

Comments on the draft "LAW ENFORCEMENT AGENCIES DEVELOPMENT STRATEGY"

Summary

It is necessary to appreciate the openness of the document. For the successful start of the reform of the security sector within the scope of the Ministry of Internal Affairs of Ukraine it is important to expose the reality in all its nakedness and set a critical mirror. The present document fulfils this basic premise and shows in real contours the way how to improve the safety of citizens and build professional and self-confident police force that will respond to the challenges of the 21st century.

Comments

I. Brief Description of the Current Condition of the MIA

On the outset it shall be noted that comparisons of statistical data on the number of police officers in individual countries are often misleading. These data do not tell anything about the social situation, composition of committed crimes, composition and education of the population, infrastructure (e.g. transport), the number of performed duties, expectations of the general public or technical equipment that can facilitate and accelerate the service of police force a great deal. Such data neither tell anything about the legal system of the country and demands with regard to criminal proceedings where the police plays a crucial role.

A simplified comparison of statistics is misleading and does not often lead to correct conclusions.

It is essential to carry out an internal review. Determine how many members of the security forces carry out the key police functions and how many of them work in the administrative and service support. In other words, how many officers serve in the streets, looking after safety and investigating criminal activities and how many of them just sit back in the office and uphold the bureaucracy. Another important indicator is the number of commanders. More precisely the number of officers having any extra charge for management tasks: unit, group of regional commanders, including sub- commanders. Generally speaking it is advisable to reduce the number of managerial staff in relation to the rank and file officers (1:7, max. 1:12, depending on the complexity of the tasks fulfilled). At the same time it is necessary to increase the ratio of executive officers to the administrative and auxiliary staff. In order to fulfil this ambition, the Ministry should initiate a process of gradual reduction of bureaucracy. This can be achieved notably by reducing the scope of internal rules and internal legislation, and by reducing the production of reports and documents that are not directly relevant to the fulfilment of the key tasks of the police force.

The situation identified in the areas of human rights, the rights of victims of crime, but also the rights of detainees is of particular concern. It will be essential to set up strict control mechanisms in order to ensure that there is no room for violation of individual rights.

II. Society Requirements of the Police

Basic public expectations are not surprising. The public requires in particular:

- assistance and protection
- prompt handling of reported incidents and compliance with deadlines
- processing of submissions in applicable time limits
- professional performance of service duties in accordance with the law, including respect for the rights of others

- openness and transparency, especially providing extensive information on the ongoing activities and on the security situation on state, regional and local level

Strategic Vision for Development of the MIA and the Police

1. Optimization of the MIA Structure

The principle of building a civil and open Ministry of Internal Affairs is absolutely correct. Examples of such transitions to civilian structures in post-communist countries in the EU show that this is the right approach that pays off in the long run. Civilian control of the repressive bodies of the state is the cornerstone of a functioning democratic government.

The Ministry must be in charge as a policy maker, being able to propose necessary legislation, to create a framework for training of police forces and in particular to ensure a smooth communication with other ministries, since a reform within one particular ministry cannot ensure the functioning of the system as a whole. Continuity and smooth collaboration can only be achieved through the joint efforts across the whole government.

The result should lead to the creation of a civilian ministry, subordinate bodies of law enforcement agencies (Police, Border Guard Service, etc.) and subordinate rescue agencies (Emergency Service). Their subordinate position should be precisely defined by law in order to prevent any abuse of political influence on their management and performance.

In the framework of restructuring the ministry should think of handing over some agendas to local authorities. Examples include the issuance of driving licences, licence plates, identification cards, various permits, etc. All these administrative activities could be handed over to municipalities, including personnel. It is not a core police business and there is no reason why the police should do such work.

2. Rule of Law

The rule of law shall be ensured by means of a three-stage control system:

- civil (or society) control
- internal control
- external independent control

Society control

The Ministry of Internal Affairs together with the Ministry of Justice should launch a system for providing of free legal assistance to crime victims and whistle-blowers. This can be achieved by providing financial grants to non-governmental organizations in several defined areas that are a priority for the government: fight against corruption, human rights protection, assistance to victims of hate crime and assistance to victims of human trafficking.

If the government declares some topic a priority, it should also support an active participation of civil society in the implementation of such priorities. Financial grants to NGOs (by way of transparent tenders) will significantly help particularly in combination with private donations. Funds received will help to provide free legal assistance and other important services.

Internal control

Each law enforcement agency must establish its own control mechanisms to investigate disciplinary offences committed by its officers. The investigation of offences shall be fast and transparent; the complainant must be notified of the results of the investigation and shall have the possibility to appeal against the outcome of the investigation.

External independent control

Creation of an independent external inspection institution to investigate crimes of members of the law enforcement bodies is an essential prerequisite for winning the trust of the public. Such institution cannot be part of the Ministry of Internal Affairs or State Security Service, but must report directly to the President or the Prime minister. Its head shall be appointed only with the consent of the Parliament in order to ensure his/her independence.

The independent inspection of security forces should have the right to conduct *tests of integrity*. Such an offensive instrument should be introduced in order to comply with the findings of the European Court of Human Rights. Across the EU there already are examples of application of the integrity tests. Such tests are an important anti-corruption tool as well.

3. Depoliticization

It will also be important to limit the political influence on the work of police; this will bring about an increase of citizens' confidence in the fairness and impartiality of policing. At the same time it is necessary to bear in mind that politicians compete for votes in order to have the opportunity to change the existing order of things. Politicians can offer to their voters a change in security policy and also changes which could influence the work of police. It is therefore not possible to completely shield the Ministry of Internal Affairs from political influence – that would be a denial of the foundations of democracy and free competition of ideas. Elected political actors should have sufficient tools to carry through their vision and ideas that helped them get elected.

Political influence shall be limited to the activities of the civilian apparatus of the Ministry - the drafting of legislation, creation of strategies and the like. The law enforcement bodies should be affected only in a very limited way. The minister should only set up a framework for the remuneration of law enforcement agencies' commanders. Another precondition of independence would be the appointment procedures for commanders. The government should appoint the commander only with the consent of the Parliament in order to ensure his/her independence and legitimacy. The commander should be appointed for a period of 5 years and should only be suspended if convicted of a criminal offence.

4. Demilitarization

Stating that the removal of military ranks will help the police to better approach the public is correct. Its organization is constructed hierarchically but police is not a military organization. It would be useful to link the functional status of police officers to their rank designation and not to tie the rank insignia to seniority.

5. Decentralization

Police must get closer to the public, but should not do so without preservation of the benefits of a centrally managed institution. "To get closer to public" means to understand local problems, to solve local and regional issues and to improve the communication with local governments and municipalities. It certainly shall not mean a fragmentation of the police and the emergence of more or less independent regional police forces under the influence of regional politicians.

The post-Soviet countries inherited centrally managed security services and it would be very unfortunate to waste this benefit in a hasty run towards the Anglo-Saxon decentralized model that is completely alien to this region, both legally and culturally. The basis of the new concept should be to preserve the unity of the police force, while strengthening the relationship with the regions by way of enhancing the powers of regional police commanders and promoting communication with local governments and municipalities on particular security problems that concern them. The concept of community policing should be promoted too.

The rotation of personnel at the highest levels is an important element in maintaining the unity of the police corps and a good way to promote the exchange of best practice across regions. Regional commanders and their deputies shall also rotate across the regions in order to avoid excessive ties with local structures.

Finally, the Ministry should prepare a plan for the establishment of municipal police. This should be done by way of a new regulation (Act on Municipal Police) that would give municipalities the opportunity to create their own police force with limited powers to oversee public order and local transport. This is a very pragmatic and useful solution to help to improve the safety in the streets without additional expenditure from the state budget. Municipal police would be funded by the municipality. The Ministry of Internal Affairs would retain only legislative power, methodology and supervision of professional qualifications of the municipal police officers. Every municipal police officer would be required to undergo a thorough examination on a regular basis (every 3 to 5 years).

6. Accountability and Transparency of Operations

and

7. Close Cooperation with the Public and Local Communities

Open and transparent public administration must inform the public of its actions. It is very important not only to inform the public, but mainly to get it involved. Preparation of strategies in collaboration with non-governmental organizations and academia should become a good practice. Issues like the fight against extremism and corruption, combating hate crime, supporting victims of human trafficking, improving of human rights or policing of minorities and foreigners are some of the topics that need a regular cooperation with the public (round tables, ministerial committees and working groups, etc.).

8. Staffing Policy, Personnel Professional Development

A successful implementation of any strategy depends also on the relation with the education system. It is therefore key for the Ministry of Internal Affairs to adjust the educational system so that it does meet the needs and is flexible enough to respond to changing requirements.

The basic element is a properly designed system of training for newcomers. Each candidate should go through a basic training, regardless of his level of education or previous experience. The basic theoretical training combined with periods of practice and training in model situations should take at least 18 months. The complexity of police work, the scope of the legislation and the number of situations the police must cope with require a thorough preparation. It would be useful to open the education system to such an extent that some lectures could be provided by representatives of non-governmental organizations – for example specialists on human rights, protection of victims of crime. This way the police should get used to a system of lifelong learning and continuously acquire knowledge that will help them to meet the needs of their functional position.