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Ukrainian Law Enforcement Reform Digest

Digest is dedicated to the process of reform of law enforcement authorities in Ukraine, first of all of police, prosecution authorities, State Bureau of Investigation and criminal justice legislation. It is published with the aim to better inform the society, expert community and international institutions on the state of reforming mentioned authorities and spheres of their activity.

I. NATIONAL POLICE

System of law enforcement authorities in Ukraine undergoes a long transformation process from soviet system of internal affairs authorities directed at protection of state security to law enforcement agencies with European standards, which should be oriented on provision of services to population and human rights observance.

However, as of the beginning of 2017, changes occurring in police have a more non-systemic character as a result of the lack of detailed, step-by-step roadmap for conducting a reform elaborated in the form of one comprehensive document, and the very process of reforming is sometimes oriented on the interests of the institution itself rather than on the needs of people.

On October 7, new Disciplinary Charter of National Police of Ukraine became effective

On October 7, the Law of Ukraine On Disciplinary Charter of National Police of Ukraine came in force after having been approved by the Verkhovna Rada of Ukraine back on March 15 of the current year.

Provisions of the Charter apply only to police officers. At the same time, the old Disciplinary Charter of Internal Affairs Agencies (2006) remains valid for other law enforcement bodies since it applies to the managers of the National Anti-Corruption Bureau of Ukraine, ordinary members and managers of the State Criminal-Executive Service of Ukraine, and the Tax Militia.

The Disciplinary Charter introduces new rules for bringing police officers to responsibility, namely:

1. Internal investigation will be carried out by a disciplinary commission that makes the decision. In the past, the line manager made this decision personally with regard

- to an employee (Article 15 of the Charter).
2. Civil society representatives can be members of a disciplinary commission (Article 15 of the Charter).
 3. A police officer now has a right to protection during the internal investigation, more specifically – his/her interests may be represented by a lawyer (Article 18 of the Charter).
 4. The new Charter clarifies the notion of internal discipline; general provisions and terms are coordinated with the 2015 Law on National Police.

As a reminder, the previous Charter has not been changed significantly since the 1990s, and it granted unlimited power to managers over their employees, which means a possibility to decide personally on punishing them for misconduct. At the same time, a police officer had no mechanisms for protection from such actions of managers. This is one of the problems mentioned by patrol police officers who resigned from the «new police» and spoke publicly about the reasons of their resignation. In addition to stripping of bonuses and the Soviet Code of Ukraine on Administrative Offenses, this fact significantly depressed all initiatives that dissented from the vision of some managers who were attested successfully and, respectively, took over inefficient management practices of former militia.

Blog of an expert of the UMDPL Association (Association of Ukrainian Human Rights Monitors), Yevhen Krapyvin, Responsibility of Police Officers: New Rules Come in Force, on LB.UA: <https://goo.gl/8qrw2h>

The Verkhovna Rada of Ukraine bans using the name 'police' by non-governmental organizations

On October 2, the Verkhovna Rada of Ukraine adopted the Law on amending certain legislative acts of Ukraine on using the name and insignia of the National Police of Ukraine (№ 7474) initiated by the Government.

The draft law introduces administrative liability for an illegal use of insignia of the National Police of Ukraine or an illegal use of the name of the National Police or derivatives on a vehicle. Furthermore, Article 5-1, Using the Name and Insignia of National Police, is added to the Law of Ukraine On National Police. According to it, the signs of belonging to police include police symbols, police uniforms, special ranks, departmental insignia, a special badge, and a service ID of a police officer. The word 'police' and its derivatives, also in foreign languages, as well as police insignia may be used exclusively by police.

The problem addressed by the draft law is caused by a large number of civil society organizations, formations and other organizations that use the word 'police' in their names, most frequently – municipal police. Often, they use uniforms that are visually similar to those of police and thus confuse ordinary citizens who are not aware that there is no police at a municipal level in Ukraine.

In the past, it was prohibited to use only the full or the short name of state agencies by legal entities (Article 16 of the Law On State Registration of Legal Entities, Individual Entrepreneurs, and Civil Society Formations). It should be mentioned in this regard that the problem with some 'municipal police' organizations is that they were registered before 2015 when the word 'police' was not used the name of a state agency. At the same time, after the National Police was established, respective organizations did not bring their names in compliance with the legislation despite repeated statements of the Ministry of Justice and the Ministry of Interior. In any case, there was no responsibility for using the name of police, and therefore sometimes the legislation on registration of legal entities was violated.

Card of the draft law № 7474 on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/WL4Rjs>

On September 11, Mol Order on Urgent Restraining Orders in Cases of Domestic Violence came in force

On September 11, the Order of the MoIA of Ukraine № 654 On Approving Procedure for Issuance of Urgent Restraining Order against Abuser by Authorized Agencies of National Police of Ukraine, came in force, which was developed to ensure implementation of provisions of the Law on Combating and Preventing Domestic Violence adopted on December 7, 2017. In practice, without respective by-laws, police officers were not able to issue urgent restraining orders despite the fact that the Law came in force back in January 2018.

An urgent restraining order will be issued against the abuser by police officers working in the units of the National Police of Ukraine for the period of 10 days if there is an immediate threat to life or health of the victim for urgent termination of domestic violence, prevention of further or repeated violence.

This provision will oblige the abuser to leave the victim's place of residence (stay); it will contain a prohibition to enter and stay at the specified place; it will furthermore prohibit all contacts of the abuser with the victim.

When they detect facts of domestic violence, police officers can detain the abusers immediately (maximum for three hours). In the

event of a failure to comply with a restraining order, the abuser will be fined (it is important to mention that the abuser's presence in court is mandatory), sent to public works from 30 to 40 hours or be subject to an administrative arrest for the period up to 7 days.

Therefore, for the period of validity of a restraining order the abuser has to inform police about the place of his temporary stay. Police is also responsible for supervision of implementation of special measures (urgent restraining order, restrictive order, preventive registration, programs for abusers) – not only patrol police but also district police officers, response groups of patrol police, and juvenile prevention inspectors).

It should be mentioned that this document is rather important in the light of amendments to the Criminal and Criminal Procedural Codes of Ukraine that will come in force in the beginning of 2019 and facilitate implementation of provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence as well as combating such manifestations.

Order №654 of the Mol of Ukraine dated August 1, 2018 On Approving Procedure for Issuance of Urgent Restraining Order against Abuser by Authorized Agencies of National Police of Ukraine:
<https://goo.gl/KASNVY>

II. 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.

Selection of staff for the State Bureau of Investigations continues

Competitions for positions in the central secretariat and local offices of the SBI are in progress. It should be reminded that competitions for the managerial positions and positions of staff members of the internal oversight department (167 positions) are carried out by an «external» commission established on the basis of political quotas (consisting of representatives of the President of Ukraine,

Verkhovna Rada of Ukraine, and the Cabinet of Ministers), which already selected the SBI Director and Deputy Directors. The competitions for the remaining 674 positions are held by two «internal» commissions, members of which include representatives of civil society.

As of October 22, the commission selected 212 winners of the competition for positions of investigators in 7 local offices of the SBI, and 19 positions remain vacant. Furthermore, 5 winners were selected for positions of leading specialists of investigation units. All winners have to go through a psycho-physiological examination, including polygraph, and those who apply for a position of an investigator – also an additional vetting process carried out by state agencies. Respective work has only been started.

Selection of investigators completed the competition for 455 positions in seven local offices of the State Bureau of Investigations, which began in April of the current year. In total, 351 winners were selected, and 104 positions remain vacant so far. New competition will be announced to fill the vacant positions.

Previously, **5 deputy directors of local offices of the SBI were appointed in Khmelnytsky, Kyiv, Melitopol, Kramatorsk, and Mykolaiv**. At the same time, successful candidates for positions of directors were selected already on July 18, but because of the conflict between the «external» selection commission and the SBI director, they have not been appointed to their positions until today. More details about the conflict can be found in the previous issue.

On October 24, the first 16 successful candidates were appointed to the positions of civil servants and heads of investigation and operative units of the SBI local office in Kyiv. In total, there will be 114 employees in the SBI's Kyiv local office. The competition for the first 65 positions in the SBI started in April of the current year and ended with the selection of investigators for the local office. 54 winners were selected based on the results of the competition: two deputy directors of the local office, 8 heads of investigation and operative units, 30 investigators, one specialist of the investigation unit, and 13 civil servants.

All other winners of the competitions for positions in the SBI are undergoing respective vetting processes and have not been appointed yet. Therefore, we can state that on **November 1** (the date following September 1, when it was planned to launch the Bureau's activities) **the Bureau will not start working**, which means it will not start investigating criminal cases.

Interview with the deputy director of Kyiv local office, Oleksandr Melnykov: <https://bit.ly/2N1fntq>

Interview with the deputy director of Melitopol local office, Bohdan Chehyl: <https://bit.ly/2N4GgWH>

Interview with the deputy director of Kramatorsk local office, Ihor Rudenko: <https://bit.ly/2NxAuD3>

Interview with the deputy director of Khmelnytskyi local office, Oleksandr Lysyi: <https://bit.ly/2O5slmg>

Interview with the deputy director of Mykolaiv local office, Mykola Chernov: <https://bit.ly/2Mguda8>

The Committee of Ministers of the Council of Europe called upon Ukrainian authorities to guarantee selection of the SBI staff members

The Committee of Ministers of the Council of Europe noted with satisfaction that the State Bureau of Investigations was established and called upon the authorities to intensify their efforts to ensure its full staffing and effective functioning without further delay.

The statement to this effect is presented in the Committee's decision based on the results of a discussion of the issue of supervision of the execution of the European Court's judgments (groups of Kaverzin, Afanasyev, Karabet and Others, Belousov v. Ukraine).

The decision was adopted during a visit of the SBI Director, Roman Truba, to Strasbourg. On September 18, he took part in a session of the Committee of Ministers of the Council of Europe for a discussion of supervision of the execution of the European Court's judgments.

Decision CM/Del/Dec(2018)1324/27 on the web site of the Council of Europe (English): <https://goo.gl/1gnyad>

Information about a visit of the SBI Director, Roman Truba, to Strasbourg on the SBI web site: <https://goo.gl/Af5Q2g>

III. CRIMINAL JUSTICE

There is still a problem with harmonization and approximation of criminal and criminal procedural legislation with the European standards. Since adoption of the CPC in 2012, this law has been going through chaotic and unsystematic changes (such as Lozovyi's amendment), which necessitates systematization of changes. Both amendments to the CPC of Ukraine and the CC of Ukraine have a strong impact on fighting corruption that today is one of the largest challenges faced by Law Enforcement agencies. More specifically, introducing misdemeanors influences efficiency of activities of the criminal justice bodies in general, more specifically – workload of investigative and operative units, efficiency of the criminal law, and adherence to the principle of inevitability of punishment. It should be mentioned that draft of law №7279-d on criminal misdemeanors has gone through first reading in Verkhovna Rada. Also there has been currently working group established under the Committee for the Legislative Support of the Law Enforcement of the Verkhovna Rada conducting comprehensive review of the CPC and developing systematic amendments of the Code.

The Parliament introduced a mechanism of regressive claim against law enforcement agencies regarding officers violating human rights

On September 18, the Verkhovna Rada of Ukraine adopted the draft law № 8490 on improving guarantees of respect for the rights of participants of criminal proceeding and other individuals by law enforcement agencies during pre-trial investigation. In the media community, the draft law received the title Stop Mask Show-2. On October, 31 it was signed by President of Ukraine.

The draft law contains the following provisions:

1. It establishes the right of exoneration of the state regarding a law enforcement officer who committed illegal actions. In this case, his/her guilt has to be established by a court (for crimes) or a competent authority (for disciplinary

offenses). This applies to the cases of torture, illegal detention, delays in returning temporarily confiscated property, and other grave procedural violations. Whereas in the past, after the state paid compensation, law enforcement officers were free from any material liability, now the state has a right to reimburse such losses from the taxpayers' money (amendments to the Civil Code of Ukraine).

2. Lawyers received the right to ask for closing criminal proceedings if the resolution of an investigator on closing the proceedings on the same case had not been canceled or after expiration of the period for pre-trial investigation. Previously, the process of closing criminal proceedings could be started only by an investigator/prosecutor even after emergence of the grounds provided for by law. Proceedings could last for months, and no one paid attention to the aforementioned delays (amendments to the Criminal Procedure Code of Ukraine).

3. New grounds for receiving compensation introduced for individuals who became victims of illegal actions of law enforcement agencies. This applies to the cases when a court rules on supporting a complaint against the decision, action or inaction of the investigator or prosecutor during pre-trial investigation (an appeal pursuant to Article 303 of the CPC of Ukraine). Whereas in the past a compensation was paid mostly on the basis of a guilty verdict of court regarding criminal actions of law enforcement officers, which made provisions of this law non-executable, from now on any judgments of investigating judges supporting the complaint can be used as a ground for compensation.

For instance, in the case of a delay in implementing a court decision on returning temporarily confiscated property, the lost profit can reach high amounts. Hence, today lawyers have big hopes for this Law since together with the regressive claim it can mean huge material liability for a specific investigator (amendments to the Law on the procedure for compensating

damage inflicted upon an individual by illegal actions of agencies carrying out operative-search activities, pre-trial investigation agencies, prosecution, and court).

Card of the draft law №8490 on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/azkSYj>

The Verkhovna Rada Committee on Legislative Support of Law Enforcement recommends that the Parliament should adopt as a whole the draft law on new rules of carrying out forensic expert examination in criminal proceedings

On October 17, the Verkhovna Rada Committee on Legislative Support Law Enforcement Activities recommended the parliament should adopt the draft law № 8336 on the new rules of expert examination. The stated objective of the draft law is to eliminate shortcoming of the so-called Lozovyi's amendment concerning the court supervision of calling for expert evidence, which in fact threaten efficient pre-trial investigation of crimes.

We remind that since March 16 of the current year, all expert examinations have to be ordered by a ruling of an investigating judge, and not a resolution of an investigator/prosecutor as before. Above this, expert examinations in criminal proceedings can no longer be carried out by private institutions, but only by state institutions. In practice, it resulted in a significant increase of the period of examination because of the large workload of state institutions, in longer periods of investigation of crimes in general, and in an absence of an alternative for carrying out an expert examination in the event of doubts concerning the quality of examination or the expert's objectivity.

The draft law № 8336 contains the following provisions:

1. The need to go to court for ordering an expert examination is partially eliminated, except for an expert analysis of video and audio recordings, handwriting, linguistic, economic or commodity expert examination (if the item value is 200 or more times higher than the minimum subsistence

level for able-bodied persons). One should mention that these are expert examinations that are frequently necessary for the NABU detectives and SAP prosecutors investigating corruption-related criminal cases.

2. The possibility to interrogate an expert as a witness concerning the conclusion is eliminated.

However, the expert can submit a written explanation to the court. Introduction of an alternative institution – written explanations of an expert – is not an adequate substitution of a possibility to interrogate an expert as witness. First, "correspondence" between an investigator, a prosecutor and an expert can take quite long time, since every explanation provided by the expert can raise new questions from the investigator and the prosecutor. Second, the expert can individually decide if it is necessary to provide a written explanation, and arbitrarily refuse to provide it. Third, Article 384 of the CC of Ukraine provides for criminal liability only for deliberate provision of a false expert conclusion, but not for deliberate provision of written explanations, in which the expert can try to manipulate the statements provided in the conclusion for some reasons, correct his/her previous statements in favor of one of the parties to a criminal process, and so on (*from an expert conclusion of the CPLR, see the link below*).

3. Creation of the Uniform State Register of Forensic and Expert Examinations. This can create a threat of disclosure of the pre-trial investigation secret, and offer a possibility for the persons involved in criminal proceedings to trace the course of investigative actions at the investigation stage, find out which expert examinations were ordered, and be able to "influence" the results thereof (during the discussion of this draft law, the Committee rejected this provision).

4. The draft law states conclusively that expert examinations in criminal proceedings should be carried out only by experts of specialized state institutions (amendments to Article 242 of the CPC of Ukraine). At present, after the enactment of Lozovyi's amendment, the CPC of Ukraine does not contain this requirement, yet at the same

time, the special Law on Forensic Examination in Article 7 establishes the state monopoly in this sphere. In practice, there are discussions about the need to use this norm, but the courts in all cases order an expert analysis to be carried out by state expert institutions. The suggested amendments “cement” the already existing provisions. Meanwhile, some forensic and expert institutions have completely full schedules of expert examinations for 2019, and reply that an expert examination can be ordered only for 2020. Apparently, anchoring this provision already violates the principle of reasonable timelines, and it does not make it possible to observe the periods of pre-trial investigation provided for in Article 219 of the CPC of Ukraine.

On October 17, the National Anti-Corruption Bureau of Ukraine announced that it deems the suggested amendments to legislation unacceptable, and called upon members of parliament to completely cancel the norms that make it impossible to investigate corruption-related crimes efficiently, threaten independence of law enforcement agencies, infringe the rights of victims, civil claimants, and other participants of the criminal process.

Card of the draft law №8336 on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/b8H88J>

Statement of the NABU, Suggested amendments to the CPC threaten independence and block work of the NABU and SAP: <https://goo.gl/1kChf3>

Expert conclusion to the draft law prepared by the Center of Policy and Legal Reform: <https://goo.gl/gqznFy>

The Verkhovna Rada Committee on Legislative Support of Law Enforcement recommended that the Parliament should adopt the draft law on misdemeanors

On September 19, the Verkhovna Rada Committee on Legislative Support of Law Enforcement Activities adopted a decision to recommend that members of parliament should pass the draft law №7279-д in the second reading and in total. It introduces an institution of misdemeanors, in other words – a differentiated procedure for

investigation of criminal offenses depending on the crime gravity. For instance, low-gravity crimes and some medium-gravity crimes are transferred to the category of misdemeanors. At the same time, such form of pre-trial investigation as initial inquiry will be used for misdemeanors as provided for in the 2012 CPC of Ukraine. Due to this, it will be possible to apply new instruments for investigating low-gravity crimes. At the same time, the powers related to investigation of misdemeanors will be transferred from investigators to officers conducting an initial inquiry, and thus the workload of investigators will be decreased to ensure efficient investigation of grave and especially grave crimes. Today, one police investigator can be working on approximately 300 cases while the optimal caseload is 40-50 criminal proceedings.

The draft law №7279-д was approved in the first reading on June 7, 2018. This wording contains provisions that are dangerous for human rights and freedoms – understated timelines for inquiry, additional extra-procedural sources of evidence, the possibility of condemning a person who admitted guilt without involving a lawyer, and some other. Some of them were eliminated in the wording that was prepared for the second reading and approved by the Committee.

Given the scope and social importance of the draft law, at its meeting on November 7 the Committee will discuss a separate item on its agenda, namely comments of the Main Legal Department of the Secretariat of the Verkhovna Rada of Ukraine, and the Conclusion of the Directorate General of Human Rights and Rule of Law dd. October 12, 2018.

Card of the draft law №7279-д on the web site of the Verkhovna Rada of Ukraine: <https://goo.gl/BSzGYS>

Article of the Head of the EU Advisory Mission, Kęstutis Lančinskas, Away with Bureaucracy. Why does the Criminal Procedure Code need urgent amendments? <https://goo.gl/X7kQj7>

Article by an expert of the UMDPL Association, Yevhen Krapyvin, Misdemeanors: Panacea from petty crimes or infringement of rights? <https://goo.gl/tGYWV5>

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Association of Ukrainian human rights monitors on Law Enforcement (Association UMDPL) – non-governmental human rights organization implementing systemic all-Ukrainian monitoring of human rights and fundamental freedoms on law enforcement agencies activity.

Activities (programms):

- Expertise and Analytics programm;
- Development of civic control;
- Education;
- Penitentiary programm.

More about organization and results of work – www.umdpl.info/police-experts

Centre of Policy and Legal Reform (CPLR) – is a Ukrainian think-tank that promotes reform in the law and politics of Ukraine. The organization has its general goals the strengthening of democracy, the rule of law and good governance in our country. The Centre was established in 1996.

CPLR works through research, policy advising, monitoring of public decision making and via civic education. The work of CPLR is focused on the following policy areas: constitutionalism, public administration, judiciary, and criminal justice. The issues of human rights, combating corruption and gradual adaption of the Ukrainian legal system to the standards of the European Union are cross-cutting themes throughout all policy areas.

More about organization and results of work – <http://pravo.org.ua/en>

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