



MOVING FORWARD  
TOGETHER



Асоціація  
УМДПЛ  
UMDPL  
Association

*This publication created with support of European Union  
The content of publication does not translate official position of European Union*

**№13**

May-June  
2019

*periodicity: 1 time / 2 months*

# 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, 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.

### *Community Police Officer project launched in Ukraine*

On May 28, the *Community Police Officer* project was presented. The presentation was attended by Ukrainian Prime Minister Volodymyr Groysman, Minister of Internal Affairs Arsen Avakov, and Head of the National Police of Ukraine Serhii Kniaziev. The project will encompass nearly 30, 000 settlements with almost 28 million residents. It is aimed at ensuring close cooperation between a police officer and the united territorial community focusing on its interests.

A community police officer is an officer oriented to solving security problems of the specific territorial community he/she works in. Establishing the institution of community police officers will make it possible not only to improve police activities in large cities

where patrol police works, but in the entire territory of the county, in small settlements. It is envisaged that the project will be implemented in two stages: in 2019 – 802 united territorial communities, and in 2020 – the entire territory of Ukraine.

Candidates for positions of community police officers are selected both from among the current police officers and from among the public. A candidate has to submit an application, go through tests, polygraph examination, and an interview involving representatives of the community.

---

## II. PROSECUTOR'S OFFICE

**R**eform 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.

### *Beginning of collection of applications from candidates for prosecutors of local prosecution offices*

On May 28, the Qualification and Disciplinary Commission of Prosecutors (QDCP) announced the start of collection of applications for 350 positions of prosecutors of local prosecution offices. Applications can be submitted until July

26 by candidates who have completed previous one-year training in the National Academy of Prosecution of Ukraine and passed a qualification exam successfully. At present, there are 248 potential candidates.

This is the first competition in the prosecution system that is carried out according to the procedure provided for in the new wording of the Law of Ukraine *On Prosecution* (2014). However, this number of new prosecutors is not sufficient since, according to the Prosecutor General's Office of Ukraine, 307 prosecutors resigned voluntarily in 2018, and 33 prosecutions were fired on the basis of the results of examination of disciplinary proceedings by the QDCP.

***More details about the specific features of competition can be found of the QDCP web-site: <http://bit.ly/2RR8nOR>***

### *President submits a request to dismiss Prosecutor General to Verkhovna Rada*

On June 11, President of Ukraine submitted a request to parliament asking it to dismiss Yurii Lutsenko from the position of the Prosecutor General.

According to this request, Yurii Lutsenko does not meet the requirements for a prosecutor as provided for in the Law on Prosecution, first of all concerning legal education and experience of work in respective positions, which makes him ineligible for working in the prosecution system.

Such dismissal procedure runs contrary to Article 42 of the Law *on Prosecution* since there are no legal grounds for dismissing the Prosecutor General from this administrative position. This fact, among other things, was mentioned on June 19, 2019 by the Chair of the Verkhovna Rada Committee on Legislative Support to Law Enforcement Activities, Andrii Kozhemiakin.

**Draft resolution of the Verkhovna Rada № 10380 dd. June 11, 2019:** <http://bit.ly/323Y7rc>

**Article by an expert of the Expert Center for Human Rights, Yevhen Krapivin, Four possible scenarios of dismissing the Prosecutor General:** <http://bit.ly/2KSrDLg>

**Article by the RPR expert and StateWatch Legal Adviser, Volodymyr Petrakovskiy, Failure General vs. Prosecutor General:** <http://bit.ly/2Ytp3hQ>

#### **President submits a request to dismiss Prosecutor General to Verkhovna Rada**

On June 20, 2019 the High Council of Justice, based on the results of examination of a complaint submitted by lawyer S.I.Rokhmanov against the QDCP decision №216дп-18 dd. May 23, 2018 on closing the disciplinary proceedings concerning Prosecutor General Yurii Lutsenko, decided that the Prosecutor General may be brought to disciplinary liability if he/she commits a disciplinary offence.

When closing the proceedings, the QDCP justified its conclusion by the impossibility to bring the Prosecutor General to disciplinary liability because, pursuant to the Law of Ukraine *On Prosecution*, the Prosecutor General is not authorized to apply disciplinary sanctions against himself. The QDCP believes that, in the absence of proper legislative regulation, it has no possibility to carry out disciplinary proceedings against him.

The High Council of Justice disagreed with this conclusion. The QDCP is the entity that carries out disciplinary proceedings against prosecutors. Given the powers provided for by Law, it cannot avoid assessing actions of a prosecutor, including the Prosecutor General, in terms of the presence or absence of the grounds for bringing him/her to disciplinary liability.

Based on the results of examination of the complaint, the High Council of Justice cancelled the QDCP decision and adopted a new decision, in which it concluded that actions of the Prosecutor General contained characteristics of a disciplinary offence, but it closed the disciplinary proceedings in view of expiration of the period for imposing a disciplinary penalty.

### 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.

#### *Law on improving SBI's activities adopted*

On May 17, the Verkhovna Rada of Ukraine adopted the law as a whole, and on May 18 President of Ukraine Petro Poroshenko signed the Law of Ukraine *On Amending Some Legislative Acts of Ukraine for Improving Activities of the State Bureau of Investigation*, which enables the State Bureau of Investigation to form its own operative units, including operative-technical and internal security units. The SBI published an announcement on a competition for filling respective positions in the operative units immediately after the Law had come in force. The need to adopt this law (draft law 5395-д) was repeatedly mentioned in this Newsletter during the last year.

However, there is a controversial provision in the adopted Law – it introduces special ranks for the SBI officers but there is no list of positions, holding of which requires the specified ranks. In other words, solving this issue is left to the discretion of the SBI director and deputy directors although initially the SBI was established as a purely “civilian” agency.

**Law № 2720-VIII on the web-site of the Verkhovna Rada of Ukraine:** <http://bit.ly/307c9X>

#### *SBI director dismisses several managers of the Bureau*

In the end of May, the Director of the State Bureau of Investigation dismissed the following SBI managers from their positions: Director of Territorial Department in Poltava, Head of the Second Department on Organizing Pre-Trial Investigation, Head of Department of Planning and Financial Activities, and Head of Department for Supporting Activities. They were fired for alleged incompliance with requirements for the position based on the probation period results as provided for in the Law of Ukraine *On Public Service*.

At the same time, such dismissal procedure violates the specialized Law *on the State Bureau of Investigation* which reads that the SBI director appoints and dismisses directors of territorial agencies, heads of departments of the central apparatus of the SBI upon request of the Selection Commission (Article 13 of the Law). Furthermore, the director has to come to an agreement on such request with deputy directors (Article 12 of the Law). Neither the aforementioned request nor agreement took place. This problem, among other things became a subject for discussion during parliamentary hearings in the Committee on Legislative Support for Law Enforcement Activities held on May 29. As of today, all dismissal orders were suspended as a result of application of activities to ensure proceedings in administrative courts where the dismissed persons filed complaints against decisions of the SBI director.

**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>

### **President of Ukraine changes membership of the “external” selection commission of the SBI**

On June 26, President of Ukraine Volodymyr Zelensky issued a decree on excluding members of the “external” selection commission of the SBI R. Maidanyk, V. Samokhvalov and T. Slipachuk. Instead, the decree appoints the following commission members: Oksana Kvasha – a leading researcher of the V.M. Koretsky Institute of State and Law of the National Academy of Science of Ukraine; Oleksandr Kostenko – deputy head of unit of the V.M. Koretsky Institute of State and Law of the National Academy of Science of Ukraine; and Viktor Koschynets – head of unit of the Institute for Special Training of the National Academy of Prosecution of Ukraine.

It should be remembered that powers and authorities of the commission, in addition to selecting the SBI director and deputy directors,

also include selection of middle managers, the number of which exceeds 150 out of whom only 27 were selected. The commission members do not receive remuneration for their work, the commission is formed on the basis of political criteria, and it had to be removed from the process long time ago because it has no physical capacity to hold these competitions (as the commission states itself). In the course of approval of the aforementioned draft law № 5395-д, an attempt was made to remove the Commission from the process of solving these staff issues by amending the Law, but the respective provision was excluded when the draft law was prepared for the second reading.

**Decree of the President of Ukraine № 457 dd. June 26, 2019: <http://bit.ly/2Lwawys>**

## **IV. CRIMINAL JUSTICE**

**T**here 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. 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.

### **New legislative initiatives on re-criminalization of illicit enrichment**

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.

A working group of the Committee of the Verkhovna Rada of Ukraine on Legislative Support for Law Enforcement Activities that was mentioned in our previous Digest, developed its own version of the draft law on illicit enrichment.

At the same time, President of Ukraine Volodymyr Zelensky also presented his own initiative having submitted to parliament a draft law on confiscation of illegal assets of individual authorized to perform functions of the state or local self-government and on punishment for acquisition of such assets. The President's initiative, in addition to criminal liability for illicit enrichment, envisages civil confiscation of assets received as a result thereof. Therefore, given the overall limitation period for civil legal relations that totals three years, NABU and SAP may receive a possibility to prosecute those persons who were suspects or defendants in criminal proceedings closed on the grounds of the Decision of the Constitutional Court of Ukraine.

**Draft law № 10110-δ developed by the working group:** <http://bit.ly/2LxTosd>

**Draft law № 10358 submitted by the President of Ukraine:** <http://bit.ly/2YvlpTC>

#### **Constitutional Court says NABU may not represent the state in court**

On June 5, 2019 the Second Senate of the Constitutional Court of Ukraine adopted a Decision on the case upon a constitutional complaint of the Joint Stock Company Zaporizhzhia Ferroalloy Plant concerning constitutionality of the provisions of Clause 13 Part 1 Article 17 of the Law of Ukraine On National Anticorruption Bureau of Ukraine. This provision granted a right to the NABU "provided there are the groups specified by law, file requests with courts asking it to invalidate agreements pursuant to the procedure provided for in the Ukrainian legislation".

The CCU emphasized that duplications of powers/functions of prosecution by other state authorities can result in a change of the mechanism set by the Constitution for exercise of the state governance by individual state authorities or influence the scope of their constitutional powers and authorities. At the same time, the Verkhovna Rada of Ukraine by delegating the constitutional powers of prosecution went beyond the powers set forth in the Constitution of Ukraine while the disputed

provisions of the Law grant to the Bureau the powers of prosecution vested into it by Article 131-1 of the Constitution of Ukraine.

**CCU Decision № 4-p(II)/2019 dd. June 5, 2019 and dissenting opinions of judges O.O. Pervomaiskyi, O.M. Tupytskyi, V.V. Horodovenko, and V.V. Lemak can be found at:** <http://bit.ly/2xsbVhj>

#### **Verkhovna Rada adopted the Law on temporary investigation commissions**

On June 6, the parliament adopted as a whole the Law On Temporary Investigation Commissions, Special Temporary Investigation Commission, And Temporary Special Commissions of the Verkhovna Rada of Ukraine (draft law №1098). This document contains a section that described the procedure for impeachment of the president.

Pursuant to the law, grounds for establishing a temporary investigation commission (TIC) include information about violations of the Constitution of Ukraine, laws of Ukraine by state authorities, local self-government bodies, their officers and officials, heads (or officials performing their duties) of enterprises, institutions, and organizations regardless of the forms of ownership, and associations of citizens that constitute public interest.

A temporary investigation commission is established by the parliament for preparation and preliminary examination of issues as well as for preparation and finalization of draft laws and other official documents of the parliament as a lead committee if the subject matter of legal regulation of such draft laws does not fall into the scope of terms of reference of parliamentary committees except for the case of establishment of a special commission for continuing work on a draft law on amending the Constitution.

The law also contains provisions on activities of a special TIC for impeachment of the President. It reads that a special temporary investigation commission of the Verkhovna Rada of Ukraine is a collegiate temporary body of the parliament consisting of members of parliament, a special prosecutor, and special investigators.

The commission's tasks, among others, include inquiry into the circumstances of commitment

by the President of Ukraine of high treason or another crime stated in a request signed by the majority of the constitutional membership of the VRU initiating the issue of dismissal of the Head of State from his position using the impeachment procedure.

On June 21, Representative of the President of Ukraine in the Verkhovna Rada of Ukraine said that the Head of State would likely veto this law as adopted with violations of the Constitution and containing unconstitutional norms.

**Draft law № 1098 on the web-site of the Verkhovna Rada of Ukraine:** <http://bit.ly/2NrbKh2>

### *Constitutional Court on guard of freedom of individuals during criminal proceedings*

On June 13, the Constitutional Court of Ukraine recognized provisions of Part 2 Article 392 of the Code as non-compliant with the Constitution of Ukraine (unconstitutional). The provisions make it impossible to submit a separate appeal against a court ruling on continuing the period of detention adopted in the course of court proceedings in the first instance court until a court decision on the merits of the case is adopted. In other words, such decisions could not be appealed against until examination of the indictment was completed unlike pre-trial investigation when the suspect is able to appeal against the ruling on continuing the period of detention proving that the risks provided for in Article 177 of the CPC of Ukraine disappeared (risk of fleeing, influencing witnesses, etc.).

The court decided that these provisions prohibited submitting separate appeals against court rulings on continuing the period of detention until the end of court proceedings, and as such they did not guarantee efficient exercise of the right to court protection to individuals and did not comply with the criteria of fairness and adequacy (proportionality).

On June 26, the Constitutional Court adopted a decision on unconstitutionality of the provisions of Part 5 Article 176 of the CPC of Ukraine. They made it impossible to use alternative preventive measures (except for detention) for individuals suspected of crimes against the state. These CPC provisions allowed keeping a person in detention only on the grounds of a formal court decision, which is a violation of the rule of law principle. The CCU decision emphasizes that the disputed norm justified the need to keep a person in detention purely by the graveness of a crime the person was charged with, which does not guarantee the constitutional right of an individual to freedom and personal integrity.

The aforementioned decisions were adopted on the basis of examination of constitutional complaints.

**CCU Decision №4-p/2019 dd. June 13, 2019:**  
<http://bit.ly/2xnftRS>

**CCU Decision №7-p/2019 dd. June 25, 2019:**  
<http://bit.ly/2YtGH5d>

---

Ukrainian Law Enforcement Reform Digest. Issue 13: May-June 2019. – K.: Association UMDPL, CPLR, 2019. – 8 pages.

Responsible for the Issue: **Stepan Zolotar**  
Editors: **Oleksandr Banchuk, Eugene Krapyvin, Mykhailo Kameniev**  
Design: **Ivan Yurchyk**  
Page layout: **Stepan Zolotar**

**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](http://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>

**Contacts for propositions on Digest:**

PO box 496, Kyiv-1, 01001, Ukraine, tel.: (044) 253-40-36, [association.umdpl@gmail.com](mailto:association.umdpl@gmail.com)

© Association UMDPL © CPLR

When using any materials references (in case of use in Internet – links) to digest are obligatory