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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.

President of Ukraine signed the Law of Ukraine on Disciplinary Statute of the National Police of Ukraine

On July 5, during the celebration of the National Police Day, President of Ukraine Petro Poroshenko signed the Law of Ukraine “On Disciplinary Statute of the National Police of Ukraine” which was adopted by the Parliament of Ukraine on March 15. It shall become effective 3 months after its publication, namely on October 7, 2018.

The statute applies exclusively to the police officers. At the same time, the former Disciplinary Statute of the Internal Affairs Institutions (2006) did not cease to be effective with regard to other bodies due to the fact that its provisions apply to the chief staff of the National Anti-Corruption Bureau of Ukraine, employees and chief staff of the State Criminal Executive Service of Ukraine, and tax police.

Previous statute which envisaged unlimited disciplinary power of management staff over their employees has not substantially changed

since 1990s. The new Disciplinary Statute repeats many provisions of the previous one, but the police officers finally received the right for defense during the internal investigation, and disciplinary proceedings will not be considered by the head single-handedly, but by the disciplinary commission. Such a

commission will consist of police officers from different departments, and may also include the representatives of civil society.

News on the web-site of the President of Ukraine:
<https://goo.gl/geGHju>

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.

Departments of procedural control over the activities of State Bureau of Investigation were formed in Prosecutor General's Office, and they were staffed with employees without competition

On July 2, Prosecutor-General Yuriy Lutsenko signed the Decree on establishing Department of procedural control over criminal proceedings at the Prosecutor General's Office of Ukraine, under the jurisdiction of the State Bureau of Investigation (SBI). The Department will be composed of 3 offices and 2 units.

The scope of competence of one of the offices of the newly established department, namely, the Office of the procedural control over criminal

proceedings of the investigators of the Central Office of the State Bureau of Investigation, will include supervision over the SBI's compliance with the law during the pre-trial investigation. Two other offices of the above mentioned Department – the Office of procedural control over criminal proceedings of investigators of the Main Investigation Office and the Office of organizing procedural control over criminal proceedings of the investigators of regional prosecutor's offices, were established with a view to streamlining functions of procedural control in the proceedings which were launched by the investigation bodies of the prosecution before the State Bureau of Investigation was established and are currently at the stage of pre-trial investigation.

At the same time, two structural units were disbanded at the Prosecutor General's Office – Department of procedural control over criminal proceedings of investigators of the central office and Division of criminal proceedings oversight of investigative bodies of the prosecution of the Main investigation office.

However, it is important to mention that the prosecutors appointed to the new Departments were transferred from other departments, and not selected at open competitions. Procedural control in cases investigated by the State Bureau of Investigation is essential in terms of impartiality and even-handedness of the pre-trial investigation and respect for human rights and liberties. The units of the State Bureau of Investigation are being formed through open competitions; therefore other relevant bodies of the prosecutor's office should have been formed

the same way to ensure their professional and high-quality work.

Thus, for the purpose of procedural supervision of the activities of the National Anti-Corruption Bureau of Ukraine, Specialized Anti-Corruption Prosecutor's Office was created, and the special procedure for the appointment of prosecutors through open competitions was established, which grabbed the attention of civil society and international institutions. In the case of SBI, there is a risk that the above mentioned units will be staffed with "puppet" employees who will

block the investigation of criminal proceedings.

According to the current legislation, Prosecutor-General can announce a competition for the vacancies in a newly established Department to give the opportunity to the employees of regional and location prosecutor's offices to compete for a vacant position in relevant units. Apart from the selection of the most professional candidates, an open competition would allow to check the integrity of prosecutors who will be in charge of investigations of crimes committed by law-enforcement officers and other top officials.

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.

Staffing continues at the State Bureau of Investigation

Competitions for the vacant positions at the Central office and territorial bodies of the State Bureau of Investigation continue. We would like to remind that the competitions for the management positions and positions of employees of the Department of internal control (167 positions) will be conducted by the external commission formed according to political quotas (it will include representatives of the President, the Parliament, and the Cabinet of Ministers). This external commission had previously selected the Director of State Bureau of Investigation and the deputies. The competition for other 674 positions shall be conducted by 2 internal commissions which will include the representatives of civil society.

a) internal commissions

On July 20, the internal commission №2 defined **14 winners** of the competition for the positions of **deputy director of 7 territorial divisions of the Bureau**. According to the director of State Bureau of Investigation, they will launch the course of action of the Bureau on September 1, in the absence of heads of territorial bodies.

On August 3, internal competition commission №1 defined the winners for **75 positions of investigators** of SBI central office. Altogether, the competition was announced for 152 positions of investigators of the central office and 231 positions of 7 territorial bodies. Overall, 383 positions of investigators in the Bureau.

On August 14, **180 winners of the competition were selected for the positions in the central office of the State Bureau of Investigation**: 126 investigators and 54 state officials (main and leading experts). 39 positions remained vacant – repeated competition will be announced. Altogether 1646 candidates who submitted more than 5 thousand sets of documents for various vacancies, participated in the competition.

According to the results of the competition, 3 departments of pre-trial investigation of the central office of the State Bureau of Investigation were staffed. The first Department on investigation of the crimes in the sphere

of official activities and corruption – the competition was announced for 57 positions – 48 persons were selected. The second Department on investigation of crimes committed by the employees of law-enforcement agencies and

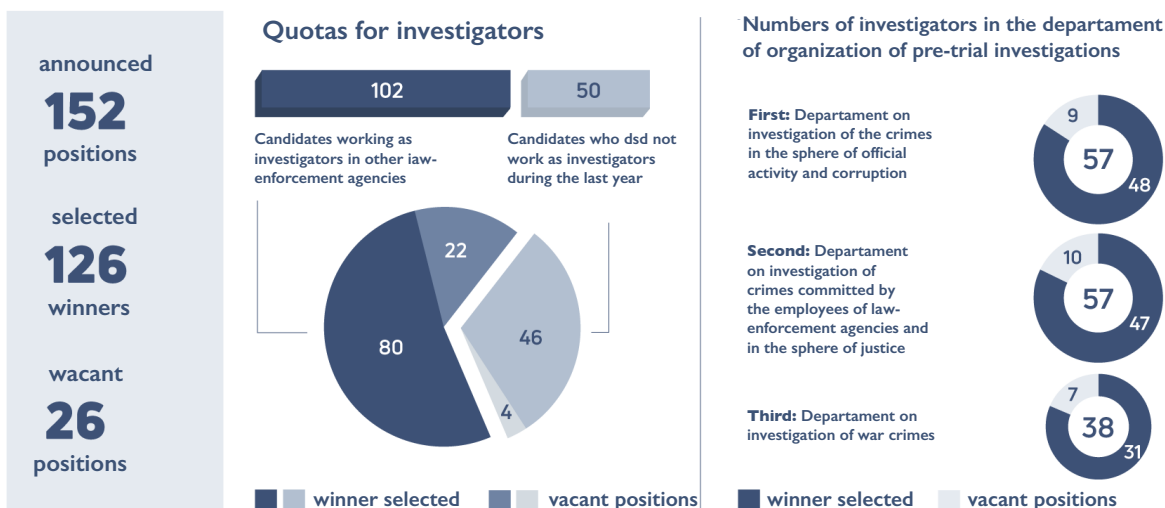
in the sphere of justice: the competition was announced for 57 positions – 47 persons were selected. In the third department on investigation of war crimes – 31 out of 38 vacant positions were staffed.

Results of competition for 219 positions of the Central Office of SBI



Source: State Bureau of Investigation

Competition for the positions of investigator of the Central Office of SBI



Source: State Bureau of Investigation

On 20 August, the Internal Commission №2 defined 53 winners of the competition for the positions of **heads of the investigation departments and their deputies**, and also **heads of the department of support with operational units of pre-trial investigations** and the **unit of operational development** in 7 territorial departments of SBI.

b) external commission

On July 23, the external commission announced the competition for 44 management positions of the Central Office of the Bureau – heads of units, investigators, and deputy heads of departments. Previously another competition was announced for 27 out of 167 management positions, which have to be selected by the

external competition commission.

On July 18, the external commission selected the winners of the competition for the management positions of the Bureau – directors of territorial departments and heads of departments of the central office (altogether 27 positions). Later, the mass-media published information on most candidates' lack of integrity, their political connections, investigation of criminal proceedings against them etc. The coalition of civil organizations Reanimation Package of Reforms urged the director of the State Bureau of Investigation:

- not to appoint those persons who are credibly known to have lack of integrity;
- not to adopt and not to send to the competition commission the qualification requirements for other leading positions in the central office of the Bureau, to prevent any further political appointments.

On August 28, during the press-briefing on the launch of State Bureau of Investigation Roman Truba refused to consider recommendations on appointment of 27 winners of the competition for the leading positions in the Bureau. He stated that the external commission destroyed the conclusions of psychological and physiological tests of the candidates with the polygraph, which SBI Director had to receive in order to approve the decision on staffing. Therefore, according to him, the commission deprived him of the opportunity to check the candidates' personal, moral, and professional characteristics and approve the decision on appointments. Also Roman Truba stated that he did not take a decision to refuse to appoint these candidates, but he refused to consider the submission on appointment of these employees because the candidates' document sets were incomplete.

In accordance with the Law on SBI the winners of the competition shall be appointed and resigned from the position by the Director of the Bureau after the submission of the Commission. At the same time the procedure for the director is not specified, and it has caused the discussion among the employees whether the SBI Director possesses discretion to implement the decision

of the competition commission. At the same time, first Deputy Director of the SBI Olga Varchenko stated in her commentary for "Judicial Legal Newspaper" that such a decision had to be taken by Roman Truba upon the agreement with her and with the other deputy Director of the Bureau, and also that the candidates who were refused, have all the chances to receive a positive decision of the court, in case they file a complaint against refusal.

According to the Secretary of the external commission Denys Monastyrskiy, the commission will have a meeting on September 3 to provide legal assessment regarding Roman Truba's refusal to consider 27 candidates winners of the competition for the leading positions in the State Bureau of Investigation.

Statement of the group "Reform of law-enforcement agencies" of Reanimation Package of Reforms: <https://goo.gl/wqXZr5>

Statement of SBI Director Roman Truba regarding his refusal to appoint 27 candidates winners of the competition for the leading positions in the State Bureau of Investigation: <https://goo.gl/VDFVW2>

Commentary of the first Deputy Director of the SBI Olga Varchenko for "Judicial Legal Newspaper": <https://goo.gl/4xNuYP>

Interview of SBI Director Roman Truba "I am ready for any compromise within the scope of the law" for "Left Bank" publication: <https://goo.gl/55YzMa>

State Bureau of Investigation starts its work

Roman Truba announced that the Bureau shall start its work on September 1. Later in the interview he stated that SBI will have its first criminal proceedings already this year. According to the experts in the sphere of law-enforcement, it can take place in October-November due to the fact the territorial departments will be staffed with the investigation units by that time.

However, despite the efforts of SBI leaders, scientists, civil sector experts and others, the Parliament of Ukraine did not adopt the package of legislative changes necessary for a full-scale launch of the Bureau; the competition commission did not select the

candidates to the management positions, and the Prosecutor-General's Office has formed the units of procedural control without competition. Therefore, there is a range of problems which can make its work less efficient, and its powers – limited. Namely:

- SBI will start its work without middle management;
- there will be no operational staff in the SBI, only investigators;
- SBI employees cannot be brought to disciplinary responsibility;
- there is no certainty about the territorial

departments of the SBI;

- forming of the units of procedural control over the activities of the SBI by the prosecutor's office bodies took place without competition;
- SBI has no powers to carry out independent non-public investigative (search) actions.

You can find more details about these problems and the ways to resolve them in analytical materials "What hampers the launch of the State Bureau of Investigation" (July 2018): <https://goo.gl/XK5e5S>

IV. CRIMINAL JUSTICE

There is still a problem with harmonization and approximation of criminal and criminal procedural legislation with the European standards. Since adoption of the CPC in 2012, this law has been going through chaotic and unsystematic changes (such as Lozovyi's amendment), which necessitates systematization of changes. Both amendments to the CPC of Ukraine and the CC of Ukraine have a strong impact on fighting corruption that today is one of the largest challenges faced by Law Enforcement agencies. More specifically, introducing misdemeanors influences efficiency of activities of the criminal justice bodies in general, more specifically – workload of investigative and operative units, efficiency of the criminal law, and adherence to the principle of inevitability of punishment. 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.

Supreme Court commented on the principle "beyond reasonable doubt" with regard to the issues of proof in the criminal process

The judicial panel of the First Judicial Chamber of

the Criminal Cassation Court ruled the decision on case № 688/788/15-к, which cancelled guilty verdicts of subordinate courts, closed criminal proceedings due to the absence of a crime, and released the accused. Former defense lawyer and human rights advocate Arkadii Bushchenko, former lawyer and human rights defender is a member of the judicial panel.

The accused was charged with causing grievous bodily harm which caused the death of the victim (part 2 of Article 121 of the Criminal Code of Ukraine). The Court analyzed both the objective part of the crime (action), and the subjective one (intent) from the point of view of the general principle "beyond reasonable doubt", and reached the conclusion that the case did not have any irrefutable evidence in support of the intent to cause grievous bodily harm, nor the specific offense in the acts of the accused since the grievous bodily harm could have been caused by the victim himself. The prosecution had to refute this particular version of those events, which was suggested by the defense, but the prosecution did not provide any evidence, which would have eliminated such a possibility.

Therefore, the Court implemented one of the key standards of the proof (standard of persuading) in the criminal process, provided by parts 2 and

4 of Article 17 of Criminal Procedure Code of Ukraine, according to which “2. No one must prove his or her innocence in committing a criminal offense and must be found not guilty unless the prosecution proves him or her guilty beyond reasonable doubt...”

Such argumentation in the decision of the Supreme Court may have very important

and long-term consequences for all criminal proceedings in the future. This is the first decision, when the Supreme Court speaks about the fundamentals and principles of the criminal procedure, which is not a standard practice for the previous Court.

Decision on case № 688/788/15-к in the Registry of court decisions: <https://goo.gl/oPjUhr>

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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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