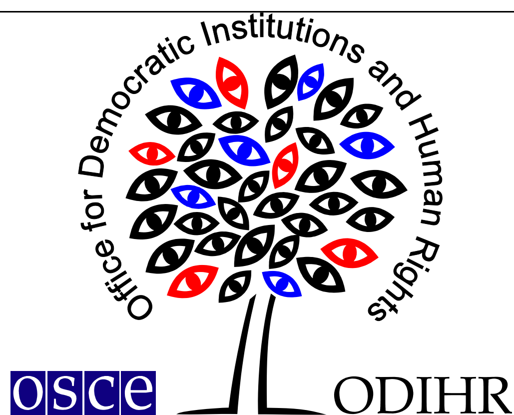
Warsaw, 1 December 2014 Opinion-Nr.: GEN-UKR/260/2014 [AlC] www.legislationline.org	

OPINION

ON THE DRAFT LAW OF UKRAINE

ON POLICE AND POLICE ACTIVITIES

based on an English translation of the draft law provided by the Ukrainian Parliament Commissioner for Human Rights

This Opinion has benefited from contributions made by the OSCE Strategic Police Matters Unit, Transnational Threats Department, of the OSCE Secretariat and by Ms. Ruth Montgomery, expert on police and criminal justice reform

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I. INTRODUCTION

1. *On 16 September 2014, the Ukrainian Parliament Commissioner for Human Rights sent a letter to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR") requesting the review of the draft Law of Ukraine "On Police and Police Activities" (hereinafter "the Draft Law").*
2. *On 23 September 2014, the OSCE/ODIHR Director responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Draft Law with international human rights standards and OSCE commitments.*
3. *This Opinion was prepared in response to the above-mentioned request of 16 September 2014. The Opinion has been the subject of informal consultations with the European Union Advisory Mission for Civilian Security Sector Reform in Ukraine* (*EUAM Ukraine).*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the Draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the police and criminal justice system in Ukraine.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, the Opinion focuses more on areas that require amendments or improvements rather than on the positive aspects of the Draft Law. The ensuing recommendations are based on international and regional standards relating to democratic policing, human rights and fundamental freedoms and the rule of law, as well as relevant OSCE commitments. The Opinion will also highlight, as appropriate, good practices from other OSCE participating States in this field.
6. This Opinion is based on an unofficial translation of the Draft Law provided by the Ukrainian Parliament Commissioner for Human Rights, which is attached to this document as an Annex. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to legislation and policy regarding the police and criminal justice system reform in Ukraine, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

8. At the outset, it is noted that this Draft Law contains many positive aspects which correspond to international standards and good practices. These include in particular the reference to certain safeguards when implementing coercive measures (e.g., the compliance with the principles of prevention, exclusiveness and proportionality) and their detailed explanation (Article 30); certain measures relating to personal data protection (Chapter 4); the provisions relating to the clear identification of police officers (Article 41) and the introduction of measures to prevent corruption in the police (Article 42).
9. At the same time, despite the Draft Law's attempt to address police reform in a comprehensive and integrated manner, the co-ordination and co-operation mechanism

between the police, and other actors in the criminal justice system in Ukraine would benefit from clarity, and overall improvement. Moreover, certain provisions of the Draft Law could potentially lead to serious interferences with human rights and fundamental freedoms. In particular, the Draft Law does not provide for substantive and procedural safeguards relating to the exercise of police powers, particularly as regards document checks, powers to search individuals, vehicles, homes and other property, measures of expulsion from Ukraine, and the policing of assemblies, amongst others.

10. Further, the Draft Law lacks precise and clear provisions relating to accountability and oversight, particularly in terms of public complaint mechanisms. The Draft Law also does not sufficiently address gender equality and non-discrimination, particularly towards national minorities and ethnic groups. Given the key role that the police should play in providing assistance to victims and preventing victimization, the Draft Law should also adopt a victim-centred approach, which would involve protecting and assisting victims of crimes, and treating them with compassion and respect for their dignity.[1]

11. In order to ensure the compliance of the Draft Law with international standards, the OSCE/ODIHR thus has the following key recommendations:

A. to clearly set out in the Draft Law the different roles and responsibilities of individual police authorities/units, and relevant inter-agency cooperation mechanisms; [pars 20, 22, 43, 45, 48, 51-52, and 56-57]

B. to amend or remove potentially discriminatory provisions from the Draft Law; [pars 30-31]

C. to ensure that the Draft Law includes the main conditions and modalities for considering and responding to complaints concerning alleged human rights violations (including discrimination) and abuse of power by police officers, and to consider creating, for this purpose, an Independent Oversight Body that will investigate such complaints; [pars 56, 64-67, and 123-124]

D. to amend Article 44 of the Draft Law to state that police officers shall not be obliged by their superiors to perform any unlawful activities, in particular in cases of torture or inhuman and degrading treatment, and that superiors shall also be held liable if they issue unlawful orders ; [pars 58-60]

E. to enhance relevant provisions pertaining to police measures (including search and seizure, custody and detention) so that they are in line with relevant international human rights standards on the right to liberty and security, the right to respect for private life, and the principle of *non-refoulement*, among others; [pars 76-87, 100-110]

F. to specify in the Draft Law the limitations and requirements concerning the use of force by the police, and transparent reporting of such cases; [pars 90-97]

G. to ensure that in the Draft Law, the selection and promotion of police officers is merit-based, transparent and dependent on a proper performance evaluation; [pars 116-117] and that integrity tests are held within the limitations set out by ECtHR case law; [par 37] and

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[1] See page 129 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

H. to see to it that further discussions on the Draft Law are conducted with all relevant stakeholders from different parts of society, and that it undergoes a proper and realistic impact assessment, including a full financial impact assessment. [pars 131-133]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards on Policing

12. The main duties of the police are to maintain public tranquility, law and order; protect the individual's fundamental rights and freedoms; prevent and detect crime; reduce fear; and provide assistance and services to the public.[2] Given the scope of their powers, police forces may in certain circumstances encroach upon human rights and fundamental freedoms of individuals in the performance of their duties.

13. Key general international human rights instruments applicable in Ukraine are the International Covenant on Civil and Political Rights[3] (hereinafter "the ICCPR") and the European Convention on Human Rights and Fundamental Freedoms[4] (hereinafter "the ECHR"). In addition, Ukraine has also ratified, among others, the UN Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW"), the UN Convention on the Elimination of All Forms of Racial Discrimination[6] (hereinafter "CERD"), the UN Convention on the Rights of Persons with Disabilities[7] (hereinafter "CRPD") and the Council of Europe Framework Convention for the Protection of National Minorities.[8]

14. In addition, Ukraine has signed, though not yet ratified, the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter "the Istanbul Convention");[9] this is the first legally binding

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[2] See Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR). See also part A par 1 of the Council of Europe Declaration on the Police (1979); Articles 1 and 2 of the UN Code of Conduct for Law Enforcement Officials (1979); and par 2 of the CSCE Charter of Paris (1990). See also par 2 of the OSCE Guidebook on Democratic Policing, May 2008 (hereinafter "2008 OSCE Guidebook on Democratic Policing"), available at http://www.osce.org/spmu/23804?download=true.

[3] UN International Covenant on Civil and Political Rights, adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. This Covenant was ratified by Ukraine on 12 November 1973.

[4] Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Ukraine on 11 September 1997.

[5] UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), adopted by the UN General Assembly by resolution 34/180 of 18 December 1979. The CEDAW was ratified by Ukraine on 12 March 1981 and its Optional Protocol on 26 September 2003.

[6] UN International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly by resolution 2106 (XX) of 21 December 1965. Ukraine ratified this Convention on 7 March 1969.

[7] UN Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly by resolution A/RES/61/106 of 13 December 2006. Ukraine ratified this Convention and its Optional Protocol on 4 February 2010.

[8] CoE Framework Convention for the Protection of National Minorities (ETS No. 157), 1 February 1995. It was signed by Ukraine on 15 September1995 and ratified on 26 January1998, available at http://conventions.coe.int/Treaty/en/Treaties/html/157.htm.

[9] CoE Convention on preventing and combating violence against women and domestic violence (ETS No. 210), Council of Europe Committee of Ministers, CM(2011)49 final, 7 April 2011 (hereinafter "the Istanbul Convention") which entered into force on 1 August 2014, and its Explanatory Report, available at http://conventions.coe.int/Treaty/EN/Reports/Html/210.htm. It was signed by Ukraine on 7 November 2011, not yet ratified.

instrument in Europe to create a comprehensive legal framework to protect women from acts of violence as well as prevent, prosecute and eliminate all forms of violence against women and domestic violence.

15. At the OSCE level, participating States have committed to take all necessary measures to ensure that when enforcing public order, law enforcement entities shall act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement (Moscow 1991).[10] As per the OSCE Charter for European Security (1999), "the OSCE will also work with other international organizations in the creation of political and legal frameworks within which the police can perform its tasks in accordance with democratic principles and the rule of law".[11] Moreover, the 2006 Brussels Declaration on Criminal Justice Systems clearly states that law enforcement officials, while performing their duties, should respect and protect human dignity and maintain and uphold the human rights of all persons.[12]

16. The ensuing recommendations will also make reference, as appropriate, to other specialized documents of a non-binding nature, which have been elaborated in various international/regional fora and may prove useful as they contain a higher level of detail. These documents include, amongst others:

- the UN Code of Conduct for Law Enforcement Officials (1979);[13] and the UN Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (1989);[14]
- the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990);[15]
- the European Code of Police Ethics (2001);[16]
- the Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009);[17]
- the OSCE Guidebook on Democratic Policing (2008);[18]

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[10] See par 21.1 of the CSCE Moscow Document (1991).

[11] See par 45 of OSCE Charter for European Security, Istanbul Summit, November 1999, available at http://www.osce.org/mc/17502?download=true.

[12] OSCE Brussels Declaration on Criminal Justice Systems, MC.DOC/4/06 of 5 December 2006, available at http://www.osce.org/mc/25065?download=true.

[13] UN Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in its resolution 34/169 of 17 December 1979, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx.

[14] UN ECOSOC Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials adopted by the Economic and Social Council in its resolution 1989/61 of 24 May 1989 and endorsed by the UN General Assembly in its resolution 44/162 of 15 December 1989, available at https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-61.pdf.

[15] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (hereinafter "1990 UN Basic Principles on the Use of Force and Firearms") available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx.

[16] Council of Europe Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics.

[17] Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1417857.

[18] OSCE Guidebook on Democratic Policing, May 2008 (hereinafter "2008 OSCE Guidebook on Democratic Policing"), available at http://www.osce.org/spmu/23804?download=true.

- the OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform" (2013);[19] and
- the OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly (2010).[20]

2. General Comments

2.1. Purpose and Scope of the Draft Law

17. Overall, it is positive that the Draft Law tries to streamline and simplify the organizational set-up of the police system in Ukraine, which appears to be overly complex and involves multiple bodies/entities. However, the proposed new structure and organization still retains aspects that seem to be quite complex; in particular, it does not clearly delineate the respective roles and responsibilities of entities involved and there seem to be certain overlaps between them (see also comments on the overall structure and organization of the police in pars 43, 45, 48, and 51-52 *infra*).

18. Article 2 of the Draft Law makes reference to the investigation of criminal offences. Given the potential encroachment on human rights and fundamental freedoms of individuals, **the Draft Law should clearly specify that these should be carried out in accordance with the provisions of the Criminal Procedure Code.**

19. Transitional provisions of the Draft Law mention that units to combat corruption and organized crime of the Security Service of Ukraine are to be abolished and transferred to the criminal police. In this context, it is important to highlight the importance of consistency between the Draft Law and the recent/ongoing legislative reforms pertaining to the institutional framework of Ukraine to prevent and combat corruption.[21] In any case, in accordance with Article 6 par 2 and Article 36 of the UN Convention against Corruption,[22] Ukraine is obliged to grant the body or bodies dealing with the prevention of corruption, as well as those specialized in combating corruption through law enforcement, "the necessary independence, in accordance with the fundamental principles of its legal system", to enable it/them "to carry out its or their functions effectively and free from any undue influence".[23] This refers both to political as well as operational independence, which involves the ability to take decisions within one's sphere of competence without undue interference from other actors.[24] This means that actors within the executive branch should not have the possibility to exercise direct influence on the work of anti-corruption agents, including on investigations of corruption cases. **Thus, the drafters and stakeholders should discuss further aspects relating to the anti-corruption institutional framework and the role of the police in**

[19] OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013 (hereinafter "2013 OSCE Publication on Police Reform"), available at http://www.osce.org/secretariat/109917?download=true.

[20] OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Peaceful Assembly (2010, 2nd Edition) ("2010 Guidelines on Freedom of Peaceful Assembly") available at http://www.osce.org/odihr/73405.

[21] See the OSCE/ODIHR Opinion on Two Draft Anti-Corruption Laws of Ukraine (18 July 2014), available at http://www.legislationline.org/documents/id/19137.

[22] UN Convention Against Corruption, adopted on 31 October 2003, ratified by Ukraine on 2 December 2009, available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

[23] Cf. also Article 20 of the Council of Europe Criminal Law Convention on Corruption, and OSCE MC Decision 2/2012, Declaration on Strengthening Good Governance and Combating Corruption, Money-laundering and the Financing of Terrorism (hereinafter 'OSCE MC Decision 2/2012'), par II: "those in charge of the prevention, identification, investigation, prosecution and adjudication of corruption offences should be free from improper influence".

[24] Anti-Corruption Authority Standards of the European Partners against Corruption, Principle 2 (independence), available at Available at http://www.epac.at/downloads/recommendations/doc_view/1-anti-corruption-authority-standards.

that respect, and ensure consistency with recent/ongoing legal reforms on anti-corruption.

20. The Draft Law is also seeking to amend the Law of Ukraine "On the Security Service of Ukraine" by supplementing it with new tasks relating to the security of certain high-ranking officials. While the review of legislation pertaining to security services falls outside the scope of the present Opinion, it appears that the government will thereby retain a security/intelligence service that is separate from the police. At the same time, **the responsibilities and functions of the security services and of the police services respectively, as well as their reporting relationships and governance structures, remain unclear. This will need to be clarified to ensure that there are clear lines of accountability and to avoid overlap between the two organs.** In this context, see pars 22 *infra* on surveillance measures, which are also part of the relevant powers exercised by security/intelligence services.

21. The final provisions of the Draft Law also state that the units combating cybercrime shall be transferred to the criminal police. In that respect, the recommendations made in OSCE/ODIHR's Opinion on the draft Law on Combating Cybercrime[25] should be taken into account. In particular, the Council of Europe Cybercrime Convention, to which Ukraine is a party,[26] provides for certain types of new investigative instruments,[27] which need to comply with international and regional human rights standards.[28] Consequently, specific criminal investigations or proceedings relating to cybercrimes should be subject to certain conditions and minimum substantive and procedural safeguards. Additionally, legislation should also clearly identify the authorities competent to permit, carry out and supervise such investigations. Legal provisions should further specify the necessary authorization procedure, limit their scope; define the procedure to be followed for examining, using and storing the data obtained; and detail the circumstances in which data obtained may or must be erased, or the records destroyed.[29]

22. If combating cybercrime will indeed be part of the mandate of the criminal police, **the Draft Law should expressly provide for such competences, and include references to the respective provisions of the Criminal Procedure Code (which in turn should be in line with international human rights standards).**[30] **It would also be advisable to clearly identify in the Draft Law which police authorities/units shall be assigned such responsibilities, and expressly define the nature, type, purpose and limits of their powers, as well as of multi-agency and cross-border co-operation mechanisms**

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[25] See the OSCE/ODIHR Opinion on the Draft Law on Combating Cybercrime (22 August 2014), available at http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf.

[26] The Additional Protocol to the CoE Cybercrime Convention concerning the criminalization of acts of a racist and xenophobic nature committed through computer system (CETS No. 189) was signed by Ukraine on 8 April 2005, ratified on 21 December 2006 and entered into force in Ukraine on 1 April 2007.

[27] See in particular the following provisions of the CoE Cybercrime Convention: Title 2 (Expedited preservation of stored computer data); Article 18 (Production order); Article 19 (Search and seizure of stored computer data); Article 20 (Real-time collection of traffic data); Article 21 (Interception of content data).

[28] Article 15 of the CoE Cybercrime Convention specifies that "the establishment, implementation and application of the powers and procedures […] are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the [ECHR], the [ICCPR], and other applicable international human rights instruments, and which shall incorporate the principle of proportionality".

[29] See par 76 of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria,* ECtHR judgment of 28 June 2007 (Application No 62540/00), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81323#{"itemid":["001-81323"]}. See also par 63 *Uzun v. Germany,* ECtHR judgment of 2 September 2010 (Application No 35623/05), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100293#{"itemid":["001-100293"]}.

[30] See pars 44-48 of the OSCE/ODIHR Opinion on the Draft Law on Combating Cybercrime (22 August 2014), available at http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf.

(see also comments regarding other specialized investigative units in par 53 *infra*). More generally, any legal provisions pertaining to surveillance measures should comply with the minimum requirements and safeguards provided for in the case law of the European Court of Human Rights (hereinafter "the ECtHR").[31]

23. Finally, it is noted that the Draft Law does not appear to deal with digital forensics (i.e. the branch of forensic science concerned with the recovery and investigation of material found in digital and computer systems).[32] This is an indispensable element for ensuring successful investigations into cybercrimes (and other crimes). If not already provided for in other legislation, **the drafters should discuss the option of establishing an expert digital forensics centre within the police that would employ specialized ICT experts. If part of the police, such a centre should also be included in the Draft Law**[33] (see also comments regarding other specialized investigative units in par 53 *infra*).

24. In this context, it is noted that the Criminal Procedure Code does not seem to regulate the identification, collection and analysis of electronic evidence through digital forensics. Legal frameworks effectively addressing electronic evidence, together with police/law enforcement and criminal justice capacity to identify, collect and analyse electronic evidence, are central to an effective response to crime.[34] **The Criminal Procedure Code should therefore be supplemented with provisions relating to electronic evidence and its lawful use before court, unless this is already provided for in other legislation.**

2.2. Gender, Diversity and Non-Discrimination

25. Section 2 of the Draft Law regulates the appointments of the leadership of the administrative, criminal, financial and border police, as well as of local level police. It provides for eligibility criteria and outlines the procedure for appointment among the candidates selected through a competitive process (as per Article 47 and 49 of the Draft Law). Article 83 of the Draft Law also regulates the composition of the police commissions at the local and central levels, which are in charge of disciplinary proceedings against police officers, among others.

26. The appointment processes set out in the Draft Law do not include special provisions on how to ensure gender equality and diversity in the police force. At the same time, various recommendations at the international and regional level call for gender-balanced representation in all publicly-appointed positions.[35] The 2009 OSCE Ministerial Council

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[31] See pars 76, 85 and 87-88 of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (Application no. 62540/00, ECtHR judgment of 28 June 2007). See also par 63 of *Uzun v. Germany* (Application no. 35623/05, ECtHR judgment of 2 September 2010). For more information on minimum requirements and safeguards, see also pars 44-47 of the OSCE/ODIHR, Opinion on the Draft Law of Ukraine on Combating Cybercrime, 22 August 2014, available at http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf.

[32] See page 159, 2013 UNODC Comprehensive Study on Cybercrime, available at http://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf.

[33] See pars 50-51 of the OSCE/ODIHR Opinion on the Draft Law on Combating Cybercrime (22 August 2014), available at http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf.

[34] *Op. cit.,* footnote 32, page 157 (2013 UNODC Comprehensive Study on Cybercrime).

[35] See Strategic Objective G.1. "Take measures to ensure women's equal access to and full participation in power structures and decision-making" of the UN Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en. See also pars 9-10 of the Appendix to the CoE Recommendation Rec(2003)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public

decision on Women's Participation in Political and Public Life[36] also calls upon OSCE participating States to consider specific measures to achieve the goal of gender balance in security services, such as police services,[37] including measures for balanced recruitment, retention and promotion of men and women. More generally, in order to enjoy the confidence of the entire population, the police should be representative of the community as a whole.[38]

27. Admittedly, certain provisions of the Draft Law may contribute to addressing the special needs of women (such as the possibility of working time arrangements, or considering individual family situations when deciding on transfers of police officers), which is positive. At the same time, while gender balance may be difficult to achieve when dealing with individual appointments, **gender balance requirements could at least be provided for collective bodies such as the police commissions**.[39] **Moreover, the drafters may consider introducing certain gender balance criteria in the nomination process to propose candidates for the positions,[40] as well as regarding the rules governing appointment to the above-mentioned posts.[41]** This would be in line with the 2013 Concluding Observations of the UN Human Rights Committee on Ukraine where the underrepresentation of women in various areas of political and public life was noted.[42] Further, in order to be effective, **such provisions should indicate the consequences for infringement of the gender balance requirement** (for instance, the annulment of the appointment,[43] at least of members of the over-represented gender).[44] Police bodies should also focus on ensuring an adequate number of female law enforcement officers, including at high levels of decision-making and responsibility.[45] In this way, police bodies in Ukraine would better reflect all parts of Ukrainian society and

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decision-making adopted on 30 April 2002 (hereinafter "the CoE Recommendation Rec(2003)3"), available at https://wcd.coe.int/ViewDoc.jsp?id=2229, which calls for gender-balanced representation in all public-appointed members to public committees and posts or functions. In this context, gender balance means that the representation of either women or men in any decision-making body in political or public life should not fall below 40% (see the preamble of the Appendix to the CoE Recommendation Rec(2003)3).

36 OSCE Ministerial Council Decision MC DEC/7/09 on Women's Participation in Political and Public Life, 2 December 2009, pars 1-2.

37 See Document of the Seventeenth OSCE Ministerial Council, Athens, 1-2 December 2009.

38 Op. cit., footnote 18, par 124 (2008 OSCE Guidebook on Democratic Policing). See also Preambular Paragraph, 8(a) of the UN *Code of Conduct for Law Enforcement Officials* and par 44 of the OSCE *Charter for European Security* (1999).

39 E.g., by providing that no more than three out of five members shall be of the same gender.

40 E.g., by providing that the nominating authority should propose two candidates, a woman and a man (see the example in Denmark, Appendix IV to the Explanatory Memorandum on CoE Recommendation Rec (2003)3).

41 E.g., by stating that in cases of equal competence, preference ought to be given to the under-represented gender.

42 See par 9 of the Concluding Observations of the Human Rights Committee (22 August 2013) on Ukraine (hereafter "2013 Concluding Observations of the Human Rights Committee on Ukraine"), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUKR%2fCO%2f7&Lang=en.

43 See par 39 of the 2013 Report of the UN Working Group on the issue of discrimination against women in law and in practice (A/HRC/23/50) adopted on 19 April 2013, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50_EN.pdf where the UN Working Group noted that "[q]uotas work best when accompanied by sanctions and closely monitored by gender-responsive independent bodies, including national electoral bodies and human rights institutions".

44 As an example, according to the new French Law on Equality between Men and Women dated 4 August 2014, the appointments of the members of the executive board of certain administrative bodies shall be annulled if gender balance is not respected (except for appointments of members from the under-represented gender); at the same time, the annulment of the appointments will not render null and void the decisions that may have already been adopted by said body; see http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=84EC2437366E2DFFB5DEEEFEB386BB2B.tpdjo15v_3?cidTexte=JORFTEXT000029330832&categorieLien=id.

45 See pars 190 and 192 of the Beijing Platform for Action Strategic objective G.1. (Take measures to ensure women's equal access to and full participation in power structures and decision-making), Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), available at http://www.un.org/womenwatch/daw/beijing/platform/decision.htm#object2.

would be likely to adhere to the needs of both men and women.[46] Article 11 of the Draft Law and/or other legislation, as appropriate, should be supplemented to that effect.

28. Furthermore, as noted in the 2014 OSCE Report on the Human Rights Assessment Mission in Ukraine, there are significantly few minority representatives in the executive and judiciary.[47] More generally, as noted at the international level, one important step to winning the trust of minority communities is to integrate them into the police throughout all ranks and functions.[48] In this context, the 2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine also highlights the under-representation of Roma in the criminal justice system, including in the police force.[49] Further, Roma women require particular support, as they are generally both under-represented, and have limited access to job opportunities within the police.[50] **The drafters should discuss whether to put some measures in place to pursue greater gender balance and diversity in the police forces**.[51] For instance, time-bound targets with a gradual increase of the target quota could be set for increasing the representation of women and minority communities;[52] in extraordinary circumstances, and for a limited time only, special recruitment measures might be considered in order to quickly redress an imbalance.[53]

29. Finally, Article 3 of the Draft Law refers to the principles of police activity but does not include a clear anti-discrimination statement, either directly or by reference to other legislation. Given that the issue of discrimination or prejudice against Roma by law enforcement officials has been the subject of recent reports,[54] **it would be advisable to supplement Article 3 of the Draft Law by including such an anti-discrimination statement**. Additionally, adequate training on human rights issues, gender equality, anti-discrimination and community policing, and more generally awareness-raising activities would be recommended, for all levels of the police force (see also par 72 *infra* on education and capacity development).

[46] See for reference *op. cit.* footnote 9, par 258 (Explanatory Report to the CoE Istanbul Convention).

[47] See page 107 of the OSCE/ODIHR and OSCE High Commissioner on National Minorities (HCNM) Report on the Human Rights Assessment Mission in Ukraine (May 2014), available at http://www.osce.org/odihr/118476?download=true (hereinafter "2014 OSCE HRAM Report").

[48] *Op. cit.*, footnote 18, par 127 (2008 OSCE Guidebook on Democratic Policing).

[49] See pages 19 and 25 of the 2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis (August 2014), available at http://www.osce.org/odihr/124494?download=true.

[50] OSCE/ODIHR "Summary Report of the Expert Meeting: Police and Roma and Sinti - Current Challenges and Good Practices in Building Trust and Understanding", 8 April 2014 Warsaw, page 14, available at http://www.osce.org/odihr/119653?download=true.

[51] See for instance pars 38-40 of the 2013 OSCE/ODIHR Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine, GEND-UKR/242/2013, 19 December 2013, available at http://www.legislationline.org/download/action/download/id/5011/file/242_GEND_UKR_19Dec2013_en.pdf.

[52] See Paragraph VI of the Explanatory Memorandum on Recommendation Rec (2003)3 of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making adopted on 30 April 2002 (hereinafter "the CoE Recommendation Rec (2003)3", available at https://wcd.coe.int/ViewDoc.jsp?id=2229.

[53] *Op. cit.*, footnote 18, par 130 (2008 OSCE Guidebook on Democratic Policing). See also pars 21-22 of the General recommendation of the CEDAW Committee No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, available at http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf.

[54] See pages 18-19 of the 2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis (August 2014), available at http://www.osce.org/odihr/124494?download=true.

2.3. Directly and Indirectly Discriminatory Provisions of the Draft Law

30. Certain provisions of the Draft Law appear to have a direct or indirect discriminatory effect. In particular, Article 23 par 3 and 4 of the Draft Law specifically refers to foreigners and stateless persons at state borders, and their registration at checkpoints across the state border. Such a provision constitutes direct discrimination[55] as it specifically targets foreigners and stateless persons as opposed to any other person crossing the state border. Singling out foreigners and stateless persons in these circumstances may lead in practice to a situation where authorities target only persons with specific physical or ethnic characteristics, which contradicts international human rights standards.[56] In that respect, the Council of Europe's European Commission against Racism and Intolerance (hereinafter "ECRI") recommends that member States clearly define and prohibit 'racial profiling'[57] in legislation.[58] Bearing this in mind**, it is recommended to remove the reference to "foreigners" and "stateless persons" in Article 23, and replace it with general powers to conduct border checks, to ensure compliance with immigration/entry rules. Moreover, a clear statement defining and prohibiting racial profiling should also be included, either in the Draft Law or in other relevant legislation (with respective cross-references included in the Draft Law)**.

31. Article 26 of the Draft Law provides that "[t]he police is authorized to enter a home or other property without a substantiated court decision only in urgent cases related to the preservation of human life and valuable property". While Article 26 par 3 of the Draft Law seems to adopt a broad understanding of the notion of "home or other property", both definitions appear to refer to permanent or temporary "ownership" of such properties. While it is unclear whether this would require holding an official property title, this could lead to a situation where the entry into domiciles or other living spaces that are not the occupants' property is perhaps not covered. Thus, a person who is an "owner" may be treated differently and be more protected than other persons otherwise occupying a home, land or other property with or without title. This is not in compliance with the non-discrimination principle.[59] In particular, recommendations at the international and regional levels highlight that certain protection should not be conditional upon a person's land/property tenure status and lawfulness of the occupation under domestic law.[60] Further, as noted in recent OSCE Reports on the human rights

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[55] i.e., a difference in the treatment of persons in analogous, or relevantly similar, situations, which is based on an identifiable characteristic (see e.g., par 61 of *Carson and Others v. UK,* ECtHR judgment of 16 March 2010 (Application no. 42184/05)).

[56] ibid. where the Human Rights Committee held that "the physical or ethnic characteristics of the persons […] should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only persons with specific physical or ethnic characteristics".

[57] i.e. "[t]he use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities", see par 1 of ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, adopted by ECRI on 29 June 2007, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/e-RPG%2011%20-%20A4.pdf.

[58] See ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, adopted by ECRI on 29 June 2007, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/e-RPG%2011%20-%20A4.pdf.

[59] See Articles 2 and 26 of the ICCPR and Article 14 of, and Protocol 12 to, the ECHR.

[60] See par 25 of the General Comment No. 20 of the Committee on Economic, Social and Cultural Rights on Non-Discrimination (10 June 2009). See also par 46 of *McCann v. the United Kingdom*, ECtHR judgment of 13 May 2008 (Application No 19009/04), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"appno":["19009/04"],"itemid":["001-86233"]}, where the ECtHR has recognized that the protection of Article 8 of the ECHR which protects the right of individuals to respect for their

situation in Ukraine, certain minority groups may not possess documents officially recognizing their property/land rights;[61] especially, Roma often lack necessary documents relating to home ownership.[62] Consequently, the provisions of the Draft Law, though drafted in a seemingly neutral manner, have the potential to adversely and disproportionately affect indigenous peoples, minorities and other vulnerable groups who do not own the property they live on, and as such may constitute indirect discrimination.[63] **Therefore, it is recommended to replace or supplement the reference to ownership with the term "occupation" which should be irrespective of the title to the property/land tenure status.**

32. Finally, effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police, or other types of discriminatory conducts should be ensured and the perpetrators of these acts adequately punished. In this context, see comments relating to oversight and complaint mechanisms in pars 66-67 *infra,* as well as comments on addressing discrimination and harassment within the institution in par 56 *infra*). This should be accompanied by adequate training and awareness-raising for police and law enforcement officials against all forms of harassment or discriminatory behaviour, as recommended in recent human rights monitoring reports on Ukraine.[64]

2.4. General Principles governing Police Activity

33. Article 3 of the Draft Law provides for a list of principles governing police activity, including a welcome protection of human rights and fundamental freedoms. However, some key principles seem to be missing. First, as mentioned above under par 29 *supra*, the provision does not mention the **principle of non-discrimination or the principle of equality of gender, ethnic groups and minorities.**

34. Second, **references to integrity, professionalism, accountability, ethical behavior (compliance with Police Ethics/Code of Professional Conduct) and co-operation with other institutions of the Criminal Justice System[65] would also be useful additions;** at the international level, these are generally considered to be key principles which should guide the exercise of police activities.

35. International recommendations also highlight the importance of adopting a victim-centered approach[66] to strengthen crime prevention and criminal justice responses,

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private life, family life and home is a matter of fact independent of the question of the lawfulness of the occupation under domestic law.

61 See pages 55-56 of the OSCE/ODIHR and OSCE High Commissioner on National Minorities (HCNM) Report on the Human Rights Assessment Mission in Ukraine (May 2014), available at http://www.osce.org/odihr/118476?download=true (hereinafter "2014 OSCE HRAM Report").

62 See page 21 of the 2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis (August 2014), available at http://www.osce.org/odihr/124494?download=true.

63 See par 10 of the General Comment No. 20 of the Committee on Economic, Social and Cultural Rights on Non-Discrimination (10 June 2009).

64 *Op. cit.*, footnote 61, page 16 (2014 OSCE HRAM Report) and *op. cit.*, footnote 62, page 25 (2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine).

65 See Section VII on Enhanced Collaboration among Criminal Justice System Institutions of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

66 Such an approach focuses on assisting victims in their engagement with the criminal justice process, rather than holding them responsible for any "reluctance" to co-operate with the criminal justice system (see page 34 of 2014 UNODC Blueprint for Action: an Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women (hereinafter "2014 UNODC Blueprint for Action on VAW"), available at http://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

particularly in relation to violence against women and domestic violence.[67] Consequently, it may be advisable to state in Article 3 the **assistance to victims and a victim-centered approach as a key principle guiding all police activity**; this would also imply adopting gender-sensitive and child-sensitive processes.

36. As regards more specifically the integrity of the police, Article 4 par 3 of the Draft Law states that "[c]ontrol over the activity of the police shall be realized in the form of inspection and secret inspection of police officers' integrity". However, while this provision does specify that 20% of the body exercising such oversight should consist of human rights defenders, it does not mention the nature of this body, nor its exact responsibilities, powers and structure. **Though this would probably be the subject of secondary legislation, to be approved by the Cabinet of Ministers, at least the above aspects and main principles guiding such inspections should be stated in the Draft Law.**

37. Regarding "integrity tests", the ECtHR has acknowledged the necessity, in certain circumstances, to resort to certain under-cover/covert inquiries or investigations to identify and investigate offences.[68] However, the Court has considered that the use of such proactive policing methods should be subject to certain limitations. In particular, when actively testing an individual's integrity, the state must ensure that this method does not instigate the commission of a crime, more specifically, that the state officials did not persuade and talk the person into committing such crime and that the person was already ready and willing to commit the crime before his/her interaction with State agents.[69] Moreover, the collection of information or recording by a state official of an individual without his or her consent would raise issues under the right to private life under Article 8 of the ECHR.[70] While integrity tests have been introduced in several countries as important anti-corruption tools, adequate safeguards thus need to be provided**. If Article 4 par 3 of the Draft Law is indeed referring to these types of integrity tests, it should be supplemented to reflect the above-mentioned limitations when applying such tests.** At the same time, it is noted that Article 43, par 4 of the Draft Law states that the result of a secret integrity inspection cannot be a ground for "bringing a police officer to administrative or criminal responsibility". **It is thus unclear what the exact purpose of these testing methods would be, if not to identify and prosecute wrongdoing. This should be clarified in the Draft Law.**

38. Further, while corruption is mentioned on several occurrences in the Draft Law, **a clear anti-corruption statement should also be included under Article 3 of the Draft Law**. It is important that police officers do not allow their private interests to interfere with their public position, and it is their responsibility to avoid such conflicts of interests.[71]

39. Finally, another aspect currently missing in Article 3 of the Draft Law is the principle of confidentiality of information. Such a principle is important, since information gathered by the police could, if publicized, potentially compromise police investigations, as well as public security, victim and witness rights to privacy and confidentiality,[72] or the

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[67] ibid., page 34 (2014 UNODC Blueprint for Action on VAW).

[68] *Ramanauskas v. Lithuania*, ECtHR [GC] judgment of 5 February 2008 (Application no. 74420/01), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84935#{"itemid":["001-84935"]}.

[69] ibid. par 73 (*Ramanauskas v. Lithuania*, ECtHR judgment of 5 February 2008).

[70] See *Klass v. Germany*, ECtHR judgment of 6 September 1978 (application no. 5029/71), pars 36-38. See also *Vetter v. France*, ECtHR judgment of 31 August 2005 (application no. 59842/00), par 27.

[71] *Op. cit.*, footnote 18, par 24 (2008 OSCE Guidebook on Democratic Policing).

[72] See Section VII 20(c) of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at

presumption of innocence.[73] **The drafters should consider whether to include the principle of confidentiality under Article 3 of the Draft Law.**

3. Police Organization and Main Roles and Responsibilities

3.1. Overall Structure and Organization of the Police

40. Generally, the proposed police structure envisioned by the Draft Law seems to be quite complex and may become difficult to manage due to multilevel subordination and potential overlaps between individual ministries and police services, including at the regional, district and municipal levels.

41. Article 4 of the Draft Law provides that police activity shall be directed and co-ordinated by the Ministry responsible for state policy in the sphere of protection of public order and of persons, society and state from unlawful infringements (hereinafter "the Ministry of Public Order and Protection of Persons") and by the Ministry of Finance. According to Article 11 par 1, the Ministry of Finance will have a management and coordinating role relating to the financial police. Pursuant to Article 11 par 2 of the Draft Law, the financial police shall investigate criminal offences in accordance with the Criminal Procedure Code (insofar as they touch on the sphere of finance).

42. It is unclear why such an arrangement has been introduced, since this would imply that the Ministry of Finance would oversee the investigations of criminal offences relating to financial matters, such as fraud, economic crimes, money laundering, and counterfeiting (though this is not clearly stated in the Draft Law), while other criminal investigations would be led by a different ministry. Moreover, the relationship between the financial police (and the Minister of Finance) and the criminal police (and the Minister of Public Order and Protection of Persons) is not clear. Since a number of financial crimes often tend to overlap with other criminal offences (for instance, drug trafficking, or trafficking in human beings), such separate competences could reduce the effectiveness of the police, unless they are accompanied by a clear intelligence- and information-sharing mechanism that allows them to co-ordinate action. While it may be helpful to have specialized 'investigators' deal with financial crimes, having two ministries in charge of investigations may over-complicate the overall police organization, strategic orientation and lines of accountability. It may also be helpful, to clarify the lines of responsibility, to specify that the responsibilities lie with the respective minister, and not with the ministry per se.

43. Consequently, **it would be advisable to vest only one entity, namely the Minister (not the Ministry) of Public Order and Protection of Persons, with responsibility for the police, including for investigations of financial crimes.** The Ministry of Finance (or, better, the Minister) could then still be responsible for investigating certain non-criminal offences, as in other countries (for instance the investigation of taxation or customs matters not falling under the Criminal Code); however, such competence should be set out in separate legislation. It is recommended to amend Article 4 of the Draft Law accordingly.

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https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

[73] *Op. cit.*, footnote 18, par 97 (2008 OSCE Guidebook on Democratic Policing).

44. It is positive that Article 4 par 2 of the Draft Law provides that the responsible ministries shall define priority spheres of police activity development; this should help ensure coherence of the overall police system. **It may be advisable, however, to further specify the form/content of this responsibility, for instance by stating that the Minister of Public Order and Protection of Persons shall define basic principles and priorities of the police in a policy document approved by the Government, covering a certain time period.**[74] This would then constitute the fundamental strategic document for all police entities, and should be developed in a participatory (see par 133 *infra*) and evidence-based manner, with the use of statistics, research, assessments, and international and other developments, among others.

45. Section 2 of the Draft Law deals with the leadership of the different police forces in greater detail, but does not specify which body such leadership shall be accountable to[75] (presumably it is the Ministry of Public Order and Protection of Persons, more specifically the Minister). **The relevant lines of accountability should be expressly outlined in Section 2 of the Draft Law** (see also comments on oversight mechanisms in par 63 *infra*). Furthermore, the functions of the Ministry of Public Order and Protection of Persons (or, more specifically, the Minister) should be limited to a certain political responsibility for the police, including strategic and policy decisions, as well as oversight; the heads of the respective police forces should then be responsible for managing their respective part of the police force. This should be specified in the Draft Law.

46. Article 18 of the Draft Law specifies that the heads of the respective police forces shall devise their own strategic four-year activity programmes, as well as an annual activity programme. **These programmes should be aligned with the priorities/strategic document defined by the Minister of Public Order and Protection of Persons in accordance with Article 4 of the Draft Law; Article 18 of the Draft Law should be supplemented accordingly.** Such plans should mention anticipated financial and human resources as well as performance indicators to measure and report progress towards specified goals. Moreover, the four-year programmes should be updated on an annual basis to reflect emerging issues, organizational priorities and availability of resources. Further, **the Draft Law does not provide for the modalities to measure police organizational performance, or for a clear accountability mechanism. While perhaps not all details would need to be mentioned in the Draft Law, Article 18 should nevertheless be supplemented accordingly to include the main parameters and criteria for such performance assessments, and an accountability system.**

47. Article 5 of the Draft Law divides the overall structure of the police into six categories: local police, administrative police, criminal police, financial police, border police and the national guards of Ukraine. Subsequent articles further detail the respective organization and mandates of each category of police. In addition, these police forces are divided into regions and local areas, with some of them under the purview of local authorities and others not. In the current version of the Draft Law, it is difficult to clearly identify the respective roles and responsibilities of the different police forces in

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[74] See e.g., *op. cit.*, footnote 65, page 89 (2013 OSCE Publication on Police Reform).

[75] The 2011 UNODC Handbook on police accountability, oversight and integrity, available at http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf, which defines accountability as follows: "a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so. Such a system is meant to uphold police integrity and deter misconduct and to restore or enhance public confidence in policing" while "Police integrity" refers to "normative and other safeguards that keep police from misusing their powers and abusing their rights and privileges" (page iv).

such a multi-layered police system. This structure could also create potential competition between the respective police forces, which could dilute the effectiveness and efficiency of the police system.

48. The Draft Law details the mandate of the administrative police under Article 7 and that of the criminal police in Article 9. While administrative offences are habitually of lesser gravity than criminal offences, and thus subject to lower sanctions, there is often a potential or actual factual overlap between these offences, which in turn is likely to trigger competition between the administrative police and the criminal police. **The lawmakers and stakeholders should therefore discuss whether these two distinct police forces (administrative and criminal) are needed, all the more given the additional expenses that this would imply.** Ultimately, merging these two police forces would also considerably simplify the overall organization of the police system in Ukraine.

49. As it stands, Article 6 of the Draft Law provides that the local police ensure order through precaution, prevention, detection and termination of administrative and criminal offences on the territory of the relevant community. Further, the local police should "tak[e] part in the investigations of criminal offences" in accordance with the Criminal Procedure Code of Ukraine. Article 6 par 5 further states that jurisdiction of the local police shall be limited to the territory of the relevant community, "except for cases of direct prosecution by local police of a person suspected in committing administrative or criminal offence". This provision does not, however, explain when direct prosecution by local police would be possible. Moreover, the local police mandate seems to overlap with Articles 7 par 3 (1) to (3) and 13 par 2 which are worded in exactly the same fashion to describe the roles and responsibilities of the administrative police and the border police, respectively.

50. Moreover, Article 9 of the Draft Law states that the criminal police "investigates criminal offences" according to the procedure defined by the Criminal Procedure Code. Article 11 par 2 of the Draft Law similarly provides that the financial police shall investigate criminal offences in accordance with the Criminal Code. However, it is not clear which criminal offences would be involved; for the financial police, this would presumably be those listed under Chapter VII pertaining to Economic Criminal Offenses (such as money laundering, financial fraud, violation of bank or trade secrets, or economic crimes).

51. In light of the above, it is not clear how these five police forces, which are all mandated to investigate or take part in criminal investigations, will interact and co-ordinate their efforts. **It is recommended, therefore, to delineate more clearly the respective roles and responsibilities of the different parts of the police, particularly as concerns investigations of criminal offences (including by expressly cross-referencing the relevant chapter/provisions of the Criminal Code), to avoid overlap.** One way to do this could be to specify that the criminal police shall in principle take the lead in terms of criminal investigations, with exceptions for certain types of criminal offences such as transnational crimes and economic crimes, for which the border police and the financial police could respectively take the lead.

52. **Moreover, the hierarchy of the various police agencies should also be defined in the Draft Law, as well as their reporting and governance structures. The Draft Law should also seek to establish a co-ordination mechanism, detailing the interaction and support between these agencies and providing criteria for determining who will manage joint forces operations. Additionally, the Draft Law should specify the modalities for intelligence/information sharing between the different police forces.**

Furthermore, particularly in the context of prevention and protection from violence against women and domestic violence, co-operation with a broader range of state and other entities/bodies (e.g., local government representatives, social and health service providers, education bodies, non-governmental organisations, child protection agencies) is critical to facilitating protection, support, and assistance for victims.[76]

53. More generally, apart from some references under the Transitional Provisions, the text of the Draft Law does not mention the specialization of police forces/specialized police investigative units.[77] Good practices have shown that the specialization of police services, and focused training sessions, tend to increase reporting, trust and engagement of the victims, and more generally the efficiency and effectiveness of the criminal justice system.[78] **The lawmakers and stakeholders should review the actual policing needs in greater detail, also by community/region, in order to define the priorities and decide on the required specialization of police forces** (i.e., well trained, competent investigators and support staff with specialized skills for addressing/investigating specific crimes). The possibility of having such specialized teams would also depend on the availability of funds (see also comments relating to regulatory and financial impact assessments in pars 131-132 *infra*). If separate specialized investigative units are in charge, it is also important to provide for clear co-ordination and intelligence/information-sharing mechanisms.

3.2. Status of Police Personnel

54. Article 40 of the Draft Law mentions that police personnel is subject to the provisions of the law on state service, unless otherwise provided for in the Draft Law (except for local police officers who are subject to the Law on Service in Local Authorities). This is welcome in that it clearly states that the Draft Law constitutes a *lex specialis* in this respect.

55. Article 43 of the Draft Law states the rights and duties of a police officer. It specifically provides for the right to healthy, safe and appropriate conditions for effective service. It would be advisable **to add a reference to the need for gender equality and a multi-cultural environment, in accordance with OSCE recommendations**.[79]

56. Moreover, it is important to highlight in the Draft Law that the working environment should be free from discrimination, harassment and sexual harassment (with relevant cross-references to applicable legislation as appropriate or, alternatively, a definition of "harassment"[80] in the Draft Law itself). **Employees must have the right to file**

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[77] Specialization could be envisioned regarding e.g., financial matters (see pars 41-43, and 50 *supra*), narcotics, domestic violence, child abuse, sexual violence, human trafficking, organized crime, homicide, robberies, digital forensics, traffic collision investigations.

[78] See, for instance, in cases of domestic violence (page 10 of the draft of the European Union Handbook of Best Police Practices on Overcoming Attrition in Domestic Violence Cases, December 2012, available at http://www.eucpn.org/download/?file=EUHndbookAttritionDomViol.pdf&type=3). Regarding juvenile justice, see also Section 12 on "Specialization within the Police" of the UN Minimum Rules for the Administration of Juvenile Justice (or "Beijing Rules"), adopted by UN General Assembly resolution 40/33 of 29 November 1985, available at http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf.

[79] See par 133 (2008 OSCE Guidebook on Democratic Policing).

[80] See for instance the definition of "harassment" provided in Article 2 par 3 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (hereinafter the

complaints and such cases should be promptly and adequately investigated; the Draft Law should be supplemented accordingly. If not already provided for by other legislation (in which case the Draft Law should include a respective cross-reference), the complaint mechanism and process should be clearly defined. While the Draft Law does not need to provide all details pertaining to the filing/receipt of complaints, the complaints procedure and responsible complaints body, the outcome of such procedures and the possibility to appeal, it should at least state that these aspects will be outlined further in secondary legislation.

57. Article 44 of the Draft Law deals with the independence of police officers and mentions the possibility for heads of the respective police services to impose mandatory orders and instructions on them. However, this Article and the Draft Law in general do not rule out the possibility for the executive branch to issue instructions, which could risk the politicization of police activities. **Article 44 of the Draft Law should be supplemented in that respect by specifying that the executive branch (apart from the heads of the respective police services) shall not issue instructions. Furthermore, Article 44 of the Draft Law should exhaustively list the circumstances when internal regulations/instructions may be issued.**

58. While Article 44 par 3 of the Draft Law states that a police officer is obliged to comply with orders from superiors, par 4 of the same provision states that police officers shall not execute orders that are clearly criminal. However, certain orders, while not being necessarily criminal, may still be unlawful; in principle, **a police officer shall not be bound by orders to perform any unlawful activities. This should be clearly stated under Article 44 of the Draft Law.**

59. Moreover, Article 44 par 4 provides that in case such an order is confirmed in writing (which shall also be communicated to the Police Commission), the police officer shall be obliged to comply with the order. This should, however, not apply in cases involving acts of torture and other cruel, inhuman or degrading treatment or punishment. It is important to highlight in this context that the prohibition of torture and of ill-treatment is recognized as absolute and non-derogable.[81] The non-derogability of this prohibition also means that an order by a superior or public authority can never be invoked as a justification for such acts: subordinates will be held to account individually.[82] **Article 44 should thus also expressly state that in cases of torture and other cruel, inhuman or degrading treatment or punishment, a police officer should never execute superior orders, even where they are confirmed in writing.**

"EU Employment Equality Directive") defines "harassment" as "unwanted conduct related to any of the grounds referred to in Article 1 [which] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment". Article 2 of EU Gender Equality Directives defines "sexual harassment" as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature [which] occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment". In par 18 of General Recommendation No. 19 of CEDAW Committee (1992), sexual harassment is defined as "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions".

[81] See pars 1 and 3 of the General Comment No. 2 of the UN Committee Against Torture Committee (hereinafter "UNCAT Committee") on Implementation of Article 2, UN Doc. CAT/C/GC/2/CRP.1/Rev.4 (23 November 2007), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en. See also par 3 of the General Comment No. 20 of the Human Rights Committee on Article 7 (1992) of the ICCPR, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f44%2f40&Lang=en

[82] Article 2 of UNCAT and par 26 of the General Comment No. 2 of the UNCAT Committee.

60. In addition, it is reiterated that Article 4 of the UN Convention against Torture[83] has been interpreted as covering acts such as incitement, instigation, superior order or instruction; consequently, superior officials providing orders/instructions are criminally liable for torture in the same manner as the direct perpetrator(s).[84] **Article 44 does not expressly state that superiors are prohibited from giving unlawful orders and shall be held liable when doing so. This provision should be supplemented accordingly.**

61. Finally, Article 15 of the Draft Law pertaining to the Police Secretariat lists certain functions of this body, but does not mention **education/capacity development, human resources management, financial management, as well as infrastructure, information and technology and equipment management; these are key functions which should typically be undertaken by such bodies. It is recommended to include these tasks in the above provision.**

3.3. Monitoring, Oversight and Complaint Mechanism

62. In terms of monitoring police activities, while Article 28 of the Draft Law mentions the maintenance of records regarding detainees, nothing is said about monitoring police activities in general. **The Draft Law should require the recording of all police activities, including time, date, location and specifics of any incidents as well as actions taken.**

63. As regards oversight, it is generally recognized that for an oversight system to be effective, there should be at least six interdependent pillars of oversight and control across the criminal justice system: internal oversight, executive control (policy control, financial control and horizontal oversight by government agencies), parliamentary oversight (members of parliament, parliamentary commissions of enquiry), judicial review, and independent bodies such as national human rights institutions and civil society oversight.[85] Such mechanisms should be able to effectively investigate allegations of wrongdoing, and as appropriate, recommend disciplinary sanctions or refer cases for criminal prosecution.[86] Furthermore, the media can play an important role in providing the public with information on police activities. Without external oversight mechanisms, police leaders would have the freedom not to investigate or punish misconduct, which would render internal control ineffective;[87] an external oversight mechanism would also improve public trust in police services. Internal and external oversight mechanisms should generally complement one another.[88]

64. **Currently, the Draft Law does not specifically include such a range of external oversight mechanisms. Unless already provided by other legislation (in which case relevant cross-references should be included in the Draft Law), these aspects**

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[83] UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "UNCAT"), adopted by the UN General Assembly by resolution 39/46 of 10 December 1984. The UNCAT was ratified by Ukraine on 24 February 1987 and its Optional Protocol on 19 September 2006.

[84] ibid. pars 10 and 26 (General Comment No. 2 of the UNCAT Committee). See also par 202 of the Addendum to the Report of the UN Special Rapporteur on Follow-up to the Recommendations, E/CN.4/2005/62/Add.2, 21 February 2005, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/111/52/PDF/G0511152.pdf?OpenElement and par (d) of the General Recommendations of the Special Rapporteur on Torture (2003) E/CN.4/2003/68, available at http://www2.ohchr.org/english/issues/docs/recommendations.doc.

[85] See par 84 (2008 OSCE Guidebook on Democratic Policing).

[86] See page iv of the 2011 UNODC Handbook on police accountability, oversight and integrity, available at http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf.

[87] See par 86 (2008 OSCE Guidebook on Democratic Policing).

[88] See par 87 (2008 OSCE Guidebook on Democratic Policing).

should be addressed in the Draft Law. It is noted that Chapter 4 of Section 4 of the Draft Law specifies in detail the disciplinary responsibility of police officers and provides for a system of complaints and notification by "citizens, officials [and the] media" (Article 69). While the reference to the media is positive, **complaint mechanisms should be initiated by submissions from any individual,[89] not only citizens; Article 69 of the Draft Law should be amended accordingly** (see also comments on disciplinary proceedings in pars 123-124 *infra*).

65. Moreover, there are no **provisions specifying the conditions and modalities of the public complaints system; the Draft Law should further detail these aspects**, particularly regarding the receipt and processing of complaints, to ensure that the complaint mechanism is transparent and accessible to all.[90]

66. Also, as stated by the Council of Europe Commissioner for Human Rights, "[a] complaints system [against the police] must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against".[91]

67. While the Draft Law envisions the establishment of police commissions (the composition of which should ensure a certain degree of independence, see par 123 *infra*), these are only mandated to conduct disciplinary proceedings against police officers. An effective oversight mechanism should, however, not be limited to disciplining police officers, but should rather also inquire about their responsibility (including criminal), as well as ensure oversight of the police system in general. **The drafters should therefore consider the establishment of an overall Independent Police Complaint Body with comprehensive oversight responsibilities of the entire police system that would be competent to handle complaints in all cases (not only disciplinary ones). In particular, such body should investigate all allegations of discriminatory behaviour, or of abuse of power by the police. The Draft Law should specify that where there is a suspicion of criminal acts having been committed, this body should refer such cases to criminal prosecution.**

68. International and regional standards recommend that the complaint system be independent, adequate, prompt, subject to public scrutiny (open and transparent), and that it should ensure the victim's/complainant's involvement in the process.[92] **The Draft Law could be supplemented in this respect and should also clarify the arrangements for possible co-operation between such a body and the police, in accordance with the independence principle, seriousness of the complaint and resource management implications**.[93] The Opinion of the Council of Europe

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[89] See pages 69-70 of the UNODC Handbook on Police Accountability, Oversight and Integrity.

[90] See Section I B(4) of the UN Economic and Social Council Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (1989) available at https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1989/ECOSOC/Resolution_1989-61.pdf.[90]

[91] See the executive summary of the Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1417857.

[92] ibid. See also par 61 of the Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics which states that "[p]ublic authorities shall ensure effective and impartial procedures for complaints against the police".

[93] ibid. Section 6 of the Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1417857.

Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009)[94] may serve as useful guidance in this respect.

69. The police should also be required by law to report all deaths of individuals that took place in police custody or due to police action to a certain oversight body; penalties should be applied for the failure to do so, or delays in reporting. Complaints and reports of torture or ill-treatment should also be promptly and effectively investigated; even in the absence of an express complaint, an investigation shall take place if there are other indications that torture or ill-treatment may have occurred.[95] **The Draft Law should be amended to include such requirements.**

70. In any case, in order to fulfil their oversight mandate effectively, internal and external oversight institutions require sufficient resources, legal powers and need to be independent from executive influence.

3.4. Education and Capacity Development

71. While it is positive that the Draft Law attempts to regulate police school systems in Articles 85 and 86, this section contains very little information. For instance, there is no mention of the subjects being taught, admission processes, examination, the duration of specialized education, job description of trainers, or any references to specific secondary legislation/regulation on the police school system. **While not every detail of education and capacity development needs to be provided in the Draft Law, it should at least specify the overarching principles and then provide that another law, or secondary legislation will further elaborate these aspects.**

72. More specifically, human rights and fundamental freedoms should be an integral part of all types of basic, advanced and specialized training courses or educational programmes for criminal justice system staff.[96] **The Draft Law could be supplemented to ensure adequate training/evaluation on gender and human rights aspects.** These should ideally include non-discrimination and equality, gender-specific needs and rights of victims,[97] prevention and detection of cases of violence, the specific needs of children, the issue of "secondary victimization", as well as multi-agency co-ordination and co-operation.[98]

73. Finally, certain provisions of the Draft Law relating to the education of police officers seem to contradict each other. For instance, while Article 60 par 2 states that relations arising in connection with the further training of police officers are governed by the laws on education, Article 85 par 2 states that legislation on education does not apply to police schools. This point should be clarified.

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[94] Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1417857.

[95] See par 2 of the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommended by the UN General Assembly resolution 55/89 of 4 December 2000.

[96] See page 23 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

[97] See Article 16 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985 (hereinafter "1985 UN Basic Principles of Justice for Victims of Crime"), available at http://www.un.org/documents/ga/res/40/a40r034.htm. See also page 132 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

[98] *Op. cit.* footnote 9, pars 98 to 101 (Explanatory Report to the Istanbul Convention).

4. Police Powers

4.1. Police Measures

74. Overall, despite some positive examples to ensure transparency and accountability of the police, the language of certain articles of the Draft Law suggests a greater focus on the powers of the police, than on the rights of the individual. For instance, Article 26 of the Draft Law starts out with the statement that "[t]he police is authorized to enter a home or other property without a substantiated court decision only in urgent cases related to the preservation of human life and valuable property". This already implies that entering a home or property is an exception, not the norm, but it would nevertheless be advisable to specify this more clearly; thus, **Article 26 should first state that in principle, the police is not authorized to enter a home or other property, followed by the exceptions to the principle (and related conditions).**

75. Article 24 of the Draft Law provides that the police, within the mandate and in the manner foreseen by the Draft Law, can limit access to certain places, enter a home or other property, take someone under custody or put him/her into a police jail, and take measures of coercion. While the following articles further detail the content of such powers, they also provide overly broad prerogatives, without listing adequate substantive and procedural safeguards to ensure that such powers are not abused (see, for example, pars 76, 79-80, 82-83, and 86 *infra*).

76. First, Article 27 of the Draft Law provides for custody measures (i.e., deprivation of liberty without detention). However, the Draft Law speaks only of general powers in this respect, without providing more information as to the circumstances of such custody measures and the principles guiding them. As noted by the ECtHR, when a broad range of discretion is granted to police officers, there is a clear risk of arbitrariness.[99] The law must therefore indicate with sufficient clarity the scope of any discretion conferred on the competent authorities, and the manner of its exercise.[100] To comply with such requirements, **the Draft Law should indicate that such measures shall only be taken where necessary and proportional to a legitimate aim, should indicate whether an effective oversight mechanism is in place and whether the measure is subject to effective judicial review. Further, the modalities for carrying out the measure should be specified, in order to limit the scope of police officers' discretion**.[101]

77. Moreover, nothing is said in Article 27 of the Draft Law as to the issue of separation of minors from adults and of women from men while in custody, although this is mentioned when addressing police detention (Article 28 par 3 of the Draft Law).[102] This same distinction should be inserted into Article 27 accordingly.

78. Article 27 par 3 of the Draft Law specifies that a policeman is authorized to take away weapons or other items with which a person in custody may harm him/herself or others, regardless of whether their use is forbidden or not. However, the next sentence states that it is forbidden for a policeman to search a person to whom police custody is applied, which would make it difficult for possible weapons or other potentially harmful objects to be detected.

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[99] See par 65 of *Gillan and Quinton v. United Kingdom*, ECtHR judgment of 12 January 2010 (Application no. 4158/05), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{"itemid":["001-96585"]}.
[100] ibid, par 77.
[101] ibid, pars 80-83.
[102] *Op. cit.*, footnote 18, par 62 (2008 OSCE Guidebook on Democratic Policing).

79. More generally, aside from this ban on searching persons in police custody, nothing is said as to the potential powers of search of the police in general (except those of the border police, see pars 98-100 *infra*). In principle, a police search may be justified, so long as it is prescribed by law, necessary and proportionate, and respects human dignity. In that respect, the ECtHR generally analyses whether (i) search measures are necessary and proportional to the legitimate aim, (ii) there is an effective oversight mechanism in place, (iii) the authorization to conduct such searches is subject to effective judicial review and action for damages, (iv) there are temporal and geographical restrictions to the said powers of search, (v) the modalities for carrying out stop and search measures are clearly stated, and (vi) there are any caveats to the decision to stop and search individuals (for instance, the necessity to demonstrate reasonable suspicion).[103] Police searches of individuals should also be undertaken by a police officer of the same gender.[104] Article 28 of the Draft Law covers placement in police detention ("police jail") but does not specify whether a search may be carried out – even though in such circumstances searches may be legitimate. **Unless this is regulated by other legislation, in which case a cross-reference should be included, it may be advisable to supplement the Draft Law in this respect (including by adding reference to the above-mentioned substantive and procedural safeguards).**

80. **As regards searches and seizures in general, outside of custody or detention, they shall in principle be based on court orders.** However, the police should also have the authority to seize certain objects without a court order in certain circumstances, provided that the above mentioned safeguards are provided.

81. Article 28 of the Draft Law regulates police detention. As regards the procedure and conditions of such detention, it is welcome that Article 28 mentions certain rights of detainees and safeguards that are in line with international standards.[105] This is important since both the UN Human Rights Committee[106] and the UN Committee Against Torture recognize that conditions of detention may themselves constitute ill-treatment or, in extreme cases, torture; the wider detention system may also create conditions conducive to torture or ill-treatment, or, on the contrary, an environment in which such acts are not tolerated.[107]

82. At the same time, Article 28 does not specify the maximum duration of such detention; in that respect, it is noted that the ECtHR has held that the maximum duration should be clearly provided in the legislation.[108] **The Draft Law should provide this, or should**

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[103] See pars 80-83 of *Gillan and Quinton v. United Kingdom*, ECtHR judgment of 12 January 2010 (Application no. 4158/05), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{"itemid":["001-96585"]}.

[104] See Rule 19 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("Bangkok Rules"), 22 July 2010, available at http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf, which underline the need for searches to respect the individual's dignity and to be carried out by trained staff of the same gender.

[105] E.g., immediate registration of the detainee; proper recording of all information relating to actions during detention into the file of the detainee; separation of women and men, of minors, of persons suspected to have committed serious criminal offences from others; the right to meet a relative, etc.

[106] The standards specifically referred to in the General Comment are: the Standard Minimum Rules for the Treatment of Prisoners (1957); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); the Code of Conduct for Law Enforcement Officials (1978); and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982). HRC, General Comment No. 21, 1992, §5.

[107] Torture in International Law: A guide to jurisprudence, Jointly published in 2008 by the Association for the Prevention of Torture and the Center for Justice and International Law (CEJIL).

[108] See *Amuur v. France,* ECtHR judgment of 25 June 1996 (Application no. 19776/92), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57988#{"itemid":["001-57988"]}.

include a cross-reference to applicable legislation (presumably the Criminal Procedure Code or the Code of Administrative Offences).

83. Moreover, to avoid being branded as arbitrary, detention under Article 5 of the ECHR must be carried out in good faith, and shall be closely connected to the ground of detention invoked by the government authorities. Furthermore, the place and conditions of detention should be appropriate; and its length should not exceed what is reasonably required for the purpose pursued.[109] The date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting the detention should also be recorded.[110] Based on Article 5 par 2 of the ECHR, a detainee must be told the legal and factual grounds for his arrest or detention in simple, non-technical language that he/she can understand so as to be able to, if he/she sees fit, challenge its lawfulness in court in accordance with Article 5 par 4 of the ECHR.[111]

84. Article 28 mentions some aspects of these rights, e.g. it states that the police shall clarify to the detainee the grounds for detention, and his/her rights and obligations (par 2 (4)), and sets out details on the standards and size of detention conditions and facilities (par 4). At the same time, while the contents of police protocols are specified in Article 27 on police custody, they are not outlined in Article 28. Moreover, Article 27 is much more explicit in stating that an individual arrested shall be informed, in a language that he/she understands, of the reasons for his/her arrest (in comparison, Article 28 par 2 (4) is rather vague). It is recommended to amend **Article 28 of the Draft Law on detention to adequately reflect the safeguards set out in Article 5 of the ECHR.**

85. Additionally, this provision should include the obligation of the police to **notify individuals of a decision on their detention or of their appeal rights.**

86. Furthermore, according to Article 5 par 3 of the ECHR, the detainees should have the right to have the lawfulness of their detention reviewed promptly by a court; this involves the ability to contact a lawyer.[112] Pursuant to recommendations at international and regional levels, for this remedy to be effective, **legal assistance should also be provided.[113] The Draft Law should be enhanced accordingly.** Additionally, Article 5 of the ECHR does not simply require access to a judge to obtain a prompt decision on the legality of detention, but also requires that relevant legislation shall allow anyone detained by court order to have access to proceedings whereby the lawfulness of the continued detention is reviewed (Article 5 par 4); **this should be expressly provided in the Draft Law or in other relevant legislation (such as the Criminal Procedure Code). Moreover, in fulfilling the latter obligation, it is recommended to consider**

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[109] See par 74 of *Saadi v. the United Kingdom*, ECtHR judgement of 29 January 2008 (Application 13229/03), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84709#{"itemid":["001-84709"]}. See also par 49 of *Kim v. Russia*, ECtHR judgement of 17 July 2014 (Application no. 44260/13), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145584#{"itemid":["001-145584"]}.

[110] See par 125 of *Kurt v. Turkey*, ECtHR judgement of 25 May 1998 (Application no. 24276/94), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58198#{"itemid":["001-58198"]}.

[111] See *Nowak v. Ukraine*, ECtHR judgement of 31 March 2011 (Application no. 60846/10), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104289#{"itemid":["001-104289"]}. See also par 156 of the European Union Agency for Fundamental Rights and Council of Europe 2013Handbook on European law relating to asylum, borders and immigration, available at http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf

[112] See *R.U. v. Greece*, ECtHR of 7 June 2011, (Application no. 2237/08). See *Suso Musa v. Malta*, ECtHR judgment of 23 July 2013 (Application no. 42337/12), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122893#{"itemid":["001-122893"]}.

[113] See par 91 of *Pishchalnikov v. Russia,* ECtHR judgment of 24 September 2009 (Application no. 7025/04), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"appno":["7025/04"],"itemid":["001-94293"]}.

introducing periodic, automatic review of detention by a court, unless this is already provided in other relevant legislation.

87. Finally**, the Draft Law does not foresee the possibility for police officers to issue immediately, on the spot, protection or restraining orders (including the removal of perpetrators from their home irrespective of the ownership title to the property),**[114] **when the circumstances so require, subject to later confirmation by a court.** Such protective measures are particularly important in the context of protection and assistance to victims of domestic violence.[115] Including such a possibility would be in line with earlier recommendations made by the OSCE/ODIHR pertaining to preventing and combating domestic violence in Ukraine.[116] **Good practices at the international level suggest that live testimony or a sworn statement of the complainant/survivor should constitute sufficient evidence for the issuance of a protection order and that no further evidence should be required from the victim/survivor.**[117] **It is recommended to enhance the Draft Law accordingly.** The nature and scope of these measures could include the confiscation of weapons,[118] the order that the perpetrator should keep a specified distance from the residence, school, workplace or any other specified place of the victim, children of the victim or other family member, granting temporary custody of children to the non-violent parent,[119] and/or requiring the payment of certain costs and fees.[120]

88. If such measures are introduced, then it would be useful to include relevant information on them in the police database. This would allow the police or other criminal justice officials to quickly determine whether a protection order is in force (or whether other orders have been issued in the past), and take immediate action upon its infringement.[121] For instance, some countries oblige courts to notify a special entity in charge of a central and unified database about all issued orders, which is accessible to all criminal justice actors.[122] It is unclear whether this exists already; in any case, **Article 36 of the Draft Law should refer to such a database for protection/restraining orders.**

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[114] See Section 3.10.3 of the 2012 Handbook for Legislation on Violence against Women issued by UN Women.

[115] See 2011 UN Updated Model Strategies and Practical Measures on the Elimination of VAW.

[116] See par 69 of the OSCE/ODIHR Opinion on the Draft Law of Ukraine on Preventing and Combating Domestic Violence, DV-UKR/232/2013, issued on 31 July 2013, available at http://www.legislationline.org/download/action/download/id/5048/file/232_DV_UKR_31%20July%202013_en.pdf.

[117] *Op. cit.* footnote 114, Section 3.10.7 (2012 UN Women Handbook for Legislation on VAW).

[118] See par 7 of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

[119] *Op. cit.* footnote 66, page 41 (2014 UNODC Blueprint for Action on VAW).

[120] See *op. cit.* footnote 116, par 99 (2013 OSCE/ODIHR Opinion on the Draft Law of Ukraine on Preventing and Combating Domestic Violence). See also par 29, Part IV, "A Framework for Model Legislation on Domestic Violence", Report of the Special Rapporteur on violence against women, its causes and consequences (1996) available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/104/75/PDF/G9610475.pdf?OpenElement. This could include e.g., regulating the offender's access to dependent children, compelling the offender to pay the victim's medical bills, restricting the unilateral disposal of joint assets, prohibiting the perpetrator from using or possessing firearms or other specified weapons; granting the victim possession or use of an automobile, or other essential personal effects; granting temporary custody of children to the non-violent parent with due consideration for the safety of the children; denying visitation rights, or specifying visitation under supervision; requiring the payment of certain costs and fees.

[121] See par 16 (h) of the 2011 UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/RES/65/228, 31 March 2011, available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf.

[122] See e.g., Article 34 of the Law on Domestic Violence Protection of Montenegro, available at http://www.legislationline.org/topics/country/57/topic/7.

4.2. Coercive Measures

89. Chapter 3 (Sub-Chapter 2) of Section 3 of the Draft Law details the coercive measures/use of force that may be taken by the police. As such, they should comply with the the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Regarding the types of permissible coercive measures, Article 29 of the Draft Law lists a wide range of means and Article 30 further states the key principles guiding the use of force, which are overall in line with international standards.

90. However, **the above provisions do not expressly provide that the illegal or disproportionate use of force by the police will trigger criminal liability;[123] this should be expressly stated while providing a cross-reference to the relevant provisions of the Criminal Code (if they so exist). Moreover, instances of the use of force must be investigated independently to determine whether they met the strict guidelines mentioned above.[124] The Draft Law should be supplemented accordingly.**

91. As to the use of firearms, Article 35 of the Draft Law does not mention the obligation to report the use of firearms promptly to the competent authorities, as required by Article 6 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Article 3 (c) of the UN Code of Conduct for Law Enforcement Officials. **This obligation should be added to Article 35, along with the requirement to have such incidents investigated independently.**

92. Article 32 of the Draft Law talks about the use of service dogs and horses, but does not specify the principles guiding their use; these are of particular importance since dogs will be used to search persons (Article 23 par 1) and service horses will be used in the context of policing assemblies (Article 34). In certain countries, the legislation states, for instance, that service horses shall be used exclusively to regulate the movement of persons or forbid their passage.[125]

93. Article 7 par 4 of the Draft Law states that "the Rapid Response Service of the Administrative Police shall have the power to take immediate measures on mass riots termination" ('riots' being understood as implying a violent assembly). Article 33 par 1 (1) of the Draft Law provides for the use of impact munitions "to stop a group violation of public order and riot". The use of the term "group violation of public order" is quite vague and could potentially also imply a peaceful but illegal assembly; **to ensure proportionate police responses, it would be advisable to specify what is meant by "group violation of public order".** In this context, it should be borne in mind that impact ammunition should never be applied towards wholly or largely peaceful assemblies (see also par 97 *infra*).

94. Article 34 of the Draft Law addresses the issue of policing assemblies. However, nothing is said in this provision or in the Draft Law in general about the positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place. The OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly reiterate **the positive duty of the state in that respect and recommend that this should be expressly stated in any relevant domestic legislation pertaining to**

[123] See par 74 of the OSCE Guidebook on Democratic Policing.
[124] See par 74 of the 2008 OSCE Guidebook on Democratic Policing, available at http://www.osce.org/spmu/23804?download=true.
[125] See e.g. Article 66 of the Law on Internal Affairs of Montenegro (2012) available at www.legislationline.org/download/action/download/id/5606/file/251_GEND_MNG_10Sept2014_Annex_en.pdf.

freedom of assembly and police powers.[126] It is recommended to supplement the Draft Law in that respect.

95. Article 34 further mentions certain "coercive measures" (service horses and means of active defense) which may be used against participants of a peaceful assembly. Apart from the general principles guiding the use of any coercive measures (Article 30), these measures of policing assemblies are described in relatively vague terms. It is recalled, in this context, that in principle, the policing of assemblies shall be informed by the principles of legality, necessity, proportionality and non-discrimination.[127]

96. Moreover, it would be advisable to supplement the Draft Law by expressly including some overarching principles to ensure that the policing of assemblies is carried out in accordance with international standards. First, **Article 34 does not specify which body of the police will be in charge of policing assemblies (presumably the local or the administrative police); the Draft Law should include this information.** In this context, international good practices suggest the need for clearly defined law-enforcement command structures to ensure accountability for operational decisions in the context of policing assemblies.[128] Second, **unless there is a clear and present danger of imminent violence, law-enforcement officials should not intervene to stop, search or detain protesters *en route* to an assembly**.[129] Third, **if assemblies remain peaceful, they should not be dispersed by law-enforcement officials.**[130] Finally, **the Draft Law should clearly state that the dispersal of an assembly should be a measure of last resort[131] and a wide range of progressive measures should be available before termination or dispersal, or any use of force** (see also comments on the use of force in pars 97 *infra*).[132] The above principles should be expressly stated under Article 34 of the Draft Law.

97. As regards the use of force in the context of assemblies, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that "[i]n the dispersal of assemblies that are unlawful but nonviolent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary […;] [i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary".[133] **If dispersal is deemed necessary, the assembly organizers and participants should be clearly and audibly informed about the order to disperse prior to any intervention by law-enforcement personnel; participants should also be given reasonable time to disperse voluntarily; only if they then fail to disperse may law enforcement officials further intervene**.[134] Moreover, **under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene**. Article 34 mentions that

[126] *Op. cit.* footnote 20, par 31 (2010 Guidelines on Freedom of Peaceful Assembly). See also par 13 of the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Law on Freedom of Peaceful Assembly of Ukraine, no. 638/2011, issued on 17 October 2011, available at:

[127] ibid. par 145 (2010 Guidelines on Freedom of Peaceful Assembly).

[128] ibid. par 151 (2010 Guidelines on Freedom of Peaceful Assembly).

[129] See e.g., *Nisbet Özdemir v. Turkey*, ECtHR judgment of 19 January 2010 (Application no. 23143/04), where the applicant was arrested while on her way to an unauthorized demonstration at Kadıköy landing stage in Istanbul in February 2003 to protest against the possible intervention of United States forces in Iraq (Article 11 of the ECHR was considered to have been violated).

[130] *Op. cit.* footnote 20, par 165 (2010 Guidelines on Freedom of Peaceful Assembly).

[131] ibid. pars 159 and 165 (2010 Guidelines on Freedom of Peaceful Assembly).

[132] ibid. par 156 (2010 Guidelines on Freedom of Peaceful Assembly).

[133] *Op. cit.* footnote 15, pars 13-14 (1990 UN Basic Principles on the Use of Force and Firearms).

[134] *Op. cit.* footnote 20, par 168 (2010 Guidelines on Freedom of Peaceful Assembly).

only service horses and means of active defence (anti-shock shield and armoured shield) can be used during an assembly. It is noted that international standards concerning the use of firearms are equally applicable to the use of other potentially harmful techniques of crowd management, such as horses.[135] The Draft Law should thus specify under which circumstances and criteria the use of service horses would be considered lawful in the context of policing assemblies. Moreover, **the above-mentioned principles relating to the policing of assemblies should be reflected in the Draft Law in general;** this would be particularly relevant given the findings of the 2014 Report on the OSCE Human Rights Assessment Mission.[136]

4.3. Special Mandate of the Border Police

a) Border Checks

98. Article 23 of the Draft Law lists the powers of border police officers. These include, among others, the powers to check documents and examine persons, vehicles and cargoes. Moreover, Article 14 par 5 of the Draft Law states that "[t]he jurisdiction of the border police covers all the territory of the state", which means that such measures may potentially be carried out anywhere on the territory of Ukraine and at any time.

99. Overall, police checks and examinations/searches shall be exercised consistently with ECHR obligations; particularly, such examination/searches shall be carried out in full respect of human dignity and the principles of proportionality and non-discrimination.[137] The ECtHR has considered that the use of coercive powers "to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life", and that the *public* nature of a search may "compound the seriousness of the interference because of an element of humiliation and embarrassment".[138] Such interference is therefore justified only if it is in accordance with the law, pursues a legitimate aim and is necessary in a democratic society in order to achieve that aim.

100. Certain powers listed in Article 23 of the Draft Law are explicitly limited to the state border,[139] while others are not.[140] Also, the Draft Law does not mention the circumstances (e.g., the behaviour of an individual, or the specific circumstances giving rise to a risk of breach of the public order) which would lead to the exercise of powers of search and/or checking of documents, nor does it state in which timeframe and

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[135] ibid pars 176-177 (2010 Guidelines on Freedom of Peaceful Assembly).

[136] See page 14, OSCE/ODIHR and OSCE High Commissioner on National Minorities (HCNM) Report on the Human Rights Assessment Mission in Ukraine (May 2014), available at http://www.osce.org/odihr/118476?download=true.

[137] See par 67 of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, ECtHR judgment of 28 May 1985 (Application nos. 9214/80 9473/81 9474/81) available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57416#{"itemid":["001-57416"]}. See also par 8 of UN Human Rights Committee General Comment No. 16: Article 17 (Right to Privacy), 8 April 1988, available at http://www.refworld.org/docid/453883f922.html; pars 4 and 4.5 of OSCE Ljubljana Document (2005), "Border Security and Management Concept: Framework for Co-operation by the OSCE Participating States"; and par 340 of the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders (2014), available at http://www.osce.org/odihr/119633?download=true.

[138] See par 63 of *Gillan and Quinton v. United Kingdom*, ECtHR judgment of 12 January 2010 (Application no. 4158/05), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{"itemid":["001-96585"]}.

[139] i.e., checking that foreigners and stateless persons observe immigration, entry/exit and transit rules as well as registering them as well as their passport details (Article 23 par2 (3) and (4)).

[140] For example, checking documents and examining persons, vehicles, or cargoes (Article 23 par 2 (1) and (2)).

conditions such powers may be exercised.[141] While crossing a border, a person will know that he/she, along with his/her belongings, may be searched/checked before crossing and thus may be seen as implicitly consenting to such a search; this is qualitatively different from powers of search exercised anywhere and at any time, without notice and without leaving individuals any choice as to whether or not to submit to such search.[142]

101. As mentioned above (see par 76 *supra*), when broad discretion is granted to police officers, there is a clear risk of arbitrariness;[143] the legislation must therefore indicate with sufficient clarity the scope of such discretion and the manner of its exercise.[144] OSCE participating States have also committed to "remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners" and "to keep such restrictions to a minimum".[145] **In order to limit the risk of arbitrariness in the exercise of such wide powers of search/checking by the border police, these powers should be more clearly circumscribed and above-mentioned substantive and procedural safeguards (see pars 75-86 *supra*) should be expressly stated in the Draft Law.**

b) Expulsion/Return

102. Article 23 par 5 of the Draft Law states that the border police "forcefully returns to the country of origin or a third country foreigners and stateless persons detained within controlled border areas during or after trying to illegally cross the state border of Ukraine". It does not state any conditions or limitations to this power. However, there are many circumstances where such expulsion would violate international human rights standards.

103. First, while there is no right to asylum as such, turning away or expelling an individual, whether at the border or elsewhere within a state's jurisdiction, and thereby putting him/her at risk of torture or inhuman or degrading treatment or punishment if expelled, is prohibited by Article 3 of the ECHR, and may also raise issues under the right to life under Article 2 of the ECHR. As per the well-established case law of the ECtHR, a state is required to ensure that the person in question would not face a real risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR in the event of repatriation or transfer to another state; this implies an obligation not to expel the individual to that country.[146] **This should be clearly stated in the Draft Law (or, if already specified in other laws, cross-references to these laws should be added).**

104. Such dangers are particularly relevant in the cases of refugees and asylum-seekers.[147] Moreover, the authorities should also review whether the said persons are potential or identified victims of trafficking in human beings.[148]

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[141] See the case of *Gillan and Quinton v. United Kingdom*, ECtHR judgment of 12 January 2010 (Application no. 4158/05), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{"itemid":["001-96585"]}, in particular pars 79-87.

[142] ibid par 64.

[143] ibid par 65.

[144] ibid par 77.

[145] See par 33 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991).

[146] See par 114 of *Hirsi Jamaa and Others v. Italy,* ECtHR judgment of 23 February 2012 (Application no. 27765/09), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231#{"itemid":["001-109231"]}.

[147] Pursuant to Article 33 par 1 of the 1951 Convention relating to the Status of Refugees, to which Ukraine acceded on 10 Jun 2002, "[n]o Contracting State shall expel or return ('*refouler*') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a

105. Regarding stateless persons, Article 31 of the 1954 UN Convention relating to the Status of Stateless Persons, to which Ukraine is party,[149] prohibits the expulsion of stateless persons who are *lawfully* on the territory of a state. The ECtHR, on the other hand, takes into account the stateless status of a person as one of the criteria to assess whether there exists a violation of Article 3 of the ECHR.[150] More generally, the removal of a person from a country where close family members are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 par 1 of the ECHR.[151]

106. **Moreover, the Draft Law should provide some substantive and procedural safeguards circumscribing the expulsion measures, which should at a minimum include the review of whether the person would be under a real risk of being subjected to torture and inhuman or degrading treatment, or to death, or other forms of persecution in the target state. In any case, the assessment of the situation must be individualised, and should take into account all evidence and circumstances, including whether the persons has established family ties in Ukraine.[152]**

107. It is noted that Article 6 of the ECHR, which guarantees the right to a fair hearing before a court, has been held to be inapplicable to asylum and immigration cases; in such cases, Article 13 of the ECHR is therefore applicable, which provides the right to an effective remedy before a national authority.[153] This means that the persons subject to expulsion/return measures should be able to effectively challenge such measures; any such review should automatically have suspensive effect.[154] According to recommendations made at international and regional levels, legal assistance should be provided, in order to ensure the effectiveness of this remedy.[155]

c) *Conditions of Detention at Controlled Border Areas*

108. The detention of non-nationals, if accompanied by adequate safeguards for the persons concerned, is generally considered acceptable, for instance to prevent unlawful

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particular social group or political opinion". See also Council of Europe, Resolution on Asylum to Persons in Danger of Persecution, adopted by the Committee of Ministers of the Council of Europe on 29 June 1967 which states that member States should "ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion". See also par 6 of the UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, available at http://www.refworld.org/pdfid/45f17a1a4.pdf.

148 See CoE Convention on Action against Trafficking in Human Beings (which Ukraine ratified on 29 November 2010). Article 10 par 2 specifically provides that if the competent authorities have "reasonable grounds for believing that a person has been a victim of trafficking", the person may not be removed from the country until it has been determined whether he or she has been a victim of a trafficking offence. Expulsion is also prohibited during the recovery and reflection period (Article 13 of the Convention).

149 Ukraine acceded to the Convention on 10 June 2002.

150 See par 108 of *Auad v. Bulgaria,* ECtHR judgment of 11 October 2011 (Application no. 46390/10), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106668#{"itemid":["001-106668"]}.

151 See par 114 of *Al-Nashif and others v Bulgaria,* ECtHR judgment of 20 June 2002 (Application no. 50963/99).

152 See par 118 of the European Union Agency for Fundamental Rights and Council of Europe 2013Handbook on European law relating to asylum, borders and immigration, available at http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf.

153 See page 95 of the European Union Agency for Fundamental Rights and Council of Europe 2013Handbook on European law relating to asylum, borders and immigration, available at http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf.

154 See par 67 of *Gebremedhin v. France*, ECtHR judgement of 26 April 2007 (Application no. 25389), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"appno":["25389/05"],"itemid":["001-80333"]}

155 See 2005 Council of Europe Twenty Guidelines on Forced Return (Guideline 9).

immigration. However, international obligations need to be complied with, in particular the 1951 Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights.[156] "Controlled border areas" where persons are detained fall under Ukrainian jurisdiction and as such are subject to the guarantees provided by the ECHR.[157] More specifically, detention at controlled border areas is subject to Article 5 par 1 of the ECHR as this implies a person's confinement in a particular restricted space for a potentially not negligible length of time, without the person having validly consented to such confinement.[158]

109. The Draft Law does not clearly specify whether the safeguards provided under Article 28 of the Draft Law for police detention would also apply to the detention at controlled border areas. In any case, to avoid being branded as arbitrary, detention of non-nationals under Article 5 par 1 (f) of the ECHR must be carried out in compliance with the above-mentioned safeguards regarding detention (see pars 82-86 *supra*). It must be highlighted that immigration legislation **should allow ordinary courts to review the conditions under which non-nationals are held, impose a limit on the duration of their detention and provide for legal, humanitarian and social assistance.[159] The legislation should also clearly establish the procedure for ordering and extending detention with a view to deportation, setting time-limits for such detention and obliging national authorities to communicate the reasons for the detention to the detainee.[160] In addition, if possible, the border police should be encouraged to replace detention with a less drastic measure, particularly in cases where the detainee is a minor.[161] The authorities should also be diligent and regularly review whether it is realistically possible to effect expulsion into another country[162]; should this not be possible, e.g. due to some of the human rights consideration mentioned in pars 102-105 *supra*, then the person should be released. The Draft Law should be supplemented to include such substantive and procedural safeguards, unless they are already provided in other legislation (in which case the Draft Law should include cross-references to such provisions).**

110. Finally, as in all cases of detention, but even more so due to the nature of the persons being detained in controlled border areas, **the detention in such areas should fulfil minimum criteria so as not to be considered as constituting inhuman and degrading treatment.** These include, at a minimum, having an external area for walking or taking physical exercise; internal catering facilities; the possibility for contact with the outside world,[163] for instance a telephone; access to blankets or clean

[156] See pars 216-218 of *M.S.S. v. Belgium and Greece,* ECtHR judgment of 21 January 2011 (Application no. 30696/09).
[157] See par 49 of *Amuur v. France,* ECtHR judgment of 25 June 1996 (Application no. 19776/92), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57988#{"itemid":["001-57988"]}.
[158] See par 117 of *Stanev v. Bulgaria*, ECtHR judgement of 17 January 2012 (Application 36760/06), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":["898586"],"itemid":["001-108690"]}.
[159] See *Amuur v. France,* ECtHR judgment of 25 June 1996 (Application no. 19776/92), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57988#{"itemid":["001-57988"]}.
[160] See *Abdolkhani and Karimnia v. Turkey*, ECtHR judgement of 22 September 2009 (Application no. 30471/08), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-94127#{"itemid":["001-94127"]}.
[161] See *Rahimi v. Greece*, ECtHR judgement of 5 April 2011 (Application no. 8687/08), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"languageisocode":["FRA"],"appno":["8687/08"],"itemid":["001-104366"]}.
[162] See *Kim v. Russia*, ECtHR judgement of 17 July 2014 (Application no. 44260/13), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145584#{"itemid":["001-145584"]}.
[163] See par 104, *Riad and Idiab v. Belgium*, ECtHR judgment of 24 January 2008 (Application nos. 29787/03 29810/03) available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108395#{"itemid":["001-108395"]}.

sheets or sufficient hygiene products/facilities;[164] and access to natural light.[165] Detention facilities should also not be overcrowded. Other criteria such as the vulnerability of the person (due for instance to the asylum seeker status,[166] the fact for a woman to be pregnant,[167] or a person with disabilities[168]) have to be taken into account by the authorities. Moreover, when children are involved, while they should not be separated from their parents, they should still be placed in a facility that is specifically adapted to their needs and suited for their age, and separate from other adults.[169] **The Draft Law should ensure that the above detention criteria are reflected, or, should at least contain references to relevant other legislation, as applicable.**

4.4. Assistance to Victims

111. The Draft Law does not specifically mention the police's duty to assist victims, including informing them of their rights. **Unless provided by other legislation or by the Criminal Procedure Code (in which case a cross-reference should be included in the Draft Law), this general principle should be reflected**. More specifically, such provisions should oblige the police to inform the victims/injured parties not only of their rights,[170] but also about available social and legal protection and support services at their disposal (including legal aid[171]and shelters/accommodation); the possibility and procedure to seek protective measures[172] and to obtain full and effective reparation;[173] the progress of their complaint, investigations and judicial proceedings;[174] and finally, about the temporary or definite release or escape of the perpetrator, at least in cases where this puts the victims and their families, and others in potential danger. **The Draft Law should be supplemented accordingly.**

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[164] See *S.D. v. Greece*, ECtHR judgment of 11 June 2009 (Application no. 53541/07), available at http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2765162-3025664#{"itemid":["003-2765162-3025664"]}.

[165] See par 46 of *Horshill v. Greece*, ECtHR judgement of 1 August 2013 (Application no. 70427/11), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122973#{"itemid":["001-122973"]}.

[166] See *M.S.S. v. Belgium and Greece,* ECtHR judgment of 21 January 2011 (Application no. 30696/09).

[167] See *Mahmundi and Others v. Greece,* ECtHR judgement of 31 July 2012 (Application no. 14902/10) available at http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-112526#{"itemid":["001-112526"]}.

[168] See *Asalya v. Turkey*, ECtHR judgement of 15 April 2014 (Application no. 43875/09), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142399#{"itemid":["001-142399"]}.

[169] See pars 73-74 of *Muskhadzhiyeva and Others v. Belgium*, ECtHR judgement of 19 January 2010 (Application no. 41442/07), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"dmdocnumber":["861160"],"itemid":["001-96774"]}. See also pars 62-63 of *Popov v. France,* ECtHR of 19 January 2012 (Application nos. 39472/07 39474/07) available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108710#{"itemid":["001-108710"]}.

[170] See the 1985 UN Basic Principles of Justice for Victims of Crime; see also Annex to the UN Economic and Social Council (ECOSOC) Resolution 2005/20, 22 July 2005 (hereinafter "2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime"), available at http://www.un.org/en/pseataskforce/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf.

[171] As defined in par 8 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted by General Assembly resolution 67/187 of 20 December 2010, available at http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf, which state that "the term 'legal aid' includes legal advice, assistance and representation […] for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require".

[172] See pars 51-54 of the OSCE/ODIHR Opinion on Compensation of Damages for Victims of Criminal Acts in Montenegro (26 July 2014), available at http://www.legislationline.org/documents/id/19167.

[173] *Op. cit.* footnote 115, Section 3.8.2 (2012 UN Women Handbook for Legislation on VAW). See also OSCE/ODIHR Opinion on Compensation of Damages for Victims of Criminal Acts in Montenegro.

[174] *Op. cit*. footnote 97, Articles 5 and 6(a) (1985 UN Declaration on Victims of Crime). See also *op. cit.* footnote 170, Article 19 (2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).

112. Children should also be able to express their views in every decision that affects them, as stated in Article 12 of the UN Convention on the Rights of the Child. The fact that a child is very young or in a particularly vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, is stateless etc.) does not deprive him or her of this right, nor should it reduce the weight given to a child's views in determining his or her best interests.[175] Child-sensitive provisions should in particular specify that **the police shall keep the child informed about the process and seek his/her views regarding the way forward at all stages of the criminal investigations/proceedings. Moreover, any decision concerning a child must be duly and explicitly motivated, and include all factual circumstances, elements relevant for the best-interest assessment, and how these elements have been weighed in the given case.[176] The Draft Law should be supplemented to that effect** and the police should be adequately and systematically trained on and sensitized about children's rights.[177]

4.5. Data Collection and Processing

113. Article 21 of the Draft Law provides a description of the general police mandate, which includes "data processing". In this context, it is important that the storage and use of personal data respects international standards on personal data protection. This includes the police's obligation to maintain the privacy and confidentiality of victims' data.

114. According to Article 36 of the Draft Law, the processing of information shall be carried out in accordance with the provisions of the law on personal data protection of Ukraine. However, such legislation should also be compliant with international standards, particularly the conditions provided for by the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[178]

115. The Draft Law does not specify the guiding principles for data collection, retention and sharing. Unless provided by other legislation, it would be advisable to revert to good practices in terms of data collection in criminal cases.[179] These state that generally, data should, at a minimum, be **disaggregated by sex (of the victim and of the perpetrator), age, and type of criminal offences and should indicate the relationship between the perpetrator and the victim, for instance in cases of domestic violence.**[180] This is also key to ensuring that functional mechanisms for storing and sharing information and

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[175] See par 54 of the General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (hereinafter "CRC Committee General Comment No. 14 (2013)"), available at http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

[176] ibid. pars 97-98 (CRC Committee General Comment No. 14 (2013)).

[177] ibid. (CRC Committee General Comment No. 14 (2013)).

[178] See also CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28 January 1981, Article 5, ratified by Ukraine on 30 September 2010 and entered into force on 1 January 2011, available at http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm, and CoE Committee of Ministers, Recommendation R (87) 15E on regulating the use of personal data in the police sector, Strasbourg, 17 September 1987, available at https://wcd.coe.int/ViewDoc.jsp?id=704881&Site=CM. See also par 46 of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the UN Human Rights Council, 17 May 2010, A/HRC/14/46, available at http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/14/46.

[179] See e.g., Bastick, Megan, *Integrating Gender into Oversight of the Security Sector by Ombuds Institutions & National Human Rights Institutions* (Geneva: DCAF, OSCE, OSCE/ODIHR, 2014), available at http://www.osce.org/odihr/118327?download=true.

[180] ibid. Recommendations on pages 21-23 (2008 CoE Study on Administrative data collection on domestic violence).

tracking cases of criminal offences are in place to aid investigations and avoid delays in criminal proceedings.[181]

5. Working Environment, Police Career and Disciplinary Responsibility

5.1. Selection, Appointment and Career Management

116. Articles 43 to 48 refer to principles guiding the selection of police officers. It would be advisable to **add under Article 43 par 4 that promotion shall be based on experience, education and performance**, to ensure that objective criteria are considered in that process. Also, **Article 45 of the Draft Law should clearly state the pre-conditions that qualify applicants for a position within the police.**

117. Article 52 of the Draft Law regulates the ranking system. Article 53 provides that "the term of being in each special rank is eight years" which seems to suggest that there is an automatic promotion after eight years. This should not be the case. Rather, **promotion should be merit-based and dependent upon a proper performance evaluation; similarly, rank should be based on the level of responsibility required in a position. Article 53 should be supplemented accordingly**. Article 61 of the Draft Law seems to imply that performance appraisals only take place every four years, with no other performance appraisals being conducted in the meantime. Such an overly long period would not allow for the early detection of cases of bad performance, or ongoing opportunities to develop and improve competency. The drafters should re-consider such lengthy time intervals in the appraisal process.

118. As to the procedure for evaluation, Article 62 of the Draft Law provides that interviews shall be organized before the Attestation Commission. However, there is no mention as to the **content of such interviews or clear performance indicators which would be linked to the specific job description (or better, based on job analysis/defined requirements for each post). Article 62 should be supplemented in that respect.**

119. Article 62 of the Draft Law does not provide the possibility for police officers to appeal the decision of the Attestation Commission to another body (even though it may have grave consequences, including their dismissal according to Article 62 par 4). Moreover, the Article does not provide for any form of warning. It would be better if any decision of the Attestation Commission amounting to a "sanction", for instance dismissal, would be adopted by another body, such as the one in charge of disciplining police officers (see also comments on disciplinary proceedings in pars 123-124 *infra*). Alternatively, at a minimum, such measure should be subject to review by an independent body or a court.

120. Article 65 of the Draft Law provides for a system of monetary reward "for impeccable and efficient service". This could potentially create increased opportunities for corruption; **the drafters should re-consider the adoption of such a system.**

121. As mentioned in pars 26-27 *supra*, it is important that gender is mainstreamed in the policies and regulations and organizational culture with regard to recruitment, career advancement, working conditions and retention of staff, especially women and ethnic minorities.[182] Moreover, regular assessments should be conducted to determine the

[181] See page 27 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

[182] See page 61 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

impact of policies and practices on women and men, as well as minorities, within the organization and in the community, to determine necessary adjustments to ensure equitable application.

5.2. Disciplinary Proceedings

122. It is welcome that the Draft Law provides for the disciplinary responsibility of police officers in cases of misconduct. International and regional documents recommend that disciplinary measures brought against police staff shall be subject to review by an independent body or a court.[183]

123. Article 83 of the Draft Law envisions the establishment of police commissions in charge of conducting disciplinary proceedings; they are composed of five members, including at least two civil society representatives (human rights defenders), appointed by different entities from the executive and legislative branches, as well as bar associations. Particularly, one human rights defender shall be appointed by the relevant local entity, and another by the Ukrainian Parliament Commissioner for Human Rights. Such composition should in principle ensure the independence of the commissions, provided that **the selection of the members from civil society and from the bar association is made through a fair, professional, public and transparent process to limit politicization, corruption or other private arrangements.**[184] **The Draft Law could be supplemented in that respect**, for instance by providing for a public call for applications and detailing the criteria and procedure for such a selection.

124. Article 70 of the Draft Law seems to suggest that the police unit chief also plays a role in terms of investigating disciplinary cases and deciding disciplinary sanctions; however, the various mandates of the police commissions and of the police unit chief in this respect are not clear. While not provided for in the Draft Law, it is acknowledged at the regional and international levels that an overall Independent Police Complaint Body should be in charge of receiving all complaints or starting inquiries *ex officio*, if needed, including in matters of disciplinary proceedings; such a body should also co-operate with the police.[185] **The drafters should discuss the institutional framework relating to oversight, including complaint mechanisms as well as disciplinary proceedings, and clarify the respective roles and responsibilities of entities involved.**

125. Article 66 par 6 of the Draft Law provides that disciplinary liability is incurred in cases of non-compliance with legislation on preventing and combating corruption, including the illegal acquisition of property or services from individuals and legal entities for the purpose of financial, technical or other support for the police. Corruption cases, however, fall under the scope of the Criminal Code.[186] They should thus be **removed as**

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[183] See par 33 of European Code of Police Ethics (2001). See also par 143 of the 2008 OSCE Guidebook on Democratic Policing.

[184] See par 58 of the Joint OSCE/ODIHR-CoE-Venice Commission Opinion on the Draft Law on Disciplinary Liability of Judges of the Republic of Moldova, CDL-AD(2014)006, of 24 March 2014, adopted by the Venice Commission at its 98h Plenary Session (21-22 March 2014) available at http://www.legislationline.org/download/action/download/id/5196/file/Joint_VC_Opinion_JUD_MLD_24March2014_en.pdf.

[185] See Section 6.4 of the Opinion of the Council of Europe Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1417857.

[186] E.g., criminal offences related to bribery (Articles 368.3 and 368.4 and Article 369 of the Criminal Code), undue influence (Article 369.2 of the Criminal Code), laundering of proceeds from crime (Articles 209 and 306 of the Criminal Code).

grounds for disciplinary responsibility from Article 66, while another provision should specify that cases of corruption of police officers are subject to criminal responsibility.

126. The Draft Law does not mention the possibility of having disciplinary decisions reviewed (despite the potentially grave impact they may have on the career of the police officer, i.e., dismissal).[187] While Article 6 of the ECHR is usually not applicable to such cases,[188] **it would be advisable to provide for some type of review process given the serious consequences that such a decision may have.**

127. Finally, Article 72 of the Draft Law refers to the rights of the police officers subjected to official investigations. These should include the right to assistance of an attorney or other authorized representative.

6. Final Comments

6.1. Gender Neutral Legislative Drafting

128. It is noted positively that overall, the Draft Law uses gender neutral drafting. However, certain individual provisions still use only the male gender. This is not in line with general international practice, which normally requires legislation to be drafted in a gender neutral manner, by referring to both genders equally. Unless they are the result of inaccurate translation, it is recommended to review the respective provisions and replace the words "policemen" by "police officer" and as appropriate "his" by "his or her" or other gender neutral formulation.

6.2. Final Provisions

129. Regarding the final provisions, it is laudable that the Draft Law expressly repeals various existing legislative acts and other pieces of legislation. However, it is not clear whether this is the result of a full impact assessment, which would have helped identify an exhaustive list of all legal acts which should be amended or repealed.

130. It is also welcome that the Draft Law expressly refers to the development of secondary legislation or other tools,[189] which should help ensure the effective implementation of the Draft Law. At the same time, it may be beneficial to prepare/develop a list of secondary legislation and other relevant documents, which could be appended to the Draft Law with a specific and realistic adoption schedule. Such secondary legislation and documents should ideally be ready for adoption at the same time as the Draft Law.

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[187] The Human Rights Committee has considered that civil proceedings are compatible with the ICCPR, as long as the said decisions are capable of review on at least one occasion (see par18 of General Comment No. 32 of the Human Rights Committee). See also e.g. in the case of a decision on disciplinary responsibility taken by a Bar Council, par 53 of *H. v. Belgium*, ECtHR Judgment of 30 November 1987 (Application No. 8950/80), available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57501#{"itemid":["001-57501"]}.

[188] For instance, disciplinary proceedings against military personnel, *Sukϋt v. Turkey,* ECtHR decision of 11 September 2007 (Application no. 59773/00).

[189] E.g., procedures for running inspections/secret inspections to be approved by the Cabinet of Ministers (Article 4 par 3), approval of the number of police officers by the Cabinet of Ministers (Article 5 par 3), unified standards of organization of work of local police (Article 6 par 7).

6.3 Financial Impact Assessment and Participatory Approach

131. Aside from a few articles of the Draft Law referring to the sources of funding/budgeting,[190] the modalities for funding its implementation are not clear, nor are relevant sources of funding identified for actions undertaken by other entities under Article 6 of the Draft Law. **It is essential that adequate funding be procured for implementation of the law, once passed.** Moreover, Article 18 of the Draft Law specifically provides for the preparation of a "police activity programme" but does not mention the amount of financial or human resources required for implementing the programme; this provision should be amended, to ensure that such information is also included in the programme.

132. Further, it is not clear whether a full financial impact assessment has been carried out to analyze the funding needed to ensure the implementation of the Draft Law, including the financial and human costs.[191] **More generally, policy-makers and other stakeholders should carry out a full impact assessment of planned legislation**, including a gender and social impact assessment, adressing specifically the impact of such laws, particularly on indigenous peoples, and minorities, including Roma and other ethnic, linguistic or religious minorities, or internally displaced persons.

133. Moreover, it is worth reiterating that OSCE commitments require legislation to be adopted "as the result of an open process reflecting the will of the people, either directly or through their elected representatives" (Moscow Document of 1991, par 18.1). Particularly legislation that may affect a wide array of human rights and fundamental freedoms, as is the case here, should undergo extensive consultation processes, including with the general public, and the most vulnerable and marginalized groups.[192] **These groups of people should be fully consulted, informed, and able to submit their views prior to the adoption of the Draft Law.** Public discussion and an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the institution. **Community and civil society participation in any future amendment process will also be essential.**

134. Finally, given the inter-dependency of the work of all entities of the criminal justice system, the adoption of the Draft Law alone is unlikely to be sufficient if not complemented and synchronized with reform in other sectors of the Criminal Justice System,[193] in particular as regards criminal and criminal procedure codes.

[END OF TEXT]

[190] Article 41 of the Draft Law (Uniform and police badges), Article 60 of the Draft Law (Professional training of a police officer) and Article 64 pars 5 and 6 relating to disability, death and burial of a police officer.

[191] See page 14 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

[192] See page 13 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

[193] See par 18 of the 2008 OSCE Guidebook on Democratic Policing and page 13 of the 2013 OSCE TNTD/SPMU Publication on "Police Reform within the Framework of Criminal Justice System Reform", July 2013, available at http://www.osce.org/secretariat/109917?download=true.

Draft (as of September 2014)

Law of Ukraine "On Police and Police Activity"

This law defines the legal basis for the organization, system, mandate and order of the police activity in Ukraine as well as the status of police personnel.

SECTION 1. GENERAL PROVISIONS

Article 1. Status of police

1. Police is a central executive authority body performing functions of securing public order set by this Law, and created pursuant to the Law on Central Executive Authority Bodies and Executive Bodies of Local Councils performing functions of securing public order set by this Law and created pursuant to the Law on Local Self-Government.

2. Organization, system, mandate and order of police activity shall be defined by the Constitution of Ukraine, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, this and other laws of Ukraine.

Article 2. Tasks and functions of police functions

1. The task of police is to provide police services on securing public order by ensuring safety of persons, society and state from unlawful acts.

2. With the aim to secure public order police shall perform the following functions:

1) precaution, prevention, detection and termination of administrative and criminal offences;

2) carrying out proceedings in the cases on administrative offences;

3) investigation of criminal offences;

4) protect and ensure safety of:

a) state authorities, local authorities, diplomatic missions and consular posts of foreign countries on the territory of Ukraine, foreign diplomatic missions of Ukraine;

b) parties in criminal proceedings

5) escorting detainees and convicted persons;

6) exercising border control and overseeing crossing of Ukrainian borders by persons, vehicles and cargoes.

Within the limits of these functions police shall also cooperate with international and foreign police organizations.

Article 3. Principles of police activity

1. Police activity shall be based on the following principles:

1) Observance of human rights and fundamental freedoms;

2) Rule of law;

3) Legalness;

4) Non-partisan and political neutrality;

5) Openness;

6) Cooperation with civil society;

7) Unity of command together with collegiality in resolving certain issues of its activity.

Article 4. State policy in the sphere of police activity

1. Police activity shall be directed and coordinated by:

1) ministry responsible for state policy in the sphere of protection of public order and protection of persons, society and state from unlawful infringements;

2) ministry responsible for the state policy in the sphere of finance;

2. Central executive authorities mentioned in part 1 of this article:

1) provide for the legal regulation of police activity in cases foreseen by the Law;

2) define priority spheres of police activity development;

3) inform the public and provide clarifications with regard to implementation of the state policy in the sphere of police activity;

4) generalize the practice of implementation of legislation in the sphere of police activity, elaborate proposals concerning the improvement and amendment, in the set order, of draft legislative acts, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine for the consideration of the President of Ukraine and the Cabinet of Ministers of Ukraine;

5) control police activity in the way foreseen by this Law.

3. Control over the activity of police shall be realized in the form of inspection and secret inspection of police officers integrity. Along with this, 20 % of the group of inspection shall be comprised of human rights defenders.

Provisions on the order of running inspections and the order of running secret inspections of police officers integrity shall be approved by the Cabinet of Ministers of Ukraine.

SECTION 2. PRINCIPLES OF POLICE ORGANIZATION

Chapter 1. System and structure of police

Article 5. Police system and number of police employees and officers

1. Police system includes:

1) Local police;

2) Administrative police;

3) Criminal police;

4) Financial police;

5) Border police;

2. National guard of Ukraine shall perform police functions of securing public order according to the law on the National Guard of Ukraine in accordance with the provisions of this Law.

3. Local council approves the number of local police employees and officers in accordance with the provisions of this Law. In cases stipulated by part 2 of article 6 of this Law, the number of local police officers shall be set by the administrative contract.

The Cabinet of Ministers of Ukraine approves the number of Administrative, Criminal, Financial and Border police officers in accordance with the provisions of this law.

Article 6. Local police

1. Local police — executive body of local council created within each community.

2. Two or more local councils of neighbouring communities shall have the right to conclude an administrative contract with each other on the creation of one local police the jurisdiction of which would cover the territories of the mentioned communities.

3. Local police shall be comprised of:

1) service of district inspectors;

2) patrol service.

4. Local police secures public order through:

1) precaution, prevention, detection and termination of administrative and criminal offences on the territory of relevant community, including sections of district automobile roads as well as forest and water facilities of local importance;

2) carrying out proceedings in the cases on administrative offences;

3) taking part in investigations of criminal offences in the order set by the Criminal Procedure Code of Ukraine;

4) protection and ensuring safety of local authorities.

5. Jurisdiction of local police shall be limited to territory of relevant community (communities), except for cases of direct prosecution by local police of a person suspected in committing administrative or criminal offence.

6. The number of local police officers shall be set in accordance with the following ratio: not more than 10 police officers per 10 000 persons constantly living on the territory of relevant community (communities).

7. Ministry responsible for state policy in the sphere of protection of public order and protection of persons, society and state from unlawful infringements shall approve unified standards of organization of work of local police.

Article 7. Administrative police

1. Administrative police — central executive authority managed and coordinated by the ministry responsible for state policy in the sphere of protection of public order, persons, society and state from unlawful infringements.

2. Administrative police shall be comprised of:

1) patrol service;

2) security service;

3) rapid response service.

3. Administrative police secures public order through:

1) precaution, prevention, detection and termination of administrative and criminal offences on sections of provincial, territorial, regional, national and international automobile roads as well as on forest and water facilities of regional and national importance;

2) carrying out proceedings in cases on administrative offences;

3) taking part in investigations of criminal offences in the order set by the Criminal procedure code;

4) protection and ensuring security of:

a) state authorities (the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine), diplomatic missions and consular posts of foreign countries on the territory of Ukraine, foreign diplomatic missions of Ukraine ;

b) parties in criminal proceedings.

5) escorting detainees and convicted persons.

4. The Rapid response service of the Administrative police shall have the power to take immediate measures on mass riots termination.

5. The number of Administrative police officers shall be no more than 30 000 including no more than 2 000 police officers within rapid response service.

Article 8. Territorial structure of Administrative police

1. The Secretariat of the Administrative police shall be located in the city of .

The Service of rapid response of the Administrative police shall be located in the city of .

2. Territorial (regional) bodies of Administrative police shall be located in regions, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

3. Regional bodies of the Administrative police are created, reorganized, eliminated as legal entities of public law by the Minister managing and coordinating the activity of the Administrative police based on the proposal of the Head of the Administrative Police.

4. The jurisdiction of the Rapid response service of the Administrative police covers all the territory of state.

5. The jurisdiction of the regional body of the Administrative police shall be limited by the territory of the relevant region.

Article 9. Criminal police

1. Criminal police — central executive authority managed and coordinated by the ministry responsible for state policy in the sphere of protection of public order, persons, society and state from unlawful infringements.

2. Criminal police investigates criminal offences in the order defined by the Criminal procedure code.

3. The number of Criminal police officers shall be no more than 30 000.

Article 10. The territorial structure of Criminal police

1. The Secretariat of Criminal police is located in the city of .

2. Territorial (district) bodies of Criminal police are located at districts, cities of Kyiv and Sevastopol.

3. District bodies of Criminal police shall be created, reorganized, eliminated as legal entities of public law by the minister managing and coordinating Criminal police activity based on the proposal of the Head of the Criminal police.

4. The jurisdiction of district body of Criminal police shall be limited by the territory of the relevant district.

Article 11. Financial police

1. Financial police — central executive authority managed and coordinated by the ministry responsible for state policy in the sphere of finance.

2. Financial police investigates criminal offences in the order defined by the Criminal procedure code.

3. The number of the Financial police officers shall be no more than 3 000.

Article 12. Territorial structure of the Financial police

1. The Secretariat of Financial police shall be located in the city of .

2. Territorial (regional) bodies of Financial police shall be located at regions, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

3. Regional bodies of Financial police are created, reorganized, eliminated as the structural units of the secretariat of Financial police by the Head of Financial police upon approvement of the minister managing and coordinating the activity of Financial police and the Cabinet of Ministers of Ukraine.

4. The jurisdiction of the regional body of Financial police shall be limited by the territory of the relevant region.

Article 13. Border police

1. Border police — central executive authority managed and coordinated by the ministry responsible for state policy in the sphere of protection of public order, persons, society and state from unlawful infringements.

2. Border police secures public order through:

1) Precaution, prevention, detection and termination of administrative and criminal offences;

2) carrying out proceedings in cases on administrative offences;

3) taking part in investigations of criminal offences in the order set by the Criminal procedure code;

4) exercising border control and overseeing crossing of Ukrainian borders by persons, vehicles and cargoes.

3. The number of Border police officers shall be no more than 20 000.

Article 14. Territorial structure of Border police

1. The Secretariat of Border police shall be located in the city of .

2. Territorial (regional) bodies of Border police shall be located at the regions, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

3. Territorial (regional) bodies of Border police shall be created, reorganized, eliminated as legal entities of public law by the minister managing and coordinating the activity of Border police upon the proposal of the Head of the Border police.

4. Territorial structures (groups, units, stations, posts) of regional bodies of Border police shall be created, reorganized, eliminated by the Head of the Border police upon the approval of the minister managing and coordinating the activity of the Border police.

5. The jurisdiction of the Border police covers all the territory of state.

Article 15. The Secretariat of police

1. The structure and regulations on the secretariat of the local police are to be approved by the relevant local council.

2. Secretariats of the Administrative, Criminal, Financial and Border shall be comprised of:

1) analytic unit;

2) control unit;

3) organizational support unit;

4) international cooperation unit;

3. The Secretariats of territorial (district, regional) bodies of Administrative, Criminal, Financial and Border police shall be comprised of:

- analytics unit;
- control unit;
- organizational support unit;
- units empowered to perform functions of police foreseen by this Law.

Chapter 2. The leadership of police

Article 16. The leadership of local police

1. The Head of local police shall be appointed by the relevant local council based on the and within the framework of submission of the Commission of local police in the order set by articles 47,49 of this Law.

2. The head of local police can have one deputy.

3. A person running for the office of the Head of local police, Deputy head of local police must:

1) meet the general requirements for entering service in bodies of local self-government;

2) reach 27 years of age;

3) have the experience of police activity not less than 5 years.

4. The tenure of the office of the Head of the local police — 4 years. The same person can be reappointed to office of the head of police.

5. The mandate of the leadership of local police is defined by the Constitution of Ukraine, law on local self-government and this Law.

Article 17. The leadership of Administrative, Criminal, Financial, and Border police

1. The Head of Administrative, Criminal, Financial and Border police, their deputies are appointed to the office and fired from the office by the Cabinet of Ministers of Ukraine upon the submission of the Prime-Minister of Ukraine prepared based on the proposal of the relevant minister.

Proposals to the Prime Minister of Ukraine concerning the candidates for the office of the Head of Administrative, Criminal, Financial and Border police shall be submitted by the minister based on and within the submission of the relevant Police commission in the order stipulated by articles 47, 49 of this Law.

Proposals to the Prime Minister of Ukraine concerning the candidates for offices of Deputy Heads of Administrative, Criminal, Financial and Border police shall be submitted by the relevant Head based on and within the framework of Police commission submission in the order set by articles 47, 49 of this Law.

2. The Head of Administrative, Criminal, Financial and Border police can have no more than 3 deputies.

3. A person running for the office of the Head of Administrative, Criminal, Financial, and Border must:

1) meet the general requirements of civil service;

2) reach 35 years of age;

3) have the experience in police activity not less than 10 years;

4) know not less than 2 foreign languages.

4. A person running for the office of Deputy Head of Administrative, Criminal, Financial and Border police must:

1) meet the general requirements of civil service;

2) reach 30 years of age;

3) have the experience in police activity not less than 5 years.

5. A person running for the office of the Head, Deputy Head of structural units of the secretariat of police, units of the secretariat of territorial (district, regional) bodies of police must:

1) meet the general requirements of civil service;

2) reach 30 years of age;

3) have the experience in police activity not less than 3 years.

6. The mandate of the leadership of Administrative, Criminal, Financial and Border police are defined by the Constitution of Ukraine, law on the Cabinet of Ministers of Ukraine, law on central executive authorities and this Law.

SECTION 3. POLICE ACTIVITY

Chapter 1. Police activity program

Article 18. Types and content of police activity program

1. Having been appointed to the office, the Head of Local, Administrative, Criminal, Financial and Border police has to prepare:

1) a strategic (for 4 years) police activity program;

2) year police activity program.

2. Local police activity program has to take into consideration the provisions of the Administrative police activity program.

3. The police activity program has to include:

1) objectives that need to be achieved;

2) amount and sequence of realization of police tasks;

3) measures of cooperation with public;

4) priorities of work;

5) criteria of fulfilment / non-fulfilment of the set objectives and priorities.

Article 19. Adoption of police activity program

1. Head of Local police, Head of Administrative, Criminal, Financial and Border police adopts a strategic program together with a year program of police activity within 30 days after the appointment.

The next Police activity year program shall be adopted 30 days prior to the end of last year program of police activity.

2. The Head of local police submits the police activity program to the relevant local council.

The Heads of Administrative, Criminal, Financial and Border police submit the police activity program to the relevant minister managing and coordinating the activity of Administrative, Criminal, Financial and Border police.

3. After the adoption of the police activity program it shall be published on the official web-site of the relevant local, Administrative, Criminal, Financial and Border police.

Article 20. Annual report on police activity

1. Report on police activity includes the information concerning the results, terms and state of police activity program execution.

2. The heads of local, Administrative, Criminal, Financial and Border police adopt a report on police activity at the same time with the year program of police activity and submit to the authority foreseen by part 2 of article 19 of this Law, as well as to the Police commission for it to prepare an alternative report on police activity.

3. Police commission submits an alternative report on police activity to the head of the relevant police as well as to the authority body foreseen by part 2 of article 19 of this Law prior to the day a previous year program of police activity ends.

4. Report on police activity and the alternative report shall be published on the official websites of local, Administrative, Criminal, Financial and Border police.

Chapter 2. Police mandate

Article 21. General police mandate

1. When performing the functions defined by this Law police has the mandate for:

1) procedural actions foreseen by the criminal procedure law;

2) measures of ensuring proceedings in cases on administrative offences provided for by the Code of Ukraine on Administrative Offences;

3) police measures;

4) data processing.

2. A police officer is an official who according to the Criminal Procedure Code of Ukraine, Code of Ukraine on Administrative Offences and this Law has the mandate for:

1) adoption and registration of appeals and reports on criminal offences;

2) temporary seizure of documents certifying the use of special rights (driving a car or a vessel, hunting, entrepreneurship);

3) temporary seizure of property (actual deprivation of opportunities to own, use and dispose of their property before issue on arrest or its return is resolved);

4) detaining a person.

3. Police bodies foreseen by part 1 of article 5 of this Law cooperate with each other and other authorities when performing functions defined by this Law.

4. Police is forbidden to perform functions than are not foreseen by this Law.

Article 22. Special mandate of local and Administrative police

1. Local and Administrative police when performing functions fulfil their mandate foreseen by article 21 of this Law.

With the aim of precaution, prevention and termination of administrative and criminal offences local and Administrative police have the authority to ensure the traffic safety.

When ensuring the traffic safety, local and Administrative police are forbidden to use posts (including stationary) on automobile roads for fixation of traffic violations.

2. It is forbidden to engage Criminal and Financial police officers to perform the functions of local and Administrative police except in cases of emergency or martial law.

Article 23. Special mandate of Border police

1. Border police when performing its functions fulfils the mandate foreseen by article 21 of this.

When exercising border control the Border police:

1) checks the documents;

2) examines persons, vehicles, cargoes, including with the use of technical means, service dogs and other animals;

3) checks that the foreigners, stateless persons observe regulations of crossing the state border when entering or leaving the territory of Ukraine or in case of transit through the territory of Ukraine;

4) Registers foreign nationals, stateless persons and their passport documents at checkpoints across the state border;

5) forcefully returns to the country of origin or a third country foreigners and stateless persons detained within controlled border areas during or after trying to illegally cross the state border of Ukraine;

6) control over compliance of non-military vessels and warships with the established order of swimming and being in the territorial sea and internal waters of Ukraine.

Chapter 3. Police measures

§ 1. Police measures

Article 24. Types of police measures

1. Police within the mandate and in the way foreseen by this Law, takes the following police measures:

1) limits access to certain places;

2) enters a home or other property;

3) takes police custody;

4) puts to police jail;

5) takes measures of coercion.

Article 25. Limits of access to certain places

1. Police has the authority to limit or forbid access of persons to certain parts of locality or objects with the aim of performing functions foreseen by this Law.

Article 26. Entry into a home or other property

1. The police is authorized to enter a home or other property without a substantiated court decision only in urgent cases related to the preservation of human life and valuable property.

A police officer is authorized to open the closed room, storage, and prohibit any person to perform any act that prevents the penetration of the home or other property.

2.After saving lives or valuable property policeman is obliged to invite at least two unbiased persons to conclude a protocol. Persons are entitled to make statements that should be entered in the record.

The person who owns the home or other property or the one possessing it, shall be provided with a copy of the protocol. In the absence of people at home or other property copy of the protocol must be left in a visible place at home or other property.

Upon entry into a home or other property to the point of its abandonment a policeman is obliged to ensure the safety of property located in the home or other property, and the inability to access it by unauthorized persons.

3.This Law defines home of a person as any premises permanently or temporarily owned by a person, regardless of its purpose and legal status, and suitable for permanent or temporary residence therein of individuals, as well as all parts of the room. Premises specifically designed for the detention of persons whose rights are restricted under the law cannot be regarded as home.

Other property of a person shall be understood under this Law as a vehicle, land, garage, other buildings or premises for household, office, commercial, industrial and other purposes, etc., permanently or temporarily owned by a person.

Article 27. Police custody

1. Police custody shall be applied to:

1) a minor under the age of 16, who was left unattended;

2) a person who is suspected of escaping from a psychiatric institution or specialized treatment facility where they were held according to a court decision;

3) person who has signs of pronounced mental disorder and poses a real danger to others or themselves;

4) person in a public place who in the result of intoxication lost the ability to walk or poses a real danger to others or themselves.

Police custody results for:

1) persons mentioned in item 1 of paragraph 1 — in being given to parents or adoptive parents, guardians, guardianship authority;

2) persons mentioned in items 2,3 of paragraph 1 — in being put into relevant facility;

3) persons mentioned in item 4 of paragraph 1 — in being transferred to special medical facility or a place of living.

2. A policeman shall immediately notify the person in the language they understand of the reasons for the police action and clarify the right to receive medical care, give explanations, appeal against the police actions, immediately notify the other parties of their location.

Notification of rights and their clarification by the policeman can be waived if there are reasonable grounds to believe that the person may not be aware of their actions and to manage them.

3. A policeman is authorized to take away weapons or other items with which that person may harm himself or others, regardless of whether they are forbidden to use.

It is forbidden for a policeman to search a person to whom the police custody is applied.

4. When police custody is applied the protocol is drawn up which includes: a place, date and specific time (hour and minute) when the police custody was applied; grounds for its application, description of weapons or other objects taken away; petitions, applications or complaints of a person if such were, presence or absence of visible bodily injuries.

Protocol shall be signed by a policeman and a person. Copy of the protocol shall be immediately provided to a person upon signature. Protocol may not be provided to a person for signature and its copy handed over to him when there are grounds to believe that they may not be aware and in control of their actions.

5. A policeman immediately reports with the help of technical means to the responsible policeman at the police station on each application of police measure.

When there sufficient grounds to think that the transfer of a person lasted longer than it was necessary a responsible policeman at the police station shall be obliged to conduct an inspection to solve the issue on holding responsible the persons guilty of it.

6. A policeman is obliged to give a person a possibility to immediately notify close relatives, members of the family or other persons at his choice of his or her location.

A police is obliged to immediately notify parents or adoptive parents, guardians, guardianship authority of location of a minor.

Article 28. Putting to police jail

1. Persons apprehended in the order set by the Criminal Procedure Code, Code of Ukraine on

Administrative Offences are put to the police jail by a policeman responsible for keeping detainees.

2. Each police unit has to have one or several appointed policemen responsible for keeping detainees.

A policeman, responsible for keeping detainees shall be obliged to:

1) immediately register a detainee;

2) check the grounds for detention;

3) check whether a policeman who detained a person provided for free legal aid to be received by a detainee;

4) clarify to a detainee the grounds for his detention, his or her rights and obligations;

5) set a detainee free immediately when there are no grounds for his detention or the term for his detention foreseen by the Criminal Procedure Code and Code of Ukraine on Administrative Offences ended;

6) provide for a good treatment of a detainee and observance of his or her rights anchored in the Constitution and the laws of Ukraine;

7) ensure that all actions done with a detainee including the time when such actions started and ended as well the information about persons who conducted such actions or were present during such actions were included into personal file of a detainee;

8) ensure prompt, appropriate medical care and fixation by a health professional of any injury or deterioration of health of the detainee. To the people who provide medical care to a detainee, in his desire, admitted can be any person who has the right to engage in medical practice.

In case of violation of rights of a detainee as provided in this part, the policeman in charge of keeping detainees, shall immediately take steps to renew the violated rights.

3. Detained persons are put to police jail with the observance of the following requirements:

1) men — separately from women;

2) persons under 18 years old — separately from adults;

3) suspects in committing grave and especially grave crimes — separately from other detainees;

4) suspects in the same criminal proceedings — separately from one another;

5) suspects who are (were) law enforcement officers — separately from other detainees.

4. Detainee is provided with conditions that meet the requirements of sanitation and hygiene. Normal area in a police cell can not be less than 4 square meters, and for a pregnant woman or a woman who is carrying a child - 7 square meters excluding the area required to accommodate bathrooms and common use items (table, stools (benches), stands etc) of a detained person.

The detained person is provided free by the same standards set by the Cabinet of Ministers of Ukraine with nutrition, personal bed, bedding, and other material conditions necessary for life. If necessary, issued clean clothes and shoes.

5. A person put into a police cell (including a foreign citizen) has a right to meet a close relative, member of a family or other person who he or she notified when apprehended.

A foreign citizen put into a police cell has also a right to meet the representative of the embassy or a consulate of the relevant state that were informed of his or her detention.

A meeting, foreseen by this article shall be conducted at the time free from carrying out any procedural actions and last not longer than 1 hour.

Police has to ensure the conditions for visits which also excludes the possibility of third persons to have access to information provided during the process of a visit.

§ 2. Coercive measures

Article 29. Types of coercive measures

1. Police when performing functions foreseen by this Law, is authorized to use:

1) physical influence

2) impact munition:

a) means of active defence:

- Anti-Shock Shield, Armoured Shield;

- handcuffs;

- means of binding;

- rubber baton;

- container with tear and irritant substances;

b) means for special operations:

- backpack apparatus for spraying tear substances in open areas;

- container, shell, grenade and other special device with tear and irritant substances;

- a shell with rubber bullet;

- water pump;

- armoured truck, other vehicle;

- device for forced stopping of a vehicle;

- hand smoke grenade;

- compact subversive device to open premises;

3) a service dog, horse;

4) firearms.

2. Police is forbidden to use coercive measures not foreseen by this Law.

3. The use of means of individual protection (helmet, bullet-proof vest and other special gear) shall not be considered a coercive measure.

Article 30. Principles of coercive measures implementation

1. Implementation of coercive measures shall be based on the following principles:

1) preventiveness;

2) exclusiveness;

3) proportionality.

2. Preventiveness means that police uses each coercive measure (except when there is a need to protect a policeman from a sudden attack or an armed attack on other persons) as well as police measure of restricting access to certain places, entry into the house or other property of a person and detention of a person only after a warning on the necessity to terminate unlawful acts and an intention to use a coercive measure.

A warning can be made with voice, and when the distance is too big or when there is a big group of people, through loudspeakers and always in Ukrainian and better in native language of the group of people these coercive measures will be applied against not less than 2 times and giving enough time to terminate unlawful acts.

A warning of a policeman starts: “Police! In the name of the law!”.

3. The exclusiveness lies in the fact that police applies coercive measures only after all other possibilities were exhausted in order to terminate unlawful acts only with the aim of overcoming resistance to the legitimate demands of police, if resistance is performed with the use of force against a police officer or others.

Police is forbidden:

1) to use a coercive measure until a person commits an unlawful act or tries to commit it;

2) to use coercive measure against a woman with clear signs of pregnancy, a person under 14 years old, elderly people with severe symptoms or disability, unless they commit a group attack that threatens the life and health of people, including police officers or there is an armed attack or armed resistance, and in urgent cases related to the preservation of the lives of people by the police, including the policemen themselves.

4. Proportionality lies in the fact that police is obliged to use the softest coercive measure which would not cause or cause the least harm to the health, rights and interests of the individual and at the same time will achieve the expected results of the measure.

The most stringent measure of coercion is the use of firearms.

The police must apply one type of coercive measures by the time of achieving the desired result, or to the point where it appears that it can not be achieved and there is a need to adopt a more stringent measure of coercion.

5. A policeman is obliged to:

1) immediately in writing notify the supervisor of the applied measure of coercion (except handcuffs and medium binding) and its results;

2) with damage to health of a person to give her first aid.

Article 31. Application of physical restraint

1. A police officer is authorized to apply the measure physical restraint, including unarmed combat, only to end the criminal offence and detain a person (if there is any physical resistance or threat to the life or health of the police), the performance of the police measure in the form of restricting access to certain places, penetration in a home or other property.

Article 32. Application of a service dog, horse

1. Police is authorized to use dogs, horses, who have passed training courses recognized as suitable for official use and are in the structure of the respective departments.

Dogs are used on long, short leash or no leash, in a muzzle or with no muzzle, based on the specific situation.

Article 33. The use of impact munition

1. Police (policeman) is authorized:

1) use special tools (means of active defence, a means for special operations) only in self-defence and to stop a group violation of public order, riot, act of terrorism, release a captured hostage (hostages);

2) use handcuffs, binding tool to stop any criminal offence, detain, escort detainees and convicted persons, conducting proceedings with individuals when they pose a real danger to others or themselves. When applying handcuffs, a police is required periodically (at least every 30 minutes) to check the status of fixing means in order to avoid injuries;

3) use water cannon only to end the group violation of public order or riots;

4) use a service vehicle to forcefully stop another vehicle.

2. Police (policeman) is forbidden to:

1) strike a rubber baton on the head, neck, clavicular area, genitals, lower back, and abdomen;

2) when using tear and irritating exercise aimed fire on the people, and shoot grenades into the crowd of people re-use them in the zone lesions during the period of action of these substances;

3) shoot a rubber bullet cartridge with opaque shock action with a special rifle at a distance of

40 meters from the closest person and on any part of the head and body, except the lower legs;

4) use water cannon at temperatures below +10 ° C;

5) to use the device for forced stopping a vehicle that transports people, motorcycles, sidecars, scooters, mopeds as well as on mountain paths or parts of paths with limited visibility, level crossings, bridges, underpasses, overpasses, tunnels;

6) use compact subversive device to open the captured areas where the hostages are kept.

Article 34. Applying coercive measures to participants of a peaceful assembly

1. Police is authorized to use only the following coercive measures to the participant of a peaceful assembly including the one that was forbidden by the court until he or she commits criminal offence:

1) service horse;

2) means of active defence: anti-shock shield, armoured shield.

2. Police must ensure simultaneous dilution of participants of peaceful assembly (including counter-assemblies) at a safe distance, without limiting the right of individuals to peaceful assembly.

3. In the case of an administrative or criminal offence during a peaceful gathering police must stop this act, detain a person, without stopping and without prejudice to peaceful assembly.

Article 35. Use of firearms

1. Police is authorized to use firearms only as a last resort:

1) in terms of self-defence against an armed attack;

2) to halt attacks on individuals or convoy specified in paragraphs 4 and 5 of part 2 of Article 2 of this Law, which are protected by the police;

3) to detain an armed person;

4) for the purpose of detention of a person, who is directly prosecuted on suspicion of committing a grave or especially grave crime committed with violence.

The police is also authorized to use firearms for filing an alarm or call for assistance, for the removal of an animal that poses a real danger to humans.

2. A police officer is authorized to use firearms only after a warning about the need to stop illegal actions and intent to use coercive measures envisaged by part 2 of Article 30 of this Law. Mentioned warning can also be a shot into the air.

A police officer is authorized to use firearms without the mentioned warning only in emergency cases concerning saving people's lives.

3. A police officer is authorized to use firearms only to those losses to a person that is necessary and sufficient in this situation for the immediate cessation or prevention of attack or escape.

A try of a person to approach the police officer, reducing the determined distance, or touch a firearm of a police officer, gives a police officer the right to use firearms.

A police officer is authorized to use firearms for the purpose of causing the death of a person only in case of an armed attack if appropriate prevention or cessation of attacks can not be achieved by other means.

4. Police is forbidden to use firearms, when there is a significant crowd of people, if this can hurt outsiders.

Police warning, foreseen by part 2 of this article, shall have the proposition for outsiders to move to a safe place.

5. It shall be forbidden to use firearms in the direction of a neighbouring state except for cases when it is necessary to repel the armed attack and invasion of the territory of Ukraine by armed military groups and crime groups, terminate armed provocations as well as to repel the attack or terminate armed resistance of persons who illegally cross or try to cross the state border of Ukraine.

<u>Chapter 4. Police databases</u>

Article 36. The list of police databases

1. Police when performing the functions foreseen by this Law is authorized to process information in databases.

Processing of information in police databases is carried out under the provisions of the law on personal data protection taking into consideration the requirements of this Law.

2. Police processes information of such databases:

1) database of wanted persons;

2) database of missing persons;

3) database of unidentified corpses;

4) database of identified individuals who can not provide information about themselves due to illness or minor age;

5) database of missing and found vehicles and items;

6) database on administrative offences;

7) database of persons subjected to fingerprinting;

8) database of photographed persons;

9) database of selected biological samples;

10) database of application of police measures, including coercive measures;

11) database of those who were in police station;

12) database of persons who have crossed the border of Ukraine;

13) database of people who are not allowed to enter Ukraine or temporarily restricted to leave

Ukraine.

3. Police is forbidden to process information on natural persons in databases not foreseen by this Law.

The provision of this chapter shall not apply to the processing by police of data of the Unified Register of pre-trial investigations, information in police personnel database, police database for candidates for the post of policeman, database on individuals involved in the confidential cooperation, database on material and technical equipment of the police.

Article 37. Term of data storage

1. Police is authorized to retain data for the following terms:

1) for bases mentioned in items 1-5 of part 2 of article 36 of this Law, - until the moment a person, corpse, transport vehicle, a thing are found (identified);

2) for the base mentioned in item 6 of part 2 of article 36 of this Law, - during one year from the moment of imposing an administrative fine;

3) for bases mentioned in items 7-9 of part 2 of article 36 of this Law, - until the limitation periods for criminal prosecution run out;

4) for a base mentioned in item 10 of part 2 of article 36 of this Law, - during 3 years from the moment of application of relevant measure;

5) for a base mentioned in item 11 of part 2 of article 36 of this Law, - during 3 years from the moment of relevant stay;

6) for a base mentioned in item 12 of part 2 of article 36 of this Law, - during 3 years from the moment of relevant crossing;

7) for a base mentioned in item 13 of part 2 of article 36 of this Law, - within the terms of relevant decision action.

2. The police is obliged to remove and destroy the data in an appropriate database after the deadline provided for in the first paragraph of this article.

Article 38. Access to police database

1. A policeman has a right to access database manager of which is a relevant police body officer serves at.

Information on access to database shall be registered and stored in the automatic system of data processing, including the information on a police officer who received access and the volume of data he got access to.

Access to the other databases is done on the basis of a submitted request for access to the data that shall be considered according to the law on personal data protection.

SECTION 4. POLICE PERSONNEL

Chapter 1. Status of police personnel

Article 39. Composition of the police personnel

1. Police personnel is comprised of:

1) police officers;

2) civil servants, officials of local self-government;

3) employees.

2. A police officer — is a serviceperson performing functions and mandate of police including police measures foreseen by this Law.

A civil servant — is a serviceperson within the secretariat of police, the secretariat of territorial (regional, county, district) police body.

An official of local self-government — a serviceperson within the secretariat of local police.

An employee — a person working within the secretariat of police, secretariat of the territorial (regional, county, district) police body.

Article 40. Legislation on police personnel

1. The legal status of a police officer (except for a local police officer), regulations for being appointed as a police officer, police service, payment and social guarantees, disciplinary responsibility and termination of service is defined by the provisions of the law on state service taking into consideration the peculiarities foreseen by this Law.

The legal status of a local police officer, regulations for being appointed as a police officer, police service, payment and social guarantees, disciplinary responsibility and termination of service is defined by the provisions of the law on service in local authorities taking into consideration the peculiarities foreseen by this Law.

2. The legal status of a civil servant is defined by the provisions of the law on civil service.

3. The legal status of an official of local self-government is defined by provisions of the law on service in local authorities.

4. The legal status of an employee is defined by the provisions of legislation on labour.

Article 41. Uniforms and police badges

1. Local, Administrative and Border police officers shall perform functions in a uniform. Police officers are provided with standard uniform, approved by the Cabinet of Minister of Ukraine, for free.

The uniform shall have a sign “ПОЛІЦІЯ. POLICE”.

Money for uniforms of local police officers is provided from the relevant local budget.

Uniforms for Administrative and Border police are provided for the money from the State Budget.

2. Criminal and Financial police officers perform their functions in civil clothes.

3. A police uniform has a badge with a clear imprint of the family name, name and a unique personal number of the officer.

A police officer is forbidden to take away from the uniform or hide a badge as well as to hinder in any way the information on the badge from being read or fixate it with the help of technical means.

A police officer performing functions in civil clothes is obliged to have a badge foreseen by this part with him, except for cases when the existence of a badge prevents carrying out a covert investigative (search) action.

4. A police officer is provided with a service ID card, the sample of which is approved by the Cabinet of Ministers of Ukraine.

A service ID card has a unique personal number the same as foreseen by part 3 of this article.

A police officer is forbidden to hide service ID card as well as to hinder the information on it from being read or to fixate it with the help of technical means.

Article 42. The unity of the legal status of police

1. Police officers in Ukraine have a unified legal status regardless of the police authority or position held by a police officer.

Article 43. Rights and duties of a police officer:

1. Policeman has the right to:

1) healthy, safe and appropriate for effective activity conditions of service;

2) remuneration regardless of seniority and performance;

3) professional training;

4) promotion based on performance;

5) participate in trade unions to protect their rights and interests;

6) vacation and pension benefits in accordance with the law;

7) appeal as prescribed by law against decisions on dismissal of civil service, disciplinary penalties, denial of retirement, and a negative opinion on the basis of performance appraisal activities;

8) respect for their personality, dignity, fair and respectful treatment by commanding officers, colleagues and other citizens;

9) unimpeded access to documents relating to the service, including the findings on the basis of the evaluation results of his police activity;

10) the free use (with subsequent redress) of vehicles, communications facilities of legal entities or persons during the execution of police powers relating to the direct pursuit of the suspect;

11) Participate in the activities of NGOs, subject to the limitations prescribed by law;

12) other rights foreseen by the law.

2. A police officer is obliged to:

1) To uphold the Constitution and laws of Ukraine and the rules of conduct of public servants;

2) treat citizens with respect, respect the dignity of a person;

3) say his name, rank and at the request of the person - to present an official ID when talking to a person. Police officer who performs the functions of the police in civilian clothes when dealing with a person must show an official ID, say his last name and rank;

4) use state language or any other language according to the language law while on duty;

5) to ensure the effective performance of the functions and powers of the police, conscientiously perform his or her duties;

6) carry out the decisions of public authorities, orders of commanding officers given (issued) within their mandates and internal regulations of the police;

7) continuously improve professional skills and improve the organization of their activity; participate as an instructor (teacher) in training for other police officers;

8) keep state secrets, information about persons that have become known to them in connection with their official duties, as well as other information that under the law shall not be disclosed;

9) take the necessary measures to terminate the offence, rescue people and help them - regardless of their location and time of day;

10) immediately notify the head of the police unit of detected offences committed by others among police personnel, and if such offence has crime elements - relevant pre-trial investigation body.

Police periodically, at least once a year, passes the secret inspection of integrity. Secret integrity test is to establish the circumstances and conditions that contribute to the commission of a corruption offence by certain police officer.

The result of a secret integrity inspection cannot become the ground for bringing a police officer to administrative or criminal responsibility.

Article 44. Independence of a police officer

1. A policeman in his activities is independent from any undue influence, pressure, interference from wherever they may come from.

2. Policeman acts within the powers defined by law, job descriptions and is subordinated to their supervisor.

The immediate supervisor is the direct commanding officer.

In the case of joint exercise of powers by police officers, holding same positions, the one holding a higher rank is appointed as an interim commanding officer. In case when positions and ranks are the same, the police officer of higher age shall be appointed as an interim commanding officer.

In the case of joint exercise of powers by police officers who hold different positions, the one holding a higher position is appointed as an interim commanding officer.

3. A direct supervisor within their authority can give orders and instructions. Order, instruction of a supervisor is mandatory for compliance.

The head of the local police, Administrative Police and Border Police has the right to give orders and instructions that are mandatory for all police officers of local police, Administration Police and Border Police accordingly.

4. Policeman shall not execute orders that are clearly criminal. In the case of doubt on the legality of the order, instruction given by his superior has the right to refuse to execute it or to require written confirmation, upon receipt of which must comply with such an order, instruction. Simultaneously with the execution of such order, instruction a police officer is obliged to inform of it the Police Commission in writing.

5. Procedure for issuance or execution of orders, instructions by the Criminal, Financial police officers shall be determined by the Criminal Procedure Code.

Criminal, Financial Police officers are not obliged to execute orders, instructions of their supervisors that cause them to question their legitimacy, if they did not get them in writing.

6. If a police officer performed an illegal order, instruction, without having observed the requirements provided in this chapter, he shall be responsible for his actions under the law.

Chapter 2. Peculiarities of the appointment of police officer

Article 45. General requirements for candidates to become police officers

1. A citizen of Ukraine that runs for the post of police officer must meet the following requirements:

1) reach the age of 18;

2) have a completed secondary education;

3) fluency in the national language;

4) health sufficient for the exercise of powers of the police officer, approved by the medical commission, given in the order established by the Cabinet of Ministers of Ukraine.

Article 46. Procedure for selection of candidates for the position of a police officer

1. Selection of candidates for the position of police officer consists of the following steps:

1) the competition, which includes a polygraph test;

2) special training for a candidate who enters the service for the first time;

3) the appointment and taking the oath.

Article 47. Competition for the position of a police officer

1. Competition for the position of police officer is held by the Police commission.

2. Competition is held to occupy any vacant position.

3. Competition announcement is published on the relevant website of local police, Administration Police, Criminal Police, Financial Police and Border Police.

4. Polygraph testing is conducted by a certified specialist in a specially designated room. The process of testing is fixed by technical means of video and audio recording .

Certification and specifications of a polygraph are approved by the Cabinet of Ministers of Ukraine.

Exempted from passing a polygraph test are pregnant women and women with children under three years old.

Polygraph testing is harmless to the health of a person survey in which the analysis of the dynamics of psychophysiological responses of a questioned person in response to psychological stimuli provided in the form of answers, objects, diagrams, photos, etc., which gives the possibility to detect simulation and present registered results in the analog and/or digital form.

The survey results are used during the interview with the person solely for the information of the likely character, which contributes to the possible formation amongst members of the Police Commission of an inner conviction.

5. Polygraph test is conducted to ascertain the facts of corruption or other illegal acts committed by the candidate for police officer position.

6. Negative result on a polygraph itself is not a reason for the denial of candidates for appointment to the position of a police officer. However, refusal to pass polygraph test results in the impossibility of his appointment as a police officer.

7. Polygraph test results can not be used to charge the candidate for the police officer position of criminal, administrative or disciplinary offence.

Article 48. Specific training of a candidate for police officer position

1. The candidate for the police officer position who enters the service for the first time, is trained in a Police school to gain knowledge and skills of practical activity of a police officer, including the passing of the special physical and fire training.

2. Term of the special training of the candidate for the police officer position, who has completed their secondary education, is six months.

The period of special training of the candidate for police officer position, who has basic or full higher education, is three months.

3. During the period of special training of the candidate for police officer position he or she receives monthly allowance in the amount of 50% of the salary of a police officer.

4. During special training candidate for police officer position is engaged to the performance of certain police functions performance of which shall take no more than 25% of the time of special training and has the status of a police officer during the performance of these functions.

5. Specific training of a candidate for a police officer position is considered completed:

1) when all the standards of special physical and fire training are fulfilled;

2) when a qualification examination in the form of anonymous testing and practical tasks are passed.

Candidates who failed to comply with the standards of the special physical and fire training are not allowed to pass a qualifying examination. A qualification examination takes place in a specially designated area. The course of the qualification examination is fixed by technical means of video and audio recording.

The standards of special physical and fire training, as well as a list of issues and practical problems for the qualification examination shall be approved by the ministry responsible for public policy in the field of public order and the protection of individuals, society and the state from illegal encroachments in consultation with the ministry responsible for public policy in finance, and the ministry responsible for public policy in the field of defence.

Based on the result of the police special training Police School Examination Board shall take a reasoned decision on the successful or unsuccessful completion showing the results of training (number of points), a copy of which is awarded to the candidate for the post of police officer. A candidate can not be deemed as one who have successfully completed a special training, if he did not comply with the standards of the special physical and fire training, or if the result of the qualifying examination was less than 50 percent of the maximum score possible.

6. Candidate for the police officer position who failed special training may appeal against the decision to the relevant Police Commission within fifteen days after the receipt of a copy of such decision. After reviewing an appeal the Police Commission denies the appeal or satisfies it and makes a decision that a candidate for police officer position successfully completed police special training.

7. Police school shall notify the appropriate Police commission of the results of the special police training of the candidates for the position of police officer.

8. Candidate for police officer position who failed a special training shall be excluded from the reserve for vacant police officer positions after the deadline to appeal against the decision of Police School Examination Commission (if the complaint was not filed) or if the complaint was denied.

9. Results of special training of a candidate are valid for two years or until the first appointment to a police officer position.

Article 49. Appointment to the police officer position

1. The winner of the competition shall be appointed to the vacant post of police officer.

2. Decision on appointment is made on the basis of and on the submission of the Police Commission after the deadline to appeal against the results of the competition, and in the case the results of the competition were challenged - after the decision on the appeal.

3. Service relations of a person who enters the service of the police begin upon appointment as a police officer. Status of a police officer a person, who enters the civil service, service in local self- government authorities for the first time, receives after taking the oath.

Article 50. Oath of a police officer

1. A person appointed as a police officer for the first time must publicly take the oath as follows:

"Being aware of high responsibility, I solemnly swear that I will faithfully serve the Ukrainian people, observe the Constitution and laws of Ukraine, put them into practice, respect and protect the rights and freedoms of a person and a citizen, the honour of state, I will honorably carry a high rank of a police officer and conscientiously perform my duties ".

2. A person appointed as a police officer for the first time, says the oath in a solemn ceremony in the presence of the head of the local police, Chief of Administrative Police, Criminal Police, Financial Police or Border Police.

3. Text of the oath shall be signed by a police officer and kept in his personal file.

Article 51. Perpetuity of the appointment as a police officer

1. Appointment as a police officer has no terms (until retired or resigned), subject to the successful execution of duties.

2. A police officer can be appointed for a certain term in the case when this is done for the period of absence of the person who retains the position of a police officer under the law.

<u>Chapter 3. Peculiarities of police service</u>

§ 1. Police ranks

Article 52. Police ranks

1. Chief of local police, Administrative Police and Border Police awards respective police officers with following special ranks:

1) Junior Inspector of Police;

2) The Inspector of Police;

3) Senior Inspector of Police;

4) The Commissioner of Police.

2. Chief of Criminal Police, Financial Police awards the respective police officers with following special ranks:

1) Junior Detective of Police;

2) Detective of Police;

3) Senior detective of Police;

4) The Commissioner of Police.

3. A person who was appointed as a police officer for the first time, is awarded with a rank of junior police inspector, junior police detective.

4. Upon the appointment of a police officer of the local police, Administrative Police and Border Police to the Criminal police or Financial Police he or she is automatically awarded with the appropriate special rank of Criminal Police or Financial Police.

Upon the appointment of a police officer of Criminal police, Financial police to the local police, Administration Police or Border Police he or she is automatically awarded with an appropriate special rank of local police, Administration Police or Border Police.

5. Policeman after termination of service in the corresponding special rank retains this rank for life.

Article 53. Duration of stay in the police rank

1. Term of being in each special rank is 8 years.

There shall be no early promotion to the next rank of police officer .

2. The length of police service (stay in the police rank) includes term of tour of duty made in accordance with this Law to:

1) secretariat of the respective ministry;

2) the secretariat of police;

3) Police School as an instructor (teacher) ;

4) national contingents participating in international peacekeeping and security operations.

3. Whatever term of a tour of duty is, provided for by part 2 of this Article, it is only 10 years of such tour of duty that can be included to the term of service in the police (stay in the police rank).

§ 2. Features of working time and rest time of a police officer

Article 54. Working time of a police officer

1. Duration of a working time of a police officer is 39 hours per week.

2. Police Chief sets the calendar of shifts of police officers for every month taking into account the wishes of police personnel.

3. Working shifts may include both uniform and irregular working hours, standard and flexible working time of police officers.

4. Uniform schedule of policeman must meet the following criteria:

1) consists of 5 days a week;

2) has two days off per week;

3) the shift shall not be longer than 9 hours in one working day;

4) the difference of working time in different weeks cannot be more than 5 hours;

5) the average hours of work over two calendar months shall not exceed working time during the relevant working week.

Irregular working hours of policemen shall meet the following criteria:

1) the length of one working day shall be not more than 9 hours;

2) the average hours of work over two calendar months shall not exceed working time during the relevant working week.

5. Flexible working hours give a police officer the right to choose the start and end of a shift. Working shifts with flexible working time must last at least four hours without a break.

6. Overtime period shall not exceed 200 hours in one calendar year.

Article 55. Service readiness of a police officer

1. Supervisor is authorized by order to oblige a police officer to be service ready during non-working hours while staying at the place of residence or other place specified by a police officer.

2. Duration of stay in the service readiness can not exceed 200 hours in one calendar year.

Article 56. Leisure time of a police officer

1. Breaks for rest and meals of a police officer last:

1) with a work shift of up to 8 hours - one hour;

2) with a work shift of more than 8 hours - one break for one hour, and the rest of the breaks for not more than 30 minutes.

Break for rest and meals can be made no later than four hours after the start of the shift. Breaks for rest and meals are not included in the working hours.

2. Continuous rest between individual police shifts should last at least ten hours. In the case of the overtime work continuous rest can not be less than six hours.

3. Weekly uninterrupted rest period in the performance of overtime work can not be less than 12 hours.

§ 3. Peculiarities of transfer, rotation, secondment of a police officer

Article 57. Transfer of a police officer

1. In case of a reasonable need of services a policeman, given his training and skills can be transferred:

1) to another position in the same police unit, including in another area - by a decision of the head of the respective police unit;

2) to the equivalent position in another police unit, including in another area - by a decision of the chief of the police unit from which a policeman is being transferred and chief of police, where a policeman is transferred.

2. Transfers shall be made only with the consent of a police officer, except in cases where the transfer is necessary in view of the important public interests.

Transfer within one police unit does not require the consent of a police officer if a new post is related to the same remit as the previous post, and does not involve reduction of wages.

Before making the decision to transfer a police officer has a right to be heard.

3. Transfer to another area can be carried out in the view of special public interest, for a period not exceeding two years. When transferring to another district a police officer shall be provided with appropriate living conditions, taking into account his family situation, and reimbursement of all the costs associated with the move, in the order established by the Cabinet of Ministers of Ukraine. A police officer can be transferred in such a way no more than twice during the service.

4. The transfer to another place is not allowed without the consent of a police officer — being a pregnant woman or a person self-raising a disabled child, a disabled since childhood, a child under the age of sixteen. There shall be no transfer during the existence of critical personal or family circumstances (illness or serious illness of police officer family member, natural disaster, etc.).

5. Transfer should not be a disguised punishment.

6. In the case of transfer of a police officer to another police post he or she receives salary that corresponds to the position at which he or she was transferred, and in case the salary in the new position is less than the previous one, he or she receives supplement wage in the appropriate amount.

Article 58. Rotation of police officers

1. Police carries out rotation of the police officers — planned transfer of a police officer from one office to another office of the same level.

2. A list of positions subject to rotation in the police force shall be established by the Cabinet of Ministers of Ukraine.

Article 59. Secondment of a police officer

1. A policeman can be sent on a service secondment (hereinafter - secondment) to exercise his or her powers outside the permanent duty station.

Supervisor determines the location of assignment and tasks to be executed, duration of a secondment, the vehicle and the date of completion of a secondment.

2. A secondment can take no more than 30 calendar days. If it requires a longer duration, then this requires the written consent of the police officer.

A police officer is required to perform duties on a secondment on days-off as well if so required.

3. A police officer receives a reimbursement of costs relating to the secondment in the manner specified by the Cabinet of Ministers of Ukraine.

For the entire period of secondment a police officer retains his position and salary.

4. When directed on a secondment marital status and other personal circumstances of a police officer shall be taken into consideration.

It is not allowed to send a police officer on a secondment without the consent of the police officer - self- raising a disabled child, a disabled since childhood, a child under the age of sixteen.

5. Provisions of part 2,4 of this article shall not apply to police secondments, provided for by Article 53 of this Law.

§ 4. Peculiarities of professional training of police officers

Article 60. Professional training of a police officer

1. Professional training provides for police training and professional development and is carried out:

1) for local police officers - at the expense of the relevant local budget;

2) other police officers - at the expense of the state budget.

2. Relations arising in connection with the passing of police retraining are governed by the laws on education, besides the characteristics defined in this Law.

In matters arising in connection with the further training of police officers, laws on education do not apply.

Regulations of police training and professional development shall be approved by the ministry responsible for public policy in the field of public order and the protection of individuals, society and state from illegal encroachments.

3. The need for retraining of police officers shall be defined by a police officer together with the supervisor during the appointment and at the time of service.

In the event of termination of service at the initiative of the police officer within three years after the passage of retraining wholly or partially funded by the budget, he is obliged to reimburse the money spent on training in the order set by the Cabinet of Ministers of Ukraine.

4. Professional training of a police officer is conducted to systematically improve professional skills needed to perform the powers of the police, and is an integral part of the service.

Education policeman held in the form

Professional training of policemen shall be held in the form of special courses, workshops, training sessions and other activities aimed at improving the professional level of performance of police powers, as well as through training and self-education.

5. Supervisors within the eligible costs for the maintenance of proper police units, organize training of police officers on the job, at the police school, and are entitled by law to procure the services in enterprises, institutions and organizations of ownership, individuals, necessary to provide for police training

6. Police officers improve police skills by decision of a supervisor at least once every two years, as well as when there is a need for it.

The need for professional development is determined by the police officer along with his supervisor on the basis of performance appraisal of police activity.

Article 61. General provisions of police officer evaluation

1. Every four years Attestation Commission runs an attestation of a police officer.

It is not allowed to conduct other forms of police performance appraisal in addition to attestation.

A police officer subject to attestation shall get the information on attestation no later than one month before its start.

2. Attestation commission is created by the order of the head among the police officers who serve in this police force, in an amount not less than four people for three years and operates on a continuous basis without interruption of its members from exercising the powers of the police. The structure of the attestation committee consists of an equal number of representatives of the supervisory staff (chiefs) and employees of the relevant police units.

Representatives of the staff are elected to the Attestation Commission at the General Assembly of Policemen by secret ballot. Representatives of the supervisory staff (chiefs) are appointed by the Chief of the relevant police unit.

2. Failure to create a constant Attestation Commission within the police unit (other than local police) evaluation of a police officer shall be carried out by the Attestation Commission of Police units of a higher in order of submission.

3. Attestation Commission members elect their chairman and secretary at the first meeting by a secret ballot.

4. Attestation Commission meeting is valid if attended by at least four of its members. Attestation Commission decisions are adopted by a majority of the members of the commission. A member of the Commission who is under evaluation has no right to vote.

5. Decision of the Attestation Commission in the form of a submission is binding for the head of the police unit.

Regulations on Attestation Commission shall be approved by the Cabinet of Ministers of Ukraine.

Article 62. Procedure for evaluation of a police officer

1. Evaluation is carried out in the form of interviews, during which a police officer answers questions from members of the Attestation Commission concerning police activity, knowledge and application of laws.

2. Based on the results of evaluation of a police officer an Attestation Commission by a secret ballot has to take a following decision:

1) meets the requirements of his position;

2) meets the requirements of his position, subject to the recommendations to improve the professional skills of a particular direction;

3) does not meet the requirements of the position.

A police officer is considered as the one who passed the attestation when he is recognized as the one who meets the requirements of his position or the one who meets the requirements of his position, subject to the recommendations to improve the professional skills of a particular direction.

3. In case of a decision on compliance to the post, subject to the recommendations on training, in twelve months such a policeman shall pass re-evaluation for the purpose of validation of advanced training in certain professional direction.

4. In case of a decision on non-compliance with policeman's position, an Attestation Commission decides on his or her dismissal from the position.

Article 63. Internship of a police officer

1. With the purpose of improvement of police officer's skills and achieving experience a police officer can do an internship for a period of up to six months on other (including higher) positions in the same unit of police or other police units.

2. Internship is conducted distantly from the police unit that sent a police officer, with his maintaining a position and salary.

Procedure for police internship is set by the Cabinet of Ministers of Ukraine.

§ 5. Peculiarities of remuneration, bonuses for police officers

Article 64. Salary of a police officer and measures of social protection

1. Salary of a police officer consists of base salary and bonuses for the following:

1) years of service;

2) staying service ready.

2. Police officer's base salary is set at 6 times the minimum wage established by law.

Base salary of the police officer who is in a managerial position in the local police, set in proportion to the size of the salary of a police officer as defined in paragraph 1 of this Part, with the coefficient for:

1) deputy head of the local police - 1.1;

2) head of the local police - 1.2.

Base salary of a police officer who is in a managerial position in the Administrative Police, Criminal Police, Financial Police, Border Police shall be established in proportion to the size of the salary of a police officer as defined in paragraph 1 of this Part, with the coefficient for:

1) Deputy chief of the structural unit of territorial (district, regional) body - 1.2;

2) Chief of a branch of territorial (district, regional) body - 1.3;

3) The deputy head of regional (district, regional) body - 1.4;

4) The head of a territorial (district, regional) body - 1.5;

5) Deputy Chief of Police - 1.6;

6) Chief of Police - 2.

3. Police officers receive a monthly bonus for seniority in the following amounts: for the service more than a year - 10 percent, more than 3 years - 15 percent, over 5 years - 18 percent, over 10 years - 20 percent, over 15 years - 25 percent, over 20 years - 30 percent, over 25 years - 40 percent, over 30 years - 45 percent, over 35 years - 50 percent of base salary.

4. A police officer is paid a bonus at the rate of 0,002 to the size of the salary for each hour of stay in the service readiness.

5. In case of injury or disability that occurs in connection with performing official duties, a police officer shall be compensated at a rate of up to three years annual salary, which consists of a base salary and bonuses for length of service, depending on the degree of disability, and in case of the

death of this reason the family or dependents of the deceased shall be paid a lump sum of five years salary at the last post, which consists of base salary and bonuses for seniority. The order, conditions and payment of compensation and a lump sum shall be determined by the Cabinet of Ministers of Ukraine.

6. Burial of a policeman who died in connection with performing official duties, or removed from office, who died as a result of bodily injury or other harm, related to the performance of official duties shall be done at the expense of the funds allocated to the police in order and in the amount determined by the Cabinet of Ministers of Ukraine.

Article 65. Police officer encouragement

1. For an impeccable and efficient service the head of the police unit uses the following types of police officer encouragement:

1) acknowledgment certificate;

2) awarding with the diploma and other departmental awards of police;

3) cash prize in the amount of 50 to 100 percent of base salary, but not more than twice in one calendar year;

4) a request for state honours.

2. Incentives do not apply to the police officer during the term of a disciplinary sanction.

Chapter 4. Peculiarities of disciplinary responsibility of a police officer

Article 66. Grounds for bringing a police officer to disciplinary responsibility

1. Grounds for bringing a police officer to disciplinary responsibility are committing misconduct - illegal actions (or inaction), a decision showing non-performance or improper performance of police duties and other requirements of this Law, for which he may be subjected to disciplinary punishment.

2. Disciplinary offences of police officers are such acts that are free of administrative misconduct or criminal offence:

1) an expression of disrespect to state symbols of Ukraine;

2) non-performance or improper performance of duties, decisions of state authorities, commands, decrees and orders of the heads given within their jurisdictions;

3) failure to perform or improper performance of official duties, any other violation of the oath;

4) disclosure of information constituting secrecy protected by law;

5) abuse of office or unlawful interference with official activities of other officers, including through public statements about their decisions, actions or inaction;

6) non-compliance with legislation on preventing and combating corruption, including illegal acquisition of property or services from individuals and legal entities for the purpose of financial, technical or other support for the police;

7) approval of behavior that discredits them as police officers and could harm the authority of the police;

8) providing false information or forged documents during the appointment to the post, as well as the failure to provide such information about the circumstances that have arisen during the service;

9) violation of the requirements of police work, if it caused substantial harm or created a real threat to the onset of severe consequences;

10) failure to take legal measures to address conflicts of interest;

11) violation of the rules of professional ethics;

12) violation of restrictions on the participation of the policemen in the election process set out by the electoral legislation, other non-performance of requirements for loyalty and political neutrality of the police;

13) violation of internal regulations, including absenteeism;

14) being in a state of alcoholic, narcotic or other intoxication in the workplace, as confirmed by a medical report or a decline to perform the command of the head of the unit to pass the examination for the state of alcoholic, narcotic or other intoxication;

15) an expression of contempt for persons in the exercise of powers or unreasonable delay in the consideration of the appeal;

16) public statement, which is a violation of the presumption of innocence;

17) non-observance of legislation o languages when performing functions.

3. Policeman can not be subject to disciplinary action if six months passed after the head of the unit received the information on disciplinary misconduct, not counting the time of temporary disability of a police officer or his stay on vacation, or if two years passed after it was committed.

Article 67. Types of disciplinary sanctions

1. To the police officer may be applied one of the following types of disciplinary penalties:

1) observations;

2) a reprimand;

3) penalty;

4) delay in promotion to the next rank of police;

5) reduction in the police rank by one grade;

6) a warning of unsatisfactory professional competence;

7) release from police.

Disciplinary sanctions provided for in paragraphs 2-7 shall be imposed only upon submission by the Police Commission.

2. In case of minor violations of internal regulations and other internal documents approved in due course, and other minor misconduct, the head is required to confine written comments to the police officer.

3. In case of improper exercise of the powers of the police, violation of law, the commission of other misconducts a police officer may be reprimanded or fine the amount from 10 to 25 percent of base salary for a period of one to three months.

4. Delayed promotion to the next rank of police officer for a period of one to two years applies if the Commission decides that the police officer meets the requirements of the position subject to fulfilment of recommendations for training as well as when during the year the police have imposed on a police officer such types of disciplinary sanctions as a reprimand and a fine.

5. Lowering of police rank by one grade, warning of unsatisfactory professional competence can be used for the systematic improper exercise of the powers of the police, the systematic violation of internal regulations in cases where such offence was committed within one year from the date of application to the police officer of any other type of disciplinary penalty (except for observations) for the commission of the prior offence.

6. Dismissal is an exceptional police disciplinary action and may be used only in cases provided for in paragraphs 1-9 of Article 68 of this Law, provided that there has been a gross violation of the Constitution or laws of Ukraine, violation of oath and / or systematic failure to perform functions of police committed within one year after the application of any other disciplinary action (except for observations) to a police officer.

Article 68. Circumstances mitigating or aggravating disciplinary action

1. Disciplinary sanction shall conform to the nature and severity of the misconduct and the degree of fault of the police officer. When determining the type of disciplinary sanction taken into account should be the nature of the offence, the circumstances under which it was committed, the previous behavior of the police and its relationship to the performance of official duties.

2. Contingencies that mitigate the responsibility of a police officer, are:

1) awareness and acknowledgment of his guilt in committing a disciplinary offence;

2) The previous behavior is impeccable;

3) The strong performance of his functions, the availability of public incentives and rewards;

4) Taking measures to prevent or eliminate adverse effects that occurred or may occur as a result of the commission of the offence, voluntary reparation of damage;

5) The commission of the offence under threat, coercion or through the service or any other dependence;

6) the commission of the offence as a result of supervisor's misconduct.

3. When using a particular type of disciplinary sanction other circumstances that are not mentioned in the second part of this article may be taken into account, that mitigate the responsibility of police officer.

4. Contingencies that aggravate the responsibility of a police officer are:

1) the commission of the offence being drunk or in the condition caused by the use of drugs or other intoxicating substances;

2) the commission of the offence again before the removal of a previous penalty in the set order;

3) the commission of the offence intentionally because of personal hostility to another police officer, an employee, including a supervisor, or retaliation for actions or decisions concerning a police officer;

4) the occurrence of serious consequences or damages caused as a result of the commission of a disciplinary offence.

Article 69. Grounds and reasons for initiation a disciplinary case

1. Grounds for initiation a disciplinary case are statements of complaint and the notice of citizens, officials, media (hereinafter - the notice) on the commission of a violation that has elements of the disciplinary offence, or a direct detection of a misdemeanor by a the police official.

2. Basis for initiation of disciplinary case is the existence in the report and other materials of sufficient evidence pointing to signs of misconduct.

Article 70. General procedure for disciplining

1. The police unit chief or the Head of the Police Commission, in the presence of matter and the grounds, open proceedings in a disciplinary case.

Where there is no need for disciplinary proceedings, head of police unit or his authorized representative demands a written explanation from a police officer and makes a disciplinary sanction— an observation.

If there is a need to conduct a disciplinary investigation, head of the police unit conducts the investigation and based on its conclusions imposes disciplinary sanctions - observations, or refers the case to the Police Commission. Police Commission after consideration of disciplinary proceedings makes a recommendation to the head of police unit to impose on police officer a disciplinary sanction or close the proceedings due to lack of grounds for disciplinary action.

2. Decision to send the case to the Police commission or to close a case (proceedings) shall be taken within three months after the detection of the offence or the end of a disciplinary investigation.

The decision to impose a disciplinary sanction taken within three days after the completion of the proceedings by Police Commission.

3. Decision to impose a disciplinary sanction is issued in the form of the relevant act (an order or decree).

4. Where a breach of discipline has signs of a corrupt act or offence, head of the police unit must immediately transfer the file to the appropriate pretrial investigation body.

Article 71. Initiation of a disciplinary case

1. The initiation of the disciplinary case - a decision of the head of the police unit or police commission in resolution (instruction) to the notification of violation of discipline, on consideration of the fact by a respective official and resolution of the issue concerning bringing the police officer to disciplinary responsibility, or in the order or other act on the initiation of a disciplinary investigation concerning this incident.

Article 72. Conduct of disciplinary investigation

1. Disciplinary investigation, which is a preliminary collection of information about the circumstances of the case concerning the possible commission of the offence, is made by chief of police unit or a person (Commission) authorized by him or by a police commission.

Commission to conduct a disciplinary investigation shall necessarily be formed in case of failure or improper performance of functions, abuse of authority, which led to loss of life or significant property damage to a person or entity, state or community.

The order of conduct of the disciplinary investigations by a commission shall be established by the Cabinet of Ministers of Ukraine.

2. Disciplinary investigations are carried out within one month. If necessary, the prescribed period may be extended by a disciplinary body that initiated disciplinary investigations, but not more than to two months.

3. Officials of police units, personally interested in its results shall not be involved in the conduct of disciplinary proceedings.

4. Persons conducting a disciplinary investigation shall be personally liable for the completeness, comprehensiveness and objectivity of its findings and nondisclosure of information relating to this investigation.

5. Commission or a person conducting a disciplinary investigation has a right to:

1) receive an explanation from the police officer against whom a disciplinary investigation is conducted, and others on the circumstances of the case;

2) receive in units of the police or at the request by other authorities required documents or copies and attach them to the case file;

3) consult relevant experts on issues relating to disciplinary proceedings.

6. Policeman, against whom the official investigation is conducted, has a right:

1) to give explanations, submit relevant documents and materials relating to the circumstances that are investigated;

2) submit an application to obtain new materials and to attach to a case file materials new documents, to obtain additional explanations of persons related to the case;

3) be present during the execution of appropriate measures;

4) to submit complaints against the persons who conduct disciplinary investigations.

7. Integral part of a disciplinary investigation is a police polygraph test, which is conducted to ascertain the fact of committing misconduct in the manner provided in Article 49 of this Law.

The negative results of the polygraph test can not be the only reason for bringing the police officer to disciplinary responsibility.

The results of the polygraph test cannot be used to charge the police officer with a criminal or administrative offence or other misconduct.

8. Based on the results of the disciplinary investigation a conclusion is drawn up which within the term of the investigation together with a disciplinary case shall be given to the head of the police unit or a police commission that has initiated the disciplinary investigation.

Article 73. Removal of a police officers from office

1. Failure or improper exercise of the powers which could lead or has led to loss of life, caused significant damage to persons or entities, the state, the community gives grounds for dismissal from the police post. Decision on removal of a police officer from office shall be adopted by a Police Commission.

2. Duration of removal can not exceed the term of a disciplinary investigation, and if the case is given to the Police Commission - time to make a decision after hearing in the case.

3. During the removal from office a police officer is paid two-thirds the size of his salary.

In the event of closure of disciplinary proceedings without calling the police officer to disciplinary measures he shall be paid the difference in wages not received due to removal from office.

Article 74. Conclusion on the results of a disciplinary investigation

1. Conclusion as a the result of a disciplinary investigation shall include:

1) the date and place of conclusion, surname and initials, title, and a place of service of person (or committee members), who conducted a disciplinary investigation;

2) grounds and the basis for initiation of disciplinary proceedings;

3) the circumstances of the case, in particular, the circumstances of police officer misconduct;

4) an explanation of the police officer regarding the circumstances of the case;

5) explanations of others who know the circumstances of the case;

6) an explanation of the police supervisor on the circumstances of the case;

7) documents and materials that confirm and / or deny the fact of misconduct;

8) information describing the police officer as well as data on the presence or absence of disciplinary sanctions;

9) the causes and conditions that led to the commission of the offence, taken or proposed measures to eliminate them or circumstances that are removed from the police charges;

10) conclusion regarding the presence (absence) of the act of police misconduct and its legal qualification , with reference to the provisions of law .

2. Conclusion shall be signed by a person (all members of the Police Commission), who conducted a disciplinary investigation. The members of the Police Commission are entitled to a separate opinion, which they sets out in writing and attach to the report.

3. Decision to send the disciplinary case to the Police Commission or to close a case (proceedings) is taken by the supervisor or a Police commission within three days from the date of detection of the offence or the end of a disciplinary investigation.

4. Disciplinary authority which appointed the disciplinary investigation, may close disciplinary proceedings on the results of disciplinary investigations in case of absence of misconduct in police officer's actions.

Article 75. Procedure for consideration of the case by a Police Commission

1. Police Commission is considering a disciplinary case within 15 days from the date of its receipt and shall submit a proposal to the head of the police unit.

2. Consideration of the case is made by Police Commission publicly unless it adopted a decision to make a consideration closed in order not to disclose the state secrets or other secrets protected by law.

3. Police Commission verifies the completeness, comprehensiveness and objectivity of the disciplinary proceedings, the availability and sufficiency of the evidence of guilt in the commission of police officer's misconduct, decides on the presence in the police officer's act of a misconduct or lack of it, and make proposals to impose a particular type of disciplinary sanction or to close disciplinary proceedings.

When determining the type of disciplinary sanction members of the Police Commission should be guided by the provisions of Article 70 of this Law.

4. Police Commission is empowered under the law to change the legal qualification of the offence committed specified by the person (Commission), which conducted a disciplinary investigation.

5. Consideration of a case by the Police Commission shall be carried out with the police officer, who is being held accountable, except when he or she fails to attend the meetings of the Commission without good reason. At a meeting the Police Commission hears the explanations of the police officer about the circumstances of the case.

Police officer, the person who filed the complaint or report are to be notified of the time, date and place of the hearings of Police Commission no later than three days prior and in writing.

6. Decision to impose a disciplinary sanction on police officer or to close the case because of the lack of disciplinary offence shall be taken by a Police Commission by secret ballot with a simple majority vote of its members and is made in the form of a submission.

7. In the case of an equality of votes the vote of the Head of Police Commission is decisive.

8. During the proceedings, the Police Commission Secretary and in case of his absence - the other member of the Commission is taking minutes of the meeting, which is attached to the case file.

9. Submission of the Police Commission shall be immediately forwarded to the head of police unit.

Article 76. Disciplinary case

1. Disciplinary case shall include:

1) the decision of an authority or officer of the initiation of disciplinary proceedings;

2) a written explanation of the police officer on the circumstances of the case;

3) a written explanation of the head of the structural unit (body) of the police, which a police officer works for, on the circumstances of the offence and other data necessary for a complete, thorough and objective investigation of the facts;

4) a written explanation of others who know the circumstances of the offence committed;

5) a certificate of presence (absence) of disciplinary measures imposed on a police officer;

6) the conclusion on the disciplinary proceedings (if such proceedings took place);

7) submission of the head of the structural unit (body) of the police, which a police officer works for, with proposals for the imposition of disciplinary punishment or dismissal of the case (if the investigation was not carried out and it is not considered by a Police Commission);

8) submission of the Police Commission to bring the police officer to disciplinary responsibility and imposement of a specific type of disciplinary punishment or to dismiss the case (if the case was considered by the Commission);

9) A copy of the decision (act) of the head of the police unit or the Police Commission on the imposition of a disciplinary sanction or dismissal of the case.

Article 77. Guarantees in the application of disciplinary sanction

1. Disciplinary sanction is applied to the police officer immediately after the detection of the offence within the period specified by this Law.

2. In the case of conducting disciplinary investigations within the 6 months period from the day when offence occurred the day of signing the conclusion of this investigation is considered the day of the detection of the offence.

3. Disciplinary sanction may be imposed only when the fact of the commission of the offence and the guilt of the police officer are confirmed.

It is not allowed to impose a disciplinary sanction if the person has already been imposed with administrative penalties or criminal penalties for the same offence.

4. Only one disciplinary penalty shall be imposed for each violation of discipline.

5. Disciplinary sanction can not be applied in the absence of a police officer in the service because of temporary disability, while being on vacation or on a secondment, and before the completion of the appropriate disciplinary investigation.

The period of absence of police officer in the service because of temporary disability and stay on vacation or a business trip terminates the period of penalty.

In such cases, the penalty is applied after a police officer returns in service in the manner prescribed by this Law.

6. Policeman has a right to review the disciplinary case, and challenge a disciplinary penalty imposed on him or her in the manner prescribed by this Law.

7. Policeman is entitled to have the assistance of an attorney or other authorized representative.

Article 78. Explanation of a police officer

1. Before imposition of a disciplinary sanction a person (Commission) that conducts disciplinary proceedings (in case there is an investigation) shall receive from the police officer, called to disciplinary responsibility, a written explanation.

2. Explanation of a police officer shall reflect the time, place, circumstances and reasons for committing misconduct, his sense of guilt or denial, and other issues that are relevant to the case.

3. Failure to provide official explanation shall be fixed by an official in presence of two persons from the staff of the police or with the relevant act and shall not prevent the imposition of a disciplinary sanction on a police officer.

Refusal of a police officer to review or sign the act shall be certified thereon by persons who composed it.

Article 79. Right to review records of disciplinary proceedings

1. Policeman has the right to examine all records of disciplinary proceedings before the decision to impose a disciplinary sanction on him is made, in the case where the disciplinary investigation was not conducted, or after the preparation and signing of the conclusion of such investigation within the time allowed for the preparation of materials for their consideration or sending them to the disciplinary committee.

2. On the results of review a police officer may contribute comments and additions to the conclusion, file a petition to take additional measures to establish the circumstances relevant to the case, to provide additional explanations and submit additional documents and materials relating to these circumstances, which are added to the case.

Article 80. Decision on bringing to disciplinary responsibility or disciplinary proceedings closure

1. Decision to impose a disciplinary sanction on a police officer or to close disciplinary

proceedings is taken within three days from the day the offence was detected based on notification and materials of the case or the conclusion of the disciplinary investigation or submission of the Police Commission from the date of receipt.

2. A decision that is made by order or other act specifies the name of the police unit, the date of its adoption, information about a police officer, a summary of the circumstances of the offence and its legal qualification, type of disciplinary sanction.

3. If in the course of disciplinary proceedings in the act of police officer misconduct under this Law has not been identified, Head of Police Unit or Police Commission decides to close the disciplinary proceedings against the police officer, and issues an order or other act.

4. A police officer receives upon signature a duly certified copy of the order or any other act on imposition on him a disciplinary sanction or closure of disciplinary proceedings no later than the next business day after the decision is made.

In case of the police officer refuses to obtain a copy of the order or any other act on imposing on him a disciplinary sanction or closure of disciplinary proceedings this document shall be sent to the police officer at his place of residence by registered mail with return receipt requested.

Chapter 5. Peculiarities of resignation of a police officer

Article 81. Resignation of police officer

1. Resignation is a termination of powers of a police officer based on his written statement.

2. Grounds for resignation of a police officer can be a medical condition that prevents the execution of their duties (if any medical report).

3. In case of resignation of a police officer who has not reached retirement age set by the law, but has insurance experience for men - at least 15, for women - at least 10 years and worked as a police officer for at least 5 years, a body that made the decision on resignation, pays on a monthly basis 2 /3 the size of his salary until the retirement age or to the moment a person finds a job, but no longer than six months.

4. If a resigned person terminates the citizenship of Ukraine or commits an intentional crime, the payments referred to in paragraph third of this Article shall cease.

SECTION 5. BODIES PROVIDING FOR THE ACTIVITY OF POLICE

Chapter 1. Police Commissions

Article 82. Types, jurisdiction and powers of the Police Commissions

1. Police commissions operating in Ukraine are the following:

1) Commissions of the local police;

2) Police Commissions of regions, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

2. Commission of local police shall be created in each community (communities), which has the local police.

Police commissions are formed in each region, the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

3. Police Commission is authorized to:

1) conduct a competition for the position of police officer;

2) adopt an alternative report on police activity;

3) conduct disciplinary proceedings against a police officer.

4. Commission of local police is authorized to prepare the nomination of the head of the respective local police based on the results of the competition.

Police Commissions are authorized to prepare the nomination of heads and deputy heads of the Administrative Police, Criminal Police, Financial Police and Border Police based on the results of the competition. The mentioned authority as well as the adoption of an alternative report on police activity shall be exercised by the Police Commission within which jurisdiction the secretariat of Administrative Police, Criminal Police, Financial Police and Border Police respectively is located.

Police Commissions of a region, Autonomous Republic of Crimea, cities of Kyiv and Sevastopol authorized to conduct a competition for all police officers positions and conduct disciplinary proceedings against all the police officers who serve in the secretariats, local (district and regional) authorities and other departments of the Administrative Police, Criminal Police, Financial police and Border Police, that are located within the relevant region, the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol.

Article 83. Composition of Police Commissions

1. The structure of each Police Commission (Commission of the local police, the Police

Commission of the region, the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol)

consists of five members who are citizens of Ukraine, in particular:

1) one person appointed by the Minister responsible for public policy in the field of public order and the protection of individuals, society and the state from illegal encroachments in consultation with the Minister responsible for public policy in the field of finance;

2) one person (deputy), elected by the relevant local council, regional council, the Supreme Council of the Autonomous Republic of Crimea, Kyiv City Council, Sevastopol City Council;

3) one person (authoritative human rights defender), selected by the relevant local council, regional council, the Supreme Council of the Autonomous Republic of Crimea, Kyiv City Council, Sevastopol City Council;

4) one person (a reputable attorney), elected by the Board of Advocates of the region;

5) one person (authoritative human rights defender), designated by the Ukrainian Parliament Commissioner for Human Rights.

2. Police Commission shall include a police officer elected during the general assembly of policemen of the respective police unit by a secret ballot when considering a disciplinary case.

Police officer against whom a disciplinary case is opened, cannot be a member of the Police Commission during its consideration.

Head of Police unit cannot be selected to the Police Commission.

3. An elected People's deputy of Ukraine, representative of the Cabinet of Ministers of Ukraine, central or local executive authority, judge, law enforcement officer or officer of an agency of state supervision (control) cannot be selected as a member of the Police Commission .

4. Police Commission is competent if it has at least four members.

Commission members at the first meeting by secret ballot elect its chairman and secretary. Meeting of the Police Commission is legal, if attended by at least four of its members.

Article 84. Term of office and the support of the Police Commissions activities

1. Term of office of a member of the Police Commission shall be three years.

The same person may not exercise the powers of a member of the Police Commission for more than two consecutive terms.

2. Police Commissions act on a regular basis without interruption of its members from performance of their basic duties.

3. Travel and lost earnings or separation from ordinary activities are reimbursed to the members of the police commission. Compensation for lost earnings shall be calculated in proportion

to the amount of the average salary, and compensation for separation from ordinary activities - in proportion to the size of the minimum wage.

4. Organizational support of the activities and meetings of police commissions are carried out by an appropriate unit of the relevant police secretariat.

Chapter 2. Police schools

Article 85. Status of Police schools

1. Ukraine has a 4 Police Schools in the city of_____________, of_____________, of_____________, of_____________.

2. Police schools are public institutions with a special status, providing training to the staff of the police. Legislation on education does not apply to the police schools.

3. Ministry responsible for public policy in the field of public order and the protection of individuals, society and the state from illegal encroachments:

1) forms the Police Academy;

2) approves the statutes of Police schools and changes thereto;

3) appoints and dismisses heads of Police schools;

4) serves as the chief administrator of the State Budget of Ukraine on the financial support of the Police School.

4. Employees of Police schools except seconded police officers, are under equal wages to civil servants.

5. Police schools are legal entities, having the seal with the State Emblem of Ukraine and its name, its own balance sheet and accounts in the State Treasury of Ukraine.

Police schools cannot form regional offices.

Article 86. Tasks of police schools

1. Police school shall:

1) train candidates for the police officer position;

2) retrain police officers;

3) conduct research on improving the police;

4) study the international experience of police activity;

5) provide guidelines for police activity, police commissions.

Final provisions

1. This Law shall enter into force on 1 January 2015, except for:

1) the provisions concerning the local police and the local police commissions, which shall take effect from the date of entry into force of the Law on Administrative and Territorial Structure of Ukraine;

2) The provisions of the Border Police, which will become effective on January 1, 2017;

3) Article 48, which shall enter into force on 1 July 2015;

4) paragraph 3 of Article 16, which shall enter into force on 1 January 2020;

5) paragraph 3 of Article 17, which shall enter into force on 1 January 2025;

6) paragraph 3 of part 4 of Article 17, which shall enter into force on 1 January 2020;

7) paragraph 3 of part 5 of Article 17, which shall enter into force on 1 January 2018.

8) sub-item 5 of item 4 of Transitional provisions which shall enter into force on 01 January 2017

2. Since the enactment of this Law the following acts are repealed:

1) Law of Ukraine "On Militia" of 20 December 1990 № 565 -XII (Bulletin of the Supreme Council of the USSR, 1991, № 4, p. 20);

2) Resolution of the Supreme Council of the USSR "On the order of the Law of Ukrainian SSR "On Police" December 25, 1990 № 583 -XII (Bulletin of the Supreme Soviet of the USSR , 1991, № 4, p. 21);

3) Law of Ukraine "On the organizational and legal framework to combat organized crime" on June 30, 1993 № 3341 -XII (Bulletin of the Verkhovna Rada of Ukraine, 1993 , № 35, p. 358);

4) Resolution of the Verkhovna Rada of Ukraine "On the order of the Law of Ukraine "On the organizational and legal framework to combat organized crime" on June 30, 1993 № 3342-XII (Bulletin of the Verkhovna Rada of Ukraine, 1993, № 35, p. 359);

5) The Law of Ukraine "On State Protection of public authorities and officials in Ukraine" dated March 4, 1998 160/98-VR number (Bulletin of the Verkhovna Rada of Ukraine, 1998, № 35, p. 236);

6) The Law of Ukraine "On the General Structure and Strength of the Ministry of Internal Affairs of Ukraine" dated January 10, 2002 № 2925 -III (Bulletin of the Verkhovna Rada of Ukraine, 2002, № 16, p. 115);

7) The Law of Ukraine "On the general structure and size of the State Guard of Ukraine" dated November 17, 2005 № 3106 -IV (Bulletin of the Verkhovna Rada of Ukraine, 2006, № 2-3, art. 50);

8) Law of Ukraine "On Disciplinary Statute of the Interior of Ukraine" dated February 22, 2006 № 3460 -IV (Bulletin of the Verkhovna Rada of Ukraine, 2006, № 29, p. 245).

3. Since January 1, 2017 are repealed:

1) Law of Ukraine "On the State Border Service of Ukraine" dated April 3, 2003 № 661 -IV (Bulletin of the Verkhovna Rada of Ukraine, 2003, № 27, p. 208);

2) Law of Ukraine "On Border Control" on November 5, 2009 № 1710 -VI (Bulletin of the Verkhovna Rada of Ukraine, 2010, № 6, p. 46).

4. Amend the following legislative acts of Ukraine:

1) In the Law of Ukraine "On Security Service of Ukraine" (Bulletin of the Verkhovna Rada of Ukraine, 1992, № 27, p, 382):

a) part 2 of article 2 shall be amended as follows: "as well as state protection and ensuring security of certain state officials, members of their families and other persons".

b) amend the article 25 with part 4 as follows:

"In case of performing state protection and ensuring security of certain state officials and members of their families, Security Service of Ukraine, its bodies and officers also have the right:

1)to give consent to let citizens to objects where a protected person constantly or temporarily resides;

2) receive in the set order from the heads of state authorities of Ukraine, local authorities, entrepreneurs, institutions, organizations disregard of the form of ownership, upon a written request from the Head of the Security Service of Ukraine or his deputies, information necessary to conduct state protection;

3) use the form of clothing and documents encoding a person or departmental affiliation of officers and transport vehicles of the Security Service of Ukraine; run in the order set by the Law of Ukraine "On Operative and Search activity", open and covert operative and measures with the aim to prevent encroachments on officials and members of their families, detect and terminate such encroachments

4) take video-, foto- audio-recordings at objects where a protected person constantly or temporarily resides;

5) engage upon agreement with the heads of law enforcement authorities and other state authorities their military servicemen, technical and other means;

6) exercise on objects, where a protected person constantly or temporarily resides, fire, sanitary, ecological, radiation and anti-epidemic control and control over the state of technical protection of information, take measures to eliminate detected violations, define reasons that caused them";

c) amend article 25-1 as follows:

"Article 25-1. Ensuring security of certain state officials, members of their families and other persons Security Service of Ukraine, its bodies and officers carry out state protection and ensure security of places of constant and temporary residence of the President of Ukraine, Speaker of the Verkhovna Rada of Ukraine, its deputies, the Prime-Minister of Ukraine, Chief of the Supreme Court of Ukraine and members of their families. State protection shall be carried out both on the territory of Ukraine and beyond its borders during the whole tenure of officials mentioned in this article.

State protection shall also be carried out with regard to heads of foreign states, parliaments and governments and members of their families, heads of international organizations coming to Ukraine or staying at its territory. The list of heads of international organizations subject to state protection shall be approved by the Cabinet of Ministers of Ukraine.

State protection if there is a threat to life or health can be applied to people's deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central executive authorities – not members of the Cabinet of Ministers of Ukraine, judges of the Constitutional Court of Ukraine and Supreme Court of Ukraine, Head of the National Bank of Ukraine, Speaker of the Verkhovna Rada of the Autonomous Republic of Crimea, Chief of the Head of the Council of Ministers of the Autonomous Republic of Crimea.

Decision on the necessity of applying state protection to persons mentioned in part 3 of this article shall be taken by the President of Ukraine upon the submission of the Head of the Security Service of Ukraine. State protection shall be provided to persons for the term up to six months, which can be prolonged for the same term by the President of Ukraine upon the submission of the Head of the Security Service of Ukraine".

d) amend article 25-2 as follows:

"Article 25-2. Obligations and rights of persons subject to state protection

Persons subject to state protection are obliged to treat their security responsibly, facilitate state protection authorities in carrying out their functions.

Persons subject to state protection have the right to:

1) receive information on measures of ensuring their security;

2) approve candidates who will be directly protecting them;

3) refuse (temporarily refuse) in the written form from personal protection, taking full personal responsibility for possible negative consequences of this act."

2) Remove Article 26-1 of the Law of Ukraine "On Road Traffic " on June 30, 1993 № 3353 - XII (Bulletin of the Verkhovna Rada of Ukraine, 1993, № 31, p. 338);

3) Delete paragraphs 4 and 6 of Article 1 of the Law of Ukraine "On the general structure and size of the Security Service of Ukraine" (Supreme Council of Ukraine, 2006, № 4, p. 53);

4) Delete Article 348 - 357 of the Tax Code of Ukraine on December 2, 2010 № 2755 -VI (Bulletin of the Verkhovna Rada of Ukraine, 2011, № 13-14, № 15-16, № 17, p. 112).

5) add item 19 to part 1 of article 2 of the Law of Ukraine "On National Guard of Ukraine" (Bulleting of the Verkhovna Rada of Ukraine, 2014, № 17, p.594) as follows:

"19) protection and ensuring security of state border of Ukraine, sovereign rights of Ukraine in its maritime and economic zone".

Transitional provisions

1. The course of one month from the date of publication of this Law provided for shall be the

appointment, election of members of Police Commissions of regions, the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol stipulated by the Article 82 of this Law (other than local police commissions, which members shall be appointed and elected within one month from the date of entry into force of the Law of Ukraine "On administrative and territorial structure").

Until the day when this Law comes into force the mentioned Police commissions conduct competitions for the positions of officers of Administrative police, Criminal Police, Financial Police and Border Police according to the article 47 except for special training of candidates for the position of a police officer.

2. Prior to the day of creation of local police its functions foreseen by this Law shall be performed by district, district in cities, city units of the Administrative police.

Within one month from the date of publication of this Law, the formation of Police commissions of districts, districts in cities and cities shall be provided for.

The mentioned Police commissions have 5 members who are the citizens of Ukraine, in particular:

1) one person is appointed by the Minister responsible for public policy in the field of public order and the protection of individuals, society and the state from illegal encroachments;

2) one person is elected by the relevant local council from among the members of the Board;

3) one person (authoritative human rights defender) shall be elected by the relevant local council;

4) one person (a reputable lawyer) is elected by the Board of Advocates of the region;

5) one person (authoritative human rights defender) shall be appointed by the Ukrainian Parliament Commissioner for Human Rights.

The term of office of the members of these police commissions is three years.

Until the formation of Local police commissions mentioned Police commissions are authorized pursuant to this Law to:

1) conduct a competition for the position of a police officers of district, city district and city units of Administrative police;

2) submit an alternative report on police activity of district, city district, city units of

Administrative police;

3) conduct disciplinary proceedings against police officers of district, city district, city units of Administrative police.

3. Upon enactment of this Law police officers already appointed to service automatically receive police ranks of junior inspector of police, junior detective of police if before such an appointment they had a special rank of private, junior, middle commanding officers or from 15th to 7th rank of a civil servant, service in local self-government bodies.

Police officers already appointed to service automatically receive police ranks of inspector of police, detective of police if before such an appointment they had a special rank of senior commanding officers or from 6th to 1h rank of civil servant, service in local self-government bodies.

Appointed to the position of a police officer persons not foreseen in paragraphs 1, 2 of this item is automatically assigned a rank of junior police inspector, junior police detective.

4. Surcharges for years of police service will amount to:

1) for junior police inspector, junior police detective, who prior to his or her appointment had special police ranks of private, junior commanding officers, middle commanding officers or from 15th to 7th rank of civil servants, servants in local self-government - 15 percent of base salary;

2) for inspector of police, police detective, who prior to his or her appointment had special rank of the senior and higher commanding officers or from 6th to 1st rank of civil service, service in local self-government - 20 percent of base salary.

5. The length of police work includes the work before the enactment of this Law as a judge, prosecutor, investigator, police officer or other law enforcement agency.

6. Cabinet of Ministers of Ukraine to the date of enactment of this Act shall provide for:

1) Elimination of structural units of the Ministry of Interior, Territorial and structural divisions of Directorate Generals of the Ministry of Internal Affairs, Departments of the Ministry of Internal Affairs on railroads, the State Automobile Inspectorate, veterinary police, judicial police, special police units, territorial and structural divisions of the State Guard of Ukraine, special units of the State penitentiary Service of Ukraine, escorting units of the National Guard of Ukraine;

2) creation of Administrative Police, Criminal Police, Financial Police and Border Police;

3) the transfer of premises, transport, logistical facilities and equipment that were in use by public authorities, which are to be abolished to the police bodies taking into account peculiarities of their previous usage to:

a) the Administrative Police - from the State Guard Service of Ukraine, special units of the State Penitentiary Service of Ukraine, National Guard of Ukraine escorting units, the State Automobile Inspectorate, transport police, veterinary police, judicial police, a special unit of the State Guard Service, a special unit of the police for public safety;

b) to district, district in cities, city units of Administrative police - from district and district in the city, city units of Internal Affairs;

c) to the local police (since its creation) - from district, district in cities, city units of Administrative police;

d) to the Criminal Police - from investigative units, units to combat organized crime, human and drug trafficking, cyber-crime, units of criminal police for children, criminal investigation, the units of the State Border Guard Service of Ukraine, units to combat corruption and organized crime of the Security Service of Ukraine;

e) to the Financial Police - from the State Service to combat economic crime, tax police units of the State Customs Service of Ukraine, counterintelligence departments for protection of the economy of the state of the Security Service of Ukraine;

f) to the Border Police (since its creation) — from State Border Guard Service of Ukraine;

g) to Police schools — from schools and vocational training centers of police;

4) the reorganization of the State Guard Service of Ukraine of MIA (except for a special unit) in a state enterprise;

5) deprive bodies of interior of the authority:

a) in respect of property evaluation, property rights and professional activities;

b) in the permit system;

c) in the sphere of state registration of vehicles and issuance of relevant registration documents;

d) to control the trade of transport vehicles, training, retraining and improvement of skills of drivers of transport vehicles;

e) to take exams for the right to drive a transport vehicle and issuance of driver's licenses;

f) to license economic activities;

g) to issue permits in the sphere of traffic safety;

6) to transfer databases not foreseen by this law to authorized state authorities;

7) to stop enrolling cadets, students, adjuncts, Ph.Ds to the institutes, universities, academy of internal affairs from the day this Law comes into force;

8) transfer health care facilities from the sphere of the Ministry of Internal Affairs of Ukraine to the sphere of the ministry responsible for state police in the sphere of healthcare;

9) adoption of legal acts arising out of this Law;

10) bring its legal acts in correspondence with this Law;

11) bring legal acts of the ministries and other central executive authorities in correspondence with this Law;

12) introduction for the review by the Verkhovna Rada of Ukraine of propositions concerning bringing the legal acts of Ukraine in correspondence with this Law.

7. Petitions and notifications of criminal offences submitted to the bodies of internal affairs before the enactment of this Law as well as the information that has not been entered into the Unified state register of pre-trial investigations have to be transferred during 24 hours to the respective police unit for them to be entered to the Unified state register of pre-trial investigations according to the article 214 of the Criminal Procedure Code of Ukraine.

8. Materials of criminal proceedings that on the day of enactment of this Law are at the body of internal affairs at the pre-trial stage must be transferred to the relevant police unit to continue the proceedings during 10 days from the day this Law is enacted.

9. Petitions and notifications, appeals of the bodies of local self-government, deputies of all levels, legal entities and individuals submitted to bodies of internal affairs before this Law was enacted and concerning which there was no decision taken must within 24 hours be transferred to those who submitted them or to the relevant police unit for them to be entered into the Unified state register of pre-trial investigations according to the article 214 of the Criminal Procedure Code of Ukraine.