Unfortunately, such a disregard would be the consequence of the proposed (in the draft law – Author) procedure to be followed, which would

allow procedural actions to be taken before any entry of information in the Integrated Register both in circumstances that have led to abuse in the past and in others where there is no provision for new and adequate safeguards against such abuse; furthermore, it would leave unclear the limits as to the duration of investigations, would create the possibility for suspects to be put under pressure to plead guilty and would deprive the defense of crucial rights (paragraphs 193, 194 of the Opinion).

Some of these provisions are still present in the approved text and require amendments; at the same time, the text of the Law needs comprehensive analysis, which we hope will soon be prepared by the expert community.

Law № 2617-VIII on the web-site of the Verkhovna Rada of Ukraine: <http://tiny.cc/law2617>

Council of Europe Conclusion for the Draft Law №7279-d: <http://tiny.cc/coe7279>

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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
- Justice in criminal justice

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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