

ICPS newsletter[®]

A basic concept for reforming the law enforcement system in Ukraine

It is impossible to achieve democracy and sustainable social and economic development without basic protection for the individual and the society. Historically, government institutions have been known to threaten the safety of the individual and the security of the society as a whole, starting with ineffectiveness, lack of professionalism, and inappropriate regulation, and going on to corruption and the wholesale violation of human rights. This concept for reforming the law enforcement system in Ukraine was prepared as part of an ongoing study into approaches to reforming security and defense being carried out by ICPS since April 2005

The essence of law enforcement reform

So far, Ukraine has failed to develop an understanding that law enforcement bodies are there to defend the rights of subjects of legal relations, including both Ukrainian citizens and legal entities, whenever they are violated. On the contrary, the majority of Ukrainians sees the law enforcement system as a mechanism for the state to repress or pressure commercial rivals and political opponents.

According to ICPS analysts, there are several defining axioms and issues that need to be in place to make any reform of the country's law enforcement system possible:

Reform of the law enforcement system is a pre-condition for all other reforms. The rule of law and a civil society cannot be sustained without properly protecting and observing the rights and freedoms of all members of the society.

Law enforcement reform must be coordinated and integrated with plans and programs in all relevant agencies. Law enforcement is multidimensional, with a number of ministries and departments carrying out activities in this area, so the distribution of powers should be consistent. In certain areas, there is some crossover, which requires a powerful coordinating mechanism in the form of the National Security and Defense Council (NSDC) to ensure consistent, efficient, appropriate and systematic operation.

The task of reforming this system requires that the objectives match the functions, structure, human resources, and other support systems. In order to establish the responsibility of the institution, the necessary resources must be available;

otherwise, any reform efforts will be simply dabbling. The shortage of resources and the need for reforms are both a problem, so the government has to prioritize: what is urgent, what is necessary and what is desirable. The desirable can be done over a longer period of time, the necessary in the medium term, and the urgent—immediately.

The corporate culture of each agency must be oriented towards reform. It is very easy to change policies or regulations, but not so easy to change the working culture of an entire ministry. Here, the issue is for the public to know who makes decisions in the ministry, what decisions are being made, and what the consequences of these decisions are. One of the challenges for the government, then, is to create a critical mass of new employees who know why reform is necessary and support it.

The overall goal of reform must be higher than any consequences and should be transparent and understandable to the average voter. This goal has three elements:

- to transform law enforcement bodies from a mechanism for prosecuting and repressing physical and legal entities into a mechanism for protecting and restoring their violated rights;
- to restore confidence in law enforcement agencies as the main source of legal protection;
- to eliminate or reduce corruption in these agencies.

Stage One: Set up the necessary structures

This stage (2005–2006) consists of the most urgent and most difficult steps. These will face powerful resistance among the ministry's officials, who will lose influence over the

administrative, staffing and financial policies of independent divisions. But this will also seriously limit the opportunities for machination and corruption in the higher ranks.

The 2006 State Budget must allocate funds to ensure that seven key tasks are carried out:

(1) Reforming the Interior Ministry into a law and order policy-making body and removing functional divisions from the Ministry apparatus.

(2) Setting up independent functional agencies under the MIA: criminal police to deal with felonies and other crimes; police to deal with white-collar crime; a migration service; public security police; and the Ministry Guard (based on the current one). These various agencies should be headed by professionals, not politicians, they should have their own Budget funds, and they should implement their own human resource policies.

Criminal division. Its functions include: criminal investigations, crime detection (intelligence), and pre-trial investigations of misdemeanors. This division would be formed directly from the MIA units involved in criminal investigation, pursuit, combating organized crime, and investigations of the MIA itself.

White-collar crime division. This police department would be formed from the existing white-collar crime units, as well as units of the State Tax Administration's tax police, who counteract tax-related crimes. White-collar crime work that is currently under the SBU, the state security service, must be turned over to this division as well.

Migration division. Its functions include: review citizenship matters; process applications for refugee status or asylum by foreigners and stateless individuals in Ukraine; accommodate and provide for those in the process of getting refugee status; detect and deport those who are on Ukrainian territory illegally or have lost the right to a legal stay; detain, screen and identify those arrested for illegal entry or stay on Ukrainian territory. The migration division should take in specialists from the State Nationality and Migration Committee

and the MIA's Passport Immigration and Registration Department. The Committee should then be eliminated and its functions of supporting ethnic minorities and deported peoples handed over to the Ministry of Culture and Tourism. The function of registering and issuing passports to Ukrainian citizens belongs to the Ministry of Justice. The migration division will thus include departments to deal with citizenship issues, refugees and policing foreigners.

Public security division: This would be the municipal police, based on the tasks and organizational and staffing structure of the street patrol, traffic police, and old DAI, the state vehicle inspection department.

The MIA Guard (special forces division): These would be based on tasks and organizational and staffing structure of the Ministry's internal troops, Special Forces, court and special police.

The MIA police departments would carry out inquests and pre-trial investigations for misdemeanors and minor crimes, leaving felonies and serious crimes to an independent pre-trial investigative body.

(3) Establishing an independent pre-trial investigative agency (the National Bureau of Investigation, the Investigation Department, and so on) based on investigative units in the MIA, the SBU, the STA, and the Prosecutor General's Office (PGO). Their key function would be to investigate felonies and serious crimes, crimes involving abuse of office (corruption), and crimes against the society and the state.

(4) Renaming the "militia" into "police." This would help both the public and the police themselves to perceive the new, more civilized face of the MIA.

(5) Extending the powers of the State Border Service. This would be done by making this service part of the highway patrol and adding responsibility for maintaining law and order in airports, railway terminals and seaports as points of international connections. This service would also carry out pre-trial investigations.

(6) Separating the Special Communication Service from the SBU. This service will be responsible for Government and other types of special communication, radio and electronic intelligence, encryption and other technical communication security, and monitoring communications. Problems of illegal bugs and protection of information in general, including in government networks, can be handled by centralizing these in a separate agency closely monitored by the Prosecutor's Office and carrying out only proper court orders for intelligence operations on behalf of other special services and law enforcement bodies.

(7) Setting up an intelligence committee that reports to the NSDC but is outside its structure. This should coordinate intelligence activities under a newly-created national security director. Similar agencies exist in many countries. The committee will coordinate the work of intelligence bodies and cross-analyze information to produce substantial and confirmable information for the country's top officials to help them make political decisions. The chair of this committee could report directly to the NSDC chair, that is, the Council's head, not its secretary. In addition, this committee could be one of the instruments for public oversight of intelligence agencies.

All steps of the first stage will be accompanied by reforms in the legislation governing police and other law enforcement activity to bring its new functions and tasks in line: amendments to legislation and regulation must be drafted, adopted and enforced to make reforms possible.

The results of this first stage will be:

- the State Nationalities and Migration Committee, the DAI, the State Passport Registration and Migration Department, tax police departments, and economic crime departments of the SBU are eliminated;
- functions that are not appropriate to law enforcement will be handed over to the relevant government institutions. For example, the task of issuing passports and registering residents will go to the Ministry of Justice; ethnic minority affairs will go to the Ministry of Culture and Tourism;
- the structure will become more politically transparent and managerial functions will be handed over to specialists with appropriate qualifications.
- the foundation for a pre-trial investigation system will be laid.

Stage Two: Optimize operations

During the second stage of reforms (2007–2008), the activity of law enforcement agencies will be analyzed and newly established structures optimized. Among the steps undertaken will be:

- the Ministry of Justice will take over running the penitentiary system, which is in line with both European standards and international commitments made by Ukraine;
- the SBU's activities will be directed at using counterintelligence to protect information related to domestic and foreign policies and the activities of the Armed Forces and the military-industrial complex, and to ensure security from terrorist attacks. The State Guard Service will be a separate department within the SBU.

Stage Three: Consolidate new structures

This phase will take place over 2009 and 2010:

- Once administrative and territorial reform has been carried out, the financial and human resources of the Public Security Division will be used to set up municipal police in urban areas and sheriff's offices in smaller communities. The heads of these institutions will be appointed by the chairs of local community governments. Sheriffs will report to the community and be responsible for ensuring public order on their territory, counteracting administrative violations and those crimes that do not pose any threat to public security.
- The Border Service will merge with the Migration Service and become a separate department of the Border Patrol Division within the MIA. It will be responsible for the entire territory of Ukraine.

As a result of the second and third stages overlapping functions among various law enforcement bodies will be finally eliminated and institutional reform will be completed:

- municipal police will be established;
- reforms in the law enforcement divisions of the MIA will be complete;
- a pre-trial investigation system will be established;
- the SBU's activity as an intelligence body to protect information related to domestic and foreign policies, the activities of the Armed Forces and the MIC, and terrorist attacks will be supported properly;
- the PGO's activity will be supported on a constitutional basis;
- a penitentiary system will be instituted.

The reformation of the country's law enforcement system cannot be achieved through slogans like "Nobody will steal any more." Changing the current system requires a comprehensive and well-grounded approach, with the government acting through a constitutional analytical and forecasting body like the National Security Council. Relations between Ukrainian society and its government must be profoundly changed in this area and the government's monopoly of opinion on security and defense must be broken.

The reform strategy developed by the Council will have to be broadly covered by the media and discussed widely in academic and legal circles. Here, the practice of developing and debating Green and White Papers on government policies will be a very useful tool. ■

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