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LAW ENFORCEMENT REFORM IN UKRAINE – A ONE-TIME PHENOMENON OR A CONSTANT PROCESS?

Олексій Бочковий, Люся Можечук. ПРАВООХОРОННА РЕФОРМА В УКРАЇНІ – РАЗОВЕ ЯВИЩЕ ЧИ ТРИВАЛИЙ ПРОЦЕС? У науковій статті досліджується ефективність та перспективи реформування правоохоронних органів України. Висвітлено питання, що виникли під час запровадження такої реформи, яка, у свою чергу, вплинула на ефективність правоохоронної діяльності в Україні. Досліджено питання щодо запровадження проекту «Поліцейські детективи». Розкрито значення поняття «поліцейські детективи», наведено особливості їх роботи та результати.

Акцент зроблено на необхідності внесення відповідних змін до існуючих нормативних актів у зв'язку з реформою, оскільки більшість положень не узгоджуються між собою або не повністю регулюють певні правовідносини.

Звернуто увагу на пенсійну реформу в Україні, висвітлено ключові аспекти такої реформи. Особливу увагу було приділено, зокрема, питанню пенсійного забезпечення працівників Національної поліції в контексті реформи, проаналізовано нормативно-правові акти, що регулюють правовідносини у цій сфері. Висвітлено проблемні аспекти реалізації права на пенсію колишніми правоохоронцями, зокрема виплату пенсій за новими перерахунками. Наводяться конкретні приклади із судової практики щодо порушення права на належне пенсійне забезпечення.

Ключові слова: правоохоронні органи, реформи, соціальний захист, пенсійне забезпечення, Національна поліція, поліцейські детективи, поліцейські.

Relevance of the study. «May you live in interesting times», this is the famous English saying, where «interesting» means times of change, reform and so on. The subtext of such an expression is a wish with a negative taste, wishing for anxiety and problems. Such are the times in Ukraine, because today there isn't a single law enforcement agency that hasn't been reformed.

Dozens of new law enforcement agencies have been created, others have been liquidated or reformatted. At the same time, during the introduction of the next reform, changes with a positive mood are announced and forecasts for improving the efficiency of the reformed activity are provided. Of course, the reform is carried out in order to improve, at least it is announced before the start. But do the reforms achieve these goals in improving the efficiency of units to protect the rights and freedoms of citizens, the interests of society and the state? Sometimes it is difficult to find out, as new reforms are introduced for law enforcement agencies that haven't yet completed the previous reform. However, the intensity with which the old and new law enforcement units are reformed doesn't even allow to adjust the current legislation in time, which, of course, doesn't contribute to the effectiveness of law enforcement activities. Thus,

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today there is a need for scientific research on the effectiveness and prospects of reforming law enforcement agencies in Ukraine.

Recent publications review. The issue of law enforcement reform has always been and remains the focus of domestic scholars. In particular, some aspects of such reform were covered in the works of such scientists as Bodruk O.S., Hovorukha M.M., Kulish A.M., Marochkin I.Ye., Melnyk M.I., Medvediev O.V., Panonko I.M., Pylypchuk V.H., Rybalko H.S., Rudenko M.V., Sybilova N.V., Khavroniuk M.I., Khoma V.O., Yusupov V.A. and other.

Special attention was paid to the issue of pension provision by such scientists as Andriiv V.M., Bolotina N.B., Venedyktov V.S., Vyshnovetska S.V., Vitruk M.V., Voievodin L.D., Honcharuk V.V., Inshyn M.I., Klemparskyi M.M., Kryvenko O.A., Melnyk K.Yu., Prylipko S.M., Pylypenko P.D., Chanysheva H.I., Shcherbyna V.I. and others.

The article's objective is to analyze the issues of efficiency and further prospects of law enforcement reform in Ukraine.

Discussion. The need to reform the law enforcement system of Ukraine is recognized by all stakeholders: society, politicians, law enforcement. Ukraine has significant support from international organizations (EU, OSCE, NATO) and partner countries (USA, Great Britain, the Netherlands, etc.) For example, the EU Civil Security Reform Advisory Mission (EUAM), the EU Border Assistance Mission to Moldova and Ukraine (EUBAM), the EU Support Group for Ukraine (SGUA), and the International Department of Justice's Criminal Investigation Program are currently operating in Ukraine. USA (ICITAP) [1, p. 5].

As an example, in 2017, with the initiative and support of the European Union Advisory Mission to Ukraine, a pilot project to introduce police detective positions was launched. According to the Minister of Internal Affairs of Ukraine, the experiment was introduced in order to find the optimal balance between the institute of investigators and the institute of detectives. Therefore, it was decided to introduce the project «Police Detectives» in eight regions of Ukraine – in Kyiv, Zaporizhia, Lviv, Odessa, Poltava, Sumy, Kharkiv and Khmelnytsky regions [2]. This is stated in the order of the Ministry of Internal Affairs of Ukraine dated 10.04.2017 № 337 «On conducting an experiment on the introduction of new forms and methods in some police departments of the main departments of the National Police». All these ideas seem reasonable and extremely interesting, because in theory, the combination of functions of an operative and an investigator saves not only effort but also time, which is constantly lacking in the investigation of criminal proceedings due to the timeliness of most sources of evidence. The combination of the functions of an operative and an investigator in the person of a detective would eliminate bureaucratic red tape during the approval of orders, their transfer, execution, etc.

But what does it all look like in practice? Google's search query for «police detective» yields more than 800,000 results, most of which relate to the term «detective» in the sense of a literary work or a private detective. As for police detectives in the sense of officials, most of the results date back to 2017-2018, and quote the words of the Minister of the Interior and the then Head of the National Police, regarding the presentation of the same experiment.

Only a few links allow us to learn at least a little about the peculiarities of the work of police detectives and their results. In particular, it is news about detection by detectives of criminal activity in the Khmelnytsky and Nikolaev areas in 2019. But the most detailed material from the GUNP in the Donetsk region, which, in addition to the peculiarities of the work of police detectives, contains an analysis of activities in 2019, as well as the basic requirements for a candidate for the position of detective.

Thus, analyzing the information content of the request for police detectives on the Internet, there is a certain contrast between the vivid presentation of the project «Police Detective» and its further implementation. We suspect that the lack of information is due to the increased level of secrecy of police detectives. And the analysis of the activities of detectives in the GUNP in the Donetsk region, which is presented on the official website of the unit, doesn't allow to say about its lack of effectiveness [3].

The practical implementation of the experiment was as follows: in the police departments that participated in the experiment, the vast majority of detectives were appointed as investigators and empowered to conduct a full range of investigative and operational measures, starting from the detection of the crime and ending with court.

It should be noted at once that if such experience could have existed in the regional police departments, then in the district departments, due to the workload, the project implementation was problematic. Moreover, the use of the Western name of the subject of the proceedings

«detective» isn't provided by any legal act, and therefore, from a legal point of view, all detectives are ordinary investigators who independently conduct covert investigative (search) actions (hereinafter NA (R) D). Although, according to the current CPC of Ukraine and without experiment, the investigator isn't prohibited from conducting an emergency (R) D on his own without sending instructions to operatives.

Talking to colleagues in the practical units, it became known that today, some «detectives» were transferred back to the criminal investigation department, while others remained to work as ordinary investigators, because even some heads of «police detectives» didn't understand the experiment and didn't want to continue it. Whether the experiment ended or not is currently unknown, as is its effectiveness.

A study of information on the effectiveness of recent law enforcement reforms gives the impression that the vast majority of them are grant projects. And there would be nothing wrong with this if the main goal of many such projects wasn't to obtain financial benefits without taking into account the end results. After all, conducting a variety of grant research allows you to implement scientific ideas and at the same time receive appropriate funding. But the ideas of scientists aren't always effective, which is often manifested only in practical implementation.

In particular, domestic researchers in the field of law often blame the imperfect Ukrainian law enforcement sphere and take as an example the experience of many successful countries, including European or American ones. This fascination with Western experience sometimes leads to ignoring many important aspects, one of which is historical experience and belonging to a particular legal system.

Thus, in the criminal process there is a century-old division into continental and Anglo-American paradigms. Ukrainian law has always professed the first of these, which has a pre-trial investigation, which deals with the collection and evaluation of evidence, and not the court, as in the latter. Unfortunately, this aspect isn't taken into account by many followers of fashion trends in law.

Recently, such an example took place when legislators, following the trends of copying Western legal provisions, amended Art. 242 of the CPC of Ukraine (Law № 2147-VIII of 03.10.2017) regulating the conduct of examinations exclusively by expert organizations, experts or experts on behalf of the investigating judge or court, provided at the request of a party to criminal proceedings. After the entry into force of such novelties, the work of law enforcement agencies was paralyzed, because even obtaining a certificate for the burial of a person who died a natural death required going to court. It took two whole years to return the previous procedure for conducting examinations (Law № 187-IX of October 4, 2019).

Sometimes the adoption of legislation leads to absurd incidents. Thus, in June 2003, Ukraine planned to accede to the International Convention on the Carriage of Goods by Rail. The abbreviation of this convention is COTIF(KOTIΦ). During the voting, the board read the inscription, which was included in the transcript: «Ratification of the International Convention on the Carriage of Cats by Rail». At the same time, none of the deputies was surprised by such a name [4].

At the same time, in reforming law enforcement agencies, the management ignores an important component of this process – social and pension provision for employees. After all, the unsuccessful personnel policy on the pension provision of the National Police units has led to the loss of experienced employees and the complete destruction of the institution of mentoring in the units. And those who remained unsure of the need to continue serving in the police due to the increase in the length of service before the possibility of retirement and the lack of effective guarantees of social security for police officers.

As you know, starting from 2017 to the present, Ukraine is in the process of reforming the pension sector, which aims to implement European standards for the functioning of the pension system as a whole. In October 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Increasing Pensions» [5], which defined the stages of reform. The normative legal act provides for changes in special pension regimes (pension for years of service for certain categories of persons, etc.), the use of modern information and management technologies, uniform standards of service quality. The legislator didn't ignore the issue of pension provision for police officers. It should be noted that at the legislative level there isn't definition of the concept of pension provision for this category of persons. Most scholars consider pensions as a set of certain guarantees of social orientation. According to Bortnyk S.M. police pensions – a type of guarantee of social security of police officers, which is associated with the receipt of their established cash benefits to satisfy

their vital needs after dismissal from the National Police, which take place in the cases, in the manner and under the conditions provided by law [6, p. 10].

Legal regulation of pension provision for police officers is defined by the Law of Ukraine «On the National Police» [7], but the document contains only one article which deals with pension provision (Article 102), which in turn is blanket, ie refers to another normative-legal norm. Act - the Law of Ukraine «On pensions of persons discharged from military service and certain other persons» of 09.04.1992. This normative legal act defines the conditions, norms and procedure for pension provision of citizens of Ukraine from among persons who have served in the military, service in the internal affairs bodies, the National Police, but today the document contains more than 70 amendments, which indicates imperfection categories of legal relations.

One of the priority tasks of the pension reform is the recalculation of pensions, which in turn has become resonant among former law enforcement officers who received pensions according to outdated calculations. Thus, according to the Law of Ukraine «On pensions of persons discharged from military service and some other persons» the right to pensions are persons who have been discharged from both police and former police [6, with. 10]. Article 102 of the Law of Ukraine «On the National Police» [7] stipulates that pensions for police officers and payment of one-time cash benefits after their dismissal from the police are carried out in the manner and under the conditions specified by the Law of Ukraine «On pensions for persons discharged from military service, and some other people». That is, the pension provision of police officers is carried out in accordance with the pension legislation, which provides for the pension provision of police officers.

Thus, this article of the Law gives grounds to believe that the pension provision of police officers and the pension provision of police officers are identical. Thus, former police officers (pensioners) have the right to recalculate their pensions on the basis of Article 63 of the Law of Ukraine «On Pension Provision for Persons Released from Military Service and Certain Other Persons» of April 9, 1992 [8] in connection with the establishment of salaries of police officers by the Resolution of the Cabinet of Ministers of Ukraine № 988 of November 11, 2015 «On financial support of police officers of the National Police» [9, p. 51].

Today, according to court practice, a significant number of lawsuits related to the violation of the right to adequate pension provision of former employees of the Ministry of Internal Affairs. As an example, the decision of the Supreme Court of 15.02.2018 № Pz / 9901/8/18 (№ 820/6514/17) – on the recalculation of pensions for pensioners of the Ministry of Internal Affairs, taking into account the cash security of police officers [10]. Thus, according to the decision of the Supreme Court, the inaction of the Main Department of the Pension Fund of Ukraine in Kharkiv region was declared illegal.

Conclusions. Thus, the analysis of law enforcement shows a large number of problems and contradictions that negatively affect its effectiveness. And this is subject to constant reforms. It is hoped that the lack of positive results doesn't indicate the ineffectiveness of the reform, but only an intermediate stage of successful initiatives. After all, as realists, we must understand that no reform is carried out spontaneously, and its results can be delayed due to objective factors.

The issue of pension provision for police officers remains problematic today, which is primarily due to the imperfection of regulations, as there is a so-called fragmentary application of legislation to regulate this issue. In addition, the issue of enshrining in law the mechanism of recalculation of pensions for former law enforcement officers is acute, which would increase the effectiveness of legal guarantees of their social protection and, of course, would encourage existing police officers to increase their efficiency.

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Abstract

The scientific article examines the effectiveness and prospects of reforming law enforcement agencies of Ukraine. Issues that arose during the implementation of such a reform, which in turn affected the effectiveness of law enforcement in Ukraine, were highlighted. The issue of introduction of the project «Police detectives» is investigated. The meaning of the concept «police detectives» is revealed, the peculiarities of their work and results are given.

Emphasis is placed on the need to make appropriate changes to existing regulations in connection with the reform, as most provisions aren't consistent with each other or don't fully regulate certain legal relations.

Emphasis is placed on pension reform in Ukraine, highlighting key aspects of such reform. Particular attention was paid, in particular, to the issue of pensions for employees of the National Police in the context of the reform, analyzed the regulations governing legal relations in this area. The problematic aspects of the exercise of the right to a pension by former law enforcement officers, in particular the payment of pensions under the new recalculations, are highlighted. Specific examples from case law on the violation of the right to adequate pension provision are given.

Keywords: law enforcement agencies, reforms, social protection, pension provision, National Police, police detectives, police officers.