

Shadow Report

on Chapter 23 “Justice and Fundamental Rights” of the European Commission’s Report on Ukraine in 2023



The Report prepared by:



The Agency for Legislative Initiatives (ALI) is a leading independent Ukrainian think tank, which has been operating since 2000. ALI's activities are aimed at strengthening the institutional capacity of the Parliament and Government, continuing European and Euro-Atlantic integration, supporting the stabilisation and reconstruction of Ukraine to overcome the aftermaths of the Russian Federation's aggression, monitoring and backing reforms in justice and security, political and civic awareness-raising.



Transparency International Ukraine is an accredited chapter of the global movement Transparency International, helping Ukraine grow stronger since 2012. The organization takes a comprehensive approach to the development and implementation of changes for reduction of corruption levels in certain areas. TI Ukraine helped create and subsequently transferred Prozorro, Prozorro.Sale, eHealth, and Prozvit systems to the state. The team also implemented City Transparency and Accountability Rankings, developed the DOZORRO community to control public procurement, and co-founded the RISE UA Coalition, which protects integrity and efficiency in the rebuilding process.



The Human Rights Centre ZMINA (Ukraine) is engaged in informational, educational, monitoring, analytical and advocacy activities in the field of human rights. ZMINA deals with protection of freedom of speech, assembly and associations, combating discrimination, torture, protecting human rights defenders and civic activists in Ukraine, including in the occupied Crimea. After the beginning of the large-scale Russian aggression against Ukraine ZMINA together with 38 other NGOs launched the Ukraine 5AM Coalition dealing with the documentation of war crimes and aiming at protecting victims of armed Russian aggression in Ukraine and bringing to justice top leadership of the Russian Federation and direct perpetrators of war crimes. In 2022, ZMINA received the OSCE Democracy Defender Award "for outstanding contribution to promoting and protecting fundamental freedoms and human rights in both non-government and government-controlled territories in Ukraine".



Tomorrow's Lawyer is a civic organization aims to promote the institutional development of justice to establish the rule of law and protect human rights. Since 2016, TL has been conducting research on public policy and the state of affairs in the justice sector and developing recommendations for their improvement and development. A special priority of the organisation is the professional development of the legal community. To this end, Tomorrow's Lawyer provides training and professional networking for communities of attorneys and prosecutors who are dedicated to serving justice in accordance with the highest ethical standards and being proactive in implementing democratic reforms.



The Ukrainian Bar Association (UBA), founded in 2002, is a national public organization that brings together more than 8,000 lawyers across the country. As a robust and influential professional community, the UBA is dedicated to advancing the legal profession, refining legislation, enforcing ethical standards and safeguarding both the professional rights of its members and human rights overall.



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List of Abbreviations

ACR – Audit Commission of the Region

AFU – Armed Forces of Ukraine

AGE – Advisory Group of Experts

AMCU – Antimonopoly Committee of Ukraine

ARMA – National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes

BCR – Bar Council of the Region

BCU – Bar Council of Ukraine

BSG – Bar self-government bodies

CUAO – Code of Ukraine on Administrative Offences

CAR – Conference of Advocates of the Region

CCC SC – Criminal Court of Cassation of the Supreme Court

CCU – Constitutional Court of Ukraine

CC of Ukraine – Criminal Code of Ukraine

CoE CM – Committee of Ministers of the Council of Europe

COJ – Council of Judges of Ukraine

CoPU – Council of Prosecutors of Ukraine

CPC of Ukraine – Criminal Procedure Code of Ukraine

CRGL – Commission for Regulation of Gambling and Lotteries

CSOs – civil society organisations

DACK – District Administrative Court of Kyiv

ECHR – European Court of Human Rights

ESBU – Economic Security Bureau of Ukraine

EU – European Union

FRA – Fundamental Rights Agency

GC SC – Grand Chamber of the Supreme Court

Government – Cabinet of Ministers of Ukraine

HACB – High Audit Commission of the Bar

HACC – High Anti-Corruption Court

HCIP – High Court of Intellectual Property

HCJ – High Council of Justice

HCJ DI – Disciplinary Inspectorate of the High Council of Justice

HEIs – higher education institutions

HQCJ – High Qualification Commission of Judges of Ukraine

HQDC – High Qualification and Disciplinary Bar Commission

ICC – International Criminal Court

ICPA – International Centre for the Prosecution of the Crime of Aggression against Ukraine

ISM ISACP – Information system for monitoring the implementation of the state anti-corruption policy

JIT – Joint Investigation Teams
KDAC – Kyiv District Administrative Court
MoIA – Ministry of Internal Affairs of Ukraine
MoJ – Ministry of Justice of Ukraine
MSEC – Medical and Social Expert Commission
NABU – National Anti-Corruption Bureau of Ukraine
NACP – National Agency on Corruption Prevention
NAQA – National Agency for Higher Education Quality Assurance
National Council – National Council of Ukraine on Television and Radio Broadcasting
NCM – National Centre for Operational and Technical Management of Telecommunication Networks
NHRI – national human rights institution
NPM – National Preventive Mechanism
NPU – National Police of Ukraine
NSJU – National School of Judges of Ukraine
Ombudsman – Ukrainian Parliament Commissioner for Human Rights
OPG – Office of the Prosecutor General
PCIE – Public Council of International Experts
PIC – Public Integrity Council
President – President of Ukraine
PTCU – Prosecutors’ Training Centre of Ukraine
QDC – Qualification and Disciplinary Commission of the Bar
QDCP – Qualification and Disciplinary Commission of Prosecutors
SAPO – Specialised Anti-Corruption Prosecutor’s Office
SBI – State Bureau of Investigation
SC – Supreme Court
SECs – sectoral expert councils
SJA – State Judicial Administration of Ukraine
SOGI – sexual orientation and gender identity
SSU – Security Service of Ukraine
Standards – Higher Education Standards
TOT – temporarily occupied territories
UJITS – Unified Judicial Information and Telecommunication System
UNBA – Ukrainian National Bar Association
UPEE – Unified Professional Entrance Examination
URAU – Unified Register of Advocates of Ukraine
USQE – Unified State Qualification Examination
USRCD – Unified State Register of Court Decisions
USRED – Unified State Register of Enforcement Documents
Verkhovna Rada, Parliament – Verkhovna Rada of Ukraine



Introduction

This Report outlines the results of monitoring the state of play, issues and recommended solutions in the areas covered by Chapter 23 “Justice and Fundamental Rights” of the European Commission’s 2023 Report on Ukraine as part of the EU Enlargement Package (hereinafter - the Commission Report), which recommends starting negotiations on Ukraine’s accession to the European Union.

This is the first Report prepared by a coalition of NGOs led by the Agency for Legislative Initiatives. Taking into account their longstanding expertise, knowledge and experience, the NGOs have divided the preparation of the Report into specific areas as follows: Agency for Legislative Initiatives - “Judicial Reform”; Tomorrow’s Lawyer - “Prosecution Reform” and “Bar Reform”; Ukrainian Bar Association - “Legal Education Reform”; Transparency International Ukraine - “Fighting Corruption”; ZMINA Human Rights Centre - “Protection of Fundamental Rights and Freedoms”.

This Report contains an analysis of the progress made by Ukraine in each of these areas from June 2023 to the end of July 2024. Information on the progress achieved in the relevant areas during August 2024, which is not reflected directly in the text of the report, is contained in a separate annex¹. The Report also presents data for previous periods (prior to June 2023), if it remains relevant in the reporting period, and is necessary to demonstrate progress or to explain the reasons for the absence of expected results. This Report follows the structure of the Chapter 23 of the European Commission’s 2023 Report on Ukraine. A summary of the issues and recommended solutions is also provided in a separate annex².

During the reporting period, the Government adopted the Action Plan for the implementation of the European Commission’s recommendations presented in the European Commission Report, which sets out more than 350 measures to implement 142 recommendations of the European Commission and involves more than 100 actors, including ministries, other central executive authorities, state (military) administrations, other state entities and local self-government bodies. In addition, at the end of 2023, Ukraine presented a report on the results of the initial assessment of the state of implementation of the EU acquis - a self-assessment. Bilateral meetings between Ukraine and the European Commission have now begun to assess the adaptation of Ukrainian legislation to EU acquis.

This report was prepared with the support of the EU Pravo-Justice Project. The project is funded by the European Union and aims to promote the development of the rule of law in Ukraine in line with European standards and best comparable practices.

1 Annex 1 to the Report.

2 Annex 2 to the Report.



Methodology

In order to prepare this Report, a methodology was developed to conduct an alternative independent assessment of the state of Ukraine's public policy in the areas identified in Chapter 23 "Justice and Fundamental Rights" of the European Commission Report, to draw conclusions on the effectiveness of the selected mechanisms for achieving their goals and to provide recommendations on our own vision of solving the identified problems.

Using the Methodology, experts of the coalition of NGOs analysed national (laws, acts of the President, the Government and central executive authorities, and other institutions) and international (conventions, statutes, resolutions, principles, etc.) legislation; draft legal acts; and the practice of the judiciary of Ukraine and the European Court of Human Rights for each area outlined in the Report; studies and reports of state and public institutions; media materials, as well as information received through requests for access to public information.

For the purpose of considering and reflecting in the Report the positions, including alternative ones, the coalition of civil society organisations conducted more than 40 semi-structured in-depth interviews with representatives of various NGOs, academics, experts and other stakeholders based on pre-prepared guides, taking into account the specifics of the relevant areas.

RULE OF LAW

- › Judicial reform
- › Prosecution reform
- › Bar reform
- › Legal education reform

ЛЗІ Agency
for Legislative
Initiatives

 TOMORROW'S
LAWYER

 АСОЦІАЦІЯ
ПРАВНИКІВ
УКРАЇНИ
UKRAINIAN BAR
ASSOCIATION



Judicial reform

The period from June 2023 to July 2024 was characterised by the full intensification of the judicial reform process, which was suspended in previous years due to the lack of a full complement of the High Qualification Commission of Judges of Ukraine (November 2019 - June 2023) and the High Council of Justice (February 2022 - January 2023). Prior to this, steps were taken to resume the work of these bodies. The High Council of Justice and the High Qualifications Commission of Judges of Ukraine have effectively resumed exercising their powers, which allowed the launch of competitive procedures for the positions of judges of local and appellate courts, as well as the High Anti-Corruption Court. The qualification assessment of judges and consideration of disciplinary complaints have resumed. Around 400 judges are to be appointed to local courts in the second and third quarters of 2024 following competitions. As of 31 July 2024, a total of 286 judges have already been appointed to the respective positions. Another 42 judges have been appointed after successfully passing the qualification assessment.

The Verkhovna Rada of Ukraine adopted a number of legislative acts aimed at improving judicial career procedures, resuming consideration of disciplinary complaints against judges, launching a competition to the Disciplinary Inspectorate of the High Council of Justice, digitalising the judicial process, regulating the competitive selection of judges of the Constitutional Court of Ukraine, etc.

However, in the reporting period, the fight against corruption in the judiciary became more acute due to the increase in the number of cases of detention of judges for receiving illegal benefits. The judicial system also faced the traditional problems of excessive workload, lack of judicial personnel, low funding and attacks on the independence of the judiciary. This part of the Report will analyse in detail all of these challenges and issues, as well as the progress made in reforming the judiciary, and the prospects and timelines for completing key procedures.



Judicial Reform Strategy: current status, issues, prospects

A Presidential Decree approved the **Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023**³ (hereinafter - the Strategy), which outlines the priorities for improving legislation on the judiciary, the status of judges, court proceedings and other justice institutions, as well as urgent measures to improve the performance of legal institutions. At the same time, it also identified issues that need to be addressed to further improve the functioning of the judiciary and the administration of justice.

The President of Ukraine (President) instructed the Legal Reform Commission (hereinafter - the Commission) to ensure the development and approval of the Action Plan for the implementation of the Strategy, to inform the President on an annual basis about the status of implementation of the Strategy, and to hold an annual public discussion of the results of the implementation of the Strategy over the previous year.

State of play

The Strategy expired on 31 December 2023.

Most of the provisions of this act were not implemented due to a number of internal and external factors:

- › internal: suspension of the work of the judicial governance bodies - the High Council of Justice (HCJ) and the High Qualification Commission of Judges of Ukraine (HQCJ); the Commission's self-removal from the implementation of the Presidential Decree⁴ following the outbreak of war; lack of political will; delays (and sometimes outright sabotage) by stakeholders, etc.;
- › external: the Covid-19 pandemic and the full-scale invasion of Ukraine by the Russian army in February 2022.

The composition of the Commission has not been updated since October 2020⁵. The latest information on the Commission's meetings available in the public domain dates back to 2022⁶. At the same time, information on the activities of various working groups functioning within the Commission was sometimes covered⁷.

The working group on the development of legislation on the organisation of the judiciary and the administration of justice, which operated within the Commission, was distinguished by a certain degree of secrecy in its activities, especially in terms of any developments. At the same

3 On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023: Decree of the President of Ukraine of 11.06.2021 No. 231. URL: <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

4 Ibid.

5 Issues of the Legal Reform Commission: Decree of the President of Ukraine of 07.08.2019 No. 584. URL: <https://zakon.rada.gov.ua/laws/show/584/2019#Text>.

6 The term for integrity checks of HCJ members may be extended - Legal Reform Commission. Pravo. 2022. URL: <https://pravo.ua/strok-perevirky-chleniv-vrp-na-dobrochesnist-mozhut-prodovzhyty-komisiia-z-pytan-pravovoi-reformy/>.

7 Virtual roundtable "Legal Education Reform: Dialogue with Civil Society". National Agency for Higher Education Quality Assurance. 2023. URL: <https://naqa.gov.ua/2023/09/virtualnyy-kruglyy-stil-reforma-yp/>; A meeting of the Working Group on the Development of Criminal Law took place. Verkhovna Rada of Ukraine. 2023. URL: https://www.rada.gov.ua/news/news_kom/244458.html.

time, the head of the relevant group and the relevant Deputy Head of the Office of the President was dismissed in March 2024⁸.

At this point, it stands to reason that the Action Plan for the implementation of the Strategy has not been approved, and there is no information on whether and how the implementation of the Strategy's provisions has been monitored.

In fact, of the judiciary issues listed in the Strategy that need to be addressed, only the launch of the new HCJ and HQCJ, selected under the new rules, has been fully implemented. In addition, at the end of 2023, the competition procedures for the courts of first instance and appeal, the Constitutional Court of Ukraine (CCU), the High Anti-Corruption Court (HACC) and the Disciplinary Inspectorate of the High Council of Justice (HCJ DI) were launched. The procedures for the selection of judges to local courts are currently being completed with the appointment of the winners to the respective positions (as of 31 July 2024, 286 people have been appointed)⁹.

After Ukraine gained the status of a candidate for membership in the European Union (EU), the coordination of the necessary measures, including the improvement of certain judicial processes, is carried out at the level of the Cabinet of Ministers of Ukraine, which on 9 February 2024 approved the Action Plan for the implementation of the recommendations of the European Commission presented in the Ukraine Progress Report under the EU Enlargement Package 2023¹⁰.

Thus, the relevant Plan, in particular, provides for filling the vacant positions of CCU judges in line with the requirements of the law; resumption of the selection of judges under improved legislation, in particular, clear criteria of integrity and professionalism and a strong role of the Public Integrity Council (PIC); establishment of a disciplinary inspectorate and resumption of disciplinary proceedings against judges; taking effective measures to eliminate corruption risks in the Supreme Court (SC); holding a competition for the positions of judges.

Alongside this, another important document, the Government's Priority Action Plan for 2024¹¹, also sets out a number of measures to be taken to reform the judiciary. For example, in terms of drafting a law on the High Administrative Court.

In March 2024, it became publicly known that the Government had approved the Plan for the Ukraine Facility¹², which is form the foundation for the implementation of the EU's financial support programme for Ukraine in 2024-2027 and which, among other things, contains a number of important provisions in the area of judiciary.

The new Deputy Head of the Office of the President Iryna Mudra, appointed on 29 March 2024¹³, announced in May that a concept for the justice system development with clear KPIs for 2024-2026¹⁴ had been drafted. Currently, there is no draft of such a concept in the public domain.

8 The President changed the composition of the Legal Reform Commission. Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/296949-zelenskiy-uvolil-zamestiteley-rukovoditelya-ofisa-prezidenta-andreya-smirnova-i-alekseya-dniprova>.

9 Publication of the High Qualification Commission of Judges on Facebook. 2024. URL: <https://www.facebook.com/share/p/Ts7fW1u5L6ESB8Qx/>.

10 On approval of the action plan for the implementation of the recommendations of the European Commission presented in the Progress Report of Ukraine within the framework of the European Union's 2023 Enlargement Package: Order of the Cabinet of Ministers of Ukraine of 09.02.2024 No. 133. URL: <https://zakon.rada.gov.ua/laws/show/133-2024-%D1%80#Text>.

11 On approval of the Government's priority action plan for 2024: Order of the Cabinet of Ministers of Ukraine of 16.02.2024 No. 137. URL: <https://zakon.rada.gov.ua/laws/show/137-2024-%D1%80#Text>.

12 On approval of the Plan of Ukraine. Order of the Cabinet of Ministers of Ukraine of 18.03.2024 No. 244. URL: <https://www.kmu.gov.ua/npas/pro-skhvalennia-planu-t180324>.

13 On the appointment of I. Mudra as Deputy Head of the Office of the President of Ukraine: Decree of the President of Ukraine of 29.03.2024 No. 206. URL: <https://zakon.rada.gov.ua/laws/show/206/2024#Text>.

14 Publication by I. Mudra on Facebook. URL: <https://www.facebook.com/share/p/CzN413aNY9DCiSDv/>.

Progress and issues

Despite the obvious progress in reforming the judiciary as the HCJ and HQCJ resume their work in 2023, a number of challenges remain both in implementing the judicial reform strategy and in exercising certain elements of the reform:

- 1) lack of a unified strategy for the development of the judiciary as a basic document that would regulate key tasks and expectations from the next stages of reform in this area. The dispersion of individual elements of the reform in different documents¹⁵ adopted by different bodies has a negative impact on the justice system as a whole;
- 2) lack of a thorough analysis of the previous stages of the reform, their successes and failures;
- 3) implementation of the reform in most cases “under pressure” from international partners or the public;
- 4) parallel implementation of different elements of the reform by different teams without sharing experience and unifying approaches;
- 5) inconsistency of the timing of certain stages of the reform with the actual implementation capacity of the responsible state bodies (for example, the timing of the launch of the High Administrative Court disregards the level of workload of the HQCJ with other procedures, such as competitions to the HACC and appellate courts, and qualification assessment of current judges).

Recommendations

Adopt a strategic document on the development of the judiciary for the next 5 years (2025-2030), with due regard to all international obligations and available capacities, and develop and approve an action plan for its implementation. For this purpose, it is necessary to analyse the results of judicial reform in previous periods, its achievements and failures, including the effectiveness of the adopted legislative changes.

Institutional capacity and competitive selection to key judicial institutions

High Council of Justice

The HCJ is a collegial, independent constitutional body of state power and judicial governance that operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning according to the principles of responsibility, accountability to the public, formation of a virtuous and highly professional corps of judges, compliance with the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors¹⁶.

The HCJ submits to the President a proposal for the appointment of a judge, decides on the transfer of a judge from one court to another, dismisses a judge from office, brings a judge to

¹⁵ For a detailed comparison of these documents, see Annex 3 to this Report.

¹⁶ On the High Council of Justice: Law of Ukraine of 21.12.2016 No. 1798-VIII, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

disciplinary responsibility, removes a judge from the administration of justice, gives consent to the detention of a judge or keeping them in custody or arrest, etc.

The HCJ consists of 21 members, 10 of whom are elected by the Congress of Judges of Ukraine from among judges or retired judges, 2 members each by the Verkhovna Rada of Ukraine (Parliament), the Congress of Advocates of Ukraine, the All-Ukrainian Conference of Prosecutors, and the Congress of Representatives of Law Schools and Research Institutions. Another 2 members are appointed by the President. The Chief Justice of the Supreme Court is an ex officio member of the HCJ.

The HCJ resumed its work on 12 January 2023, after the Congress of Judges elected 8 judges according to its quota¹⁷. Prior to that, the HCJ had been incompetent for 11 months¹⁸. In February 2023, two members of the HCJ were elected by the All-Ukrainian Conference of Prosecutors, and in November of the same year, the Congress of Scholars elected one representative under its quota, who was subject to reservations about her political neutrality and declarations submitted by representatives of NGOs, including the DEJURE Foundation¹⁹. However, in September, the 4-year term of office of the HCJ member appointed by the President ended.

Currently, 17 members of the HCJ hold positions in the HCJ²⁰. The quotas of the President and the Congress of Advocates remain unfilled.

On 19 June 2024, the Ethics Council, which assists the bodies electing (appointing) HCJ members in assessing whether a candidate for the position of HCJ member meets the criteria of professional ethics and integrity, decided that two candidates under the presidential quota met the criteria. Four candidates were found not to meet the criteria. In addition, six candidates filed applications to withdraw from the competition, five of whom withdrew after being admitted to the interview stage²¹.

In early July 2024, the competition commission for the selection of candidates for appointment by the President to the position of HCJ member interviewed candidates who were recognised by the Ethics Council as meeting the criteria of professional ethics and integrity. Following the interviews, the competition commission decided not to recommend any candidate to the President²².

In addition, as early as 16 March 2023, the Ethics Council recommended 3 candidates²³ to the President for appointment as HCJ members (for one of the quotas). The President has not yet made a decision, but the submitted list of candidates has not been rejected.

Given that the powers of two HCJ members under the quota of the Congress of Judges expire in March 2025, the Council of Judges of Ukraine (COJ) included the issue of electing two new HCJ

17 The composition of the High Council of Justice has been restored. The High Council of Justice. 2023. URL: <https://www.hcj.gov.ua/news/vidnovleno-povnovazhnyy-sklad-vyshchoyi-rady-pravosuddya>.

18 The HCJ is competent provided that at least 15 members, the majority of whom are judges (including retired judges), are elected (appointed) and take the oath.

19 Decided: The Congress of Scientists elected a scientist to the HCJ with questions about declarations and political neutrality. DEJURE Foundation. 2023. URL: <https://new.dejure.foundation/vyznachyls-zyzid-naukovcziv-obrav-do-vrp-vchenu-z-pytannyamy-do-deklaracij-i-politychnoyi-nejtralnosti/>.

20 Composition of the High Council of Justice. High Council of Justice. URL: <https://hcj.gov.ua/rubric/sklad-vyshchoyi-rady-pravosuddya-0>.

21 Publication of the Ethics Council on Facebook. 2024. URL: <https://www.facebook.com/share/p/icoYNWbToBFJSmGc/>.

22 Information on the meeting of the competition commission for the selection of candidates for appointment by the President of Ukraine to the position of a member of the High Council of Justice. Official website of the President of Ukraine. 2024. URL: <https://www.president.gov.ua/administration/informaciya-pro-zasidannya-konkursnoyi-komisiyi-z-doboru-kan-913>.

23 The Ethics Council made a decision on candidates for the position of HCJ member from the President of Ukraine. Ethics Council. 2023. URL: <https://ec.court.gov.ua/ec/pres-centr/general/1396316/>.

members at the XX regular Congress of Judges of Ukraine²⁴. The HCJ Secretariat has started accepting documents of candidates for the positions of two HCJ members. The deadline for submission of documents is 19 August 2024²⁵.

The Congress of Advocates has not started the selection of candidates for HCJ members under its quota for more than 2 years.

Meanwhile, on 12 July 2024, the HCJ received a letter from Robert Cordy, a member of the Ethics Council, requesting to terminate his powers of his own free will as of 31 July 2024. Based on this letter, the HCJ Head decided on 23 July 2024 to terminate Robert Cordy's powers as a member of the Ethics Council²⁶. The next day, through the Ministry of Foreign Affairs of Ukraine, the HCJ addressed foreign diplomatic missions accredited in Ukraine with a request to submit proposals for a candidate to the Ethics Council²⁷.

Progress and issues

During the reporting period, the HCJ was partially recruited. However, the HCJ currently lacks 4 more members. This poses risks when voting at the meetings and increases the workload of the existing members by at least 20%, which in turn may affect the quality of the HCJ's work.

Failure of the President to appoint a member of the HCJ according to his quota based on the recommendations provided a year ago creates additional risks for the quorum of the HCJ and the exercise of its powers to appoint judges (which requires at least 14 votes).

Similar risks should be expected in the absence of any action by the leadership of the Ukrainian National Bar Association to convene a congress of advocates to elect 2 HCJ members according to their quota.

In addition, if the Congress of Judges fails to elect two new HCJ members by March 2025 to replace those whose terms of office expire, there is a risk that some procedures will be suspended. At the same time, the HCJ will work on the verge of a quorum.

Starting from 1 August 2024, the Ethics Council will be missing one member out of three proposed by international and foreign organisations. This will to some extent worsen the situation of a candidate for the position of a HCJ member, as two members of the Ethics Council nominated by international and foreign organisations are required to vote for the decision on their compliance with the criteria of professional ethics and integrity²⁸.

Recommendations

The main task is to appoint a new member of the Ethics Council as soon as possible to ensure its effective work, in particular in terms of making the most balanced decisions. For this purpose, international partners should submit proposals for a candidate to the Ethics Council as soon as possible, and the HCJ should appoint a new member of the Council without delay.

24 Decision of the Council of Judges of Ukraine of 21.06.2024 No. 16. URL: <https://rsu.gov.ua/ua/documents/175>.

25 The Secretariat of the High Council of Justice has started accepting documents from candidates for the election of HCJ members by the Congress of Judges of Ukraine. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/sekretariat-vyshchoyi-rady-pravosuddya-rozpochav-pryom-dokumentiv-vid-kandydativ-dlya-obrannya>.

26 HCJ takes measures to appoint a new member of the Ethics Council. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-vzhvyaye-zahodiv-dlya-pryznachennya-novogo-chlena-etychnoyi-rady>.

27 Ibid.

28 In accordance with clause 23¹ of the Final and Transitional Provisions of the Law of Ukraine "On the High Council of Justice", the decision of the Ethics Council is adopted by a majority vote of the members of the Ethics Council present, provided that it is supported by two votes of the members of the Ethics Council nominated by international and foreign organisations.

In order to ensure the effective operation of the HCJ and the continuous performance of its inherent functions, it is necessary to take all possible steps to elect/appoint 4 members of the HCJ under the quotas of the President and the Congress of Advocates, as well as to elect two new members of the HCJ under the quota of the Congress of Judges to replace those whose terms of office expire in March 2025.

Thus, in order to resolve the situation with the failure to hold the Congress of Advocates for more than two years, it is advisable to develop an alternative mechanism for convening the Congress at the legislative level and to provide for the responsibility of the leadership of the Ukrainian National Bar Association in case of its failure to do so. Since a significant number of advocates use electronic services for signing documents in the course of their practice of law, the Congress of Advocates may be held online, and the identification of advocates and voting may be conducted through secure electronic services.

Failure of the President to exercise his powers to appoint members of the HCJ requires a broad legal discussion and the development of mechanisms to resolve such situations.

Exercise of powers by the HCJ

State of play

Once the HCJ started working, it resumed its functions such as appointment, transfer, dismissal of judges, removal of judges from the administration of justice, consent to arrest of judges, etc.

In 2023, the HCJ submitted to the President a motion to appoint a judge to the Supreme Court²⁹, and in January-July 2024, it submitted a motion to appoint 357 judges to local courts, including: 311 - to general courts; 26 - to administrative courts; 20 - to economic courts. During this period, the President received submissions on the appointment of 349 candidates for the positions of judges³⁰.

On 8 May 2024, the President signed 24 decrees on the appointment of 114 judges, and on 4 July 2024, another 38 decrees on 215 judges. On 5 July 2024, the oath-taking ceremony for judges appointed for the first time took place. The oath was taken by 248 local court judges, including 208 judges of general local courts, 22 judges of administrative courts, and 18 judges of commercial courts³¹.

In 2023, the HCJ dismissed 325 judges³²: 318 judges - under general circumstances, 6 judges - for committing a significant disciplinary offence, 1 judge was dismissed on the basis of subpara. 4, clause 16¹, Section XV "Transitional Provisions" of the Constitution of Ukraine in line with the recommendation of the HCJ (based on the results of the qualification assessment, he was found to be unfit for the position). A total of 134 judges were dismissed in January-July 2024: 119 judges - under general circumstances, 12 judges - for committing a significant disciplinary offence and 3 – for being unfit for office³³.

29 The HCJ decided to submit to the President of Ukraine a proposal to appoint a judge to the Civil Court of Cassation as part of the Supreme Court. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-uhvalyla-vnesty-prezydentovi-ukrayiny-podannya-pro-pryznachennya-suddi-do-kasacijnogo>.

30 In the first six months of 2024, the High Council of Justice decided to submit to the President of Ukraine a proposal to appoint 357 judges to local courts. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/protyagom-sichnya-cherwnya-2024-roku-vrp-uhvalyla-vnesty-prezydentovi-ukrayiny-podannya-pro>.

31 Ibid.

32 Information and analytical report on the activities of the High Council of Justice in 2023. High Council of Justice. 2024. URL: https://hcj.gov.ua/sites/default/files/field/file/analiz_za_2023_rik_.pdf.

33 In January-June 2024, the High Council of Justice decided to dismiss 134 judges. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/uprodovzh-i-pivrichchya-2024-roku-zvilneno-134-suddi>.

During the dismissal of judges, there are frequent cases when judges try to avoid the qualification assessment in this way. In other words, a judge ignores all attempts of the HQCJ to interview him/her as part of the qualification assessment³⁴ procedure due to “illness”, but he/she appears at the HCJ meeting on dismissal of such a judge and in the vast majority of cases receives such a dismissal.

There have also been cases when judges have tried to resign by submitting their resignation in connection with disciplinary complaints to the HCJ, thus avoiding disciplinary liability. In some cases, the HCJ decided to dismiss the judge on this basis, while in other cases the consideration of the resignation was suspended until the disciplinary complaints were considered on their merits³⁵.

In 2023, the HCJ passed 15 decisions on granting consent to keep a judge in custody, 17 decisions on granting motions of the Office of the Prosecutor General (OPG) for temporary suspension and extension of the period of temporary suspension of a judge from the administration of justice until the court verdict enters into force or criminal proceedings are closed; 11 decisions on partial granting of these motions³⁶.

During the first six months of 2024, the HCJ temporarily suspended 9 judges from the administration of justice and issued seven decisions to extend the period of temporary suspension of a judge. During this period, the HCJ also received 2 motions for consent to detain a judge in custody, after consideration of which the HCJ made one decision to grant such consent³⁷.

The HCJ exercises such powers based on submissions from the OPG (directly from the Prosecutor General or the deputies). As a rule, in the vast majority of cases, the OPG applies simultaneously for the removal of a judge from the administration of justice and for consent to keep the judge in custody. However, there are cases when the HCJ receives a motion to keep a judge in custody without removing him/her from the administration of justice (for example, in the case of the former Chief Justice Vsevolod Kniazev). As a result, V. Kniazev issued a dissenting opinion in the Ferrexpo PLC case while in pre-trial detention and submitted it to the SC for inclusion in the Unified State Register of Court Decisions (USRCD)³⁸.

On 08 February 2024, the HCJ established a working group to develop uniform indicators for assessing the integrity and professional ethics of a judge (candidate for the position of judge)³⁹. The development and approval of common criteria (indicators) for assessing integrity and professional ethics is also envisaged by the State Anti-Corruption Programme for 2023–2025⁴⁰. The group includes members of the HCJ, HQCJ, PIC, and representatives of international projects, namely the USAID Justice for All Program, the EU Pravo-Justice project, the Council of Europe Project “Support to the Judiciary in Ukraine in the Context of War and Post-War Period”, and the International Development Law Organization (IDLO) in Ukraine. On 1 July 2024, the working group completed its

34 Judge Andriienko “fell ill” for the third time on the eve of the qualification assessment. DEJURE Foundation. 2024. URL: <https://new.dejure.foundation/suddya-andriyenko-vtretye-zahvorila-naperedodni-kvalifocziyuvannya/>.

35 The HCJ suspended consideration of the resignation of Kyiv District Administrative Court judge Yevhen Ablov. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-zupynyla-rozglyad-zavyv-suddi-okruzhnogo-administratvynogo-sudu-mista-kyveva-vevgeniya>.

36 Information and analytical report on the activities of the High Council of Justice in 2023. High Council of Justice. 2024. URL: https://hcj.gov.ua/sites/default/files/field/file/analiz_za_2023_rik_.pdf.

37 Between January and June 2024, the HCJ received 17 motions from the Office of the Prosecutor General. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/uprodovzh-shesty-misyaciv-2024-roku-do-vrp-nadiyshlo-dva-podannya-pro-nadannya-zgody-na>.

38 Dissenting opinion of Judge V.S. Kniazev Unified Register of Court Decisions. 2023. URL: <https://reyestr.court.gov.ua/Review/113269749>.

39 On Establishment of a Working Group to Develop Common Indicators for Assessing the Integrity and Professional Ethics of a Judge (Candidate for the Position of a Judge): Decision of the High Council of Justice of 08.02.2024 No. 375/0/15-24. URL: <https://hcj.gov.ua/doc/doc/43695>.

40 State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

work on the draft Uniform Indicators for Assessing the Integrity and Professional Ethics of Judges (Judicial Candidates). It is expected that the Uniform Indicators will be approved after consultations with the HCJ, the COJ and the PIC⁴¹.

Progress and issues

After almost a year of suspension, the HCJ's resumption of its functions is a significant progress. However, the OPG sometimes continues the practice of applying to the HCJ with a motion to keep a judge in custody without suspension from the administration of justice. As a result, the judge under criminal investigation continues to exercise his/her judicial powers using the shortcomings of the prosecutor's office. This has a negative impact on public confidence in both the judiciary as a whole and the work of the prosecution service in terms of its effectiveness.

Attempts by judges to resign during the qualification assessment procedure and in the presence of disciplinary complaints against them to avoid negative consequences continue to be recorded.

Recommendations

Introduce amendments to the Law of Ukraine "On the High Council of Justice" to regulate that:

- › when the HCJ gives consent to keep a judge in custody or arrest, the issue of his/her removal from the administration of justice is simultaneously resolved;
- › if a judge submits a letter of resignation, but if there are disciplinary complaints filed (but not opened) against the judge, the HCJ shall decide on the opening and consideration of such complaints within 2 months. Then a decision is made on dismissal (or refusal to dismiss);
- › the issue of dismissal of a judge during the qualification assessment procedure should be decided taking into account the information on the presence or absence of disciplinary complaints against such a judge. In the absence of any complaints, the right to resign may be exercised at any time, without regard to the ongoing qualification assessment of the judge. In the event of disciplinary complaints, consideration of the resignation shall be suspended until the disciplinary complaints are resolved (taking into account the suggestions provided in this paragraph);
- › Adopt as early as possible the Unified Indicators for Assessing Integrity and Professional Ethics of Judges (Judicial Candidates) so that the assessment of judicial candidates in the launched competitions is based on the provisions of this act.

Bringing judges to disciplinary responsibility

State of play

The HCJ's disciplinary function has not been exercised for more than two years (since 5 August 2021, after the entry into force of Law of Ukraine No. 1635-IX⁴²).

41 The Working Group has completed the draft of the Unified Indicators for Assessing Integrity and Professional Ethics of Judges and Candidates. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/robocha-grupa-zavershyla-pidgotovku-proyektu-yedynyh-pokaznykiv-dlya-ocinky-dobrochesnosti-ta>.

42 On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice: Law of Ukraine of 14 July 2021 No. 1635-IX. URL: <https://zakon.rada.gov.ua/laws/show/1635-20#Text>.

Thanks to the adoption of the necessary legislative changes^{43,44} in October 2023, the HCJ's disciplinary function was restored. On 19 October 2023, the HCJ decided to restore the distribution of complaints about disciplinary misconduct of a judge and complaints against decisions to bring a judge or prosecutor to disciplinary responsibility among its members from 1 November 2023⁴⁵.

In November 2023, the HCJ approved amendments to its Rules of Procedure, setting out a new edition⁴⁶ and providing, inter alia, that disciplinary proceedings against judges shall be conducted in chronological order by the date of receipt, subject to certain priority - if the disciplinary proceedings may result in the dismissal of a judge from office on the grounds specified in clause 3, 6 of Article 126 of the Constitution of Ukraine, including in respect of a judge who has submitted his/her resignation; in respect of a judge whose qualification assessment has been suspended in connection with consideration of a disciplinary complaint; in respect of a judge in respect of whom the HCJ has made a recommendation for appointment based on the results of a competition for a vacant judicial position or transfer; if the complaint contains information about the actions of a judge that have caused significant public interest. It was in this part of the Regulations that the judges of the District Administrative Court of Kyiv, P. Vovk and I. Pohribnichenko, challenged the provisions of the Regulations in court⁴⁷. The court proceedings are currently ongoing.

On 06 December 2023, the HCJ completed the distribution of complaints about a judge's disciplinary misconduct, which had accumulated during the absence of the HCJ's disciplinary function. In total, 14454 complaints were distributed, of which: 13443 complaints are old cases, the disciplinary proceedings in which were not completed by the previous HCJ and complaints received from 05 August 2021 to 31 October 2023. Also, from 01 November to 06 December, 1011 new cases received from 01 November 2023, were distributed⁴⁸.

Between January and June 2024, the HCJ received more than 4,000 disciplinary complaints. The average number of complaints received per month is about 700. On average, the HCJ members consider 900 complaints per month. From November 2023 to June 2024, about 5,000 disciplinary complaints were considered⁴⁹.

During six months of 2024, 67 judges were brought to disciplinary responsibility and the following types of disciplinary sanctions were imposed on them: warning (28 judges); suspension (one judge); reprimand with deprivation of the right to receive additional payments to the judge's official salary for one month (9 judges); strict reprimand with deprivation of the right to receive additional payments to the judge's official salary for three months (8 judges); resignation (20 judges)⁵⁰. Among those brought to justice in the form of a motion for dismissal from office is former Supreme Court Chief Justice Vsevolod Kniazev.

43 On Amendments to Certain Laws of Ukraine on the Immediate Resumption of Cases Concerning Disciplinary Liability of Judges: Law of Ukraine of 09.08.2023 No. 3304-IX. URL: <https://zakon.rada.gov.ua/laws/show/3304-20#top>.

44 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on Changing the Status and Procedure for Forming the Service of Disciplinary Inspectors of the High Council of Justice: Law of Ukraine of 06.09.2023 No. 3378-IX. URL: <https://zakon.rada.gov.ua/laws/show/3378-20#Text>.

45 The HCJ Disciplinary Chambers start meeting today. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vid-sogodni-rozpochynayutsya-zasidannya-dyscyplinarnyh-palat-vrp>.

46 On approval of amendments to the Rules of Procedure of the High Council of Justice: Decision of the High Council of Justice of 21.11.2023 No. 1068/0/15-23, para. 13.7. URL: <https://hcj.gov.ua/doc/doc/41668>.

47 Announcement. High Council of Justice. URL: <https://hcj.gov.ua/page/ogoloshennya-1>.

48 The HCJ has completed the distribution of complaints about disciplinary misconduct of judges that have accumulated during the absence of the Council's disciplinary function. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/u-vrp-zavershyvsya-rozpodil-skarg-shchodo-dyscyplinarnogo-prostupku-suddi-yaki-nakopychylsya>.

49 Between January and June 2024, more than 4,000 complaints were received. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/yes-bude-naybilsh-vymoglyvym-u-pytannyah-vkonannya-ukrayinoyu-yevrointegraciynogo-procesu>.

50 Information on bringing judges to disciplinary responsibility. High Council of Justice. 2024. URL: <https://hcj.gov.ua/disciplinary>.

In 2023, 6 judges were brought to disciplinary responsibility, of which 5 were subjected to a disciplinary sanction in the form of a warning and one judge was subjected to a motion for dismissal⁵¹.

Progress and issues

The resumption of the HCJ's disciplinary function after more than two years of suspension is a significant progress in cleansing and reforming the judiciary. Representatives of civil society organisations (in particular, the DEJURE Foundation) note, however, that there is a difference in practice in the HCJ disciplinary chambers of bringing judges to justice in similar circumstances, which may of course lead to the cancellation of some HCJ decisions⁵². At the same time, members of the public mention certain names of HCJ members who may violate the practice and help some judges avoid responsibility⁵³.

Another problem is the prioritisation of disciplinary complaints and their further consideration.

Recommendations

- › Conduct a thorough analysis of the HCJ's new practice of bringing judges to disciplinary responsibility in order to identify discrepancies. Such analysis should be carried out not only within the framework of the chambers' activities, but also separately for each HCJ member.
- › Clarify the criteria for determining the priority of disciplinary complaints and set clear time limits for their consideration – 2 months from the moment the priority criterion is established.
- › Further publish open data on the HCJ website in the context of the work of each HCJ member, reflecting information on all votes, terms of consideration, number of complaints considered and other issues of bringing judges to justice.

Selection to the Disciplinary Inspectorate of the High Council of Justice

State of play

Law of Ukraine No. 3378-IX⁵⁴ also regulates the formation of the HCJ DI, in particular, clarifies its legal status and powers, peculiarities of filling the positions of the Head of the HCJ DI, his/her deputy and disciplinary inspector, as well as their powers, rights and duties, etc.

On 07 December 2023, the HCJ established a competition commission to hold a competition for the position of the DI Head, his/her deputy and a disciplinary inspector⁵⁵. Subsequently, Reda

51 Information on bringing judges to disciplinary responsibility. High Council of Justice. 2023. URL: <https://hcj.gov.ua/disciplinary?page=1>.

52 Publications of the DEJURE Foundation on Facebook. URL: <https://www.facebook.com/share/p/w7NTzGZ9T6b1dwLe/>; <https://www.facebook.com/share/p/tRJXHyNZt87SKvSB/>.

53 Publications of the DEJURE Foundation on Facebook. URL: <https://www.facebook.com/share/p/zydQ7Bb7tUEKeQpE/>; <https://www.facebook.com/share/p/PCwyjwvNL8z41EE5/>; <https://www.facebook.com/share/p/yJLhZYBVoJrXPg1/>.

54 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on Changing the Status and Procedure for Forming the Disciplinary Inspectorate of the High Council of Justice: Law of Ukraine of 06 September 2023 No. 3378-IX. URL: <https://zakon.rada.gov.ua/laws/show/3378-20#Text>.

55 The HCJ has established a competition commission for the selection of disciplinary inspectors. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-utvoryla-konkursnu-komisiju-dlya-vidboru-na-posady-dyscyplinarnyh-inspektoriv>.

Molyneux was elected as the Head of the competition commission and Olha Popikova as the Deputy Head⁵⁶.

On 19 December 2023, the HCJ announced a competition for the positions of the Head of the HCJ DI - Deputy Head of the HCJ Secretariat, Deputy Head of the HCJ DI and 24 disciplinary inspectors of the HCJ DI⁵⁷.

The Competition Commission has published the Rules of Procedure for the competition for the positions in the HCJ DI. In January-February 2024, the documents were accepted from candidates for the positions in the HCJ DI. However, due to the low activity of candidates, the deadline for submitting documents in January was extended. In total, 415 candidates submitted their documents (539 applications)⁵⁸. Some candidates applied for several positions simultaneously.

Based on the documents review, the following candidates were admitted to the competition:

- › Head of the HCJ DI - 11 candidates;
- › Deputy Head of the HCJ DI - 120 candidates;
- › Disciplinary Inspector - 350 candidates.

On 02 April 2024, the Competition Commission approved the Procedure for holding a competition for the positions of the Head of the HCJ DI and his/her deputy, a disciplinary inspector⁵⁹.

In May 2024, the Selection Panel held the first stage - testing the candidates' cognitive skills. Only 67 candidates for the position of a disciplinary inspector successfully passed this testing. In addition, 17 candidates for the position of Deputy Head of the HCJ DI and 2 candidates for the position of Head of the HCJ DI successfully passed the test⁶⁰.

On 22 June 2024, the next stage of the competition took place - case study. This stage was attended by 68 candidates out of 69. All candidates had 2 hours to answer one assignment, which was randomly selected immediately before the test⁶¹. Based on the results of verification of answers to situational assignments and in accordance with the competition procedure, 5 candidates who scored the highest number of points and applied for the position of Deputy Head of the HCJ DI and 48 candidates who applied for 24 positions of disciplinary inspectors, respectively, were admitted to the next stage of the competition (interview)⁶².

The verification of candidates for the positions of Deputy Head of the HCJ DI and disciplinary inspectors for compliance with the integrity criteria and ethical standards established for judges

56 Reda Molyneux is elected Head of the Competition Commission to hold a competition for positions in the service of disciplinary inspectors. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/reda-molyene-obrana-golovoyu-konkursnoyi-komisiyi-dlya-provedennya-konkursu-na-posady-u-sluzhbi>.

57 A competition for the position of the Head of the Disciplinary Inspectorate and his/her deputy, a disciplinary inspector, has been announced. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/ogolosheno-konkurs-na-zaynyattya-posady-kerivnyka-sluzhby-dyscyplinarnyh-inspektoriv-ta-yogo>.

58 Acceptance of documents from candidates for positions in the Disciplinary Inspectorate is closed. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/zaversheno-pryom-dokumentiv-vid-kandydativ-na-posady-u-sluzhbi-dyscyplinarnyh-inspektoriv>.

59 Procedure for conducting a competition for the positions of the Head of the Disciplinary Inspectorate and the deputy, disciplinary inspector: Minutes of the meeting of the competition commission for the competition for the positions of the Head of the Disciplinary Inspectorate and the deputy, disciplinary inspector of 02.04.2024 No. 2. URL: <https://hcj.gov.ua/sites/default/files/field/poryadok-ksdi-2-04-24.pdf>.

60 The sixth official meeting of the competition commission was held. The Competition Commission is the Service of Disciplinary Inspectors. 2024. URL: <https://www.facebook.com/watch/?v=919753809924918>.

61 Publication on the Facebook page of the Competition Committee. 2024. URL: <https://www.facebook.com/share/p/FmSUem7nknnAxsZt/>.

62 Publication on the Facebook page of the Competition Committee. 2024. URL: <https://www.facebook.com/share/p/kBGwzmn2SZeD5te/>.

is already underway. The next stage for the candidates will be an interview with the Commission, which is tentatively scheduled for 26 August - 6 September 2024⁶³.

In July, interviews with two candidates for the head of the HCJ DI took place, and the competition commission left no candidates on the list of winners⁶⁴. At the same time, some members of the competition commission allowed themselves to proactively communicate in the media about the decision⁶⁵. This raised certain questions about the appropriateness and legality of such actions, in particular, for one of the candidates for the position of the HCJ DI, as the published information, firstly, negatively characterised the previous candidates, and secondly, allowed them to be identified⁶⁶.

The HCJ has now announced a second competition for this position⁶⁷. The application period will last until 22 August 2024. The competition is expected to be completed in October, and the full formation of the HCJ DI is expected by the end of 2024⁶⁸.

The Ukraine Facility Plan for 2024–2027⁶⁹ stipulates that by the end of the fourth quarter of 2025, 20% of old disciplinary proceedings (complaints) pending as of 31 December 2023 will be resolved with the involvement of the HCJ DI and based on the priority criteria for reviewing disciplinary complaints set out in clause 13.7 of the HCJ Rules of Procedure (as amended on 21 November 2023 No. 1068/0/15-23)⁷⁰.

Progress and issues

The launch of the competition to the HCJ DI is definitely a progress in reforming the procedure for bringing judges to disciplinary responsibility. Under an optimistic scenario, the HCJ DI will start working in the fourth quarter of 2024.

However, the work of the competition commission is characterised by certain delays, on the one hand, and the extremely high demands placed on candidates' cognitive skills on the other, which may result in certain shortcomings in the implementation of various stages of the competition and even the repetition of some procedures, as has already happened during the competition for the position of the HCJ DI⁷¹.

Even though there is no obligation to publish negative conclusions on termination of a candidate's participation in the competition, there is a risk that some candidates may withdraw from the competition on their own. Given the above and the high requirements for the candidates during the cognitive skills test, there is a risk that all vacancies in the HCJ DI will not be filled and that a second competition will be held not only for its head, but also for other positions.

63 Publication on the Facebook page of the Competition Commission. 2024. URL: <https://www.facebook.com/share/p/raTkHpH3B7b5E2Ka/>.

64 The Commission has announced the result of the competition for the position of the Head of the Disciplinary Inspectorate. Competition Commission - Disciplinary Inspectorate. 2024. URL: <https://www.facebook.com/watch/?v=335925952904529>.

65 Ukrainian society deserves officials with a high level of professionalism and impeccable reputation. Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/columns/2024/07/22/7466834/>.

66 Publication of Vasylyev Y. on his personal Facebook page. 2024. URL: <https://www.facebook.com/share/p/WrJQqzOaEuSbjnKD/>.

67 Publication on the Facebook page of the Competition Commission. 2024. URL: <https://www.facebook.com/share/p/kvj9pD8Taa3Ax4uQ/>.

68 The Head of the HCJ Disciplinary Inspectorate will be elected by the end of October, Ukraine will fulfil its obligations - the Head of the Selection Panel. Interfax-Ukraine. 2024. URL: <https://interfax.com.ua/news/general/1001293.html>.

69 Plan for Ukraine Facility for 2024-2027. URL: <https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/plan-ukraine-facility.pdf>.

70 On Approval of the Rules of Procedure of the High Council of Justice: Decision of the High Council of Justice of 24.01.2017 No. 52/0/15-17. URL: https://zakon.rada.gov.ua/rada/show/vr52_910-17#top.

71 Disciplinary inspectors. High Council of Justice. 2024. URL: <https://hcj.gov.ua/tags/dyscyplinarani-inspektoiry>.

There is an issue with the premises where the DI is to operate, its technical equipment, and other organisational issues of the DI's further work⁷².

Linking the number of disciplinary complaints to be resolved with the involvement of the HCJ DI in the Plan for Ukraine Facility for 2024–2027⁷³ may lead to artificial delays in the consideration of some complaints, which may negatively affect the disciplinary liability of judges.

Recommendations

In order to ensure that the HCJ exercises its powers to conduct disciplinary proceedings against judges, it is necessary to finalize the selection of the DI as soon as possible in compliance with the principles of openness and transparency.

Given that the adoption of conclusions on the termination of candidates' participation in the competition may result in the voluntary withdrawal of some candidates from the competition, it is more appropriate to apply the so-called positive selection (as in the selection of candidates to the HQCJ), for which it is advisable to amend the Competition Procedure⁷⁴.

The passing rate for cognitive skills tests should also be reconsidered after a thorough study of this issue by experienced testers.

Regarding the logistical support of the HCJ DI after its formation, the HCJ, together with the Cabinet of Ministers of Ukraine, should provide the HCJ DI with necessary premises, equipment, etc. in the third quarter of 2024.

Also, given that bringing judges to disciplinary responsibility is an important function of the HCJ, which, following its resumption, is carried out continuously, it seems inappropriate and impossible to establish a clear percentage of disciplinary complaints that should be considered with the involvement of the HCJ DI.

High Qualification Commission of Judges of Ukraine

The HQCJ is a state collegial body of judicial governance that operates on a permanent basis in the Ukrainian justice system⁷⁵. In essence, it is a personnel agency of the judiciary responsible for the selection of highly professional and integrity judges, including the assessment of current judges within the framework of the qualification assessment procedure.

Personnel support

State of play

The HQCJ consists of 16 members, 8 of whom are appointed from among judges or retired judges⁷⁶.

⁷² Provision of premises for the HCJ Disciplinary Inspectorate remains a priority. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/zabezpechennya-prymishchennyam-sluzhby-dyscyplinarnyh-inspektoriv-vrp-zalyshayetsya>.

⁷³ Plan for the Ukraine Facility for 2024-2027. URL: <https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/plan-ukraine-facility.pdf>.

⁷⁴ Procedure for conducting a competition for the positions of the Head of the Disciplinary Inspectorate and the Deputy Head, disciplinary inspector: Minutes of the meeting of the competition commission for the competition for the positions of the Head of the Disciplinary Inspectorate and the Deputy Head, disciplinary inspector of 02.04.2024 No. 2. URL: <https://hcj.gov.ua/sites/default/files/field/poryadok-kksdi-2-04-24.pdf>.

⁷⁵ On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Part 1, Article 92. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

⁷⁶ Ibid, Part 3, Article 92.

The new HQCJ was appointed by the HCJ on 01 June 2023 following a competition that lasted for about two years (due to the war) after the relevant legislation was passed, after almost 4 years of suspension of work as a result of the Parliament's decision to dismiss the previous HQCJ.

On 06 June 2023, Roman Ihnatov (a judge of the Kyiv Court of Appeal)⁷⁷, was elected as the Head of the HQCJ; Ruslan Sydorovych (an advocate and former MP who actively participated in the reform of 2015-2019)⁷⁸, was elected as the Deputy Head. Since February 2015, the HQCJ Secretariat has been headed by O. Ponomarenko⁷⁹.

On 21 December 2023, it was reported about a letter from the Foreign Intelligence Service⁸⁰ stating that during the special processing of data from open sources, information was obtained regarding a person whose personal data coincided with personal data of R.M. Ihnatov.

To clarify the circumstances, the HQCJ established working group of 3 HQCJ members and 3 representatives of NGOs to investigate this issue. The HQCJ also addressed the Security Service of Ukraine, the Foreign Intelligence Service, the Defence Intelligence of Ukraine, the State Bureau of Investigation, the Office of the Prosecutor General, and the Ministry of Foreign Affairs of Ukraine with requests to obtain information confirming or denying the HQCJ Head's Russian citizenship.

The Working Group remained in place until 31 January 2024. The Working Group's report was approved unanimously by its members, which shows that HQCJ Head Roman Ihnatov has no Russian citizenship⁸¹. However, throughout the entire period of the HQCJ's work, and especially in the last three months, the national and social media have been putting pressure on the HQCJ and its Head regarding the alleged Russian citizenship. The pressure did not cease even after the publication of the report.

On 27 March 2024, the HQCJ unanimously granted the Head of the HQCJ's request for his resignation⁸². Thus, the HQCJ currently consists of 15 members (14 - until July 2024). While 1 HQCJ member returned from service in the Armed Forces of Ukraine (AFU), while 1 position remains vacant.

However, on 5 April 2024, the Competition Commission for the Selection of HQCJ Members announced a competition for the vacant position of a member of the HQCJ and invited candidates from among judges or retired judges to participate in the competition⁸³. A total of 28 people have applied for the competition⁸⁴. A special screening of the candidates is currently underway and their motivation letters are being reviewed by the Competition Commission. Interviews with the candidates

77 Roman Ignatov elected Head of the High Qualification Commission of Judges of Ukraine. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/golovoyu-vyshchoyi-kvalifikaciynoi-komisiyi-suddiv-ukrayiny-obranyy-roman-ignatov>.

78 Ruslan Sydorovych was elected Deputy Head of the High Qualification Commission of Judges of Ukraine. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/ruslana-sydorovycha-obraly-zastupnykom-golovy-vyshchoyi-kvalifikaciynoi-komisiyi-suddiv>.

79 Questionnaire of a candidate for appointment as a member of the High Qualification Commission of Judges of Ukraine. O.G. Ponomarenko. URL: https://dn.court.gov.ua/userfiles/media/media/ponom_ankeya.pdf.

80 Letter of the Foreign Intelligence Service of 19.12.2023 No. 10/2/11724-VS/P.

81 Report of the Working Group on Verification of Information on the Possible Citizenship of the Russian Federation of the Head of the Commission Roman Ihnatov. URL: https://vkksu.gov.ua/sites/default/files/zvit_robochoyi_grupy_shchodo_ignatova.pdf.

82 Ihnatov, the Head of the High Qualification Commission of Judges of Ukraine, resigned. Interfax-Ukraine. 2024. URL: <https://interfax.com.ua/news/general/976420.html>.

83 Announcement of the competition for the vacant position of a member of the High Qualification Commission of Judges of Ukraine. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/ogoloshennya-pro-pochatok-konkursu-na-zaynyattya-vakantnoyi-posady-chlena-vyshchoyi>.

84 Candidates for the position of HQCJ member. High Council of Justice. 2024. URL: <https://hcj.gov.ua/page/kandydaty-na-posadu-chlena-vkksu>.

are expected to take place in October 2024, and the appointment of a new member is expected to take place in the fourth quarter of 2024⁸⁵.

On 7 August 2024, Andrii Pasichnyk was elected as the Head of the HQCJ⁸⁶. Prior to this, the HQCJ made two attempts to elect a new Head of the Commission, but no candidate received the required number of vote⁸⁷. On 8 August 2024, Oleksii Omelian was elected Deputy Head of the HQCJ on the fourth attempt⁸⁸.

Progress and issues

During the reporting period, the HQCJ fully resumed its work, which is a significant progress for the purposes of staffing the courts and implementing the staffing component of the judicial reform. However, external pressure on the HQCJ led to the dismissal of its Head, a position that has remained vacant for four months.

Another problem is the lack of equal number of judges and representatives of other legal professions in the Commission, since the HQCJ is a judicial governance body that should include at least half of the judges.

The time-consuming special vetting of HQCJ candidates does not allow for a quick appointment of a HQCJ member, which increases the workload of other members of the Commission.

Prior to amending the legislation on mobilisation⁸⁹ another challenge was the inability of the appointed members of the HQCJ (and HCJ) to discharge from military service in the view of their appointment, which also negatively affected the work of the Commission.

The absence of legislative regulation for replacing an HQCJ member who resigns early with another candidate who has already passed the competitive procedures necessitates holding a second competition for a single position, which is an inefficient use of resources, both human and financial.

Recommendations

In view of these issues, it is advisable to hold a competition for the single vacant position of a member of the HQCJ (under the judicial quota) as soon as possible.

The Law of Ukraine “On the Judiciary and the Status of Judges” should include a provision stating that if the number of members of the Commission is reduced by 1-3 persons, new members should be appointed from the pool of candidates who have successfully passed the competitive procedures but were not appointed by the HCJ to the position of a member of the HQCJ. A new competition should be held only if the HQCJ is reduced by more than three members.

85 Based on the information received in the working order from the Head of the Competition Commission.

86 Andrii Pasichnyk elected as the Head of the High Qualification Commission of Judges of Ukraine. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/golovoyu-vyshchovi-kvalifikacynoyi-komisiyi-suddiv-ukrayiny-obranay-andriy-pasichnyk>.

87 Meeting of the Commission in plenary session (20.06.24). High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.youtube.com/live/fMqV1YgIoRk>.

88 The HQCJ elected Oleksii Omelian as Deputy Head of the Commission. Yurydychna Praktyka. 2024. URL: <https://pravo.ua/vkks-obrala-andriia-omeliana-zastupnykom-holovy-komisiij/>.

89 On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilisation, and Military Registration: Law of Ukraine of 11.04.2024 No. 3633-IX. URL: <https://zakon.rada.gov.ua/laws/show/3633-IX#top>.

Institutional capacity of the HQCJ

State of play

In June 2023, the new HQCJ faced the need to update local regulations, as well as a number of problems caused by the prolonged suspension of the body's work - a number of incomplete personnel procedures, outdated material and technical base, and understaffing.

In 2023-2024, the HQCJ made a number of amendments to its Rules of Procedure⁹⁰, including those aimed at strengthening the principle of collegiality in the HQCJ's decision-making.

By its decision of 29 February 2024, the HQCJ amended the Regulations on the Competition for the Vacancy of a Judges⁹¹, which relate, in particular, to the competition to the HACC.

In May 2024, a Procedure for Access to the Judicial Dossier (Judicial Candidate Dossier) of the PIC⁹² Members was also adopted.

In January 2024, the HQCJ and the PIC sent a joint letter to the ambassadors of the G7 and the EU, in which they reported that the National Anti-Corruption Bureau of Ukraine (NABU) and the National Agency on Corruption Prevention (NACP) had stopped providing information on judges undergoing qualification assessment. In this regard, the authors of the letter requested to "intervene" and "emphasise to the leadership of the NACP and NABU the crucial importance of continuing the qualification assessment of judges", as "its termination would jeopardise the cleansing of the judiciary and undermine the entire judicial reform process"⁹³.

This is an extremely atypical situation when a state institution does not directly address partners from other state authorities, but directly to the G7 and EU ambassadors. It had an impact on both the HQCJ's internal processes and its relations with the NABU and the NACP.

Starting from February 2024, the pace of the qualification assessment has slowed down significantly⁹⁴. Currently, there are verbal agreements between the HQCJ and the NACP on some assistance from the latter in preparing analytical reports on judges. The timing, regularity and number of such references are not yet clearly agreed upon.

Last year, the Accounting Chamber of Ukraine conducted a comprehensive audit of the HQCJ, which resulted in the publication of a report⁹⁵ stating that due to inadequate control by the State Judicial Administration of Ukraine (SJA), the HQCJ used UAH 3.5 million from the state budget in violation of the current legislation, UAH 863 thousand inefficiently, and UAH 433 thousand ineffectively. It is also noted that the HQCJ has no property rights to the workflow automation

90 Rules of Procedure of the High Qualification Commission of Judges of Ukraine: Decision of the High Qualification Commission of Judges of Ukraine of 13.10.2016 No. 81/zp-16. URL: https://vkksu.gov.ua/sites/default/files/reglament_12022024_kontrol.pdf.

91 Regulation on holding a competition for a vacant judicial position: Decision of the High Qualification Commission of Judges of Ukraine of 02.11.2016 No. 141/zp-16. URL: https://www.vkksu.gov.ua/sites/default/files/polozhennya_pro_provedennya_konkursu_na_zaynyattya_vakantnoyi_posady_suddi.2.2024.pdf.

92 Procedure for Access to the Judicial Dossier (Dossier of a Candidate for the Position of Judge) of the Members of the Public Integrity Council: Decision of the High Qualification Commission of Judges of Ukraine No. 37/zp-24 of 22.05.2024. URL: <https://vkksu.gov.ua/doc/pro-zatverdzhennya-poryadku-dostupu-do-suddivskogo-dosye-dosye-kandydata-na-posadu-suddi-chleniv>.

93 HQCJ and PIC complained to G7 Ambassadors about NABU and NACP not providing information about judges, which threatens to suspend qualification assessment. Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/291442-vkks-s-grd-pozhalovalis-poslam-g7-na-nabu-i-napk-kotorye-ne-dayut-informatsiyu-o-sudyakh-cho-ugrozhaet-ostanovkoy-kvalifotsenivaniya-pismo>.

94 More details are provided in a separate section.

95 Report on the findings of the audit of the use of budget funds to ensure the performance of functions and tasks by the High Qualification Commission of Judges of Ukraine. 2023. URL: https://rp.gov.ua/upload-files/Activity/Collegium/2023/17-3_2023/Zvit_17-3_2023.pdf.

system implemented by the HQCJ. In addition, this system is not integrated into the Unified Judicial Information and Telecommunication System (UJITS) (it does not provide data exchange).

In May 2024, draft laws No. 11254⁹⁶ and No. 11254-1⁹⁷ were submitted to the Parliament, offering to grant the HQCJ the status of the main budgetary entity for itself and the National School of Judges of Ukraine (NSJU). In July 2024, the Verkhovna Rada Committee on Legal Policy recommended that the Parliament adopt Draft Law No. 11254, but it has not yet been included in the agenda. In June 2024, the HQCJ approved the Regulation on the Qualification Examination Procedure and Methodology for Assessing Candidates⁹⁸ which, in particular, regulates the qualification assessment procedures for competitions for vacant positions of judges of appellate courts and the HACC.

In the reporting period, the HQCJ took a number of steps to digitalise its processes: candidates for the positions of judges of the Court of Appeal and the HACC submit documents electronically.

Progress and issues

The legislative regulation of the HQCJ's status and powers is much less detailed than the content of similar provisions defining the status of the HCJ and the CCU. The new composition of the HQCJ as of 2023 tends to intensify the implementation of the principle of collegiality in the work of the Commission. At the same time, the Law of Ukraine "On the Judiciary and the Status of Judges"⁹⁹ contains a number of gaps that prevent an unambiguous interpretation of the legislator's intentions regarding the status and powers of the HQCJ.

This became apparent during the development and adoption of the new edition of the HQCJ Rules of Procedure in autumn 2023. The updated regulation contains many novelties that grant broad powers to the plenary of the body, unlike the previous practice, when many of them were attributed to the Head of the Commission. Adoption of the relevant amendments took a long time, given that a number of Commission members expressed dissenting opinions, including on the lack of powers of the Commission's plenary, which the Rules of Procedure as a bylaw act conferred on it. However, although the HQCJ has partially resolved the issue of vesting the plenary of the Commission with a wide range of powers to implement its status as a collegial body, there is a risk that another composition of the Commission may change these powers in the same way, given the lack of clear legislative regulation.

The issue of defining the procedure for appointment and dismissal of the Head of the HQCJ Secretariat remains relevant, as currently the relevant position is held by a person appointed during the work of the previous composition of the Commission, whose powers were terminated in accordance with Law of Ukraine No. 193-IX¹⁰⁰. Moreover, the said Law¹⁰¹ directly stipulated that from the date of its entry into force, the powers of the HQCJ members shall be terminated, and

96 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on Financial Support of the High Qualification Commission of Judges of Ukraine: Draft Law of Ukraine, registration No. 11254 of 13.05.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44198>.

97 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Financial Support for the Activities of Judicial Governance Bodies: Draft Law of Ukraine, registration No. 11254-1 of 24.05.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44293>.

98 Regulation on the Procedure for Passing the Qualification Exam and Methodology for Assessing Candidates: Decision of the High Qualification Commission of Judges of Ukraine of 19.06.2024 No. 185/zp-24. URL: https://www.vkksu.gov.ua/sites/default/files/polozhennya_pro_poryadok_skladannya_kvalifikacijnogo_istytu_ta_metodyky_ocinyuv_kaciyi.pdf.

99 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII. . URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

100 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Laws of Ukraine on the Activities of Judicial Governance Bodies: Law of Ukraine of 16.10.2019 No. 193-IX. URL: <https://zakon.rada.gov.ua/laws/show/193-20#Text>.

101 Ibid, Chapter II, para. 2.

the Head of the HQCJ Secretariat shall be appointed based on the results of the competition in accordance with the requirements of the law.

The biggest problem affecting the institutional capacity of the HQCJ is its dependence on other bodies to obtain information from state registers and analyse it regarding judges and judicial candidates. This makes the HQCJ completely dependent on the NACP (and NABU) in its personnel procedures. There is also a risk that the NACP will not be able to provide the HQCJ with at least a minimum number of analytical references.

Although the HQCJ is taking a number of steps towards digitalisation, its overall level remains low. Another problem is the lack of property rights to the software on which the HQCJ's work is based.

Financial dependence on the SJA affects the work of the HQCJ, which impacts all internal processes of the Commission.

Recommendations

The Law of Ukraine “On the Judiciary and the Status of Judges” should be developed and amended to more clearly define the status of the HQCJ and the powers of its plenary, as well as to regulate the procedure for appointment and dismissal of the HQCJ Secretariat.

Against the background of the events described above, it is advisable to create an independent analytical unit within the HQCJ, whose employees will work with all state registers and analyse the information received from them on judges and judicial candidates. Without such a unit, the HQCJ will not be able to effectively perform its functions.

It is advisable to create an analytical unit following the example of the HJC DI. In this way, it will be an independent structural unit within the HQCJ that will function to exercise the powers of the HQCJ in the selection and qualification assessment of judges, as well as to assist in verifying declarations of integrity and family ties of judges and judicial candidates.

The analytical service may consist of 24 analysts, the head of the service and the deputy head, who will be selected by the competition commission (following the example of the HCJ DI). The financial support level should be set at the level of the corresponding positions in the HCJ DI.

This approach will ensure a high level of competence, integrity and independence of the analytical service, significantly reduce corruption risks, increase the institutional capacity of the HQCJ (and the judiciary as a whole) and ensure institutional memory during the change of the HQCJ members, who are appointed to their positions for a term of four years.

The proposed model will require amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and appropriate budgetary funding. Under all favourable conditions, it will be possible to create such a service within 6-9 months after the relevant legislative changes come into force.

Along with the creation of the analytical service, it is necessary to conduct a functional audit of the HQCJ Secretariat to further establish the optimal structure of the HQCJ apparatus, based on the functions of the HQCJ updated by the legislator under Law of Ukraine No. 3511-IX¹⁰², as well as future personnel procedures.

¹⁰² On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career: Law of Ukraine of 09.12.2023 No. 3511-IX. URL: <https://zakon.rada.gov.ua/laws/show/3511-20#Text>.

The adoption of draft law No. 11254, by which the HQCJ will be granted the status of the main spending unit for itself and the National Judicial Service, will increase the Commission's institutional capacity. However, it is advisable to strengthen internal oversight over the use of budget funds and regular reporting of the relevant HQCJ secretariat staff to the HQCJ members, as well as reinforcing the financial division with additional personnel.

The next step is to further digitalise the HQCJ, which is objectively necessary for maintaining the dossiers of judges and judicial candidates in electronic format, exchanging information with state registers, courts, and other judicial authorities. It is also advisable to study the use of artificial intelligence (AI) tools for processing large amounts of data.

The issue of property rights to the software and further work on its integration with the UJITS should be resolved.

The Regulation on the Secretariat, the Regulation on the Inspector, etc. also need to be updated and harmonised with the legislation.

Public Council of International Experts

State of play

The Public Council of International Experts (PCIE) is established by the HQCJ for a term of six years to assist in preparing decisions on the appointment of HACC judges and is its subsidiary body. The PCIE is composed of six members¹⁰³.

The first PCIE was appointed on 06 November 2018. This means that the 6-year term of office of the PCIE, as stipulated by the Law, expires in November this year. The members of the PCIE are appointed for a two-year term and cannot be reappointed¹⁰⁴.

In December 2023, with the assistance of the Ministry of Foreign Affairs of Ukraine, the HQCJ sent letters of invitation to four international organisations (Council of Europe, Organisation for Economic Co-operation and Development (OECD), International Monetary Fund (IMF), European Anti-Fraud Office (OLAF)) with which Ukraine officially cooperates in the field of preventing and combating corruption to submit proposals for candidates for appointment to the PCIE.

On 28 March 2024, the HQCJ reported that three international organisations had provided the HQCJ with information on 12 candidates for election to the PCIE¹⁰⁵. The candidates are recommended by the EU, the European Anti-Fraud Office (OLAF) and the Organisation for Economic Co-operation and Development (OECD). The HQCJ held online interviews with all candidates.

On 29 April 2024, during a meeting of the HQCJ, a new PCIE was elected, which included six foreign legal experts - judges and prosecutors with experience in Estonia, the USA, Lithuania, the Netherlands, and Canada¹⁰⁶.

103 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VII. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

104 Ibid.

105 International organisations proposed 12 candidates for the Public Council of International Experts. High Qualification Commission of Judges. 2024. URL: <https://vkksu.gov.ua/news/mizhnarodni-organizaciyi-zaproponuvaly-12-kandydatur-do-skladu-gromadskoyi-rady-mizhnarodnyh>.

106 The Commission elected members of the Public Council of International Experts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/page/sklad-grme>.

Regarding the PCIE's activities, it is worth noting that at the initiative of at least three PCIE members, the issue of compliance of any candidate for the position of a HACC judge with the criteria specified in the Law is considered at a special joint meeting of the HQCJ and the PCIE¹⁰⁷. Such special joint meeting shall be held no later than the thirtieth day after the announcement of the results of the exam taken by the candidates to determine whether the candidate for the position of a judge meets the criteria of professional competence.

The experience of the first competition to the HACC shows that a significant number of candidates for HACC judges participate in the procedure of special joint meetings (49 people). According to the Anti-Corruption Action Centre, the experts eliminated 42 candidates – 40% of 113 who had successfully passed the test beforehand¹⁰⁸.

On 22 July 2024, draft law No. 11426¹⁰⁹ was submitted to the Parliament to extend the PCIE's term of office until the end of the competition to the HACC announced by the HQCJ on 23 November 23, but no later than 1 November 2025.

Progress and issues

The formation of the second PCIE is a progress in the competition to the HACC and the HACC Appeals Chamber, but the deadline of 05 November 2024 may challenge the completion of the competition.

The second independent problem is the too short timeframe for vetting judicial candidates, which is provided by the PCIE after the candidates have successfully passed the exams.

Recommendations

In view of the above issues, it is advisable to amend the Law of Ukraine "On the High Anti-Corruption Court"¹¹⁰, namely by adopting the Draft Law No 11426, to extend the PCIE's term of office for at least one year.

Also, through amendments to the said Law, the PCIE should extend the timeframe for vetting HACC judicial candidates from 30 to 60 days, with the following provision:

"Such special joint meeting shall be held no later than the sixtieth day after the announcement of the results of the exam taken by the candidates to determine whether the candidate for the position of judge meets the criterion of professional competence."

Personnel procedures in the judicial system

State of play

In June 2023, the new HQCJ was tasked with completing a number of personnel procedures that had been suspended since 07 November 2019.

107 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

108 There are 71 candidates left in the competition to the Anti-Corruption Court. International experts have completed their work. Anti-Corruption Action Centre. 2019. URL: <https://antac.org.ua/news/u-konkursi-do-antykorsudu-zalyshylos-71-kandydativ-mizhnarodni-eksperty-zavershyly-svoyu-robotu/>.

109 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and the Law of Ukraine "On the High Anti-Corruption Court" regarding the Public Council of International Experts: Draft Law of Ukraine, registration No. 11426 of 22.07.2024. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/44540>.

110 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

These procedures include:

- 1) qualification assessment of judges. According to the report of the Accounting Chamber of Ukraine, the qualification assessment of 42.2% of judges¹¹¹ remained incomplete;
- 2) competition to the High Court of Intellectual Property (HCIP), announced on 30 September 2017¹¹²;
- 3) the competition to the Appeals Chamber of the High Court of Intellectual Property announced on 05 October 2018¹¹³;
- 4) competition to fill 35 vacant positions of judges in local courts, announced on 05 August 2019¹¹⁴;
- 5) competition for 7 vacant positions of judges of local general courts of Donetsk and Luhansk regions, announced on 05 August 2019¹¹⁵;
- 6) competition for vacant positions of judges of courts of appeal announced on 09 August 2019 (cancelled on 14 September 2023¹¹⁶);
- 7) verification of the results of the qualification exam of 368 candidates for local courts announced on 03 April 2017.

In July 2023, the HQCJ completed the examination of 1,028 practical papers of 368 candidates¹¹⁷ as part of the qualification exam for candidates to first instance courts. A total of 9 candidates were found to have failed the exam. Some candidates are appealing this decision of the Commission to the court¹¹⁸.

In September 2023, the Commission announced two competitions at once:

- 1) competition for candidates to fill 560 vacant positions of local court judges¹¹⁹;

111 Report on the results of the audit of the use of budget funds to ensure the performance of functions and tasks by the High Qualification Commission of Judges of Ukraine. 2023. URL: https://rp.gov.ua/upload-files/Activity/Collegium/2023/17-3_2023/Zvit_17-3_2023.pdf.

112 Competition for 21 vacant positions of judges of the High Court on Intellectual Property (announced on 30.09.2017). High Qualification Commission of Judges of Ukraine. URL: <https://new.vkksu.gov.ua/infographics/konkurs-na-zaynyattya-21-vakantnoyi-posady-suddiv-vyshchogo-sudu-z-pytan-intelektualnoyi>.

113 A competition to the Appeals Chamber of the High Court of Intellectual Property has been announced. High Qualification Commission of Judges of Ukraine. 2018. URL: <https://vkksu.gov.ua/news/ogolosheno-konkurs-do-apyaciynoyi-palaty-vyshchogo-sudu-z-pytan-intelektualnoyi-vlasnosti>.

114 A competition for 35 vacant positions of local court judges has been announced for candidates who meet the requirements of the third paragraph of Section 13 of the Law of Ukraine "On the High Council of Justice". High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/news/ogolosheno-konkurs-na-zaynyattya-35-vakantnyh-posad-suddiv-miscevyh-sudiv-dlya-kandydativ-na>.

115 A competition for 7 vacant positions of judges of local general courts of Donetsk and Luhansk regions has been announced for candidates who meet the requirements of the seventh paragraph of Section 13 of the Law of Ukraine "On the High Council of Justice". High Qualification Commission of Judges of Ukraine. 2019. URL: <https://vkksu.gov.ua/news/ogolosheno-konkurs-na-zaynyattya-7-vakantnyh-posad-suddiv-miscevyh-zagalnyh-sudiv-doneckoyi-ta>.

116 The competition for 346 positions of appellate court judges announced on 09.08.2019 has been cancelled. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/skasovano-konkurs-na-zaynyattya-346-posad-suddiv-apyaciynih-sudiv-ogolosheny-09082019>.

117 The HQCJ has started checking the practical work of judicial candidates, but there is a nuance. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/273961-vkks-nachala-proverku-prakticheskikh-rabot-kandidatov-na-dolzhnosti-sudey-no-est-nyuans>.

118 The Supreme Court has already ruled on the presence of materials prohibited during the exam. This decision confirms that the mere fact that a candidate has materials prohibited during the exam is sufficient grounds for terminating the participation of such a person in the competition. Decision of the Supreme Court of 18.03.2024 No. 990/185/23. URL: <https://reyestr.court.gov.ua/Review/117889644>.

119 Announcement of the competition for 560 vacant positions of judges in local courts. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/ogoloshennya-pro-provedennya-konkursu-na-zaynyattya-560-vakantnyh-posad-suddiv-u-miscevyh-sudah>.

2) competition for candidates to fill 550 vacant positions of judges in the courts of appeal¹²⁰.

In addition, on 23 November 2023, the HQCJ launched a competition for candidates to fill vacant positions of judges of the High Anti-Corruption Court – 15 positions in the first instance of the HACC and 10 positions in the HACC Appeals Chamber¹²¹.

In December, the HQCJ held a competition for local general courts, district administrative courts and local commercial courts, with 434 winners¹²². This is effectively the end of the judicial selection procedures launched in April 2017.

An updated procedure was applied for the selection of courts by the candidates, which means that the candidate with the first place in the ranking chooses the local court in which he or she wants to work first, the second in the ranking chooses the second, the third in the ranking chooses the third, and so on. This approach seems to be more fair and transparent. However, there is a downside: no one elects “unpopular” courts. More than 100 positions of judges in the proposed courts remain vacant. The participants deliberately withdrew from the competition by not choosing positions in the regions close to Russia (Sumy and Kharkiv regions) and the area of active hostilities (Donetsk, Kherson, Zaporizhzhia, partially Mykolaiv and Dnipropetrovsk regions). Another interesting fact is that positions in western Ukraine were even more popular than those in Kyiv.

Between January and May 2024, the HQCJ interviewed the winners of the competition and has so far recommended the appointment of 390 people as first instance judges to 266 courts (women – 223; men – 167), including:

- › 29 candidates (16 women and 13 men) to 15 administrative courts;
- › 26 candidates to 17 economic courts (18 women and 8 men);
- › 335 candidates to 234 general courts (189 women and 146 men)¹²³.

Another 36 candidates were denied recommendations for appointment to the position of a judge, and the participation of 8 candidates was terminated (at their request).

In general, the interview with the winners is a new procedure provided for by the Law of Ukraine No. 3511-IX¹²⁴, which applies to all competitions. However, the Law does not establish any methodology for such interviews. Nor does it require the HQCJ to develop one.

Some interviews lasted 7 minutes, and some lasted more than one hour. Not only the timing differs, but also the depth and complexity of the questions asked of the candidates. Some of the candidates are asked to list their professional background, while others are tested for integrity. The information resources of civil society organisations, including Automaidan and the DEJURE Foundation, periodically reported on cases that they consider to be of the greatest concern¹²⁵.

120 Announcement of the competition for 550 vacant positions of judges in courts of appeal. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/page/ogolosheno-konkurs-na-zaynyattya-550-vakantnyh-posad-suddiv-v-apelyacynyh-sudah>.

121 A competition to fill 25 vacant positions of judges of the High Anti-Corruption Court has been announced. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/page/ogolosheno-konkurs-na-zaynyattya-25-vakantnyh-posad-suddiv-vyshchogo-antikorupciynogo-sudu>.

122 The Commission has started interviews with the winners of the competition for local court judges. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/komisiya-rozpochala-spivbesidy-z-peremozhchamy-konkursu-na-posady-suddiv-miscevyh-sudiv>.

123 Results of the competition for 560 vacant positions of judges in local courts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/rezultaty-konkursu-na-zaynyattya-560-vakantnyh-posad-suddiv-u-miscevyh-sudah>.

124 On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career: Law of Ukraine of 09.12.2023 No. 3511-IX. URL: <https://zakon.rada.gov.ua/laws/show/3511-20#Text>.

125 Publications of the All-Ukrainian Automaidan Association on Facebook. URL: <https://www.facebook.com/share/p/wkMXwxkH5QxBRpu9/>; <https://www.facebook.com/share/p/AG8iUjFDi64KbOf/>; <https://www.facebook.com/share/p/8a6Wf8oJ56M6vGWWW/>. Publication of the DEJURE Foundation on Facebook. URL: <https://www.facebook.com/share/p/JPznJufbQ7SFHSgK/>.

Also during the reporting period, two competitions to the first instance announced in August 2019 were completed. There were 22 winners¹²⁶.

Thus, the following qualification procedures are currently underway:

- › Qualification assessment, which, according to the data announced by the Commission on 12 November 2023, is expected to be passed by 1884 judges of local and appellate courts from all over Ukraine. A total of 109 persons are to start this procedure by taking an exam, and 1775 persons are at the stage of dossier research and interviews¹²⁷.

As of 30 June 2024, 90 judges have successfully completed the assessment. 24 judges were found to be unfit for office. They are subject to dismissal. In total, 114 judges have completed the qualification assessment in 9 months¹²⁸.

On 30 July 2024, examinations began as part of the qualification assessment for the position of judge and in connection with the imposition of disciplinary sanctions. 16 judges of local courts with administrative specialisation completed an anonymous written test and a practical assignment (including some judges of the Kyiv District Administrative Court, including Pavlo Vovk)¹²⁹. The coded test results were made public on the same day¹³⁰. The procedure will continue for the rest of the judges in August. In total, 105 people are on the list to take the qualification exam¹³¹.

- › The competition to the courts of appeal of all jurisdictions, for which 2076 people applied. As of 1 July 2024, 1839 candidates were admitted to the competition¹³².
- › The competition to the HACCC, for which 238 candidates applied (153 to the first instance and 85 to the Appeals Chamber)¹³³. A total of 161 persons were admitted to the competition (100 persons to the first instance and 61 persons to the Appeal Chamber¹³⁴.
- › Competitions to the HCIP and the HCIP Appeals Chamber, for which no procedures are currently underway. There is also no information on what will happen in the future and when.

126 Rating of participants of the competition for 35 vacant positions of local court judges. High Qualification Commission of Judges. URL: https://vkksu.gov.ua/sites/default/files/field/file/kopyya_dodatok_do_rishennya_pro_zatv_reytyngu35-3.pdf.

127 Qualification assessment of judges resumes in Ukraine. Interfax-Ukraine. 2024. URL: <https://interfax.com.ua/news/general/947232.html>.

128 Data calculated based on the analysis of decisions of the High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/acts>.

129 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/pFxeteGPTiMyQjq2/>.

130 Coded test results on 30 July 2024. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.vkksu.gov.ua/news/kodovani-rezultaty-testuvannya-30-lypnja-2024-roku>.

131 Schedule of examinations during the qualification assessment of judges for compliance with the position held or qualification assessment of judges in connection with the imposition of a disciplinary sanction. High Qualification Commission of Judges of Ukraine. 2024. URL: https://www.vkksu.gov.ua/sites/default/files/grafik_1.pdf.

132 Candidates who have applied for participation in the competition for vacant positions of judges of appellate courts, and information on their admission to the competition. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/spysky_konkurs_apelyaciya_2.pdf.

133 Candidates who applied to participate in the competition. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/spysky_podani_zayavy_kandydativ_konkurs_vas_na_01.04.2024_na_sayt.pdf.

134 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/hw4hvnBC7BDYhfXB/>.

In July 2024, the HQCJ published the tests and their corresponding answers (test basis) developed by the NSJU¹³⁵ for the appellate court competition¹³⁶. A total of 13,000 tests were developed and published, but candidates and others have reported errors in a significant number of them. Additionally, 200 practical tasks were developed.

The HQCJ announced that the qualification assessment will begin no earlier than 45 days after candidates are granted access to the test database. The exact date will be determined later¹³⁷.

The Commission has also developed terms of reference for testing the cognitive abilities of candidates (this is a new competitive procedure envisaged by Law of Ukraine No. 3511-IX¹³⁸). However, discussions continue on the feasibility of measuring the results of cognitive ability testing in accordance with the requirements established by law¹³⁹. As a result, in July 2024, Draft Law No. 11425 was submitted to the Parliament, which clarifies the provisions for determining the results of the said test¹⁴⁰ and regulates other components of the qualification exam assessment.

According to the information announced by the HQCJ members, it is expected that the first recommendations for appointment will be made to the HACC candidates at the end of 2024. After the competition to the HACC is completed, the Commission will interview candidates for the appellate courts¹⁴¹.

Special attention should be paid to the SC decision on the procedure for qualification assessment of judges. In this decision, the SC reversed nearly seven years of practice by determining that the qualification assessment of judges for their suitability for the position and the assessment of their ability to administer justice in court are two distinct procedures¹⁴². This decision casts doubt on the assessment process of 180 judges from local and appellate courts, for whom the PIC issued conclusions of non-compliance with the criteria of integrity and professional ethics. As the decision sparked public concern, the Supreme Court provided additional clarifications¹⁴³. In response, the PIC issued several statements criticizing the decision and called on the HQCJ to adhere to the previous evaluation procedure for judges¹⁴⁴. The HQCJ has not yet made any decisions regarding the Supreme Court's ruling.

Progress and issues

The reintroduction of qualification assessment and competitions is an undoubted progress in judicial reform, cleansing the courts of incompetent and dishonest judges and filling the courts with new quality personnel. However, there are a number of challenges at this stage of the reform.

135 Discussions on new challenges for the judiciary. URL: <https://www.youtube.com/watch?v=9DjyZp1Rf9c>.

136 To the attention of candidates for vacant positions of judges of appellate courts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/do-uvagy-kandydativ-na-zaynyattya-vakantnyh-posad-suddiv-apelyacynyh-sudiv>.

137 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/35rRnDp8y4J8zRd4/>.

138 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career: Law of Ukraine of 09.12.2023 No. 3511-IX. URL: <https://zakon.rada.gov.ua/laws/show/3511-20#Text>.

139 Dmytro Maslov's publication on his Facebook page. 2024. URL: <https://www.facebook.com/share/p/9A7Gh6ZT7JiJfT5/>.

140 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the peculiarities of the qualification exam: draft Law of Ukraine, registration No. 11425 of 22.07.2024. . URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/44574>.

141 Discussions on new challenges for the judiciary. URL: <https://www.youtube.com/watch?v=9DjyZp1Rf9c>.

142 Resolution of the Grand Chamber of the Supreme Court of 13.06.2024 in case No. 9901/198/20. URL: <https://reyestr.court.gov.ua/Review/120088917>.

143 Publication of the Supreme Court on Facebook. 2024. URL: <https://www.facebook.com/share/p/zgzSmUCfoWHk89BS/>.

144 For example, the publication of the Public Integrity Council on Facebook. 2024. URL: <https://www.facebook.com/share/p/XRyV21XkGr7dJtFc/>.

One of the problems is the slow pace of the qualification assessment due to the lack of capacity of the NACP and NABU to promptly provide certificates on judges undergoing qualification assessment and the lack of institutional capacity of the HQCJ to work with the registers independently.

Another issue that became evident during the competition to local courts is the lack of a methodology for interviewing candidates for the positions of judges of such courts, and thus the full discretion of the HQCJ, which is obviously excessive and carries corruption risks. Also, since a significant number of candidates for local courts demonstrated a low level of competence during the interviews, and some candidates were questioned about their integrity, this calls into question, in the first case, the level and results of training in the National School of Judges, and in the second case, the expediency of conducting a vetting of a candidate after the competition (rather than before it begins).

The competition to the courts of first instance showed a low level of interest of candidates in working in the regions that share a common border with Russia, as well as in the regions where active hostilities are taking place, which is a significant problem in itself for filling vacancies in these courts and calls into question the feasibility of further operation of such courts.

Another challenge is ensuring the safety of the participants of the competitions during the examinations, especially for the positions of judges in the courts of appeal. Currently, the judiciary cannot count on a sufficient number of premises that meet the requirements of a bomb shelter and can accommodate the required number of people for the relevant stage of the competition. Therefore, if the alarm is sounded after the start of the exam, there are risks of non-compliance with the principles of anonymity and continuity of this stage due to the need to move candidates to safer places.

Although the HQCJ has been in operation for more than a year, no action has been taken to complete the competitions to the HCIP and its Appeals Chamber. A new issue has arisen with the Supreme Court's decision on qualification assessment, which disrupts the procedure that has been in place for years and undermines the previous achievements of judicial reform.

Recommendations

1. The Law of Ukraine "On the Judicial System and the Status of Judges"¹⁴⁵ should provide for the HQCJ's obligation to develop a methodology for conducting interviews for local courts that will unify (based on the existing experience) such a procedure and reduce corruption risks.
2. The provisions of Article 79⁵ of the Law¹⁴⁶ should be clarified to the extent that the provision on the HQCJ interviewing the winner of the competition applies exclusively to the procedure of competitive selection for the position of local court judges.
3. Consider the results of the competition to local courts when drawing up a new map of courts, as well as subsequent calculations of the required number of vacancies for such courts.
4. Ensure safety of candidates and observe the principles of anonymity and continuity during such a stage of the competition as the examination, it is worth considering holding the examination exclusively in premises that meet the requirements of an equipped bomb shelter and can accommodate up to 2,000 people. In the absence of such premises in sufficient quantity, it is necessary to attract resources for their re-equipment as soon as possible.

¹⁴⁵ On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

¹⁴⁶ Ibid.

5. Taking into account the results of the competitions to local courts, the approach to the sequence of their stages should be reconsidered to avoid situations when candidates with low level of competence and integrity are excluded by the HQCJ from the competition procedures after they have been elected to the courts. This would then require a second competition for the vacancy.
6. Complete the competition procedures to the HCIP and the HCIP Appeals Chamber.
7. Intensify the HQCJ's qualification assessment procedure, in particular in terms of ensuring that candidates who had to pass the relevant procedure in 2016-2019 (primarily judges of the District Administrative Court of Kyiv) pass the exams.
8. Resolve the issue of the impact of the Supreme Court's decision on the procedures for the qualification assessment of judges for their suitability for the position through a broad discussion involving the HQCJ, HCJ, SC, and PIC.

Public Integrity Council

State of play

PIC is established to assist the HQCJ in assessing the compliance of a judge (judicial candidate) with the criteria of professional ethics and integrity for the purposes of qualification assessment¹⁴⁷.

The PIC consists of 20 members, who may be (in accordance with the Law) representatives of human rights NGOs, legal scholars, advocates, journalists who are recognised experts in their field of professional activity, have a high professional reputation and meet the criteria of political neutrality and integrity¹⁴⁸.

The current composition of the PIC was established on 14 August 2023¹⁴⁹. Subsequently, 2 members ceased their participation in the Council. Instead, their positions were taken by persons from among the reserve PIC members, although the law does not provide for such a procedure¹⁵⁰.

Currently, the PIC is involved in the qualification assessment of judges and will participate in the assessment of candidates for the positions of judges of the courts of appeal.

On 09 November 2023, HQCJ members and PIC members agreed on common indicators for determining non-compliance with the criteria of integrity and professional ethics, which was perceived with cautious optimism in the relations between them during the period under review¹⁵¹.

Also in November 2023, the qualification assessment of judges for their suitability for the position resumed¹⁵².

The analysis of the PIC's findings and joint interviews with the HQCJ and the PIC revealed a number of issues that need to be addressed.

147 Ibid, p. 1, Art. 87.

148 Ibid, p. 3, Art. 87.

149 About the Public Integrity Council. Public Integrity Council. URL: <https://grd.gov.ua/pro-hromads-ku-radu-dobrochesnosti/>.

150 The Public Integrity Council voted to terminate the powers of two of its members, Yurii Nikolov and Oleh Ivanov. Public Integrity Council. 2023. URL: <https://grd.gov.ua/news/hromads-ka-rada-dobrochesnosti-proholosuvala-stosovno-prypynennia-povnovazhen-dvokh/>.

151 The HQCJ and the PIC agreed on a list of common indicators to determine non-compliance with the criteria of integrity and professional ethics. Public Integrity Council. 2023. URL: <https://grd.gov.ua/news/vkksu-ta-hrd-pohodyly-spysok-spil-nykh-indykatoriv-dlia-vyznachennia-nevidpovidnost/>.

152 Restoration of judges' qualification assessment. Public Integrity Council. 2023. URL: <https://grd.gov.ua/news/vidnovlennia-kvalifotsiniuvannia-suddiv/>.

Progress and issues

The agreement on common indicators for determining whether a judge (judicial candidate) does not meet the criteria of integrity and professional ethics was an undoubted progress in the relations between the HQCJ and the PIC. However, despite this, there are still a number of shared issues for the HQCJ and the PIC:

- 1) the absence at this stage of the Uniform Indicators for Assessing Integrity and Professional Ethics of Judges (Judicial Candidates), which, according to the law, should be developed by the HCJ in consultation with the HQCJ, the Council of Judges of Ukraine and the PIC;
- 2) absence of a “standard of proof” of dishonesty of judges and judicial candidates;
- 3) lack of unified approaches to assessing the gravity of judicial misconduct;
- 4) lack of unified approaches to the scope/depth of vetting of judges and judicial candidates, as well as their family members (including former family members);
- 5) lack of consent of family members (especially former family members) and third parties to verification of their assets, mentioning their personal data during interviews, etc.;
- 6) cases of untimely issuance of negative conclusions (or their untimely publication);
- 7) different quality of negative PIC opinions prepared by different PIC members;
- 8) cases of disclosure by a PIC member of confidential information concerning third parties unrelated to the judge;
- 9) lack of clear timing of the qualification assessment procedure, especially in terms of predictability of the deadline for its completion. Such a procedure is inherently extraordinary and should have been quick, taking into account the recommendations of the Venice Commission¹⁵³, but has actually been going on since 2017.

Most of these issues are being challenged in court by judges who have been found to be unfit for office, or even those who may be found to be unfit for office in the future.

Recommendations

- › Approve and adopt the Uniform Indicators for Assessment of Integrity and Professional Ethics of Judges (Judicial Candidates) as soon as possible, which will contribute to legal certainty in the context of addressing the above issues. In this context, the issue of vetting third parties and former family members of judges (judicial candidates) requires a broad discussion and legislative regulation.
- › The HQCJ should introduce the practice of scheduling meetings in advance, coordinating them with PIC members, and intensify the qualification assessment.
- › Given that some PIC members are not lawyers or have little experience in the relevant field, it is advisable to conduct training with the participation of all PIC members to develop common approaches to the conclusions provided by the PIC. Separately, joint events should be held for PIC and HQCJ members to unify their approaches to integrity and professional ethics assessment (taking into account their existing experience of participation in qualification assessment).

¹⁵³ Opinion on the Draft Amendments to the Constitution of Ukraine on Justice, approved by the Constitutional Commission on 04.09.2015. URL: <https://old.vkksu.gov.ua/userfiles/doc/visnovok%2026.pdf>.

Supreme Court

The SC is the highest court in the judicial system of Ukraine, which administers justice as a court of cassation (and in cases specified by law - as a court of first instance or appeal), ensures uniform application of the law by courts of different specialisations and exercises a number of other powers, including appealing to the CCU on the constitutionality of laws and other legal acts, and official interpretation of the Constitution. The SC includes: The Grand Chamber of the Supreme Court (GC SC), the Administrative Court of Cassation, the Commercial Court of Cassation, the Criminal Court of Cassation, and the Civil Court of Cassation¹⁵⁴.

The SC in the updated format has been operating since 15 December 2017. When the SC was formed, a formula was applied for the first time, when not only career judges, but also advocates and academics from outside the judicial system were eligible to become SC judges. At the time of the start of the new Supreme Court's work, there were about 22% of them¹⁵⁵.

Strategic development and staffing of the SC

State of play

Rotation of the Supreme Court leadership

On 15 May 2023, Chief Justice Vsevolod Kniazev was exposed by the NABU and the Specialised Anti-Corruption Prosecutor's Office (SAPO) for receiving an undue benefit of USD 2.7 million for making a decision in a dispute between two oligarchs - Kostiantyn Zhevago and Ihor Kolomoiskyi – over a stake in Ferrexpo PLCC¹⁵⁶.

The next day, the Plenum of the Supreme Court removed V. Kniazev from the post of the Chief Justice¹⁵⁷, and on 26 May 2023, at a meeting of the Plenum of the Supreme Court, Stanislav Kravchenko, who had been heading the Criminal Court of Cassation¹⁵⁸ for 5.5 years, was elected Chief Justice for a four-year term. At the same time, NGOs specialising in judicial reform and anti-corruption issues¹⁵⁹, negatively assessed¹⁶⁰ the appointment of S. Kravchenko as the Chief Justice, as the PIC gave a negative opinion on him during the competition to the SC in 2017. After his appointment, S. Kravchenko provided public explanations of the PIC's opinion in several interviews¹⁶¹.

154 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Articles 36, 37. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

155 The new Supreme Court: an ATO warrior and 25% of "dishonest". BBC News Ukraine. 2017. URL: <https://www.bbc.com/ukrainian/features-40752799>.

156 NABU and SAPO expose bribery scheme of the Supreme Court leadership. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/nabu-sap-vikrili-koruptc-inu-skhemu-u-verkhovnomu-sud/>.

157 The Plenum of the Supreme Court prematurely terminated the powers of the Chief Justice Vsevolod Kniazev as a result of a vote of no confidence. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1423797/>.

158 Stanislav Kravchenko elected Chief Justice of the Supreme Court. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1428935/>.

159 For example, "Black Day in the Court History" continues: Stanislav Kravchenko is elected as the Chief Justice of the Supreme Court. DEJURE Foundation. 2023. URL: <https://dejure.foundation/chornyj-den-v-istoriyi-sudu-tryvaye-golovoyu-vs-obraly-stanislava-kravchenka/>.

160 Conclusion on the inconsistency of the candidate for the position of Supreme Court judge Stanislav Kravchenko with the criteria of integrity and professional ethics. Public Integrity Council. 14.04.2017. URL: https://grd.gov.ua/wp-content/uploads/2020/06/kravchenko_vysn.pdf.

161 The new Chief Justice of the Supreme Court denied the information about the distribution of apartments for votes. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-society/3714549-novij-golova-verhovnogo-sudu-sprostuvav-informaciju-pro-rozdacu-kvartir-za-golosi.html>.

Also in 2023, the meeting of judges of the GC SC elected Vitalii Urkevych as the Secretary of the GC SC for a three-year term¹⁶², and the composition of the GC SC was renewed by half in 2023.

The Criminal Court of Cassation of the Supreme Court (CCC SC) was headed by Oleksandr Marchuk¹⁶³, and Nataliia Antoniuk was elected as his Deputy¹⁶⁴. Civil society organisations negatively assessed the appointment of the new Head of the CCC SC and some judges of the GC SC¹⁶⁵. No negative assessments were given to the Secretary of the GC SC and the Deputy Head of the CCC SC.

On 06 October 2023, during a meeting of the SC Plenum, judge and Major of the Armed Forces of Ukraine Oleksandr Mamalui was elected to the position of Deputy Chief Justice of the SC for a four-year term¹⁶⁶.

Key personnel changes also affected the SC Secretariat: in June last year, Viktor Kapustynskiy was appointed as Chief of Staff, with Rasim Babanly¹⁶⁷ as his first deputy.

Thus, after the corruption story with the Chief Justice of the Supreme Court, the Court's leadership at the central level was completely renewed. The staff of the Supreme Court also received new personnel changes, and the composition of the Grand Chamber was renewed by 50%. Most of the senior positions in this case were taken by career judges with significant experience.

In total, 24 judges resigned from the Supreme Court in 2023¹⁶⁸.

Meanwhile, during the reporting period, 5 judges of the SC of Ukraine, "liquidated" during the 2017 reform, were transferred to the SC. The Law of Ukraine No. 3481-IX¹⁶⁹ regulated the transfer of these judges. However, one of these judges resigned a week after the transfer procedure was completed¹⁷⁰. The other 4 judges work in the courts of the respective specialisation or in the GC SC¹⁷¹.

162 Vitalii Urkevych elected to the post of Secretary of the Grand Chamber of the Supreme Court. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1383286/>.

163 Oleksandr Marchuk is elected as the Head of the Criminal Court of Cassation within the Supreme Court. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1438841/>.

164 Deputy Head was elected to the Criminal Court of Cassation of the Supreme Court. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1481850/>.

165 For example: It's been done before: election of a new head of the CCU as an indicator of the need to cleanse the court. DEJURE Foundation. 2023. URL: <https://dejure.foundation/cze-zh-bulo-vzhe-obrannya-novogo-golovy-kks-vs-yak-indykator-neobhidnosti-v-ochyshhenni-sudu/>.

166 Election of the Deputy Chief Justice of the Supreme Court and legislative initiatives to improve the activities of the Grand Chamber are on the agenda of the next meeting of the Supreme Court Plenum. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1488524/>.

167 The Chief of Staff of the Supreme Court and his first deputy appointed. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1434108/>.

168 Both the number of cases received by the courts in 2023 and the number of cases considered in the conditions of war and lack of staff are impressive – Chief Justice Stanislav Kravchenko. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1554727/>.

169 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" in connection with the Decision of the Constitutional Court of Ukraine of 18 February 2020 No. 2-r/2020 on ensuring the continuity of the administration of justice by the highest court in the judicial system of Ukraine: Law of Ukraine of 21.11.2023 No. 3481-IX. URL: <https://zakon.rada.gov.ua/laws/show/3481-20#Text>.

170 On the dismissal of B.M. Poshva from the position of a judge of the Supreme Court in connection with her resignation: Decision of the High Council of Justice of 11.01.2024 No. 68/0/15-24. . URL: <https://hcj.gov.ua/doc/doc/43174>.

171 For example: The Meeting of Judges of the Cassation Court of the Supreme Court elects a judge to the Grand Chamber of the Supreme Court. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1537552/>.

At present, there are 156 judges in the SC¹⁷²; two judges of the Civil Court of Cassation were seconded to the HCJ; judge V. Kniazev of the Administrative Court of Cassation was dismissed from his position due to disciplinary prosecution; former judge of the Commercial Court of Cassation Bohdan Lvov is challenging his dismissal from the SC due to his citizenship of the Russian Federation¹⁷³. Meanwhile, according to the established number of judges, the Supreme Court should have 196 judges¹⁷⁴. Thus, the shortage of judicial personnel in the Supreme Court currently reaches 20%.

Strategic development group of the Supreme Court

Since the beginning of the war, the Supreme Court has had a strategic development group coordinated by Olena Kibenko, a judge of the Commercial Court of Cassation. The group consisted of 42 judges and included heads of relevant departments from the Court's staff¹⁷⁵.

In 2022, the group developed a project to optimise the SC Secretariat, which was implemented in early 2023¹⁷⁶. During the same period, the group drafted the SC Development Strategy for 2023-2027 for further approval by the SC Plenum¹⁷⁷.

After the detention of the Chief Justice V. Kniazev and the election of career judges to the SC leadership, most reform processes were curtailed; the current leadership of the Court believes that judges should now focus exclusively on hearing cases. Inside the SC, this mode of operation is called "daily hard work"¹⁷⁸.

No SC development strategy was adopted in the reporting period. Instead, in October 2023, five working groups were set up to finalise the Strategy¹⁷⁹. Currently, almost nothing is known about the progress of these groups, however, during the survey conducted for the purposes of this report, it was found that, for example, the group on anti-corruption policy had only one meeting during this time - to elect the group coordinator. Out of the five working groups, only one is active - the group on basic principles of court management, which in the reporting period began preparations for the audit of processes at the Commercial Court of Cassation¹⁸⁰.

The optimisation of the Supreme Court's apparatus, carried out in December 2022 – March 2023, was partially cancelled a year later¹⁸¹. Some staff members of the Supreme Court's Secretariat who had been dismissed during the optimisation in spring 2023 due to their low competence returned to work at the Court. The lack of competitions for some civil service positions during the war enabled

172 Accounting of judges' positions. High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/oblik>.

173 The decision of the District Administrative Court cancelled the order of the Chief Justice of the Supreme Court to dismiss Judge Bohdan Lvov from the staff of the Supreme Court. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1538556/>.

174 Accounting of judges' positions. High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/oblik>.

175 The Plenum of the Supreme Court approved the structure and staffing of the Supreme Court and the budget request for 2023. Supreme Court. 2022. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1357160/>.

176 Ibid.

177 How to adapt plans and priorities in the face of uncertainty. Yurydychna Gazeta. 2024. URL: <https://yur-gazeta.com/dumka-eksperta/yak-adaptuvati-plani-i-prioriteti-v-umovah-neviznachenosti-.html>.

178 Formation of approaches to the development of fundamental criteria for the strategy of activity through the prism. Dead Lawyers Society. 2023. URL: <https://www.deadlawyers.org/formuvannya-pidhodiv-do-napracyuvannya-kryteriyiv-strategichno-zasadnychoyidiyalnosti-kriz-pryzmu/>.

179 Election of the Deputy President of the Supreme Court and legislative initiatives to improve the work of the Grand Chamber are on the agenda of the next meeting of the Supreme Court Plenum. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1488524/>.

180 Information obtained from a conversation with the head of the working group on basic principles of court management..

181 The Supreme Court will restore the archive, legal service and classify positions - amendments have been approved. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/286560-v-verkhovnom-sude-vosstanovyat-arkhiv-yuridicheskuyu-sluzhbu-i-provedut-klasyfikatsiyu-dolzhnostey-utverzhdeny-izmeneniya>.

them to return to their posts. Similarly, certain rotations within the SC Secretariat were carried out without competition, and some employees of the Court who were loyal to the current leadership were given administrative positions.

Thus, as of July 2024, several processes of reforming the Court from within have been curtailed, but new initiatives have been launched instead. During the reporting period, R. Babanla, the first deputy Chief of Staff of the Supreme Court, launched two important projects: the preparation and publication of reviews of the case law of the EU Court of Justice and the launch of the Supreme Observer modern law portal, which has been developed since the summer of 2022 with the support of the EU Pravo-Justice project¹⁸². The functionality of the Supreme Court's Database of Legal Opinions¹⁸³, which was developed and modernised in partnership with the EU Pravo-Justice project, was also updated.

The Supreme Court has also launched a large-scale project with law schools to develop a modern legal outlook for future lawyers, facilitate mutual knowledge exchange between the judiciary and law schools, build a potential talent pool for the Supreme Court, and increase trust in the judiciary and its authority. The concept of cooperation with higher legal education institutions has now been presented¹⁸⁴.

In June 2024, it became known about a joint project of the Supreme Court and the European Court of Human Rights (ECHR) to maintain the Knowledge sharing platform in Ukrainian, which will allow receiving thematic collections of ECHR case law on any issue.

At the same time, the SC is in the process of enhancing its communication capacity, including the development of a concept of the SC communication policy. It is expected to be approved by the end of this year¹⁸⁵.

The case of Bohdan Lvov, former Head of the Commercial Court of Cassation of the Supreme Court

A separate issue that affected the work of the Court in the reporting period is the litigation brought by Bohdan Lvov, the former Head of the Commercial Court of Cassation, who is seeking to overturn the order of his dismissal from the Court due to his alleged Russian citizenship and to be reinstated as a judge. He claims not to hold Russian citizenship. In January, the Kyiv District Administrative Court partially upheld Mr. Lvov's claim and cancelled the dismissal order. The Supreme Court appealed this decision to the Sixth Administrative Court of Appeal¹⁸⁶, which dismissed Lvov's claim, confirming the legality of the Supreme Court's actions in removing him from the Court¹⁸⁷. Currently, Bohdan Lvov is attempting to appeal this decision to the cassation instance¹⁸⁸.

182 The Supreme Observer portal of modern law was presented. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1528193>.

183 Database of legal positions of the Supreme Court. URL: <https://lpd.court.gov.ua/home/approve?key=tg0lza0zyy6u&page=1>.

184 The Supreme Court presented the concept of cooperation with higher legal education institutions. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1615948>.

185 Information obtained during a conversation with a representative of the Supreme Court.

186 The decision of the District Administrative Court cancelled the order of the Chief Justice of the Supreme Court to dismiss Judge Bohdan Lvov from the Supreme Court. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1538556/>.

187 Decision of the Sixth Administrative Court of Appeal of 12.06.2024 in case No. 640/18519/22. URL: <https://reyestr.court.gov.ua/Review/119783508>.

188 Ruling of the Supreme Court of 19.07.2024 in case No. 640/18519/22. URL: <https://reyestr.court.gov.ua/Review/120490467>.

Trust in the SC and the judiciary

The cases of Lvov and Kniazev had a negative impact on the credibility of the SC within the judicial system and in the public eye. These events also affected the trust in all courts.

Sociological surveys conducted last year show one of the lowest levels of trust in courts among state institutions. For example, the Razumkov Centre's research clearly recorded a drop in the level of trust in the courts in May 2023 (16.8%). Prior to that, the indicator had been gradually increasing (October 2017 – 9.3%; February 2019 – 11.4%; October 2020 – 13%; August 2021 – 15.5%; December 2022 – 23.3%; March 2023 – 24.8%)¹⁸⁹.

Progress and issues

In fact, the events related to the so-called Kniazev case and the change in the management team have halted the progress made in reforming the Supreme Court over recent years. With career judges now in the Supreme Court, the advancement of further reforms in certain areas has been put on hold, and some reform areas have even been reversed.

Since the SC has lost its leadership position and authority within the judiciary, this leads to a group of problems such as the rejection of the SC's practice by judges of first and appellate instances and advocates/prosecutors, which negatively affects the unity of judicial practice and the credibility of the Court and its decisions. The Supreme Court is attempting to address this issue by strengthening communication with lower courts and the public. However, this effort has not increased trust in the Court due to the absence of a comprehensive approach to reforming the Supreme Court and ongoing problems related to combating corruption within the Court.

The possibility of B. Lvov's return to the SC is likely to further undermine the credibility of the Court. The same threat is posed by the likely lengthy process of bringing V. Kniazev to justice, especially if the names of other SC judges who may be involved in criminal schemes in the Court appear during the trial.

Recommendations

The following set of tools can be used to address the situation described above. First of all, it is an analysis, including with the involvement of international experts, of the draft Supreme Court Development Strategy for 5 years, its revision taking into account the proposals submitted and adoption by the SC Plenum (it is advisable to provide for the mandatory adoption of such a document, public disclosure and annual public reporting on progress in implementation at the legislative level).

It would also be advisable to ensure that the previous Supreme Court Development Strategy cannot be automatically abandoned in the event of a change in its leadership without a full audit of its implementation, including with the involvement of international experts, reporting and decision-making by the SC Plenum on such a Strategy.

It is also important to introduce the publication of all statistical data disaggregated by judge on the judiciary's website (number of cases – considered/not considered, refusals to accept applications for consideration, leaves, business trips, workload, average number of days of consideration of cases, etc.) with weekly updates. In 2024–2025, it is advisable to implement the relevant pilot project on the basis of the Supreme Court. In 2026–2027, it should be extended to all courts. The openness of such data will help reduce corruption risks, avoid manipulations

¹⁸⁹ The generalised information is based on the data of social surveys conducted by the Razumkov Centre. URL: <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia>.

with the automatic distribution of cases, the timing of consideration, indirectly affect the unity of practice, the discipline of judges, and allow us to see where the problem lies in the case of a large number of reversals, etc.

The next tool is to conduct a functional audit of the Court's apparatus with the participation of external experts in the field, providing recommendations on optimising the organisational structure of the SC apparatus and developing profiles of the Court's staff with relevant competences and a set of functions. Carrying out a full-fledged reform of the SC apparatus.

Another tool is the legislative return of competitions for all positions in the courts and judiciary. At the same time, it would be advisable to address the issue of "career elevators" in the justice system through the instruments of the National Agency of Ukraine on Civil Service (for example, a clerk cannot be appointed head of a unit in the press service without having previous significant experience, and a court administrator cannot be appointed head of the statistics department, etc.).

The issue of Russian citizenship/passports of officials and judges, confirmed by documents of the Ukrainian special services, requires a broad legal discussion and legislative regulation, as there were no diplomatic relations between Ukraine and Russia during the war. However, the existence of a mechanism to avoid situations of returning to office (or not dismissing from office) of persons who, according to the Ukrainian special services, have Russian citizenship will help to cleanse state and local authorities and courts of potential traitors, Russian spies, etc. To this end, it may be possible to enshrine in legislation the inability of such persons to hold public office until they have received convincing evidence that they do not hold Russian citizenship. Satisfaction for a person who did not have Russian citizenship but was dismissed from office (not returned to office) would be compensation of salary on the basis of a separate court decision.

Integrity check of the Supreme Court judges

State of play

After the detention of the Chief Justice V. Kniazev for receiving an undue advantage, the NABU and the SAPO leadership disclosed that other GC SC judges also participated in the organised criminal group¹⁹⁰.

As of 31 July 2024, no other judges of the Supreme Court were served with any suspicions of committing a crime, but the NABU separated the case against the GC SC judges into a separate criminal proceeding. There is currently no public information on the progress of the investigation in this case.

However, against the background of this information, legislative initiatives have emerged to fully vet all SC judges for integrity. Thus, the draft law No. 9454¹⁹¹, inter alia, includes proposals to introduce monitoring of the work of the court in case of serving a notice of suspicion of committing a corruption criminal offence to one of the judges of the relevant court and the HCJ's decision to grant consent to the detention, custody or arrest of such a judge or to the temporary suspension from the administration of justice in connection with criminal prosecution. Subsequently, an alternative draft law was introduced¹⁹².

190 NABU and SAPO expose bribery scheme of the Supreme Court leadership. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/nabu-sap-vikrili-koruptc-inu-skhemu-u-verkhovnomu-sud/>.

191 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the introduction of additional procedures to strengthen public confidence in the judiciary: Draft Law of Ukraine, registration No. 9454 of 03.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42188>.

192 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on the Introduction of Additional Procedures to Strengthen Public Trust in the Judiciary": Draft Law of Ukraine, registration No. 9454-1 of 11.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42274>.

In 2023, the Plenum of the Supreme Court, the HCJ, the Venice Commission, and the Council of Europe's Directorate of Human Rights and Rule of Law provided their comments on the draft laws. The latter, in their Joint Opinion published on 9 October 2023¹⁹³, noted that permanent institutional reforms cannot be the answer to the problems that have been caused by the personal behaviour of individual members of the judiciary. The Commission and the Directorate also recalled their general recommendations contained in the 2020 Opinion: when introducing such significant changes to the legal framework governing the judiciary, the authorities should adopt a comprehensive and consistent approach, with due regard to considerations of judicial stability; it is important to maintain the sequence of changes during judicial reforms and to give priority to the effective application of existing regular instruments of judicial accountability.

Subsequently, the European Commission also expressed its position on the issue, noting, *inter alia*, that effective integrity tools should be used to combat corruption in the SC and other courts, including through integrity checks and asset declarations of judges, a disciplinary framework and improved selection procedures with a focus on integrity and professional ethics.

Also last year, draft laws No. 9643 and No. 9643-1¹⁹⁴ were submitted to the Parliament, which proposed various models of reforming the GC SC, including reducing its composition. The SC Plenum provided its suggestions and reservations, but no further action was taken on the draft laws.

At the same time, as noted above, the composition of the GC SC changed by 50% in 2023, so less than half of the judges who ruled on the Ferrexpo PLC stake are currently working there.

Progress and issues

Some self-purification of the SC occurred naturally through the dismissal of some SC judges or their return to the cassation courts during the partial re-election of the chamber, which is some progress, as it paved the way for restoring confidence in the SC and its decisions. This is important in view of their precedent and role in ensuring the unity of judicial practice.

As for the integrity checks of the entire SC, no such checks were carried out in the reporting period, but the procedures for the selection of judges were revised through the adoption of new legislation¹⁹⁵ which is some progress in implementing this recommendation of the European Commission.

Recommendations

In 2024–2025, the integrity of SC judges can be verified through a number of instruments, the first of which is a full NACP verification of declarations of persons authorised to perform state or local government functions submitted by SC judges in 2021–2023.

However, it would be advisable to clarify the powers of the HQCJ to verify the declarations of integrity and family ties of judges in order to enable the HQCJ to monitor judges' declarations on a regular basis.

193 Venice Commission considers the introduction of lie detector for Ukrainian judges inappropriate - Opinion. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/282825-venetsianskaya-komissiya-schitaet-vvedenie-detektora-lzhi-dlya-ukrainskikh-sudey-neumestnym-zaklyuchenie>.

194 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Some Other Legislative Acts of Ukraine on Improving the Activities of the Grand Chamber of the Supreme Court: Draft Law of Ukraine, registration No. 9643 of 23.08.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42587>; Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on Improving the Activities of the Grand Chamber of the Supreme Court: Draft Law of Ukraine, registration No. 9643-1 of 07.09.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42736>.

195 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career: Law of Ukraine of 09.12.2023 No. 3511-IX. URL: <https://zakon.rada.gov.ua/laws/show/3511-20#Text>.

It is also advisable to conduct a one-time check of the academic integrity of SC judges who have the status of candidates or doctors of science, especially those who completed their dissertations while working in the SC. For this purpose, the National Agency for Quality Assurance in Higher Education should be given the appropriate powers. Academic integrity checks should also become one of the tools used during competitions to the courts of appeal, the HACC, etc.

Ensuring the unity and consistency of judicial practice

State of play

In accordance with the Law of Ukraine “On the Judiciary and the Status of Judges”¹⁹⁶ the SC ensures the consistency and unity of judicial practice in the manner and order prescribed by the procedural law. At present, the SC ensures the unity and consistency of judicial practice by reviewing cases by the Trial Chamber, the Joint Chamber of the Court of Cassation, and the Grand Chamber of the Supreme Court.

The mechanism for referring a case to a chamber, joint chamber or the GC SC, as set out in the procedural codes, provides for a condition for the court to refer a case: if the panel considers it necessary to deviate from the conclusion on the applicability of a legal provision in **similar legal relations** set out in a previously adopted SC decision.

Last year, the Supreme Court considered over 86,000 cases and materials, which is almost 15.3 thousand more than in 2022. In total, over the six years of its operation, the SC received about 580,000 cases and materials, almost 545,000¹⁹⁷ of which were considered. At the same time, not all SC rulings are entered into the USRCD (currently, not even all GC SC rulings are in the USRCD).

On average, each judge of the Supreme Court considers approximately 1500-1600 cases per year, in particular, in approximately 500-550 cases such judge is a rapporteur¹⁹⁸.

In the first half of 2024, the Supreme Court received 45,624 cases and materials for consideration, and reviewed 44,322 cases and materials, which is the same as in 2023¹⁹⁹.

The filters introduced in 2017 and 2020 for accepting cases for consideration still leave a large number of cases for cassation review. The “historical habit” that developed in Ukraine in previous years, when all cases were subject to cassation review, is also important. Currently, parties continue to appeal to the Supreme Court even in minor cases. Therefore, cassation courts in Ukraine have historically accepted a large number of cases for review.

According to the statistics for 2023, a total of 57 cases were referred to the SC judicial chambers, 117 cases to the joint chamber of the respective cassation court, and 154 cases to the GC SC²⁰⁰.

Jurisdictional issues were resolved by the GC SC in the first years of its operation, so that the bulk of issues in this area have now been resolved - the courts are informed of the GC SC’s legal positions, and the unity of practice in jurisdictional matters has been achieved in general.

¹⁹⁶ On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 36. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

¹⁹⁷ Information on the Key Performance Indicators of the Supreme Court in 2023, Art. 8. Supreme Court. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zvi/Info_dijalnist_VS_2023.pdf.

¹⁹⁸ Both the number of cases received by the courts in 2023 and the number of cases considered in the context of war and staff shortage are impressive – Chief Justice Stanislav Kravchenko. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1554727>.

¹⁹⁹ Letter of the Supreme Court of 07.08.2024 No 218/0/18-24.

²⁰⁰ The information is based on data from the Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>.

In the reporting period, there were few cases of cases being referred to the GC SC on the grounds of the need to define the proper jurisdiction of a particular dispute. They were caused, in particular, by the emergence of new categories of disputes related to the war in Ukraine.

Cases are referred by cassation courts to the GC SC to resolve an exceptional legal issue/depart from the conclusions formulated by the SC.

As of 2023, the GC SC resolved an exceptional legal issue in 28 cases and decided in 42 cases to deviate from the conclusion set out in the SC's earlier decision.

Progress and issues

Discrepancies in court practice regarding the application of procedural law do occur, but they are mostly resolved by the courts of appeal or the Supreme Court.

The exception is when the courts of first and second instance make decisions on issues that cannot be referred to the Supreme Court. There may be different practices on such issues, which are formed by different courts of appeal of the same jurisdiction and by courts of appeal of different jurisdictions, and there is currently no mechanism to achieve unity of court practice in this area.

The issue of application of substantive law is currently the most challenging in terms of the unity of court practice. There are many reasons for this. First of all, it is the quality of legislation, including contradictions in laws, gaps in regulation, etc.

The second challenge is the volume of SC rulings. A search in the USRCD²⁰¹ reveals the following results: from December 15, 2017, to March 8, 2024, the Grand Chamber issued 5,972 rulings, the Commercial Court of Cassation issued 31,129 rulings, the Administrative Court of Cassation issued 86,539 rulings, the Civil Court of Cassation issued 81,634 rulings, and the Criminal Court of Cassation issued 22,672 rulings. In total, the Supreme Court issued approximately 230,000 rulings, which creates significant challenges not only in their application, but also in terms of their study and understanding (even within a single jurisdiction).

However, ensuring the unity of judicial practice in the application of substantive law has been hampered (as in previous periods) not only by the large number of cases, but also by the rejection by judges of the first instance and appellate courts of certain precedents adopted by the Supreme Court. Therefore, in recent years, there has been a situation where courts, knowing about a certain decision of the Supreme Court, have sought to avoid applying it in one way or another. The situation could be remedied by explanatory work on the legal positions of the SC among judges of the first instance and appellate courts, but in the reporting period, for various reasons, including objective ones (war), such work was almost never carried out.

Certain issues in ensuring the unity of judicial practice have been resolved by the existence of exemplary cases, which is currently introduced only in administrative proceedings. The decision in one such case has an impact on a significant number of cases of the relevant type and leads to a quick and final resolution of a certain legal conflict of a general nature.

Other problems are the ambiguous wording of the concept of “similarity of legal relations”, the failure to include some of the Supreme Court's rulings in the USRCD, which prevents access to the relevant Supreme Court practice, and the secrecy of court decisions made in camera, which prevents the understanding of court decisions, including in high-profile cases.

201 Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>.

There is also the problem of finding the relevant legal position of the SC, since if the Court has deviated from its conclusions in an earlier ruling, the information about this should not be reflected in the text of this ruling in the USRCD.

Recommendations

1. Improving the operation of the USRCD, including entering all court decisions therein:

- › court decisions made in closed sessions should be disclosed with the conventional designations of the points where the closed regime was applied. Currently, such decisions are not available in full in the public domain. This requires proper legislative support;
- › if the SC departed from the conclusions in an earlier ruling, the relevant information should be reflected in the earlier ruling in the USRCD. Both judges and the SJA should be responsible for this activity;
- › key (pilot) decisions and decisions that do not contain new legal conclusions should be marked accordingly (such marking should be done by the panel or chamber itself when making the decision);

2. Optimisation of filters by granting the SC a discretionary right to accept or not to accept a case for consideration, in particular, by allowing the SC to independently open proceedings in a case that is not appealed to the SC, but where the practice is guided by different appellate courts in different manner, to resolve it as exemplary. This requires amendments to the procedural legislation.

3. Introducing the concept of exemplary cases for commercial and civil proceedings by amending the Commercial Procedure Code of Ukraine and the Civil Procedure Code of Ukraine.

4. Improving the precedent mechanism:

- › improving the criterion of similarity of legal relations by amending the procedural legislation;
- › given that the SC formulates its conclusions not in the abstract, but in a specific case, any generalisations of case law that were used before the 2017 reform should not be applied following the change in procedural law. The SC shall be responsible for doing so;
- › if the SC applies a rule of law without sufficient justification, it should not be considered a binding conclusion on the application of the rule, and such a decision will not be considered precedent-setting. Consequently, there will be no grounds for cassation appeals based on the argument that lower courts failed to consider such a Supreme Court decision;
- › moving towards a convincing precedent involves explanatory efforts aimed at making the Supreme Court's positions clear to a broad audience, especially judges. The Supreme Court should take primary responsibility for this educational role.

High Anti-Corruption Court

The HACC is a permanent high specialised court in the judicial system of Ukraine. The HACC has been operating in Ukraine since 05 September 2019²⁰².

²⁰² On setting the date of commencement of the High Anti-Corruption Court: Decision No. 6 of the meeting of judges of the High Anti-Corruption Court of 07.05.2019. URL: https://hcac.court.gov.ua/userfiles/media/VAKS/self-government/decisions/07.05.2019_6.pdf.

State of play

Personnel support of HACC

As of July 2024, the HACC employs 38 judges (27 judges in the HACC first instance and 11 judges in the HACC Appeals Chamber)²⁰³, with 1 judge seconded to the HQCJ for a four-year term²⁰⁴.

On 23 November 2023, the HQCJ launched a competition for candidates to fill the vacant positions of HACC judges - 15 positions in the first instance of the HACC and 10 positions in the HACC Appeals Chamber²⁰⁵.

On 30 March 2024, the application stage was completed, with 238 people participating in the competition for the positions of HACC judges, including 153 persons to the HACC first instance, 85 persons to the HACC Appeals Chamber (including 11 HACC first instance judges)²⁰⁶. The HQCJ admitted 161 candidates to the competition: 100 people to the HACC first instance and 61 people to the HACC Appeals Chamber²⁰⁷.

According to the terms of the competition announced by the HQCJ members, it is expected that new judges will be appointed no earlier than the first quarter of 2025²⁰⁸.

The Head of the HACC exercises administrative powers provided for by law and has one Deputy who exercises administrative powers determined by the Head of the HACC²⁰⁹. Since 14 February 2023, the HACC has been headed by Judge Vira Mykhailenko, who was elected to this position after 8 months of work under the Acting Head. Since 24 May 2022, Judge Oleksandr Semennikov has been the Head of the HACC Appeals Chamber²¹⁰.

The position of the Deputy Head of the HACC has been vacant for 2 years, due to the failure of any candidate to obtain the required number of votes.

Powers of the court and workload of HACC judges

The HACC administers justice as a court of first instance and appeal in criminal proceedings, as well as in civil and administrative proceedings in accordance with the powers defined by the Law²¹¹.

203 Information on the number of judges' positions in the higher specialised courts as of 18.03.2024. High Qualification Commission of Judges of Ukraine. 2024. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_18.03.2024_vss.pdf.

204 High Anti-Corruption Court judge Oleh Koliush became a member of the HQCJ. High Anti-Corruption Court. 2023. URL: <https://first.vaks.gov.ua/publications/suddia-vyshchoho-antikoruptsiynoho-sudu-oleh-koliush-stav-chlenom-vkks/>.

205 On 23 November 2023, a competition was announced to fill 25 vacant positions of judges of the High Anti-Corruption Court. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/page/23-lystopada-2023-roku-ogolosheno-konkurs-na-zaynyattya-25-vakantnyh-posad-suddiv-vyshchogo>.

206 Candidates who applied for the competition to fill vacant positions of judges of the High Anti-Corruption Court and the Appeals Chamber of the High Anti-Corruption Court. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/spysky_podani_zayavy_kandydativ_konkurs_vas_na_01.04.2024_na_sayt.pdf.

207 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. URL: <https://www.facebook.com/share/p/hw4hvnBC7BDYhfXB/>.

208 We hope to elect new HACC judges by the end of this year, we are checking possible ties with the aggressor state thoroughly – HACC judge, HQCJ member Koliush. Interfax-Ukraine. 2024. <https://interfax.com.ua/news/interview/976319.html>.

209 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VIII, Art. 6. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

210 Vira Mykhailenko is the Head of the High Anti-Corruption Court. High Anti-Corruption Court. 2023. URL: <https://first.vaks.gov.ua/publications/vira-mykhaylenko-ocholya-vyshchyy-antikoruptsiynyy-sud/>.

211 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VIII, Art. 4. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

Cases in the first instance and appellate instances of the HACC (except for the pre-trial investigation stage in the first instance) are considered by a panel of three judges²¹².

During the period from **05 September 2019 to 30 June 2024**²¹³, the HACC as a court of first instance delivered 195 verdicts against 258 individual:

- › 2019–2020 – 22 guilty verdicts against 25 individuals and 2 acquittals against 2 individuals;
- › 2021 – 27 guilty verdicts against 32 individuals and 7 acquittals against 9 individuals;
- › 2022 – 34 guilty verdicts (49 individuals convicted) and 3 acquittals (7 individuals acquitted);
- › 2023 – 61 guilty verdicts (83 individuals convicted) and 4 acquittals (6 individuals acquitted);
- › 2024 – 31 guilty verdicts (40 individuals were convicted) and 4 acquittals (5 persons was acquitted).

The share of guilty verdicts in the total number of verdicts delivered by the HACC is 90% – 175 such court decisions concerning 229 individuals (with the approval of the agreement – 71 verdicts concerning 93 individuals).

In total, 29 individuals were acquitted by the HACC, including 20 individuals acquitted by 26 verdicts of not guilty, and 3 individuals were acquitted by verdicts that simultaneously convicted other individuals.

On average, the consideration of criminal proceedings with the passing of a verdict lasted 517 days: the minimum time for passing a verdict was 33 days (1 day in cases of plea agreement approval), the maximum – 1684 days.

A total of 131 HACC verdicts were appealed, and 63 were appealed in cassation.

In total, as of 30 June 2024 (taking into account the results of the review of verdicts in the court of appeal and cassation and under exceptional circumstances), 123 verdicts against 164 individuals have entered into force. There are 39 proceedings against 53 individuals pending in the appellate instance, and 14 proceedings against 22 individuals in the cassation instance.

During the consideration of criminal proceedings, the court issued 258 court decisions, whereby measures were taken to improve the efficiency of case consideration, in particular, to bring the accused and witnesses, change the preventive measure, impose monetary penalties, etc.

As of 30 June 2024, the HACC has 283 criminal proceedings against 728 individuals.

Investigating judges have reviewed almost 46,000 applications, motions and complaints at the pre-trial investigation stage of criminal proceedings since the HACC began its work.

In addition to administering justice in criminal cases, the HACC also considers civil claims for the recognition of unjustified assets and their recovery for the benefit of the state. During its operation, the HACC considered 11 such claims, of which 9 were satisfied. According to the court decisions, the defendants have been charged with unjustified income totalling UAH 18,854,771 and USD 35,795.85. As of 30 June 2024, the HACC was considering 5 civil cases of this category.

212 Criminal Procedure Code of Ukraine, Part 13, Article 31. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#top>; Civil Procedure Code of Ukraine, p. 4, Art. 23; p. 3, Art. 24. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#top>; Code of Administrative Procedure of Ukraine, p. 5, Art. 22, p. 4, Art. 23. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

213 These figures are provided by the High Anti-Corruption Court (letter of 29.07.2024 No. 03.10-04/56).

In administrative cases involving claims for the imposition of a sanction under clause 11 of part 1 of Article 4 of the Law of Ukraine “On Sanctions”²¹⁴, the HACC collects assets belonging to individuals or legal entities that have created a significant threat to the national security, sovereignty or territorial integrity of Ukraine (including through armed aggression or terrorist activities) and/or facilitated the commission of such actions by other persons. The HACC sanction was imposed on property (assets) owned directly or through affiliates by residents of the aggressor state, the Russian Federation.

In 2022-2024, the HACC received 57 administrative claims for sanctions. As of 30 June 2024, 45 cases were decided on the merits (claims were fully or partially satisfied) and 8 cases are still being considered.

According to court decisions, residential and non-residential premises, land plots, vehicles, administrative, industrial, warehouse premises, integral property complexes, construction in progress, shares, stakes in the authorised capital of legal entities, historical, cultural and material values, airplanes and their components, watercraft, other property and funds were recovered for the state’s revenue.

Based on the HACC court decisions, more than UAH 1.6 billion (UAH 1,617,781,283) was allocated to Ukraine’s defence capability.

Since the end of 2023, the Parliament has been considering two government draft laws to improve the HACC’s activities. Draft Law No. 10178²¹⁵ provides for the extension of the general rules for consideration of criminal proceedings in a court of first instance to the HACC, i.e., enabling HACC judges to consider most cases alone.

The provisions of Draft Law No. 10338²¹⁶, in particular, propose to exclude from the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine²¹⁷ the provisions on mandatory civil and administrative proceedings within the HACC’s jurisdiction in the first instance by a three-judge panel.

On April 24, 2024, the Parliament adopted Law of Ukraine No. 3655-IX²¹⁸, which permits the High Anti-Corruption Court (HACC) to hear certain cases before a single judge. This draft law was developed by the Ministry of Justice of Ukraine in response to the recommendations outlined in the European Commission’s report on improving the outcomes of high-level corruption cases. The text of Draft Law No. 10178 was effectively incorporated into the adopted legislation.

Logistical and financial support of the HACC

As of July 2024, the HACC operates in three premises. At the same time, the first instance of the HACC occupies 2 premises that are located at a considerable distance from each other. Meanwhile, two of the premises are temporary and fail to meet national building or safety standards²¹⁹.

214 On sanctions: Law of Ukraine of 14.08.2014 No. 1644-VII. URL: <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

215 On Amendments to Article 31 of the Criminal Procedure Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings by the High Anti-Corruption Court: Draft Law of Ukraine, registration No. 10178 of 23.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43053>.

216 On Amendments to the Civil Procedure Code of Ukraine and the Code of Administrative Procedure of Ukraine to Improve the Procedure for Consideration of Cases by the High Anti-Corruption Court: Draft Law of Ukraine, registration No. 10338 of 13.12.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43388>.

217 Civil Procedure Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/1618-15#top>; Code of Administrative Procedure of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

218 On Amendments to Article 31 of the Criminal Procedure Code of Ukraine on Improving the Procedure for Criminal Proceedings: Law of Ukraine of 24.04.2024 No. 3655-IX. URL: <https://zakon.rada.gov.ua/laws/show/3655-IX#top>.

219 These figures were provided by the High Anti-Corruption Court (letter of 29.07.2024 No. 03.10-04/56/2024).

In accordance with the Law²²⁰ the HACC Appeals Chamber and the HACC trial chambers for the administration of justice in the first instance cannot be located in the same building. The HACC, its chambers and staff may not be located in the same building as other courts, state bodies, their territorial or structural subdivisions, representative offices, local self-government bodies, institutions, and organisations.

The area of available premises in both the first and appellate instances is currently insufficient even for the current number of judges and court staff. The appointment of the new HACC judges selected through the competition will only exacerbate the existing problem, as there is currently no technical possibility of their proper accommodation and organisation of appropriate workplaces, courtrooms and other necessary court premises²²¹.

However, after seven months of active communication and attempts to resolve the existing problem together with a number of ministries and government agencies, the issue of providing the HACC and the HACC Appeals Chamber with permanent premises remains unresolved.

Progress and issues

The number of criminal cases in the HACC is increasing every year. The number of people brought to criminal responsibility is also increasing, which is a significant progress in the fight against corruption. However, due to the annual increase in the number of cases and materials submitted to the HACC, there are problems with the workload of judges, which in turn affects both the timing of criminal cases and the prosecution of perpetrators.

A separate problem is that the HACC has been granted uncharacteristic powers to consider cases on claims for the imposition of sanctions under clause 11 of part 1 of Article 4 of the Law of Ukraine "On Sanctions"²²² in administrative proceedings. At the beginning of the war, the legislator, while solving the problem of considering a new category of cases, simultaneously created a problem with an additional workload for HACC judges, which in turn negatively affected the timing of criminal cases and the exercise of the powers for which this court was created.

Prior to April 2024 the significant challenge was the requirement to consider all cases at the first instance level (except for pre-trial investigation materials) by panels of three judges.

These issues highlight the critical concern of court staffing, which is likely to remain unresolved for at least the next six to nine months due to the lengthy competition procedures and the large number of functions currently managed by the HQCJ.

A separate issue that requires attention and specific regulation is the participation of a significant number of first-instance judges from the HACC (25%) in the competition for positions in the HACC Appeals Chamber. Depending on the results of the competition, it may lead to a staff shortage in the HACC first instance.

The ongoing crisis with the election of the court's leadership affects the effectiveness of management and the exercise of the court's representative functions. The situation when the HACC was unable to elect the Head²²³ for 8 months and a Deputy Head for 2 years has a negative impact on internal processes in the court, on communications with key stakeholders and on the

220 On the High Anti-Corruption Court: Law of Ukraine of 07.06.2018 No. 2447-VIII, Art. 15. URL: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>.

221 Ibid.

222 On Sanctions: Law of Ukraine of 14.08.2014 No. 1644-VII. URL: <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

223 Vira Mykhailenko became the Head of the High Anti-Corruption Court. High Anti-Corruption Court. 2023. URL: <https://first.vaks.gov.ua/publications/vira-mykhaylenko-ocholya-vyshchyy-antikoruptsiynyy-sud/>.

level of authority of the court. In fact, the judge who, under the Law²²⁴ in such cases performs the duties of the Head of the court, exercises minimal functions aimed only at ensuring the current functioning of the court, without the possibility of its development and leadership in all processes.

For the effective functioning of both instances of the HACC and given the growing number of judges and court staff, the problem of providing the court with appropriate premises, repairs and equipment is also urgently needed.

Recommendations

In order to reduce the workload of the HACC and effectively delineate the jurisdiction of cases between courts within the judicial system, the authority to consider sanctions cases should be transferred from the HACC to one of the administrative courts.

One of the administrative courts of appeal (similar to the cases of banning pro-Russian political parties) could take over the relevant powers, with further appeals against its decisions to the Administrative Court of Cassation within the Supreme Court (and if the High Administrative Court is established to hear cases against central executive authorities, it is advisable to transfer the consideration of cases on the application of sanctions to this court). Another option would be for the Administrative Court of Cassation within the SC to act as a court of first instance (similar to lawsuits against the President and the National Security and Defence Council of Ukraine regarding sanctions) with further appeals to the GC SC. Such changes will require legislative consolidation.

The next step to reduce the workload of HACC judges is to adopt draft law No. 10338. This will increase the efficiency and ensure proper dynamics of consideration of civil and administrative cases under the jurisdiction of the HACC.

As part of the competition to the HACC, it is advisable to resolve situations when individual first-instance judges of this court are recognised as winners of the competition to the HACC Appeals Chamber, which will create a new staff shortage and require a new competition. To avoid such situation, it is advisable to separate the competition for the first instance and appellate courts and complete the selection (and appointment) of judges to the HACC Appeals Chamber first. Thus, if additional vacancies occur in the first instance of the HACC in the future, it will only be necessary to increase the number of vacant positions in this instance for which the competition is held, rather than announce a new selection. To minimise corruption risks, such increase in the number of vacancies can be made after the results of the exam of candidates for the position of judges in the first instance of the HACC are approved and before the next stages of the competition begin.

Taking into account the current situation within the HACC with the election of the Deputy Head of the Court and given the increase in the number of HACC judges, it is also advisable to review the “management structure” of the HACC. The new governance structure of the court should include the election of the Head and two Deputy Heads of the court. At the same time, the Head of the court will be elected by all HACC judges, and each of the deputies will be elected in each of the HACC instances. It is also advisable to provide that the Head of the HACC Appeals Chamber is also the ex officio Deputy Head of the HACC. This structure will make it impossible to have any of the administrative positions unfilled, and the court will be represented by judges elected to administrative positions. In case of absence of the Head of the court, the Deputy Head with the

224 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p.3, Art. 34. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

longest service in the HACC will be able to perform his/her functions, and in case of equal service in the HACC for both Deputies, the Deputy Head with the longest service as a judge.

Since the new HACC judges will need to be provided with workplaces immediately after their appointment, the new premises, their renovation and equipment should be allocated in 2024, for which the Cabinet of Ministers of Ukraine should adopt the relevant decisions.

Local and appellate courts

The Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that the judicial system in Ukraine is based on the principles of territoriality, specialisation and instance. The judicial system consists of local courts, courts of appeal and the Supreme Court. In addition, the functioning of higher specialised courts is envisaged for consideration of certain categories of cases²²⁵.

Personnel support of local and appellate courts

State of play

According to the data published on the HQCJ website, as of 31 July 2024, a total of 3776 judges were appointed to local courts. At the same time, the total number of judges in local courts is 5031. **As of this date, 1258 positions²²⁶ (or 25% of the total number of staff) remained vacant.** In September 2023, a competition for 560 judgeships in local courts was launched²²⁷. In January-May 2024, about 390 individuals had received recommendations from the HQCJ for appointment as judges²²⁸. It is expected that they will be appointed as judges in the second and third quarters of 2024. As of 31 July 2024, 286 judges from this list had already been appointed.

However, as of the relevant date, no judges have been appointed **in 9 local courts (including: jurisdiction of 4 courts was transferred to other courts, 1 court ceased to function), 23 local courts have appointed only 1 judge, 85 courts - 2 judges²²⁹.**

In the courts of appeal, 647 judges were appointed out of a staff of 1357 judges. There are 710 vacant positions (or 52.32%)²³⁰. In September 2023, similar to the situation with local courts, a competition was announced to fill 550 judgeships in the courts of appeal²³¹. As of 01 July 2024, 1839 candidates were admitted to the competition²³².

However, in 10 courts of appeal, the situation with personnel is the most difficult. In particular, only 4 judges out of 25 have been appointed to the Sumy Court of Appeal, 8 judges out of 23 to the

225 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 17. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

226 Accounting of judges' positions. High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/oblik>.

227 Announcement of the competition for 560 vacant positions of judges in local courts High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/ogoloshennya-pro-provedennya-konkursu-na-zaynyattya-560-vakantnyh-posad-suddiv-u-miscevyh-sudah>.

228 Results of the competition for 560 vacant positions of judges in local courts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/rezultaty-konkursu-na-zaynyattya-560-vakantnyh-posad-suddiv-u-miscevyh-sudah>.

229 Information on the number of judges' positions in local courts as of 31.07.2024. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_22.07.2024_ms.pdf.

230 Accounting of judges' positions. High Qualification Commission of Judges of Ukraine. URL: <https://vkksu.gov.ua/oblik>.

231 A competition for 550 vacant positions of judges in the courts of appeal has been announced. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/page/ogolosheno-konkurs-na-zaynyattya-550-vakantnyh-posad-suddiv-v-apyaciynih-sudah>.

232 1,839 candidates were admitted to the competition for 550 positions of judges of appellate courts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.facebook.com/share/p/6rDjdyYgbYRvtS1/>.

Rivne Court of Appeal, 9 judges out of 27 to the Ternopil Court of Appeal, 13 judges out of 60 to the Kharkiv Court of Appeal, and 16 judges out of 45 to the Odesa Court of Appeal, Dnipro Court of Appeal – 21 judges out of 60, Cherkasy Court of Appeal – 10 judges out of 33, Chernihiv Court of Appeal – 11 judges out of 34, First Administrative Court of Appeal – 7 judges out of 21, and Central Commercial Court of Appeal – 9 judges out of 30²³³.

In addition, in 2023, 162 local court judges and 122 appellate court judges resigned or voluntarily left the bench²³⁴. In January-June 2024, another 67 local court judges and 24 appellate court judges resigned²³⁵.

These trends indicate that the problem of judicial personnel shortage has only worsened during the war. However, it is important to note that at least part of the problem was solved in 2022, when the Chief Justice of the Supreme Court²³⁶ temporarily transferred judges. Currently, according to the HCJ, approximately 510 judges are temporarily transferred (seconded)²³⁷.

Based on the analysis of the speeches of the HQCJ leadership and members, it can be predicted that under the most favourable conditions, new judges may be appointed to the courts of appeal no earlier than the second or third quarter of 2025²³⁸. Therefore, it is likely that the problem of judicial personnel shortage at the level of appellate courts will only worsen in 2024 - the first half of 2025. Among the key reasons for this is the continued dismissal of judges due to age, health and resignation²³⁹.

As for the first instance courts, given that the HCJ continues considering the HQCJ's recommendations on the appointment of local court judges²⁴⁰, that about 400 judges will be appointed in the second and third quarters of 2024. This will improve the situation in a number of courts and in the system as a whole, as about 10% of the total number of judges will be appointed to the courts.

On the other hand, **the ongoing qualification assessment results in the dismissal of judges who are not fit for their positions**. The dismissal of judges under general circumstances is inherently natural. Therefore, it is expected that the number of newly appointed judges will largely compensate for the number of dismissals that took place over the past 2-3 years. However, there are still risks that the overall shortage of judges in the first instance courts will remain almost unchanged.

233 Information on the number of judges' positions in the courts of appeal as of 22.07.2024. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_22.07.2024_as.pdf

234 In 2023, 325 judges were dismissed. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/uprodovzh-2023-roku-zvilneno-325-suddiv>.

235 Between January and June 2024, 134 judges were dismissed. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/uprodovzh-i-pivrichchya-2024-roku-zvilneno-134-suddi>.

236 The procedure for secondment of judges of local courts located in the territories where hostilities are taking place has been launched. The Supreme Court. 2022. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1267790>.

237 Discussions on new challenges for the judiciary. High Council of Justice. 2024. URL: <https://www.youtube.com/watch?v=9DjyZp1Rf9c>.

238 Ruslan Sydorovych, Deputy Head of the HQCJ, took part in the round table "Justice of the Future: Judicial Network and Access to Justice". Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/archive/1551771/>.

239 How does the HQCJ plan to overcome one of the most serious challenges of the judiciary? Interfax-Ukraine. 2023. URL: <https://interfax.com.ua/news/blog/956604.html>.

240 For example, the HCJ will submit a proposal to the President of Ukraine to appoint two judges. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-vnese-prezydentovi-ukrayiny-podannya-pro-pryznachennya-dvoh-suddiv-3>; The HCJ will submit to the President of Ukraine a proposal to appoint five judges to local courts. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-vnese-prezydentovi-ukrayiny-podannya-pro-pryznachennya-pyatoh-suddiv-do-miscevyh-sudiv-0>; HCJ submits to the President of Ukraine a proposal to appoint two judges to local courts of Donetsk and Kharkiv regions. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-vnese-prezydentovi-ukrayiny-podannya-pro-pryznachennya-dvoh-suddiv-do-miscevyh-sudiv-0>.

A separate issue is the swearing-in of newly appointed judges with the participation of the President. Previous experience shows that several hundred judges²⁴¹ take the oath at the same time. On 5 July 2024, 248 judges of local courts took the oath, including 208 judges of general local courts, 22 judges of administrative courts, and 18 judges of commercial courts²⁴².

Between January and June 2024, the HCJ submitted to the President proposals for the appointment of 349 judges²⁴³; and this number will increase every week. Yet about 50 submissions on the appointment of judges have been pending in the President's Office for more than 2 years²⁴⁴, although the law stipulates that a decree on the appointment of a judge is signed within 30 days after the HCJ receives a submission on the appointment of a judge²⁴⁵. At the same time, the Venice Commission has repeatedly emphasised that the role of the President in the appointment of judges is purely ceremonial²⁴⁶.

At the end of February 2024, the SJA submitted to the HCJ the draft standards for staffing, logistics and financial support of courts approved by the working group, aimed at optimising the structure of court staff. At the same time, the draft staffing standards state that the relevant regulations are approved for the duration of the legal regime of martial law in Ukraine and should be reviewed after its termination. A working group on drafting standards for staffing, financial, logistical and other support of courts²⁴⁷ was established by the SJA in August 2023²⁴⁸.

Progress and issues

In 2023 and first quarter of 2024, the issue of court staffing was only beginning to be addressed due to the personnel procedures initiated by the HCJ²⁴⁹. At this stage, the shortage of judicial personnel is among the three most serious problems of the judiciary²⁵⁰ and creates a number of derivative challenges, such as deprivation of access to justice in some regions, poor quality of court decisions, and violation of reasonable time limits for consideration of cases and excessive workload of judges. There are also cases of individuals avoiding responsibility for their offences (or crimes) due to the expiry of the time limits for bringing such individuals to administrative or criminal liability (which, in turn, may lead to the dismissal of a judge during the qualification assessment or disciplinary procedure²⁵¹).

241 For example, 232 judges took the oath in the Ukrainian House. Ukrinform. 2020. URL: <https://www.ukrinform.ua/rubric-politics/3155204-v-ukrainskomu-domi-sklali-prisagu-232-suddi.html>.

242 248 newly appointed judges take the oath. Yurydychna Gazeta. 2024. URL: <https://jur-gazeta.com/golovna/248-novopriznachenih-suddiv-sklali-prisyagu.html>.

243 Between January and June 2024, the HCJ decided to submit to the President of Ukraine a proposal to appoint 349 judges. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/protyagom-sichnya-cherვნya-2024-roku-vrp-uhvalyla-vnesty-prezydentovi-ukrayiny-podannya-pro>.

244 Calculated based on the information posted on the official website of the High Council of Justice. . URL: <https://hcj.gov.ua/>.

245 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 80. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

246 Opinion on Proposals for Amendments to the Draft Law on Amendments to the Constitution to Strengthen the Independence of Judges of Ukraine, adopted by the Venice Commission at its 97th Plenary Session (Venice, 6-7 December 2013), para. 16. URL: https://hcj.gov.ua/sites/default/files/field/cdl_d_2013_034_2013_12_10.pdf.

247 Letter of the State Judicial Administration of 29.02.2024 No. 16-6234/24.

248 On the establishment of a working group: Order of the State Judicial Administration of Ukraine of 14.08.2023 No. 384. URL: https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/N_384_23.pdf.

249 Commission resumes qualification assessment of judges. High Qualification Commission of Judges of Ukraine. 2023. URL: <https://vkksu.gov.ua/news/komisiya-vidnovlyuye-kvalifikaciyne-ocinyuvannya-suddiv>.

250 Both the number of cases received by the courts in 2023 and the number of cases considered in the context of war and staff shortage are impressive – Chief Justice Stanislav Kravchenko. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1554727/>.

251 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p. 8, Art. 109, Section XII “Final and Transitional Provisions”, clause 20. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

Another concern is the violation of the terms of appointment of judges by the President in respect of persons whose submissions were made by the previous HCJ.

Recommendations

At this stage of the reform of the courts of first instance and appellate courts, one of the tools to solve the problem of judicial personnel is timely appointment of judges by the President with their prompt taking of the oath of office.

Another systemic tool may be a comprehensive analysis of the situation with judges temporarily transferred (seconded) from courts located in the temporarily uncontrolled territories or in the areas of active hostilities. In the next few years, they are unlikely to be able to return to their courts, so the issue of permanent transfer of such judges to the courts where they have been working for two years should be addressed by law. This will improve the situation with access to justice in the regions where such judges are seconded. It will also help to ensure judicial guarantees and practical implementation of the principle of legal certainty for judges and their families regarding their permanent place of residence and work.

As a point and quick solution, it is advisable to consider changing the jurisdiction of the Sumy Court of Appeal to the Poltava Court of Appeal with the simultaneous temporary transfer of the four existing judges there. This would facilitate better access to justice for citizens and affect the timeframe for consideration of their cases. The feasibility of changing the jurisdiction of other appellate courts from the list mentioned in this section should be decided in case of a reduction in the number of judges in these courts.

Workload of local and appellate court judges

State of play

According to the Supreme Court, **in 2023, the courts received a total of almost 4.5 million cases and materials**. This is 55% more than in 2022 and slightly higher than in 2021²⁵².

However, **in 2023, local courts received 3.8 million cases**, which is also 55% higher than in 2022 and, by some indicators, higher than in 2021²⁵³.

The number of cases filed with the courts of appeal also increased. The number of such cases increased by 62% compared to the previous year, 2022, and exceeded the figures for 2021²⁵⁴.

As for the status of cases in 2023, it is as follows: **local general courts considered 2.9 million cases, district administrative courts – almost 590 thousand cases, local commercial courts – 179 thousand cases, and courts of appeal – a total of 537 thousand cases**²⁵⁵.

In addition, in all types of jurisdictions, the figures for 2023 are significantly higher than in 2022, and some of them are higher than in 2021. Last year, 1.040 million administrative cases, 283 thousand commercial cases, 1.245 million criminal proceedings, 1.505 million civil cases, and 1.034 million cases of administrative offences were pending in the courts²⁵⁶.

252 The summary of the Supreme Court's activities in 2023 is on the agenda of the Supreme Court Plenum. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1554480>.

253 Both the number of cases that came to the courts in 2023 and the number of cases considered in the conditions of war and lack of staff are impressive - Chief Justice Stanislav Kravchenko. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1554727>.

254 Ibid.

255 Ibid.

256 Ibid.

In the first half of 2024, 3.047 million cases were pending in Ukrainian courts. Meanwhile, 2.248 million cases were received for consideration, and 2.118 million cases were considered during this period²⁵⁷. This is 6.4% more than in the first quarter of 2023 in terms of the number of cases received and 8.8% more than in terms of cases considered by the courts.

However, the increase in the number of cases in courts is uneven. This can be seen on the map created by the Council of Judges of Ukraine²⁵⁸, which clearly shows which local courts have a workload that remains within the established standards and which have a significantly higher workload.

For example, the judges of the Pechersk District Court of Kyiv have a caseload of 2800 cases per judge²⁵⁹. However, according to the standards, the number of judges in this court should be almost 4 times higher²⁶⁰. To address this problem, the HQCJ has launched the procedure of secondment of 6 judges due to excessive workload²⁶¹. Nevertheless, it was able to send only three judges²⁶².

Progress and issues

The problem of uneven workload of judges was not resolved during the reporting period. On the one hand, this situation is a consequence of the shortage of judges in the courts, and, on the other hand, this problem is independent in terms of uneven flow of cases to the courts. The secondment of judges from less busy courts to more busy courts solves the problem only partially. In general, the excessive workload in certain regions leads to the same consequences as the lack of staff – deprivation of access to justice for citizens in some regions, poor quality of court decisions, and violation of reasonable time limits for consideration of cases.

Recommendations

The problem of overloaded courts and judges can be solved by applying four principal instruments.

In the short term, there is no alternative to temporary secondments of judges from less busy courts to more busy ones.

An increase in the number of judge assistants in overloaded courts could also be considered as a temporary measure.

Another tool to address this problem is to increase the categories of cases that can be considered in written proceedings. This tool can be used temporarily.

In the medium term, the best option for levelling the workload is to simultaneously introduce the possibility of remote case consideration and a general redistribution of cases between courts

257 Letter of the Supreme Court of 07.08.2024 No 218/0/18-24.

258 MFA map 2023. Estimated normative number of judges of general local courts according to the reporting data for 2023. Council of Judges of Ukraine. URL: https://rsu.gov.ua/mzs-2024_2-maps.

259 Calculated on the basis of the estimated normative number of judges of general local courts according to the reporting data for the first half of 2024.

260 According to the standards outlined in the Council of Judges of Ukraine's map, the Pechersk District Court of Kyiv should have at least 76 judges in the first quarter of 2024, based on the number of cases they are expected to handle. However, in reality, there were only 22 judges at the court as of the first quarter of 2024.

261 On 11 March 2024, the issue of secondment of judges to 3 courts was scheduled for consideration. High Qualification Commission of Judges of Ukraine. URL: <https://www.vksu.gov.ua/news/11-bereznya-2024-roku-pryznachenno-do-rozglyadu-pytannya-pro-vidryadzhennya-suddiv-do-3-sudiv>.

262 Decision of the High Qualification Commission of Judges of Ukraine of 03.04.2024 No. 14/ps-24 on the secondment of judges to the Pechersk District Court of Kyiv. URL: <https://vksu.gov.ua/doc/pro-vidryadzhennya-suddiv-do-pecherskogo-rayonnogo-sudu-mista-kyyeva>; Decision of the High Qualification Commission of Judges of Ukraine of 01.05.2024 No. 19/ps-24 on the secondment of judges to the Pechersk District Court of Kyiv. URL: <https://vksu.gov.ua/doc/pro-vidryadzhennya-suddiv-do-pecherskogo-rayonnogo-sudu-mista-kyyeva-0>.

(which should be implemented simultaneously with the process of optimising (consolidating) courts). This will require significant technical transformations and full implementation of digital technologies in the work of courts. This tool is the most optimal in terms of levelling the workload between courts and fighting corruption²⁶³.

Rotation of court leadership

State of play

According to the Law of Ukraine “On the Judicial System and the Status of Judges”, administrative positions in a court are those of the court head and deputy head(s)²⁶⁴.

Article 20 of this Law defines the procedure for the election of judges to the respective administrative positions. Thus, the head of a local court, his/her deputy, the head of an appellate court, his/her deputies, the head of a higher specialised court, and his/her deputies are elected to their positions by a meeting of judges by secret ballot by a majority of the number of judges of the respective court. The elected judges may hold these positions for three years, but not more than for the duration of the judge’s term of office. In addition, the rule is established that a judge elected to an administrative position may not hold one administrative position of the relevant court for more than two consecutive terms, unless otherwise provided by law.

Nevertheless, in practice, there are still quite common cases when the meeting of judges distorts the requirements of this article through the use of certain schemes by the court management.

For example, **one of the most common cases is when a head of a court resigns early two or three months before the end of his/her term, while an acting head of the court is appointed for this period**²⁶⁵. Thus, we get a situation in which the term of office of the court head is “reset”, and, accordingly, they have the opportunity to reapply for a six-year term of office after a 2–3 month break.

Another common scheme is the exchange of positions between the head of the court and the deputy head of the court²⁶⁶.

The reform of the appellate courts in 2018 and the transfer of those judges who successfully passed the qualification assessment to the newly established courts also contributed to the retention of the court heads in their positions²⁶⁷. As a result, **all heads of appellate courts had their statutory term of office “reset” to zero**. Therefore, most of them took advantage of this legislative loophole to continue to run the new appellate courts²⁶⁸.

263 Information obtained from expert interviews conducted during the preparation of this report.

264 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 20. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

265 Tetyana Batsutsa, following the rotation, returned to the Head of the Khmelnytskyi City District Court. Suspilne News. 2023. URL: <https://suspilne.media/495685-tetana-bacuca-pisla-rokirovki-povernulasa-u-krislo-golovi-hmelnickogo-miskrajonnogo-sudu/>.

266 Historical essay on the establishment of the Economic Court of Kyiv. Economic Court of the City of Kyiv. URL: https://ki.arbitr.gov.ua/sud5011/pro_sud/histcreate; The Head and Deputy Heads of the Economic Court of Kyiv elected. Economic Court of Kyiv. 2023. URL: <https://ki.arbitr.gov.ua/sud5011/pres-centr/novyny/1421878/>.

267 The transfer of courts of appeal to the newly established courts will continue until the end of 2018. Ukrinform. 2018. URL: <https://www.ukrinform.ua/rubric-society/2521187-pereselenna-apelacijnih-suddiv-trivatime-do-kinca-roku-vrp.html>.

268 Operation “Appeal”: How were the new courts of appeal formed? Ukrainska Pravda. 2018. URL: <https://www.pravda.com.ua/columns/2018/10/23/7195965/>.

For example, the Head of the Kyiv Court of Appeal (until 2018, the Appeal Court of Kyiv) has not changed since 2015, the Head of the Northern Commercial Court of Appeal (until 2018, the Kyiv Commercial Court of Appeal) has not changed since 2013, and the Head of the South-western Commercial Court of Appeal (until 2018, the Odesa Commercial Court of Appeal) has not changed since 2013. These individuals still hold their respective positions. Similarly, the Head of the Commercial Court of Kyiv held the position for a long time, remaining unchanged from 2012 to 2023; he currently holds the position of Deputy Head of the court. The Head of the liquidated District Administrative Court of Kyiv has also not been replaced since 2010.

There are also opposite situations when the **assembly of judges cannot elect a court head for a long time**. This situation occurred in a number of first instance²⁶⁹, courts, as well as in the HACC²⁷⁰.

Attempts to resolve these problems were made in previous years. However, the respective proposals for legislative changes were considered “unacceptable”²⁷¹ by the Council of Judges of Ukraine (COJ), which is the highest body of judicial self-government between congresses of judges of Ukraine.

Progress and issues

During the reporting period, the issue of regulating the rotation of court leadership was not resolved in any way. Therefore, there is currently a situation where the leadership of a significant number of courts has not changed for 9–10 years or more²⁷². This creates additional corruption risks for each such court through the establishment of long-term and excessive control over judges and court staff by the head/deputy head, and allows for the development of criminal schemes. In addition, it preserves the situation inside the court for many years and does not allow for the introduction of qualitative changes. A striking example is the suspicion of receiving undue advantage by four judges of the Kyiv Court of Appeal²⁷³ at once.

The second issue is that some courts have not been able to elect court heads for a long time.

Recommendations

It would be advisable to amend the legislation and establish a clearer legal framework for the terms of office of judges as heads and deputy heads of courts. It is also important to define the concept of rotation of court leadership by establishing both the terms of administrative positions and the terms of breaks in court management. At the same time, responsibility for circumventing such terms by the court assembly and leadership should be established.

It also seems advisable to include provisions in the Law of Ukraine “On the Judiciary and the Status of Judges” that would regulate the situation of non-election of court leadership by the assembly of judges for a certain period of time:

269 Explanatory Note to the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” to Regulate the Procedure for Election (Appointment) of Judges to Administrative Positions and Dismissal from These Positions” of 22.12.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40999>; Bohdan Monich: “The Council has been working and will continue to work on resolving problems of the judiciary”. Council of Judges of Ukraine. 2023. URL: <https://rsu.gov.ua/ua/news/bogdan-monich-rada-pracovala-i-bude-pracuvati-nad-vreguluvannam-problemnih-pitan-sudovoi-vladi>.

270 The Anti-Corruption Court failed to elect the Head of the Court. Judicial and Legal Newspaper. 2022. URL: <https://www.sud.ua/uk/news/publication/255099-predsedatelem-vysshego-antikorrupcionnogo-suda-izbrali>.

271 Decision of the Council of Judges of Ukraine “On Limiting the Influence of Judges Holding Administrative Positions” of 03.09.2021 No. 37. URL: <https://rsu.gov.ua/en/events/risenna-rsu-no-37-vid-03092021-sodo-obmezenna-vplivu-suddiv-aki-zajmout-administrativni-posadi>.

272 Explanatory Note to the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” on Regulation of the Procedure for Election (Appointment) of Judges to Administrative Positions and Dismissal from These Positions” of 22.12.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40999>.

273 Corruption in the Kyiv Court of Appeal: Suspicions. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/koruptc-ia-u-ki-vs-komu-apeliatc-inomu-sud-p-dozri/>.

1. For courts where the number of appointed judges exceeds five: if the meeting of judges fails to elect the head of the court for more than three months, the HCJ shall appoint such head independently for a period of one calendar year from among the two candidates who received the highest number of points during the last vote of the meeting of judges.

2. For courts where the number of appointed judges is less than 5: if the meeting of judges fails to elect the head of the court for more than three months, the HCJ shall appoint the judge with the longest service record in that court as the head of the court for a period of one calendar year. If such a judge does not consent to the appointment, the right to be appointed passes to the next most senior judge of that court.

Optimisation of courts of first instance

State of play

In December 2017, new courts of general and commercial jurisdiction were established by decrees of the President²⁷⁴ including the consolidation of courts. The new courts were registered as legal entities, but judges were not transferred (due to incomplete qualification assessment). In December 2020, the administrative-territorial structure of Ukraine changed²⁷⁵, and thus the 2017 map of local courts became outdated before its implementation.

In February 2021, a group on optimisation of the court network under the Verkhovna Rada Committee on Legal Policy was set up to develop the concept of optimisation based on the **“one district - one court” formula**²⁷⁶. **However, given the ongoing hostilities, this process has not yet been completed.**

Although a pilot project to optimise the court network in Zakarpattia region²⁷⁷ was presented in 2022 with the support of the EU Pravo-Justice Project, its implementation is also currently on hold due to the war and the lack of financial support for this part of the judicial reform (this issue is discussed in a separate section).

Progress and issues

During the reporting period, there was no progress in optimising the court network and building a new map.

In some regions of Ukraine, it is impossible to resolve this issue until the end of the war (or the active phase of the war). This applies primarily to the territories where active hostilities are ongoing, the temporarily occupied territories and the regions that share a common border with Russia.

274 On liquidation and establishment of local general courts: Decree of the President of Ukraine of 29.12.2017 No. 449/2017. URL: <https://www.president.gov.ua/documents/4492017-23382>; On liquidation and establishment of local general courts: Decree of the President of Ukraine of 29.12.2017 No. 450/2017. URL: <https://www.president.gov.ua/documents/4502017-23374>; On the reorganisation of local general courts: Decree of the President of Ukraine of 29.12.2017 No. 451/2017. URL: <https://zakon.rada.gov.ua/laws/show/451/2017#Text>; On liquidation of courts of appeal and establishment of courts of appeal in appellate districts: Decree of the President of Ukraine of 29.12.2017 No. 452/2017. URL: <https://www.president.gov.ua/documents/4522017-23378>; On the liquidation of local economic courts and establishment of district economic courts: Decree of the President of Ukraine of 29.12.2017 No. 453/2017. URL: <https://zakon.rada.gov.ua/laws/show/453/2017#Text>; On liquidation of commercial courts of appeal and establishment of commercial courts of appeal in the appellate districts: Decree of the President of Ukraine of 29.12.2017 No. 454/2017. URL: <https://zakon.rada.gov.ua/laws/show/454/2017#Text>.

275 On the establishment and liquidation of districts: Resolution of the Verkhovna Rada of Ukraine of 17.07.2020 No. 807-IX. URL: <https://zakon.rada.gov.ua/laws/show/807-20#Text>.

276 Presentation of the concept of optimisation of local general courts in Zakarpattia region (updated). High Council of Justice. 2022. URL: <https://hcj.gov.ua/news/vidbulasya-prezentaciya-koncepciji-optimizaciji-miscevyh-zagalnyh-sudiv-zakarpatskoyi-oblasti>.

277 Zakarpattia to become a model site for optimising local general courts. Transcarpathian Court of Appeal. 2022. URL: <https://zka.court.gov.ua/sud4806/pres-centr/news/1310349/>.

For the rest of the regions, the biggest problem is the lack of funding for expenses related to the optimisation of the court network in wartime (from replacing seals to providing new premises).

Recommendations

1. Conduct a comprehensive study on the government-controlled territory of Ukraine, taking into account internal migration processes of the population and business, despite the war and lack of funding. Based on the obtained data, an update to the Optimisation Concept developed in 2021 should be developed.
2. Prepare comprehensive terms of reference for future optimisation, including a mapping of courts in the government-controlled regions, designs of model court premises for areas where there are currently no appropriate court premises, etc. and develop an effective methodology for determining the “hub court”.
3. In the short term, launch a pilot project in Zakarpattia region, developed with the support of the EU Pravo-Justice project. This will help to further take into account all the circumstances that will occur in its implementation when building a new map of courts after the end of the war (or its active phase).

Changing the jurisdiction of court cases in connection with the war

State of play

As of 01 July 2024, the jurisdiction of 2 courts of appeal (Donetsk Court of Appeal and Luhansk Court of Appeal) and 76 local courts was changed²⁷⁸ due to the fact that they are located in the area of active hostilities or in the temporarily occupied territories.

Nevertheless, the jurisdiction of some courts that were destroyed as a result of the war or were located in the temporarily occupied territories was not changed (Maryinka District Court of Donetsk region, Dimitrovsky City Court of Donetsk region²⁷⁹). The judges in these courts work in a remote mode. Therefore, based on the results of the consideration of cases, decisions are made that can be found in the USRCD²⁸⁰.

Similarly, such courts of Donetsk region as the Selydivsk City Court, Sloviansk City Court, Dzerzhynsk City Court, and Kostiantynivsk City Court²⁸¹ work remotely. The Krasnoarmiisk City District Court of Donetsk Region is operating in the city of Pokrovsk in a regular mode. The premises of these courts were not destroyed, but due to their location near the contact line, it is impossible to ensure the safety of judges, court staff and parties to the trial.

However, it is essential to emphasise that remote mode of courts operation is not governed by law. Although there were attempts to legislate the rules of remote work of judges in 2022

278 Information on the number of judges' positions in local courts as of 01.07.2024. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_01.07.2024_ms.pdf; Information on the number of judges' positions in courts of appeal as of 01.07.2024. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_01.07.2024_as.pdf.

279 Information on the number of judges' positions in local courts as of 01.07.2024. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/field/pdf/vakansiyi_na_sayt_na_01.07.2024_ms.pdf.

280 Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>.

281 See, for example, Court working hours. Sloviansk City District Court of Donetsk Region. 2024. URL: <https://sl.dn.court.gov.ua/sud0544/pres-centr/news/1274438/>; The court resumed its operation! The court works remotely. Kostiantynivka City District Court of Donetsk Region. 2022. URL: <https://ksm.dn.court.gov.ua/sud0527/pres-centr/novini/1271041/>.

and early 2023. In particular, in March 2023, several draft laws No. 9151²⁸² and No. 9090²⁸³ were submitted to the Parliament to introduce effective mechanisms for conducting court proceedings remotely in wartime or emergency situations. However, the Parliament has not yet resolved this issue even for the frontline regions.

Progress and issues

There was no legislative regulation of the work of courts in the frontline regions during the reporting period. There are also no clearly established criteria for changing the jurisdiction of courts close to the contact line.

Recommendations

The identified issues require, first of all, legislative regulation, therefore the following measures are advisable:

1. Define and legislate the conditions whereby the introduction of remote work of judges is advisory and mandatory (location of the contact line 50 km from the court; location of the court building 50 km from the border with Russia; destruction of the court building).
2. Identify and legislate the conditions where a change in the jurisdiction of court cases is recommended and where it is mandatory (location of the court building near the contact line or at a distance of 30 km from the border with Russia; location of the court in the territory where active hostilities are taking place or in the temporarily occupied territories).

Before the proposed amendments are adopted, it is advisable to conduct in-depth monitoring of the situation in the frontline regions by the HCJ, primarily in Donetsk region, and to change the jurisdiction of those courts that are destroyed or located in the occupied territories as soon as possible.

Issues of the District Administrative Court of Kyiv

State of play

Pursuant to Law of Ukraine No. 2825-IX²⁸⁴, on 13 December 2022, the District Administrative Court of Kyiv (DACK) was terminated. However, **the jurisdiction of its court cases was assigned to the Kyiv District Administrative Court (KDAC), which lacks a sufficient number of judges**. It is noteworthy that some of the cases transferred to KDAC from DACK were not even distributed among the judges of this court²⁸⁵.

In order to address the excessive workload in the Kyiv District Administrative Court, on 28 September 2023, the HCJ seconded 7 judges to the KDAC for a period of one year from 16 October 2023²⁸⁶. This somewhat improved the situation, but did not solve the problem in general.

282 Draft Law on Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine and the Commercial Procedure Code of Ukraine on the Peculiarities of the Work of Courts and Judges during Martial Law or a State of Emergency of 28.03.2023 No. 9151. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41632>.

283 On Amendments to Certain Legislative Acts on Digitalisation of Court Proceedings and Improvement of the Order Proceedings in Civil Proceedings: Draft Law of Ukraine, registration No. 9090 of 10.03.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41530>.

284 On liquidation of the District Administrative Court of Kyiv and establishment of the Kyiv City District Administrative Court: Law of Ukraine of 13.12.2022 No. 2825-IX. URL: <https://zakon.rada.gov.ua/laws/show/2825-IX#Text>.

285 Explanatory Note to the Draft Law of Ukraine "On Amendments to Clause 2 of Section II "Final and Transitional Provisions" of the Law of Ukraine "On Liquidation of the District Administrative Court of Kyiv and Establishment of the Kyiv City District Administrative Court" on Ensuring the Consideration of Administrative Cases". URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43095>.

286 The HCJ sent seven judges to the Kyiv District Administrative Court. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-vidryadyla-simoh-suddiv-do-kyivskogo-okruzhnogo-administrativnogo-sudu>.

In view of this, on 10 November 2023, draft law No. 10244²⁸⁷ was submitted to the Parliament. It provided for the distribution of cases between administrative courts and determined which cases will remain pending in the KDAC and which will be transferred to other district administrative courts. **On 16 July 2024, the Parliament adopted Law of Ukraine No. 3863-IX**²⁸⁸.

Another issue that occurred in the context of the DACK liquidation relates to the fact that this court had exclusive jurisdiction. In addition to acting as a court of first instance, the DACK also considered cases against central executive authorities²⁸⁹ (except for cases against the President of Ukraine, the Verkhovna Rada, the HCJ and the HJCJ, which are currently considered as a court of first instance by the Administrative Court of Cassation of the Supreme Court²⁹⁰). **Therefore, after the DACK ceases to operate, the issue of determining the jurisdiction of cases against central executive authorities remains important.** In order to address this issue, the Cabinet of Ministers of Ukraine was supposed to submit to the Parliament in March 2024 a draft law “On the High Administrative Court”, which proposes to establish a separate higher specialised court to hear cases against central executive authorities²⁹¹. However, this has not happened yet.

As for the DACK judges, as of the beginning of 2024, they have not been administering justice for more than a year. At the same time, in order to be transferred to other administrative courts, each judge shall successfully pass a qualification assessment and confirm their suitability for the position. Most of them are due to take the exam in August. Importantly, all attempts to evaluate these judges in 2018-2019 were sabotaged by DACK judge²⁹².

Progress and issues

The main problem following the liquidation of the DACK is access to justice in Kyiv in administrative cases, as the consideration of cases within its jurisdiction has significantly slowed down, and in a significant number of cases, such consideration has stopped altogether.

Given the reasons for the liquidation of the DACK, it is also necessary to simultaneously address the derivative problems of compliance with judicial guarantees for judges who are fit for office and dismissal of those judges who are not fit for office.

As of August 2024, the biggest challenges are the competition to the Kyiv City District Administrative Court, which was created to replace the DACK, as a court of first instance²⁹³, as well as the submission to the Parliament and adoption of a draft law on the establishment of the High Administrative Court with the subsequent selection of judges to this court.

287 On Amendments to Clause 2 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Liquidation of the District Administrative Court of Kyiv and Establishment of the Kyiv City District Administrative Court” to Ensure Consideration of Administrative Cases: Draft Law of Ukraine, registration No. 10244 of 10.11.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43095>.

288 On Amendments to Clause 2 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Liquidation of the District Administrative Court of Kyiv and Establishment of the Kyiv City District Administrative Court” regarding the consideration of administrative cases: Law of Ukraine of 16.07.2024 No. 3863-IX. URL: <https://zakon.rada.gov.ua/laws/show/3863-IX#Text>.

289 Code of Administrative Procedure of Ukraine of 06.07.2005 No. 2747-IV, Art. 27. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

290 Ibid, p. 4, Art. 22.

291 Government Priority Action Plan for 2024, approved by the Cabinet of Ministers of Ukraine on 16 February 2024, No. 137-r, step 290. URL: <https://www.kmu.gov.ua/storage/app/uploads/public/65c/f91/313/65cf913135996125931042.pdf>.

292 Out of 30 judges appointed for the qualification assessment, 27 did not appear for the exam again. High Qualification Commission of Judges of Ukraine. 2019. URL: <https://old.vkksu.gov.ua/ua/news/27-iz-30-priznatchienich-na-kwalifikacijnie-ociniuwannia-suddiwo-kruzhnogo-administratiwnogo-sudu-mista-kiewa-powtorno-nie-ziawilisia-na-ispit/>.

293 The HJCJ explained what determines the announcement of competitions to the High Administrative Court and Kyiv City District Administrative Court. Judicial and Legal newspaper. 2024. URL: <https://sud.ua/uk/news/publication/293162-v-vkks-obyasnili-ot-chemu-zavisit-obyavlenie-konkursov-v-vyshshiy-administrativnyy-sud-i-kiyevskiy-gorodskoy-okruzhnoy-adminsud>.

Recommendations

There are four main instruments aimed at solving the problems that have arisen as a result of the liquidation of the DACK.

The first is the qualification assessment of DACK judges, which is the responsibility of the HQCJ.

The second is to launch the competition for the Kyiv City District Administrative Court to be established instead of the KDAC as a court of first instance to hear administrative cases in Kyiv as soon as possible.

The third is redistribution of cases between KDAC and other district administrative courts in accordance with the procedure established by the SJA and the provisions of Law of Ukraine No. 3863-IX.

The fourth is the adoption of the draft law “On the High Administrative Court” and the launch of a competition to this court. In the Ukraine Facility Plan for 2024–2027, the third quarter of 2025 is indicated as the deadline for this component of the judicial reform.

Both competitions to the above-mentioned courts should be conducted by the HQCJ.

The High Court of Intellectual Property

Decree of the President of Ukraine No. 299/2017²⁹⁴ of 29 September 2017 established the HCIP, which was registered in February 2020. The purpose of establishing this court was to assign to it all cases related to intellectual property rights.

According to the order of the SJA²⁹⁵ in agreement with the HCJ, in accordance with the legislation in force at the time of adoption of the said acts, the number of judges of the HCIP should be 30, of which 9 are judges of the Appeals Chamber.

During 2017-2019, the HQCJ held competitions for vacant positions in the first²⁹⁶ and appellate instances²⁹⁷ of the HCIP. However, the competition procedures stopped in November 2019 after the previous composition of the HQCJ was terminated by a parliamentary decision²⁹⁸ (later declared unconstitutional²⁹⁹).

294 On the establishment of the High Court of Intellectual Property: Decree of the President of Ukraine of 29.09.2017 No. 299/2017. URL: <https://zakon.rada.gov.ua/laws/show/299/2017#Text>.

295 On setting the number of judges of the High Court on Intellectual Property: Order of the State Judicial Administration of Ukraine of 31.07.2018 No. 372. URL: https://dsa-court.gov.ua/userfiles/file/DSA/2018_DSA_NAKAZY/N_372_2018.pdf.

296 Competition for 21 vacant positions of judges of the High Court on Intellectual Property (announced on 30.09.2017). High Qualification Commission of Judges of Ukraine. URL: <https://new.vksu.gov.ua/infographics/konkurs-na-zaynyattya-21-vakantnoyi-posady-suddi-vyshchogo-sudu-z-pytan-intelektualnoyi>.

297 A competition to the Appeals Chamber of the High Court of Intellectual Property has been announced. High Qualification Commission of Judges of Ukraine. 2018. URL: <https://vksu.gov.ua/news/ogolosheno-konkurs-do-apelyacynoyi-palaty-vyshchogo-sudu-z-pytan-intelektualnoyi-vlasnosti>.

298 On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Laws of Ukraine on the Activities of Judicial Governance Bodies: Law of Ukraine of 16.10.2019 No. 193-IX. <https://zakon.rada.gov.ua/laws/show/193-20#Text>.

299 Decision of the Constitutional Court of Ukraine of 11.03.2020 No. 4-p/2020 in the case on the constitutional petition of the Supreme Court on the compliance of certain provisions of the Laws of Ukraine “On the Judiciary and the Status of Judges” of 2 June 2016 No. 1402-VIII, “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Laws of Ukraine on the Activities of Judicial Governance Bodies” of 16 October 2019 No. 193-IX, “On the High Council of Justice” of 21 December 2016 No. 1798-VIII. URL: <https://zakon.rada.gov.ua/laws/show/v004p710-20#Text>.

Progress and issues

Unlike the legal framework for the HACCC, no separate law has yet been adopted that would define the principles of organisation and operation of the HCIP, requirements for judges of this court and guarantees of their activities. At the same time, since November 2021, the Parliament has been considering Draft Law No. 6487 “On the High Court of Intellectual Property”³⁰⁰, which regulates these issues. On 06 February 2024, draft law No. 6487 was included in the Parliament’s agenda³⁰¹, but as of 5 August 2024, the relevant act remains pending.

In the current reporting period, no actions were taken to extend the competitive procedures for the selection of judges to the HCIP, and therefore the said court is currently not functioning.

Recommendations

The launch of the HCIP will help to resolve many issues in the field of intellectual property rights protection, provide guaranteed qualified judicial protection of right holders in respect of industrial property, copyright and related rights, as well as investors, including foreign ones³⁰².

To this end, in 2024, the Parliament will need to significantly revise draft law No. 6487, in particular in terms of clarifying and distinguishing between cases under the jurisdiction of the HCIP and commercial courts to avoid manipulation of court jurisdictions and reduce corruption risks. Meanwhile, the HCJ should complete the competitive procedures for the positions of judges to the HCIP.

State Judicial Administration of Ukraine

The SJA is a state body in the justice system that provides organisational and financial support to the judiciary within the powers established by law. The SJA is accountable to the HCJ³⁰³.

State of play

Personnel support

During the reporting period, a number of significant changes took place in the SJA leadership.

On 24 July 2023, the NABU and the SAPO exposed the Head of the SJA, Oleksii Salnikov, for incitement to provide undue benefit to judges of the Supreme Court for ruling in favour of a commercial enterprise and for seizing another’s property by fraud³⁰⁴. On 07 December 2023, the HCJ brought O. Salnikov to disciplinary responsibility and dismissed him from the post of the Head

300 On the High Court of Intellectual Property: Draft Law of Ukraine, registration No. 6487 of 29.12.2021. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/38712>.

301 On the Agenda of the Eleventh Session of the Verkhovna Rada of Ukraine of the Ninth Convocation: Resolution of the Verkhovna Rada of Ukraine, of 06.02.2024, No. 3562-IX. URL: <https://zakon.rada.gov.ua/laws/show/3562-IX#top>.

302 Under what conditions will the High Court on Intellectual Property become operational: Larysa Rogach, Head of the Commercial Court of Cassation within the Supreme Court, took part in the expert discussion. Supreme Court. 2023. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1516608/>.

303 Regulation on the State Judicial Administration of Ukraine: Decision of the High Council of Justice of 17.01.2019 No. 141/0/15-19, para. 1. URL: <https://zakon.rada.gov.ua/rada/show/vr141910-19#Text>.

304 The Head of the SJA was served with a notice of suspicion. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/golov-dsa-pov-domili-pro-p-dozru/>.

of the SJA³⁰⁵. The Deputy Head of the SJA, Maksym Pampura, was appointed to act as the Head of the SJA until 15 September 2024³⁰⁶.

In January 2024, the HCJ started selecting candidates for the position of the Head of the SJA³⁰⁷. A total of 13 candidates out of 15 have been admitted to the competition³⁰⁸. There is no official public record of this competition so far. Therefore, it is impossible to assess whether there are objective processes of a lengthy competition, or certain abuses or delays on the part of the working group that processes information on candidates for the position of the Head of the SJA.

However, civil society organisations have independently monitored the candidates for the position of the SJA Head and note that “the integrity of 12 out of 13 candidates who applied for the competition is highly questionable”³⁰⁹.

The Head of the SJA will be appointed temporarily, under a fixed-term employment contract, until the winner of the competition is appointed to this position, but for no more than 12 months from the date of termination or cancellation of martial law³¹⁰.

On 12 March 2024, the HCJ appointed Leonid Sapelnikov as Deputy Head of the SJA for Digital Development, Digital Transformation and Digitalisation³¹¹.

The work of the SJA and territorial offices

In August 2023, the COJ found the work of the SJA³¹² unsatisfactory and requested the HCJ to conduct an audit to check whether the actions (inaction) of the Head of the SJA, O. Salnikov, and his Deputy, M. Pampura, signs of a disciplinary offence in view of the improper organisational and financial support of the judiciary in 2022 and January-August 2023, the established facts of providing these institutions with inaccurate information, failure to ensure the implementation of decisions of the Congress of Judges of Ukraine, the COJ, improper performance of their official duties, and violation of executive discipline.

Thus, the COJ Decision stated, inter alia, that the level of incentive payments to employees and management of the SJA and its territorial departments significantly exceeded the level of incentive payments to court employees; there were constant difficulties with accounting for judges who were seconded to other courts, remained in the occupied territory or voluntarily joined the Armed Forces. The payment of judicial remuneration to these categories of judges was problematic.

Territorial departments of the SJA, in particular, in Kherson region, provided incomplete information on the situation in the courts, the safety of judges and litigants, and the feasibility of resuming the

305 On bringing the Head of the State Judicial Administration of Ukraine O.O. Salnikov to disciplinary liability in the form of dismissal from the civil service: Decision of the High Council of Justice of 07.12.2023 No. 1232/0/15-23. URL: <https://hcj.gov.ua/doc/doc/42256>.

306 On Temporary Assignment of Duties of the Head of the State Judicial Administration of Ukraine: Decision of the High Council of Justice of 06.06.2024 No. 1770/0/15-24. URL: <https://hcj.gov.ua/doc/doc/45903>.

307 HCJ approved the conditions for holding the position of the Head of the SJA of Ukraine. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zatverdyla-umovy-dlya-zaynyattya-posady-golovy-dsa-ukrayiny>.

308 13 candidates were admitted to participate in the selection for the vacant position of the Head of the SJA of Ukraine. 2024. URL: <https://hcj.gov.ua/news/do-uchasti-u-dobori-na-zaynyattya-vakantnyi-posady-golovy-dsa-ukrayiny-dopushcheno-13>.

309 Shariy's supporter, scandalous woman and corrupt official's assistant: who wants to head the State Judicial Administration? Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/columns/2024/05/14/7455725/>.

310 HCJ approved the conditions for holding the position of the Head of the SJA of Ukraine. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zatverdyla-umovy-dlya-zaynyattya-posady-golovy-dsa-ukrayiny>.

311 Leonid Sapelnikov appointed as Deputy Head of the SJA of Ukraine responsible for digitalisation. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/leonida-sapelnikova-pryznacheno-na-posadu-zastupnyka-golovy-dsa-ukrayiny-vidpovidalnego-za>.

312 Decision of the Council of Judges of Ukraine of 30.08.2023 No. 36. URL: <https://rsu.gov.ua/uploads/article/risenna-rsu-no-36-vid-30082023-p-af1d78172b.pdf>.

work of courts in the de-occupied territories. Thus, in January 2023, a decision was made to resume the work of the Bilozersky District Court of Kherson Region³¹³. However, due to the security situation, the HCJ regularly postpones the actual resumption of its work³¹⁴.

On 08 September 2023, the SJA commented on and refuted certain information set out in the COJ Decision³¹⁵. Currently, the SJA is trying to appeal the relevant COJ Decision in the Supreme Court³¹⁶.

In February 2024, the HCJ closed disciplinary proceedings against the former Head of the SJA (due to his dismissal from his position) and his Deputy (due to the absence of a disciplinary offence and grounds for bringing him to disciplinary responsibility)³¹⁷.

At the same time, the State Audit Service of Ukraine continues to conduct a financial audit of the SJA for the period 2021-2022 and the first half of 2023. As of February 2024, numerous violations in the SJA's activities have already been identified, in particular in terms of unlawful payment of salaries to judges in the amount of more than UAH 430 million and disproportionate provision of courts with consumables³¹⁸. The Accounting Chamber of Ukraine is scheduled to hold a meeting on performance audit on "Organisational and Financial Support of the Judiciary" in August 2024³¹⁹.

Progress and issues

The revelation of corruption against the Head of the SJA has had a negative impact on the SJA's performance of its functions, as well as on the credibility of the entire judiciary. In fact, for more than a year, the agency has been experiencing persistent management problems, resulting in a low level of financial and material support for courts and judicial authorities.

Significantly different levels of salaries in the courts and in the territorial offices of the SJA³²⁰ have led to an outflow of staff from the courts, and the delay in addressing this issue has worsened the situation. As a result, many courts are understaffed with clerks, court reporters and judicial assistants³²¹ which in turn affects the workload, timelines for consideration of cases, the quality of court decisions and, in general, access to justice.

Non-payment of salaries to some judges is a violation of the guarantees of judicial independence³²².

313 On the resumption of work and change of territorial jurisdiction of courts of Kherson region: Order of the Supreme Court of 10.01.2023 No. 2. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rozporjadjennya/Rozpor_2_10_01_2023.pdf.

314 The HCJ again postponed the reopening of the Bilozerskyi District Court of Kherson Region. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-vchergove-vidterminuvala-vidnovlennya-roboty-bilozerskogo-rayonnogo-sudu-hersonskoyi>.

315 SJA of Ukraine's message on the decision of the Council of Judges of Ukraine of 30.08.2023 No. 36. State Judicial Administration of Ukraine. 2023. URL: <https://dsa.court.gov.ua/dsa/pres-centr/news/1473936/>.

316 Unified State Register of Court Decisions. URL: <https://revestr.court.gov.ua/Review/116553374>.

317 On closure of disciplinary proceedings against the Head of the State Judicial Administration of Ukraine O.O. Salnikov and the Deputy Head of the State Judicial Administration of Ukraine M.V. Pampura: Decision of the High Council of Justice of 29.02.2024 No. 624/0/15-24. URL: <https://hcj.gov.ua/doc/doc/44364>.

318 Auditors found that the state paid UAH 430 million in remuneration to judges who did not administer justice or were collaborators at all - Alla Basalaeva. State Audit Service of Ukraine. 2024. URL: <https://dasu.gov.ua/ua/news/5074>.

319 Work Plan of the Accounting Chamber for 2024: Decision of the Accounting Chamber of 23.11.2023 No. 28-5. URL: <http://www.rcp.gov.ua/Plan/2024/?id=1709>.

320 Data on the average salary and incentive payments to employees of court staff and institutions in 2023. State Judicial Administration of Ukraine. 2024. URL: <https://dsa.court.gov.ua/dsa/pres-centr/news/1551736/>.

321 The HCJ addressed the CMU with proposals on the priorities of financial support of the judiciary for 2025-2027. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-iz-propozyciyamy-shchodo-priorytetnyh-zavdan-finansovogo-zabezpechennya>.

322 On the Report of the Head of the State Judicial Administration of Ukraine on the Activities of the State Judicial Administration of Ukraine for 2022: Decision of the High Council of Justice of 20.07.2023 No. 740/0/15-23. URL: <https://hcj.gov.ua/doc/doc/40744>.

The lack of accounting of judges who remained in the occupied territories and, therefore, may cooperate with the occupation authorities, has led to the waste of budget funds and complicated the identification of so-called traitor judges³²³.

The provision of incomplete information by the territorial departments of the SJA on the functioning of courts in the areas close to the contact line leads to erroneous management decisions regarding such courts. The unwillingness of the heads of territorial departments of the SJA to change the jurisdiction of court cases in courts located near the contact line endangers the lives and health of judges and court staff, as well as the consideration of court cases, as the risks of losing them in the event of damage or destruction of the premises are significant.

Recommendations

To address the above problems, it is advisable to conduct a functional audit of the SJA and all its territorial departments in 2024 – early 2025. Based on the audit, an updated model of the judiciary support system should be developed, which, inter alia, should include reorganisation of the SJA and its territorial departments (including their liquidation) and transfer of functions of territorial departments to the central SJA office and appellate courts of the respective regions in 2025. The staff of the territorial departments of the SJA will be subject to significant reduction and, in most cases, dismissal. Such changes will require amendments to the Law of Ukraine “On the Judiciary and the Status of Judges”³²⁴ and other derivative regulations.

It is also advisable to conduct in-depth monitoring of the situation in the regions where active hostilities are taking place to determine the real state of affairs in the courts located near the contact line.

The selection and appointment of the Head of the SJA, which is currently ongoing, should be completed urgently, and if none of the candidates is appointed to the position, promptly announce a second competition.

When reviewing the dossiers of candidates for the said position, it is also advisable to take into account the information published by NGOs, and if a candidate is recognised as the winner of the competition, in respect of whom such organisations have certain reservations, the appointing authority should be provided with appropriate explanations.

Judicial self-government: Congress of Judges of Ukraine, Council of Judges of Ukraine, and meetings of judges

Article 130¹ of the Constitution of Ukraine³²⁵ stipulates that judicial self-government shall be established in accordance with the law to protect the professional interests of judges and resolve issues of internal affairs of courts.

Judicial self-governance in Ukraine is exercised by judges in the following organisational forms: meetings of judges, joint meetings of judges of local general courts, the Council of Judges, and the Congress of Judges of Ukraine. The law delineates the powers of the subjects of judicial self-government.

323 On closing disciplinary proceedings against the Head of the State Judicial Administration of Ukraine O.O. Salnikov and the Deputy Head of the State Judicial Administration of Ukraine M.V. Pampura: Decision of the High Council of Justice of 29.02.2024 No. 624/0/15-24. URL: <https://hcj.gov.ua/doc/doc/44364>; Traitors of Themis: which Ukrainian judges went over to the enemy. Ukrainska Pravda. 2023. URL: <https://www.pravda.com.ua/columns/2023/07/27/7413100/>.

324 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

325 Constitution of Ukraine of 28.06.1996 No. 254k/96-VR. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

State of play

Meetings of judges

Following the adoption of the Law of Ukraine “On the Judiciary and the Status of Judges”³²⁶, the role of the meeting of judges was strengthened with the power to elect court heads and deputy heads, hear reports of the court head and chief of staff, decide on specialisation and workload, etc. Decisions of the meeting of judges are binding on judges and court staff. Decisions on election to administrative positions are made by secret ballot. During the COVID-19 pandemic, judges switched to an online format of discussions, though the respective legal framework has not changed even despite the war.

Recently, two cases of abuse of power by the meeting of judges and/or the head of the court have been reported and are currently the subject of court proceedings. They are related to the dismissal of the chiefs of staff of two courts - the Sumy District Administrative Court (case No. 480/8900/20³²⁷) and the Economic Court of Chernivtsi Region (case No. 600/6374/23-a³²⁸). In the case of the dismissal of the chief of staff of the Economic Court of Chernivtsi region, it was the decision of the meeting of judges that formed the basis for her dismissal.

However, the most widely known cases of abuse by the meeting of judges (in collusion with the court management) are schemes of re-election of court heads for a term exceeding six years (two terms of three years)³²⁹.

Congress of Judges of Ukraine

Joint meetings of local court judges are held to elect delegates to the Congress of Judges of Ukraine, which is the highest body of judicial self-government and is convened by the COJ once every two years, and may be convened out of turn if necessary. Delegates participate in the Congress of Judges of Ukraine according to quotas established by law³³⁰.

On 12 January 2023, the XIX Extraordinary Congress of Judges of Ukraine was held, where in particular 8 members of the HCJ were elected, allowing the HCJ to resume its work after almost a year of suspension³³¹.

Members of the HCJ, members of the COJ and judges of the CCU are elected by secret ballot.

Civil society organisations (DEJURE Foundation, Anti-Corruption Action Centre) have repeatedly criticised the Congress of Judges for electing judges with dubious reputations to these bodies, for secrecy and backroom deals, etc., which led to the introduction of preliminary vetting of candidates for HCJ and CCU judges. Some judges recognise these problems and write openly about them³³².

326 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 128. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

327 Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>.

328 Ibid.

329 Information is provided in the subsection “Local and Appellate Courts”.

330 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 131. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

331 The XIX Extraordinary Congress of Judges of Ukraine elected all 8 members of the HCJ. Council of Judges of Ukraine. 2023. URL: <https://rsu.gov.ua/ua/news/hih-pozacergovij-zizd-suddiv-ukraini-obrav-usih-8-cleniv-vrp>.

332 The Congress of Judges elected new members of the HCJ. What is known about them? Radio Svoboda. 2021. URL: <https://www.radiosvoboda.org/a/novi-chleny-vrp/31143642.html>; The Congress of Judges has again elected pre-approved members of the High Council of Justice. DEJURE Foundation. 2021. URL: <https://dejure.foundation/zizd-suddiv-znovu-obrav-zazdalehid-pohodzhenykh-chleniv-vrp/>.

On 18 (19) September 2024, the XX Regular Congress of Judges of Ukraine is scheduled to be held to appoint a CCU judge under the quota of the Congress of Judges of Ukraine. The agenda also includes the approval of amendments to the Code of Judicial Ethics, the election of two members of the HCJ, and the election of a new composition of the COJ³³³ (the last two items are planned to be implemented in March 2025, as candidates for HCJ members must be vetted by the Ethics Council).

Council of Judges of Ukraine

The COJ is the highest body of judicial self-government that acts as the executive body of the Congress of Judges of Ukraine. The members of the COJ are elected by the Congress of Judges by secret ballot on a quota basis, taking into account specialisation and instance. The composition of the COJ was elected on 10 March 2021³³⁴. At the same time, civil society organisations (in particular, the DEJURE Foundation) issued a negative assessment of the election of some judges to the COJ, including the leadership of the body³³⁵. The law does not provide for preliminary vetting of candidates for the COJ.

Throughout the work of the COJ, some of the Council's decisions were also criticised by the public, including the delay in the election of members of the Ethics Council (which vets candidates for HCJ) and the election of a member (and deputy member) to the Advisory Group of Experts (which vets candidates for CCU judges)³³⁶.

One of the most important powers of the COJ is to resolve conflicts of interest. In this part, the COJ's powers overlap with those of the NACP to some extent. This leads to opposing decisions and public criticism of each other³³⁷.

Recently, two approaches to the fate of the COJ have been spreading in academic and public opinion: reforming this body and complete liquidation of the COJ with the transfer of functions to the HCJ. Legislative initiators have submitted draft laws No. 8342³³⁸ and No. 8343³³⁹, which propose to abolish the COJ and the positions of court heads, except for the Chief Justice of the Supreme Court. On 12 January 2023, the Nineteenth Extraordinary Congress of Judges of Ukraine decided to consider unacceptable the weakening of the constitutional role of judicial self-government bodies as the main guarantee of the judiciary³⁴⁰.

333 The XX Regular Congress of Judges of Ukraine will be held on 18 September 2024. Council of Judges of Ukraine. 2024. URL: <https://rsu.gov.ua/ua/news/hh-cergovij-zizd-suddiv-ukraini-vidbudetsa-18-veresna-2024-roku>.

334 Most members of the Council of Judges of Ukraine have been elected. Judiciary of Ukraine. 2021. URL: <https://court.gov.ua/archive/1086008/>.

335 Council of Judges. DEJURE Foundation. URL: <https://sudovavlada.dejure.foundation/courts/organy-suddivskogo-vryaduvannya/rada-suddiv>.

336 "We tried, we failed". The Council of Judges did not elect the Ethics Council. Does this mean blocking the reform? Suspilne News. 2021. URL: <https://suspilne.media/163564-sprobuvali-ne-vdalosa-rada-suddiv-ne-obrala-etichnu-radu-ci-oznacae-ce-blokuvanna-reformi/>.

337 The Council of Judges did not see a conflict of interest in a judge who voted to elect himself as the head of the court. Due to this explanation of the COJ, it is impossible to bring the judge to justice. National Agency on Corruption Prevention. URL: <https://nazk.gov.ua/uk/rada-suddiv-ne-pobachyla-konflikt-interesiv-u-suddi-yakyj-golosuvav-za-obrannya-samogo-sebe-golovoyu-sudu-cherez-take-roz-yasnennya-rsu-prytyagnuty-suddyu-do-vidpovidalnosti-nemozhlyvo/>.

338 On the Judiciary and the Status of Judges and Certain Laws of Ukraine on the Elimination of the Positions of Court Heads and Their Deputies, as well as the Elimination of the Council of Judges of Ukraine: Draft Law of Ukraine, registration No. 8342 of 10.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41135>.

339 On Amendments to the Criminal Procedure Code of Ukraine Related to the Elimination of the Positions of Court Heads and Their Deputies, as well as the Elimination of the Council of Judges of Ukraine: Draft Law of Ukraine, registration No. 8343 of 10.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41138>.

340 Decision of the XIX Extraordinary Congress of Judges of Ukraine on Certain Issues of Judicial Independence of 12.01.2023. URL: <https://rsu.gov.ua/ua/documents/129>.

The COJ is currently actively working on updating the Code of Judicial Ethics. It is expected to be approved in September 2024³⁴¹.

Progress and issues

Overall, the strengthening of the role of the meeting of judges and the reduction of the role of court heads can be seen as a positive result, although it is too early to assert that the heads of the courts are fully accountable and judges are independent of the potential influence of the head of their court.

Cases when the meeting of judges circumvent the law³⁴² by conducting formal elections of judges to administrative positions and re-electing judges who have already held these positions for two three-year terms in a short period of time require legislative support³⁴³.

The election of judges to administrative positions by secret ballot allows for pressure on judges by the court leadership or third parties.

With regard to the work of the Congress of Judges of Ukraine, it should be noted that during the period of quarantine and restrictive anti-epidemic measures in connection with the spread of COVID-19, as well as after the outbreak of full-scale war, serious obstacles to the Congress of Judges of Ukraine arose due to the lack of proper organisational and security conditions.

There are widespread cases of “backroom dealings” in the work of the Congress of Judges of Ukraine, in particular on issues related to the nomination of candidates for the position of members of the COJ and the election of members of the HCJ, as well as the appointment of judges of the CCU.

The current formula for electing delegates to the Congress of Judges and holding the Congress of Judges offline currently does not meet either security requirements or the requirements for transparency and independence of the judiciary.

The election of the members of the COJ without a pre-nomination procedure and without any verification makes it virtually impossible to elect members of the COJ in a democratic manner and without the use of “lists”, “package deals”, influence of court presidents and third parties, and, in fact, corruption.

The election of judges to senior positions in the COJ, in respect of whom the PIC has issued negative opinions and expressed reservations about their reputation, affects the credibility of the COJ, its decisions, etc.

The COJ did not take a proactive position to ensure the evacuation of judges and court staff during the full-scale invasion, did not decide how judges should act in the event of a full-scale invasion (before it happened), and failed to provide assistance to judges and court staff who were under occupation. Instead, some members of the COJ were abroad for a considerable period of time. The crisis of the COJ’s leadership and involvement in the processes taking place in the judiciary raises questions about its future mode of operation.

341 The working group at the Council of Judges of Ukraine has been actively working on updating the Code of Judicial Ethics. Council of Judges of Ukraine. 2024. URL: <https://rsu.gov.ua/ua/news/u-radi-suddiv-ukraini-roboca-grupa-pracuvava-nad-onovlennam-kodeksu-suddivskoi-etiki>.

342 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

343 The proposals are set out in the subsection “Local and Appellate Courts”.

Recommendations

The expediency of further secret ballots during the election of court heads, deputy heads, members of the HCJ, the COJ, and CCU judges and the search for a balance between transparency, accountability and independence of the judiciary require a broad discussion.

It is also advisable to settle the issue of holding meetings of judges, meetings of the COJ and the Congress of Judges online and voting through secure electronic services.

A separate matter that requires legislative review is the concept of “congress of judges”, which, in the case of online voting, may involve the participation of all judges of Ukraine, rather than delegates on a quota basis, as is currently regulated.

Given that the COJ composition principle lacks such components as gender balance and equal regional representation, the formula for the COJ composition as provided for by law should also be reviewed. It is equally important to regulate the issue of pre-nomination of candidates to the COJ and their preliminary vetting. The vetting of candidates to the COJ should be carried out at least until the qualification assessment of judges is completed and disciplinary complaints against them are resolved.

National School of Judges of Ukraine

The NSJU is a state institution with a special status in the justice system that provides training for the justice system and carries out research activities. This institution is created under the HQCJ. The special status of the NSJU is also manifested in the fact that it is not subject to the legislation on higher education³⁴⁴.

State of play

Personnel support of the National School of Judges of Ukraine

The National School is headed by the Rector, who is appointed and dismissed by the HQCJ. From 2013 to the present, the position of Rector has been held by Mykola Onishchuk³⁴⁵. In 2011, Nataliia Shuklina³⁴⁶ was appointed Vice-Rector for Research, Scientific and Methodological Work.

The leadership and staff of the NSJU are not civil servants, so they are not subject to the requirements of the law on annual declaration of income and property, as well as competitive selection for positions. In this regard, the staffing issues of the NSJU regularly attract the attention of the public sector and the media, as the **NSJU also employs persons who were involved in criminal proceedings** (e.g., the Head of the Secretariat, former Head of the SJAA³⁴⁷), **former judges who failed to prove their ability to administer justice during the qualification assessment** (e.g., the Head of the Department for Training of Teacher-Trainers and a former judge of High Administrative Court, liquidated by the 2017 reform³⁴⁸) etc.

344 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 104. . URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

345 The HQCJ appointed Mykola Onishchuk as the Rector of the National School of Judges of Ukraine. RBC-Ukraine. 2013. URL: <https://www.rbc.ua/ukr/news/vkks-naznachila-nikolaya-onishchuka-rektorom-natsionalnoy-shkoly-19112013154000>; Rector. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/about/lead/rector/>.

346 Vice-Rector for Research, Scientific and Methodological Work. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/about/lead/rector-for-research/>.

347 NABU and SAPO ask to remove Kholodniuk from office. Word and deed. 2020. URL: <https://www.slovoidilo.ua/2020/08/16/novyna/polityka/nabu-sapo-prosyat-vidstoronyty-xolodnyuka>.

348 Interviews with candidates for the positions of judges of cassation courts within the Supreme Court. Yurydychna Gazeta. 2019. URL: <https://yur-gazeta.com/golovna/provedeno-spivbesidi-z-kandidatami-na-posadi-suddiv-kasacyijnih-sudiv-u-skladi-vs.html>.

In addition, the Vice-Rector herself, Natalia Shuklina, came to the attention of the media during the judicial exams in 2013. At that time, attempts were made to **influence through her the appointment of judges**³⁴⁹.

Similarly, last year, the media attention was drawn to the attempt of the Rector of the National School of Law to appoint the former Head of the HCJ, Andrii Ovsienko, who **has no scientific degree**, as the Vice-Rector of this institution. However, the HQCJ did not receive any justification for such an appointment from the NSJU³⁵⁰.

In general, due to the **inefficiency of the NSJU, in 2022, the possibility of its reformatting into a training centre under the HQCJ was considered**. The relevant initiative was voiced by a representative of the President's Office³⁵¹. However, this opinion received a negative assessment from the Rector of the National School of Judges³⁵².

Secondment of judges to the National School of Judges of Ukraine

Judges are annually seconded to the NSJU as trainers to help its staff develop/update training courses for judges, judicial candidates and court staff, and subsequently conduct seminars for these groups.

However, the procedure for selecting judges seconded to the NSJU is currently not governed by any act. Consequently, there are no clear criteria for selection. In fact, the secondment of a judge depends entirely on the discretion of the management of the NSJU and the head of the court where the judge works. This may lead to misunderstandings as to why some judges are seconded to the NSJU, while others are not under the same conditions. In addition, there is no publicly available list of judges who are seconded to the NSJU³⁵³. That is, all information on this procedure is currently withheld from the public.

According to a well-known rule in the judicial system, judges who administer justice cannot be seconded to the NSJU, especially in conditions of high workload. Therefore, **those judges who do not have powers are usually assigned to the NSJU**, namely the so-called “five-year judges” who are waiting for the results of the qualification assessment or judges of liquidated courts (before their transfer to a new court). The rest of the judges are involved in teaching at the NSJU, either by conducting a seminar or a series of seminars.

However, there have been cases when judges with full powers have been seconded to the NSJU. Due to their “atypical nature”, these situations have attracted public and media attention. For example, between November 2023 and April 2024, Oksana Blazhivska, a former HCJ member

349 Party of Regions member Bakhtieieva specifies who should pass the judicial exam. *Ukrainska Pravda*. 2013. URL: <https://www.pravda.com.ua/news/2013/06/7/6991677/>.

350 Former Head of the High Council of Justice wants to become Vice-Rector of the National School of Judges. *Judicial and Legal* 2023. 2023. URL: <https://sud.ua/uk/news/publication/286593-eks-predsedatel-vysshego-soveta-pravosudiya-khochet-zanyat-dolzhnost-prorektora-natsionalnoy-shkoly-sudey>.

351 How Ukraine will reboot its judicial system to meet European standards. Interview with Andrii Smyrnov, Deputy Head of the Office of the Prosecutor General. *Forbes.ua*. 2022. URL: <https://forbes.ua/inside/rule-of-law-klyuchoviy-punkt-dlya-otrimannya-bud-yakoi-dopomogi-yak-kraina-bude-perezavantazhuvati-sudovu-reformu-intervyu-z-zastupnikom-kerivnika-op-andriem-smirnovim-04072022-6960>.

352 Why liquidating the National School of Judges is a bad idea, especially in times of war. *Interfax-Ukraine*. 2022. URL: <https://interfax.com.ua/news/blog/845225.html>.

353 As of 2024, the website of the High Qualification Commission of Judges of Ukraine contains only lists of judicial candidates who were sent to the National School of Judges of Ukraine for special training as part of the selection process, of 2017. URL: <https://old.vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/spECIALNA-pidgotowka/spisok-kandidatiw-na-posadu-suddi-iaKich-naprawlieno-do-nacionalnoi-shkoli-suddiw-ukraini/>.

(a judge of the Commercial Court of Kyiv)³⁵⁴, was seconded to the NSJU. Monitoring of the USRCD confirms that she did not administer justice in court during this period³⁵⁵.

To confirm this fact (as well as other similar cases), a request was sent to the NSJU, the response to which (contrary to the requirements of the Law of Ukraine “On Access to Public Information”) was actually denied by the NSJU³⁵⁶ with reference to the recommendations of the COJ of 25 March 2022³⁵⁷. However, these recommendations were recognised by the COJ as invalid in February 2023³⁵⁸.

A complaint was filed with the Office of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) regarding the actions of the management of the National School of Judges in accordance with the procedure prescribed by law. Following communication between the Ombudsman’s Office and the NSJU management, responses to the inquiries were provided, confirming the secondment of judges with full powers (including Judge O. Blazhivska) to the NSJU. This information was later confirmed by the NSJU in response to a request from the COJ and was made public by them³⁵⁹.

Quality of education at the National School of Judges of Ukraine

According to the National School of Judges, in 2023, 10,267 judges (some of them several times), 24,789 court staff (some of them several times) and 5,286 employees of the Court Security Service (some of them several times) were trained at its premises, which means that 40,342 trainees were covered by training events, which is almost 5% more than in 2022³⁶⁰.

In the first half of 2024, 5,830 judges (some of them several times), 16,264 court staff and judicial assistants (some of them several times), and 3,065 employees of the Court Security Service (some of them several times) were trained at the National School of Judges³⁶¹.

The vast majority of trainings (seminars, workshops) are developed and conducted by judges themselves. In most cases, the staff of the National School of Judges act as moderators. This fact is confirmed by the data obtained from the monitoring of the NSJU website³⁶². However, a significant number of educational courses (trainings) are aimed at understanding and applying legislation or case law. Seminars on declaration are also held periodically³⁶³.

354 The information was published on social media. To confirm this fact, a request for access to public information was sent to the National School of Judges again.

355 Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>.

356 Letter of the National School of Judges of Ukraine of 12.04.2024 No 20-03/944..

357 Decision of the Council of Judges of Ukraine of 25.03.2022 No. 11. URL: <https://rsu.gov.ua/ua/documents?id=130&page=4&per-page=8>.

358 Decision of the Council of Judges of Ukraine of 03.02.2023 No. 8. URL: <https://rsu.gov.ua/ua/documents?id=146&page=7&per-page=8>.

359 Letter of the National School of Judges of Ukraine of 17.05.2024 No. 20-03/1167. URL: <https://rsu.gov.ua/uploads/news/vidradzennasuddinssu-d57455e7a9.pdf>.

360 Information and analytical report on the activities of the National School of Judges of Ukraine in 2023 (extract). Kyiv: 2024. P. 5. URL: <https://www.nsj.gov.ua/files/1706882077Витяг%20з%20ІА3%20ІШСЦУ%202023.pdf>.

361 Information on the work of the National School of Judges of Ukraine for the first half of 2024 (extract). URL: <https://www.nsj.gov.ua/files/1720092763ІНФОРМАЦІЯ%20ПРО%20РОБОТУ%20НАЦІОНАЛЬНОЇ%20ШКОЛИ%20СУДДІВ%20УКРАЇНИ%20ЗА%20І%20ПІВРІЧЧЯ%202024%20РОКУ.pdf>.

362 Training of judges. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/training/>.

363 See, for example, Practical Recommendations on Income Declaration. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/news/praktichni-rekomendatsii-z-deklaruvannya-dohodiv/>.

Recently, the NSJU has been conducting training mainly in an online format, including for security reasons³⁶⁴. However, a few years ago, the situation was different - most trainings were held at the branches of the National School of Law in Kyiv and in the regions. **Therefore, the work of the NSJU branches in the regions has lost its relevance, but requires significant budget funding each year (UAH 83,668.3 thousand is provided for in the State Budget of Ukraine for the NSJU in 2024)**³⁶⁵.

However, in previous years, judges who were seconded to the NSJU received payments as part of their business trip, and judges who developed training courses or taught at the NSJU as trainers/lecturers received payment for their work. This is clearly evident in the declarations of persons authorised to perform state or local self-government functions³⁶⁶. However, judges do not currently receive any payments (this is also established by monitoring declarations)³⁶⁷.

International technical assistance projects are involved in comprehensive trainings of the Supreme Court, HACC, courts of appeal, or specialised trainings on, for example, bankruptcy procedures, intellectual property, etc³⁶⁸. It is thanks to the experts involved in the work of such projects that training in the National School of Justice reaches a qualitatively new level, including training in leadership, communications, strategy, improving the quality of court services, working with vulnerable victims and witnesses, etc³⁶⁹. International technical assistance projects invite experts from the Council of Europe, judges of the ECHR, judges of the EU Court of Justice, etc. to participate in such trainings³⁷⁰. However, the involvement of international experts, judges from other countries, etc. is sporadic and irregular and depends entirely on the capacity of international technical assistance projects. At the same time, the NSJU is unable to provide this level of service on its own.

However, in general, the results of the survey of civil society representatives conducted for the purposes of this report indicate that, in general, “the quality of training at the NSJU remains low” and the teaching methods are “outdated”. An analysis of the curricula and examples of training courses and seminars posted on the NSJU³⁷¹ website largely confirms these statements.

The low quality of training is also evidenced by examples of dismissals of judges based on the results of qualification assessment, including on the criterion of competence. At the same time, these judges were successfully trained in the National School of Judges, which is confirmed by the relevant certificates that are part of their judicial dossiers³⁷². In addition, during the qualification assessment, HQCJ members have questions about the high percentage of cancellations of

364 Distance learning of the National School of Judges of Ukraine. National School of Judges of Ukraine. URL: <http://dn.nsj.gov.ua>.

365 State Budget for 2024: Ensuring the Administration of Justice - Committee on Legal Policy. Verkhovna Rada of Ukraine. 2023. URL: https://www.rada.gov.ua/news/news_kom/243601.html.

366 Based on information from the Unified State Register of Declarations of Persons Authorised to Perform State or Local Self-Government Functions. URL: <https://public.nazk.gov.ua/documents/a5f56aa8-2e38-481c-8c06-74521396f9d3>.

367 Based on information from the Unified State Register of Declarations of Persons Authorised to Perform State or Local Government Functions. URL: <https://public.nazk.gov.ua/documents/4e86b6cb-d647-4d02-a7f1-d2e19de7525b>.

368 Regulations of the National School of Judges of Ukraine, approved by the Order of the National School of Judges of Ukraine No. 34 of 24.06.2016. URL: <https://nsj.gov.ua/reglament-2021/>.

369 For example, Coordination meeting with representatives of the ITA projects on the organisation of training of HACC judges. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/archive/1541966/>.

370 Judges of the Supreme Court were trained on war crimes against property. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1580868/>.

371 Training of judges. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/training/>; Training of Judges of the High Anti-Corruption Court. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/training/pidgotovka-maybutnih-suddiv-vishogo-antikoruptionsynogo-sudu/>; Training of Judges of the Supreme Court. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/ua/training/pidgotovka-verhovnogo-sudu/>.

372 Labour independence. Pravo. URL: <https://pravo.ua/articles/trudova-nezalezhnist/>.

decisions made by certain judges³⁷³. And the PIC establishes in its conclusions violations of the time limits for consideration of certain categories of administrative and criminal cases, which leads to the avoidance of administrative or criminal liability by the offenders³⁷⁴.

Similar situations are also observed in the HCJ disciplinary procedures: in the national media and social media, litigants complain about violations of the rules of court procedure by judges, unethical behaviour of judges in court and outside the courtroom, including unethical behaviour in social media³⁷⁵. The most high-profile cases are considered by the HCJ³⁷⁶.

Between January and May 2024, the HQCJ interviewed candidates for local courts who had successfully completed their training at the NSJU in 2018-2019 in accordance with the requirements of the Law of Ukraine "On the Judiciary and the Status of Judges"³⁷⁷. However, the HQCJ declined to recommend some candidates for appointment as judges³⁷⁸. In some cases, this was due to a low level of knowledge in the field of law³⁷⁹.

Civil society organisations that regularly monitor the work of the judiciary describe similar examples on their websites³⁸⁰. These examples are also indirect evidence that the level of education of judges and judicial candidates, and, accordingly, the quality of training provided by the NSJU, is low.

Design and administration of examinations

Several qualification procedures involve the NSJU in training and/or assessing the qualifications of judges and judicial candidates³⁸¹. As reported by the NSJU, in 2023, the School checked the relevance and brought five exam programmes for the qualification assessment of judges and candidates for the position of judges of appellate courts in line with the current legislation, and drafted two exam programmes with a taxonomic description of anonymous written testing for the qualification assessment of judges and candidates for the position of judges of the HACC and the Appeals Chamber of the HACC. Work was also underway to transfer tests to the HQCJ for

373 Conclusion on a judge's failure to meet the criteria of integrity and professional ethics. Public Integrity Council. 06.12.2023. URL: https://grd.gov.ua/wp-content/uploads/2023/12/2023.12.14_Nahorniuk_vysnovok-bliurenyy-.pdf; Two judges confirmed their compliance with the position, one failed. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.vkksu.gov.ua/news/dvoye-suddiv-pidtverdily-vidpovidnist-zaymaniy-posadi-odyn-ne-pidtverdily-0?fbclid>.

374 Conclusion on the judge's failure to meet the criteria of integrity and professional ethics. Public Integrity Council. 06.12.2023. URL: https://grd.gov.ua/wp-content/uploads/2023/12/2023.12.14_Nahorniuk_vysnovok-bliurenyy-.pdf.

375 Publication on Facebook. 2018. URL: <https://www.facebook.com/share/p/WDHavhVCPy961TxZ/>.

376 GC SC cancelled the disciplinary sanction against Judge Holnyk. Judicial and Legal Newspaper. 2019. URL: <https://sud.ua/ru/news/publication/133225-vp-vs-skasuvava-distiplinarne-styagnennya-schodo-suddi-golnik>.

377 The HQCJ has started interviews with the winners of the competition for the positions of local court judges. Judicial and legal newspaper. 2024. URL: <https://sud.ua/uk/news/sud-info/291320-vkks-nachala-sobesodovaniya-s-pobeditelyami-konkursu-na-dolzhnosti-sudey-mestnykh-sudov>.

378 The HQCJ continues to refuse to provide recommendations to judicial candidates: what is happening. Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/296071-vkks-prodolzhaet-otkazyvat-kandidatam-na-dolzhnosti-sudey-v-predostavlenii-rekomendatsiy-chto-proiskhodit>.

379 Ten candidates for the positions of local court judges have already been rejected by the HQCJ: why did it happen? Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/294595-uzhe-desyat-kandidatov-na-dolzhnosti-sudey-mestnykh-sudov-poluchili-otkaz-ot-vkks-pochemu-tak-proizoshlo>.

380 Appeal of the All-Ukrainian Automaidan Association regarding Judge V. Sova. Conducting interviews with the winners of the competition in the composition of the panel No. 4. URL: https://www.youtube.com/watch?v=TJ7KX8B0zdQ&ab_channel=ВищакваліфікаційнакомісіясуддівУкраїни.

381 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 105. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

the examination (qualification assessment) of vacant positions of appellate level judges³⁸². Acting judges of all instances and jurisdictions were involved in the development of these programmes³⁸³.

The NSJU report for the first half of 2024³⁸⁴ states that, at the request of the HCJ and the HQCJ, the NSJU prepared tests and practical tasks for the qualification assessment of judges across various instances and specializations, and provided opinions on draft laws related to justice. Specifically, eight examination programs for the qualification assessment of judges from seven local and appellate courts were reviewed for relevance and updated to comply with current legislation. Additionally, work was conducted to prepare and submit tests and practical tasks to the HQCJ: to ensure the examination in the qualification assessment procedure for judges of local and appellate courts of all specialisations, 5991 test tasks were reviewed with additional development and 40 practical tasks (model court cases) were prepared; to ensure the qualification examination in the competition procedure for vacant positions of judges of appellate courts, 13,000 test tasks were reviewed and literary edited and 200 test tasks were developed.

However, it is publicly known that there are numerous issues with the tests developed by the NSJU, including a significant number of errors and overall poor quality. As a result, the HQCJ has excluded a substantial number of tests (over 150) from the lists of test questions for the qualification assessment of judges in local and appellate courts³⁸⁵.

Progress and issues

The NSJU, unlike all other bodies and institutions of the justice system, **has not undergone any reforms over the past 10 years**. Administrative positions have been retained by persons appointed before the Revolution of Dignity, and no attestation or any other similar checks have been carried out in the NSJU.

The high level of discretion exercised by the leadership of the NSJU allows for management and personnel decisions to be made without accountability or control³⁸⁶. **There is no mechanism for selecting the staff of the NSJU and seconded judges** to develop training curricula and conduct trainings. Currently, the **NSJU employs a number of people with low qualifications and dubious reputation**, which, in turn, negatively affects the credibility of the entire body and the judiciary. In fact, people who are dismissed from other judicial bodies through the vetting process find work in the NSJU thanks to their connections with its leadership (since no appointment is possible without the approval of the leadership).

Currently, the state lacks control over the management and employees of the NSJU in matters of income and property declaration, integrity violations, family ties and potential conflicts of interest of the management and employees of the NSJU. At the same time, given that the NSJU is directly involved in the development of examinations for judges and judicial candidates, **corruption risks in such procedures are elevated**.

382 Information and Analytical Report on the Activities of the National School of Judges of Ukraine in 2023 (extract). Kyiv: 2024. P. 5–6. URL: <https://www.nsj.gov.ua/files/1706882077Витяг%20ІА3%20НШСУ%202023.pdf>.

383 Concept of National Standards of Judicial Education in Ukraine. National School of Judges of Ukraine. URL: <https://nsj.gov.ua/about/symbols/>.

384 Report on the work of the National School of Judges of Ukraine for the first half of 2024 (extract). URL: <https://www.nsj.gov.ua/files/1720092763ІНФОРМАЦІЯ%20ПРО%20РОБОТУ%20НАЦІОНАЛЬНОЇ%20ШКОЛИ%20СУДДІВ%20УКРАЇНИ%20ЗА%20І%20ПІВРІЧЧЯ%202024%20РОКУ.pdf>.

385 Certain questions have been excluded from the lists of test questions for examinations within the qualification assessment of judges of local and appellate courts. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.vkksu.gov.ua/news/vklyucheno-okremi-zapytannya-z-perelikiv-testovyh-zapytan-dlya-provedennya-istrytiv-u-mezhah>.

386 Zenoviy Kholodnyuk was appointed to a position at the National School of Judges of Ukraine. Judicial and legal newspaper. 2021. URL: <https://sud.ua/ru/news/publication/198062-zenoviy-kholodnyuk-poluchil-dolzhnost-v-natsionalnoy-shkole-sudey-ukrainy>.

In addition, numerous qualification and disciplinary procedures in the judicial system demonstrate the **low qualification level of some candidates and judges who have previously been successfully trained by the NSJU**.

The branched organisational structure does not meet the demands of the times and the security challenges posed by the war. There is also a duplication of functions between the central office and regional offices, when the same seminars are taught by the same judges, but in different branches of the National School of Judges³⁸⁷, and mostly online. At the same time, the state spends considerable funds on this structure during the war.

The NSJU should have played a significant role in the preparation of tests and practical tasks during the competition procedures, but demonstrates a low overall level of performance in this area.

Recommendations

A number of tools could be utilised to address these issues.

Specifically, in 2024 and the first half of 2025, it is advisable to conduct a full functional, personnel and financial audit of the NSJU. International experts should be involved in this process.

In addition, in 2025, based on the results of the audits, it is advisable to transform the NSJU into a modern training centre within the HQCJ (an independent unit). To do this, it is necessary to amend the Law of Ukraine “On the Judiciary and the Status of Judges”. Supreme Court judges (and, after the vacancies in the appellate courts are filled, judges of the appellate courts) should play a significant role in the development of this training centre. This will help to ensure the uniformity of judicial practice, significantly reduce state budget expenditures, and help to unify training programmes while raising their overall level.

In addition, given the judiciary’s movement towards full digitalisation and the existing duplication of training by different branches of the NSJU, it is advisable to conduct all types of training mainly online. Accordingly, all regional branches of the National School of Judges should be liquidated in 2025. Their premises should be better used to house courts or other justice system institutions.

Due to changes in legislation, in the third and fourth quarters of 2024, the rules on mandatory declarations (the same types of declarations as those submitted by current judges), competitions for all positions in the NSJU, etc. should be extended to the management and employees of the NSJU. Moreover, the law should provide for the submission of declarations for 2023 as well.

Finally, in the short term, it is advisable to conduct an assessment of the entire management of the NSJU, including the regional level.

It is also advisable to create a modern testing unit on the grounds of the HQCJ, excluding the development of tests and practical tasks for competitions and judicial evaluation procedures from the powers of the NSJU. To do this, it is necessary to amend the Law of Ukraine “On the Judiciary and the Status of Judges”, select the relevant personnel through competitive procedures and train them with the help of ITA projects in accordance with the best international practices. Current judges should not be involved in the development of tests and practical tasks, but may participate in their preliminary testing.

387 25-29 March 2024, training programme to maintain the qualifications of judges of district administrative courts. National School of Judges of Ukraine. 2024. URL: <https://hsj.gov.ua/ua/training/programi-pidgotovki-kiiv/25-29-bereznya-2024-r-programa-pidgotovki-dlya-pidtrimannya-kvalifikatsii-suddiv-okrujnih-administrativnih-sudiv/>; 25-29 March 2024, training programme for maintaining the qualifications of judges of district administrative courts. National School of Judges of Ukraine. 2024. URL: <https://hsj.gov.ua/ua/training/programi-lviv/125-29-bereznya-2024-r-programa-pidgotovki-dlya-pidtrimannya-kvalifikatsii-suddiv-okrujnih-administrativnih-sudiv/>.

Constitutional Court of Ukraine

The Constitutional Court of Ukraine is a constitutional jurisdiction body that ensures the supremacy of the Constitution of Ukraine, decides on the compliance of laws of Ukraine and, in cases provided for by the Constitution of Ukraine, other acts with the Constitution of Ukraine, provides official interpretation of the Constitution of Ukraine, and has other powers in accordance with the Constitution of Ukraine³⁸⁸.

Amendments to the Constitution (on Justice) of 2016³⁸⁹ removed the CCU from the section “Justice” (before that, there was a constitutional provision that “judicial proceedings are carried out by the Constitutional Court of Ukraine and courts of general jurisdiction”). Thus, the CCU is not a court in the classical sense.

State of play

Personnel support and the constitutional crisis

According to the Constitution of Ukraine, the CCU should have 18 judges appointed on a quota basis (6 by the President of Ukraine, 6 by the Verkhovna Rada, 6 by the Congress of Judges of Ukraine)³⁹⁰.

Prior to the 2016 reform, judges were appointed without any competition at all and were subject to loyalty to the political or judicial authorities. Amendments to the Constitution of Ukraine in 2016 provided for a competition for the positions of CCU judges. The first judges to be selected with the participation of the competition commission were Serhii Holovaty and Vasyl Lemak, who were appointed in February 2018³⁹¹.

However, the public in its conclusions emphasised that “the competition procedure was levelled in the law”³⁹². However, the Venice Commission noted in its opinion the “positive experience” of the procedure for selecting judges with the participation of a competition commission (with an international expert)³⁹³.

In the autumn of 2020, the CCU issued Decision No. 13-r/2020³⁹⁴, which declared certain provisions of the Law of Ukraine “On Prevention of Corruption” unconstitutional and effectively cancelled the declaration of public officials. The decision was adopted with 4 dissenting opinions. As a result, the NACP was forced to close access to the Unified State Register of Declarations of Persons Authorised to Perform State or Local Self-Government Functions³⁹⁵.

388 The Constitution of Ukraine of 28.06.1996 No. 254k96-VR, p. 1, Art. 147. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

389 On Amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine of 02.06.2016 No. 1401-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#n6>.

390 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 148. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

391 Poroshenko to appoint Holovaty and Lemak as judges of the Constitutional Court. New Voice. 2018. URL: <https://nv.ua/ukr/ukraine/politics/poroshenko-priznachiv-suddjami-konstitutsijnoho-sudu-holovatoho-i-lemaka-2454456.html>.

392 Who becomes judges of the Constitutional Court and why do they not defend the Constitution? DEJURE Foundation. 2020. URL: <https://dejure.foundation/khto-staye-suddiamy-ksu/#rec264647506>.

393 Ukraine – Urgent opinion on the Reform of the Constitutional Court of Ukraine issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure. P. 15. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)019-e).

394 Decision of the Constitutional Court of Ukraine of 27.10.2020 No. 13-r/2020 in the case on the constitutional petition of 47 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine “On Prevention of Corruption” and the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality). URL: <https://ccu.gov.ua/dokument/13-r2020>.

395 NACP closes access to the Register of Declarations pursuant to the CCU decision. National Agency on Corruption Prevention of Ukraine. 2020. URL: <https://nazk.gov.ua/uk/nazk-zakryvaye-dostup-do-revestru-deklaratsij-na-vykonannya-rishennya-ksu/>.

This situation was called a “constitutional crisis”, which also affected the appointment of CCU judges.

Back then, the Venice Commission and the Council of Europe’s Directorate-General for Human Rights and the Rule of Law published an urgent joint opinion³⁹⁶ where they stressed that CCU decision No. 13-r/2020 “lacks clear reasoning, has no solid basis in international law and may have been tainted by a serious procedural flaw - the unresolved issue of the conflict of interest of some judges”. “This is regrettable not only because of the immediate negative impact of this decision on the fight against corruption in Ukraine, but also because such decisions undermine public confidence in constitutional justice in general,” the Venice Commission noted.

The Venice Commission also noted that Ukraine should carry out a thorough constitutional reform, in particular by changing the rules of selection to the CCU. The selection body for CCU judges should be established with an international component, which may include international human rights experts and civil society participation, to guarantee the moral and professional qualities of the candidates. It was also recommended that the current vacancies in the CCU should be filled by the Parliament and the Congress of Judges only after the system of judicial appointments is changed.

In December 2020, “Skhemy” published an investigation into the possible involvement of the then Head of the CCU in bribery and judicial fraud³⁹⁷, which led to the launch of a pre-trial investigation by law enforcement agencies. Journalists and the public also raised questions about the other judges of the CCU and highlighted the facts of their misconduct³⁹⁸.

In March 2021, President of Ukraine Volodymyr Zelenskyy dismissed one of the CCU judges and the CCU Head, cancelling Viktor Yanukovich’s decrees on their appointment from 2013³⁹⁹ (in 2023, the Supreme Court cancelled these presidential decrees⁴⁰⁰).

The broad constitutional crisis resulted in the adoption of relevant amendments⁴⁰¹ to the Law of Ukraine “On the Constitutional Court of Ukraine”⁴⁰², whereby an open competition for the positions of CCU judges was launched in 2023⁴⁰³.

396 Ukraine – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legislative situation regarding anti-corruption mechanisms following Decision No. 13-r/2020 of the Constitutional Court of Ukraine, issued pursuant to article 14a of the Venice Commission’s rules of procedure. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)018-e).

397 “Skhemy” published a conversation with the head of the Constitutional Court about his involvement in judicial fraud and bribery. Radio Svoboda. 2020. URL: <https://www.radiosvoboda.org/a/news-schemes-privky-tupytskoho/31011912.html>.

398 Chronicles of arbitrariness in the Constitutional Court: arrangements for relatives, miracles of auto-allocation and ignoring procedures (investigation). Radio Svoboda. 2021. URL: <https://www.radiosvoboda.org/a/skhemy-svavilya-v-ksu/31145654.html>; Who become judges of the Constitutional Court and why do they not defend the Constitution? DEJURE Foundation. 2020. URL: <https://dejure.foundation/khto-staye-suddiamy-ksu/#rec264647506>.

399 Zelenskyy dismissed the Head of the Constitutional Court Tupytsky. He cancelled Yanukovich’s decree. BBC News Ukraine. 2021. URL: <https://www.bbc.com/ukrainian/news-56548418>.

400 The Supreme Court has declared Zelenskyy’s decrees on the removal of Constitutional Court judges Kasminin and Tupytsky illegal. Dzerkalo Tyzhnia. 2023. URL: <https://zn.ua/ukr/UKRAINE/verkhovnij-sud-viznav-nezakonnimi-ukazi-zelenskoho-pro-usunennja-suddiv-ks-kasminina-ta-tupitskoho.html>.

401 On Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Selecting Candidates for the Position of a Judge of the Constitutional Court of Ukraine on a Competitive Basis: Law of Ukraine of 13.12.2022 No. 2846-IX. URL: <https://zakon.rada.gov.ua/laws/show/2846-20#Text>; On Amendments to Certain Legislative Acts of Ukraine on Clarification of Provisions on Competitive Selection of Candidates for the Position of a Judge of the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine resolves: Law of Ukraine of 27.07.2023 No. 3277-IX. URL: <https://zakon.rada.gov.ua/laws/show/3277-20#Text>.

402 On the Constitutional Court of Ukraine: Law of Ukraine of 13.07.2017 No. 2136-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2136-19#Text>.

403 Announcement on the start of the competition for the position of a judge of the Constitutional Court of Ukraine. Council of Judges of Ukraine. 2023. URL: <https://rsu.gov.ua/ua/news/opublikovano-ogolosenna-pro-pocatok-konkursu-na-posadu-suddi-konstitucijnogo-sudu-ukraini>.

The Verkhovna Rada adopted the latest amendments⁴⁰⁴ to hold a public and independent competition to the CCU in order to fulfil one of the seven requirements for Ukraine as a candidate for accession to the EU⁴⁰⁵. Prior to that, the Venice Commission⁴⁰⁶ also expressed its opinion on these amendments to the Law⁴⁰⁷.

At the same time, two CCU judges under the parliamentary quota⁴⁰⁸ were appointed during the constitutional crisis, bypassing the recommendations of the Venice Commission on compliance with the relevant vetting procedures⁴⁰⁹ and before the adoption of the amendments. For example, the appointment of one of these judges violated the principle of political neutrality established by the Constitution of Ukraine⁴¹⁰. Similarly, judges of the CCU were appointed under the presidential quota⁴¹¹, bypassing the recommendations of the Venice Commission.

In the reporting period, a new stage of confrontation between the CCU and the NACP began. The anti-corruption institution drew up reports on administrative offences against the ex-acting Head of the CCU⁴¹² and the Head of the CCU Secretariat. Later, the NACP found that the acting Head of the CCU made a decision in the context of a real conflict of interest, which was not reported in the prescribed manner⁴¹³. In May 2024, the Kyiv Court of Appeal ruled that the NACP's order against acting CCU President Serhii Holovatyi was unlawful⁴¹⁴.

Currently, there are 13 judges⁴¹⁵ in the CCU. There are 5 vacant positions: 2 positions under the quota of the Congress of Judges, one position – under the President's quota and 2 under the quota of the Parliament.

404 On Amendments to Certain Legislative Acts of Ukraine on Clarification of Provisions on Competitive Selection of Candidates for the Position of a Judge of the Constitutional Court of Ukraine, the Verkhovna Rada of Ukraine resolves: Law of Ukraine of 27.07.2023 No. 3277-IX. URL: <https://zakon.rada.gov.ua/laws/show/3277-20#Text>.

405 Candidate in advance: 7 requirements that Ukraine must fulfil for the EU not to cancel its new status. European Pravda. 2023. URL: <https://www.eurointegration.com.ua/articles/2022/06/18/7141516/>.

406 On the Constitutional Court of Ukraine: Law of Ukraine of 13.07.2017 No. 2136-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2136-19#Text>.

407 Ukraine – Opinion on the draft law «On Amendments to Certain Legislative Acts of Ukraine on improving the procedure for the selection of candidates for the position of judge of the Constitutional Court of Ukraine on a Competitive Basis», adopted by the Venice Commission at its 133rd Plenary session (16–17.12.2022). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)054-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)054-e).

408 New judge of the Constitutional Court Kichun: Rada appoints Zelenskyy's second man. BBC News Ukraine. 2021. URL: <https://www.bbc.com/ukrainian/news-56110139>; Rada appoints Sovhyria as a judge of the Constitutional Court. Suspilne News. 2022. URL: <https://susplne.media/265022-rada-priznacila-sovgiru-suddeu-konstitucijnogo-sudu/>.

409 Ukraine – Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legislative situation regarding anti-corruption mechanisms following Decision No. 13-r/2020 of the Constitutional Court of Ukraine, issued pursuant to article 14a of the Venice Commission's rules of procedure (09.12.2022). URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)018-e).

410 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Article 148. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

411 Zelenskyy appointed Hryshchuk and Petryshyn as judges of the Constitutional Court - decrees. Ukrayinska Pravda. 2021. URL: <https://www.pravda.com.ua/news/2021/11/26/7315363/>.

412 The NACP drew up reports on administrative offences against the acting Head of the Constitutional Court of Ukraine Serhii Holovatyi and the Head of the Court's Secretariat Viktor Beschastnyy. National Agency on Corruption Prevention of Ukraine. 2023. URL: <https://nazk.gov.ua/uk/nazk-sklalo-protokoly-pro-administratyvne-pravoporushennya-shhodo-v-o-golovy-konstytutsijnogo-sudu-ukrainy-sergiya-golovatogo-ta-kerivnyka-sekretariatu-tsogo-sudu-viktora-beschastnogo/>.

413 The NACP drew up a report on administrative violation against acting Head of the Constitutional Court of Ukraine Serhii Holovatyi. National Agency on Corruption Prevention of Ukraine. 2024. URL: <https://nazk.gov.ua/uk/novyny/nazk-sklalo-protokol-pro-administratyvne-porushennya-stosovno-v-o-golovy-konstytutsijnogo-sudu-ukrainy-sergiya-golovatogo/>.

414 The Kyiv Court of Appeal has ruled that the NACP's order against acting Chief Justice of the Constitutional Court of Ukraine Serhii Holovatyi is unlawful. Constitutional Court of Ukraine. 2024. URL: <https://ccu.gov.ua/novyna/kyvivskyy-apelyacynyy-sud-vyznav-nezakonnym-prypys-nazk-stosovno-vykonuvacha-obovyzkiv>.

415 Judges. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/judge/1844>.

Serhii Riznyk, selected by the AGE and appointed under the Parliamentary quota, took office as a CCU judge on 28 May 2024, having taken the oath of office at a special plenary session of the Court⁴¹⁶.

At the same time, on 29 May 2024, CCU judge Serhii Holovatyi turned 70, which is the maximum age for a judge of this court under the Constitution of Ukraine⁴¹⁷. Therefore, the judge resigned.

Thus, without the appointment of new judges, the CCU operates at the limit of the quorum⁴¹⁸ from the end of May 2024. The absence (or recusal) of two judges will halt the work of the CCU. The risk of such a situation is also supported by the fact that on 27 January 2025, the term of office of three judges expires: two under the President's quota and one under the quota of the Congress of Judges of Ukraine.

Competition for the position of a judge of the Constitutional Court of Ukraine

Advisory Group of Experts

Following the amendments to the Law⁴¹⁹, the President, Parliament and the Congress of Judges may appoint candidates for the positions of CCU judges only after the candidates have been vetted by the Advisory Group of Experts (AGE), a body that assists the appointing authorities in assessing the moral qualities and level of competence of candidates for the position of CCU judge. Currently, in accordance with the transitional provisions of the Law, the AGE⁴²⁰ consists of 6 members: one member is delegated by the appointing authorities, three are representatives of international partners.

On 12 November 2023, the AGE commenced its work⁴²¹. By a unanimous decision, Aleš Zalar, a retired judge of the Ljubljana District Court and former Minister of Justice of Slovenia, was elected as the Head of the AGE, and Yaroslav Romaniuk, Doctor of Law, former Chief Justice of the Supreme Court of Ukraine, was elected as the Secretary. At the same meeting, the Regulations on the AGE were approved.

Subsequently, during the second meeting, the AGE unanimously adopted the Methodology for Assessment of Moral Character and Legal Competence⁴²² of Candidates for the Position of a CCU Judge. The AGE evaluates each candidate according to the criteria of high moral qualities and recognised level of legal competence. First, the “high moral qualities” of the candidates are assessed. Based on the results, each candidate receives a “pass” or “fail” grade. All candidates who receive a “fail” grade are removed from the competition. Those who receive a “pass” grade are assessed on the basis of “legal competence”. If, after the assessment at one of these stages, there are less than two candidates for one vacant position, a new selection for such a position is announced.

416 Newly appointed CCU judge Serhii Riznyk takes oath. Ukrinform. 2024. URL: <https://www.ukrinform.ua/rubric-society/3868752-novopriznacenij-sudda-ksu-sergij-riznik-sklav-prisagu.html>.

417 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 149¹. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

418 According to Article 10 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the Court is authorised to conduct constitutional proceedings if it consists of at least 12 judges of the Constitutional Court.

419 On the Constitutional Court of Ukraine: Law of Ukraine of 13.07.2017 No. 2136-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2136-19#Text>.

420 Ibid, Chapter IV, clause 5.

421 Competitive selection of CCU judges: the advisory group of experts has started its work. Centre of Policy and Legal Reform. 2023. URL: <https://pravo.org.ua/analytical-materials/shhotyzhnevji-analiz-08-14-kystopada-2023-roku/>.

422 Methodology for assessing moral qualities and level of competence in the field of law of 04.12.2023. URL: https://ccu.gov.ua/sites/default/files/metodologiya_dge.pdf.

On 21 May 2024, the AGE considered and granted the application of member Nataliia Kuznetsova for early termination of her powers and simultaneously voted to appoint Vasyl Shakun to the vacant position. Since V. Shakun was Nataliia Kuznetsova's deputy before his appointment, his powers as a member of the AGE are limited to the legal term of office of the previous member⁴²³.

On 30 May 2024, the AGE reviewed and approved amendments to the Regulations on the AGE and to the Methodology for assessing moral qualities and the level of competence in the field of law, mainly of a technical nature, to improve the efficiency of its work⁴²⁴.

Competitive selection for the position of CCU judge was completed

At the end of November 2023, the AGE received documents of 16 candidates for the positions of CCU⁴²⁵ judges from the COJ, and in early December 2023, the Verkhovna Rada submitted documents of another 25 candidates for consideration⁴²⁶.

Thus, 37 persons, including 17 doctors of sciences and 14 candidates of sciences, applied for 5 vacant positions of CCU judges. According to the primary activity profile, the absolute majority of candidates were judges – 16 people, as well as teachers – 9 people⁴²⁷.

In early March 2024, the AGE interviewed 29 candidates⁴²⁸ for the position of CCU judge to assess their compliance with the criteria of high moral qualities (the rest were either not admitted or voluntarily withdrew from the competition). Consequently, 6 candidates for the position of CCU judge under the parliamentary quota and 3 candidates under the quota of the Congress of Judges received the “meets” assessment of high moral qualities. One candidate applied for the position of a CCU judge under both quotas. However, due to the lack of candidates (2 persons for one seat), the competition for one position of a CCU judge under the quota of the Congress of Judges of Ukraine was terminated.

On 05 April 2024, the admitted candidates for the position of CCU judge passed a written exam as part of the assessment of their competence in the field of law⁴²⁹. The questions for the written assessment were developed by an external group of international experts who are renowned experts in the field of constitutionalism. To ensure maximum transparency of the competitive selection process, the written assessment was broadcast online on the official CCU resources and on the AGE website. Subsequently, the AGE published the content of the written question as part of the assessment of the level of legal competence of candidates for the position of CCU judge⁴³⁰.

423 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/LPKtpNSyFMGrB5DF/>.

424 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/KgDjJmHtn926ipL8/>.

425 Decision of the Council of Judges of Ukraine of 02.11.2023 No. 44. URL: <https://rsu.gov.ua/uploads/article/risennarsuno44vid02112023sodovid-5ed9f58846.pdf>; Decision of the Council of Judges of Ukraine of 20.11.2023 No. 51. URL: <https://rsu.gov.ua/uploads/article/risenna-rsu-no-51-vid-20112023-s-c1a302042c.pdf>.

426 5 vacant positions – 37 candidates. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/storinka/5-vakantnyh-posad-37-kandydativ>.

427 Candidates for the position of CCU judge admitted to the competitive selection by the Council of Judges of Ukraine (Congress of Judges of Ukraine). Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/storinka/kandydaty-na-posadu-suddi-ksu-dopushcheni-do-konkursnogo-vidboru-radoyu-suddiv-ukrayiny>; Candidates for the position of CCU judge admitted to the competitive selection by the Verkhovna Rada of Ukraine. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/storinka/kandydaty-na-posadu-suddi-ksu-dopushcheni-do-konkursnogo-vidboru-verhovnoyu-radoyu-ukrayiny>.

428 Council of Judges of Ukraine reports. Out of 15 individuals who expressed their intention to become CCU judges from the Congress of Judges of Ukraine, 8 candidates took part in the interviews. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1572051/>.

429 The Advisory Group of Experts conducted a written assessment of candidates for the position of CCU judge. Constitutional Court of Ukraine. 2024. URL: <https://ccu.gov.ua/storinka/doradcha-grupa-ekspertiv-provela-pysmove-ocinyuvannya-kandydativ-na-posadu-suddi-ksu>.

430 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/qD1xuSUzPL8dGKwJ/>.

On 2 May 2024, the AGE held a meeting to assess the level of legal competence of the CCU judicial candidates. Three candidates under the Parliament's quota and two candidates under the quota of the Congress of Judges received the "meets" grade⁴³¹. Eventually, on 23 May 2024, the Parliament appointed Serhii Riznyk as a CCU judge⁴³². The Congress of Judges of Ukraine is scheduled to be held on 18 (19) September 2024⁴³³.

During these competitive selections, civil society organisations such as the Anti-Corruption Action Centre and Automaidan assessed the work of the AGE as "transparent and objective"⁴³⁴. Civil society experts also noted that "for the first time in the history of the appointment of CCU judges in Ukraine, this selection is truly open"⁴³⁵.

On 29 February 2024, the President signed Decree No. 139/2024⁴³⁶ approving the Regulations on the competitive selection of candidates for the position of CCU judge under his quota, established the Competition Commission for the competitive selection and approved its personal composition.

In May 2024, the Competition Commission sent the documents of all ten candidates who had expressed their willingness to participate in the selection to the AGE for consideration⁴³⁷. Between June and July 2024, the AGE processed these documents and conducted seven interviews with the candidates. Only one candidate successfully passed the high moral character test, leading to the early conclusion of the competition under the President's quota. The AGE made this decision on 31 July 2024⁴³⁸.

Repeated competitive selection for the position of the CCU judge

On 11 April 2024, the COJ announced a new competition for two positions of CCU judges under the quota of the Congress of Judges of Ukraine⁴³⁹ at once: a vacant and a "potentially" vacant position (the term of office of CCU judge V. Kryvenko⁴⁴⁰ expires on 26 January 2025). Between May and June 2024, the COJ admitted 13 candidates to participate in the second competition. Their documents are currently being processed by the AGE⁴⁴¹.

Furthermore, on 22 May 2024, the Parliament also announced a repeated competition for two vacant positions of CCU judges under its quota⁴⁴². Following the review of the submitted

431 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/Xh7kLZhTQoFlLKgF/>.

432 The Rada appointed Serhii Riznyk as a judge of the CCU. Ukrinform. 2024. URL: <https://www.ukrinform.ua/rubric-society/3866943-rada-priznacula-sergia-reznika-suddeu-ksu.html>.

433 For more details, see the subsection "Congress of Judges of Ukraine".

434 The Advisory Group of Experts selected the CCU candidates who will move to the next stage. 17 candidates, including one who did not know the date of adoption of the Constitution, did not pass the competition. Anti-Corruption Action Centre. 2024. URL: <https://antac.org.ua/news/doradcha-hrupa-ekspertiv-obrala-kandydativ-do-ksu-iaki-pereydu-na-nastupnyy-etap-kandydat-iakyy-ne-znav-datu-ukhvalennia-konstytutsii-ta-shche-16-kandydativ-ne-proyshly-konkurs/>.

435 Did the competition fail? How judges of the Constitutional Court are selected at the first open competition. Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/articles/2024/03/13/7446304/>.

436 The issue of competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine in relation to persons appointed by the President of Ukraine: Decree of the President of Ukraine of 29.02.2024 No. 139. URL: <https://www.president.gov.ua/documents/1392024-49989>.

437 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/jmxYtFPeeVXJVrtp/>.

438 Publication of the Advisory Group of Experts on Facebook. 2024. URL: <https://www.facebook.com/share/p/3WT18xUAe5w2jUaq/>.

439 Announcement of the start of the competition for the position of a judge of the Constitutional Court of Ukraine. Council of Judges of Ukraine. 2024. URL: <https://rsu.gov.ua/ua/news/ogolosenna-pro-pocatok-konkursu-na-posady-suddi-konstytucijnogo-sudu-ukraini>.

440 Viktor Vasylovych Kryvenko. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/suddya/kryvenko-viktor-vasylovych>.

441 Competition according to the quota of the Congress of Judges of Ukraine: portrait of candidates for the positions of CCU judges. Constitutional Court of Ukraine. 2024. URL: <https://ccu.gov.ua/storinka/konkurs-za-kvotoyu-zyzdu-suddiv-ukrayiny-portret-kandydativ-na-posady-suddiv-ksu>.

442 Announcement of the start of the competitive selection of candidates for two vacant positions of judges of the Constitutional Court of Ukraine. Verkhovna Rada of Ukraine. 2024. URL: https://www.rada.gov.ua/news/fixed_news/249691.html.

documents, the Verkhovna Rada Committee on Legal Policy on 31 July 2024 admitted 14 candidates to participate in the repeated competition⁴⁴³. The documents of the candidates are also currently being processed by the AGE.

It should be noted that among the candidates under the Parliament's quota, as well as among the candidates under the quota of the Congress of Judges of Ukraine, there are those who have already been denied participation in previous competitions for the position of a CCU judge by the AGE due to non-compliance with the criterion of high moral qualities.

After passing all the stages, the AGE should hold a vote and submit the list of candidates to the Verkhovna Rada and the Congress of Judges of Ukraine for voting on the appointment of these persons to the positions of CCU judges.

Institutional capacity of the CCU

Experts of the Centre of Policy and Legal Reform have previously noted⁴⁴⁴ that the CCU often becomes a hostage to political processes in Ukraine, which leads to its adoption of politically motivated (biased) decisions that harm the constitutional legal order and cause a significant public outcry⁴⁴⁵.

Following the amendments⁴⁴⁶ to the Constitution of Ukraine, the institution of a constitutional complaint was launched. Thus, a constitutional complaint may be filed if all other national legal remedies have been exhausted⁴⁴⁷. The CCU decides on the compliance of a law of Ukraine with the Constitution of Ukraine (constitutionality) upon a constitutional complaint from a person who believes that the law of Ukraine applied in the final court decision in their case contradicts the Basic Law of the state.

In practice, this leads to a certain imbalance in the powers of the CCU and the SC. When considering a constitutional complaint, the CCU not only makes conclusions on the constitutionality of a legal provision, but also provides its interpretation. If such interpretation does not coincide with the one already provided by the SC, a conflict occurs. The parties to a case often use the institution of a constitutional complaint as a tool of "second cassation" against a SC ruling. An example of this is the SC and CCU's interpretation of Article 88 of the Law of Ukraine "On Notaries"⁴⁴⁸.

443 There are 14 candidates for two positions of judges of the Constitutional Court. Dzerkalo Tyzhnia. 2024. URL: <https://zn.ua/ukr/POLITICS/na-dvi-posadi-suddiv-konstitutsijnoho-sudu-pretendujut-14-kandidativ.html>.

444 Key issues of the Constitutional Court of Ukraine. Centre of Policy and Legal Reform. 2021. URL: <https://pravo.org.ua/klyuchovi-problemy-diyalnosti-konstytutsijnogo-sudu-ukrayiny/>.

445 For example, decisions in the case on the terms of office of the President of Ukraine (25.12.2003 № 22-rp/2003), on the possibility of individual MPs of Ukraine to participate directly in the formation of a coalition of parliamentary factions (06.04.2010 № 11-rp/2010), on the observance of the procedure for amending the Constitution of Ukraine. 2010 No. 11-rp/2010), on compliance with the procedure for amending the Constitution of Ukraine (30.09.2010 No. 20-rp/2010), on the official interpretation of the provision "at the next regular session of the Verkhovna Rada of Ukraine" of Article 155 of the Constitution of Ukraine (15.03.2016 No. 1-rp/2016), on illicit enrichment (26.02.2019 No. 1-r/2019), on the constitutionality of the Decree of the President of Ukraine "On Early Termination of the Verkhovna Rada of Ukraine and Calling Early Elections" (20.06.2019 No. 6-r/2019), on the unconstitutionality of certain provisions of the Law of Ukraine "On Prevention of Corruption" and Article 366-1 of the Criminal Code of Ukraine (27.10.2020 No. 13-r/2020), an opinion on the compliance of the draft law on amendments to the Constitution of Ukraine on decentralisation of power with the requirements of Articles 157 and 158 of the Constitution of Ukraine (30.07.2015 No. 2-v/2015).

446 On Amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine of 02.06.2016 No. 1401-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#n6>.

447 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Article 151¹. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

448 Resolution of the Grand Chamber of the Supreme Court of 02.07.2019 in case No. 916/3006/17. URL: <https://reyestr.court.gov.ua/Review/83589983>; Decision of the Constitutional Court of Ukraine of 01.07.2020 in the case of the constitutional complaint of Ukrkava Limited Liability Company on the compliance of the provisions of part one of Article 88 of the Law of Ukraine "On Notaries" with the Constitution of Ukraine (constitutionality). URL: https://ccu.gov.ua/sites/default/files/docs/7_p1_2020.pdf.

There is also the opposite situation, when the SC has the right not to apply a rule of law as unconstitutional. In this case, it applies to the CCU with a corresponding constitutional petition⁴⁴⁹. And then the question arises whether courts, government agencies, other individuals and legal entities should apply this rule. After the Supreme Court has applied to the CCU, there is a period when the Supreme Court has already essentially declared the provision unconstitutional⁴⁵⁰, but the CCU has not yet done so.

Some CCU decisions have contradictions between the operative and the reasoning part of the decision⁴⁵¹, and the position of the Court, according to which it justifies its decision, becomes unclear.

The majority of constitutional petitions and constitutional complaints to the CCU are considered for a long time, and even the issue of opening proceedings on the basis of a petition or constitutional complaint is regularly put before the CCU. The overwhelming majority of CCU rulings in 2023 are devoted to extending the deadlines⁴⁵².

For example, the constitutional petition of the Supreme Court⁴⁵³ regarding the constitutionality of certain provisions of Law of Ukraine No. 1635-IX⁴⁵⁴ has been under consideration by the CCU since October 2021. In practice, the provisions of this Law are currently being implemented. The current composition of the HCJ was selected in accordance with the provisions of this Law, including those that may be declared unconstitutional. Such a lengthy consideration of this issue violates the principle of legal certainty and does not contribute to the implementation of the principles of judicial independence.

The work of the CCU is also affected by the fact that the approach to organizing the Court's work has remained unchanged since 1996. Currently, the CCU operates under a scheme where the rapporteur judge independently seeks votes for "their" decision, which impacts the independence and impartiality of both the judge and their decisions. This has led to ongoing internal politicization of the Court. Additionally, the inability to quickly gather votes for "one's" decision results in delays in its consideration. Consequently, decisions that align with the judge's interests are actively lobbied for, while those that do not are left pending before the Court for years. As a result, the level of internal politicization within the Court remains high.

The CCU's work is further hindered by numerous recusals and self-recusals of some judges with a "political background". For example, CCU Judge Olha Sovrygia (who was a member of Parliament and a representative of the Parliament in the CCU before her appointment as a judge), is currently compelled to recuse herself from certain constitutional petitions and complaints due

449 Resolution of the Plenum of the Supreme Court of Ukraine of 03.12.2021 No. 12. URL: https://zakononline.com.ua/documents/show/503518_686683.

450 Ruling of the Supreme Court as part of the panel of judges of the Commercial Court of Cassation of 19.01.2022 in case No. 910/22858/17. URL: <https://reyestr.court.gov.ua/Review/102854560>.

451 Decision of the Constitutional Court of Ukraine of 01.07.2020 in the case of the constitutional complaint of Ukrkava Limited Liability Company on the compliance of the provisions of part one of Article 88 of the Law of Ukraine "On Notaries" with the Constitution of Ukraine (constitutionality). URL: https://ccu.gov.ua/sites/default/files/docs/7_p1_2020.pdf.

452 Grand Chamber. Constitutional Court of Ukraine. 2023. URL: <https://ccu.gov.ua/docs/5786>.

453 Constitutional petition on verification of compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraph 13 of clause 23-1 of Section III "Final and Transitional Provisions" of the Law of Ukraine of 21 December 2016 No. 1798-VIII "On the High Council of Justice", paragraphs 1, 6, 11 of clause 4 of section II "Final and Transitional Provisions" of the Law of Ukraine of 14 July 2021 No. 1635-IX "On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice". Supreme Court. 08.10.2021. URL: https://ccu.gov.ua/sites/default/files/4_395_2021.pdf.

454 On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice: Law of Ukraine of 14 July 2021 No. 1635-IX. URL: <https://zakon.rada.gov.ua/laws/show/1635-20#Text>.

to her previous involvement in the adoption of related laws or representation of interests of the Parliament during consideration of certain constitutional petitions or complaints still pending before the Court⁴⁵⁵.

The Law of Ukraine “On Constitutional Procedure”, which has been under consideration by the Parliament since December 2020 (registration No. 4533)⁴⁵⁶, was intended to address some of these issues. However, as of July 31, 2024, it has not yet been adopted.

Progress and issues

Currently, there are a number of systemic problems in the work of the CCU that have not been resolved for many years⁴⁵⁷.

For example, the existence of politically motivated decisions of the CCU, which in turn leads, among other things, to the long consideration of such proceedings by this court, and thus to the continued application of unconstitutional norms and violation of the rights and freedoms of citizens⁴⁵⁸.

The presence in the CCU of judges appointed before the 2016 reform, to whom there are public claims about their integrity and professionalism, as well as the appointment in recent years of persons who do not meet the criteria of political neutrality, affects the trust in the CCU on the part of citizens and the authority and enforcement of decisions of such a court⁴⁵⁹.

Conflicting provisions on the powers of the CCU and the SC, ineffective protection of constitutional rights through the institution of constitutional complaints indicate a problem with the actual protection of the rights of complainants.

Delays in the consideration of constitutional proceedings prevent the CCU from responding to institutional conflicts in a timely manner, which negatively affects the effectiveness of the entire mechanism of checks and balances, as well as the protection of constitutional rights and freedoms.

Inadequate motivation of the CCU decisions leads to negative perception of such acts as unjust or politically motivated by the society, which does not contribute to the emergence of trust in the institution itself.

Outdated approaches to the organisation of the CCU’s work have been leading to internal politicisation of the Court for years. In the current period, after the start of the competition for the positions of CCU judges, the problem of high-quality staffing of the CCU has been partially resolved, which is a significant progress in this regard. This process revealed a global staffing crisis among legal professionals. The low “quality” of the candidates who applied for the competition prevented the first round of competitions from filling the available vacancies under all quotas. Therefore, the appointment of only one judge out of six vacant seats casts doubt on

455 See, for example, the Ruling of the Grand Chamber of the Constitutional Court of Ukraine of 20.04.2023 No. 47-y/2023 on the recusal of Judge of the Constitutional Court of Ukraine Olha Sovhyra in the case on the constitutional petition of 49 MPs of Ukraine on the compliance of the Resolution of the Verkhovna Rada of Ukraine “On the Formation and Liquidation of Districts” with the Constitution of Ukraine (constitutionality). URL: <https://zakon.rada.gov.ua/laws/show/v047u710-23#Text>.

456 On the Constitutional Procedure: Draft Law of Ukraine, registration No. 4533 of 21.12.2020. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/5067>.

457 Key issues of the Constitutional Court of Ukraine. Centre of Policy and Legal Reform. 2021. URL: <https://pravo.org.ua/klyuchovi-problemy-diyalnosti-konstytutsijnogo-sudu-ukrayiny/>.

458 Ibid.

459 Ibid.

the possibility of resolving the staffing crisis in the CCU by the end of this year. For example, the lengthy procedures for convening and holding the Congress of Judges of Ukraine will delay the appointment of new CCU judges for another 4-5 months.

Instead, the swift appointment of a CCU judge under the Parliament's quota had a positive impact on the CCU's functioning in 2024, ensuring that the quorum was met, albeit minimally. However, the continued delay in appointing new judges poses a threat to maintaining the CCU's quorum in 2025, which could potentially halt the Court's work altogether.

Recommendations

Appointment of CCU judges under the quota of the Congress of Judges of Ukraine should occur in two stages: one vacancy should be filled in September 2024 (with the Congress of Judges demonstrating a high level of responsibility and selecting one of the two candidates) and for the remaining two vacancies, i.e. after a second competition. In addition, the President should soon announce a competition for three positions of CCU judges: one for the vacancy where the competition ended early, and two potentially vacant positions (the terms of office of CCU judges Viktor Kolisnyk and Volodymyr Moisyk expire on 27 January 2025⁴⁶⁰).

In general, all available vacancies should be filled in 2024.

Judges who were appointed through other procedures, especially those who took office after the 2020 constitutional crisis, should be offered to voluntarily undergo the vetting required by the Law⁴⁶¹. This will help overcome doubts about their competence and moral qualities on the part of society and international partners. Since these judges will remain judges of Ukraine for a long time (6-7 years), their voluntary undergoing of the statutory vetting will help restore confidence in the CCU and its stable operation.

It is crucial to review and improve the organisation of processes within the CCU to reduce its politicisation. One approach is to examine the internal processes of the ECHR as a model for the CCU. This issue should be addressed as part of the process of finalising the draft law "On Constitutional Procedure" (registration No. 4533) to ensure a comprehensive legislative solution to the entire list of urgent problems of the CCU.

It is also advisable to adopt a Code of Ethics for CCU judges (similar to the Code of Judicial Ethics), which, among other things, should provide that the standards of academic integrity also apply to CCU decisions and dissenting opinions of its judges.

The issue of disciplinary liability of CCU judges, in particular for violation of reasonable time limits for consideration of cases, requires a broad discussion. However, a broad legal debate is needed on the issues of legislative regulation of the conflict between the powers of the CCU and the SC, as well as improvement of the constitutional institution of the complaint, the reasoning of court decisions and requirements for compliance with the time limits of constitutional proceedings.

The independence of the judiciary

An important condition for proper judicial protection of human rights and fundamental freedoms is the principle of judicial independence. In Ukraine's legal system, the principle of judicial

460 Judges. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/judge/1844>.

461 On the Constitutional Court of Ukraine: Law of Ukraine of 13.07.2017 No. 2136-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2136-19#Text>.

independence is enshrined in the Constitution of Ukraine⁴⁶², the Law of Ukraine “On the Judiciary and the Status of Judges”⁴⁶³ and is specified in codified procedural acts. The principle of judicial independence is guaranteed by international legal acts and numerous case-law of the ECHR.

Interference with the professional activities of judges

State of play

The principle of judicial independence includes such elements as **independence from any unlawful influence, pressure or interference** and the statutory **obligation of a judge to report interference in the work of a judge to the HCJ and the Prosecutor General**. Failure to comply with this obligation results in disciplinary action⁴⁶⁴ against the judge who committed such violation.

In 2023, the HCJ received 185 reports of interference in the professional activities of judges in the administration of justice, actions that violate guarantees of judicial independence or undermine the authority of justice⁴⁶⁵. The HCJ received 133 reports of interference with the professional activities of judges in the administration of justice and actions that violate guarantees of judicial independence or undermine the authority of justice in January-June 2024⁴⁶⁶.

In total, taking into account the reports received in previous periods, in 2023 the HCJ considered **208** reports of judges, and **125** reports during the first quarter of 2024⁴⁶⁷.

Following consideration of **149** reports of interference with the administration of justice, **144** decisions were made to take response measures:

- › requesting the prosecutor’s office and law enforcement agencies to provide information on the detection and investigation of crimes;
- › submitting to the relevant authorities or officials a request to identify and bring to justice the persons who committed the acts or omitted to act, etc.⁴⁶⁸

However, based on the consideration of **184** reports, the HCJ adopted **79** decisions approving **161** conclusions⁴⁶⁹ of the HCJ members on the absence of grounds for taking measures to ensure the independence of judges and the authority of justice.

462 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Articles 126, 129. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

463 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 48. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

464 Ibid. Art. 106, p.1, cl. 6.

465 In 2023, the HCJ considered 208 reports of interference in the professional activities of judges. High Council of Justice. URL: <https://hcj.gov.ua/news/208-povidomlen-pro-vtruchannya-u-profesiyu-diyalnist-suddiv-rozglyanula-vrp-protvyagom-2023>.

466 Since the beginning of 2024, the HCJ has considered 125 reports of interference in the professional activities of judges. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/z-pochatku-2024-roku-vrp-rozglyanula-125-povidomlen-pro-vtruchannya-u-profesiyu-diyalnist>.

467 In 2023, the HCJ considered 208 reports of interference in the professional activities of judges. High Council of Justice. URL: <https://hcj.gov.ua/news/208-povidomlen-pro-vtruchannya-u-profesiyu-diyalnist-suddiv-rozglyanula-vrp-protvyagom-2023>; Since the beginning of 2024, the HCJ has considered 125 reports of interference in the professional activities of judges. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/z-pochatku-2024-roku-vrp-rozglyanula-125-povidomlen-pro-vtruchannya-u-profesiyu-diyalnist>.

468 Ibid.

469 Ibid.

Throughout this period, the HCJ also adopted **9** decisions⁴⁷⁰ on its own initiative within its powers to take measures to ensure the independence of judges and the authority of justice.

It should be noted that the HCJ decisions do not always explain the reasons why in one case interference with the professional activity of a judge is established, while in another similar case it is not⁴⁷¹.

An example of HCJ consideration of cases concerning measures to ensure judicial independence and the authority of justice is HCJ Decision No. 174/0/15-24⁴⁷². This illustrates a **violation of judicial independence** during a search that took place in the Dniprovskiy District Court of Kyiv on 09 January 2024. Thus, the State Bureau of Investigation (SBI) conducted investigative actions - a search - without a court decision, which was related to the consideration of a specific court case. In particular, SBI officers conducted a personal search of court employees, checked their personal belongings, the contents of mobile phones and other devices. At the same time, personal searches of women were carried out by persons of the opposite sex. The office of a judge of the Dniprovskiy District Court of Kyiv was also searched, and material evidence was seized. The main purpose of such an urgent search was to allow investigators to access a computer belonging to the Dniprovskiy District Court of Kyiv and assigned to an assistant judge.

Consequently, the procedure for this search was accompanied by public comments and publications in the media⁴⁷³ and social media by both the SBI⁴⁷⁴ and the court⁴⁷⁵. Such interference with the independence of a judge also resulted in public statements by the SC⁴⁷⁶, the COJ⁴⁷⁷ and the HCJ about interference with the professional activities of judges in the administration of justice, which violates the guarantees of judicial independence and undermines the authority of justice⁴⁷⁸.

Following consideration of the **appeal of the meeting of judges of the Dniprovskiy District Court of Kyiv and the report of Judge Yulia V. Ivanina of the Dniprovskiy District Court of**

470 Ibid.

471 Register of reports of interference in the work of judges. High Council of Justice. URL: https://hcj.gov.ua/intervention?field_number_value=&title=%D0%9A%D1%96%D0%B1%D0%B5%D0%BD%D0%BA%D0%BE&field_court_name_value=&date_filter_%5Bvalue%5D%5Bdate%5D=&field_number_value_1=&field_complainant_value=&field_narrator_value=.

472 On taking measures to ensure the independence of judges and the authority of justice at the request of the meeting of judges of the Dniprovskiy District Court of Kyiv and the report of Judge Yulia Ivanina of the Dniprovskiy District Court of Kyiv: Decision of the High Council of Justice of 23.01.2024 No. 174/0/15-24. URL: <https://hcj.gov.ua/doc/doc/43454>.

473 For example, Actions of the SBI in the Dniprovskiy District Court of Kyiv: what is the situation and what the Supreme Court said. Yurydychna Gazeta. 2024. URL: <https://jur-gazeta.com/golovna/diyi-dbr-u-dniprovskomu-rayonnomu-sudi-mista-kyeva-yaka-situaciya-ta-shcho-zayavili-u-verhovnomu-sud.html>; "Neither law nor justice is established by unlawful actions" - the CCU reacted to the search in the Dniprovskiy District Court of Kyiv. Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/290620-nepravovymideystviyami-ni-pravo-ni-spravedlivost-ne-ustanavlivaetsya-sovet-sudey-otreagiroval-na-obysk-v-dneprovskom-raysude-kyeva>.

474 The SBI conducted searches in one of the Kyiv district courts as part of the case of misappropriation of property by the owners and management of Bank Finance and Credit. State Bureau of Investigation. 2024. URL: <https://dbr.gov.ua/news/dbr-provelo-obshuki-v-odnomu-z-kiivskih-rajonnih-sudiv-u-mezhah-spravi-privlasnennya-majna-vlasnikami-ta-menedzhmentom-bank-finansi-ta-kredit>.

475 For example, Situation report on the events that took place in the premises of the Dniprovskiy District Court of Kyiv on 09 January 2024. Dniprovskiy District Court of Kyiv. Facebook. 2024. URL: <https://www.facebook.com/share/p/SC2qeSKRc7vq31B/>; Statement of the Supreme Court on investigative actions conducted by the SBI in the Dniprovskiy District Court of Kyiv. Supreme Court. Facebook. 2024. URL: <https://www.facebook.com/share/p/n2W7xxJiyQhssyCk/>.

476 Statement of the Supreme Court on investigative actions conducted by the SBI in the Dniprovskiy District Court of Kyiv. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1539541/>.

477 Statement on "urgent investigative actions" conducted by the SBI in the Dniprovskiy District Court of Kyiv. Council of Judges of Ukraine. 2024. URL: <https://rsu.gov.ua/ua/news/zaava-sodo-nevidkladnih-slidciv-dij-provedenih-dbr-u-dniprovskomu-rajonnomu-sudi-mista-kyeva>.

478 The HCJ will consider the appeal of the meeting of judges of the Dniprovskiy District Court of Kyiv on interference in the activities of the court. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-rozglyane-zvernennya-zboriv-suddiv-dniprovskogo-rayonnogo-sudu-mista-kyeva-pro-vtruchannya>.

Kyiv on 23 January 2024, the HCJ **took appropriate measures to ensure the independence of judges and the authority of justice**⁴⁷⁹.

In some cases, the HCJ has recognised information in the media as interference in the work of judges and a violation of the principle of judicial independence. Such a case occurred in September 2023, when a Telegram channel published a post about the decision of HACC judge Oleh Tkachenko in a particular case⁴⁸⁰. The HACC judge filed a notice of interference with the HCJ. As a result, the HCJ took appropriate measures to ensure the independence of judges and the authority of justice⁴⁸¹ and appealed “to the Office of the Prosecutor General to provide information on the detection and investigation of a crime in criminal proceedings registered on 28 September 2023 in the Unified Register of Pre-trial Investigations under No. ____ on the grounds of a criminal offence under part 1 of Article 376 of the Criminal Code of Ukraine, based on the facts reported by the judge of the High Anti-Corruption Court O. Tkachenko”⁴⁸². This case received wide publicity.

In another decision, the HCJ stated that it had repeatedly received reports from judges about interference in their administration of justice by a certain NGO, which in its publications, at its own discretion, evaluated public information about judges, their court decisions, used offensive language, obscene language about judges, etc. After reviewing the judges’ reports, the HCJ decided that there were grounds to take measures to ensure the authority of justice, in particular by addressing the Ministry of Justice of Ukraine with a proposal to consider conducting an inspection of the activities of such civil society organisation⁴⁸³.

Criticism in the media and social media of court decisions in specific cases without analysing the circumstances of the case and the text of the court decision (or even before it is made public), combined with insults, slander or threats against judges, does not contribute to the transparency and openness of the judiciary. On the contrary, such activity has a negative impact on the independence of judges.

In addition, other mechanisms remain imperfect. In particular, this concerns the conduct of investigative actions, including searches, in courts, as sometimes the practice of their implementation poses significant threats to the independence of judges - especially in cases where there is no relevant ruling of the investigating judge.

Progress and issues

The analysis of the implementation of such a guarantee of judicial independence as a judge’s appeal to the HCJ with a report of interference in their professional activity gives grounds to conclude that there are certain problems accompanying the process of consideration of such reports by the HCJ. In particular:

- › the HCJ fails to take sufficient measures to effectively communicate its position on what is considered interference with the administration of justice and what is not;
- › a significant part of the HCJ’s resources is spent on consideration of similar appeals that do not constitute interference with the administration of justice according to the HCJ practice;

479 On Taking Measures to Ensure the Independence of Judges and the Authority of Justice at the Request of the Meeting of Judges of the Dniprovskiy District Court of Kyiv and the Report of Judge Yulia Ivanina of the Dniprovskiy District Court of Kyiv: Decision of the High Council of Justice of 23.01.2024 No. 174/0/15-24. URL: <https://hcj.gov.ua/doc/doc/43454>.

480 Shabunin. 2023. URL: <https://t.me/VitaliyShabunin/1324>.

481 On taking measures to ensure the independence of judges and the authority of justice upon report of the High Anti-Corruption Court judge O. Tkachenko: Decision of the High Council of Justice of 19.10.2023 No. 991/0/15-23. URL: <https://hcj.gov.ua/doc/doc/41038>.

482 On taking measures to ensure the independence of judges and the authority of justice upon the report of the High Anti-Corruption Court judge O. Tkachenko. 2023. URL: <https://hcj.gov.ua/doc/doc/41038>.

483 On taking measures to ensure the authority of justice. High Council of Justice. 2023. URL: <https://hcj.gov.ua/doc/doc/40190>.

- › the HCJ's practice is characterised by inconsistency in considering certain types of interference reports;
- › the current legislation does not contain sufficient sanctions for failure to take appropriate measures in response to the HCJ's requests;
- › the HCJ does not fully use the potential of the available means of responding to the ignoring of the HCJ's conclusion on interference in the administration of justice by the authorised body. Although the law provides for the possibility of bringing to administrative liability for failure to respond or delayed response to the relevant submission, the HCJ does not take measures to bring the perpetrators to administrative liability;
- › despite the fact that the HCJ considers the interference with the independence of judges and makes relevant decisions, further opening of criminal proceedings cannot be considered effective today. This is due to the fact that these proceedings do not result in bringing the perpetrators to justice. Accordingly, this practice points to the need to rethink the mechanisms for responding to interference with judicial independence and to develop more effective tools for responding to violations of judicial independence.

Recommendations

In order to improve the existing mechanisms for the protection of judicial independence, it would be worthwhile to review certain aspects of the functioning of certain institutions and change the approaches to the implementation of certain measures in practice.

In view of this, it is expedient to address the HCJ's activities:

- › summarise the HCJ's practice of reviewing reports of interference with the administration of justice. Formulate a clear position on "typical" reports of interference with the administration of justice;
- › take active measures to reduce the number of reports that do not contain information on interference with the administration of justice in accordance with the HCJ practice (information letters to courts, information on the official website and social media, media reports, etc.);
- › explain the reasons for the departure from the previously expressed position following the consideration of the report on interference with the administration of justice;
- › make no delays in the consideration of reports of interference with the administration of justice, in particular, to consider reports of interference as quickly as possible;
- › draw up protocols on administrative offences in case of non-response or untimely response to the HCJ's submission;
- › consider expanding the liability for failure of the responsible authorities to take appropriate measures to respond to interference with the administration of justice.

Investigative actions in courts, including searches, should be conducted on proper factual and legal grounds and in strict compliance with the procedure established by procedural law.

In relations with civil society, it is important to find a model of interaction between the judiciary and civil society institutions capable of ensuring partnership between the state and its citizens.

Proper financial and social security of judges as a guarantee of their independence

State of play

The independence of judges is guaranteed, among other things, by their **proper material and social security. The adoption of new laws and amendments to existing ones cannot narrow the content and scope of the guarantees of judicial independence set out in the Constitution of Ukraine and the Law**⁴⁸⁴.

The basic salary of a judge of the relevant court is a certain amount of subsistence minimum for able-bodied persons, which is set as of 1 January of the calendar year⁴⁸⁵. At the same time, the procedure for determining the subsistence minimum for able-bodied persons, which is set for calculating the basic salary of a judge, differs from the subsistence minimum set for other able-bodied persons. Thus, starting from 2021⁴⁸⁶, the subsistence minimum for calculating the basic salary of a judge remains unchanged - UAH 2,102⁴⁸⁷. At the same time, the “ordinary” subsistence minimum for able-bodied persons is increasing every year and as of 1 January 2024 amounts to UAH 3,028⁴⁸⁸.

The use of such a “separate type” of subsistence minimum violates the guarantees of judicial independence and contradicts the provisions of the Constitution of Ukraine and the Law of Ukraine “On the Judiciary and the Status of Judges”⁴⁸⁹. The Supreme Court has repeatedly assessed the existence of such a situation with the determination of different amounts of subsistence minimums for different needs. For example, in cases No. 360/503/21, No. 400/2031/21, No. 120/19262/21-a, the SC noted that the Law of Ukraine “On the Subsistence Minimum”⁴⁹⁰ does not provide for such a type of subsistence minimum as “the subsistence minimum for able-bodied persons, which is used to calculate the basic amount of a judge’s official salary”. Therefore, judges do not belong to the social demographic group for which the subsistence minimum should be set separately⁴⁹¹.

On June 28, 2024, the Government approved the Budget Declaration for 2025–2027⁴⁹², which stipulates that the subsistence minimum for able-bodied persons—used to determine the basic salary of judges—will remain at the 2024 level. This means that the Government does not plan to alter the approaches to calculating judicial remuneration, despite its impact on judicial independence guarantees.

484 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p. 7, Art. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

485 Ibid, Art. 135, p. 3.

486 On the State Budget of Ukraine for 2021: Law of Ukraine of 15.12.2020 No. 1082-IX, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/1082-20#Text>.

487 On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 No. 3460-IX, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

488 Ibid.

489 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p. 3, Art. 135. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

490 On the subsistence minimum: Law of Ukraine of 15.07.1999 No. 966-XIV. URL: <https://zakon.rada.gov.ua/laws/show/966-14#Text>.

491 Resolution of the Administrative Court of Cassation of the Supreme Court of 30 November 2021 in case No. 360/503/21. URL: <https://reyestr.court.gov.ua/Review/101502517>; Resolution of the Administrative Court of Cassation as part of the Supreme Court of 10 November 2021 in case No. 400/2031/21. URL: <https://reyestr.court.gov.ua/Review/101009728>; Resolution of the Administrative Court of Cassation of the Supreme Court of 15 August 2023 in case No. 120/19262/21-a. URL: <https://reyestr.court.gov.ua/Review/112836964>.

492 On Approval of the Budget Declaration for 2025-2027: Resolution of the Cabinet of Ministers of Ukraine of 28.06.2024 No. 751. URL: <https://zakon.rada.gov.ua/laws/show/751-2024-n#Text>.

Additionally, Parliament has registered a draft Resolution on the Budget Declaration for 2025–2027⁴⁹³. This draft proposes addressing the issue of legal regulation in all relevant legislation concerning the use of the subsistence minimum per person per month to determine the base salary of judges, as well as the salaries of employees in other state bodies governed by special laws, including tax and customs authorities, and district prosecutors.

The issue of compensation for the lost judicial remuneration for the period of restrictions established in 2020 by Law of Ukraine No 553-IX⁴⁹⁴ remains unresolved. This situation is due to the fact that on 28 August 2020, the CCU issued a decision⁴⁹⁵ declaring certain provisions of this Law unconstitutional. In particular, the CCU believes that limiting judicial remuneration is an encroachment on the guarantees of judicial independence. Restriction of the respective payments is permissible under martial law or a state of emergency. However, such restrictions shall be imposed proportionately, with clear deadlines and in accordance with the Constitution and laws of Ukraine. The CCU notes that such a restriction may also apply to judges, but after its expiry, the funds lost due to this restriction must be compensated by appropriate payments, since judicial remuneration is an integral element of the status of a judge as defined by the Constitution of Ukraine⁴⁹⁶.

Progress and issues

For several years now, there has been a violation of the constitutional guarantees of judicial independence in terms of material support. Since the problem has been stated in the decisions of the Supreme Court and the CCU, its solution must be ensured by the state. This will be progress in resolving this issue.

Recommendations

The state's practice of determining a separate subsistence minimum for able-bodied persons, which is used to calculate the basic salary of a judge, should be adjusted in accordance with Article 130 of the Constitution of Ukraine and Article 135 of the Law of Ukraine "On the Judiciary and the Status of Judges". For this purpose, appropriate amendments should be made to the Law of Ukraine on the State Budget for the respective year.

As part of the settlement of the issue of implementing the CCU Decision of 28 August 2020 No. 10-r/2020, it is considered appropriate to provide for the costs of paying judges the unpaid judicial remuneration in the State Budget of Ukraine.

However, given the ongoing Russian aggression, it is advisable to resolve this issue with the participation of all branches of government. The consensus may be to compensate for the lost amounts of judicial remuneration after the end of the war (or active hostilities). However, when planning the budget for 2025 (and all subsequent years), the authorities should refuse to limit the amount of judicial remuneration.

493 On the Budget Declaration for 2025-2027: Draft Resolution of the Verkhovna Rada of Ukraine, registration No. 11437 of 24.07.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44629>.

494 On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020": Law of Ukraine of 13.04.2020 No. 553-IX. URL: <https://zakon.rada.gov.ua/laws/show/553-20#Text>.

495 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 in Ukraine and stages of easing anti-epidemic measures", provisions of parts one and three of Article 29 of the Law of Ukraine "On the State Budget of Ukraine for 2020", paragraph nine of clause 2 of section II "Final Provisions" of the Law of Ukraine "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020" of 28 August 2020 No. 10-r/2020. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-20#Text>.

496 Ibid. Clause 4.3. of the reasoning section of the decision.

Financing of the judiciary

The Constitution of Ukraine stipulates that the state shall provide funding and appropriate conditions for the functioning of courts and the activities of judges⁴⁹⁷. In turn, the mechanism of ensuring the functioning of the judiciary consists of the following elements:

- › separate allocation in the State Budget of Ukraine of expenditures for the maintenance of courts not lower than the level that ensures the full and independent administration of justice in accordance with the law;
- › legislative guarantee of full and timely funding of the courts;
- › guaranteeing a sufficient level of social security for judges and employees of all judicial bodies⁴⁹⁸.

The Law of Ukraine “On the Judiciary and the Status of Judges” additionally emphasises that the expenditures of the general fund of the State Budget of Ukraine for the maintenance of courts are protected items of expenditure of the State Budget of Ukraine⁴⁹⁹.

However, despite the fact that the institution of judicial funding is properly enshrined in the legislation, there are still certain practical problems that accompany the process of ensuring funding of the judiciary in Ukraine.

State of play

Since the beginning of the war, the level of funding for any expenditure other than war-related has fallen to critically low levels⁵⁰⁰. The financial support of the judiciary is no exception.

As of the end of 2023, the budget of the judiciary totalled UAH 18.549 billion. Expenditures in the amount of UAH 16.792 billion were approved for local general and appellate courts. Out of the budget allocations provided in 2023 for the SJA as the main spending unit, 88% of the total financial resource was allocated for salaries. **However, only 10% of the available financial resources⁵⁰¹ were allocated to ensure the conduct of court proceedings, payment for utilities and energy, as well as to ensure the current operation of courts.**

As for the SJA’s expenditures in 2024, they were increased by UAH 3.2 billion compared to 2023⁵⁰². This will include an increase in labour costs by UAH 2.2 billion. In addition, UAH 532 million will be allocated for capital expenditures. Of this amount, 232 million will be used for the development of the UJITS, and 300 million will be used for major repairs, reconstruction and commissioning of “court long-term projects”⁵⁰³.

497 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 130. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

498 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 146. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

499 Ibid, p.2, Art. 148.

500 Last year, UAH 1.8 trillion was spent on defence, or more than 60% of the total budget - Ministry of Finance. Forbes.ua. 2024. URL: <https://forbes.ua/news/za-minuliy-rik-na-oboronu-vitracheno-18-trln-grn-abo-ponad-60-vsogo-byudzhetu-minfin-22012024-18673>.

501 Ensuring the work of justice: results of the SJA’s work in 2023. State Judicial Administration of Ukraine. 2024. URL: <https://dsa.court.gov.ua/dsa/pres-centr/news/1561319/>.

502 Expenditures on the judiciary in 2024 will increase by more than UAH 3 billion compared to 2023. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/280841-raskhody-na-sudebnuyu-vlast-v-2024-godu-uvlichat-bolee-chem-na-3-mlrd-grn-po-sravnenniyu-s-2023-godom>.

503 Meeting of the working group on ensuring proper funding of the judiciary 06.11.2023. Judiciary. 2023. URL: <https://www.youtube.com/watch?v=Un6eyGKTYDk>.

For 2023, the budget allocations for the Supreme Court amounted to UAH 2.050 billion. Of this amount, UAH 1.657 billion (81% of the total) was allocated for salaries, current expenditures amounted to UAH 147 million (7%), and capital expenditures - UAH 246 million (12%). However, this amount of funds did not cover all planned expenditures. In particular, **due to the shortfall in court fees (which amounted to UAH 284 million) and Russia's armed aggression against Ukraine last year, capital expenditures to complete projects started in previous years remained unfulfilled.** In fact, as of the end of 2023, court fee revenues amounted to only UAH 456 million (only 61% of the plan)⁵⁰⁴.

Meanwhile, the estimated allocations for labour remuneration, utilities and current expenses for proper organisational support of the procedural activities in the reporting year were fully funded both from the general and special budget funds⁵⁰⁵.

The financial situation of the Supreme Court improved in 2024. In particular, the SC expenditures were increased by UAH 380 million compared to 2023⁵⁰⁶. The size of the special fund, which is funded by court fees, has been adjusted. In addition, in 2024, salaries will be paid from the general budget fund, and thus will not depend on the court fee revenues.

The amount of expenditures for the HCJ's work in 2023 was UAH 232.53 million. At the same time, similarly to the above institutions, the **HCJ's expenditures for 2024 were increased.** Thus, their volume increased by 51% compared to 2023⁵⁰⁷. This, in turn, should ensure, among other things, the functioning of the HCJ DI, which is planned to be established in 2024⁵⁰⁸.

The HACC expenditures in 2024 were approved in the amount of UAH 433 million, which is 47.5% more than in 2023 (UAH 293.5 million)⁵⁰⁹. The increase in expenditures was due to the need to select 25 HACC judges⁵¹⁰.

In 2024, it is planned to spend UAH 4.4 million to finance the expenses of the HCIP. Importantly, this amount was set taking into account that the competition to this court has not yet been completed. **The size of such funding corresponds to the amount of expenditures that was set for the relevant court in 2023**⁵¹¹.

In fact, as of July 2024, all the main spending units of the judiciary have no problems with current expenditures. In particular, this is confirmed by the fact that the revenues from court fees in local and appellate courts are currently slightly higher than planned⁵¹².

504 The key results of the activities of the Supreme Court in 2023. Portal of Modern Law. 2024. URL: <https://so.supreme.court.gov.ua/news/295/osnovni-pidsumky-diialnosti-aparatu-verkhovnoho-sudu-u-2023-rotsi>.

505 Ibid.

506 Expenditures on the judiciary in 2024 will increase by more than UAH 3 billion compared to 2023. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/280841-raskhody-na-sudebnuyu-vlast-v-2024-godu-velichat-bolee-chem-na-3-mlrd-grn-po-sravnenniyu-s-2023-godom>.

507 Expenditures of the High Council of Justice in 2024 will be increased by 51% compared to 2023. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/285235-raskhody-vysshego-soveta-pravosudiya-v-2024-godu-budut-velicheny-na-51-po-sravnenniyu-s-2023-godom>.

508 The Disciplinary Inspectorate can be established within five to six months. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/sluzhba-dyscyplinaryh-inspektoriv-mozhe-but-y-sformovana-prot-yagom-pyaty-shesty-misyaciv>.

509 Spending on the judiciary in 2024 will increase by more than UAH 3 billion compared to 2023. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/publication/280841-raskhody-na-sudebnuyu-vlast-v-2024-godu-velichat-bolee-chem-na-3-mlrd-grn-po-sravnenniyu-s-2023-godom>.

510 The competition for 25 vacant positions of judges of the High Anti-Corruption Court launches. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/startuye-konkurs-na-zaynyattya-25-vakantnyh-posad-suddiv-vyshchogo-antykorporucijnogo-sudu>.

511 Spending on the judiciary in 2024 will increase by more than UAH 3 billion compared to 2023. Judicial and legal newspaper. 2023. URL: <https://sud.ua/uk/news/publication/280841-raskhody-na-sudebnuyu-vlast-v-2024-godu-velichat-bolee-chem-na-3-mlrd-grn-po-sravnenniyu-s-2023-godom>.

512 Meeting of the working group on ensuring proper funding of the judiciary 05.02.2024 (video). URL: https://www.youtube.com/watch?v=WH_9v8nF1cg.

However, given that in 2023 the level of meeting the needs of the courts of first instance and appellate courts was approximately 55%⁵¹³, %, there are certain negative trends in the staffing of the courts. Since this factor had the greatest impact on the level of salaries of court staff, it led to staff turnover, difficulties in filling vacant positions, understaffing of court staff, and excessive workload for judges and court staff⁵¹⁴.

However, certain changes in the remuneration of court employees were introduced at the end of 2023, when a comprehensive civil service reform was launched. Thus, as a result of this reform, the Law of Ukraine “On the State Budget of Ukraine for 2024” established that in 2024, remuneration of civil servants (including court employees) is based on the **classification of positions**; the salaries in 2024 are based on the division of state bodies into different types⁵¹⁵. As early as October 2023, the Cabinet of Ministers of Ukraine approved the Catalogue⁵¹⁶ defining 27 types of civil service positions. Organisational support for the court functions or constitutional proceedings belongs to the 17th type.

On the one hand, the introduction of such changes to the legal regulation is a step towards solving the problem with the procedure for remuneration of court employees. However, on the other hand, such regulation remains fragmented. For example, at the end of December 2023, the Government adopted a resolution⁵¹⁷ approving the scheme of salaries for civil service positions, taking into account families and levels of positions, jurisdiction and types of government agencies in 2024. **However, this list does not include civil service positions that are available only in courts, judicial bodies and institutions**⁵¹⁸. Accordingly, these provisions do not apply to them.

However, the Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that the salary scale with coefficients for civil servants of courts, bodies and institutions of the justice system is approved by the Cabinet of Ministers of Ukraine upon submission of the SJA⁵¹⁹.

In order to address this situation, in January 2024, the SJA developed and submitted to the Cabinet of Ministers of Ukraine a draft resolution “Issues of Remuneration of Civil Servants of Courts, Bodies and Institutions of the Justice System Based on the Classification of Positions in 2024”⁵²⁰. This act is intended to regulate the remuneration conditions of these entities, but the **Government has not yet approved the draft resolution developed by the SJA.**

513 Budget of the Judiciary 2023: which needs are fully met? The Judiciary of Ukraine. 2023. URL: <https://court.gov.ua/press/general/1352560/>.

514 The HCJ addressed the CMU with proposals on the priorities of financial support of the judiciary for 2025-2027. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-iz-propozyciyamy-shchodo-priorytetnyh-zavdan-finansovogo-zabezpechennya>.

515 On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 No. 3460-IX, clauses 10-11 of the Final Provisions. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

516 Catalogue of Typical Civil Service Positions and Criteria for Inclusion in Such Positions, approved by the Resolution of the Cabinet of Ministers of Ukraine of 23 October 2023, No. 1109. URL: <https://zakon.rada.gov.ua/laws/show/1109-2023-%D0%BF#n16>.

517 The remuneration of civil servants based on the classification of positions in 2024: Resolution of the Cabinet of Ministers of Ukraine; List of 29.12.2023 No. 1409. URL: <https://zakon.rada.gov.ua/laws/show/1409-2023-%D0%BF#Text>.

518 This refers to employees of the secretariat of the High Council of Justice, employees of the staff of the Supreme Court, higher specialised courts, employees of the State Judicial Administration of Ukraine, territorial departments of the State Judicial Administration of Ukraine, employees of the secretariat of the High Qualification Commission of Judges of Ukraine, employees of the staff of local and appellate courts. URL: <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-iz-propozyciyamy-shchodo-priorytetnyh-zavdan-finansovogo-zabezpechennya>.

519 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p.6, Art.150. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

520 Draft Resolution of the Cabinet of Ministers of Ukraine “Issues of Remuneration of Civil Servants of Courts, Bodies and Institutions of the Justice System Based on the Classification of Positions in 2024”. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/DSA_KMU_24.pdf.

Another unresolved issue concerns the fact that the remuneration system introduced by the Government Resolution No. 1409⁵²¹, of 29 December 2023 also **does not apply to those employees of state bodies in the justice system who are not civil servants. In particular, this applies to judicial assistants.**

However, the regulation of remuneration is not the only area that needs to be improved. The issue of providing **courts and judicial authorities with adequate premises also requires special attention.** Thus, according to the SJA, as of 24 July 2024, since the full-scale invasion, 142 premises of 132 judicial institutions have suffered varying degrees of damage. In some cases, the premises were completely destroyed and property was stolen. In particular, the following were damaged: 134 premises of 120 courts; 6 premises of territorial departments of the SJA and the Court Security Service (in Donetsk, Zaporizhzhia, Mykolaiv, Odesa, Kharkiv, Chernihiv and Kherson regions); 1 premises of the National School of Judges; 1 premises of the HQCJ⁵²².

The largest number of damaged/destroyed court premises are located in Kharkiv (23), Donetsk (24) and Mykolaiv (21) regions. Out of this number of damaged premises, **15 court buildings were completely destroyed.** A total of 127 court premises were partially damaged: windows were smashed, electricity, heat and water supply were cut off, ceilings, courtrooms, internal doors, and internal partitions between offices, etc. were damaged⁵²³.

According to preliminary estimates of the SJA, more than **UAH 1.9 billion**⁵²⁴ **is needed to restore the work of courts** in these premises with comprehensive repairs, purchase of necessary equipment and furniture. **However, the Law of Ukraine “On the State Budget of Ukraine for 2024” provides for development expenditures of only UAH 532.1 million for the SJA as the main spending unit**⁵²⁵.

Also worthy of attention is the issue of **adequate funding of current expenses for court proceedings** (postage, paper, internet services, maintenance of office equipment, information systems, jury remuneration, etc.), as well as **expenses for utilities and energy**⁵²⁶.

Finally, the **digitalisation of justice** remains an important area requiring significant funding. The development of e-justice in Ukraine can be an effective way to improve access to justice and reduce the cost of logistical support for the judiciary⁵²⁷.

Progress and issues

In the reporting period, the situation with the financial support of the judiciary improved somewhat, but the overall level of funding for the judiciary remains low. In particular, there are almost no development expenditures.

521 Issues of remuneration of civil servants based on the classification of positions in 2024: Resolution of the Cabinet of Ministers of Ukraine of 29.12.2023 No. 1409. URL: <https://zakon.rada.gov.ua/laws/show/1409-2023-%D0%BF#Text>.

522 SJA of Ukraine published information on destroyed and damaged courts as of 24 July 2024. State Judicial Administration of Ukraine. 2024. URL: https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2024/zruinivani_sudy/analit_24_07_24.pdf.

523 Discussions on new challenges for the judiciary. High Council of Justice. 2024. URL: <https://www.youtube.com/watch?v=9DjyZp1Rf9c>.

524 SJA of Ukraine published information on destroyed and damaged courts as of 10 July 2024. State Judicial Administration of Ukraine. 2024. URL: https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2024/zruinivani_sudy/analit_24_07_24.pdf.

525 The HCJ addressed the CMU with proposals on the priorities for financial support of the judiciary for 2025-2027. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1557841/>.

526 The HCJ appealed to the CMU and the Ministry of Finance for proper funding of the judiciary. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-ta-minfinu-shchodo-nalezhnogo-finansuvannya-sudovoyi-vlady>; HCJ appealed to the CMU with proposals on the priorities of financial support of the judiciary for 2025-2027. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1557841/>.

527 Ibid.

Accordingly, there are currently a number of problems that require prompt response and resolution. For example, the **problem of calculating the basic salary of a judge and the problem of compensation for the judge's remuneration not received during the period of restrictions established by the Law of Ukraine No. 553-IX** "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020"⁵²⁸ dated 13 April 2020 (taking into account that some of its provisions were declared unconstitutional by the CCU Decision No. 10-r/2020 dated 28 August 2020⁵²⁹ remain unresolved⁵³⁰).

In addition, the **issue of proper remuneration** of employees of court staff, bodies and institutions of the justice system needs to be addressed. According to the HCJ, this issue is particularly critical for employees of the staff of local and appellate courts⁵³¹.

Another issue is that the **remuneration of civil servants of courts, bodies and institutions of the justice system** based on the classification of positions in 2024 **remains unregulated today. And the absence of reform of the remuneration system for employees of patronage services makes it impossible to implement one of the directions of the Public Administration Reform Strategy of Ukraine for 2022–2025**⁵³² – increasing transparency, predictability and fairness of wages, as well as reducing and eliminating the wage gap.

In addition, the unequal position of civil servants and court patronage service employees affects motivation and staff attrition. These factors, in turn, indicate the need to develop unified approaches to remuneration of employees of patronage services in courts and other judicial authorities.

In addition, the **unequal position of civil servants and court support staff affects motivation and staff outflow**. These factors, in turn, indicate the need to develop unified approaches to remuneration of employees of patronage services in courts and other judicial authorities.

A further challenge is the **impossibility of paying extra salaries for performing duties in a vacant position due to a legislative conflict**⁵³³.

Another challenge is the **restoration of damaged and destroyed court and justice system buildings, which requires significant investment**. Accordingly, there is a need to ensure capital construction, repair and reconstruction of court buildings, in particular those that are in disrepair, damaged or completely destroyed as a result of hostilities. There is also a need to provide judicial institutions with the machinery and equipment necessary for their full functioning⁵³⁴.

528 On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2020": Law of Ukraine of 13.04.2020 No. 553-IX. URL: <https://zakon.rada.gov.ua/laws/show/553-20#Text>.

529 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the Resolution of the Cabinet of Ministers of Ukraine "On the establishment of quarantine to prevent the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 in Ukraine and stages of easing anti-epidemic measures", provisions of parts one, three of Article 29 of the Law of Ukraine "On the State Budget of Ukraine for 2020", paragraph nine of clause 2 of Section II "Final Provisions". URL: <https://zakon.rada.gov.ua/laws/show/v010p710-20#n2>.

530 For more details, see the section "Ensuring the Independence of the Judiciary".

531 The HCJ addressed the CMU with proposals on the priorities for financial support of the judiciary for 2025-2027. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1557841/>.

532 Strategy for Reforming Public Administration of Ukraine for 2022-2025, approved by the Resolution of the Cabinet of Ministers of Ukraine of 21 July 2021 No. 831-r. URL: <https://zakon.rada.gov.ua/laws/show/831-2021-%D1%80#n9>.

533 Summary of the meeting of the working group on ensuring adequate funding of the judiciary in Ukraine, 19.02.2024. Serhii Demchenko. 2024. URL: https://t.me/Demchenko_Sergiy/368.

534 The HCJ addressed the CMU with proposals on the priorities of financial support for the judiciary for 2025-2027. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1557841/>.

Other issues that remain problematic are the **lack of premises** for the HCIP; the need to provide premises for the HACC in connection with its expansion; the need to provide appropriate premises for the HCJ DI for its normal functioning⁵³⁵.

Another major negative factor that prevents the expansion and improvement of digitalisation of judicial proceedings is the **lack of necessary budgetary allocations**.

Yet another aspect of the lack of adequate funding is that insufficient current expenditures in the courts of first instance and appellate courts may result in the **suspension or restriction of mail delivery, disconnection of courts from the Internet, arrears in utility payments, etc.** This, in turn, may result in a **violation of citizens' right to access to justice**.

Recommendations

Remuneration of court employees in accordance with the new classification of civil service positions needs to be settled as soon as possible in the short term. The issue of remuneration of employees of the patronage service should also be resolved promptly. The funds released due to the dismissal of judges should be redistributed to the courts with the highest workload to pay for additional assistants, who can partially even out the workload that is increasing due to the dismissal of judges.

In order to resolve the issue of additional payments for performing duties in a vacant position, it is advisable to amend the legislation to eliminate the existing legislative conflict in this regard.

It is also advisable to take into account the proposals to determine the base salary of a judge and compensation for the lost judicial remuneration for the period of restrictions established by the Law of Ukraine No. 553-IX⁵³⁶ of 13 April 2020.

In addition, it is important to guarantee the stability of the state budget expenditures planned for 2024, which ensure the necessary level of funding for the judiciary.

In the medium term, it is advisable to ensure funding for such areas as the digitalisation of justice and the formation of a new map of courts (through their consolidation).

It also seems necessary to introduce remote work for some positions in the courts and judicial authorities, which will result in a reduction of judicial spending.

In terms of providing premises for the HACC, HCJ and (in the future) the HCIP, a significant optimisation of the regional offices of the National School of Judges and territorial offices of the SJA should be considered.

Digitalisation of justice

The 2017 reform of the procedural legislation⁵³⁷ laid the groundwork for the functioning of a new format of electronic court proceedings. The introduction of e-courts requires a set of three components: legislative regulation, hardware and software, and adequate funding.

535 Ibid.

536 For more details, see the section "Ensuring the Independence of the Judiciary".

537 On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts: Law of Ukraine of 03.10.2017 No. 2147-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2147-VIII#top>.

State of play

Legal framework for the digitalisation of justice

The legislation provides for the functioning of the UJITS⁵³⁸, which should include the existence of a single system that will ensure automated case distribution; electronic document flow between the court and litigants; recording of court proceedings and participation of litigants in court hearings via videoconference, broadcasting on the Internet; centralised storage of procedural and other documents or information in a single database; storage of cases and other documents in an electronic archive; automation of processes that meet financial, property, organisational, personnel, information and telecommunication and other needs.

However, given the limited funding of judicial expenditures, the simultaneous technical implementation of the relevant functionality was unattainable. Therefore, the approach of sequential launch of individual modules of the UJITS was implemented, i.e., the actual phased implementation of the digitalisation of court proceedings.

The **Law of Ukraine No. 1416-IX**⁵³⁹ amended the procedural codes, except for the criminal code⁵⁴⁰, by providing for the possibility of commissioning certain modules of the UJITS and, in fact, launching the normal functioning and development of this system. In particular, it was regulated that procedural documents in electronic form shall be submitted by the parties to the case to the court using the UJITS.

On 18 October 2023, **Law of Ukraine No. 3200-IX**⁵⁴¹, came into force, which launched a new stage of the UJITS implementation - the gradual registration of electronic offices in the system. From the date of entry into force of this Law, advocates, notaries, public and private enforcement officers, insolvency receivers, forensic experts, public authorities and local self-government bodies, and other legal entities became obliged to register with the UJITS. In other words, mandatory registration does not apply to individuals and individual entrepreneurs.

The submission of documents not in electronic form may result in negative procedural consequences for these entities, in particular, the relevant document will not be accepted by the court.

Starting from **21 February 2024**, the respective obligation was extended to private legal entities as participants in civil and administrative proceedings⁵⁴².

The implementation of the relevant legislative changes generally helps to speed up the process of considering cases and avoid unnecessary costs for printing and postage. According to the Supreme Court, the digitalisation of court proceedings has saved about UAH 1 million⁵⁴³.

538 In the future, the more modern name of the Unified Judicial Information and Communication System (UJICS) was used, but in this document the abbreviation "UJITS" will be used to refer to the relevant system.

539 On Amendments to Certain Legislative Acts of Ukraine to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System: Law of Ukraine of 27.04.2021 No. 1416-IX. URL: <https://zakon.rada.gov.ua/laws/show/1416-20#Text>.

540 This law could not amend the Criminal Procedure Code of Ukraine, as according to the provisions of this Code, such amendments must be made by a separate draft law.

541 On Amendments to Certain Legislative Acts of Ukraine Regarding Mandatory Registration and Use of Electronic Offices in the UJITS or its separate subsystem (module) that provides for the exchange of documents: Law of Ukraine of 29 June 2023 No. 3200-IX. URL: <https://zakon.rada.gov.ua/laws/show/3200-20#Text>.

542 Starting from 21 February, the electronic cabinet is mandatory for enterprises - court warning. Liga Zakon. 2024. URL: https://buh.ligazakon.net/news/225710_z-21-lyutogo-elektronniy-kabinet-obovyazkoviy-dlya-pdprimstv--poperedzhennya-sudu.

543 People should be able to receive judicial services remotely, rather than going to court - Oleksandr Mamalui. Supreme Court. 2024. URL: <https://supreme.court.gov.ua/supreme/pres-centr/news/1566896/>.

In February 2024, the Parliament adopted the **Law of Ukraine No. 3604-IX**⁵⁴⁴, amending the Criminal Procedure Code of Ukraine and now provides for the gradual introduction of the UJITS in criminal proceedings, in particular, the possibility for parties to a case to submit procedural documents in electronic form to the court using the UJITS; participation of parties to criminal proceedings in a court hearing via video conference outside the courtroom; summoning and selecting jurors using the UJITS modules, etc.

Certain aspects of the introduction of the UJITS are also outlined in the **State Anti-Corruption Programme for 2023–2025**⁵⁴⁵, which, among other things, presumes the expected strategic result of ensuring the implementation of electronic justice, including by introducing the possibility of online consideration of certain categories of cases regardless of the location of the parties and the court, which, in particular, contributes to the even distribution of cases between courts and judges.

Meanwhile, the Parliament is currently considering draft law No. 8358⁵⁴⁶, which aims to introduce effective mechanisms for conducting court proceedings in wartime or emergency situations, in particular by enabling remote work for court clerks; expanding the scope of written proceedings in court cases in courts of all jurisdictions through remote access of judges to the court's electronic document management system, etc.

Technical and functional audit of the e-court

The Ministry of Digital Transformation, together with the HCJ, the Verkhovna Rada Committee on Legal Policy and the SJA, with the support of the United States Agency for International Development (USAID), the EU Pravo-Justice project and the consulting company CIVITTA, are working on the technical component of full-fledged digitalisation of justice⁵⁴⁷.

From May to August 2023, CIVITTA conducted a technical audit of the UJITS⁵⁴⁸. The audit examined the state of development of each of the modules that make up the UJITS: e-cabinet, e-court, D3, DSS, video conferencing, as well as the Judiciary of Ukraine web portal, the Unified State Register of Court Decisions in terms of information security and technical support⁵⁴⁹.

CAs of now, the UJITS is operational, but unstable. The technologies behind it are morally and technically outdated. One of the reasons why the UJITS is currently in this state is the lack of institutional maturity of the SJA and the state enterprise responsible for its operation as managers of this system⁵⁵⁰.

The technical audit experts made **recommendations to develop a new eJustice system**, including the fact that updating the current UJITS would cost approximately the same as developing

544 On Amendments to the Criminal Procedure Code of Ukraine to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System: Law of Ukraine of 23.02.2024 No. 3604-IX. URL: <https://zakon.rada.gov.ua/laws/show/3604-20#Text>.

545 On approval of the State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

546 On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine and other legislative acts on the implementation of legal proceedings during martial law or a state of emergency and the settlement of disputes with the participation of a judge: Draft Law of Ukraine, registration No. 8358 of 13.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41130>.

547 Digitalisation of the judiciary: we are working on an updated concept of e-Court. Government portal. 2024. URL: <https://www.kmu.gov.ua/news/tsyfrovizatsiia-sudovoi-sfery-pratsiuemo-nad-onovlenoiu-kontseptsiiu-e-sudu>.

548 The technical audit of the UJITS subsystems has been completed. Pravo-Justice. 2023. URL: <https://www.pravojustice.eu/ua/post/zavershivsyia-tehnichnij-audit-pidsistem-yesits>.

549 Information obtained from expert interviews conducted throughout the preparation of this Report.

550 Ibid.

a new one⁵⁵¹. Instead, when developing a new system, new approaches to the functionality of the UJITS may be used. For example, the new system should be developed on a modular basis (with the gradual replacement of existing modules)⁵⁵².

One of the experts' recommendations was to increase the institutional maturity of the SJA and state-owned enterprises that maintain electronic judicial systems by building IT service management within these institutions⁵⁵³.

The effective period of development of the new UJITS will be about 3 years. At the same time, a number of measures⁵⁵⁴ need to be taken to stabilise the current system.

A functional audit of the entire electronic justice system is currently underway, and it is planned to develop a general concept of the new UJITS and terms of reference for its development⁵⁵⁵. At the same time, all key stakeholders have an understanding of the need to fund the relevant processes⁵⁵⁶.

The EU Pravo-Justice project has already assisted the SJA in finalising the technical requirements for judicial dossiers. In cooperation with international partners, a financial accounting system is being implemented. Work is also underway on video conferencing systems. In addition, there is a request for a centralised subsystem for auto-distribution of cases. Improving the document management subsystem remains a priority. This development is tentatively scheduled to start in October 2024. At the same time, artificial intelligence, improvement of the programming system, security issues (authentication, registration), etc. will be required to ensure the maintenance of the UJITS modules⁵⁵⁷.

Progress and issues

The joint work of all key stakeholders interested in the effective functioning of the UJITS is a definite progress that is yielding results. Another positive development in early 2024 was the appointment of the Deputy Head of the SJA for Digitalisation, who is responsible for the operation and updating of the UJITS.

The biggest challenge in the current period is to ensure the stable operation of the existing eJustice system.

The low staffing capacity of the SJA and state-owned enterprises that maintain electronic judicial systems is another problem that needs to be addressed.

Recommendations

The key at this stage is the implementation of the results of the technical audit of the UJITS, completion of the functional audit, and development of the concept and terms of reference for the modular and phased deployment of the new eJustice system in 2025– 2027.

551 Ibid.

552 Ibid.

553 Ibid.

554 Ibid.

555 Representatives of the SJA of Ukraine took part in the meeting of the Steering Committee of the EU Project "Pravo-Justice III": results of cooperation. State Judicial Administration of Ukraine. 2024. URL: <https://dsa.court.gov.ua/dsa/pres-centr/news/1637375/>.

556 Information obtained from expert interviews conducted throughout the preparation of this Report.

557 Representatives of the SJA of Ukraine took part in the meeting of the Steering Committee of the EU Project "Pravo-Justice III": results of cooperation. State Judicial Administration of Ukraine. 2024. URL: <https://dsa.court.gov.ua/dsa/pres-centr/news/1637375/>.

Further cooperation of all key stakeholders during the three-year development and implementation of the new UJITS is important. Additionally, it is necessary to allocate funds for the development and implementation of eJustice in the state budget for 2025–2027, as well as to attract international technical and financial assistance, if necessary.

It is urgent to strengthen the current eJustice system. To do this, it is necessary to follow the recommendations provided by the experts who conducted the technical audit of the UJITS.

However, the problem of low staffing capacity of the SJA and state-owned enterprises that maintain electronic judicial systems should be comprehensively addressed by hiring relevant specialists and providing comprehensive training to existing staff.

It is also advisable to return to the parliamentary level the draft law No. 8358, which, among other things, is intended to solve problems with the conduct of justice in times of war, especially in areas where active hostilities are taking place and close to them.

Fighting corruption in the judiciary

Corruption is consistently ranked as one of the three main problems of the judiciary. Ukrainians consider corruption to be the biggest problem since the war. According to a survey conducted by the Kyiv International Institute of Sociology for the European Union Advisory Mission Ukraine, 68% of Ukrainians believe that to get access to justice, you have to pay a bribe⁵⁵⁸.

State of play

According to the Anti-Corruption Action Centre, in 2023, slightly more than 10% of the HACC's first-instance verdicts concerned cases against judges⁵⁵⁹. At the same time, before the HACC was established, there were zero such verdicts in NABU cases, and in the four years of the newly created court's operation, their number exceeded two dozen, of which 8 verdicts were delivered in 2023⁵⁶⁰.

However, despite the verdicts and clear examples of judges being held criminally liable for receiving an unlawful demand, in 2023 the NABU continued to detain judges for bribery and other related crimes. At the same time, last year corruption affected the highest positions in the judiciary⁵⁶¹.

On 29 November 2023, four judges of the Kyiv Court of Appeal were exposed for receiving an undue benefit of USD 35,000 for ruling to cancel the seizure of property - two aircrafts related to the Motor Sich Company, headed by former MP Viacheslav Bohuslaev, who is currently suspected of high treason⁵⁶².

During 2023 and the second quarter of 2024, a number of first instance judges, as well as a judge of the Kropyvnytskyi Court of Appeal, were detained by the NABU and the SAPO for receiving undue advantage⁵⁶³.

558 Ukrainians consider corruption to be the biggest problem after the war - poll. Suspihne News. 2023. URL: <https://suspihne.media/607517-ukrainci-vvazaut-korupciu-najbilsou-problemou-pisla-vijni-opituvanna/>.

559 Judges behind bars: What sentences were passed against representatives of Themis in 2023? Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/columns/2024/01/17/7437661/>.

560 Putting a bribe-taking judge in jail: mission possible. Ukrainska Pravda. 2023. URL: <https://www.pravda.com.ua/columns/2023/06/8/7405802/>.

561 For example, the case of the Chief Justice of the Supreme Court V. Kniazev (described in Section "Supreme Court") or the case of the Head of the State Judicial Administration of Ukraine O. Salnikov (described in Section "State Judicial Administration of Ukraine").

562 For a detailed analysis, see Annex 4 to this Report.

563 Ibid.

The case of the so-called Vovk tapes, which has been under consideration by the HACCC since June 2022, deserves special attention. The accused are 7 judges of the Kyiv District Administrative Court, as well as former HQCJ members and a lawyer. According to the investigation, these individuals acted as part of a criminal organisation headed by the head of the court, which aimed to seize state power by establishing control over the HQCJ and the HCJ and creating artificial obstacles to their work. In fact, this organisation made customised decisions in its own interests, as well as in the interests of political elites and business circles⁵⁶⁴. Currently, the preparatory hearing in this case has been completed; the case is being considered on the merits⁵⁶⁵.

A separate issue that deserves attention is the determination of bail for judges suspected of receiving undue benefit or committing other offences from a “corrupt group”. The analysis of the amounts in the cases described above demonstrates a different approach to determining bail amounts⁵⁶⁶.

Similarly, a different approach is observed when reducing bail amounts (best illustrated by the case of Kniazev). Members of the public and the media have recorded numerous cases of “dramatic” reductions in bail amounts⁵⁶⁷.

The issue of closure of criminal proceedings due to the expiry of the time limit for bringing to justice also requires attention. For example, in the DACK case, one of the suspects avoided prosecution exactly on this basis⁵⁶⁸.

Currently, there is a different practice of removing judges from the administration of justice. In some cases, the SAPO applies to the HCJ simultaneously with motions to remove a judge from the administration of justice and to detain them in custody (judges of the Kyiv Court of Appeal), in other cases only to detain them in custody (judge Kniazev). At the same time, judges continue to receive their judicial remuneration even while in pre-trial detention.

Progress of issues

The NABU and the SAPO demonstrate clear progress in detecting and investigating corruption crimes, while some judges become involved in them. In 2023, the problem of judicial corruption became much more acute, and the detention of the Chief Justice of the Supreme Court for receiving an undue benefit not only undermined the trust in this Court that had been built over the previous 5 years, but also caused an international scandal that negatively affected Ukraine’s image. A significant number of cases of corruption in the judiciary do not allow it to develop successfully and undermine the already low level of trust in the courts.

Other problems include the lack of uniformity of practice in setting bail and reducing it, as well as avoidance of accountability for crimes due to the expiry of the time limit for bringing to justice.

The issue of removing judges from the administration of justice, as well as suspension of judicial remuneration after the HCJ has adopted a decision to remove such judges from the administration of justice or a decision to grant consent to their detention, requires streamlining and unity of approach.

564 Ibid.

565 Preparatory proceedings in the Vovk Tapes case completed almost two years later - AntAC. Dzerkalo Tyzhnia. 2024. URL: <https://zn.ua/ukr/anticorruption/u-spravi-plivok-vovka-majzhe-cherz-dva-roki-zavershilosja-pidhotovche-provazhennja-tspk.html>.

566 For a detailed analysis, see Annex 4 to this Report.

567 How and why bail in grand corruption cases is reduced. LB.ua. 2024. URL: https://lb.ua/pravo/2024/03/16/603539_yak_i_chomu_zmenshuyut_zastavi_spravah.html.

568 “DACK tapes”: The High Anti-Corruption Court closed the case against the former head of the State Judicial Administration Kholodniuk. Babel. 2023. URL: <https://babel.ua/news/94724-plivki-oask-vishchiiy-antikorsud-zakriv-spravu-shchodo-eksgolovi-derzhavnoji-sudovoji-administraciji-holodnyuka>.

Recommendations

1. Streamline the practice of setting bail amounts at the HACC level and formulate approaches to logical and consistent reduction of such amounts, which will promote uniformity of practice, legal certainty and trust in court decisions.
2. Regulate the practice of removing judges from the administration of justice, which will contribute to legal certainty.
3. Consider the issue of suspension of judicial remuneration after the HCJ has made a decision to remove a judge from justice. If a judge is acquitted by the court or his or her guilt is not proven, he or she will be entitled to receive compensation for the period of suspension of such payments.

Enforcement of court decisions

An integral part of the right to a fair trial, which is guaranteed at the international level and is a constitutional guarantee at the national level, is the mandatory enforcement of court decisions.

The implementation of the judicial reform in 2016, which began with the adoption of new legislation⁵⁶⁹, led to the emergence of new approaches to the application of the principle of binding court decisions. In particular, the Constitution of Ukraine⁵⁷⁰ was amended to provide that the state shall enforce a court decision in accordance with the procedure established by law, and the court shall control the enforcement of such decision.

In September 2020, the Government approved the National Strategy for Addressing the Problem of Non-Compliance with Court Decisions, the Debtors of which are a State Body or a State Enterprise, Institution, Organisation, for the period up to 2022⁵⁷¹, which was subsequently extended until 2025. The respective act states that one of the reasons for the systemic problem of non-enforcement of court decisions is the imperfect mechanism of judicial control over the enforcement of court decisions on debt collection, and therefore the procedure for establishing or changing the method or procedure for the enforcement of court decisions needs to be improved.

Inadequate enforcement of court decisions and ineffective mechanisms of judicial control over the enforcement of court decisions are among the main problems outlined in the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023⁵⁷².

Currently, the Verkhovna Rada is considering Draft Law No. 9462⁵⁷³, which proposes to amend procedural codes other than the Criminal Procedure Code of Ukraine and significantly strengthen judicial control over the enforcement of court decisions, in particular, to extend the judicial control

569 In particular, the Law of Ukraine of 02.06.2016 No. 1401-VIII "On Amendments to the Constitution of Ukraine (regarding Justice)". URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.

570 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Article 129¹. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

571 On approval of the National Strategy for Solving the Problem of Non-Compliance with Court Decisions, the Debtors of which are a state body or a state enterprise, institution, organisation, for the period up to 2025: Order of the Cabinet of Ministers of Ukraine of 30.09.2020 No. 1218-r. URL: <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>.

572 On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023: Decree of the President of Ukraine of 11.06.2021 No 231/2021. URL: <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

573 On Amendments to Certain Legislative Acts of Ukraine on Improving the Provisions on Judicial Control: Draft Law of Ukraine, registration No. 9462 of 06.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42236>.

mechanism introduced in 2017, which was used in administrative proceedings⁵⁷⁴, to civil and commercial proceedings. On 23 May 2024, the draft law was adopted by the Parliament as a basis and as of early August it is being prepared for consideration in the second reading.

Enforcement of domestic court decisions

State of play

According to Opendatabot⁵⁷⁵, in 2023, the Enforcement Service and private enforcement officers collected UAH 25.21 billion in enforcement proceedings. This is the largest amount in the last 5 years. However, it is only 6% of the total amount that should have been collected from debtors. That is, only 6 kopecks of every hryvnia of debt is currently collected in Ukraine. The total amount of debts in 2023 was UAH 435.4 billion. In addition, in 2023, the State Enforcement Service and private enforcement officers enforced almost 2 million enforcement documents. The amount of recoveries increased by 2.5 times over the year.

Currently, almost 60% of the total number of enforcement proceedings⁵⁷⁶ are underway. Analysts state that judicial debt collection has improved significantly due to the emergence of the private enforcement officers and partial automatic blocking of accounts. At the same time, the law does not require banks to connect to the system.

The situation is further complicated by the rapid increase in the number of debtors due to the war and the lack of awareness of traffic violators of the fines imposed on them when their offence was recorded automatically. Currently, the number of such enforcement proceedings is almost 20% of all debts in the country⁵⁷⁷.

The practice of adopting legislation that essentially prohibits the recovery of property from certain categories of legal entities and individuals continues. Some of these acts are temporary, while others have been in force for more than 20 years⁵⁷⁸. For example, Law of Ukraine No. 3048-IX⁵⁷⁹ suspended the enforcement of pensions and scholarships until the end of the martial law regime (except for decisions on the recovery of alimony, compensation for damage caused by injury, other health damage or death as a result of a criminal offence, and decisions where the debtors are citizens of the Russian Federation). In May 2024, Law of Ukraine No. 3723-IX⁵⁸⁰ was adopted, which also provides that temporarily, during the martial law and for two years after its termination or cancellation, enforcement actions and measures of enforcement of decisions (including seizure of property and funds) in enforcement proceedings in which the debtors are business entities that meet a certain set of criteria, in particular, critical infrastructure operators, are suspended.

574 On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts: Law of Ukraine of 03.10.2017 No. 2147-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2147-19#Text>.

575 Only 6 kopecks of each hryvnia of debt is collected in Ukraine. Opendatabot. 2024. URL: <https://opendatabot.ua/analytics/execution-2023>.

576 Ibid.

577 Ibid.

578 See, for example, the Law of Ukraine "On the introduction of a moratorium on the forced sale of property". URL: <https://zakon.rada.gov.ua/laws/show/2864-14#top>.

579 On Amendments to Certain Laws of Ukraine on Certain Peculiarities of the Organisation of the Enforcement of Court Decisions and Decisions of Other Bodies during Martial Law: Law of Ukraine of 11.04.2023 No. 3048-IX. URL: <https://zakon.rada.gov.ua/laws/show/3048-20#top>.

580 On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Operation of Critical Infrastructure Facilities during Martial Law: Law of Ukraine of 22.05.2024 No. 3723-IX. URL: <https://zakon.rada.gov.ua/laws/show/3723-20#Text>.

Public and private enforcement officers have direct access only to the State Register of Real Property Rights and the State Register of Encumbrances on Movable Property. The electronic exchange between the Pension Fund of Ukraine, the State Tax Service, the State Border Guard Service, the Ministry of Internal Affairs and enforcement officers is limited to certain types of requests, which do not always provide all the information that could help identify the debtor's accounts or property. At the same time, the information content of such registers leaves much to be desired⁵⁸¹.

The behaviour of debtors with regard to the timely and full enforcement of court decisions has not changed either. Debtors often evade enforcement of judgments, and sometimes even obstruct it by closing bank accounts and transferring property to other persons⁵⁸². However, in the event of failure to comply with binding court decisions without good cause, the enforcement officer may impose a fine on the debtor in a certain amount (depending on the type of debtor, the fine varies from UAH 1,700 to UAH 5,100⁵⁸³).

In the event of repeated failure to comply with such a decision, the enforcer imposes a double fine on the debtor and reports the criminal offence to the pre-trial investigation authorities. However, over the past 16 years, Ukrainian courts have delivered only 845 verdicts⁵⁸⁴ for non-compliance with a court decision⁵⁸⁵.

One of the key issues in the enforcement of court decisions is the enforcement of such categories of cases as social disputes. It is based on the fact that the state regulates the availability of social guarantees that are not backed by real funding, and therefore is unable to fulfil them and does not enforce them. This leads to citizens going to court, the court satisfies the relevant claims, since such claims are based on the law, and, again, the state is unable to finance the fulfilment of such obligations due to lack of funds.

National legislation does not currently regulate the procedure for enforcement of decisions or the specifics of enforcement actions by the enforcement officer in the event of a sanction being imposed⁵⁸⁶ on a party to the enforcement proceedings. In particular, there are difficulties in enforcing a court decision when sanctions are imposed on the debtor, the creditor or both. In the course of enforcement, there is a competition between the provisions of different laws, under which the same asset of the sanctioned person may be blocked both under the sanctions and enforcement laws.

Private enforcement officers

The institute of private enforcement officers is important in the context of enforcement. In 2022, due to the full-scale invasion, private enforcement officers were deprived of the opportunity to exercise their powers⁵⁸⁷ for a long time, and many claimants were forced to apply to the state enforcement service. This not only deprived the claimants of the right to choose the enforcement

581 The information obtained during an interview with a representative of the Association of Private Enforcement Officers of Ukraine conducted in the course of preparing this Report.

582 The debtor "hid" their property after the entry into force of the court decision: actions to take by the enforcement officer. Judicial and Legal Newspaper. 2022. URL: <https://sud.ua/uk/news/publication/251648-dolzhenik-spryatal-svoe-imuschestvo-posle-vstupleniya-v-silu-sudebnogo-resheniya-kak-dolzhen-deystvovat-ispolnitel>.

583 On Enforcement Proceedings: Law of Ukraine of 02.06.2016 No. 1404-VIII, Art. 75. URL: <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

584 Criminal liability for non-enforcement of a court decision in Ukraine: dynamics of law enforcement. Legal scientific electronic journal. 2023. URL: http://lsej.org.ua/5_2023/60.pdf.

585 Criminal Code of Ukraine, Article 382. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

586 On sanctions: Law of Ukraine of 14.08.2014 No. 1644-VII. URL: <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

587 Enforcement Proceedings in Time of War: Challenges and Longstanding Issues. Yurydychna Praktika. 2023. URL: <https://pravo.ua/vykonavche-provadhennia-v-umovakh-viiny-novi-vyklyky-i-davni-problemy/>.

entity for decisions made in their favour, but also had devastating consequences for private enforcement officers as business entities and taxpayers. In 2022, only 163,000 enforcement documents were filed with private enforcement officers, which is three times less than in 2021. Their share was only 6%⁵⁸⁸.

As of July 2023, the Unified Register of Private Enforcement Officers contains data on 335 private enforcement officers, with the largest number of them registered in Kyiv – 109⁵⁸⁹. At the same time, the full-scale war slowed down the growth of the number of private enforcement officers in Ukraine. Thus, in 2021, information on 40 private enforcement officers was entered into the said Register, in 2022 – 16⁵⁹⁰, and in 2023 – only 14 private enforcement officers⁵⁹¹. However, in the first seven months of 2024, the Register included information about 16 new private enforcement officers, which may indicate a certain stabilisation of the situation⁵⁹².

Access to the profession of a private enforcement officer is granted in accordance with Law of Ukraine No. 1403-VIII⁵⁹³, which provides that the qualification exam is conducted through automated anonymous testing of a person who has expressed an intention to carry out the activities of a private enforcement officer. The specifics of the exam are regulated by the Procedure for Admission to the Profession of a Private Enforcement Officer⁵⁹⁴, which has been amended 13 times over the past 6 years.

As of today, private enforcement officers have limited powers, as the law defines a list of categories of cases and subjects in which they cannot enforce court decisions⁵⁹⁵. At the same time, back in July 2020, Ukraine and the European Union signed a Memorandum and Loan Agreement on Ukraine's receipt of macro-financial assistance from the European Union in the amount of up to EUR 200 million⁵⁹⁶, whereby Ukraine undertook to extend the powers of private enforcement officers to claims of up to UAH 100,000 against any debtor (including state-owned legal entities and legal entities with state participation) and administrative fines, as well as to draw up a roadmap for the full equation of their powers with those of the public authorities. Currently, Ukraine has not fulfilled the relevant requirements.

The Ministry of Justice of Ukraine (MoJ) controls the activities of private enforcement officers by conducting scheduled and unscheduled inspections in accordance with the procedure established by the MoJ⁵⁹⁷. The body responsible for imposing disciplinary sanctions on private enforcement officers is the Disciplinary Commission of Private Enforcement Officers, which

588 Statistics 2022. Agency for the Execution of Decisions. 2022. URL: <https://www.ae.org.ua/stat2022/>.

589 The number of private enforcement officers is estimated based on the information reflected in the Register of Private Enforcement Officers of Ukraine. URL: <https://apvu.com.ua/revestrpy>.

590 Statistics 2022. Agency for the Enforcement of Decisions. 2022. URL: <https://www.ae.org.ua/stat2022/>.

591 The number of private enforcement officers is calculated on the basis of information reflected in the Register of Private Enforcement Officers of Ukraine. URL: <https://apvu.com.ua/revestrpy>.

592 Ibid.

593 On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies: Law of Ukraine dated 02.06.2016 No. 1403-VIII, p. 3, Art 21. URL: <https://zakon.rada.gov.ua/laws/show/1403-19#top>.

594 On Approval of the Procedure for Admission to the Profession of Private Enforcement Officer: Order of the Ministry of Justice of Ukraine of 25.10.2016 No. 3053/5. URL: <https://zakon.rada.gov.ua/laws/show/z1445-16#Text>.

595 On Enforcement Proceedings: Law of Ukraine dated 02.06.2016 No. 1404-VIII, p. 2, Art. 5. URL: <https://zakon.rada.gov.ua/laws/show/1404-19#Text>.

596 Memorandum of Understanding between Ukraine as Borrower and the European Union as Lender. URL: https://zakon.rada.gov.ua/laws/show/984_004-20#n2; Loan Agreement between Ukraine as Borrower and the National Bank of Ukraine as Borrower's Agent and the European Union as Lender. URL: https://zakon.rada.gov.ua/laws/show/984_005-20#n2.

597 On Bodies and Persons Enforcing Court Decisions and Decisions of Other Bodies: Law of Ukraine of 02.06.2016 No. 1403-VIII, p.1, Art. 34. URL: <https://zakon.rada.gov.ua/laws/show/1403-19#top>.

consists of 9 members, 4 of whom are appointed by the Ministry of Justice, including the Minister or Deputy Minister, 4 by the Congress of Private Enforcement Officers of Ukraine and 1 by the Council of Judges⁵⁹⁸.

In the context of the full-scale invasion, the number of cases of disciplinary sanctions against private enforcement officers has significantly decreased compared to the pre-war period. Thus, in 2021, 93 private enforcement officers were brought to disciplinary responsibility, of which: 36 were warned; 31 were reprimanded; 21 were suspended; in 5 cases, the private enforcement officer's activities were terminated. In contrast, in 2022, 7 private enforcement officers received disciplinary sanctions in the form of a warning (1), a reprimand (1), and suspension (5). As of November 2023, 12 private enforcement officers were subjected to disciplinary sanctions (in 11 cases, their activities were suspended, and 1 was terminated)⁵⁹⁹.

Digitalisation

In June 2022, the SJA and the Ministry of Justice approved the Regulation on the Unified State Register of Enforcement Documents⁶⁰⁰ to comply with the requirements of the law⁶⁰¹. Although this issue is duly regulated within the legal framework, the Unified State Register of Enforcement Documents ("USRED")⁶⁰² is not currently functioning. The Ministry of Justice recognises that the USRED⁶⁰³ must become fully operational in order for the state to receive objective data on the enforcement of judgments in Ukraine

On 15 May 2024, the Automated System of Enforcement Proceedings began electronic information interaction with the Unified Judicial Information and Telecommunication System (UJITS) as part of a service for sending enforcement proceedings documents to users with electronic accounts in the UJITS. Now, individuals and legal entities with electronic accounts in the UJITS can receive enforcement proceedings documents (such as resolutions, acts, etc.) directly in their accounts⁶⁰⁴. This service was implemented with the support of the e-Governance Academy (eGA) under the international technical assistance project "Interoperability, e-Services, and Cybersecurity (EU4DigitalUA)".

The current legislation provides for the possibility of automated seizure of the debtor's funds, but due to the lack of comprehensive regulation on this issue at the level of law, this mechanism is not fully functional in practice⁶⁰⁵. Law of Ukraine No. 2475-VIII⁶⁰⁶ only stipulates

598 Ibid, p. 3, Art. 39.

599 Report on the activities of the Association in 2021-2023. Association of Private Enforcement Officers of Ukraine. 2023. URL: <https://drive.google.com/file/d/1O7MsA0oF5w094q1MWnXbQFBN5OlqvbPp/view>.

600 On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts: Law of Ukraine of 03.10.2017 No. 2147-VIII, clause 10, para 2, s. 4. URL: <https://zakon.rada.gov.ua/laws/show/2147%D0%B0-19#Text>.

601 On Approval of the Regulation on the Unified State Register of Enforcement Documents: Order of the State Judicial Administration of Ukraine and the Ministry of Justice of Ukraine of 14.06.2023 No. 177/2370/5. URL: <https://zakon.rada.gov.ua/laws/show/v0177750-22#Text>.

602 An automated system for collecting, storing, protecting, recording, searching electronic enforcement documents, as well as providing information from it.

603 Monitoring Report – 2023, Article 253. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/files/gener-al/2024/02/22/20240222084437-42.pdf>.

604 Guaranteed delivery of enforcement proceedings documents from the ASEP to the UJITS was launched. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1606014/>.

605 Automated seizure of funds: An automated system for collecting, storing, protecting, recording, searching electronic enforcement documents, as well as providing information from it. Experts of the EU "Pravo-Justice" project positively assessed the draft law No. 5660. Yurydychna Gazeta. 2021. URL: <https://yur-gazeta.com/golovna/avtomatizovaniy-aresht-koshtiv-eksperti-projektu-es-pravojustice-pozitivno-ocinili-zakonoproekt-5660.html>.

606 On Amendments to Certain Legislative Acts of Ukraine on Creating Economic Preconditions for Strengthening the Protection of the Child's Right to Proper Subsistence: Law of Ukraine of 03.07.2018 No. 2475-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2475-19#top>.

that the automated system of enforcement proceedings ensures the automated seizure of the debtor's funds under enforcement proceedings for the recovery of alimony in accordance with the procedure determined by the Ministry of Justice in coordination with the National Bank of Ukraine. In general, the mechanism of automated seizure of debtors' funds is governed by the Procedure approved by the Ministry of Justice⁶⁰⁷.

Since June 2021, the European integration draft law No. 5660⁶⁰⁸ has been under consideration in the Parliament, which provides, inter alia, for the introduction of the legal institution of electronic seizure of funds in debtors' bank accounts. The draft law was adopted as a basis in July 2021, but no further steps have been taken to finalise it.

Enforcement of judgements of the European Court of Human Rights

State of play

According to the 2019 annual report of the Committee of Ministers of the Council of Europe (CoE CM), Ukraine was ranked third among the countries with the highest number of applications to the ECHR and cases under the supervision of the CoE CM⁶⁰⁹. However, despite the new challenges posed by the war, Ukraine, thanks to its commitment and close cooperation with the Council of Europe, was able to close 75 cases in 2023, 10 of which were leading cases⁶¹⁰.

In 2023, the CoE CM received 125 cases against Ukraine from the ECHR for supervision of their execution (compared to 145 in 2022 and 196 in 2021). As of 31 December 2023, a total of 766 cases were pending in Ukraine (compared to 716 in 2022 and 638 in 2021), of which 50 were leading cases under the simplified procedure (compared to 51 in 2022 and 53 in 2021) and 53 were leading cases under the standard procedure⁶¹¹. Full payment of just satisfaction awarded by the ECHR was recorded in 103 cases in 2023, while confirmation of full payment and/or penalties was expected in 293 cases for which the deadline specified in the Court's judgment had passed more than six months⁶¹².

The European Court of Human Rights (ECHR) has identified the **systemic problem in Ukraine with non-enforcement or prolonged non-enforcement of national court judgments** as a violation by Ukraine of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁶¹³ (hereinafter - the Convention). In particular, this concerns the **prolonged non-enforcement of national court judgments in social disputes, as evidenced by the ECHR practice, first in the pilot judgment in the case of Yuriy Ivanov v. Ukraine⁶¹⁴ and then in the unprecedented judgment in the case of Burmych and others v. Ukraine⁶¹⁵.**

607 On Approval of the Procedure for Automated Seizure of Debtors' Funds/Electronic Money on Accounts/Electronic Wallets Opened by Account Service Providers and Electronic Money Issuers: Order of the Ministry of Justice of Ukraine of 16.04.2019 No. 1203/5. URL: <https://zakon.rada.gov.ua/laws/show/z0399-19#Text>.

608 On the enforcement of decisions: Draft Law of Ukraine of 14.06.2021 No. 5660. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/27003>.

609 Explanatory Note to the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Provisions on Judicial Control", registration No. 9462 of 06.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42236>.

610 Supervision of the execution of judgments and decisions of the European Court of Human Rights. 17th Annual Report of the Committee of Ministers, p. 11. 2023. URL: <https://tm.coe.int/annual-report-2023/1680af6e81>.

611 Ibid, Art. 110.

612 Ibid.

613 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

614 The case of Yuriy M. Ivanov v. Ukraine: Decision of the European Court of Human Rights of 15.01.2010. URL: https://zakon.rada.gov.ua/laws/show/974_479#Text.

615 Burmych and others v. Ukraine: Judgment of the European Court of Human Rights of 12.10.2017. URL: <https://minjust.gov.ua/files/general/2023/06/08/20230608173527-69.pdf>.

The last time the CoE CM considered the state of implementation of the ECHR judgments in the group of cases *Yuriy Ivanov / Zhovner / Burmych and others v. Ukraine* at a meeting held on 19 September – 21 September 2023 in Strasbourg⁶¹⁶. Following this meeting, the CoE CM adopted a decision in which the delegates, in particular, expressed deep concern that the current level of enforcement of all types of national court decisions, judging by the statistics provided by the authorities, is close to zero; reiterated their call on the authorities to adopt a full package of legislative and institutional measures to address all the root causes of this problem; reiterated the importance of introducing national remedies for non-enforcement of national judgments or delays in their enforcement, which could prevent recurrent violations of the Convention at the national level; and stressed the need to avoid creating new social obligations without ensuring adequate public funding; also stressed the importance of lifting legislative prohibitions, in particular moratoriums, that block the enforcement of court decisions; regretted that there is still no comprehensive system for collecting data on the enforcement of current and future court decisions against the state and state-controlled entities, both property and liability, and called on the authorities to establish such a system as is necessary to determine the extent of the problem and the measures required. The Committee of Ministers of the Council of Europe is scheduled to return to this case at its meeting in September 2024.

Following the examination of the case of *Yukhymovych v. Ukraine*⁶¹⁷, the CoE CM expressed concern that more than 23 years after the murder of the applicant's son, the investigation into the police actions that led to his death had not yet been completed⁶¹⁸.

At the meeting held on 5–7 December 2023 to review the implementation of the *Kaverzin, Afanasiev and Belousov v. Ukraine*⁶¹⁹ group of cases, the CoE CM delegates, inter alia, called for the SBI to redouble its efforts to investigate allegations of ill-treatment, fully implementing the zero tolerance policy, in order to eradicate impunity for ill-treatment, and in light of the new possibility of prosecuting torture committed by officials⁶²⁰.

At the same meeting, the CoE CM considered the implementation of the group of **cases Polyakh and others v. Ukraine**⁶²¹, where the CoE CM welcomed the approach taken by the Supreme Court in its current established practice to address the violations found by the Court regarding the shortcomings in the Law of Ukraine “On Purification of Power”⁶²² and in the subsequent administrative practice that led to the violation of Article 8 of the Convention; **decided to transfer this group of cases from enhanced to standard supervision.**

In addition to justified criticism of the continued failure to comply with certain ECHR judgments, the CoE CM also noted some improvement in Ukraine's compliance with other court decisions.

616 Decision of the Committee of Ministers of the Council of Europe on the enforcement of judgments of the European Court of Human Rights in cases against Ukraine. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/m/rishennya-komitetu-ministriv-radi-evropi-pro-vikonannya-rishen-evropeyskogo-sudu-z-prav-lyudini-u-spravah-schodo-ukraini-6224>.

617 *Yukhymovych v. Ukraine* case: Judgment of the European Court of Human Rights of 17.03.2021. URL: https://zakon.rada.gov.ua/laws/show/974_g01#Text.

618 Decision of the Committee of Ministers of the Council of Europe on the execution of judgments of the European Court of Human Rights in cases against Ukraine. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/m/rishennya-komitetu-ministriv-radi-evropi-pro-vikonannya-rishen-evropeyskogo-sudu-z-prav-lyudini-u-spravah-schodo-ukraini-6224>.

619 The case of *Kaverzin v. Ukraine*: Judgment of the European Court of Human Rights of 15.05.2012. URL: https://zakon.rada.gov.ua/laws/show/974_851#Text; Case of *Afanasiev v. Ukraine*: Judgment of the European Court of Human Rights of 05.04.2005. URL: https://zakon.rada.gov.ua/laws/show/980_239#Text; Case of *Belousov v. Ukraine*: Judgment of the European Court of Human Rights of 07.02.2014. URL: https://zakon.rada.gov.ua/laws/show/974_989#Text.

620 Decision of the Committee of Ministers of the Council of Europe on the enforcement of judgments of the European Court of Human Rights in cases against Ukraine. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/m/rishennya-komitetu-ministriv-radi-evropi-pro-vikonannya-rishen-evropeyskogo-sudu-z-prav-lyudini-u-spravah-schodo-ukraini-6224>.

621 The case of *Polekh and Others v. Ukraine*: Judgment of the European Court of Human Rights of 17.10.2019. URL: https://zakon.rada.gov.ua/laws/show/974_e71#Text.

622 On Lustration of Power: Law of Ukraine of 16.09.2014 No. 1682-VII. URL: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>.

Thus, in March 2024, at a meeting of the CoE CM on the implementation of ECHR judgments in the group of cases **Oleksandr Volkov v. Ukraine**, Ukraine's significant progress in implementing the judgments of this group of cases concerning complex and long-term problems of independence and impartiality of the judiciary, as well as reforming the system of judicial discipline and career. In particular, progress was noted in the implementation of individual measures in the group of cases Kulikov and others v. Ukraine and Humeniuk and others v. Ukraine⁶²³. In addition, the CoE CM ceased supervising the execution of the judgment in the latter case after the state authorities restored the applicants' violated rights and took general measures aimed at preventing similar violations in the future.

At the meeting of the CoE CM held on 11-13 June 2024, the status of Ukraine's implementation of the ECHR judgments in the group of cases **Nevmerzhytskyi/Melnyk/Yakovenko v. Ukraine** and the "pilot" judgment in the case of **Sukachov v. Ukraine** was reviewed. This group of cases concerns violation of Articles 3 and 13 of the Convention in connection with inadequate material and living conditions of detention in pre-trial detention or penitentiary institutions and the lack of an effective remedy provided for by law in connection with such complaints. In its decision, the CoE CM acknowledged the information on the implementation of the Strategy for the reform of Ukraine's penitentiary system but reiterated its concern regarding the proposal for financing "paid cells" suggesting to find alternative financing methods to improve detention conditions in line with the requirements of the Convention. At the same time, the CoE CM welcomed the adoption of legislation introducing probation supervision as a new type of criminal punishment⁶²⁴.

As part of the review of Ukraine's implementation of the ECHR judgments in the group of cases **Ignatov/Korneykova/Chaney v. Ukraine**, which concerns various violations of Article 5 of the Convention in connection with unreasonable and excessively prolonged detention, The CoE CM **ceased supervision of the execution of the judgment in the case of Chaney v. Ukraine**, taking into account the procedures established by the Law of Ukraine No. 2690-IX which eliminates the legislative gap identified by the ECHR regarding pre-trial detention in the period between the end of the investigation and the beginning of the trial⁶²⁵.

The CoE CM also issued a decision on the group of cases **Balytskyi/Yaremenko v. Ukraine**, which concerns the applicants' convictions in 2002-2011 on the basis of confessions obtained in the absence of a lawyer and in circumstances that raise suspicions that the confessions were obtained in violation of the applicants' right not to testify and the right not to incriminate themselves. **The CoE CM decided to transfer this group of cases from the enhanced supervision procedure to the standard one.** In addition, in their decision, the delegates welcomed the range of measures taken to ensure the effective implementation of the new legislation, in particular the efforts made by the Supreme Court and the judiciary to develop a case law that meets the requirements of the Convention and is capable of preventing similar violations in the future⁶²⁶. In order to regulate certain aspects of the implementation of ECHR judgments, the Government registered Draft Law No. 10389⁶²⁷ in January 2024, which, in particular, aims to resolve the issue of just satisfaction by Ukraine, which is under the enhanced supervision of the CoE CM.

623 Margaryta Sokorenko took part in the 1492nd (dh) meeting of the Committee of Ministers of the Council of Europe on the execution of ECHR judgments. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/news/ministry/margarita-sokorenko-vzlyala-uchast-u-1492-mu-dh-zasidanni-komitetu-ministriv-radi-evropi-schodo-vikonannya-rishen-espl>.

624 Olena Vysotska and Margaryta Sokorenko took part in the 1501st (DH) meeting of the CoE CM on the implementation of ECHR judgments. Government portal. 2024. URL: <https://www.kmu.gov.ua/news/olena-vysotska-ta-marharyta-sokorenko-vzlyali-uchast-u-1501-mu-dh-zasidanni-km-rie-shchodo-vykonannya-rishen-iespl>.

625 Ibid.

626 Ibid.

627 On Amendments to Certain Legislative Acts on Strengthening the Protection of Human and Civil Rights and Freedoms in the Course of Enforcement of Decisions: Draft Law of Ukraine, registration 10389 of 03.01.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43480>.

The difficulty of Ukraine's implementation of the ECHR judgments is also currently associated with certain challenges, especially in the context of Russia's ongoing war against Ukraine and the introduction of martial law.

Issues

In practice, the judicial control declared in the Constitution of Ukraine⁶²⁸ has not become a mechanism that guarantees full and timely execution of court decisions. Accordingly, such formal compliance with constitutional norms has a negative impact on public confidence in the rule of law and undermines the confidence of citizens in the possibility of restoring their rights and guarantees.

An equally significant problem is the significant number of statutory moratoriums on the enforcement of property/funds from certain categories of debtors (approximately 15⁶²⁹). For example, a moratorium on the forced sale of property of state-owned enterprises and business companies in which the state holds at least 25 per cent⁶³⁰ of the authorised capital has been in place for more than 20 years. The relevant rules essentially violate the rights of persons who, for example, provided certain services to such business entities and now cannot collect the remuneration due to them. However, in the reporting period, the Parliament not only did not reduce the number of such moratoriums on enforcement, but, on the contrary, adopted new legislation on such restrictions.

Another problematic aspect in the enforcement of national court decisions is the enforcement of court decisions against persons subject to sanctions. Russia's full-scale invasion of Ukraine in 2022 and the increase in cases of sanctions against a significant number of individuals exacerbated this problem. Despite the systematic legal regulation of sanctions and enforcement legislation separately, there are conflicts and internal inconsistencies between them, which cause gaps and presumably have a negative impact on the proper enforcement of court decisions.

The lack of full access of public and private enforcement officers to registers containing information on debtors or outdated data in them leads to lengthy bureaucratic procedures and delays in the enforcement of court decisions.

It takes a lot of time for public and private enforcement officers to search for debtors' accounts (individuals) in different banking institutions⁶³¹. Unlike legal entities, banks are not required to notify the tax authorities of bank accounts opened by individuals. In order to locate an account of an individual debtor in a banking institution, a public or private enforcement officer needs to send paper requests to all banks in the country⁶³². Ultimately, such a process is costly in terms of both time and money, the compensation of which will again become an additional burden for the debtor.

With regard to access to the profession of a private enforcement officer, it should be noted that despite numerous amendments to the Procedure⁶³³, its provisions still do not comply with the law,

628 Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 129¹. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

629 Information obtained from an interview with a representative of the Association of Private Enforcement Officers of Ukraine conducted during the preparation of this Report.

630 On the introduction of a moratorium on the forced sale of property: Law of Ukraine of 29.11.2001 No. 2864-III. URL: <https://zakon.rada.gov.ua/laws/show/2864-14#top>.

631 The Tax Code of Ukraine, para 1, cl. 69.2, Art. 69. URL: <https://zakon.rada.gov.ua/laws/show/2755-17#Text>.

632 Information obtained from an interview with a representative of the Association of Private Enforcement Officers of Ukraine conducted during the preparation of this report.

633 On approval of the Procedure for admission to the profession of a private enforcement officer: Order of the Ministry of Justice of Ukraine of 25.10.2016 No. 3053/5. URL: <https://zakon.rada.gov.ua/laws/show/z1445-16#Text>.

as the third practical task is not automated and is not a test. Therefore, access to this profession is not characterised by simplicity and transparency⁶³⁴.

On the contrary, the actual interference of the Ministry of Justice in the process of enforcement, including through the participation of 4 of its representatives in the Disciplinary Commission, calls into question the principle of independence of private enforcement officers.

In general, the lack of adequate budgetary funding for the enforcement of court decisions, the apparently discriminatory position of private enforcement officers, delays in digitalisation, the lack of adequate and effective means of compensation for delays in the enforcement of court decisions (which again requires budgetary funding), and effective mechanisms to incentivise debtors result in extremely low rates of enforcement of court decisions and decisions of other bodies.

It should also be noted that the failure to enforce judgments of national courts leads to the need for citizens to apply to the ECHR for protection of their rights, which leads to Ukraine's image losses.

Recommendations

Given the existence of a number of different dysfunctions in the legal system of Ukraine that affect the proper and binding enforcement of domestic court decisions, the issue of enforcement of court decisions requires special attention from the Cabinet of Ministers of Ukraine and the Verkhovna Rada, including through the following steps:

- 1) Improve the legislation regulating judicial control over the enforcement of court decisions and increase the effectiveness of the instruments of such control and change the method and procedure for the enforcement of binding court decisions, in particular by adopting the draft law No. 9462⁶³⁵;
- 2) Review legislative acts to establish the appropriateness of so many moratoriums on the enforcement of property/funds from certain categories of debtors and, accordingly, cancel those that are clearly irrelevant;
- 3) Establish at the regulatory level the specifics of enforcement proceedings involving persons subject to sanctions in order to minimise the risks of non-enforcement or improper enforcement of a court decision and the likelihood of liability measures being applied to the executors for non-compliance with enforcement or sanctions legislation;
- 4) Provide public and private enforcement officers with access to the maximum possible list of state registers that may contain information on the property and funds of debtors;
- 5) To address the problem of non-enforcement of judgments in the category of social dispute cases, provide for the funds necessary to eliminate the existing arrears in the state budget and to further avoid "populist" practices and the establishment of social guarantees that cannot be provided with the necessary funding;
- 6) Improve the procedure for passing the qualification exam by a person wishing to become a private enforcement officer by automating the practical task and changing the order of training, internship and passing the exam⁶³⁶;

634 Information obtained from an interview with a representative of the Association of Private Enforcement Officers of Ukraine conducted during the preparation of this Report.

635 On Amendments to Certain Legislative Acts of Ukraine on Improving Provisions on Judicial Oversight: Draft Law of Ukraine, registration No. 9462 of 06.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42236>.

636 Information obtained from an interview with a representative of the Association of Private Enforcement Officers of Ukraine conducted during the preparation of this Report.

- 7) Equalise the powers of public and private enforcement officers as much as possible, which will have a positive impact on the number and timeliness of court decisions;
- 8) Review the regulatory role of the Ministry of Justice, in particular by reducing the quotas of its representatives in the Disciplinary Commission⁶³⁷;
- 9) Ensure the full functioning of the Unified State Register of Enforcement Documents, including the possibility of combining it with the USRCD;
- 10) Adopt legislation on automated seizure of funds⁶³⁸ and ensure the full operation of the relevant software;
- 11) In order to encourage debtors to voluntarily comply with binding court decisions, reduce cases of evasion and obstruction of such decisions, their liability should be strengthened in one of the following ways:
- › increase the amount of fines for failure of a debtor to comply with a decision obliging the debtor to perform certain actions and a decision on reinstatement of employment without valid reasons within the time limit set by the enforcement officer⁶³⁹;
 - › provide for the possibility of collecting a penalty (astrent) for each day of delay in the debtor's execution of a binding decision⁶⁴⁰.
- 12) Take all possible measures to ensure timely and high-quality execution of ECHR judgments and take further steps to ensure timely execution of national court judgments in order to minimise the number of cases of Ukrainian citizens applying to the relevant international court for protection of their rights.

Prosecution reform

The reform of the prosecution as part of the judiciary is a rather slow process due to the high level of legal regulation and the fact that the prosecution is shielded from other branches of government to ensure its independence. Since June 2023, there have been almost no events that would demonstrate rapid changes in this institution. However, this does not mean that they are not underway. It is worth taking a wider timeframe to understand the steps that have been taken and their consequences.

There are problems in the prosecutor's office that have not been resolved by any of the recent reforms, such as the issue of practical independence of the prosecutor, guaranteeing their legal status, the exercise of constitutional functions that would be limited to the criminal justice system, the activities of prosecutorial self-government bodies that would have a significant impact on the processes in the prosecutor's office, etc. This section of the Report is devoted to these complex problems that require long-term and comprehensive solutions.

However, one cannot fail to notice the dynamic progress in many other vectors of prosecution development. In April 2023, amendments to the Law of Ukraine "On the Public Prosecutor's

637 Independence of private enforcement officers: between illusion and reality. Yurydychna Gazeta. 2020. URL: <https://yur-gazeta.com/publications/practice/inshe/nezalezhnist-privatnih-vikonavciv-mizh-ilyuzieyu-ta-realnistyu.html>.

638 On the Enforcement of Decisions: Draft Law of Ukraine of 14.06.2021 No. 5660. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/27003>.

639 Suggestion provided by a representative of the Ukrainian Bar Association during an interview conducted during the preparation of this Report.

640 Astrent on debtors. Yurydychna Praktika. 2021. URL: <https://pravo.ua/astrentom-po-borzhykam/>.

Office” came into force to introduce the concept of “trainee prosecutors”. As of now, about 200 of these young lawyers (sometimes even without professional experience) have already started their work in the prosecution bodies.

In the context of the full-scale invasion, the eCase system was restored in specialised anti-corruption bodies (including the Specialised Anti-Corruption Prosecutor’s Office (SAPO)). This experience is now planned to be extended to all prosecutor’s offices through the introduction of the SMEREKA system, which will also include the automatic distribution of criminal proceedings among prosecutors to avoid cases of bias. The terms of reference for this have already been developed and are being implemented.

The Prosecutors’ Training Centre of Ukraine (PTCU), a specialised institution for the professional training of prosecutors, is also developing, expanding distance learning methods to meet the challenges posed by the war.

Finally, in 2023, Ukraine is actively developing the system of prosecution of international criminal offences, which is the subject of a separate Strategy, whereby the prosecution units responsible for this area of work are being institutionalised. These aspects are covered in detail in the report as tangible progress that has already been made on the path to European integration since Ukraine became a candidate member of the European Union.

Therefore, this section of the Report covers both systemic problems that require comprehensive reform measures both in the prosecution bodies and in the law enforcement system as a whole, and highlights the progress that has already been made over the past year, when the prosecution actively adapted to European standards, taking into account recommendations of the European Union, the Council of Europe, GRECO and other institutions of the European acquis.

Legal status of the prosecutor and guarantees of independence

State of play

Status of the public prosecutor

The prosecutor’s office serves as a body of justice, and prosecutors in Ukraine enjoy a unified status. The division into administrative positions and positions of prosecutors in the prosecution bodies introduced⁶⁴¹ in 2014 reflects the principles of unity of the prosecutor’s status – despite having administrative functions, heads of prosecution bodies do not have procedural influence on specific criminal proceedings where their subordinates carry out criminal prosecution, given their procedural independence.

The maximum number of employees of the prosecution bodies is no more than 15,000, including the total number of prosecutors no more than 10,000⁶⁴². As of 29 March 2024, the number of vacant and temporarily vacant positions of prosecutors in the prosecution bodies of Ukraine (except for administrative positions) is⁶⁴³:

641 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, Art. 14. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

642 Ibid, Art. 39.

643 Plan for the Ukraine Facility for 2024-2027, p. 73 . URL: <https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/plan-ukraine-facility.pdf>.

- › vacant: 468 in the Office of the Prosecutor General (OPG), regional prosecutor's offices; 825 in district prosecutor's offices;
- › temporarily vacant: in the OPG, regional prosecutor's offices – 62; in district prosecutor's offices – 208. That is, the prosecution is understaffed by 15% of the maximum number of staff (about 8,500 staffed prosecutor positions).

In comparison, in 2022–2023, the number of vacant positions was approximately the same, with only an increase in the number of vacant positions in the OPG and regional prosecutor's offices and a decrease in the number of vacant positions in district prosecutor's offices:

- › at the end of 2022, there were 357 vacant positions in the OPG and regional prosecutor's offices and 973 in district prosecutor's offices; 72 vacant positions in the OPG and 181 in district prosecutor's offices⁶⁴⁴;
- › at the beginning of 2022, there were 319 vacant positions in the OPG and regional prosecutor's offices, and 975 in district prosecutor's offices; 33 temporarily vacant positions in the OPG and 102 in district prosecutor's offices⁶⁴⁵.

If necessary, the Prosecutor General may decide to establish specialised prosecutor's offices as a structural unit of the OPG, regional prosecutor's offices (a subdivision of the regional prosecutor's office), and district prosecutor's offices (a subdivision of the district prosecutor's office). Currently, such prosecutor's offices are the **Specialised Military and Defence Prosecutor's Office** and the **Specialised Environmental Prosecutor's Office** (both with the rights of a department of the OPG).

Starting from 1 January 2024⁶⁴⁶ this rule on the legal regime for the establishment of specialised prosecutor's offices does not apply to the establishment of the **SAPO**, which functions as an independent legal entity (starting from 21 March 2024), which is in line with the European Commission's recommendations on the autonomy and independence of this prosecution unit⁶⁴⁷.

Since June 2016, the Constitution of Ukraine⁶⁴⁸ has **limited the functions of the prosecutor's office to criminal proceedings**, namely: 1) *maintaining public prosecution in court*; 2) *organising and procedurally guiding pre-trial investigation, resolving other issues in criminal proceedings in accordance with the law, supervising covert and other investigative and detective actions of law enforcement agencies*; 3) *representing the interests of the state in court in exceptional cases and in accordance with the procedure established by law*. In addition, the prosecutor's office continues to supervise the observance of laws in the enforcement of court decisions in criminal cases and in the application of other coercive measures related to the restriction of personal freedom of citizens – until the law on the establishment of a dual system of regular penitentiary inspections comes into force. No amendments to the legislation in this regard have been adopted, therefore this function is temporary.

644 Data on the number of vacant and temporarily vacant positions of prosecutors in the prosecution bodies of Ukraine (except for administrative ones) as of 30 November 2022. Qualification and Disciplinary Commission of Prosecutors. URL: <https://kdkp.gov.ua/news/declaration/286>.

645 Data on the number of vacant and temporarily vacant positions of prosecutors in the prosecution authorities of Ukraine (except for administrative ones) as of 15 February 2022. Qualification and Disciplinary Commission of Prosecutors. URL: <https://kdkp.gov.ua/news/declaration/184>.

646 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#Text>.

647 Ukraine Report 2023. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). 8 November 2023. – p. 32. URL: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en.

648 Constitution of Ukraine of 28 June 1996 No 254k/96-VR. Art. 131-1. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

Progress and issues

Recently, the **coordination functions of prosecutors** have been significantly expanded. For example, the **Procedure for Coordination of Law Enforcement Agencies in the Field of Combating Crime**⁶⁴⁹ provides for the possibility to hold joint meetings not only with the leadership of law enforcement agencies, as specified in the Law, but also with other state bodies.

During the same period, the **Prosecutor's Office Development Strategy for 2021–2023**⁶⁵⁰ was approved. It suggests developing the prosecution service by implementing measures that will strengthen its “coordination function”, in particular: 1) coordination of the development and implementation of criminal law policy for the coherent work of the prosecution authorities and relevant law enforcement agencies; ensuring modern approaches to combating crime; 2) improvement of mechanisms for coordinating crime prevention; 3) establishment of regular and effective interaction with all key state and non-state partners to improve the criminal justice system and law enforcement agencies; 4) consolidation of the leadership role of the prosecution authorities in determining the directions of development of the criminal justice system and law enforcement agencies in Ukraine.

In this context, it is worth mentioning the fundamental PACE Recommendation 1604 (2003) “On the role of public prosecutor's office in a democratic society governed by the rule of law” of 27 May 2003⁶⁵¹ which states that “the exercise by public prosecutors of various functions outside the criminal law is of concern as to its compliance with the basic principles...”.

This approach significantly goes beyond the prosecutor's office and negatively affects the independence of law enforcement agencies and the criminal justice system as a whole, given the excessive role of the Prosecutor General in this process (issues of state policy in the field of criminal justice belong primarily to the Ministry of Justice of Ukraine, not the OPG). **All this looks like an attempt to return to the prosecutor's office the status of the body exercising “supreme supervision over the exact and uniform implementation of laws”, which it had during the Soviet era**⁶⁵².

The Prosecutor General should not become a subject of the political process, and cooperation at the OPG level with the Ministry of Justice of Ukraine and the relevant parliamentary committee, rather than additional coordination powers, is sufficient to prepare the necessary amendments to the criminal, criminal procedural legislation, etc.

Independence of the prosecutor in criminal proceedings

In carrying out the functions of the prosecutor's office, the **prosecutor shall be independent** of any unlawful influence, pressure, interference and shall be guided in their activities only by the Constitution and laws of Ukraine⁶⁵³.

649 On Approval of the Procedure for Coordination of Law Enforcement Agencies in the Field of Combating Crime: Order of the Prosecutor General of 08.02.2021 No. 28. URL: <https://zakon.rada.gov.ua/laws/show/v0028905-21#Text>.

650 Prosecutor's Office Development Strategy for 2021-2023: Order of the Prosecutor General of 16.10.2020 No. 489, clause 2.2. URL: <https://www.gp.gov.ua/ua/posts/strategiya-rozvitku-prokuraturi-na-2021-2023-roki>.

651 Role of the public prosecutor's office in a democratic society governed by the rule of law. Rec. 1604(2003). URL: <https://pace.coe.int/en/files/17109>.

652 Assessment of the State Policy in the Field of Reforming the Public Prosecution Service of Ukraine during 2014-2023 / Khavroniuk M., Krapyvin Y., Pysarenko D., 2023. – P. 37.

653 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No 1697-VII, p. 9, Art. 16. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

The prosecutor is appointed for an indefinite period and cannot be dismissed from office; his/her powers in office may be terminated only on the grounds and in the manner prescribed by the relevant law. In other words, the **head of the prosecutor's office cannot dismiss a prosecutor at will, but shall apply to the Qualification and Disciplinary Commission of Prosecutors (QDCP) or the Council of Prosecutors of Ukraine (CoPU)**, depending on whether the prosecutor holds an administrative and/or a prosecutor's position in the prosecution body. Several examples⁶⁵⁴ of appeals from 2023 show that the fact of encroachment on independence was refused, the appeal was left without consideration or the fact was confirmed (for example, the failure to grant leave).

The prosecutor shall execute only such instructions of a higher-level prosecutor that have been given in writing⁶⁵⁵. A prosecutor who has been given an order or instruction orally shall be provided with a written confirmation of such order or instruction upon request⁶⁵⁶. It is to strengthen the prosecutor's independence from higher-level prosecutors that the **right of the prosecutor to demand written confirmation of the instruction if in doubt as to its legality, as well as the right to appeal against such instruction to the independent body of prosecutorial self-government - the CoPU - was introduced**⁶⁵⁷. The CoPU as a body of prosecutorial self-government is responsible for immediate verification and consideration of such appeal with its participation and for taking necessary measures to eliminate the threat within its powers under this Law⁶⁵⁸. There is no statistics on such appeals or other public communication from the CoPU on this issue.

Issues

The practical enforcement of prosecutorial independence is one of the biggest challenges of all the prosecution reforms that have taken place since the Revolution of Dignity.

First and foremost, the problem lies with prosecutors themselves, who are used to treating this as a formality and, as was the case before, constantly coordinating their actions with the heads of prosecution departments. Thus, it is considered quite normal to coordinate almost every procedural decision with a supervisor (although neither the Law of Ukraine "On the Public Prosecutor's Office" nor the Criminal Procedure Code of Ukraine (CPC of Ukraine) require this). As a result, the prosecutor ceases to perceive oneself as an independent and autonomous procedural figure, and therefore, if the opinion of the prosecutor does not agree with the opinion of the management, for example, in relation to the so-called "political cases", the prosecutor will rather take the side of the leadership and will not feel any issues with this.

Another problem is that prosecutors have procedural leverage over their subordinates if they disagree with their opinion. Instead of providing written instructions on how to carry out certain procedural actions in accordance with the law and taking responsibility for them, prosecutors resort to removing their subordinates from criminal proceedings.

This can be done either by replacing a lower-level administrative manager (the approval of the CoP is not currently required, although the prosecutorial self-government body could act as a safeguard against such actions with improper motivation) or by simply excluding them from the criminal proceedings (from the group of prosecutors). Often, in "high-profile" criminal proceedings, prosecutors simply replace the entire group of prosecutors with others who are

654 Council of Prosecutors. Appeal. 2023. URL: https://rpu.gp.gov.ua/ua/rishenya/rozglyad.html?_m=publications&_t=rec&id=337060.

655 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No 1697-VII, p. 4, Art. 17. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

656 Ibid, p. 4, Art. 17.

657 Ibid, p. 5, Art. 17.

658 Ibid, p. 6, Art. 16.

more compliant and ready to support the line of the leadership⁶⁵⁹. However, such leaders usually do not include themselves in this group, again, in order not to be held responsible for such actions, which are either simply questionable or even illegal.

An integral component of independence is also a decent level of remuneration for prosecutors. The **official salaries of prosecutors**⁶⁶⁰ (15 subsistence minimums - about UAH 35,000 as of 1 January 2024) **are still much lower than the official salaries of judges of the relevant courts**⁶⁶¹ (30 subsistence minimums - about UAH 70,000 as of 1 January 2024). Meanwhile, **the salaries of prosecutors provide no additional payments for work that poses risks to life and health** (for example, for prosecutors of the Specialised Defence Prosecutor's Office⁶⁶²).

Moreover, starting from 2021, the subsistence minimum for able-bodied persons, which is used to calculate the salary of a district prosecutor, is set at UAH 1,600. This level of the subsistence minimum is defined only for prosecutors, is transitional and permanent for four consecutive years⁶⁶³. This amount is significantly lower than the subsistence minimum for able-bodied persons (UAH 3028), as well as the subsistence minimum established for judges, employees of other state bodies, as well as employees of tax and customs authorities (UAH 2,102), which creates a significant difference in the salary size.

However, there is a possibility that prosecutors may be awarded bonuses by the decision of the heads of prosecutor's offices (and not, for example, by the prosecutorial self-government bodies), which negatively affects the independence of prosecutors. The downside of such a system is depression, which can occur constantly if there is an internal conflict between the prosecutor and their supervisor. The amount of the bonus is 30% of the official salary⁶⁶⁴ and is perceived as an integral part of the salary (i.e. it does not serve as a financial incentive). In an expert survey of prosecutors during the study⁶⁶⁵, the majority of prosecutors confirmed that they use the practice of "depression" as a tool of influence. In the same study, 77% of prosecutors confirmed that they usually coordinate or sometimes coordinate decisions with their supervisors.

Finally, the attempt of MPs (draft laws No. 7576 and 7576-1⁶⁶⁶) to restore the position of "military prosecutor" to staff the Specialised Defence Prosecutor's Office (responsible for military criminal

659 For example: Families of the Heavenly Hundred Heroes appealed to Riaboshapka over the replacement of prosecutors in the Maidan case. Mezha. 2020. URL: <https://mezha.net/ua/bukvy/semi-geroev-nebesnoj-sotni-obratilis-k-riaboshapke-iz-za-zameny-prokurorov-po-delu-majdana/>.

660 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No 1697-VII, Art. 81. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

661 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, p. 3, Art. 135. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

662 The allowance is provided only for 1) length of service; 2) performance of duties in an administrative position and other payments provided for by law (e.g. access to state secrets). On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 2, Art. 81. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

663 On the State Budget of Ukraine for 2021: Law of Ukraine of 15.12.2020 № 1082-IX URL: <https://zakon.rada.gov.ua/laws/show/1082-20#Text>; On the State Budget of Ukraine for 2022: Law of Ukraine of 02.12.2021 № 1928-IX. URL: <https://zakon.rada.gov.ua/laws/show/1928-20#Text>; On the State Budget of Ukraine for 2023: Law of Ukraine of 03.11.2022 № 2710-IX. URL: <https://zakon.rada.gov.ua/laws/show/2710-20#Text>; On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 № 3460-IX. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

664 Ibid, p. 2, Art. 81.

665 Assessment of the State Policy in the Field of Reforming the Public Prosecution Service of Ukraine in 2014-2023 / Khavroniuk M., Krapyvin Y., Pysarenko D., 2023 - P. 191.

666 In April 2022, there was an attempt to return military prosecutors - as a result of the adopted law, the President of Ukraine used his veto power for reasons that are outlined in the subsection below. See: Proposals of the President of Ukraine to the Law "On Amendments to Certain Laws of Ukraine on Improving the Operation of the Prosecutor's Office in the Context of Armed Aggression against Ukraine". Draft Law No. 7058 of 16.02.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39003>. However, this did not prevent MPs from re-registering this legislative initiative with minor changes, but with the same problems: Draft Law "On Amendments to the Law of Ukraine "On the Public Prosecutor's Office" to ensure the operation of specialised military prosecutor's offices" No. 7576 of 21.07.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40074>; Draft Law "On Amendments to the Law of Ukraine 'On the Public Prosecutor's Office' on Ensuring the Operation of Specialised Military Prosecutor's Offices" No. 7576-1 of 05.08.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40199>.

offences against the order of military service) remains problematic. Such positions have been eliminated twice (in 2012 and 2019) due to negative opinions of the Council of Europe⁶⁶⁷, therefore this prosecutor's office is currently staffed by "civilian" prosecutors, in line with the unified status of prosecutors.

Instead, there are proposals to appoint servicemen seconded from the Armed Forces of Ukraine (AFU), given their unique experience in the military sphere and their perception by the defence forces as their own, which will ensure unimpeded access to military units, formations and other closed areas where war crimes are committed. On the flip side, such servicemen will not be independent, as they will have a double oath (to the prosecutor's office and the AFU), which will require them to coordinate their actions with their military superiors and make them biased in the outcome of the investigation.

Progress

On 13 September 2023, the Constitutional Court of Ukraine issued Decision No. 8-r(II)/2023⁶⁶⁸, where it stated that the power of the Cabinet of Ministers of Ukraine to regulate the remuneration of prosecutors cannot be recognised as complying with the constitutional requirement that public authorities exercise their powers within the limits established by the Constitution of Ukraine and in accordance with the laws of Ukraine. The Court emphasised that the role of the prosecutor's office in the public administration system and the standards of prosecutorial independence that Ukraine should adhere to as a member of the Council of Europe require the state to ensure that the guarantees of prosecutorial independence are protected in the same way as for judges. **The Court thus protected the appropriate level of remuneration for prosecutors, in particular to prevent pressure from other branches of government from affecting the impartiality of the prosecutor.**

On 16 October 2023, the CoPU appealed⁶⁶⁹ to the Verkhovna Rada Committee on Law Enforcement with a request to amend the draft Law of Ukraine "On the State Budget of Ukraine for 2024" and set the subsistence minimum for calculating the base salary of a district prosecutor at the level of the subsistence minimum established for determining the base salary of a judge. In its appeal, the CoPU noted that the proposed subsistence minimum for calculating the base salary of a district prosecutor at UAH 1,600 (the general subsistence minimum is UAH 3,028; for judges, employees of other state bodies, as well as employees of tax and customs authorities - UAH 2,102) is a violation of the guarantees of prosecutors' independence in terms of proper material and social security. The Verkhovna Rada Committee on Law Enforcement appealed to the Verkhovna Rada Committee on Budget to prevent unfair salary ratio among prosecutors when drafting the State Budget of Ukraine for 2024⁶⁷⁰. However, the adopted Law of Ukraine

667 CDL-AD(2012)019-e. Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine (prepared by the Ukrainian Commission on Strengthening Democracy and the Rule of Law), adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12–13 October 2012). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)019-e).

668 Decision of the Constitutional Court of Ukraine of 13.09. 2023 No. 8-r (II)/2023 in the case on constitutional complaints of Mykola Petrovych Starychenko, Serhii Serhiiiovych Garlyka, Oleksandr Anatoliiiovych Petrychuk, Mariana Vasylivna Ostapenko and Serhii Vitaliiiovych Menchynskyi on the compliance with the Constitution of Ukraine (constitutionality) of the third paragraph of Section II, paragraph 3, "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecutor's Office" of 19 September 2019 No. 113-IX regarding the remuneration of the prosecutor as a guarantee of their independence). URL: <https://ccu.gov.ua/docs/6352>.

669 The Council of Prosecutors of Ukraine initiated a review of the level of prosecutors' salaries. URL: https://rpu.gp.gov.ua/ua/rada_news.html?_m=publications&_c=view&_t=rec&id=345571.

670 The Committee on Law Enforcement Appealed to the Committee on Budget to Prevent Unfair Salary Ratio among Prosecutors in the Draft Law on the State Budget of Ukraine for 2024. URL: https://www.rada.gov.ua/news/news_kom/242099.html.

No. 3460-IX⁶⁷¹ failed to introduce such changes, therefore the CoPU subsequently appealed to the Cabinet of Ministers of Ukraine with a proposal to draft amendments to this Law to resolve the issue⁶⁷².

Recommendations

1. Set the salary for prosecutors at the level of the salary of judges of the relevant court (district prosecutor – judge of a city district court, regional prosecutor – judge of the court of appeal, prosecutor of the OPG – judge of the Supreme Court) and additional payments for seniority, performance of duties in an administrative position, as well as for work involving risk to life and health and access to state secrets. However, the possibility of bonuses for prosecutors should be excluded.

2. Provide for the proper specialisation of prosecutors of specialised defence prosecutor's offices, inclusion of prosecutors with military service experience as officers in these offices, advanced training of prosecutors, establishment of district specialised prosecutor's offices in the frontline and certain garrisons, their proper transport, military and other support, as well as payment of compensation for risk to life and health. Simultaneously, the Law of Ukraine "On the State Bureau of Investigation"⁶⁷³ should provide for the establishment of territorial units of the State Bureau of Investigation in the frontline area and relevant military garrisons.

Activities of prosecutor's self-government bodies

State of play

In 2017, the prosecutorial self-government bodies were launched to enable prosecutors to collectively resolve issues of internal activities of the prosecutor's office in order to guarantee the independence of the prosecutor by resolving personnel and disciplinary issues in the prosecution bodies.

Prosecutorial self-government is exercised through the **All-Ukrainian Conference of Prosecutors**⁶⁷⁴ and the **CoPU**⁶⁷⁵. The bodies that support the work of the prosecutor's office are the disciplinary body - the **QDCP** and the PTCU.

The above division into prosecutorial self-government bodies and bodies ensuring the work of the prosecution is due to the fact that the **majority of the members of the QDCP (6 out of 11) are not prosecutors**⁶⁷⁶. By its very nature, this body cannot be called a prosecutorial self-government body, as it does not ensure proper representation of prosecutors.

However, in the context of the establishment of the new prosecutor's office, the legislator compromised and balanced the QDCP with representatives of the legal profession, i.e. the function of bringing to disciplinary responsibility was not given to prosecutors alone. This is due

671 On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 No. 3460-IX. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

672 The Council of Prosecutors continues to work on the issue of fair remuneration of prosecutors. URL: https://rpu.gp.gov.ua/ua/rada_news.html?_m=publications&_c=view&_t=rec&id=350155.

673 On the State Bureau of Investigation: Law of Ukraine of 12.11.2015 No. 794-VIII. URL: <https://zakon.rada.gov.ua/laws/show/794-19#Text>.

674 Hereinafter, the title "All-Ukrainian Conference of Prosecutors" is used, although from 2014 to 2016 the Law of Ukraine "On Prosecution" No. 1697-VII referred to it as the "All-Ukrainian Conference of Prosecution Employees".

675 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 1, Art. 66. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

676 Ibid, Art. 74.

to fears of the closed nature of the prosecutorial system and the need for a transitional period to adapt prosecutors to the new model of administration. More globally, there is a lack of trust in the broad discretionary powers of the authorities, despite the fact that European standards and practices indicate the opposite⁶⁷⁷.

The Group of States against Corruption (GRECO) criticised the compromise: *“The current legislation does not ensure that the majority of seats in the Commission will be held by prosecutors. This distinguishes the situation in Ukraine from virtually all GRECO countries that have established similar bodies. Ensuring that the majority of prosecutors on the Commission are elected by their peers is an appropriate measure to help them fully uphold their legitimacy and credibility, as well as to strengthen their role as a guarantor of prosecutorial independence and autonomy”*⁶⁷⁸. Ultimately, GRECO recommended amending the provisions on the composition of the QDCP to ensure that the majority of seats are held by prosecutors elected by their peers.

Therefore, this **division into prosecutorial self-government bodies and bodies that support the work of prosecutor’s office is rather arbitrary, since both the All-Ukrainian Conference of Prosecutors, the CoPU and the QDCP are prosecutorial self-government bodies by their functions**, despite the peculiarities of these bodies in Ukraine. The QDCP can be called a separate body of prosecutorial self-government with special competence⁶⁷⁹.

All-Ukrainian Conference of Prosecutors

The highest body of prosecutorial self-government is the All-Ukrainian Conference of Prosecutors⁶⁸⁰. The regular All-Ukrainian Conference of Prosecutors is convened by the Council of Prosecutors of Ukraine every two years⁶⁸¹. An extraordinary All-Ukrainian Conference of Prosecutors may be convened by the decision of the Council of Prosecutors of Ukraine. The delegates are representatives of prosecutor’s offices of all levels - OPGs (6); regional prosecutor’s offices (6 from each); district prosecutor’s offices (2 from each)⁶⁸².

Thus, **since 2017, four All-Ukrainian Conferences of Prosecutors have already been held:**

- › I. 26–27 April 2017;
- › II. 20–21 December 2018;
- › III. 27–28 August 2021 (postponed from 16 March 2020);
- › IV. 28 February 2023 (postponed from 26 August 2022), where 2 members of the High Council of Justice were elected⁶⁸³.

677 Assessment of the State Policy in the Field of Reforming the Prosecution Service in Ukraine in 2014-2023 / Khavroniuk M., Krapyvin Y., Pysarenko D., 2023 - P. 73.

678 Report on the outcome of the 4th round of assessments on the prevention of corruption among MPs, judges and prosecutors of the Group of States against Corruption (GRECO), adopted at the 76th plenary meeting of GRECO (Strasbourg, 17-23 June 2017), para. 216. URL: <https://rm.coe.int/grecoeval4rep-2016-9-p3-76-greco-19-23-2017-1680737206>.

679 Kostenko S.K. Status of the Qualification and Disciplinary Commission of Prosecutors as a body of the justice system. Scientific Bulletin of Public and Private Law. 2018. Issue 5. B. 3. P. 146-153.

680 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p.1, Art. 67. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

681 Ibid, p. 1, Art. 68.

682 Ibid, p.1, Art. 69.

683 On 28 February 2023, the All-Ukrainian Conference of Prosecutors elected two members of the High Council of Justice. Council of Prosecutors of Ukraine. 2023. URL: https://rpu.gp.gov.ua/ua/rada_news.html?_m=publications&_t=rec&id=329111.

Council of Prosecutors of Ukraine

Between the All-Ukrainian Conferences of Prosecutors, the highest body of prosecutorial self-government is the CoPU⁶⁸⁴. This body consists of 13 members, including: 2 representatives (prosecutors) from OPG; 4 representatives (prosecutors) from regional prosecutor's offices; 5 representatives (prosecutors) from district prosecutor's offices; 2 representatives (academics) appointed by the Congress of representatives of law schools and research institutions. The actual number of members of the CoPU is currently 12, as one representative from law schools and research institutions passed away in February 2022⁶⁸⁵. Members of the CoPU are elected for a 5-year term without the right of re-election.

The key powers of the CoPU are the appointment and dismissal of prosecutors from administrative positions, consideration of prosecutors' appeals and other reports on threats to the independence of prosecutors, taking appropriate measures (notification of the relevant authorities on the grounds for bringing to criminal, disciplinary or other liability; initiation of consideration of measures to ensure the security of prosecutors; publication of a statement on behalf of the prosecutorial corps on the facts of violation of the prosecutor's independence, etc; addressing international organisations with relevant reports, etc.).

Qualification and Disciplinary Commission of Prosecutors

The Qualification and Disciplinary Commission of Prosecutors is the body that conducts disciplinary proceedings. It assesses the level of professional training of individuals who have expressed their intention to take up the position of a prosecutor and decides on the disciplinary liability of prosecutors, transfer and dismissal of prosecutors⁶⁸⁶.

The QDCP carries out activities related not only to access to the profession, but also to the further career of a prosecutor and its completion, influences prosecutors to develop proper moral and business qualities through disciplinary proceedings or removes from office prosecutors who have committed disciplinary offences incompatible with the status of a prosecutor. In other words, it ensures the formation of the prosecutorial competition by addressing the issues of selection (personnel function) and dismissal (disciplinary function) from office.

The QDCP consists of 11 members who are citizens of Ukraine, have a higher legal education and at least 10 years of experience in the field of law, of whom:

- › 5 prosecutors are appointed by the All-Ukrainian Conference of Prosecutors;
- › 2 persons (scholars) are appointed by the Congress of representatives of law schools and research institutions;
- › 1 person (advocate) is appointed by the Congress of Advocates of Ukraine;
- › 3 persons are appointed by the Ukrainian Parliament Commissioner for Human Rights in agreement with the Verkhovna Rada committee responsible for the organisation and operation of the prosecution authorities (in the current IX convocation of the Verkhovna Rada - the Committee on Law Enforcement).

684 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p.1, Art. 71. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

685 The Council of Prosecutors of Ukraine is saddened to announce the passing of Olga Shylo, a member of the Council of Prosecutors, at the age of 56. URL: https://rpu.gp.gov.ua/ua/rada_news.html?_m=publications&_c=view&_t=rec&id=314377.

686 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p.1, Art. 73. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

The QDCP was inactive from 2019 to 2021 due to the reform of the prosecution system. Thus, the transitional provisions of Law of Ukraine No. 113-IX⁶⁸⁷ suspended the powers of the QDCP for two years, which was explained, in particular, by the need to reset the staff of the prosecution authorities⁶⁸⁸. Instead, the Council of Europe experts noted, in particular, that the reform created a personnel commission, the composition and procedure of which were not clearly defined and seemed to give the Prosecutor General broad discretionary powers⁶⁸⁹.

During this period, disciplinary proceedings against prosecutors in line with the Prosecutor General's Order No. 9⁶⁹⁰ at the level of the OPG were conducted by the personnel commission, which consisted of 7 OPG prosecutors (at the level of regional prosecutor's offices – regional prosecutors). For them, this was not a full-fledged function, but simply additional duties to their main job, which negatively affected the quality of disciplinary practice.

On 3 November 2021, the activities of the QDCP were resumed. Currently, the QDCP consists of only 10 members, as the Congress of Advocates of Ukraine has not delegated its representative⁶⁹¹.

The QDCP has its own Secretariat, which arranges its meetings and is responsible for keeping records. It was established as a structural unit of the OPG⁶⁹², which in the status of the Office is part of the Department of Personnel and Civil Service of the OPG. The Secretariat consists of 8 people working in three departments.

Issues

There is no transparent approach to the nomination and election of candidates to the prosecutorial self-government bodies, which leaves this issue entirely at the discretion of the participants of the All-Ukrainian Conference of Prosecutors. There is no unified practice of how this process is carried out, and it is not clear and predictable for prosecutors how to become members of the CoPU and the QDCP. Therefore, even if a prosecutor wishes to participate in their work, he or she faces a lack of understanding of how to nominate and be elected. Consequently, prosecutors lack awareness of the role of prosecutorial self-government, do not believe that it is the work of the prosecutorial corps itself, and not an order from the “top management”, and therefore show little activity in the formation of these bodies.

The meetings of prosecutors exist only at the national level, which is why many prosecutors are not interested in the issues of prosecutorial self-government and do not feel its influence. **There are no meetings at the level of district prosecutor's offices, although they could be held and represent prosecutors at this level.** This would help avoid the inactivity of prosecutors in their

687 On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service: Law of Ukraine of 19.09.2019 No. 113-IX. URL: <https://zakon.rada.gov.ua/laws/show/113-20#Text>.

688 Explanatory Note to the Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service”, registration 1032 of 29.08.2019. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=1032&skl=10.

689 Expert assessment of the Draft Law No. 5158 “On Amendments to Certain Laws of Ukraine on Improving the Selection and Training of Prosecutors” and the Draft Law No. 5157 “On Amendments to Section II “Final and Transitional Provisions” of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service” on Certain Aspects of Transitional Provisions” of 18 May 2021. URL: <https://rm.coe.int/ukr-coeexpert-comments-dl5157-5158-completed/1680a2c917>.

690 On the establishment of a personnel commission to consider disciplinary complaints about a prosecutor's disciplinary offence and to conduct disciplinary proceedings against prosecutors: Order of the Prosecutor General of 09.01.2020 No. 9. URL: <https://gp.gov.ua/ua/posts/2020>.

691 Composition. Qualification and Disciplinary Commission of Ukraine. URL: <https://kdkp.gov.ua/commission>.

692 Regulations on the Department of Organisational Support of the Activities (Secretariat) of the Qualification and Disciplinary Commission of Prosecutors of the Department of Personnel and Civil Service of the Office of the Prosecutor General: Order of the Prosecutor General of 07.08.2023 No. 212. URL: https://kdkp.gov.ua/uploads/files/2_Polojennja_do_nakazu_212_vid_07.08.23.docx.

participation in the exercise of prosecutorial self-government, similar to the judges' meetings⁶⁹³ and the regional bar conferences⁶⁹⁴. This position is supported by representatives of the expert and academic community, arguing that prosecutors do not have such powers to influence the appointment of heads of prosecutor's offices, receive reports from these heads of prosecutor's offices, resolve other work issues, etc.

Great expectations were placed on the function of protecting prosecutors from the threat of interference with their independence. However, the OPG developed, but never approved, draft acts on the procedure for responding to reports of threats to prosecutor independence.

Only in 2023 was the form of notification of a threat to the prosecutor's independence approved⁶⁹⁵, although the Law⁶⁹⁶ contains no requirements for such notification. It is not surprising that prosecutors hardly ever reported interference with their independence to the CoPU, as they consider this tool ineffective, given that no response measures were taken by this body of prosecutorial self-government. There is only one known example of such response⁶⁹⁷, which consisted of condemnation of cases of threats against procedural supervisors.

In addition, some of the functions of the CoPU are performed directly by the Prosecutor General – who approves (or appoints) a number of senior positions in the prosecution service. That is, not all personnel powers regarding administrative positions belong to the CoPU, for example, mid-level managers are effectively excluded from this process, although they have the greatest influence on the development of the prosecution service.

The 2019 reform of the prosecutorial authorities, specifically regarding the suspension of the QDCP, was influenced by political rather than professional considerations. On one hand, the reform was necessitated by the need to re-certify prosecutors following the adoption of Law of Ukraine No. 113-IX, as it was impractical to conduct certification while adhering to the existing general requirements for the appointment and dismissal of prosecutors. On the other hand, media reports highlighted accusations of bias against certain members of the QDCP, including its head⁶⁹⁸, and there was criticism of certain decisions made by the Commission⁶⁹⁹, which raised concerns about the quality of its work. The explanatory note to Law No. 113-IX pointed out that *the newly created structures within the prosecution system, such as the QDCP and the CoPU, had not demonstrated the capacity to fully and independently perform their functions effectively*. The assessment of the quality of the QDCP's disciplinary practice in 2017–2019⁷⁰⁰, carried out by experts of the Centre of Policy and Legal Reform with the support of the Council of Europe, and the assessment of the

693 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII. P. 1, Art. 128. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

694 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI. Art. 46. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

695 The form of notification of threat to prosecutor's independence is approved. Council of Prosecutors of Ukraine. 2023. URL: https://rpu.gov.ua/ua/rishenya/rozglyad.html?_m=publications&_t=rec&id=337060.

696 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

697 Publication of a statement on behalf of the prosecutor's office. Council of Prosecutors of Ukraine. 2019. URL: https://rpu.gov.ua/ua/rada_news.html?_m=publications&_t=rec&id=263466.

698 Kasianenko, Natalia. The chief "ethics" official in the prosecutor's office, with a report on drunken driving, revealed new property. Bihus.info. 2018. URL: <https://bihus.info/golovnij-po-etici-v-prokuraturi-z-protokolom-pro-panu-izdu-zasvitiv-u-nomu-nove-maino/>.

699 Sytnyk filed an objection to the QDCP's conclusion on Kholodnytskyi - NABU. Radio Svoboda. 2018. URL: <https://www.radiosvoboda.org/a/news/29376110.html>; Supreme Court cancelled the reprimand of the SAPO prosecutor due to "slamming the door". Slidstvo.info. 2019. URL: <https://www.slidstvo.info/news/verhovnij-sud-skasuvav-dohanu-prokuroru-sap-cherez-hryukit-dveryma/> and others.

700 Disciplinary liability of prosecutors in Ukraine / O. Banchuk, M. Kameniev, Y. Krapyvin, B. Malyshev, V. Petrakovskiy, M. Tsapok. K.: O.M. Moskalenko, 2019. 140 c. URL: <https://pravo.org.ua/books/dystyplinarna-vidpovidalnist-prokuroriv-v-ukrayini/>.

first 9 months of the restored QDCP's work in 2021–2022⁷⁰¹ demonstrated similarity of disciplinary practice, without any possibility to say that such practice has become better or worse. Finally, the three-year term of office of the first members of the QDCP was due to expire in April 2020. However, according to the newly appointed Prosecutor General, the attestation was supposed to start in autumn 2019, and it was initially believed that the activities of the QDCP at that time could have interfered with this process.

A minority of the QDCP members (5 out of 11) are prosecutors, which negatively affects the quality of this body's work (lack of understanding of prosecutorial specifics) and its credibility among prosecutors themselves (for them, it is more an external body than internal self-government). However, the quota of the Ukrainian Parliament Commissioner for Human Rights, which appoints 3 out of 11 members of the QDCP, seems to be too high and unjustified, and it is by reducing it by 1 person that the GRECO recommendations to ensure a majority of prosecutors elected by prosecutors in the QDCP can be implemented⁷⁰².

Currently, the composition of the QDCP is not complete. This is due to the failure of the Bar self-government bodies to hold the congress. In fact, this is the only body that failed to delegate its representative, arguing that it was impossible to hold the congress due to martial law. Meanwhile, scholars delegated representatives of law schools and research institutions and held the congress as well.

In other words, **the need for early termination of the powers of the QDCP members and suspension of its activities for two years was generally due to plans to conduct a large-scale certification of prosecutors, as well as certain accusations against individual QDCP members and decisions of the Commission that were criticised in the media.** At the same time, despite minor changes in the procedure of this body in the Law⁷⁰³ and its complete “reset”, as the authors of the reform wanted, there was no qualitatively noticeable impact on the disciplinary procedure and, ultimately, the independence of the prosecutor. **Eventually, there was just a two-year pause, which had a negative impact on the independence of prosecutors due to their lack of protection from poor disciplinary procedures**⁷⁰⁴. It can now be argued that it was not necessary to suspend the activities of the QDCP as a whole in order to conduct the attestation of prosecutors, as after its resumption in 2021, prosecutors continued to participate in the attestation procedure. At that time, it was possible to limit the decision to early terminate the powers of the current members of the QDCP and elect new members, possibly even under improved rules that would include an assessment of the integrity and professionalism of the candidates.

A particular issue concerns the QDCP Secretariat – its employees are the OPG prosecutors. Accordingly, although the Secretariat carries out office work, registers incoming correspondence, and prepares inquiries and materials, its employees are subordinated to the OPG in the chain of command, which may call into question the sufficient distancing of the QDCP from the OPG. For example, when it comes to preparing an opinion on the performance of duties by the Prosecutor General, which falls within the competence of the QDCP.

701 Expert analysis of the disciplinary practice of the relevant prosecutor's office conducting disciplinary proceedings for nine months of work (2021-2022), prepared with the support of the Council of Europe project “Respect for Human Rights in the Criminal Justice System of Ukraine” by the national consultant of the Council of Europe V. Petrakovskyi, with further comments by Dr L. Bachmeier, international consultant to the Council of Europe. 2022. URL: <https://rm.coe.int/report-disciplinary-practice-final/1680a9bf3c>.

702 Kostenko S. K. Improving the procedure for forming the composition of the Qualification and Disciplinary Commission of Prosecutors. Legal Bulletin. 2018. Issue 7. Part 2. P. 76–83.

703 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

704 Assessment of the State Policy in the Field of Reforming the Public Prosecution Service of Ukraine during 2014-2023 / Khavroniuk M., Krapyvin Y., Pysarenko D., 2023. — P. 96.

Recommendations

1. Expand the powers of the All-Ukrainian Conference of Prosecutors of the CoPU by narrowing the powers of the Prosecutor General.
2. Define at the legislative level the procedure for nomination and election of prosecutors to the CoPU and the QDCP at the All-Ukrainian Conference of Prosecutors to ensure transparent composition of these bodies.
3. Define in the Law of Ukraine “On the Public Prosecutor’s Office” that prosecutorial self-government is exercised through meetings of prosecutors of all levels, the All-Ukrainian Conference of Prosecutors and the Council of Prosecutors of Ukraine; provide for the establishment of such organisational form of prosecutorial self-government as meetings of the prosecutors of the OPG, SAPO, regional and district prosecutor’s offices. Provide the meetings of prosecutors with real self-governing powers, in particular, to: discuss the internal organisation of the activities of individual prosecutors (workload of prosecutors, definition of their specialisation, etc.); hear reports of prosecutors holding administrative positions; consult with the leadership of prosecution bodies; discuss the facts of violation of guarantees of independence of prosecutors and appeal to the relevant authorities in this regard.
4. Provide for the obligation of the Prosecutor General in the annual report to announce the number of reports on violations of guarantees of independence of prosecutors (based on information provided by the CoPU and the QDCP).
5. Reduce to 2 persons the quota of the Ukrainian Parliament Commissioner for Human Rights for the appointment of members of the QDCP; accordingly, increase the number of prosecutors appointed by the All-Ukrainian Conference of Prosecutors. This will ensure representation of prosecutors’ interests, self-governance of the profession and compliance with the best European practices.

Selection of prosecutors, attestation and disciplinary liability of prosecutors

State of play

All prosecutors in the positions of prosecutors of the prosecution body (non-managerial positions) are elected through a competitive process with the involvement of the prosecutorial self-government. As for *administrative positions*, the **appointment of a prosecutor to an administrative position is conducted by the Prosecutor General, the head of the regional or district prosecutor’s office, depending on the level of the position. However, only the positions of the First Deputy and Deputy Prosecutor General, the head of the regional prosecutor’s office (his/her first deputy, deputy and the head of the district prosecutor’s office) are appointed on the recommendation of the CoPU.**

The competitive principles and procedure for the selection of candidates for the position of a district prosecutor involve several successive stages, starting with the decision to conduct the selection and ending with the Oath of the Prosecutor⁷⁰⁵. Competitions are held in line with a standardised procedure that includes testing for knowledge of the law, general skills and an interview with the competition commission.

⁷⁰⁵ On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, Chapter V. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

Attestation of prosecutors as a temporary tool for cleansing the prosecution of unprofessional and dishonest staff is still used in the prosecution authorities⁷⁰⁶. The findings of the 2019–2021 attestation (active phase) showed that at the central level, in the OPG, less than half of the 1,339 prosecutors successfully passed the attestation and were hired in the new entity. At the regional level, about 1/3 of the 3,160 prosecutors failed to pass the re-attestation. Finally, in local prosecutor's offices, approximately 2,200 out of 6,700 prosecutors, or 1/3⁷⁰⁷ failed to pass the attestation. Subsequently, due to the introduction of martial law in 2022, this process was suspended, and some prosecutors who failed to pass the attestation on time for various reasons (leave, temporary disability, etc.) are still undergoing this process⁷⁰⁸, which involves anonymous testing of knowledge of the law, general abilities, integrity checks and an interview with the personnel commission.

To protect the performance appraisal of prosecutors from the issues that had previously occurred with other authorities, in 2021, Law of Ukraine No. 1554-IX⁷⁰⁹ was adopted, which provided that prosecutors who were dismissed following the results of the appraisal and reinstated in their positions by a court decision in which the results of the appraisal were challenged should still be appraised after such reinstatement. The explanatory note to the draft law stated: "It is obvious that at the time of adoption of the Law, the legislator could not have predicted that persons who failed the attestation would be reinstated in their positions in the Office of the Prosecutor General, regional and district prosecutor's offices by court decisions. This also applies to persons who were dismissed from the prosecution authorities before the entry into force of Law of Ukraine No. 113-IX, in particular through lustration procedures". It is difficult to agree with the notion that it could not have been foreseen that dismissed prosecutors would exercise their constitutional right and appeal the decision of a governmental authority in an administrative court. There is little information on the practice of applying this provision – re-attestation in case of reinstatement – so it is difficult to formulate a clear conclusion as to how the results of reinstatement of prosecutors in courts (for which there is also no statistics) have affected the staffing of the prosecution service.

In general, the explanatory note to the future Law of Ukraine No. 113-IX states that it is aimed at introducing priority and, in many respects, temporary measures related primarily to the staffing of the prosecution authorities through the certification of current prosecutors, as well as providing an opportunity for all honest candidates with appropriate theoretical knowledge and practical skills to take up the position of a prosecutor in any prosecution authority on a competitive basis. Given that one-third to one-half of prosecutors, depending on the level of the prosecutor's office, were dismissed based on the results of the attestation, it can be argued that this mechanism is effective and achieves the goals set by the legislator.

The most common grounds for dismissal without the prosecutor's consent are disciplinary proceedings with the most severe sanction – dismissal from the prosecutor's office. The law provides an exhaustive list of grounds on which a prosecutor may be brought to disciplinary liability in disciplinary proceedings⁷¹⁰.

706 On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Public Prosecution Service: Law of Ukraine of 13.09.2023 No. 113-IX. URL: <https://zakon.rada.gov.ua/laws/show/113-20#top>.

707 Assessment of the State Policy in the Field of Reforming the Public Prosecution Service of Ukraine during 2014-2023 / Khavroniuk M., Kravynin Y., Pysarenko D., 2023 - P. 103.

708 Attestation of prosecutors of local prosecutor's offices, military prosecutors of garrisons (as local prosecutors). Office of the Prosecutor General. URL: <https://www.gp.gov.ua/ua/posts/atestaciya-prokuroriv-miscevih-prokuratur-vijskovih-prokuratur-garnizoniv-na-pravah-miscevih-2>.

709 On Amendments to Section II "Final and Transitional Provisions" of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service" regarding certain aspects of transitional provisions: Law of Ukraine of 15.06.2021 No. 1554-IX. URL: <https://zakon.rada.gov.ua/laws/show/1554-20#Text>.

710 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, Art. 43. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

On 15 March 2023, amendments to the legislation on trainee prosecutors⁷¹¹ came into force. They introduced the position of a trainee prosecutor of the district prosecutor's office and stipulate that the positions to which trainee prosecutors may be appointed are to be selected from among the vacant (temporarily vacant) positions in the district prosecutor's offices (accordingly, the possibility of appointing other persons to a temporarily vacant position of a prosecutor is excluded).

The trainee prosecutor is subject to the guarantees of financial, social and amenity support provided by the legislation for prosecutors, as well as the internal labour regulations established for prosecutors. A trainee prosecutor of the district prosecutor's office may be entrusted with the performance of duties related to the prosecution functions, including **procedural guidance in criminal proceedings on criminal misdemeanours and minor crimes** (however, their decisions are subject to approval by the senior prosecutor of the group of prosecutors, and in cases specified by law – by the head of the prosecution body).

Issues

The appointment of prosecutors to administrative positions is carried out directly by the heads of the prosecutor's office. Therefore, this process is not transparent and, given the large number of administrative positions in the prosecutor's office, may not properly reflect the prosecutor's professional achievements, ability to perform leadership functions and work with the team of the prosecutor's office. Meanwhile, the mechanism of appointment of the First Deputy and Deputy Prosecutor General, the head of the regional prosecutor's office and the first deputy; the head of the district prosecutor's office, which requires the recommendation of the CoPU, allows for the involvement of prosecutorial self-government bodies in this process. However, even so, the procedure lacks transparency, clearly defined rules and proper assessment of all factors affecting the professionalism of the prosecutor, such as integrity. In some cases, the role of the CPU is formalised and does not facilitate the appointment of competent executives to relevant administrative (managerial) positions.

Attestation of prosecutors as a temporary mechanism should not be applied on a permanent basis. Given the guaranteed level of independence of the prosecutor when appointed to office, this tool is exceptional and was caused by the situation with the lack of integrity in the prosecution service. Although European standards⁷¹² allow for internal control over the work of prosecutors in certain cases, this should not be a general rule, as, similarly to judges, prosecutors are appointed for an indefinite period of time and can be dismissed only in case of violations established by law. Another issue is the qualification assessment for appointment to a higher position, but this should be subject to competitive procedures as mentioned above. The current assessment procedure is not provided for by the relevant law, but only by the transitional provisions of the Law of Ukraine No. 113-IX⁷¹³ adopted for the prosecution reform in 2019, which is directly stated in its title. It is also worth mentioning that some of its provisions on attestation were declared unconstitutional⁷¹⁴ in 2023, namely the warning of possible dismissal due to indiscriminate attestation of all prosecutors. The Constitutional Court of Ukraine noted that the Verkhovna Rada has no such powers, which makes it virtually impossible to repeat the attestation on a similar scale.

711 On Amendments to Certain Laws of Ukraine on Improving the Selection and Training of Prosecutors: Law of Ukraine of 14.04.2022 No. 2203-IX. URL: <https://zakon.rada.gov.ua/laws/show/2203-20#Text>.

712 On the role of the public prosecution service in the criminal justice system: Rec (2000) 19 of the Committee of Ministers to Member States of 06.10.2000, para 35. URL: <https://rm.coe.int/16804be55a>.

713 On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Public Prosecution Service: Law of Ukraine of 13.09.2023 No. 113-IX. URL: <https://zakon.rada.gov.ua/laws/show/113-20#top>.

714 Decision of the Constitutional Court of Ukraine of 21.07.2021 No. 4-p(II)/2021 in the case of the constitutional complaint of Bohdan Bivalkevych on the compliance of paragraph 8 of Section XI "Final and Transitional Provisions" of the Law of Ukraine "On National Police" with the Constitution of Ukraine (constitutionality). URL: <https://zakon.rada.gov.ua/laws/show/v004p710-21?fbclid=IwAR1TZ7SgkF-Vn52BTmLz068vOfhAyykBLhw6AXIj-oR1Yb3bU8D7XYaSRw8#n99>.

The joint opinion of the Venice Commission and the Directorate General for Human Rights and the Rule of Law of the Council of Europe on the draft Law of Ukraine “On the Public Prosecutor’s Office”⁷¹⁵ concerned its provisions as of 2013, but a significant number of recommendations remain relevant to its current version. For example, the experts recommended *improving the list of grounds for disciplinary liability*, in particular in terms of gross violation of the rules of prosecutorial ethics⁷¹⁶, as such wording creates unclear grounds for disciplinary liability of prosecutors. In addition, according to the experts, *the law should include a system for assessing the performance of prosecutors as an objective ground for disciplinary liability. Such system should provide for objective evaluation criteria and include the necessary guarantees for appealing against a negative assessment*. Both recommendations remain relevant in view of the fact that gross and other violations of the rules of prosecutorial ethics are still not distinguished, and there is still no formally established system of prosecutor’s evaluation (except for annual evaluation for the purpose of bonuses, which does not meet the objectives of continuous monitoring of the prosecutor’s performance).

Later, GRECO experts expressed additional comments to the conclusions of the Venice Commission⁷¹⁷: such grounds for disciplinary liability as committing actions discrediting the title of prosecutor⁷¹⁸, and systematic or one-time gross violation of the rules of prosecutorial ethics” should be removed due to the vagueness of the wording.

The State Anti-Corruption Programme for 2023–2025 adopted by the Government states that the grounds for disciplinary liability of prosecutors should be improved. The reason for this is imperfect legislative regulation of the grounds for bringing prosecutors to disciplinary liability, which is reflected in the unclear wording of disciplinary offences relating to the conduct of prosecutors and their compliance with ethical standards, and the absence of a clearly defined list of types of disciplinary offences, which may result in the application of such a disciplinary sanction as dismissal from the prosecutor’s office, may lead to unjustified and arbitrary imposition of such sanction⁷¹⁹.

There is a practice of excessive or too lenient punishment for committing a disciplinary offence, which makes the disciplinary practice of the QDCP unpredictable and heterogeneous⁷²⁰.

Organisational support for the activities of the QDCP is ensured by its Secretariat⁷²¹. Until 2021, this function was fulfilled by the Department of Personnel and Civil Service of the OPG, which negatively affected the independence of the QDCP from the prosecution authorities. **In 2021, a dedicated Secretariat was established to perform the organisational function of the QDCP.** However, the entire work of collecting evidence of a disciplinary offence lies with the member of the QDCP, who, although he or she has the opportunity to involve the Secretariat, has to take many actions, such as applying to the authorities, on an individual basis in the absence of separate procedural powers.

715 Joint Opinion of the Venice Commission and the Human Rights Directorate of the Directorate-General for Human Rights and the Rule of Law of the Council of Europe on the Draft Law of Ukraine “On the Public Prosecutor’s Office of Ukraine”, adopted at the plenary session of the Venice Commission on 11-12 October 2013, CDL-AD(2013)025. URL: <https://rm.coe.int/1680097f7d>.

716 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, c. 6, p.1, Art. 43. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

717 Report on the results of the 4th round of evaluation of Ukraine “Prevention of corruption among MPs, judges and prosecutors” (GrecoEval4Rep(2016)9-P3), adopted at the 76th GRECO plenary session, 19-23 June 2017. URL: <https://rm.coe.int/grecoeval4rep-2016-9-p3-76-greco-19-23-2017-/1680737206>.

718 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, c. 5, p.1, Art. 43. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

719 On approval of the State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220, issue 2.1.5. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#top>.

720 Expert analysis of the disciplinary practice of the relevant prosecutor’s office conducting disciplinary proceedings for 9 months of work (2021-2022). Council of Europe. - P. 27-28. URL: <https://rm.coe.int/report-disciplinary-practice-final/1680a9bf3c>.

721 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p.1, Art. 79. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

In addition, the number of complaints received by the QDCP is large, and a single QDCP member's review of them and decision on whether to initiate proceedings requires substantial preparation, which, given the complexity of the material, requires the involvement of additional specialists.

The legal status of a trainee prosecutor of the district prosecutor's office is different from the status of a prosecutor of the prosecution system of Ukraine, which provides for the unity of the prosecution system of Ukraine, ensured by the unified status of prosecutors⁷²². The problem is that the level of procedural independence of a trainee prosecutor is significantly lower than that of a prosecutor, given the need to coordinate key actions with a supervisor, which creates a false impression of the prosecutor's profession. In addition, the establishment of a separate status of a trainee prosecutor or assistant prosecutor, or even granting them a separate procedural status (such changes to the CPC of Ukraine are being discussed in the professional community), leads to the cultivation of subordination and lack of independence in the prosecution bodies. Despite the training purposes, this sets up patterns of behaviour that the prosecutor will reproduce in the future⁷²³.

Recommendations

1. To make the selection process more transparent and meritocratic, it is necessary to a) expand the range of administrative positions that require the CPU's consent (e.g., add heads of OPG departments or deputy heads of district prosecutor's offices); b) make it mandatory to hold a competition for senior management positions in the prosecution service simultaneously with the need for the CPU's approval.
2. Improve the procedure of attestation of prosecutors and apply it as an exceptional measure to prevent cases of encroachment on the independence of prosecutors.
3. Exclude from the Law of Ukraine "On the Public Prosecutor's Office" all provisions that may be regarded as limiting the independence of a trainee prosecutor, given the requirements of the Law⁷²⁴, which provides for the unity of the prosecution system of Ukraine, ensured by the unified status of prosecutors. An alternative option to preserving the unified status of the prosecutor's office would be to improve the procedure for training prosecutors so that a system of mentoring and standardised training in the practical aspects of the work of new prosecutors would completely replace the need for the introduction of trainee prosecutors.
4. Remove from the Law of Ukraine "On the Public Prosecutor's Office" or substantially clarify such grounds for disciplinary liability as committing actions that discredit the title of prosecutor and may raise doubts about their objectivity, impartiality and independence, honesty and integrity of the prosecution authorities, systematic or one-time gross violation of the rules of prosecutorial ethics.
5. Expand the list of disciplinary sanctions in order to increase their proportionality and effectiveness, as well as improve the general conditions of their application and the circumstances mitigating and aggravating the prosecutor's liability.
6. Provide for a gradation (correspondence) between disciplinary offences, their severity and penalties that may be imposed in case of their commission.

722 Ibid, p.5, Art. 7.

723 The President signed amendments to the legislation on improving the selection and training of prosecutors // Centre of Policy and Legal Reform. 2023. URL: <https://pravo.org.ua/analytical-materials/shhotyzhnevji-analiz-8-14-bereznja-2023-roky/>.

724 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 5, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

7. Ensure the institutional independence of the QDCP by establishing the Secretariat as a separate body under the QDCP, thereby reducing the influence of the OPG on its activities.
8. Introduce a disciplinary inspectorate in the QDCP, following the example of the High Council of Justice⁷²⁵ to improve the quality of materials assessed when considering bringing a prosecutor to disciplinary responsibility.

Improving the procedure for the appointment and dismissal of the Prosecutor General

State of play

The prosecution in Ukraine is headed by the Prosecutor General, who is appointed and dismissed by the President of Ukraine with the consent of the Verkhovna Rada⁷²⁶. **The appointment is made by a simple majority of votes of the constitutional composition of the Verkhovna Rada.** The Prosecutor General may be dismissed from the office only in cases and on the grounds specified by the Constitution and the law. **For dismissal by way of a resolution of no confidence, 150 MPs (one-third of the constitutional composition) are required to initiate the decision and a simple majority of votes of MPs to adopt it⁷²⁷.**

Issue

Neither the Constitution of Ukraine nor the Law of Ukraine “On the Public Prosecutor’s Office” or other laws provide for the need for qualification and competition for the position of the Prosecutor General. Thus, any person who satisfies political interests and meets the qualification requirements can be appointed to this position. Although there have been repeated calls for the Prosecutor General to be appointed only through a competition, there have been no changes in this direction.

In its Opinion⁷²⁸ the Venice Commission recommended that the process of appointment of the Prosecutor General should involve a “technical/non-political body”, such as the High Qualification and Disciplinary Commission of Prosecutors (currently the QDCP), which could make non-binding recommendations to the President and the Verkhovna Rada on candidates before these bodies decide on the appointment, as well as non-binding recommendations on possible failure to fulfil the professional duties of the Prosecutor General.

However, the dismissal of the Prosecutor General through a vote of no confidence is an instrument of political pressure. The Venice Commission of the Council of Europe in its Opinion) stated that since the Prosecutor General *“is not a member of the Government, the Parliament should not have the right to express no confidence, which is a purely political instrument. Perhaps this can be seen as a tool for applying a system of checks and balances in the organisation of state bodies, but it is doubtful that this will ensure a fair decision. The over-centralisation of the role of the Prosecutor General, together with the dependence of the Prosecutor General*

725 On the High Council of Justice: Law of Ukraine of 21.12.2016 No. 1798-VIII, Art. 27. URL: <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.

726 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Article 131¹. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

727 On the Rules of Procedure of the Verkhovna Rada of Ukraine: Law of Ukraine of 10.02.2010 No. 1861-VI, Art. 213. URL: <https://zakon.rada.gov.ua/laws/show/1861-17#Text>.

728 Opinion of the Venice Commission on the Draft Law of Ukraine “On the Public Prosecutor’s Office” No. 735/2013, paras. 30, 199. URL: <https://rm.coe.int/1680097f7d>.

*on political bodies, thus hinders the independence or autonomy of the prosecution service*⁷²⁹. The distrust of the Prosecutor General by certain political forces may be a direct consequence of their efforts to fight political corruption and economic crimes, the beneficiaries of which are MPs themselves or associated persons⁷³⁰.

The Prosecutor General in Ukraine should be a politically neutral and politically independent figure, i.e. he/she cannot be a person who is appointed or removed from office in a political manner and who is involved in policy-making⁷³¹.

Recommendations

1. Increase the qualification requirements for candidates for the position of Prosecutor General in terms of age, work experience, professional competence, integrity and ethics.
2. Introduce an exclusively competitive procedure for filling the position of the Prosecutor General with the involvement of independent experts.
3. Define an exhaustive list of grounds for early dismissal or termination of the powers of the Prosecutor General, as well as develop a special procedure for their application.

Institutional support for the training of prosecutors

State of play

The general duties of a prosecutor include the **obligation to improve their professional level and to upgrade their qualifications for this purpose**. Prosecutors are periodically trained by the PTCU, including training in the rules of prosecutorial ethics⁷³².

In 2019, the National Academy of Prosecution of Ukraine was renamed the **PTCU**⁷³³, and in March 2020, the PTCU started operating in a new format. Not only did the name of the institution change, but its functions were significantly reduced. Currently, the PTCU is engaged **only in advanced training of prosecutors**, i.e. it no longer trains bachelors and masters in law and is not a research institution (no postgraduate/doctoral studies).

As of today, the PTCU carries out: 1) in-service training of prosecutors and civil servants of the prosecution authorities in order to develop their professional competence; 2) training of prosecutors, initial training of candidates for the positions of prosecutors (as part of the internship – training of persons who have successfully passed the selection procedure for the

729 Opinion of the Venice Commission on the Draft Law on the Public Prosecutor's Office No. 735/2013. URL: <https://rm.coe.int/1680097f7d>.

730 White Paper on Depoliticisation of Law Enforcement and Prosecution: Appointment/Dismissal of the Management / Kravchuk Y.O. // Centre of Policy and Legal Reform - Kyiv: O.D. Buria, 2023. - P. 37-38. URL: <https://pravo.org.ua/books/bila-knyga-depolityzatsiyi-organiv-pravoporyadku-ta-prokuratury-pryznachennya-zvinnennya-kerivnytstva/>.

731 Assessment of the State Policy in the Field of Reforming the Public Prosecution Service of Ukraine during 2014-2023 / Khavroniuk M., Kravchuk Y., Pysarenko D., 2023. – P. 56.

732 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 2, Art. 19. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

733 The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecution Service" of 19.09.2019 No. 113-IX. URL: <https://zakon.rada.gov.ua/laws/show/113-20#Text>.

position of prosecutor); 3) in-service training of employees of other state bodies, enterprises, institutions, organisations regardless of ownership (under conditions and in accordance with the procedure determined separately).

The in-service training is provided by prosecutors themselves, who take relevant courses as prosecutor-trainers (lecturers), rather than by full-time faculty members, as it was the case with the National Academy of Prosecution of Ukraine. External trainers are also involved – advocates, human rights defenders, journalists, academics, investigators, judges and other criminal justice professionals.

The PTCU is constantly developing. Thus, in order to train professionals with a high level of knowledge, skills and abilities ready to defend the public interest, the measures envisaged by the **Development Strategy of the Prosecutors' Training Centre of Ukraine for 2021–2023**⁷³⁴ were implemented, namely: proper conditions were created for the professional development of prosecutors, prosecutorial officials and candidates for the position of prosecutor, institutional and innovative development of the PTCU; effective systems of external relations were established, including cooperation with international partners in the field of professional development of prosecutors.

Consequently, an applied training interactive learning system aimed at developing practical skills was introduced; offline and online forms of training were developed that are convenient for prosecutors, trainee prosecutors of district prosecutor's offices and civil servants of the prosecution authorities, as well as a distance learning form available around the clock on the Moodle⁷³⁵ platform, etc.

The PTCU has also been able to establish fruitful cooperation with the public sector. In partnership with representatives of NGOs, the centre conducts most of its trainings, allowing it to improve methodological approaches and continue to improve the training system⁷³⁶.

In 2023⁷³⁷, the PTCU held 170 training events to improve the skills of prosecutors in both face-to-face and online forms of education. Prosecutors also had the opportunity to take part in 13 distance learning courses, which are available on the PTCU's distance learning portal. A total of 18,980 standardised certificates were issued, including: 6659 – for face-to-face and online training; 12,294 – for distance learning; 27 – based on the results of training for trainers (ToT).

It is also important to note that prosecutors are required to take periodic distance learning courses on anti-corruption legislation and prosecutorial ethics. Thus, in 2023, a total of 1927 prosecutors took the course "Compliance with Anti-Corruption Legislation" and 2529 prosecutors took the course "Professional Ethics of Prosecutors".

To date, a **draft Development Strategy of the Prosecutors' Training Centre of Ukraine for 2024–2026** has been developed, which is driven by the need for consistent strategic planning: identifying clear priority areas for ensuring effective training and professional development of prosecutors, trainee prosecutors of district prosecutor's offices and civil servants of the

734 Development Strategy of the Prosecutors' Training Centre of Ukraine: Order of the Director of the Prosecutors' Training Centre of 18.02.2021 No. 31. URL: <https://ptcu.gov.ua/wp-content/uploads/2021/02/strategiya-rozvytku-tczpu-2021-23-rr.pdf>.

735 The Prosecutors' Training Centre of Ukraine has opened access to the Distance Learning Portal for more than 8,000 prosecutors and civil servants of the prosecution authorities. URL: <https://ptcu.gov.ua/uk/2022/11/treningovyi-czentr-prokuroriv-ukrayiny-vidkryv-dostup-do-portalu-dystancijnogo-navchannya-dlya-bilshe-8000-prokuroriv-ta-derzhavnyh-sluzhbovcziv-organiv-prokuratury/>; PTCU Distance Learning Portal. URL: <https://el.gp.gov.ua/moodle/>.

736 For example, the Strategic Session of the Department of International Legal Cooperation of the Office of the Prosecutor General with the participation of experts. URL: <https://www.facebook.com/share/p/6pevBEWLECW39Rmy/>; Offline training "Ensuring the best interests of children in criminal proceedings involving them". URL: <https://www.facebook.com/share/p/XdkcojTZe6vErG9a/>; Tomorrow's Lawyer program regarding soft skills development. URL: <https://www.facebook.com/share/p/eWmhtqUtv4R9tbVc/>.

737 Letter of the Prosecutors' Training Centre of Ukraine of 24.04.2024 No. 07-16/511.

prosecution authorities. Further development is focused on the specifics of training of trainee prosecutors, creating conditions for responding to current challenges caused by martial law, digitalisation of the educational process, training of trainers among prosecutors themselves, etc. An important step towards increasing the coverage of prosecutors trained at the PTCU is the establishment of regional branches (clause 2.3.5 of the draft Strategy).

The level of competence of a prosecutor is gradually approaching that of a judge, which is logically determined by the purpose of this profession and the fact that both the prosecutor's office and the courts are included in the Justice section of the Constitution of Ukraine⁷³⁸. Therefore, we can talk about synchronising the training courses of the PTCU and the National School of Judges of Ukraine with the gradual merger of these two institutions for the training and professional development of prosecutors and judges.

Issues

Despite the development of distance learning (both in the context of Covid restrictions and in times of war), the ability to cover all prosecutors with advanced training is limited. It is easier to take advanced training in Kyiv, as prosecutors have the opportunity to meet with the best specialists from central executive authorities, the High Anti-Corruption Court of Ukraine (HACC), the Supreme Court, etc. The opportunity to participate in such events at the regional level is less clear. Due to the martial law, it is difficult to implement the presence of the PTCU in the regions, so, given the limited resources and security challenges, prosecutors have the opportunity to receive such training during business trips to Kyiv or via a remote platform.

Another issue concerns the training and professional development of prosecutors in general. Although the PTCU involves specialists from related professions, there is no sufficient exchange of information with judges (and the prosecutor should communicate with the judge most of all, given the collection and presentation of evidence to the judge). The foreign experience of joint training of representatives of these two professions in the justice system is not seriously discussed in Ukraine, and there is no platform for proper exchange of experience in a closed, secure environment.

Recommendations

1. Approve and implement the PTCU Development Strategy for 2024–2026.
2. Consider optimising the network of educational institutions for training and professional development of personnel for the justice system, in particular, to merge the National School of Judges of Ukraine and the PTCU, synchronise programmes and unify forms of training.
3. Involve specialists from outside the prosecution system in the training activities of the PTCU, in particular, provide support to NGOs that adapt the best international practices and methodologies in the field of prosecutors' training.

⁷³⁸ Constitution of Ukraine of 28.06.1996 № 254k/96-VR, Section VIII. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

Introduction of electronic criminal proceedings and a system of distribution of cases among prosecutors

State of play

The development of the **E-Case Management System** began in 2019 with the technical, expert and financial support of the European Union Anti-Corruption Initiative in Ukraine (EUACI). The system provides for the gradual transfer of pre-trial investigations involving the National Anti-Corruption Bureau of Ukraine (NABU), the SAPO and the HACC into an electronic format to increase the efficiency of investigating offences, ensure transparency of the work of anti-corruption agencies and save resources.

The system is currently operating in a test mode based on specialised anti-corruption bodies. In December 2021, the first criminal proceedings were opened electronically at the NABU⁷³⁹, and the SAPO has access to them in the form of procedural guidance. From March to August 2022, the system was suspended due to the full-scale invasion of Ukraine by Russian troops to ensure data security in the critical first months of the armed conflict.

Simultaneously, the **SMEREKA investigation, escalation, control and analysis management system** is being implemented in law enforcement agencies and general prosecutors' offices.

The SMEREKA system should be integrated into the information environment of the OPG, gradually minimising the circulation of paper documents in criminal proceedings. The SMEREKA system aims to improve coordination and increase the efficiency of both individual employees and teams formed by areas of work, improve the analysis of criminal proceedings, as well as improve procedural guidance in pre-trial investigations and standardise procedural documents.

The SMEREKA system also provides for connection to the approved list of state information registers, including information registers of law enforcement agencies and integration with the Unified Register of Pre-trial Investigations, in order to improve the quality and reduce the time of pre-trial investigation, and to develop relevant amendments to criminal procedural legislation. In the future, SMEREKA may replace the somewhat outdated Unified Register of Pre-trial Investigations, whose technical implementation was modern in 2010 but is outdated today.

The professional community has recently been discussing the possibility of applying the recommendations of GRECO (the Council of Europe's anti-corruption monitoring body)⁷⁴⁰ on the Prosecutor's Office Development Strategy automatic distribution of disciplinary complaints against prosecutors in the QDCP to a wider range of issues, namely **the creation of an automated system for the distribution of criminal proceedings among procedural supervisors in the prosecution authorities**.

Meanwhile, the Prosecutor's Office Development Strategy for 2021–2023⁷⁴¹ envisages the introduction of an automated system for the distribution of criminal proceedings among

739 One year of eCase MS operation: achievements and immediate plans. NABU. 2022. URL: <https://nabu.gov.ua/news/novyny-rik-ekspluataciyi-ecase-ms-dosyagnennya-ta-nayblyzhchi-planu/>.

740 Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. *Interim Compliance Report*. Ukraine. GrecoRC4(2023)2. 24 March 2023. URL: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>.

741 Prosecutor's Office Development Strategy for 2021–2023: Order of the Prosecutor General of 16.10.2020 No. 489, clause 2.1.2.2. URL: <https://www.gp.gov.ua/ua/posts/strategiya-rozvitku-prokuraturi-na-2021-2023-roki>.

prosecutors based on clear objective criteria (including the criterion of specialisation), combined with safeguards against possible abuse. This measure has not yet been implemented, despite the fact that this document has expired. According to the prosecutors⁷⁴², this issue is being dealt with by the same working group that is working on the implementation of the SMEREKA system.

Progress

As of 1 December 2023, the HACC⁷⁴³ was connected to the **E-Case Management System** as part of the anti-corruption infrastructure, enabling it to accept applications for permission to search a person's home or other property from NABU detectives and SAPO prosecutors in an electronic format.

In May 2023, the President of Ukraine approved the Overarching Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023–2027⁷⁴⁴, which, inter alia, provides for a consolidated, phased **digital transformation** of law enforcement agencies and the prosecutor's office based on strategic management tools that are in line with the best practices of the European Union.

Currently, an interagency working group under the OPG has developed a draft Action Plan for the implementation of the Overarching Strategic Plan and submitted it to the Cabinet of Ministers of Ukraine⁷⁴⁵ for approval. This document provides for the implementation of measures to ensure the phased implementation of the electronic system for managing criminal proceedings through comprehensive replacement and modernisation of equipment, ensuring compatibility of IT systems, uninterrupted operation, and access for all participants in criminal proceedings and interoperability. This measure envisages the **introduction of a unified information and communication system for pre-trial investigations, SMEREKA**⁷⁴⁶. The system is scheduled to be launched in the fourth quarter of 2024 (development of the Regulation on the system's operation), and data exchange with the Unified Register of Pre-trial Investigations is scheduled for the first quarter of 2025.

Currently, the terms of reference for the implementation of the SMEREKA system by the OPG are being developed within the framework of the DT4UA project funded by the European Union⁷⁴⁷.

Issues

The **E-Case Management System** is a good example of the potential for digital transformation in the criminal justice system. At the same time, it is a pilot project within the framework of the activities of specialised anti-corruption bodies – NABU, SAPO and HACC.

742 This opinion was voiced during the communication of the authors of the report with the leadership of the Office of the Prosecutor General.

743 The NABU announced the start of practical integration of eCase with the courts. Judicial and Legal Newspaper. 2023. URL: <https://sud.ua/uk/news/ukraine/287073-nabu-zayavilo-o-nachale-prakticheskoy-integratsii-ikays-s-sudami>.

744 On the Overarching Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027: Decree of the President of Ukraine of 11.05.2023 No. 273, clause 5.1. URL: <https://zakon.rada.gov.ua/laws/show/273/2023#Text>.

745 Andrii Kostin: Implementing important steps to build a modern European criminal justice system. URL: <https://www.gp.gov.ua/ua/posts/andrii-kostin-vprovadzujemo-vazlivi-kroki-dlya-rozbudovi-sucasnoyi-jeuropeiskoyi-sistemi-kriminalnoyi-yustitsiyi>.

746 SMEREKA is an original Ukrainian software for generating websites and managing their content, which implements a hierarchical data model for the editor and a network model for the site reader: System of Managing Web Resources by Network Client Access (SMEREKA).

747 Estonian partners announced a tender for the development of modules of the SMEREKA pre-trial investigation management system. Office of the Prosecutor General. 2023. URL: <https://www.gp.gov.ua/ua/posts/estonski-partneri-ogolosili-tender-na-rozrobku-moduliv-sistemi-upravlinnya-dosudovimi-rozsliduvannyami-smereka>.

The simultaneous implementation of the SMEREKA system and the E-Case Management System is a necessary step in the need to digitise the work of the prosecutor's office today. While it would have been possible to extend the results of the E-Case Management System to all law enforcement agencies and prosecutors after its completion, the lack of time necessitates that these processes occur in parallel and will require additional resources for their eventual merger, data synchronisation, access integration, and other necessary steps to build a full-fledged SMEREKA system that will incorporate the E-Case Management System and eventually replace the Unified Register of Pre-trial Investigation.

According to some experts, the current system of distribution of criminal proceedings as a discretionary power of a particular head of the prosecutor's office potentially contains a corruption component and impedes the objective and fair conduct of pre-trial investigations. That is why it is proposed to introduce, by analogy⁷⁴⁸ with the automatic distribution of court cases in the Unified Judicial Information and Telecommunication System, disciplinary complaints in the High Council of Justice and the QDCP, the automatic distribution of criminal proceedings in the prosecution authorities, where the system will automatically identify the procedural supervisor, considering the workload, specialisation, experience, availability at the workplace, etc.

The introduction of the auto-assignment system would not solve most of the illegal practices of “manual” appointment of a group of prosecutors in criminal proceedings, as it will in any case leave the possibility of adjusting the composition of the group of prosecutors as a discretionary power of the head of the prosecutor's office.

Moreover, the possible drawbacks of such system are the interdependence between the criteria to be taken into account by the system for distribution and the system for assessing the workload of prosecutors, evaluating their performance and the overall level of digitalisation of work processes in the prosecution service. Given that there is currently no formally established system for assessing the performance of prosecutors (except for annual evaluation for the purpose of bonuses), and that the workload of a prosecutor is about 800 proceedings per person⁷⁴⁹, the possibility of “manual” interference with the auto-allocation will remain high and the desired effect of implementing such ideas will not be achieved. Therefore, the idea itself may have a positive impact on the management processes in the prosecution service, but it should be implemented in conjunction with other management reforms, including the assessment of the workload and quality of work of prosecutors.

Recommendations

1. Upon piloting of the E-Case Management System, it should be integrated into the SMEREKA system to ensure the full functioning of a single digital solution within the framework of electronic criminal proceedings.
2. Introduce the SMEREKA system in all prosecutor's offices, synchronising it with the Unified Register of Pre-trial Investigations and other relevant systems, with the subsequent absorption of the said register into the SMEREKA system.

⁷⁴⁸ European-style prosecution: are there any successes in Ukraine and where changes are needed? European Pravda. 2023. URL: <https://www.eurointegration.com.ua/articles/2023/05/18/7161950/>.

⁷⁴⁹ This refers to the total number of criminal proceedings in which the prosecutor is included in the group of prosecutors. Instead, the real figure is measured in the range of 50-100 proceedings in which the prosecutor is the senior prosecutor of the group of prosecutors. This practice is the result of a distorted understanding of the group of prosecutors, which is used exclusively to ensure the principle of the prosecutor's irremovability. Therefore, all proceedings (not only complex ones) provide for procedural guidance in the form of a group of prosecutors, which creates a huge additional burden on each of them, as it may happen that all prosecutors of the department are on vacation or on sick leave, so the prosecutor will have to “substitute” colleagues and waste time getting familiar with the materials of a particular criminal proceeding. Therefore, it is unclear whether the auto-allocation system should take into account the total number of prosecutors or only those where the prosecutor is the head of the group. Neither of these decisions reflects the real state of prosecutor's workload.

3. Introduce automation of the appointment of a prosecutor-procedural supervisor in criminal proceedings simultaneously with the entry of information about a criminal offence into the Unified Register of Pre-trial Investigations, taking into account the established clear objective criteria (including the criterion of specialisation), combined with safeguards against possible abuse.

Introduction of a human-centred approach in the work of the prosecutor's office: "community prosecutor"

State of play

Usually, community members who rarely come into contact with law enforcement agencies, prosecutors and courts focus their attention on offences that worsen the quality of life of themselves and their families, and affect the situation in the immediate area (in the relevant district of the settlement or even on a particular street). Thus, the role of the prosecutor's office is reduced to a negative perception as a body whose activities are detached from the community.

In response to this challenge, the **Community Prosecutor pilot project was launched in August 2023**⁷⁵⁰. To implement it, the **Concept of Cooperation between Prosecutor's Offices and Communities ("Community Prosecutor")**⁷⁵¹ was approved. It is aimed at a long-term proactive partnership between the prosecutor's office, law enforcement agencies, communities and NGOs, including veterans' and volunteer organisations, educational institutions, and business associations, to ensure effective resolution of security problems in communities (improving public safety), prevent criminal offences and, consequently, improve the quality of life of community members.

All parties involved in this cooperation share the goal of **making the justice system more human-centred**, dynamic and accessible, and of making better use of the community as a partner in fighting crime. It is also about deepening the balance between the protection of individual rights, meeting the public's demand for justice, criminal prosecutions and lawful punishment, through the well-established cooperation of prosecutors, law enforcement agencies and other organisations and institutions. The concept creates a platform and new tools for effective achievement of tasks in this area.

The project involves individual prosecutors in the regions becoming "community prosecutors". They will be selected from among those already working in the field, and additional training will be provided for them.

The main tasks of the community prosecutor include: analysing the causes of crime, improving ways to combat crime; introducing a human-centred approach to work; collecting information about the needs and requests of the community; developing comprehensive mechanisms to strengthen community security together with local authorities, the police and other interested bodies or organisations; interacting with NGOs and the media; informing the public about the work results, etc.

750 Andrii Kostin signed the concept of the Community Prosecutor project. Office of the Prosecutor General. 2023. URL: <https://www.gp.gov.ua/ua/posts/andrii-kostin-pidpisav-koncepciyu-projektu-prokuror-gromadi>.

751 On Approval of the Concept of Cooperation between Prosecutor's Offices and Communities ("Community Prosecutor"): Order of the Prosecutor General of 11.08.2023 No. 224. URL: <https://zakon.rada.gov.ua/laws/show/v0224905-23#Text>.

Progress

The programme is coordinated by a unit within the Department of Criminal Policy and Investment Protection of the Office of the Prosecutor General. Similar units will be set up in the regions where the pilot project is being implemented, and they will include such positions as a programme coordinator, a sociological analyst and a head of department.

The pilot project was implemented in the regions on 20 February 2024⁷⁵², namely in 4 prosecutor's offices: the Prosecutor's Office of the Autonomous Republic of Crimea and the city of Sevastopol; Galician District Prosecutor's Office of Lviv; Bolhrad District Prosecutor's Office of Odesa Region; Bucha District Prosecutor's Office of Kyiv Region.

Job profiles were developed in cooperation with international experts from the International Development Law Organisation (IDLO). The EU Pravo-Justice Project⁷⁵³ is actively working on institutional development and financing of the Community Prosecutor project, which, in particular, organised a study visit to the Netherlands, whose model is used as a model for the one being developed.

As of 10 April 2024, three prosecutors have been selected in each of the prosecutor's offices where the pilot project is being implemented. In total, there are 12 "community prosecutors", as well as additional functions assigned to the heads of district prosecutor's offices (in the case of the Prosecutor's Office of the Autonomous Republic of Crimea – the first deputy regional prosecutor), who ensure the organisation of the process at the administrative level. Four specialists were selected for the OPG (out of 5 positions foreseen in the newly created department). All prosecutors were selected through a competition involving international experts who help implement the Community Prosecutor project in Ukraine.

Recommendations

1. Encourage the establishment of horizontal cooperation between the prosecutor's office and civil society institutions and local governments to develop transparent and understandable local community security strategies.
2. Implement a pilot project, conduct a study of the results of the pilot project and, if successful, scale it up to all prosecutor's offices.

National system of international crimes prosecution

State of play

All war crimes are registered and investigated by law enforcement agencies (the Security Service of Ukraine, the National Police of Ukraine, the State Bureau of Investigation) and prosecutors (the OPG and regional prosecutor's offices).

752 On the introduction of a pilot project to implement the Concept of Cooperation between Prosecutor's Offices and Communities ("Community Prosecutor"): Order of the Prosecutor General of 16.02.2024 No. 32. URL: https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&_t=fsfile&_c=download&file_id=244038.

753 A working meeting of representatives of the Office of the Prosecutor General and heads of district prosecutor's offices on the implementation of the Concept of Cooperation between Prosecutor's Offices and Communities was held with the support of the EU Pravo-Justice Project. 29.02.2024. URL: <https://www.pravojustice.eu/ua/post/weekly-digest-novini-pravo-justice-19-lyutogo-03-bereznya-2024>.

Investigations of international crimes fall under the jurisdiction⁷⁵⁴ of the Security Service of Ukraine alone. However, given the limited resources of this body and its active work to combat crimes against the foundations of national security (primarily treason, collaboration, public support for the aggressor state), **pre-trial investigations of international crimes are also carried out by other pre-trial investigation bodies, such as the National Police and the State Bureau of Investigation.** These law enforcement agencies have specialised units where investigators spend full time working on international crimes, and in certain cases, investigators have a specialisation, which is additional work alongside their main tasks.

The prosecutor's office has a **Department for Combating Crimes Committed in the Context of Armed Conflict of the OPG** (hereinafter referred to as the Department)⁷⁵⁵ and specialised units in nine regional prosecutor's offices with a total of over 200 employees⁷⁵⁶. The Department was established in 2019 and expanded in 2022 in response to the new challenges posed by the full-scale invasion of Ukraine by Russian Federation. Currently, efforts are underway to build regional structural units for procedural guidance in international crimes, as specialisation currently exists only at the level of regional prosecutor's offices, and not as independent structural units of the Department.

Progress

In 2023, the Strategic Plan for the Exercise of Powers of the Prosecutor's Office in the Field of Prosecution of International Crimes for 2023–2025⁷⁵⁷ was approved, with the strategic objectives of: 1) ensuring a structured and effective approach to the prosecution of international crimes committed in the context of armed conflict; 2) strengthening the capacity of the national system of criminal prosecution of international crimes, including the prosecutor's office and pre-trial investigation bodies; 3) facilitating proper support and protection of victims and witnesses; 4) building sustainable partnerships and effective cooperation between international organisations, foreign partners and civil society for the purpose of effective criminal prosecution of international crimes.

The protection and support for victims and witnesses has become particularly important given the scale of war crimes and the large number of people in need of assistance. At the same time, there is a need to record damage and investigate war crimes, which involves the participation of victims and witnesses in investigative and procedural actions. **In order to avoid repeated and secondary victimisation when a person participates in criminal proceedings, investigators, prosecutors and judges must have the appropriate specialisation and training to take into account the special situation of victims and witnesses of war crimes.**

To this end, the Prosecutor General approved the **Concept of Implementation of the Mechanism for Supporting Victims and Witnesses of War and Other International Crimes⁷⁵⁸**. The purpose of this Mechanism is to take measures to ensure that victims and witnesses can

754 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI, Article 216. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

755 Regulation on the Department for Combating Crimes Committed in the Context of Armed Conflict of the Office of the Prosecutor General: Order of the Prosecutor General of 14.11.2023 No. 312. URL: <https://gp.gov.ua/ua/posts/polozhennya-pro-samostijni-strukturni-pidrozdili>.

756 One year of war crimes investigations. Interview with Yurii Belousov, Head of the War Department of the OPG. JustTalk. 2023. URL: <https://justtalk.com.ua/post/rik-rozsliduvannyavoennih-zlochiv-intervyu-z-yuriem-belousovim-nachalnikom-departamentu-vijni-ogp-tekstova-versiya>.

757 Approved by the Order of the Prosecutor General of 15 September 2023 pursuant to subpara. 2.1.1.4 of the Prosecution Service Development Strategy for 2021-2023 (approved by the Order of the Prosecutor General of 16 October 2020 No. 489). URL: <https://www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazen-organiv-prokuraturov-u-sferi-kriminalnogo-peresliduvannya-zacinennya-miznarodnix-zlochiv-na-2023-2025-roki>.

758 On the organisation of work of the prosecutor's office on support of victims and witnesses of war crimes and other international crimes: Order of the Prosecutor General of 11.04.2023 No 103. URL: <https://zakon.rada.gov.ua/laws/show/v0103905-23#Text>.

fully and effectively participate in criminal proceedings, are protected from secondary and re-victimisation, intimidation and retaliation, and receive appropriate support to facilitate their recovery, even in the context of the ongoing armed conflict and the lack of access to certain territories by the Ukrainian authorities.

To implement the tasks set out in the Concept, the **Coordination Centre for Victims and Witnesses Support was launched in April 2023**⁷⁵⁹ as a separate, independent structural unit within the OPG. The Centre's main mission is to ensure that every victim and witness 1) feel safe, respected and fully informed about their rights and available services; 2) receive up-to-date information about their case; 3) receive psychological support to prevent re-victimisation; 4) and, if necessary, are referred to appropriate psychological, medical and social support services. The Coordination Centre includes psychologists, social work specialists and lawyers to ensure coordination of a wide range of support for victims of war crimes.

Issues

Another issue today is the lack of regional units of the Department, which prevents timely and effective coordination of law enforcement activities, especially in areas close to the front line. It is worth exploring the option of strengthening the specialisation of such prosecutors, creating safeguards against pressure, introducing security programmes to protect them (especially those with relatives in the occupied territories or in places close to the front line), etc⁷⁶⁰. The worst-case scenario after years of prosecution for international crimes could be a repeat of the Berkut cases, i.e. crimes committed by special police units during the Revolution of Dignity⁷⁶¹. This experience should be taken into account when developing the relevant OPG unit.

Meanwhile, the specialisation of prosecutors is defined exclusively by internal documents of the prosecution and law enforcement agencies. **It is not enough to define specialisation by situational orders of the Prosecutor General, the respective priority should be enshrined in the Law**⁷⁶². In this case, it is worth drawing an analogy with the SAPO, which is given a lot of space in the Law. The issue of restoring justice in cases of international crimes is no less important than the issue of fighting corruption.

Insufficient coordination between investigators and prosecutors of different units creates a number of other challenges, such as the loss of criminal proceedings due to numerous chains of transfer between units of different levels and different bodies, which negatively affects the effectiveness of criminal prosecution. Or repeated investigative and detective actions by units of different levels, which is a duplication of efforts, a waste of working time, and in some cases harmful to the victim.

For example, in such sensitive category of cases as conflict-related sexual violence, there are international standards that indicate the need to interrogate a victim only once, as each repetition of their story causes psychological pain and moral suffering, and creates repeated and secondary victimisation. In practice, there are cases when the same victim is interrogated more than 5 times, causing psychological harm⁷⁶³.

759 Focus on the victims' rights. EUAM. 2023. URL: <https://www.euam-ukraine.eu/ua/news/focus-on-the-victims-rights/>.

760 Concept of Law Enforcement Sector Reform "Ukraine after the Victory" Vision of Ukraine 2030. Centre of Policy and Legal Reform. 2023. URL: <https://pravo.org.ua/vision-ukraine/kontseptsiya-reformuvannya-sektoru-pravoporyadku-ukrayina-pislya-peremogy-bachennya-ukrayiny-2030/>.

761 Ten years of the Maidan cases: will the perpetrators be punished and will the relatives wait for justice? Detector Media. 2024. URL: <https://cs.detector.media/community/texts/185912/2024-02-28-desyat-rokiv-spravam-maydanu-chy-ponesut-pokarannya-vynni-ta-chy-dochekayutsya-ridni-spravedlyvosti/>.

762 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

763 Chovhan Vadym, Krapyvin Evhen. Support for victims of war crimes in Ukraine (2022). URL: https://books.google.co.uk/books/about/Support_For_Victims_of_War_Crimes_in_Ukr.html?id=vxTNEAAQBAJ&redir_esc=y.

Recommendations

1. Develop a system of support for victims and witnesses of war crimes in order to obtain quality information from them for further proof of these crimes, while preventing secondary or repeated victimisation of such persons.
2. Build institutional capacity for long-term work on prosecuting international crimes, including protected budget items, additional guarantees of independence, and security measures for prosecutors working in this area.
3. Expand the presence of structural units of the Department of the OPG at the regional level.

Features of international cooperation

State of play

The main burden of investigating international crimes lies with the Ukrainian justice system. However, in view of the principle of complementarity in international law, in cases where Ukraine cannot bring perpetrators to justice on its own, due to limited legislation, existing immunities from prosecution under international law or simply due to lack of resources, other mechanisms that function as international criminal justice systems may be involved.

In the case of Ukraine, these are, first of all: **1) the International Criminal Court; 2) universal jurisdiction over war crimes, which allows for the work of Joint Investigation Teams (JIT); 3) other mechanisms, such as the future Special Tribunal on the Crimes of Aggression**⁷⁶⁴.

International criminal court

Ukraine is not a party to the Rome Statute⁷⁶⁵, the international treaty that governs the International Criminal Court (ICC). Nevertheless, it has recognised its jurisdiction over the events of 2013–2014 and Russia's armed aggression in eastern Ukraine, which began in 2014.

On 2 March 2022, ICC Prosecutor Karim Khan launched⁷⁶⁶ an investigation into international crimes following the full-scale invasion of Ukraine on 24 February 2022, based on a joint request from 39 member states of the Rome Statute. The right to initiate an investigation by ICC member states is not linked to the scope of the ICC's jurisdiction, which a state has recognised over itself⁷⁶⁷. Therefore, the field of qualification for the ICC is as wide as possible - war crimes, crimes against humanity and genocide (except for the crime of aggression, given the complex procedure for its application due to the restrictions imposed by the Kampala Amendments).

Ukraine is in a unique situation - the ICC, on its own initiative, has started proceedings on Russia's war crimes against Ukraine (and as of March 2024, has issued 4 arrest warrants⁷⁶⁸

764 Kozmenko A., Lebid V., Kravchuk Y., Voinova N., Sapozhnikova O. International crimes in Ukraine: an overview of national investigation and judicial practice (2023). Ukrainian Helsinki Human Rights Union. URL: https://www.helsinki.org.ua/wp-content/uploads/2023/09/International_crim_ukr_A4-DLYA-ONLAYN-PUBLIKATSIYI-3.pdf.

765 Rome Statute of the International Criminal Court. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

766 Situation in Ukraine. ICC-01/22. International Criminal Court. URL: <https://www.icc-cpi.int/situations/ukraine>.

767 Rome Statute of the International Criminal Court of 17.07.1998, Art. 14. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

768 The International Criminal Court issued an arrest warrant for Putin. Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine. 2023. URL: <https://minre.gov.ua/2023/03/17/mizhnarodnyj-kryminalnyj-sud-vydav-order-na-aresht-putina/>; Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov. International Criminal Court. 2024. URL: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and>.

against the military and political leadership of the Russian Federation and the Commissioner for Children's Rights of this country), and the **OPG actively exchanges evidentiary information in cases involving the military and political leadership of Russia**. These cases are clearly distinguished from the proceedings on the fact of committing a crime by ordinary combatants and are strategically important for evidence at the ICC. In order to enable the ICC representatives to participate in investigative and procedural actions conducted by Ukrainian investigators and prosecutors, in 2022, the CPC of Ukraine was supplemented with Section IX-2 "Specifics of Cooperation with the International Criminal Court"⁷⁶⁹.

Joint Investigation Teams (JITs)

JITs are joint forces of national states to investigate international crimes within the framework of universal jurisdiction (regardless of the principle of territoriality and nationality, more than 150 countries can prosecute international crimes on their own initiative).

The JIT for the investigation of international crimes includes a number of European countries. Eurojust (a European agency that cooperates with the judicial and police authorities of the European Union member states) is also a member, and it has noted that the war in Ukraine is the most documented armed conflict in human history⁷⁷⁰. Eurojust provides extensive operational, analytical, legal and financial assistance to the members of the team, as well as supporting coordination and cooperation between all national investigative and prosecutorial authorities that have also launched investigations into individual crimes, including the administration of the Core International Crimes Evidence Database⁷⁷¹.

It is important that the United States of America has recently joined this effort, having adopted amendments⁷⁷² to its criminal law (War Crimes Act) specifically for this purpose in December 2022. After that, on 18 February this year, the US Secretary of State stated that the United States considers the actions of the Russian armed forces and high-ranking officials to be crimes against humanity⁷⁷³. In addition, the US provided a detailed list of intentions to deploy legal assistance to punish Russia for international crimes. One of the steps towards this was the signing of a Memorandum of Understanding between the US Department of Justice and the JIT member states in March 2023⁷⁷⁴. Thus, the main cooperation in prosecuting crimes against humanity today is with the United States through the JIT.

Crime of aggression

In the summer of 2023, the International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA)⁷⁷⁵ was launched. Its purpose is to ensure close cooperation between partners. The technical work and coordination of the Centre is carried out by Eurojust. Prosecutors

769 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Cooperation with the International Criminal Court: Law of Ukraine of 03.05.2022 No. 2236-IX. URL: <https://zakon.rada.gov.ua/laws/show/2236-20#n13>.

770 The work of the joint investigation team in the process of documenting Russian crimes: Ukraine's military experience. JustTalk. 2023. URL: <https://justtalk.com.ua/post/robota-spiinoi-slidchoi-grupi-v-protsezi-dokumentuvannya-zlochiv-rf-voennij-dosvid-ukraini>.

771 Core International Crimes Evidence Database. Eurojust. URL: <https://www.eurojust.europa.eu/core-international-crimes-evidence-database>.

772 The United States and JIT member states sign a Memorandum of Understanding. Office of the Prosecutor General. 2023. URL: <https://www.gp.gov.ua/ua/posts/ssa-ta-krayini-cleni-jit-pidpisali-memorandum-provzajemorozuminnya>.

773 United for Justice: What are the results of the "Legal Ramstein" and why is it important? JustTalk. 2023. URL: <https://justtalk.com.ua/post/united-for-justice-yaki-rezultati-yuridichnogo-ramshtajnu-ta-chomu-tse-vazhlivo>.

774 The United States and JIT member states sign a Memorandum of Understanding. Office of the Prosecutor General. 2023. URL: <https://www.gp.gov.ua/ua/posts/ssa-ta-krayini-cleni-jit-pidpisali-memorandum-pro-vzajemorozuminnya>.

775 Ukraine: International Centre for the prosecution of Russia's crime of aggression against Ukraine starts operations today. European Commission. 2023. URL: https://neighbourhood-enlargement.ec.europa.eu/news/ukraine-international-centre-prosecution-russias-crime-aggression-against-ukraine-starts-operations-2023-07-03_en.

and investigators from the JIT member states and experts are based in The Hague. The Centre carries out preparatory work to collect evidence of the crime of aggression for the future Special Tribunal (or another mechanism currently being discussed at the diplomatic level). The evidence of the guilt of the military and political leadership of the Russian Federation collected by Ukrainian investigators and prosecutors is already being transferred to the ICPA, which will be a prerequisite for the formation of charges for crimes of aggression and their subsequent presentation to these subjects within the future Special Tribunal (if such model is created).

Issues

The ratification of the Rome Statute is a component of Ukraine's European integration, given the Association Agreement between Ukraine and the European Union⁷⁷⁶. According to the Government's Action Plan for the implementation of the European Commission's recommendations presented in the Ukraine's Progress Report under the EU's 2023 Enlargement Package⁷⁷⁷, such ratification will take place within one year from the date of termination or cancellation of martial law in Ukraine⁷⁷⁸. In other words, the **state policy is to avoid actions to ratify the Rome Statute in times of war, which limits Ukraine's initiative, the ability to have its own judge, and creates a situation of dependence on the initiative and goodwill of the court in relation to the armed conflict.**

Another problem is that the **current CPC of Ukraine only allows for the possibility of creating joint investigation teams (JITs), but does not specify the procedure for their activities.** Thus, the CPC of Ukraine only provides that special investigative teams may be created to conduct pre-trial investigation of criminal offences committed on the territories of several states, or if the interests of these states are affected⁷⁷⁹.

In fact, it is impossible to define the composition of the joint investigative team, including the senior officer who will coordinate its activities. Similarly, the possibility for members of the joint investigation team to conduct investigative (search) and other procedural actions in the territory of the state where the criminal offence was committed or in the territory of one of the states whose competent authorities are members of the team, if required by the needs of pre-trial investigation and court proceedings, is also not provided for. **Although currently the provisions of the CPC of Ukraine are applied by analogy, this is a problematic way that may lead to the loss of the results of the investigation, including the recognition of the evidence collected as inadmissible.** To address this issue, draft law No. 7330⁷⁸⁰ has been developed and is pending consideration by the Parliament.

Recommendations

1. Ratify the Rome Statute of the International Criminal Court without waiting for the end of martial law.

776 The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, of 27.06.2014, Articles 8, 24. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text.

777 On approval of the action plan for the implementation of the recommendations of the European Commission presented in the Progress Report of Ukraine within the framework of the European Union's 2023 Enlargement Package: Order of the Cabinet of Ministers of Ukraine of 09.02.2024 No. 133, recommendation 140. URL: <https://zakon.rada.gov.ua/laws/show/133-2024-%D1%80#Text>.

778 Government's position on the ratification of the Rome Statute of the International Criminal Court: to ratify, but after the war. Centre of Policy and Legal Reform. 2024. URL: <https://pravo.org.ua/analytical-materials/shhotyzhnevji-analiz-28-lyutogo-05-bereznya-2024-roku/#link1>.

779 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI. Art. 571. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

780 On Amendments to the Criminal Procedure Code of Ukraine on Improving the Activities of Joint Investigation Teams: Draft Law of Ukraine, registration No. 7330 of 29.04.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39520>.

2. Continue the previously defined approaches to the allocation of resources for proving international crimes using various instruments, combining the efforts of national criminal prosecution authorities and foreign and international institutions.
3. Regulate at the legislative level the activities of joint investigative teams on the territory of Ukraine.

Bar reform

An independent legal profession is a prerequisite for the establishment of the rule of law and democracy in society. **The Bar is a component of the justice system, which was enshrined in the 2016⁷⁸¹ amendments to the Constitution of Ukraine, and therefore a component of the justice reform, which cannot be successful without an institutionally developed independent Bar.** In the context of post-war recovery of Ukraine, the Bar is one of the important guarantees of observance of the rights of citizens affected by the consequences of the armed aggression.

The current Law of Ukraine “On the Bar and Practice of Law”⁷⁸² (the “Law”) defines the Bar as a non-governmental self-governing institution that provides legal protection, representation and other types of legal aid on a professional basis, and independently resolves issues of its organisation and activities. However, the Law has a number of shortcomings, some of which were predicted in the conclusions of the Main Scientific and Expert Department⁷⁸³. The implementation of the Law over the past 11 years demonstrates this and gives clear signals of the need for a fundamental reform of the Bar.

The idea of self-governance of the Bar was intended to provide the Bar with sufficient independence from the state to guarantee the independence of each advocate, as well as to protect them from any external influence, pressure or interference in their professional activities. However, in modern conditions, using the slogans of independence from the state, there is an increasing dependence of advocates on the leadership of the Ukrainian National Bar Association (UNBA). The current structure of the Bar organisation, introduced by the above-mentioned Law, is characterised by:

- › excessive dependence of advocates on the Bar self-government bodies (BSG);
- › legal uncertainty in the regulation carried out by the Bar self-government bodies;
- › insufficient transparency of procedures in the field of access to the profession, which leads to abuse;
- › contains risks and regularly demonstrates practical cases of abuse in disciplinary procedures;
- › insufficient accountability of the Bar self-government bodies with regard to funding and expenditures within the system;

781 On Amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine of 02.06.2016 No. 1401-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.

782 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

783 On the Bar and Practice of Law: Draft Law of Ukraine, registration No 10424 of 28.04.2012. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=10424&skl=7.

- › significant shortcomings in the system of continuous professional development of advocates, which turns the process into a formality along with a complex, non-transparent procedure for accreditation of organisations that provide professional development activities for advocates.

Moreover, a key challenge today is the expiry of the term of office of the Bar self-government bodies, which results in the Bar not performing some of its constitutional functions in the justice system. For example, two members of the High Council of Justice (HCJ)⁷⁸⁴ and one member of the Qualification and Disciplinary Commission of Prosecutor⁷⁸⁵, the bodies of the justice system that are essential for the proper functioning of the judiciary and prosecution system and for the full guarantee of the independence of judges and prosecutors in their professional activities, have not yet been delegated. HCJ Head Hryhorii Usyk outlined key areas for change, highlighting the problem of the current lack of HCJ members who should be delegated by the Bar. He also emphasized the importance of reforming the Bar in Ukraine, noting that this should be preceded by the creation of an appropriate legislative framework⁷⁸⁶.

Today, the Ukrainian Bar needs to bring the provisions on its organisation and activities in line not only with the Constitution of Ukraine, as amended in 2016, but also with the best international standards.

The result of such reform should be the strengthening of the protection of fundamental human rights and freedoms, the enhancement of the institutional independence of the Bar, the protection of the professional rights of an advocate, their independence, guarantees of the practice of law, the establishment of favourable conditions for the provision of effective and high-quality legal aid to war-affected individuals, and the provision of full access to justice both in Ukraine and abroad.

The issues are particularly critical due to the so-called “monopoly of advocates” on representation in courts introduced by the 2016 constitutional reform. And the only solution to the problem is fundamental legislative changes in the legal profession. In particular, according to the Constitution of Ukraine⁷⁸⁷, the Bar is an element of justice and the principles of its organisation and activities are governed by law. Therefore, the powers delegated to the Bar self-government by the state should be regulated at the legislative level. However, the situation is complicated by the fact that there is currently no political will to introduce such changes in the Bar system. There was an attempt to fundamentally change the situation in 2018, when the draft law No. 9055⁷⁸⁸ was registered in the Parliament. However, these attempts to change the current situation were not implemented due to aggressive resistance from the leadership of the Ukrainian National Bar Association. At the same time, the development of the draft law, its discussion and advocacy indicate that the state is aware of the need to reform the Bar.

784 Representatives of the Bar in the HCJ resigned because of disagreement with unconstitutional status restrictions. Ukrainian National Bar Association. 2022. URL: <https://en.unba.org.ua/activity/news/7396-representatives-of-the-bar-in-the-hcj-resigned-because-of-disagreement-with-unconstitutional-status-restrictions.html>.

785 As of 03.11.2021, the current composition of the QDCP consists of 10 out of 11 members. The only member missing is the one who was supposed to be delegated by the Congress of Advocates of Ukraine, which has not taken place since then for reasons that will be discussed in the Report below.

786 We need a legislative framework for reforming the Bar - Hryhorii Usyk, Head of the HCJ. Judicial and Legal Newspaper. 2024. URL: <https://sud.ua/uk/news/publication/303644-nam-nuzhna-zakonodatelnaya-baza-dlya-reformirovaniya-advokatury-glava-vsp-grigoriy-usik>.

787 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 131². URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

788 On the Bar and Practice of Law: Draft Law of Ukraine, registration No. 9055 of 06.09.2018. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64557.

Legal status of the Bar

State of play

An independent Bar as a prerequisite for the establishment of the rule of law and democracy in a society is a generally recognised international standard. An advocate should be free – politically, economically and intellectually – to carry out activities of advising and representing clients⁷⁸⁹.

Since its accession to the Council of Europe, Ukraine has undertaken to ensure the protection of the legal profession by law and to establish a professional Bar Association. In particular, this was stated in the recommendations of the PACE in Conclusion No. 190⁷⁹⁰ in 1995, Resolution 1346⁷⁹¹ in 2003 and Resolution 1755 in 2010⁷⁹². The current Law⁷⁹³ was adopted in 2012.

This Law defines the Ukrainian Bar as a non-governmental self-governing institution that provides protection, representation and other types of legal aid on a professional basis, and independently decides on its organisation and activities. The Law also introduced the obligation of all advocates of Ukraine, regardless of their choice, to be members of the unified UNBA, a non-governmental non-profit professional organisation established to ensure the implementation of the tasks of the Bar self-government⁷⁹⁴.

Thus, the Law formally ensured the fulfilment of Ukraine's international obligations to ensure the protection of the status of the legal profession and the establishment of a professional Bar Association at the legislative level. Meanwhile, this Law also contains significant shortcomings that have a significant negative impact on the performance by the Bar of its special social role in society and are used for the purpose of abusing the BSG, as will be discussed in separate sections of the Report. In particular, the implementation of the Law has made advocates particularly dependent on the BSG.

Progress and issues

In 2016, following amendments to the Constitution of Ukraine, the constitutional and legal regulation of the Bar was moved from Chapter II "Rights, Freedoms and Duties of Individuals and Citizens" to Chapter VIII "Justice". This strengthened the status of the Bar and emphasised its role in the justice system along with the courts and the prosecution. In addition, Article 131² of the Constitution of Ukraine establishes that the independence of the Bar is guaranteed and provides that the principles of organisation and operation of the Bar, as well as the practice of law in Ukraine, are defined by law.

At the same time, based on the 2016 amendments to the Constitution, the legislator turned the system of the Bar into a monopolist, which has all the tools and mechanisms to ensure and control the quality of legal aid, and therefore, significant control over access to justice and over the

789 Charter of Basic Principles of the European Legal Profession and Code of Ethics for European Lawyers. 2013, Principle A. URL: https://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf.

790 Opinion No. 190 of the Parliamentary Assembly of the Council of Europe on the application of Ukraine for membership in the Council of Europe of 26.09.1995. URL: https://zakon.rada.gov.ua/laws/show/994_590#Text.

791 Resolution 1346 (2003) of the Parliamentary Assembly of the Council of Europe Fulfilment of obligations and commitments by Ukraine of 29.09.2003. URL: https://zakon.rada.gov.ua/laws/show/994_608#Text.

792 Resolution 1755 of the Parliamentary Assembly of the Council of Europe. The functioning of democratic institutions in Ukraine of 04.10.2010. URL: https://zakon.rada.gov.ua/laws/show/994_a19#Text.

793 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

794 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). 2018. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

activities of individual advocates. After all, it is the BSG bodies that are vested with the functions of ensuring the proper level and quality of access to the profession, creating and enforcing the Rules of Professional Conduct, organising disciplinary procedures, and advocates' professional development, and it is the BSG bodies that make financial decisions, which are mostly regulated by the relevant acts of the BSG bodies. In addition, it is the BSG bodies that are supposed to ensure an adequate level of independence of advocates. Thus, the constitutional context for the implementation of the Law, which existed at the time of its development and adoption in 2012, is significantly different from the one that emerged after the amendments to the Constitution of Ukraine in 2016.

Thus, the Law stipulates that the Bar shall be independent from the state authorities, local self-government bodies, their officials and employees⁷⁹⁵. At the same time, it is the state, through the legislative process, that has delegated to the Bar the powers of self-government, including those aimed at ensuring the independence of the advocate in the process of administration of justice. Consequently, each advo BSG is implemented through numerous cate, and thus the Bar as a whole, must be independent and protected from possible arbitrariness, as well as the Bar self-government bodies in terms of exercising their functions delegated by the state, in particular, access to the profession and disciplinary liability of advocates.

The relevant law provides that the Bar self-government is based on the principles of election, transparency, binding nature of the decisions of the Bar self-government bodies, accountability, and prohibition of interference of the Bar self-government bodies in the professional activities of the advocates⁷⁹⁶. This provision is elaborated in a number of articles, which stipulate that the Bar Council of the Region (hereinafter referred to as the BCR) is subject to supervision and accountability to the conference of advocates of the region, and the Qualification and Disciplinary Commission of the Bar (hereinafter referred to as the QDC) is subject to supervision and accountability to the regional Bar conference; the Audit Commission of the regional Bar is subject to the supervision and accountability of the conference of advocates of the region; the High Qualification and Disciplinary Commission of the Bar is subject to the supervision and accountability of the Congress of Advocates of Ukraine and the Bar Council of Ukraine (BCU); and the High Audit Commission of the Bar is subject to the supervision and accountability of the Congress of Advocates of Ukraine⁷⁹⁷.

Thus, the Bar is accountable by law only to the advocates of Ukraine. The current legislation does not provide for other mechanisms of accountability of the Bar to the public, although it is now an element of the justice system and has a monopoly right to provide professional legal aid. In this regard, society is increasingly raising the issue of declaring the BSG officials or all advocates as agents of justice, which should be one of the effective tools of public accountability of the Bar as an institution performing a public function.

Recommendations

Amend the legislation of Ukraine on the Bar to bring it in line with the spirit of the provisions of the Constitution of Ukraine, which came into force after the amendments in 2016, namely:

- › introduce a system of checks and balances to offset the exclusive right to provide professional legal aid and additional mechanisms to guarantee its quality. For example, if membership in a voluntary professional Bar association is mandatory for every advocate, the provision stating that the UNBA is the only such association should be removed. At the

⁷⁹⁵ On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, p.1, Art. 5. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

⁷⁹⁶ Ibid, Art. 43.

⁷⁹⁷ Ibid, Arts 48, 50-53, 55.

same time, the procedure for the election and functioning of the BSG, the procedure for admission to the profession and disciplinary action against advocates, the procedure for the formation and expenditure of the association's budget, procurement, and the procedure for the publication and entry into force of acts of the Bar self-government should be regulated equally for all associations.

Practice of law

Stare of play

The Law provides that the advocate can practice law individually; in the organisational and legal form of an advocate's bureau (which can be established by one advocate); in the organisational and legal form of an advocates' association (which can be established by two or more advocates)⁷⁹⁸.

In June 2016, Article 131² of the Constitution of Ukraine was supplemented by a provision stating that only an advocate may represent another person in court as well as defend against criminal charges. At the same time, the Law may define exceptions to the representation in court in labour disputes, disputes concerning the protection of social rights, elections and referendums, minor disputes, as well as representation of minors and persons declared incapacitated by a court or whose capacity is limited.

Another aspect of the regulation of the practice of law is that all advocates of Ukraine are required to be included in the **Unified Register of Advocates of Ukraine (hereinafter – the URAU)**. In order to fulfil this requirement, the relevant law stipulates that the Bar Council of Ukraine⁷⁹⁹ is responsible for maintaining the URAU. The purpose of maintaining such a register is to ensure the collection, storage, accounting and provision of reliable information on the number and personal composition of advocates of Ukraine, advocates of foreign countries who have received the right to practice law in Ukraine, as well as information on the organisational forms of practice of law chosen by advocates.

Such information is entered into the URAU by the BCR and the BCU. The Law establishes a list of data to be entered into the URAU⁸⁰⁰, in particular:

1. Full name of the advocate.
2. Number and date of the Bar Certificate, number and date of the decision to issue the Bar Certificate (number and date of the decision to include the advocate of a foreign state in the URAU).
3. The name and location of the organisational form of the practice of law, telephone numbers.
4. The address of the advocate's office, telephone numbers.
5. Information on the suspension or termination of the right to practice law.
6. Other information required by this Law.

⁷⁹⁸ Ibid, p. 3, Art. 4.

⁷⁹⁹ Ibid, p. 1, Art. 17.

⁸⁰⁰ Ibid, p. 2, Art. 17.

The list of information to be entered into the URAU is exhaustive and is established only by the provisions of the relevant Law⁸⁰¹. The information entered into the URAU is public and is posted on the UNBA's official website. If an advocate or other person needs to obtain an extract from this register, the BCU and the relevant BCRs may provide it upon request of such advocate or other person.

Progress and issues

Another challenge is that the Law provides for an exclusive list of forms of practice of law. Currently, this creates a problem if, for example, two advocates wish to carry out professional activities jointly, but without establishing a legal entity (bureau or association), rather to enter into employment contracts with each other on the distribution of duties, profits, and joint obligations. Although, by analogy with the notary service, this form of practice of law, "advocate-advocate", still has the right to exist.

Another issue is that many of the provisions of the URAU Procedure⁸⁰² directly contradict the Law⁸⁰³. Such contradictions are present even in the new version of this Procedure, which was approved by the BCU Decision of 22 August 2022⁸⁰⁴. In particular, contrary to the Law, the following are introduced to the URAU:

- › the name and location of several organisational forms of the practice of law;
- › addresses of several workplaces of the advocate (with specification of the main and/or additional addresses of the workplace);
- › information on the decisions of the BCU, marks on fees payment, e-mail address, digital version of the advocate's photograph, information on advanced training;
- › information about the advocate's assistants and trainees.

For example, according to the provisions of the Law, as noted above, an advocate may practice law individually or in the legal forms of an advocate's bureau or advocates' association. This leads to the conclusion that the URAU cannot contain the locations of several organisational forms of the practice of law simultaneously, as provided for in clause 3.1.3 of the URAU Procedure.

Similarly, the provision of sub-clause 3.1.4 of the URAU Procedure on entering the addresses of several advocate's workplaces into the URAU directly contradicts sub-clause 2 of part 2 of Article 17 of the Law and clause 3.3 of this Procedure, which provide for the entry into the URAU of only one address of the advocate's workplace. The address of the advocate's workplace specified in the URAU is important for the protection of the advocate's professional rights, observance of the guarantees of the practice of law, bringing the advocate to disciplinary responsibility and ensuring the implementation of the Bar self-government.

Meanwhile, the Law generally make no provision for entering additional addresses of workplaces; assistants/trainees of the advocate; total length of service as an advocate; position held in the Bar self-government bodies; categories of cases; awards (honorary titles, distinctions, etc.);

801 The Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/>.

802 The Procedure for Maintaining the Unified Register of Advocates of Ukraine, approved by the Decision of the Bar Council of Ukraine of 17.12.2012 No. 26 (as amended). URL: <https://zakon.rada.gov.ua/rada/show/v0026871-12#n5>.

803 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). Kyiv, 2018. P. 40-44. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

804 On Approval of the Procedure for Maintaining the Unified Register of Advocates of Ukraine in a New Edition: Decision of the Bar Council of Ukraine of 22.08.2022 No. 74. URL: <https://zakon.rada.gov.ua/rada/show/v0074871-22#Text>.

official pages in social networks; model and serial number of computer equipment used by the advocate; characteristics and corresponding serial numbers of data storage devices used by the advocate in their activities; transport used by the advocate, the logo and/or the name of the website of the law firm, law office where the advocate practices law, etc⁸⁰⁵.

In addition, the Law neither provides for any fee for entering information into the URAU. At the same time, clause 5.1 of the URAU Procedure provides for the possibility of establishing a fee for the initial entry of information into the URAU, confirmation or amendment of the URAU by the decision of the BCU. Similarly, the Regulation on the Legal Assistant⁸⁰⁶ provides for the payment of a fee for updating the data in the URAU on the legal assistant in the amount of 50% of one minimum wage established by law on the day of such payment.

The BCU decision⁸⁰⁷ also establishes an annual fee (contribution) for processing, entering and posting additional information in the advocate's profile (upon their request) in the URAU database on the UNBA's official website. The amount of such a fee (contribution) is 50% of one minimum wage as of the day of submission of such information to the BCR (for each of the 3 entries).

However, ensuring the transparency of information about the Bar and the practice of law and ensuring the maintenance of the URAU are among the main tasks of the Bar self-government in Ukraine. Similarly, ensuring access to and transparency of information about advocates in Ukraine is a function of the UNBA⁸⁰⁸, since the information entered into the URAU is publicly available on the UNBA's official website⁸⁰⁹. Therefore, the relevant information is of public interest. As a result, the UNBA, as the information manager, should be guided by the Law of Ukraine "On Access to Public Information"⁸¹⁰ when deciding on the access to information.

Pursuant to clause 2 of the Government Resolution No. 835⁸¹¹, information administrators defined by the Law of Ukraine "On Access to Public Information" had to ensure the publication and subsequent updating of data sets on their official websites within 6 months (i.e. by 25 April 2016) in line with the Regulation on data sets to be published as open data approved by this Resolution. However, information about the URAU was posted on a private website <https://www.imena.ua> without a mandatory list of open data sets that ensures consistent stability of information data⁸¹². In its current form, the URAU allows obtaining information only about an individual advocate according to their data or selecting the required advocate from the list of proposed (found) advocates. The current URAU is not able to provide public access to reliable information, in particular, on:

- › the number and personal profile of all advocates in Ukraine;
- › the number of advocates in each region;

805 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, c. 6, p. 2, Art. 17. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

806 Regulation on the Legal Assistant, approved by the decision of the Bar Council of Ukraine of 25.09.2015 No. 113 (as amended). URL: <https://zakon.rada.gov.ua/rada/show/v0074871-22#Text>.

807 Issues of Organisational Support of the Unified Register of Advocates of Ukraine: Decision of the Bar Council of Ukraine of 22.09.2017 No. 191. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2017-09-22-r-shennya-rau-190_5aaf8ecba8ab6.pdf.

808 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, cl. 5, 6, p.1, Art. 44; cl. 4, p.2, Art. 45. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

809 Ibid, p. 4, Art. 17.

810 On Access to Public Information: Law of Ukraine of 13.01.2011 No. 2939-VI, cl. 4, p.4, p.2, Art. 13. URL: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.

811 On Approval of the Regulation on Data Sets to be Disclosed in the Form of Open Data: Resolution of the Cabinet of Ministers of Ukraine of 21.10.2015 No. 835. URL: <http://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF>.

812 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). Kyiv, 2018. P. 40-44. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

- › the number and composition of the advocates of foreign states who have acquired the right to practice law in Ukraine;
- › the organisational forms of the practice of law chosen by advocates and their quantitative composition.

Thus, the **issues with maintaining the URAU** in the Bar are summarised as follows:

- › the Procedure for maintaining the Unified Register of Advocates of Ukraine, approved by the UNBA, provides for entering into the URAU and publishing information that is not provided for by the Law of Ukraine “On the Bar and Practice of Law”;
- › the UNBA charges a fee for entering information into the URAU that is not provided for by the Law of Ukraine “On the Bar and Practice of Law”, which is also not provided for by this Law;
- › the UNBA, as the administrator of the information contained in the URAU, contrary to clause 2 of Government Resolution No. 835, fails to ensure the publication and subsequent updating of the data set on the UNBA’s official website in line with the Regulation on data sets to be published in the form of open data approved by this Resolution;
- › the procedure for maintaining the URAU does not meet the requirements of the Law of Ukraine “On Public Electronic Registers”⁸¹³.

Moreover, there are legislative initiatives aimed at legalising such practices. Thus, Draft Law No. 7025⁸¹⁴ introduces significant amendments and additions to Article 17 of the Law on the functioning of the URAU, whereby:

- › the UNBA shall be the holder (owner) of the URAU, organise and ensure its maintenance;
- › by the decision of the BCU, the information not provided for by the Law may be entered into the URAU;
- › the information shall be entered into the URAU based on and in accordance with the procedure established by the BCU;
- › the Procedure for maintaining the URAU shall be approved by the BCU and shall not require registration in the Unified State Register of Legal Acts;
- › registration of the URAU as an entity of the register is not required;
- › the URAU is administered by the registry holder based on and in accordance with the procedure established by the BCU.

In general, this legislative initiative proposes amendments to the Law, which is an attempt to remove maintenance of the URAU from the scope of the Law of Ukraine “On Public Electronic Registers” or its individual provisions and to legalise the arbitrariness of the BCU in establishing various fees for entering information into the URAU, which are not envisaged by the Law⁸¹⁵.

813 On Public Electronic Registers: Law of Ukraine of 18.11.2021 No. 1907-IX. URL: <https://zakon.rada.gov.ua/laws/show/1907-20#Text>.

814 On Self-Regulatory Organisations: Draft Law of Ukraine, registration No. 7025 of 04.02.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/38927>.

815 Draft Law No 7025: challenges to the independence of the Bar. Dnistrianskyi Centre. 2022. URL: <https://dc.org.ua/news/zakonoproekt-no7025-riziki-dla-nezaleznosti-advokaturi>.

Recommendations

Adopt amendments to the Law of Ukraine “On the Bar and Practice of Law” to bring the UNBA’s procedures in line with the requirements of the law. The BCU should amend the URAU Procedure in accordance with these legislative changes. Given the decentralisation of the Bar and the legislative provision for the voluntary formation of several advocates’ associations with the obligation for advocates to be members in at least one such association, it is advisable to transfer the maintenance of the UNBA register to one of the judicial authorities, such as the State Judicial Administration of Ukraine or the High Council of Justice.

Bar self-government

State of play

Self-governing Bar associations are necessary to ensure the independence of advocates, their representation, ongoing training, retraining and upskilling. They should co-operate with governments to ensure the right of everyone to equal and effective access to legal aid, so that advocates are able to advise and assist their clients in the absence of undue interference, in accordance with the law and recognised professional standards and ethical rules.

Recommendation R (2000)21⁸¹⁶ of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of advocate also notes the need to enable and encourage advocates to form professional local, national and international associations tasked with strengthening professional standards and safeguarding the independence and interests of advocates. In addition, this act encourages advocates to join the relevant associations. At the same time, Bar associations or other professional associations of lawyers shall be self-governing bodies independent of the authorities and the public.

The Charter of Fundamental Principles of the European Legal Profession of the Council of Bars and Law Societies of Europe (2006)⁸¹⁷ defines ten basic principles of the legal profession in the EU, which, in particular, include the principle of self-regulation of the legal profession. The official commentary to the Charter states that one of the characteristic features of underdeveloped democracies is the attempts of the state, openly or covertly, to control the legal profession and the activities of advocates.

Most European legal professions combine state regulation and self-regulation. In many cases, the state, recognising the importance of basic principles, uses legislation to reinforce them, for example, by enshrining the principle of confidentiality in law or by empowering Bar associations to adopt rules of professional ethics. The Council of Bars and Law Societies of Europe is convinced that **only strong professional self-regulation can guarantee the professional independence of lawyers from the state, and without guarantees of independence lawyers will not be able to fulfil their professional and legal role**⁸¹⁸.

The Bar self-government is a clear indicator of the development of the Bar, a strong and independent Bar corporation. At the current stage of judicial and legal reform, when the Bar has become a self-governing institution of the legal system, the task of the Bar community is to improve the system of Bar self-government bodies, to ensure a balanced distribution of powers

816 Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer. URL: <https://www.icj.org/wp-content/uploads/2014/10/CoE-rec200021-freedom-exercise-profession-lawyer.pdf>.

817 Charter of Basic Principles of the European Legal Profession of 25.11.2006. URL: <https://ips.ligazakon.net/document/MU06301>.

818 Draft law No 7025: challenges to the independence of the Bar. Dnistrianskyi Centre. 2022. URL: <https://dc.org.ua/news/zakonoproekt-no7025-riziki-dla-nezaleznosti-advokaturi>.

between the Bar self-government bodies and to exercise them effectively and in accordance with the law⁸¹⁹.

In Ukraine, the Bar is an independent *self-governing* institution. The Bar self-government is the right of advocates guaranteed by the state to independently decide on the organisation and activities of the Bar⁸²⁰. It acts to ensure the proper exercise of the profession of advocate, observance of guarantees of such activity, protection of professional rights of advocates, ensuring a high professional level of advocates and resolving issues of disciplinary liability of advocates in Ukraine. Decisions of the BSG are binding on every advocate⁸²¹. Failure to comply with such decisions is grounds for bringing the advocate to disciplinary liability⁸²².

The tasks of the Bar self-government include, inter alia, the establishment and maintenance of the Bar Qualification and Disciplinary Commissions; maintenance of the Unified Register of Advocates of Ukraine; participation in the formation of the High Council of Justice in accordance with the procedure established by law⁸²³.

The Bar self-government system is composed and implemented through the activities of 8 organisational forms, namely:

- › the Congress of Advocates of Ukraine;
- › the Bar Council of Ukraine (BCU);
- › the High Qualification and Disciplinary Bar Commission (HQDC);
- › the High Audit Commission of the Bar (HACB);
- › the Conference of Advocates of the Region (CAR);
- › the Bar Council of the Region (BCR);
- › the Qualification and Disciplinary Commission of the Region (QDC);
- › the Audit Commission of the Region (ACR).

The Congress of Advocates of Ukraine is the supreme body of the Bar self-government, which is convened by the BCU at least once every three years or at the request of at least one tenth of the total number of advocates included in the URAU or at least one third of the regional Bar councils⁸²⁴. Its functions include the approval of the UNBA Charter, as well as other regulatory documents and reports, and the election of the head and deputy heads of the Congress of Advocates of Ukraine, the HQDC and the HACB. Some important functions of the Congress go beyond the regulation of the Bar as such, in particular: it elects/appoints 2 members of the High Council of Justice; 2 members of the High Qualification Commission of Judges; and 1 member of the Qualification and Disciplinary Commission of Prosecutors.

The CAR is the highest body of the Bar self-government in each region of the country, which is convened by the Bar Council of the Region at least once a year or at the proposal of at least one

819 D. Zabłaziuk. Ways to improve the organisational forms of the Bar self-government in Ukraine. Bulletin of Lviv Polytechnic National University. Series: Legal Sciences. B. 7. No 1. 2020. P. 34

820 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, cl. 3, p. 1, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

821 Ibid, cl. 5, p.1, Art. 21.

822 Ibid, cl. 6, p.2, Art. 34.

823 Ibid, Art. 44.

824 Ibid, Art. 54.

tenth of the total number of advocates in the region or the BCU. In addition to the functions that are similar to those of the Congress of Advocates of Ukraine, but at the regional level, the CAR also elects delegates thereto⁸²⁵.

The BCU performs the functions of the Bar self-government in the period between the congresses of advocates of Ukraine. It consists of 30 members with at least five years of legal practice. It performs regular organisational functions, deals with issues and procedures for the payment of Bar fees, and considers complaints against decisions of regional Bar associations⁸²⁶.

At the regional level, the BCRs perform similar functions in between the conferences of advocates of the regions. There are 27 Bar councils of the regions authorised to represent the advocates of the respective region, perform administrative functions in relation to funds and property, control the quality of legal aid and draw up the agenda for conferences of advocates of the regions⁸²⁷.

The HQDC is a collegial body tasked with reviewing complaints against the qualification and disciplinary commissions of the Bar. It is accountable to the Congress of Advocates of Ukraine and the BCU. This body considers and acts on complaints against decisions of regional QDCs and summarises disciplinary practice⁸²⁸.

The regional QDCs are the UNBA's regional disciplinary bodies. As a self-governing body, the QDC determines the level of professional training of individuals who have expressed their intention to be admitted to the Bar and decides on the disciplinary liability of advocates. Each QDC of the region has 30 members and is accountable to the CAR⁸²⁹.

The HACB monitors the financial and economic activities of the UNBA, its central and regional bodies, the QDC and regional audit commissions.

The ACR monitors the financial and economic activities of the relevant Bar Council of the Region and the regional QDC. It develops conclusions for consideration and approval to the conference of advocates of the region, and may also submit the results of inspections of the BCU and the Congress of Advocates of Ukraine⁸³⁰.

The **Ukrainian National Bar Association** was established on 19 November 2012 to ensure the implementation of the Bar self-government tasks. It is a non-governmental, non-profit professional organisation that unites all advocates of Ukraine⁸³¹. The UNBA is established by the Congress of Advocates of Ukraine and cannot be reorganised (only liquidated by law). The same congress approves the UNBA Charter⁸³². The UNBA's responsibilities include: representing the Ukrainian Bar in relations with public authorities and local self-government bodies, enterprises, institutions, organisations regardless of ownership, public associations and international organisations, delegating representatives to public authorities; protecting the professional rights of advocates and ensuring guarantees of the practice of law, etc.

825 Ibid, Art. 47.

826 Ibid, Art. 55.

827 Ibid, Art. 48.

828 Ibid, Art. 52.

829 Ibid, Art. 50.

830 Ibid, Art. 51.

831 Ibid, Art. 45.

832 The Charter of the non-governmental non-profit professional organisation "Ukrainian National Bar Association", approved by the Reporting and Election Congress of Advocates of Ukraine in 2017. URL: https://unba.org.ua/assets/uploads/legislations/inshidokumenty/statut_naau%2009.06.2017.pdf.

In accordance with the administrative-territorial division of Ukraine, the BSG bodies are divided into two levels - central Bar self-government bodies (at the national level) and regional (at the regional and Kyiv city levels).

After taking the oath, all advocates become members of the UNBA - thus, Ukrainian legislation provides for mandatory and non-alternative membership of all Ukrainian advocates in the UNBA⁸³³.

Progress and issues

First, the UNBA's non-alternative membership of advocates, according to some experts, contradict the Constitution of Ukraine⁸³⁴. Thus, on 10 November 2023, the Constitutional Court of Ukraine received a constitutional complaint from V. Pleskach regarding the compliance of part 6 of Article 45 of the Law of Ukraine "On the Bar and Practice of Law"⁸³⁵ with the Constitution of Ukraine (constitutionality). It is argued that the mandatory and non-alternative membership of all Ukrainian advocates in the UNBA is a violation of the constitutional right to freedom of association of citizens in public organisations and indicates that this disputed provision of the Law of Ukraine "On the Bar and Practice of Law" is inconsistent with parts 1 and 4 of Article 36 of the Constitution of Ukraine. The reason for this is that the UNBA does not perform any disciplinary and qualification functions in relation to advocates. Accordingly, compulsory membership in this association does not meet the criteria for not violating this right, based on the relevant case law of the ECHR. The UNBA's activities are not related to the public interest, which existence is connected with the legal profession, since the organisation of this interest is carried out by other Bar self-government bodies, which are not accountable to the UNBA, and are not obliged to implement its decisions and policies.

Thus, the complainant argues that the UNBA forcibly unites all Ukrainian advocates by virtue of non-alternative membership, which a Ukrainian advocate acquires automatically by virtue of the law (*ex lege*). The consequence is that the UNBA is not a sufficiently representative body of the Ukrainian Bar: The "test of time" has shown that the procedure for electing the "leadership" of the Bar provided for by the Law "On the Bar and Practice of Law" is designed to ensure a high degree of corporatisation of the Association in the hands of a very narrow circle of interconnected persons. An ordinary advocate has no influence on the activities of the Association, and the possibility of being elected to any mid-level or higher positions without the support of the management is rather illusory. At the same time, any criticism of this body is prohibited by the Rules of Ethics of the Bar and is the basis for disciplinary liability (Article 12 of the Rules of Ethics of the Bar⁸³⁶).

Without assessing the constitutionality of the complainant's arguments, it can be stated that the lack of alternatives for each advocate to participate in the UNBA as the only body that ensures the activities of the Bar self-government hinders the development of the institution of the Bar under the condition of a double monopoly: the monopoly on representation in courts and the monopoly of the professional association.

833 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, p.6, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

834 S.Y. Rabovska. Some issues of the principles of the Bar of Ukraine. Civil procedural opinion. 2015. № 1. P. 98-102.

835 Constitutional complaints received by the Constitutional Court of Ukraine and their processing as of 29.12.2023. Constitutional Court of Ukraine. URL: <https://ccu.gov.ua/novyna/konstytuciyni-skargy-shcho-nadiyshly-do-konstytuciynogo-sudu-ukrayiny-ta-yih-opracuvannya-51>.

836 The Rules of Ethics of the Bar approved by the Reporting and Election Congress of Advocates of Ukraine in 2017 (as amended on 15 February 2019). URL: <https://zakon.rada.gov.ua/rada/show/n0001891-17#Text>.

The second problem concerns the activities of the BSG. In particular, after 2014 – the beginning of the armed aggression of the Russian Federation against Ukraine – **the Bar self-government bodies of the Autonomous Republic of Crimea were not restored on the territory controlled by Ukraine**⁸³⁷. Although the authorities or higher education institutions, having a similar problem, took such a step, despite the impossibility of predicting the duration of the occupation of this region of Ukraine. The addresses of the BSG bodies of Luhansk and Donetsk regions were also changed.

An equally important problem is the **actual absence of the BSG in Kyiv**, a situation that has historically arisen due to conflicts between different Bar representatives and the lack of such bodies. For several years, both the Kyiv City Bar Council and the Qualification and Disciplinary Commission of the Kyiv City Bar were being formed, but they were not recognised by the BCU and the HQDC due to the UNBA's disapproval⁸³⁸ of their composition. The last attempt to form the BSG bodies in Kyiv ended on 07 November 2021 with the UNBA recognising the reporting and election conference of the Kyiv City Bar as incompetent. The UNBA stated that all its decisions have no legal consequences⁸³⁹. As a result, Kyiv advocates are deprived of the opportunity to participate in the work of the BSG, and advocates who wish to be admitted to the Bar face difficulties in the access to the profession due to the delay by the central level BSG in resolving the conflict that has been going on for many years. This situation forces advocates to start their careers in other regions where they do not actually live and do not plan to practice law there.

Another issue is the powers of the existing BSG bodies. The law establishes a general five-year term of office in the Bar self-government bodies. At the same time, it is prohibited to hold positions in the BSG for more than two consecutive terms⁸⁴⁰.

In 2016, in their comments to the draft Law of Ukraine “On the Bar and Practice of Law” developed by the Judicial Reform Council, experts of the EU Project “Support to Justice Sector Reforms in Ukraine” noted that in the vast majority of European countries the term of office in the Bar self-government bodies (head, members of the council, etc.) is from one to three years⁸⁴¹. Therefore, the term of office defined by the Ukrainian legislation is quite long and does not contribute to the proper frequency of renewal of the BSG.

Similar recommendations regarding the term of office of the heads and members of the Bar self-government bodies are expressed in the Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and the Directorate of Justice and Human Dignity of the Directorate General for Human Rights and the Rule of Law of the Council of Europe on the draft Law on the Bar and Practice of Law of 18 October 2011 CDL-AD(2011)039⁸⁴².

837 Being an advocate in the occupied Crimea. LB.ua. 2023. URL: https://lb.ua/blog/koalitsiia_ua5am/589698_buti_advokatom_okupovanomu_krimu.html.

838 Such non-recognition has been the subject of litigation on several occasions. For example, the Kyiv Administrative Court of Appeal upheld the appeal of the Qualification and Disciplinary Commission of the Kyiv City Bar and declared unlawful the decision of the central level BSG to refuse to recognise the results of its formation. Decision of the Kyiv Administrative Court of Appeal of 11.04.2018 in case No. 826/13030/16. URL: <https://reyestr.court.gov.ua/Review/73420793>.

839 Due to incompetence, the Kyiv City Bar Conference failed to form the Bar self-government bodies of the capital - the decision of the UNBA. Ukrainian National Bar Association. 2022. URL: <https://unba.org.ua/news/7239-cherez-nepovnovazhnist-konferenciya-advokativ-m-kieva-ne-sformovala-organi-advokats-kogo-samovryaduvannya-stolici-rishennya-rau.html>.

840 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, Articles 48, 50-53, 55. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

841 Comments to the Draft Law of Ukraine “On the Bar and Practice of Law”, developed by the Judicial Reform Council. 2016, cl. 39. URL: http://parlament.org.ua/wp-content/uploads/2018/09/Law-Bar-Comments-EUProjectTeam_22April-2016_ukr_.pdf.

842 CDL-AD(2011)039-e Joint Opinion on the draft law on the Bar and practice of law of Ukraine by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), cl. 96, 97. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)039-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)039-e).

However, the biggest problem is that the current BSG bodies were formed at the constituent conferences of advocates in the regions and the constituent congress of advocates in 2012. Consequently, in 2022, the second five-year term of office of the vast majority of the heads of the BSG bodies - heads and members of the Bar councils of the region, heads and members of the QDC, members of the HQDC, the head, deputy head, and a significant part of the members of the BCU - expired. Therefore, the staff of the BSG was inevitably due for renewal in 2022. This has not happened, so the validity of these bodies may be questioned, despite the principle of continuity referred to by the UNBA in its public communication⁸⁴³.

However, the essence of the “principle of continuity” actually differs depending on the area of law. It can mean the continuity of the existence of a state in international law, the preservation of constitutional institutions in the transition from one legal regime to another, territorial continuity, etc. Finally, the term “institutional continuity” may be the closest to it in terms of meaning – the continuity of the activities of constitutional state bodies, in cases expressly provided for by law (transitional provisions of the Constitution), as pointed out by the advocates themselves⁸⁴⁴. In the case of the BSG, **the law makes no provision for a continuum of powers of its members, and it is simply impossible to derive them from the general principles of law under any approach to its interpretation**. The principle of legal certainty as a component of the rule of law, on the contrary, indicates that the members of the BSG have no powers, which necessitates the holding of a congress of advocates as soon as possible. In the context of martial law, this can be done with the use of digital means, as discussed below.

However, the UNBA decided that it would be impossible to hold a congress of advocates to re-elect the members of the BSG due to the introduction of martial law in Ukraine⁸⁴⁵. A reservation to this effect was included in the BSG regulations. This is justified by the impossibility of physically holding the congress and the need to preserve property.

Instead, many events are held under martial law, and the developed security protocols allow avoiding the danger mentioned in these BSG decisions. The legal regime of martial law imposes restrictions on electoral processes, but does not prevent the re-election of members of advisory, personnel, disciplinary and other structures of public authorities. Similar congresses, meetings and other forms of collective gatherings were held by representatives of higher education law schools, prosecutors and judges.

Accordingly, the BCU still intended to hold a congress of advocates until the powers of the BSG members finally expired (November 2022). Thus, on 06 September 2022, the BCU decided to convene the Reporting and Election Sixth Congress of Advocates of Ukraine⁸⁴⁶. However, it never took place, and no information about it is publicly available. The result is an inconsistent position – first, it is announced that a regular congress will be held, indicating that the powers of the members of the BSG will expire on 17 November 2022, and then they appeal to the principle of continuity.

Consequently, the inability of the BSG to hold the Congress of Advocates of Ukraine resulted in the failure to fulfil the constitutional function of the Bar. In particular, 2 members have not

843 The BCU decided to convene the Sixth Congress of Advocates of Ukraine. The Ukrainian National Bar Association. 2022. URL: <https://unba.org.ua/news/7582-rau-uhvalila-rishennya-pro-sklikannya-shostogo-zizdu-advokativ-ukraini.html>.

844 I. Rafalska. Publication on Facebook of 15.09.2023. URL: <https://www.facebook.com/share/p/23M6GWeUtZXQz98p>.

845 On Amendments to the Rules of Procedure of the Bar Council of the Region: Decision of the Bar Council of Ukraine of 01.08.2022 No. 50. URL: <https://zakon.rada.gov.ua/rada/show/v0050871-22#Text>.

846 The BCU decided to convene the Sixth Congress of Advocates of Ukraine. The Ukrainian National Bar Association. 2022. URL: <https://unba.org.ua/news/7582-rau-uhvalila-rishennya-pro-sklikannya-shostogo-zizdu-advokativ-ukraini.html>.

yet been delegated to the HCJ⁸⁴⁷ and one to the Qualification and Disciplinary Commission of Prosecutors⁸⁴⁸, bodies in the justice system without which the quality functioning of the judiciary and prosecution system is impossible, as well as the guarantee of independence of judges and prosecutors in their professional activities.

In the context of the BSG's powers, it should be noted that since 17 November 2012 Lidia Izovitova has served as the Head of both the UNBA and the BCU, while also holding the position of the Head of the Expert Council on Accreditation and Certification of Advocates' Professional Development, which was established by the UNBA under the decision of the BCU as a permanent collegial working body of the UNBA, responsible for organisational and methodological support of accreditation of the advocates' training events and organisers of such events, certification of individuals allowed to participate in the advocates' training events as speakers, lecturers, trainers or experts, and conducting these accreditations and certifications. It is obvious that the concentration of power in the hands of one person for a significant period of time contributes to the risks and abuse of power, as the lack of proper control and accountability may lead to decisions that do not always meet the interests of the Bar and society as a whole, which has been observed in recent years in the Ukrainian Bar. Full control over the Bar, derived from these official powers, contradicts the principles of democratic governance and transparency, which are essential for the effective functioning of the Bar and the judiciary in Ukraine. The principle of rotation is democratically important, as it serves as a counterbalance to excessive power.

Therefore, for the BSG to function properly, these bodies shall be constantly renewed, and the illegitimate tenure of the same persons in them for more than 10 years threatens the quality of their work and, consequently, the effectiveness of the entire Bar self-government, which, although it retains formal features, fails to fulfil its functions. Instead, there are destructive proposals to abolish the ban on holding positions in the BSG for more than two consecutive terms (draft law No. 7025⁸⁴⁹).

Another challenge is to ensure the electability and transparency of the BSG procedures.

The BSG bodies have created a complex quota system for delegating advocates to the Congress of Advocates of Ukraine. Thus, the Law⁸⁵⁰ establishes the quota of representation in the BCU, the procedure for nominating and electing delegates to the Congress of Advocates of Ukraine, and the procedure for holding the Congress of Advocates of Ukraine⁸⁵¹. These acts **establish that the quotas for the election of delegates to the conferences of advocates of the region** are determined based on the number of advocates in the respective districts of the region, cities of regional subordination, city districts, but not less than 2 delegates from each district of the region, city of regional subordination, city district according to the URAU, according to the list compiled by the Secretariat of the Council of Advocates of Ukraine. First, a conference of the advocates of the region is held to nominate and elect delegates to the conference of the region, and only then the delegates to the Congress of Advocates of Ukraine are finally elected. Thus,

847 Representatives of the Bar in the HCJ resigned because of disagreement with unconstitutional status restrictions. Ukrainian National Bar Association. 2022. URL: <https://en.unba.org.ua/activity/news/7396-representatives-of-the-bar-in-the-hcj-resigned-because-of-disagreement-with-unconstitutional-status-restrictions.html>.

848 As of 03.11.2021, the current composition of the QDCP is composed of ten out of eleven members. The only member missing is the one who was supposed to be delegated by the Congress of Advocates of Ukraine, which has not taken place since then for reasons that will be discussed in the report below.

849 On self-regulatory organisations: Draft Law of Ukraine, registration No. 7025 of 04.02.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/38927>.

850 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, p. 3, Art. 54. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

851 See, for example, the Procedure for the Nomination and Election of Delegates to the Conference of Advocates of Odesa Region: Decision of the Bar Council of Ukraine of 16.02.2017 No. 43. URL: https://unba.org.ua/assets/uploads/files/Rishennya/Poryadok_Odesa_Konfaranciya.pdf.

the indirect representation of the BSG separates its members from each advocate in two “filters”, which demotivates advocates to actively participate in such meetings, as the same people are usually elected due to such a complex quota system.

It is impossible for an advocate to criticise such system, since it is actually prohibited by the provision of Article 12 of the Rules of Ethics of the Bar⁸⁵². It is also impossible to appeal to the court, since the Grand Chamber of the Supreme Court in 2021 formulated a legal position, whereby such disputed legal relations are not subject to the jurisdiction of the courts⁸⁵³.

Recommendations

1. Change at the legislative level the procedure for electing self-government bodies using the principle of direct voting and 1 advocate = 1 vote using digital means (for example, the UJITS system or another technological solution that can be developed by the Ministry of Digital Transformation or by one of the judicial authorities).
2. Reduce the total term of office in the Bar self-government bodies from 5 to maximum 3 years, in line with European standards.
3. Reboot the Bar self-government bodies:
 - › option a) amend the law to provide for a new system of elections to the BSG based on the principle of direct voting with the possibility of using the electronic voting mechanism and to commit the BSG to hold elections at the regional and national levels;
 - › option b) amend the law to provide for the liquidation of the single UNBA (with appropriate transitional mechanisms), preserving the mandatory membership of advocates in a professional association and providing for the right of advocates to voluntarily form associations and elect Bar self-government bodies.

Advocates in the temporarily occupied territories (TOT)

State of play

There is not much reliable information about the fate of advocates living in the temporarily occupied territories. Although there is currently a small amount of statistical data, the history of Ukrainian advocates from the ORDLO occupied in 2014 and in the occupied Crimea can serve as a guide. In the so-called “LPR” and “DPR” and in the occupied Crimea, the occupation authorities established Bar self-government bodies and adopted legislation regulating the practice of law. Therefore, starting in 2015, Ukrainian advocates could obtain Bar certificates in these territories. According to one report, around 300 advocates have registered with the new Bar organisation in the so-called “DPR” and 90 advocates in the so-called “LPR”⁸⁵⁴. By comparison, as of December 2020, the UNBA accounted for 2,884 advocates in Donetsk region and 701 advocates in Luhansk region⁸⁵⁵.

852 Rules of Ethics of the Bar: Congress of Advocates of Ukraine of 09.06.2017. URL: <https://zakon.rada.gov.ua/rada/show/n0001891-17#Text>.

853 Ruling of the Grand Chamber of the Supreme Court of 18.05.2021 in case No. 758/733/18 (proceedings No. 14-78tsc21). URL: <https://reyestr.court.gov.ua/Review/97220706>.

854 D. Meyer, W. Surviving the Assault: The Ukrainian Legal System After a Year of War. 2023 ICLAC Rule of Law Report. P. 57–58. URL: https://ilacnet.org/wp-content/uploads/2023/05/ILAC_Ukraine_Law-Report-2023.pdf.

855 Annual Report for 2020. Ukrainian National Bar Association. Kyiv, 2021. P. 8. URL: https://en.unba.org.ua/assets/uploads/news/zvity/ENG_ANNUAL_REPORT_2020.pdf.

Although many advocates left the profession or moved away from the occupied territories in 2014, some remained, accepted the new conditions and continued their professional activities, participating in the “justice” system in the TOT. Some of these decisions were undoubtedly ideological in nature, while others were likely more pragmatic, based on family or other considerations. According to some reports, advocates who remained in the post-2014 Russian-controlled territories were intimidated and did not receive much support from the new Bar associations⁸⁵⁶. Time will tell whether the situation will be similar in the territories occupied after 24 February⁸⁵⁷.

Progress and issues

Currently, to legalise their activities, citizens of Ukraine in the temporarily occupied territories have to undergo certain confirmation procedures, namely: obtain citizenship of the occupying country, take an oath, and obtain documents certifying a special right from representatives of illegal authorities and pay taxes to the budget of the aggressor country.

At the same time, some of the advocates who carry out legal practice or other professional activities in the TOT have the status of active advocates with a residence permit in the URAU.

A separate issue with the status of advocates in the URAU (which means that they have the right to practice throughout the government-controlled territory) and in the status of advocates in the TOT (in accordance with the occupier’s legislation) is the possible influence that advocates can have on the Ukrainian Bar system by participating in conferences and congresses. After all, the fact that a person has the status of an advocate in the TOT in line with the rules of the occupation authorities, and takes the oath of an advocate in accordance with the legislation of the occupation authorities calls into question their independence, impartiality and objectivity.

The issue of continuing professional activities in TOT lies in the fact that advocates take an oath to the occupation authorities, which legitimises their activities in the occupied territories. At the very least, this is in conflict with the oath they took when becoming advocates of Ukraine⁸⁵⁸. Therefore, such activities should be grounds for disciplinary liability⁸⁵⁹. At the same time, the fact of obtaining the status of an advocate in the TOT can be regarded as a crime under Article 111¹ of the Criminal Code of Ukraine⁸⁶⁰ – collaboration. Relevant criminal proceedings are currently being investigated by the Security Service of Ukraine, although the forms of collaboration are not necessarily related to the provision of legal services.

Therefore, three draft laws were registered in the Verkhovna Rada of Ukraine, which propose to clarify the issue of criminal liability - No. 8077⁸⁶¹, No. 10136⁸⁶² and alternative one No. 10136-1⁸⁶³.

856 Submission to the report on protection of lawyers. ZMINA Human Rights Center, Ukrainian Helsinki Human Rights Union. 2021. URL: https://www.ohchr.org/sites/default/files/2022-04/zmina-submission_0.pdf.

857 D. Meyer, W. Surviving the Assault: The Ukrainian Legal System After a Year of War. 2023. ICLAC Rule of Law Report. P. 57–58. URL: https://ilacnet.org/wp-content/uploads/2023/05/ILAC_Ukraine_Law-Report-2023.pdf.

858 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, Art. 11. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

859 Ibid, Article 34.

860 Criminal Code of Ukraine of 05.04.2001 No 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

861 On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Criminal Liability for Collaboration Activities: Draft Law, registration No. 8077 of 26.09.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40531>.

862 On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the Fundamentals of National Security of Ukraine: Draft Law, registration No. 10136 of 09.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42957>.

863 On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the National Security of Ukraine: Draft Law, registration No. 10136-1 of 24.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43055>.

The first draft law proposes to criminalise professional activities related to the provision of *legal services*, as well as other public services, under the laws of the aggressor state. The latter proposes to amend Art. 111¹ of the Criminal Code of Ukraine, by supplementing the disposition with a direct reference to such a form of its commission as “*the exercise of independent professional activity in cooperation with the occupation administration of the aggressor state*”.

Meanwhile, there is also a critical assessment of this position, since advocates left to fend for themselves in the TOT comply with international law and carry out the only possible professional activity that allows them to survive in these territories. It is not the advocates themselves who should be blamed for their situation, but the Russian Federation as the aggressor state. Moreover, some of these advocates remain pro-Ukrainian and are the “only bridge” between the Ukrainian authorities and the persons persecuted by the occupation authorities⁸⁶⁴. Therefore, it is necessary to evaluate each advocate individually, depending on what they did and how they did it, even if the information can be obtained only later, after de-occupation.

The difficulty of assessing the activities of advocates who remained in the TOT is also emphasised in the expert community. At the same time, taking the side of the advocates in this discussion, advocate A. Serbina notes that “the practice of law should have immunity from prosecution for the fact of carrying out such activities under the laws of the occupier during the occupation. The population has the right to legal defence, and this defence should be provided by an independent advocate, which is every Ukrainian advocate”⁸⁶⁵. In addition, D. Svyrydova, an expert of the “Ukraine. 5AM” coalition emphasises that a unified position on the assessment of the actions of advocates who find themselves in such a situation “should be formed among the professional legal community”⁸⁶⁶.

However, it is important to note that the UNBA, in turn, takes a non-constructive position on the protection of Ukraine’s national security in the context of the Russian Federation’s armed aggression against Ukraine. This is evidenced by a number of facts.

Firstly, since 2014, the UNBA has not resumed the work of the BSG bodies of the Autonomous Republic of Crimea and the city of Sevastopol (local councils and QDCs) in the controlled territories, which have been effectively suspended since the occupation. Although, for example, the councils and QDCs of Donetsk and Luhansk regions were relocated to the government-controlled territories.

Secondly, the **UNBA publicly supports and generally approves the position that it is impossible to bring to justice (disciplinary and criminal) Ukrainian advocates who have not ceased their activities in the temporarily occupied territories** (and, in particular, even cooperate with the occupation regime in the AR of Crimea)⁸⁶⁷. For example, on 16 January 2024, the Shevchenkivskyi District Court of Kyiv imposed a preventive measure on a resident of the occupied territory of Luhansk region, who headed the court during the occupation and is suspected of collaboration⁸⁶⁸.

864 Y. Kravchuk. Key problems of the legal dimension in the de-occupation of the temporarily occupied territories, definition of the rights and responsibilities of citizens. Ukrainian Helsinki Human Rights Union. 2022. P. 7. URL: <https://national-platform.org/klyuchovi-vikliki-pravovogo-vimiru-pri-deokupaczi%D1%97-timchasovo-okupovanih-teritorij-viznachennya-prav-ta-vidpovidalnosti-gromadyan/>.

865 Legal practice under occupation: ensuring the right to defence or collaboration? Ukrainian Helsinki Human Rights Union. 2023. URL: <https://www.helsinki.org.ua/articles/advokatska-diialnist-v-okupatsii-zabezpechennia-prava-na-zakhyst-chy-kolaboratsionizm/>.

866 How should Ukraine restore the Bar after the de-occupation of the territories: Expert discussion. ZMINA. 2024. URL: <https://zmina.ua/event/yak-ukrayini-vidnovlyuvaty-advokaturu-pislya-deokupacziyi-terytorij-ekspertna-dyskusiya/>.

867 Defenders “Werewolf”: how advocates in Crimea help fabricate cases against political prisoners. ZMINA. 2023. URL: <https://zmina.info/articles/zahysnyky-perevertni-yak-u-krymu-advokaty-dopomagayut-fabrykuvaty-spravy-proty-polityvazniv/>.

868 The advocate who chaired the court during the occupation was imposed a preventive measure in absentia. Court reporter. 2024. URL: <https://sudreporter.org/advokatci-yaka-ocholya-sud-v-okupacziyi-zaочно-обралы-zapobizhnyj-zahid/>.

At the same time, this judge has had a Ukrainian Bar certificate since 2007. According to the URAU⁸⁶⁹, her right to practice law has not been suspended. There are many more similar examples in the URAU⁸⁷⁰. There are many facts of these advocates playing the role of ‘extras’ in criminal proceedings, for example, in relation to searches of Crimean Tatars conducted by the Federal Security Service (FSB) in the annexed Crimea⁸⁷¹. However, no reaction to such facts was observed by the BSG bodies.

The UNBA head also emphasised that “collaborationism is cooperation with the enemy’s government. And the legal practice is professional and independent of the state. It is in no way related to politics, propaganda or aggression. In such circumstances, the punishment of advocates does not fit into the European standards of a fair trial”⁸⁷². However, she failed to provide an assessment of the procedure for obtaining permission to practice law in TOT, including the oath of office for such advocates. The advocate performs a function delegated by the state as an agent of justice alongside the prosecutor and judge, and hence this indicates direct signs of cooperation.

Thus, the question of the responsibility of advocates in TOT remains open. It should be answered by the legal community itself in the form of a clear position on the part of the BSG (in terms of disciplinary liability), as well as the Government (in terms of transitional justice and the prospects of bringing to criminal liability or applying other restrictive measures to such advocates after the de-occupation of Ukrainian territories).

Recommendations

1. The UNBA should develop a unified approach to the assessment of the activities of advocates in the TOT.
2. The problem of the threat to national security, which is not addressed by the BSG, needs to be resolved at the legislative level: lawyers in TOT should be deprived of the right to practice law as those who have violated their oath.

Finances of the Bar

State of play

The financial support of the Bar self-government bodies is defined by the Law⁸⁷³, whereby the funding of the BSG bodies can be provided by the qualification exam fees, annual fees of advocates, deductions of the QDC for the operation of the HQDC, voluntary contributions of advocates, advocates’ associations and law firms, individuals and legal entities, and other sources not prohibited by law.

869 Bar certificate on the right to practice law No 868. Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/8900>.

870 For example, Serhii Sukhanov - so-called “DPR” (certificate No. 3595). Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/19423>; O. Kovalenko - so-called “DPR” (certificate No. 3447). Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/14181>; I. Kilkeiev – so called “DPR” (at the same time he was an investigator of the “DPR” security bodies) (certificate No. 3575). Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/15110>; O. Shyshkina - the so-called “DPR” (certificate No. 1339). Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/20593>; Oleh Glushkov – AR Crimea (certificate No 943). Unified Register of Advocates of Ukraine. URL: <https://erau.unba.org.ua/profile/18002>.

871 Defenders-“werewolves”: how advocates in Crimea help fabricate cases against political prisoners. ZMINA. 2023 URL: <https://zmina.info/articles/zahysnyky-pervertni-yak-u-krymu-advokaty-dopomagayut-fabrykuvaty-spravy-proty-politvyazniv/>.

872 Justice for advocates in the TOT: the UNBA and IBA leaders discussed the criteria. Ukrainian National Bar Association. 2024. URL: <https://unba.org.ua/news/9044-spravedlivist-dlya-advokativ-na-tot-kriterii-obgovorili-ochil-niki-naau-ta-iba.html>.

873 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, Art. 58. URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

The financing of the Bar self-government bodies and the disposal of their funds and property shall be carried out in accordance with the estimates approved by the conferences of advocates of the regions and the Congress of Advocates of Ukraine. In addition, the financial statements of the BSG are subject to annual publication in compliance with the procedure approved by the BCU.

As of today, the regulatory framework for the financing of the Bar self-government bodies is implemented through numerous acts of the BSG bodies that do not meet the requirements of the Law and in many respects contradict it.

Progress and issues

The system of control over the financial activities of the UNBA, according to the initiators of the Law, consisted only of public control, which in fact provided only for the “good will” of the governing bodies of the Bar. Thus, the Charter of the Ukrainian National Bar Association⁸⁷⁴ stipulates that the BCU makes decisions on the disposal of funds and property of the UNBA in accordance with the purposes of funds and property defined by the Charter of the Ukrainian National Bar Association and decisions of the Congress of Advocates of Ukraine. In other words, the body that manages the association between congresses actually manages the funds. At the same time, the Charter grants the BCU Head the right to solely dispose of the UNBA’s funds in accordance with the approved estimates⁸⁷⁵.

Para. 2, part 2, Article 58 of the Law stipulates that the amount of **annual fees** of advocates to ensure the implementation of the Bar self-government is determined taking into account the need to cover the costs of the activities of the Bar councils of the regions, the BCU, the HACB and the maintenance of the URAU and may not exceed the subsistence minimum for able-bodied persons. At the same time, the BCU systematically (annually) sets⁸⁷⁶ the annual fee for the exercise of the Bar self-government in the amount of one subsistence minimum for able-bodied persons. That is, it sets the largest of the permissible amounts. At the same time, these decisions do not contain any explanations or miscalculations regarding the justification of the amount of such contributions.

The constituent congress of advocates did not approve the estimates of the BCU and the HQDC, nor did it take into account the need to cover the costs of the BSG’s activities. Thus, these decisions of the BCU were made without any justification, which is in fact a gross violation of the requirements of the relevant Law, which clearly states that the amount of contributions should be set taking into account the need to cover the costs of the BCU’s activities⁸⁷⁷.

Regarding the **qualification exam fee**: part 2 of Article 58 of the Law provides that the amount of the qualification exam fee is set taking into account the need to cover the costs of the activities of the QDC and the HQDC and may not exceed three subsistence minimums for able-bodied persons established by law on the day of submission of the application for admission to the qualification exam.

At the same time, the BCU, going beyond its powers, arbitrarily and unreasonably decided to set and approve the fee for the qualification exam in the amount of three subsistence minimums

874 Charter of the non-governmental non-profit professional organisation “Ukrainian National Bar Association”, approved by the Decision of the Reporting and Election Congress of Advocates of Ukraine in 2017, clauses 9, 11.5. URL: https://unba.org.ua/assets/uploads/legislations/inshi-dokumenty/statut_naau%2009.06.2017.pdf.

875 Ibid, cl. 11.10.

876 Decision on the payment of the annual fee to ensure the implementation of the Bar self-government for 2023 and 2024. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2022-11-16-r-shennya-rau-135_6389bb1d3e0b3.pdf; Decision on the payment of the annual fee to ensure the implementation of the Bar self-government in 2021. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2020-12-18-r-shennya-rau_5fe0a8708f63e.pdf.

877 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow’s Lawyer). Kyiv, 2018. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

for able-bodied persons⁸⁷⁸. From the above, it can be concluded that the BCU made a decision that is generally contrary to the Law, since, as a result of the mandatory requirement to set the fee for the qualification exam at three subsistence minimums, the need to take into account the costs of ensuring the activities of the qualification and disciplinary commissions of the Bar was effectively eliminated. Thus, the BCU set the highest possible fee, without taking into account the real needs of the respective BSG bodies. At the same time, the lack of transparency and accountability in the financial component of these bodies makes it impossible to determine the costs of the qualification and disciplinary commissions of the Bar, and therefore impossible to establish their real needs.

Payments not provided for by the Law. The Law does not provide for the powers of the BSG to impose any additional fees or charges. At the same time, exceeding the limits of the powers granted by the Law, the BCU in its decisions establishes additional fees⁸⁷⁹. For example, this situation occurred in relation to the one-time fee of foreign advocates (BCU Decision No. 156 of 01 June 2013); annual fee of foreign advocates to ensure the exercise of the Bar self-government of Ukraine (BCU Decision No. 157 of 01 June 2013); fee for updating the data in the URAU on the advocate's assistant in the amount of 50% of one minimum wage (BCU Decision No. 113 of 25 September 2015)⁸⁸⁰; fee for internship in the amount of three minimum wages as of the day of submission of the application for internship (BCU Decision No. 80 of 01 June 2018)⁸⁸¹. However, this is contrary to the Constitution of Ukraine, since clause 14 of Article 92 declares that only the laws of Ukraine determine the principles of organisation and activity of the Bar.

As for the conditions of disclosure of financial statements of the Bar self-government bodies, the relevant Procedure was approved by the decision of the BCU dated 17 December 2013 No. 253⁸⁸². Amendments to this Procedure in 2019 significantly simplified the procedure for reporting expenses. In particular, according to the previous version, the Bar council of the region (BCR) had to indicate in the table of expenses "Salary fund of full-time employees: (employees) – (full name)". However, starting from 2019, only the information on "Administrative expenses", "Unified social tax" and "Name of expenses" is required to be indicated. In fact, without any detailed indication of actual expenses. The same changes apply to the format of publication of reports of other BSG bodies. At the same time, neither the Law nor the internal regulations of the UNBA and the BSG provide for transparent public procurement procedures and external audit. This actually preserves the lack of transparency and the risk of abuse in the management of funds received from the Ukrainian advocates by the BSG bodies.

The financial report of the BSG is too generalised and simplified and does not reflect actual costs. For example, the UNBA report for 2021 contains an expense item "Maintenance of the official website; printing of the UNBA newsletter" – UAH 3,028,600⁸⁸³. In addition, in the UNBA report for 2021, only 9 items of expenditure account for the total amount of UAH 39,044,444.

The financial reports of the Bar councils of the regions have a similar situation. It should be noted that the distribution of annual fees of advocates based on the decision of the Constituent Congress of Advocates of Ukraine of 17 November 2012 No. 24 between the UNBA and regional

878 On Establishment of Fees for Passing the Qualification Exam: Decision of the Bar Council of Ukraine of 03.02.2017 No. 5. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2017-02-03-r-shennya-rau-5_58adad78088cd.pdf.

879 Ibid..

880 Collection of Decisions of the Bar Council of Ukraine for 2012-2017. URL: http://rau.in.ua/attachments/article/496/zbirka_rishen.pdf.

881 Regulations on the advocate's assistant: Decision of the Bar Council of Ukraine of 25.09.2015 No. 80. URL: <https://unba.org.ua/assets/uploads/legislations/pologennya/2015.09.25-pologennya-113.pdf>.

882 The Procedure for Publication of Financial Statements of the Bar Self-Government Bodies, approved by the Decision of the Bar Council of Ukraine of 17.12.2013 No. 253 (as amended by the Decision of the Bar Council of Ukraine of 12.04.2019 No. 54). URL: https://unba.org.ua/assets/uploads/legislation/poryadki/2019-04-12-poryadki-54_5cebec1ad7321.pdf.

883 Annual Financial and Statistical Report of the Ukrainian National Bar Association for 2021. Kyiv, 2022. P. 85. URL: https://unba.org.ua/assets/uploads/news/zvity/UNBA_REPORT_2021_compressed.pdf.

Bar councils is carried out in the ratio of 30 per cent (UNBA) and 70 per cent (Bar Council of the Region). In 2021, the budget of the BCR amounted to UAH 82,930,411. The budget of the regional QDCs is UAH 23,786,847⁸⁸⁴. According to the UNBA website, as of 15 December 2023, there were 46969 advocates in the URAU who did not suspend/terminate their practice of law⁸⁸⁵.

As of March 2024, the UNBA website contains the last published financial report, which is dated 2021⁸⁸⁶. In his response to advocate O. Zelentsov's request for public information⁸⁸⁷ the Head of the High Audit Commission of the Bar reported that "the UNBA adopted Decision No. 50 "On closing access to the financial statements of the Bar self-government bodies for the period of martial law" with reference to the Law of Ukraine No. 2115-IX of 03 March 2022 "On Protection of the Interests of Subjects of Submission of Reports and Other Documents during Martial Law or a State of War".

Special attention should be drawn to the financial statements of the Higher School of the Bar (hereinafter – the HSB). This is due to the fact that the de facto monopolist in the field of professional development does not have public annual reports along with substantive reports⁸⁸⁸. This situation is unclear, since according to the Procedure for the Advanced Training of Advocates⁸⁸⁹ the HSB is funded by annual fees for accreditation of third-party training providers⁸⁹⁰, payments by advocates for advanced training, and may also be funded by the UNBA and/or the HQDC (in fact, by the qualification exam fees; annual fees of advocates; and contributions of the QDC to the activities of the HQDC).

In view of the above, it is worth noting that as of today, the regulatory framework for the financing of the Bar self-government bodies is implemented through numerous bylaws that do not meet the requirements of the Constitution and the Law, and in many respects contradict it.

Recommendations

Amend the Law of Ukraine "On the Bar and Practice of Law" and relevant lower-level acts or to adopt a new law to introduce mechanisms that will provide for a sufficient level of transparency and detail in financial reporting to prevent abuse. In particular, this refers to the need to:

- › regulate the public procurement procedure for works and services; ;
- › detailed and itemised reporting;
- › disclose the contracts for the purchase of goods or services;
- › disclose the number of employees with their positions, salaries and the amount of accrued and paid salaries, etc.;
- › the requirement for the BSG bodies to have the financial statements regularly confirmed by an independent auditor.

884 UNBA Annual Reports. Ukrainian National Bar Association. URL: <https://unba.org.ua/shorichni-zviti-naau>.

885 There are 47 thousand advocates in Ukraine. National Bar Association of Ukraine. 2023. URL: <https://unba.org.ua/news/8621-v-ukraini-47-tisyach-aktivnih-advokativ.html>.

886 UNBA Annual Reports. National Bar Association of Ukraine. URL: <https://unba.org.ua/shorichni-zviti-naau>.

887 Response of the Head of the High Audit Commission of the Bar of 11.12.2023 No. 472.

888 Report on the activities of the UNBA Higher School of the Bar. 2021. URL: https://drive.google.com/file/d/1S2azMLh4_82-5xGGLIczjZrJR2F62aAe/view.

889 Procedure for the Advanced Training of Advocates of Ukraine (new edition): Decision of the Bar Council of Ukraine of 03.07.2021 No. 63, clauses 39, 40 of Section III. URL: <https://zakon.rada.gov.ua/rada/show/vr063871-21#top>.

890 For more details, see the "Continuous Professional Development" section.

Access to the profession

State of play

The Law defines a list of requirements that must be met by a person seeking to acquire the right to practice law⁸⁹¹. These requirements include: a complete higher legal education, knowledge of the state language, at least two years of work experience in the field of law, passing the qualification exam, completing an internship (except in cases established by the Law), taking the oath of the Ukrainian Bar and obtaining a certificate of the right to practice law.

The introduction in 2016 of the exclusive monopoly of advocates on representation in courts has significantly increased the number of persons intending to be admitted to the Bar. According to the Youcontrol analytical system⁸⁹², 2017 was a turning point in the history of the Ukrainian Bar, as the number of certificates issued doubled (from 2116 in 2016 to 4176 in 2017). And over time, the trend towards acquiring the right to practice law has not diminished, as the monopoly continues to exist. Thus, according to the UNBA Report for 2016⁸⁹³, as of the end of 2016, the number of advocates was about 35 thousand people, and as of 01 August 2022, almost 65 thousand advocates were registered with the UNBA⁸⁹⁴.

Progress and issues

Numerous reports by civil society organisations and shadow reports have pointed out that the introduction of the monopoly has caused a huge rush to obtain a Bar certificate. The artificial demand for certificates has led to corruption risks in access to the legal profession, which have increased significantly during the qualification exams and internship. In a 2018 survey, more than 47% of the responding advocates indicated that they were aware of cases where advocates seeking to obtain a licence made corrupt offers to those responsible for the qualification process. At the same time, almost 38 per cent of these respondents were aware of corrupt offers made to candidates by those responsible for the qualification process⁸⁹⁵.

The inadequacy of the procedure for access to the legal profession was mentioned in the Shadow Report 2018⁸⁹⁶, the Annual Report of the International Commission of Jurists 2020⁸⁹⁷ and the Recovery Plan for Ukraine 2022⁸⁹⁸. Despite this, no actions to improve the access system have been taken either by the UNBA or by the Parliament as the only institution that can directly influence the state of the Bar.

One of the options to minimise corruption risks in access to the legal profession is the idea of introducing standardised national exams for master's degree graduates. However, as early as

891 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, Art. 6. URL: <https://zakon.rada.gov.ua/laws/show/5076-17>.

892 Bar certificates: trends in issuance and verification. Yurydychna Gazeta. 2020. URL: <https://yur-gazeta.com/publications/practice/advokatura/advokatski-svidoctva-trendi-vidachi-i-perevirka.html>.

893 Report of the Ukrainian National Bar Association for 2016. National Bar Association of Ukraine. URL: https://unba.org.ua/assets/uploads/news/zvity/UNBA_ANNUAL_REPORT_2016.pdf.

894 Bulletin of the Ukrainian National Bar Association for July-August 2022. National Bar Association of Ukraine. 2022. URL: https://unba.org.ua/assets/uploads/news/visnyky/2022-08-26-v-snik-naau_6308dc602c938.pdf.

895 D. Meyer, W. Surviving the Assault: The Ukrainian Legal System after a Year of War. 2023 ICLAC Rule of Law Report. P. 54. URL: https://ilacnet.org/wp-content/uploads/2023/05/ILAC_Ukraine_Law-Report-2023.pdf.

896 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). Kyiv, 2018. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

897 Between a Rock and a Hard Place: Attacks on Advocates in Ukraine: Report of the ICJ Mission to Ukraine. 2020. URL: <https://www.icj.org/wp-content/uploads/2020/05/Ukraine-Between-the-rock-and-the-anvil-Publications-Reports-Mission-report-2020-UKR.pdf>.

898 Recovery Plan for Ukraine. Materials of the Justice Working Group. National Council for the Reconstruction of Ukraine from the Consequences of War. 2022. URL: <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/ua/justice.pdf>.

2019, the UNBA stated that it was “categorically opposed” to replacing the current Bar exam procedure with such a standardised exam⁸⁹⁹.

Consequently, the introduction of the monopoly of advocates on representation in courts and the lack of amendments to the relevant law regarding the procedure for access to the Bar have not only perpetuated existing problems, but also created new global challenges.

Thus, the first challenge is the ethical problems on the way to accessing the legal profession.

The role of the Bar is to create a fair, equal and, most importantly, legal environment in which the rights and freedoms of every person are properly protected. As rightly pointed out by advocate Andrii Vyshnevskiy (for which he was disbarred in 2015), it is currently the advocate who is the main corrupt link in the justice system in Ukraine⁹⁰⁰. This statement is still relevant in 2024, as the beginning of a professional career as an advocate may be fraught with ethical dilemmas and corruption risks from the very first steps.

An example is the provision of the Procedure for admission to the qualification examination⁹⁰¹, whereby a person who wishes to become an advocate shall apply to the QDC at the place of registration. However, in order to find a “loyal” QDC to take the qualification exam, some individuals deliberately registered in other regions, often with the assistance of the QDCs themselves. A striking example of such abuse was found in Zakarpattia region, where two hundred and fifty workplaces of advocates were registered in one apartment⁹⁰².

However, it is not necessarily the person who intends to acquire the right to practice law who deliberately changes his or her place of residence to take the exam. In particular, after the beginning of the armed aggression of the Russian Federation against Ukraine in 2014, the BSG bodies of the Autonomous Republic of Crimea was not restored on the territory controlled by Ukraine. This, in turn, created additional difficulties for the applicants in realising their intention to take the exam, since applicants from the respective regions could not apply to the relevant Bar self-government bodies to become a member of the relevant Bar community in their region.

Therefore, the above demonstrates that reforming access to the legal profession is a priority for creating an independent and professional Bar in Ukraine.

Another issue is that the Bar in Ukraine has essentially become a “safe haven” for civil servants, law enforcement officials, judges, prosecutors and those involved in high-profile investigations by journalists. For example, in 2020, the former odious military prosecutor Anatolii Matios, along with other former prosecutors, was admitted to the Bar, which caused outrage in the legal community⁹⁰³. At the same time, there are examples of prosecutors and judges becoming advocates while they were sworn in as judges or prosecutors⁹⁰⁴.

899 Legal education in Ukraine calls for reform, goals contested. KyivPost – Ukraine’s Global Voice. 2019. URL: <https://www.kyivpost.com/ukraine-politics/legal-education-in-ukraine-calls-for-reform-goals-contested.html>.

900 Statement of the UBA on the use of disciplinary proceedings as a means of pressure on advocates. Ukrainian Bar Association. 2024. URL: <https://uba.ua/ukr/news/apu-zaklika-naau-peregljanuti-pdkhd-do-disciplnarnogo-provadhennja-jak-sposobu-tisku-na-advokatv>.

901 The procedure for admission to the qualification examination, the procedure for passing the qualification examination and the methodology for assessing the results of the qualification examination for the right to practice law in Ukraine, approved by the decision of the Bar Council of Ukraine of 17.12.2023 No. 270. URL: https://unba.org.ua/assets/uploads/legislation/poryadki/2023-08-11-poryadki-71_64ef8e3b8be6c.pdf.

902 Again, about the “crow’s nest” or bug fixes. Liga.net. 2018. URL: <https://blog.liga.net/user/igolovan/article/31308>.

903 Head of UNBA instructed to check the admission to the Bar of ex-Chief Military Prosecutor Matios. Ukrainian National Bar Association. 2020. URL: <https://unba.org.ua/news/5528-golova-naau-doruchila-pereviriti-nabuttya-statusu-advokata-eks-golovnim-vijs-kovim-prokurorom-matiosom.html>.

904 The fact that a judge, prosecutor or investigator has the status of an advocate is grounds for his/her withdrawal. Yurydychna Gazeta. 2023. URL: <https://ur-gazeta.com/publications/practice/advokatura/nayavnist-u-suddi-prokurora-chi-slidchogo-statusu-advokata-e-pidstavoyu-dlya-yogo-vidvodu.html>.

Another case, which testifies to the admission to the Bar of individuals whose activities do not correspond to this status, is related to the name of the MP from the Opposition Platform – For Life Illia Kyva, who passed the qualification exam at the Qualification and Disciplinary Commission of Zakarpattia Region⁹⁰⁵ in January 2021. However, a few years later, he was sentenced in absentia to imprisonment on the basis of a verdict of the Lychakiv District Court of Lviv on 13 November 2023⁹⁰⁶. As a rule, such persons have nothing to do with the values of the Bar and perceive the status of an advocate as an opportunity to obtain additional rights and guarantees provided for in Article 23 of the Law (for example, the right to security during participation in criminal proceedings; prohibition of engagement in confidential cooperation; prohibition to demand disclosure of information constituting the attorney-client privilege, etc.

All of these circumstances also indicate high corruption risks in the procedure for access to the legal profession, which is accompanied by numerous cases of corrupt offers⁹⁰⁷. This is evidenced, in particular, by the Supreme Court's ruling of 14 April 2021 in case No. 826/9606/17, by which the Grand Chamber of the Supreme Court prohibited the admission of current prosecutors to qualifying exams and internships for the Bar⁹⁰⁸.

The next issue concerns the lack of moral and ethical requirements for persons who intend to become advocates as defined by the Law. The current rules of legal ethics encourage honest behaviour and good reputation only among persons who have already been admitted to the Bar. In this regard, the Head of the Bar Council of Kyiv Region stressed that in order to restrict access to those candidates who have a bad or ambiguous reputation, have violated the requirements of the law, abuse alcohol or drugs, etc. One of them is to ask such a candidate difficult questions during the exam, but this mechanism does not always work⁹⁰⁹. It is worth recalling that according to statistics, Kyiv region issues the largest number of certificates in Ukraine⁹¹⁰.

At the same time, the legislation of many EU countries regulating the practice of law contains provisions that stipulate moral and ethical requirements for a person seeking to be admitted to the Bar, in particular, impeccable reputation of an advocate, inadmissibility of abuse of psychotropic drugs, narcotic and/or toxic substances or alcohol. Relevant provisions, for example, are contained in the current legislation on the Bar of the Republic of Lithuania⁹¹¹ and the Republic of Poland⁹¹².

Another challenge is the resistance of the UNBA and regional BSG to reform the procedure for passing the Bar qualification exam. The concept of reforming the procedure for passing the Bar qualification exam⁹¹³ stipulated that starting from 1 September 2018, the qualification exam was to be held under a new procedure. This procedure provided for the submission of documents

905 MP Kyva passed the Bar exam. Bihus.info. 2021. URL: <https://bihus.info/nardep-kyva-sklav-ispyt-na-advokata/>.

906 Traitor Illia Kyva from Poltava was sentenced in absentia to 14 years in prison. ZMIST. 2023. URL: <https://zmist.pl.ua/news/zradnyka-illyu-kyvu-z-poltavy-zaochno-zasudyly-do-14-rokiv-uvyaznennya>.

907 How to easily overcome corruption when joining the Bar. TEXTY.ORG.UA. 2019. URL: https://texty.org.ua/archive-blogs/90622/Jak_legko_podolaty_korupciju_pry_vstupi_v-90622/.

908 In addition to judges, the Grand Chamber of the Supreme Court also banned current prosecutors from the legal profession. Ukrainian National Bar Association. 2021. URL: <https://unba.org.ua/news/6613-okrim-suddiv-velika-palata-vs-zaboronila-i-diyuchim-prokuratorom-dostup-do-advokats-koi-profesii.html>.

909 The Bar or Asylum? Access to the profession requires attention! Yurydychna Gazeta. 2023. URL: <https://yur-gazeta.com/golovna/advokatura-chi-pritulok-dostup-do-profesiyi-potrebue-uvagi.html>.

910 Report of the Ukrainian National Bar Association for 2021, p. 8. URL: https://unba.org.ua/assets/uploads/news/zvity/UNBA_REPORT_2021_compressed.pdf.

911 On the Bar: Law of the Republic of Lithuania of 18.03.2004 No. IX-2066. URL: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.445415?jfwid=i3h7wi2cr>.

912 Practice of law: the experience of Poland. Higher School of the Bar of the Ukrainian National Bar Association. 2022. URL: <https://www.hsa.org.ua/blog/zdijsnennya-advokatskoyi-diyalnosti-dosvid-polshhi>.

913 Concept of Reforming the Procedure for Passing the Qualification Exam for Obtaining the Right to Practice Law: Decision of the Bar Council of Ukraine of 30.03.2018 No. 25. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2018-03-30-r-shennya-rau-25_5acf55f8a1406.pdf.

by the candidate through the UNBA website, the possibility of self-selection of the exam date, a two-stage exam procedure consisting of testing and practical tasks with the resolution of legal cases, as well as the exam to be held daily during working hours in a specially equipped room with video surveillance.

However, the Concept was essentially declarative in nature, as no action has been taken to improve the relevant procedure in the almost 6 years since its adoption. The main reason for this is the resistance of the BSG to create a transparent and understandable procedure for passing the qualification exam. Therefore, the exam continues to be held without video recording in the relevant room. In addition, for both the written and oral parts of the exam, the QDC approves the relevant questions in paper form, which enables it to know in advance the content of a particular questionnaire, which is an additional corruption risk. According to Ukrainian advocates, the current situation indicates the expediency of borrowing the technology of conducting an external independent assessment in order to ensure an effective and transparent procedure for passing the qualification exam⁹¹⁴.

Another important issue is the flawed internship model. In particular, unlike in many EU countries, in Ukraine, internships are only available to individuals after they have successfully passed a qualification exam. The internship lasts for six months (whereas in the EU countries the average internship period is 2-3 years⁹¹⁵) and is calculated by taking into account the total working hours spent by the intern on the programme and the internship plan. In total, the trainee's working time for the entire internship period must be at least 550 hours, of which at least 50 hours shall be spent practicing law. Given that the internship may be completed in the trainee's free time, a full-time employee will not be able to acquire all the necessary skills to practice law within six months. Thus, improving the internship procedure is an important challenge for the system of access to the profession.

Another issue is the unreasonable complication of access to the legal profession by imposing additional requirements and restrictions not provided for by the Law. The Regulation on the Organisation and Procedure of the Internship⁹¹⁶ establishes the obligation of the intern to attend the adaptation course to the profession of advocate at the UNBA Higher School of the Bar, for which a fee is required. The relevant course, which Pavlo Riabenko, the former Head of the Bar Council of Kyiv, suggests should be the starting point for a future advocate's internship⁹¹⁷, consists of modules with video lectures, textual materials, documents, as well as tests and practical tasks. However, upon analyzing the course content, it becomes apparent that it lacks practical knowledge valuable for trainees in their professional lives. The video materials largely consist of readings of specific legal provisions, depending on the module's topic, while the textual materials merely replicate provisions of the Law or certain acts of the BSG. This approach to training future advocates may reflect outdated teaching methods. Moreover, the superficial presentation of information and the absence of real-world advocacy cases significantly reduce the course's value, especially considering its paid nature.

914 How to easily overcome corruption when entering the Bar. TEXTY.ORG.UA. 2019. URL: https://texty.org.ua/archive-blogs/90622/Jak_legko_podolaty_korupciju_pry_vstupi_v-90622/.

915 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). Kyiv, 2018. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

916 Regulations on the Organisation and Procedure for the Internship for Obtaining a Bar Certificate: Decision of the Bar Council of Ukraine of 01.06.2018 No. 80. URL: https://unba.org.ua/assets/uploads/legislation/pologennya/2023-08-12-polozhennya-89_64efb54e385fd.pdf.

917 New approaches to internships: why the most important stage of access to the legal profession requires higher qualifications. Ukrainian National Bar Association. URL: <https://unba.org.ua/publications/4517-novi-pidhodi-do-stazhuvannya-chomu-najvazhlivishij-etap-dostupu-v-advokats-ku-profesiyu-peredbachae-vishi-vimogi.html>.

Another requirement for an advocate's assistant provided for in the Regulation on the advocate's assistant⁹¹⁸ is to attend a special (paid) introductory course to the profession of an advocate's assistant at the UNBA Higher School of the Bar. In addition, in November 2022, based on the relevant decision of the BCU⁹¹⁹ a fee for the maintenance of the electronic register of individuals who passed/failed the qualification exam was established in the amount of 0.5 of the minimum wage established by law on the day of the application for admission to the qualification exam. Of these funds, 90% (0.5 of the minimum wage) is paid to the account of the relevant QDC, and the rest – to the UNBA. However, the relevant fee is not provided for by the Law, and it creates an additional burden on an individual who intends to be admitted to the Bar.

Another important issue that needs to be addressed promptly today is the lack of regulation of admission to the practice of law for advocates from the aggressor country (the Russian Federation and the Republic of Belarus). According to information obtained from the website of the Ministry of Justice of Ukraine⁹²⁰, in 2023, the High Qualification Commission of Notaries considered 117 cases of cancellation of a certificate of the right to practice as a notary. In the vast majority of cases, the grounds for revocation were the acquisition of the right to practice notary in the temporarily occupied territories under Russian law, cooperation with the aggressor state, armed groups and/or the occupation administration of the Russian Federation. At the same time, in 2023, there were isolated cases of disbarment of persons who tolerated the armed aggression of the Russian Federation against Ukraine and contributed to the consolidation of the occupation authorities. Individual advocates continue to fight to clear the Ukrainian Bar of traitorous advocates⁹²¹, but face active resistance from the BSG.

Recommendations

Given the existence of significant systemic deficiencies in the procedure for access to the Bar in Ukraine, it is advisable to:

1. Strengthen the qualification requirements for persons intending to gain access to the Bar, as well as to amend the Law of Ukraine "On the Bar and Practice of Law" integrity for persons intending to become an advocate, providing for the obligation to submit a relevant declaration in accordance with the Law of Ukraine "On Prevention of Corruption".
2. Reform the procedure for passing the qualification exam, including by amending the Law of Ukraine "On the Bar and Practice of Law" in order to create a transparent, effective and free from deep-rooted corruption practices system of access to the profession.
3. Cancel the fee for the maintenance of the electronic register of individuals who have passed/failed the qualification exam, which is not provided for by the Law of Ukraine "On the Bar and Practice of Law".
4. Improve the internship model, taking into account the experience of the European Union countries.

918 Regulations on the Assistant Advocate: Decision of the Bar Council of Ukraine of 25.09.2015 No. 113. URL: https://unba.org.ua/assets/uploads/legislation/pologennya/2023-08-11-polozhennya-75_64ef90e14d81f.pdf.

919 On the establishment of a fee for obtaining an extract/reference from the Register of individuals who have expressed a desire to take the exam in order to obtain a Bar certificate: Decision of the Bar Council of Ukraine of 16-17 November 2022 No. 143. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2022-11-16-r-shennya-rau-143_63ad4118c224d.pdf.

920 Information on the cancellation of certificates of the right to engage in notarial activities. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/m/2023-rik-9800>.

921 The enemy is among us. The last, fourth part. Bar leadership and the invasion. Conclusions. Censor.NET. 2023. URL: https://m.censor.net/ua/blogs/3421302/vorog_sered_nas_ostannya_chetverta_chastyna_kerivnytstvo_advokatury_i_vtorgnennya_vysnovky.

5. Regulate the admission of foreign lawyers to the practice of law in Ukraine, to prohibit advocates from aggressor country (the Russian Federation and the Republic of Belarus) from practising law in Ukraine.

Disciplinary liability

State of play

Bringing the advocate to disciplinary liability is governed by Section VI of the Law and the Regulations on the procedure for receiving and considering complaints about the advocate's misconduct that may result in his or her disciplinary liability⁹²². The advocate may be brought to disciplinary responsibility in the course of disciplinary proceedings in case of committing a disciplinary offence, namely:

- › in case of violation of the requirements of incompatibility;
- › violation of the oath of the Ukrainian Advocate;
- › violation of the rules of professional conduct;
- › disclosure of the professional secrecy or actions that led to its disclosure;
- › failure to perform or improper performance of one's professional duties;
- › failure to comply with the decisions of the Bar self-government bodies;
- › violation of other obligations of the advocate provided for by law.

For committing such an offence, the advocate may be subject to one of three measures: a warning, suspension from practising law for a period of one month to one year or disbarment.

The procedure for bringing an advocate to disciplinary responsibility in Ukraine has been criticised by international organisations since its entry into force. This was because, in particular, the Council of Bars and Law Societies of Europe (CCBE) in its report following its mission to Ukraine in July 2013⁹²³ drew attention to the inconsistency of disciplinary procedures and decisions made with European standards. Subsequently, significant gaps in the legislation were highlighted in the Shadow Report prepared by the Agency for Legislative Initiatives in 2018⁹²⁴. The existing procedural shortcomings in disciplinary proceedings were also highlighted by the International Commission of Jurists in its Report issued in April 2020⁹²⁵. The Recovery Plan for Ukraine⁹²⁶, presented in July 2022, also addressed the problem of bringing advocates to disciplinary responsibility, which has long existed in Ukraine, and in this regard, it was proposed, inter alia, to introduce a transparent procedure for bringing advocates to disciplinary responsibility.

922 Regulations on the Procedure for Receiving and Considering Complaints on Misconduct of Advocates that May Result in Disciplinary Liability: Decision of the Bar Council of Ukraine of 30.08.2014 No. 120. URL: https://unba.org.ua/assets/uploads/legislation/pologennya/2023-12-15-polozhennya-122_65ae8a012c45b.pdf.

923 Report on the CCBE fact-finding mission to Kyiv. Council of Bars and Law Societies of Europe. 2013. URL: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PECO/PECO_Reports/EN_PECO_20130710_Report_on_the_CCBE_fact-finding_mission_to_Kiev.pdf.

924 The Bar in Ukraine: Lessons from the first years of self-government. Shadow report. Agency for Legislative Initiatives (in cooperation with the NGO Tomorrow's Lawyer). Kyiv, 2018. URL: https://parlament.org.ua/wp-content/uploads/2018/09/Shadow_Report_Bar_19.09.2018pdf-1.pdf.

925 Between a rock and a hard place: attacks on advocates in Ukraine: Report of the ICJ Mission to Ukraine. 2020. URL: <https://www.icj.org/wp-content/uploads/2020/05/Ukraine-Between-the-rock-and-the-anvil-Publications-Reports-Mission-report-2020-UKR.pdf>.

926 Recovery Plan for Ukraine. Materials of the Justice Working Group. National Council for the Reconstruction of Ukraine from the Consequences of War. 2022. URL: <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/ua/justice.pdf>.

In November 2023, the European Commission also concluded that it was necessary to improve the procedure for bringing advocates to disciplinary responsibility, both at the legislative level and in practice⁹²⁷.

Progress and issues

The systematic comments on the existing gaps and shortcomings of the procedure for bringing advocates to disciplinary liability in Ukraine make it impossible to claim progress in improving this procedure, including due to the following issues.

Disciplinary proceedings are reviewed by the BSG members whose terms of office have expired. The relevant law establishes a five-year term of office for BSG positions. At the same time, it prohibits holding positions in the BSG for more than two consecutive terms. The current BSG bodies, including the QDC and HQDC, were formed at the constituent conferences of advocates in the regions and the constituent congress of advocates in 2012. Thus, the term of office of the heads and members of the QDC and HQDC expired in 2022, which was covered in more detail in the Bar self-government section. Therefore, currently in Ukraine, the situation is that unauthorised QDC bring advocates to disciplinary responsibility and impose disciplinary sanctions on them, including suspension or disbarment⁹²⁸. This practice contradicts international standards of the organisation and operation of the Bar, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the current legislation on the Bar in Ukraine.

In addition, there is an issue with the transformation of disciplinary proceedings into a mechanism of pressure on advocates by the BSG. A separate challenge of the disciplinary procedure in Ukraine is the existence in the regulatory framework of value judgements, such as violation of the oath or the Rules of Professional Conduct, which “undermines the authority of the Ukrainian Bar”, as grounds for the most severe disciplinary sanctions. The Rules of Ethics of the Bar⁹²⁹ contain terms that are rather abstract in their meaning, such as “honour”, “dignity”, “undermining the prestige of the Bar”, “humiliation of the authority of the Bar”, etc. The Ukrainian Bar Association also drew attention to numerous cases of bringing advocates to responsibility as a result of their public criticism of administrative actions and decisions of the BSG⁹³⁰. The BSG bodies systematically use disciplinary proceedings as an instrument of pressure on advocates for expressing critical comments on certain aspects of the organisation and activities of the Bar in Ukraine.

The primary tool for prosecuting advocates for their statements and actions is primarily the Rules of Ethics of the Bar⁹³¹, as it is Article 12 of the Rules of Ethics of the Bar, which deals with criticism of the activities of the Bar self-government bodies and “humiliation of the authority of the Bar”, that is used to formulate the grounds for applying to the local QDC to bring advocates to disciplinary responsibility for criticising or disagreeing with decisions or actions of the BSG. This is exemplified by a number of blatant cases of persecution of advocates for expressing their positions on certain aspects of the activities of the BSG and the institution of the Bar in general.

927 Ukraine 2023 Report. 2023 Communication on EU Enlargement Policy. Brussels, 8.11.2023. URL: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en.

928 Ruling of the Luhansk District Administrative Court of 17.11.2023 in case No. 360/1266/23. URL: <https://reyestr.court.gov.ua/Review/114996764>.

929 Rules of Ethics of the Bar, approved by the Reporting and Election Congress of Advocates of Ukraine in 2017, 09.06.2017, Art. 12. URL: https://unba.org.ua/assets/uploads/legislation/pravila/2019-03-15-pravila-2019_5cb72d3191e0e.pdf.

930 Statement of the UBA on the use of disciplinary proceedings as a means of pressure on advocates. Ukrainian Bar Association. 2024. URL: <https://uba.ua/ukr/news/apu-zaklika-naau-peregljanuti-pdkhd-do-disciplinarnogo-provazhennja-jak-sposobu-tisku-na-advokatv>.

931 Rules of Ethics of the Bar, approved by the Reporting and Election Congress of Advocates of Ukraine, dated 09.06.2017. URL: https://unba.org.ua/assets/uploads/legislation/pravila/2019-03-15-pravila-2019_5cb72d3191e0e.pdf.

In 2015, the Qualification and Disciplinary Commission of Kyiv region disbarred **Andrii Vyshnevskiy**, who was the director of the Coordination Centre for Legal Aid Provision of the Ministry of Justice of Ukraine, for publicly criticising the BSG. During his speech in the Supreme Court of Ukraine, he expressed the opinion that the Bar needs urgent reform, as it is the advocate who is the main corruption link today, and the UNBA does not fight the phenomenon of police advocates and does not even give any assessment of it⁹³². In addition, A. Vyshnevskiy described the state of the Bar as “deplorable”, which could become an obstacle to the implementation of judicial reform⁹³³. These statements angered the BSG, and on 02 July 2015, based on the appeal of the UNBA and the BCU Head L. Izovitova, the QDC of Kyiv Region initiated a disciplinary case against A. Vyshnevskiy for violation of the Law of Ukraine “On the Bar and Practice of Law” and the Rules of Professional Conduct. According to the UNBA, A. Vyshnevskiy’s critical statements about the state of the Ukrainian Bar *destroy the public’s respect for the institution of the Bar in the country*⁹³⁴. Despite numerous statements in support of A. Vyshnevskiy from the Ukrainian Bar Association⁹³⁵, the Ukrainian Helsinki Human Rights Union⁹³⁶ and other professional organisations, following the consideration of the relevant disciplinary case, the advocate was brought to disciplinary responsibility in the form of disbarment for violation of clause 1, part 1, Article 21 (professional duties of an advocate) of the Law of Ukraine “On the Bar and Practice of Law”, and Articles 12, 51, 52, 54 of the Rules of Ethics of the Bar, as the Qualification and Disciplinary Commission of Kyiv Region considered his statements to be humiliation of the Bar and each advocate individually, as well as dissemination of false information about corruption in the Bar. After more than 2.5 years of struggle, Andrii Vyshnevskiy regained his advocate status by virtue of the Supreme Court’s ruling⁹³⁷, which became a kind of guideline for Ukrainian advocates to freely express themselves (including making critical remarks) regarding the activities of the Bar, its bodies, as well as the judiciary⁹³⁸, but the BSG continued their attempts to put pressure on advocates.

An equally striking example of the persecution of an advocate for disagreeing with the decision of the BSG is the disciplinary case of advocate **Ihor Ivanov**, which was initiated based on the statement of the UNBA and the BCU Head L. Izovitova. Thus, by the BCU decision No. 211 of 23 September 2017 “Issues of non-implementation of the decisions of the Bar Council of Ukraine related to the activities of the Bar self-government bodies of Kyiv and guarantees of the practice of law”⁹³⁹ it was established that the meeting of Kyiv advocates was held without the BCU approval of the representation quotas, the procedure for nomination and election of delegates to the regional Bar conference, the regulations of the regional Bar conference, i.e. outside the Law and mandatory decisions of the UNBA. The BCU’s non-recognition of the decisions of the Conference of Advocates of Kyiv on formal grounds led to the actual destruction of the Bar self-government in Kyiv, the largest region by the number of advocates. Therefore, the formation of the Kyiv BSG bodies is blocked by the decisions and inactivity of the BCU.

932 Potential punishment has not changed the advocate’s opinion about the Ukrainian Bar. ZMINA. 2015. URL: https://zmina.info/articles/mozhlive_pokarannya_ne_zminilo_dumku_advokata_pro_advokaturu_ukrajini_-2//.

933 Andrii Vyshnevskiy, who insisted on reforming the Bar, was disbarred. Zmina. 2015. URL: https://zmina.info/news/andrija_vishnevskogo_jakij_napoljagav_na_reformuvanni_advokaturi_pozbavili_prava_na_advokatsku_dijalnist/.

934 Consideration of the disciplinary case against Andrii Vyshnevskiy was postponed. Yurydychna Gazeta. 2015. URL: <https://yur-gazeta.com/golovna/rozglyad-disciplinarnoyi-spravi-stosovno-andriya-vishnevskogo-pereneseno.html>.

935 Public position of the UBA on the persecution of advocate Andrii Vyshnevskiy. Ukrainian Bar Association. 2015. URL: <https://uba.ua/ukr/news/3856>.

936 Public position of the Ukrainian Helsinki Human Rights Union. Free Legal Aid. 2015. 2015. URL: <https://legalaid.gov.ua/novyny/publiczna-pozytsiya-ukrayinskoyi-gelsinskoyi-spilky-z-prav-lyudyny/>.

937 Resolution of the Supreme Court of 14.03.2018 in case No. 826/23545/15. URL: <https://reyestr.court.gov.ua/Review/72863807>.

938 Andrii Vyshnevskiy’s case: advocates are free to think and speak. Yurydychna Gazeta. 2018. URL: <https://yur-gazeta.com/publications/practice/inshe/keys-andriya-vishnevskogo-advokati-vilni-dumati-i-govoriti.html>.

939 The issue of non-implementation of the decisions of the Bar Council of Ukraine related to the activities of the Bar self-government bodies of Kyiv and guarantees of the practice of law: Decision of the Bar Council of Ukraine of 23.09.2017 No. 211. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2017-09-23-r-shennya-rau-211_5a046002f25e5.pdf.

The complainant considered the advocate's actions to be a violation of the Law, failure to comply with the BSG decisions, actions that blocked and destabilized the work of the Kyiv City BSG for a long time, disorientation of the advocates of the region and undermining the authority of the BSG bodies. According to the complainant, at a meeting of advocates, which did not have the legal status of a conference of advocates in the region and was held in violation of Article 47 of the Law, advocate Ivanov agreed to be elected to the Bar Council of Kyiv, intending to exercise the powers inherent in a member of a legally formed Bar Council of the region. In addition, in substantiating her claims, the UNBA Head noted that the BCU Decision No. 211 established that the conference of advocates of Kyiv was held without the BCU approval of the quotas of representation, the procedure for nomination and election of delegates to the conference of advocates of the region, the regulations of the conference of advocates of the region, i.e. outside the Law and binding decisions of the BCU.

In October 2018, the QDC of Kirovohrad region decided to close the disciplinary proceedings against the advocate I. Ivanov due to the expiration of the terms. However, the UNBA did not agree with the decision and filed a complaint against it with the HQDC. By the decision of the HQDC of 30 May 2019, the UNBA's complaint was partially upheld, and the materials of the disciplinary case were sent to the QDC of Kirovohrad region for a new consideration, which eventually led to the decision of the QDC to bring advocate Ivanov to disciplinary responsibility and disbar him for a period of six months. However, no new circumstances of the case were established, including those that would affect the period of disciplinary liability. Only in July 2020, the advocate was able to recognise the relevant decision of the Qualification and Disciplinary Commission of Kirovohrad Region as unlawful and cancel it⁹⁴⁰, as well as to recover non-pecuniary damage from the QDC in another lawsuit⁹⁴¹.

Also, in June 2023, **Valeriia Kolomiets**, who held the position of Deputy Minister of Justice of Ukraine for European Integration and suspended from the Bar on 12 September 2019, was disbarred for violating the rules of legal ethics. Her statements criticising the activities of the Administrative Court of Ukraine led to the initiation of disciplinary proceedings by the BCU due to "Valeriia Kolomiets' negative attitude to the Bar and destructive management of the area entrusted to her"⁹⁴². To substantiate its complaint, the BCU used the materials of the e-mail correspondence between the advocate and the Deputy Head of the BCU and the Head of the Committee on Legal Aid, which operates within the UNBA, which was assessed as incorrect communication with signs of violation of business ethics and the use of threats by V. Kolomiets against the relevant persons.

The QDC of the Zakarpattia region supported the BCU position and recognised V. Kolomiets' actions as violations of Articles 12, 12¹, 50, 57-60 of the Rules of Ethics of the Bar and failure to fulfil professional duties of an advocate under paragraphs 1, 6 of part 1 of Article 21 of the Law of Ukraine "On the Bar and Practice of Law". The advocate tried to appeal the relevant decision of the QDC in the Zakarpattia District Administrative Court, but the court dismissed her claim for declaring the decision of the QDC of Zakarpattia region unlawful and cancelling it⁹⁴³. According to the advocate herself, the cornerstone of the conflict between her and the BSG was the area of legal aid entrusted to her. For more than 10 years, since the system of free legal aid coordinated by the Ministry of Justice has existed in Ukraine, the UNBA has not given up its attempts to

940 Resolution of the Sixth Administrative Court of Appeal of 07.07.2020 in case No. 320/6481/19. URL: <https://reyestr.court.gov.ua/Review/90366150>.

941 Ruling of the Kropyvnytskyi Court of Appeal of 25.02.2022 in case No. 405/7473/20. URL: <https://reyestr.court.gov.ua/Review/103570493>.

942 Valeriia Kolomiets is disbarred: details. Yurydychna Gazeta. 2023. URL: <https://yur-gazeta.com/golovna/valeriyu-kolomiec-pozbavleno-prava-na-zaynyattya-advokatskoyu-diyalnistyu-detali.html>.

943 How Valeriia Kolomiets failed to prove in court the unlawfulness of the decision to disbar her. Advpcatpost. 2023. URL: <https://advokatpost.com/iak-valeriia-kolomiets-u-sudi-ne-zmohla-dovesty-protypравnist-rishennia-pro-pozbavlenia-ii-statusu-advokata/>.

discredit it and to get the opportunity to dispose of the funds allocated from the budget for the functioning of the system. According to V. Kolomiets, the UNBA's personal enemy is anyone who heads or coordinates the work of the legal aid system⁹⁴⁴.

Another example of arbitrary disciplinary proceedings is the case of Ukrainian advocate **Artem Donets**, who has been serving in the Armed Forces of Ukraine (AFU)⁹⁴⁵ since May 2022. In February 2021, the QDC of Kharkiv region received a complaint from the UNBA HSB Director Serhii Kuzmenko regarding the unlawful actions of advocate Donets, which may indicate a violation of the Rules of Ethics of the Bar. According to the text of the complaint, the reason for the appeal was that advocate A. Donets repeatedly published posts on the social network Facebook, which, in the complainant's opinion, discredited the measures for the advanced training of advocates of the UNBA HSB. In general, the advocate's posts concerned the coverage of the problem of low quality of educational activities offered by the UNBA HSB and the shortcomings of the system of continuous professional development of advocates in Ukraine.

On 30 November 2023, the HQDC, following almost two years of consideration of this complaint in three different disciplinary commissions after the expiry of the term of prosecution and without providing the complaint for review, made a decision to bring advocate A. Donets to disciplinary responsibility by imposing a disciplinary sanction in the form of disbarment for a period of six months. Currently, the relevant decision of the HQDC is being appealed within the framework of case No. 520/38196/23⁹⁴⁶.

However, the prosecution of the advocate by the Bar self-government bodies did not end there. On 16 January 2024, the Head of the UNBA and the BCU L. Izovitova filed a petition with the court in case No. 520/38196/23 for a separate ruling that would oblige the Qualification and Disciplinary Commission of Kharkiv Region to apply to the NACP regarding the advocate's corrupt actions in the form of non-suspension of the advocate's certificate during his service in the Armed Forces. However, the respective appeal contradicts the decision of the BCU adopted on 03 March 2022, whereby during the martial law it is not considered a violation of the requirements on the incompatibility of military or alternative (non-military) service by advocates and such grounds for bringing an advocate to disciplinary responsibility are not applied⁹⁴⁷.

Also, in May 2023, before the decision on the first complaint was made, the UNBA HSB once again appealed to the QDC of Kharkiv region to bring advocate Donets to disciplinary responsibility, again for posts on a social network criticising the training activities of the UNBA HSB. Although the relevant complaint was distributed on 07 December 2023 to the QDC of Odesa region, the complaint has not yet been scheduled for consideration. Also, on 11 January 2024, three separate complaints against the advocate A. Donets were filed by the representative of the UNBA Human Rights Committee Tetiana Hnatiuk to the QDC of Kharkiv region. Thus, it can be concluded that the Bar self-government bodies monitor every statement of Artem Donets about the existing shortcomings of the Bar in Ukraine and try to restrict the right to freedom of expression guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁴⁸ and to put pressure on the advocate through disciplinary proceedings.

944 I am not afraid to openly call a spade a spade and call a lie a lie, - Valeriia Kolomiets. Yurydychna Gazeta. 2023. URL: <https://yur-gazeta.com/interview/ya-ne-boyusya-vidkrito-nazivati-rechi-svoyimi-imenami-ta-nazivati-brehnyu-brehnyu--valeriya-kolomie.html>.

945 Advocate Illia Kostin reported pressure due to criticism of members of the Bar self-government. ZMINA. 2023. URL: <https://zmina.info/news/advokat-illya-kostin-zayavyv-pro-tysk-cherez-krytyku-chleniv-organiv-advokatskogo-samovryaduvannya/>.

946 Decision of the Kharkiv District Administrative Court of 28.03.2024 in case No. 520/38196/23. URL: <https://reyestr.court.gov.ua/Review/118009319>.

947 On the peculiarities of military or alternative (non-military) service by advocates during martial law: Decision of the Bar Council of Ukraine of 03.03.2022 No. 24. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2022-03-24-r-shennya-rau-24_6244383f5d80a.pdf.

948 Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950, Art. 10. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

The interesting case of advocate **Illia Kostin**, who was admitted to the Bar in 2005 and suspended his practice on 25 November 2022 due to his service in the Armed Forces of Ukraine, deserves special attention. Since June 2016, the advocate has been actively researching the problem of the activities of Ukrainian advocates in the territories occupied by the Russian Federation. The advocate repeatedly appealed to the QDC with complaints about the violation of the oath by the advocates in view of their inclusion in the so-called register of advocates of the so-called DPR and their activities in the relevant territory under the “legislation of the DPR” and the Russian Federation⁹⁴⁹. However, the BSG bodies either refused to consider the relevant complaints or concluded that there was no sufficient evidence of violation of the oath of office by such individuals. In addition, advocates Illia Kostin and Roman Tytykalo initiated a complaint to the QDC of Kyiv region against advocate Viktor Medvedchuk, which eventually resulted in Mr Medvedchuk’s disbarment.

Despite taking an active stance in defending the sovereignty of Ukraine and the basic principles of the Bar, in November 2023, the Head of the UNBA Human Rights Committee filed a complaint with the Qualification and Disciplinary Committee of Kyiv Region against the advocate Illia Kostin for publicly criticising the UNBA leadership for inaction against advocates who cooperate with the occupation government in the temporarily occupied territories. The Ukrainian Bar Association repeatedly called on the UNBA not to use disciplinary proceedings as a means of pressure on advocates who publicly criticise the management actions and decisions of the current heads of the Bar⁹⁵⁰.

Thus, in view of the above, the BSG continue to persecute advocates even in such sensitive issues as disbarment of traitorous advocates.

At the same time, the **issue of combining military service and the practice of law deserves special attention**. According to Article 7 of the Law, military or alternative (non-military) service is incompatible with the practice of law. Violating these incompatibility requirements is considered a disciplinary offense and may lead to disciplinary liability, including the suspension of the right to practice law for a period of one month to one year if the advocate does not cease their activities.

Since the full-scale invasion by the Russian Federation in February 2022, many legal professionals have either voluntarily or through mobilization joined the Armed Forces of Ukraine to repel the aggression, putting both their civilian and professional lives on hold.

On March 3, 2022, the BCU adopted Decision No. 24, stating that during the period of martial law, it will not be considered a violation for lawyers to engage in military or alternative (non-military) service, and this will not serve as grounds for disciplinary action⁹⁵¹. This decision was clearly necessary, as the legal profession does not exist in isolation and is also impacted by the consequences of the Russian Federation’s armed aggression.

However, the position of the BSG soon changed radically, despite the continuation of active hostilities and the relentless shelling of Ukrainian territories by the aggressor country. On June 10, 2024, it became known that the BCU had canceled Decision No. 24, justifying this by claiming that advocates who allegedly took up arms and did not terminate their Bar certificates did so for mercenary purposes, seeking additional income⁹⁵². Additionally, according to the

949 The enemy is among us. Part one. “Register of Advocates of the DPR”. CN.Blogs. 2023. URL: https://censor.net/ru/blogs/3417009/vorog_sered_nas_chastina_persha_restr_advokatv_dnr.

950 Statement of the UBA on the use of disciplinary proceedings as a means of pressure on advocates. Ukrainian Bar Association. 2024. URL: <https://uba.ua/ukr/news/apu-zaklika-naau-peregljanuti-pdkhd-do-disciplnarnogo-provazhennja-jak-sposobu-tisku-na-advokatv>.

951 On the peculiarities of military or alternative (non-military) service by advocates during martial law: Decision of the Bar Council of Ukraine of 03.03.2022 No. 24. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2022-03-24-r-shennya-rau-24_6244383f5d80a.pdf.

952 Advocates who have joined military service are called to eliminate incompatibility. National Bar Association of Ukraine. 2024. URL: <https://unba.org.ua/news/9219-advokativ-yaki-pishli-na-vijs-kovu-sluzhbu-zaklikayut-usunuti-nesumisnist.html>.

UNBA Committee on Human Rights Protection, combining professions leads to the improper performance of duties by a citizen, both as a military servant protecting the sovereignty and independence of the state and as an advocate defending, representing, and providing other types of legal assistance to a client⁹⁵³.

Regarding the incompatibility of combining the practice of law with military service, it is worth noting that the relevant law was adopted in 2012, before both the full-scale invasion of the Russian Federation and the annexation of Crimea, as well as the occupation of the Donetsk and Luhansk regions in 2014. The law could not have anticipated that advocates, like other citizens, would be forced to take up arms against an aggressor. As a result, the current legislation on the Bar does not meet the requirements of martial law, leading to manipulation by the BSG.

However, the cancellation of SJA Decision No. 24, which allowed for the suspension of disciplinary liability for advocates in the military regarding incompatibility requirements, was not the only questionable action by the BSG. According to the DEJURE Foundation, the heads of the Bar submitted an order to the Commander-in-Chief of the Armed Forces of Ukraine, requiring Ukrainian advocates in the military to suspend their Bar certificates. This document is classified as secret, an unusual practice for such matters⁹⁵⁴. Advocate Vitalii Tytych, who serves in the Armed Forces of Ukraine, reported that the commanders of military units received a separate classified order, No. 4301t of May 10, 2024, signed by the Commander-in-Chief of the Armed Forces of Ukraine. This order instructs military units to initiate disciplinary actions against servicemen who hold the status of an advocate by appealing to the Bar Council of the relevant region⁹⁵⁵, citing a violation of the incompatibility requirements under Article 7 of the Law. The order includes step-by-step instructions on how to bring an advocate-serviceman to disciplinary responsibility. The mere status of an advocate does not affect the rights and interests of the military command or military service itself. However, the Commander-in-Chief of the AFU mandates military commanders to interfere in the relationship between advocates and their self-governing organization by initiating disciplinary proceedings under the special rules of that organization. Moreover, this is not the first attempt by Bar leaders to target advocates in the military. In May 2023, they attempted to lobby the command of the Territorial Defence Forces of the Armed Forces of Ukraine, arguing that combining military service with the status of an advocate constitutes a corruption offense. However, due to the active stance of advocates-servicemen, this effort was unsuccessful⁹⁵⁶.

In light of the above, it is surprising that the BSG, rather than supporting advocates who have joined the Armed Forces of Ukraine to resist the occupying forces, is focusing its time and resources on imposing disciplinary measures under outdated provisions of the Law that were designed for peacetime. Since 2014, the UNBA has failed to initiate amendments to the Law to address this issue and exclude advocates in military service from liability.

These actions by the BSG have provoked significant outrage within the legal community, as they appear more focused on persecuting advocates who criticize the BSG's activities and preventing their participation in future elections. The suspension of an advocate's right to practice law effectively disqualifies them from voting in BSG elections. The lack of transparent and open elections, particularly with the participation of reform-minded advocates including those in the military, risks perpetuating the BSG's power consolidation and contributing to stagnation within the Bar for the next five years.

953 Why there are no advocates-servicemen. National Bar Association of Ukraine. 2024. URL: <https://unba.org.ua/publications/8692-chomu-ne-buvae-vijs-kovih-advokativ.html>.

954 Elections in the shadow of war: whom do advocates in the military hinder? Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/columns/2024/06/12/7460427/>.

955 Vitalii Tytych's publication on Facebook on 11.07.2024. URL: <https://www.facebook.com/share/p/FNciwE1RyS3VuWJz/>.

956 Why there are no advocates-servicemen. National Bar Association of Ukraine. 2024. URL: <https://unba.org.ua/publications/8692-chomu-ne-buvae-vijs-kovih-advokativ.html>.

The next problem is bringing advocates to disciplinary liability for non-payment of the annual fee for the Bar self-government. The Regulation on contributions to the Bar self-government⁹⁵⁷ stipulates that violation of the procedure and terms of payment of annual contributions by an advocate is considered a failure to comply with the decision of the Bar self-government bodies and, accordingly, a disciplinary offence. If the advocate violates the payment procedure for more than three months, the disciplinary sanction in the form of disbarment for a period of one month to one year is imposed on the advocate. However, the imposition of a disciplinary sanction in the form of disbarment for a period of one month to one year may be imposed only if there are grounds specified in part 2 of Article 31 of the Law (i.e., in case of repeated commission of a disciplinary offence within a year; violation of the requirements for incompatibility by the advocate; and systematic or gross one-time violation of the rules of professional conduct). At the same time, repeated violation of the terms or procedure for payment of such fees within one year will result in disbarment with subsequent exclusion from the URAU.

However, disciplinary sanctions in the form of disbarment may be imposed on an advocate only if there are grounds provided for in part 2 of Article 32 of the Law, namely: in case of violation of the oath by the advocate; disclosure of the attorney-client privilege, its use in their own interests or in the interests of third parties; causing by the advocate's unlawful actions significant damage to the client, if such damage is established by a court decision that has entered into force; systematic or gross one-time violation of the Rules of Ethics that undermines the authority of the Ukrainian Bar. Obviously, the relevant clauses of the Regulations on contributions directly contradict the provisions of the Law.

Another issue is related to the imposition of a fee for organisational and technical support for the review of applications (complaints) to the QDC and the HQDC, which is not provided for by the law. Back in 2017, the decision of the BCU⁹⁵⁸ established a fee for consideration of applications (complaints) to the QDC and the HQDC against the advocate's behaviour, decisions, actions or inaction of the QDC in the amount of one subsistence minimum for able-bodied persons established by law on the day of filing the application. However, by the decision of the Sixth Administrative Court of Appeal dated 09 June 2020 in case No. 816/2353/17⁹⁵⁹, the relevant BCU decision was declared unlawful and invalid from the moment of its adoption, given that the relevant Law does not provide for payment for the submission and consideration of an application (complaint) regarding the conduct of an advocate by the QDC. The relevant decision of the appellate court was upheld by the decision of the Administrative Court of Cassation of the Supreme Court of 21 December 2020⁹⁶⁰.

However, the BCU re-established⁹⁶¹ the fee in the amount of 1 subsistence minimum for able-bodied persons established by law on the day of filing an application (complaint) for organisational support of consideration of applications (complaints) to the QDC and the HQDC. Thus, despite the fact that the illegality of charging a fee for the organisational support of the consideration of applications (complaints) to the QDC and the HQDC was established by the decision of the

957 Regulations on contributions to ensure the implementation of the Bar self-government: Decision of the Bar Council of Ukraine of 03.02.2017 No. 4. URL: https://unba.org.ua/assets/uploads/legislation/pologennya/2018-10-13-polozhennya-176_5c3709045642e.pdf.

958 On establishing the fee for organisational and technical support of consideration of applications (complaints) to the Qualification and Disciplinary Commission of the Bar of the Region and the High Qualification and Disciplinary Commission of the Bar: Decision of the Bar Council of Ukraine of 23.09.2017 No. 203. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2017-09-23-r-shennya-rau-203_5c370fc4cfc74.pdf.

959 Resolution of the Sixth Administrative Court of Appeal of 09.06.2020 in case No. 816/2353/17. URL: <https://reyestr.court.gov.ua/Review/89728140>.

960 Resolution of the Administrative Court of Cassation within the Supreme Court of 21.12.2020 in case No. 816/2353/17. URL: <https://reyestr.court.gov.ua/Review/93749503>.

961 On Establishment of the Fee for Organisational Support of Consideration of Applications (Complaints) to the Qualification and Disciplinary Commissions of the Bar and the High Qualification and Disciplinary Commission of the Bar: Decision of the Bar Council of Ukraine of 18.06.2020 No. 37. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2020-06-18-r-shennya-rau-37_5ef4903adf787.pdf.

Supreme Court, this practice continues to exist under the apparently illegal decision of the BCU No. 37 of 18 June 2020. This fact indicates a violation by the Bar self-government bodies of the constitutional principle of the rule of law.

Another issue is that the appeal of a decision in a disciplinary case does not suspend its effect. The law stipulates that an advocate or a person who initiated the issue of disciplinary liability of an advocate has the right to appeal the decision in a disciplinary case within 30 days from the date of its adoption to the HQDC or to the court. However, the appeal of such a decision will not suspend its effect⁹⁶². Such a provision leads to an actual violation of the advocate's rights, because when a decision is made to disbar the advocate for a certain period (several months), a long period of consideration of the complaint by the HQDC and/or court eliminates the right of the person to appeal against such a decision⁹⁶³. Moreover, in the event of suspension or disbarment, the advocate cannot offer legal assistance to clients or represent their interests in courts, which directly affects the interests of the client, the priority of which is one of the fundamental principles of the Rules of Ethics of the Bar.

The challenges also include the existence of significant shortcomings in the legal regulation of the procedure for bringing the advocate to disciplinary responsibility. As noted above, for a long period of time, many reputable international organisations have expressed critical remarks on both the legal regulation and practical aspects of the implementation of disciplinary procedures. Along with the above-mentioned problems, the following can be identified:

- › absence of a definition of a disciplinary offence in the Law;
- › an uncertain range of persons who may file a complaint against the advocate's actions;
- › absence of legislatively defined requirements to the form and content of the application (complaint), which may result in disciplinary liability of the advocate;
- › a narrow list of disciplinary sanctions provided for by the Law, which does not allow to ensure compliance with the principle of proportionality when choosing the type of disciplinary sanction;
- › the absence of a mechanism for repayment and early removal of disciplinary sanctions.

Obviously, without amending the Law to eliminate the existing gaps and streamline the relevant system of disciplinary liability, it is impossible to achieve a meaningful improvement of the procedure for bringing advocates to disciplinary liability in Ukraine.

Recommendations

In view of the above, in order to eliminate the shortcomings of the procedure for bringing an advocate to disciplinary responsibility in Ukraine, it is advisable to:

1. Amend the legislation in order to streamline and eliminate the shortcomings of the legal regulation of the procedure for bringing an advocate to disciplinary liability. In particular, to define the concept of disciplinary misconduct of an advocate and the range of persons who may file a complaint against the actions of an advocate; to define the requirements for the content of an application (complaint) that may result in disciplinary liability of an advocate, etc.

962 On the Bar and Practice of Law: Law of Ukraine dated 05.07.2012 No. 5076-VI, Art. 42. URL: <https://zakon.rada.gov.ua/laws/show/5076-17>.

963 V. V. Zaborovskyi. Appeal against a decision in a disciplinary case as an optional stage of disciplinary proceedings against an advocate. Scientific Bulletin of Uzhhorod National University. Series "Pravo". 2012. Issue 46. Volume 2. URL: <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/20246/1/Заборовський%20Оскарження%20рішення%20у%20дисциплінарній%20справі%20як%20факультативна%20стадія%20.pdf>.

2. Amend the legislation to provide that the appeal against a decision in a disciplinary case suspends its execution.

3. Enshrine in law the observance of the fundamental principles of legal ethics, including by amending the Rules of Professional Conduct. The Rules of Professional Conduct should also be improved in line with the best ethical standards of the EU and prevented from being used as an instrument of pressure on advocates.

Continuous professional development

State of play

Continuing professional development of the advocate is an important professional duty provided for by the Law⁹⁶⁴ and the Rules of Ethics of the Bar⁹⁶⁵. Failure to fulfil or improper fulfilment of this obligation is a disciplinary offence, which is the basis for bringing the advocate to disciplinary responsibility.

At present, the continuous professional development of advocates in Ukraine is conducted in accordance with the Procedure for the Advanced Training of Advocates of Ukraine⁹⁶⁶, which generally complies with international standards of organisation and operation of the Bar in democratic countries, as it provides for various types of advanced training, the obligation to improve their qualifications at the level of at least 10 hours per year (for young advocates during the first three years of practice – at least 16 hours per year), obtaining an electronic certificate of advanced training, etc.

Starting from February 2024, the participation of advocates providing secondary legal aid in the Council of Europe HELP programme courses and obtaining the relevant certificate will be taken into account by the UNBA Higher School of the Bar when calculating the required number of points for advocates in the free legal aid system⁹⁶⁷.

However, the system of advanced training of advocates in Ukraine is stagnating due to significant shortcomings of the current legislation on the Bar, combined with the artificial eradication of competition among providers of educational programmes for the advanced training of advocates by the Bar self-government bodies.

Progress and issues

Despite the almost annual updating of certain provisions of the Procedure for the Advanced Training of Advocates of Ukraine, the system of continuous professional development has not undergone any qualitative changes for a significant period of time, which has led to the entrenchment of certain systemic issues:

1. The artificial creation of the UNBA Higher School of the Bar (UNBA HSB) as a monopolist in the field of continuous professional development of advocates. The BCU has vested the UNBA HSB with the authority to organise training for advocates and to conduct certification

964 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, cl. 4, p. 1, Art. 21. URL: <https://zakon.rada.gov.ua/laws/show/5076-17>.

965 Rules of Ethics of the Bar, approved by the Reporting and Election Congress of Advocates of Ukraine in 2017 of 09.06.2017, Art. 11. URL: https://unba.org.ua/assets/uploads/legislation/pravila/2019-03-15-pravila-2019_5cb72d3191e0e.pdf.

966 The Procedure for Advanced Training of Advocates of Ukraine: Decision of the Bar Council of Ukraine of 03.07.2021 No. 63. URL: https://unba.org.ua/assets/uploads/legislation/poryadki/2024-02-08-poryadki-3_65e9d580a3597.pdf.

967 Training opportunities are being expanded for advocates of the FLA system. National Bar Association of Ukraine. URL: <https://unba.org.ua/news/8797-advokatam-sistemi-bpd-rozshiryuyut-mozhливosti-navchannya.html>.

and accreditation procedures for third-party organisations and training programmes. However, neither the Law nor the BCU Regulations provide for a monopoly on access to professional development and do not empower the BCU to confer authority or oversight functions, delegate its powers, or provide administrative functions to third parties outside the BSG system. At the same time, the All-Ukrainian Scientific and Educational Association of the UNBA is a private structure (according to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations), which is not provided for by the Law. Relevant arguments were made by individual advocates in case No. 640/15532/19 on challenging the previous version⁹⁶⁸ of the Procedure for the Advanced Training of Advocates, which is also relevant to the current Procedure. The progress of this case is currently unknown.

On 08 June 2024, the UNBA adopted a new decision that sparked active discussions among the legal community. Thus, the UNBA Decision No. 34 established a period of one month from the date of receipt of the certificate of the right to practice law and the oath of the Ukrainian Bar to register personal electronic offices for professional development on the platform of the UNBA's HSB Accreditation and Certification Centre (<https://cpd.hsa.prg.ua>) and to register personal electronic offices of advocates on the UNBA's official website (www.unba.org.ua⁹⁶⁹). The decision also establishes a period of one month from the date of entry into force of this decision for advocates to check the availability of registration of personal accounts for advanced training on the platform of the UNBA's HSB Accreditation and Certification Centre and certificates of advanced training from 2019 to 2023 and registration of personal electronic accounts on the UNBA's official website. In the absence of such accounts, the advocate shall register within one month from the date of entry into force of this decision.

In making this decision, the BCU highlighted Article 21 of the Law, which stipulates that advanced training is a professional duty of an advocate, and noted that a significant number of advocates are not complying with the relevant requirements of the Law and the Procedure for the Advanced Training of Advocates. However, rather than investigating the real reason behind the advocates' reluctance to attend the training events offered by the UNBA HSB, the BCU concluded that the most effective way to encourage advocates to carry out continuous professional development is to mandate the registration of a personal account on the UNBA's HSB Accreditation and Certification Centre platform, which, by the way, is not provided for by the current Law, which does not specify how an advocate should enhance their professional skills. Such actions of the BCU may indicate a desire of the BSG to exert control over the continuous professional development of advocates in Ukraine and to compel advocates to use the educational services of the UNBA HSB. Although the decision does not currently impose sanctions for not registering personal accounts or missing deadlines, it is possible that the BSG may implement such measures in the future.

2. A complicated, formalised and non-transparent system of accreditation of the professional development operators. In accordance with the Procedure for Advanced Professional Development⁹⁷⁰, the training of an advocate is considered as advanced professional development only if he/she receives a certain number of points provided for in the Procedure, which are awarded by the UNBA HSB or its accredited advanced professional development operators. The law generally does not provide for the procedure of accreditation of training programmes and payment of any fees related to the continuous professional training of advocates. However, the current Procedure

968 Vadym Semenov and Mykola Stoianov appeal to the court against the procedure for advanced training of advocates. Tomorrow's Lawyer. 2019. URL: <https://tomorrowslawyer.org/community/вадим-семенов-та-микола-стоянов-оскар/>.

969 On Amendments to the Procedure for Advanced Training of Advocates of Ukraine and the Procedure for Maintaining the Unified Register of Advocates of Ukraine: Decision of the Bar Council of Ukraine of 08.06.2024 No. 34. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2024-07-04-r-shennya-rau-34_66865a7d0f8da.pdf.

970 The Procedure for Advanced Training of Advocates of Ukraine, approved by the decision of the UNBA of 03 July 2021 No. 63 (as amended by the decision of the UNBA of 08 February 2024 No. 3). URL: https://unba.org.ua/assets/uploads/legislation/poryadki/2024-02-08-poryadki-3_65e9d580a3597.pdf.

for Accreditation and Certification⁹⁷¹ establishes a complicated procedure for a potential operator to pass accreditation, given the large number of documents (registration papers, documents on the implementation of the in-service training process, documents defining the content of training and regulating the organisation of the process), compliance with 10 accreditation requirements, such as at least 3 years of experience in providing educational services, provision of lecturer files with biographical references, provision of expert and methodological support, and other requirements. At the same time, the accreditation procedure is the same for both initial and repeated accreditation, i.e. the Procedure does not provide for a simplified procedure for operators who have already completed the same procedure.

The operator is accredited for a period of one year only, and then undertakes to repeat the procedure again and again, as well as to pay an annual accreditation fee of 50 minimum wages as of 01 January of each year in which such a fee is paid (as of 01 January 2024, such a fee is UAH 355,000). In addition, for the in-service training operators (except for the Bar Councils of the regions), an additional administrative fee for the processing and accounting of credit points and issuance of the relevant certificates is established at the rate of 1 (one) percent of the minimum wage as of 01 January of each year in which the certificates are issued for each credit point, which is also not provided for by the Law.

According to the information posted on the UNBA HSB Accreditation Centre's website⁹⁷², apart from the UNBA HSB and Bar councils of the region, which do not require accreditation exclusively for advocates in their region, only two legal entities (Private Joint Stock Company "Yurydychna Praktyka" and Limited Liability Company "Legal Portal "Ratio Decidendi") are accredited as operators of advocates' training.

This fact reiterates the lack of competition among providers of educational services due to the artificially created complex and non-transparent conditions for accreditation and certification, as well as a large fee, which is a significant barrier for many potential operators. The absence of a wide range of educational institutions for the continuous development of advocates leads to the degradation of the system of continuous professional development of advocates and lower standards of legal aid provision. However, there are many organisations in Ukraine (the Ukrainian Bar Association, Tomorrow's Lawyer NGO, international technical assistance programmes, international projects, etc.) that are not accredited precisely because of the relevant unreasonable restrictions and complex accreditation procedures, but systematically conduct training activities for advocates based on best practices and with the support of international technical assistance. Attendance at such events is not a qualification for attorneys to receive advanced training points, resulting in the need to undergo separate training to receive advanced training points.

3. The issue of the quality and accessibility of the UNBA HSB advanced training courses offered by the UNBA. The website of the UNBA Accreditation Centre⁹⁷³ contains a list of accredited advanced training events for advocates, divided into paid and free of charge. As of 20 March 2024, the number of paid ongoing events is 71, and the number of free events is only 17. At the same time, every advocate has a duty to improve their skills, but not everyone can afford to participate in paid events. This is especially true for young advocates, who are required to devote more hours to professional development during the first three years (16 hours instead of 10). In addition, the quality of the events offered by the UNBA HSB has been repeatedly criticised by advocates, as established by an independent survey, in which the vast majority of respondents expressed the opinion that the quality of educational events was poor, that the topics offered to advocates were

971 Procedure for Accreditation and Certification, approved by the Head of the Expert Council L. Izovitova on 01.04.2019. URL: https://unba.org.ua/assets/uploads/files/Rishennya/Poryadok_akreditacii%20ta%20sertifikacii%202019.pdf.

972 Accredited operators of the advocates' training. Accreditation Centre of the UNBA HSB. URL: <https://cpd.hsa.org.ua/organizers>.

973 Authorised training events for advocates. Accreditation Centre of the Ukrainian National Bar Association. URL: <https://cpd.hsa.org.ua/events>.

not relevant, and that they had doubts about the professionalism of UNBA HSB-certified trainers⁹⁷⁴. However, advocates are obliged to attend the events offered by the UNBA HSB due to the limited number of operators of advanced training events and the obligation to obtain points (conducting a set number of hours) for professional development. As already mentioned, criticism of the actions of the BSG and the quality of educational events offered by the UNBA HSB resulted in the initiation of disciplinary proceedings.

4. Violation of the rights of personal data holders by the UNBA HSB. In 2019, the Ukrainian Ombudsman's Office revealed a gross violation of the rights of personal data holders by the UNBA HSB – registration of users (advocates, trainees, assistant advocates) took place at hsa.org.ua, which was physically hosted (data on the server) in Germany, but further processing of users' personal data (including storage of such data) was carried out at online.hsa.org.ua using the online platform "antitreningi.ru", which was physically hosted in the Russian Federation⁹⁷⁵. Based on the results of this inspection, an order was issued to eliminate the identified violations. In its appeal, the UNBA disagreed with the conclusions of the Ombudsman's Office and noted attempts to put pressure on the organisation⁹⁷⁶. The information established by the Ombudsman's Office was not refuted. Given that since 2014, the Russian Federation has been using armed aggression against the sovereignty and territorial integrity of Ukraine, the processing of personal data of advocates, assistant advocates, trainees and other persons who register on the UNBA HSB website for the purpose of advanced training is unacceptable.

5. The access to the system of professional development of advocates shall be granted only to advocates who do not have arrears in payment of annual fees to the Bar self-government.

Recommendations

In order to eliminate the shortcomings of the system of continuous professional development of advocates in Ukraine, it is advisable to:

1. Introduce amendments and additions to the Law of Ukraine "On the Bar and Practice of Law" regarding the system of advanced training of advocates in Ukraine in order to develop it in line with international standards of organisation and activities of the Bar, to prevent corruption risks and abuse of the Bar self-government bodies.
2. Develop a clear and transparent procedure for accreditation of the in-service training providers and certification of persons admitted to participate in the in-service training of advocates.
3. Cancel the payment of fees for accreditation of third-party operators and administrative fees for the processing and recording of credits and issuance of relevant certificates, which are not provided for by the Law of Ukraine "On the Bar and Practice of Law".
4. Provide access to the system of professional development to all advocates, including those who are in arrears in paying annual fees to ensure the implementation of the Bar self-government.

974 The results of the survey of advocates on the quality of professional development activities. Publication of A. Donets on Facebook of 17.09.2019. URL: <https://www.facebook.com/share/p/HN36BoWi7KqKTiu2/>.

975 Gross violation of the rights of personal data holders by the UNBA. Ombudsman's Office of Ukraine. 2019. URL: <https://www.facebook.com/share/p/AkvecPXqsXh5v3rs/>.

976 UNBA claims pressure from the Ombudsman's Office. Ukrainian National Bar Association. URL: <https://unba.org.ua/news/4886-naau-zavavlyae-pro-tisk-zi-storoni-ofisu-ombudsmena.html>.

Corruption risks in the practice of law and activities of the Bar self-government bodies.

Mandatory declaration issues

State of play

Unlike the judiciary and the prosecution, the Bar does not have a mechanism for checking the integrity of its members, except for the suspension or termination of the right to practice law in case of a court conviction against an advocate⁹⁷⁷. At the same time, the media frequently accuse the Bar of corrupt practices, and law enforcement and prosecutorial authorities publish news about the detention of advocates and their suspicion of committing corruption-related offences⁹⁷⁸.

Despite the consolidation of society in the face of a full-scale invasion by the Russian Federation, the problem of corruption has not disappeared. Throughout the war, advocates were accused of corruption offences⁹⁷⁹. At the same time, representatives of the Bar self-government deny this in every possible way. For example, the head of the HQDC stated that “*numerous lawsuits and illegal criminal prosecutions of advocates by law enforcement agencies, initiated and, therefore, controlled by NABU officials, are unacceptable in a law-based democratic state*”⁹⁸⁰. However, a more balanced position would have been to respect law enforcement agencies that use criminal procedural means to verify the facts of corruption criminal offences, rather than accuse them of “unlawful pressure”. It is one thing to criticise procedural violations, but it is another to reject the possibility of involvement in corrupt activities in general.

As noted above, the risk of corruption in the process of access to the legal profession attracts particular attention. At the same time, neither advocates nor members of the disciplinary and qualification bodies of the Bar are under any declaration obligations.

Progress and issues

One of the members of the Disciplinary Chamber of the Qualification and Disciplinary Commission of the Bar of Zakarpattia Region received a notice from the National Agency on Corruption Prevention of the fact of failure to submit a declaration for 2020 as a person authorised to perform the functions of the state and local self-government, and of her obligation to submit such declaration in accordance with the law on the prevention of corruption. The grounds for her classification as a declarant were specified in subparagraph “c”, paragraph 2, part 1 of Article 3 of the Law of Ukraine “On Prevention of Corruption”⁹⁸¹, which equated persons “*who are members of competition and disciplinary commissions established in accordance with the Law*

977 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No. 5076-VI, Articles 31, 32. URL: <https://zakon.rada.gov.ua/laws/show/5076-17>.

978 In Odesa, an advocate was exposed for corruption: promised to influence a judge to close two cases. Suspilne Odesa. URL: <https://suspilne.media/667862-v-odesi-na-korupcii-vikrili-advokata-obicav-vplnuti-na-suddu-sob-zakriti-dvi-spravi/>.

979 USD 6 thousand for a positive court decision - the head of the city district court and an advocate are to be prosecuted. Kyiv City Prosecutor's Office. 2022. URL: https://kyiv.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=314372&fp=60; <https://www.gp.gov.ua/ua/posts/na-cerkashhini-zatrimali-advokata-ta-iogo-spilnika-yaki-obicyali-viiskovomu-dovidku-pro-nepridatnist-do-sluzbi>; <https://nabu.gov.ua/en/news/novyny-dvoh-advokativ-vykryly-na-sprobi-pidkupu-posadovciv-ogp-i-dfs/>.

980 “Meeting with MPs-advocates on the occasion of the 10th anniversary of UNBA”. Ukrainian National Bar Association. 2022. URL: <https://unba.org.ua/news/7762-zustrich-z-narodnimi-deputatami-advokatami-z-nagodi-10-richchya-naau.html>; “Even in wartime, we are forced to defend the independence of the Bar” – Serhii Vylkov, Head of the HQDC. HQDC. 2023. URL: <https://vkdk.org/navit-u-vojenij-chas-mi-vimusheni-vidstoyuvati-nezalezhnist-institutu-advokaturi-sergij-vilkovgolova-vkdka/>.

981 On the Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

of Ukraine “On Civil Service”, the Law of Ukraine “On Service in Local Self-Government Bodies”, other laws (except for non-resident foreigners who are members of such commissions), the Public Integrity Council established in accordance with the Law of Ukraine “On the Judiciary and the Status of Judges” as declaration holders⁹⁸².

At the same time, in March 2020, the UNBA sent a request to the National Agency on Corruption Prevention to clarify whether members of the QDC and the HQDC were subject to declaration, to which it received a negative response⁹⁸³.

But a year later, a completely opposite position emerged. The new interpretation of Article 3 of the Law of Ukraine “On Prevention of Corruption” stated that the Law applies to an indefinite number of persons (including those who hold no positions in public authorities or local self-government bodies) who are members of competition and disciplinary commissions established in accordance with other laws. The disciplinary bodies of the Bar, since they are established and operate for the purpose of performing public legal functions, are nevertheless subjects to declaration⁹⁸⁴.

Finally, the decision of the Grand Chamber of the Supreme Court of 02 February 2023 (case No. 260/3380/21⁹⁸⁵) failed to establish the obligation of filing declarations by advocates. The Grand Chamber of the Supreme Court noted that the NACP, as the body authorised to monitor the timeliness of filing declarations, only notified the advocate of the need to file a declaration and explained the procedure for filing it. By this notification, the NACP did not identify the advocate as a subject of declaration.

Despite this fact, in its clarification of 13 November 2023, the NACP noted that the persons subject to the Law of Ukraine “On Prevention of Corruption” are members of the HQDC and disciplinary chambers of the regional QDCs⁹⁸⁶.

This position of the NACP was criticised by the BCU in its Decision No. 134⁹⁸⁷ dated 15–16 December 2023. The BCU notes that the information set out in the aforementioned clarification only reflects the position of the public authority in numerous disputes. The end result was the aforementioned decision of the Grand Chamber of the Supreme Court, which cannot be understood in any other way than the absence of an obligation for members of disciplinary BSG bodies to submit a declaration.

The BCU noted that the broad interpretation of the Law of Ukraine “On Prevention of Corruption” contradicts the principle of legal certainty, which is a component of the rule of law. The Bar is an independent self-governing professional human rights institution of civil society, i.e. a non-governmental institution whose activities are not related to the performance of state or local government functions. The state authorities and local self-government bodies have no right to interfere with the activities of the Bar and the Bar self-government bodies.

982 By law, advocates cannot be subject to declaration. Zakon i Biznes. 2023. URL: https://zib.com.ua/ua/157900-advokati_v_silu_zakonu_ne_mozhut_buti_subektami_deklaruvannya.html.

983 NACP response of 17.02.2020 No. 45-08/5374/20. URL: <https://vkdk.org/wp-content/uploads/2020/03/13308.pdf>.

984 The Supreme Court has closed the case on the advocate’s declaration. What’s next? Yurydychna Gazeta. 2023. URL: <https://yur-gazeta.com/publications/practice/advokatura/verhovniy-sud-zakriv-spravu-pro-advokatske-deklaruvannya-shcho-dali.html>.

985 Decision of the Grand Chamber of the Supreme Court of 02.02.2023 in case No. 260/3380/21. URL: <http://iplex.com.ua/doc.php?regnum=108930843&red=10000355a2ae3d028a453295e0a6c94037f889&d=5>.

986 The BCU assessed the NACP’s explanations on advocates as subjects of declaration. Ukrainian National Bar Association. 2024. URL: <https://unba.org.ua/news/8740-rau-ocinila-rozlyasennya-nazk-shodo-advokativ-yak-subektiv-deklaruvannya.html>.

987 BCU Decision of 15-16 December 2023 No. 134 “On the results of consideration of the letter of the Head of the Bar Council of Kharkiv Region V. Gaivoronska, Head of the Qualification and Disciplinary Commission of Kharkiv Region L. Glukhacheva on issues related to the NACP’s clarification on the submission of declarations by members of the HQDC and disciplinary chambers of the regional QDCs”. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2023-12-15-r-shennya-rau-134_65ae8e453554b.pdf.

The Constitutional Court of Ukraine may put an end to this case, which on 14 February 2024 began consideration of Oksana Bukhtoyarova's constitutional complaint⁹⁸⁸.

However, the issue of creating safeguards against corruption in the Bar remains open without legislative regulation. Declarations of members of the BSG and advocates may be an element of the Bar's accountability to the public. The declaration system cannot be seen as an element of state pressure on the Bar, since the Bar performs a public function as one of the constitutional elements of the justice system. The Bar is accountable to society as a public legal institution.

Recommendations

Introduce mandatory declarations by advocates, including BSG officers.

Mediation

Implementation of the current Law on Mediation and adoption of bylaws

State of play

The Law of Ukraine "On Mediation"⁹⁸⁹ (the "Mediation Law") was adopted in November 2021. Many practicing mediators were involved in the development of the Mediation Law, which is why it is a framework document and largely meets the expectations of the community. The Mediation Law defines the basic concepts, principles, certain features and areas of mediation, as well as requirements for mediators and their training. The adoption of the Mediation Law was supposed to accelerate the development of mediation, but three months after its adoption, the full-scale invasion of Ukraine by Russia took place, and the expected leap did not occur.

Progress and issues

Over the two years of the Mediation Law's operation, there has been some movement, in particular, a significant increase in demand for mediation training, especially among legal professionals: advocates, notaries, and private enforcement officers. Most of the training is now conducted online, which makes it easier to access quality training even in small communities. The Mediation Law contains no provisions regarding the structure of self-government bodies. This, on the one hand, allows the system to develop rapidly and be flexible, eliminates corruption risks and the possibility of restricting access to the profession. However, it significantly complicates communication between different institutions, authorities and international organisations, as there is no single stakeholder.

The development of mediation was given a considerable impetus by the adoption of the new version of the Law of Ukraine "On Social Services"⁹⁹⁰, which defines mediation as a basic social service. The content, scope, conditions and procedure for the provision of social mediation, as well as quality indicators for entities of various forms of ownership and business entities providing such service, are defined by the State Standard of Social Service of Counselling (Mediation)⁹⁹¹.

988 Declarations are under threat again: The Constitutional Court of Ukraine is considering a complaint. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/deklaruvannya-znovu-pid-zagrozoyu-konstytutsiynyy-sud-ukrainy-rozglyadae-skargu/>.

989 On Mediation: Law of Ukraine of 16.11.2021 No. 1875-IX. URL: <https://zakon.rada.gov.ua/laws/show/1875-IX#Text>.

990 On Social Services: Law of Ukraine of 17.01.2019 No. 2671-VIII, cl. 10, p. 6, Art. 16. URL: <https://zakon.rada.gov.ua/laws/show/2671-19#Text>.

991 State Standard of Social Service of Counselling (Mediation): Order of the Ministry of Social Policy of Ukraine of 17.08.2016 No. 892. URL: <https://zakon.rada.gov.ua/laws/show/z1243-16#Text>.

Odesa also tested the practice of engaging mediators – mediation service providers – by local governments on a competitive basis, which is still a single example.

Despite the positive intentions, this regulation does not actually contribute to the introduction of quality mediation services, as very often in social services such services are provided purely on paper or by specialists who are not practicing mediators and/or have not received appropriate training, especially in small communities. At the same time, the draft order approving the State Standard of Social Counselling Service and the State Standard of Social Mediation Service is currently available for public discussion on the website of the Ministry of Social Policy of Ukraine. The relevant draft has been developed to determine the content, scope, conditions and procedures for the provision of social mediation services and the quality criteria for their provision by entities of various forms of ownership and business. These steps should improve the quality of these services⁹⁹².

Also there is an issue with collecting statistics on mediation – there is no complete information on the number of mediators in Ukraine; the number and categories of cases in which mediation was conducted; the number of cases that ended in reconciliation. Some statistics is collected on mediation as a social service, but it is not relevant, as it takes into account indicators for two services at the same time (counselling and mediation), which according to the older state standard is one service. Also, the FLA system collects statistics on the availability of mediation in its activities.

Access to the profession of mediator and professional development

State of play

A mediator may be an individual who has completed basic mediator training in Ukraine or abroad⁹⁹³. The Mediation Law sets out the requirements for such training, in particular, the programme shall contain at least 90 hours of training, including at least 45 hours of practical training⁹⁹⁴. The Mediation Law also states that mediators are trained by educational entities (e.g. Odesa Regional Mediation Group, Commercial Mediation Group, Ukrainian Mediation Centre, Ukrainian Academy of Mediation and many others, including universities). At the same time, the Mediation Law or other legal acts contain no requirements for the structure of the training programme or its components.

However, the mediation community understands the importance of high-quality training of mediators to ensure that mediation services are provided at the proper level. Therefore, representatives of various centres that train mediators unite to develop guidelines in this regard. The National Association of Mediators of Ukraine and the Association of Family Mediators of Ukraine serve as a platform for this purpose. Currently, there are two training standards - for mediators and family mediators.

In addition to the basic training, mediators may also receive specialised training in line with training programmes developed by educational entities, such as family mediation, business mediation, etc. Upon completion of basic and/or specialised training and confirmation of the acquired competencies, a certificate is issued. The certificate confirming the completion of basic and/or specialised training of a mediator shall be accompanied by a list of components of the training programme and acquired competencies.

⁹⁹² On Approval of the State Standard of Social Counselling Service and the State Standard of Social Mediation Service: Draft Order of the Ministry of Social Policy of Ukraine. URL: <https://www.msp.gov.ua/projects/867/>.

⁹⁹³ On Mediation: Law of Ukraine of 16.11.2021 No 1875-IX, Art. 9. URL: <https://zakon.rada.gov.ua/laws/show/1875-IX#Text>.

⁹⁹⁴ Ibid, Art. 10.

It is important to note that educational entities that provide mediators with training shall maintain registers of their graduates. It should be noted that educational entities are not required to publish registers of graduates on their websites. Instead, the organisations usually publish the registers of mediators who are members of these organisations⁹⁹⁵.

Ethics of a mediator and disciplinary liability

State of play

The Mediation Law⁹⁹⁶ stipulates that a mediator is required to comply with professional ethics. Mediators' associations have the right to develop their own codes of professional ethics for mediators or to recognise and join existing codes of professional ethics. The Law also requires associations of mediators to define in their statute the procedure for bringing to liability for non-compliance with the rules of professional ethics of a mediator who is a member of such an association.

Progress and issues

As of today, most organisations have joined the Code of Professional Ethics for Mediators, which was developed by representatives of various organisations on the basis of the NGO National Association of Mediators of Ukraine⁹⁹⁷, or have developed their own codes of professional ethics or are guided by the European Code of Conduct for Mediators, the Code of Conduct for Mediators of the International Mediation Institute (IMI) or another international organisation. There are no restrictions in this regard – the key is that the mediator should provide the text of the code to the potential parties to the mediation before starting the mediation procedure.

Discussions in mediation circles are still ongoing regarding the practical mechanism of bringing to justice for violations of professional ethics by mediators. In particular, the issue of who exactly decides to hold a mediator liable, whether it is done individually or collectively, what sanctions are provided for a mediator in case of violation of professional ethics, etc. has not been resolved. The procedure may be carried out in accordance with the organisation's charter and internal regulations. There is no single procedure.

The Mediation Law also does not specify how to bring to justice for violation of ethical standards a mediator who is a member of an association of mediators but practices individually. In particular, it can potentially be said that this can be done by the organisation that trained such a mediator and issued the relevant certificate. However, it is important to define what kind of disciplinary measures can be taken in practice, since such a mediator may live in another city or, for example, may have received training abroad. This issue should be addressed by the mediation community.

Development of mediators' self-government and the role of the state

State of play

Self-governance of the mediator community is essentially carried out through associations of mediators. According to the Mediation Law⁹⁹⁸, associations of mediators are voluntary associations

995 Register of Mediators – NAMU Members. URL: <http://namu.com.ua/ua/members/>.

996 On Mediation: Law of Ukraine of 16.11.2021 No. 1875-IX, Art. 13. URL: <https://zakon.rada.gov.ua/laws/show/1875-IX#Text>.

997 Code of Professional Ethics for Mediators: Decision of the General Meeting of the NGO National Association of Mediators of Ukraine of 19.02.2022. URL: <https://namu.com.ua/ua/info/mediators/nseyenf-yekhynt-pyeeakhsua/>.

998 On Mediation: Law of Ukraine of 16.11.2021 No. 1875-IX, cl. 5, p.1, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/1875-IX#Text>.

established in accordance with the Law of Ukraine “On Non-Governmental Organisations” to exercise and protect the rights and freedoms of members of such an association and/or develop mediation and/or promote a culture of peaceful conflict (dispute) resolution and/or exercise professional self-government of mediators and/or ensure the provision of mediation services.

As of today, there are more than 50 organisations⁹⁹⁹ in Ukraine that provide mediation services or conduct relevant training to certify future mediators. These organisations are mostly registered as public associations and are equal.

There are also several associations of mediators in Ukraine (e.g., National Association of Mediators of Ukraine, Association of Family Mediators of Ukraine), all-Ukrainian organisations (e.g., Ukrainian Academy of Mediation, Ukrainian Mediation Centre, Institute for Peace and Understanding, Centre for Law and Mediation, etc.), local organisations that aim to develop mediation within a particular region (e.g., Lviv Mediation Centre, Bukovyna Mediation Centre, Podil Mediation Centre, etc.).

As already mentioned, mediators are free to choose an organisation of their choice, including several organisations, or to practice without affiliation to any organisation. The Mediation Law does not favour one or more organisations, nor does it require mediators to belong to any one organisation, as is the case with advocates under the Law of Ukraine “On the Bar and Practice of Law”. Competition encourages organisations to develop qualitatively and improve the level of services by competing with each other.

Register of mediators

State of play

There is no single centralised register of mediators in Ukraine. The Mediation Law¹⁰⁰⁰ stipulates that associations of mediators and entities providing mediation shall maintain registers of mediators in compliance with the law’s requirements for confidential information about a person. This is definitely a positive development, as it allows organisations to maintain registers in accordance with their needs and specific activities, and does not create excessive regulation of the mediation sector. For example, the National Association of Mediators of Ukraine (Register of Mediators¹⁰⁰¹) and the free legal aid system (the Register of Mediators Engaged by Centres for Free Secondary Legal Aid¹⁰⁰²) maintain their own registers.

A special mention should be made of the platform www.mediation-help.com, which was created by the Ukrainian Academy of Mediation with the financial support of the European Union at the beginning of the full-scale invasion to provide information and conflict resolution support to the Ukrainian population in different countries. This platform contains an inter-organisational register of mediators, which can be accessed free of charge by any mediator who meets the formal requirements of the Mediation Law. This register is the main resource used by the judiciary and other authorities in communicating about mediation.

Promoting mediation at the level of the justice system and at the community level

In general, the development of mediation as a service should be carried out on market conditions by the community, but there are definitely areas where the state should play a major role.

999 Who’s Who in Mediation and Dialogue in Ukraine? National Association of Mediators of Ukraine. URL: <https://namu.com.ua/ua/info/mediation/esvkeryn-shkhs-zh-shkhs-ts-fchyeuk-pyeekashchki-kha-ekaosgts-v-tsnuarlk/>.

1000 On Mediation: Law of Ukraine of 16.11.2021 No. 1875-IX, Art. 13. URL: <https://zakon.rada.gov.ua/laws/show/1875-IX#Text>.

1001 Register of Mediators – NAMU Members. URL: <http://namu.com.ua/ua/members/>.

1002 FLA. Register of Mediators. URL: <https://legalaid.gov.ua/reyestr-mediatoriv/>.

Progress and issues

Mediation as a type of legal service provided by the free legal aid (FLA) system

The Law of Ukraine “On Free Legal Aid”¹⁰⁰³ stipulates that free legal aid centres provide mediation services in accordance with the established procedure. The Cabinet of Ministers of Ukraine establishes the amount and procedure for payment for mediation services by mediators engaged by free legal aid centres.

Having examined this Law, it can be concluded that the territorial branches of the FLA system can be considered as entities that ensure mediation, but not as providers of such service. The document that establishes the procedure for providing mediation services in criminal proceedings is the joint order of the Ministry of Justice of Ukraine and the Prosecutor General’s Office of Ukraine of 21 January 2019 No. 72/5/10¹⁰⁰⁴, which provides for mediation between minors who have committed a criminal offence or a minor crime for the first time and the victim.

In 2021, the Coordination Centre for Legal Aid Provision established a department for the implementation of alternative dispute resolution methods¹⁰⁰⁵. In addition, during 2020–2021, a number of training events were held for FLA specialists on the implementation of the mediation service¹⁰⁰⁶. In 2021, 40 specialists of the FLA system completed a 120-hour course “Basic Mediator Skills” and received a mediator certificate.

The FLA centres conclude memoranda of cooperation with both mediator organisations and individual mediators. The mediators engaged by the FLA system until 2024 worked pro bono. In January 2024, the Government approved the **Procedure for Payment for Mediation Services to Mediators Engaged by Free Legal Aid Centres**, which defines the mechanism for paying remuneration and reimbursement of expenses related to the provision of mediation services to mediators included in the Register of Mediators Engaged by Free Legal Aid Centres.

Mediation in criminal proceedings, introduction of restorative justice

Given the specifics of the relationship, it is almost impossible to develop mediation in this area without the active participation of the state. In recent years, Ukraine has managed to implement several projects to introduce restorative justice. For example, for two years, the NGO Institute for Peace and Understanding, in partnership with the Supreme Court and the Office of the Prosecutor General, with the support of the United Nations Democracy Fund (UNDEF)¹⁰⁰⁷ has been implementing the “Implementation of Restorative Justice in Ukraine” project. The project helped to develop mechanisms for introducing restorative justice into the criminal justice system in Ukraine (during pre-trial investigation and in criminal proceedings in the court of first instance), and to test them at pilot sites in six regions of Ukraine. Despite the positive results of these projects, it is still too early to talk about the systemic effects of implementing mediation in criminal proceedings.

1003 On Free Legal Aid: Law of Ukraine of 02.06.2011 No. 3460-VI, cl. 15, p.1, Art. 17, cl. 5, p.1, Art. 27. URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>.

1004 On the implementation of the pilot project “Recovery Programme for Minors Suspected of Committing a Criminal Offence”: Order of the Ministry of Justice of Ukraine and the Prosecutor General’s Office of Ukraine of 21 January 2019, No. 72/5/10. URL: <https://zakon.rada.gov.ua/laws/show/z0087-19#Text>.

1005 The Law on Mediation opens up new opportunities for clients of the FLA system. Ministry of Justice of Ukraine. 2021. URL: <https://minjust.gov.ua/news/ministry/zakon-pro-mediatsiyu-vidkrivae-novi-mojlivosti-klientam-sistemi-bpd>.

1006 Alternative dispute resolution: 120 employees of the free legal aid system took part in specialised training on how to facilitate access to mediation. Pravokator. 2021. URL: <https://pravokator.club/news/alternatyvne-vyrishennya-sporiv-120-pratsivnykiv-systemy-nadannya-bezoplatnoyi-pravovoyi-dopomogy-vzaly-uchast-u-spetsializovanomu-navchanni-z-nadannya-dopomogy-v-zabezpechenni-dostupu-do-mediatsiyi/>.

1007 Participation of the Regional Centre’s management in the presentation of the project “Implementation of Restorative Justice in Ukraine” in Ivano-Frankivsk region. URL: <https://legalaid.gov.ua/novyny/uchast-kerivnytstva-regionalnogo-tsentru-v-prezentatsiyi-proektu-vprovadzhennya-vidnovnogo-pravosuddya-v-ukrayini-na-terenah-ivano-frankivshhyny/>.

As already mentioned, the FLA system plays a key role in the development of mediation in criminal justice, as it implements the project “Recovery Programme for Juveniles Suspected of Committing a Criminal Offence”. In 2023, the Register of Mediators Engaged by Free Secondary Legal Aid Centres included 104 mediators, of whom 26 confirmed their specialisation and received a certificate in restorative justice mediation involving minors. According to the Coordination Centre for Legal Aid Provision, in 2023, a total of 55 agreements on the application of the Programme were concluded (55 minors successfully completed it, taking part in additional resocialisation measures)¹⁰⁰⁸. In previous years, the same number of minors successfully completed the Programme: 2022 – 64 people, 2021 – 130, and 2020 – 69¹⁰⁰⁹.

Since the beginning of 2023, the Coordination Centre for Legal Aid Provision, the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine and the OPG have been exploring the possibility of introducing a new pilot project: a restorative justice programme involving minors who are suspects or accused of committing a criminal offence. As a result of this work, on 22 July 2024, the above-mentioned ministries and the OPG approved the Procedure for the implementation of the pilot project “Restorative Justice Programme with the participation of minors who are suspects or accused of committing a criminal offence”¹⁰¹⁰. From now on, restorative justice has been extended not only to juvenile defendants, but can also be applied in cases of serious crimes (for example, under Articles 185 and 186 of the Criminal Code of Ukraine, which are most often committed by minors)¹⁰¹¹. In addition, the new Procedure stipulates that restorative justice under this programme is conducted in the form of mediation.

Thus, there has been some progress in law enforcement agencies’ understanding of the essence and benefits of the mediation procedure in criminal proceedings and its promotion.

Mediation in administrative cases, municipal mediation

It is extremely difficult to note any activity of the state in this area. All isolated practices that take place in Ukraine are implemented by individual mediators or mediation organisations (Mediation in Administrative Cases¹⁰¹²), and largely depend on the readiness of local authorities to apply new approaches in their activities.

In February 2022, the Parliament adopted the Law of Ukraine “On Administrative Procedure”¹⁰¹³, which, inter alia, provides that the parties have the right to reach conciliation at any stage of administrative proceedings on a complaint. At the same time, the relevant procedure requires further detail and clarification among citizens.

Mediation in labour disputes

The National Mediation and Conciliation Service, in cooperation with representatives of the Ministry of Economy of Ukraine, the joint representative body of representative all-Ukrainian trade unions and the employer side at the national level, national and international experts, and academics, developed the draft law “On Collective Labour Disputes” and published it for public

1008 Annual Report of the Free Legal Aid System - 2023, p. 24. URL: <https://legalaid.gov.ua/wp-content/uploads/2022/08/zvit-systemy-bpd-2023-2.pdf>.

1009 Ibid.

1010 Procedure for Implementing the Pilot Project “Restorative Justice Programme with the participation of minors who are suspects, accused of committing a criminal offence”: Order of the Ministry of Justice of Ukraine, Ministry of Internal Affairs of Ukraine, Office of the Prosecutor General of 22.07.2024 No. 2176/5/501/176. URL: <https://legalaid.gov.ua/wp-content/uploads/2024/07/poryadok-2.pdf>.

1011 Ukraine approves a programme of restorative justice involving juvenile suspects and accused persons. Free Legal Aid. 2024. URL: <https://legalaid.gov.ua/novyny/v-ukrayini-zatverdzheno-programu-vidnovnogo-pravosuddya-za-uchastyu-nepovnolitnih-pidozryvanyh-obvynuvachenyh/>.

1012 Mediation in administrative cases. URL: <https://www.pravojustice.eu/storage/app/uploads/public/611cc9/61d/611cc961d4853230712969.pdf>.

1013 On administrative procedure: Law of Ukraine of 17.02.2022 No. 2073-IX. URL: <https://zakon.rada.gov.ua/laws/show/2073-20#top>.

discussion in September 2023¹⁰¹⁴. The provisions of the draft law stipulated that a collective labour dispute may be resolved through labour mediation in accordance with the Law of Ukraine “On Mediation”, subject to certain specifics. A labour mediator may be a person who has the status of a mediator in accordance with the Law of Ukraine “On Mediation”, has experience and/or has undergone specialised training as a labour mediator in the field of labour dispute resolution. The relevant draft law has not yet been submitted to the Parliament.

Meanwhile, on 05 March 2024, the professional standard “Labour Mediator”¹⁰¹⁵ was approved and entered into the register of qualifications, whereby the purpose of this profession is to prepare and conduct an out-of-court voluntary, confidential, structured mediation procedure in labour conflicts (disputes), during which the parties, with the help of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations.

Recommendations

1. Develop the state policy in the field of mediation training for social service professionals to ensure the quality of social mediation services for people in difficult life circumstances and vulnerable groups.
2. Approve the State Standard of Social Mediation Services with further collection of statistics on the provision of such services (category of dispute, duration of the mediation procedure, impersonal data on the number, age and gender of the parties, grounds for termination of mediation).
3. Introduce a list of categories of court disputes for which mediation is mandatory.
4. Regulate the mechanism for engaging associations of mediators (mediation service providers) by local governments on a competitive basis and provide for the possibility of paying for their work.
5. Community of mediators should develop a mechanism for bringing mediators to justice for violation of ethical standards, so that this provision of the law does not remain declarative.
6. Organise work on developing mechanisms to encourage public authorities to implement the provisions of the Law of Ukraine “On Administrative Procedure” on the possibility of conciliation in complaint proceedings.
7. Promote the development of mediation in administrative cases, conduct legal education work with public authorities, local self-government bodies, and administrative courts.
8. Regulate the possibility of implementing the Restoration Programme for Minors Suspected of Committing a Criminal Offence on a permanent basis.

1014 Publication of the draft law “On Collective Labour Disputes”. National Mediation and Conciliation Service. 2023. URL: <https://www.nspp.gov.ua/novini/17381-oprilyudnennya-zakonoproektu-pro-kolektivni-trudovi-spori>.

1015 Labour mediator (labour dispute mediator): Professional standard. URL: https://register.nqa.gov.ua/uploads/0/597-profstandart_trudovij_mediator_pogodzenij_05032024.pdf.

Legal education reform

Legal education in Ukraine¹⁰¹⁶ involves two degrees (bachelor's and master's), of which the master's degree gives access to regulated professions (judge, advocate, notary, prosecutor), and the bachelor's degree allows for certain positions, including legal assistants. Studies last 5.5 to 6 years, of which 4 years are spent on a bachelor's degree and 1.5 to 2 years on a master's degree.

Legal education is available in two specialties (081 "Law" and 293 "International Law")¹⁰¹⁷ and in two types of higher education institutions (HEIs) – classical universities and "departmental institutions" of various government agencies, including the Ministry of Internal Affairs (universities of internal affairs), the Ministry of Justice (e.g., the Penitentiary Academy of Ukraine), etc. This division into specialties and the proliferation of legal programmes are linked to the legacy of the Soviet higher education system.

There are a number of systemic and institutional problems in the area of legal education that need to be addressed, including:

- › the quality and relevance¹⁰¹⁶ of curricula and approaches, their adaptation to the needs of society and the economy;
- › imperfection of curricula, their formality and obsolescence;
- › the issue of "overproduction" of law graduates;
- › the problem of the number of law schools, including those in the form of departmental universities;
- › lack of practice-oriented training, cooperation with the real sector, including professional associations of lawyers;
- › low "added value" of legal education for society as a whole, the rule of law and human rights protection;
- › challenges of academic integrity and corruption.

In 2009-2024, a number of concepts for reforming legal education in Ukraine were presented and discussed. Among them are the 2009 Concept for the Development of Higher Legal Education in Ukraine¹⁰¹⁸, the 2019 Concept for the Development of Legal Education¹⁰¹⁹ and the draft Concept for Improving Legal Education for the Professional Training of Lawyers in Accordance with European Standards of Higher Education and the Legal Profession of 2021 (the Concept for Improving Legal Education)¹⁰²⁰.

1016 Nota bene: In this Part, the term "legal education" refers exclusively to specialised law programmes at the university level. The issues of legal education in schools, teaching legal courses in other programmes, and other legal educational projects are not addressed here.

1017 On Approval of the List of Fields of Knowledge and Specialities in which Higher Education Applicants are Trained: Resolution of the Cabinet of Ministers of Ukraine of 29.04.2015 No. 266. URL: <https://zakon.rada.gov.ua/laws/show/266-2015-%D0%BF#Text>.

1018 Concept for the Development of Higher Legal Education in Ukraine (version of 14.10.2009). URL: http://old.univer.km.ua/doc/koncepc.htm#_Toc243311774.

1019 Concept of Legal Education Development. URL: <https://mon.gov.ua/ua/osvita/visha-osvita/koncepciya-vdoskonalennya-pravnichoyi-yuridichnoyi-osviti-dlya-fahovoyi-pidgotovki-pravnika>.

1020 Draft Concept of Improvement of Legal Education for Professional Training of Lawyers in accordance with European Standards of Higher Education and Legal Profession. URL: <https://mon.gov.ua/storage/app/media/vyshcha/koncepcziya-reformuvannya-pravnichoyi-osviti-09.09.2016-proekt.doc>.

None of these concepts has been fully implemented. Nevertheless, a number of important practical steps have been taken to reform legal education in Ukraine (introduction of the Unified Professional Entrance Exam (hereinafter – the UPEE) for admission to the Master’s degree programme in law; introduction of the Unified State Qualification Exam (hereinafter – the USQE) for law school graduates; launch of the Law School Ranking¹⁰²¹ etc.).

Ukraine is currently developing the Concept of Legal Regulation of Higher Legal Education to meet the requirements of Ukraine’s European integration. It is being developed by the Working Group on Legal Education Reform, established by the Verkhovna Rada Committee on Legal Policy on 14 December 2023¹⁰²².

According to previous reports, the Working Group was supposed to develop a draft Concept by the end of June 2024¹⁰²³. However, these deadlines were not met, and as the co-chair of the Working Group, MP Yuliia Hryshyna, reported on 27 July 2024 on social media, the draft Concept has been finalised and is being prepared for submission to the Verkhovna Rada Committee on Legal Policy¹⁰²⁴. The content, timeframe for adoption and implementation, and other details of the Concept are unknown at the time of this report.

Meanwhile, the issue of legal education reform is being actively addressed and discussed at the level of the Office of the President of Ukraine. For example, in June 2024, Iryna Mudra, Deputy Head of the Office of the President of Ukraine, held a meeting on this topic with representatives of the Government, Parliament, and law schools¹⁰²⁵, and has been discussing these issues during meetings with foreign diplomats¹⁰²⁶.

One of the most important outcomes of the discourse on legal education reform is the general consensus among stakeholders that this issue is one of the key factors affecting the rule of law in Ukraine. However, despite some successful decisions (introduction of the UPEE and the USQE), the key objectives of the reform have not been achieved and the main institutional and systemic problems of legal education have not been resolved, which causes a problem in further practical steps to reform it in the course of Ukraine’s European integration.

Standards of legal education and modernisation of educational programmes

Higher education in Ukraine is governed by the Higher Education Standards (hereinafter referred to as the Standards), which set out the requirements for general and specialised competences and learning outcomes to be achieved by students upon completion of a degree programme¹⁰²⁷.

1021 First Annual Law Schools Rating: Presentation and Press Conference: September 7, 2021. URL: <https://uba.ua/eng/news/8600>.

1022 Personnel of the working group on legal education reform: Appendix to the Decision of the Verkhovna Rada of Ukraine Committee on Legal Policy of 14.12.2023 (Protocol No. 150). Verkhovna Rada of Ukraine. URL: <https://kompravpol.rada.gov.ua/uploads/documents/34490.pdf>.

1023 Reforming legal education: the concept of changes under preparation. National Bar Association of Ukraine. 2024. URL: <https://unba.org.ua/news/8938-reformuvannya-yuridichnoi-osviti-gotuet-sya-koncepciya-zmin.html>.

1024 Publication of M. Hryshyna on her personal page on Facebook. 2024. URL: <https://www.facebook.com/share/p/fWu4PMDJzQNpZNUj/>.

1025 The Office of the President is preparing for the reform of legal education. Judicial and legal newspaper. 2024. URL: <https://sud.ua/uk/news/publication/303642-v-ofise-prezidenta-gotovyatsya-k-reforme-yuridicheskogo-obrazovaniya>.

1026 Iryna Mudra discusses the judicial system and legal education reform with the Ambassador of the G7 country. Judicial and legal newspaper. 2024. URL: <https://sud.ua/uk/news/ukraine/299175-irina-mudrava-obsudila-voprosy-reform-sudebnoy-sistemy-i-yuridicheskogo-obrazovaniya-s-poslom-strany-g7>.

1027 On Higher Education: The Law of Ukraine of 01.07.2014 No. 1556-VII. URL: <https://zakon.rada.gov.ua/laws/show/1556-18>.

The training of students is also influenced by professional standards – requirements for competences that serve as the basis for the formation of professional qualifications¹⁰²⁸.

As of March 2024, the Standards for the speciality 081 “Law” for bachelor’s¹⁰²⁹ and master’s¹⁰³⁰ degrees were approved in Ukraine. These Standards are relatively new - they were approved on 20 July 2022 and developed by a wide range of professional experts, including representatives of leading law schools, NGOs, parliament, etc.

The standards for the speciality 293 “International Law” have not yet been approved and are not even available in draft form.

In the case of professional standards, their developers may include employers, professional organisations and associations, public authorities, academic institutions, and other stakeholders¹⁰³¹. The development of professional standards began in June 2023. The standards for the professions of “Judge”, “Prosecutor” and “Legal Advisor” were developed by the Ukrainian Bar Association, and “Notary/Assistant Notary”, “Attorney/Assistant Attorney” and “Judge’s Assistant” were developed by the Lviv University of Business and Law¹⁰³².

The presentation and discussion of the professional standards and, subsequently, their approval are expected to take place in 2024.

Issues

In preparing the Standards, a number of European and international guidelines or similar documents¹⁰³³ were used, which makes it possible to speak about their implementation in legal education in Ukraine, which is one of the key values of the Standards. However, the small scope of the Standards indicates that the provisions of international documents are partially implemented in their content, which may be due to a generalised or incomplete understanding of such documents by the authors of the Standards.

The Standards generally meet the requirements of the legal profession, including the development of soft skills, practical tools, methodological knowledge and their application. However, the ethical aspects of legal professional development have received less attention compared to technical skills. In particular, ethical issues are addressed in only two competences and learning outcomes, unlike research skills, which are represented in five items.

Similar comments are made regarding the reflection in the Standards of the requirements for knowledge of EU law, foreign languages, etc.

It is currently impossible to assess the content of professional standards and how they may potentially affect the Standards and legal curricula. Meanwhile, since the procedure for selecting

1028 Information on professional standards. Ministry of Economy of Ukraine. 2023. URL: <https://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=22469103-4e36-4d41-b1bf-288338b3c7fa&title=RestrProfesiinikhStandartiv>.

1029 On approval of the standard of higher education in the speciality 081 Law of the first (bachelor’s) level of higher education: Order of the Ministry of Education and Science of Ukraine of 20.07.2022 No. 644. URL: <https://mon.gov.ua/storage/app/media/vishcha-osvita/zatverdzeni%20standarty/2022/07/21/081-pravo-bakalavr-zi-zminamy-644-20.03.2023.pdf>.

1030 On approval of the standard of higher education in the speciality 081 Law of the second (master’s) level of higher education: Order of the Ministry of Education and Science of Ukraine of 20.07.2022 No. 643. URL: <https://mon.gov.ua/storage/app/media/vishcha-osvita/zatverdzeni%20standarty/2022/07/21/081-pravo-magistr-zizminami-643-20032023.pdf>.

1031 On Approval of the Procedure for the Development, Implementation and Review of Professional Standards: Resolution of the Cabinet of Ministers of Ukraine of 31.05.2017 No. 373. URL: <https://zakon.rada.gov.ua/laws/show/373-2017-%D0%BF#Text>.

1032 Information on applications for the development of professional standards. National Qualifications Agency of Ukraine. URL: <https://data.nqa.gov.ua/zaavki-profstandarts/>.

1033 For example, Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) Approved by the Ministerial Conference in Yerevan, 14-15 May 2015. URL: <https://www.ehea.info/page-standards-and-guidelines-for-quality-assurance>; The European Qualifications Framework. URL: <https://europa.eu/europass/en/europass-digital-tools/european-qualifications-framework>.

the developers of such documents currently involves only the stage of submitting an application in the prescribed form to the National Qualifications Agency (clauses 9-10 of the Procedure¹⁰³⁴) without a full competition, the content of such professional standards may be of poor quality and therefore need to be improved.

Recommendations

It would be advisable to assess the impact of the Standards and professional standards on legal education. This will allow formulating recommendations for improving the content of such documents and selecting the most effective tools for their implementation in legal education programmes, as well as for subsequent monitoring of their effectiveness.

In addition, given that the Standards and professional standards are currently rather formal, their role in legal education needs to be reviewed by strengthening the impact of such documents or introducing other ways to control the quality and content of educational programmes.

When improving the content of the Standards and professional standards for legal specialities, provisions should be made to strengthen the requirements for competencies and qualifications that would guarantee that students acquire adequate knowledge and skills in professional ethics, European Union law, foreign languages and artificial intelligence technologies. This will help ensure the proper level of the rule of law in Ukraine, improve the quality of the legal profession as a whole, and the process of European integration.

The procedure for developing professional standards should be reviewed, in particular in terms of competitive selection of developers or involvement of a wide range of stakeholders in the process.

Institutional separation of legal education and training of law enforcement personnel

The key institutional challenge in Ukrainian legal education is the so-called “departmental institutions” – universities that are under the jurisdiction of other public authorities, not the Ministry of Education and Science of Ukraine. At the same time, such institutions provide educational services and issue official diplomas, including in the specialities 081 “Law” and 293 “International Law”.

The “departmental institutions” that provide higher education training for lawyers are, in particular, under the jurisdiction of the Ministry of Finance of Ukraine (State Tax University¹⁰³⁵), the Ministry of Justice of Ukraine (Penitentiary Academy of Ukraine¹⁰³⁶), the Security Service of Ukraine (National Academy of the Security Service of Ukraine¹⁰³⁷), the State Border Guard Service (Bohdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine¹⁰³⁸) etc.

1034 On Approval of the Procedure for Development, Enactment and Revision of Professional Standards: Resolution of the Cabinet of Ministers of Ukraine of 31.05.2017 No. 373. URL: <https://zakon.rada.gov.ua/laws/show/373-2017-%D0%BF#Text>.

1035 On the establishment of the State Tax University: Order of the Cabinet of Ministers of Ukraine of 06.10.2021 No. 1202. URL: <https://zakon.rada.gov.ua/laws/show/1202-2021-%D1%80#Text>.

1036 History of the Academy. Penitentiary Academy of Ukraine. URL: <https://academysps.edu.ua/istoriya-akademiji/>.

1037 Statute of the SSU National Academy of 31.05.2016. National Academy of the Security Service of Ukraine. URL: <https://academy.ssu.gov.ua/ua/60-statut-nacionalnoi-akademii-sbu-istoriya-akademii>.

1038 History of the Academy. Bohdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine. URL: <https://nadpsu.edu.ua/istoriya-akademiji/>.

The majority of such higher education institutions are within the system of the Ministry of Internal Affairs (MoIA). These institutions were established in Soviet times as “police schools” and later transformed into full-fledged universities with a status similar to classical universities.

As of March 2024, there are 9 MoIA system HEIs in Ukraine (2 academies (National Academy of Internal Affairs and National Academy of the State Border Guard Service) and 6 internal affairs institutes) and 5 of their separate subdivisions (faculties, institutes, branches). One more HEI of this system, the Luhansk State University of Internal Affairs named after E.O. Didorenko, which was located in Sievierodonetsk after 2014, is in the process of liquidation¹⁰³⁹.

The Soviet era existence of such specialised institutions was justified by the repressive nature of the communist regime, which required a large number of police officers, investigators and other bodies. This education was also of a specialised nature, with an emphasis on the ideological component and the punitive nature of the law enforcement system.

This approach is partly still in effect today, which is reflected in the nature of teaching certain disciplines (including criminal law) and the general atmosphere – “specific learning conditions”¹⁰⁴⁰ (enhanced discipline, control over students’ studies and extracurricular activities). The latter is not directly applicable to law students in these institutions, but it affects the nature of the educational process.

Significant budget funds are spent on the maintenance of these institutions. For example, in 2023, the state order for the MoIA system HEIs to educate bachelor’s degree students amounted to 975 people (30.8% of the total number of students¹⁰⁴¹).

Issues

The status of the MoIA higher education institutions and the format of “specific learning conditions” prevent students from fully developing a human-centred understanding of the law, as well as to form them as independent individuals, which is especially important for representatives of the legal profession. This is also emphasised by experts working on legal education reform in Ukraine¹⁰⁴².

Also, the MoIA is a more centralised body and the concept of “university autonomy” can be interpreted within its framework much more narrowly. At the same time, the possibility of participation of representatives of these higher education institutions in the Congress of Representatives of Law Schools and Research Institutions, which elects two members of the High Council of Justice (hereinafter – HCJ), creates risks of using this right for political purposes¹⁰⁴³.

Given the excessive number of graduates of law programmes and the acknowledged need to reduce the number of law schools, the existence of additional schools in institutions outside of classical universities with a special format of education is questionable. This is especially emphasised by the significant amount of budgetary funds spent on their maintenance.

1039 Register of educational entities. URL: <https://registry.edbo.gov.ua/search/>.

1040 Higher education institutions with specific learning conditions that provide police training. National Police of Ukraine. URL: <https://osvita.np.gov.ua/index.php?r=site%2Fzvo>.

1041 Does the state need more lawyers? The volume of state orders for law has increased. DEJURE Foundation. 2023. URL: <https://new.dejure.foundation/derzhavi-treba-bilshe-yurystiv-obsyag-derzhzamovlennya-na-pravi-zris/>.

1042 “Lawyers in uniform” will no longer be trained, because the Ministry of Internal Affairs only teaches obedience. Pravo i Zakon. 2021. URL: <https://zib.com.ua/ua/146684.html>.

1043 Viktor Hryshchuk elected a member of the High Council of Justice. Yurydychna Gazeta. 2019. URL: <https://yur-gazeta.com/golovna/viktora-grishchuka-obrano-chlenom-vishchoyi-radi-pravosuddya.html>.

However, any proposals to solve the problem of legal education in the MoIA system have been harshly criticised by representatives of these institutions¹⁰⁴⁴ and opposed by representatives of the Ministry¹⁰⁴⁵ itself. It is possible that this trend will continue in the future.

In addition, without addressing the issue of the future institutional status of these institutions in general, resistance to the reform of legal education as a whole may continue and negative trends related to their existence and activities may persist. In particular, this is important in the context of combining educational programmes for law enforcement personnel (law enforcement agencies) and law programmes in these higher education institutions.

Training law enforcement officers for 5.5–6 years in specialised institutions is also questionable. Experts are discussing the feasibility of reforming their specialised education by replacing multi-year university programmes with short-term specialised training programmes that focus on practical skills and knowledge for law enforcement personnel¹⁰⁴⁶.

Recommendations

The issue of distinguishing between higher education for lawyers and law enforcement personnel (law enforcement officers) has already been raised in the context of discussions on reforming legal education and specific solutions have been proposed¹⁰⁴⁷. In March 2024, this topic is also on the agenda of the Working Group on Legal Education Reform, which held its first meeting on 19 March¹⁰⁴⁸.

The issue of separating legal education from law enforcement training, including in the institutional dimension, is a prerequisite for the modernisation of legal education. The previous experience of legal education reform shows that failure to resolve this issue hinders the entire reform process.

To solve this problem, it is necessary to conduct a systematic assessment of the quality of educational services provided by these institutions and their impact on the training of personnel in the law enforcement system. Based on the assessment results, those units and their specialists that train lawyers and have a high professional level can be merged with law schools in classical universities, which will reduce social tension and resistance to reform.

The second outcome of such assessment should be an analysis of the effectiveness of training for law enforcement agencies and a change in the model of their training from academic to specialised. This will help manage the resources allocated to these institutions more efficiently, by directing them to other needs, and to raise the standards of training for the National Police and other law enforcement agencies, forming a vision for their further reform.

This approach goes beyond reforming legal education alone, but given the previous experience of blocking consideration of this issue, it seems impossible to solve it only in the local dimension

1044 The concept of legal education development in Ukraine. Dnipro State University of Internal Affairs 2021. 2021. URL: <https://dpuvs.in.ua/2021/12/30/kontsepsiya-rozvytku-yurydychnoyi-osvity-v-ukrayini/>.

1045 Deputies quarrel at the committee over the ban on law enforcement officers studying to become lawyers. Judicial and Legal Newspaper. 2021. URL: <https://sud.ua/ru/news/publication/191004-deputati-pochubilisya-na-komiteti-navkolo-zaboroni-pravookhorontsyam-vchitisya-na-yuristiv>.

1046 Key ways to reform legal education in Ukraine: analytical report. DEJURE Foundation. 2019. URL: <https://drive.google.com/file/d/16IP0DtK9hmjKZpSOZcPyGXHYvS66wylw/view>.

1047 Draft Concept of Improving Legal Education for the Professional Training of Lawyers in accordance with European Standards of Higher Education and Legal Profession. URL: <https://mon.gov.ua/storage/app/media/vyshcha/konczepczya-reformuvannya-pravnychoyi-osvity-09.09.2016-proekt.doc>.

1048 The Concept of Legal Education Reform is Expected in the End of June: How Did the First Meeting of the Working Group Go? DEJURE Foundation. 2024. URL: <https://dejure.foundation/konczepczyu-reformy-yurosivity-obiczayut-na-kinecz-cherwnya-yak-projshlo-pershe-zasidannya-robochovi-grupy/>.

of legal education within the framework of the MoIA. This will save substantial resources and allow for a comprehensive reform that is important for both legal education and law enforcement in Ukraine.

Accreditation of law schools

In Ukraine, at this stage, it is impossible to separate the accreditation of law schools from the accreditation of law degree programmes. Accreditation of educational programmes under Ukrainian law involves the evaluation of educational programmes in terms of their compliance with established standards and their ability to achieve the stated educational goals.

The new legislation established two new public authorities to ensure institutional quality control of higher education: The State Education Quality Service and the National Agency for Higher Education Quality Assurance (NAQA).

Within the framework of the NAQA, there are sectoral expert councils (SECs) - permanent collegial bodies consisting of a wide range of representatives of teachers and researchers, government representatives, employers and professional associations, and student self-government bodies. The aims of the SECs are to make decisions on the accreditation of educational programmes and consider Standards projects¹⁰⁴⁹.

The accreditation of educational programmes is carried out by expert commissions consisting of two expert teachers and one student expert, who are pre-selected by the NAQA.

The new Accreditation Procedure¹⁰⁵⁰ has significantly automated these procedures, eliminated the influence of the Ministry of Education and Science of Ukraine and the possibility of official interference in the process, increased its transparency and involvement of HEIs, and expanded the range of stakeholders who can participate in it, including students and employers. Despite some criticisms, in particular regarding the continued bureaucratic nature of the process and the focus of expert commissions on extremely formal requirements, these changes can be assessed as positive.

Issues

Accreditation procedures are common to all study programmes, regardless of their speciality. At the same time, legal education programmes train future representatives of regulated professions (judges, lawyers, prosecutors, notaries, etc.). Accordingly, the accreditation procedures for these educational programmes should be more in line with this status quo.

Specifically, it is advisable to give a greater role to professional legal associations in terms of accreditation, which is currently *nominal*. In particular, according to the Regulations on the NAQA SEC, there are 13 SEC members in the speciality 081 “Law”, of whom only 1 is an employer representative¹⁰⁵¹. Representatives of employers participate in the work of expert commissions exclusively as invited representatives of higher education institutions, who acquaint the members of the commissions with the impression of cooperation with law school graduates.

1049 Regulation on Sectoral Expert Councils of the National Agency for Quality Assurance in Higher Education of 10.02.2022. URL: <http://surl.li/qphcq>.

1050 Procedure for registration, re-registration, issuance, storage and accounting of certificates of accreditation of an educational programme: Resolution of the Cabinet of Ministers of Ukraine of 05.03.2024 No. 244. URL: <https://zakon.rada.gov.ua/laws/show/244-2024-n#Text>.

1051 Regulation on Sectoral Expert Councils of the National Agency for Quality Assurance in Higher Education of 10.02.2022. URL: <http://surl.li/qphcq>.

On the one hand, this approach is already a progress compared to previous models, in which employers and professional associations were basically excluded from the accreditation of educational programmes, including law programmes. However, given the regulated nature of these legal professions, it should definitely be expanded.

Legal professional associations may be granted broad powers to accredit law degree programmes and, in the future, law schools, in order to ensure a single standard (uniformity) of these programmes and to prevent graduates of law schools not accredited by them from entering the profession¹⁰⁵².

This approach can be fully implemented only in the *long term*, which is due to several reasons. First of all, it is quite radical and will involve making fundamental changes not only at the level of bylaws, but also in the legislation as a whole. This will require political support at the parliamentary level for a lengthy advocacy campaign, as it will face resistance from the conservative part of the education community.

Another key factor is the rather different situation with professional legal associations in Ukraine, which include a number of official, self-regulatory associations (the Ukrainian National Bar Association of Ukraine, the Council of Judges of Ukraine, the Council of Prosecutors of Ukraine, and the Notary Chamber of Ukraine). Meanwhile, voluntary professional associations have been operating in Ukraine for a long time, and they have proven to be effective institutions and are known at the national and international level. They bring together representatives of various legal professions (Ukrainian Bar Association), advocates (Ukrainian Advocate's Association), judges (e.g., Association for the Development of Judicial Self-Government) and court staff (e.g., All-Ukrainian Association of Court Staff), etc. Failure to include these associations in the accreditation processes of legal education programmes may cause misunderstandings and have discriminatory consequences. Accordingly, their status and criteria for involvement in the process of accreditation of law programmes should be further regulated.

Moreover, on 9 July 2024, the All-Ukrainian Forum of Heads of Higher Legal Education Institutions was held in Poltava, where it was decided to establish the NGO "Association of Heads of Higher Legal Education Institutions of Ukraine"¹⁰⁵³. The status and mandate of this association are currently unclear, but should be discussed in the context of improving the quality of law school accreditation.

Recommendations

In the short term, it is advisable to consider a softer, more gradual approach to increasing the role of professional associations in the accreditation processes of law schools, which would involve wider involvement of their representatives in the accreditation processes, in particular by:

- › increasing the number of representatives of legal associations in the sectoral expert council for speciality 081 "Law" to four, in accordance with the number of regulated legal professions;
- › mandatory participation of representatives of law associations in expert commissions for accreditation of educational programmes in law.

¹⁰⁵² This model is applied, in particular, in the United States, where the American Bar Association and the California Bar Association have the relevant accreditation authority for law schools. ABA-Accredited Law School. URL: <https://www.princetonreview.com/law-school-advice/law-school-accreditation>.

¹⁰⁵³ All-Ukrainian Forum of Heads of Higher Legal Education Institutions. State University of Trade and Economics. 2024. URL: <https://knute.edu.ua/blog/read/?pid=48227&uk>.

This approach will gradually increase the involvement of law schools in the accreditation of law curricula and, with the expansion of these practices, create preconditions for increasing their role in this process, including taking into account the American experience. However, this may create opportunities for expanding cooperation between higher education institutions and the professional sector, which will have a positive impact on practice-oriented learning.

Financing of lawyers' education from the state budget

In Ukraine, there is a high level of funding for the state order for the education of students in the speciality 081 "Law" and 293 "International Law". Thus, in 2023, the state order amounted to 3164 seats for applicants to bachelor's degree programmes in law and 145 places for bachelor's degree programmes in international law. In the case of masters, the state order amounted to 1317 seats for the speciality 081 "Law" and 53 places for the speciality 293 "International Law"¹⁰⁵⁴. This trend indicates an increase in the state order for lawyers even under martial law¹⁰⁵⁵.

The Ukrainian government is currently working on reforming the public procurement system. Thus, on 20 March 2024, the first reading of the draft law No. 10399¹⁰⁵⁶ was adopted, which provides for the improvement of the system of financing higher education in Ukraine by introducing a co-financing system together with the state order.

The state will continue to fully fund the training of specialists in areas where the need can be predicted, and will guarantee the first job for these graduates. At the same time, state grants will be introduced for specialities with unpredictable labour market demand, which will cover full or partial tuition fees (from 30% to 100%), depending on the student's academic achievements. The amount of grants will change every year, reflecting student performance.

The mechanism for defining the number of state-funded seats will be regulated annually by the Ministry of Economy of Ukraine based on the needs of the state. It is expected that the new co-financing system will be launched in September 2024. The changes will affect only new applicants, without affecting the study conditions of students who were enrolled before the introduction of the relevant innovations.

Issues

The state order is not fulfilling the function for which it was created. Its original idea was that the state finances the training of specialists in the number required by the economy and guarantees them a first job, where they are obliged to work for a certain period of time.

In fact, the latter condition has not been fulfilled in principle for a long time, with the exception of medical and secondary education specialities. Law graduates do not receive real job offers, and those that they do receive often do not meet their expectations. Acceptance of such offers is purely voluntary.

¹⁰⁵⁴ Does the state need more lawyers? The volume of state orders for law has increased. DEJURE Foundation. 2023. URL: <https://dejure.foundation/derzhavi-treba-bilshe-yurystiv-obsyag-derzhzamovlennya-na-pravi-zris/>.

¹⁰⁵⁵ Ibid.

¹⁰⁵⁶ On Amendments to Certain Laws of Ukraine on Financing Higher Education and Providing State Targeted Support to its Applicants: Draft Law of Ukraine, registration No 10399 of 10.01.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43517>.

Consequently, the state actually pays tuition fees and pays scholarships to students for their performance during their studies. Meanwhile, the high number of seats for studying in HEIs funded by the state order does not stimulate competition between applicants and students and erodes its prestige.

Recommendations

The system of state order for education in higher education institutions, including law schools, has long been in need of improvement in order to optimise resources and improve the system of financing higher legal education.

The transition from state order to a grant-based system of student support will stimulate academic productivity and increase the number of motivated students who choose legal specialities. To this end, the Verkhovna Rada should complete the procedure for adopting draft law No. 10399.

Fighting corruption and plagiarism in legal education

Anti-corruption reforms in Ukraine have significantly changed the landscape of integrity tools in higher education institutions and legal education programmes. Institutional mechanisms (special policies and procedures, positions of anti-corruption commissioners) were introduced, and anti-corruption courses for law students were launched as part of law curricula¹⁰⁵⁷.

Anti-corruption reforms in Ukraine have significantly changed the landscape of integrity tools in higher education institutions and legal education programmes. Institutional mechanisms (special policies and procedures, positions of anti-corruption commissioners) were introduced, and anti-corruption courses for law students were launched as part of law curricula.

In addition to improving the quality of legal education and controlling the knowledge of graduates, the introduction of the UPEE and the USQE was aimed at overcoming corruption in the process of admission to law master's programmes and obtaining law degrees

In order to maintain academic integrity in the educational environment, anti-plagiarism software is used¹⁰⁵⁸, both for checking at the level of institutions (departments, faculties, universities) and by individual teachers through free software. However, the Covid-19 pandemic and martial law, the transition to online learning, and subsequently the expansion of the use of artificial intelligence technologies have raised related issues.

Issues

For a long time, the main problem of corruption in Ukrainian higher education institutions, including law schools, was admission. The introduction of external independent testing (EIT) helped to solve these problems. However, there is still a significant proportion of applicants who are eligible to study outside the EIT mechanism.

1057 Cooperation between the state and society in the field of combating corruption. National University of Kyiv-Mohyla Academy. URL: <https://law.ukma.edu.ua/courses/vzayemodiya-derzhavy-i-suspilstva-v-sferi-protydyi-koruptsiyi/>; Corruption: Prevention and Counteraction in Ukraine. Ivan Franko National University of Lviv. URL: <https://law.lnu.edu.ua/course/koruptsiia-zapobihannia-ta-protydiia-v-ukraini>.

1058 MoES attracts more resources for plagiarism checks - memorandum signed with Antiplagiat. Ministry of Education and Science of Ukraine. 2018. URL: <https://mon.gov.ua/ua/news/mon-zaluchaye-bilshe-resursiv-dlya-perevirki-na-plagiat-pidpisano-memorandum-z-kompaniyeyu-antiplagiat>.

According to experts, as of 2021, about 25% of applicants entered higher education institutions in another way or by passing the EIT with a combination of other factors. Such factors include internal exams of higher education institutions, admission with a junior specialist diploma (college graduates), and benefits for applicants from the temporarily occupied territories, etc.¹⁰⁵⁹. In the future, the list of such opportunities to bypass the EIT may be expanded. These circumstances also apply to law study programmes and admission to law schools.

Another issue is the control over the ongoing study of law programmes. While the UPEE and the USQE mostly address the corruption risks that exist during admission to and graduation from the master's degree programme, the ongoing education is a "grey area" where corruption is possible, especially in the extreme conditions of higher education in Ukraine.

As already mentioned, such facts can have a devastating impact on the personality of future graduates of law programmes and have a negative effect on the state of the rule of law in Ukraine in the future.

The issue of academic integrity also remains unresolved. Previously, it has been noted that "the quality of legal research is not high enough and it does not meet the modern needs of the state and society"¹⁰⁶⁰. Plagiarism is one of the reasons for this status quo. In particular, facts of plagiarism are often found in the scientific works of candidates for judges and judicial bodies¹⁰⁶¹.

The rise of artificial intelligence technologies has created new challenges for this trend. Generating texts for assignments can worsen the situation with plagiarism on the one hand, and devalue the quality of education for students on the other. The Ministry of Education and Science of Ukraine, higher education institutions and law schools have not yet developed approaches to preventing these risks.

Recommendations

The issue of professional and academic integrity is fundamental to the reform of higher legal education in Ukraine. Preventing these manifestations at the level of legal education programmes can contribute to the fight against corruption in society as a whole, as lawyers are often the leaders of this process.

Given the importance of the legal profession and the priority of legal education in the context of European integration, it is advisable to exclude the possibility of admission to law programmes outside the external independent testing. In cases where such opportunities are likely to remain (e.g., admission of persons from the territories under occupation, combat veterans and their children, etc.), mechanisms for monitoring and interim control of their studies should be introduced.

The learning process should be digitised by requiring law schools to transfer the current learning process, progress monitoring and assignments into an online format, for example, based on a CMS platform or other similar product. Relevant platforms and applications should be subject to quality and security audits, including by the NAQA, which should develop standardised requirements for such platforms.

1059 Report on the Assessment of Corruption Risks in Legal Education in Ukraine, p. 19. 2021. URL: https://www.skeptic.in.ua/wp-content/uploads/NJ_Report_Legal-Education-Corruption-Risks-Assessment_UKR_final.pdf.

1060 Draft Concept of Improvement of Legal Education for the Professional Training of Lawyers in Accordance with European Standards of Higher Education and Legal Profession. URL: <https://mon.gov.ua/storage/app/media/vyshcha/konczepczija-reformuvannya-pravnichoyi-osviti-09.09.2016-proekt.doc>.

1061 A candidate for the position of a judge of the Constitutional Court was caught plagiarising her dissertation. Glavkom. URL: <https://glavkom.ua/country/incidents/kandidatku-na-posadu-suddi-konstitutsijnoho-sudu-pidlovili-na-plahiatu-u-disertatsiji-990515.html>.

In order to ensure academic integrity and minimise the negative effects of AI technologies, law schools need to develop policies on the use of these technologies and provide training for students on how to use them and comply with the requirements of integrity. Law professors should also be provided with training to improve their digital skills in artificial intelligence and the use of these technologies in the classroom.

Recommendations

1. Update the Higher Education Standards for legal specialities to improve the quality of legal education and rethink their role as a lever of influence on the content and quality of educational programmes.
2. Incorporate into the content of the standards for legal specialities modern requirements for competencies and learning outcomes, in particular in terms of professional ethics, European Union law, knowledge of foreign languages, understanding of artificial intelligence technologies, etc.
3. Separate legal education from the training of law enforcement personnel (law enforcement education) in departmental institutions of the MoIA, which is the key to reforming legal education in general. Otherwise, a full-fledged reform of legal education is impossible, as it will face political barriers.
4. Conduct a systematic assessment of the quality of legal education in MoIA departmental institutions to identify ways to integrate it with classical legal education in terms of individual units and specialists.
5. Rethink the models of training for law enforcement agencies in order to improve the quality of this training, free up resources and comprehensively address the problems with departmental education in the MoIA system.
6. Involve representatives of professional associations in accreditation processes, which will improve the quality and impact of accreditation of legal education programmes. This can ensure that legal education programmes meet the real needs of society and the profession. A greater role for law associations in the accreditation process would facilitate the integration of education with practice by establishing a dialogue between them and law schools.
7. Introduce changes to the state funding of legal education, including the transition from the state order system to a grant system, in particular by adopting draft law No. 10399. Such changes will have a positive impact on academic competition and improve the quality of education.
8. Ensure that admission to law study programmes should be based solely on the results of the external independent evaluation. It is also necessary to introduce additional mechanisms for controlling and monitoring cases of preferential admission to guarantee the high quality of education of such applicants.
9. Introduce the transition of law schools to a digital learning format using modern educational platforms that must meet standardised quality and security requirements approved by the NAQA, as well as develop and implement policies on the use of artificial intelligence technologies with a focus on academic integrity.

FIGHTING CORRUPTION



National Anti-Corruption Strategy and State Anti-Corruption Programme

Measures and indicators of implementation of the State Anti-Corruption Programme

State of play

The State Anti-Corruption Programme (SAP) is a document establishing a system of specific binding measures aimed at implementing the Anti-Corruption Strategy for 2021–2025 (Anti-Corruption Strategy)¹⁰⁶². This document, in addition to the content of anti-corruption measures, also defines their implementers (public authorities, local governments, courts, etc.), deadlines and indicators of implementation, as well as sources and amounts of financial resources required for the implementation of measures.

On 4 March 2023, the Cabinet of Ministers of Ukraine adopted the State Anti-Corruption Programme¹⁰⁶³ two months after the statutory deadline¹⁰⁶⁴. Prior to that, the National Agency on Corruption Prevention (NACP) held a series of public discussions and coordinated the SAP with 140 stakeholders¹⁰⁶⁵. Taking into account the Government's comments, the revised draft of the SAP was adopted.

At the end of 2023, the NACP exercised the right granted to it by law to initiate amendments to the SAP. In this regard, the NACP presented its own vision of such changes and invited civil society organisations to evaluate it and provide their suggestions for improving the SAP¹⁰⁶⁶. However, the NACP has not yet submitted the amendments to the SAP and there is no information on how the suggestions or comments of external stakeholders have been addressed.

Progress and issues

Overall, the SAP¹⁰⁶⁷ is a comprehensive document that covers key sectoral corruption issues. However, there are multiple problems in the SAP that are described as large-scale tasks, but are

1062 On the Principles of State Anti-Corruption Policy for 2021-2025: Law of Ukraine of 20.06.2022 No. 2322-IX. URL: <https://zakon.rada.gov.ua/laws/show/2322-20#Text>.

1063 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 5, Art. 18. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1064 State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

1065 The NACP has completed a series of public discussions on the State Anti-Corruption Programme. National Agency on Corruption Prevention. 2022. URL: <https://nazk.gov.ua/uk/nazk-zavershylo-provedennya-seriyi-gromadskiyh-obgovoren-derzhavnoyi-antykoruptsiynoyi-programy/>.

1066 The NACP invites to participate in public discussion of draft amendments to the State Anti-Corruption Programme for 2023-2025. National Agency on Corruption Prevention. 2023. URL: <https://nazk.gov.ua/uk/novyny/nazk-zaprosyue-vzhyaty-uchast-u-gromadskomu-obgovorenni-proektu-zmin-do-derzhavnoi-antykoruptsiynoi-programy-na-2023-2025-roky/>.

1067 State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

planned to be addressed by only one framework measure¹⁰⁶⁸. This makes it difficult to effectively monitor such measures and track progress or regression.

It also creates an opportunity for executors to avoid implementing these measures or to delay their implementation as much as possible, since the deadline for such measures is the last day of the SAP – **31 December 2025**. Some measures in the SAP have biased deadlines¹⁰⁶⁹, that are not always realistic for executors, especially due to the possibility of personnel changes and other circumstances.

Other measures aimed at eliminating corruption risks need to be revised to achieve the expected strategic result, as they have lost their relevance due to changes in objective circumstances, the regulatory framework and the capacity of the executors. At the same time, the problem itself remains relevant.

Certain problems, especially those that arose during the martial law, are not provided for in the SAP at all, for example, in the transport sector (sea, air, rail and road transport), which is very important for the Ukrainian economy in terms of export and import operations during a full-scale invasion of the Russian Federation. Thus, measures on road weight and size control¹⁰⁷⁰ do not exhaustively reflect the problems and risks associated with corruption in the transport sector.

At the stage of the initial development of the SAP, many measures proposed by Transparency International Ukraine¹⁰⁷¹, in particular, the NACP as an implementer in the areas of financial control of officials or regulation of conflicts of interest, etc. were rejected without explanation.

Earlier iterations of the SAP had more precise and clear indicators of achievement of strategic goals, in particular in the context of regulations. In the approved version of the SAP, due to political pressure from the authorities at the stage of its adoption, these indicators are weakened, where the results are assessed, in particular, by the fact of only developing or submitting draft laws to the parliament or government – their advocacy, as well as approval or overcoming a possible presidential veto, is not required. In some measures, this is compensated for through a mechanism for monitoring the implementation of the document or conducting an analytical study to expand the scope of the measure.

Recommendations

1. Review and reformulate large-scale measures of the SAP and break them down into more specific tasks.
2. Review the deadlines for implementation of measures, especially complex ones, and set more realistic deadlines that take into account the existing capabilities of their implementers.
3. Analyse and revise the essence of certain measures of the SAP, taking into account new circumstances and changes. The new measures should be aimed at achieving the expected strategic result in accordance with the current conditions, taking into account the legal regime

1068 For example, one measure stipulates that the Ministry of Social Policy should put into commercial operation the Unified Social Information System, while other measures do not mention such a system (measure 2.7.7.1.4. Problem 2.7.7).

1069 The State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220, para. 2.7.7.1. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

1070 Ibid, subpara. 2.5.10.5.1-2.5.10.5.3. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

1071 The Cabinet of Ministers adopted the State Anti-Corruption Programme - what does the document say? Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/kabmin-pryinyav-derzhavnu-antykoruptsiynu-programu-pro-shho-jdetsya-v-dokumenti/>; Procurement in the SAP: what anti-corruption measures are planned?. URL: <https://ti-ukraine.org/news/zakupivli-u-dap-yaki-antykoruptsiyni-zahody-zaplanuvaly/>; Anti-corruption policy in the field of state property management: what is planned to be done by 2025. Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/antykoruptsiyna-polityka-u-sferi-upravlinnya-derzhvlasnistyu-shho-planuyut-zrobyty-do-2025/>.

of martial law and the resources of public authorities. Each measure should have a detailed implementation plan with specific stages, percentage of implementation and indicators of achievement.

4. Include successful advocacy and adoption of legal acts as indicators of the implementation of relevant measures of the SAP, not just their registration as projects.

SAP implementation

State of play

In August 2023, the NACP implemented the Information System for Monitoring the Implementation of the State Anti-Corruption Policy (ISM SAP)¹⁰⁷², which contains key information on the results of the implementation of Ukraine's anti-corruption policy, in particular on the status and dynamics of the implementation of the Anti-Corruption Strategy and the SAP adopted for the period up to 2025.

The SAP¹⁰⁷³ contains 3 chapters, 16 areas, 73 problems, 271 expected strategic results and 1187 measures for 2023-2025. The programme is implemented by 109 authorities, enterprises, institutions and organisations. The NACP, the Ministry of Economy of Ukraine, the Ministry of Defence of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine and the Ministry of Education and Science of Ukraine are the leaders in the number of measures assigned for implementation.

According to the law, in order to facilitate coordination of actions of public authorities on the implementation of the Anti-Corruption Strategy and the implementation of the SAPO's measures to implement it, the NACP should establish a Coordination Working Group on Anti-Corruption Policy as an advisory body, co-chaired by the Head of the NACP and a Minister of the Cabinet of Ministers of Ukraine. The Coordination Working Group shall include the implementers of the Anti-Corruption Strategy measures and MPs of Ukraine (upon consent)¹⁰⁷⁴.

Progress and issues

The first civic expert monitoring of the implementation of the SAP¹⁰⁷⁵ was carried out until November 2023 by the project team of the NGO "Together Against Corruption" and the experts involved. The monitoring covered 121 anti-corruption measures in the following areas: urban development, infrastructure, land relations, education and science, healthcare, cultural heritage and social protection. The monitoring methodology consisted of experts determining the progress of the measures by analysing the materials provided by the executors to confirm the implementation of the measure, conducting interviews with them, collecting feedback from target groups of users of the relevant public services and further preparing expert opinions on the implementation of the SAP measures.

Based on the results of the public monitoring of the part of the SAP¹⁰⁷⁶ as of 15 November 2023, only 7.4% of the measures have been implemented in a timely and strict manner, as

1072 Information system for monitoring the implementation of the state anti-corruption policy. URL: <https://dap.nazk.gov.ua/>.

1073 State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

1074 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 2, Art. 18². URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1075 Report on Public Monitoring of the Implementation of the State Anti-Corruption Programme. 2023. URL: https://www.rpk.org.ua/wp-content/uploads/2023/12/zvit-pro-gromadskij-monitoryng-dap-%E2%84%961_go-rpk.pdf.

1076 Ibid, Art. 5.

recommended by the European Commission in the Progress Report on Ukraine's 2023 EU Enlargement Package¹⁰⁷⁷. While 30.6% of the measures are being implemented within the deadlines, 15.7% of the measures have not been completed, although the deadline for their implementation has already passed. At the same time, 14.9% of the measures have not been started (despite the fact that the deadline for their implementation has passed). A total of 5.8% of measures have lost their relevance. As for 11.6% of formally implemented measures, there are comments on their content (or their essence has been diluted). In the case of 13.2% of measures, there is a failure in their implementation and significant comments on the content of implementation.

The second public monitoring of the implementation of the SAP as of March 2024 showed the following results¹⁰⁷⁸: 18% of the measures were implemented in a timely and strict manner, 23% are being implemented within the deadlines, and 16% have not been completed, although the deadline for their implementation has already passed. At the same time, implementation of 10% of measures has not started (despite the fact that the deadline for their implementation has passed), and 5% have lost their relevance. As for 8% of formally implemented measures, there are comments on their content (or their essence has been diluted). In the case of 20% of measures, there was a failure in their implementation and significant comments on the content of implementation. Such public monitoring is a useful tool that should be in place for the duration of the programme.

The official monitoring of the NACP as of 30 March 2024 shows that 12.6% of the actions of the entire SAP have been implemented, and 6.1% of the actions have been partially implemented¹⁰⁷⁹. And as of July 31, 2024, the NACP has already demonstrated 17.2% of completed and 7.4% of partially completed actions of the SAP¹⁰⁸⁰.

The experts are not aware of any sanctions being applied to the offending executives. The NACP clearly lacks a tool for monitoring the implementation of the state anti-corruption policy – a mandatory order to the executive in case of a violation, for which administrative liability is currently provided. Such a provision was proposed to the legislator during the preparation of the draft law on the anti-corruption strategy for the second reading, but it was rejected by the main committee, the Committee on Anti-Corruption Policy. At present, the Law¹⁰⁸¹ provides only for declarative “personal” responsibility of the head of the company for ensuring the implementation of the SAP measures, without explaining its content. Therefore, the problem of formal implementation¹⁰⁸² may be very relevant in the long term, as there is a threat of accumulation of the number of formally implemented measures.

1077 Ukraine 2023 Report. URL: https://neighbourhood-enlargement.ec.europa.eu/document/download/bb61ea6d-dda6-4117-9347-a7191ecef3f_en?filename=SWD_2023_699%20Ukraine%20report.pdf.

1078 Report on public monitoring of the implementation of the state anti-corruption programme. 2024. URL: https://www.rpk.org.ua/wp-content/uploads/2024/04/rpk_monitoryngovvj_zvit_2024.pdf.

1079 Results of monitoring and evaluation of the effectiveness of the state anti-corruption programme for 2023-2025. National Agency for Corruption Prevention. URL: https://dap.nazk.gov.ua/module/?a%5Bstatus%5D=&a%5Bmain_organ%5D=&a%5Bid%5D=&a%5Bbydate%5D=

1080 Results of monitoring and evaluation of the effectiveness of the state anti-corruption programme for 2023-2025. National Agency on Corruption Prevention. URL: https://dap.nazk.gov.ua/module/?a%5Bstatus%5D=&a%5Bmain_organ%5D=&a%5Bid%5D=&a%5Bbydate%5D=

1081 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 3, Art. 18². URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1082 For example, if the measure requires the contractor to analyse corruption risks in a particular sector, such an analysis may be superficial. The report that is published to confirm the analysis may be fragmented and lack details and conclusions that could be used in further planning, for example, in the anti-corruption programme of the public authority. Nevertheless, it is expected that the NACP will recognise this measure as completed, as a document was drawn up and attached, allegedly confirming its implementation, but the problem that the measure was aimed at solving remains.

The NACP does not have sufficient capacity for its own meaningful monitoring¹⁰⁸³, especially of the sectoral measures of the SAP, and therefore it needs expert support in assessing the implementation of the SAP¹⁰⁸⁴, in particular through the Public Feedback tool added to the ISM SAP¹⁰⁸⁵. After all, given the difficulties in communication with the implementers of the SAP at the stage of its approval and with a view to its significant mitigation, there is a risk that the programme implementers may level the NACP's negative feedback on their work on the implementation of the SAP.

However, there is also a possibility that the implementing agencies will lack human and financial resources to fully implement the SAP measures. The lack of funding from the state budget or development partners may in the future become a formal reason for the public authorities to motivate the non-implementation of certain measures of the SAP. There is a risk that it may be difficult for the SAP executors to independently implement key SAP measures aimed at reducing corruption risks within the same SAP executor. This is especially true in the absence of support from specially created project offices with the support of the donor-supervisor, which would bring together NGOs and external stakeholders working in the area of the SAP measure and could provide expert monitoring and support for institutional capacity building of the SAP implementers.

The Coordination Working Group on Anti-Corruption Policy could take on much of this work on targeted support for the implementation of the SAP measures. However, it can only include the implementers of the anti-corruption measures and MPs of Ukraine (by agreement), which may indicate the weakness of the legislator's intentions to achieve actual implementation of the approved anti-corruption documents. The number of members of the working group may be much overloaded, given that 109 public authorities, enterprises, institutions and organisations are implementing the SAP. Nothing is known about the public activities of this group.

According to Article 20 of the Law of Ukraine "On Prevention of Corruption", in the year of completion of the anti-corruption strategy, the NACP prepares a national report on the effectiveness of the implementation of the state anti-corruption policy, which should include, inter alia, a report on the status of implementation of the anti-corruption strategy and the SAP, indicating the implemented measures, measures under implementation, as well as unimplemented measures and those responsible for non-implementation and the reasons for non-implementation of these measures. At the same time, this model of continuous availability of anti-corruption strategic documents, proposed by the legislator, since the NACP shall draft a new anti-corruption strategy by 1 August of the last year of the current one, has certain drawbacks.

On the one hand, the preparation of a national report during the reporting period of the implementation of the SAP may serve as an additional tool to encourage the SAP implementers to implement its measures in time by pointing out problems that may be highlighted in the national report. On the other hand, it would be a great challenge for the NACP, with its limited resources, to simultaneously coordinate and monitor the implementation of the SAP and develop a new anti-corruption strategy with the preparation of the national report, which may become obsolete rather quickly due to the completion of the SAP measures after its preparation. Therefore, it is more optimal to complete the reporting period to assess the overall state of implementation of the measures, and then start preparing new strategic documents based on the results, which will also reduce the burden on the NACP.

1083 Review of Anti-Corruption Reforms in Ukraine under the Fifth Round of Monitoring: The Istanbul Anti-Corruption Action Plan, OECD Publishing, Paris. 2024. URL: <https://doi.org/10.1787/9e03ebb6-en>.

1084 State Anti-Corruption Programme for 2023-2025: Success Factors for the Defence Sector, NAKO. 2023. URL: [https://nako.org.ua/storage/pdf/2023-07-18-06:42:36-ДАП%202023-2025%20фактори%20успіху%20для%20сектору%20оборони%20\(1\).pdf](https://nako.org.ua/storage/pdf/2023-07-18-06:42:36-ДАП%202023-2025%20фактори%20успіху%20для%20сектору%20оборони%20(1).pdf).

1085 Information system for monitoring the implementation of state anti-corruption policy. URL: <https://dap.nazk.gov.ua/>.

Recommendations

1. Hold a broad legal discussion with the participation of all key stakeholders on the opportunity to apply enforcement measures to the executives of the implementing agencies (institutions, enterprises, organisations) in case of failure to implement the SAP measures without sufficient grounds. In particular, consider empowering the NACP to issue precepts to the respective executives of the executors of the SAP measures.
2. Create an option in the ISM SAP to leave non-personalised public feedback (without using a qualifying electronic signature) at the level of a specific measure or expected strategic result. Such an option may encourage the general public to share their corruption experiences, assessments or warnings outside of social media and the Unified Whistleblower Reporting Portal, where specific offences are reported.
3. In order to promote the ISM SAP, publish in a separate tab information about events, trainings, roundtables, conferences, etc. organised by the SAP implementers or external stakeholders in areas relevant to the SAP, which could be useful for the implementers' specialists in terms of, for example, getting answers to complex questions or sharing experience, etc.
4. Identify key activities among the actions of the SAP that could be undertaken by the implementing project teams with the support of development partners and the public sector.
5. Introduce amendments to the legislation that would allow for the inclusion of representatives of development partners and civil society in the Coordination Working Group on Anti-Corruption Policy with the involvement of observers, as well as optimisation of its format.
6. Amend the legislation to allow the NACP to prepare a national report on the effectiveness of the implementation of the state anti-corruption policy, as well as a draft new anti-corruption strategy in the year following the last year of the previous anti-corruption strategy and the SAP.

National Anti-Corruption Strategy

State of play

According to the Law¹⁰⁸⁶, the principles of the state anti-corruption policy for the relevant period are established by the Verkhovna Rada in the Anti-Corruption Strategy, which is approved by law. The Anti-Corruption Strategy for 2021-2025 was approved by the Parliament in June 2022¹⁰⁸⁷.

Progress and issues

The Progress Report on Ukraine's 2023 EU Enlargement Package¹⁰⁸⁸ and the report of the external independent assessment of the NACP's¹⁰⁸⁹ performance raise the point that it is inappropriate for the parliament to adopt the anti-corruption strategy at the legislative level and suggest that

1086 On the Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 1, Art. 18. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1087 On the Principles of State Anti-Corruption Policy for 2021-2025: Law of Ukraine of 20.06.2022 No. 2322-IX. URL: <https://zakon.rada.gov.ua/laws/show/2322-20#Text>.

1088 Ukraine 2023 Report. URL: https://neighbourhood-enlargement.ec.europa.eu/document/download/bb61ea6d-dda6-4117-9347-a7191ecef3f_en?filename=SWD_2023_699%20Ukraine%20report.pdf.

1089 External independent assessment of the effectiveness of the National Agency on Corruption Prevention. 2023. URL: <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisiyi-z-provedennia-nezaleznoi-otsinky-efektivnosti-diiialnosti-nazk.pdf>.

its approval should be delegated to the government. It is assumed that such a transfer could prevent delays in its adoption. However, the Government has recently also failed to meet the legal deadline for the adoption of the SAP. In addition, such a postponement would deprive the Verkhovna Rada and the President of the political will to reduce corruption, as the President would not be able to submit a draft law with an anti-corruption strategy and the Parliament would not be able to adopt it. Thus, such postponement will lead to a less responsible attitude of the implementers of the anti-corruption strategy to the measures envisaged by the SAP. It is likely that attention to them will be maintained only at the initial stages, as the experience of implementing other strategies adopted at the government level rather than by the parliament shows.

Recommendations

Given all the risks, advocate for the preservation of the current version of the Law¹⁰⁹⁰, which provides for the approval of the anti-corruption strategy for the respective year by the Parliament through the adoption of a separate law.

Anti-corruption institutions of Ukraine

Appointment of the heads

State of play

National Anti-Corruption Bureau of Ukraine (NABU)

According to the current regulations, updated after the decision of the Constitutional Court of Ukraine (CCU)¹⁰⁹¹, the composition of the 6-member commission for the competition for the position of the NABU Director is determined by the Cabinet of Ministers of Ukraine. At the same time, 3 of them are appointed based on proposals from international and foreign organisations that, in accordance with international or intergovernmental agreements, have provided Ukraine with international technical assistance in the field of preventing and combating corruption for the last three years prior to the expiry of the term of office of the NABU Director or prior to the date of early termination of his/her powers¹⁰⁹².

The decision of the competition commission for the position of the NABU Director shall be deemed adopted if at least 4 members of the competition commission voted for it at its meeting, at least 2 of whom are from among those appointed by the Cabinet of Ministers of Ukraine based on proposals from international and foreign organisations. Based on the results of the

1090 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 1, Art. 18. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1091 Decision of the Constitutional Court of Ukraine of 16.09.2020 No. 11-r/2020 in the case on the constitutional petition of 50 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" with the Constitution of Ukraine (constitutionality). URL: <https://zakon.rada.gov.ua/laws/show/v011p710-20#top>.

1092 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, cl. 2, p. 3, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

competition, the Competition Commission must select 3 candidates for the position of the NABU Director and submit a respective proposal to the Prime Minister of Ukraine¹⁰⁹³.

Since March 2023, the NABU has been headed by Semen Kryvonos¹⁰⁹⁴.

Specialised Anti-Corruption Prosecutor's Office (SAPO)

The competition for the head of the SAPO has clearly demonstrated the possibility of delaying it for political reasons. Thus, in January 2021, following the resignation of the previous head of the SAPO, a competition for the vacant position was announced¹⁰⁹⁵.

On 21 December 2021, the commission for the selection of the SAPO leadership announced the rating of candidates for the position of the head of the agency based on the results of the competition. According to the ranking, NABU detective Oleksandr Klymenko scored the highest number of points among the candidates for the position of the head of the SAPO. However, the members of the commission were unable to officially approve this result, as 5 of them did not cast their votes¹⁰⁹⁶. It was only in July 2022 that the Prosecutor General appointed the winner of the competition to the position of the head of the SAPO¹⁰⁹⁷.

The legal regulation of the competition for the head of the SAPO was significantly updated in December 2023¹⁰⁹⁸. Previously, he was elected by a commission consisting of 4 representatives from the Council of Prosecutors of Ukraine (CPU) and 7 from the Verkhovna Rada. Such mechanism had a significant drawback in the form of possible political influence on the selection process of the SAPO Head through the representatives of the Parliament. Currently, the competition commission is formed by the Prosecutor General and consists of 6 persons, 3 of whom are nominated by development partners¹⁰⁹⁹.

The decision of the competition commission is considered to be adopted, as in the case of the competition for the position of the NABU Director, if at least 4 members of the competition commission, including at least 2 international members of the competition commission, voted for it at the meeting¹¹⁰⁰. At the same time, the competition commission shall submit to the Prosecutor General 2 candidates for the position of the Head of the SAPO, and the Prosecutor General is required to appoint one of the candidates selected by the competition commission within 10 working days.

1093 Ibid, p. 6, Art. 7.

1094 On Appointment of S. Kryvonos the Director of the National Anti-Corruption Bureau of Ukraine: Order of the Cabinet of Ministers of Ukraine of 06.03.2023 No. 192. URL: <https://www.kmu.gov.ua/npas/pro-pryznachennia-kryvonosa-s-iu-dyrektorem-natsionalnoho-antykoruptsiinoho-biuro-t60323>.

1095 On 25 January 2021, the selection process for administrative positions in the Specialised Anti-Corruption Prosecutor's Office will begin. Office of the Prosecutor General. URL: <https://www.gp.gov.ua/ua/posts/25-sichnya-2021-rozpochnetsya-konkurs-na-zajnyattya-administrativnih-posad-u-specializovanij-antikorupcijnij-prokuraturi>.

1096 Competition for the head of the SAPO: the commission announced Oleksandr Klymenko as the winner. Ukrinform. 2022. URL: <https://www.ukrinform.ua/rubric-polytics/3532233-komisija-ogolosila-oleksandra-klimenka-peremozcem-konkursu-z-obranna-golovi-sap.html>.

1097 Oleksandr Klymenko was appointed the Head of the SAPO. 2022. <https://www.ukrinform.ua/rubric-polytics/3538468-oleksandra-klimenka-priznacili-kerivnikom-sap.html>.

1098 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#top>.

1099 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 3, Art. 29¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1100 Ibid.

National Agency on Corruption Prevention (NACP)

According to the Law¹¹⁰¹, the 6-member competition commission for the selection of the Head of the NACP consists of 3 persons appointed by the Cabinet of Ministers of Ukraine and 3 persons appointed by the Cabinet of Ministers of Ukraine based on proposals from donors who, during the last two years prior to the expiry of the term of office of the Head of the NACP or prior to the early termination of his/her powers, provided international technical assistance to Ukraine in the field of preventing and combating corruption.

Moreover, the decision of the competition commission is considered adopted if 4 members of the competition commission vote for it at the meeting, including 3 members from among persons identified on the basis of donors' proposals who, during the last two years before the expiration of the term of office of the NACP Head or before the day of early termination of his/her powers, provided Ukraine with international technical assistance in the field of preventing and combating corruption.

In January 2024, the four-year term of office of the NACP Head expired. On 13 November 2023, the official website of the Cabinet of Ministers of Ukraine published an announcement on the terms and conditions of the competition for the position of the NACP Head¹¹⁰², which resulted in the Government's appointment of Viktor Pavlushchuk, a former NABU employee, to the position in February 2024¹¹⁰³.

Progress and issues

The improvement of the selection of the SAPO management is a major achievement in this area, as it takes into account the problems of the previous competition regarding the formation of the competition commission and the terms of its work. The Law¹¹⁰⁴ also details the content of the criteria of integrity¹¹⁰⁵ and professional competence¹¹⁰⁶. This is the right approach, which increases the certainty of selection criteria for the competition participants and members of the competition commission.

However, the problem remains the discretion of the political leadership to choose a particular candidate out of three (in the case of the NABU) or two (in the case of the SAPO) proposed by the competition commissions.

The model for selecting the NACP head can be considered the best available standard at the moment. After all, the competition for the new head of the NACP established a high level of transparency. Some stages of the selection process, such as the final discussion and the live announcement of the winner, demonstrated a new level of openness of such competition commissions. The Commission also initiated several meetings with the public during the competition itself, and this proactive approach is to be welcomed. At the same time, the organisational and technical support provided by the competition commission's secretariat ensured a smooth selection process.

1101 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 2, Art. 6. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1102 Competition for the position of the NACP Head: documents are now being accepted. National Agency on Corruption Prevention. 2023. URL: <https://nazk.gov.ua/uk/konkurs-na-posadu-golovy-nazk-rozpochato-pryjom-dokumentiv/>.

1103 On the appointment of V. Pavlushchuk the Head of the National Agency on Corruption Prevention: Order of the Cabinet of Ministers of Ukraine of 27.02.2024 No. 162. URL: <https://zakon.rada.gov.ua/laws/show/162-2024-%D1%80#Text>.

1104 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 3, Art. 29¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1105 Ibid.

1106 Ibid.

Recommendations

To amend the legislation to provide that following the results of the competitive selection for the position of the head of the NABU/SAPO, the competition commission selects only one candidate and submits a proposal for his/her appointment to the Prime Minister/Prosecutor General.

Clarity of grounds for dismissal

State of play

NABU

The grounds for termination of office and dismissal of the NABU Director are specified in the Law¹¹⁰⁷. Most of them are sufficiently defined and predictable in their application. Except for one – the existence of a conclusion of the Commission for External Independent Evaluation (Audit) of the NABU's Performance, provided for in Article 26 of the Law, on the inefficiency of the NABU's performance and improper performance of duties by its Director. Given that the NABU has never had an external independent assessment (audit), it is difficult to talk about the shortcomings of its application. However, performing a prognostic function, we can point out potential shortcomings in the wording of the relevant grounds, which will be mentioned below.

The decision to form the Evaluation Commission is adopted by the Cabinet of Ministers of Ukraine no later than thirty calendar days before the expiration of the one-year period from the date of approval of the last report of the external independent evaluation (audit) of the NABU's performance¹¹⁰⁸.

Pursuant to Law of Ukraine No. 1810-IX¹¹⁰⁹, the first external independent assessment (audit) of the NABU's performance is conducted one year after the date of appointment of the NABU Director in accordance with the procedure established by the Law¹¹¹⁰. Given that the new NABU Director was appointed by the Government on 6 March 2023¹¹¹¹, the first external independent assessment (audit) of the NABU's performance should have started on 6 March 2024.

As of July 2024, there is no information on the composition of the commission for such an audit, although the memorandum with the International Monetary Fund states that it should be completed by the end of September 2024¹¹¹².

In addition, neither the provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" nor the provisions of Law of Ukraine No. 1810-IX directly define the time period for the first external independent assessment (audit) of the NABU's performance.

1107 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, p. 4, Art. 6. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

1108 Ibid, para. 4, p. 7, Art. 26.

1109 On Amendments to Certain Laws of Ukraine on Bringing the Status of the National Anti-Corruption Bureau of Ukraine in Line with the Requirements of the Constitution of Ukraine: Law of Ukraine of 19.10.2021 No. 1810-IX, clause 6 section II. URL: <https://zakon.rada.gov.ua/laws/show/1810-20#top>.

1110 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, Art. 26. URL: <https://zakon.rada.gov.ua/laws/show/1810-20#n178>.

1111 On Appointment of S. Kryvonos as the Director of the National Anti-Corruption Bureau of Ukraine: Order of the Cabinet of Ministers of Ukraine of 06.03.2023 No. 192. URL: <https://www.kmu.gov.ua/npas/pro-pryznachennia-kryvonosa-s-iu-dyrektorom-natsionalnoho-antykorupsiinoho-biuro-t60323>.

1112 Ukraine: Fourth Review of the Extended Arrangement under the Extended Fund Facility, Request for Modifications of a Performance Criterion, and Financing Assurances Review-Press Release; Staff Report; and Statement by the Executive Director for Ukraine. International monetary fund. 2024. URL: <https://www.imf.org/en/Publications/CR/Issues/2024/06/28/Ukraine-Fourth-Review-of-the-Extended-Arrangement-under-the-Extended-Fund-Facility-Request-551207>.

SAPO

The legal regulation amended at the end of 2023 significantly improved the quality of the grounds for dismissal of the head of the SAPO. Thus, a special procedure for termination of his/her powers as a prosecutor of the prosecution authorities and early dismissal from an administrative position has been defined for the Head of the SAPO. The head of the SAPO may be dismissed if the evaluation commission concludes that the SAPO's activities are ineffective due to improper performance of the head's duties¹¹¹³.

His/her powers as a prosecutor may also be terminated on other grounds specified in the Law¹¹¹⁴. If the relevant body conducting disciplinary proceedings establishes grounds in relation to the Head of the SAPO that may indicate that such person cannot continue to hold the position of a prosecutor, it shall, by its decision, submit copies of the materials of such disciplinary proceedings to the Evaluation Commission for making a relevant decision¹¹¹⁵.

Based on the results of the review of the disciplinary proceedings in accordance with the procedure stipulated by the Law¹¹¹⁶, the Evaluation Commission may decide to recommend to the Prosecutor General to terminate the powers of the Head of the SAPO as a prosecutor of the prosecution authorities in case of committing a disciplinary offence that indicates the impossibility of further holding the position of a prosecutor of the prosecution authorities.

NACP

The external independent assessment of the NACP's performance is conducted every two years by the Commission for Independent Assessment of the NACP's Performance consisting of three persons appointed by the Cabinet of Ministers of Ukraine based on proposals from donors who have provided international technical assistance to Ukraine in the field of preventing and combating corruption in the last two years prior to the assessment¹¹¹⁷.

The Commission's decision to approve the NACP performance evaluation report is considered adopted if all members of the Commission cast their votes in favour. The powers of the NACP Head are terminated by the Cabinet of Ministers of Ukraine ahead of schedule if the Commission for Independent Evaluation of the NACP's Performance concludes that the NACP's performance is ineffective.

Progress and issues

Prior to the update of the legislation on the prosecutor's office in terms of the work of the SAPO, the general procedure for dismissal was applied to prosecutors and the SAPO leadership, with the peculiarity that SAPO prosecutors could be dismissed only by the head of the SAPO. Therefore, the biggest progress is that the law limits the list of grounds for dismissal of the SAPO head with proper guarantees. After all, such a decision can only be made by the Evaluation Commission, as mentioned above.

At the same time, the provisions of the laws governing external independent audits of the NABU, SAPO and NACP are not detailed in terms of what the consequences for the head of the institution may be if the violations found by the commission relate to the previous head.

1113 On the Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 10, Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1114 Ibid, para. 4, p. 3, Art. 51; p. 2, Art. 61.

1115 Ibid, p. 12, Art. 8¹.

1116 Ibid, p. 10, Art. 8¹.

1117 On the Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 4, Art. 14. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

The provisions governing the external independent audit of the SAPO do not specify the scope of the assessment and the timeframe for forming the assessment commission. There is only a reference to the procedure for forming a competition commission for the selection of the SAPO management¹¹¹⁸. This procedure should also apply to the selection and work of the evaluation commission.

In addition, the NABU Evaluation Commission approves and publishes the criteria and methodology for evaluating the NABU's performance¹¹¹⁹. The same model is envisaged for the SAPO in a special law¹¹²⁰. Given that no such audits have ever been conducted, the quality of the criteria and methodology for conducting the assessment is important. It is important to ensure that these indicators really allow to assess the effectiveness of the respective agencies.

With regard to the external assessment of the NACP, a description of progress, challenges and recommendations are provided in the relevant section of the report.

Recommendations

The consequences of negative conclusions of external independent audits of the NABU, SAPO and NACP should be specified for the heads of these bodies, whose activities did not relate to the periods in which the deficiencies that affected their effectiveness were committed.

Independence

State of play

The guarantees of **independence of the NABU** as a central executive body are set out in the relevant law and a number of other legislative acts¹¹²¹. In addition, the law explicitly prohibits the transfer of a criminal offence under the jurisdiction of the NABU to another pre-trial investigation body, except in cases expressly provided for in the law¹¹²².

As for the SAPO, the basis of the **SAPO's independence** is the legislative provisions that establish the grounds for the impossibility of external influence on the body¹¹²³. In case of encroachment on their independence, SAPO prosecutors have the right to apply to the CPU, as well as to take other measures to protect this guarantee: procedural (e.g., to recuse themselves), disciplinary or criminal (to file a relevant application with the competent authorities).

The issues of organisation of the SAPO activities are resolved by orders issued by the Deputy Prosecutor General - Head of the SAPO (or a person performing his/her duties) and are binding on prosecutors and other SAPOs.

1118 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, para. 4, p. 10, Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1119 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, Art. 26. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

1120 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 10, Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1121 For example, Article 21 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" was amended to provide that the Cabinet of Ministers of Ukraine is prohibited from interfering with the activities of the NABU, in particular, in the pre-trial investigation and decision-making related to or affecting specific criminal proceedings. In addition, Article 4 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" defines the manner in which the Cabinet of Ministers of Ukraine has the right to coordinate the activities of the NABU.

1122 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI, p. 5, Art. 36. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

1123 The Law of Ukraine "On the Public Prosecutor's Office" stipulates that the Prosecutor General, First Deputy and Deputies have no right to give instructions to the SAPO prosecutors and to perform other actions that directly relate to the exercise of their powers by the SAPO prosecutors.

The **NACP's independence** from influence or interference in its activities is guaranteed in accordance with the Law¹¹²⁴, in particular by the special status of the NACP; a special procedure for the selection, appointment and termination of powers of its Head; a special procedure for financing and logistical support of the NACP, etc.

With regard to guarantees of **independence of HACC judges**, the Law¹¹²⁵ provides judges with some tools to respond to pressure and interference in their work. Also, the Criminal Code of Ukraine (CC) provides for certain cases when certain actions of a person directed at judges in connection with the exercise of their powers may lead to criminal liability¹¹²⁶.

Progress and issues

While no particular progress or problems with independence have been identified with NABU, the authorities have introduced a number of key changes in the context of the SAPO. In December 2023, Law of Ukraine No. 3509-IX¹¹²⁷ was adopted, whereby the SAPO received the status of a separate legal entity. On 21 March 2024, the SAPO officially started functioning in the new status¹¹²⁸.

The SAPO prosecutors may delegate one representative to the CPU, which may increase the effectiveness of this body, in particular, to facilitate the adoption of procedures for responding to interference with the prosecutor's independence¹¹²⁹. However, the SAPO's full procedural independence is still far from being achieved, as, for example, the Prosecutor General can overturn illegal and unjustified decisions of NABU detectives and SAPO prosecutors¹¹³⁰. The Head of the SAPO does not have the ability to file extradition requests and to consider and decide on the establishment of joint investigative teams at the request of the pre-trial investigation body of Ukraine, the Prosecutor of Ukraine and the competent authorities of foreign countries¹¹³¹.

In July 2024, the Parliament adopted Law of Ukraine No. 3887-IX¹¹³², which empowers the Head of the SAPO to appoint prosecutors who oversee compliance with the law during the conduct of operational and investigative activities.

In addition, the special guarantees for MPs and other subjects are not entirely justified. For example, information that may indicate that a criminal offence has been committed by a member of parliament is entered into the Unified Register of Pre-trial Investigations by the Prosecutor General (or a person acting as the Prosecutor General), but not by the head of the SAPO or

1124 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 1, Art. 9. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1125 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, Art. 6. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

1126 Criminal Code of Ukraine of 05.04.2001 No. 2341-III, Arts 376-379. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

1127 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#top>.

1128 Announcement on the launch of the Specialised Anti-Corruption Prosecutor's Office established on the basis of the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor's Office" of 08.12.2023 No. 3509-IX. Office of the Prosecutor General. 2024. URL: <https://gp.gov.ua/posts/ogolosennya-pro-pocatok-diyalnosti-specializovanoyi-antikorupciinoyi-prokuraturi-utvorenoyi-na-pidstavi-zakonu-ukrayini-pro-vnesennya-zmin-do-kriminalnogo-procesualnogo-kodeksu-ukrayini-ta-insix-zakonodavcix-aktiv-ukrayini-shhodo-posilennya-samostiynosti>.

1129 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1130 Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI, Art. 36. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

1131 Ibid, Arts 571, 575.

1132 On Amendments to Part One of Article 14 of the Law of Ukraine "On Operational and Investigative Activities": Law of Ukraine of 18.07.2024 No 3887-IX. URL: <https://zakon.rada.gov.ua/laws/show/3887-%D0%86%D0%A5#Text>.

his deputies¹¹³³. The Prosecutor General also has to approve motions for actions that restrict the rights and freedoms of a Member of Parliament of Ukraine in accordance with the law, the consideration of which is within the powers of the investigating judge¹¹³⁴, etc. These are significant problems, given the number of cases involving MPs under investigation by the NABU and the SAPO.

For example, in the second half of 2023, the NABU and the SAPO served notices of suspicion to 14 special category persons (including MPs of Ukraine, members of the Verkhovna Rada of the Autonomous Republic of Crimea, members of local councils, village, town and city mayors)¹¹³⁵. It can be assumed that the number of such cases will increase significantly with the reintroduction of the declaration obligation.

Thus, the initiation of criminal prosecution and approval of major investigative actions against MPs depends on the political figure of the Prosecutor General, whose competition for the position is not provided for by law and was excluded from the draft SAP.

Despite the legal guarantees of the **NACP's** independence, in the past, some decisions of the CCU¹¹³⁶ and the Verkhovna Rada¹¹³⁷ to suspend verification of declarations or reports of political parties, etc. have jeopardised the NACP's ability to perform its functions in full, which indirectly affected the NACP's ability to perform its functions independently, and should be avoided in the future. Concerns were also raised about the appointment of a classmate as the new deputy head, whose independence and integrity had already been questioned during previous selection processes¹¹³⁸.

With regard to the independence of **HACC** judges, the latter have been filing complaints with the High Council of Justice (HCJ) about interference in their professional activities. This institution, in its turn, forwards them to the Office of the Prosecutor General (OPG) for pre-trial investigation¹¹³⁹.

The HCJ reports that in 2023, 208 reports from judges were considered (these are reports from all judges, not just the HACC). Based on 97 reports of interference with the administration of justice, 93 decisions on response measures were made¹¹⁴⁰. However, it is too early to talk about any results of these response measures, as the authorities do not communicate them in the public domain, which makes it impossible to assess the effectiveness of such measures.

In the past, there was a significant problem with the lack of a professional and independent HCJ. In January 2023, the renewed HCJ finally became competent¹¹⁴¹. Therefore, there is currently no

1133 Ibid, p. 1 Art. 482².

1134 This includes permission to detain, impose a preventive measure in the form of detention or house arrest, search, violation of the secrecy of correspondence, telephone conversations, telegraphic and other correspondence, as well as the use of other measures, including covert investigative (detective) actions.

1135 Report for the second half of 2023. National Anti-Corruption Bureau of Ukraine. URL: <https://nabu.gov.ua/activity/reports/report-zvit-druge-pivrichchya-2023-roku/>.

1136 Decision of the Constitutional Court of Ukraine dated 27.10.2020 No. 13-r/2020 in the case on the constitutional petition of 47 MPs of Ukraine on the compliance of certain provisions of the Law of Ukraine "On Prevention of Corruption" and the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality). URL: <https://ccu.gov.ua/dokument/13-r2020>.

1137 On the Protection of the Interests of Subjects of Submission of Reports and Other Documents during the Period of Martial Law or State of War: Law of Ukraine dated 03.03.2022 No. 2115-IX (as amended at the time of adoption). URL: <https://zakon.rada.gov.ua/laws/show/2115-20/ed20220303#Text>.

1138 First steps of the new Head of the NACP: where could Viktor Pavlushchuk have taken a wrong turn? Transparency International Ukraine. 2024. URL: <https://ti-ukraine.org/news/pershi-kroky-novogo-golovy-nazk-de-viktor-pavlushchuk-mig-povernuty-ne-tudy/>.

1139 On taking measures to ensure the independence of judges and the authority of justice upon the report of the High Anti-Corruption Court judge O. Tkachenko: Decision of the High Council of Justice of 19.10.2023 No. 991/0/15-23. URL: <https://hcj.gov.ua/doc/doc/41038>.

1140 208 reports of interference in the professional activities of judges were considered by the HCJ in 2023. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/208-povidomlen-pro-vtruchannya-u-profesijnu-diyalnist-suddiv-rozglyanula-vrp-protvagam-2023>.

1141 The authorised composition of the High Council of Justice has been restored. High Council of Justice. 2024. URL: <https://www.hcj.gov.ua/news/vidnovleno-povnovazhny-sklad-vyshchoyi-rady-pravosudya>.

information that would allow us to assert that the instruments of disciplinary proceedings are used as a means of pressure on HACC judges.

In the context of the HACC's independence, it is worth noting that the CCU is considering a deputy's petition of 22 July 2020 on the unconstitutionality of the HACC¹¹⁴². By the decision of the CCU panel of judges, the constitutional proceedings in the case were opened and it has been considered by the Grand Chamber since 6 October 2020¹¹⁴³. **If the CCU judges agree with the arguments of the authors of the petition, it will have a significant negative impact on the entire hard-built anti-corruption system in Ukraine.**

Recommendations

1. **Strengthen the procedural** authority of the head of the SAPO by adding to his legal status:
 - › the ability to initiate criminal proceedings and approve investigative actions against MPs;
 - › file extradition requests with the competent authority of a foreign state;
 - › consider and decide on the establishment of joint investigative teams at the request of the pre-trial investigation body of Ukraine, the Prosecutor General of Ukraine and the competent authorities of foreign countries.
2. **Ensure discussion of amendments to the NACP legislation with the participation of all stakeholders and the NACP itself**, as current practice has already led to the actual absence of results of the institution's work in such important areas as financial control (except for lifestyle monitoring, the results of which are ambiguous due to significant shortcomings in the bylaws regulating this procedure) and control over compliance with the legal restrictions on political party funding, etc.
3. The results of measures taken to respond to reports of judges on interference in their administration of justice should be communicated by the HCJ to track their effectiveness.

Selection and evaluation of personnel

State of play

NABU

The selection of public officials of the NABU is conducted on a competitive basis. The Director of the NABU establishes competition commissions that conduct a competition for vacant positions of public employees and includes representatives appointed by the Public Oversight Council under the NABU in such commissions, which should not exceed 3 persons per competition commission¹¹⁴⁴.

1142 Constitutional petition on the compliance of the Law of Ukraine "On the High Anti-Corruption Court" of 7 June 2018 No. 2447-VIII with the Constitution of Ukraine (constitutionality). URL: https://ccu.gov.ua/sites/default/files/3_349_2020.pdf.

1143 On the constitutionality of the High Anti-Corruption Court - analysis of the submission to the CCU. Transparency International Ukraine. 2020. URL: <https://ti-ukraine.org/news/pro-konstytutsijnist-vyshhogo-antykoruptsijnogo-sudu-analiz-podannya-v-ksu/>.

1144 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, p. 3, Art. 10. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

At the end of 2023, the Verkhovna Rada adopted a Law¹¹⁴⁵ that increased the **NABU** staff from 700 to 1,000 employees in three stages: the selection will be made annually for 100 vacancies in the period 2024-2026.

The National Anti-Corruption Bureau of Ukraine Development Strategy for 2021-2023¹¹⁴⁶ states that one of the expected results is to identify and eliminate gaps in legislation related to the lack of social guarantees for NABU employees that are provided by the state to employees of other law enforcement agencies by developing and/or advocating for relevant regulations.

The NABU is implementing a detective evaluation system in accordance with the new Procedure¹¹⁴⁷. According to this procedure, the form of performance evaluation for detectives and heads of departments is a rating based on the following areas of evaluation: efficiency of service; performance discipline, participation in management activities; professional development and participation in NABU projects. The key performance indicators include, for example, seizure of assets, serving a notice of suspicion to a person, engaging a person in confidential cooperation, etc.

SAPO

The rules for selection of **SAPO prosecutors** were updated by the Law¹¹⁴⁸ on 8 December 2023. Thus, the competition is organised and conducted by a competition commission of 6 persons, 3 of whom are appointed based on proposals from development partners. The procedure for such selection is identical to the one used for the selection of the Head of the SAPO, with the exception that the powers of the Prosecutor General are exercised by the Head of the SAPO.

The total number of employees of the SAPO is set at 15% of the statutory maximum number of central and territorial departments of the NABU¹¹⁴⁹.

Along with the selection of personnel, the Prosecutor's Office Development Strategy for 2021–2023¹¹⁵⁰ and the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023–2027¹¹⁵¹ envisaged the introduction of a new performance evaluation system for prosecutors. However, the establishment of such a system is still only in the pipeline. The absence of such a system is currently a significant problem that needs to be addressed.

1145 On Amendments to Article 5 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" to Strengthen the Institutional Capacity of the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 08.12.2023 No. 3502-IX. URL: <https://zakon.rada.gov.ua/laws/show/3502-IX#Text>.

1146 The National Anti-Corruption Bureau of Ukraine Development Strategy for 2021-2023. URL: https://issuu.com/nabu_nabu/docs/_bfaee615222b10.

1147 On Approval of the Procedure for Evaluating the Performance of Detectives of the Detective Units of the National Anti-Corruption Bureau of Ukraine: Order of the National Anti-Corruption Bureau of Ukraine of 30.11.2023 No. 170. URL: <https://zakon.rada.gov.ua/rada/show/v0170911-23#Text>.

1148 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine to Strengthen the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#top>.

1149 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, para. 2, p. 1, Art. 14. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1150 Prosecutor's Office Development Strategy for 2021-2023: Order of the Prosecutor General of 16.10.2020 No. 489, para. 2.2. URL: <https://www.gp.gov.ua/ua/posts/strategiya-rozvitku-prokuraturi-na-2021-2023-roki>.

1151 On the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as a Part of the Security and Defence Sector of Ukraine for 2023-2027: Decree of the President of Ukraine of 11.05.2023 No. 273. URL: <https://zakon.rada.gov.ua/laws/show/273/2023#Text>.

At the same time, the Regulation on the Performance Evaluation System for Prosecutors, approved by the Order of the Prosecutor General of 29 December 2021 No. 407¹¹⁵² remains in force.

It should be noted that the funds provided for in the Law of Ukraine “On the State Budget of Ukraine for 2024”¹¹⁵³ do not take into account the increase in the number of SAPO staff, and therefore the Law needs to be amended in this part.

NACP

The maximum number of employees of the NACP staff is 408¹¹⁵⁴. No more than six territorial bodies of the NACP may be established by the decision of the Head of the NACP, the territory of which may not coincide with the administrative-territorial division.

With the introduction of martial law in Ukraine on 24 February 2022, for the period of its validity, the selection of persons for positions in the NACP is conducted on the basis and in accordance with the procedure provided for by the Law of Ukraine “On the Legal Regime of Martial Law”¹¹⁵⁵, by conducting an interview, during which the professional competencies of candidates are determined to meet the requirements of the vacancy, their values and motivation.

HACC

The **HACC judicial selection** procedures were updated in December 2023 by amending the legislation on the judiciary and the status of judges¹¹⁵⁶. The changes mainly concerned clarification of the criteria of “competence” and “integrity”, as well as procedural aspects of the competition.

In September 2023, the HCJ appointed a new number of judges to the HACC – 63 positions, including 21 positions of judges of the HACC Appeals Chamber. At the initial stage of the court’s establishment, the HCJ approved 39 positions of HACC judges, including 12 positions of judges in the HACC Appeals Chamber¹¹⁵⁷.

In November 2023, the High Qualification Commission of Judges (HQCJ) announced a competition to fill 25 vacant positions of HACC judges¹¹⁵⁸. A total of 238 candidates applied for the competition: a total of 153 to the HACC first instance and 85 to the HACC Appeals Chamber¹¹⁵⁹. On 28 March 2024, international organisations also proposed 12 candidates for the Public Council of International Experts (PCIE)¹¹⁶⁰.

1152 On Approval of the Regulation on the Performance Evaluation System for Prosecutors: Order of the Office of the Prosecutor General of 29.12.2021 No. 407. URL: <https://zakon.rada.gov.ua/laws/show/v0407905-21#Text>.

1153 On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 No. 3460-IX. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#n244>.

1154 Some issues of reducing the number of employees of executive authorities: Resolution of the Cabinet of Ministers of Ukraine of 29.12.2023 No. 1410. URL: <https://zakon.rada.gov.ua/laws/show/1410-2023-%D0%BF#Text>.

1155 On the legal regime of martial law: Law of Ukraine of 12.05.2015 No. 389-VIII, p. 5.7, Art. 10. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

1156 On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career: Law of Ukraine of 09.12.2023 No. 3511-IX. URL: <https://zakon.rada.gov.ua/laws/show/3511-20#n236>.

1157 The HCJ increased the number of judges of the High Anti-Corruption Court. High Council of Justice. 2023. URL: <https://hcj.gov.ua/news/vrp-zbilshyla-chyiselnist-suddiv-vyshchogo-antikorupciynogo-sudu>.

1158 Start of the competition to the High Anti-Corruption Court. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-preshall/3833614-start-konkursu-u-visij-antikorpicijnij-sud.html>.

1159 Candidates who applied for the competition. High Qualification Commission of Judges of Ukraine. URL: https://vkksu.gov.ua/sites/default/files/spysky_podani_zavavy_kandydativ_konkurs_vas_na_01.04.2024_na_sayt.pdf.

1160 International organisations proposed 12 candidates to the Public Council of International Experts. High Qualification Commission of Judges. 2024. URL: <https://vkksu.gov.ua/news/mizhnarodni-organizaciyi-zaproponuvaly-12-kandydatur-do-skladu-gromadskoyi-rady-mizhnarodnyh>.

On 19 June 2024, the HQCJ decided to complete the stage of admission of candidates and move on to the most important part of it - the qualification assessment. The qualifying stage of the admission process lasted more than two and a half months, one and a half months dedicated specifically to admissions. As a result, the HQCJ filtered out 32% of applicants, allowing only 161 out of 238 to take part in the qualification assessment (100 to the HACC and 61 to the HACC Appeals Chamber)¹¹⁶¹.

The selection of judges includes the stages of anonymous testing, completion of a practical task, special checks, examination of dossiers and interviews with HQCJ members with the participation of the PCIE. Subsequently, the winners will undergo another interview with the HQCJ, and then the HCJ will consider the recommendation. As a result, the HCJ must send a submission to the President of Ukraine for the appointment of judges.

Progress and issues

Despite the legislative increase in the number of **NABU staff**, the public version of the NABU Technical Assessment Report of October 2023¹¹⁶² states that even an increase in NABU staff and the redistribution of staff from auxiliary units to the main detective units will not solve the workload issue. The report recommends that the NABU optimise the use of available resources by introducing a clear prioritisation policy to focus on high impact and systemic corruption cases.

Although the NABU recruits staff through an open competitive selection process, there are concerns that appointments to senior positions within the NABU are not based on merit and have rewarded personal loyalty rather than performance and a desire to improve¹¹⁶³.

In addition, although the National Anti-Corruption Bureau of Ukraine Development Strategy for 2021–2023¹¹⁶⁴ was adopted and published, no analysis of the implementation of this strategy has been made public, which makes it impossible to track the effectiveness of the measures taken.

The NABU Technical Assessment Report states that the high intensity of work, insufficient staff, bureaucracy, inefficient processes and war-related stress are testing the resilience of NABU staff and may affect morale if measures are not taken. Morale among NABU staff remains strong, but there are signs of gradual burnout and deterioration¹¹⁶⁵.

A focus on quantitative indicators in the evaluation of detectives may neglect the qualitative assessment of the work of NABU detectives. During the period covered by this report, HACC judges delivered two acquittals in NABU cases. In the first of them, the court considered the evidence of guilt of a person in false declaration insufficient, as the prosecution failed to prove that the accused used his daughter's apartment¹¹⁶⁶. The other verdict, inter alia, found that the evidence of guilt was collected illegally¹¹⁶⁷.

1161 Information on the admission of candidates to participate in the competition for vacant positions of judges of the High Anti-Corruption Court and the Appeals Chamber of the High Anti-Corruption Court announced on 23.11.2023. High Qualification Commission of Judges of Ukraine. 2024. URL: https://vkksu.gov.ua/sites/default/files/informaciya_po_dopusku_0.pdf.

1162 Technical assessment of the National Anti-Corruption Bureau of Ukraine 2023. URL: https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

1163 Ibid.

1164 The National Anti-Corruption Bureau of Ukraine Development Strategy for 2021-2023. URL: https://issuu.com/nabu_nabu/docs/_bfaee615222b10.

1165 Technical Assessment of the National Anti-Corruption Bureau of Ukraine 2023. URL: https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

1166 Judgement of the High Anti-Corruption Court of Ukraine of 16.11.2023 in case No. 991/2084/23. URL: <https://reyestr.court.gov.ua/Review/114952662>.

1167 Judgement of the High Anti-Corruption Court of Ukraine of 18.01.2024 in case No. 991/9294/20. URL: <https://reyestr.court.gov.ua/Review/116391630>.

The increase in the number of **SAPO prosecutors**, as well as the introduction of a new performance evaluation system for prosecutors, should have a positive impact on the performance of prosecutors. The current Regulation on the Evaluation of Prosecutors¹¹⁶⁸ is used for bonus purposes. According to this regulation, the evaluation report contains information on the results of performance of official duties, professional development and business activity, and self-assessment.

The problems of internal management, i.e. management processes in the prosecution service that are not always transparent and effective, also remain relevant for the prosecution authorities. Therefore, the SAP¹¹⁶⁹ contains a measure aimed at addressing the problem of an imperfect system of performance evaluation of prosecutors (in fact, the absence of a formally approved evaluation system); poor legislative regulation of the grounds for bringing prosecutors to disciplinary responsibility, guarantees of independence and effective functioning of the body conducting disciplinary proceedings, procedures for reviewing disciplinary complaints and imposing disciplinary sanctions.

The increase in the number of NABU detectives and SAPO prosecutors will also require expansion of the material and technical base for the functioning of these bodies.

The absence of transparent competitive selection for vacant positions within the **NACP** may negatively affect the confidence of candidates for such positions in the transparency of the relevant processes, and may also call into question the actual competence of the selected persons.

The study conducted by the experts of the DeJure Foundation formulated the issues related to each stage of the first **competition for the positions of HACC judges**. The most important of them include:

- › evaluation methodology: lack of a methodology for determining points for each of the qualification assessment criteria, unmotivated decisions of the Commission based on the results of the qualification assessment;
- › transparency of the competitive selection: non-publication of the methodology for checking practical tasks and scoring for each of the criteria, non-publication of completed practical tasks, lack of publication of decisions made as a result of special joint meetings with the PCIE and voting results;
- › thoroughness of assessment of documents submitted by candidates¹¹⁷⁰.

All these issues remain relevant for the new competition for HACC judges.

The issue of the term of office of the Public Council of International Experts (PCIE) is also worth mentioning. According to part 1 of Article 9 of the Law of Ukraine “On the High Anti-Corruption Court”, it is formed for a term of six years. This term expires in November 2024, as the HQCJ considered the appointment of PCIE members in November 2018¹¹⁷¹. Therefore, if the competition for the positions of HACC judges is not completed by November 2024, the PCIE’s powers may be questioned.

¹¹⁶⁸ On Approval of the Regulation on the Performance Evaluation System for Prosecutors: Order of the Office of the Prosecutor General of 29.12.2021 No. 407. URL: <https://zakon.rada.gov.ua/laws/show/v0407905-21#Text>.

¹¹⁶⁹ State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

¹¹⁷⁰ Formation of the High Anti-Corruption Court: how 38 judges were selected out of 343 candidates. DEJURE Foundation. URL: <https://dejure.foundation/library/formuvannia-antykorsudu-yak-z-343-kandydativ-vidibraly-38-suddiv>.

¹¹⁷¹ On consideration of the issue of appointing members of the Public Council of International Experts. Decision of the HQCJ of 06.11.2018 No. 249/zp-18. URL: <https://vkksu.gov.ua/doc/pro-rozglyad-pytannya-shchodo-pryznachennya-chleniv-gromadskoyi-rady-mizhnarodnyh-ekspertiv>.

Draft Law No. 11426 has been registered in the Parliament, which proposes to extend the PCIE's term of office until the end of the competition to the HACC announced by the HQCJ on 23 November 2023, but no later than 1 November 2025¹¹⁷².

It should also be noted that as the number of HACC judges increases, the number of employees of the court's staff will also increase. Therefore, it will be necessary to ensure that the new employees are properly accommodated in the premises and provided with equipment for their work.

Recommendations

1. Improve the criteria for evaluating NABU detectives, focusing not only on quantitative but also on qualitative characteristics. For example, to take into account the cancellation of detective decisions by SAPO prosecutors and investigating judges, confirmation of violations by these entities, as well as the results of court proceedings in criminal proceedings (for example, regarding the admissibility of evidence collected by NABU detectives).
2. Increase the maximum number of employees of the NACP staff and restore the procedures for selecting new employees of the agency on the basis of an open competition.
3. Properly regulate the management processes in the prosecutor's offices in order to introduce a system of performance evaluation of prosecutors, including SAPO prosecutors, based on predefined performance criteria.
4. Provide anti-corruption institutions with adequate financial resources for their effective operation.
5. Improve the by-laws regulating the competition to the HACC in terms of ensuring greater transparency and methodological certainty (develop methods for determining the scores for each of the qualification assessment criteria).
6. Improve the Law of Ukraine "On the High Anti-Corruption Court" by extending the term of office of the PCIE (part 1 of Article 9) to 12 years, as well as extending the term of a special joint meeting of the PCIE and the HQCJ to 60 days (part 5 of Article 8 of the same Law).

Disciplinary liability

State of play

NABU

Within the **NABU**, internal investigations are conducted by the Internal Control Department, which is accountable to and subordinate to the NABU Director. A 5-member Disciplinary Commission is established to consider disciplinary actions against NABU employees. The Disciplinary Commission shall include two persons appointed by the Public Oversight Council under the NABU¹¹⁷³.

1172 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and the Law of Ukraine «On the High Anti-Corruption Court" regarding the Public Council of International Experts: Draft Law of Ukraine, registration No. 11426 of 22.07.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44540>.

1173 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, p. 1, Art. 28. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

The decision to impose a disciplinary sanction based on the conclusion of the Disciplinary Commission is made by the NABU Director. This decision may be appealed in court.

SAPO

The Law¹¹⁷⁴, revised on 8 December 2023, provides for the establishment of an internal oversight unit **within the SAPO**. The procedure and powers of the internal control unit of the SAPO are determined by the regulation approved by the Head of the SAPO.

This unit conducts a secret integrity check of SAPO prosecutors and preliminarily reviews the circumstances set out in the disciplinary complaint against the SAPO prosecutor in order to conduct an internal investigation (if there are grounds) and submit proposals to the relevant disciplinary authority to initiate or refuse to initiate disciplinary proceedings¹¹⁷⁵.

NACP

The NACP has an internal oversight unit, which, according to the Law¹¹⁷⁶, is supposed to monitor compliance by NABU employees with the legislation on ethical behaviour, prevention and settlement of conflicts of interest, control the submission of declarations and conduct a full review of these declarations, etc.

The NACP also has a disciplinary commission, and the process of bringing to disciplinary responsibility is regulated, in particular, at the level of legislation¹¹⁷⁷.

HACC

When assessing the process of disciplining HACC judges, the list of grounds on which a judge may be held disciplinarily liable in disciplinary proceedings is set out in Article 106 of the Law of Ukraine “On the Judiciary and the Status of Judges”.

Progress and issues

The NABU Technical Assessment Report states that the NABU’s internal oversight function needs to be strengthened to address weaknesses, create an effective system for preventing and investigating information leaks, and ensure reliable internal oversight of NABU personnel.

The report recommends, inter alia, that an internal audit of the procedures used by the Internal Oversight Department be conducted; that standard operating procedures (rules) be approved for lifestyle monitoring, integrity checks and other procedures implemented by the Internal Oversight Department; that internal controls in the area of conflict of interest be strengthened, especially during selection and promotion procedures; and that criteria be developed to assess the effectiveness of the Internal Oversight Department. The CPC of Ukraine should also allow the Internal Oversight Department to conduct pre-trial investigations in case of information leaks in NABU proceedings¹¹⁷⁸.

1174 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor’s Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#top>.

1175 On the Public Prosecutor’s Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 2 of Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1176 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, para. 1, p. 3, Art. 17¹. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1177 On Civil Service: Law of Ukraine of 10.12.2015 No. 889-VIII. URL: <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

1178 Technical Assessment of the National Anti-Corruption Bureau of Ukraine 2023, p. 16. URL: https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

The lack of response by the Internal Oversight Department to violations of the presumption of innocence found by HACC judges is particularly noteworthy. For example, in several cases, judges assessed interviews with NABU detectives regarding the circumstances of cases under trial as giving the impression of guilt to the defendants in these cases¹¹⁷⁹. However, there was no public reaction to these events from the NABU.

In addition, in June 2024, several incidents in the NABU's work highlighted issues with open and professional communication, particularly regarding crises or challenges related to the alleged disclosure of pre-trial investigation secrets¹¹⁸⁰.

The low quality of the grounds for bringing prosecutors to disciplinary responsibility is mentioned in the GRECO report. Thus, the said institution recommended to (i) more clearly define disciplinary offences related to the behaviour of prosecutors and their compliance with ethical standards; (ii) expand the range of disciplinary sanctions to ensure greater proportionality and effectiveness. The same report also made recommendations to increase the efficiency of disciplinary proceedings by extending the limitation period, ensuring that proceedings can also be initiated by relevant self-governing bodies (which are not authorised to make decisions in disciplinary proceedings) and heads of prosecution offices, and providing that appeals against disciplinary decisions can ultimately (after a possible internal procedure within the prosecution office) be lodged only with the court, both on substantive and procedural grounds¹¹⁸¹. **These recommendations have not yet been implemented.**

The disciplinary practice for the entire existence of the Qualification and Disciplinary Commission of Prosecutors (hereinafter – the QDCP) (from 2017 to 2019 and from 2021 to the present) includes only 5 cases of bringing SAPO prosecutors to disciplinary responsibility¹¹⁸². Most of the violations are for failure to perform or improper performance of official duties, with only 1 case involving a gross violation of ethics rules - the case of the former head of the SAPO. Although it does not explicitly refer to the category of integrity, the HQCJ cites the relevant provisions of the Code of Professional Ethics and Conduct for Prosecutors¹¹⁸³.

As of June 2024, the **NACP's** internal oversight unit no longer handles such uncharacteristic functions as the closed-door review of declarations of intelligence officers, counterintelligence officers, etc, which could divert limited resources of the department from checking the integrity of the NACP employees themselves. In addition, the Internal Oversight Department is no longer part of a corruption prevention unit¹¹⁸⁴, but the existing disciplinary procedures are applied only in exceptional cases.

The GRECO report¹¹⁸⁵ recommended that the disciplinary offences related to judicial conduct should be more precisely defined, including by replacing the reference to 'norms of judicial ethics

1179 Ruling of the High Anti-Corruption Court of 31.10.2023 in case No. 991/392/23. URL: <https://reyestr.court.gov.ua/Review/114797457>; Ruling of the High Anti-Corruption Court of 17.01.2024 in case No. URL: <https://reyestr.court.gov.ua/Review/116419129>.

1180 Three questions about the investigation of information leaks in NABU - Transparency International Ukraine 2024. 2024. URL: <https://ti-ukraine.org/blogs/try-zapytannya-pro-rozsliduvannya-vytokiv-informatsiyi-v-nabu/>.

1181 Fourth Round Interim Compliance Report on Ukraine. 2023. URL: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>.

1182 Qualification and Disciplinary Commission of Prosecutors. Decision of 26.07.2018 No. 343dp-18. URL: <https://kdkp.gov.ua/decision/2018/07/26/366>; Decision of 12.06.2019 No. 178dp-19. URL: <https://kdkp.gov.ua/decision/2019/06/12/1835>; Decision of 21.09.2022 No. 153dp-22. URL: <https://kdkp.gov.ua/decision/2022/09/21/3020>; Decision of 03.05.2023 No. 95dp-22. URL: <https://kdkp.gov.ua/decision/2023/05/3/3473>; Decision of 27.09.2023 No. 194dp-23. URL: <https://kdkp.gov.ua/decision/2023/09/27/4231>.

1183 Code of Professional Ethics and Conduct for Prosecutors of 27.04.2017. URL: <https://zakon.rada.gov.ua/laws/show/n0001900-17#Text>.

1184 A separate newly created unit of the NACP will verify declarations and monitor the lifestyle of intelligence officers. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/perevirku-deklaratsiy-ta-monitoryng-sposobu-zhyttya-pratsivnykiv-spetssluzhby-zdiysnyuvatyme-okremy-novostvorenyy-pidrozdil-nazk/>.

1185 Fourth Round Interim Compliance Report on Ukraine. 2023. URL: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>.

and standards of conduct that ensure public confidence in the judiciary' with clear and specific offences. A recent summary of the HCJ's practice of considering disciplinary cases against judges will also add to the certainty of bringing judges to disciplinary responsibility¹¹⁸⁶.

In the HCJ's practice (prior to the renewal of its composition), there were cases when HACC judges were brought to disciplinary responsibility for decisions they made in high-profile cases. After the HCJ composition was changed, no such examples have been observed yet.

However, there are currently cases when the head of the SAPO files a disciplinary complaint against a HACC judge because, in the opinion of an NABU detective, the investigating judge, when considering a motion to extend a preventive measure in the form of detention, made statements during the case and wording in the court decision that indicate his bias¹¹⁸⁷.

Recommendations

1. NABU should strengthen public communication on the results of internal investigations into violations established by HACC judges, as well as the effectiveness of the internal control system in general.
2. Separate grounds for disciplinary liability of prosecutors and judges should be specified.
3. Disciplinary procedures should be applied more effectively to strengthen the accountability of the NACP employees in cases of gross errors or other significant shortcomings in their activities.

Institutional autonomy and interaction

State of play

The **NABU** has its own development strategy for 2021-2023¹¹⁸⁸. This document, among other things, defines the NABU's vision, mission, values, challenges, threats and opportunities, strategic goals and the mechanism for their implementation.

The **SAPO** functioned as an independent department of the OPG until 1 January 2024. Therefore, it was subject to the general Prosecutor's Office Development Strategy¹¹⁸⁹. This document contained, inter alia, the vision, mission, values of the prosecution, and strategic priorities.

In 2024, the **NACP** presented its own Institutional Strategy for Continuous Development as a Highly Effective Organisation until 2028¹¹⁹⁰. Also in October 2023, the NACP Head approved the NACP

1186 One of the HCJ's tasks is to form a unified and sustainable practice in disciplinary proceedings. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/odne-iz-zavdan-vrp-sformuvat-yedynu-ta-stalu-praktyku-pry-zdiysnenni-dyscyplinarnyh-provazhen>.

1187 Ruling of the High Anti-Corruption Court of 23.02.2024 in case No. 991/1384/24. URL: <https://reyestr.court.gov.ua/Review/117250570>.

1188 The National Anti-Corruption Bureau of Ukraine Development Strategy for 2021-2023. URL: https://issuu.com/nabu_nabu/docs/_bfaee615222b10.

1189 Prosecutor's Office Development Strategy for 2021-2023: Order of the Prosecutor General of 16.10.2020 No. 489, para. 2.2. URL: <https://www.gp.gov.ua/ua/posts/strategiya-rozvitku-prokuraturi-na-2021-2023-roki>.

1190 Institutional Strategy for the Continuous Development of the National Agency on Corruption Prevention as a Highly Effective Organisation. National Agency on Corruption Prevention. 2024. URL: <https://drive.google.com/drive/folders/1TwLwMSohs9uSfYHcR0jXAmG001hMjoBu>.

Management Procedure based on the Objectives and Key Results (OKR) methodology to implement the Mission: “Building Integrity in Government and a Just Society”¹¹⁹¹.

The NACP cooperates with other foreign state institutions, but is not mentioned in the laws of Ukraine ‘On Ratification of the United Nations Convention against Corruption’ and ‘On Prevention of Corruption’ as a competent authority. Instead, the NACP is a member of the International Sanctions Group¹¹⁹² based at Stanford University. To implement the decisions of this group, the NACP, with the support of the Ministry of Foreign Affairs of Ukraine, created the War and Sanctions portal¹¹⁹³.

In 2023, with the support of donors, a strategic session was held with **HACC** judges and staff to identify areas for organisational development and improve performance¹¹⁹⁴. However, there is currently no formalised development strategy for the HACC.

Progress and issues

The NABU Strategy was relevant until 2023. After its adoption, the NABU faced new challenges. For example, a full-scale invasion. The problem of the quality of expert research in criminal cases investigated by the NABU has become more actively articulated. Also, no analysis of the implementation of this strategy has been made public. Such an analysis could be extremely useful in formulating the agency’s development strategy for the coming years. The technical assessment report suggests that the NABU’s strategic development is handled by units that carry out investigative activities, such as the Internal Oversight Department¹¹⁹⁵. This does not contribute to the effectiveness of the strategic planning, monitoring and evaluation functions.

On 1 January 2024, the SAPO received the status of an independent legal entity, and on 21 March, the prosecutor’s office left the OPG structure¹¹⁹⁶. Consequently, this body will face more acute challenges and threats to its functioning, as well as new opportunities to improve its work.

The NACP’s institutional strategy differs from what strategic documents should look like in general. For example, a large part of the agency’s development strategy is occupied by sections explaining what corruption is, where and why it occurs, a diagram of the corruption-affected organisation, the preconditions for corruption, and the priority areas of anti-corruption at the state level, which would be more appropriate for an explanatory note to a new state anti-corruption strategy rather than the NACP’s institutional strategy. There is also extensive citation of the current legislative powers of the NACP and the fundamental provisions of the SAP for 2023-2025, etc., which does not add value to the strategic document and does not answer the question of how this relates to the continuous development of the NACP as a highly effective organisation by 2028.

Interaction issues can be considered both internally and externally.

1191 On approval of the Management Procedure in the National Agency on Corruption Prevention based on the Objectives and Key Results (OKR) methodology for the implementation of the Mission: “Building Integrity in Government and a Just Society”: Order of the National Agency on Corruption Prevention of 23.10.2023 No. 233/23. URL: <https://nazk.gov.ua/uk/documents/poryadok-upravlinnya-nazk-za-okr/>.

1192 International Sanctions Group based at Stanford University. URL: <https://fsi.stanford.edu/working-group-sanctions>.

1193 War and Sanctions Portal. URL: <https://sanctions.nazk.gov.ua/>.

1194 HACC judges held a strategic planning session. High Anti-Corruption Court. 2023. URL: <https://first.vaks.gov.ua/publications/suddi-vaks-provely-sesiiu-stratehichnoho-planuvannia/>.

1195 Technical Assessment of the National Anti-Corruption Bureau of Ukraine 2023, p. 15. URL: https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

1196 On the Day of Commencement of the Specialised Anti-Corruption Prosecutor’s Office: Order of the Office of the Prosecutor General of 19.02.2024 No. 52. URL: <https://www.gp.gov.ua/ua/posts/ogoloshennya-55000>.

With regard to internal cooperation, the NABU technical assessment report found that the interaction between analysts and detectives was bureaucratic and overly formalised (the situation improved after some analysts were assigned to detective units, but this was not enough to ensure effective integration). The Analytical Department failed to effectively support and guide investigative work through strategic analysis of sectors and institutions, study of corruption trends, identification of corruption hotspots and systemic vulnerabilities, which could have led to the identification of new corruption schemes and their investigation¹¹⁹⁷.

In general, the NABU's interaction with other state and non-state actors is settled at the regulatory level¹¹⁹⁸. The current head of the SAPO is an ex-detective of the NABU, and this is likely one of the reasons for the high level of procedural and business understanding between the two agencies¹¹⁹⁹.

Problems of external cooperation with other pre-trial investigation agencies may be manifested in the late transfer of criminal proceedings under the defined jurisdiction. Such a case, for example, occurred in February 2024, when the case file on suspicion of an official of the Ministry of Defence of Ukraine was not transferred to the NABU promptly¹²⁰⁰ from the National Police. Subsequently, the SAPO prosecutor changed the jurisdiction, recognising that the evidence gathered was insufficient to state that the official of the Ministry of Defence of Ukraine had committed a crime under the NABU's jurisdiction¹²⁰¹.

There has been an increase in the number of criminal proceedings investigated jointly by the NABU and the SSU¹²⁰², which may indicate improved cooperation with other pre-trial investigation agencies.

Despite the existing evidence of improved cooperation between the SSU and the NABU, due to the position of the SSU, the NABU is still unable to conduct certain covert investigative actions, including autonomous wiretapping of defendants¹²⁰³.

At the end of 2023, the interaction between the NABU, the SAPO and the HACC reached a new level due to the introduction of the **electronic criminal proceedings system (eCase)**, which aims to transfer pre-trial investigations involving these institutions into an electronic format¹²⁰⁴. Thus, in December 2023, the NABU detectives and SAPO prosecutors began accepting applications for permission to search a person's home or other property in an electronic

1197 Technical Assessment of the National Anti-Corruption Bureau of Ukraine 2023, p. 12. URL: https://nabu.gov.ua/site/assets/files/47003/tekhnichna_otcinka_nabu_2023_ua-1.pdf.

1198 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, Arts 191, 192. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

1199 Capable, effective and independent: analysis of anti-corruption agencies. Transparency international Ukraine. 2023. URL: <https://ti-ukraine.org/research/spromozhni-efektyvni-j-nezalezhni-analiz-antykoruptsijnyh-organiv/>.

1200 Embezzlement on shells. What was revealed during the hearing in the Liiev case? Hromadske. 2024. URL: <https://hromadske.ua/posts/rozkradannya-na-snyradah-vaks-vidpraviv-eksposadovcya-minoboroni-liyeva-pid-vartu>.

1201 SAPO returns the case of former Defence Ministry official Liiev to the National Police. Slovo i dilo. 2024. URL: <https://www.slovoidilo.ua/2024/03/15/novyna/polityka/sap-povernula-naczpolicziyi-spravu-eksposadovcya-minoborony-liyeva>.

1202 66.7 thousand US dollars for land lease: city council deputy exposed. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/66-7-tis-dol-ssha-za-orendu-zeml-vikrito-deputata-m-s-kradi/>; 10.5 thousand US dollars for a decision in a fatal road accident case: a judge suspected. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/10-5-tis-dol-ssha-za-r-shennia-u-sprav-pro-smertel-ne-dtp-p-dozriu-t-sia-suddia/>; Receiving undue advantage by an official of Odesa Regional State Administration: investigation completed. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/oderzhannia-nepravomirno-vigodi-posadovtsem-odesko-ova-rozsliduvannia-zavershene/>.

1203 Granting NABU autonomous wiretapping depends on the SSU - Kryvonos. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-society/3725464-nadanna-nabu-avtonomnogo-prosluhovuvanna-zalezit-vid-sbu-krivonos.html>.

1204 Electronic criminal proceedings: the HACC now accepts motions through the eCase system. The High Anti-Corruption Court. 2023. URL: <https://hcac.court.gov.ua/hcac/pres-centr/news/1518985/>.

format. And in March 2024, the HACC started accepting applications for temporary access to belongings and documents¹²⁰⁵. This will increase the effectiveness of the investigation, guarantee transparency of the work of anti-corruption agencies and save resources.

At the same time, there is currently no possibility for the defence and victims to participate in criminal proceedings electronically. This prevents the defence from tracking the progress of criminal proceedings, receiving procedural decisions of the investigator and prosecutor in a timely manner, and getting acquainted with the criminal proceedings.

Involvement of the defence in criminal proceedings in electronic form may allow optimisation of certain procedures. For example, in 2023, HACC investigating judges considered 71 motions to set procedural deadlines, and 47 of them were granted¹²⁰⁶. If the defence is able to review the criminal proceedings in electronic form, the quality and speed of these processes may improve.

Also, the transition to the electronic form of criminal proceedings may have a positive impact on tracking the effectiveness of procedural actions of the pre-trial investigation body. Thus, in 2023, investigating judges considered 102 motions to extend the pre-trial investigation period, of which 85 were granted¹²⁰⁷. At the same time, when dismissing certain motions, investigating judges noted that the scope of procedural actions planned by the detective was not significant and did not require a large amount of time, given the total duration of the pre-trial investigation and the number of prosecutors¹²⁰⁸. The eCase management system will help to improve management processes in the pre-trial investigation body, track the scope of planned and completed procedural actions, as well as their effectiveness.

In the context of the entire criminal justice system, comprehensive digital transformation is a strategic priority in accordance with the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023–2027¹²⁰⁹ approved by the President of Ukraine, which, in particular, provides for the phased implementation of an electronic system for managing criminal proceedings through comprehensive replacement and modernisation of equipment, ensuring compatibility of IT systems, uninterrupted operation, access to all participants in criminal proceedings, and the development of a comprehensive system for the management of criminal proceedings. Therefore, the experience of the NABU and the SAPO can be useful for the entire system.

The interaction of the NABU and the SAPO with forensic institutions is problematic. After all, examinations in criminal proceedings under the NABU's jurisdiction are conducted in the expert institutions of the Ministry of Justice, the Ministry of Internal Affairs and the SSU, which negatively affects the timing of the investigation and, consequently, the effectiveness of the NABU. In addition, there are now risks of bribery of experts, influence on the results of expert opinions and information leaks¹²¹⁰.

1205 HACC expands the use of eCase. High Anti-Corruption Court. 2024. URL: <https://first.vaks.gov.ua/publications/vaks-rozshyriuie-ekspluatatsiiu-ikeys>.

1206 Report on consideration of cases and materials of criminal proceedings for 2023. High Anti-Corruption Court. 2024. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-K_2023_1.pdf.

1207 Ibid.

1208 Ruling of the High Anti-Corruption Court of 22.01.2024 in case No. 991/205/24. URL: <https://reyestr.court.gov.ua/Review/116572201>.

1209 On the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as a Part of the Security and Defence Sector of Ukraine for 2023-2027: Decree of the President of Ukraine of 11.05.2023 No. 273. URL: <https://zakon.rada.gov.ua/laws/show/273/2023#Text>.

1210 The NABU needs more staff and independent expertise: Semen Kryvonos met with the Ambassador of Canada. National Anti-Corruption Bureau of Ukraine. 2023. URL: <https://nabu.gov.ua/news/rozshirennia-shtatu-ta-nezalezhna-ekspertiza-vkrai-neobkh-dn-nabu-semen-krivonos-zustr-vsia-z-poslom-kanadi/>.

The **NACP** informed the Commission on the External Independent Evaluation of joint meetings with representatives of public authorities on cooperation with the NACP in the process of conducting a full verification of declarations¹²¹¹.

However, the NACP's cooperation with the competent authorities of other countries, in particular with regard to the exchange of data for the purposes of administrative inspections within the scope of the NACP's authority, for example, on the basis of Article 43 of the UN Convention against Corruption¹²¹² or on the basis of provisions of other applicable international treaties, lacks a clear establishment that the NACP has the authority to act as a competent authority. Furthermore, the functioning of the NACP's sanctioning activities and dissemination of relevant information was not envisaged by its legislative mandate, as set out in the Law of Ukraine "On Prevention of Corruption".

There have been numerous appeals from representatives of the diplomatic corps of partner countries regarding the negative impact of this list on the adoption of important decisions to counter Russian aggression¹²¹³. As a progress, on 22 March 2024, the NACP redirected users from the International Sponsors of War register to the State Register of Sanctions¹²¹⁴ to provide accurate and unified information about the official list of entities subject to sanctions in Ukraine. In addition, the NACP has provided the Interagency Working Group on Implementation of the State Sanctions Policy with the information contained in the "International Sponsors of War" section of the War and Sanctions portal, and the transfer of the documentary materials that served as the basis for entering this information shall be completed.

Recommendations

1. Evaluate the implementation of the NABU Development Strategy for 2021–2023¹²¹⁵ and take into account the relevant results when working on the strategic document for the next period.
2. Conduct a study of the challenges, threats and opportunities for the SAPO in its work, identify strategic goals and a mechanism for their implementation and set them out in the development strategy of the body.
3. Formalise the HACC's own findings on challenges, threats and opportunities in its work, as well as define strategic goals and a mechanism for their implementation in the development strategy of the body.
4. Review the NACP Development Strategy until 2028, in particular, in terms of updating the challenges and expected strategic results of institutional development.
5. Improve the NABU's organisational structure and interaction between departments by reviewing the internal distribution of staff, the role and location of individual structural units, and the organisation of work.
6. Ensure that the NABU is able to conduct wiretapping independently of the SSU.

1211 External independent assessment of the effectiveness of the National Agency on Corruption Prevention. 2023. URL: <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisiyi-z-provedennia-nezaleznoi-otsinky-efektyvnosti-dijalnosti-nazk.pdf>.

1212 UN Convention against Corruption. URL: https://zakon.rada.gov.ua/laws/show/995_c16#Text.

1213 An expanded meeting of the Government considered the issue of concentrating information on the state's sanctions policy on one resource. URL: <https://www.kmu.gov.ua/news/na-rozshyrenomu-zasidanni-uriadu-bulo-rozghliano-pytannia-zoseredzhennia-informatsii-shchodo-sanktsiinoi-polityky-derzhavy-na-odnomu-resursi>.

1214 Information and communication system State Register of Sanctions. URL: <https://drs.nsd.gov.ua/>.

1215 The National Anti-Corruption Bureau of Ukraine Development Strategy for 2021–2023. URL: https://issuu.com/nabu_nabu/docs/bfaee615222b10.

7. In order to ensure the full functioning of the eCase system, develop a technical capability and regulatory framework for involving other participants in criminal proceedings in electronic criminal proceedings.
8. Strengthen forensic support to the NABU by creating a special forensic institution. At the same time, it will be necessary to ensure the independence of experts and management both from the NABU and from third parties.
9. Legislatively define the NACP as a competent authority within the meaning of Article 43 of the UN Convention against Corruption in order to exchange data with competent authorities of other countries for the purposes of administrative inspections within the NACP's powers.
10. Transfer the sanctioning activities of the NACP, as well as the relevant developments, to another competent authority in order to preserve the mass of information, as well as to properly regulate the procedure for adding to and removing from the list of International Sponsors of War.

External audit of NABU and SAPO

State of play

NABU

A prerequisite for an unbiased assessment of the NABU and the SAPO is the introduction of a mandatory external audit of their activities.

In the current configuration, the external audit of the NABU is provided for by Law of Ukraine No. 1810-IX¹²¹⁶, whereby the assessment is conducted by the Commission for External Independent Performance Evaluation (Audit) of the NABU, consisting of three persons appointed by the Cabinet of Ministers of Ukraine on the basis of proposals from development partners. This audit should be conducted annually.

SAPO

The external audit of the SAPO was introduced by Law of Ukraine No. 3509-IX¹²¹⁷. It is to be conducted every two years, but not more than twice during the term of office of the Head of the SAPO.

The assessment is carried out by the Commission for External Independent Assessment (Audit) of the SAPO Performance consisting of three persons appointed by the Prosecutor General based on proposals from development partners.

Progress and issues

With regard to the NABU, the Law states that the relevant Commission approves and publishes the criteria and methodology for performance evaluation¹²¹⁸. At the same time, if each commission

1216 On Amendments to Certain Laws of Ukraine on Bringing the Status of the National Anti-Corruption Bureau of Ukraine in Accordance with the Constitution of Ukraine: Law of Ukraine of 19.10.2021 No. 1810-IX. URL: <https://zakon.rada.gov.ua/laws/show/1810-20#Text>.

1217 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine to Strengthen the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#n28>.

1218 On the National Anti-Corruption Bureau of Ukraine: Law of Ukraine of 14.10.2014 No. 1698-VII, para. 5, p. 7, Art. 26. URL: <https://zakon.rada.gov.ua/laws/show/1698-18#Text>.

approves significantly different criteria for such an assessment, this will not serve the sustainability of the audit and may also negatively affect the work of the NABU (since each time the audit criteria will be uncertain until the audit begins).

The introduction of the possibility of conducting an external audit of the SAPO at the legislative level¹²¹⁹ is a significant progress in the work of this body. Given the similarity of regulation of the NABU and SAPO audit processes and the problem of certainty and stability of criteria, the methods of external independent assessment (audit) of the SAPO performance may be relevant for this body as well.

Recommendations

Amend the legislation to transfer the authority to approve the general framework of criteria for performance evaluation of the NABU and the SAPO from the commissions to the Government. This document should be developed with the active participation of competent experts. With the approved general framework in place, the relevant commissions will be able to immediately start specifying them in the process of evaluating the NABU and the SAPO without spending much time on procedural issues. The formulated criteria should allow for a prompt and qualitative assessment of the effectiveness of the NABU and the SAPO.

Efficiency of court proceedings

State of play

The number of people whose indictments were sent to court by the NABU in the second half of 2023 is equivalent to the same figure for the second half of 2021. At the same time, in the first half of 2023, the NABU sent indictments to court against a record number of people – 147, including 9 top officials, 4 judges, 4 members of parliament and local councils¹²²⁰.

The number of criminal proceedings under consideration by the HACC in 2023 (including those received during the year) was a record for the HACC – 288. The growth rate compared to 2022 was 88.3%, and the share of proceedings reviewed during the year was 24.7%. This figure was better than in 2021 and 2022¹²²¹.

In 2023, the HACC delivered 45 verdicts on criminal offences in the field of public office and professional activities related to the provision of public services¹²²², of which 18 were approved with a plea agreement.

At least 3 people were released early by local courts from serving their sentences imposed by HACC judges¹²²³.

1219 On the Public Prosecutor's Office: Law of Ukraine of 14.10.2014 No. 1697-VII, p. 10, Art. 8¹. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

1220 Report: second half of 2023. National Anti-Corruption Bureau of Ukraine. 2024. URL: <https://nabu.gov.ua/activity/reports/>.

1221 Interactive graphics: The High Anti-Corruption Court: trial of corruption criminal offences (first instance). National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/interaktyvna-grafika-vyschyy-antikoruptsiynyy-sud-sudovyy-rozglyad-koruptsiynyh-kryminalnyh-pravoporushen-i-instantsiya/>.

1222 Report on the consideration of cases and materials of criminal proceedings for 2023. High Anti-Corruption Court. 2024. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-K_2023_1.pdf.

1223 Another official convicted by the anti-corruption court was released early by a local court - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/shhe-odnogo-zasudzhenogo-antykorsudom-posadovtsya-mistsevyj-sud-zvilnyv-dostrokov/>.

Progress and issues

The number of criminal proceedings referred to courts by the NABU and the SAPO is growing, but the efficiency of their trial is not improving .

The SAP measures propose to introduce a single judge review of criminal proceedings in the HACC as a court of first instance (except for criminal proceedings on particularly serious crimes, which are reviewed by a three-judge panel in the HACC). To this end, in 2023, the Government submitted to the Verkhovna Rada Draft Law No. 10178¹²²⁴ developed by the NACP.

Also, since the end of 2023, the Parliament has been considering the Government's draft law No. 10338¹²²⁵, which is intended to resolve the issue of the HACC's consideration of cases in civil and administrative proceedings. At the same time, in March 2024, the Government Draft Law No. 11130 on amendments to Article 31 of the CPC of Ukraine to improve the procedure for conducting criminal proceedings was registered¹²²⁶.

These draft laws suggest the same model of formation of judicial panels as in general local courts. This may to some extent reduce the workload of the HACC judges. However, the draft law No. 10178 does not specify the subject of the decision to schedule a trial - whether it is the presiding judge or the panel of judges¹²²⁷.

The government's draft law No. 11130 also has significant flaws. After all, it proposes to introduce a list of individuals in whose cases a collegial hearing may be held. These include MPs, ministers, judges of the Constitutional Court, the Chief Justice of the Supreme Court, the Head of the Antimonopoly Committee (AMCU) and other high-ranking officials. A large number of these officials are already involved in NABU cases or have a high chance of becoming so. These individuals will be entitled to a collegial trial regardless of the gravity of the criminal offence charged against them.

Also, the list of exceptions to a single judge trial is unclear and may be subject to political bargaining and negotiations. It does not correlate with the Law of Ukraine "On Prevention of Corruption"¹²²⁸ and has no connection with the categories established in criminal law. On 24 April 2024, the Parliament adopted draft law No. 11130¹²²⁹ without addressing the above-mentioned shortcomings.

Another issue related to the effectiveness of court proceedings is the prevention of abuse of procedural rights. The current CPC of Ukraine fails to provide for a list and signs of behaviour that can be regarded as abuse (with some exceptions).

1224 On Amendments to Article 31 of the Criminal Procedure Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings by the High Anti-Corruption Court: Draft Law of Ukraine, registration No. 10178 of 23.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43053>.

1225 On Amendments to the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine on Improving the Procedure for Consideration of Cases by the High Anti-Corruption Court: Draft Law of Ukraine, registration No. 10338 of 13.12.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43388>.

1226 On Amendments to Article 31 of the Criminal Procedure Code of Ukraine on Improving the Procedure for Criminal Proceedings: Draft Law of Ukraine, registration No. 11130 of 27.03.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43915>.

1227 The draft law states that "In criminal proceedings in a court of first instance, in which, before the entry into force of this Law, the collegial composition of the court is determined in accordance with the rules in force before the entry into force of this Law, and a preparatory court hearing is held, and the trial has not yet been scheduled, the trial in criminal proceedings is conducted and completed by the composition of the court determined in accordance with the provisions of this Law".

1228 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, note to Art. 51-3. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#n1731>.

1229 On Amendments to Article 31 of the Criminal Procedure Code of Ukraine on Improving the Procedure for Criminal Proceedings: Law of Ukraine of 24.04.2024 No. 3655-IX. URL: <https://zakon.rada.gov.ua/laws/show/3655-IX#Text>.

HACC judges hardly ever use the available tool of bringing to administrative responsibility for contempt of court. In addition, judges do not have the ability to impose monetary penalties on advocates, and the amount of such monetary penalties that can be applied to other participants in criminal proceedings is quite small.

The SAP stipulates the need to develop and submit to the Cabinet of Ministers of Ukraine a draft law which:

- › provides for the inadmissibility of abuse of procedural rights by parties to criminal proceedings and the possibility for an investigating judge or court to recognise certain actions or inaction of such parties as abuse;
- › empowers an investigating judge or court to issue a special ruling in case of abuse of procedural rights or failure to comply with obligations by participants in criminal proceedings;
- › expands the grounds for imposing monetary penalties for breach of duty by participants in criminal proceedings and increase their amounts¹²³⁰.

To implement the SAP, the NACP has developed a draft law 'On Amendments to the Criminal Procedure Code of Ukraine on the Inadmissibility of Abuse of Procedural Rights'. The draft law is currently being finalised with due regard to the comments of the Ministry of Justice of Ukraine¹²³¹.

Not all stakeholders believe that this approach to combating abuse of procedural rights is acceptable. For example, the Ukrainian National Bar Association believes that preventing the abuse of procedural rights is not a function of justice and objectively goes beyond the scope of judicial activity. And an attempt to implement this idea will create tools to restrict the parties' exercise of their procedural rights and fulfilment of procedural obligations¹²³². If this institution is properly formalised, this risk can be levelled.

The problem remains that the court is required to close criminal proceedings if the pre-trial investigation period is missed when an indictment is filed with the court. The Law of Ukraine No. 3509-IX amended the CPC of Ukraine to provide that the pre-trial investigation period before a person is notified of suspicion is not calculated¹²³³. However, no corresponding amendments were adopted to exclude clause 10 of part 1 of Article 284 of the CPC of Ukraine. Therefore, it cannot be assumed that the recommendation to improve the timeframe for pre-trial investigation of grand corruption cases has been fully implemented, as the obligation to close the case due to the expiry of the allotted investigation period remains.

Improvements to the plea bargaining system could increase the effectiveness of corruption trials. The problem lies in the different understanding of whether the parties to a plea agreement can stipulate a "suspended sentence". This was based on the terminological inconsistency of parts 1 and 2 of Article 75 of the CC of Ukraine.

1230 State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220, subpara. 2-8, para. 3.3.4.1.1 of Annex 2. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

1231 Information on the status, dynamics, completeness and effectiveness of the implementation of measures envisaged by the State Anti-Corruption Programme for 2023-2025, as well as the achievement of expected strategic results and solving key issues described in the Anti-Corruption Strategy for 2021-2025. National Agency on Corruption Prevention. 2024. Measure 3.3.4.1.1. URL: <https://dap.nazk.gov.ua/zahid/253/>.

1232 A judge has no right to establish the fact that an advocate has committed a disciplinary offence - Ukrainian National Bar Association. 2023. URL: <https://unba.org.ua/news/8394-suddya-ne-vpravi-vstanovlyuvati-fakt-vchinennya-advokatom-disciplinarnogo-prostupku.html>.

1233 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#n28>.

Despite the fact that the HACC approves plea agreements concluded by SAPO prosecutors with defendants in corruption cases with exemption from serving a sentence, there are examples of prosecutors (not the Specialised Anti-Corruption Prosecutor's Office) being brought to disciplinary responsibility for concluding such agreements¹²³⁴. At the same time, the courts, considering the complaint of the prosecutor brought to disciplinary responsibility, concluded that "the prosecutor deliberately unlawfully applied a legislative provision that was not subject to application, which led to the failure to fulfil the tasks of criminal proceedings and ignored the explanations of the higher prosecutor's office"¹²³⁵.

Due to the different approach of the courts to whether it is possible to suspend the sentence and apply other preferential sentencing provisions upon approval of the agreement, one of the cases was referred to the Grand Chamber of the Supreme Court¹²³⁶. However, the Grand Chamber of the Supreme Court did not investigate these issues, as it closed the cassation proceedings on formal grounds¹²³⁷.

When reviewing and approving plea agreements for corruption-related criminal offences, different court practices were found when assessing the category of "public interest". This leads to different interpretations of criminal law provisions¹²³⁸.

In addition, the CPC of Ukraine does not regulate whether the court is obliged to examine all the materials of the criminal proceedings when approving the agreement. It also does not oblige the prosecutor to send the pre-trial investigation materials for the court's assessment. Therefore, it can be witnessed from the HACC's practice that the criminal proceedings are not examined in full, and the qualification of a person's actions is often established by assessing only the essential circumstances of the criminal proceedings¹²³⁹. The problem is exacerbated when the agreement is approved at a preparatory court hearing, during which the parties cannot present any evidence.

On 14 June 2024, the Government registered Draft Law No. 11340, by which it proposed to amend the CC of Ukraine, in particular:

- › to allow the parties to a transaction to agree on a fine even if it is not provided for in the sanction of the article. At the same time, the amounts of such fines are quite large (from UAH 20.4 million for a serious crime);
- › to allow the parties to the agreement to agree on a penalty in the form of imprisonment below the lowest limit, provided that the other person is exposed or compensated for damages. In this case, the person cannot use the exemption from serving the sentence;
- › clearly define that exemption from serving a sentence in connection with probation is possible in the event of a deal. At the same time, it is proposed to increase the probationary period to 6 years, as well as the term of imprisonment that allows for the application of release from it to 8 years (previously 5 years)¹²⁴⁰.

1234 Decision of the Qualification and Disciplinary Commission of Prosecutors of 25.05.2022 No. 62dp-22. URL: <https://kdkp.gov.ua/decision/2022/05/25/2244>.

1235 Supreme Court, including the strict implementation of legal instructions in the prosecution system. Qualification and Disciplinary Commission of Prosecutors. 2023. URL: <https://kdkp.gov.ua/news/declaration/450>.

1236 Ruling of the Supreme Court of 16.02.2022 in case No. 947/10464/21. URL: <https://reyestr.court.gov.ua/Review/104086265>.

1237 Resolution of the Supreme Court of 29.03.2023 in case No. 947/10464/21. URL: <https://reyestr.court.gov.ua/Review/110428154>.

1238 Is it time to negotiate: HACC trends in plea bargaining in corruption cases - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/chy-chas-domovlyatysya-tendentsiyi-vaks-shhodo-ukladennya-ugod-v-koruptsijnyh-spravah/>.

1239 Ibid.

1240 On Amendments to the Criminal Code of Ukraine and the Code of Criminal Procedure of Ukraine to Improve the Effectiveness of Plea Bargaining: Draft Law of Ukraine, registration No. 11340 of 14.06.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44421>.

This draft law addresses certain issues related to plea bargaining for corruption and corruption-related criminal offences, but there are opportunities for abuse in concluding such agreements, and certain criteria for their approval are highly subjective. If such a model is introduced, special attention should be paid to the tracing and confiscation of criminal assets¹²⁴¹.

During the monitoring of HACC cases, it was found that **some people who were sentenced by the HACC to actual sentences were released from prison early by local courts**. After all, local courts are responsible for commuting sentences or early release of HACC convicts. For example, Vitalii Kuts, the head of Trebukhiv village council in Brovary district of Kyiv region, was conditionally released from the colony 11 months earlier¹²⁴².

Although the evaluative concepts used by the CC of Ukraine as grounds for mitigation of sentence or early release of convicts¹²⁴³ have been clarified to some extent with the adoption by the Ministry of Justice of the methodology for determining the degree of rehabilitation of a convict, a certain subjectivity remains.

Recommendations

1. Finalise the draft law on the introduction of the institution of combating abuse of procedural rights in criminal proceedings and submit it to the Parliament.
2. Amend the CPC of Ukraine by removing the obligation of the court to close criminal proceedings due to the expiration of the pre-trial investigation (clause 10, part 1, Article 284 of the CPC of Ukraine), and to empower the court to do so in case of violation of the accused's right to consider criminal proceedings within a reasonable time.
3. Provide in the CC of Ukraine for the possibility of applying preferential criminal law provisions when concluding plea agreements for corruption and corruption-related criminal offences, with safeguards against abuse of these opportunities.
4. Ensure uniformity of judicial practice in assessing the category of "public interest" when approving plea agreements for corruption and corruption-related criminal offences.
5. Amend the CPC of Ukraine to empower the court to request the collected pre-trial investigation materials when considering plea agreements.
6. To make compensation for damages, the exposure of another person, or the payment of a fine together with the confiscation of criminal proceeds, conditions for release from serving a sentence in connection with probation when concluding a plea agreement.
7. Amend Article 539 of the CPC of Ukraine to provide that issues related to the execution of a court verdict under which a person was convicted of a corruption-related criminal offence are considered by the HACC.

1241 Large fines and below-the-line sentences: how does the government propose to improve plea bargains in criminal cases? Transparency International Ukraine. 2024. URL: <https://ti-ukraine.org/news/velyki-shtrafy-ta-pokarannya-nyzhche-vid-mezhi-yak-uryad-proponuye-udoskonalyty-ugody-v-kryminalnyh-spravah/>.

1242 Another official convicted by the Anti-Corruption Court was released early by a local court - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/shhe-odnogo-zasudzhenogo-antykorsudom-posadovtsya-mistsevyj-sud-zvilnyv-dostrokovo/>.

1243 Methodology for determining the degree of correction of a convicted person. Order of the Ministry of Justice of Ukraine of 19.01.2023 No. 294/5. URL: <https://zakon.rada.gov.ua/laws/show/z0117-23#Text>.

Application of criminal law by Anti-Corruption Institutions

State of play

The Plenum of the Supreme Court is authorised to provide explanations of a recommendatory nature on the application of legislation in court cases based on the results of the analysis of court statistics and summarisation of court practice¹²⁴⁴. However, not a single such explanation has been provided since the Supreme Court began operating.

Most of the acquittals in 2022 and 2023 concerned criminal proceedings in which the defendants were accused of committing criminal offences under Articles 191 and 364 of the CC of Ukraine¹²⁴⁵.

A special working group was set up by a Presidential Decree to begin the process of harmonising Ukrainian legislation with the OECD Anti-Bribery Convention and related instruments¹²⁴⁶.

Progress and issues

The consistency of the application of criminal law by anti-corruption institutions in Ukraine is not monitored. One of the measures aimed at implementing the SAP is the annual preparation of summaries of the Supreme Court's case law in criminal proceedings on corruption and corruption-related criminal offences for the previous calendar year¹²⁴⁷.

As a result of this measure, an overview of the Supreme Court's case law is provided¹²⁴⁸. This review cannot be considered as a proper fulfilment of the measure specified in the SAP, since summarising court practice and reviewing legal positions are different logical operations that are stages of research activity. In other words, review is a prerequisite for generalisation. And it is the latter that is lacking for the sustainable application of criminal law.

The Alternative Report on the Evaluation of the Effectiveness of the Implementation of the State Anti-Corruption Policy states that there are shortcomings in the disposition of Article 364 of the CC of Ukraine in terms of the nature of the damage that is an element of this criminal offence. Namely, that Article 364 of the CC of Ukraine is unjustifiably broader than the provisions of Article 19 of the UN Convention against Corruption, since the use of power or official position against the interests of the service can be embodied in both illegal and formally legal acts committed not

1244 On the Judiciary and the Status of Judges: Law of Ukraine of 02.06.2016 No. 1402-VIII, cl. 10-2, p. 2, Art. 46. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#n2447>.

1245 Report on persons brought to criminal responsibility and types of punishment for 2023. High Anti-Corruption Court. 2024. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-PP_2023_1.pdf; Report on persons brought to criminal responsibility and types of punishment for 2022. High Anti-Corruption Court. 2023. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-PP_2022.pdf.

1246 A working group on the implementation of the OECD Anti-Corruption Convention is being set up in the Office of the President - Ukrinform. 2022. URL: <https://www.ukrinform.ua/rubric-politics/3537463-v-op-stvoruut-robocu-grupu-z-pitan-implementacii-antikorupcijnoi-konvencii-oesr.html>.

1247 Information on the status, dynamics, completeness and effectiveness of the implementation of measures envisaged by the State Anti-Corruption Programme for 2023-2025, as well as the achievement of expected strategic results and solution of key problems described in the Anti-Corruption Strategy for 2021-2025. National Agency on Corruption Prevention. 2024. Measure 3.3.1.3.5. URL: <https://dap.nazk.gov.ua/zahid/202>.

1248 Review of the Supreme Court's case law in criminal proceedings on corruption and corruption-related criminal offences. Decisions entered into the USRC in 2022. Supreme Court. 2023. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/oglyady/Oglyad_VS_korup_pravoporush.pdf.

in the interests of the service¹²⁴⁹. The CC of Ukraine also has shortcomings, particularly in Article 369², which establishes criminal liability for the abuse of influence but lacks a definition of extortion, leading to problems in its application.

The NABU Technical Assessment Report states that many of the NABU's cases of abuse of power and misappropriation of property resulted in acquittals; these cases should be analysed and the NABU's approach may need to be changed. Several such cases handled by the NABU drew criticism from civil society and the business community, which saw them as prosecutions of managerial decisions made by officials who were supposed to be engaged in reforms¹²⁵⁰.

Particular attention should be paid to the problem of implementing the OECD recommendations on the introduction of liability of legal entities for bribery. As part of one of the SAP measures, the NACP developed a report on the results of an analytical study on the possibility of amending national legislation to take into account the OECD Council's recommendations on the regulation of criminal liability of legal entities¹²⁵¹. In March 2024, the working group's findings were presented by the NABU jointly with the OECD at the workshop Ukrainian Legislative Reforms on the Path to Membership in the Working Group on Bribery: Liability of Legal Entities.

On 25 July 2024, Parliament registered Draft Law No. 11443, which aims to align the Criminal Code of Ukraine, the CPC of Ukraine, and other legislative acts with international standards for the liability of legal entities for corruption-related criminal offenses¹²⁵². However, some of its provisions are controversial, raising doubts about whether the declared goals can be achieved in practice. Therefore, Draft Law No. 11443 requires discussion with the involvement of a professional audience.

Recommendations

1. The Plenum of the Supreme Court should provide explanations of a recommendatory nature on the application of legislation in court cases on bringing to criminal responsibility persons guilty of corruption and corruption-related criminal offences.
2. Align the disposition of Article 364 of the CC of Ukraine with international obligations, and also define the term "extortion" as it appears in part 3 of Article 369² of the CC of Ukraine.
3. Hold public consultations on the harmonisation of Ukrainian legislation with the OECD Anti-Bribery Convention and related instruments.

1249 Alternative report on the assessment of the effectiveness of the implementation of the state anti-corruption policy. Centre of Policy and Legal Reform. 2021. p. 149. URL: https://pravo.org.ua/wp-content/uploads/2021/11/Alternative_Report_2021.pdf.

1250 Technical Assessment of the National Anti-Corruption Bureau of Ukraine 2023, p. 11. URL: https://nabu.gov.ua/site/assets/files/47003/tehnichna_otcinka_nabu_2023_ua-1.pdf.

1251 Information on the status, dynamics, completeness and effectiveness of the implementation of measures envisaged by the State Anti-Corruption Programme for 2023-2025, as well as the achievement of expected strategic results and solving key problems described in the Anti-Corruption Strategy for 2021-2025. National Agency on Corruption Prevention. 2024. Measure 2.4.4.1.1. URL: <https://dap.nazk.gov.ua/zahid/761>.

1252 On Amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Bringing Legal Entities' Liability for Corruption Criminal Offences in Line with International Standards: Draft Law of Ukraine, registration No. 11443 of 25.07.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44643>.

Limitation periods for prosecuting perpetrators of corruption

State of play

In the course of its procedural activity, the HACC released 21% of the persons whose cases were heard on the merits¹²⁵³. from criminal liability or punishment due to the expiration of the statute of limitations. The categories of cases in which people were released from criminal liability included not only criminal offences or minor crimes, but also serious crimes.

For example, in cases of false declarations, out of 18 proceedings considered by the HACC in 2023, 7 cases resulted in verdicts, 8 cases were closed, and 3 cases were released from criminal liability¹²⁵⁴.

Progress and issues

Members of the Ukrainian Parliament registered Draft Law No. 10100, which proposes to abolish the statute of limitations for grave and especially grave corruption offences committed during martial law, as well as to suspend the statute of limitations for grave and especially grave crimes during martial law¹²⁵⁵. This approach is ineffective, as it applies only to a limited range of criminal offences and does not take into account the specifics of corruption investigations.

The NABU does investigate cases where the incriminated criminal offence occurred a long time ago. These categories of criminal offences have their own peculiarities: they are difficult to detect (have a high latency), often during their investigation it is necessary to use international cooperation and comply with the established requirements for obtaining restricted information (bank secrecy, correspondence secrecy, etc.) in order to obtain evidence. All of this increases the time required to investigate this category of cases¹²⁵⁶.

Recommendations

Measures should be taken to ensure that the state is able to timely disclose and consider cases against persons accused of committing corruption-related criminal offences. For example, to expand the grounds for suspension of the statute of limitations, to increase criminal liability for certain corruption-related criminal offences and those involving obstruction of the investigation, and to shift the time of expiry of the statute of limitations to the time of the verdict rather than its entry into force.

1253 The HACC during the war - Transparency International Ukraine. 2023. 2023. URL: <https://ti-ukraine.org/research/vaks-pid-chas-vijny-osnovni-tendentsiyi-vyklyky-i-rekomendatsiyi-dlya-pokrashhennya-roboty>.

1254 Report on consideration of cases and materials of criminal proceedings for 2023. High Anti-Corruption Court. 2024. URL: https://court.gov.ua/userfiles/media/new_folder_for_uploads/hcac/statistics/reports/1-K_2023_1.pdf.

1255 How MPs propose to improve the terms in criminal cases - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/news/yak-nardepy-proponuyut-udoshkonalaty-stroky-u-kryminalnyh-spravah/>.

1256 HACC during the war - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/research/vaks-pid-chas-vijny-osnovni-tendentsiyi-vyklyky-i-rekomendatsiyi-dlya-pokrashhennya-roboty/>.

Confiscation of assets derived from corruption-related criminal offences

State of play

On 1 August 2023, the Cabinet of Ministers of Ukraine approved the Asset Recovery Strategy for 2023-2025, developed last year under the coordination of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA)¹²⁵⁷.

Over the 4 years of its operation, the HACC has delivered more than 150 verdicts, 48 of which included confiscation of property. In total, as of 31 December 2023, 61 people were sentenced to such a punishment. Special confiscation was applied in only 22 verdicts (as of 31 December 2023)¹²⁵⁸.

As of 31 December 2023, there were 24 HACC verdicts that had entered into force and ordered confiscation of property in the public domain. Of this number of verdicts, only 5 were executed in terms of confiscation, as evidenced by the completion of enforcement proceedings. A total of 17 enforcement proceedings are still ongoing, and in 2 cases, enforcement proceedings have not even been opened as of the beginning of 2024¹²⁵⁹.

The number of identified and traced assets decreased significantly in 2023. Thus, in 2020, the ARMA traced 45808 such assets, in 2021 – 24957, in 2022 – 196631, and in 2023 almost half as many – 92064. At the same time, it was last year that the Agency provided a large number of responses to asset tracing requests. Also, the number of requests sent by ARMA to foreign jurisdictions within the framework of cross-border information exchange remains low, especially if we take into account the number of requests received by ARMA from law enforcement agencies¹²⁶⁰.

Progress and issues

The ARMA, together with the concerned central executive authorities, had to develop and submit to the Cabinet of Ministers of Ukraine a draft action plan for the implementation of the Strategy approved by the Order of 1 August 2023 No. 670-r¹²⁶¹. within three months. Within four months from the date of approval of the Strategy, the government had to approve the action plan for the implementation of the Strategy, i.e. by 1 December 2023¹²⁶². However, the action plan for the implementation of the Strategy has not yet been approved.

1257 On Approval of the Asset Recovery Strategy for 2023-2025: Order of the Cabinet of Ministers of Ukraine of 1 August 2023 No. 670-r. URL: <https://zakon.rada.gov.ua/laws/show/670-2023-%D1%80#Text>.

1258 How to effectively confiscate property from top corrupt officials. - Transparency International Ukraine. 2024. URL: <https://ti-ukraine.org/research/yak-efektyvno-konfiskuvat-majno-v-topkoruptsioneriv>.

1259 Ibid.

1260 Report on the results of the evaluation of the effectiveness of the budget programme for 2023. National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes. 2024. URL: <https://arma.gov.ua/files/general/2024/02/19/20240219125347-61.pdf>; Report on the results of the evaluation of the effectiveness of the budget programme for 2022. National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes. 2023. URL: <https://arma.gov.ua/files/general/2023/02/15/20230215170220-18.pdf>; Report on the results of the evaluation of the effectiveness of the budget programme for 2021. National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes. 2022. URL: <https://arma.gov.ua/files/general/2022/02/17/20220217163342-52.pdf>; Report on the results of the evaluation of the effectiveness of the budget programme for 2020. National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes 2021. URL: <https://arma.gov.ua/files/general/2021/02/18/20210218174928-25.pdf>.

1261 On Approval of the Asset Recovery Strategy for 2023-2025: Order of the Cabinet of Ministers of Ukraine of 01.08.2023 No. 670-r. URL: <https://zakon.rada.gov.ua/laws/show/670-2023-%D1%80#Text>.

1262 Operational Measures for the Implementation of the Asset Recovery Strategy for 2023-2025: Order of the Cabinet of Ministers of Ukraine of 01.08.2023 No. 670-r. URL: <https://zakon.rada.gov.ua/laws/show/670-2023-%D1%80#Text>.

In addition, there are legislative and organisational issues with asset recovery. Legislative issues include shortcomings in the regulation of the use of confiscation of property, the process of sending requests for the execution of this punishment abroad, as well as international treaties to which Ukraine is a party on the execution of sentences. Meanwhile, the organisational ones relate to the practice of charging persons with crimes that cannot be effectively prosecuted abroad, the process of prosecution *in absentia*, i.e. in the absence of the accused, shortcomings in asset tracing and insufficient use of joint investigation teams and asset recovery agreements¹²⁶³. All these problems should be taken into account when developing an action plan for the implementation of the Asset Recovery Strategy.

It is difficult to verify the quality of execution of HACC verdicts on confiscation of property, as there is no public statistics on the results of the sale of such property. The HACC's statistical reports lack this information, and the State Executive Service does not provide such information in response to public requests¹²⁶⁴. In addition, there are problems with the enforcement of such verdicts, as the State Executive Service has issues with access to certain registers and databases, and difficulties with communication¹²⁶⁵; confiscated property is sold through electronic auctions at SETAM, and the register of seized property does not always correctly reflect information on the confiscation of an asset and its subsequent sale¹²⁶⁶.

ARMA lacks institutional capacity. As a result of the external audit of the National Agency's activities in 2022, the auditors found that most of the Agency's functions were not performed properly in 2022. The independent audit found that certain aspects of ARMA's activities were not covered by local regulations, some functions were not performed at all due to the lack of initiatives from other bodies, and the Agency's capabilities were not fully utilised¹²⁶⁷.

The problems of the ARMA are exacerbated by the following: the competition for the Head of ARMA without involvement of development partners, as well as the politicisation of this process; the lack of a regulatory framework for a high-quality independent external assessment of ARMA's activities; and the poor regulatory framework for the selection of managers of seized assets; lack of established joint planning between law enforcement agencies and ARMA representatives on the management of specific seized assets.

Recommendations

1. Approve the action plan for the implementation of the Asset Recovery Strategy for 2023–2025, which will contain specific steps to improve the work of state bodies in this area.
2. Improve measures to confiscate corrupt assets. For example, the procedure for confiscation of property should be brought in line with generally accepted international standards; the CC of Ukraine should provide for 'extended' confiscation of property; initiate the conclusion of new and improvement of existing bilateral treaties on legal assistance in criminal cases in terms of confiscation of assets obtained through criminal means.

¹²⁶³ How to return criminal assets from abroad: what needs to be changed in Ukrainian legislation - Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/research/yak-povertaty-zlochynni-aktyvy-z-za-kordonu>.

¹²⁶⁴ How to effectively confiscate property from top corrupt officials - Transparency International Ukraine. 2024. URL: <https://ti-ukraine.org/research/yak-efektyvno-konfiskuvaty-majno-v-topkoruptsioneriv/>.

¹²⁶⁵ Report on the results of the study of the enforcement of court decisions and other bodies in Ukraine - Human Research. 2023. URL: <https://www.pravojustice.eu/storage/app/uploads/public/64f/6df/591/64f6df591b0dc111219083.pdf>.

¹²⁶⁶ How to effectively confiscate property from top corrupt officials - Transparency International Ukraine. 2024. URL: <https://ti-ukraine.org/research/yak-efektyvno-konfiskuvaty-majno-v-topkoruptsioneriv>.

¹²⁶⁷ Report on the results of the operational audit of the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes in 2022. AC Crowe Ukraine. 2024. URL: <https://arma.gov.ua/files/gener-al/2024/01/03/20240103173925-60.pdf>.

3. Publish statistical reports on the status of execution of court verdicts in terms of confiscation of property and special confiscation of property, as well as analyse the results obtained to improve the work of the competent authorities.

4. Improve asset tracing and management of seized assets by strengthening the institutional capacity of ARMA. For example, introduce: a system of transparent selection of the Head of ARMA; a legal and qualitative external independent assessment of ARMA's performance; full joint planning between law enforcement agencies and ARMA representatives on possible measures to manage specific seized assets; prioritisation of asset seizures by criminal courts; transparent procedures for asset management, sale and valuation; unblocking the possibility of corporate rights management.

Resumption of electronic declaration and verification of declarations

Restoring mandatory submission and verification of e-declarations of public officials

State of play

In December 2023, the Parliament adopted Law of Ukraine No. 3503-IX¹²⁶⁸, which addressed and in fact fully implemented two requirements of the European Commission to correct the most acute problems in the restored institution of electronic declaration, which is to be welcomed.

Thus, Article 51³ of the Law of Ukraine "On Prevention of Corruption"¹²⁶⁹ was supplemented with a new part, whereby a full verification of the declaration shall be carried out in respect of the objects of declaration not covered by the full verification of the declarations of the relevant declarant for previous periods, unless the NACP has received new information about the object being verified or when there are new sources of information that were not known or available to the National Agency during the previous full verification. At the same time, part 7 of Article 51¹ of the Law, which stipulated that during the full verification of the declaration, the NACP does not verify the grounds for the acquisition of real estate and vehicles acquired by the declarant or a member of his/her family before the day of election (appointment) of the person to the position in connection with which the person first became obliged to submit declarations, was excluded.

Progress and issues

Despite significant amendments to the Law of Ukraine "On Prevention of Corruption"¹²⁷⁰, there are still provisions that are poorly justified and should be corrected. These include

1268 On Amendments to the Law of Ukraine 'On Prevention of Corruption' to bring certain provisions in line with the conclusions of the European Commission on Ukraine: Law of Ukraine of 08.12.2023 No. 3503-IX. URL: <https://zakon.rada.gov.ua/laws/show/3503-20#Text>.

1269 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1270 Ibid..

the provision that MPs are allowed to omit leased real estate of up to 75 m² in their declarations if they are compensated for the costs of such property, which is an unjustified threat to the completeness of declarations in the open register and an example of corporatism.

It is also possible to hide full information about the same asset by indicating information about it only in one section of the declaration, which will not be considered a violation. It remains to be seen how the practice will develop and whether declarants will use this provision to avoid disclosure of certain information. This provision can be interpreted very broadly and in different ways. For example, if a declaration lists a property but does not mention a financial liability related to that property, this may raise questions about whether it should be disclosed in the section on financial liabilities.

The heads of separate subdivisions and branches of legal entities and their deputies were excluded from the list of declarants due to the new definition of “official of a legal entity under public law”¹²⁷¹. At the same time, corruption at state-owned enterprises, in particular during tenders held by such units, has repeatedly been the subject of public attention and investigations by law enforcement agencies. This raises another issue: the circle of persons who may be held liable for illicit enrichment or subject to civil forfeiture is narrower than the circle of persons obliged to file declarations, which may be disproportionate to the requirement to disclose detailed property information¹²⁷².

It is also necessary to carefully consider how the new right to familiarise the declarant with all the materials of the full inspection of the declarant will function in practice¹²⁷³. For example, whether declarants will use this opportunity to demand materials related to criminal proceedings when investigators and/or prosecutors oppose disclosure of such information to the declarant.

The NACP’s efforts to provide the most comprehensive explanations of the various life circumstances of declarants, some of whom were required to submit three years’ worth of missed declarations, should be welcomed¹²⁷⁴. Nevertheless, this leads to the explanations becoming increasingly voluminous and creating difficulties in finding the necessary information for an average declarant. Also noteworthy are the NACP’s efforts to integrate various databases into the register of declarations at the stage of filling out a new declaration, including those for the declarant’s family members¹²⁷⁵.

Recommendations

1. Improve the provisions of the Law of Ukraine “On Prevention of Corruption” in terms of requirements for electronic declaration and the procedure of full verification carried out by the NACP, namely:
 - › remove the provisions allowing MPs not to indicate in their declarations information about rented real estate up to 75 m² if the costs of such real estate are reimbursed to them;

1271 Ibid, p.1 Art. 1.

1272 For example, the note to Art. 368⁵ “Illicit enrichment” of the Criminal Code of Ukraine does not mention the persons referred to in subpara. ‘a’, ‘c’-‘d’ of clause 2 of part 1 of Article 3 of the Law of Ukraine “On Prevention of Corruption”, who are also obliged to submit a declaration of a person authorised to perform the functions of the state or local self-government. These include, for example, the following categories of declarants: members of the medical and social expert commission and the medical advisory commission, the National Agency for Higher Education Quality Assurance, the Council of the National Bank of Ukraine, etc.

1273 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 4, Art. 51-3. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1274 NACP Knowledge Base, section “Declarations”. URL: <https://wiki.nazk.gov.ua/category/deklaruvannya/>.

1275 The data for the declaration of family members can now be obtained using the Diia app in a few clicks in the Register of Declarations. 2024. URL: <https://nazk.gov.ua/uk/novyny/dani-dlya-deklaratsii-stosovno-chleniv-sim-i-vidteper-mozhna-otrymaty-zadopomogoyu-zastosunku-diya-za-dekilka-klikiv-v-reestri-deklaratsiy/>.

- › remove the provision on specifying information about the same asset in only one section of the declaration;
 - › limit the right of the declarant to get acquainted with all the materials of the full audit of themselves based on the results of its conduct;
 - › expand the range of officials of a legal entity under public law and include heads of separate divisions and branches of legal entities and their deputies in the list of declarants.
2. The NACP should improve the navigation in the “Explanations” section on its website and consider the possibility of integrating this block into the declaration filling process to the maximum extent possible.

Lifestyle monitoring

State of play

Lifestyle monitoring (LSM)¹²⁷⁶ remained the only relevant type of financial control that the NACP could carry out during the suspension of e-declaration verification. According to the NACP, as of the end of 2023, 552 lifestyle monitoring reports were conducted, which resulted in 31 materials on establishing signs of unreasonable assets being sent to the SAPO, and 13 to other anti-corruption actors (containing signs of a criminal corruption offence (illicit enrichment)¹²⁷⁷). This suggests that a very small proportion of the monitoring materials has further development and does not require any further work. Thus, this financial control measure has yet to demonstrate its potential in terms of obtaining a final court decision in criminal or civil proceedings, notifying a suspect, or even initiating or referring proceedings to court.

Progress and issues

It is worth recalling that many of GRECO’s recommendations, as well as those of the external assessment of the NACP’s organisational performance, remain relevant, including the improvement of the lifestyle monitoring procedure. Although there has been some progress in this regard – the NACP, after almost four years of refusal, approved the procedure for its conduct in autumn 2023 and registered it with the Ministry of Justice - the content of this procedure has not undergone any conceptual changes, which has been criticised by the public¹²⁷⁸. The NACP replaced the previously existing non-binding guidelines only after the Law¹²⁷⁹ was amended to restore e-declaration. That is, when MPs had already explicitly stipulated, although they did not have to do so, that the procedure for the implementation of the LSM is determined by the NACP in the manner prescribed by part 9 of Article 12 of this Law.

However, the **differences between the two types of financial control** – lifestyle monitoring and full verification of declarations – are still unclear. The legal grounds for their initiation are quite similar, and in practice, there may be confusion as to which procedure should be initiated in different cases. **The Procedure does not specify any clear LSM timeframe**, which should be limited in time as a procedure for full verification of the declaration (up to 120 or 180 days in certain cases), so as not to be an excessive interference with the declarant’s private life.

1276 On the Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, Art. 51-4. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1277 Building a virtuous government and a just society is the key to Ukraine’s victory and prosperity. The NACP’s work for 2020-2023. 2024. URL: https://drive.google.com/drive/folders/1JUSgAaVSnmxqdW1WOP7sbCvms08u_XTQ.

1278 The NACP has streamlined the monitoring of declarants’ lifestyles. Is it a happy ending or another profanation? 2024. URL: <https://ti-ukraine.org/news/nazk-vporyadkuvalo-monitoryng-sposobu-zhyttya-deklarantiv-tse-gepi-end-chy-cherhova-profanatsiya/>.

1279 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

The powers of the NACP's authorised persons in conducting the IPA are defined too broadly and need to be narrowed. One of the most significant omissions is the **absence of auto-distribution of monitoring among the NACP employees, which should also be corrected.**

Recommendations

The NACP's bylaws regulating the new lifestyle monitoring procedure should be revised to avoid excessive interference with the private life of declarants.

Financial control of the NACP after its renewal

State of play

As of 8 April 2024, more than 664 thousand declarations were submitted by public officials for the reporting period of 2023. During the previous campaign, which included two reporting periods at once (2021 and 2022) and took place after the reintroduction of declaration, 656 thousand and 649 thousand declarations were submitted, respectively. About 160 thousand declarations filed for the reporting period of 2021 and more than 137 thousand declarations for 2022 were automated¹²⁸⁰.

The global challenge of financial oversight is for the NACP to focus its limited human resources not only on mechanical work and comparing new declarations (approximately 2.5 million) with other registers to identify minor errors, but to direct its efforts towards achieving the main goal: reducing corruption.

The financial control system aims not only to ensure transparency through the online publication of information on the assets and property of public officials, but also to identify unjustified assets that are subject to civil or criminal confiscation. The main purpose of the introduced declaration verification mechanisms is to deprive persons who cannot explain the origin of their property of the opportunity to use it and hold public office after a court decision.

Progress and issues

The NACP has not yet fully unlocked its potential in terms of effective detection of conflicts of interest, undeclared property and schemes where assets are hidden behind numerous legal entities abroad; improving cooperation with other countries and finding new tools for this purpose. This is what will indicate the improvement of the restored e-declaration institution and is the main challenge facing the modern NACP.

However, full inspections are actually less effective than even the LSM, as evidenced by the figures recently released by the NACP. The NACP itself noted this as an achievement, but in practice, the new risk-based approach to the selection and verification of declarations has

led to the fact that only in terms of the NACP's finding of unjustified assets of officials, one LSM was more effective than more than 200 full verifications of declarations in the first half of 2024. It found almost UAH 29 million of such assets¹²⁸¹, while two hundred inspections revealed half as much – UAH 14.4 million¹²⁸².

1280 Almost 700 thousand declarations were filed in the reporting period of 2023. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/deklaruvannya/mayzhe-700-tysyach-deklaratsiy-podano-za-zvitnyy-period-2023-roku/>.

1281 The NACP found evidence of unjustified assets worth almost UAH 29 million from a former Deputy Prosecutor General. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/nazk-vyavlylo-oznaky-nabuttya-neob-runtovanyh-aktyviv-u-ekszastupnyka-genprokurora-na-mayzhe-29-mln-grn/>.

1282 Over 200 full audits of declarations completed by the NACP: violations worth UAH 700 million found. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/ponad-200-povnyh-perevirok-zavershylo-nazk-vyavleno-porushen-na-700-mln-grn/>.

It seems that this difference in results is due to the fact that during the full verification of the declaration, the NACP mistakenly focuses more on identifying inaccuracies in the e-declaration, for example, declared differences of several hundred hryvnias in bank accounts. And then they start from such inaccuracies, rather than from the personality of the declarant and their family members, who are the main focus of the LSM and play a central role in full verifications.

The declaration submitted to the register undergoes several types of control. It is important to understand the circumstances, grounds and purpose of each stage, as well as to assess the effectiveness of its bylaw regulation mechanisms, along with the relevance and compliance with the goal of the e-declaration institution. It seems that the NACP currently lacks a comprehensive vision of all aspects of financial control as a single business process.

The NACP has already eliminated some of the problems in financial control. In addition to approving the procedure for the LSM, it abandoned the recommendatory nature of the selection of declarations for full verification, approving the relevant procedure in December 2023¹²⁸³. However, a number of other tasks highlighted in the report of the external evaluation of the NACP's performance remain relevant. These include the closed nature of the procedures for inspecting intelligence officers, the closed nature of the rules of logical and arithmetic control, as well as artificially isolated control over the completeness of declarations, etc.

However, in December 2023, additional issues emerged, such as the introduction of automation of full verification of declarations, which also came under criticism from the public¹²⁸⁴. The purpose of this update, which is also not provided for in the relevant law, remains ambiguous and insufficiently distinguished from logical and arithmetic control, as well as from artificially separated control of the completeness of the declaration. In fact, the automated verification, which may affect up to a third of declarants, is not aimed at identifying irregularities or risks or potential shortcomings. Its main result is to inform the declarant, after fairly basic and simple comparisons, especially in the context of the future pulling of data from state registers into the declaration itself and the loss of the point of repeated verification next year, that their declaration is properly filled out and does not contain questionable assets or excessive risks. However, this is not a final decision; such a conclusion may be reconsidered by the NACP if new information is discovered later.

However, it remains unclear how several declarations, which contain significant amounts of cash, cryptocurrency, foreign assets, etc. – and for which there are no relevant registers (such as for cash or cryptocurrency) or automatic access (as with foreign registers) – have successfully passed auto-verification, according to the entries in the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions¹²⁸⁵.

Recommendations

The NACP should:

1. Comprehensively assess the entire system of business processes of financial control, identify procedures where duplication, conflicts or discrepancies between bylaws and the concept of the law may be allowed. Based on the results of this assessment, make the necessary changes to the legislative regulation to improve the financial control procedure.

1283 On Approval of the Procedure for Selecting Declarations of Persons Authorised to Perform State or Local Government Functions for Full Verification and the Priority of Such Verification Based on Risk Assessment: Order of the National Agency on Corruption Prevention of 07.12.2023 No. 284/23. URL: <https://zakon.rada.gov.ua/rada/show/z2146-23#Text>.

1284 A new round of full NACP inspections: How it will work now. 2024. URL: <https://ti-ukraine.org/news/nova-iteratsiya-povnyh-perevirok-nazk-yak-tse-vidbuvatymetsya-teper/>.

1285 Unified State Register of Declarations of Persons Authorised to Perform State or Local Government Functions. URL: <https://public.nazk.gov.ua/>.

2. Return to the previous concept of full verification of declarations, which did not provide for the availability of declarations that can be fully verified automatically.

Restoring political party reporting

Restoring political party reporting

State of play

The obligation of parties to submit reports was suspended by the Verkhovna Rada of Ukraine in 2020 for more than three years due to restrictions related to the COVID-19 pandemic¹²⁸⁶. In addition, the NACP's powers to verify such reports were also suspended following the introduction of martial law in Ukraine in 2022¹²⁸⁷. A special law restoring these responsibilities was only adopted in August 2023.

Progress and issues

The resumption of political party reporting by a special law¹²⁸⁸ that came into force on 26 December 2023 is a correct but overdue step, given that the parliament did not need to suspend reporting for almost four years, using the outbreak of the COVID-19 pandemic as an excuse. The efforts of civil society and development partners to advocate for recovery did not find a response in parliament¹²⁸⁹ until the EU supported early recovery¹²⁹⁰ as the last leverage. This lack of political will on the part of the authorities is worrying, but it is good that the legislator did not allow for the long period of suspension to be waived.

Ukraine has actually become a pioneer in such a resumption, as there are no similar situations and such long suspensions of reforms in international practice. A positive factor is the gradual resumption of reporting, with a number of different deadlines for submission for different years by different parties, parliamentary or non-parliamentary, with different features by period.

In fact, for 2020, political parties only need to submit paper reports. For the period 2021-2023, parties have the option of submitting special electronic reports in an annual format. Starting from 2024, parties will have to submit standard electronic reports in a quarterly format.

According to the Law¹²⁹¹, the parliamentary parties that have received state funding are the first to report. They were required to submit all reports for 2020–2023 by 26 March 2024. Non-parliamentary parties should have filed their reports by 26 April 2024. At the same time, all political parties should have filed a report for the fourth quarter of 2023 by 26 March 2024

1286 On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19): Law of Ukraine of 30.03.2020. No. 540-IX, Art. 123. URL: <https://zakon.rada.gov.ua/laws/show/540-20#Text>.

1287 On Protection of Interests of Entities Submitting Reports and Other Documents during the Period of Martial Law or a State of War: Law of Ukraine of 03.03.2022 No. 2115-IX. URL: <https://zakon.rada.gov.ua/laws/show/2115-20#Text>.

1288 On Amendments to Certain Legislative Acts of Ukraine on Improving State Financing and Control of Political Parties: Law of Ukraine of 23.08.2023 No. 3337-IX. URL: <https://zakon.rada.gov.ua/laws/show/3337-IX#Text>.

1289 Joint Statement: We call for the restoration of the obligation of political parties to submit quarterly reports on property, income, expenses and financial liabilities - CHESNO. 2021. URL: <https://www.chesno.org/post/4948/>.

1290 G7 and EU ambassadors expect resumption of e-declaration and approval of the SAP by Ukraine - NACP. 2023. URL: <https://nazk.gov.ua/uk/pro-nazk/posly-g7-ta-yes-ochikuyut-vidnovlennya-elektronnogo-deklaruvannya-ta-zatverdzhennya-dap-ukrayinoyu/>.

1291 On Amendments to Certain Legislative Acts of Ukraine on Improving State Financing and Control of Political Parties: Law of Ukraine dated 23.08.2023 No. 3337-IX, Art. 2. URL: <https://zakon.rada.gov.ua/laws/show/3337-IX#Text>.

(if they choose the annual option for 2023, they also have to submit it by 26 March 2024). Parties had the opportunity to choose a convenient option: to submit 4 annual reports or 16 quarterly reports for 2020-2023, etc.

In addition to the advantages, annual reporting also has one drawback, which is a legal requirement to include the internal party audit report only in the political party report for the fourth quarter¹²⁹². The NACP's bylaws also say nothing about the need to attach it to the annual report. Instead, starting from 2024, the possibility to report annually, which was provided for reporting for 2020–2023 suspended years, will disappear, leaving standard quarterly reports, and this ensures the consistency of public and state oversight over the quarterly reporting model. Parties appear to have had sufficient time to prepare such reports and generally received the necessary assistance and clarifications from the NACP, although the clarifications approved by the NACP in late December were only published on the agency's website in late January 2024¹²⁹³.

In addition to the interface flaws, the available explanations also contain some controversial differences in the NACP's interpretation of the law. They relate, in particular, to the fact that it should have taken into account the fact that some party branches were located in the temporarily occupied territories during this period. For the most part, a balance was struck in this situation to prevent political parties from abusing and using this as an excuse, while at the same time taking into account security considerations, etc¹²⁹⁴.

However, along with the restoration of the law, the barrier to funding for non-parliamentary parties was reduced from 5% to 3%¹²⁹⁵, which, although welcomed, was not subject to a broad inclusive discussion with stakeholders, nor was it discussed in detail in what amounts and when such funding should be provided.

The need to review the entire concept of the system of public funding of political parties, and not just the specific issue of the barrier to public funding, remains relevant, given the experience gained throughout the reform. Some parties have adapted to the current legislation and continue accepting contributions from individuals to finance the activities of parties without having the appropriate income (e.g., registered at the employment centre or on maternity leave); cooperating with entities that have signs of dubiousness (opening accounts before transferring funds); conducting transactions on paper; overpricing goods and services, etc¹²⁹⁶. A working group that presented its preliminary findings a year before the full-scale invasion¹²⁹⁷ along with a joint opinion from the Venice Commission and the OSCE¹²⁹⁸ Office for Democratic Institutions and Human Rights, worked to adopt a new Law "On Political Parties" that would address these and other challenges. However, due to a lack of political will¹²⁹⁹, the relevant draft law was not considered by the Verkhovna Rada.

1292 On Political Parties in Ukraine: Law of Ukraine of 05.04.2001 No. 2365-III, Art. 118. URL: <https://zakon.rada.gov.ua/laws/show/2365-14#top>.

1293 Clarification on reporting by political parties of 27.12.2023 No. 6. URL: <https://wiki.nazk.gov.ua/download-controler/?sid=185&a=docs&id=d054047d3cffa52be58e0d1954a7973075aa75366aca239d98b6d8c8c3acf1721758267>.

1294 Clarifications on reporting by political parties - National Agency on Corruption Prevention. 2023. URL: <https://wiki.nazk.gov.ua/category/zapobigannya-politychnij-koruptsiyi/roz-yasnennya-schodo-vidnovlennya-zvituvannya-politychnih-partiy/#post6189>.

1295 On Amendments to Certain Legislative Acts of Ukraine on Improving Public Financing and Control over the Activities of Political Parties: Law of Ukraine of 23.08.2023 No. 3337-IX, cl. 4, Art. 2. URL: <https://zakon.rada.gov.ua/laws/show/3337-IX#Text>.

1296 How to increase the integrity of political parties: 10 tips from the NACP - National Agency on Corruption Prevention. 2023. URL: <https://nazk.gov.ua/uk/yak-pidvyshhyty-dobrochesnist-politychnyh-partij-10-porad-vid-nazk/>.

1297 The expert community presented a draft law on political parties - Ukrinform. 2021. 2021. URL: <https://www.ukrinform.ua/rubric-politics/3182487-eksperti-predstavili-zakonoproekt-pro-politichni-partii.html>.

1298 Joint Opinion on the Draft Law on Political Parties. European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). 2021. URL: <https://rm.coe.int/cdl-ad-2021-003-e-uk-/1680a238c1>.

1299 Korniienko suggests introducing a new law on political parties to the Rada: see Fakty. 2021. URL: <https://fakty.com.ua/ua/ukraine/polituka/20211115-korniienko-proponuye-vnesty-na-rozglyad-rady-novij-zakon-pro-politychni-partiyi-pro-shho-vin/>.

Recommendations

1. The NACP should develop amendments to its own acts to bring them in line with the legislative changes and hold a broad public discussion with external stakeholders.
2. The working group should resume work on a new draft law on political parties in order to submit it to the parliament.

NACP challenges in the course of verification of submitted reports

State of play

Just before the suspension of political party reporting in 2020, the NACP was relaunched, and the staff of the relevant department changed significantly. Over the next 4 years, the new NACP staff had no opportunity to gain the necessary practical experience in verification, although they had both foreign training and exchange of experience with representatives of other countries. Currently, they have to check the reports for previous years within 90 days, which the previous staff of the department checked gradually. In addition, the criteria by which the NACP checks reports for, among other things, signs of abuse or corruption risks, etc., are closed to the public and have not been publicly discussed.

Progress and issues

Although the new head of the NACP, appointed by the Government at the end of February 2024, publicly states his moderation in personnel policy, this volume of work will still pose a great challenge for the NACP staff responsible for this area and risks becoming a more formal activity. Additionally, the NACPs specialists are assigned inspections on a quarterly basis, which may take up part of the agency's human resources to examine from scratch the activities of new parties resulting from such assignment every three months instead of introducing annual auto-assignment of parties. It is expected that parties will be more active in reporting for 2020, when local elections were held, and where the statute of limitations for possible administrative or criminal offences has already expired, etc. However, state funding may still be suspended or withheld until the relevant violations are resolved, etc. The reports for 2021–2023 will contain much less information.

Sanctions for violations of the requirements in the field of public funding of political parties remain insufficiently balanced and disproportionate. For example, a sanction in the form of termination of state funding for a political party, which can amount to tens or hundreds of millions of hryvnias, may be imposed for inaccurate information in party reports amounting to tens or hundreds of thousands of hryvnias. In this case, the NACP's response cannot be one that would weaken such a sanction by adapting it to the size of the violation. After all, state funding is either terminated or not, and cannot be limited to a certain part.

On the other hand, the only penalty for late submission of a financial report or submission in violation of the requirements is an administrative fine of UAH 5100 to 6800 (Article 212²¹ of the Code of Ukraine on Administrative Offences (hereinafter – the CUAO¹³⁰⁰) with no progressive liability for repeated violations. In theory, one can pay symbolic fines endlessly and avoid more serious sanctions. After all, even if a party disagrees with the NACP's position and challenges it in court,

1300 Code of Ukraine on Administrative Offences of 07.12.1984 No. 80731-X, Art. 212²¹. URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

such proceedings may drag on for a long time, during which no state funding will be provided and no mechanisms are provided for receiving the missed funding later in the state budget.

If the NACP finds evidence of criminal violations during the audit of a political party's reports (e.g., large-scale criminal schemes involving funds for political party financing), it should collect such materials and send them to the National Police. However, in the 8 years of the reform of state funding of political parties, not a single case has been brought to court by the National Police¹³⁰¹, which also jeopardises the effectiveness of the NACP's verification.

A separate challenge is that the National Police will be able to disregard the NACP's explanations to parties and introduce its own practice, which may differ from them. After all, the NACP's explanations are not binding and are merely recommendations, while the legislation on political parties, which the National Police may interpret differently from the NACP, is legally binding.

Recommendations

1. The NACP's capacity to verify political party reports should be strengthened by increasing human resources and implementing an annual auto-distribution system for party inspections among the employees of the body.
2. The criteria for verification of the NACP's reports as a preventive body should be widely discussed with the parties and external stakeholders, and instead of classifying such criteria as 'for official use only', they should be made available to the public.
3. The results of new audits of political parties' reporting should be made public in a comprehensive manner, not in fragments.
4. The system of sanctions for violation of legal requirements by political parties should be reviewed to make it more balanced, proportionate and broader.
5. The National Police should more thoroughly investigate the materials from the NACP on possible criminal offences by political parties, and the prosecutor's office should submit them to the court.
6. Amend the Law of Ukraine "On Prevention of Corruption" and clarify the status of the NACP's explanations, in particular to political parties, to remove their advisory nature. The NACP should reconsider its approach to providing explanations to avoid provisions contrary to the law by organising a public discussion of such explanations.

POLITDATA System

State of play

At the time of the resumption of reporting, the electronic reporting system for political parties POLITDATA¹³⁰² (hereinafter – the System), which was launched in 2021, contained virtually empty reports of inactive political parties. Prior to that, the System was closed for public access and was reopened in October 2023¹³⁰³. Before its reopening, it was a new tool for political parties,

1301 Information obtained through expert interviews conducted during the preparation of this report

1302 Unified State Register of Political Party Reports - National Agency on Corruption Prevention. 2024. URL: <https://politdata.nazk.gov.ua/>.

1303 NACP opens the Register of Political Party Reporting POLITDATA - National Agency on Corruption Prevention. 2023. URL: <https://nazk.gov.ua/uk/novyny/nazk-vidkryvaye-reyestr-zvitnosti-politpartij-politdata/>.

especially for those that failed to submit voluntary reports to the System during the suspension of reporting. This situation necessitated an extensive communication campaign, which took place from October 2023 and involved many representatives of political parties.

As of 15 March 2024, only 188 political parties were registered in the System. At the same time, according to the Ministry of Justice of Ukraine, as of 1 January 2024, 377 political parties were officially registered in Ukraine, but according to various sources, approximately 280 political parties are actually operating¹³⁰⁴. In total, as of 26 March 2024 (the last day of reporting), political parties (central offices and regional branches) submitted almost 14,300 reports to the NACP. However, 222 non-parliamentary parties did not report to the agency for 2020-2024¹³⁰⁵. And for the first quarter of 2024, the NACP was short 188 reports of political parties¹³⁰⁶.

Progress and issues

In fact, it is only now that the system is functioning at a stage where practical issues can be identified. Currently, the reports of political parties submitted before 2020 are already publicly available again, except for the reports for 2016–2017, as the law requires that reports be kept public for only 5 years¹³⁰⁷. However, the starting point of these 5 years is debatable, as the System has been closed for public access for a long time, and this period does not allow for comparison of reports even from parliamentary parties of different convocations.

Sometimes, the System encounters difficulties, which the NACP makes timely efforts to resolve – doubling of the displayed data, different statistical information pulled from the database at the same request at different times, system freezes, etc¹³⁰⁸. Such unstable operation can be explained by the novelty of the System, including its public section.

However, a more pressing problem is that the System is not user-friendly enough for a third-party analyst. It doesn't contain an advanced search tool for the content of reports, aggregated general statistical information, etc. Instead, there are separate reports that need to be studied individually.

The System has an Application Programming Interface (API). However, its use requires some experience with the relevant software, which an average citizen may not have. At the same time, there are alternative tools for analysing political finance, for example, “Gold of Parties” by the CHESNO Movement¹³⁰⁹ etc.

Recommendations

The NACP shall:

- 1) take measures to make the 2016-2017 reports of political parties publicly available, as well as to initiate amendments to the law so that the reports remain public for more than 5 years to maintain continuity and allow for comparison of their dynamics;

1304 189 political parties have not registered in the POLITDATA register. 2024. URL: <https://nazk.gov.ua/uk/novyny/189-politpartii-ne-zareestruvalysya-v-reestri-politdata/>.

1305 More than 220 political parties failed to submit reports to the NACP. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/politychna-koruptsiyaya-novyny/ponad-220-politychnyh-partiy-ne-podaly-zvity-do-nazk/>.

1306 More than 180 political parties failed to comply with the law on reporting to the NACP for the first quarter of 2024. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/politychna-koruptsiyaya-novyny/ponad-180-politychnyh-partiy-ne-vykonyali-vymogy-zakonu-schodo-zvituvannya-do-nazk-za-i-kvartal-2024-roku/>.

1307 Procedure for the formation and maintenance of the Unified State Register of Political Parties' Reports on Property, Income, Expenses and Financial Obligations: Order of the National Agency on Corruption Prevention of 19.02.2021 No. 102/21 - Section V, paragraph 4. URL: <https://zakon.rada.gov.ua/laws/show/z0508-21#Text>.

1308 Such problems were observed during the work with the System as part of the Report preparation.

1309 The gold of parties – CHESNO. 2024. URL: <https://zp.chesno.org/>.

2) upgrade the System further to improve its use by political parties and other users, in particular by adding automatic verification of available information and interaction with other state registers.

Corruption risk management; conflict of interest; whistleblower system

Internal anti-corruption programmes of state and local authorities

State of play

State and local self-government bodies, as defined in Article 19 of the Law of Ukraine “On Prevention of Corruption”¹³¹⁰, are required to adopt anti-corruption programmes. Such an anti-corruption programme is the third most important anti-corruption document after the Anti-Corruption Strategy and the SAP for a particular entity. It defines the policy framework for preventing and combating corruption and is aimed at managing corruption risks in the activities of a particular body. An authority’s anti-corruption programme and amendments to it are subject to approval by the NACP.

Progress and issues

As on 31 July 2024, a total of 131 authorities have effective anti-corruption programmes in place, while 33 do not¹³¹¹, which is a rather alarming indicator of compliance with the Law. In addition, the legislative list of entities that must adopt anti-corruption programmes does not include, in particular, village and town councils, district state administrations and separate structural units of local state administrations.

Additionally, there are anti-corruption programmes of legal entities that do not require the NACP’s approval and, in accordance with part 2 of Article 62 of the Law, are mandatorily approved by the heads of legal entities that are participants in the procurement procedure in accordance with the Law of Ukraine “On Public Procurement”¹³¹², if the cost of procurement of goods, services or works equals or exceeds UAH 20 million, as well as by the heads of state-owned, municipal enterprises, business companies (in which the state or municipal share exceeds 50 per cent), where the average number of employees is more than 50 per cent.

The NACP also has sufficient space to further simplify the procedures for assessing corruption risks and developing anti-corruption programmes for legal entities. The model anti-corruption

1310 On the Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, Art. 19. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

1311 Anti-corruption programmes of public authorities. National Agency on Corruption Prevention. 2024. URL: <https://antycorportal.nazk.gov.ua/antycorprogram/>.

1312 On Public Procurement: Law of Ukraine of 25.12.2015 No. 922-VIII, Art. 89. URL: <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

programme for legal entities¹³¹³, approved by the NACP in early 2024, which will come into force in August 2024, does not distinguish between the public, municipal and private sectors, taking into account the specifics of the activity, inherent corruption risks and the specifics of the organisational structure. In addition, the document itself contains provisions that apply only to legal entities under public law. While other provisions of the document apply only to legal entities specified in part 2 of Article 62 of the Law of Ukraine “On Prevention of Corruption”. Certain parts apply only to the subjects of the adoption of an anti-corruption programme in accordance with Article 19 of the Law of Ukraine “On Prevention of Corruption”, and the rest apply to all legal entities.

This approach does not make it easy to understand what exactly needs to be done, and this may be the reason why almost 20% of state bodies still do not have mandatory anti-corruption programmes for 2024¹³¹⁴. In addition, the NACP has formulated its position in such a way that legal entities are recommended to use a model anti-corruption programme as a basis, which may unify the approach of different implementers and not reflect their specific current corruption risks¹³¹⁵. The External Independent Evaluation Commission also recognised in its report that the procedure for submitting anti-corruption programmes and amendments to them to the NACP for approval and implementing their approval sets out in great detail the obligation to take correct in concept but burdensome measures to prevent corruption¹³¹⁶.

Recommendations

1. The remaining government and local authorities should expedite the development of anti-corruption programmes for 2024 and approving them by the NACP.
2. Include village and settlement councils, district state administrations and separate structural units of local state administrations in the legislative list of entities that adopt anti-corruption programmes.
3. The NACP should revise its guidelines on anti-corruption programmes to simplify them and pay more attention to how documents in this area are communicated to specific entities, as they should then effectively apply them in their own activities.

Anti-corruption expertise of the NACP

State of play

The NACP may conduct, on its own initiative and in accordance with its established procedure, an anti-corruption assessment of draft legal acts submitted to the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine¹³¹⁷. Typical criteria and methods of evaluation, as well as ways to identify and eliminate corruption-prone factors in such draft legal acts, are defined in

1313 On Amendments to the Order of the National Agency on Corruption Prevention of 28 December 2021 No. 830/21: Order of the National Agency on Corruption Prevention of 15.01.2024 No. 22/24. URL: <https://zakon.rada.gov.ua/rada/show/z0099-24#Text>.

1314 Anti-corruption programmes of public authorities. National Agency on Corruption Prevention. 2024. URL: <https://antycorportal.nazk.gov.ua/antycorprogram/>.

1315 On Amendments to the Order of the National Agency on Corruption Prevention of 28 December 2021 No. 830/21: Order of the National Agency on Corruption Prevention of 15.01.2024 No. 22/24. URL: <https://zakon.rada.gov.ua/rada/show/z0099-24#Text>.

1316 Report of the External Independent Evaluation of the NACP Performance of 24.07.2023. URL: <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisii-z-provedennia-nezalezhnoi-otsinky-efektyvnosti-diialnosti-nazk.pdf>.

1317 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 5, Art. 55. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

the NACP's methodology for conducting anti-corruption expertise¹³¹⁸. Between June 2023 and July 2024, the NACP issued 115 anti-corruption expert opinions¹³¹⁹.

Progress and issues

The NACP's model of anti-corruption expertise is in fact optional and differs from the mandatory anti-corruption expertise carried out by the Ministry of Justice of Ukraine, except for the anti-corruption expertise of draft legal acts submitted to the Verkhovna Rada of Ukraine by MPs, which is carried out by the Verkhovna Rada Committee on Anti-Corruption Policy¹³²⁰.

In general, the quality of anti-corruption assessments conducted by the NACP is not significantly lower than those conducted by the parliamentary committee and the Ministry of Justice. However, the high degree of legislative discretion and the NACP's independent selection of draft laws and the number of times they are reviewed may lead to cases when a draft law is reviewed only in the first reading, when in fact the NACP's methodology allows for review in any version, unlike the Committee on Anti-Corruption Policy, which, according to the Rules of Procedure of the Verkhovna Rada¹³²¹ has no authority to review draft laws after changes before the second reading.

The findings of the expert review, including the public review, are subject to mandatory consideration by the subject of the relevant act¹³²². However, the law fails to provide clear guidance on the review procedure and timeframe, allowing the authorities to act at their own discretion and ignore the findings of the expert review. For example, the Verkhovna Rada may wonder how to deal with the results of project expertise if the Parliamentary Rules of Procedure do not provide for a procedure for their consideration. In addition, the law does not require mandatory disclosure of all expert opinions, allowing for their concealment by the body that conducted the expert review in certain cases.

Recommendations

To amend the legislation to provide for measures aimed at eliminating gaps and legal uncertainty in the legislation in the field of anti-corruption expertise, in particular:

- › envisage clear terms and procedure for consideration of the results of anti-corruption expertise by the Verkhovna Rada;
- › to make all results of anti-corruption expertise publicly available;
- › limit the NACP's discretion in selecting draft legal acts for anti-corruption expertise.

1318 On Approval of the Methodology for Conducting Anti-Corruption Expertise by the National Agency on Corruption Prevention: Order of the National Agency on Corruption Prevention of 18.05.2023 No. 109/23. URL: <https://nazk.gov.ua/uk/documents/nakaz-vid-18-05-2023-109-23-pro-zatverdzhennya-metodologiyi-provedennya-antikoruptsiynoyi-ekspertyzy-natsionalnym-agentstvom-z-pytan-zapobigannya-koruptsiyi/>.

1319 Anti-corruption expertise. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/antikoruptsiyna-ekspertyza>.

1320 Novikov's ghost. How the NACP and the Cabinet of Ministers propose to 'improve' anti-corruption legislation - Dzerkalo Tyzhnia. 2024. URL: <https://zn.ua/ukr/anticorruption/privid-novikova-jak-nazk-razom-iz-kabminom-proponujut-udoskonaliti-antikoruptsiyne-zakonodavstvo.html>.

1321 On the Rules of Procedure of the Verkhovna Rada of Ukraine: Law of Ukraine of 10.02.2010 No. 1861-VI, Art. 133. URL: <https://zakon.rada.gov.ua/laws/show/1861-17#Text>.

1322 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 8, Art. 55. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

By-laws for monitoring conflicts of interest

State of play

In contrast to full verification of declarations, the NACP lacks an internal mandatory procedure for monitoring compliance with legal requirements on prevention and resolution of conflicts of interest and other restrictions. Also, the NACP does not use automated distribution of such monitoring among its authorised persons, which, along with other problems, was raised in the report of the external independent assessment of the NACP's performance. The NACP periodically informs about the protocols drawn up and some of the results of their judicial review.

Thus, in the first half of 2024, the NACP completed 93 monitoring and control activities regarding the implementation of legislation on ethical behaviour, prevention and settlement of conflicts of interest. It issued 12 orders and drew up 17 protocols on violations of the legislation on ethical behaviour, prevention and settlement of conflicts of interest, and other legal requirements and restrictions¹³²³.

However, the NACP's interaction with other stakeholders in this area of activity has not become more systematic

Progress and issues

Back in 2018, European experts presented a report "Conflict of Interest Management in Ukraine and the NACP"¹³²⁴ with 63 recommendations, many of which remain relevant today, for example, in relation to gifts, overlapping and concurrent employment, management of corporate rights, etc. A number of these recommendations are to be implemented through amendments to the Law of Ukraine "On Prevention of Corruption".

However, the amendment to introduce the category of 'apparent conflict of interest' into the legislation is currently premature. There are still significant problems, in particular in court practice, with officials' understanding of the concepts of real and potential conflicts of interest through the prism of the NACP's explanations, the quality of court proceedings in such cases, the ability to competently understand the available materials, correctly qualify all circumstances and give them a proper assessment, etc.

A global trend that has been going on for almost 10 years is the traditionally low number of protocols that ultimately result in an administrative penalty being imposed in court¹³²⁵. The NACP also faces difficulties - some members of the public warned the NACP against misinterpretation of the legislation, insufficient elaboration of materials submitted to the court, including with very short timeframe for their consideration in court (very close to the expiration of the administrative penalty), etc.¹³²⁶ It is noteworthy that the NACP's report for 2020-2023 does not address the issue of performance in this area¹³²⁷.

1323 Conflicts of interest: 17 protocols, 12 orders, 93 completed monitoring in the first half of 2024. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/konflikt-interesiv-17-protokoliv-12-prypysiv-93-zavershenyh-monitoringiv-za-i-pivrichchya-2024-roku/>.

1324 Conflict of Interest Management in Ukraine and the NACP: Conclusions and Recommendations. 2018. URL: <https://euaci.eu/assets/userfiles/resources/CoiSumUA1.pdf>.

1325 Analytical report on the results of the assessment of the effectiveness of the application of the laws of Ukraine on conflict of interest. 2021. URL: https://www.undp.org/sites/g/files/zskgke326/files/migration/ua/PRP_PLS_Conflict_of_interests_UKR.pdf.

1326 Alternative report on the assessment of the effectiveness of the implementation of the state anti-corruption policy / [O. Kalitenko, D. Kalmykov, I. Koliushko, et al.]; edited by M. Khavroniuk - Kyiv: O. Moskalenko, 2019. URL: https://pravo.org.ua/wp-content/uploads/2020/10/1553535186shadow-report-on-evaluating-the-effectiveness-of-state-anticorruption-policy-implementation_short.pdf.

1327 Report on the NACP's work 2020-2023 - NACP. 2024. URL: https://drive.google.com/drive/folders/1JUSgAaVSnmxqdW1W0P7sbCvms08u_XTQ.

In November 2023, the Deputy Minister of Justice of Ukraine announced that the CUAO and amendments to a number of other laws are being prepared to bring the legal framework in line with the rules of general administrative procedure¹³²⁸.

Recommendations

1. Consider introducing comprehensive amendments to the CUAO to improve the provisions on: guaranteeing equality of parties; introducing an effective way to notify persons of the drawing up of a report on an offence and its submission to the court; defining clear and sufficient time limits to allow the NACP to collect the necessary evidence and timely submit the case file to the court in accordance with the established procedures.
2. Supplement the CUAO with a provision stating that the NACP has the right to participate in court hearings against a person against whom it has drawn up a report on an administrative offence. In addition, grant the NACP the right to appeal in cases of administrative offences related to corruption.

Regulatory framework for whistleblower protection

State of play

The European Commission's report emphasises the need to ensure that the legal framework for whistleblower protection is completed¹³²⁹. In Ukraine, the situation is such that the test period, as it was described in political circles, of the functioning of legislation that protects only whistleblowers has been prolonged.

Progress and issues

The major problem is the absence of a separate law that would protect whistleblowers of public interest information (e.g., abuse of power, food, transport or environmental safety violations, torture or other human rights violations, etc.) in the so-called 'broad definition' that has long been discussed by members of the public¹³³⁰.

The European standards for whistleblower protection are set out in Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers¹³³¹ (hereinafter - the Directive). Ukrainian legislation does not fully take into account the requirements of the Directive, which, in particular, provides for the **extension of protection guarantees to:**

- › **persons who have assisted whistleblowers and facilitated whistleblowing;**

1328 Oleksandr Banchuk: It is important for the law on administrative procedure to work in full force - Ministry of Justice of Ukraine. 2023. URL: <https://minjust.gov.ua/news/ministry/oleksandr-banchuk-vajlivo-schob-zakon-pro-administrativnu-protseduru-zapratsyuvav-na-povnu-silu>.

1329 Ukraine 2023 Report. URL: https://neighbourhood-enlargement.ec.europa.eu/document/download/bb61ea6d-dda6-4117-9347-a7191ecfc3f_en?filename=SWD_2023_699%20Ukraine%20report.pdf.

1330 Who are the 'whistleblowers'? How civil society watchdogs are protected in Ukraine - Rubryka. 2022. URL: <https://rubryka.com/article/acrec-transparencyinternational/>.

1331 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1937>.

- › **persons who were perceived to be a whistleblower;**
- › **persons who were preparing to make a disclosure but did not have time to complete it before they were disclosed;**
- › **those who participate in professional organisations;**
- › **volunteers and interns, etc.**

In addition, the current legislation fails to specify clearly when local anti-corruption commissioners acquire whistleblower guarantees. And the whistleblower currently has no choice but to rely on the courts to protect his or her rights or to try pre-trial mediation beforehand. After all, if an employer dismisses a whistleblower without initiating a mediation procedure, this should be considered a violation of the whistleblower's rights.

There are both benefits and risks to having certified judges hear whistleblower protection cases, which are currently absent from the procedural law. On the one hand, judges should undergo relevant training to obtain such a certificate, as cases involving whistleblowers are of a higher complexity – the judge must understand the fundamental difference between the status of a whistleblower and that of a complainant or witness, etc. Indeed, one can already observe erroneous judicial practice¹³³² when the court recognises a person as a whistleblower if the facts reported by him or her are confirmed and an investigation, for example, of criminal proceedings, has been initiated. On the other hand, the consideration of whistleblower cases by an artificially 'narrowed' number of judges or in a separate designated local court may lead – through the state's certification of politically loyal judges without independent testing and open competitions, etc. – to the monopolisation of such proceedings to the detriment of whistleblowers.

The security of persons involved in criminal proceedings is regulated by an outdated law¹³³³ that is not systematically implemented in practice, in particular due to insufficient funding for the implementation of such security measures¹³³⁴, and does not apply to persons involved in administrative proceedings, etc. For example, if a whistleblower reports a violation of the law by a person for which disciplinary action is envisaged, such a whistleblower cannot rely on appropriate security measures. However, in the future, law enforcement agencies may discover facts of more serious offences in the process of processing the relevant whistleblower report.

The issue that is not regulated by the Directive¹³³⁵ is the disclosure of classified information, including state secrets. Although the Directive leaves this regulation to the discretion of national states and encourages reporting through internal channels rather than external or regular channels, it should be remembered that it sets minimum standards - and among these standards is the right of the whistleblower to choose the channel through which the report is made. Given the vagueness of Ukrainian legislation on intelligence, state secrets, etc., it is important to bear in mind that there is a high probability of a violation of Article 10 of the European Convention on Human Rights¹³³⁶ if a whistleblower is imprisoned for reporting classified information of public interest through external channels - especially if they have previously reported it through internal and regular channels.

1332 Information obtained from expert interviews conducted during the preparation of this Report.

1333 On ensuring the security of persons involved in criminal proceedings: Law of Ukraine of 23.12.1993 No. 3782-XII. URL: <https://zakon.rada.gov.ua/laws/show/3782-12#Text>.

1334 (In)security. On the problems of ensuring the personal security of civil society activists and human rights defenders in criminal proceedings. 2020. URL: https://www.helsinki.org.ua/wp-content/uploads/2020/09/Preview_Status_Pravozhist_A4-1.pdf.

1335 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1937>.

1336 Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950. Council of Europe. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text.

The definition of the reporting channels themselves, in particular the regular channel, was significantly deteriorated in terms of compliance with European standards by the amendments to the legislation that introduced the Unified Whistleblower Reporting Portal in the summer of 2021¹³³⁷. Thus, it is now impossible to report through regular channels to bodies with control or supervisory functions, etc. In practice, this will mean that a whistleblower will not be able to report to the relevant committee or provisional investigative commission of the Verkhovna Rada, the AMCU or the Accounting Chamber of Ukraine, etc.

Recommendations

Adopt a separate legislative act that would provide for:

1. A “broad definition” of a whistleblower of socially important information.
2. Extend protection guarantees to: persons who assisted whistleblowers and facilitated disclosures; persons who were perceived as whistleblowers; persons who were preparing to make a disclosure but did not have time to complete it; persons involved in professional organisations, volunteers and interns, etc.
3. Ensuring the safety of participants in proceedings without reference to criminal justice.
4. Extending the definition of a regular communication channel to include public authorities responsible for consideration and decision-making on the issues in relation to which the relevant information is disclosed. Regular channels must be established by specially authorised anti-corruption bodies, pre-trial investigation bodies, bodies responsible for monitoring compliance with laws in the relevant areas, and other relevant state bodies, institutions and organisations.
5. Communicating information with limited access, including state secrets, through an external communication channel if it is of public interest, without being brought to liability.

Unified Whistleblower Reporting Portal

State of play

In September 2023, the NACP launched the Unified Whistleblower Reporting Portal, which provides for the possibility to report corruption, monitor the status and results of consideration of such a report, and obtain information on the status of the whistleblower¹³³⁸. However, shortly after the launch, the portal was partially criticised by the public in relevant studies¹³³⁹. Although the launch of the portal enabled the implementation of the legislation adopted more than 2 years ago¹³⁴⁰ and avoided further delays. Prior to the launch of the portal, whistleblower reports were received through channels and considered in accordance with the procedure that was in place before the adoption of this legislative act.

1337 On Amendments to the Law of Ukraine “On Prevention of Corruption” to Regulate Certain Issues of Whistleblower Protection: Law of Ukraine of 01.06.2021 No. 1502-IX. URL: <https://zakon.rada.gov.ua/laws/show/1502-IX#Text>.

1338 Unified whistleblower reporting portal. National Agency on Corruption Prevention. 2024. URL: <https://whistleblowers.nazk.gov.ua/#/>.

1339 Whistleblowers in Ukraine: useful materials - ACREC Library. URL: <https://acrec.org.ua/library/?materials-type=ukraine-whistleblowers-library>.

1340 On Amendments to the Law of Ukraine “On Prevention of Corruption” to Regulate Certain Issues of Whistleblower Protection: Law of Ukraine of 01.06.2021 No. 1502-IX. URL: <https://zakon.rada.gov.ua/laws/show/1502-IX#Text>.

Progress and issues

The portal does not fully comply with best practices, especially in terms of usability, anonymity and confidentiality. The visualisation and explanation of the portal as an internal communication channel is insufficient. The fact that some of the portal's capabilities are quite inherent in regular communication channels may contribute to confusion. For example, the addressee of a message on the portal may be the NABU, NACP, OPG, etc¹³⁴¹.

The portal should not require the whistleblower to be qualified and have a legal assessment at the reporting stage. This stage should be removed as unnecessary and without providing the relevant additional information. The technical ability of the head of the agency to view the whistleblower's report on the Portal is contrary to other EU directives and regulations on personal data protection and processing, as well as the fact that the Portal fails to answer the question of how much and how such personal data will be processed and stored. Also, the Portal does not have a TOR version for more secure reporting.

In addition, for a long time now, the NACP has not provided information on cases where the NACP protected and supported whistleblowers but failed to achieve a positive result under the pretext of protecting the identity of the whistleblowers. Without such information, it is difficult to establish whether the NACP's activities are successful. Another negative development was the update of the NACP's clarification in the summer of 2023¹³⁴², which narrowed the status of a whistleblower compared to the one provided for by law. Given the dubious trends observed in the NACP in recent years, civil society representatives have issued key recommendations to restart the work of this body in the area of whistleblower protection¹³⁴³.

Recommendations

1. The Unified Whistleblower Reporting Portal should comply with international standards and best practices in terms of guaranteeing anonymity and confidentiality of whistleblowers.
2. The NACP should conduct a comprehensive communication campaign to promote the Portal among potential whistleblowers and inform the anti-corruption commissioners about its capabilities.
3. The NACP should take into account the recommendations of civil society representatives to improve its work with whistleblowers.

1341 Unified whistleblower reporting portal. National Agency on Corruption Prevention. 2024. URL: <https://whistleblowers.nazk.gov.ua/#/organizations>.

1342 NACP Clarification of 12.06.23 No. 2 "On the Legal Status of a Whistleblower". 2023. URL: https://wiki.nazk.gov.ua/category/vykryvachi-koruptsiyi/status_vykruvacha/.

1343 Key recommendations for restarting the NACP's work in whistleblower protection - ACREC. 2024. URL: <https://acrec.org.ua/wp-content/uploads/2024/03/brief-web-portal-NN.pdf>.

Findings of the independent external evaluation of the NACP's performance

Implementation plan for the recommendations of the external performance evaluation

State of play

The NACP became the first government agency in Ukraine to undergo a legally mandated independent assessment by international experts. In July 2023, the Report on the Independent External Evaluation of the National Agency on Corruption Prevention was published¹³⁴⁴. Immediately afterwards, the NACP issued a statement¹³⁴⁵, claiming that it would soon analyse the Commission's report in detail and develop an Implementation Plan to improve its performance. However, there is currently no publicly available information on the approval of the relevant Plan.

Recommendations

The NACP should hold a public discussion and publish an Implementation Plan for all recommendations of the external performance assessment, together with public reporting on the status of implementation of the recommendations.

Methodology and criteria for external assessment of the NACP

State of play

The Law of Ukraine "On Prevention of Corruption" stipulates that the Cabinet of Ministers of Ukraine approves and publishes the criteria and methodology for evaluating the NACP's performance. Based on the experience gained from the first external evaluation of the NACP's performance in 2020-2021, we can draw conclusions about certain shortcomings of these documents.

Progress and issues

The methodology and criteria¹³⁴⁶, approved by the Cabinet of Ministers of Ukraine in 2020 without open and inclusive consultations with stakeholders are complicated, not fully relevant and do not

¹³⁴⁴ Report of the External Independent Evaluation of the NACP Performance as of 24 July 2023. URL: <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisii-z-provedennia-nezaleznoi-otsinky-efektyvnosti-dialnosti-nazk.pdf>.

¹³⁴⁵ The NACP team achieved most of the performance criteria for all evaluation objects - report of the evaluation commission. National Agency on Corruption Prevention. 2023. URL: <https://nazk.gov.ua/uk/komanda-nazk-dosyagla-bilshosti-kryteriyiv-efektyvnosti-za-vsima-ob-yektamy-otsinyvannya-zvit-otsinochnovi-komisiyi/>.

¹³⁴⁶ On Approval of Criteria and Methodology for Evaluating the Performance of the National Agency on Corruption Prevention: Resolution of the Cabinet of Ministers of Ukraine of 20.05.2020 No. 458. URL: <https://zakon.rada.gov.ua/laws/show/458-2020-%D0%BF#Text>.

leave much room for the Commission's assessment. For example, the NACP's performance is assessed based on 237 criteria, and a number of them are duplicative or focus on more formal implementation or availability of certain legal documents, rather than on the NACP's impact on fighting and preventing corruption.

An illustrative example is the criteria for verification of electronic declarations of public officials. Many of them focused on whether there is a by-law regulation of a particular procedure, rather than on what results the NACP has after applying such financial control instruments, etc. For example, with regard to another object of assessment – the formation, coordination and monitoring of the state anti-corruption policy – it is necessary to focus more on qualitative criteria. For example, whether the state anti-corruption programme developed by the NACP is relevant and evidence-based, whether it is based on different sources and whether the list of such sources is complete.

Despite a significant number of assessment criteria, it does not fully cover the assessment of the implementation of legislative changes regarding judges and CCU judges introduced in late 2020¹³⁴⁷. The new legislation on lobbying¹³⁴⁸, which was recently adopted and expanded the NACP's mandate, has not yet been reflected in the content of the external assessment criteria.

Similarly, the audit currently has only one so-called personal criterion for the NACP head. There are also problems with the current high mathematical formula¹³⁴⁹ for declaring the NACP's activities ineffective and, accordingly, early dismissal of the NACP head based on other non-personal criteria. These requirements are too high, meaning that a lot of criteria need to be missed for this formula to work.

The audit stages themselves also need to be shortened so that the next external assessment takes less time. Thus, based on the actual evaluation schedule published by the Commission, we can see that long periods of time depended on the NACP's work.

A negative precedent of the previous assessment was the repeated refusal of the NACP to provide the Commission with the requested documents for the assessment, contrary to the law¹³⁵⁰. **The NACP should comply with the provisions that guarantee the Commission members access to information even with restricted access.** The Commission's basic questionnaires for external stakeholders and public authorities were too detailed, which could have complicated the process of completing them.

Recommendations

1. The Cabinet of Ministers of Ukraine should update the Methodology and Criteria for External Evaluation of the NACP's Performance after a broad discussion with stakeholders, including the NACP (which should be able to express its position, but should not have a significant influence on the final content of the documents) and the public. Further, it is necessary to introduce legislative amendments, whereby the government will approve the general framework of criteria

1347 On Amendments to the Law of Ukraine "On Prevention of Corruption" to Restore the Institutional Mechanism for Prevention of Corruption: Law of Ukraine of 15.12.2020 No. 1079-IX. URL: <https://zakon.rada.gov.ua/laws/show/1079-20#n2>.

1348 On Lobbying: Law of Ukraine of 23.02.2024 No. 3606-IX. URL: <https://zakon.rada.gov.ua/laws/show/3606-IX#Text>.

1349 The NACP's activities are deemed ineffective if at least one of the following conditions is met:

- › If more than half of the objects of assessment specified in subparagraphs 2-9 of paragraph 8 (including necessarily the objects specified in subparagraphs 4-6 of paragraph 8), the NACP failed to achieve more than two thirds of the criteria;
- › for each of the assessment objects defined in subparagraphs 2-9 of paragraph 8, the NACP failed to achieve half of the criteria.

Methodology for Evaluating the Performance of the National Agency on Corruption Prevention: Resolution of the Cabinet of Ministers of Ukraine of 20.05.2020 No. 458, para. 14. URL: <https://zakon.rada.gov.ua/laws/show/458-2020-%D0%BF#n329>.

1350 Report of the External Independent Evaluation of the NACP Performance of 24 July 2023, pp. 5-6. URL: <https://www.kmu.gov.ua/storage/app/sites/1/perevirka%20NAZK/zvit-komisii-z-provedennia-nezalezhnoi-otsinky-efektyvnosti-diiialnosti-nazk.pdf>.

for assessing the NACP's performance, and the Independent Evaluation Commission will specify public criteria and methodology for the assessment, similar to external audits of the NABU and the SAPO.

2. Reduce the number of evaluation criteria, eliminate their duplication and ensure their focus on qualitative indicators of the NACP's impact on corruption prevention, giving the Commission the appropriate discretion to do so.

3. Provide for new objects of evaluation – monitoring of lobbying requirements and an expanded range of personal criteria for evaluating the Head of the NACP, including his/her accountability, leadership, independence, competence, etc. Unsatisfactory results in this block should serve as grounds for early termination of the Head's powers. The mathematical formula for the number of unfulfilled non-personal assessment criteria for such early termination of powers should be made less demanding. Similarly, new evaluation criteria for judges and CCU judges should be added to comply with changes in legislation, in particular, regarding the NACP's compliance with the guarantees of independence of judges and CCU judges in the exercise of its powers.

4. Significantly simplify the basic questionnaires for external stakeholders and public authorities.

Legislative regulation of excessive influence of oligarchs and lobbying

Flaws and risks of the anti-oligarchic law

State of play

The Law of Ukraine “On Prevention of Threats to National Security Associated with Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)”¹³⁵¹ (the “Law”) entered into force on 7 May 2022, but has not yet been applied in practice. Its implementation requires extensive preparation, including the development of a register of oligarchs to be maintained by the National Security and Defence Council of Ukraine.

In July, the Regulation on the Register of Persons with Significant Economic and Political Influence in Public Life (Oligarchs), the Procedure for its Formation and Maintenance¹³⁵², was enacted. On 6 October 2022, a public procurement for the development of this register was announced, and the winner was selected¹³⁵³. However, the registry has not yet been launched.

1351 On Preventing Threats to National Security Associated with the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Law of Ukraine of 23.09.2021 No. 1780-IX, Art. 421. URL: <https://zakon.rada.gov.ua/laws/show/1780-20#Text>.

1352 On Approval of the Regulation on the Register of Persons with Significant Economic and Political Influence in Public Life (Oligarchs), the Procedure for its Formation and Maintenance: Decision of the National Security and Defence Council of Ukraine of 29.06.2022. URL: <https://zakon.rada.gov.ua/laws/show/n0012525-22#Text>.

1353 Announcement of a tender for software development services “Register of persons with significant economic and political influence in public life (oligarchs)” - PROZORRO. 2024. URL: <https://prozorro.gov.ua/tender/ua-2022-10-06-010169-a>.

On 23 February 2023, the Government postponed the launch of the registry, noting that all measures provided for by the Law should be implemented three months after the publication of the Venice Commission's opinion¹³⁵⁴. The relevant opinion was published in June 2023¹³⁵⁵, but in September 2023, the Government again amended the action plan, indicating that the register should be launched three months after the termination/ cancellation of martial law in Ukraine¹³⁵⁶.

Progress and issues

Even at the stage of consideration and adoption of the Law in the Parliament, it was subject to a lot of criticism from experts and the public. This criticism concerned both the legislative process in the Verkhovna Rada (special procedure for consideration in the second reading, adoption of the draft law before the Venice Commission provided its opinion) and the content of the Law.

The experts highlighted the following key shortcomings of the Law:

- › **Contradiction to the Constitution of Ukraine.** The law gives the National Security and Defence Council of Ukraine powers that are not directly provided for in the Constitution. In addition, it prohibits persons included in the register from financing the activities of political parties and any political campaigning, from being buyers in the privatisation process, which restricts the constitutional right of citizens to freely elect and be elected to state and local authorities and violates the constitutional principle of equality of citizens of Ukraine¹³⁵⁷.
- › The Security and Defence Council of Ukraine is subordinated to the President of Ukraine, which may lead to **political influence on its decision** to recognise a person as an oligarch.
- › **Potential violation of the European Convention on Human Rights and other international standards** due to (1) lack of clear and complete criteria for recognising a person as an oligarch, (2) lack of a procedure for collecting and storing personal information about a person, (3) lack of possibility to appeal against the decision to recognise a person as an oligarch.
- › Potential violation of the European Convention on Human Rights and other international standards due to **disproportionate restriction of the rights of a person recognised as an oligarch and imposition of additional burdens on that person.**
- › Certain provisions of the Law **disregard the provisions of the Association Agreement** on the proper observance of the principle of legal certainty, as well as the Rules of Procedure of the European Parliament and Council, the European Convention on Human Rights, the Helsinki Final Act, PACE Recommendation No. 1516 (2001) on the financing of political parties and election campaigns¹³⁵⁸.
- › The Law is not sufficiently transparent in its implementation mechanism. In particular, there is no provision for any monitoring of its implementation by civil society.

1354 On Amendments to the Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Resolution of the Cabinet of Ministers of Ukraine of 24.02.2023. № 177-r. URL: <https://zakon.rada.gov.ua/laws/show/177-2023-%D1%80#Text>.

1355 Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) – Venice Commission, 9-10 June 2023. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e).

1356 On Amendments to the Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Order of the Cabinet of Ministers of Ukraine No. 827-r of 19.11.2023. URL: kmu.gov.ua/npas/pro-vnesennia-zmin-do-planu-zakhodiv-shchodo-zapobihannia-zlovzhvanniu-nadmirnym-vplyvom-s827-190923.

1357 White Paper on Anti-Oligarchic Reform. Khavroniuk M.I., Piskunova O.B., Serebriakov M.M. 2023, p. 198. URL: <https://pravo.org.ua/books/bila-knyga-antyligarhichnoyi-reformy/>.

1358 Ibid.

If all the dubious, unconstitutional and contradictory articles are removed from this Law, the plot and the first article on the definition of terms are actually left. The adopted law does not offer effective measures to combat the oligarchy in Ukraine, but instead exposes the state to numerous national and international lawsuits and allows for potential political abuse of the instruments it introduces.

Recommendations

The Law of Ukraine “On Prevention of Threats to National Security Associated with Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” requires significant amendments, as the current iteration carries significant risks of violating the Constitution of Ukraine and international human rights standards.

Negative opinion of the Venice Commission on the law on excessive influence of oligarchs

State of play

The Venice Commission’s opinion on the Law¹³⁵⁹ was due to be published in winter 2022. However, its publication has been repeatedly delayed due to various circumstances, including the full-scale invasion of Ukraine by Russia. It is known that prior to the official publication of the document, the Commission communicated with both government officials and experts on the recommendations and warnings¹³⁶⁰.

Some experts suggest that due to the negative nature of the opinion, its publication was delayed for more than a year and a half at the request of the Ukrainian authorities. However, the conclusion itself states that in March 2023, the Speaker of the Verkhovna Rada of Ukraine asked the Commission to delay the publication due to martial law¹³⁶¹.

Progress and issues

In its opinion, the Venice Commission provided many reservations regarding the Law’s compliance with international and national legal standards. These reservations very closely echo the criticism of the public and experts, which confirms the substantive consultations held by the Commissioners with various stakeholders since autumn 2022¹³⁶².

In particular, the Venice Commission also concluded that there is a risk of political influence of the President on the decision of the National Security and Defence Council to recognise a person as an oligarch. It also noted the inadmissibility of completely restricting oligarchs’ access to the political life of the country and imposing an obligation on them to submit asset declarations.

1359 On Preventing Threats to National Security Associated with the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Law of Ukraine of 23.09.2021 No. 1780-IX, Art. 421. URL: <https://zakon.rada.gov.ua/laws/show/1780-20#Text>.

1360 The Head of State met with the delegation of the Venice Commission. Official website of the President of Ukraine. 2023. URL: <https://www.president.gov.ua/news/glava-derzhavi-zustrivsyaz-delegaciyeyu-venecianskoyi-komis-82717>.

1361 Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) – Venice Commission, 9-10 June 2023. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e).

1362 In particular, Transparency International Ukraine has repeatedly participated in these meetings.

According to the Commission, this would be a direct violation of the European Convention on Human Rights¹³⁶³.

Oligarchs are a major obstacle on Ukraine's path to strengthening and building a democratic society that sees its place in the European community. However, the fight against this phenomenon must be carried out with respect for human rights and freedoms.

The conclusion of the Venice Commission is more than reasonable and complete. Moreover, it coincides with the warnings of civil society.

Recommendations

The authorities, in cooperation with national and international experts and civil society, should develop a new comprehensive approach to implementing anti-oligarchic measures based on a strategic document similar to the Anti-Corruption Strategy and SAP.

Expediency of the anti-oligarchic law during martial law and after its cancellation is questionable

State of play

Despite delays in the implementation of the Law at the stage of its adoption, it had an impact on large Ukrainian businessmen. A number of such businessmen divested themselves of their media business in order to avoid falling under the criteria of oligarchs specified in the Law¹³⁶⁴. After the start of the full-scale invasion, the assets of Ukrainian oligarchs suffered even more, as did the entire Ukrainian economy. Thus, the presence of oligarchs in the political life of society was reduced to some extent even before the anti-oligarchic measures were fully implemented.

This process was also facilitated by the resumption of political party accountability¹³⁶⁵ and the government's adoption of the State Anti-Corruption Programme¹³⁶⁶. Of course, the SAP does not cover a number of important areas that should be reformed to reduce the influence of big business on big politics. For example, it is about introducing a transparent competition for the position of the AMCU Head. Another law that also partially covered some issues of anti-oligarchic reform is the Law of Ukraine "On Lobbying".

Progress and issues

All these factors raise the question of the expediency of anti-oligarchic legislation in the current and post-war period. It is extremely important not only to overcome the existing oligarchy in Ukraine, but also to prevent the emergence of a new one. Such a risk is more than justified for a war-weakened Ukraine that needs to ensure transparent and effective reconstruction.

¹³⁶³ Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) – Venice Commission, 9-10 June 2023. URL: [https://www.venice.co.e.int/webforms/documents/?pdf=CDL-AD\(2023\)018-e](https://www.venice.co.e.int/webforms/documents/?pdf=CDL-AD(2023)018-e).

¹³⁶⁴ Akhmetov gives up media business because of the law on oligarchs. Suspilne News. 2022. URL: <https://suspilne.media/259418-ahmetov-zaaviv-so-media-grupa-ukraina-peredast-medijnij-biznes-na-korist-derzavi/>.

¹³⁶⁵ On Amendments to Certain Legislative Acts of Ukraine on Improving State Financing and Control over the Activities of Political Parties: Law of Ukraine of 23.08.2023 No. 3337-IX, Art. 2. URL: <https://zakon.rada.gov.ua/laws/show/3337-IX#Text>.

¹³⁶⁶ On Approval of the State Anti-Corruption Programme for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine of 04.03.2023 No. 220. URL: <https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text>.

Moreover, the current situation, with increased public and international attention and somewhat weakened political resistance to reforms due to the war, provides Ukraine with a window of opportunity to accelerate anti-oligarchic processes. It is important to make effective use of these circumstances and develop a comprehensive approach to reforming the institutions responsible for controlling and preventing oligarchs' influence on state processes.

It should be noted that in 2021, the Government adopted an Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs)¹³⁶⁷. This Plan was aimed at strategic mapping and comprehensive implementation of the anti-oligarchic reform, but it was developed without involvement of the public and experts, which resulted in its superficiality, blanket nature and lack of a monitoring mechanism.

This conclusion is confirmed by the fact that most European countries do not have special anti-oligarchic legislation, while they are protected from the risks of excessive influence of oligarchs on state processes by an effective judicial system, competition law and rules on financing political parties and campaigns.

Recommendations

It is necessary to introduce an effective and comprehensive system of anti-oligarchic measures, which should primarily focus on reforming and strengthening existing institutions that are currently not fully effective and thus contribute to the increase of oligarchic influence on political processes in Ukraine. First of all, we are talking about the AMCU, the judiciary, the National Bank and the anti-corruption system.

To implement a full-fledged anti-oligarchic reform, it is important to have effective anti-monopoly measures, fight and prevent corruption, fight against money laundering, measures to ensure media pluralism, and rules for financing political parties and election campaigns. All these processes cannot be established by an anti-oligarchic law and the creation of a register of oligarchs alone. Instead, reforms and strengthening of existing institutions are needed.

The existing Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs) needs to be revised in cooperation with national and international experts and the public. This will help to avoid declarative and vague reform processes, and thus its ineffectiveness.

New law on lobbying

The annex to the European Commission's interim decision on Ukraine's accession to the EU emphasises the need for Ukraine to adopt a law on lobbying regulation as part of its de-oligarchisation action plan¹³⁶⁸. The Law of Ukraine "On Lobbying" (Law No. 3606-IX)¹³⁶⁹ was adopted by the Verkhovna Rada on 23 February 2024.

1367 On approval of the action plan to prevent the abuse of undue influence by persons with significant economic and political weight in public life (oligarchs): Order of the Cabinet of Ministers of Ukraine of 24.11.2021 No. 1582-r. URL: <https://zakon.rada.gov.ua/laws/show/1582-2021-%D1%80#Text>.

1368 Ukraine Report 2023 – Directorate-General for Neighbourhood and Enlargement Negotiations, 8 November 2023. URL: https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en.

1369 On Lobbying: Law of Ukraine of 23 February 2024 No. 3606-IX. URL: <https://zakon.rada.gov.ua/laws/show/3606-IX#Text>.

Progress and issues

The Law No. 3606-IX is an improvement over the version of the draft law No. 10337¹³⁷⁰ adopted in the first reading and the version presented by the NACP before its registration in the Parliament.

The NACP actually failed to develop draft law No. 10337, and the public discussions organised by the body in late 2023 looked more like an imitation. The NACP did not involve external stakeholders in the development of the draft law concept in the summer of 2023, when it, along with the NACP's international experience analysis, appeared in the ISM SAP¹³⁷¹.

In the course of public discussions, there were calls from the public to take a step back and return to the concept, which was quite different from the draft law presented by the NACP, but the Agency rejected such proposals. During the second round of public negotiations, the NACP failed to keep its promise to send the participants their written proposals, which it had received earlier, which also confirms the formality of the discussions. Eventually, the version of the NACP's draft law submitted to the government differed from the original one only in terms of minor changes.

In fact, the public reaction¹³⁷² and communication with MPs and the government contributed to the involvement of the civil society in the discussion of draft law No. 10337 and influenced its content, reducing potential threats to the civil society compared to the NACP's initial version. In general, the government and the parliament, in particular the Head of the relevant committee on legal policy, have demonstrated sufficient readiness to address the issue of lobbying as a priority for European integration. For example, the NACP's initial draft law excluded the prohibition on lobbying for legislative changes that "threaten national security" from the legislative initiative, which was inconsistent with the principle of legal certainty.

In a short time, a working group was set up with a fairly large number of civil society representatives. However, it is somewhat surprising that the draft law was not discussed with potential lobbyists. Nevertheless, more than 1300 amendments by MPs were considered, although the working group members lacked an articulation of the working group's influence. However, the planned speed of this process (in fact, only one and a half months) resulted in the failure to properly develop a real mechanism for identifying influence and introducing incentives for lobbyists. This was partly due to the NACP, which was represented at the working group and, when approached by the authorities, somewhat manipulatively rejected the public's proposals¹³⁷³ to improve lobbying regulation, citing, among other things, the fact that the draft law had already been reviewed by international organisations without any comments, although it was not known whether the texts of the draft laws were identical.

The Ukrainian feature was that the initiators of this draft law chose a different path compared to some European countries, not launching an information campaign before its adoption and not distinguishing between advocacy and lobbying in clear public communication. This could have led to a general lack of understanding of the consequences and meaning of lobbying regulation, as the available public communication was mainly limited to the message that the law was European integration-related and therefore needed to be adopted.

While Law No. 3606-IX may formally meet the European Commission's requirement to adopt lobbying legislation, it still needs to be further improved by amending it to better regulate

1370 On Fair Lobbying: Draft Law of Ukraine, registration No. 10337 of 13.12.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43386>.

1371 Measure 1.3.3.1.1. ISM SAP NACP. 2023. URL: <https://dap.nazk.gov.ua/zahid/1088/>.

1372 We call on the government and parliament to ensure consultations on draft laws on lobbying - Transparency International Ukraine 2023. 2023. URL: <https://ti-ukraine.org/news/zaklykayemo-kabmin-ta-verhovnu-radu-zabezpechty-zmistovni-konsultatsiyi-shhodo-zakonoprojektiv-pro-lobiyuvannya/>.

1373 Information obtained from expert interviews conducted during the preparation of this report.

commercial lobbying and implement best practices in lobbying regulation. In its current version, it is unlikely to achieve the goals of limiting the influence of oligarchs on decision-making and making it transparent. The law does not create effective mechanisms to identify these influences and ensure that the people who exert them are registered in the Transparency Register, which is set to be created in a rather short timeframe, which will pose a separate challenge for the NACP as its holder and administrator, as well as building a new area of the NACP's activities to monitor lobbying requirements from scratch.

The NACP is currently finalizing the Rules of Ethical Conduct for Lobbying Entities, which must be approved by the Cabinet of Ministers of Ukraine. The agency has published a report on the results of public consultations and sent the draft Rules to international partners for their assessment¹³⁷⁴. Additionally, the NACP has announced a tender for the development of the Transparency Register¹³⁷⁵.

Among the conditionally positive aspects of the adopted Law No. 3606-IX is the exclusion from its scope of activities of non-profit civil society organisations (CSOs), when such activities do not relate to commercial interests. In this context, commercial interest means money or other property, personal advantages, privileges, and other benefits of a tangible or intangible nature that a person receives or may receive in the course of business activities after influencing (attempting to influence) the object of lobbying as a result of the adoption (publication) of a regulatory act, amendments to it, invalidation (cancellation) of a regulatory act that is the subject of lobbying, or as a result of refraining from such actions¹³⁷⁶.

Such provisions may pose potential risks for human rights CSOs. For example, youth CSOs that advocate for a more favourable legal environment for youth development may be subject to potential scrutiny by the NACP, as this may be seen as a potential commercial interest, although in fact it is not, as the legal framework will be improved for all youth, not just for specific members of youth CSOs. The interpretation of the issue of commercial interests will depend on the clarifications of the NACP and the government, as well as on court practice.

The concept of conflict of interest in lobbying, in turn, will need to be revised, as it deviates significantly from the common practice of definition in other laws¹³⁷⁷ and is multifaceted and difficult to identify.

Moreover, the submission of information on contacts with lobbyists to the Transparency Register by civil servants does not fall within the scope of Law No. 3606-IX, **which needs to be corrected**. It also lacks sufficient incentives for lobbyists to register themselves. In addition, Law No. 3606-IX allows unlimited contributions by lobbying entities to political parties and election funds.

A major gap in Law No. 3606-IX is that it does not regulate the forms of lobbying that have historically developed in our region, and thus will not be able to achieve its goal of reducing corruption risks, let alone anti-oligarchic influence, which is not obviously related to the legislative regulation of lobbying. The adopted law may be perceived as an imitation of a solution to the problem, as its scope, along with anti-corruption requirements and restrictions, does not cover

1374 Fair lobbying: The NACP held public consultations on the Rules of Ethical Conduct. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/dobrochesne-lobiyuvannya-nazk-provelo-konsultatsii-z-gromadskisty-schodo-pravyl-etychnoi-povedinky/>.

1375 IT companies are invited to participate in the tender for the procurement of services for the creation of the Transparency Register. 2024. URL: <https://nazk.gov.ua/uk/novyny/zaproshuem-it-kompanii-do-uchasti-v-torgah-iz-zakupivli-poslug-zi-stvorenniya-reestru-prozorosti/>.

1376 On Lobbying: Law of Ukraine of 23.02.2024 No. 3606-IX, cl. 4, p. 1, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/3606-IX#Text>.

1377 On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII, p. 1, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>; On Public Procurement: Law of Ukraine of 25.12.2015 No. 922-VIII, p. 5, Art. 11. URL: <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

the entire patronage service, including advisers to top officials - from advisers to the Presidential Office to advisers to MPs, ministers, etc. This is crucial, as top advisers often engage in covert lobbying activities. Members of the public have noted that it is not known for whom and for what money advisers in the Presidential Office work, and how they use their access to the Presidential Office building and 'telephone law', given that some external advisers in reality have the same or even greater powers than some ministers¹³⁷⁸.

Following up on the issue of patronage service, one should also pay attention to improving the legal regulation of the activities of the Verkhovna Rada's staff and MPs' assistants, which is currently not transparent and proportionate. The best practice is that of the EU countries, where MPs successfully work with 3-4 assistants. Currently, in Ukraine, an MP can have up to 31 assistants, while the average figure in practice is about 20 assistants. Their wide access to government at all levels creates significant opportunities for lobbying and is not necessary for the fulfilment of the mandate. Their access to the parliament should also be limited, especially during plenary sessions, with the introduction of registration of attendance at the Verkhovna Rada.

In addition, the draft law on amendments to certain legislative acts of Ukraine on the rules of ethical conduct of MPs of Ukraine (the Code of Ethics), registered in the Parliament at the end of 2022, has not yet been considered by the committee¹³⁷⁹.

However, the Parliament has recently passed a draft law amending the Code of Administrative Offences in the area of lobbying¹³⁸⁰. Thanks to this law, the European Commission's request can be considered formally fully implemented. However, the proper application of this law will be hampered by the short limitation period for bringing to administrative liability, i.e. fines, etc. provided for in this law for violation of lobbying requirements. After all, the relevant administrative penalty may be imposed no later than two months from the date of the offence, and in case of a continuing offence - no later than two months from the date of its detection¹³⁸¹. Such timeframes for imposing an administrative penalty are too short to provide a realistic prospect of bringing to administrative responsibility for lobbying violations.

Recommendations

1. Conduct a communication campaign to reduce the negative perception of lobbying and explain the meaning of its regulation, in particular to increase the transparency of the work of state bodies.
2. Introduce amendments to the law that would improve the regulation of commercial lobbying and achieve the goals of its introduction, namely:
 - › expand the scope of lobbying to include individual acts, such as decision-making in the process of public procurement, appointment of certain officials, etc;
 - › ensure equality of all stakeholders, not just different professional lobbyists, in access to civil servants;
 - › include provisions encouraging lobbyists to actively develop and register their own codes of conduct;

1378 No restrictions on Yermak's advisers. How the new law on lobbying is becoming an imitation of MPs' work before the EU - Daria Kaleniuk, *Ukrainska Pravda*. 2023. URL: <https://www.pravda.com.ua/columns/2024/02/12/7441493/>.

1379 On Amendments to Certain Legislative Acts of Ukraine on the Rules of Ethical Conduct of People's Deputies of Ukraine (Code of Ethics): Draft Law of Ukraine, registration No. 8327 of 30.12.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41099>.

1380 On Amendments to the Code of Ukraine on Administrative Offences on Violation of Legislation in the Field of Lobbying: Draft Law of Ukraine, registration No. 10373 of 25.12.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43450>.

1381 Code of Ukraine on Administrative Offences of 07.12.1984 No. 80731-X, Art. 38. URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.

- › clarify the mechanisms of verification, monitoring and enforcement of compliance with the law to be carried out by the NACP – the law should mention a special procedure – a by-law to be adopted by the NACP;
- › activities of local self-government associations and scientific and technical activities are excluded from the scope of the law – this may help to avoid registration as a lobbyist, such provisions should be reviewed;
- › introduce a condition that civil servants may meet with lobbyists only after they are registered in the Transparency Register;
- › oblige lobbyists to submit the amount of lobbying expenses and information about the officials they target to the Transparency Register at the time of registration, with subsequent updates;
- › increase the frequency of lobbyists' reporting to more than twice a year;
- › expand the public section of the Transparency Register to include additional requirements to inform about lobbying contacts, lobbied officials and their functions, purpose and type of lobbying, disclosure of information about meetings (date, topic, duration, form, etc.), references to the decision to be influenced, documents confirming lobbying activities;
- › create an open and updated system for publishing agendas of public meetings and official meetings with lobbyists with the necessary level of automation.

3. Extend the Laws of Ukraine “On Lobbying” and “On Prevention of Corruption” to cover patronage services, including advisers to top officials, and change the legal framework for the number, status and activities of assistants to MPs. It is necessary to limit the maximum number of relevant assistants to 6 persons, as well as to narrow the powers of MPs' assistants who do not work under an employment contract. Alternatively, the status of pro bono MPs could be cancelled altogether. To increase the transparency of the assistants' work, a comprehensive publication of their profiles and reports on their activities on the website of the Verkhovna Rada should be introduced. In addition, it is necessary to include a requirement to disclose private interests of MPs' advisers and to introduce a provision prohibiting relatives of MPs from being their assistants.

4. Increase MPs' salaries, and at the same time adopt a code of ethics for MPs, along with amendments to the legislation on local self-government bodies that would oblige local councils to adopt their own codes of ethics.

5. Amend the CUAO to allow administrative penalties for lobbying offences to be imposed within six months of their detection, but not later than two years from the date of their commission, similar to what is currently provided for corruption-related offences.

Investigation of anti-corruption cases by the National Police of Ukraine, the State Bureau of Investigation and the Security Service of Ukraine

Compliance with jurisdiction in the investigation of anti-corruption cases

State of play

Investigative jurisdiction over criminal offences is closely related to the tasks of the relevant law enforcement agencies. For example, the police are tasked with providing police services, in particular, in the areas of protection of human rights and freedoms, as well as the interests of society and the state, and combating crime¹³⁸².

The State Bureau of Investigation (SBI) is tasked with preventing, detecting, terminating, solving and investigating 1) crimes committed by officials who hold a particularly responsible position in accordance with part 1 of Article 9 of the Law of Ukraine “On Civil Service”, by persons whose positions fall into the first to third categories of civil service positions, judges and law enforcement officers, except when these crimes fall under the jurisdiction of detectives of the National Anti-Corruption Bureau of Ukraine; 2) crimes committed by NABU officials, the Head of the SAPO or other SAPO prosecutors, except when the pre-trial investigation of these crimes falls under the jurisdiction of detectives of the NABU Internal Control Unit; 3) crimes against the established procedure for military service (war crimes), except for crimes under Art. 422 of the CC of Ukraine¹³⁸³.

The Security Service of Ukraine (SSU) is tasked with, inter alia, preventing, detecting, suppressing and solving criminal offences against peace and security of mankind, terrorism and other unlawful acts that directly threaten the vital interests of Ukraine¹³⁸⁴.

The Bureau of Economic Security of Ukraine (BES) is a central executive body tasked with combating offences that infringe on the functioning of the state’s economy¹³⁸⁵.

1382 On National Police: Law of Ukraine of 02.07.2015 No. 580-VIII, Art. 2. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

1383 On the State Bureau of Investigation: Law of Ukraine of 12.11.2015 No. 794-VIII, Art. 5. URL: <https://zakon.rada.gov.ua/laws/show/794-19#Text>.

1384 On the Security Service of Ukraine: Law of Ukraine of 25.03.1992 No. 2229-XII, Art. 2. URL: <https://zakon.rada.gov.ua/laws/show/2229-12#Text>.

1385 On the Bureau of Economic Security of Ukraine: Law of Ukraine of 28.01.2021 No. 1150-IX, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/1150-20#Text>.

The vagueness of these provisions should be compensated by the clarity of Article 216 of the CPC of Ukraine¹³⁸⁶, which delineates the jurisdiction of various pre-trial investigation bodies. It clearly states that the competence of the NABU to investigate corruption-related criminal offences cannot be encroached upon by any other pre-trial investigation body. Also, any other criminal proceedings may be referred to the jurisdiction of the NABU if the relevant criminal offence caused or could have caused serious consequences to the freedoms and interests of an individual or legal entity protected by law, as well as to the state or public interest¹³⁸⁷.

Progress and issues

There is still a practice whereby the NABU and another law enforcement agency (a body with law enforcement functions) each register the same fact indicating the commission of a criminal offence, the investigation of which falls within the NABU's jurisdiction. The subsequent parallel pre-trial investigation by such bodies makes it difficult for the NABU to conduct a full, comprehensive and impartial investigation, as another pre-trial investigation body may seize some evidence within its criminal proceedings and not provide it to the NABU under various pretexts¹³⁸⁸.

Based on the information provided in the 2022 public report, the SSU broadly understands the task of detecting and suppressing crimes that pose a direct threat to national security, have a destructive impact on public administration and other negative consequences for society. It is in this area that the SSU's Main Directorate for Countering Systemic Threats to State Governance reports on the results of its work in exposing systemic corruption¹³⁸⁹.

Despite the fact that the SSU does not have the authority to investigate corruption-related criminal offences, the agency regularly reports on corruption exposures. Mostly, it refers to investigative and procedural actions taken jointly with the NPU investigators. That is, formally, evidence may be recognised as admissible if the officials exposed for corruption are not among the actors whose actions should be investigated by the SBI or NABU¹³⁹⁰. The 'loudness' of the disclosure should also be taken into account. This approach may also cause problems with the presumption of innocence¹³⁹¹. However, it should be noted that the **qualitative results of the work of pre-trial investigation bodies can only be considered when a guilty verdict against a person has entered into force.**

In this context, it is important to note that the proposals of the top leadership of the state to equate corruption with high treason with the subsequent transfer of this category of cases to the SSU are inappropriate¹³⁹². This contradicts the general concept of developing the SSU as a security body

1386 Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 No. 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20240328#n531>.

1387 Ibid, p. 5, Art. 216.

1388 Capable, effective and independent: analysis of anti-corruption agencies. Transparency International Ukraine. 2023. URL: <https://ti-ukraine.org/research/spromozhni-efektyvni-j-nezalezhni-analiz-antikoruptsijnyh-organiv/>.

1389 Defence of the State in Wartime. Security Service of Ukraine. 2023. p. 50. URL: <https://ssu.gov.ua/uploads/documents/2023/04/24/ssu-report-2022-web.pdf>.

1390 SSU exposes corruption schemes in the Tax Service and three regional customs offices of Ukraine. Security Service of Ukraine. 2023. URL: <https://ssu.gov.ua/novyny/sbu-vykryla-koruptsiini-skhemu-v-podatkovii-sluzhbi-ta-na-trokh-oblasnykh-mytnytsiakh-ukrainy>; SSU detains head of military registration and enlistment office in Poltava region on bribe and exposes another scheme for evaders in Cherkasy region. Security Service of Ukraine. 2023. URL: <https://ssu.gov.ua/novyny/sbu-zatrymala-kerivnyka-viiskkomatu-na-poltavshchyni-na-khabari-ta-vykryla-cherhovu-skhemu-dlia-ukhyliantiv-na-cherkashchyni>; SSU exposes officials of Chernivtsi and Odesa customs on large-scale corruption (video). Security Service of Ukraine. 2023. URL: <https://ssu.gov.ua/novyny/sbu-vykryla-posadovtsiv-chernivetskoi-ta-odeskoi-mytnyts-na-masshtabnii-koruptsii-video>.

1391 According to p. 1, Art. 62 of the Constitution of Ukraine, a person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his/her guilt is proved in accordance with the law and established by a court verdict of guilty

1392 Zelenskyy to propose to MPs to equate corruption with high treason during martial law. LB.ua. 2023. URL: https://lb.ua/news/2023/08/27/572047_zelenskiy_zaproponuie_deputatam.html.

responsible for responding to threats to state security, rather than investigating corruption. Draft laws aimed at implementing such ideas¹³⁹³ have even been registered in the Parliament.

Failure to comply with the rules of jurisdiction may lead to inadmissibility of evidence collected by the pre-trial investigation body and, as a result, acquittal of a person¹³⁹⁴. The Chamber of the Supreme Court concluded that the admissibility of evidence obtained by law enforcement agencies in the period before the transfer to the appropriate pre-trial investigation body should be carried out in the light of the criteria that determine the duration of such period, the scope and nature of the procedural actions carried out during this period, other relevant circumstances of the criminal proceedings, which allow to conclude on “the impact of these violations on certain conventional or constitutional human rights, in particular to establish to what extent procedural shortcomings ‘destroyed’ or narrowed these rights or restricted the person’s ability to use them effectively”¹³⁹⁵.

For example, in July 2023, the SBI, together with the NABU, completed an investigation into the former Deputy Minister of Defence of Ukraine and the acting Director of the Department of Public Procurement and Supply of Material Resources of the Ministry of Defence of Ukraine. According to the investigation, they caused UAH 12 million¹³⁹⁶ in damage to the state when purchasing food for the army. It is questionable why this case was investigated by the SBI and not immediately transferred to the NABU.

Another measure of the SAP aimed at overcoming the problems of violation of jurisdiction is to provide technical possibility to search for information in the Unified Register of Pre-trial Investigations according to various criteria (in particular, the content of the plot, the amount of damage) in order to find criminal proceedings that may be under the jurisdiction of the NABU and pre-trial investigation of which is carried out by other bodies. The OPG informs that the relevant information search functionality in the Unified Register of Pre-trial Investigations has been available for use by users since 30 October 2023¹³⁹⁷.

The subject matter jurisdiction of the BES overlaps with that of the NABU, but the law is worded in such a way that the NABU has an advantage in investigating such cases¹³⁹⁸. However, there are situations where one person is prosecuted by several pre-trial investigation agencies, including the NABU. For example, in September 2023, the BES was notified of suspicion of one of the Ukrainian oligarchs of committing fraud and legalisation (laundering) of the proceeds of crime. Five days later, the NABU served him with a notice of suspicion of misappropriation of Privatbank’s funds worth more than UAH 9.2 billion¹³⁹⁹.

In December 2023, a law was passed stipulating that a dispute over jurisdiction in criminal proceedings that may fall under the jurisdiction of the National Anti-Corruption Bureau of Ukraine

1393 On Amendments to Certain Legislative Acts on Equating the Punishability of Corruption Criminal Offences with High Treason for the Period of Martial Law in Ukraine: Draft Law of Ukraine, registration No. 9659 of 30.08.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42634>.

1394 Verdict of the Brovary City District Court of Kyiv Region of 14.06.2023 in case No. 361/5057/17. URL: <https://reyestr.court.gov.ua/Review/111586900>.

1395 Resolution of the Supreme Court of 21.11.2022 in case No. 991/492/19. URL: <https://reyestr.court.gov.ua/Review/107805010>.

1396 SBI completes investigation into fraudulent food supply to the Armed Forces by former deputy ministers and head of the MoD department. State Bureau of Investigation. 2023. URL: <https://dbr.gov.ua/news/dbr-zavershilo-rozsliduvannya-shhodo-mahinacij-z-harchuvannyam-zsu-kolishnih-zastupnikiv-ministra-ta-kerivnika-departamentu-minoboroni>.

1397 Information on the status, dynamics, completeness and effectiveness of the implementation of measures envisaged by the State Anti-Corruption Programme for 2023-2025, as well as the achievement of expected strategic results and solving key problems described in the Anti-Corruption Strategy for 2021-2025. National Agency on Corruption Prevention. 2024. Measure 3.3.2.4.2. URL: <https://dap.nazk.gov.ua/zahid/220/>.

1398 Criminal Procedure Code of Ukraine: Law of Ukraine of 13.04.2012 No. 4651-VI, p. 3, Art. 216. URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20240328#n531>.

1399 The BES case against Kolomoiskyi appeared when NABU was already preparing a suspicion - Ukrainska Pravda. 2023. URL: <https://www.pravda.com.ua/news/2023/09/8/7419023/>.

is resolved by the Prosecutor General or the Deputy Prosecutor General - Head of the Specialised Anti-Corruption Prosecutor's Office (or a person acting as such)¹⁴⁰⁰. This narrows the range of possibilities for other Deputy Prosecutors General, other than the Head of the SAPO, to interfere with the exclusive jurisdiction of the NABU. However, it still leaves the Prosecutor General with the possibility to interfere.

Recommendations

1. The SSU, SBI, NPU, BES and prosecutors should strictly adhere to the requirements of procedural law regarding the jurisdiction of the NABU and to this end, effectively cooperate with each other. For example, if the SSU discovers facts of corruption and corruption-related criminal offences committed by a suspect in the course of investigating a case under its specialisation, which are under the NABU's jurisdiction, it should ensure that the relevant case files are transferred to the NABU in a prompt and efficient manner.
2. Consider establishing disciplinary liability for heads of pre-trial investigation bodies (i.e. investigative units) for investigating cases in violation of the NABU's exclusive jurisdiction, as well as for prosecutors who fail to correctly determine the jurisdiction of criminal proceedings.

Limited public scrutiny and accountability of the National Police, SBI, BES and SSU

State of play

In order to inform the public about the activities of the police, the chief of the police and heads of territorial police bodies prepare and publish a report on police activities once a year on the official web portals of the police bodies, which should include, inter alia, an analysis of the crime situation in the country or region, respectively, information on measures taken by the police and the results of these measures, etc¹⁴⁰¹.

The SBI Director also prepares an annual report on the activities of the body. The report should contain the results, timing and status of the SBI's programme of activities, etc¹⁴⁰².

The requirements for the SBI report are more detailed than for the NPU report. Thus, it should contain statistical data, interaction and cooperation with other state bodies, local self-government bodies, enterprises, institutions and organisations, the SBI staff, qualifications and experience of its employees, their professional development and other information¹⁴⁰³.

The relevant law also states that the SBI's activities are supervised by a committee of the Verkhovna Rada of Ukraine, which is responsible for law enforcement activities¹⁴⁰⁴. In order to ensure transparency and civilian control over the SBI's activities, a 15-member Public Control Council is established under the SBI, which is formed on the basis of an open and transparent competition¹⁴⁰⁵.

1400 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI, p. 5, Art. 218. URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20240328#n531>.

1401 On National Police: Law of Ukraine of 02.07.2015 No. 580-VIII, Art. 86. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

1402 On the State Bureau of Investigation: Law of Ukraine of 12.11.2015 No. 794-VIII, Art. 12. URL: <https://zakon.rada.gov.ua/laws/show/794-19#Text>.

1403 Ibid, Art. 23.

1404 Ibid, p. 1 Art. 23.

1405 Ibid, Art. 28.

The Head of the NPU is appointed and dismissed by the Government on the proposal of the Prime Minister, who is advised by the Minister of Internal Affairs¹⁴⁰⁶. In turn, the Head of the NPU submits proposals for his/her deputies, who are appointed by the Minister of Internal Affairs¹⁴⁰⁷.

The selection of the heads of the SBI¹⁴⁰⁸ and the BES¹⁴⁰⁹ differs from the selection of the head of the NPU, as it is carried out on a competitive basis.

Progress and issues

The Law of Ukraine “On National Police” stipulates that **during martial law, public control over the activities of the police is not exercised**.

The public report of the NPU for 2023 contains almost no data on the analysis of official crime. It only states that the police continue to work under martial law to combat organised crime in all its manifestations. In particular, an increase in the number of criminal proceedings sent to court (+16%) was achieved in relation to 419 organised criminal groups, including 42 groups with interregional ties, 26 with corrupt ties and 13 ethnically based groups¹⁴¹⁰. Thus, **the report does not provide a detailed analysis of the state of the fight against white-collar crime**.

The SBI’s public report for 2023 provides statistical data **without highlighting the results of investigations of corruption-related criminal offences**. However, it does provide specific examples of cases investigated by the SBI in the area of anti-corruption¹⁴¹¹.

Despite the fact that a Public Oversight Council was established at the SBI to ensure transparency and civilian control over its activities, the SBI website only published the report of this Council for 2021¹⁴¹².

It is worth noting that on 11 May 2023, the President of Ukraine approved the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023–2027¹⁴¹³ by a Decree. It applies, in particular, to the prosecutor’s office, the Ministry of Internal Affairs, the NPU, the State Border Guard Service, the SBI, the BES, the SSU and the State Customs Service of Ukraine.

It notes the need for annual sociological external monitoring of the activities of law enforcement agencies and the prosecutor’s office. It also requires annual publication of reports for the media and civil society with a focus on reforms, accountability and integrity.

1406 On National Police: Law of Ukraine of 02.07.2015 No. 580-VIII, p.2, Art. 21. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

1407 Ibid, p. 4 Art. 21.

1408 On the State Bureau of Investigation: Law of Ukraine of 12.11.2015 No. 794-VIII, Art. 11. URL: <https://zakon.rada.gov.ua/laws/show/794-19#Text>.

1409 On the Bureau of Economic Security of Ukraine: Law of Ukraine of 28.01.2021 No. 1150-IX, Art. 15. URL: <https://zakon.rada.gov.ua/laws/show/1150-20#Text>.

1410 Report of the National Police of Ukraine on the results of work in 2022. Cabinet of Ministers of Ukraine. 2023. URL: <https://www.kmu.gov.ua/news/zvit-natsionalnoi-politsii-ukrainy-pro-rezultaty-roboty-u-2022-rotsi>.

1411 Report on the activities of the State Bureau of Investigation for 2023. State Bureau of Investigation. 2024. URL: <https://dbr.gov.ua/reports/kopiya-zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za-2023-rik>.

1412 Reports on the activities of the SBI POC. State Bureau of Investigation. 2024. URL: <https://dbr.gov.ua/rada-gromadskogo-kontrolyu/zviti-pro-diyalnist-rgk-pri-dbr>.

1413 On the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027: Decree of the President of Ukraine of 11.05.2023 No. 273/2023. URL: <https://zakon.rada.gov.ua/laws/show/273/2023#Text>.

Reports of the active preparation of a detailed action plan to implement this Comprehensive Strategic Plan date back to July 2023, but no such action plan has been made public¹⁴¹⁴. On 16 March 2023, the Prosecutor General informed that the draft action plan had been approved at a meeting of the Interagency Working Group¹⁴¹⁵.

In addition, there are issues with the **appointment of the NPU leadership**. The selection process is not competitive and does not involve representatives of civil society.

One of the measures taken by the SAP is aimed at overcoming this problem, namely the development and submission to the Cabinet of Ministers of Ukraine of a draft law that 1) stipulates that appointment to a senior position in the police, which involves the exercise of managerial functions, is carried out exclusively on a competitive basis; 2) defines integrity as one of the criteria that a police officer applying for a senior position must meet; 3) provides for amendments to take into account recommendations to improve the efficiency and quality of police commissions and the selection procedure provided by the results of the analytical study¹⁴¹⁶.

The selection of the SBI Director, **although conducted on a competitive basis, has a significant political component**. Six of the 9 members of the selection panel are appointed by the President of Ukraine and the Parliament upon the recommendation of the Verkhovna Rada committee responsible for law enforcement. In addition, the law does not define the concepts of ‘high moral qualities’ and ‘impeccable reputation’. This may lead to unequal understanding and application of these concepts during the competitive selection of the SBI director.

There are no integrity requirements for the BES director at all. The competition commission is formed by the government, parliament and the NSDC¹⁴¹⁷. At the same time, the law does not provide for the participation of members appointed by development partners in the selection panel, which does not contribute to the transparency of the competition and, as a result, to the appointment of a head whose professionalism and integrity will not be in doubt. In particular, the effectiveness of the institution depends on this.

In the autumn of 2023, MPs submitted two draft laws (No. 10088 and No. 10088-1) to the parliament to reform the BES¹⁴¹⁸. However, these draft laws were not considered in the session hall due to the coalition’s refusal to put them to a vote. In January 2024, the Government submitted another draft law, No. 10439, to which MPs submitted several alternative drafts, No. 10439-1 and No. 10439-2 (re-registered as No. 10088, which was later re-registered as No. 10439-4)¹⁴¹⁹.

1414 Oleh Tatarov discussed with EU representatives a comprehensive strategic plan for reforming law enforcement agencies in Ukraine. Office of the President of Ukraine. 2023. URL: <https://www.president.gov.ua/news/oleg-tatarov-obgovoriv-iz-predstavnikami-yes-kompleksnij-str-84453>.

1415 Andrii Kostin: We are taking important steps to build a modern European criminal justice system. Office of the Prosecutor General. 2024. URL: <https://www.gp.gov.ua/ua/posts/andrii-kostin-vprovadzujemo-vazlivi-kroki-dlya-rozbudovi-sucasnoyi-jeuropeiskoyi-sistemi-kriminalnoyi-yusticiyi>.

1416 Information on the status, dynamics, completeness and effectiveness of the implementation of measures envisaged by the State Anti-Corruption Programme for 2023-2025, as well as the achievement of expected strategic results and solving key problems described in the Anti-Corruption Strategy for 2021-2025. National Agency on Corruption Prevention. 2024. Measure 2.1.6.1.3. URL: <https://dap.nazk.gov.ua/zahid/833/>.

1417 On the Bureau of Economic Security of Ukraine: Law of Ukraine dated 28.01.2021 No. 1150-IX, p. 3, Art. 15. URL: <https://zakon.rada.gov.ua/laws/show/1150-20#Text>.

1418 On Amendments to Certain Laws of Ukraine on Priority Measures for Reforming the Bureau of Economic Security of Ukraine: Draft Law of Ukraine, registration No. 10088 of 25.09.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42858>.

1419 On Amendments to the Law of Ukraine “On the Bureau of Economic Security of Ukraine” to improve the work of the Bureau: Draft Law of Ukraine, registration No. 10439 of 29.01.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43595>; On Amendments to Certain Laws of Ukraine on Ensuring the Independence, Depoliticisation and Efficiency of the Bureau of Economic Security of Ukraine: Draft Law of Ukraine, registration No. 10439-1 of 05.02.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43628>; On Amendments to Certain Laws of Ukraine on Ensuring the Independence, Depoliticisation and Efficiency of the Bureau of Economic Security of Ukraine: Draft Law of Ukraine, registration No. 10439-2 of 12.02.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43698>; On Amendments to Certain Laws of Ukraine on Ensuring the Independence, Depoliticisation and Efficiency of the Bureau of Economic Security of Ukraine: Draft Law of Ukraine, registration No. 10439-4 of 27.02.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43776>.

On 20 June 2024, the Parliament adopted Law of Ukraine No. 3840-IX¹⁴²⁰, which establishes that the decision by the competition commission for the selection of the BES director is considered to be adopted if it receives four votes, including two from representatives suggested by development partners. This regulatory act also includes provisions on timely and transparent certification of BES employees and the specifics of conducting an independent audit of the BES.

Recommendations

1. Publicly communicate the results of the development of an action plan aimed at implementing the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023–2027. Particular emphasis should be placed on provisions for external monitoring of law enforcement and prosecution.
2. Improve the legal framework for the selection of heads of the NPU and SBI in terms of transparency and professionalism. Particular attention should be paid to the fact that the position of development partners that should be involved in the selection commissions should be unanimous.

1420 On Amendments to Certain Legislative Acts of Ukraine on Improving the Work of the Bureau of Economic Security of Ukraine: Law of Ukraine of 20.06.2024 No 3840-IX. URL: <https://zakon.rada.gov.ua/laws/show/3840-20#Text>.

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS



Experts from the Human Rights Center ZMINA, NGO 'Human Rights Association 'FREERIGHTS'', NGO 'Ukraine without Torture', NGO 'Digital Security Lab Ukraine', NGO 'Kharkiv Institute for Social Research', NGO 'Social Action Centre', NGO 'Fight For Right', NGO 'Congress of Ethnic Communities of Ukraine', NGO 'Fulcrum UA', NGO 'Ukrainian Legal Advisory Group', CF 'Right to Protection', NGO 'Centre of Policy and Legal Reform' worked on this section



Institute of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman)

The role of the Ukrainian Parliament Commissioner for Human Rights is very significant, especially in the context of full-scale armed aggression against Ukraine. At the same time, one of the basic conditions for the effective work of the Commissioner is his/her independence (administrative and financial). However, during the legal regime of martial law, the relevant legislation of Ukraine was amended to allow the termination of the Commissioner's powers during the legal regime of martial law. As this provision has already been applied to the dismissal of the previous Commissioner in May 2022, it can be argued that this puts the Commissioner in a dependent position.

Another important issue is the participation of civil society organisations in nominating candidates for the position of the Commissioner, organising an open competition for the position, and ensuring the financial independence of the institution, which, according to the UN Paris Principles, is an important component of ensuring the sustainability and independence of the Ombudsman.

The Commissioner's mandate is very broad and includes the implementation of the National Preventive Mechanism (NPM), combating discrimination, protection of personal data and access to public information.

In 2023, the NPM carried out 538 visits to places of detention (compared to 345 visits in 2022). However, budgetary expenditures for the implementation of the NPM's mandate decreased sharply by 19% between 2022 and 2023, and are currently almost at the level of 2020. Despite the continuation of regular activities, the Ombudsman Office's interaction with civic monitors, their ongoing professional training and involvement in visits to places of detention remain an urgent issue.

In 2023, the Ombudsman received 1116 written appeals related to ensuring equal rights and freedoms, but no appeals were filed with the court on behalf of victims of discrimination. The Code of Ukraine on Administrative Offences (CUAO) still provides no liability for discrimination, despite the fact that administrative liability is established in Article 16 of the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine". Therefore, the Commissioner cannot bring to administrative responsibility for discrimination.

National legislation on the protection, processing, and storage of personal data needs to be harmonised with EU legislation. The key EU regulation in this area is the General Data Protection Regulation (GDPR). In order to synchronise with EU legislation, the Ukrainian Parliament shall adopt the relevant draft laws (registration No. 6177 of 18 October 2021 and No. 8153 of 25 October 2022), which have been under consideration by the Verkhovna Rada of Ukraine for quite a long time.

Ukrainian Parliament Commissioner for Human Rights (Ombudsman)

The Ukrainian Parliament Commissioner for Human Rights (Ombudsman), which has been operating since 1998, is a national human rights institution (NHRI) with “A” status¹⁴²¹. According to Article 101 of the Constitution of Ukraine, the Ombudsman monitors the observance of constitutional rights and freedoms.

The Ombudsman’s activities and powers are defined by the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” (hereinafter – the Law on the Ombudsman)¹⁴²². In addition to the general function of parliamentary oversight, the Ombudsman performs the functions of the NPM established under the Optional Protocol to the UN Convention against Torture¹⁴²³. The Ombudsman’s powers also include prevention of any form of discrimination and taking measures to combat discrimination¹⁴²⁴, information rights of citizens (access to public information), the right to appeal and protection of personal data. In addition to these areas, the Ombudsman’s Office has other core areas of activity, including: the rights of citizens affected by the armed aggression against Ukraine; children’s rights; human rights in the defence sector and the rights of veterans and military personnel, prisoners of war and their families; social and economic rights; the right to a fair trial and procedural rights.

As Ukraine approaches EU accession, it is questionable to what extent the legislation on the Ombudsman’s activities, the procedures for his/her appointment and dismissal, and the overall mandate of the Ombudsman are in line with NHRI standards and best European practices.

A positive development was the capacity assessment of the Ombudsman’s institution during the international armed conflict (November 2023)¹⁴²⁵. The purpose of the capacity assessment was to support the Ombudsman in identifying the current strengths and weaknesses of its activities, as well as to define the extent to which it has the necessary elements to fulfil its mandate in the challenging human rights environment. Consequently, strategic priorities and measures to strengthen capacity and fill capacity gaps are proposed.

According to the assessment, the biggest gaps are in five areas of the Ombudsman’s capacity: (1) sufficient financial resources; (2) sufficient space and resources; (3) appropriate staff and organisational structure; (4) capacity to collect, store and analyse information; and (5) strategic planning and management¹⁴²⁶.

Amending the provisions of the Law on the Ombudsman and bringing it in line with international standards for NHRIs has been one of the key recommendations for the institution for a long time. The relevant Working Group on Amendments to the Law of Ukraine “On the Ukrainian

1421 NHRIs that are recognised as compliant with the Paris Principles are accredited with “A” status, while those that are partially compliant are accredited with “B” status. NHRIs with “A” status have the right to participate independently in the UN Human Rights Council, its subsidiary bodies and certain organs and mechanisms of the General Assembly. They are eligible for full membership in GANHRI, including voting rights and leadership positions. URL: <https://ganhri.org/accreditation/>.

1422 On the Ukrainian Parliament Commissioner for Human Rights: Law of Ukraine of 23.12.1997 No. 776/97-VR. URL: <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text>.

1423 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. URL: https://zakon.rada.gov.ua/laws/show/995_f48#Text.

1424 On the Principles of Preventing and Combating Discrimination in Ukraine: Laws of Ukraine of 06.09.2012 No. 5207-VI, Art. 10. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>.

1425 The capacity assessment was supported by the European Network of National Human Rights Institutions (ENNHRI), the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/Final%20CA%20Report%20UA.pdf>.

1426 Ibid.

Parliament Commissioner for Human Rights” to further strengthen its compliance with the Paris Principles¹⁴²⁷ was established by the Commissioner in 2023, and the group’s work is currently being finalised¹⁴²⁸.

The main criticisms of the current version of the Law on the Ombudsman that may affect the independence of the Ombudsman are the lack of civil society’s ability to influence the nomination of candidates for the Ombudsman’s position, as well as the lack of a transparent and clear competitive procedure for the election of the Ombudsman, and the lack of tools to ensure the financial independence of the institution.

Lack of civil society’s ability to influence the nomination of candidates for the position of the Ombudsman, as well as the lack of a transparent and clear competitive procedure for the election of the Ombudsman

Currently, in accordance with the Law on the Ombudsman, proposals for candidate(s) for the position of the Ombudsman are submitted by the Head of the Verkhovna Rada of Ukraine or at least one fourth of the MPs of Ukraine from the constitutional composition of the Verkhovna Rada of Ukraine. The relevant committee of the Verkhovna Rada of Ukraine, based on the results of a special inspection, submits to the Verkhovna Rada of Ukraine its conclusions on each candidate for the position of the Commissioner, their compliance with the requirements stipulated by this Law and the absence of reasons that would prevent them from holding the position. Therefore, firstly, public associations, in particular human rights organisations, or organisations representing the legal community of the country, cannot influence the nomination process. Secondly, a special inspection cannot replace a competitive procedure that would allow to assess the integrity of candidates, their personal and professional qualities. Ukrainian human rights activists have long been demanding a competition for the post of Ombudsman¹⁴²⁹. Such demand is in line with the UN Paris Principles and the Principles for the Protection and Promotion of Ombudsman Institutions (the “Venice Principles”)¹⁴³⁰. Thus, according to the Venice Principles, the selection procedure should include a public competition, be open, transparent, based on the candidate’s professional qualities, objective and governed by law. The criteria for the appointment of the Ombudsman should be sufficiently broad to attract a wide range of potential candidates. The most important criteria are high moral character, integrity and adequate professional competence and experience, in particular in the field of human rights and fundamental freedoms.

The inability of civil society organisations to influence the nomination of candidates for the position of the Ombudsman, closed vetting instead of open competition for the position negatively affects the independence and impartiality of the Ombudsman, his/her political impartiality, and thus the ability to effectively protect human rights in Ukraine.

Lack of tools to ensure the financial independence of the institution

The effectiveness of the Ombudsman’s activities may be reduced by the lack of effective mechanisms to ensure the institution’s financial independence. In the context of armed

1427 Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). Annex to UN General Assembly Resolution 48/134 of 20.12.1993. URL: <https://ombudsman.gov.ua/uk/parizki-principi>.

1428 Annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2023, Art. 29. Ombudsman of Ukraine. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_довідка_Уповноважено_ро_за_2023_pik.pdf.

1429 Open statement of the Human Rights Agenda on the appointment of the Ombudsperson. Centre for Civil Liberties. 2017. URL: <https://ccl.org.ua/claims/vidkryta-zayava-pravozahysnoho-poryadku-denko-z-pryvodu-pryznachennya-upovnovazhenoho-z-pravlyudyny/>.

1430 Principles for the Protection and Promotion of the Ombudsman Institution (the “Venice Principles”), adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019). URL: https://boi.org.ua/upload/wn/sr/ombudsman%20principles_ukr.pdf.

aggression against Ukraine, the issue of funding the Ombudsman's activities is becoming increasingly relevant, as the lack of sufficient funding for the institution's activities in the face of a sharp increase in the number of complaints may pose a significant risk to the effective response to human rights violations and become an instrument of pressure on the Ombudsman.

During 2022-2023, the number of staff increased from 250 to 354, and regional offices were opened in most of Ukraine's 24 regions. With over 300 staff and more than 20 regional offices, the Ombudsman is the largest NHRI in Europe and one of the largest in the world in terms of staff. In addition, its mandate is one of the broadest among all members of the Global Alliance of NHRIs (GANHRI) and the European Network of NHRIs (ENNHRI)¹⁴³¹. However, despite the growth of the Ombudsman's total budget in recent years (by 19.2% since 2020), state funding currently mostly covers salaries and utilities, and only 0.7% of the total budget of the Ombudsman in 2023 is used for research and travel expenses. Funding for the rest, and above all for all operational activities, comes not from the state budget, but from regional, international and non-governmental national partners¹⁴³².

The UN Paris Principles¹⁴³³ state that NHRIs should have sufficient resources and financial autonomy. The purpose of such funding should be to enable NHRIs to maintain their own staff and premises, to be independent of the government and not be subject to financial controls that could affect their independence.

Amending the provisions of the Law on the Ombudsman and bringing it in line with international standards for NHRIs has been one of the key recommendations for the institution for a long time. The relevant Working Group on preparation of amendments to the Law on the Commissioner to further strengthen its compliance with the Paris Principles¹⁴³⁴ was established by the Ombudsman in 2023. During the year, amendments were developed, discussed and finalised, including with the involvement of experts from the Council of Europe and the European Network of National Human Rights Institutions (ENNHRI). On 9 April 2024, the draft law was presented by the Commissioner during an expert discussion attended by international partners, members of the Ukrainian Parliament and members of the public¹⁴³⁵.

The draft law developed by the Working Group envisages amendments to 24 legal acts: codes and laws of Ukraine, without which the implementation of new approaches is impossible. In general, the amendments developed by the Ombudsman's Office are in line with the recommendations that human rights organisations have been proposing for many years¹⁴³⁶. In particular, they include the introduction of a competitive procedure for the election of the Ombudsman with the participation of civil society organisations, lowering the age limit for candidates for the position, and eliminating the conflict in the legislation on secret and open voting. The draft law strengthens the guarantees of the institution's independence, in particular, it protects the financial sustainability of the Ombudsman's Office by stipulating that its funding

1431 Report on the results of the capacity assessment of the Ukrainian Parliament Commissioner for Human Rights. Ukrainian Parliament Commissioner for Human Rights / ENNHRI / OHCHR / UNDP. November 2023, p. 71. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/Final%20CA%20Report%20UA.pdf>.

1432 Ibid.

1433 Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the "Paris Principles"). Annex to UN General Assembly Resolution 48/134 of 20.12.1993. URL: <https://ombudsman.gov.ua/uk/parizki-principi>.

1434 Ibid.

1435 Amendments to the Law of Ukraine on the Ombudsman: the institution must be strong! Ombudsman of Ukraine. 2024. URL: https://ombudsman.gov.ua/news_details/zmini-do-zakonu-ukrayini-pro-upovnovazhenogo-instituciya-maye-buti-silnoyu.

1436 How the Verkhovna Rada should strengthen the Ombudsman institution: human rights activists discussed changes to the laws. ZMINA. 2020. URL: <https://zmina.info/news/yak-rada-maye-posylyty-instytut-ombudsmana-pravozahysnyky-obgovoryly-zminy-v-zakonah/>.

for each consecutive year cannot be reduced compared to the previous one¹⁴³⁷. The draft law, presented in April 2024, has now been submitted to the Members of Parliament for registration in the Parliament.

Threats to the independence of the Ombudsman's institution during the martial law regime

The independence of the Ombudsman is an important element of ensuring his/her ability to exercise the parliamentary oversight function over the observance of constitutional rights and freedoms of people and citizens. However, after the start of the large-scale invasion, the legislation in this regard was amended, in particular, provisions were adopted that allow the Commissioner to be dismissed bypassing the procedures provided for by the relevant law. Thus, according to Article 4 of the Law on the Ombudsman, his/her powers cannot be terminated or limited in the event of a martial law or a state of emergency. The Law on the Ombudsman also contains a list of grounds and a clear dismissal procedure (the conclusion on the existence of grounds for dismissal of the Ombudsman shall be submitted by a temporary special commission of the Verkhovna Rada).

However, in May 2022, the Verkhovna Rada amended Article 12 of the Law of Ukraine "On the Legal Regime of Martial Law"¹⁴³⁸, which provides for the possibility of dismissal by the Parliament of an official from a position whose appointment and dismissal are within the powers of the Verkhovna Rada. Although this provision came into conflict with the provision of the special Law on the Ombudsman, the Ukrainian Parliament dismissed Liudmyla Denisova from the post of Ombudsman on 31 May 2022¹⁴³⁹. Human rights defenders then called on the Parliament to stop politicising and attempts to destroy the independence of the Ombudsman institution and to create conditions for an open and independent competition for the position of the Commissioner in line with internationally recognised standards of transparency, impartiality and civil society involvement¹⁴⁴⁰.

A month later, on 01 July 2022, Dmytro Lubinets was appointed to the position of the Commissioner¹⁴⁴¹. However, the provision on the possibility of dismissal of the Commissioner during martial law remained, which casts doubt on the Commissioner's ability to act completely independently. Since the provision on dismissal of the Ombudsman during martial law has already been applied to dismiss the previous Ombudsman, it can be argued that it puts pressure on the Ombudsman who currently holds the position.

Implementation of the function of the National Preventive Mechanism

To exercise the NPM function, in 2023 the Commissioner made 538 visits to places of detention under the jurisdiction of the Ministry of Justice of Ukraine (MoJ), the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the Ministry of Health of Ukraine, the Ministry of Social Policy of Ukraine, the National Social Service of Ukraine,

1437 Ukraine is amending the law on the Ombudsman: what is proposed and why it is important. ZMINA. 2024. URL: <https://zmina.info/news/v-ukrayini-zminyuyut-profilnyj-zakon-pro-ombudsmanshho-proponuyut-i-chomu-cze-vazhlyvo/>.

1438 On the Legal Regime of Martial Law: Law of Ukraine of 12.05.2015 No. 389-VIII. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

1439 Rada dismisses Denisova from the post of ombudsman. Radio Svoboda. 2022. URL: <https://www.radiosvoboda.org/a/news-rada-ombudsmen-denisova-vidstavka/31876755.html>.

1440 Human rights activists demand compliance with procedures and an independent competition for the post of Ombudsman. ZMINA/ 2022. URL: <https://zmina.ua/statements/pravozahysnyky-vymagayut-dotrymannya-procedur-i-nezalezhnogo-konkursu-na-posadu-ombudsmana/>.

1441 On the appointment of D.V. Lubinets to the position of the Ukrainian Parliament Commissioner for Human Rights: Resolution of the Verkhovna Rada of Ukraine of 01.07.2022 No. 2353-IX. URL: <https://zakon.rada.gov.ua/laws/show/2353-IX#Text>.

the Ministry of Defence of Ukraine, and the State Judicial Administration of Ukraine¹⁴⁴². The number of visits to places of detention in 2023 increased significantly compared to the previous year (345 visits in 2022¹⁴⁴³). Also in 2023, the number of submissions by the Ombudsman to the competent authorities following the NPM visits increased significantly: 21 in 2022¹⁴⁴⁴ 140 in 2023.

At the same time, budget expenditures for the NPM's powers sharply decreased by 19% between 2022 and 2023 and are now almost at the level of 2020¹⁴⁴⁵.

Inadequate conditions of detention, lack of access to quality medical care, violations of the right to work of prisoners, lack of shelters, etc. remain key issues in most places of detention. At the same time, in 2023, the Ombudsman conducted monitoring visits to the State Migration Service (SMS) for the first time, prompted by increasing cases of foreigners being detained in SMS facilities (official vehicles) for extended periods without adequate food, drinking water, or access to toilets, etc¹⁴⁴⁶. Also in 2023, the Ombudsman's Office, together with civil society activists, conducted 48 visits to privately owned institutions for the elderly and people with disabilities (so-called private boarding houses or residential care institutions) and identified systemic problems with the observance of the basic rights of people held in these places of detention¹⁴⁴⁷.

The NPM in Ukraine operates in the "Ombudsman+" format¹⁴⁴⁸, which provides for monitoring visits to places of detention by the Ombudsman's Office staff and civil society activists (public monitors). However, the work of the Ombudsman's Office with civic monitors is insufficient (in particular, there is no strategy for selecting monitors, their systematic training, attracting new monitors and retaining those who already have experience). The emergence of new monitors, in the absence of systematic professional training, can lead to a decrease in the effectiveness of visits to places of detention. In addition, it is important that visits by NPMs do not turn into regular inspections by state bodies, where compliance with sectoral norms is subject to control without considering international standards for the detention of people in places of detention. There is also an acute issue of visiting places of detention located in the de-occupied territories, in the area of hostilities¹⁴⁴⁹. As access to these areas is very limited, the risk of human rights violations within these institutions increases.

Combating discrimination

The Ombudsman has broad powers to prevent and combat discrimination in Ukraine, including the right to file complaints of discrimination with the court to protect the public interest and to participate in court proceedings in person or through a representative in cases and in the manner prescribed by law. In 2023, the Commissioner received 1116 written appeals related to ensuring equal rights and freedoms¹⁴⁵⁰, but no appeals were filed with the court on behalf

1442 Special report of the Ukrainian Parliament Commissioner for Human Rights "On the state of affairs with regard to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in Ukraine in 2023". URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/додаток.pdf>.

1443 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2022. URL: <https://ombudsman.gov.ua/report-2022/npm-ta-prava-liudyny-v-mistsyakh-nesvobody>.

1444 Ibid.

1445 Report on the results of the capacity assessment of the Ukrainian Parliament Commissioner for Human Rights. Ukrainian Parliament Commissioner for Human Rights / ENNHRI / OHCHR / UNDP. November 2023, p. 71. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/Final%20CA%20Report%20UA.pdf>.

1446 Special report of the Ukrainian Parliament Commissioner for Human Rights "On the state of affairs with regard to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in Ukraine in 2023". URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/додаток.pdf>.

1447 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023, p. 184. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна доповідь Уповноваженого за 2023 рік.pdf>.

1448 The "Ombudsman+" model. URL: <https://ombudsman.gov.ua/uk/model-ombudsman>.

1449 Information obtained from expert interviews conducted during the preparation of this Report.

1450 Ibid.

of victims of discrimination. There is still no liability for discrimination in the CUAO, despite the fact that administrative liability is provided for in Article 16 of the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”¹⁴⁵¹. Therefore, the Ombudsman cannot bring the relevant persons to administrative responsibility for discrimination.

The Ombudsman publicly advocates for legislative changes to promote equality and combat discrimination. Thus, the Ombudsman supported the adoption of the draft laws “On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination” (registration No. 5488 of 13 May 2021) and “On the Institute of Registered Partnerships” (registration No. 9103 of 13 March 2023). In 2023, the Commissioner twice appealed to the Head of the Verkhovna Rada of Ukraine to speed up the consideration of draft law No. 5488 in the Parliament¹⁴⁵².

In October 2023, the Commissioner became a member of the European Network of Equality Authorities (EQUINET), an association that promotes equality in Europe¹⁴⁵³.

Protection of personal data and access to public information

The issues of personal data protection and access to public information are united in the structure of the Ombudsman’s Office into one area - observance of information rights.

In accordance with the Law of Ukraine “On Personal Data Protection”¹⁴⁵⁴ the authority to monitor compliance with personal data protection legislation is vested in the Commissioner. In 2023, the Ombudsman received 1205 complaints about violations of this right. The main topics of appeals were issues related to illegal processing of personal data, violation of the right to access personal information, improper organisation of personal data processing in enterprises, institutions and organisations, as well as requests for recommendations and clarifications on the practical application of personal data protection legislation during their processing¹⁴⁵⁵.

One of the most pressing issues facing Ukraine is the synchronisation of national legislation in the field of personal data protection with EU regulation. In particular, we are talking about the General Data Protection Regulation (GDPR), a regulation within the EU legislation on personal data protection¹⁴⁵⁶ as well as more recent acts known as the Digital Markets Act¹⁴⁵⁷ and the Digital Services Act¹⁴⁵⁸.

1451 On the Principles of Preventing and Combating Discrimination in Ukraine: Law of Ukraine of 06.09.2012 No. 5207-VI. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>.

1452 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023, p. 235. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_доповідь_Уповноваженого_за_2023_рік.pdf.

1453 The members of the European Network of Equality Institutions (EQUINET) unanimously supported the membership of the Ombudsman’s institution in the organisation with 42 votes. Ombudsman of Ukraine. 2023. URL: https://www.ombudsman.gov.ua/news_details/chleni-yevropejskoyi-merezhi-organiv-rivnosti-equinet-odnogolosno-42-golosami-pidtrimali-chlenstvo-instituciiv-povnovazhenogo-v-organizaciyi.

1454 On Personal Data Protection: Law of Ukraine of 01.06.2010 No. 2297-VI. URL: https://docs.google.com/document/d/13cpHBijJS_CpaEayxN8PXSpkQAWTqrvRff-oGsvbk2uc/edit.

1455 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023, p. 218. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_доповідь_Уповноваженого_за_2023_рік.pdf.

1456 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). URL: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

1457 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on competitive and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3A%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L._2022.265.01.0001.01.ENG.

1458 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065>.

In 2022, a new version of the Law of Ukraine “On Personal Data Protection” was developed (draft law No 8153)¹⁴⁵⁹, which reflected the novelties of the Regulation to the fullest extent possible. This draft law proposes to expand the rights of personal data holders, regulate the processing of personal data in various areas, and considers the spread of modern technologies in Ukraine, etc. In May 2023, the Verkhovna Rada received a legal opinion from Council of Europe experts on draft law No. 8153¹⁴⁶⁰, which gave a generally positive assessment of the draft law and expressed readiness to engage in further consultations. The adoption of the Draft Law of Ukraine “On Personal Data Protection” (registration No. 8153), as well as the previously registered Draft Law “On the National Commission on Personal Data Protection and Access to Public Information” (registration No. 6177 of 18 October 2021), is particularly relevant.

One of the consequences of the introduction of the martial law regime in Ukraine was the restriction of the right to access public information, despite the fact that the legislation does not provide for the respective changes. However, such restrictions were introduced in practice: some data disappeared from public access (for example, the list of MPs and email addresses of parliamentary committees disappeared from the website of the Verkhovna Rada, and some of these decisions disappeared from the Unified State Register of Court Decisions). However, information administrators began to unreasonably refuse to provide information or even ignore requests. In general, access to information was restricted without passing the “three-part test”¹⁴⁶¹, which created conditions for unreasonable restriction of access to public information¹⁴⁶².

In 2023, the Commissioner received 3957 appeals regarding violations of the right to access public information¹⁴⁶³. The key reasons for appeals were: unjustified classification of data as restricted information, failure to provide information, restriction of access to information or classification of data as restricted information if it is expressly prohibited by law, failure to publish information on official websites of public authorities, and delays in satisfying requests.

In 2023, a total of 88 reports on administrative offences were drawn up for violation of the right to information, the right to appeal and in the field of personal data protection, as well as failure to comply with the legal requirements of the Commissioner or the Commissioner’s representatives, including 50 – under Article 212³ of the CUAO, 29 – under Article 188⁴⁰ of the CUAO, 9 – under Article 188³⁹ of the CUAO.

Also in 2023, the Commissioner presented a Special Report on the observance of the constitutional right to information under the martial law regime¹⁴⁶⁴.

Recommendations:

1. Introduce comprehensive amendments to the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” to bring the law in line with the standards and best practices of national human rights institutions, in particular, to strengthen the independence of the institution by allowing civil society organisations to nominate candidates for the position of

1459 On Personal Data Protection: Draft Law of Ukraine, registration No. 8153 of 25.10.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40707>.

1460 Ibid.

1461 A three-part test: how the mechanism works to prevent important information from being classified. Access to the truth. 2020. URL: <https://dostup.org.ua/explainers/publications/tryskladovi-test-iaak-pratsiuie-mekhanizm-iaiki-ne-dozvoliaie-zasekretity-suspilno-vazhlyvu-informatsiu>.

1462 Restriction of access to public information during the war: what does the court practice say? Centre for Democracy and Rule of Law. 2023. URL: <https://cedem.org.ua/analytics/dostupu-sudova-praktyka/>.

1463 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023, p. 223. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_довідка_Уповноваженого_за_2023_рік.pdf.

1464 Special report on the observance of the constitutional right to information under the martial law regime. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsdopovid-vipravleno-1.pdf>.

the Commissioner, introducing an open competition for the position, ensuring the financial independence of the institution (for example, by making it impossible to reduce the costs of its operation compared to the previous year).

2. Amend Article 12 of the Law of Ukraine “On the Legal Regime of Martial Law” to eliminate the possibility of dismissing the Ombudsman of the Verkhovna Rada of Ukraine during the legal regime of martial law.

3. Ensure systematic efforts to engage and train NPM monitors and encourage them to participate in NPM visits.

4. Introduce comprehensive amendments to the legislation governing the prosecution of discrimination by enabling the Ukrainian Parliament Commissioner for Human Rights to draw up protocols on discrimination as an administrative offence.

5. Adopt the Draft Law of Ukraine “On the National Commission on Personal Data Protection and Access to Public Information” (registration No. 6177 of 18 October 2021) and the Draft Law of Ukraine “On Personal Data Protection” (registration No. 8153 of 25 October 2022) to synchronise Ukrainian legislation with the relevant legislation and requirements for the processing and storage of personal data in the EU.

Issues for further monitoring

- › Registration and consideration of the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Framework for the Ombudsman’s Activity”, developed by the Working Group under the Ombudsman’s Office.
- › Amendments to Article 12 of the Law of Ukraine “On the Legal Regime of Martial Law” to eliminate the possibility of dismissing the Ombudsman during the martial law regime.
- › Adoption of the Draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination” (registration No. 5488 of 13 May 2021).
- › Adoption of the Draft Law of Ukraine “On the National Commission on Personal Data Protection and Access to Public Information” (registration No. 6177 of 18 October 2021) and the Draft Law of Ukraine “On Personal Data Protection” (registration No. 8153 of 25 October 2022).

Combating torture, cruel and degrading treatment

The recommendation made in the Fundamental Rights section of the previous report of the European Commission¹⁴⁶⁵ regarding the need to introduce annual public reporting to the Parliament on the work of the Office of the Prosecutor General (OPG) and the State Bureau of Investigation (SBI) in investigating cases of torture, protecting victims and reviewing the effectiveness of the NPM remains relevant. As of March 2024, the relevant annual public reports have not been introduced.

¹⁴⁶⁵ Ukraine 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, p. 39. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf.

Also relevant are the remarks about inadequate medical care and insufficient staffing of medical units of the penitentiary system and the need to transfer penitentiary medicine to the general healthcare system. During the war, these problems worsened significantly, as, despite the already insufficient number of existing staff, some paramedics and doctors were mobilised. All this has a negative impact on the provision of medical care in the penitentiary system.

In addition to the problems with detention conditions and penitentiary medicine, there are also concerns about the insufficient fulfilment of the state's positive obligation to respect the rights of persons in places of detention in times of war. This includes the issue of evacuating institutions located in frontline regions and providing penitentiary institutions with shelters from rocket and bomb attacks.

The issue of investigating cases of torture and ill-treatment committed by law enforcement officials remains problematic. The SBI's priority remains investigating economic and anti-corruption crimes, while torture cases are investigated ineffectively and are delayed.

On a positive note, the development of the Custody Records system in police units has contributed to the improvement of conditions in temporary detention centres and the protection of their rights. The functioning of this system was enshrined in an order of the Ministry of Internal Affairs of Ukraine (MoIA)¹⁴⁶⁶.

General situation in the field of torture prevention

The problem with the definition of the term 'torture'

International standards against torture and other cruel, inhuman or degrading treatment or punishment, in particular the UN Convention against Torture¹⁴⁶⁷, define torture as acts of pain or suffering inflicted by public officials or other persons acting in an official capacity, or at their instigation, or with their consent or acquiescence. At the same time, Ukrainian national legislation does not fully meet this standard. In particular, Article 127 of the Criminal Code of Ukraine (CC of Ukraine) provides that any person, not necessarily connected with the authorities, can be a special subject of the crime of torture. That is why in most cases in Ukraine under the article "Torture" the suspects are civilians and, accordingly, the investigation of these cases is conducted by the National Police of Ukraine (NPU), not the SBI.

In 2023, Law of Ukraine No. 2812-IX¹⁴⁶⁸ came into force, which increased criminal liability for the basic unqualified form of torture (part 1 of Article 127 of the CC of Ukraine), which is punishable by imprisonment for a term of 3 to 6 years (previously – 2 to 5 years). Part 2 of Article 127 of the CC of Ukraine provides for an additional qualifying feature - the use of torture "for the purpose of discrimination". The punishment for such an act is imprisonment for a term of 5 to 10 years. Also, Article 127 of the CC of Ukraine was supplemented by part 3, which provides for liability for torture committed by a representative of a state, including a foreign one. Such actions will be punishable by imprisonment for a term of 7 to 12 years with disqualification to hold certain positions or engage in certain activities for up to 3 years. According to paragraph 1 of the note to Article 127 of the CC of Ukraine, representatives of the state in this Article and Article 146¹ of this Code should be understood as officials, as well as persons acting as officials or acting at their instigation, or with their knowledge or tacit consent.

1466 On the organisation of activities of temporary detention centres of the National Police of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of 25.09.2023 No. 777. URL: <https://zakon.rada.gov.ua/laws/show/z2034-23#Text>.

1467 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 1998. URL: https://zakon.rada.gov.ua/laws/show/995_085#Text.

1468 On Amendments to the Criminal Code of Ukraine to Improve Liability for Torture: Law of Ukraine of 01.12.2022 No. 2812-IX. URL: <https://zakon.rada.gov.ua/laws/show/2812-20#Text>.

However, even in this modified form, the definition of “torture” in national legislation does not meet international standards and should be changed.

Complaints of torture

Information on the number of complaints of torture and the number of complaints received from places of detention remains unavailable. General records of such information are either not kept or are not public.

Prevention of torture

National preventive mechanism

In the area of prevention of torture and ill-treatment, a positive development is that the NPM continues to operate despite martial law. At the same time, there are cases of denial of access to certain institutions to representatives of the NPM¹⁴⁶⁹.

Custody Records system

The Custody Records system helps to prevent torture and provides for electronic recording of actions taken with detainees in NPU temporary detention centres. The system aims to protect detainees from police misconduct, as well as to protect law enforcement officers from false accusations by introducing effective round-the-clock video surveillance in temporary detention facilities. It provides for the introduction of a separate position in the temporary detention centre – a human rights officer. The officer enters all information related to the detainee into an electronic database: detention conditions, all investigative actions, health status, medical care, consultations with an advocate. All of this is recorded in a single electronic database, which allows for quick retrieval of any document regarding the detainee at any time.

Ukraine has been implementing the Custody Records system since 2017 (initially as a pilot project in the temporary detention facilities in the cities of Dnipro, Kropyvnytskyi, Sarny, Kherson, Kharkiv and Sievierodonetsk). In 2023, this system was launched by an order of the Ministry of Internal Affairs¹⁴⁷⁰. The relevant act also settled the issue of escorting persons and the introduction of a special position of a human rights inspector or other police officer whose job description includes such functions.

The Department of the Main Inspection and Human Rights Compliance of the NPU (formerly the Department of Human Rights Monitoring) is responsible for the implementation of the Custody Records system. This unit has been reformed and, in addition to the functions of monitoring human rights in police activities and implementing and developing the Custody Records system, it has also been given the function of reviewing disciplinary proceedings against police officers.

As of March 2024, the Custody Records system was introduced in 109 temporary detention facilities and 95 units with rooms for detainees¹⁴⁷¹.

¹⁴⁶⁹ For more information on the work of the NPM, see the section on the Ukrainian Parliament Commissioner for Human Rights (Ombudsman).

¹⁴⁷⁰ On the organisation of activities of temporary detention centres of the National Police of Ukraine: Order of the Ministry of Internal Affairs of Ukraine of 25.09.2023 No. 777. URL: <https://zakon.rada.gov.ua/laws/show/z2034-23#Text>.

¹⁴⁷¹ More details in the “Procedural rights” section.

Recording traces of torture

For the effective investigation of torture cases, it is important to examine bodily injuries as objective signs of trauma and to thoroughly record the traces of torture, which is why international standards in this area are very detailed. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol)¹⁴⁷² was presented to the UN on 09 August 1999. The document defines the procedures and standards for recording injuries, the procedure for conducting psychiatric examinations, the algorithm for interrogating victims and witnesses, the sequence of evidence collection, ethical principles and principles of effective investigation of torture.

The Istanbul Protocol is not a binding document, although states are obliged to investigate cases of torture. Before Russia's full-scale invasion, Ukraine took a number of steps to implement the Istanbul Protocol.

For example, in 2017, an interdisciplinary working group was formed¹⁴⁷³ on the grounds of the Ministry of Health of Ukraine to develop a medical standard "Medical Documentation of Torture or Inhuman or Degrading Treatment or Punishment". It included representatives of the OPG, the Ministry of Internal Affairs, the NPU, and the Commissioner. In addition, in 2021, the Presidential Decree approved the updated National Human Rights Strategy¹⁴⁷⁴, which identified the implementation of the Istanbul Protocol as one of its strategic priorities.

Steps towards the implementation of the Istanbul Protocol have been taken at the level of certain types of places of detention. For example, at the end of October 2021, the Health Care Centre of the State Criminal Executive Service issued an order¹⁴⁷⁵, which obliged doctors in penitentiary institutions to record bodily injuries in a special card that meets the standards of the Istanbul Protocol. The order came into force on 1 January 2022, but due to Russia's full-scale invasion of Ukraine, this system has not been introduced.

Two years after the start of the full-scale invasion, in February 2024, the Ministry of Health of Ukraine issued an order¹⁴⁷⁶, introducing the primary record form No. 511 "Certificate of bodily injury and instructions for its completion". A map for the initial recording of criminal injuries was developed, which provides a detailed description of injuries, their nature, size and graphic display of their location. It is important to continue implementing this practice in the activities of the healthcare system.

Torture investigations

Investigations into cases of torture and ill-treatment continue to be problematic, and the number of cases that reach the courts is still low. Thus, according to the statistics of the OPG¹⁴⁷⁷ the number of criminal proceedings opened under Article 127 of the Criminal Code of Ukraine in

1472 Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. URL: <https://ukraine.un.org/uk/130826-стамбульський-протокол-посібник-з-питань-ефективного-розслідування-і-документування-фактів>.

1473 The Ministry of Health is developing standards for effective medical documentation of torture. Government portal. 2017. URL: <https://www.kmu.gov.ua/news/250097813>.

1474 On the National Human Rights Strategy. Decree of the President of Ukraine of 24.03.2021 No. 119. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#Text>.

1475 Starting from 1 January, traces of torture in prisons will be recorded according to new standards: expert on the advantages and disadvantages of innovations. ZMINA. 2021. URL: <https://zmina.info/news/z-1-sichnya-slidy-katuvan-u-tyurmah-fiksuvatymut-zanovymy-standartamy-ekspertka-pro-perevagiy-i-nedoliky-novovveden/>.

1476 On amendments to clause 1 of the Order of the Ministry of Health of Ukraine of 14 February 2012 No. 110: Order of the Ministry of Health of Ukraine of 02.02.2024 No. 186. URL: <https://ips.ligazakon.net/document/re41588>.

1477 On registered criminal offences and the results of their pre-trial investigation. Office of the Prosecutor General. URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

2023 compared to 2022 increased by 38% and amounted to 94 (in 2022 – 68 cases). In 53 of them, suspicions of committing a criminal offence under this article were announced, and 8 cases were terminated due to the application of the provisions of Article 280 of the CPC of Ukraine and Article 615 of the CPC of Ukraine¹⁴⁷⁸.

At the same time, statistics under Article 127 of the CCU are also reflected in two other sections. In section 2 “Criminal proceedings, the pre-trial investigation of which is carried out by the National Police”, the number of criminal proceedings for torture was 51. In 39 of them, suspicions were served and 34 were sent to court. In section 6 “Criminal proceedings, the pre-trial investigation of which is carried out by the State Bureau of Investigation”, the number of criminal proceedings opened under Article 127 of the CC of Ukraine in 2023 was 31. Suspicions were served in 7 of them and only 3 were sent to court.

These statistics show that criminal proceedings opened on allegations of torture by law enforcement agencies are not a priority for the SBI and, accordingly, investigations of this type of case are inefficient and are conducted on a case-by-case basis. The SBI focuses most of its efforts on investigating economic and corruption-related cases. In view of this, it is necessary to reconsider the prioritisation of the SBI’s work towards greater attention to documenting and investigating torture and other cruel, inhuman or degrading treatment or punishment.

Provision of medical care in the penitentiary system

One of the key problems of human rights observance in the penitentiary system is the inadequate medical care and insufficient staffing and equipment of the medical units. After Russia’s full-scale invasion of Ukraine, these problems worsened significantly, as, despite the already insufficient number of existing staff, some paramedics and doctors were mobilised. This situation has an even more negative impact on the provision of medical care in the penitentiary system.

In 2017, the Ministry of Justice created a new entity independent of the penitentiary system – the State Institution “Health Care Centre of the State Criminal Executive Service of Ukraine”¹⁴⁷⁹, but this only worsened the provision of medical care to individuals serving their sentences in penitentiary institutions. Before this reform, penitentiary institutions, having various types of income, were able to support and partially cover the needs related to the provision of medical care to detainees from their own funds by supporting medical units within their structure, but after the removal of such units from their subordination, this was no longer in place.

In 2019, ZMINA and the Expert Centre for Human Rights conducted a study¹⁴⁸⁰ of the practice of recording torture, in particular in pre-trial detention centres and colonies, which included focus groups with medical staff. The results of the study showed that doctors in the penitentiary system, although formally independent from the administration of the institution, cannot actually work if they have bad relations with their superiors.

This problem can be solved by incorporating penitentiary medicine into the general healthcare system, which is coordinated and funded by the Ministry of Health of Ukraine. The Operational Plan for the Implementation of the Strategy for Reforming the Penitentiary System¹⁴⁸¹ envisages

1478 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI. Art. 571. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

1479 On the establishment of the State Institution “Health Care Centre of the State Criminal Executive Service of Ukraine”: Order of the Cabinet of Ministers of Ukraine of 13.07.2017 No. 684. URL: <https://zakon.rada.gov.ua/laws/show/684-2017-%D1%80#Text>.

1480 The practice of recording torture in places of detention: Report on the results of the study. URL: <https://zmina.ua/wp-content/uploads/sites/2/2020/02/fixingtorture-web.pdf>.

1481 On approval of the Strategy for reforming the penitentiary system for the period up to 2026 and approval of the operational plan for its implementation in 2022-2024: Order of the Cabinet of Ministers of Ukraine of 16.12.2022 No. 1153. URL: <https://zakon.rada.gov.ua/laws/show/1153-2022-%D1%80#Text>.

the development of a model for providing medical care to convicts and detainees in a single medical space in Ukraine and the implementation of a pilot project to provide medical care to convicts and detainees in a single medical space in the third to fourth quarter of 2023. However, to date, no real steps have been taken in this direction.

The impact of the war on the situation in places of detention

Security risks for penitentiary institutions related to hostilities

The threat to the lives and health of people in places of detention is caused by their stay in the war zone. Ukraine has taken insufficient measures to respect the rights of persons in places of detention during the war. In particular, no evacuation of penitentiary institutions was carried out, which is why some of them were occupied in 2022 (some prisoners from Kherson region were deported to the territory of the Russian Federation)¹⁴⁸², while others are located in frontline regions and are at risk of shelling, and institutions are often not provided with shelters from missile and bomb attacks.

On 16 December 2022, the Strategy for the Reform of the Penitentiary System until 2026 and the Operational Plan for its implementation in 2022–2024 were adopted¹⁴⁸³. Despite the fact that this happened almost a year after the start of Russia's full-scale invasion of Ukraine, passing references to martial law and military aggression are contained only in provisions that describe in a rather general way the analysis of the current state of affairs and the problems that led to the adoption of the Strategy. At the same time, the operational plan to the Strategy is not adapted to the challenges of war at all, and there is no mention of Ukraine being in a state of war.

The situation is similar with the adoption of the new version of the Procedure for Optimising the Activities of Pre-trial Detention Facilities, Penitentiary Institutions and Penitentiary Enterprises¹⁴⁸⁴, which specifies which institutions should be closed. Despite the fact that more than 20 institutions are currently located in the occupied territory (including the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol), neither the criterion of proximity to the combat zone, nor proximity to the border with the aggressor country, nor other features of institutions that would prevent them from being occupied were taken into account when updating the procedure for optimising institutions, although human rights defenders and experts have repeatedly pointed this out before.

In this regard, it is important that the government revise its strategic documents to take into account the risks of the ongoing armed conflict to places of detention, and prepare effective plans to reduce the level of danger to persons in detention. Convicts serving their sentences in institutions located in frontline areas should be moved to safer areas. It is important to create and equip the necessary number of shelters from rocket and bomb attacks in places of detention.

1482 Deportation of places of detention from the occupied territories of Ukraine: analytical note. ZMINA. 2023. URL: <https://zmina.ua/publication/deportacziya-misz-nesvobody-z-okupovanyh-terytorij-ukrayiny-analitychna-zapyska/>.

1483 On approval of the Strategy for reforming the penitentiary system for the period up to 2026 and approval of the operational plan for its implementation in 2022-2024: Order of the Cabinet of Ministers of Ukraine of 16.12.2022 No. 1153. URL: <https://zakon.rada.gov.ua/laws/show/1153-2022-%D1%80#Text>.

1484 On amendments to the procedure for optimising the activities of pre-trial detention facilities, penitentiary institutions and penitentiary enterprises: Resolution of the Cabinet of Ministers of Ukraine of 08.10.2022 No. 1149. URL: <https://zakon.rada.gov.ua/laws/show/1149-2022-%D0%BF#Text>.

Mobilisation of convicts into the Armed Forces of Ukraine

On 8 May 2024, the Verkhovna Rada adopted Law of Ukraine No. 3687-IX¹⁴⁸⁵, which permits certain categories of prisoners to be mobilised into the Armed Forces of Ukraine (AFU). This will not apply to persons who are serving a sentence or have been convicted crimes against the foundations of national security of Ukraine; intentional murder of two or more people, or murder with particular cruelty, or combined with rape or sexual violence; crimes against sexual freedom and inviolability; terrorism-related crimes; drunken driving if it caused the death of several people; murder or attempted murder of a law enforcement officer or military personnel; particularly grave corruption offences.

Despite certain shortcomings of this Law (e.g., not a clear procedure, restrictions by article, no consequences if a military unit refuses to take a released prisoner, etc.), it is generally positive and allows convicts who are found fit by their psychological state, skills and health to defend Ukraine. As of July 2024, 3,800 such persons had joined the Armed Forces of Ukraine¹⁴⁸⁶ (including 18 women)¹⁴⁸⁷.

Other issues

According to the Special Report of the Ukrainian Parliament Commissioner for Human Rights “On the State of Implementation of the National Preventive Mechanism in Ukraine in 2022”¹⁴⁸⁸ the problem of joint detention of different categories of convicts, including first-time offenders and those who have previously served their sentences, was identified. These problems in pre-trial detention centres were also recorded in 2023.

Such joint detention poses serious and immediate risks to the safety of first-time offenders. In particular, convicted persons who have committed repeated crimes may have a negative impact on previously unconvicted persons, joint detention may lead to conflicts among detainees, self-harm and crimes during their detention in penal institutions (state institutions “Kyiv pre-trial detention centre”, “Chernivtsi pre-trial detention centre”, and “Zakarpattia penal institution (№ 9)”).

In this regard, it is necessary to strengthen oversight over the separation of different categories of prisoners in penitentiary institutions, including first-time offenders and those who have previously served their sentences.

The state of the probation system

The term “probation” officially appeared in the national legislation in 2015 with the adoption of the Law of Ukraine “On Probation”¹⁴⁸⁹, although the first references to this institution are found in government documents as early as 2002. In 2008, the first Concept of Reforming the Criminal Justice System of Ukraine (with the direction of probation) was developed. In 2008, the Ukrainian Parliament registered the first two draft laws defining the organisational and legal framework for

1485 On Amendments to the Criminal Code, the Code of Criminal Procedure and other legislative acts of Ukraine regarding the introduction of the institution of conditional release of persons from serving their sentences for their direct participation in the defence of the country, protection of its independence and territorial integrity: Law of Ukraine of 08.05.2024 No. 3687-IX. URL: <https://zakon.rada.gov.ua/laws/show/3687-IX#Text>.

1486 Almost 4,000 released prisoners are in the Ukrainian Armed Forces, and there are already wounded and dead among them. Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/news/2024/07/23/7467036/>.

1487 There are 18 amnestied women serving in the Armed Forces of Ukraine. What do they do? Hromadske. 2024. URL: <https://hromadske.ua/viyna/229077-mayze-20-eksuviaznenykh-zinok-sluzat-u-zsu-iak-strilchyni-ta-sanitarky-zsu>.

1488 Special report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine in 2022. 2023. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/spetsdopovid-npm-2022-na-druk-1compressed-1.pdf>.

1489 On Probation: Law of Ukraine of 05.02.2015 No. 160-VIII. URL: <https://zakon.rada.gov.ua/laws/show/160-19#Text>.

the functioning of probation. In 2011, the first Concept for the Development of Juvenile Criminal Justice in Ukraine was developed (focusing on the future of juvenile probation).

Instead, the actual implementation of the provisions of the above Law was carried out only in 2017, as it required amendments to other legislative acts.

The main idea behind the departure from the “philosophy” of the criminal executive inspection, which was replaced by the probation “philosophy”, is a shift from the usual tasks and functions of supervision over the execution of criminal sentences alternative to deprivation (restriction) of liberty to those that ensure the implementation of supervisory and social and educational measures. This affects the change in the thinking and behaviour of the convicted person – their correction and resocialisation, as provided for in Article 6 of the Criminal Executive Code of Ukraine.

Staff and funding

The announced reform of the probation system and the expansion of alternative sentences to imprisonment did not lead to any qualitative or even quantitative positive results.

The reform has been reduced to expanding the functional purpose of probation bodies, accompanied by a lack of funding and reduced legal and social protection for staff. This negates the requirement of the European Probation Rules¹⁴⁹⁰ that the probation service should have a certain status, be recognised in society and be adequately provided with all necessary resources.

The staff is trying to perform significant functions in conditions when even the provision of paper is less than 2% of the need, and employees have to buy envelopes, stamps and other necessary items with their own salaries. Utilities and repairs are also not financed from the state budget. Expenditures allocated by the central government in a minimum amount do not apply to all regions, and the grounds for the selective approach are not open and unclear. The gap in salaries between the central apparatus and employees who work directly with prisoners is tenfold. Only the needs of the central apparatus are fully funded¹⁴⁹¹.

Probation staff involve local authorities and budgets in funding, but instead of supporting work and programmes specifically for convicts, local budgets pay for repairs and technical support for the daily activities of staff¹⁴⁹². Consequently, convicts are not involved in rehabilitation programmes, the necessary services are not provided to them, and the risk of recidivism increases.

Last year, measures were taken to change the positions filled by senior staff to those filled by persons employed under an employment contract with the authorised probation authorities, but the staff did not acquire any legal and social status/protection. Persons working in probation do not even belong to the category of civil servants. The staff turnover rate is almost 100% (the number of dismissals is equal to the number of recruits, the average length of service in probation is 1-2 years for the vast majority of staff)¹⁴⁹³. The costs of training such staff are significant, but there is a lack of trained personnel. Under such conditions, it is impossible to conduct effective work with convicts.

1490 Recommendation CM/Rec (2010)1 of the Committee of Ministers to the Member States on the Council of Europe Probation Rules (Adopted by the Committee of Ministers on 20 January 2010 at the 105th meeting of the Deputy Ministers). URL: <https://rm.coe.int/16806f4097>.

1491 Explanatory Note to the Draft Law of Ukraine “On Amendments to Certain Legislative Acts on Improving the Execution of Punishment in the Form of Fines and Community Service”. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41654>.

1492 Review of the performance of the State Institution “Probation Centre” for the first half of 2023, p. 76. URL: <https://docs.google.com/document/d/1W-wqJfyw4wWX3eaidImLbLvSAdQrO7s/edit>.

1493 1053 hired, 1078 dismissed. Review of the performance of the State Institution “Probation Centre” for the first half of 2023, pp. 99-100. URL: <https://docs.google.com/document/d/1W-wqJfyw4wWX3eaidImLbLvSAdQrO7s/edit>.

This also contradicts the European Probation Rules, which require that employees' remuneration, incentives and working conditions reflect the specifics of their professional activities and correspond to the nature of their work in order to attract new employees and retain existing ones.

Performing the main tasks

Penitentiary probation has actually been reduced to an exchange of messages with various services and does not lead to a real solution to the problems of convicts, work with their families, etc. as defined in the European Probation Rules. Probation actually forwards information to other services and then sends the responses to penitentiary institutions. In reality, the needs of convicts are not studied, nor is there any impact on them, nor are their criminogenic needs.

The introduction of probation supervision does not affect the situation with imprisonment, as this type of punishment, according to the law, is planned to be applied to those convicts who have not been imprisoned before, and who were sentenced to arrest or other, more lenient, types of punishment.

The current Criminal Executive Code of Ukraine and other regulations give probation staff considerable discretion to cancel probation. In practice, when making a decision to cancel the probationary period, formal circumstances are taken into account, without a real assessment of the convict's life situation. There are frequent cases when the fact of the person's behaviour in the complex, as well as their personal circumstances are not taken into account. The behaviour of the person is not accessed through the measures that should have been taken or actually taken by the probation authorities. The plans drawn up are formal and not aimed at addressing the real needs¹⁴⁹⁴. All this leads to an unjustified deterioration of the situation of probationers.

On 28 March 2024, Law of Ukraine No. 3687-IX on Probation Supervision¹⁴⁹⁵, adopted in September 2023, came into force. Probationary supervision is the restriction of the rights and freedoms of a convicted person, as defined by law and established by a court verdict, with the use of supervisory and social and educational measures without isolation from society. The new law covers more than 140 articles of the Criminal Code of Ukraine under which probation supervision may now be imposed.

At its core, probation supervision is virtually no different from conditional release with a probationary period (except for the consequences of failing to meet obligations). Therefore, those currently under probation supervision would likely have been sentenced to non-custodial punishment anyway. Therefore, the introduction of this type of punishment is unlikely to have a significant immediate impact. Only in the long term, it may lead to an increase in the number of convicts serving longer sentences, since if previously, in case of failure to meet obligations upon conditional release, would result in the convict being sent to serve their sentence in a penitentiary institution. Now, it will require the initiation of new criminal proceedings, a new trial, and potentially a much longer period of actual imprisonment.

1494 K. Avtukhov, I. Yakovets. Legal Principles and Practice of Cancellation of Probationary Subjects' Probationary Period in the Context of Combating and Overcoming the Consequences of the Epidemic. 2021. URL: <https://notorture.org.ua/wp-content/uploads/2021/03/Дослідження.pdf>.

1495 On Amendments to the Criminal Code, the Code of Criminal Procedure of Ukraine and Other Legislative Acts of Ukraine on Improving the Types of Criminal Punishment: Law of Ukraine No. 3342-IX of 23.08.2023. URL: <https://zakon.rada.gov.ua/laws/show/3342-20>.

Recommendations

1. Amend Article 127 of the CC of Ukraine to establish a special subject of the crime of torture – state officials or other persons acting in an official capacity.
2. Ensure the proper implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol).
3. Re-prioritise the work of the State Bureau of Investigation to increase its focus on documenting and investigating torture and other cruel, inhuman or degrading treatment or punishment.
4. Ensure the improvement of medical care and the gradual integration of medical care for convicts and detainees in a single (common) medical space, as envisaged by the Strategy for Reforming the Penitentiary System until 2026.
5. Provide for adequate funding for the healthcare system. Develop and implement a strategy and plan for working with medical personnel, which should include fair remuneration and social guarantees for medical workers.
6. Strengthen control over the separation of different categories of prisoners in penitentiary institutions, including first-time offenders and those who have previously served their sentences.
7. Review the strategic documents of the authorities to take into account the existing risks of the ongoing armed conflict, to prepare effective plans to reduce the level of danger to persons in places of detention. Ensure the transfer of convicts serving their sentences in institutions located in the frontline areas to safer areas, and provide appropriate funding for such transfer and placement.
8. Create and equip the necessary number of shelters from rocket and bomb attacks in places of detention.
9. Ensure legal and social protection of probation staff in line with the approaches laid down in the European Probation Rules, reduce the gap in remuneration between the central office and those who work directly with convicts; create conditions for the proper performance of their functions.
10. Review the capacity of probation bodies to provide real work with convicts.
11. Amend the current legislation to improve the grounds for applying extreme measures to convicts that adversely affect their situation, as well as the content and forms of penitentiary probation in line with European approaches.

Issues for further monitoring

- › Practical implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol).
- › Adequate funding of the medical care system in penitentiary institutions, improvement of medical care and gradual integration of medical care for convicts and detainees into a single (common) medical space of the country.

- › Increase the effectiveness of the SBI in documenting and investigating torture and other cruel, inhuman or degrading treatment or punishment.
- › Creating and equipping the necessary number of shelters in places of detention, preparing effective plans to reduce the level of danger to persons in places of detention in the context of the armed conflict, and relocating places of detention that are or may be located near the combat zone to safer regions of Ukraine.

Freedom of expression

In 2023, the Law of Ukraine “On Media” (the “Media Law”)¹⁴⁹⁶ came into force, bringing Ukrainian media legislation closer to European standards.

In particular, the Law established requirements for the funding of the National Council of Ukraine on Television and Radio Broadcasting (National Council), including the remuneration of its Head, First Deputy Head, Deputy Head, Executive Secretary and members. In addition, it stipulates that the financing of the media regulator’s activities shall be at least 0.022% of the revenues of the general fund of the State Budget of Ukraine for the previous year. However, in 2023 and 2024, the Ukrainian Parliament suspended these provisions of the Law. The issue of remuneration of the above-mentioned individuals is currently being resolved by the Cabinet of Ministers of Ukraine. Meanwhile, in 2023, the National Council received almost half the amount of funds for its activities than it was supposed to receive under the Media Law. In addition, in 2023, the Law of Ukraine “On Lawmaking”¹⁴⁹⁷ was adopted, establishing the obligation for the media regulator’s legal acts to undergo the procedure of state registration by the Ministry of Justice. All this poses serious risks to the independence of the National Council.

It is important to note that the Media Law expanded the range of media outlets in which government authorities are prohibited from participating (and/or acting as founders/co-founders). This is a positive step towards the implementation of European standards in the media sphere, designed to reduce the influence of the authorities on the media and to ensure the editorial independence of such media. However, it is impossible to fully implement these legislative provisions during the war.

In 2023 and 2024, there was a significant underfunding of the public broadcaster, which negatively affected its work. Instead, the state’s influence on information policy has increased through the format of the United Telemarathon.

The problems associated with the excessive influence of oligarchs and the inconsistency of the procedure for the appointment and dismissal of the Head of the Antimonopoly Committee of Ukraine, as defined in the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, with the Constitution of Ukraine remain unresolved, which undermines its independence and creates opportunities for political pressure. This also poses threats to the media sector, given the authority granted to the Antimonopoly Committee of Ukraine to define the boundaries of media markets, as well as the market for the dissemination (distribution) and consumption of advertising.

There is a deterioration in the effectiveness of investigations into offences committed against journalists and pressure on journalists and the media, censorship attempts and legislative efforts to restrict public access to court decisions included in the Unified State Register of Court

1496 On Media: Law of Ukraine of 13.12.2022 No 2849-IX. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1497 On Lawmaking: Law of Ukraine of 24.08.2024 № 3354-IX. URL: <https://zakon.rada.gov.ua/laws/show/3354-20#top>.

Decisions, which may contain socially important information. Problems related to the lack of adequate insurance for journalists, other media workers and fixers remain unresolved¹⁴⁹⁸.

A positive trend is the increasing attention of journalists and media to the ethical aspects of covering a wide range of topics, especially in the context of war, and the strengthening of the role of the Journalism Ethics Commission.

In 2023 and early 2024, journalists' access to the Verkhovna Rada for independent coverage of its activities remained a challenge. However, in May 2024, access to the Parliament's premises was restored (subject to a number of conditions)¹⁴⁹⁹. Additionally, since the entry into force of the Media Law, there has been a positive trend towards the publication of the justification for including a person in the List of Persons Posing a Threat to the National Security of Ukraine.

Implementation of the Law of Ukraine "On Media"

The "Media Law"¹⁵⁰⁰ entered into force on 31 March 2023 (except for certain provisions). In general, it complies with European media standards¹⁵⁰¹, in particular the Audiovisual Media Services Directive¹⁵⁰². Currently, media lawyers do not observe any serious problems related to the implementation of the Law¹⁵⁰³.

Among other things, the Media Law strengthens the financial independence of the National Council. However, in 2023 (as well as the year before), the Ukrainian parliament suspended a number of provisions of the Media Law relating to the funding of the regulator¹⁵⁰⁴. As a result of these changes, the remuneration of the head, first deputy head, deputy head, executive secretary and members of the National Council became dependent on the Cabinet of Ministers of Ukraine¹⁵⁰⁵. Moreover, in 2023, due in part to the suspension of these provisions, the National Council received nearly half of the funding it was entitled to under the Media Law¹⁵⁰⁶. This shortfall has complicated the implementation of the Law, particularly with regard to the launch of an electronic cabinet¹⁵⁰⁷.

1498 A fixer is a local hired coordinator who helps to organise the workflow for journalists, photographers and TV crews during their business trips abroad.

1499 Speaker of the Ukrainian Parliament Ruslan Stefanchuk signs an Order on the admission of journalists to the Verkhovna Rada of Ukraine under martial law. Verkhovna Rada of Ukraine. 2024. URL: <https://www.rada.gov.ua/news/Novyny/249274.html>.

1500 On Media: Law of Ukraine of 13.12.2022 No. 2849-IX. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1501 DGI (2023)03: Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Information Society Department prepared on the basis of the expertise by Council of Europe experts: Eve Salomon and Tanja Kerševan on the Law «On Media» of Ukraine of 24.02.2023. URL: <https://rm.coe.int/dgi-2023-03-ukraine-tp-law-on-media-2751-9297-4855-1-2753-6081-2551-1/1680aa72df>.

1502 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive, AVMSD), as amended by the Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018. URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013>.

1503 Information based on an interview with a representative of the Human Rights Platform NGO (interview on 04.03.2024).

1504 On the State Budget of Ukraine for 2023: Law of Ukraine of 03.11.2022 No. 2710-IX, para. 24, para. 3, "Final Provisions". URL: <https://zakon.rada.gov.ua/laws/show/2710-20#top>; On the State Budget of Ukraine for 2024: Law of Ukraine of 09.11.2023 No. 3460-IX, para. 26, cl. 3, "Final Provisions". URL: <https://zakon.rada.gov.ua/laws/show/3460-20#top>.

1505 On Amendments to Annex 1 to the Resolution of the Cabinet of Ministers of Ukraine of 20.04.2016 No. 304: Resolution of the Cabinet of Ministers of Ukraine of 30.03.2023 No. 276. URL: <https://zakon.rada.gov.ua/laws/show/276-2023-%D0%BF#Text>.

1506 For more details, see Opryshko Dariia. Monitoring media pluralism in the digital era: preliminary study to the implementation of the media pluralism monitor 2024 in Ukraine. Cadmus. URL: <https://cadmus.eui.eu/handle/1814/77025>.

1507 According to Art. 69 of the Law of Ukraine "On Media", the purpose of the electronic cabinet is to provide an effective mechanism for licensing and registration actions, electronic exchange of information, documents and effective interaction between the National Council and media entities.

Another serious threat to the independence of the National Council is the obligation for the media regulator's acts to undergo the procedure of state registration by the Ministry of Justice¹⁵⁰⁸. Such an obligation may arise for the National Council after the termination or cancellation of the martial law regime. The problem is that the National Council does not belong to the system of central executive bodies¹⁵⁰⁹, but is an independent constitutional permanent collegial state body¹⁵¹⁰. The procedure of state registration of legal acts stipulates that the Ministry of Justice reviews them for compliance with Ukrainian legislation and international acts, and only after their registration do these legal acts enter into force¹⁵¹¹. Thus, the Ministry of Justice will exercise control over the regulatory acts of the National Council, thereby undermining its independence.

This makes the media regulator dependent on the legislative and executive branches of government and opens up opportunities for pressure on its representatives. In view of this, it is necessary to stop the practice of suspending the provisions of the Media Law in this part and to comply with its requirements in full, and amend the Law of Ukraine "On Lawmaking" to eliminate the obligation for the National Council's regulatory acts to undergo state registration by the Ministry of Justice.

It is also important to pay attention to the issues related to the compilation of the List of Persons Posing a Threat to the National Security of Ukraine. This List¹⁵¹² is compiled (upon submission by the National Security and Defence Council of Ukraine (NSDC), the Security Service of Ukraine (SSU), and the National Council), updated and published on its website by the Ministry of Culture and Information Policy of Ukraine. As of March 2024, the SSU published the relevant letters containing the justification for the inclusion of a person on the List in three cases. In the period from April to 18 July 2024, the number of persons included in this List increased by 7 persons¹⁵¹³. The relevant letters from the SSU or appeals from the National Council were made available to the public in all these cases. The published information generally complies with the requirements of the Law on Media, which indicates a positive trend in compliance with its requirements.

As of March 2024, the SSU published letters justifying the inclusion of individuals on the List in three cases. From April to July 18, 2024, the number of individuals added to this List increased by seven. In all these cases, the relevant letters from the SSU or appeals from the National Council were made available to the public. The published information generally complies with the requirements of the Media Law, reflecting a positive trend in adhering to its provisions

Reforming state and municipal media

In Ukraine, as of March 2024, print media are predominantly private. This became possible as a result of the reforms carried out in 2016-2018 to denationalise state and municipal media. The only exceptions are the newspapers Holos Ukrainy and Uriadovyi Kurier, which officially publish laws, other regulations, analytics, etc¹⁵¹⁴.

1508 On Lawmaking: Law of Ukraine of 24.08.2023 No. 3354-IX, clause 15, part 2 of the Final Provisions section. URL: <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

1509 On Central Executive Bodies: Law of Ukraine of 17.03.2011 No. 3166-VI, Art. 1, Art. 24. URL: <https://zakon.rada.gov.ua/laws/show/3166-17#Text>.

1510 On Media: Law of Ukraine of 13.12.2022 No 2849-IX, Art. 70. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1511 Regulation on State Registration of Normative Legal Acts of Ministries and Other Executive Bodies: Resolution of the Cabinet of Ministers of Ukraine of 28.12.1992 No. 73, paras. 4, 15. URL: <https://zakon.rada.gov.ua/laws/show/731-92-%D0%BF#Text>; On Lawmaking: Law of Ukraine of 24.08.2023 No. 3354-IX, clause 15, part 2 of the Final Provisions section. URL: <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

1512 List of persons who pose a threat to national security. URL: <https://mcip.gov.ua/informatsiyna-polityka-ta-bezpeka/perelik-osib-ia-ki-stvoriuiut-zahrozu-natsbezpetsi/>.

1513 Ibid, paras. 32, 54, 84.

1514 Opryshko Dariia. Monitoring media pluralism in the digital era: application of the media pluralism monitor in Ukraine, p. 20. URL: <https://cadmus.eui.eu/handle/1814/76165>.

The Media Law has expanded the range of media in which public authorities are prohibited from participating (and/or acting as founders/co-founders). As a general rule, an entity in the field of audiovisual, print and online media cannot be a person whose ownership structure includes state bodies, local self-government bodies, or their associations¹⁵¹⁵. Exceptions to this rule include, in particular, the public broadcaster, the state enterprise Multimedia Platform of Foreign Broadcasting of Ukraine, the Ukrainian National News Agency Ukrinform, the Rada TV channel, and the media of the Ministry of Defence of Ukraine (the exception for the latter is applied for the period of validity of Section IX of the Media Law¹⁵¹⁶).

In addition, the Media Law requires local self-government bodies to decide on the reorganisation of municipal broadcasting organisations into local public audio-visual media. This obligation shall be fulfilled six months following the termination or cancellation of the martial law regime (with certain exceptions)¹⁵¹⁷, and until then, such media may be reorganised on a voluntary basis. In October 2023, the National Association of Broadcasters launched a pilot project to help these media outlets in the process of their reforming and selected five participants for its implementation¹⁵¹⁸. Currently, the process of reorganising communal media into local public audiovisual media is still ongoing (as of July 2024).

These legislative changes are a positive step towards the implementation of European media standards. They are intended to reduce the influence of the authorities on the media and to ensure their editorial independence. However, given that the reorganisation of municipal broadcasters into local public audiovisual media is mandatory only after the termination or cancellation of the martial law regime, it is impossible to fully implement these legislative norms during the war.

The situation with the public broadcaster and the national telemarathon

The situation with the underfunding of the National Public Broadcasting Company of Ukraine PJSC remains alarming: in 2023, the public broadcaster received only about 29%¹⁵¹⁹ of the funding provided by the current legislation of Ukraine¹⁵²⁰. Approximately the same situation is observed in 2024¹⁵²¹. Significant underfunding has a direct negative impact on content production and salaries of public broadcaster employees. At present, a public broadcaster can produce/purchase content only with its own resources or with grant funds. The inadequate level of remuneration of the public broadcaster's employees leads to the fact that journalists are forced to look for sources of additional income¹⁵²². Therefore, in order to solve this problem, it is necessary to provide the public broadcaster with funding in the amount required by law.

1515 On Media: Law of Ukraine of 13.12.2022 No. 2849-IX, para. 2, p. 2, Art. 15; para. 2, p. 2, Art. 16, p. 2, Art. 21. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1516 Section IX of the Law of Ukraine "On Media" is in force from the moment the Verkhovna Rada recognises a certain state as an aggressor state (occupying power) and for five years from the date of the Verkhovna Rada's decision to cancel such status. As of March 2024, Ukraine recognised only the Russian Federation as an aggressor state (occupying power) (in 2015) and only after Russia illegally occupied part of Ukrainian territory.

1517 On Media: Law of Ukraine of 13.12.2022 No. 2849-IX, para 38, Section X of the Law. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1518 Winners of the competition for community media. National Association of Media. 2023. URL: <https://nam.org.ua/news/peremozci-konkursu-dla-komunalnih-media>.

1519 On the State Budget of Ukraine for 2022: Law of Ukraine of 02.12.2021 No. 1928-IX, para. 3, Article 1. URL: <https://zakon.rada.gov.ua/laws/show/1928-20#Text>; On the State Budget of Ukraine for 2023: Law of Ukraine of 03.11.2022 No. 2710-IX, Annex 3, line 50. URL: <https://zakon.rada.gov.ua/laws/show/2710-20#top>; ББudget-2023: Expenditures on Public and Other Information Spheres. Centre for Democracy and Rule of Law. 2022. URL: <https://cedem.org.ua/news/byudzhet-2023/>.

1520 On Public Media of Ukraine: Law of Ukraine of 17.04.2014 No. 1227-VII, p. 3, Art. 14. URL: <https://zakon.rada.gov.ua/laws/show/1227-18#Text>.

1521 On the State Budget of Ukraine for 2023: Law of Ukraine of 03.11.2022 No. 2710-IX, para. 3, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/2710-20#top>; Про Державний бюджет України на 2024 рік: Закон України від 09.11.2023 № 3460-IX, додаток 3, рядок 488. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>.

1522 Information obtained from an interview with a representative of the NGO Centre for Democracy and Rule of Law (06.03.2024).

At the same time, in 2023 and 2024, the state allocated significant funds for the national telemarathon “United News” and the work of foreign broadcasting channels, thus strengthening its information influence: in 2023, this amount was over UAH 1.4 billion. Simultaneously, the public broadcaster did not receive approximately the same amount of funds¹⁵²³.

In 2023, the telemarathon was criticised for “unbalanced presentation of information and lack of access to it for the opposition”¹⁵²⁴, as well as for “becoming a platform for PR for the pro-government political force”¹⁵²⁵. At the same time, Priamyi, Espresso and Channel 5 TV channels (two of which are associated with former President of Ukraine Petro Poroshenko) were not allowed to participate in the creation of a joint telemarathon¹⁵²⁶ and in April 2022, they were removed from the digital broadcasting (under the NSDC decision to broadcast a joint marathon)¹⁵²⁷. This situation carries risks for media pluralism in Ukraine¹⁵²⁸.

It should be noted that on May 21, 2024, the public broadcaster withdrew from the United Telemarathon and resumed its own programming on Channel One. It no longer broadcasts “United News #UAtogether,” but the content it produces can still be included in the united telemarathon on the TV channels that continue to broadcast it¹⁵²⁹.

Against this background, Ukrainian society is witnessing a decline in confidence in the telemarathon¹⁵³⁰ and is increasingly questioning the feasibility of its continued existence or, at the very least, the need for its reformatting¹⁵³¹. In addition, the format of the foreign broadcasting channels, in particular FreeDom, is heavily criticised. Moreover, media experts are increasingly raising the issue of the need to review and change Ukraine’s information policy in general¹⁵³². Therefore, it is proposed to reconsider the feasibility of further uniting national TV channels

1523 On the State Budget of Ukraine for 2023: Law of Ukraine of 03.11.2022 No. 2710-IX, para. 3, Art. 1. URL: <https://zakon.rada.gov.ua/laws/show/2710-20#top>; On the State Budget of Ukraine for 2024: Law of Ukraine dated 09.11.2023 No. 3460-IX, Annex 3, lines 467, 468, 488. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>; Budget 2023: Less for the media and cultural sphere, but more for the marathon and the information protection system. Detector Media. 2022. URL: <https://detector.media/rinok/article/205125/2022-11-19-byudzhet-2023-roku-menshe-na-mediyno-kulturnu-sferu-ale-bilshe-na-marafon-i-systemu-zakhystu-informatsii/>.

1524 Challenges for freedom of speech and journalists in times of war: a sociological study. Human Rights Centre. ZMINA. p. 47. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/05/freedomofspeechandjournalistsatwar_socialresearchua_web.pdf.

1525 Ibid, art. 7.

1526 Mono-marathon. Why the authorities stopped broadcasting Channel 5, Priamyi and Espresso. Media Detector. 2022. URL: <https://detector.media/infospace/article/198512/2022-04-19-monomarafon-chomu-vlada-prypynyla-movlennya-5-kanalu-pryamogo-ta-espreso/>.

1527 State Special Communications: Digital broadcasting of Espresso, Priamyi and Channel 5 was switched off to implement the NSDC decision. Media Detector. 2022. URL: <https://detector.media/infospace/article/199070/2022-05-09-derzhspetsvvyazku-tyfrovyy-efir-espreso-pryamogo-ta-5-kanalu-vidklyuchyly-na-vykonannya-rishennya-rnbo/>.

1528 For more details, see Opryshko Dariia. Monitoring media pluralism in the digital era: preliminary study to the implementation of the media pluralism monitor 2024 in Ukraine. Cadmus. 2024. P. 27-29. URL: <https://cadmus.eui.eu/handle/1814/77025>.

1529 “Suspilne” resumes broadcasting: the beginning of the end of the telemarathon? DW. 2024. URL: <https://www.dw.com/uk/suspilne-vidnovlue-vlasne-movlenna-pocatok-kinca-nacionalnogo-telemarafonu/a-69162446>.

1530 KIIS: The level of trust in telethon continues to decline. Media Detector. 2023. URL: <https://detector.media/infospace/article/221129/2023-12-28-kmis-riven-doviry-do-telemarafonu-prodovzhuie-znyzhuvatysya/>.

1531 Information obtained from interviews with representatives of the NGO “Detector Media” (11.03.2024) and the NGO “Ukrainian Institute of Media and Communication” (12.03.2024); Challenges to freedom of speech and journalists in times of war: a sociological study. ZMINA. pp. 22-23, 47. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/05/freedomofspeechandjournalistsatwar_socialresearchua_web.pdf.

1532 Information obtained from an interview with a representative of the Ukrainian Institute of Media and Communication (12.03.2024); The balance between freedom of speech and information security should consist of truth and silence, not truth and lies. Media Detector. 2023. URL: <https://detector.media/infospace/article/218112/2023-10-16-balans-mizh-svobodoyu-slova-ta-infobezpekoyu-maie-skladatysya-z-pravdy-i-movchannya-a-ne-z-pravdy-i-brekhni/>; Our journalists have shown during the war that they can work as well as The New York Times. Centre for Political Consulting. 2023. URL: <https://cpc.com.ua/articles/diana-ducik-nashi-zhurnalisti-pokazali-pid-chas-vyni-scho-mozhut-pracyuvati-ne-girshe/>; “We have to admit that we are in a chronic war, and society cannot remain with unresolved problems for years.” Experts talk about the telethon and its further existence. Media Detector. 2024. URL: <https://detector.media/community/article/223504/2024-02-27-varto-vyznaty-shcho-v-nas-khronichna-viyna-i-suspilstvo-ne-mozhe-rokamy-zalyshatys-iz-neprogovorenymy-problemamy-eksperty-pro-telemarafon-ta-yogo-podalshe-ispunannya/>.

on a single information platform of the round-the-clock information marathon “United News #UAtogether” and to change the format of implementing a unified information policy during martial law.

Oligarchs’ influence on the media

Ukraine is characterised by the influence of oligarchs on the media¹⁵³³ and the risk of their use of the media to achieve certain goals (in business, politics, etc.). In 2021, in order to reduce this influence, the Parliament of Ukraine adopted the Law of Ukraine “On Prevention of Threats to National Security Associated with the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” No. 1780-IX¹⁵³⁴ (the relevant opinion of the Venice Commission, is one of the EU requirements for confirming Ukraine’s status as a candidate state for EU membership¹⁵³⁵. However, in its opinion of 12 June 2023, the Venice Commission stressed that Law No. 1780-IX cannot be considered a democratic response to oligarchisation, in particular because of its inconsistency with the rule of law and the possibility of its use for political purposes¹⁵³⁶.

In 2023, the Ukrainian government amended the Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (oligarchs)¹⁵³⁷, in particular, it postponed the amendments to Law No. 1780-IX and the launch of the relevant Register (of oligarchs). Therefore, amendments that take into account the conclusions of the Venice Commission should be made to Law No. 1780-IX, and the registry should start functioning three months after the cancellation/termination of the martial law regime. However, such a step does not solve the problem of oligarchs’ influence on the media, as Law No. 1780-IX creates conflicts in Ukrainian legislation (in particular, in terms of terminology), does not comply with the rule of law and creates risks of political pressure. Therefore, it is worth considering the possibility of declaring this law invalid and preparing amendments to Ukrainian legislation in line with the recommendations of the Venice Commission.

In the context of the media, it is also important to pay attention to issues related to the activities of the Antimonopoly Committee of Ukraine (hereinafter – the AMCU). This problem is relevant, in particular, in view of the fact that the AMCU has been empowered to define the boundaries of media markets, as well as the market for the dissemination (distribution) and consumption of advertising information. Despite the adopted amendments to the legislation of Ukraine¹⁵³⁸, the problem of inconsistency with the Constitution of Ukraine of the procedure for appointment and dismissal of the AMCU Head, as set out in the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, still remains. According to the Constitution of Ukraine, the Head of the AMCU is

1533 Opryshko Dariia. Monitoring media pluralism in the digital era: preliminary study to the implementation of the media pluralism monitor 2024 in Ukraine, p. 18. Cadmus. URL: <https://cadmus.eui.eu/handle/1814/76165>.

1534 On Prevention of Threats to National Security Associated with the Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Law of Ukraine of 23.09.2021 No. 1780-IX. URL: <https://zakon.rada.gov.ua/laws/show/1780-20#Text>.

1535 Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on Ukraine’s application for membership of the European Union of 17.06.2022. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0407>.

1536 Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9–10 June 2023). URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e).

1537 Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs): Order of the Cabinet of Ministers of Ukraine of 24.11.2021 No. 1582. URL: <https://zakon.rada.gov.ua/laws/show/1582-2021-%D1%80#Text>.

1538 On Amendments to Certain Legislative Acts of Ukraine on Improving the Legislation on Protection of Economic Competition and the Activities of the Antimonopoly Committee of Ukraine: Law of Ukraine of 09.08.2023 No. 3295-IX. URL: <https://zakon.rada.gov.ua/laws/show/3295-20#Text>.

appointed (upon the proposal of the Prime Minister of Ukraine) and dismissed by the Parliament of Ukraine¹⁵³⁹.

Instead, the Law of Ukraine “On the Antimonopoly Committee of Ukraine” provides that the Head of the AMCU is appointed and dismissed by the President of Ukraine with the consent of the Parliament of Ukraine¹⁵⁴⁰. Thus, the procedure for appointment and dismissal of the AMCU Head established by the above-mentioned law does not comply with the provisions of the Constitution of Ukraine and creates conditions for political pressure. To eliminate the said problem, it is necessary to bring the provisions of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” in line with the Constitution of Ukraine.

Harassment and intimidation of journalists, investigation of attacks and other forms of pressure on journalists

There is a problem of increasing pressure on independent journalists and media¹⁵⁴¹, violations and restrictions of their rights by government officials. According to the Institute of Mass Information, in 2023, a total of 150 cases of violations of freedom of speech were recorded, of which 83 were committed by the Ukrainian side and 67 by Russia¹⁵⁴². In addition, there is a tendency to deteriorate the state of investigations into offences against journalists¹⁵⁴³. This is an alarming signal, indicating that the problems related to the implementation of the European Court of Human Rights judgement in the case of Gongadze v. Ukraine have not been resolved. Examples of putting pressure on journalists include an attempt to intimidate Yuriy Nikolov¹⁵⁴⁴ – the author of high-profile investigations into corruption schemes, including the embezzlement of budget funds in the Ministry of Defence of Ukraine for the purchase of provisions for the military; long-term covert surveillance by Ukrainian special services of the team of the investigative journalism project Bihus.Info¹⁵⁴⁵ sending “temnyky”¹⁵⁴⁶ to journalists of the Ukrainian national news agency Ukrinform¹⁵⁴⁷.

In this regard, the change¹⁵⁴⁸ in the Government’s position on the implementation of the European Court of Human Rights judgement in the Sedletska v. Ukraine case¹⁵⁴⁹, which is to refuse to amend

1539 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, para. 12, Art. 85. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#top>.

1540 On the Antimonopoly Committee of Ukraine: Law of Ukraine of 26.11.1993 No. 3659-XII, p. 1, Art. 9. URL: <https://zakon.rada.gov.ua/laws/show/3659-12#Text>.

1541 Information based on an interview with a representative of the NGO Detector Media (11.03.2024). Who and how harasses and intimidates Ukrainian media. Detector Media. 2024. URL: <https://detector.media/community/article/222070/2024-01-23-khto-i-yak-tskuie-ta-zalyakuie-ukrainski-media/>.

1542 IMI recorded 150 violations of freedom of speech in 2023. Almost half of them were committed by Russia. Institute of Mass Information. 2024. URL: <https://imi.org.ua/monitorings/150-porushen-svobody-slova-zafiksuvav-imi-v-ukrayini-v-2023-rotsi-majzhe-polovynu-vchynyla-rosiya-i58397>.

1543 Information obtained from an interview with a representative of the Human Rights Platform NGO (06.03.2024).

1544 Unidentified persons staged a provocation against investigative journalist Yuriy Nikolov, breaking into his apartment and demanding that he “go to serve”. Detector Media. 2024. URL: <https://detector.media/infospace/article/221722/2024-01-15-nevidomi-vashtuvaly-provokatsiyu-proty-zhurnalista-rozsliduvacha-yuriya-nikolova-lomylys-do-kvartyry-vymagayuchy-ty-sluzhyty/>.

1545 Verkhovna Rada summons SSU Head to explain surveillance of Bihus.Info. Media Detector. 2024. URL: <https://detector.media/infospace/article/222597/2024-02-06-verkhovna-rada-vyklykaie-golovu-sbu-dlya-poyasnen-shchodo-stezhennya-za-bihusinfo/>.

1546 “Temnyky” are guidelines that undermine the principle of editorial independence for journalists and media. They may relate to permitted and prohibited topics for coverage; persons from whom comments or interviews are desirable or undesirable; bans on distributing content from certain individuals, etc.

1547 Own insiders. How the Office of the President takes control of Ukrinform. 2024. URL: <https://www.pravda.com.ua/articles/2024/05/29/7458080/>.

1548 1436th meeting (June 2022) (DH) – Action plan (11.03.2022) – Communication from Ukraine concerning the case of Sedletska v. Ukraine (Application № 42634/18). URL: [https://hudoc.exec.coe.int/?i=DH-DD\(2022\)313E](https://hudoc.exec.coe.int/?i=DH-DD(2022)313E).

1549 Judgment of the European Court of Human Rights in the case of Sedletska v. Ukraine (application № 42634/18) of 01.04.2021. URL: <https://hudoc.echr.coe.int/eng?i=001-208882>.

Ukrainian legislation¹⁵⁵⁰ to ensure guarantees of protection of journalistic sources, is a cause for concern. In fact, this preserves the existing problem and makes it possible to commit similar violations of journalists' rights in the future¹⁵⁵¹.

In this context, a legislative initiative aimed at restricting general access to the Unified State Register of Court Decisions (draft law No. 7033-d) is particularly concerning¹⁵⁵². This draft law proposes that access to rulings on temporary measures and documents be granted only one year after they are entered into the register. While it was previously challenging to identify violations similar to those in the *Sedletska v. Ukraine* case, adoption of this draft law would make it nearly impossible. Consequently, this draft law poses significant risks to the protection of journalistic sources.

In addition, draft law No. 7033-d proposes to restrict general access to court decisions in cases of particular public interest (namely, crimes against the foundations of national security, protection of state secrets, inviolability of the state border, conscription and mobilisation, and the procedure for military service); to give judges the right to exclude from court decisions information that "may harm security" in cases considered in open court; to significantly expand the list of information that cannot be disclosed in the texts of court decisions, etc¹⁵⁵³ (*for more details, see the "Freedom of peaceful assembly, unions and associations" section*). The adoption of the draft law No. 7033-d will significantly restrict the public's right to access socially important information, substantially reduce the ability of society to exercise control over the administration of justice and increase corruption risks.

The work of journalists in the war zone and the impact of war on the media

In 2023, Ukraine continued to experience problems with journalists' access to the areas of hostilities. They were mainly related to the accreditation of journalists and its cancellation, selective (in some cases discriminatory) admission of journalists to the "hot" zones for media representatives in the areas of hostilities¹⁵⁵⁴, as well as the fact that the Order of the Commander-in-Chief of the AFU "On the organisation of interaction between the Armed Forces of Ukraine, other components of the defence forces and media representatives for the duration of the legal regime of martial law" No. 73¹⁵⁵⁵ (hereinafter referred to as the Commander-in-Chief's Order No. 73) was not fully consistent with the provisions of the Media Law¹⁵⁵⁶.

In early February 2024, the Commander-in-Chief of the Armed Forces of Ukraine approved amendments to Order No. 73. This was an important step in facilitating journalists' access to the areas of hostilities. In particular, the period for which accreditation is granted has been extended

1550 1492nd meeting (March 2024) (DH) – Action Report (28/02/2024) – Communication from Ukraine concerning the case of *Sedletska v. Ukraine* (Application № 42634/18). URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680aeb3de.

1551 1428th meeting (March 2022) (DH) – Rule 9.2 – Communication from an NGO (Human Rights Platform) (18/11/2021) in the case of *Sedletska v. Ukraine* (Application № 42634/18). URL: [https://hudoc.exec.coe.int/?i=DH-DD\(2021\)1328E](https://hudoc.exec.coe.int/?i=DH-DD(2021)1328E).

1552 On Amendments to Certain Laws of Ukraine on Preventing Disclosure of Certain Information in the Texts of Court Decisions: Draft Law of Ukraine, registration No. 7033-d of 13.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41159>.

1553 Calling on the Verkhovna Rada to refrain from adopting draft law No. 7033-d, which restricts access to court decisions. ZMINA 2024. URL: <https://zmina.ua/statements/zaklykayemo-verhovnu-radu-ne-pryjmaty-zakonoprojekt-%e2%84%96-7033-d-yakij-obmezhuje-dostup-do-sudovyh-rishen/>.

1554 More than fifty local communities are closed to journalists. Reporters without Borders. 2023. URL: <https://rsf.org/sites/default/files/medias/file/2023/03/Lire%20en%20Ukrainien.pdf>; MediaRukh demands that the authorities immediately return accreditations to foreign journalists. ZMINA. 2023. URL: <https://zmina.ua/statements/mediarukh-vymagaye-vid-vlady-negajno-povernuty-akredytacziyi-zarubizhnyh-zhurnalistam/>.

1555 On the organisation of interaction between the Armed Forces of Ukraine, other components of the defence forces and media representatives for the duration of the legal regime of martial law: Order of the Commander-in-Chief of the Armed Forces of Ukraine of 03.03.2022 No. 73. URL: <https://ips.ligazakon.net/document/MUS36785?an=1>.

1556 Information obtained from an interview with a representative of the Human Rights Platform (06.03.2024).

and a clear description of the areas for media representatives to stay in the areas of hostilities has been established. These changes are positive. However, there are still some drawbacks that media experts point out. In particular, in the order of the Commander-in-Chief No. 73, some grounds for refusing accreditation are still not clearly defined¹⁵⁵⁷. This shortcoming is significant, as it allows officials to deny accreditation to journalists at their discretion. This shortcoming can be addressed by amending the above-mentioned order and defining a clear and exclusive list of grounds for refusing to grant accreditation to journalists in the areas of hostilities.

The issue of life and health insurance for journalists (both those working in the media and freelancers), other media workers and fixers remains unresolved¹⁵⁵⁸. The problem of ensuring their proper insurance is especially relevant during the period of hostilities on the territory of the state. In 2023, the insurance of a few journalists working on the frontline was provided through a special fund, which was financially supported by foreign donors¹⁵⁵⁹. However, the problem shall be addressed comprehensively, in particular at the level of state policy, which will provide the preconditions for the creation of special insurance programmes for risks associated with the work of journalists, other media professionals and fixers in the context of hostilities.

Other unfavourable factors that also have a negative impact on the activities of journalists and the media include low remuneration for their work¹⁵⁶⁰. In particular, this applies to journalists of the public broadcaster, as well as those working in regional media¹⁵⁶¹. This can lead to cases where journalists are forced to leave the profession in search of other jobs with higher pay. The main reason for this situation is the destruction of the Ukrainian economy and advertising markets as a result of the war and the mobilisation of financial resources for military needs.

The impact of the war on the media is much broader, including the fact that a number of media outlets have been forced to cease operations (due to financial difficulties or because they were in combat areas or on Russian-occupied territories)¹⁵⁶², and the possibility of male journalists, especially those who publish critical material, being mobilised into the ranks of the AFU¹⁵⁶³.

Another issue in 2023 – nearly 2024 was the denial of access to the parliament for journalists and media representatives. Human rights defenders and journalists pointed to the fact that immediately after the full-scale invasion began, journalists and media were banned from attending the Verkhovna Rada's sessions and from the side-lines, and meetings of almost all parliamentary committees were moved online, without the involvement of experts from civil society organisations¹⁵⁶⁴. Parliamentary representatives explained such decisions by security

1557 Ibid.

1558 Information obtained from interviews with representatives of the NGO Centre for Democracy and Rule of Law (06.03.2024) and the NGO Ukrainian Institute of Media and Communication (12.03.2024).

1559 International Journalists' Insurance Fund. URL: <https://war-correspondent.info/>.

1560 Information obtained from an interview with a representative of the Ukrainian Institute of Media and Communication (12.03.2024).

1561 Information obtained from interviews with representatives of the NGO Centre for Democracy and Rule of Law (06.03.2024) and the Human Rights Platform NGO (06.03.2024).

1562 IMI recorded 567 violations of freedom of speech in Ukraine in 2022. More than 80% were committed by Russia. Institute of Mass Information. 2023. URL: <https://imi.org.ua/monitorings/567-porushen-svobody-slova-imi-zafiksuvav-u-2022-rotsi-v-ukrayini-ponad-80-vchynyla-rosiya-i50055>; 150 violations of freedom of speech were recorded by IMI in 2023. Almost half of them were committed by Russia. Institute of Mass Information. 2024. URL: <https://imi.org.ua/monitorings/150-porushen-svobody-slova-zafiksuvav-imi-v-ukrayini-v-2023-rotsi-majzhe-polovynu-vchynyla-rosiya-i58397>.

1563 Information obtained through interviews with representatives of the Centre for Democracy and Rule of Law NGO (06.03.2024) and the Human Rights Platform NGO (06.03.2024); An Ukrinform correspondent who reported the "temnyky" was requested to come to the military recruitment office. Institute of Mass Information. 2024. URL: <https://imi.org.ua/news/korespondenta-ukrinformu-yakj-zayavyv-pro-temnyky-zobov-yazaly-z-yavytysya-do-vijskkomatu-i61747>.

1564 The Verkhovna Rada is urged to allow journalists to attend its meetings and to the side-lines. Media Detector. 2024. URL: <https://detector.media/community/article/222585/2024-02-06-verkhovnu-radu-zaklykayut-dopustyty-zhurnalistiv-do-svoikh-zasidan-i-v-kuluary/>.

measures and the lack of sufficient space in shelters during air raid alerts. However, on 8 May 2024, the Head of the Verkhovna Rada signed Order No. 431, approving the Regulation on Accreditation of Media at the Verkhovna Rada of Ukraine of the ninth convocation for the period of martial law in Ukraine¹⁵⁶⁵, which restored access to the Parliament's premises for journalists (subject to a number of conditions).

Journalistic ethics and the work of professional journalistic unions

There are a number of professional and creative journalistic unions and journalistic self-regulatory bodies in Ukraine, such as the Commission on Journalistic Ethics, the National Union of Journalists of Ukraine, and the Independent Media Council. According to Ukrainian legislation¹⁵⁶⁶ journalists are required to comply with the requirements of the Code of Ethics of Ukrainian Journalists¹⁵⁶⁷, which is monitored by the Commission on Journalistic Ethics (CJE). This commission is very active, preparing and publishing decisions, explanations and statements on the issues of compliance with ethical standards by journalists and the media, providing relevant recommendations based on international and European standards and best practices in the field of freedom of expression. In addition, the CJE actively cooperates with journalism faculties of Ukrainian higher education institutions¹⁵⁶⁸.

Since the beginning of Russia's full-scale invasion of Ukraine, the number of requests from journalists and media outlets to the CJE to provide recommendations on ethical standards for covering various topics, especially in the context of the war, has increased¹⁵⁶⁹, in response to which the CJE has developed and published relevant recommendations and standards¹⁵⁷⁰. In addition, a positive trend is the increase in the number of cases of journalists and media responding to the CJE's appeals. At the same time, there is a tendency that regional media are more closely following the CJE's recommendations than large media groups¹⁵⁷¹.

Recommendations

1. Terminate the practice of suspending the provisions of the Law of Ukraine "On Media" in terms of financing the National Council of Ukraine on Television and Radio Broadcasting, and to fully comply with the provisions of the said Law.
2. Ensure proper funding of the public broadcaster, in accordance with the Law of Ukraine "On Public Media of Ukraine". Cancel the obligation of the regulatory legal acts of the National Council to undergo state registration by the Ministry of Justice of Ukraine.

1565 On certain issues of organising the work of journalists in the Verkhovna Rada of Ukraine of the ninth convocation during the martial law in Ukraine: Order of the Chairman of the Verkhovna Rada of Ukraine of 08.05.2024 No. 431. URL: <https://zakon.rada.gov.ua/laws/show/431/24-%D1%80%D0%B3#Text>.

1566 On State Support of the Media, Guarantees of Professional Activity and Social Protection of Journalists: Law of Ukraine of 23.09.1997 No. 540/97-VR, cl. 1, p. 2, Art. 11¹. URL: <https://zakon.rada.gov.ua/laws/show/540/97-%D0%B2%D1%80#Text>.

1567 Code of Ethics of Ukrainian Journalist. Commission on Journalism Ethics. URL: <https://cje.org.ua/ethics-codex/>.

1568 Information based on an interview with a representative of the Ukrainian Institute of Media and Communication (12.03.2024).

1569 See, for example, the Recommendations of the Commission on Journalism Ethics on Coverage of Deaths in War of 04.05.2022. URL: <https://cje.org.ua/statements/rekomendatsii-kzhe-shchodo-vysvitlennia-zahybeli-liudey-pid-chas-viyny>, Recommendations of the Commission on Journalistic Ethics on the use of stylistically coloured vocabulary in journalistic materials about the war of 27.05.2022. URL: <https://cje.org.ua/statements/rekomendatsii-komisii-z-zhurnalistskoi-etyky-shchodo-vzhyvannia-stylistychno-zabarvlenoi-leksyky-v-zhurnalistskykh-materialakh-pro-viynu/>.

1570 Ibid; Self-regulation of the Ukrainian media during martial law in Ukraine. From the experience of the Commission on Journalistic Ethics. Commission on Journalistic Ethics. 2022. URL: <https://cje.org.ua/library/samorehuliatyia-ukrainskykh-media-pid-chas-dii-voiennoho-stanu-v-ukraini-z-dosvidu-roboty-komisii-z-zhurnalistskoi-etyky/>.

1571 Information obtained from an interview with a representative of the Ukrainian Institute of Media and Communication (12.03.2024).

3. Reconsider the feasibility of further uniting national TV channels on a single information platform for the round-the-clock information marathon “United News #UAtogether”, and change the format of implementing a unified information policy during martial law.
4. Recognise the Law of Ukraine “On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” as invalid and prepare amendments to Ukrainian legislation in accordance with the recommendations of the Venice Commission.
5. Bring the provisions of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” in line with the Constitution of Ukraine in terms of the procedure for appointment and dismissal of the Head of the Antimonopoly Committee.
6. Ensure proper implementation of the European Court of Human Rights judgement in the case of Gongadze v. Ukraine, in particular, increase the efficiency of investigations into offences committed against journalists and media professionals.
7. Amend the legislation of Ukraine to implement the judgment of the European Court of Human Rights in the case of Sedletska v. Ukraine.
8. Amend Order No. 73 of the Commander-in-Chief of the Armed Forces of Ukraine to include a clear and exclusive list of grounds for refusing to grant accreditation to journalists in combat areas.
9. Address the issue of insurance for journalists, other media professionals and recorders against the risks associated with working in the context of hostilities.
10. Bring the List of Persons Posing a Threat to the National Security of Ukraine in line with the requirements of the Law of Ukraine “On Media”.

Issues for further monitoring

- › The Law of Ukraine “On Media” (in terms of funding the National Council; fulfilment of the requirements of para. 2 of Part 2 and Part 5 of Article 7, namely: in terms of developing and approving a methodology for determining the boundaries of media markets and a methodology for determining the boundaries of the market for the distribution (dissemination) and consumption of advertising information).
- › The Law of Ukraine “On Lawmaking” (in terms of cancellation of the obligation for regulatory legal acts of the National Council to undergo the state registration by the Ministry of Justice of Ukraine).
- › The Law of Ukraine “On Public Media of Ukraine” (in terms of ensuring proper financing of the joint-stock company “National Public Broadcasting Company of Ukraine”).
- › The Law of Ukraine “On the Antimonopoly Committee of Ukraine” (in terms of bringing the procedure for appointing and dismissing the Head of the Antimonopoly Committee in line with the Constitution of Ukraine).
- › The Law of Ukraine “On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” (to repeal this Law and prepare amendments to Ukrainian legislation in accordance with the recommendations of the Venice Commission).

- › The Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Prevention of Disclosure of Certain Information in the Texts of Court Decisions” (registration No. 7033-d of 13 January 2023) in terms of its adoption or rejection or withdrawal from consideration.

Extrajudicial blocking of websites

As for the extrajudicial blocking of websites in Ukraine, starting from June 2023, the situation remains generally unchanged due to the absence of any amendments to the legal regulation. Currently, there are five procedures that can be used to block websites in Ukraine without a court decision:

- › imposition of sanctions (special restrictive measures) by decision of the NSDC;
- › the adoption of the decision by the Commission for Regulation of Gambling and Lotteries (CRGL) to require the website owner or hosting provider to restrict access to the website that provides unlicensed access to gambling;
- › a ban on the distribution of online media by the National Council;
- › the National Council's inclusion of the relevant services in the List of on demand audio-visual media services and services of audio-visual service providers of the aggressor state;
- › blocking by order of the National Centre for Operational and Technical Management of Telecommunication Networks (NCM).

The use of these procedures to restrict access to illegal content and websites that disseminate it can generally be considered justified and proportionate. The CRGL restricts access to websites that fail to meet the requirements for conducting economic activities that pose a high level of risk to citizens. The blocking of the aggressor state's services by decisions of the National Council, orders of the NCM and sanctions of the National Security and Defence Council are limited in time.

At the same time, the legal grounds for applying the blocking both by the NSDC as part of the sanctions apparatus and by the NCM under its emergency powers are uncertain and make it impossible to say that they fully comply with international standards in the area of freedom of expression guaranteed by Article 10 of the European Convention on Human Rights¹⁵⁷² and Article 19 of the International Covenant on Civil and Political Rights¹⁵⁷³.

The situation with extrajudicial blocking of websites in Ukraine

Ukraine has no consolidated legislation on website blocking. For a long time, the only provision that made it possible was Article 39 of the Law of Ukraine “On Telecommunications”¹⁵⁷⁴, which required providers to restrict access to websites that distributed child pornography by court order. However, the absence of such norms did not prevent the President of Ukraine and the National Security and Defence Council from using the provisions of the Law of Ukraine “On Sanctions” in 2017 to block the Russian online platforms Vkontakte, Odnoklassniki, Mail.ru and

1572 Convention for the Protection of Human Rights and Fundamental Freedoms (with protocols) of 04.11.1950. URL: https://zakon.rada.gov.ua/laws/show/995_004.

1573 International Covenant on Civil and Political Rights of 16.12.1966. URL: https://zakon.rada.gov.ua/laws/show/995_043.

1574 On telecommunications: Law of Ukraine dated 18.11.2003 No. 1280-IV (repealed). URL: <https://zakon.rada.gov.ua/laws/show/1280-15>.

Yandex for a term of three years¹⁵⁷⁵. The sanction in the form of “prohibiting Internet providers from providing services for access to resources to Internet users” was imposed on the basis of paragraph 25, part 1, Article 4 of the Law¹⁵⁷⁶, which allows for the imposition of “other sanctions that comply with the principles of their application established by this Law”. Subsequently, this tool was used to block more than 800 websites¹⁵⁷⁷, and such blocking took place even during the full-scale invasion after 24 February 2022.

In 2023, the Law of Ukraine “On Sanctions” was amended to provide for a new type of sanction - “blocking access to information resources used to demonstrate and use the symbols of terrorist organisations and groups, to promote the ideas and programme objectives of such organisations (groups)”¹⁵⁷⁸. As of the end of February 2024, this sanction has not been applied.

Over time, other provisions began to appear in Ukrainian legislation that allowed websites to be blocked without a court decision. The first was the Law of Ukraine “On State Regulation of Activities on Organising and Conducting Gambling”¹⁵⁷⁹, which allowed the CRGL to require that website owners and hosting providers restrict access to websites that provided unlicensed access to gambling. As of today, CRGL has restricted access to 245 such websites¹⁵⁸⁰.

The next such possibility was provided for by the Law of Ukraine “On Media”¹⁵⁸¹, adopted at the end of 2022 as part of the requirements for Ukraine to obtain the status of a candidate state for membership in the European Union. The provisions of its Article 116 allow for the blocking of online media sites by the regulator’s decision if anonymous online media have committed three significant or gross violations within one month or if a registered online media has committed six significant violations within one month. In the latter case, the restriction is temporary and is introduced for only two weeks. However, during the first year of the Law, the National Council could not apply these measures due to the transitional period for online media regulation.

However, the media regulator applied a different procedure - filling in the List of on demand audio-visual media services and services of audio-visual service providers of the aggressor state in accordance with the requirements of the Law of Ukraine “On Media”¹⁵⁸². In line with the criteria set out in the Law, as well as the Regulation on the List¹⁵⁸³ the National Council decided to restrict access to 225 websites that provided access to 22 services¹⁵⁸⁴, which were in various ways associated with Russia - through the language of the interface, compliance of the service requirements with the legislation of the aggressor state, or the availability of content on the platform that could threaten national security. The blocking of these sites is valid until the end of

1575 On the Decision of the National Security and Defence Council of Ukraine of 28.04.2017 “On the Application of Personal Special Economic and Other Restrictive Measures (Sanctions)”: Decree of the President of Ukraine of 15.05.2017 No. 133. URL: <https://www.president.gov.ua/documents/1332017-21850>.

1576 On Sanctions: Law of Ukraine of 14.08.2014 No. 1644-VII. URL: <https://zakon.rada.gov.ua/laws/show/1644-18>.

1577 Sanctions registry. Digital Security Lab. URL: <https://freespeech.dslua.org/sanctions-registry/>.

1578 On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine in connection with the ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, as well as to certain legislative acts of Ukraine on improving the fight against terrorism: Law of Ukraine of 21.03.2023 No. 2997-IX. URL: <https://zakon.rada.gov.ua/laws/show/2997-20>.

1579 On state regulation of activities related to the organisation and conduct of gambling: Law of Ukraine of 14.07.2020 No. 768-IX. URL: <https://zakon.rada.gov.ua/laws/show/768-20>.

1580 Illegal websites. Commission for the Regulation of Gambling and Lotteries. URL: <https://www.gc.gov.ua/ua/Nelehalni-saity.html>.

1581 On the media: Law of Ukraine of 13.12.2022 No. 2849-IX. URL: <https://zakon.rada.gov.ua/laws/show/2849-20#Text>.

1582 Ibid.

1583 On Approval of the Regulation on the List of Customised Audio-visual Media Services and Services of Audiovisual Service Providers of the Aggressor State: Decision of the National Security and Defence Council of Ukraine of 08.06.2023 No. 382. URL: <https://ips.ligazakon.net/document/FN077696>.

1584 List of audiovisual media services on demand and services of audio-visual service providers of the aggressor state. URL: https://webportal.nrada.gov.ua/wp-content/uploads/2023/11/Perelik-servisiv-derzh-agresora_stanom-na-09.11.2023.pdf.

Russia's aggression and the cancellation of its status as an aggressor state, as well as for 5 years thereafter, subject to an annual review of the need for the imposition of the relevant restrictions by the Verkhovna Rada.

The new Law of Ukraine "On Consumer Protection"¹⁵⁸⁵ grants the State Service of Ukraine for Food Safety and Consumer Protection the power to block websites if the website of a business entity does not contain information about its name and location. The law will come into force only after the end of martial law, and therefore the Service does not exercise these powers.

Finally, it is worth mentioning the peculiarities related to the regulation of electronic communications during the legal regime of martial law, which has been in effect continuously since 24 February 2022. According to the current legislation, during this period, the regulatory functions are assumed by a specially created NCM, which operates under the State Service for Special Communications and Information Protection of Ukraine. Its activities are governed by Government Resolution No. 812¹⁵⁸⁶, as well as by certain provisions of the Law of Ukraine "On Electronic Communications"¹⁵⁸⁷, which replaced the aforementioned Law of Ukraine "On Telecommunications". Article 32 of the Law stipulates that the NCM's orders on the operational and technical management of electronic communications networks are binding on providers. However, the range of issues it may cover is unclear. The NCM has actively used these provisions to block so-called autonomous systems (AS)¹⁵⁸⁸, various websites, and to combat phishing¹⁵⁸⁹. Data from the Human Rights Platform indicates 11754 blocked sites as of August 2023¹⁵⁹⁰, and this practice continued; the last blocking decision was dated December 2023¹⁵⁹¹. The decision of the NCM covered both Russian media websites¹⁵⁹² and Ukrainian websites selling alcohol and tobacco products¹⁵⁹³, as well as websites providing access to gambling¹⁵⁹⁴. In addition, this procedure was used to block websites that contained personal data of fallen Ukrainian soldiers¹⁵⁹⁵. The NCM orders shall be in force the end of the legal regime of martial law, while afterwards the access to the websites should be unblocked.

The procedures provided for in the Laws of Ukraine "On Media" and "On State Regulation of Activities on Organising and Conducting Gambling" are clearly defined and pursue legitimate aims of protecting national security and the rights of others, and are necessary and proportionate. Thus, they meet the three-part test for the restriction of human rights under international law.

1585 On the Protection of Consumer Rights: Law of Ukraine of 10.06.2023 No. 3153-IX. URL: <https://zakon.rada.gov.ua/laws/show/3153-20/>.

1586 Some issues of operational and technical management of telecommunication networks in emergency situations, state of emergency and martial law: Resolution of the Cabinet of Ministers of Ukraine of 29.06.2004 No. 812. URL: <https://zakon.rada.gov.ua/laws/show/812-2004-%D0%BF>.

1587 On electronic communications: Law of Ukraine of 16.12.2020 No. 1089-IX. URL: <https://zakon.rada.gov.ua/laws/show/1089-20>.

1588 The NCCS publishes important information for the attention of all network and service providers regarding interaction with the NCN. National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services. URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2282&language=uk>.

1589 On the implementation of a phishing domain filtering system: Order of the National Centre for Operational and Technical Management of Telecommunication Networks of 30.01.2023 No. 67/850. URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2580&language=uk>.

1590 Information obtained from an interview with a representative of the Human Rights Platform NGO..

1591 On blocking domain names: Order of the National Centre for Operational and Technical Management of Telecommunication Networks of 20.12.2023 No. 917/1778. URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2914&language=uk>.

1592 The list of websites subject to the decision of the National Centre for Operational and Technical Management of Telecommunications Networks. URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2621&language=uk>.

1593 On blocking domain names: Order of the National Centre for Operational and Technical Management of Telecommunication Networks of 10.03.2023 No. 196/980. URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2617&language=uk>.

1594 On blocking domain names: Order of the National Centre for Operational and Technical Management of Telecommunication Networks of 14.03.2023 No. 203/987/ URL: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=2621&language=uk>.

1595 The information is based on an interview with a representative of the Ukrainian Helsinki Human Rights Union.

The blocking procedure provided for by the Law of Ukraine “On Protection of Consumer Rights” is also aimed at enforcing compliance with formal legal provisions by the relevant entities and does not pose a significant threat to freedom of expression. In this regard, it is worth focusing on the use of sanction legislation to block websites and the discretionary powers of the NCM in this area.

Problem 1: Use of the Law of Ukraine “On Sanctions” to block websites

Civil society has consistently drawn attention to the problems with the use of sanctions to block online platforms and websites since 2017–2018¹⁵⁹⁶. Back then, experts agreed that although a significant number of sites under sanctions spread malicious content, the procedure for such blocking is not provided for by law, as no legislative act in Ukraine contains such a measure as “prohibiting Internet providers from providing services to Internet users to access resources/services”. There have even been cases of attempts to block individual pages on social media, such as (@page_name)¹⁵⁹⁷ tags and the email addresses¹⁵⁹⁸.

One of the studies pointed to other elements of the unsystematic sanctions policy. According to its authors, the use of unequal wording on blocking (even in the same Presidential Decree), the practice of blocking websites by imposing sanctions on individuals, including deceased persons, and the inconsistency of the timeframe for imposing sanctions (one decree may block a website indefinitely, and the next, in a month, for three years) are questionable in terms of legality and predictability¹⁵⁹⁹. They also emphasised the need to provide adequate information that would make it clear the grounds for applying the relevant sanction to a particular entity, as the sanctions lacked motivation.

However, despite the criticism of civil society¹⁶⁰⁰, the situation has generally remained unchanged. The provision on “other sanctions” is actively used to extend the blocking - for example, since June 2023, four more such decrees have been issued¹⁶⁰¹.

1596 Media NGOs called on the authorities to refrain from blocking websites without a court order. Detector Media. 2018. URL: <https://cs.detector.media/infospace/texts/137845/2018-05-25-mediyni-gromadski-organizatsii-zaklykaly-vladu-utrymatys-vid-blokuvannya-saytiv-bez-rishennya-sudu/>.

1597 On the Decision of the National Security and Defence Council of Ukraine of 20.08.2021 “On the Application of Personal Special Economic and Other Restrictive Measures (Sanctions)”: Decree of the President of Ukraine of 21.08.2021 No. 379/2021. URL: <https://www.president.gov.ua/documents/3792021-39757>.

1598 On the Decision of the National Security and Defence Council of Ukraine of 15.10.2021 “On the Application of Personal Special Economic and Other Restrictive Measures (Sanctions)”: Decree of the President of Ukraine of 30.10.2021 No. 556/2021. URL: <https://www.president.gov.ua/documents/5562021-40497>.

1599 Sanctions and website blocking in Ukraine: how to open Pandora’s Box without being noticed - analytical report. Digital Security Lab. 2021. URL: <https://dslua.org/publications/sanktsii-ta-blokuvannia-saytiv-v-ukraini-iak-nepomitno-vidkryty-skrynku-pandory-analitychnyy-zvit/>.

1600 Can’t Stop: The President reauthorised the blockade again. Digital Security Lab. 2021. URL: <https://dslua.org/publications/can-t-stop-prezydent-znovu-sanktsionuvav-blokuvannia/>.

1601 On the Decision of the National Security and Defence Council of Ukraine of 18.11.2023 “On the Application and Amendments to Personal Special Economic and Other Restrictive Measures (Sanctions)”: Decree of the President of Ukraine of 18.11.2023 No. 758/2023. URL: <https://www.president.gov.ua/documents/7582023-48913>; On the Decision of the National Security and Defence Council of Ukraine of 23.12.2023 “On the Application and Amendments to Personal Special Economic and Other Restrictive Measures (Sanctions)”: Decree of the President of Ukraine of 23.12.2023 No. 851/2023. URL: <https://www.president.gov.ua/documents/8512023-49337>; Decision of the National Security and Defence Council of Ukraine of 22 May 2024 «On the Application and Amendments to Personal Special Economic and Other Restrictive Measures (Sanctions)»: Decree of the President of Ukraine of 22.05.2024 No. 340/2024. URL: <https://www.president.gov.ua/documents/3402024-50897>; On the Decision of the National Security and Defence Council of Ukraine of 24 June 2024 «On the Application and Amendments to Personal Special Economic and Other Restrictive Measures (Sanctions)»: Decree of the President of Ukraine of 24.06.2024 No. 340/2024. URL: <https://www.president.gov.ua/documents/3762024-51081>.

The amendments to the Law of Ukraine “On Sanctions” adopted in 2023 and mentioned above¹⁶⁰² failed to improve the situation, while posing additional questions about who is defined as a terrorist organisation, as well as the proportionality of blocking for the dissemination of symbols of terrorist groups when such images are used on sites such as Wikipedia or news media¹⁶⁰³. Furthermore, the initial practice of blocking websites that spread the symbols of terrorist groups highlights the problem of identifying which resources should be blocked under the new sanctions. This, in turn, leads to the simultaneous application of two sanctions to achieve the same restrictive effect.

In addition, although the creation of the State Register of Sanctions¹⁶⁰⁴ is certainly positive, it will not contain information on the reasons for imposing sanctions on individuals¹⁶⁰⁵, which also undermines the transparency of the sanctions policy, including in terms of the continuation of the application of appropriate measures to block websites. That is why the procedure for blocking websites under the sanctions legislation, as it currently exists, cannot be considered as compliant with international human rights standards, as it is not provided for by law within the meaning of Article 10 of the European Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

Problem 2. Unrestricted discretion of the NCM for the Blocking of Websites

The legislation describes the powers of the NCM in very general terms. Article 32 of the Law “On Electronic Communications” and the relevant Government Resolution No. 812¹⁶⁰⁶ do not mention blocking websites at all and are in fact limited to stating that the NCM can do literally anything during martial law and that its orders are binding. The exercise of these powers by the NCM has led to the actual blocking of the Russian segment of the Internet in Ukraine for the duration of the war, which can be considered a justified step, given the threats to national security that may be posed by the aggressor state’s websites, the temporary nature of the measure, and the fact that Ukraine has derogated from certain provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

The NCM’s unlimited discretion could have been justified at the beginning of the full-scale Russian aggression, as it was difficult to predict the scope of steps the regulator would have to take to limit threats from outside Ukraine. However, as the war continues, there is a need to more clearly define the powers of the NCM in the area of national security at the legislative level to avoid the risk of directing its measures against legitimate activities, such as independent media that may criticise the government. Similar concerns have already been expressed by specialised associations as part of the discussion on the introduction of a phishing domain filtering system¹⁶⁰⁷. The uncertainty of the content areas where the NCM can exercise its powers

1602 On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine in connection with the ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, as well as to certain legislative acts of Ukraine on improving the fight against terrorism: Law of Ukraine of 21.03.2023 No. 2997-IX. URL: <https://zakon.rada.gov.ua/laws/show/2997-20>.

1603 Terrorist-related website blocking. Digital Security Lab. URL: <https://freespeech.dslua.org/decreeterrorist-related-website-blocking/>.

1604 On Amendments to Certain Legislative Acts of Ukraine on the Application of Sanctions: Law of Ukraine of 13.07.2023 No. 3223-IX. URL: <https://zakon.rada.gov.ua/laws/show/3223-20>.

1605 On approval of the Regulation on the State Register of Sanctions: NSDC decision of 29.01.2024. URL: <https://zakon.rada.gov.ua/laws/show/n0002525-24>.

1606 Some issues of operational and technical management of telecommunication networks in emergency situations, state of emergency and martial law: Resolution of the Cabinet of Ministers of Ukraine of 29.06.2004 No. 812. URL: <https://zakon.rada.gov.ua/laws/show/812-2004-%D0%BF>.

1607 Letter No. 32/1-6 of 21.03.2023 from the NSDC, Verkhovna Rada, NCCC, State Special Communications Service, NCN and NBU on industry cooperation in the field of countering phishing. Ukrainian Internet Association, 2023. URL: <https://inau.ua/document/lyst-no-321-6-vid-21032023-rnbo-vru-nktsk-derzhspetsvzavku-ntsu-ta-nbu-shchodo>.

has already led to curiosities, such as the blocking of Linktree¹⁶⁰⁸. Another problem is the lack of guidance on how providers should comply with the NCM's decisions technically (by DNS, by IP address, etc.) in order to avoid blocking legitimate content¹⁶⁰⁹.

Less significant, but quite important for public control over the powers of the NCM, is the need to ensure more convenient and transparent public access to its decisions. Currently, they are available only through an inconvenient search on the website of the National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services (NCEC), the peacetime communications regulator¹⁶¹⁰ and according to experts, only about 10% of the NCM's resolutions are published at all¹⁶¹¹. This does not allow us to speak about the compliance of the procedure of the NCM functioning with human rights standards.

Recommendations

Although the situation with extrajudicial blocking is not currently threatening, and the Ukrainian authorities do not use it for internal political struggle and are committed to countering Russian information influence, legislative changes could improve the situation. In order to eliminate the risks of non-compliance of extrajudicial website blocking with international human rights standards, it is necessary to:

1. Review the Law of Ukraine "On Sanctions" and the practice of its implementation. In particular, clarify the grounds and procedure for restricting access to websites and ensure that the sanctions procedure is applied exclusively to foreign individuals or legal entities, stateless persons, and organisations recognised as terrorist under international law or national legislation, and is not used to block the activities of national media and civil society organisations.
2. Ensure transparency in the application of sanctions, in particular by publishing the grounds for imposing sanctions on the relevant entities in the State Register of Sanctions.
3. Develop a system for countering other types of terrorist content based on EU Regulation 2021/784 on countering the spread of terrorist content online¹⁶¹².
4. Adopt amendments to the Resolution of the Cabinet of Ministers of Ukraine of 29 June 2004 No. 812¹⁶¹³, clarifying the scope of the NCM's powers to block, the proper justification of such blocking with an indication of the grounds for blocking, and introducing requirements for the publication of NCM orders that do not contain restricted information.
5. Following the end of the legal regime of martial law, ensure the unblocking of websites blocked in virtue of the decision of the NCM if there are no legal grounds for their further blocking.

1608 The National Centre for Operational and Technical Management of Telecommunications Networks has ordered to unblock the Linktree service. The State Service for Special Communications and Information Protection of Ukraine. 2023. URL: <https://cij.gov.ua/ua/news/nacionalnii-centr-operativno-tekhnichnogo-upravlinnya-merezhami-telekomunikacii-ukhvaliv-rozporjadzhennya-rozblokuvati-servis-linktr-ee>.

1609 Information obtained from an interview with a representative of the Ukrainian Helsinki Human Rights Union.

1610 National Commission for the State Regulation of Electronic Communications, Radio Frequency Spectrum and Postal Services. URL: <https://nkrzi.gov.ua/>.

1611 During the war, a super-regulator of the Internet appeared. The State Special Communications Service. Dead Lawyers Society. 2023. URL: <https://www.deadlawyers.org/super-regulyator-internetu/>.

1612 Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0784>.

1613 Some issues of operational and technical management of telecommunication networks in emergency situations, state of emergency and martial law: Resolution of the Cabinet of Ministers of Ukraine of 29.06.2004 No. 812. URL: <https://zakon.rada.gov.ua/laws/show/812-2004-%D0%BE>.

6. In the event of the legislative changes outlined above, review previous decisions to block websites based on sanctions and decisions of the NCM for their relevance, proportionality and compliance with the law.

Issues for further monitoring

In the context of website blocking, the most controversial issue in the Ukrainian digital rights community is the regulation of online platforms, including Telegram. These platforms have been criticized for failing to fulfill their obligations to ensure users' freedom of expression and for not meeting their positive obligation to restrict harmful content and illegal activities, in particular due to insufficient content moderation, non-transparent algorithms used to highlight content in news feeds, and, in some cases, unlimited opportunities for anonymity. The regulatory options being discussed range from blocking non-cooperative platforms to introducing legislative requirements for opening representative offices in Ukraine and ensuring transparency of the platforms' ownership structures¹⁶¹⁴, as well as attempts to limit the spread¹⁶¹⁴ of disinformation, including through criminal or administrative liability.

At the European Union level, the regulation of online platforms is governed by the Digital Services Act¹⁶¹⁵, which outlines requirements for platforms to comply with due diligence obligations and assigns implementation responsibilities to national digital services coordinators and, for the largest online platforms (the so-called VLOPs), to the European Commission. As Ukraine progresses towards European integration, it will eventually need to implement the provisions of this Act. The Ministry of Digital Transformation is currently working on this, and therefore, by 2025, it is crucial to ensure that any legislative efforts to regulate platform activities are in compliance with the Act. At the same time, the effective implementation of the Act's provisions will require the European Commission to clarify how the Act will be applied at the national level by candidate states, particularly in areas currently under the exclusive jurisdiction of the European Commission with respect to the largest online platforms.

Freedom of peaceful assembly, association and expression

The year 2023 can be called a “year of relative stabilisation” of the situation in the field of freedom of association and expression. We can talk about the dynamics of a gradual decrease in cases of pressure and harassment by the authorities and offenders against civic activists, human rights defenders, and volunteers compared to the previous year. Also in 2023, the public received court decisions in high-profile cases that had been pending for many years. Despite martial law and broad powers, the government generally does not restrict human rights unnecessarily and complies with the law. The partnership between civil society and the government continues, and has become even stronger since Russia's full-scale invasion of Ukraine.

However, there are still policies, decisions, actions or inactions of the government that need to be changed and improved: law enforcement agencies should stop harassing civic activists, human rights defenders and volunteers, update strategic documents in the field of human rights

1614 On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Activities of Platforms for Shared Access to Information through which Mass Information is Disseminated: Draft Law of Ukraine, registration No. 11115 of 25.03.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43884>.

1615 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). URL: <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>.

protection, improve legislation on the activities of volunteers and civil society organisations (CSOs), expand opportunities for the public to participate in decision-making by public authorities, etc.

The situation with attacks on human rights defenders, civil society activists, volunteers and the status of the investigation

The year 2023 was a landmark year due to important decisions in high-profile cases that had been pending for years. In December 2023, the court closed the case of civil society activist Serhii Sternenko on charges of premeditated murder¹⁶¹⁶ (in 2018, Sternenko, defending himself from an armed attacker, fatally wounded him). As a result of a lengthy trial, one of the participants in the attacks on Sternenko was sentenced to 10 years in prison¹⁶¹⁷. However, the third alleged attacker on Sternenko escaped from justice¹⁶¹⁸. Other perpetrators and organisers of the attacks on Sternenko have not been identified by the investigation and have not been brought to justice¹⁶¹⁹.

On 26 June 2023, the court delivered a guilty verdict against the organisers of the murder of anti-corruption activist Kateryna Handziuk from Kherson. The court sentenced them to 10 years' imprisonment with the obligation to compensate non-pecuniary damage to Handziuk's parents. However, the defendants' advocates filed appeals against this decision, and the final decision in this case is still pending¹⁶²⁰. The defense for the victim reported that the defendants' attorneys were delaying the appeal process, as well as the potential appointment of a new trial in the first instance. This could result in the case not being heard in a timely manner and the subsequent release of the accused in the murder of Kateryna Handziuk from punishment¹⁶²¹.

The general trend even for such high-profile cases is that, on average, their investigation and trial, if they do result in a conviction, takes many years. Some of the perpetrators have been identified or punished only due to public outcry and constant attention to the processes by civil society. A separate problem is that the investigation is often limited to identifying only the perpetrators of the crime, without the organisers¹⁶²². According to the ZMINA Human Rights Centre, in 2023, the trend of improper investigation and closure by law enforcement of criminal proceedings from previous years due to the expiration of the investigation period, where the victims were representatives of civil society, including journalists, activists and human rights defenders, also continued. Thus, due to the inaction of the investigation, the attackers and organisers were not identified and brought to justice, which means that they are still on the loose and will continue to attack.

In 2022, ZMINA recorded 71 cases of harassment against civil society activists, human rights defenders, journalists, and volunteers in the government-controlled territories of Ukraine. These cases included: legal persecution – 31; cyber harassment – 1; defamation – 2; threats or other forms of pressure – 18; obstruction of activities – 4; beatings or assaults – 9; damage or destruction of property – 3; and violation of privacy or surveillance – 3.

1616 Ruling of the Prymorskyi District Court of Odesa of 22.12.2023. Case No. 522/13809/20. Proceedings No. 1-kp/522/822/23. URL: <https://reyestr.court.gov.ua/Review/115925765>.

1617 10 years behind bars: the perpetrator of the second attempt on Serhii Sternenko's life has been sentenced. Suspilne. 2023. URL: <https://suspilne.media/503017-10-rokiv-za-gratami-vikonavec-drugogo-zamahu-na-sergia-sternenka-otrimav-virok/>

1618 The attacker on activist Sternenko fled the country. Espresso. 2019. URL https://espresso.tv/news/2019/04/19/napadnyk_na_aktyvista_sternenka_vtik_z_krayiny_nayvem.

1619 Serhii Sternenko's Instagram page. URL: https://www.instagram.com/p/CtRfnRAoN_7/.

1620 The murder of Katia Handziuk. What the court decided and what questions remained unanswered. 2023. URL: <https://www.bbc.com/ukrainian/articles/cqldpq21e25o>.

1621 Handziuk's murder case: the appeal hearing may start anew. Suspilne. 2024. URL: <https://suspilne.media/kyiv/770305-sprava-pro-vbivstvo-gandzuk-rozklad-apelacii-moze-pocatisa-zanovo/>.

1622 Not a single customer has been punished. How attacks on activists are investigated. LB. 2019. URL: https://lb.ua/society/201910/23/440437_zhoden_zamovnik_ponis_pokarannya_yak.html.

In 2023, ZMINA recorded the following 50 harassments of civil society activists, human rights defenders, journalists and volunteers in the government-controlled territories of Ukraine: legal harassment¹⁶²³ – 11; cyber harassment – 3; discrediting – 7; threats or other forms of pressure – 12; obstruction of activities – 6; beatings, assaults – 6; damage or destruction of property – 3; violation of privacy, surveillance – 2¹⁶²⁴. This is about half the number compared to the years before the full-scale invasion of Russia, when ZMINA recorded about 100 cases of persecution of activists annually in the government-controlled territories of Ukraine.

However, in 2024, the dynamics of persecution began to increase. In the first half of 2024 alone, from January to June, ZMINA recorded 46 cases of persecution of civil society activists, human rights defenders, journalists and volunteers in the government-controlled territories of Ukraine: legal persecution – 3; defamation – 3; threats or other forms of pressure – 13; obstruction of activities – 13; beatings, assaults – 5; damage or destruction of property – 6; violation of privacy, surveillance – 3.

Since the end of 2022, journalists have resumed their work investigating possible abuses by public officials, which has led to high-profile media reports. In this regard, the journalistic community and civil society also put on the agenda the return of the obligation of public officials to declare their income in compliance with anti-corruption legislation, as well as open access to their declarations. In July 2023, MPs registered the relevant draft law No. 9534¹⁶²⁵ in the Parliament. However, the requirement to open the Unified State Register of Declarations of Persons Authorised to Perform State or Local Government Functions was not reflected in this draft law. Therefore, in September 2023, a petition was created to President Volodymyr Zelenskyy demanding to restore open access to the register¹⁶²⁶. The President submitted the relevant proposals, the Parliament supported them, and in October 2023, the President signed the necessary law¹⁶²⁷. The restoration of open access to the registry gave anti-corruption activists and investigative journalists more opportunities to monitor the lifestyle of public officials, and increased the number of media publications about possible abuses and illicit enrichment.

At the same time, there have been cases of pressure, threats, defamation and other forms of harassment against journalists and civic activists, including anti-corruption activists. One of the instruments of pressure was the use of mobilisation. Representatives of the territorial recruitment centres (TRCs) of the Armed Forces of Ukraine showed up at their places of residence¹⁶²⁸ or followed them in public places to serve them with a call-up notice¹⁶²⁹. Despite the importance of mobilisation activities in Ukraine during the war, such actions by the TRCs

1623 Legal harassment includes defamation lawsuits, the use of legal provisions by the authorities to impede the exercise of rights by individuals and civil society organisations, false reports of offences to state authorities, including law enforcement agencies, and suspension of the right to practice law.

1624 See: The situation of human rights defenders and civil activists in Ukraine in 2021: Monitoring and analytical report. ZMINA Human Rights Centre. 2021. URL: https://zmina.ua/wp-content/uploads/sites/2/2022/06/stateofhumanrightsdefenders2021_reporten-final.pdf; The situation of human rights defenders and civil activists in Ukraine in 2020: Analytical report. ZMINA Human Rights Centre. 2020. URL: https://zmina.ua/wp-content/uploads/sites/2/2021/04/stateofhumanrightsdefenders2020_reporten_final.pdf.

1625 On Amendments to Certain Laws of Ukraine on Determining the Procedure for Submitting Declarations of Persons Authorised to Perform the Functions of the State or Local Self-Government under Martial Law: Draft Law of Ukraine, registration No. 9534 of 26.07.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42379>.

1626 To veto the Draft Law No. 9534 and return it to the Parliament with a demand to open the register of property declarations of officials. Petition No. 22/204906-ep of 06.09.2023. URL: <https://petition.president.gov.ua/petition/204906>.

1627 Zelenskyy signed the law on the restoration of e-declaration. Ekonomichna Pravda. 2023. URL: <https://www.epravda.com.ua/news/2023/10/10/705291/>.

1628 Internal Front. Who is putting pressure on anti-corruption journalists and activists and why. Detector Media. 2024. URL: <https://detector.media/infospace/article/221987/2024-01-21-vnutrishniy-front-khto-y-navishcho-tysne-na-antykoruptsiynykh-zhurnalistiv-i-aktivistiv/>.

1629 A call for service as revenge. The SBU used the military recruitment office to persecute a journalist of Slidstvo.info for his exposé. Slidstvo.info. 2024. URL: <https://www.slidstvo.info/news/povistka-iak-pomsta-sbu-vykorystala-viyskkomat-dlia-peresliduvannia-zhurnalista-slidstva-info-za-yoho-vykryttia/>.

and the mobilisation itself cannot be used as punishment for civic or journalistic activities. In addition, the SBU conducted covert investigative actions against Bihus.Info journalists, and a discrediting campaign was conducted against journalist Yurii Nikolov¹⁶³⁰. However, only one case was assessed by the SBU leadership¹⁶³¹ and the Armed Forces command¹⁶³², and the officials were transferred to other places of service.

Thus, during the full-scale invasion, freedom of expression, freedom of association and association remain under threat, and persecution for civic activities, including anti-corruption, is taking on new forms.

During 2022-2023, ZMINA received information about 18 cases of criminal prosecution of volunteers under Article 201² of the CC of Ukraine for allegedly “selling humanitarian aid for profit”¹⁶³³. In almost all cases, the investigation used provocation to obtain formal signs of a crime, distorted the application of the criminal law, and distorted the circumstances of the case. By the end of 2023, in cooperation with the CSOs, the ZMINA Human Rights Centre managed to stop the criminal prosecution of volunteers in 7 proceedings. In 2023, the overall dynamics of opening criminal proceedings under Article 201² of the CC of Ukraine decreased: this year, ZMINA recorded only one case of such prosecution.

Recommendations

1. Law enforcement agencies should prevent unlawful acts against civil society representatives and investigate them properly and within a reasonable time. Investigative bodies should stop the practice of unjustified prosecution of civil society representatives. To this end, the government should continue reforms of law enforcement and law enforcement agencies, including the police¹⁶³⁴ and legal education¹⁶³⁵.
2. The law enforcement system needs to develop an effective mechanism for cooperation and direct communication with representatives of human rights organisations. This mechanism should prevent cases of unjustified restriction of rights and persecution of civil society representatives. This mechanism should also be used by law enforcement agencies and human rights defenders to conduct an inventory of problematic criminal proceedings (where the investigation was conducted at a low level or closed in violation of procedural law) and reopen the investigation to ensure that the investigation is conducted in a quality manner (exhausting all appropriate investigative steps) and that those responsible for persecution are brought to justice.
3. The leadership of law enforcement agencies should begin to speak openly about mistakes in their work and bring to justice officials responsible for the unlawful persecution of activists and volunteers.

1630 Bihus.Info was secretly monitored, and unknown persons broke into the apartment of journalist Yurii Nikolov. Babel. 2024. URL: <https://babel.ua/texts/102951-za-bihus-info-tayemno-stezhili-a-v-kvartiru-do-zhurnalista-yuriya-nikolova-lomilis-nevidomi-babel-rozpovidaye-yak-mediyni-pomiyki-i-anonimni-telegram-kanali-atakuyut-zhurnalistiv>.

1631 Ilya Vityuk, a person involved in the investigation by Slidstvo.Info, was removed from his post and sent to the frontline. Detector Media. 2024. URL: <https://detector.media/infospace/article/225253/2024-04-09-figuranta-rozsliduvannya-slidstvainfo-illyu-vityuka-vidstoronyly-vid-posady-ta-vidpravly-na-front/>.

1632 The head of the TRC was demoted after an incident involving an attempt to conscript a journalist. Zaxid.Net. 2024. URL: https://zaxid.net/pislya_intsidentu_zi_sproboyu_prizvati_zhurnalista_nachalnika_ttsk_ponizili_v_posadi_n1583365.

1633 Prosecution of volunteers for illegal use of humanitarian aid: what is wrong with the law and how it can be changed. ZMINA. 2023. URL: <https://zmina.info/articles/yak-volonteram-shyyut-kryminalnu-vidpovidalnist-za-nachebto-nezakonne-vykorystannya-gumanitarnoyi-dopomogy/>.

1634 Roadmap for Police Reform, IWI, Avtomaidan. 2023. URL: <https://izi.institute/research/dorozhnyia-karta-reformy-policzii/>.

1635 Map of legal education reforms, DEJURE Foundation. URL: <https://karta-reformy-pravnychoyi-osvity.webflow.io/en>.

4. The judicial system should become an arbiter in such cases, independent of the prosecution, political, corporate and other types of illegal influence. In addition, trials in cases of attacks on activists and human rights defenders should be prioritised in view of their public importance.

Restrictions on the right to peaceful assembly under martial law, curfews

With the introduction of martial law in Ukraine on 24 February 2022¹⁶³⁶ the authorities were granted the right to restrict constitutional human rights to ensure Ukraine's national security and territorial integrity on the basis of the Law of Ukraine "On the Legal Regime of Martial Law". The law allows for the restriction of the rights provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, including the right to peaceful assembly. Such restrictions are imposed by military command/administrations independently or with the involvement of other local authorities to the extent necessary to introduce and implement measures of the martial law regime.

No restrictions on peaceful assemblies by the authorities were recorded in 2023. In several regions of Ukraine, there were regular actions demanding that local governments allocate more local budget funds for the needs of the Armed Forces. In particular, such actions were held in Kyiv¹⁶³⁷, Lviv¹⁶³⁸, Mykolaiv¹⁶³⁹, Cherkasy, Odesa, Dnipro¹⁶⁴⁰,

Zaporizhzhia¹⁶⁴¹ and in a dozen other cities of Ukraine. Systematic "Free Azov" campaigns were held in Kyiv and Kharkiv to draw public attention to the prisoners of war of the Azov regiment, who have been held in Russian captivity since the spring of 2022¹⁶⁴². Also, since 2022, the authorities have not banned cultural and educational events, in particular, they are held to raise funds to support the army¹⁶⁴³. Thus, it can be argued that the authorities do not restrict the right of citizens to peaceful assembly, and Ukrainians organise rallies solely to draw the attention of the authorities and society to the most important issues.

As a result of martial law at the beginning of Russia's full-scale invasion of Ukraine, regional military administrations (except for the administration of the Zakarpattia region) introduced curfews on their territory, which restricted freedom of movement. During 2023 and as of the beginning of 2024, except for a few regions (Donetsk, Luhansk, Kherson, Zaporizhzhia, and certain districts of Dnipropetrovsk), the curfew lasts 4-5 hours at night and does not constitute a serious restriction on freedom of movement¹⁶⁴⁴. It was only in October 2023 that a draft law

1636 On the introduction of martial law in Ukraine: Decree of the President of Ukraine of 24.02.2022 No. 64/2022. URL: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

1637 "Money for the Armed Forces": a rally to support the army takes place near the Kyiv City State Administration. Radio Svoboda. 2023. URL: <https://www.radiosvoboda.org/a/hroshi-na-zsu-pid-stinamy-kmda-prokhodyt-aktsiya-na-pidtrymku-armiyi/32730855.html>.

1638 The rally "First Drones, Then Stadiums" was held in Lviv for the tenth time. Suspilne. 2023. URL: <https://suspilne.media/614653-u-lvovi-vdesate-vidbuvsya-miting-spocatku-droni-potim-stadioni/>.

1639 Money for the Armed Forces and military rotation: two rallies in support of the army took place in Mykolaiv. Suspilne. 2023. URL: <https://suspilne.media/646140-grosi-na-zsu-ta-rotacia-vijskovih-u-mikolaevi-vidbulisa-dvi-akcii-na-pidtrimku-armii/>.

1640 In a number of cities, protests demanding money for the Armed Forces were held again. Ukrainska Pravda. 2023. URL: <https://www.pravda.com.ua/news/2023/10/21/7425145/>.

1641 "First and foremost, the Armed Forces": residents of Zaporizhzhia rally to demand that budget money be allocated to the needs of the army. Suspilne. 2023. URL: <https://suspilne.media/604347-v-persu-cergu-zsu-zaporizci-vijsli-na-miting-z-vimogou-spramuvati-budzetni-grosi-na-potrebi-armii/>.

1642 "People forget that the war is ongoing. They think that all of Azov has been exchanged." The fourth action "Captivity Kills!" took place in Kharkiv. Suspilne. 2024. URL: <https://suspilne.media/655930-ludi-zabuvaut-so-vijna-trivae-dumaut-so-ves-azov-obminali-cetverta-akcia-polon-vbivae-vidbulasa-v-harkovi/>.

1643 War and festivals. What events will take place despite martial law. Suspilne. 2022: <https://suspilne.media/culture/251998-vijna-i-festivali-aki-podii-vidbudutsya-popri-voennij-stan/>.

1644 What is the curfew in different regions of Ukraine in 2024? Visit Ukraine. 2024. URL: <https://visitukraine.today/uk/blog/3209/yaka-komendantska-godina-v-riznix-regionax-ukraini-u-2024-roci>.

was registered in the parliament that establishes liability for violating the curfew¹⁶⁴⁵. Thus, the Ukrainian authorities do not abuse their powers to restrict freedom of movement and peaceful assembly.

Termination of political parties

In March 2022, the NSDC's decision began the process of banning 17 pro-Russian parties, which later ended with the issuance of relevant court decisions in August 2022¹⁶⁴⁶. In 2023, the Party of Regions was also banned¹⁶⁴⁷.

The ban of pro-Russian political parties in Ukraine under martial law in 2022-2023 revealed gaps in the legislation governing the activities of political parties and the Ministry of Justice. In particular, the Ministry of Justice lacks the powers that would allow it to independently collect sufficient evidence to prove that political parties and their members have violated the law. Such powers are available only to law enforcement agencies as part of pre-trial investigations. This forced the Ministry of Justice to ask the Security Service of Ukraine for help. However, the legislation does not contain provisions that would regulate this interagency cooperation, given that the SSU is a pre-trial investigation body in criminal cases, and the ban on political parties falls under administrative jurisdiction.

Another problem was the closed nature of court proceedings in the courts of first instance, which contradicts the principle of transparency of justice and the recommendations of the Venice Commission¹⁶⁴⁸. At the same time, almost all of these cases were subsequently reviewed publicly by the Supreme Court.

It is also debatable whether the addition¹⁶⁴⁹ of such grounds as justification and denial of armed aggression against Ukraine to the list of prohibitions on the activities of political parties as set out in the Constitution of Ukraine is in line with the Constitution of Ukraine. This provision expands Article 37 of the Constitution of Ukraine, which contains an exhaustive list of such grounds. However, in 2015, this list was also expanded to include the possibility of a ban on propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols. Such amendments were recognised as constitutional by the Decision of the Constitutional Court of Ukraine (CCU) of 16 July 2019 No. 9-r/2019¹⁶⁵⁰. Therefore, the expansion of the grounds for tolerating Russian aggression during a full-scale invasion of Russia in 2022, by analogy with the previous CCU decision, may be recognised as compliant with the Constitution of Ukraine¹⁶⁵¹.

1645 On Amendments to the Code of Ukraine on Administrative Offences and Other Laws to Establish Administrative Liability for Violation of Requirements or Failure to Implement Certain Measures of the Legal Regime of Martial Law: Draft Law of Ukraine, registration No. 10195 of 27.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43069#:~:text=Картка%20законопроект%20->

1646 The Eighth Administrative Court of Appeal upheld the claims of the Ministry of Justice of Ukraine to ban the activities of political parties. Ministry of Justice of Ukraine. 2023. URL: <https://www.facebook.com/share/p/1aeXnMjq5Vwf6Fm/>.

1647 The activities of the political party 'Party of Regions' were banned. Ministry of Justice of Ukraine 2023. URL: <https://minjust.gov.ua/news/ministry/zaboroneno-diyalnist-politichnoi-partii-partiya-regioniv>.

1648 State influence on political parties: a view through the prism of the Russian Federation's aggression against Ukraine. Ukrainian Journal of Constitutional Law. 2022. URL: <https://www.constjournal.com/pub/2-2022/vplyv-derzhavy-politychni-partii-pohliad-kriz-pryzmu-ahresii-rosiiskoi-federatsii>.

1649 Relevant amendments were made to the Law of Ukraine "On Political Parties in Ukraine" in March 2022.

1650 Decision of the Constitutional Court of Ukraine dated 16.07.2019 No. 9-r/2019 in the case on the constitutional petition of 46 MPs of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols". URL: <https://zakon.rada.gov.ua/laws/show/v009p710-19#Text>.

1651 State influence on political parties: a view through the prism of the Russian Federation's aggression against Ukraine. Ukrainian Journal of Constitutional Law. 2022. URL: <https://www.constjournal.com/pub/2-2022/vplyv-derzhavy-politychni-partii-pohliad-kriz-pryzmu-ahresii-rosiiskoi-federatsii>.

Given the martial law and the Russian offensive on the territory of Ukraine, the provision of judicial review and appeal procedures, the publicity of the process at the appeal stage and the revision of the motivation for the ban decisions, one can argue that the government and the court are trying to follow legal procedures to the extent possible to avoid violating the right to freedom of association when imposing bans on the activities of certain political parties.

Recommendations

1. Decisions to ban parties should be based on relevant evidence, proper justification, and be in line with the requirements of international organisations. In addition, decisions should be made in open court sessions with the possibility of public discussion of the evidence.
2. Comprehensive amendments to the legislation on political parties should be adopted. The draft law should be developed through an inclusive consultation procedure, taking into account the OSCE's conclusions¹⁶⁵². The draft law should also include issues of interaction between the Ministry of Justice and other state authorities, specify the procedure for collecting evidence to prepare cases for trial, etc.

Status of implementation of the National Strategy for Civil Society Development in Ukraine and the National Human Rights Strategy

In 2024, the Government reported on the status of implementation of the action plan for the National Strategy for Civil Society Development in Ukraine. The report contains information on 43 measures. Twenty-seven activities were identified as properly implemented, 11 activities were found to be partially or not implemented, and 4 activities were not implemented¹⁶⁵³.

The Ministry of Justice published its report on the status of implementation of the Action Plan for the National Human Rights Strategy in 2023¹⁶⁵⁴. The monitoring of the Action Plan implementation in 2023 found that out of 26 measures, 16 measures have the status of "completed", 7 measures have the status of "in progress" and 3 measures have the status of "not completed"¹⁶⁵⁵. The deadline for the implementation of the Action Plan expired in 2023. The Ministry of Justice has developed amendments to the National Human Rights Strategy, approved by the Government on 12 September 2023 and submitted to the President of Ukraine for consideration. However, the long stay of the updated strategy under consideration by the President already requires adjustments in view of the changes that have taken place in Ukraine over the past six months. Changes in the situation affect the relevance of the strategy. In turn, the delay in updating the Strategy hinders the development and implementation of a new action plan for its implementation for 2024–2027.

Recommendations

1. The Government, with the involvement of international and Ukrainian organisations, should update the National Human Rights Strategy and approve it as soon as possible.

¹⁶⁵² Joint Opinion on the Draft Law on Political Parties, Approved by the Council for Democratic Elections at its 71st online meeting (18.03.2021) and adopted by the Venice Commission at its 126th plenary meeting (online, 19-20.03.2021). URL: <https://rm.coe.int/cdl-ad-2021-003-e-uk/1680a238c1>.

¹⁶⁵³ Information on the status of implementation of the action plan for the implementation of the National Strategy in 2023. Government Portal. URL : <https://www.kmu.gov.ua/gromadskosti/gromadyanske-suspilstvo-i-vlada/spriannya-rozvitku-gromadyanskogo-suspilstva/natsionalna-stratehiia-spriannya-rozvytku-hromadianskoho-suspilstva-v-ukraini-na-2021-2026-roky/natsionalna-stratehiia-ta-plan-y-zakhodiv-z-ii-realizatsii>.

¹⁶⁵⁴ On approval of the action plan for the implementation of the national human rights strategy for 2021-2023: Order of the Cabinet of Ministers of Ukraine of 5.12.2023 No. 1322. URL: <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>.

¹⁶⁵⁵ Analytical reports on the implementation of the national human rights strategy. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/m/analitichni-zviti-pro-stan-vikonannya-natsionalnoi-strategii-u-sferi-prav-lyudini>.

2. The Government, in partnership with civil society and human rights organisations, should develop a new action plan to implement the strategy for 2024–2027.

Regulation of volunteering activities

As of the end of 2023, the main problems in the regulation of volunteering in Ukraine remained the tax burden and related risks. These included the need to pay 19.5% of the contract amount when non-profit organisations insure their volunteers, legal uncertainty over the tax exemption for individual benefactors who have collected and continue to collect funds on their own bank cards, and a complex system of tax exemption for compensation of volunteers' expenses during volunteer activities. Other issues include migration restrictions for foreign volunteers to stay in Ukraine for volunteering, systematic and communicative approach of the government in regulating the import and distribution of humanitarian aid by non-profit organisations, increasing the opportunities for organisations to raise funds, etc¹⁶⁵⁶.

In September 2023, the Verkhovna Rada registered draft law No. 10040¹⁶⁵⁷, which exempts from taxation the costs of non-profit organisations for life and health insurance for volunteers during their volunteer activities. On 1 December 2023, Resolution of the Cabinet of Ministers of Ukraine No. 953¹⁶⁵⁸ came into force, whereby new rules for the accounting and distribution of humanitarian aid came into effect, and volunteers had to register using the ASRHA (Automated System for Registration of Humanitarian Aid). However, volunteers and NGOs learned about the new rules the day before, in October 2023, as they were developed without discussion and involvement of a wide range of NGO experts by the Ministry of Social Policy of Ukraine. The new rules also established additional reporting on the distribution of humanitarian aid and contain a list of unresolved issues. Public criticism¹⁶⁵⁹ forced the Government to postpone the implementation of the new rules for the import of humanitarian aid for three months until 01 April 2024. Simultaneously with the postponement, the Ministry of Social Policy of Ukraine set up a working group to finalise the Government Resolution No. 953¹⁶⁶⁰.

In November 2023, the Parliament adopted the Law of Ukraine No. 3448-IX¹⁶⁶¹, which partially resolved gaps and conflicts in the import and distribution of humanitarian aid and its accounting. Despite the fact that this law has entered into force, some of its provisions have not yet been implemented at the level of bylaws.

In April 2023, the Cabinet of Ministers of Ukraine removed from Resolution No. 604¹⁶⁶² the provision that allowed volunteers who were disabled or injured while helping civilians to apply

1656 Section 5 "Development of Volunteer Activity" of the Legal Reforms Map for Civil Society in Ukraine has been updated. Centre for Democracy and Rule of Law. 2023. URL: <https://cedem.org.ua/library/onovlenyi-rozdil-5/>.

1657 On Amendments to the Tax Code of Ukraine to Support Volunteer Activities under Martial Law: Draft Law of Ukraine, registration No. 10040 of 13.09.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42758>.

1658 Some issues of passing and accounting of humanitarian aid under martial law: Resolution of the Cabinet of Ministers of Ukraine of 05.09.2023 No. 953. URL: <https://www.kmu.gov.ua/npas/deiaki-pytannia-propusku-ta-obliku-humanitarnoi-dopomohy-v-umovakh-voiennoho-stanu-i050923-953>.

1659 Why is the restriction of humanitarian aid import from 1 December dangerous: volunteers' appeal to the President. Ukrainska Pravda. 2023. URL: <https://www.pravda.com.ua/columns/2023/11/14/7428770/>.

1660 CSO Meter 2023: Ukraine Country Report. URL: https://csometer.info/sites/default/files/2024-01/CSO%20Meter%20Country%20Report%20Ukraine%202023_ENG.pdf.

1661 On Amendments to Certain Legislative Acts to Simplify the Procedure for Importation, Accounting and Distribution of Humanitarian Aid: Law of Ukraine of 16.03.2023 No. 3448-IX. URL: <https://zakon.rada.gov.ua/laws/show/3448-IX#Text>.

1662 Some issues of payment of one-time financial assistance in case of death or disability of a volunteer as a result of injury (contusion, trauma or mutilation) received while providing volunteer assistance in the area of the anti-terrorist operation, implementation of measures to ensure national security and defence, repulsion and deterrence of the armed aggression of the Russian Federation in Donetsk and Luhansk regions, implementation of measures necessary to ensure the defence of Ukraine, protection of the security of the population and interests of the state in connection with military operations. Resolution of the Cabinet of Ministers of Ukraine of 19.08.2015 No. 604. URL: <https://zakon.rada.gov.ua/laws/show/604-2015-%D0%BF#Text>.

for government assistance. Currently, the possibility of such assistance is reserved exclusively for those volunteers who were injured while helping military personnel and law enforcement officers¹⁶⁶³.

Recommendations

The Government should:

1. Take into account and implement the recommendations of civil society organisations to improve legislation in the field of volunteering in accordance with section 5 “Development of volunteering” of the Legal Reforms Map¹⁶⁶⁴.
2. To restore the right to compensation for volunteers who have been injured while providing assistance to civilians, or at least to introduce tax benefits for private insurance for such volunteers, by adopting draft law No. 10040.
3. Develop decisions related to volunteers and the activities of civil society organisations exclusively with their involvement. One of the tools for this is the adoption of the draft law “On Public Consultations”. However, public authorities should involve citizens in the development and implementation of decisions on an ongoing basis, even until special legislation is adopted. Such legislation should only facilitate the process of engaging citizens.

Legislative regulation of the stay of foreign volunteers and stateless persons in Ukraine

There are still problems in the legislative regulation for foreign volunteers and stateless persons in Ukraine. To stay in Ukraine for a longer period of time (more than 3 months for 180 days), volunteers shall obtain a temporary residence permit. To do this, they should first obtain a long-term visa. A visa can only be obtained by travelling outside Ukraine and paying a visa fee of between USD 65 and USD 1,000. In practice, foreign volunteers often overstay their visas in Ukraine due to the need to continue their volunteer work in Ukraine and the complicated procedure for extending their legal stay. Thus, they violate the law. Another problem is the need for foreigners to register their place of residence in Ukraine after obtaining a temporary residence permit. Landlords of residential premises usually do not allow foreigners to register in their property. This pushes foreigners to semi-legal methods of registration and development of “shadow business”, spending money on it, and in addition, the declared place of registration does not correspond to the actual place of residence¹⁶⁶⁵.

Recommendations

The government should allow foreign volunteers and stateless persons to obtain a temporary residence permit for volunteering without the need to obtain a visa in advance; and cancel the need for such persons to register their place of residence during martial law and 90 days after its end.

1663 What is wrong with state aid to volunteers during the war? Centre for Democracy and Rule of Law. 2023. URL: <https://cedem.org.ua/analytics/volontery-dopomoga-strahuvannya/>.

1664 Section 5 “Development of volunteer activity”. Map of legal reforms. Centre for Democracy and Rule of Law. 2023. URL: https://cedem.org.ua/wp-content/uploads/2023/07/2_5-ROZDIL-2.0_Karta-pravovyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2023.pdf.

1665 Ibid.

Funding of NGOs by the Ukrainian government, legislation on interest-based philanthropy

In 2023, Ukraine still has limited opportunities for non-profit organisations to attract state funding. Legislation in this area is imperfect.

The main issues include different approaches to competitive procedures by different state authorities, forms of documents required for participation in competitions, etc. Legislation limits the ability of the government and local self-government to allocate funds to CSOs depending on the area of activity. They can allocate funds only to youth and children's CSOs, associations of veterans, persons with disabilities and organisations working in the field of national and patriotic development. In addition, the authorities do not always follow Government Resolution No. 1049¹⁶⁶⁶ when conducting competitions. This leads to the fact that competitive procedures for obtaining public funds for CSOs are non-transparent and require significant time spent on filling out project applications. Public authorities establish non-competitive conditions for the competition: for example, the maximum cost of goods, services and works, a complex procedure for reporting on the implementation of the programme, which most CSOs are unable to fulfil. Information regarding competitions on the websites of the authorities is difficult to access. There is an unequal approach to covering the administrative costs of projects (youth and children's CSOs cannot cover administrative costs, while veterans' CSOs can use up to 20% of the programme funding for administrative costs). Certain organisations, such as the Ukrainian Society of the Deaf (USD) and the Ukrainian Society of the Blind (USB), receive 75-80% of all government funding for organisations of people with disabilities without competition. The implementation of projects by these organisations and the way they spend public funds are also not transparent¹⁶⁶⁷.

The second component of the problem is the extremely limited financial capacity of the government to fund CSOs during the full-scale invasion of Ukraine by Russia.

However, even so, in 2023, CSOs had access to more different mechanisms of state funding from public authorities of different levels compared to 2022. While in 2022, all planned competitions were suspended in accordance with the order of the Fund for Social Protection of Persons with Disabilities No. 30¹⁶⁶⁸, in 2023, state institutions resumed the distribution of funding for CSOs, as well as provided additional funds through the Ukrainian Veterans Fund and the newly created Ukrainian Youth Fund. The Fund for Social Protection of Persons with Disabilities has also resumed competitions for CSO funding. CSOs that provide social services to people with disabilities were able to receive state support in the amount of up to UAH 500,000 (approximately EUR 12,500).

In November 2023, the Ukrainian Veterans Fund (UVF) under the Ministry of Veterans, together with ISAR Ednannia (which provides co-financing¹⁶⁶⁹) launched a competition to support projects of NGOs that help veterans adapt to civilian life. The amount of financial support for the potential

1666 On Approval of the Procedure for Holding a Competition to Determine Programmes (Projects, Events) Developed by Civil Society Institutions for the Implementation of which Financial Support is Provided: Resolution of the Cabinet of Ministers of Ukraine of 12.10.2011 No. 1049. URL: <https://zakon.rada.gov.ua/laws/show/1049-2011-%D0%BF#Text>.

1667 Map of legal reforms for civil society in Ukraine 2020. Centre for Democracy and Rule of Law. 2020. URL: https://cedem.org.ua/wp-content/uploads/2020/09/Final_UKR_Karta-pravovyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2020.pdf.

1668 On the termination of the procedure for organising and holding a competition to determine programmes (projects, activities) developed by public associations of persons with disabilities for the implementation of which financial support is provided in 2022 without determining the winners of the competition: Order of the Fund for Social Protection of Persons with Disabilities of 30.08.2022 No. 30. URL: <https://www.ispf.gov.ua/storage/app/sites/1/uploaded-files/Наказ%2030%20Припинення%20конкурсу220810.pdf>.

1669 The Ukrainian Veterans' Fund of the Ministry of Veterans and ISAR Ednannia join forces to support NGOs working for veterans. ISAR Ednannia. URL: <https://ednannia.ua/news/nashi-novini/12560-ukrajinskij-veteranskij-fond-minveteraniv-ta-isar-ednannya-ob-ednuyut-zusillya-na-pidtrimku-go-yaki-pratsuyut-dlya-veteraniv>.

winners of the competition is up to UAH 2.5 million (approximately EUR 62,500). In May 2023, the UVF also held funding competitions for veteran CSOs (VARTO+GO competition) for grants of up to UAH 1 million (approximately EUR 25 thousand). The UVF supported eight CSOs. The same competition was held in 2022, and eight CSOs also received support. In the 2023 grant season, the Ukrainian Cultural Foundation implemented six grant programmes to support artists and cultural figures: three new programmes and three programmes of the 2022 grant season, which were not completed due to the war. Grant programmes for 2024 have also been announced.

In February 2023, the Ukrainian Youth Fund was established by Government Resolution No. 182¹⁶⁷⁰. It will provide grants and financial support to individuals, youth NGOs and individual entrepreneurs to implement their own initiatives, ideas and projects in Ukraine. At the same time, in 2023, the Ministry of Youth and Sports of Ukraine held grant competitions for youth NGOs with the opportunity to apply for up to UAH 500,000 (approximately €12.5 thousand)¹⁶⁷¹.

In 2022, Ukrainian MPs registered a draft law on percentage philanthropy¹⁶⁷². It stipulates that each taxpayer will be able to transfer up to 2% (out of 18%) of the income tax paid to one or two non-profit organisations of their choice¹⁶⁷³. However, this draft law has not been progressing since it was registered in the Parliament.

Thus, despite the martial law and limited resources and significant international assistance, the government continues to allocate funds to CSOs. Improving the legislation on the distribution of public funds is important both for CSOs that already attract public funds and for organisations that may potentially apply for it in other areas.

Recommendations

1. The Government should continue to address the problems and improve the legislation in the area of fair distribution of public funds for CSOs, in particular, expand the range of CSOs that receive state support for project financing. In general, the Government should take into account and implement the recommendations contained in section 3 of the Legal Reforms Map “State Support for CSOs”¹⁶⁷⁴.
2. The Parliament should adopt Draft Law No. 7500 introducing a percentage deduction mechanism to support non-profit organisations.

Citizen participation in decision-making by public authorities

Draft Law No. 4254 “On Public Consultations”

The Government’s draft law “On Public Consultations”¹⁶⁷⁵, which should ensure the necessary public consultations of legislative and executive authorities at the central and local levels, was

1670 Some issues of the Ukrainian Youth Foundation: Resolution of the Cabinet of Ministers of Ukraine of 28.02.2023 No. 182. URL: <https://www.kmu.gov.ua/npas/deiaki-pytannia-ukrainskoho-molodizhnoho-fondu-i280223-182>.

1671 CSO Meter 2023: Ukraine Country Report. URL: https://csometer.info/sites/default/files/2024-01/CSO%20Meter%20Country%20Report%20Ukraine%202023_ENG.pdf.

1672 On Amendments to the Tax Code of Ukraine (regarding the introduction of a mechanism of interest deduction to support non-profit organisations): Draft Law of Ukraine, registration No. 7500 of 28.06.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39744>.

1673 Interest-bearing philanthropy. How to directly dispose of a part of your tax? Ukrayinska Pravda. 2022. URL: <https://blogs.pravda.com.ua/authors/gryshhuk/62c959a45423f/>.

1674 Map of legal reforms for civil society in Ukraine 2020. Centre for Democracy and Rule of Law. 2020. URL: https://cedem.org.ua/wp-content/uploads/2020/09/Final_UKR_Karta-pravovyyh-reform-dlya-gromadyanskogo-suspilstva-v-Ukrayini-2020.pdf.

1675 On Public Consultations: Draft Law of Ukraine, registration No. 4254 of 23.10.2020. URL: https://w1.c1.rada.gov.ua/pls/web2/webproc4_1?pf3511=70235.

prepared for the second reading in 2023. The draft law establishes the obligation and procedure for public authorities to hold public consultations on the formation and implementation of state and regional policy, addressing local issues, drafting strategic and programme documents (concepts, strategies, programmes, action plans, etc.), and regulations to reconcile public and private interests.

Despite the support from civil society and international partners, the draft law progressed slowly¹⁶⁷⁶. It was not until June 2024 that the Parliament adopted the Law of Ukraine “On Public Boiling Water” and submitted it to the President for signature. As of July 31, 2024, the Law remained unsigned.

The successful implementation of the public consultation mechanism will also depend on the availability of sufficient human and financial resources of the relevant public authorities, and will require additional outreach to public officials. Both of these elements are important to ensure the effective implementation of the draft law. The draft law does not address these issues¹⁶⁷⁷. Therefore, the effective application of the relevant legal provisions will be questionable if the draft law is adopted.

The Law of Ukraine “On Lobbying” and its risks

In November 2023, the National Agency on Corruption Prevention (NACP) started preparing a new draft law “On Fair Lobbying in Ukraine” and positioned it as implementation of national anti-corruption legislation, EU membership requirements and part of anti-oligarchic measures. The original draft contained threats to civil society organisations¹⁶⁷⁸. In the text of the draft law adopted in the second reading, MPs did not completely exclude CSOs from the regulation of lobbying activities in Ukraine. CSOs are not considered lobbyists “unless such activities relate to commercial interests”. The definition of “commercial interest” is rather broad and fails to meet the criterion of “legal certainty”. It also extends the law to CSOs engaged in social entrepreneurship.

It is currently difficult to say whether (and in what form) the Law of Ukraine “On Lobbying” will be used as an instrument of pressure on CSOs after the adoption of the provisions on administrative liability for its violation¹⁶⁷⁹. Experts agree that the risks, although seemingly low, are still present due to the lack of legal clarity in the text¹⁶⁸⁰.

Recommendations

1. Adopt the draft law “On Public Consultations” (registration No. 4254) as soon as possible.
2. The NACP, as the supervisory body in the field of lobbying, should prevent cases of unjustified extension of the Law of Ukraine “On Lobbying” to CSOs. The courts should refrain from ruling on bringing CSO leaders and members to justice for violating the provisions of the respective law.

1676 CSO Meter 2023: Ukraine Country Report. URL: https://csometer.info/sites/default/files/2024-01/CSO%20Meter%20Country%20Report%20Ukraine%202023_ENG.pdf

1677 See the conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine to the draft Law of Ukraine “On Public Consultations”, registration No. 4254 of 23.10.2020. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70235.

1678 Lobbying in its current form threatens freedom and democracy in Ukraine. Zmina. 2024. URL: <https://zmina.ua/statements/zakonoprojekt-pro-lobiyuvannya-u-hynishnomu-vyglyadi-zagrozhuje-svobodi-j-demokratiji-v-ukrayini/>.

1679 On Amendments to the Code of Ukraine on Administrative Offences regarding Violation of Legislation on Lobbying: Draft Law of Ukraine, registration No. 10373 of 25.12.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43450>.

1680 Passion for lobbying: what the long-suffering law “On Fair Lobbying” means. Zmina. ZMINA. 2024. URL: <https://zmina.info/columns/prystrasti-za-lobizmom-shho-nese-bagatostrazhdalnyj-zakon-pro-dobrochesne-lobiyuvannya/>.

Threats to CSOs in other legislative acts

Defining the ultimate beneficial owner (UBO) for CSOs

Following Ukraine's accession as a full member of the global financial crime network in December 2019, a new Law of Ukraine No. 361-IX¹⁶⁸¹ was adopted to implement the requirements of the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF) and Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. The new Law obliged most legal entities (including CSOs and charitable associations) to enter information on their ultimate beneficial owner (UBO) and ownership structure into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations. At the same time, for failure to submit or late submission of information about the ultimate beneficial owner or its absence or documents to confirm information about the ultimate beneficial owner, a person was subject to a fine of UAH 17,000 to 51,000, which, according to Article 166¹¹ of the CUAO, must be paid by the heads of the legal entity.

The vagueness of Law of Ukraine No. 361-IX in defining a CSO's UBO has led to difficulties¹⁶⁸². For example, in November-December 2021, banks blocked¹⁶⁸³ the accounts of two reputable Ukrainian CSOs – the Institute of Mass Information and the Civil Network OPORA. However, the authorities failed to provide official explanations on the procedure for filling out the relevant forms and submitting documents, which in practice led to refusals to enter information about the UBOs or to enter incorrect information into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations.

According to the aforementioned Law of Ukraine No. 361-IX, the Government adopted Resolution No. 1011¹⁶⁸⁴ which contains criteria for determining the UBO of a non-profit organisation – legal entity in paragraphs 33-39. Since 2021, CSOs have been opposing the definition of a CSO's UBO in the mentioned Law of Ukraine No. 361-IX, as it not only created an additional bureaucratic burden, but also became an additional tool of state pressure on CSOs¹⁶⁸⁵. In addition, most CSOs do not have a UBO by their very nature, because CSOs work for public, not private interests; their benefits are aimed at the public; CSOs usually do not aim to make a profit; the most important decisions (on election of governing bodies, disposal of property, approval of amendments to the charter, etc.) in non-governmental organizations and charity funds are made jointly – by the general meeting of all members of the organisation, and each of them influences the decisions of the CSO; also, it is impossible to talk about the ownership of property by one or more persons, since the property belongs to the organisation. However, the Government ignored these warnings, citing FATF requirements.

Due to the outbreak of Russia's full-scale armed aggression against Ukraine, the mandatory submission of the UBO by legal entities was postponed until the end of martial law and 90

1681 On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction: Law of Ukraine of 06.12.2019 No. 361-IX. URL: <https://zakon.rada.gov.ua/laws/show/361-20#n1471>.

1682 Kozlovska L., Jardemalie B. Submission to FATF: Tools to prevent abuse of AML/CFT laws. Open Dialogue Foundation, 2023. URL: <https://en.odfoundation.eu/a/723329.submission-to-fatf-tools-to-prevent-abuse-of-aml-cft-laws/>.

1683 Why do banks block the accounts of NGOs and is there anything that can be done about it? ZMINA. 2022. URL: <https://zmina.info/articles/chomu-banky-blokuyut-rahunky-gromadskiyh-organizacij-i-chy-mozhna-z-czym-shhos-zrobyty/>.

1684 On Approval of the Methodology for Determining the Ultimate Beneficial Owner by a Legal Entity: Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine of 19.09.2023 No. 1011. URL: <https://zakon.rada.gov.ua/laws/show/1011-2023-%D0%BF#Text>.

1685 Public statement of Ukrainian civil society organisations on the identification and state registration of the ultimate beneficial owners of civil society organisations. Zmina. URL: <https://zmina.ua/statements/zayava-shhodo-vyznachennya-ta-derzhavnoyi-registry-kinczevyh-beneficziarnyh-vlasnykiv-gromadskiyh-organizacij/>.

days after its end¹⁶⁸⁶. However, the approval of the methodology for defining the UBO created a number of threats to normal financial activities for those NGOs and charities that had reported UBO information to the Government before the end of martial law and were subject to financial monitoring by banks.

In November 2023, the FATF issued an update to Recommendation 8 and its Interpretive Note. An updated Best Practices Paper (BPP) was also issued to address the use of not-for-profit organisations for terrorist financing. According to them, the FATF no longer considers all non-profit organisations to be vulnerable to terrorist financing, but only recognises that some of them may be used for this purpose¹⁶⁸⁷. These changes confirm the position of the organisations that the obligation to determine the UBO for CSOs is erroneous.

Recommendations

The Government should exclude from the Law of Ukraine No. 361-IX the provision that NGOs and charities are entities that have a UBO¹⁶⁸⁸.

Restrictions on access to the register of court decisions

In June 2022, the Government restored open access to the Unified State Register of Court Decisions (USRCD), which had been restricted due to the full-scale Russian invasion. However, by December 2022, NGOs and journalists¹⁶⁸⁹ began reporting the disappearance of court decisions from the USRCD. The issue of timely submission of court decisions to the register, as well as partial or complete concealment of their texts, has persisted for some time¹⁶⁹⁰ but over six million court decisions were removed from the USRCD this time¹⁶⁹¹. Civil society organizations appealed to the State Judicial Administration of Ukraine and the High Council of Justice to halt these illegal actions and ensure the publication of decisions in the USRCD¹⁶⁹². The ZMINA Human Rights Centre also filed a complaint with the Ombudsman¹⁶⁹³.

In March 2023, the “State Information Systems” SE (administrator of the USRCD) announced that it had completed the depersonalization of data and restored access to all court decisions in the register¹⁶⁹⁴. However, this claim proved to be untrue, and the State Judicial Administration (SJA) and the State Enterprise “Information Court Systems” continue to remove entire layers of court decisions from the USRCD without legal grounds, citing “prevention of threats to the life

1686 On Amendments to Certain Laws of Ukraine on Improving the Regulation of Ultimate Beneficial Ownership and Ownership Structure of Legal Entities: Law of Ukraine of 06.09.2022 No. 2571-IX. URL: <https://zakon.rada.gov.ua/laws/show/2571-20#n129>.

1687 FATF amended its recommendation: what will change for Ukrainian non-profit organisations. Centre for Democracy and Rule of Law. 2023. URL: <https://cedem.org.ua/news/fatf-zminy-ogs/>.

1688 On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction: Law of Ukraine of 06.12.2019 No. 361-IX. URL: <https://zakon.rada.gov.ua/laws/show/361-20#n1471>.

1689 Thousands of verdicts from Volyn courts over the past six years have disappeared from the court register. Syla Pravdy Investigative Journalism Centre. 2022. URL: <https://sylappravdy.com/iz-sudovogo-reyestru-znykly-tysyachi-vyrokiv-volynskiyh-sudiv-za-ostanni-shist-rokiv/>.

1690 Why do court decisions disappear and become classified? Dejure Foundation. 2021. URL: <https://dejure.foundation/chomu-znykayut-sudovi-rishennia/>.

1691 Why does the government want to hide court decisions? ZMINA. 2023. URL: <https://zmina.info/articles/chomu-vlada-hoche-pryhovaty-sudovi-rishennya/>.

1692 We demand access to the state register of court decisions. ZMINA. 2022. URL: <https://zmina.ua/statements/vymagayemo-zabezpechty-dostup-do-derzhavnogo-reyestru-sudovyh-rishen/>.

1693 Data removed from the register of court decisions: human rights defenders complain before the Ombudsman. ZMINA. 2022. URL: <https://zmina.ua/event/vylucheni-dani-z-reyestru-sudovyh-rishen-pravozaahysnyky-skeruvaly-skargu-do-ombudsmana/>.

1694 Attention to the users of the USRCD! Information Court Systems State Enterprise. 2023. URL: <https://ics.gov.ua/ics/news/novyny/1400891/>.

and health of judges and participants in the judicial process”¹⁶⁹⁵. Despite the Ombudsman’s role in ensuring access to public information, there has been no effective influence on the SJA to guarantee full access to court decisions¹⁶⁹⁶.

In January 2023, a group of MPs registered draft law No. 7033-d¹⁶⁹⁷. The authors of the draft law declared the need to protect “sensitive” information from enemy intelligence. To this end, they effectively granted judges the right to remove any information from court decisions in the USRCD at their discretion (even when the case was considered in open court), as well as to remove from the register all court decisions related to crimes against the foundations of national security, protection of state secrets, inviolability of state borders, conscription and mobilization, and the order of military service during martial law. In March 2023, civil society organizations criticized the draft law¹⁶⁹⁸ and called on Parliament to reject it, as it disproportionately restricts the right of Ukrainians to receive information of significant public interest¹⁶⁹⁹, grants judges broad extra-procedural powers, and effectively undermines the institution of open access to court decisions through the USRCD—a key achievement of Ukrainian democracy.

In May 2024, draft law No. 7033-d was again on the Parliament’s agenda, and CSOs repeatedly called for its rejection¹⁷⁰⁰. However, MPs ignored these calls and passed the draft law in the first reading¹⁷⁰¹. As of July 11, 2024, MPs are preparing the draft law for the second reading. Adoption of the draft law in the second reading will have negative consequences, including facilitating the concealment of corruption, limiting public opposition tools, making it impossible to study court practice for legislative improvements, particularly in harmonizing with international law, creating additional opportunities for judges to conceal information in the USRCD based solely on their discretion, as opposed to the closed court procedure, and legalizing the ongoing illegal practice of the SJA to conceal decisions in the USRCD.

Recommendations

MPs should reject the draft law No. 7033-d “On Amendments to Certain Laws of Ukraine on Prevention of Disclosure of Certain Information in the Texts of Court Decisions”.

Issues for further monitoring

- › Increased cases of persecution of civil society actors (volunteers, human rights defenders, journalists, activists) against the background of the lack of preventive measures taken by the Government to address such cases, to properly investigate them and bring the perpetrators to justice.

1695 Response of the State Judicial Administration of Ukraine to the Representative of the Ukrainian Parliament Commissioner for Human Rights of 05.01.2024 No. 15-830/24. URL: <https://drive.google.com/file/d/1O0m5NshXZzFhTpya4jKzHmW169rf7tWk/view>.

1696 Response of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights to ZMINA of 05.02.2024 No. 6856.4/AN/193.7/23/45.3.

1697 On Amendments to Certain Laws of Ukraine on Preventing the Disclosure of Certain Information in the Texts of Court Decisions: Draft Law of Ukraine, registration No. 7033-d of 13.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41159>.

1698 Analysis of the Draft Law “On Amendments to Certain Laws of Ukraine on Prevention of Disclosure of Certain Information in the Texts of Court Decisions”. ZMINA. 2023. URL: <https://zmina.ua/wp-content/uploads/sites/2/2023/03/problemny-7033d.pdf>.

1699 The authorities seek to restrict the right of access to court decisions - human rights defenders oppose. ZMINA. 2023. URL: <https://zmina.ua/statements/vlada-hoche-obmezhyty-pravo-na-dostup-do-sudovyh-rishen-pravozahysnyky-vystupyly-proty/>.

1700 We call on the Verkhovna Rada not to adopt draft law No. 7033-d, which restricts access to court decisions. ZMINA. 2024. URL: <https://zmina.ua/statements/zaklykayemo-verhovnu-radu-ne-pryjmaty-zakonoprojekt-%E2%84%96-7033-d-yakij-obmezhuje-dostup-do-sudovyh-rishen/>.

1701 Rada is willing to ban the publication of certain court decisions on national security, mobilisation and military registration. ZMINA. 2024. URL: <https://zmina.info/news/rada-hoche-zaboronyty-publikuvaty-deyaki-sudovi-rishennya-shhodo-naczbezpeky-mobilizaciyi-ta-vijskovogo-obliku/>.

- › Legislative initiatives aimed at unreasonably curtailing democracy, destroying the instruments of public control over government decisions and public officials, and complicating the activities of CSOs.
- › Actual decrease in the involvement of civil society representatives in the decision-making processes of public authorities or formalisation of such involvement.

Protection of children's rights

The war has had a significant impact on the protection of the rights of Ukrainian children. Russia continues to commit all kinds of the grave crimes against children in Ukraine. As a result of bombing and attacks, children are dying, being injured and maimed. There are confirmed cases of sexual violence and abuse against children during the occupation. Millions of children have been displaced within the country and abroad. Attacks on institutions and facilities for children have been carried out and continue. There is a humanitarian crisis in the temporarily occupied territories (TOT) of Ukraine, according to various estimates, up to 1.6 million children are staying there.

Russia regularly violates the norms of international humanitarian law regarding the prevention of children's participation in war. Russia involves children in hostilities by actively engaging them in propaganda and military training, and recruits Ukrainian children as informants. In addition, the occupiers are deporting Ukrainian children to Russia, Belarus and the TOT of Ukraine. Unaccompanied children are transferred to Russian families or to Russian boarding schools, changing their personal data.

Investigations of war crimes against children in Ukraine are carried out under the procedural guidance of the Department for Child Protection and Prevention of Domestic Violence of the OPG and in close cooperation with the Office of the Prosecutor of the International Criminal Court (ICC). In order to ensure child-friendly justice, Ukraine has Barnahus child support centres to ensure the protection and well-being of children who are witnesses and/or victims in criminal proceedings.

The war also had a significant impact on the increase in the number of orphans and children deprived of parental care. At the same time, adoption rates remain slow and lower than before the war. The burden on social services, which were already overworked, has increased. Meanwhile, the state of war and the focus on responding to military issues deprives the state and society of resources to develop a social system for the protection of children's rights.

The unimplemented deinstitutionalisation of residential institutions for children remains a significant problem for Ukraine. Many children continue to live in institutional care. Many of them have disabilities and are forced to live in institutions due to the lack of appropriate social infrastructure in their communities. The development of local social services for children with intellectual and psychosocial disabilities is extremely slow. The same applies to families with children in difficult life circumstances, in particular, it is important to introduce and develop case management to prevent institutionalisation, violence and trauma to children due to the war and other circumstances in their lives.

The impact of war and the investigation of crimes against children, including war crimes

According to the Optional Protocol to the UN Convention on the Rights of the Child¹⁷⁰² the grave crimes against children include: killing and maiming of children, sexual violence against children, military attacks on kindergartens, hospitals and schools, denial of access to humanitarian aid, involvement of children in war, abduction (deportation) of children.

In the first months of the large-scale invasion after 24 February 2022, Russia committed and continues to commit all kinds of grave violations of the rights of Ukrainian children. For example, as of 20 July 2024, a total of 562 children were killed and 1471 were injured of varying severity¹⁷⁰³. There have been 15 confirmed cases of sexual violence against children¹⁷⁰⁴, millions of children have been displaced within the country and abroad. Many children have faced mental health problems due to the difficult evacuation, separation from loved ones, living under occupation, and experience of shelling, injury and other traumatic events. Parents report problems with sleeping, eating, irritability, depression, fear of being alone, suicidal intentions, etc. According to a survey of children and young people in September 2023, a third of respondents constantly or often experience excessive psychological anxiety and/or panic¹⁷⁰⁵.

During the full-scale war, there have been numerous attacks on institutions and facilities for children. Over two years, 3,798 educational institutions were damaged and 365 were completely destroyed¹⁷⁰⁶, while 1,636 medical facilities were damaged and 214 were completely destroyed. Russia also damaged 182 ambulances, destroyed 261 and seized 125 ambulances¹⁷⁰⁷. On 8 July 2024, the Russians carried out another terrorist act and attacked the largest children's hospital in Ukraine, Okhmatdyt, with missiles¹⁷⁰⁸.

The humanitarian crisis continues in the temporarily occupied territories of Ukraine. The occupation authorities are making no effort to provide the local population with sufficient food and drinking water, utilities, access to medicines, medical and social services. There is very little humanitarian aid, often in exchange for passport data, Russian citizenship, as a pretext to issue summonses to men, etc. Problems with access to food are caused and exacerbated by the actions of the Russian occupiers, who deny humanitarian supplies from the Ukrainian government-controlled areas, destroy or steal humanitarian aid, set wheat fields on fire and damage agricultural infrastructure, and export grain, vegetables and fruits from the temporarily occupied territories themselves or prohibit their sale.

Since 2014, Russia has regularly violated international humanitarian law to prevent children from participating in war. The basis for Russia's involvement of children in hostilities is their active involvement in propaganda and military training. For this purpose, various organisations and movements have been created and continue to be created, in particular in the TOT in Donetsk, Luhansk, Zaporizhzhia and Kherson regions. The most popular and widespread of these are

1702 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. 20.11.2014. URL: https://zakon.rada.gov.ua/laws/show/995_l60#Text.

1703 Office of the Prosecutor General. URL: <https://www.gp.gov.ua/>.

1704 Bring Kids Back. URL: <https://www.bringkidsback.org.ua/>.

1705 The survey was conducted on the U-Report platform. The sample comprised 3373 children. URL: <https://ukraine.ureport.in/opinion/6599/>.

1706 Education under threat (saveschools.in.ua). URL: <https://saveschools.in.ua/>.

1707 Over the 28 months of war, the Russian army has destroyed or damaged 1,850 facilities of Ukrainian medical institutions. Ministry of Health of Ukraine. 2024. URL: <https://moz.gov.ua/uk/za-ponad-28-misyaciv-vijni-rosijska-armiya-znishila-ta-abo-zrujnuvala-1850-ob-yektiv-ukrayinskih-medzakladiv>.

1708 Russians attacked two children's hospitals in Kyiv with missiles. Ministry of Health of Ukraine. 2024. URL: <https://moz.gov.ua/uk/rosiyani-atakuvali-raketami-dvi-dityachi-likarni-v-kiyevi>.

the Yunarmiya, the Russian schoolchildren's movement, the ANO Bolshaya Peremena, as well as the Young Guard, Victory Volunteers, Patriot, Union of Pioneers, Bastion, etc. Since the end of 2022, a unifying all-Russian movement of children and youth, the Movement of the First, has emerged. The movement's goal of "raising highly moral, socially successful citizens" is actually to raise obedient and loyal citizens to the Russian authorities who are ready to go to war and are pumped up with the propaganda of the "superpower". The new movement allows children to join from the age of 6. Even if children are unwilling to join such organisations, they still cannot avoid either propaganda or military training. After all, the temporarily occupied territories have Russian school curricula that provide for the teaching of distorted history and an almost complete rejection of the study of the Ukrainian language and literature. Starting from 1 September 2022, every week in schools begins with the raising of the national flag of the aggressor country and the performance of its anthem. In addition, extracurricular classes called "Conversations about Important Things" have been introduced, which provide propaganda information about Russia's war against Ukraine. There is also evidence that Soviet symbols and attributes are being imposed on schools in the temporarily occupied territories of Ukraine¹⁷⁰⁹.

Propaganda and militarisation of children also take place during extracurricular activities, such as celebrations, patriotic relay races, etc. Ukrainian schoolchildren are forced to participate in events using the Russian tricolour and symbols of the Russian totalitarian regime's military invasion of Ukraine, wear the military uniform of the occupying country, etc. This is used by pro-Kremlin media to create stories aimed at creating an image of "caring for Ukrainian children" and imitating peaceful life in the TOT of Ukraine¹⁷¹⁰.

In addition to the total militarisation of the education system, Russia is trying to involve Ukrainian children in the war by recruiting them as informants. This happens both through direct contact with teenagers and through indirect collection of photographs and data on military and critical infrastructure facilities in mobile applications and games.

It is worth noting that the US State Department has included Russia in the list of countries where human trafficking, forced labour and child soldiers are used. The invaders use children as human shields in a full-scale war against Ukraine. There are numerous facts of children working at Russian checkpoints in Donbas since 2014

As of 20 July 2024, Ukraine has confirmed 19,546 deported Ukrainian children who were illegally taken to Russia, Belarus and the TOT of Ukraine. Most likely, the number of displaced children is much higher, but it is currently impossible to estimate the scale of the displacement due to the lack of access to the TOT and the duration of the full-scale war. According to open sources, 744,000 children have been taken away by Russia. So far, the joint efforts of NGOs and the government of Ukraine have managed to return 388 children¹⁷¹¹.

The following categories of forcibly deported children can be identified: 1) children deported together with their parents/legal representatives; 2) unaccompanied children, including, but not limited to: orphans and children deprived of parental care, minors whose parents' fate is unknown (missing, dead), children with disabilities, children held in camps or sanatoriums for "re-education", children taken for medical intervention; 3) children in the TOT of Ukraine who were separated from their parents due to hostilities

1709 Children in Ukraine: almost a year of war. Kharkiv Institute for Social Research. URL: https://khisr.kharkov.ua/wp-content/uploads/2023/10/Dity-v-Ukraini_mayzhe-rik-viyny-.pdf.

1710 Special report of the Ukrainian Parliament Commissioner for Human Rights on the situation with children's rights in the context of armed aggression against Ukraine "TRANSFIGURED. The systemic Russian policy of destroying the Ukrainian identity of children". URL: https://www.ombudsman.gov.ua/storage/app/media/uploaded-files/Спеціальна_дповідь_ПЕРЕОПИЛЕНІ_.pdf.

1711 Website "Children of War". URL: <https://childrenofwar.gov.ua/>.

Unaccompanied children are the most vulnerable to forced passportisation by Russia and transfer to Russian families or to Russian residential institutions. The return of such children is much more difficult than that of children separated from their parents due to a number of circumstances. The difficulty of returning such children is due to four factors. Firstly, the competent authorities of the Russian Federation refuse to share the list of such children whom they consider “evacuated”, in violation of their obligations under international humanitarian law. Secondly, the identification of such minors is complicated by the change of their personal data (for example, the Russian pronunciation of their names “Pylyp – Filip”, “Daryna – Daria”, etc., the use of an incorrect year or place of birth). Thirdly, in legal relations arising in relation to these minors, Russia recognises them as citizens of the Russian Federation exclusively. In particular, when the deported boys reach the age of eighteen, in line with the requirements of Russian legislation, they must register for military service and then perform military service. Fourthly, senior Russian officials directly and unconditionally refuse to repatriate unaccompanied children. Such a general refusal has specific manifestations, in particular, refusal to return a minor under a power of attorney, change of place of detention (actual “hiding”) of the child, choice in favour of prolonging the child’s stay in a Russian family instead of reunification with blood relatives¹⁷¹².

At the beginning of February 2024, the Office of the President of Ukraine, as part of the #BringKidsBackUA platform, established the International Coalition for the Return of Ukrainian Children, which includes 28 countries, currently chaired by Canada¹⁷¹³. The Coalition focuses on facilitating the return of Ukrainian children, including identifying the whereabouts of illegally deported and forcibly displaced young Ukrainian citizens, developing mechanisms for their return, and participating in relevant diplomatic negotiations. It is also focus on the preparation and issuance of identification documents for children and their families, including those necessary for crossing the border and, accordingly, the physical return of children to Ukraine. As part of the implementation of the Bring Kids Back UA plan, on 14 May 2024, the Cabinet of Ministers of Ukraine adopted Resolution No. 551 “On Approval of the Procedure for Identifying and Returning Children Deported or Forcibly Displaced as a Result of the Armed Aggression of the Russian Federation against Ukraine”¹⁷¹⁴.

It is also important to support children upon their return, facilitate reunification with their families or placement in family-based care, and provide the necessary rehabilitation assistance. Currently, there is no mechanism for rehabilitation and support after returning from deportation for Ukrainian children deprived of parental care. Another key issue is to ensure access to justice for children who are victims and witnesses of crimes, and to bring those responsible for organising illegal actions against Ukrainian children to justice.

The forced deportation of Ukrainian children, coupled with the destruction of cultural heritage sites, shelling of civilian infrastructure, including schools, hospitals, and power substations, gives reason to believe that Russia is committing genocide against the Ukrainian people. The destruction of the identity of Ukrainians, the “erasure” of their origins and roots, the ban on the Ukrainian language, russification, passportisation and active anti-Ukrainian propaganda confirm this intention.

On 25 January 2024, the Parliamentary Assembly of the Council of Europe adopted a resolution on the situation of Ukrainian children and called for the deportation of Ukrainian children to

1712 WAY HOME: Mechanism and basis of the policy of return of illegally deported and forcibly displaced children. Analytical portal of the Regional Centre for Human Rights. 2023. URL: <https://krymbezpravil.org.ua/materialy/way-home-mekhanizm-povernennia-nezakonno-deportovanykh-i-prymusovo-peremishchenykh-ditey/>.

1713 The International Coalition for the Return of Ukrainian Children was launched under the leadership of Andriy Yermak and Melanie Joly. Office of the President of Ukraine. 2024. URL: <https://www.president.gov.ua/news/pid-kerivnictvom-andriya-yermaka-melani-zholi-zapusheno-r-88709>.

1714 On Approval of the Procedure for Identification and Return of Children Deported or Forcibly Displaced as a Result of the Armed Aggression of the Russian Federation against Ukraine: Resolution of the Cabinet of Ministers of Ukraine of 14.05.2024 No. 551. URL: <https://zakon.rada.gov.ua/laws/show/551-2024-%D0%BF#Text>.

be recognised as genocide¹⁷¹⁵. In particular, the PACE Resolution calls for: 1) adoption of statements and/or resolutions at the level of national parliaments recognising deportations, forced displacement and unjustified delays in the repatriation of Ukrainian children as genocide; 2) informing Ukraine regarding border crossings by citizens of the Russian Federation who have illegally adopted or established guardianship over a Ukrainian child; 3) introduction and enforcement of sanctions against Russia and Belarus, and inclusion in the sanctions lists those involved in the deportation of Ukrainian children; 4) assess the participation of media representatives in propaganda campaigns organised by Russia and Belarus regarding deported Ukrainian children in order to take appropriate measures, such as denying accreditation and access to public events.

As of 1 June 2024, according to the OPG, 3,800 war crimes committed against children during the Russian aggression are under investigation in Ukraine¹⁷¹⁶. To ensure child-friendly justice, a total of 12 Barnahus child support centres in Ukraine have been already established to offer protection and support to children who are witnesses and/or victims in criminal proceedings. They provide comprehensive support, minimise trauma and protect the rights and dignity of children facing violence, including in the context of martial law¹⁷¹⁷. War crimes against children are investigated under the procedural guidance of the Department for Child Protection and Prevention of Domestic Violence of the OPG and in close cooperation with the Office of the Prosecutor of the ICC, which opened an office in Ukraine in September 2023 to support the recording and investigation of Russia's war crimes against Ukraine¹⁷¹⁸. In total, following the investigation, 54 people were notified of suspicion, 31 were convicted¹⁷¹⁹.

Recommendations

1. Ensure that all crimes committed by the Russian military against children are recorded: murders, mutilations, child abuse and others.
2. Engage international partners to monitor the situation of children deported to Russia and their return to Ukraine or to third safe countries.
3. Apply child-friendly justice approaches, which includes a range of not only punitive tools, but also relevant services to support children in contact with and in conflict with the law.

Deinstitutionalisation

The latest iteration of the deinstitutionalisation (DI) reform has been underway in Ukraine since 2017, when the Cabinet of Ministers of Ukraine approved the National Strategy for Reforming the System of Institutional Care and Education for 2017–2026 and the corresponding action plan for its implementation¹⁷²⁰.

1715 Deportation of Ukrainian children - PACE calls on member states to recognise the displacement of Ukrainian children as genocide. Focus. 2024. URL: <https://focus.ua/uk/voennyje-novosti/622625-parje-zaklikala-krajini-chleni-asambleji-viznati-deportaciyu-ukrajinskih-ditey-genocidom>.

1716 Publication of the Office of the Prosecutor General on Facebook. 2024. URL: https://www.facebook.com/pgo.gov.ua/posts/891569799672521?ref=embed_post.

1717 An interdisciplinary child support centre, “Barnahus”—the 12th in Ukraine—started operating in the Cherkasy region today. URL: <https://www.gp.gov.ua/ua/posts/na-cerkashhini-rozpocav-robotu-mizdisciplinarii-centr-pidtrimki-ditei-barnaxus-12-i-v-ukrayini>.

1718 The International Criminal Court's field office opens in Kyiv. Office of the Prosecutor General. 2023. URL: <https://www.gp.gov.ua/ua/posts/u-kijevi-rozpocav-robotu-polyovii-ofis-miznarodnogo-kriminalnogo-sudu>

1719 Publication of the Office of the Prosecutor General on Facebook. 2024. URL: https://www.facebook.com/pgo.gov.ua/posts/891569799672521?ref=embed_post.

1720 On the National Strategy for Reforming the System of Institutional Care and Upbringing of Children for 2017-2026 and the Action Plan for the Implementation of its First Stage: Order of the Cabinet of Ministers of Ukraine of 09.08.2017 No. 526. URL: <https://zakon.rada.gov.ua/laws/show/526-2017-%D1%80#Text>.

The reform is designed to last for 10 years and envisages that during this time the number of children in boarding schools will be reduced by 90%, and each community will have accessible and high-quality services to support families with children according to their individual needs.

However, a significant number of children continue to live in institutional care facilities. According to the Ministry of Social Policy, about 25,500 children live in institutions, and only 5.5 per cent of them are children whose parents are deprived of parental rights. A total of 20,000 children have parents, but they continue to be brought up institutionally¹⁷²¹. Many children have disabilities and are forced to live in institutions due to the lack of appropriate social infrastructure in their communities. The development of local social services for children with intellectual and psychosocial disabilities is extremely slow. The same applies to families with children in difficult life circumstances, in particular, it is important to introduce and develop case management to prevent institutionalisation, violence and trauma of children due to war and other circumstances in life.

Recommendations

1. Continue the deinstitutionalisation reform in Ukraine.
2. Provide for state funding of social services for children in communities to stimulate their development.
3. Prohibit the placement of new children in institutional care at the legislative level.
4. Review the grounds for placing children in institutional care, and instead of placing children in boarding schools, to make family-based forms of care more viable.

Guardianship and custody, activities of social services

The war has significantly increased the number of orphans and children deprived of parental care. In almost two years of Russia's full-scale invasion of Ukraine, 13,338 children have been left without parental care. Of these, 1,759 children were granted the relevant statuses as a result of the hostilities¹⁷²². In general, more than 65,000 children in Ukraine are orphans or deprived of parental care¹⁷²³.

With the start of the full-scale invasion, the adoption procedure was suspended due to the closure of registries. It was later resumed, but the adoption rate remains slow and lower than before the war. In 2022, only 752 children were adopted¹⁷²⁴. In 2023 – 950 children¹⁷²⁵. It should be noted that these are intercountry adoptions. During the war, adoptions of Ukrainian children by foreigners and Ukrainians temporarily residing outside Ukraine were suspended.

In general, the war has put a significant strain on the activities of social services, which were already overworked. The displacement of children within the country and abroad required and still requires regular tracking of children's whereabouts, preparation of necessary documents, and provision of additional social services to families with children.

1721 Oksana Zholnovych, Minister of Social Policy: We create conditions for people to want to live and return to Ukraine. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-society/3746089-oksana-zolnovic-ministerka-socialnoi-politiki.html>.

1722 Children "taken away" in Europe, adoption and 1759 orphans due to the war. Interview with the head of the social service. Radio Svoboda. 2024. URL: <https://www.radiosvoboda.org/a/syroty-bizhentsi-vidibrani-dity-italia-usynovlennia/32844308.html>.

1723 The Government established the State Service for Children. Government portal. The only web portal of the executive authorities of Ukraine. 2023. URL: <https://www.kmu.gov.ua/news/rishenniam-uriadu-stvoreno-derzhavnu-službu-u-spravakh-ditei>.

1724 Oksana Zholnovych, Minister of Social Policy: We create conditions for people to want to live and return to Ukraine. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-society/3746089-oksana-zolnovic-ministerka-socialnoi-politiki.html>.

1725 Children "taken away" in Europe, adoption and 1759 orphans due to the war. Interview with the head of the social service. Radio Svoboda. 2024. URL: <https://www.radiosvoboda.org/a/syroty-bizhentsi-vidibrani-dity-italia-usynovlennia/32844308.html>.

The state of war and the focus on responding to military issues deprive the state and society of resources to develop a child protection system. The issues of returning Ukrainian children from deportation, returning families with children from Europe and other countries, and adapting the system of education and social services for children to security risks have been added to the problems that existed before the full-scale war. All of this is being postponed due to lack of funding and the need to support resistance to the aggressor and the country's defence capability.

As for the important changes, on 29 September 2023, the Government of Ukraine adopted a resolution on the establishment of the State Service for Children¹⁷²⁶. This service, as a central executive body, will implement state policy in the field of child protection, social support for families with children, development of family-based forms of upbringing and adoption. Among the key tasks of the body is to coordinate the provision of social support and social services to families with children (including those under guardianship or custody), foster families, families of foster carers, family-type children's homes, and adoptive parents¹⁷²⁷. However, this service currently has neither powers nor staff.

It should also be added that at present, children's services in communities and districts are almost destroyed as a result of discrepancies between the delegated and own powers of local governments, which has significantly affected the situation and protection of children in Ukraine. The problem with the functioning of children's services in communities is that the protection of childhood and children's rights is a delegated responsibility that has been "transferred" to communities without adequate funding. As a result, the performance of this function in the state depends entirely on the willingness and capacity of individual communities, which does not meet the requirements of the law and general principles of child protection. In communities, especially those near the frontline, there is a lack of specialists and funding for social services for children, forcing families to evacuate or leave their children without important social and educational services, which negatively affects the development and socialisation of Ukrainian children.

Recommendations

1. Actively promote the placement of children exclusively in family-based forms of care – foster families, adoptive families, family-type children's homes, etc.
2. Urgently finalise the establishment of the children's service structure, strengthen its status at the community level with the provision of appropriate resources, including staff and funding, and provide for liability for failure to meet the requirements of services to protect the interests of children.
3. Encourage communities and local governments to create non-institutional services for children and families, support foster families, leisure and recreational services for children and parents.
4. Adopt a state programme to support families in difficult life circumstances.

Issues for further monitoring

- › Development of a state system for the reintegration of children returning from the temporarily occupied territories, the Russian Federation, and the Republic of Belarus, which should provide long-term support and accompaniment for the child and their family.

¹⁷²⁶ Some issues of the State Service for Children: Resolution of the Cabinet of Ministers of Ukraine of 29.09.2023 No. 1048. URL: <https://www.kmu.gov.ua/npas/deiaki-pytannia-derzhavnoi-sluzhby-u-spravakh-ditei-i290923-1048>.

¹⁷²⁷ The Government established the State Service for Children. Government portal. The only web portal of the executive authorities of Ukraine. 2023. URL: <https://www.kmu.gov.ua/news/trishenniam-uriadu-stvoreno-derzhavnu-sluzhbu-u-spravakh-ditei>.

- › Promotion of the deinstitutionalisation of children’s institutions.
- › Full launch of the State Service for Children, equipping it with appropriate powers and funding.

Combating discrimination and hate crimes

As of 2023, Ukraine has a fairly developed anti-discrimination legislation, which partially complies with EU minimum standards and other obligations under international law. However, according to the comments of UN agencies and mechanisms¹⁷²⁸, the European Commission against Racism and Intolerance (ECRI)¹⁷²⁹ and other Council of Europe and European Commission bodies, there is a list of urgent tasks to fill the gaps in both legislation and its practical implementation, so that the broad national anti-discrimination framework is in line with the ECRI Recommendations on hate speech and hate crimes and the EU Directives on equality and the investigation of hate crimes.

Ukraine’s national legislation needs to be significantly amended to address the existing shortcomings – expanding the list of protected grounds, including specific mention of sexual orientation and gender identity (SOGI) in the legislation, expanding the list of prohibited behaviours, including a clear legislative definition of “reasonable accommodation” and the development of its principles and criteria to define the limits of “proportionality”, and introducing administrative liability for discrimination.

Special attention should be paid to comprehensive reform of the CC of Ukraine – from expanding the list of protected grounds to the exclusion of criminal punishment for discrimination not related to violence and extreme forms of hate speech, the introduction of separate punishment for incitement to hatred and/or hate speech and hate crimes, including expanding the list of aggravating circumstances in the CC of Ukraine to make it commensurate with the list of protected grounds. There is a lack of protection of victims in criminal proceedings and attention to their safety and other needs, which leads to the silencing of a certain number of hate crimes. Another issue that needs to be addressed is the lack of possibility to investigate a crime without a victim’s statement and/or the possibility to prosecute legal entities for crimes. All of these changes should be developed with due regard to Council Framework Decision 2008/913/JHA¹⁷³⁰, Directive 2012/29/EU¹⁷³¹ and previous recommendations of the ECRI, OSCE and other international stakeholders.

The work of national executive authorities, local self-government bodies and equality institution (the Parliament Commissioner on Human Rights), self-regulation mechanisms and prevention of hate speech mechanism, etc. should be strengthened in view of the need to develop a system for collecting and analysing disaggregated data on all manifestations of discrimination and

1728 UPR recommendations for Ukraine. URL: https://www.upr-info.org/sites/default/files/documents/2017-10/js3_upr28_ukr_e_main.pdf.

1729 ECRI conclusions on Ukraine. URL: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ukraine>.

1730 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0913>.

1731 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. URL: <https://eur-lex.europa.eu/eli/dir/2012/29/oj>.

intolerance in various spheres of public life, conduct regular measurements of the reaction to discrimination and the level of prejudice in society, and introduce regular training on preventing and combating various forms of discrimination and intolerance.

Gaps in discrimination legislation

The principle of non-discrimination enshrined in the Constitution of Ukraine¹⁷³², which guarantees equal rights and freedoms for citizens, has a rather limited list of protected grounds and specifically emphasises the equality of rights of women and men and the protection of maternity in the context of the right to work. A number of laws contain some form of definition of discrimination and prohibit it in certain areas of public life, including: The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”¹⁷³³, the Labour Code of Ukraine¹⁷³⁴, the Law of Ukraine “On Advertising”¹⁷³⁵ (contains a ban on discriminatory advertising, responsibility for its creation and distribution), the Law “On Employment of the Population” (guarantees of protection against discrimination in the field of labour, prohibition to offer jobs only to men or women in vacancy announcements, prohibition for employers to make discriminatory demands during interviews and request personal data), Law of Ukraine “On Media” (prohibition of statements inciting discrimination and harassment and their dissemination, sanctions for dissemination)¹⁷³⁶.

The most comprehensive document that forms the basis of anti-discrimination legislation in Ukraine is the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”¹⁷³⁷ (hereinafter – the Law). The Law contains definitions of discrimination and its forms, prohibitions of discrimination and the possibility of administrative, civil and criminal liability for discrimination, definitions of positive action, and the powers of the Ukrainian Parliament Commissioner for Human Rights to prevent and combat discrimination.

Despite the fact that the Law contains the key elements that should be in place to establish a general framework for protection against discrimination at the national level, and the fact that much of its logic is based on the provisions of the EU Equality Directives¹⁷³⁸ the document contains several significant shortcomings that affect the further development of anti-discrimination law in general¹⁷³⁹.

Thus, despite the extensive and open list of protected grounds, the current version of the Law does not mention SOGI. These two grounds were later added only to the Labour Code of Ukraine and the Law of Ukraine “On Employment of the Population”. The Law also lacks the grounds of “internal displacement” and “HIV-positive status” (they are mentioned separately in the relevant laws), and “health status” (not mentioned at all in national legislation). It is important to unify

1732 Constitution of Ukraine, 28.06.1996, No. 254k/96-VR. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA%96%D0%B2%D1%80#Text>.

1733 On the Principles of Preventing and Combating Discrimination in Ukraine: Law of Ukraine of 06.09.2012 No. 5207-VI. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>.

1734 Labour Code of Ukraine of 10.12.1971 No. 322-VIII. URL: <https://zakon.rada.gov.ua/laws/show/322-08%23Text>.

1735 On Advertising: Law of Ukraine of 03.07.1996 No. 270/96-VR. URL: <https://zakon.rada.gov.ua/laws/show/270/96-%25D0%25B2%25D1%2580%23Text>.

1736 Anti-discrimination legislation in Ukraine: A roadmap. UNDP. 2024. URL: <https://www.undp.org/uk/ukraine/publications/antydskryminatsiyne-zakonodavstvo-v-ukrayini-dorozhnya-karta>.

1737 On the Principles of Preventing and Combating Discrimination in Ukraine: Law of Ukraine of 06.09.2012 No. 5207-VI. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>.

1738 Handbook of European Anti-Discrimination Law. 2010. URL: https://www.echr.coe.int/documents/d/echr/handbook_non_discrim_law_ukr.

1739 Anti-discrimination legislation in Ukraine: A roadmap. 2024. URL: <https://www.undp.org/uk/ukraine/publications/antydskryminatsiyne-zakonodavstvo-v-ukrayini-dorozhnya-karta>.

the list of protected grounds and provide for their mandatory open list, which guarantees the development of anti-discrimination law and the possibility of adding new grounds through the development of judicial practice¹⁷⁴⁰.

The Law also lacks important concepts, in particular certain forms of discrimination (e.g. segregation), discrimination by association (kinship)¹⁷⁴¹, multiple discrimination, victimisation, no definition of “reasonable accommodation” and, accordingly, “refusal to provide reasonable accommodation” as a form of prohibited behaviour, as well as no principles of its application and criteria of “disproportionate burden on the employer” – this affects the possibility of its application, no relevant judicial practice has been formed yet. In addition, the Law fails to provide for easy access to judicial and/or administrative proceedings, including conciliation and expedited proceedings in urgent cases¹⁷⁴², which makes even the simplest discrimination proceedings lengthy and tedious for plaintiffs.

The Constitution or other legal acts neither create administrative liability for discrimination in any form nor confer on any central executive authority the power to impose administrative penalties for discrimination¹⁷⁴³. As the main body for preventing and combating discrimination in Ukraine, the Ukrainian Parliament Commissioner for Human Rights does not have the authority to bring violators to administrative responsibility¹⁷⁴⁴. Such liability is provided for only in a few narrow areas, for example, under the Law of Ukraine “On Advertising”. However, due to wartime restrictions, some powers of the central executive authorities to conduct inspections and control have been temporarily suspended.

The current Article 161 of the CC of Ukraine¹⁷⁴⁵ (“Violation of equality of citizens based on their race, nationality, region, religious beliefs, disability and other grounds”) contains several elements of offences, including discrimination – “direct or indirect restriction of rights or establishment of direct or indirect privileges of citizens based on race, skin colour, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, language or other grounds”. This approach is not an effective means of protection against discrimination, because even if law enforcement agencies initiate such cases, they do not go to court¹⁷⁴⁶, and the ECHR’s position that the punishment should be proportionate to the violation is not taken into account¹⁷⁴⁷.

To provide an adequate framework for combating and preventing discrimination, **gaps in legislation should be addressed to ensure adequate access to all legal remedies** in cases of discrimination – the **lists of protected grounds** in various legal acts should be **expanded and unified** (in particular, to include the grounds of “SOGI”, “internal displacement”, “HIV-positive status”, “health status”); the list of prohibited behaviours should include such **forms of discrimination as multiple discrimination, victimisation, segregation, refusal to make**

1740 Ibid.

1741 ECRI Report on Ukraine (fifth monitoring cycle). 2017. URL: <https://rm.coe.int/fifth-report-on-ukraine-ukrainian-translation-16808b5caa>.

1742 Anti-discrimination legislation in Ukraine: A roadmap. UNDP. 2024. URL: <https://www.undp.org/uk/ukraine/publications/antydyskryminatsiynе-zakonodavstvo-v-ukrayini-dorozhnya-karta>.

1743 Ibid.

1744 Analysis of national measures to counter hate speech in Ukraine: A systematic study and policy proposals for countering hate speech in Ukraine. Project. 2022. URL: <https://rm.coe.int/report-hate-speech-ukraine-ukr-draft-20220118/1680a53b93>.

1745 Criminal Code of Ukraine of 05.04.2001 No. 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

1746 Discrimination: court practice in 2012-2020: Review of court decisions in discrimination cases in Ukraine for 2012-2020. Council of Europe. “Social Action” NGO Centre. 2024. URL: https://drive.google.com/file/d/1661qEOUrlccT12yOyb_m47JeZu9gYo0h/view.

1747 Over five years, only 21 out of 597 cases of violations of citizens’ equality have gone to court. Ukrainian Legal Aid Foundation. 2020. URL: <https://ulaf.org.ua/bez-rubriki/za-p-jat-rokiv-iz-597-sprav-pro-porushennja-rivnopravnosti-gromadjan-do-sudu-dijshla-lishe-21-chomu/>; The case of Danilenkov and others v. Russia. URL: <https://precedent.in.ua/2015/12/16/danilyenkov-ta-inshi-proty-rosiyi/>.

reasonable accommodation, etc. It is also necessary to introduce **administrative liability for manifestations of discrimination that do** not involve violence and harsh (i.e., criminalised) forms of hate speech, etc.

Shortcomings of the current criminal legislation in the field of responding to manifestations of intolerance and protecting the rights of victims of hate crimes

Criminal legislation is only partially aligned with European standards, in particular with the EU Council Framework Decision 2008/913/JHA¹⁷⁴⁸. The liability for hate crimes is regulated by the CC of Ukraine. Except for Article 161, all other articles that mention the motive of intolerance as an aggravating circumstance contain a limited and closed list of protected grounds (committing a crime “for reasons of racial, national or religious intolerance” in Articles 115, 121, 122, 126, 127, and 129 of the CCU). These are circumstances that aggravate liability for certain crimes, such as murder (Article 115(2)(14), intentional grievous bodily harm (Article 121(2)), intentional moderate bodily harm (Article 122(2)), beatings and torture (Article 126(2)), torture (Article 127(2)), and threats of murder (Article 129)¹⁷⁴⁹.

All other intentional crimes may also involve the presence of hatred motives, in which case the provisions on aggravating circumstances provided for in Article 67(1)(3) of the Criminal Code may apply. However, currently, Article 67 contains a limited list of grounds and is not mandatory for courts to apply. For proper consideration of cases and strengthening of the prosecution’s position in court, it is important to ensure that the relevant motive is taken into account at the pre-trial investigation stage and proper evidence is collected, and prosecutors demand that this provision be applied by the court when determining the punishment¹⁷⁵⁰.

In addition, the legislation does not criminalise the conduct specifically referred to in Framework Decision 2008/913/JHA¹⁷⁵¹ (in Article 1(c) (public condonation, denial or gross understatement of crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the ICC) and (d) (public condonation, denial or gross understatement of crimes as defined in Article 6 of the Statute of the International Military Tribunal), does not provide for liability of a legal person for offences of racism and xenophobia, as well as for incitement and aiding and abetting such offences, contrary to Article 5 of Framework Decision 2008/913/JHA. Contrary to Article 8 of the Framework Decision, the initiation of proceedings under Article 161 is carried out by way of private prosecution, i.e. depends on the notification of the victim.

Accordingly, it is necessary to **establish liability for committing crimes motivated by hatred (hate crimes) in relation to a broad and open** list of protected grounds, harmonised with anti-discrimination legislation, to **criminalise the conduct** expressly referred to in Framework Decision **2008/913/JHA** in **Article 1(c)** (public condonation, denial or gross understatement of crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the ICC) and **(d)** (public condonation, denial or gross understatement of crimes as defined in Article 6 of the Statute of the International Military Tribunal), to provide for the **liability of a legal person for offences of racism and xenophobia**, as well as for incitement and aiding and abetting such offences in accordance with Article 5 of Framework Decision 2008/913/JHA.

1748 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0913>.

1749 Categorisation and investigation of hate crimes in Ukraine: A practical guide. OSCE/ODIHR. 2019. URL: <https://www.osce.org/files/f/documents/2/a/420296.pdf>.

1750 Ibid.

1751 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0913>.

Guided by Article 8 of the Framework Decision, it is necessary to ensure that **proceedings can be initiated in the absence of private prosecution** by specific victims (amend Article 477 of the CPC of Ukraine).

A number of legislative initiatives have been aimed at addressing the problems described above and contain solutions to some of the recommendations made here, but they have either not been adopted or are still in the long legislative process. In order to address the shortcomings of the legislation related to combating discrimination and manifestations of intolerance, it is necessary to analyse the path of previous draft laws and take into account the reasons why they may not have been adopted in the further development of draft laws.

Responding to hate crimes and supporting victims

There is a trend of annual increase in the number of cases of application of Article 161 of the CC of Ukraine by pre-trial investigation bodies, but the ratio of the number of closed criminal proceedings at the pre-trial investigation stage to those that reached the trial stage indicates low efficiency of the application of this article¹⁷⁵². Despite some changes in legislation and improved practices, the law enforcement system continues to demonstrate ineffective investigation of hate crimes¹⁷⁵³.

National legislation does not comply with Directive 2012/29/EU¹⁷⁵⁴, which sets minimum standards for the rights, support and protection of victims of crime (Victims' Rights Directive). Legislation does not provide for minimum standards or individual needs assessments for victims of any crime, including victims of hate crimes. In the absence of a law, there are no support services or structures for victims, which in turn makes it difficult or impossible for them to exercise their rights in the context of interaction with the justice system and other organisations that may provide other types of support necessary for recovery from their experiences.

According to Directive 2012/29/EU, which sets minimum standards for the rights, support and protection of victims of crime, a **comprehensive law should be developed to ensure the rights of victims of crime**, including **vulnerable victims**.

To ensure more effective investigation of hate crimes, it would be advisable to introduce a certain level of **specialisation among prosecutors** and create **standard operating procedures (SOPs)**¹⁷⁵⁵ for investigating hate crimes. It is also important to continue **training justice system officials** on how to respond to hate crimes, including the mandatory consideration of motive in investigations and practices of communication with victims that prevent re-traumatisation and revictimisation.

Data collection and prevention of discrimination, hate speech and hate crimes

The data provided by civil society organisations and the data provided by state authorities¹⁷⁵⁶ on incidents of discrimination, hate speech and hate crimes vary greatly (in terms of quantity and

1752 Practice of Investigation of Crimes Committed on the Grounds of Intolerance in Ukraine: Report on the Results of the Study. URL: <https://drive.google.com/file/d/1gZZu2FtBzt2LAHRI9NNnnc7k91qGtfU2/view>.

1753 Freedom House data on hate crimes in Ukraine for 2020-2023. Freedom House. URL: <https://freedomhouse.org/uk/programs/regional-programs/eurasia-programs/obyednanni-v-borotbi-z-nasylstvom-na-grunti-nenavysti>.

1754 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. URL: <https://eur-lex.europa.eu/eli/dir/2012/29/oj>.

1755 Standard operating procedures (SOPs).

1756 Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2022. URL: <https://ombudsman.gov.ua/report-2022/>.

quality). Only a few state authorities have the authority to collect data. There are no obligations or powers to share data and to analyse it in a comprehensive manner, including for the development of effective policies and measures to combat all forms of discrimination¹⁷⁵⁷. Discrepancies between different provisions of anti-discrimination law, dispersion of powers between different state authorities and lack of legal certainty in certain issues are also factors in the lack of unified data.

The lack of a systematic approach to **collecting and analysing disaggregated data** on various manifestations of discrimination, hate speech, and hate crimes, as well as the results of response and restoration of violated rights, makes it impossible to assess the real state of affairs or **effectively formulate state policy** on preventing and combating discrimination in Ukraine. Regular and disaggregated statistics on various manifestations of discrimination in all spheres of public life should be an integral part of any state policy in a particular area. Statistics should include various manifestations of discrimination and hate speech in different areas of public life, disaggregated by a wide range of protected grounds, and information on response measures and the restoration of violated rights. An example for building a data system can be the approaches collected and analysed by the Fundamental Rights Agency (FRA)¹⁷⁵⁸. The government should apply for Ukraine's membership in the FRA as a candidate country.

With this in mind, it is necessary to establish criteria and **systems for the thorough collection of disaggregated data on all cases of discrimination**, as well as mechanisms for data exchange and generalised analysis between different public authorities and self-regulatory bodies. Similarly, **coordinated collection and publication of data on the status of investigations into hate crimes** involving law enforcement and the justice system should be introduced. Such data should include the maximum possible **disaggregation of crimes by type and protected grounds**, as well as information on the status of the response, i.e. the results of investigations and court proceedings in such cases.

Hate speech

The CC of Ukraine does not contain provisions on certain forms of hate speech that constitute a crime in accordance with international standards. No distinction is made between different forms of expression: Article 161 combines behaviour defined as "incitement", "humiliation of national dignity", "insult to feelings", which may include an overly broad range of actions.

Given the absence of legal remedies in civil and administrative law aimed directly at combating hate speech, it is unclear what mechanism victims can use to counter hate speech, depending on the severity and scope of the speech¹⁷⁵⁹.

Based on the recommendations of the ECRI and the EU, Ukraine should develop its own model for preventing and combating various manifestations of hate speech, with a focus on possible mechanisms for restoring the violated right that could be envisaged for various manifestations of hate speech at all levels¹⁷⁶⁰.

State authorities and self-regulatory bodies should jointly and transparently begin to develop an **action plan and/or policies to respond to various manifestations of hate speech** and prevent its spread in Ukrainian society.

1757 Data Collection System on Hate Crimes, Hate Speech and Discrimination in Ukraine: Recommendations for Improvement and Common Approach and Situation Analysis, September 2020. URL: <https://rm.coe.int/final-data-collection-report-ukraine-ua/16809fac71>.

1758 Compendium of practices for equality data collection. URL: <https://fra.europa.eu/en/promising-practices-list>.

1759 Analysis of national measures to counter hate speech in Ukraine: A systematic study and policy proposals for countering hate speech in Ukraine. Project. 2022. URL: <https://rm.coe.int/report-hate-speech-ukraine-ukr-draft-20220118/1680a53b93>.

1760 Ibid.

Recommendations

1. Amend the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” regarding the list of protected grounds, mechanisms for applying various legal remedies, powers of the Ukrainian Parliament Commissioner for Human Rights to respond to discrimination, etc.
2. Unify the list of protected grounds in anti-discrimination legislation by providing for a mandatory open list.
3. Review the provisions of the CC of Ukraine on hate crimes and bring them in line with international standards.
4. Develop and adopt legislation to guarantee the rights of victims, guided by the standards of Directive 2012/29/EU (Victims’ Rights Directive).
5. Develop and implement a unified and disaggregated system of data collection on various manifestations of discrimination among central authorities and executive bodies.
6. Apply for membership in the Fundamental Rights Agency.
7. Introduce coordinated collection and publication of data on the status of investigations into hate crimes with the involvement of law enforcement and justice system representatives.
8. Introduce appropriate instructions, specialisation and SOPs for prosecutors and police to investigate hate crimes.
9. Expand training for representatives of the justice system in responding to hate crimes.
10. Develop an inter-agency action plan and/or policies to respond to hate speech.
11. Training on preventing and combating discrimination and intolerance, as well as on developing and implementing policies to promote equality, accessibility and affirmative action, should be part of the regular training of civil servants, officials and other public servants.

Issues for further monitoring

- › Continuous monitoring and oversight of Ukraine’s implementation of its obligations in the area of combating discrimination and hate crimes, as well as taking into account developments and changes taking place at the EU level.
- › The issue of developing anti-discrimination legislation should be closely linked to other commitments, such as respect for the rights of people with disabilities and accessibility, guaranteeing the rights of national minorities and indigenous peoples, respect for the rights of the LGBT+ community, etc.

Protecting the rights of people with disabilities

Inaccessibility of the physical environment, information and services, an unregulated system of support for the employment of people with disabilities in the open labour market, and the

functioning of institutions that actually pose a threat to people's lives and health are the reality in which almost 3 million people with disabilities in Ukraine now live.

According to the Ministry of Social Policy of Ukraine, during the year and a half of full-scale war, the number of people with disabilities increased by 300 000¹⁷⁶¹. This is a significant problem for the social system, which continues to operate despite limited resources. Of course, civil society is aware of these problems. Nevertheless, given the increasingly urgent issue of inaccessibility of the environment, services, and information in the country, the progress made by the state in this area over the past year can be defined as minimal.

In the area of employment, the Draft Law No. 5344-d "On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work" has not yet been adopted. Civil society has been actively advocating for the improvement of this draft law, as some of its provisions contradict EU Council Directive 2000/78/EC, and is calling for its early adoption, but the process is currently rather slow on the part of the state. The process of deinstitutionalisation has not even begun yet. Despite the fact that the European Commission in its Recommendations on Ukraine's EU membership status emphasised the need to abandon institutions¹⁷⁶², the state has not yet adopted a National Strategy and Action Plan for deinstitutionalisation. There are some legislative initiatives that directly or partially relate to deinstitutionalisation, but they are mostly under development (such as reforming the system of medical and social expertise).

Lack of supervision over the reconstruction process in the country, as well as procedural and information problems related to it, mean that many reconstructed facilities do not meet accessibility standards, and the practice of isolating and segregating people with disabilities continues.

Employment

As of February 2023, only 16% of people with disabilities were employed in Ukraine¹⁷⁶³, and in general, there is a decrease in the number of employed people with disabilities compared to 2021¹⁷⁶⁴. Among unemployed persons with and without disabilities, 76% are women¹⁷⁶⁵. It is difficult to determine exactly how many women with disabilities are unemployed, as the State Employment Centre does not disaggregate data in the category "persons with disabilities" by gender, age or type of disability. The problem of collecting disaggregated data in Ukraine remains acute and requires additional attention from the state and the international community. Back in 2015, the UN Committee on the Rights of Persons with Disabilities emphasised this in its Concluding Observations on Ukraine's first report¹⁷⁶⁶. Namely, the Committee recommended that Ukraine reform the system of collecting data on the situation of persons with disabilities, disaggregated by age and gender, including disaggregated data on persons with disabilities from discriminated communities, in all sectors, including employment. The collection of disaggregated

1761 There are 3 million people with disabilities in Ukraine. Ministry of Reintegration of the Temporarily Occupied Territories. 2023. URL: <https://minre.gov.ua/2023/09/22/v-ukrayini-nalichuyetsya-3-miljony-lyudej-z-invalidnistyu/>.

1762 Commission Opinion on Ukraine's application for membership of the European Union, COM/2022/407 final. 2022. URL: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>.

1763 Only 16% of people with disabilities are officially employed in Ukraine. Ukrinform. 2023. URL: <https://www.ukrinform.ua/rubric-society/3671006-v-ukraini-oficijno-pracevlastovani-lise-16-ludej-z-invalidnistu.html>.

1764 Currently, just over 400,000 people with disabilities are employed in Ukraine, while at the end of 2021 there were more than 455,000 of them. 2023. URL: <https://www.ukrinform.ua/rubric-society/3767712-v-ukraini-skorocuetse-killist-pracivnikiv-z-invalidnistu.html>

1765 Last year, the number of registered unemployed in Ukraine almost halved." As of 1 February 2024. State Employment Centre. 2024. URL: <https://www.dcz.gov.ua/publikaciya/v-ukrayini-torik-mayzhe-udvichi-skorotylas-killist-zareyestrovanyh-bezrobitnyh>.

1766 Recommendation 59, UN Committee on the Rights of Persons with Disabilities, Concluding observations on the first report of Ukraine, CRPD/C/UKR/CO/1. 02.10.2015. URL: <https://documents.un.org/doc/undoc/gen/g15/226/49/pdf/g1522649.pdf?token=DnY0HHFUc9J0jF73AM&fe=true>.

data is an obligation that Ukraine has undertaken under Article 31 of the Convention on the Rights of Persons with Disabilities. The lack of statistical data prevents an effective analysis of the country's disability situation and the development of effective policies and programmes.

The situation of veterans with disabilities should be highlighted separately. Specialised NGOs note that the conditions for employment of veterans with disabilities in the labour market are rather unfavourable¹⁷⁶⁷. This is due to prejudice and discrimination on the part of employers during employment, as well as the fact that existing comprehensive rehabilitation and reintegration programmes for veterans with disabilities, both state and non-state, cannot cover the entire demand. Between January and September 2023, the State Employment Centre employed only 16% of combatants¹⁷⁶⁸. A survey of servicemen and women with and without disabilities conducted by the Ukrainian Veterans Fund between 22 June and 22 July 2023 showed that 32% of respondents definitely faced obstacles to finding employment after military service, and 27% rather faced them¹⁷⁶⁹. The main problems they mentioned were physical health problems (28%) and their own psycho-emotional state (26%). In this study, almost 40 per cent of employers surveyed consider the psycho-emotional state of veterans as a risk to themselves when hiring, and 17 per cent fear the need to equip a workplace because of a veteran's disability¹⁷⁷⁰. This problem is complex and requires both legal and programmatic solutions.

In terms of programmatic solutions, information campaigns and other educational activities targeting employers to prevent discrimination and combat prejudice can improve the employment situation of veterans with disabilities.

In the legal field, the state is currently working to improve the draft law No. 5344-d¹⁷⁷¹. This draft law provides for additional protection of the right of people with disabilities to employment. However, parts of the draft law do not comply with EU standards, namely, the framework Directive 2000/78/EC of the Council of 27 November 2000¹⁷⁷², which establishes a general system of equal treatment in employment and occupation. Ukraine committed itself to approximate its legislation with the standards of the Directive back in 2014 when it signed the Association Agreement with the European Union.

This directive defines the concept of "reasonable accommodation" and the refusal to make it as one of the types of prohibited forms of discrimination. The draft law No. 5344-d, in turn, does not provide an interpretation of the term "reasonable accommodation", its principles, criteria and limits, which may further lead to difficulties in exercising the right to work¹⁷⁷³ and the development of ambiguous court practice. Another drawback of the draft law is that, according to Article 17.1 of the draft law, the need for reasonable accommodation is defined by the employer, not the person with a disability, which also contradicts the provisions of the Convention on the Rights of Persons with Disabilities and the aforementioned Directive. Reasonable accommodation measures should be implemented at the request of the employee and be the result of a dialogue

1767 "Veterans' needs and obstacles to employment, June-July 2023", sociological study, p. 5. Ukrainian Veterans Fund. URL: https://veteranfund.com.ua/wp-content/uploads/2023/07/Zvit_pereshkodi_precevlashtuvanii.pdf.

1768 The number of unemployed combat veterans who received services from the State Employment Service in January-September 2023 was 4,200, of whom 4,100 were registered as unemployed and 672 were employed. Problems of Employment of War Veterans: Risks for the State and Society. National Institute for Strategic Studies. 2023. URL: <https://niss.gov.ua/doslidzhennya/sotsialna-polityka/problemy-pratsevlashtuvannya-veteraniv-viyny-ryzky-dlya-derzhavy>.

1769 Veterans' needs and obstacles to employment, June-July 2023", sociological study, p. 67. Ukrainian Veterans Fund. URL: https://veteranfund.com.ua/wp-content/uploads/2023/07/Zvit_pereshkodi_precevlashtuvanii.pdf.

1770 Ibid, Art. 43.

1771 On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work: Draft Law of Ukraine, registration No. 5344-d of 18.11.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40853>.

1772 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>.

1773 In accordance with Article 27 of the UN Convention on the Rights of Persons with Disabilities..

between both parties in accordance with UN standards¹⁷⁷⁴. Since this draft law has been under development and discussion for several years, has controversial provisions that civil society does not agree with, it is recommended to involve the Council of Europe in the assessment of draft law No. 5344-d. For example, the Council of Europe has already successfully assessed the compliance of the draft law and then the adopted Law of Ukraine “On Media” with EU Directive 2018/1808 on audio-visual media services at the request of the Ukrainian government¹⁷⁷⁵.

Deinstitutionalisation

As of the beginning of 2023, about 11,400 people with disabilities and older people in Ukraine lived in residential care institutions, almost 26,000 people in psychoneurological care institutions, and 4,400 children and young people in orphanages¹⁷⁷⁶. Ukraine has one of the highest rates of institutionalisation of children in Europe¹⁷⁷⁷. Such institutions in the frontline areas come under constant shelling, and adults and children living there are often forcibly deported¹⁷⁷⁸. The practice of “supporting” people with disabilities by placing them in residential care facilities is discriminatory and, in times of war, a threat to life and health. As early as 2015, the UN Committee on the Rights of Persons with Disabilities in its Concluding Observations on Ukraine’s first report¹⁷⁷⁹ stressed the need for deinstitutionalisation and for Ukraine to strengthen its efforts in this direction. In 2022, the Committee reiterated¹⁷⁸⁰ this recommendation, taking into account the challenges posed by the war. The European Commission also noted the need for deinstitutionalisation in its Recommendations on Ukraine’s EU membership status¹⁷⁸¹.

The main problem remains the lack of a systematic approach to the deinstitutionalisation process by the state. As of July 2024, the Ministry of Social Policy has not yet developed a national strategy and action plan in this area. It is important that in 2024, the Ministry of Social Policy of Ukraine, together with civil society, develops a National Strategy and Action Plan for deinstitutionalisation in accordance with the Government’s Priority Action Plan for 2024¹⁷⁸². This will allow, firstly, to identify areas, state mechanisms and processes that need to be reformed for successful deinstitutionalisation, and, secondly, to outline the timeframe for the implementation of each stage, which will help monitor progress for both the state and the public sector.

1774 UN Committee on the Rights of Persons with Disabilities, General comment № 8 (2022) on the right of persons with disabilities to work and employment. 07.10.2022. URL: <https://documents.un.org/doc/undoc/gen/g22/518/57/pdf/g2251857.pdf?token=Gx6AurZ5z5GQkD5TUt&fe=true>.

1775 Council of Europe, Opinion of the Directorate General Human Rights and Rule of Law on The Law «On Media» of Ukraine, DGI (2023)03. 24.02.2023. URL: <https://rm.coe.int/dgi-2023-03-ukraine-tp-law-on-media-2751-9297-4855-1-2753-6081-2551-1/1680aa72df>.

1776 Places of detention: number, profile and geography during the war. Fight for Right. URL: https://ffr.org.ua/wp-content/uploads/2022/05/Places-of-deprivation-of-liberty_profile_-ukr.pdf.

1777 A worrying U-turn on ending the institutionalisation of children in Ukraine. Joint Statement. URL: https://www.eurochild.org/uploads/2021/10/Joint-Statement_Care-reform-in-Ukraine_October-2021.pdf.

1778 In April 2023, the Russians dropped a bomb on a psychoneurological boarding school in Sumy region, where 167 people lived. Interfax-Ukraine. 2023. URL: <https://interfax.com.ua/news/general/904310.html>; In June 2023, an orphanage in Bilopillia, home to 135 children, was shelled. Suspilne Sumy. 2023. URL: <https://suspilne.media/506677-ce-neludi-aki-zdatni-z-ditmi-otake-vitvorati-pracivniki-internatu-u-bilopilli-rozpovili-pro-obstril-zakladu/>; In July 2023, about 200 patients of the Mykhailivskiy neuropsychiatric boarding school were taken by Russians to an unknown destination. Army Inform. 2023. URL: <https://armyinform.com.ua/2023/07/15/blyzko-200-paciyentiv-psyhonevrologichnogo-internatu-rashysty-vyvezly-u-nevidomomu-napryamku/>.

1779 UN Committee on the Rights of Persons with Disabilities, Concluding observations on the first report of Ukraine, CRPD/C/UKR/CO/1. 02.10.2015. URL: <https://documents.un.org/doc/undoc/gen/g15/226/49/pdf/g1522649.pdf?token=DnY0HHFuc9J0jF73AM&fe=true>.

1780 Ukraine: UN committee ‘gravely concerned’ over treatment of people with disabilities. The United Nations Office at Geneva. 2022. URL: <https://www.ungeneva.org/en/news-media/news/2022/09/74486/ukraine-un-committee-gravely-concerned-over-treatment-people>.

1781 Commission Opinion on Ukraine’s application for membership of the European Union, COM/2022/407 final. 17.06.2022. 17.06.2022. URL: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>.

1782 On approval of the Government’s priority action plan for 2024: Order of the Cabinet of Ministers of Ukraine of 16.02.2024 No. 137. URL: <https://www.kmu.gov.ua/npas/pro-zatverdzhennia-planu-priorytetnykh-dii-uriadu-na-2024-rik-137r-160224>.

Reforming the disability assessment system can be considered the first stage of the deinstitutionalisation process and perhaps the most important factor, as social and rehabilitation services, payments and benefits depend on the person's (medical and legal) disability status¹⁷⁸³. The current disability assessment system has many shortcomings, which has led to repeated attempts to reform it. As part of the reform of the Medical and Social Expertise Commissions (MSEC), Ukraine had to develop a relevant draft law¹⁷⁸⁴ in September 2023¹⁷⁸⁵.

As of July 2024, this document has not yet been developed. The developments presented at the second meeting of the advisory group¹⁷⁸⁶ in autumn 2023 by the consulting agency Civitta at the request of the Ministry of Health of Ukraine were not supported¹⁷⁸⁷ by members of the Healthy Solutions for Open Society Coalition¹⁷⁸⁸ (which includes representatives of Ukrainian civil society and international donors and organisations). Therefore, it is extremely important that Ukraine accelerates the process of reforming the MSEC, develops and adopts a legislative act, taking into account the recommendations of civil society, and in line with the tasks defined in the Action Plan, approved by a government decree No 4833¹⁷⁸⁹.

The abandonment of institutions and the transformation of community-based services should be interconnected, requiring comprehensive reforms in many areas. Changes in the system of disability assessment, medical and rehabilitation services, social services, pension payments and benefits, the institution of guardianship (declaring a person incapable of legal action), and employment regulations are essential for the eradication of residential institutions in Ukraine.

Inclusive reconstruction

Reconstruction in Ukraine is an extremely complex, multidimensional and minimally regulated process. Tens of thousands of reconstruction projects are being implemented by a large number of institutions and organisations¹⁷⁹⁰ both governmental and non-governmental. The current system (in fact, the absence of a system) of state supervision over the planning, preparation for implementation, and construction stages leads to poor quality of reconstructed facilities, their inaccessibility to people with disabilities, and difficulties in monitoring the use of funds. There are many reasons for this, but the most important ones can be divided into the following categories: legal, procedural, and informational.

1783 On the Rehabilitation of Persons with Disabilities in Ukraine: Law of Ukraine of 06.10.2005 No. 2961-IV. URL: <https://zakon.rada.gov.ua/laws/show/2961-15#Text>; Issues of medical and social expertise: Resolution of the Cabinet of Ministers of Ukraine of 03.12.2009 № 1317. URL: <https://zakon.rada.gov.ua/laws/show/1317-2009-%D0%BF#Text>.

1784 On Amendments to Certain Legislative Acts of Ukraine on Changing Approaches to Assessment of Needs and Mechanisms for Providing Needs for Persons with Disabilities and Reforming the System of Medical and Social Expertise in Ukraine Based on the Results of the Analysis and in accordance with the Target Model of the System of Provision of Services to Persons with Persistent Disabilities: Draft Law of Ukraine (under development, not yet registered). The title of the draft law is defined in the Order of the Cabinet of Ministers of Ukraine of 26.05.2023 No. 483. URL: <https://zakon.rada.gov.ua/laws/show/483-2023-p#Text>.

1785 Action Plan for Changing the Needs Assessment and the Mechanism for Ensuring Them for Persons with Disabilities and Reforming the Conduct of Medical and Social Expertise in Ukraine: Order of the Cabinet of Ministers of Ukraine of 26.05.2023 No. 483. URL: <https://zakon.rada.gov.ua/laws/show/483-2023-p#Text>.

1786 The Advisory Group on Changing Approaches to the Assessment of Needs and the Mechanism for Ensuring Them for Persons with Disabilities and Reforming the Medical and Social Expertise System in Ukraine was established in accordance with the Order of the Ministry of Health of Ukraine No. 1342 of 24.07.2023 (as amended by the Order of the Ministry of Health of Ukraine No. 1447 of 11.08.2023).

1787 The public proposes to the Ministry of Health to reform the MSEC: 10 important changes. League of the Strong. 2024. URL: <https://ls.org.ua/msek/gromadskist-proponuye-moz-reformuvaty-msek-10-vazhlyvyh-zmin/>.

1788 More about the Coalition. URL: <https://healthsolutions.ngo/partners/>.

1789 Action Plan for Changing the Needs Assessment and the Mechanism for Ensuring Them for Persons with Limited Daily Functioning and Reforming the Conduct of Medical and Social Expertise in Ukraine: Order of the Cabinet of Ministers of Ukraine of 26.05.2023 No. 483. URL: <https://zakon.rada.gov.ua/laws/show/483-2023-p#Text>.

1790 On approval of the action plan for the implementation of the Open Government Partnership Initiative in 2023-2025: Order of the Cabinet of Ministers of Ukraine of 17.11.2023 No. 1040-r. URL: <https://zakon.rada.gov.ua/laws/show/1049-2023-p#Text>.

Legal reasons. State architectural control of construction norms, standards and rules during preparatory and construction works should be carried out by the State Inspectorate of Architecture and Urban Development of Ukraine¹⁷⁹¹. However, with the approval of Government Resolution No. 303¹⁷⁹², the procedure for state control over the construction process was suspended due to martial law. Only in certain cases, at the request of the central authorities, unscheduled state supervision measures are allowed. For example, supervision may be carried out if there is a “threat that has a negative impact on human rights, interests, health, as well as on the fulfilment of Ukraine’s international obligations”.

The inaccessibility of reconstructed facilities is a violation of the rights of people with disabilities to have access to public life, the physical environment, facilities and services provided to the public¹⁷⁹³ in accordance with national legislation and international instruments. Nevertheless, the procedure of unscheduled state supervision upon request cannot currently be an effective mechanism for monitoring the inclusiveness of construction, given the scale of this process throughout Ukraine. After all, as of January 2024, a total of 250,000 buildings were destroyed in Ukraine, 78 small, medium and large private enterprises and 348 state-owned enterprises were destroyed or damaged¹⁷⁹⁴. Therefore, for an effective reconstruction process, it is necessary to amend Government Resolution No. 303 and restore state control over the construction process, especially for facilities falling under the category of medium (CC2) and significant (CC3) consequences¹⁷⁹⁵, which are subject to mandatory examination for compliance with accessibility standards¹⁷⁹⁶.

NGOs, various national and international institutions often act as controlling structures in the process of recovery and reconstruction of the country, and their role in this process is becoming increasingly important. Through the implementation of such initiatives, it is possible to identify legislative and procedural gaps and problems in monitoring the use of funds¹⁷⁹⁷. Nevertheless, civil society and international organisations cannot and should not take over the state’s function of controlling construction, particularly in terms of accessibility. However, they can complement and strengthen the state’s actions in this area. Establishing commissions, working or expert groups with the participation of specialists from the public sector at the local state architectural and construction control bodies¹⁷⁹⁸ can improve the quality of monitoring and control over compliance with accessibility standards during construction.

Procedural reasons. Just as before the full-scale invasion, the non-compliance of facilities with the State Building Standards (SBS) B.2.2-40:2018 “Inclusiveness of Buildings and Structures”¹⁷⁹⁹

1791 Some issues of functioning of architectural and construction control and supervision bodies: Resolution of the Cabinet of Ministers of Ukraine of 23.12.2020 No. 1340. URL: <https://zakon.rada.gov.ua/laws/show/1340-2020-n#Text>.

1792 On the termination of state supervision (control) and state market supervision measures under martial law: Resolution of the Cabinet of Ministers of Ukraine of 13.03.2022 No. 303. URL: <https://zakon.rada.gov.ua/laws/show/303-2022-n#Text>.

1793 Article 9 of the UN Convention on the Rights of Persons with Disabilities (ratified by Ukraine in 2009).

1794 “The total amount of damage caused to Ukraine’s infrastructure has increased to almost \$155 billion - KSE Institute’s estimate as of January 2024”. Kyiv School of Economics. 2024. URL: <https://kse.ua/ua/about-the-school/news/zagalna-suma-zbitkiv-zavdana-infrastrukturi-ukrayini-zrosla-do-mayzhe-155-mlrd-otsinka-kse-institute-stanom-na-sichen-2024-roku/>.

1795 The class of consequences of buildings and structures is “a characteristic of the level of possible danger to the health and life of people who will be permanently or periodically on the site or outside such a facility, material damage or social losses associated with the cessation of operation or loss of the integrity of the facility.” The design organisation and the construction owner assign a construction project to a particular class. The list of criteria for determining the class of consequences of buildings and structures can be found in Article 32 of the relevant Law. On the regulation of urban development: Law of Ukraine of 17.02.2011 No. 3038-VI. URL: <https://zakon.rada.gov.ua/laws/show/3038-17#Text>.

1796 Ibid, Art. 31.

1797 For example, a journalistic investigation by OPORA on the challenges, corruption risks and abuses during the reconstruction efforts in Sumy region. URL: <https://www.oporua.org/viyana/ruinuvannia-zbitki-vidnovlennia-ta-koruptsiia-vikliki-prikordonnoyi-sumshchini-24778>.

1798 These functions are often delegated to local governments.

1799 According to Article 39 of the Law of Ukraine “On Regulation of Urban Development”, failure to comply with the norms of DBN B.2.2-40:2018 “Inclusiveness of Buildings and Structures” is a ground for refusal to accept the completed facility into operation.

at the stage of preparation of project documentation remains a serious problem. Firstly, according to Ukrainian legislation, not all construction projects are subject to mandatory expert assessment for compliance with the requirements of SBS B.2.2-40:2018. Expert review of project documentation is mandatory only for certain categories of facilities: CC2, CC3, facilities that are built in areas with complex engineering and geological conditions, which are built with the use of budgetary funds, and have an impact on the environment¹⁸⁰⁰. Therefore, for many buildings of category CC1, an accessibility assessment is not mandatory, and, accordingly, non-compliance with the SBS does not affect the commissioning of the facility. In many EU countries, an accessibility assessment is mandatory for all building projects, even private houses¹⁸⁰¹ that are being built or reconstructed. Therefore, amendments to the Law of Ukraine “On Regulation of Urban Development” to impose an obligation to conduct an accessibility assessment for all construction projects are needed to improve the inclusive reconstruction system.

Also, at the stage of preparing project documentation, it is necessary to obtain a professional, detailed examination of the project for compliance with accessibility requirements. Both governmental and non-governmental organisations¹⁸⁰² carry out expert reviews of construction project documentation at the request of the customer. The comprehensive expert opinion has an arbitrary form¹⁸⁰³. An analysis of a number of reconstruction project documents shows that it is impossible to establish whether the norms of SBS B.2.2-40:2018 were actually taken into account based on the experts’ conclusions. The wording is often very general, such as “the working design was carried out in accordance with the ‘requirements for creating conditions for unimpeded access for persons with disabilities and other low-mobility groups’”¹⁸⁰⁴. Given that most institutions and facilities in Ukraine are inaccessible, we can conclude that one of the reasons for this may be the poor quality of the project documentation in terms of analysing the facility for accessibility. This problem can be partially solved by introducing mandatory parameters for assessing the accessibility of an object and indicating them in the expert opinion. Training in architectural accessibility and professional development for organisations conducting expert assessments could also improve the situation.

Information reasons. Another issue is the extremely limited public access to data related to the reconstruction process and its inclusiveness. As part of the Open Government Partnership Initiative 2023-2025, the government launched the DREAM website¹⁸⁰⁵ on a pilot basis to manage reconstruction projects in the regions. As part of this pilot project, the platform has begun collecting data on reconstruction projects, such as project justification and planning, budgeting, evaluation, financing, procurement, contracting, project implementation, payment for work, and project completion¹⁸⁰⁶. The platform does not collect information on the accessibility/inaccessibility of reconstruction objects. Information on the accessibility of an object can be

1800 On regulation of urban development activities: Law of Ukraine of 17.02.2011 No. 3038-VI, Art. 31. URL: <https://zakon.rada.gov.ua/laws/show/3038-17#Text>.

1801 See, for example, accessibility standards in Italy regarding residential buildings in Annex A of Art. 3 “General design criteria” to the Decreto Ministeriale, 14 June 1989, n.236 “Prescrizioni tecniche necessarie a garantire l’accessibilita’, l’adattabilita’ e la visitabilita’ degli edifici privati e di edilizia residenziale pubblica sovvenzionata e agevolata, ai fini del superamento e dell’eliminazione delle barriere architettoniche”. URL: <https://www.gazzettaufficiale.it/eli/id/1989/06/23/089G0298/sg>.

1802 These organisations must meet the criteria established by the Order of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine No. 204 “Some Issues of Expertise of Project Documentation for the Construction of Facilities” of 15.08.2017. URL: <https://zakon.rada.gov.ua/laws/show/z1140-17#Text>.

1803 On regulation of urban development activities: Law of Ukraine of 17.02.2011 No. 3038-VI, Art. 31. URL: <https://zakon.rada.gov.ua/laws/show/3038-17#Text>.

1804 Construction project “New construction of a radiation protection shelter for Novhorod-Siverskyi Lyceum No. 1 of Novhorod-Siverskyi City Council of Chernihiv Region”. DREAM. URL: <https://dream.gov.ua/ua/project/DREAM-UA-201223-0B81F923/profile>.

1805 On the implementation of a pilot project to create, implement and ensure the functioning of the Unified Digital Integrated Information and Analytical System for the Management of the Process of Reconstruction of Real Estate, Construction and Infrastructure: Resolution of the Cabinet of Ministers of Ukraine of 15.11.2022 No. 1286. URL: <https://zakon.rada.gov.ua/laws/show/1286-2022-n#Text>.

1806 On approval of the Action Plan for the Implementation of the Open Government Partnership Initiative in 2023-2025: Order of the Cabinet of Ministers of Ukraine of 17.11.2023 No. 1040. URL: <https://zakon.rada.gov.ua/laws/show/1049-2023-p#Text>.

partially assessed by analysing the project documentation separately. However, based on the expert opinions it is rather difficult to assess the level of accessibility of an object in practice. Therefore, this platform should collect data on the accessibility/inaccessibility of construction projects.

In 2023, the state launched a pilot project to restore six settlements¹⁸⁰⁷ that were affected by Russia's armed aggression¹⁸⁰⁸. According to the 2023 report of the State Agency for the Restoration and Development of Infrastructure of Ukraine¹⁸⁰⁹ work has begun on 186 sites. The report contains no information on how accessibility standards are taken into account during the reconstruction and rehabilitation of these facilities. The community of one of the settlements reported that as of March 2024, not a single facility had been restored¹⁸¹⁰. In another settlement, where work has begun, it was reported that funds were allocated for the restoration of facilities in general and no separate funding was provided to ensure accessibility and inclusivity standards¹⁸¹¹. Partial information about the reconstruction projects under the pilot project is available on the DREAM platform, but again, it contains no information about their accessibility. It is extremely difficult for the public to track and monitor the process of incorporating the accessibility standards during reconstruction through open sources.

Recommendations

1. Reform the system of collecting statistical data in the field of employment, which will allow disaggregating information in the category "people with disabilities" by gender, age, and type of disability.
2. Involve international institutions, such as the Council of Europe, in assessing the draft law "On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work" (registration No. 5344-d), as a number of its provisions contradict EU Council Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities.
3. To prevent discrimination in employment and address prejudices against women and men veterans with disabilities, conduct information campaigns and educational activities targeting employers in cooperation with civil society.
4. Develop, together with civil society, a National Strategy and Action Plan for deinstitutionalisation in line with the Government's Priority Action Plan for 2024.
5. Develop and adopt, considering the recommendations of civil society, the draft law "On Amendments to Certain Legislative Acts of Ukraine on Changing Approaches to Assessment of Needs and Mechanisms for Providing Needs for Persons with Disabilities and Reforming the System of Medical and Social Expertise in Ukraine Based on the Results of the Analysis and in accordance with the Target Model of the System of Provision of Services to Persons with Persistent Disabilities".

1807 Borodianka urban-type settlement of Borodianka territorial community of Kyiv region, Moshchun village of Hostomel territorial community of Kyiv region, Posad-Pokrovske village of Chornobaiv territorial community of Kherson region, Trostianets city of Trostianets territorial community of Sumy region, Tsyrukuniv village of Tsyrukuniv territorial community of Kharkiv region, Yahidne village of Ivanivka territorial community of Chernihiv region.

1808 On the implementation of a pilot project to restore settlements affected by Russia's armed aggression: Resolution of the Cabinet of Ministers of Ukraine of 25.04.2023 No. 382. URL: <https://zakon.rada.gov.ua/laws/show/382-2023-n#Text>.

1809 Report of the State Agency for the Restoration and Development of Infrastructure of Ukraine for 2023. URL: <https://restoration.gov.ua/4489/zvity/59572/59573.pdf>.

1810 Response of the Tsyrukunivka village council of Kharkiv district, Kharkiv region, of 11.03.2024, No. 3 to the request of the NGO "Fight for Right" for public information.

1811 Response of the Service for Restoration and Development of Infrastructure in Chernihiv Region to the request of the NGO Fight for Right to provide public information on the restoration of facilities in the village of Yahidne.

6. Amend the Government Resolution No. 303 of 13 March 2022 “On the termination of state supervision (control) and state market supervision under martial law” and restore state control over the reconstruction process, especially with regard to compliance with accessibility standards.
7. Establish commissions, working or expert groups with the participation of specialists and civil society professionals at local state architectural and construction control bodies to improve the quality of monitoring and control over compliance with architectural accessibility standards during reconstruction.
8. Amend the Law of Ukraine “On Regulation of Urban Development” to require an accessibility assessment of CC1 class facilities to be carried out to ensure that the maximum number of rebuilt facilities are accessible.
9. Introduce mandatory criteria and parameters for assessing the accessibility of an object, which should be specified in the expert opinion on construction projects.
10. Conduct training in the field of architectural accessibility, improve the qualifications of experts from organisations that conduct expert assessments of construction projects.
11. Collect data on the accessibility/inaccessibility of construction projects on the DREAM platform.

Issues for further monitoring

The lack of data on the number and condition of persons with disabilities living in institutions on the non-government controlled territory of Ukraine, and the absence of a mechanism for monitoring the observance of human rights in these institutions by both Ukraine and the international community.

Gender equality and protection of LGBTIQ+ rights

Russia’s full-scale war against Ukraine, which has been going on for more than two years, continues to have a negative impact on gender equality and LGBTIQ+ rights in Ukraine. Due to the prolonged disproportionate impact, women from certain marginalised groups continue to face difficulties in accessing security, justice, social services, mental, sexual and reproductive health services, and employment. The war negatively affects the visibility and involvement of women in the political process and public life of the country, including in the security and defence sector. The unfavourable economic situation also exacerbates the vulnerability of certain groups of women in the field of employment.

This leads to a worsening of the situation with gender-based, domestic and sexual violence. In view of this, it is particularly important to implement the Istanbul Convention, which Ukraine ratified in 2022, without delay, as well as to improve mechanisms for preventing and responding to gender-based violence in the Armed Forces.

Despite the efforts of NGOs and public support, LGBTIQ+ rights remain unprotected at the legislative level. In particular, this applies to the draft law on the introduction of civil (registered) partnerships (No. 9103) and the draft law aimed at improving legislation on offences motivated

by hatred on the grounds of SOGI and enshrining them as protected grounds (No. 5488). The lack of a unified state policy on the inclusion of LGBTIQ+ people in the Armed Forces also remains a problem.

Despite the difficult situation, Ukraine is doing a lot to address some of the issues described above. It is important to improve the systematisation of information on such measures and the status of their implementation, as well as to improve coordination between government agencies, NGOs and other stakeholders in implementing the fundamental documents in the relevant areas.

The state should pay special attention to measures of an urgent nature to address the problems described, for example, those that do not require additional funds for implementation. In particular, this applies to the adoption of necessary legislative changes and policies. It is also important to inform the public to overcome negative stereotypes in society.

The disproportionate impact of war on women

Russia's full-scale war is having a negative impact on people in Ukraine and the enjoyment of their rights. The disproportionate impact on women can be seen in the areas of access to security, justice, social services, mental, sexual and reproductive health services, and employment¹⁸¹².

As stereotypical gender roles are increasingly reinforced in the context of full-scale war, women performing unpaid care work report increased hours and burdens of care and education for children¹⁸¹³. The gap that existed even before the full-scale invasion, with women performing at least twice as much unpaid care work and household duties, continues to widen¹⁸¹⁴. This is especially true for women forced to move abroad.

The war also continues to have a disproportionate negative impact on women from marginalised groups due to intersectional discrimination: women belonging to the Roma community, women from the LGBTIQ+ community, women with disabilities, women from rural areas, older women, single mothers, etc. For example, many women from Roma communities report discrimination in access to humanitarian aid¹⁸¹⁵.

Long-term negative impacts make it difficult to fully return to the principles of gender equality during post-war reconstruction, and worsen the consequences for women's physical and psychological health. With this in mind, the task of providing additional support for women from vulnerable groups and laying the foundations for inclusive post-war reconstruction remains urgent. Some steps are already underway. In particular, in September 2023, the "Platform for Gender Mainstreaming and Inclusion in Recovery" was launched to coordinate between government agencies, civil society, business and international organisations to ensure equal rights and opportunities¹⁸¹⁶.

1812 Over 8 million women and girls in Ukraine will need humanitarian assistance in 2024, Press Release. UN Women. 2024. URL: <https://ukraine.un.org/en/261357-over-8-million-women-and-girls-ukraine-will-need-humanitarian-assistance-2024>.

1813 The impact of war on women's opportunities: research results. Sedos. 2023. URL: <https://cedos.org.ua/vplyv-vijny-na-mozhlyvosti-zhinok/>.

1814 Rapid gender analysis of the situation in Ukraine. CARE & UN Women. 2023. URL: https://careevaluations.org/wp-content/uploads/RGA_Ukraine_2023_UKRAINE_UKR.pdf.

1815 Ukraine: New UN Women and CARE Report highlights disproportionate impact of the war on women and minorities. UN Ukraine. 2022. URL: <https://ukraine.un.org/en/180993-ukraine-new-un-women-and-care-report-highlights-disproportionate-impact-war-women-and>.

1816 The "Platform for Gender Mainstreaming and Inclusion in Recovery" was launched. Service of the Vice Prime Minister of Ukraine. 2023. URL: <https://www.kmu.gov.ua/news/rozpochala-robotu-platforna-zabezpechennia-hendernoho-meistryminhu-ta-inkluzii-u-vidnovlenni>.

However, it is necessary to pay more attention to the problems of women from groups subject to intersectional discrimination and to improve public relations.

Status of implementation of the Strategy for Ensuring Equal Rights and Opportunities for Women and Men and the National Action Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security

On 12 August 2022, the Cabinet of Ministers of Ukraine approved the State Strategy for Ensuring Equal Rights and Opportunities for Women and Men until 2030¹⁸¹⁷. It is one of the most comprehensive documents on the implementation of gender equality measures and takes into account the peculiarities and challenges caused by the full-scale invasion. In 2024, the first Operational Plan for its implementation for 2022–2024 will be completed¹⁸¹⁸. In view of this, an active process of developing proposals for the plan for the next period is currently underway.

The measures implemented under the strategy also meet the objectives of UN Security Council Resolution 1325 on Women, Peace and Security¹⁸¹⁹. In the current context, this resolution is particularly important, as it highlights how military conflicts disproportionately affect women and their underrepresentation in decision-making on armed conflicts.

Until 2025, Ukraine has a second National Action Plan for the implementation of the resolution, which was amended after the start of the full-scale invasion. The plan is currently being localised at the sectoral, regional and local levels¹⁸²⁰.

At the same time, coordination and access to information on the status of implementation of these documents needs to be improved. Relevant data should be systematised and made publicly available by the Ministry of Social Policy of Ukraine. It is also necessary to publish detailed statistical data related to the implementation of the goals.

In addition, measures at the sectoral, regional and local levels need to be synchronised and reporting systematised.

Gender equality in the political process and public life of the country

Given the deepening general masculinisation of society, women are still excluded from decision-making at the national and local levels in wartime. In the long term, this may lead to a significant reduction in the number of women in government.

There has already been a significant decrease in women's political engagement at the local level. At the end of January 2023, travel abroad was restricted for deputies at all levels, so many

1817 The Government has approved the State Strategy for Ensuring Equal Rights and Opportunities for Women and Men until 2030. Government portal. 2022. URL: <https://www.kmu.gov.ua/news/uriadom-skhvaleno-derzhavnu-stratehiu-zabezpechennia-rivnykh-prav-ta-mozhlyvostei-zhinok-i-cholovikiv-na-period-do-2030-roku>.

1818 The Government has approved the State Strategy for Ensuring Equal Rights and Opportunities for Women and Men until 2030. The Office of the Government Commissioner for Gender Policy is established. 2022. URL: <https://www.kmu.gov.ua/news/uriadom-skhvaleno-derzhavnu-stratehiu-zabezpechennia-rivnykh-prav-ta-mozhlyvostei-zhinok-i-cholovikiv-na-period-do-2030-roku>.

1819 1325. Security Council Resolution on women and peace and security. United Nations Peacemaker. October, 2000. URL: <https://peacemaker.un.org/node/105>.

1820 The meeting "National Action Plan for the Implementation of UN Security Council Resolution 1325 "Women, Peace and Security" for the period up to 2025: Localisation at the Sectoral, Regional and Local Levels" was held. Office of the Government Commissioner for Gender Policy. 2023. URL: <https://www.kmu.gov.ua/news/vidbulas-narada-natsionalnyi-plan-dii-na-vykonannia-rezoliutsii-rady-bezpeky-oon-1325-zhinky-my-Bezpeka-na-period-do-2025-roku-lokalizatsiia-na-haluzevomu-rehionalnomu-ta-mistsevomu-rivniakh>.

women at the local council level resigned their mandates, often because they had to constantly cross the border for volunteer work¹⁸²¹. According to preliminary estimates, after the adoption of this resolution, 7% of female deputies of village, town and city councils resigned their mandates¹⁸²². Given that women's representation in local councils and as heads of councils had been declining even before the full-scale war¹⁸²³, this reduction is particularly significant.

Also, during the next elections, the legal requirement of continuous residence in Ukraine to run for office may become a problem. Given the number of women forcibly displaced abroad, such restrictions may result in indirect discrimination against them during elections in the post-war period¹⁸²⁴.

On 27 May 2024, Draft Law No. 11300¹⁸²⁵, was registered in the Verkhovna Rada, and on 5 June, an alternative draft law No. 11300-1¹⁸²⁶, was registered, both of which are pending consideration by the relevant committee. The main draft law proposes to provide that staying abroad during martial law is not a ground for refusing to register for the post of President of Ukraine or for the post of Member of Parliament. In addition, due to the return to stereotypical gender roles, male military officers, officials and their comments have pushed women out of the public space. According to the results of the gender balance monitoring by the NGO Institute of Mass Information, the number of women as experts in national online media continues to decline. While before the full-scale invasion in 2021, it was about 30% of expert comments, while following the invasion, this figure has been decreasing every year and as of February 2024, it was only 17%¹⁸²⁷.

This shift in presence in public space exacerbates the problems with gender quotas that existed even before the outbreak of full-scale war. For example, the 2020 elections showed that if women who were on the lists due to quotas refused to accept their mandates, they could be replaced by men, so the quotas were not maintained. Many abuses were also recorded due to the failure of women candidates to submit their consent to run for office. In addition, there is also a need to introduce quotas in the formation of the governing bodies of political parties¹⁸²⁸. These shortcomings require appropriate comprehensive changes to the existing quota mechanisms in order to reduce the negative impact of general masculinisation in society.

Some of these issues are addressed by draft laws No. 11300 and No. 11300-1, which propose that MPs be replaced by a person of the same gender from the list in cases of failure to submit documents or early termination of powers. In this regard, it is important to intensify the implementation of measures to increase the visibility of women in public and political processes,

1821 Gender equality during the war: achievements and necessary changes. Chesno Movement. 2024. URL: <https://www.chesno.org/post/5879/>.

1822 Challenges and opportunities: how women can contribute to Ukraine's economic development. Platform "Women are 50% of Ukraine's success". 2024. URL: <https://50vidsotkiv.org.ua/vyklyky-ta-mozhlyvosti-yak-zhinky-mozhut-spryaty-ekonomichnomu-rozvytku-ukrayiny/>.

1823 Representation of women in local councils decreased by 12.6% - gender monitoring. Platform "Women are 50% of Ukraine's success". 2021. URL: <https://50vidsotkiv.org.ua/predstavnytstvo-zhinok-u-mistsevyn-radah-zmenshylosya-na-12-6-gendernyj-monitoring/>.

1824 Women in the army, politics and government: how the gender situation in Ukraine has changed. Radio Svoboda. 2023. URL: <https://www.radiosvoboda.org/a/genderna-sytuatsiya-v-ukraini-voennoho-chasu/32696907.html>.

1825 On Amendments to the Electoral Code of Ukraine on Combating Sexism in Electoral Processes and Ensuring Balanced Representation of Women and Men in the Verkhovna Rada of Ukraine and Local Councils: Draft Law of Ukraine, registration No. 10300 of 27.05.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44290>.

1826 On Amendments to the Electoral Code of Ukraine on Counteracting Sexism in Electoral Processes and Ensuring Balanced Representation of Women and Men in the Verkhovna Rada of Ukraine and Local Councils: Draft Law of Ukraine, registration No. 11300-1 of 05.06.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44371>.

1827 10 years of imbalance. How the war affects the representation of women in the media. Institute of Mass Information. 2024. URL: <https://imi.org.ua/monitorings/desyat-rokiv-dysbalansu-yak-vijna-vplyvaye-na-predstavlenist-zhinok-v-media-i59764>.

1828 Making the gender quota work: what changes are needed to the Electoral Code. "Women are 50% of Ukraine's success". 2020. URL: <https://50vidsotkiv.org.ua/shhob-genderna-kvota-pratsyuvaha-yaki-zminy-potribni-do-vyborchogo-kodeksu/>.

especially in the security and defence sector. Restrictions on border crossings for women MPs should be lifted. It is also important to improve quota mechanisms for post-war elections to overcome the disproportionate representation caused by the full-scale war and to develop a system of exceptions to the requirement of continuous residence in Ukraine.

Gender equality in the labour market

War causes an increase in poverty. Many women are forced to take on additional work or learn a new profession to compensate for the lost family income. The State Employment Service of Ukraine reported that in 2023, 240,000 people found new jobs, 66% of whom were women¹⁸²⁹. Women are increasingly employed in professions that were previously occupied mainly by men, given the significant involvement of the latter in military service¹⁸³⁰. There are no legal restrictions on this in Ukraine.

Despite the overall shortage of personnel¹⁸³¹, certain groups of women remain in a vulnerable position. Increased unpaid care work, including childcare, makes it more difficult to find employment. Ukrainian women who are internally displaced may be vulnerable due to the loss of previous social ties and the need to adapt to a new environment. This can lead to a loss of financial independence, which in turn increases the risk of gender-based violence, trafficking or sexual exploitation.

The state is taking measures to ensure gender equality in the labour sphere, in particular, to close the gender pay gap. In September 2023, the National Strategy for Closing the Gender Pay Gap until 2030 was adopted and an action plan for its implementation for 2023-2025 was approved. The plan is to reduce the gender pay gap from 18.6% to 13.6%¹⁸³².

This Strategy envisages the adoption of a new Labour Code, communication campaigns and measures to increase women's involvement in entrepreneurship (government programmes such as eRobota, Voucher for Education, Vlasna Sprava (Own Business), etc.) Some of them are being implemented and are yielding first results: in 2023, women headed more than 10,000 new companies in Ukraine (56% of all new companies)¹⁸³³.

Special attention should be paid to the employment of women in the Armed Forces. Currently, more than 62,000 women serve in the Armed Forces, including more than 43,000 servicewomen and more than 5,000 women in the combat zone. Any restrictions on military specialities for women have been cancelled. However, the representation of women in leadership positions in the military, overcoming domestic sexism, improving mechanisms for responding to gender-based and sexual violence, and providing them with all the necessary equipment remain pressing issues.

1829 During the Great War, the number of women in "male" positions increased in Ukraine. Ekonomichna Pravda. 2024. URL: <https://www.epravda.com.ua/news/2024/01/12/708665/>.

1830 How women are replacing men on the labour market in Ukraine. Deutsche Welle (DW). 2024. URL: <https://www.dw.com/uk/ak-zinki-zaminuut-colovikiv-na-rinku-praci-v-ukraini/a-68037179>.

1831 Ukraine lacks 4.5 million workers. How to overcome the labour shortage? Ekonomichna Pravda. 2023. URL: <https://www.epravda.com.ua/publications/2023/10/16/705494/>.

1832 The Government has approved the National Strategy for Overcoming the Gender Pay Gap in Ukraine until 2030. Ministry of Economy of Ukraine. 2023. URL: <https://www.kmu.gov.ua/news/uriad-skhvalyv-natsionalnu-stratehiu-podolannia-hendernoho-rozryvu-v-oplati-pratsi-v-ukraini-na-period-do-2030-roku>.

1833 56% of new sole proprietorships in Ukraine were opened by women in 2023. Ministry of Finance. 2023. URL: <https://minfin.com.ua/ua/2023/11/20/116414627/>.

Implementation of the Istanbul Convention, combating sexual violence

Gender-based violence, and domestic violence in particular, is getting worse. In 2023, the number of criminal proceedings related to domestic violence in Ukraine doubled compared to 2022, and the number of administrative offences increased by 36%¹⁸³⁴.

In terms of sexual violence, according to the OPG, a total of 947 criminal offences against sexual freedom and sexual inviolability were recorded in 2023¹⁸³⁵. War-related sexual violence is the focus of state efforts. As of June 2024, there were 303 cases of sexual violence committed by Russians during the full-scale invasion¹⁸³⁶. In October 2023, two draft laws were registered: to define the status of survivors of sexual violence related to armed aggression (registration No 10132) and to establish the procedure and sources for the payment of interim reparations (registration No 10133)¹⁸³⁷. On 19 June 2024, Draft Law No. 10132 was adopted as a basis in the first reading. Currently, the emergency compensation project for victims of sexual violence related to the armed aggression of the Russian Federation against Ukraine was launched in a pilot format.

However, sexual violence that is not directly related to the war still receives insufficient attention from the state authorities. Back on 20 June 2022, Ukraine ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)¹⁸³⁸. However, since ratification, few measures have been taken to implement the provisions of the Convention. As noted in its report by the Association of Women Lawyers “JurFem”¹⁸³⁹, as of the end of 2023, in Ukraine there is a lack of coordination and information exchange between public authorities; no systematic monitoring of the implementation of legislation and cases of gender-based violence; no effective public awareness of domestic, sexual or gender-based violence, which reinforces taboos; insufficient integration of the gender component in the educational process and no special training, except for training by NGOs; lack of adequate support for survivors of gender-based violence, including the insufficient number of centres and shelters; insufficient funding for the prevention and response system.

The lack of appropriate measures at the legislative level is particularly critical. Legislative changes are not systematic and timely. With regard to a large number of provisions of the Convention, draft laws have not been registered in parliament. Certain provisions, are part of already registered draft laws or adopted legislation. However, there is a negative trend of excessively long terms of their consideration: a draft law amending administrative legislation was registered on 2 January 2023 and signed by the President on 17 June 2024¹⁸⁴⁰. Amendments to criminal law have not yet

1834 Disappointing statistics on domestic violence: in 2023, the number of criminal proceedings in Ukraine doubled. UNN. 2024. URL: <https://unn.ua/en/news/disappointing-statistics-on-domestic-violence-in-2023-the-number-of-criminal-proceedings-in-ukraine-doubled>.

1835 To improve the system of protection against gender-based and domestic violence. Voice of Ukraine. 2024. URL: <http://www.golos.com.ua/article/376463>.

1836 The results of the state's response to sexual violence in war were presented in Kyiv. Service of the Vice Prime Minister of Ukraine. 2024. URL: <https://www.kmu.gov.ua/news/u-kyievi-prezentuvaly-rezultaty-reahuvannia-derzhavy-na-seksualne-nasylstvo-v-umovakh-viiny>.

1837 On the Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Immediate Interim Reparations: Draft Law of Ukraine, registration No. 10132 of 09.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42862>; On Amendments to the Budget Code of Ukraine on the Establishment of the Fund for the Payment of Urgent Compensation to Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine: Draft Law of Ukraine, registration No. 10133 of 09.10.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42863>.

1838 Council of Europe Convention on preventing and combating violence against women and domestic violence. URL: <https://rm.coe.int/1680462546>.

1839 On the implementation by Ukraine of the Council of Europe Convention on preventing and combating violence against women and domestic violence: Shadow report of the Ukrainian Women Lawyers Association “JurFem”. 2023. URL: <https://jurfem.com.ua/wp-content/uploads/2023/11/3bit-ГРЕБІО-ЮрФем.pdf>.

1840 On Amendments to the Code of Ukraine on Administrative Offences in Connection with the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Draft Law of Ukraine, registration No. 8329 of 02.01.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41104>.

been adopted: a draft law on certain amendments registered on 13 March 2023 was rejected, and a similar draft law registered on 22 January 2024 has so far been voted on only in the first reading¹⁸⁴¹. Therefore, national legislation remains inconsistent with the Convention.

Often, NGOs and civil society also develop mechanisms on their own, but they need to be approved and conditions for implementation by the state. However, this step can take years. This is the case, for example, with the approval of the algorithm for identifying, responding to, investigating and conducting an internal review of sexual harassment in the Armed Forces, which was developed before the full-scale invasion but has not yet been approved¹⁸⁴². As of the end of July 2024, it is still under discussion¹⁸⁴³.

The full-scale war complicates the implementation of some planned activities and limits the amount of financial resources for implementation. However, many measures, such as the adoption of legislation, do not require additional resources and are inherently urgent responsibilities¹⁸⁴⁴.

Thus, measures to prevent and combat gender-based violence are currently insufficient. Given that the full-scale war is exacerbating the situation and deepening the vulnerability of certain groups, this makes it imperative to implement the Istanbul Convention without delay.

LGBTIQ+ rights and legislative improvement

The visibility of LGBTIQ+ people increased with the outbreak of full-scale war as a result of the efforts of civil society, in particular, LGBTIQ+ people in the Armed Forces or in areas related to the army (medicine, volunteering). Many of them continue to make coming out.

A survey conducted in May 2024 confirms the previous positive trend and demonstrates high levels of support for LGBTIQ+ people in society: 68% of respondents support the statement that LGBTIQ+ people should be protected from discrimination (as opposed to 18% who disagree)¹⁸⁴⁵.

At the same time, the needs and rights of LGBTIQ+ people remain insufficiently protected at the legislative level. The main areas in which advocacy for legislative changes is ongoing are the adoption of legislation to recognise LGBTIQ+ family unions; and the enshrining of sexual orientation and gender identity (SOGI) as protected grounds in anti-discrimination legislation.

1841 On Amendments to the Criminal Procedure Code of Ukraine on Conclusion of a Reconciliation Agreement and Criminal Proceedings in the Form of Private Prosecution in Connection with the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Draft Law of Ukraine, registration No. 9093 of 13.03.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41491>; On Amendments to the Criminal Procedure Code of Ukraine on Examination and Expertise, Conclusion of Reconciliation Agreement and Criminal Proceedings in the Form of Private Prosecution in Connection with the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Draft Law of Ukraine, registration No. 10420 of 22.01.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43531>.

1842 Petition No. 22/220188-ep "Demand to implement the already developed mechanism for combating sexual harassment and violence in the Armed Forces and to end impunity for those who commit violence in the army" of 08.03.2024, Official website of the President of Ukraine. URL: <https://petition.president.gov.ua/petition/220188>.

1843 The Ministry of Defence of Ukraine is developing a mechanism to protect victims of sexual harassment. Ministry of Defence of Ukraine. 10 July 2024. URL: <https://www.mil.gov.ua/news/2024/07/10/minoboroni-ukraini-rozroblyae-mehanizm-zahistu-osib-yaki-stali-zhertvami-seksualnih-domagan/>.

1844 "State obligations which are of immediate effect" by analogy with the concept developed by the UN Committee on Economic, Social and Cultural Rights, see: UN Economic and Social Council, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, UN Committee on Economic, Social and Cultural Rights (CESCR). 14.12.1990. URL: <https://www.refworld.org/legal/general/cescr/1990/en/5613>.

1845 Opportunities and obstacles to Ukraine's democratic transition. National Democratic Institute. 8-25 May, 2024. URL: <https://www.ndi.org/sites/default/files/May%202024%20Opportunities%20and%20Challenges%20Facing%20Ukraine%E2%80%99s%20Democratic%20Transition%20%28Ukrainian%29.pdf>.

Institute of civil partnership, recognition of same-sex marriages

The task of developing legislation to recognise family unions of persons of the same documentary sex was first enshrined in the Action Plan for the Implementation of the National Human Rights Strategy for the period up to 2020¹⁸⁴⁶. However, this draft law was never developed Ministry of Justice, so the commitment was postponed to the next period - the Action Plan for 2021–2023¹⁸⁴⁷.

Despite the fact that the new deadline has already expired in December 2023, the Ministry of Justice has not yet submitted the relevant draft law to the Verkhovna Rada. According to the Ministry itself, as of March 2024, the text of the draft law was being finalised. After the text is finalised, the Ministry plans to send the draft law “On Civil Partnership” to other bodies for approval, as well as to submit it for public discussion¹⁸⁴⁸.

The draft law “On the Institute of Registered Partnerships” (registration No. 9103)¹⁸⁴⁹, registered at the initiative of MP Inna Sovsun and 17 other MPs from the “Holos” and “Servant of the People” political groups, due to the Ministry of Justice’s continued inability to develop its own draft law, received positive opinions from four Verkhovna Rada committees (out of 14 appointed) as of March 2024. However, the consideration of Draft Law No. 9103 in the Parliament has now stopped. Its further progress requires the support of the Legal Policy Committee, which was appointed as the main committee for this draft law.

An important stage in advocating for legislative changes in this area was the adoption of the ECHR judgment in the case of Maimulakhin and Markiv v. Ukraine¹⁸⁵⁰, which entered into force on 1 September 2023. The judgment confirmed that Ukraine violates Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention for the Protection of Human Rights and Fundamental Freedoms by failing to provide any form of legislative recognition of same-sex unions. The adoption of the draft law on civil partnerships No. 9103 would be in line with Ukraine’s obligations in this area.

At the same time, neither the potential draft law of the Ministry of Justice nor the already registered Draft Law No. 9103 “On the Institute of Registered Partnerships” contains provisions for the recognition of same-sex marriages. Both draft laws introduce civil (registered) partnerships as a new form of family union. The scope of rights provided for in Draft Law No. 9103 is narrower compared to those granted to persons in marriage. In particular, civil partnerships neither regulate the rights and obligations of partners as parents nor provide for rights to adoption.

As Article 51 of the Constitution of Ukraine states that “marriage is based on the free consent of a woman and a man”, and amendments to the Constitution of Ukraine are not possible under martial law, advocacy for the recognition of same-sex marriage remains difficult until the war ends.

1846 On approval of the action plan for the implementation of the National Human Rights Strategy for the period up to 2020: Order of the Cabinet of Ministers of Ukraine of 23.11.2015 No. 1393-r. URL: <https://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80#Text>.

1847 On approval of the action plan for the implementation of the National Human Rights Strategy for 2021–2023: Order of the Cabinet of Ministers of Ukraine dated 23.06.2021 No. 756-r. URL: <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>.

1848 Analytical report on the implementation of the National Human Rights Strategy in 2023. Ministry of Justice of Ukraine. URL: <https://minjust.gov.ua/files/general/2024/03/20/20240320104259-37.pdf>.

1849 On the Institute of Registered Partnerships: Draft Law of Ukraine, registration No. 9103 of 13.03.2013. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41497>.

1850 ECHR, Maimulakhin and Markiv v. Ukraine, App. No. 75135/14, 01.09.2023. URL: <https://hudoc.echr.coe.int/fre?i=001-224984>.

Attacks on LGBTIQ+ people, the situation with their investigations, and the establishment of SOGI as a protected ground

In 2023, according to the NGO Nash Svit Centre, 56 cases of hate crimes motivated by SOGI were recorded, 24 of which were in the first half of the year and 32 in the second half¹⁸⁵¹. These figures are a continuation of the downward trend in hate-motivated SOGI incidents since 2020.

Among the recorded incidents, 5 involved individuals in the Armed Forces. LGBTIQ+ people in the AFU continue to be in a vulnerable position, in particular due to the lack of a unified state policy on the inclusion of LGBTIQ+ people in the AFU and effective special mechanisms to protect their rights as military personnel.

Currently, the state lacks adequate measures aimed at preventing and combating SOGI-related hate crimes. Public awareness and education are provided only by non-governmental organisations.

Investigations of SOGI-motivated crimes require significant improvements at all stages. This includes improving the relevant legislation and training law enforcement and judicial officials on SOGI-motivated hate crimes.

In particular, the EU-integration Draft Law No. 5488¹⁸⁵² concerning amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination, submitted by the Cabinet of Ministers of Ukraine on 13 May 2021, has not yet been considered by the Verkhovna Rada. The adoption of this draft law would significantly affect the proper qualification of offences in the course of their investigation.

It is important that legislative enshrinement is followed by effective implementation at the local level. For example, despite the legislative recognition of SOGI in the Labour Code of Ukraine, as of 2023, no cases of discrimination against LGBTIQ+ people in the workplace had been heard in court.

According to a study conducted by the NGO Fulcrum UA, the state does not take measures to create an inclusive workplace environment and to prevent and respond appropriately to cases of discrimination. This leads to a lack of awareness of LGBTIQ+ people about their rights, a low level of trust in the system, and imperfect mechanisms for investigation by law enforcement agencies¹⁸⁵³.

Proper qualification and investigation should also be accompanied by detailed and systematic monitoring of hate-related offences and public access to relevant statistics.

Recommendations

1. Continue measures to address the disproportionate impact of the war on certain groups of women in the areas of access to security, justice, social services, mental, sexual and reproductive health services, and employment.
2. When implementing general support measures, special attention should be paid to their accessibility for women from categories subject to intersectional discrimination.

1851 The situation of LGBTQ people in Ukraine in 2023. LGBT Human Rights Centre "Nash Svit". 2023. URL: <https://gay.org.ua/publications/Situation-of-LGBT-in-Ukraine-Summer-2023-UKR.pdf>.

1852 On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Combating Discrimination: Draft Law of Ukraine, registration No. 5488 of 13.05.2021. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/26573>.

1853 (Non)discrimination of LGBTIQ+ people in the workplace and inclusive labour market. NGO "Fulcrum". 2024. URL: https://0f52f536-092c-43b1-93d5-39d5bc8afa0a.filesusr.com/ugd/ae7e39_d0e9ef8d605345e7bf6b2bd971dfded5.pdf.

3. Continue measures to further the proportionate participation of women in post-war reconstruction, including those envisaged in key documents adopted by Ukraine to ensure gender equality.
4. Continue to raise public awareness of gender equality and especially women's rights in the context of war.
5. Provide permanent public access to interim reports on the status of implementation of the Strategy for Equal Rights and Opportunities for Women and Men and the Action Plan for the Implementation of UN Security Council Resolution 1325.
6. Synchronise information on the status of implementation of measures to implement UN Security Council Resolution 1325 at the sectoral, regional and local levels.
7. Ensure the publication of statistics on the implementation of key documents aimed at ensuring gender equality: for example, statistics on gender-based violence, SOGI-related violence, etc.
8. Ensure increased visibility of women in the media, public and political processes, especially in the security and defence sector.
9. Abolish restrictions on border crossings for women MPs.
10. Adopt draft law concerning the improvement of quota mechanisms for use during elections, in particular to prevent their circumvention through abuse or withdrawal of female candidates, and introduce quotas in the formation of political party governing bodies.
11. Adopt a draft law to remove obstacles to women's participation in political affairs by eliminating the requirement of continuous Ukraine.
12. When implementing measures to support the population, special attention should be paid to special communication campaigns and the involvement of women who are subject to intersectional discrimination in entrepreneurship.
13. Focus efforts on improving the representation of women in senior and highly paid positions.
14. Continue and scale up the provision of proper military uniforms, equipment and hygiene products to servicewomen.
15. Focus attention on measures to promote women in the Armed Forces and ensure equal access to combat positions.
16. Adopt and ensure the implementation of the developed mechanisms to improve the identification of cases of sexual violence in the Armed Forces, the procedure for response, investigation, official inspection and assistance to victims.
17. Continue to raise public awareness to combat negative stereotypes about women in the Armed Forces.
18. Ensure adequate monitoring to prevent gender-based violence and improve mechanisms for informing the public about gender-based violence, including within the education system.
19. Provide adequate support for survivors of gender-based violence, including increasing the number of special services, centres and shelters that can be accessed, which in turn requires increased funding for all parts of the system to combat gender-based violence.

20. Immediately introduce the necessary legislative changes to implement the Istanbul Convention.
21. Systematise and provide access to information on the implementation of the Istanbul Convention. At the same time, to ensure coordination and exchange of information between public authorities on the implementation of the Istanbul Convention.
22. Urgently adopt a draft law to introduce the institution of civil (registered) partnerships.
23. Urgently adopt a draft law to enshrine the grounds of SOGI as protected under anti-discrimination legislation.
24. Introduce proper and systematic monitoring of hate crimes based on SOGI and access to relevant statistics.
25. Introduce measures to provide special training for law enforcement and judicial officials to properly classify and investigate hate crimes based on SOGI.
26. Intensify efforts to inform the public about the rights of LGBTIQ+ people.
27. Establish general principles of the policy of improving the inclusion of LGBTIQ+ people in the AFU and develop a plan for their implementation. This requires proper monitoring of LGBTIQ+ issues in the Armed Forces and risks identification.
28. Designate a responsible person to prevent and respond promptly and appropriately to discrimination or hate crimes based on SOGI.
29. Improve public and military awareness of LGBTIQ+ people in the armed forces on the part of the state.

Issues for further monitoring

- › The State Strategy for Ensuring Equal Rights and Opportunities for Women and Men until 2030 and the Operational Plan for its implementation for 2022–2024.
- › National Action Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security.
- › Draft Law on Amendments to the Electoral Code of Ukraine on Combating Sexism in Electoral Processes and Ensuring Balanced Representation of Women and Men in the Verkhovna Rada of Ukraine and Local Councils (registration No. 11300).
- › The National Strategy for Overcoming the Gender Pay Gap for the Period up to 2030 and the Action Plan for its Implementation for 2023–2025.
- › The new Labour Code of Ukraine.
- › Draft Law on the Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations (registration No. 10132).
- › Draft Law on Amendments to the Budget Code of Ukraine on the Establishment of the Fund for the Payment of Immediate Compensation to Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine (registration No. 10133).

- › Implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).
- › Draft Law on Amendments to the Criminal Procedure Code of Ukraine on Examination and Expertise, Conclusion of Reconciliation Agreement and Criminal Proceedings in the Form of Private Prosecution in connection with the Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (registration No. 10420).
- › Adoption of an algorithm for identifying, responding to, investigating and conducting an internal review of cases of sexual harassment in the Armed Forces.
- › Draft law on the institution of registered partnerships (registration No. 9103).
- › Draft law on amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on combating discrimination (registration No. 5488).

Protecting the rights of victims of Russia's armed aggression against Ukraine

Ukraine does not have a special definition of a person affected by armed aggression against Ukraine. Instead, there are a number of categories defined by the state over the past ten years since the beginning of the armed aggression against Ukraine, which receive very different, sometimes quite formal, support from the state. At the same time, there are categories that receive no assistance at all. For example, people who have suffered from war crimes, such as torture, deportation, etc. At present, Ukraine lacks a comprehensive system for recording damage to life and health caused by armed aggression, and has not implemented a comprehensive model of assistance to victims.

One of the largest groups affected by the armed aggression against Ukraine is internally displaced persons (IDPs), who currently number 4.9 million. In April 2023, the Government adopted the Strategy of State Policy on Internal Displacement until 2025 and the Operational Action Plan for its implementation in 2023–2025. This document outlined new directions for state policy in the field of internal displacement. However, the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons” has not been significantly amended. Despite the existence of the Strategy and the relevant legislation, the state's policy towards IDPs is hardly sustainable. During 2023-2024, the vision of providing financial support to IDPs changed several times, namely, the reduction of financial assistance payments for IDPs' accommodation. The cancellation of this payment in practice encourages IDPs to return to their abandoned places of residence, despite prolonged shelling, intense hostilities or even temporary occupation. Some IDPs move to other countries in search of better living conditions.

People who stayed or left the temporarily occupied territory often have documents issued by the occupation authorities. These documents are invalid and not recognised by Ukraine. However, the non-recognition of documents without the possibility of obtaining Ukrainian-type documents to replace those issued under occupation out of court creates additional difficulties for the civilian population, shifting the negative consequences of the occupation onto them.

The key issues related to the protection of victims of the armed aggression against Ukraine include some that, despite their urgency, have not been resolved for years, and some that arose as a result of the large-scale invasion in 2022. Every year, civil society organisations that work to protect the rights of people affected by the war develop a list of priority actions for the authorities¹⁸⁵⁴. These include issues that should be addressed to the Parliament, Government or individual ministries.

Lack of definition of the categories of persons affected by the armed aggression against Ukraine and a comprehensive system of compensation for damage caused by the armed aggression against Ukraine

Despite the ongoing armed aggression against Ukraine, national legislation still does not contain the concept of a “person affected by armed aggression against Ukraine”. However, since 2014, the state has provided support to certain categories of citizens, including: (a) IDPs; (b) people who went missing under special circumstances and their family members; (c) people who have suffered disabilities as a result of injuries or other health damage caused by explosives, ammunition and military weapons; (d) children affected by hostilities and armed conflicts; (e) persons deprived of their personal liberty as a result of the armed aggression against Ukraine and their family members; (f) people whose residential buildings (apartments) were destroyed as a result of the military emergency caused by the armed aggression of Russia. The number of categories did not expand significantly after the start of Russia’s large-scale invasion.

Establishing the status or fact of damage sustained as a result of the armed aggression against Ukraine is done in different ways by different state authorities. Information about these categories is contained in different registers that are not consistent with each other. The support provided by the state to members of these categories is usually not based on an assessment of their needs and requests (if such support is provided). In addition, issues may arise in the process of establishing the fact or establishing the status or provision of certain support. For example, relatives of those illegally deprived of their liberty as a result of the armed aggression against Ukraine draw attention to the lack of transparency of the Commission, which is supposed to establish the fact of deprivation of personal liberty¹⁸⁵⁵.

After the outbreak of large-scale armed aggression against Ukraine in 2022, the number of people affected by Russian aggression increased significantly. For example, according to the Ministry of Social Policy, as of January 2022, a total of 1.47 million IDPs were registered, and in June 2022, the number increased to 4.2 million. As of 2021, there were no official statistics on the number of people going missing under special circumstances, but according to the International Committee of the Red Cross (ICRC), there were 811¹⁸⁵⁶. As of 19 July 2024, the state Unified Register of Persons Missing in Special Circumstances contains 47,194 people¹⁸⁵⁷. The significant increase in the number of people who suffered obvious damage as a result of the war, the massive destruction of entire settlements, which led to the loss of housing and

1854 11 priority steps to protect human rights in the context of large-scale armed aggression for 2024. A coalition of civil society organisations, including the ZMINA Human Rights Centre ZMINA, Donbas SOS, CrimeaSOS, Right to Protection, Vostok-SOS, Public Holding Group of Influence, Stabilisation Support Services, and the Crimean Human Rights Group. 2024. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/02/11_steps_web.pdf.

1855 How does Ukraine help civilian hostages and their families? One year since the entry into force of the Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Liberty as a Result of Armed Aggression against Ukraine and Members of Their Families”. Analytical note. 2023. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/11/uk_help_print.pdf.

1856 More than 800 people are reported missing in Ukraine due to the conflict in Donbas. ICRC. Suspilne News. 2021. URL: <https://suspilne.media/161384-v-ukraini-ponad-800-ludej-znikli-bezvisti-cerez-konflikt-na-donbasi-mkch/>.

1857 How Ukraine is searching for missing persons as a result of Russian aggression and supporting their families. Analytical report by O. Syniuk; ed. by O. Luniova, O. Beliachkova - Kyiv, 2024. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/07/znykli_bezvisty_a4_ua-preview.pdf.

livelihoods of hundreds of thousands of people, has exacerbated the issue of compensation for this damage. In addition, it turned out that not everyone who was directly affected by the war was covered by state support programmes. For example, people who suffered health damage as a result of armed aggression but did not receive a disability are deprived of any special support. Similarly, most people who have been victims of war crimes and are duly recognised as victims in criminal proceedings do not receive adequate support from the state (according to Article 127 of the CPC of Ukraine, damage caused by a criminal offence or other socially dangerous act may be recovered by a court decision based on the results of a civil action in criminal proceedings). However, judging by the research of human rights organisations, the experience of victims in criminal proceedings is not always positive and in line with European standards in this area¹⁸⁵⁸. The state also neglects the residents of the TOT of Ukraine, who constantly face restrictions on their rights in the territories of Ukraine occupied by Russia.

In 2022–2023, a number of decisions were made at the international level on the need for full compensation for the damage caused by Russia's violation of international law in Ukraine and the need to create a compensation mechanism. For example, in May 2023, the Council of Europe (CoE) adopted a Resolution on the conclusion of an agreement on the Register of Damage Caused by Russia's Aggression against Ukraine¹⁸⁵⁹. According to the Resolution, the Register will serve to document evidence and information on claims for damage, loss or injury to all individuals and legal entities, as well as the state of Ukraine (including its regional and local authorities, state-owned or state-controlled entities), caused since 24 February 2022 on the territory of Ukraine within its internationally recognised borders, including territorial waters.

According to the Regulation on the Registry contained in the aforementioned CoE Resolution, the Registry receives and processes information on applications for damages and evidence; categorises, classifies and organises such applications, assesses and establishes the admissibility of applications for inclusion in the Registry, and registers admissible applications for further consideration and adjudication. Currently, the Registry has not approved the categories, eligibility criteria, or mechanism for filing applications.

The establishment of the Register is the first and important step towards introducing a mechanism for compensation for damage caused by Russia. However, the limitation of the Register to the beginning of the large-scale armed aggression and the lack of coverage of events since February 2014 raises the question of the need to develop a vision of national systems of compensation for damage. But at the same time, the question also arises as to how this damage (in particular, damage to human life and health) can be accounted for. The experts interviewed for this report agree with this view¹⁸⁶⁰.

The Government of Ukraine is working on the issue of damage accounting caused by the armed aggression of the Russian Federation. While the procedure for accounting and compensation for property damage (as regards destruction and damage to housing) has already been introduced, work is currently underway on how to account for non-property damage. Thus, in November 2023, the Government submitted to the Verkhovna Rada a draft Law of Ukraine "On the Registration of Persons Whose Life and Health Have Been Damaged as a Result of the Armed Aggression of the Russian Federation against Ukraine" (registration No. 10256 of 13 November 2023)¹⁸⁶¹.

1858 "Chilling effect. Motivating victims to become participants in the justice process and supporting them along the way". Analytical study. Media Initiative for Human Rights. 2024. URL: https://mipl.org.ua/wp-content/uploads/2024/03/victims_ua_a4_print_compressed.pdf.

1859 Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine (Adopted by the Committee of Ministers on 12 May 2023). URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680ab2595.

1860 Yuliia Matviychuk, advocacy manager of "Skhid SOS"; Anastasiia Kalinina, lawyer of "CrimeaSOS".

1861 On registration of persons whose lives and health were harmed as a result of the armed aggression of the Russian Federation against Ukraine: Draft Law of Ukraine, registration No. 10256 of 13.11.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43188>.

This draft law aims to create a State Register of persons affected by Russia's armed aggression against Ukraine. To this end, it is proposed to record a wide range of types of harm to human life and health, including those suffered by almost the entire population of Ukraine (e.g., restricted access to education, emotional stress, discomfort, etc.) since 2014. Human rights organisations expressed their concerns and suggestions regarding this draft law¹⁸⁶². Draft law No. 10256 was adopted by the Verkhovna Rada as a basis on 25 April 2024. In May 2024, a working group was formed on the basis of the Verkhovna Rada Committee on Social Policy and Protection of Veterans' Rights to finalise the draft law for the second reading, which included representatives of NGOs. As of 31 July 2024, the working group continues its work.

In parallel with the registration of government draft law No. 10256, the Cabinet of Ministers of Ukraine approved amendments to Resolution No. 326 of 20 March 2022, which contains a procedure for establishing damage and losses caused to Ukraine as a result of Russia's armed aggression¹⁸⁶³.

However, once the types of damage and categories of citizens who can be recognised as victims of the war are established, the question of a set of actions to support them, including compensation, will arise. Therefore, understanding the limitations of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, created under the mandate of the Council of Europe, it is important to develop national mechanisms to support those affected by the war.

The Office of the Ombudsman of Ukraine became the platform for developing the vision of such a mechanism. Back in September 2023, a working group was formed there, which included members of the Ukrainian Parliament, representatives of government agencies, international and national human rights organisations¹⁸⁶⁴. On 5 July 2024, the Concept for Improving the National System of Legal Remedies and Support for Victims of Armed Aggression against Ukraine, developed by the working group, was presented. The purpose of developing the Concept is to form a generalised systematic holistic (non-fragmentary) vision of support programmes and urgent reparations for persons affected by the armed aggression against Ukraine; agreeing on and formulating general proposals for improving the system of such measures, incorporating the principles of international law, the provisions of the European Convention on Human Rights, the case law of the ECHR and other Council of Europe standards, as well as international humanitarian and human rights law, including the provisions of international common law.

The Concept primarily focuses on enhancing the national system of legal remedies and support for individuals. It also addresses certain issues related to the accounting of losses incurred by legal entities due to aggression against Ukraine. However, the Concept does not cover support for the military and other defenders of Ukraine, which falls under a separate area of state policy and legal regulation.

The Concept has now been submitted to the Government for further elaboration. According to the Ombudsman, it should become the basis for the development of the Government's Strategy for Supporting Victims of Armed Aggression against Ukraine and its implementation plan¹⁸⁶⁵.

1862 Position of the Coalition of Organisations Working to Protect the Rights of Victims of Armed Aggression against Ukraine on the Draft Law of Ukraine "On Registration of Persons Whose Life and Health Have Been Harmed as a Result of the Armed Aggression of the Russian Federation against Ukraine" (registration No. 10256). 2023. URL: https://zmina.ua/wp-content/uploads/sites/2/2024/02/10256_eng.pdf.

1863 On approval of the Procedure for establishing the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation: Resolution of the Cabinet of Ministers of Ukraine of 20.03.2022 No. 326. URL: <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text>.

1864 On the establishment of a working group to prepare proposals for compensation to persons affected by the armed aggression against Ukraine: Order of the Ukrainian Parliament Commissioner for Human Rights of 04.09.2023 No. 98.15/23. URL: <https://ombudsman.gov.ua/storage/app/media/uploaded-files/Hakas%2098.15.23.pdf>.

1865 For the first time in 10 years: the Concept was presented to ensure that victims receive compensation for losses caused by Russian aggression. Ombudsman of Ukraine. 2024. URL: https://ombudsman.gov.ua/news_details/upershe-za-10-rokiv-prezentuvali-koncepciyu-abi-postrazhdali-otrimali-kompensaciyu-za-zbitki-cherez-agresiyu-uf.

Inconsistent state policy towards internally displaced persons

As a result of the armed aggression against Ukraine, a significant part of the population has been internally displaced or moved abroad. In April 2023, a new State Policy Strategy on Internal Displacement for the period up to 2025 and an operational plan for its implementation in 2023–2025 were adopted¹⁸⁶⁶. The Strategy contains new approaches to the implementation of the state policy on internal displacement: instead of prioritising the integration of IDPs, the Strategy identifies several vectors of the state policy on internal displacement, which include, in addition to the integration of IDPs, the stages of evacuation, adaptation, dignified voluntary return to the place of origin and reintegration there, as well as strengthening the state's capacity to respond to the problems of internal displacement and ensuring conditions for the implementation of the state policy on internal displacement. However, it is currently difficult to assess the extent to which the implementation of the Strategy has had a positive impact on IDPs' rights, and whether it has had any impact at all, given the short time the Strategy has been implemented. On 11 January 2024, the Temporary Special Commission of the Verkhovna Rada of Ukraine on the Protection of Property and Non-Property Rights of Internally Displaced Persons and Other Persons Affected by the Armed Aggression of the Russian Federation against Ukraine recognised the work on the implementation of the Operational Plan of Measures for the Implementation of the Strategy in 2023-2025 as insufficient and proposed that the Cabinet of Ministers of Ukraine update the provisions of the Operational Plan to reflect current realities and the basic needs of IDPs¹⁸⁶⁷. As of 31 July 2024, the Operational Plan has not been updated. At the same time, an independent assessment of the implementation of the Strategy remains relevant to understand the impact of its implementation on the situation with the realisation of IDPs' rights in Ukraine.

At the same time, the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”¹⁸⁶⁸ has not undergone comprehensive changes after 2022. Instead, more than ten draft laws have been registered in the Verkhovna Rada that suggest point changes to this law. Some of them are inconsistent with the already implemented state policy on internal displacement, lack financial justification, and may lead to an artificial increase in the number of IDPs and exacerbate the difficult life circumstances of vulnerable groups.

Despite the existence of a strategy and relevant legislation, the state's policy towards IDPs is hardly sustainable. In 2023-2024, the vision of providing financial support to IDPs changed several times. Indeed, change took place on 1 March 2024, when new rules for the payment of accommodation allowances to IDPs came into force¹⁸⁶⁹. Another reduction in payments was anticipated from September 1, 2024. However, at the end of July, I. Vereshchuk, Deputy Prime Minister and Minister for Reintegration of the Temporarily Occupied Territories of Ukraine, announced that the government had decided to extend payments to IDPs currently receiving them for an additional six months. According to her, this extension affects approximately 1.5 million people¹⁸⁷⁰. This is not the first time payments have been extended following the government's decision to reduce support for

1866 On approval of the Strategy of State Policy on Internal Displacement for the period up to 2025 and approval of the operational plan of measures for its implementation in 2023-2025: Order of the Cabinet of Ministers of Ukraine of 07.04.2023 No. 312-r. URL: <https://zakon.rada.gov.ua/laws/show/312-2023-%D1%80#Text>.

1867 On the state of implementation by ministries and other central executive authorities of the Operational Plan of Measures for the Implementation in 2023-2025 of the Strategy of the State Policy on Internal Displacement for the Period up to 2025, approved by the Order of the Cabinet of Ministers of Ukraine of 07 April 2023 No. 312-r: decision of the Temporary Special Commission of the Verkhovna Rada of Ukraine on the Protection of Property and Non-property Rights of Internally Displaced Persons and Other Persons Affected by the Armed Aggression of the Russian Federation against Ukraine of 11.01.2024. URL: <https://www.rada.gov.ua/uploads/documents/75151.pdf>.

1868 On Ensuring the Rights and Freedoms of Internally Displaced Persons: Law of Ukraine of 20.10.2014 No. 1706-VII. URL: <https://zakon.rada.gov.ua/laws/show/1706-18#Text>.

1869 Some issues of social support for internally displaced persons and other vulnerable categories of persons: Resolution of the Cabinet of Ministers of Ukraine of 26.01.2024 No. 94. URL: <https://zakon.rada.gov.ua/laws/show/94-2024-%D0%BE>.

1870 IDPs whose children continue online education will not be deprived of payments - Vereshchuk. Ukrinform. 2024. URL: <https://www.ukrinform.ua/rubric-society/3888215-pereselenciv-diti-akih-prodovzat-navcanna-onlajn-ne-pozbavlat-viplat-veresuk.html>.

IDPs, which was previously announced publicly. This uncertainty regarding future financial support creates significant tension within society. There are currently about 4.9 million IDPs in Ukraine. In 2023, more than 2.5 million IDPs received accommodation allowances, for which UAH 73.3 billion was allocated from the state budget¹⁸⁷¹.

The changes introduced by the Government are aimed at reducing cash assistance payments to encourage IDPs to become economically self-sufficient. To this end, the Government is discontinuing the payment of accommodation allowances to IDPs (payments remain for the most vulnerable categories), while not introducing additional mechanisms to promote such employment.

The cancellation of the payment of accommodation allowance to IDPs may encourage them to return to their abandoned place of residence, despite prolonged shelling, intense hostilities or even temporary occupation. Some IDPs may decide to move abroad in search of better living conditions¹⁸⁷². Ensuring the evacuation of people from the combat zone requires significant resources – both state and municipal, as well as resources of national and international organisations.

With the reduction of payments, services should be developed, including social services in host communities (e.g., basic social services, comprehensive social services to build resilience, etc.).

It is also important to solve housing problems and create conditions for IDPs to obtain temporary housing. On 17 July 2024, the Verkhovna Rada adopted two draft laws – No. 11028¹⁸⁷³ and No. 11281¹⁸⁷⁴. Both draft laws were adopted in the first reading and are currently being prepared for the second reading. Draft Law No. 11281 envisages the creation of an Information Database of Real Estate Objects for IDPs, which will collect information on state, municipal and, at the request of the owner, private property that is used or may be used for IDPs. The information will be made publicly available in the form of an interactive map. IDPs will be able to apply for accommodation in selected facilities, and the state and international partners and humanitarian organisations will receive information on facilities that can be invested in for reconstruction, as well as the estimated amount of funds each facility requires.

Additionally, the draft law proposes that, during martial law and for three years following its termination or cancellation, property belonging to educational institutions of various types (such as vocational, vocational-technical, pre-school, and higher education institutions) that has not been used for its intended purpose for 12 consecutive months shall be leased to IDPs according to procedures established by the Cabinet of Ministers of Ukraine. The proposed amendments to the Law of Ukraine “On Lease of State and Communal Property” also stipulate that state and communal enterprises, as well as public and charitable organizations that provide accommodation for IDPs, will have the right to lease state and communal property without going through an auction. Furthermore, the government is instructed to establish preferential terms for calculating rent for state and municipal property for such tenants.

At the same time, it is important to develop a housing strategy for IDPs, which could serve as a roadmap for the Government to ensure the housing rights of IDPs.

1871 Internally displaced persons. Ministry of Social Policy of Ukraine. URL: <https://www.msp.gov.ua/timeline/Vnutrishno-peremishcheni-osobi.html>.

1872 Ombudsman: Cancellation of assistance payments may encourage IDPs to return to occupied territories. Zmina. 2024. URL: <https://zmina.info/news/skasuvannya-vyplaty-dopomogy-mozhe-stymulyuvaty-pereselenciv-do-povernennya-na-okupovani-terytoriyi-ombudsman/>.

1873 On Amendments to Certain Laws of Ukraine on the Priority Right of Certain Categories of Internally Displaced Persons to Receive Compensation for Destroyed Real Estate: Draft Law of Ukraine, registration No. 11028 of 20.02.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43732>.

1874 On Amendments to Certain Laws of Ukraine on Ensuring the Housing Rights of Internally Displaced Persons: Draft Law of Ukraine, registration No. 11281 of 21.05.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44262>.

This situation is increasingly complicated by the lack of effective communication of the changes implemented by the authorities. All the changes that took place during the year in the state support for IDPs were not communicated in advance, which led to an increase in calls to hotlines of NGOs and government contact centres.

The payment of pensions to IDPs who left the territory of the Autonomous Republic of Crimea after 24 February 2022 remained a separate issue. They are in a vulnerable position as a result of the refusal of the Pension Fund of Ukraine (PFU) to pay pensions on the grounds that such people are considered to have secured pensions from the Russian Pension Fund, or because they can neither confirm nor deny that they have not received pensions and other social benefits “at the previous place of receipt of pensions”, i.e. in the occupied territory of the Crimean peninsula¹⁸⁷⁵.

In April 2024, the Verkhovna Rada adopted Law of Ukraine No. 3674-IX¹⁸⁷⁶ (entered into force on 23 June 2024), which, in particular, provides for the appointment, restoration and continuation of pension payments for persons residing in the temporarily occupied territory (TOT) or who moved to the territory controlled by the Government of Ukraine during the occupation, provided that the person applies to the Pension Fund of Ukraine with a statement about not receiving a pension from the Russian Federation. Currently, the Ministry of Social Policy is developing relevant bylaws that will contain a mechanism for implementing the provisions of the Law in terms of pension payments to TOT residents.

Lack of defined procedures for the recognition of civil status acts that took place during the occupation and other documents issued by the occupation authorities

According to Art. 9 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine”¹⁸⁷⁷ any documents issued by the occupation authorities are invalid and do not create legal consequences, except for documents confirming the fact of birth, death, registration (dissolution) of marriage in the TOT, which are attached to the application for state registration of the relevant civil status act.

However, there is no procedure other than judicial one to establish such facts. According to UNHCR, from mid-2015 to the end of 2021, 72,211¹⁸⁷⁸ children born in the non-government controlled areas of Donetsk and Luhansk regions did not receive Ukrainian birth certificates. According to unofficial statistics, between 2015 and 2021, up to 200,000 children¹⁸⁷⁹ born in the TOT in eastern Ukraine, the Autonomous Republic of Crimea, and the city of Sevastopol did not receive Ukrainian birth certificates. And only less than 10% of children born in the TOT of Crimea have Ukrainian birth certificates.

In addition to births that occurred on the TOT of Ukraine, other civil status acts (marriage, divorce, death) cannot be confirmed administratively. Although a simplified court procedure for establishing such facts is currently in place, first the lockdown and then the outbreak of the

1875 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_довідка_Уповноваженого_за_2023_рік.pdf.

1876 On Amendments to Certain Laws of Ukraine Regarding the Calculation of Insurance Period and Pension Benefits: Law of Ukraine of 25.04.2024 No. 3674-IX. URL: <https://zakon.rada.gov.ua/laws/show/3674-IX#Text>.

1877 On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine: Law of Ukraine of 15.04.2014 No. 1207-VII. URL: <https://zakon.rada.gov.ua/laws/show/1207-18#Text>.

1878 Registration of the birth of a stateless person or a person of undetermined citizenship. UNHCR-Ukraine. URL: <https://www.unhcr.org/ua/реєстрація-народження-особи-без-грома>.

1879 UNHCR calls for improved access to birth registration to confirm legal identity and prevent statelessness in Ukraine. UNHCR. 2023. URL: <https://www.unhcr.org/ua/65741-unhcr-calls-for-improved-access-to-birth-registration-to-confirm-legal-identity-and-prevent-statelessness-in-ukraine-ua.html>.

large-scale invasion have significantly limited the number of people who can use this procedure. For example, according to the Ministry of Justice of Ukraine, as of the end of September 2023, only about 5,000 children from the TOT of Ukraine had received state-issued birth certificates through the courts.

Back in February 2023, the Verkhovna Rada registered a government draft law No. 9069¹⁸⁸⁰, which provides for the introduction of an administrative (instead of the existing judicial) procedure for the recognition of civil status acts that took place in the temporarily occupied territory. However, it has not yet been considered by the relevant parliamentary committee on legal policy. The adoption of this draft law will help relieve the judicial system, and in the future, Ukrainian citizens living in the occupation will be allowed to obtain Ukrainian-type documents.

In addition to civil status acts, the de facto authorities in the temporarily occupied territory have issued millions of different documents during the occupation (educational documents, certificates, court decisions, documents confirming property rights, etc.). Currently, all these documents are not recognised by the state of Ukraine.

A good example of solving this problem is the adoption in November 2023 of Law of Ukraine No. 3482-IX¹⁸⁸¹, which introduced a procedure for recognising the educational qualifications of people who lived under occupation. However, as of July 31, 2024, the procedure has not been implemented because the Ministry of Education and Science of Ukraine has not yet developed the necessary procedure for validating the results of education obtained in the TOT.

There are no similar procedures for resolving the issue of property rights that occurred during the occupation of the territory. However, the issue of ownership of individuals and legal entities whose property remained in the TOT or who plan to resume their activities in the de-occupied territory of Ukraine is of fundamental importance. For example, during the years of occupation, hundreds of thousands of transactions were made in Crimea. Thus, according to the occupation resources, 469,500 transactions were carried out in 2018-2022 alone¹⁸⁸², and according to other occupation statistical data, 1,200,735 transactions on residential premises (sale and purchase, inheritance, donation, privatisation, etc.) were carried out on the peninsula in 2014–2022¹⁸⁸³. In practice, the automatic recognition of all these transactions as null and void can lead to unpredictable consequences and a complete collapse of the real estate market on the peninsula after its de-occupation. During the ten years of occupation no accessible procedures for registering such rights under Ukrainian law could be provided in the government-controlled territory of Ukraine (in total, since 20 February 2014, the number of real estate rights registered in the State Register of Real Estate Rights in Crimea has not exceeded 15,000).

Of course, it is not possible to recognise the facts of property nationalisation by the occupying authorities or other forms of property deprivation, especially when one of the parties to the transaction is the aggressor state of Russia or occupation authorities. However, a system should be introduced whereby, for example, in the absence of a dispute between the parties to a transaction, it can be confirmed in an administrative procedure.

1880 On Amendments to Certain Legislative Acts of Ukraine Regarding Peculiarities of State Registration of Civil Status Acts that Occurred on the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of Ukraine: Draft Law of Ukraine, registration No. 9069 of 28.02.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41464>.

1881 On Amendments to Certain Laws of Ukraine on the Recognition of Learning Outcomes of Persons Residing in the Temporarily Occupied Territory of Ukraine: Law of Ukraine of 21.11.2023 No. 3482-IX (enacted 24.03.2024). URL: <https://zakon.rada.gov.ua/laws/show/3482-IX#Text>.

1882 URL: <https://pkk.rosreestr.ru/portal/apps/Cascade/index.html?appid=833816ecb12741f09ffc1e49e789b893>.

1883 Occupation data "On registration of rights to residential premises". URL: [https://82.rosstat.gov.ru/storage/mediabank/1%D1%80%D0%BF%D0%B6\(1\)_713455\(1\).pdf](https://82.rosstat.gov.ru/storage/mediabank/1%D1%80%D0%BF%D0%B6(1)_713455(1).pdf); <https://82.rosstat.gov.ru/search?q=О+РЕГИСТРАЦИИ+ПРАВ+НА+ЖИЛЫЕ+ПОМЕЩЕНИЯ>.

Therefore, in order to ensure the exercise and protection of the rights of Ukrainian citizens residing in or leaving the temporarily occupied territory, it is important to establish the procedures for verification and replacement of documents issued by the occupation authorities.

Recommendations

1. Develop and adopt a draft law of Ukraine that should contain concepts and general approaches to defining the categories of people who may be considered victims of Russia's armed aggression against Ukraine. Meanwhile, it is important to develop and approve a coherent unified conceptual document at the governmental level that would cover the strategic state vision of implementing mechanisms for the protection and restoration of property and personal non-property rights of victims, where compensation for material damage is one of the components.
2. Introduce a system of Interim Reparative Measure for people who have suffered the greatest damage to their lives and health as a result of Russia's armed aggression against Ukraine (in particular, these are victims of war crimes).
3. Establish a mechanism for accounting for non-pecuniary damage caused by Russia's armed aggression against Ukraine. Such an accounting is the foundation of any reparation system for damage caused by the aggression against Ukraine and is derived from the state's international human rights obligations.
4. Develop a variety of housing programmes for IDPs, including a temporary housing programme, preferential lending, lease-to-own programmes, etc.
5. Ensure the development of social services (including comprehensive social services to build resilience) in communities for people affected by the armed aggression against Ukraine, including IDPs.
6. Ensure balanced, timely communication on state support for people affected by the armed aggression against Ukraine.
7. Adopt comprehensive amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" that will ensure that legal regulation meets the current challenges of large-scale armed aggression against Ukraine (distribution of powers between ministries, creation of a legislative framework to ensure the housing rights of IDPs, etc.).
8. Adopt a Government procedure for processing and paying pensions in accordance with the Law of Ukraine of 25 April 2024 No 3674-IX "On Amendments to Certain Laws of Ukraine on Proportional Calculation of Insurance Period for Persons who Worked Outside Ukraine" to ensure that IDPs from Crimea can receive pensions.
9. Conduct an independent assessment of the implementation of the State Policy Strategy on Internal Displacement until 2025 and the Operational plan for its implementation in 2023-2025 and update such a plan based on the results of monitoring and evaluation.
10. Adopt the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of State Registration of Civil Status Acts that Occurred in the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of Ukraine" (registration No. 9069 of 28 February 2023).
11. Develop a concept (vision of mechanisms) for using information from documents issued in the temporarily occupied territory of Ukraine.

Issues for further monitoring

- › Adoption by the Ministry of Education and Science of Ukraine of by-laws to implement the Law of Ukraine No. 3482-IX of 21 November 2023 “On Amendments to Certain Laws of Ukraine on Recognition of Educational Results of Persons Residing in the Temporarily Occupied Territory of Ukraine”.
- › Adoption of the Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of State Registration of Civil Status Acts that Occurred in the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of Ukraine” (registration No. 9069 of 28 February 2023).
- › Adoption of the Draft Law of Ukraine “On Registration of Persons Whose Life and Health Have Been Damaged as a Result of the Armed Aggression of the Russian Federation against Ukraine” (registration No. 10256 of 13 November 2023).
- › Adoption of comprehensive amendments to the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”.
- › Adoption of the Draft Law of Ukraine “On Amendments to Certain Laws of Ukraine on Ensuring Housing Rights of Internally Displaced Persons” (registration No. 11281 of 21 May 2024).

Responsibility for the most serious international crimes committed in the context of Russian armed aggression

Ensuring effective justice and accountability for the most serious international crimes are important issues not only for Ukraine, but also for the entire international justice ecosystem. The harmonisation of Ukrainian legislation with international standards to increase the effectiveness of international crimes investigations was one of the recommendations of the European Commission’s report¹⁸⁸⁴ in 2023.

Despite numerous international crimes committed since 2014 as a result of Russian aggression, recognition by the authorities of the importance and role of the International Criminal Court, high expectations for international justice, and its obligations under the Association Agreement with the European Union, Ukraine has not yet ratified the Rome Statute of the ICC¹⁸⁸⁵. To resolve this issue, the President should immediately submit a relevant legislative initiative to the Verkhovna Rada, and then the Parliament should decide to ratify the Rome Statute and the amendments to it on the crime of aggression adopted in Kampala on 11 June 2010 (RC/Res.6 (Kampala Amendments)).

Another important task on Ukraine’s agenda is the harmonisation of criminal legislation with international law to ensure effective investigations of international crimes. In 2021, after

1884 Ukraine 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf.

1885 Rome Statute of the International Criminal Court of 17.07.1998. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text.

lengthy discussions with the public and experts, the Parliament adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (registration No. 2689)¹⁸⁸⁶, based on the practice of international law and the capabilities of the national justice system. However, as of the first quarter of 2024, this law has not yet been signed by the President of Ukraine. At the same time, the Ukrainian parliament has another draft law No. 7290¹⁸⁸⁷, which proposes some important solutions in this direction, but contains a number of significant gaps that will negatively affect progress in ensuring accountability for the most serious international crimes. At the same time, criminal procedure legislation, as well as legislation on the protection of victims, witnesses and defence counsels in this category of cases, still requires significant improvement in view of the challenges of war.

It is important for the European Commission to identify the ratification of the Rome Statute and the harmonisation of Ukrainian criminal law with international law as urgent priority reforms for Ukraine.

Ratification of the Rome Statute of the International Criminal Court

In 2000, Ukraine signed the Rome Statute of the ICC, but has not yet ratified this document. For many years, this issue was actually postponed by the state until the beginning of the Russian aggression in 2014, when the Verkhovna Rada adopted two declarations on the recognition of the ICC’s jurisdiction (regarding the events on the Independence Square in Kyiv between 21 November 2013 and 22 February 2014¹⁸⁸⁸ and the consequences of the armed conflict and occupation of certain parts of the territory of Ukraine)¹⁸⁸⁹.

The ratification and implementation of the Rome Statute of the ICC and related documents became part of Ukraine’s obligations under the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States¹⁸⁹⁰ (Article 8). However, the implementation of this clause was actually slowed down by the Ukrainian authorities. This step was explained by the need to first harmonise national legislation with international law, bring the Constitution of Ukraine into line, and then proceed to ratify the Rome Statute of the ICC.

In 2016, important amendments were made to Article 124¹⁸⁹¹ of the Constitution of Ukraine, whereby Ukraine may recognise the jurisdiction of the ICC under the conditions set out in the Rome Statute of the ICC. However, the provisions of the Law of Ukraine “On Amendments to the Constitution of Ukraine (regarding justice)”¹⁸⁹² actually established a three-year moratorium on

1886 On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law: Draft Law of Ukraine, registration No. 2689 of 27.12.2019. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804.

1887 On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine: Draft Law of Ukraine, registration No. 7290 of 15.04.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39449>.

1888 On Ukraine’s recognition of the jurisdiction of the International Criminal Court over crimes against humanity committed by senior state officials, which led to particularly grave consequences and mass murder of Ukrainian citizens during peaceful protests between 21.11.2013 and 22.02.2014. Statement of the Verkhovna Rada of Ukraine to the International Criminal Court of 25.02.2014 No. 790-VII. URL: <https://zakon.rada.gov.ua/laws/show/790-18#Text>.

1889 On the Declaration of the Verkhovna Rada of Ukraine “On Ukraine’s recognition of the jurisdiction of the International Criminal Court over crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of the terrorist organisations “DPR” and “LPR”, which led to particularly grave consequences and mass murder of Ukrainian citizens”: Resolution of the Verkhovna Rada of Ukraine of 04.02.2015 No. 145-VIII. URL: <https://zakon.rada.gov.ua/laws/show/145-19#Text>.

1890 The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, of 27.06.2014. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text.

1891 The Constitution of Ukraine of 28.06.1996 No. 254k/96-VR, Art. 124. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4761>.

1892 On Amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine of 02.06.2016 No. 1401-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#n194>.

ratification, so in this part the Law entered into force only in 2019. However, even after that, the Ukrainian authorities did not take steps to ratify the Rome Statute of the ICC and did not ensure the harmonisation of national criminal legislation with international law.

In the recommendations of the report¹⁸⁹³ for 2023, the European Commission also emphasises the importance of Ukraine's work on the ratification of the Rome Statute of the ICC and related documents for the next year.

In February 2024, the Cabinet of Ministers of Ukraine approved an action plan¹⁸⁹⁴ to implement the recommendations of the European Commission presented in the Ukraine Progress Report under the EU's 2023 Enlargement Package. In this plan, the Government of Ukraine sets a deadline for the implementation of the recommendation to ratify the Rome Statute of the ICC "within one year after the termination or cancellation of martial law", which effectively postpones ratification indefinitely.

The ICC has been actively working on Ukraine since 2014 as part of a preliminary examination of the situation, and since March 2022 - as part of an investigation following a request from 43 states. The Prosecutor Office of the ICC has already issued four arrest warrants, including for Russian President Vladimir Putin¹⁸⁹⁵ and senior military commanders¹⁸⁹⁶.

During this time, in 2022, the CPC of Ukraine was supplemented with Section IX² "Peculiarities of Cooperation with the International Criminal Court"¹⁸⁹⁷, certain provisions of which will come into force after the ratification of the Rome Statute of the ICC.

Human rights organisations, in particular those working with victims and documenting international crimes as a result of Russian aggression, have long been consistently calling on the authorities to ratify the Rome Statute of the ICC in order to bring those involved to justice¹⁸⁹⁸.

However, even the consequences of the full-scale invasion and the ICC's active work on Ukraine did not change the situation of the Ukrainian authorities' ignoring the issue of ratification of the Rome Statute of the ICC. Previously, Andrii Smyrnov, ex-Deputy Head of the Presidential Office noted¹⁸⁹⁹, that the issue of studying the feasibility of ratifying the Rome Statute should be postponed until after Ukraine's victory. Among the reasons for this position, he cited "fears among the military" that they would allegedly be prosecuted by the International Criminal Court. However, there is no known published survey of the military's opinion on their attitude to the ratification of the Rome Statute of the ICC. At the same time, for example, the report of the NGO

1893 Ukraine 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf.

1894 On approval of the action plan for the implementation of the recommendations of the European Commission presented in the Progress Report of Ukraine under the EU Enlargement Package 2023: Order of the Cabinet of Ministers of Ukraine of 09.02.2024 No. 133-r. URL: <https://zakon.rada.gov.ua/laws/show/133-2024-%D1%80#Text>.

1895 Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova. 2023. URL: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

1896 Situation in Ukraine: ICC judges issue arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov? 2024. URL: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and>.

1897 The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#n7216>.

1898 Euromaidan SOS demands immediate ratification of the Rome Statute of the International Criminal Court. Zmina. 2022. URL: <http://surl.li/sbczv>; The coalition "Ukraine. 5 AM" coalition appealed to the government and international partners on the occasion of the tenth anniversary of the beginning of the war. Zmina. 2024. URL: <http://surl.li/sbdaa>.

1899 The issue of ratification of the Rome Statute should be considered only after Ukraine's victory. Interfax-Ukraine. 2023. URL: <https://interfax.com.ua/news/general/930100.html>.

Space of Opportunities¹⁹⁰⁰ published the results of a study of the opinion of veterans, military personnel, volunteers, participants in the hostilities of the Russian-Ukrainian war of 2014-2022, who live/serve in all regions (except for the TOT), including the understanding of the impact and consequences of the ratification of the Rome Statute of the ICC. Thus, according to its results, the majority of respondents supported the ratification of the Rome Statute of the ICC. In addition, it should be noted that the adoption by the Verkhovna Rada of the relevant declarations of recognition of the jurisdiction of the ICC in November 2013 already makes it possible to prosecute Ukrainian military personnel within this international mechanism, including without waiting for the ratification of the Rome Statute of the ICC. However, without ratification of the Rome Statute, Ukraine is deprived of significant opportunities to participate fully in the work of the ICC (e.g., to nominate a candidate for the ICC judge from Ukraine and elect judges and the ICC prosecutor; to be a member of the Assembly of States Parties to the ICC, to participate fully in its activities, etc).

Other reasons for postponing ratification for an indefinite period, cited by government representatives¹⁹⁰¹, include the need to conduct communication work with the population of Ukraine to ensure support for such a step. However, the nationwide survey "Legal Protection of Victims of War Crimes in Russia (23-26.12.2022)"¹⁹⁰² showed that the part of the population that is aware of the Rome Statute of the ICC is mostly favourable towards its ratification (80% supported ratification, 4% did not support it and 17% were undecided).

Since the beginning of the full-scale invasion, Ukraine has been insisting¹⁹⁰³ on the establishment of a Special International Tribunal for the crime of aggression by the Russian Federation against Ukraine, as there is a gap in international law regarding the prosecution of this crime. At the same time, the responsibility of the highest political leadership for the crime of aggression is provided for in the Rome Statute of the ICC, albeit in a limited form. In December 2023, at the Assembly of States Parties to the ICC, Germany, along with a group of other countries, stated¹⁹⁰⁴ that it was time to adopt necessary amendments to the Rome Statute, thus making it an effective tool for prosecuting the crime of aggression. However, the Ukrainian authorities are effectively ignoring these processes. Ukraine should be the flagship of these changes and improvements¹⁹⁰⁵, but in order to join this process, Ukraine shall ratify the Rome Statute of the ICC in a timely manner.

In July 2024, Iryna Mudra, Deputy Head of the Office of the President of Ukraine, stated in an interview¹⁹⁰⁶ that in fact, in previous years, there were not entirely correct communication messages that influenced the fears of the Ukrainian military and political leadership, which in turn hindered the ratification process. I. Mudra assured that she, the Prosecutor General and

1900 A report on the study of the attitudes of female and male veterans towards the creation and development of a special mechanism of justice for the most serious crimes committed as a result of the aggression of the Russian Federation. Space of opportunities. URL: <https://pm.in.ua/wp-content/uploads/2023/02/Dodatok-3.-Zvit-doslidzhennya-dokumentuvannya.pdf>.

1901 "The head of the Ministry of Justice told when the Rome Statute will be ratified". Glavkom. 2020. URL: <https://glavkom.ua/country/society/kerivnik-minyustu-rozpoviv-koli-ratifikuvt-rimskiy-statut-657323.html>.

1902 Nationwide survey "Legal Protection of Victims of War Crimes in Russia (23-26.12.2022)". Sociological group "Rating". URL: https://ratinggroup.ua/research/ukraine/pravoviy_zahist_postrazhdalih_v_d_vo_nnih_zlochyn_v_ros_23-26_grudnya_2022.html.

1903 On the working group to study the issue of establishing a special international tribunal for the crime of aggression against Ukraine: Decree of the President of Ukraine of 22.09.2022 No. 661/2022. URL: <https://zakon.rada.gov.ua/laws/show/661/2022#Text>; The President discussed possible scenarios for the establishment of a special international tribunal for the crime of aggression against Ukraine. Official website of the President of Ukraine. 2023. URL: <http://surl.li/sajoj>; Dmytro Kuleba: Special tribunal for the crime of aggression against Ukraine will not allow Russia to avoid responsibility. Government portal. 2023. URL: <https://www.kmu.gov.ua/news/dmytro-kuleba-spetsialnyi-trybunal-za-zlochyn-ahresii-proty-ukrainy-ne-dozvolyt-rf-unyknyty-vidpovidalnosti>.

1904 Information from the publication in the X network @ULAGroup. 2023. URL: <https://twitter.com/ULAGroup/status/1732794234338459854?s=20>.

1905 Accountability for the Crime of Aggression against Ukraine. Verfassungsblog. 2024. URL: <https://verfassungsblog.de/aggression-ukraine/>.

1906 Ukraine plans to ratify Rome Statute by the end of the year - Office of the President of Ukraine. Holos Ameryky. 2024. URL: https://www.holosameryky.com/a/ukraine_rymskij_statute_mks/7695671.html.

the relevant parliamentary committee personally support the ratification, and there is a goal to complete the ratification process of the Rome Statute by the end of 2024. As the ratification of an international instrument is primarily a matter of foreign policy, the responsibility for deciding on the ratification of the Rome Statute of the ICC remains with the Government, the President and the Verkhovna Rada. The Minister of Foreign Affairs of Ukraine has repeatedly stated that he supports the ratification¹⁹⁰⁷. The EU should be interested in a candidate that has a stable and strong criminal justice system, and the ratification and implementation of the Rome Statute of the ICC are fundamental reforms, which successful and timely implementation will be a key step towards ensuring effective justice processes in the aftermath of armed conflict.

Recommendations

1. To the President of Ukraine: urgently submit to the Verkhovna Rada a legislative initiative to ratify the Rome Statute of the ICC and its amendments on the crime of aggression adopted in Kampala on 11 June 2010 (RC/Res.6 (Kampala Amendments)¹⁹⁰⁸).
2. To the Verkhovna Rada of Ukraine: adopt a decision on ratification of the Rome Statute of the ICC and its amendments on the crime of aggression, adopted in Kampala on 11 June 2010 (RC/Res.6 (Kampala Amendments)).

Harmonisation of Ukrainian criminal legislation with international law

Building an effective justice architecture in the aftermath of Russia's aggression against Ukraine is an important task not only for our country, but also for all international partners, whose involvement in supporting the Ukrainian people and victims of Russian aggression is a certain confirmation of the world's commitment to international law and a promise to ensure proper justice for terrible crimes to prevent their recurrence. Many states and international organisations are launching initiatives and investing resources¹⁹⁰⁹ to support justice efforts to overcome the consequences of Russia's full-scale invasion, and sending their experts¹⁹¹⁰.

At the same time, experts from the NGOs Media Initiative for Human Rights (MIHR) and the Ukrainian Legal Advisory Group (ULAG) in an interview¹⁹¹¹ noted that although the assistance of international partners is large-scale, it is often unsystematic, uncoordinated, without proper monitoring of the needs of the national justice system and without affecting the actual state of investigations. In their opinion, partners and donors should focus more on auditing the efficiency of assistance and compliance with the request of the Ukrainian law enforcement system rather on presentation and formal reporting. In addition, according to the ULAG expert, for example, the attracted international experts still lack proper legal status in Ukrainian criminal proceedings.

1907 Ratification of the Rome Statute will not harm Ukraine - Kuleba. European Pravda. 2023. URL: <https://www.eurointegration.com.ua/news/2023/03/24/7158633/>.

1908 Resolution RC/Res.6, 11.06.2010. URL: https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/RC-Res.6-ENG.pdf.

1909 The European Union, the United States, and the United Kingdom establish the Atrocity Crimes Advisory Group (ACA) for Ukraine. US Department of State. 2022. URL: <https://www.state.gov/creation-of-atrocity-crimes-advisory-group-for-ukraine/>; France donates mobile DNA laboratory to the Office of the Prosecutor General. Office of the Prosecutor General. 2022. URL: <https://gp.gov.ua/ua/posts/franciya-peredala-ofisu-genprokurora-mobilnu-laboratoriyu-dnk>.

1910 Poland is preparing a new mission of experts to assist Ukrainian law enforcement in recording war crimes. Office of the Prosecutor General. 2022. URL: <https://gp.gov.ua/ua/posts/polshha-gotuje-novu-misiyu-ekspertiv-dlya-dopomogi-ukrayinskim-pravooxoroncjam-u-fiksaciyi-vojennix-zlociniv>.

1911 Information obtained from interviews with representatives of the Ukrainian Advisory Legal Group and the Media Initiative for Human Rights.

The work of the ICC is an important contribution to justice, but its resources are quite limited: other armed conflicts require attention¹⁹¹² and continuing work on Ukraine will require long-term expert and financial support¹⁹¹³ (which Ukraine has not yet contributed to and does not affect the allocation of resources, as it has not ratified the Rome Statute of the ICC).

The main burden of investigating more than 127,000 such crimes¹⁹¹⁴ in Ukraine remains on the national system¹⁹¹⁵, which needs to be significantly strengthened, including through the improvement of national criminal and criminal procedure legislation as an important tool in the justice architecture.

Among the issues that need to be addressed by the legislator are: lack of access of law enforcement agencies to the part of the territory where the crimes were committed; lack of jurisdiction of police to investigate this category of crimes¹⁹¹⁶; the availability of a significant amount of information that cannot be used as evidence (intelligence information, information from open sources), the need to store evidence for a long time and the general lack of adaptation of national procedural requirements for working with digital open sources to international standards¹⁹¹⁷; inaccessibility of a significant number of victims and witnesses of crimes due to travelling abroad and internal displacement within Ukraine; inability to find and detain most of the perpetrators of crimes; providing security and protection for witnesses and victims of the most serious crimes, as well as security for advocates in such cases; proportionality of the sentences imposed to the level of perpetrators of crimes and the gravity of the offence, and other issues that were particularly studied by experts¹⁹¹⁸. Moreover, these issues have not been resolved since the beginning of the armed conflict in 2014, which has significantly impeded investigations for 10 years¹⁹¹⁹.

Ukraine has generally shown an intention to implement the necessary changes in legislation dictated by the armed conflict. For example, the recent amendments to the CPC of Ukraine regarding the timeframe for investigating the most serious international crimes, which initially provided that in proceedings under Articles 437-439 and part 1 of Article 442 of the CC of Ukraine, the pre-trial investigation timeframe would not be calculated¹⁹²⁰ (later, these innovations regarding the most serious international crimes were cancelled due to the cancellation of any restrictions on the pre-trial investigation timeframe for all categories of crimes, only the requirement for the timeframe for completion of the pre-trial investigation after the person is notified of suspicion remained in force¹⁹²¹). Another example is the addition to the CPC of Ukraine

1912 Website of the International Criminal Court, cases. URL: <https://www.icc-cpi.int/cases>.

1913 Russian war crimes in Ukraine: EU supports the International Criminal Court investigation with €7.25 million. European Commission. 2022. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3543.

1914 Information message (infographic) of the Office of the Prosecutor General. URL: <https://www.gp.gov.ua/storage/uploads/9f037fe0-abb7-4ccb-a5f4-e6899cf8936b/warcrime-08032024ua.jpg>.

1915 Chief Justice of the Supreme Court: 99% of Russian war crimes will be considered by Ukrainian courts. Interfax Ukraine. 2023. URL: <https://interfax.com.ua/news/general/922677.html>.

1916 Part 2 of Art. 216 of the CPC of Ukraine defines the exclusive jurisdiction of security investigative bodies. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#n2054>.

1917 Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source and Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law. 03.01.2022. URL: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/berkeley-protocol-digital-open-source>.

1918 Needs assessment of Ukraine's justice system: delivering meaningful justice to the victims and survivors of the armed conflict (abridged). ULAG. 2023. URL: https://drive.google.com/file/d/1XPIWwGjW4s7781iyt4NiudS6_IMB0wey/view.

1919 Principle of complementarity: international justice in Ukraine. ULAG. 2019. URL: <https://ulag.org.ua/reports-and-materials/principle-of-complementarity-international-justice-in-ukraine>.

1920 On Amendments to the Criminal Procedure Code of Ukraine on Peculiarities of Calculating the Terms of Pre-trial Investigation under Martial Law: Law of Ukraine of 23.08.2023 No. 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/3341-20#n2>.

1921 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine to Strengthen the Independence of the Specialised Anti-Corruption Prosecutor's Office: Law of Ukraine of 08.12.2023 No. 3509-IX. URL: <https://zakon.rada.gov.ua/laws/show/3509-20#n14>.

of provisions on the procedure and peculiarities of interaction with the ICC¹⁹²². Still, progress remains slow and insignificant.

For example, the CC of Ukraine still has many gaps. Article 442 of the CC of Ukraine (“genocide”) does not require a special intent to destroy a group in whole or in part, as provided for in the Convention on the Prevention and Punishment of the Crime of Genocide¹⁹²³. The crime against humanity is not mentioned in the provisions of the CC of Ukraine, therefore it is not criminalised under Ukrainian law. Article 437 of the CC of Ukraine (“Planning, Preparation, Initiation and Waging of an Aggressive War”) defines a general subject of responsibility, i.e. any sane individual, unlike the definition in the relevant UN General Assembly resolution¹⁹²⁴ and Article 8 of the Rome Statute of the ICC, which refer to the planning, preparation, initiation or commission of an act of aggression by a person who is able to actually control or direct the political or military actions of a state. The wording of Article 438 of the CC of Ukraine (“Violation of the Laws and Customs of War”) differs from the general approach of the CC of Ukraine to defining specific *corpus delicti* and approaches to a clear categorisation of war crimes in accordance with the provisions of Article 8 of the Rome Statute of the ICC (such as willful killing; torture or inhuman treatment, including biological experiments; widespread destruction and appropriation of property not caused by military necessity and committed unlawfully and wantonly; unlawful deportation or transfer or unlawful deprivation of liberty, etc.), and is essentially a blanket rule¹⁹²⁵, which does not comply with the principle of legal certainty. Accordingly, in order to effectively apply the legal qualification under Article 438 of the CC of Ukraine, investigators need to understand which international treaties this article refers to and have a sufficient level of knowledge of international humanitarian law and experience in its application.

In 2021, the Parliament adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (registration No. 2689)¹⁹²⁶. However, this Law, as a compromise solution based on the practice of international law and the capabilities of the national justice system of Ukraine, has not yet been signed by the President.

In April 2022, an essentially alternative draft law “On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine” (registration No. 7290)¹⁹²⁷ was registered in the Verkhovna Rada. Adoption of this draft law in its current version will not have a progressive impact on justice in cases of the most serious international crimes, as noted by human rights organisations¹⁹²⁸. Among its shortcomings are: the absence of provisions regarding the possibility of prosecuting individuals for war crimes within the framework of command responsibility; the wording of Article 436 of the CC of Ukraine (“Propaganda of War”) does not cover the situation of an armed conflict of an international nature; the wording of Article 437 of the CC of Ukraine (“Planning, Preparation, Initiation and Waging of an Aggressive War”) enshrines an unlimited potential composition of subjects of the crime of aggression, which contradicts international

1922 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Cooperation with the International Criminal Court: Law of Ukraine of 03.05.2022 No. 2236-IX. URL: <https://zakon.rada.gov.ua/laws/show/2236-20#n13>.

1923 Convention on the Prevention and Punishment of the Crime of Genocide. UN General Assembly Resolution 260 (III). 09.12.1948. URL: https://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml.

1924 Definition of Aggression, General Assembly resolution 3314 (XXIX), 14 December 1974. URL: <https://legal.un.org/avl/ha/da/da.html>.

1925 Formulary rule (from the practice of using terms, words and phrases in jurisprudence). Liga Zakon. URL: <https://ips.ligazakon.net/document/TS000079>.

1926 On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law: Draft Law of Ukraine, registration No. 2689 of 27.12.2019. URL: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67804.

1927 On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine: Draft Law of Ukraine, registration No. 7290 of 15.04.2022. URL: <https://td.rada.gov.ua/billInfo/Bills/Card/39449>.

1928 Position of the organisations of the Coalition “Ukraine. 5AM” on the Draft Law “On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine” (No. 7290). URL: https://zmina.ua/wp-content/uploads/sites/2/2022/04/7290_pozycziya-koalicziyi.docx.pdf.

law and the provisions of the Rome Statute of the ICC; lack of a provision on the possibility of introducing the universal jurisdiction in Ukraine; increase of the sentence for international crimes to 25 years; impossibility of retroactive application of the relevant provisions, etc.

For example, an MIHR expert noted in an interview that the absence of provisions in the legislation on command responsibility and crimes against humanity, according to their observations, leads, inter alia, to the unsystematic investigation of the most serious crimes, which, in particular, is an obstacle to bringing to justice the highest military and political command of Russia¹⁹²⁹.

The need to change and adapt Ukraine's criminal legislation to international standards is also mentioned in the latest report of the European Commission¹⁹³⁰, in particular, the need to expand the elements of international crimes, to provide for criminal liability for crimes against humanity and criminal liability of commanders and other superiors for international crimes.

At the same time, amendments to criminal legislation alone, without changes and significant improvements to criminal procedure legislation, will not be sufficient to strengthen the state's ability to effectively prosecute the most serious international crimes. As of the beginning of 2024, it is important to take into account international standards:

- › introduce special rules for establishing the jurisdiction of proceedings on international crimes to ensure actual specialisation in their investigation and consideration. The practice of different countries after World War II has shown that specialisation of investigative, prosecutorial and judicial bodies can ensure effective consideration of the facts of the most serious international crimes and separate approaches to their prosecution from general criminal acts¹⁹³¹. This approach is supported by opinion polls (almost 90% of respondents support the idea of creating a special judicial system (such as an anti-corruption system) to administer justice for crimes committed during Russia's war against Ukraine)¹⁹³², and representatives of the judiciary¹⁹³³. The importance of such specialisation of specialists and appropriate systematic professional training was also noted during interviews with experts from NGOs such as the IHRC and ULAG¹⁹³⁴. Moreover, the introduction of specialisation of judges under certain conditions may not require amendments to the legislation, but may be regulated at the level of decisions of the judiciary.
- › improve the use of a special procedure in the absence of the accused (in absentia proceedings), which should comply with the standards of international criminal law¹⁹³⁵, the practice of the ECHR¹⁹³⁶, and ensure the right to adequate defence and the right to a fair trial.

1929 Information obtained from an interview with a representative of the NGO Media Initiative for Human Rights.

1930 Ukraine 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2023. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf.

1931 Strategies for the effective investigation and prosecution of serious international crimes: The Practice of Specialised War Crimes Units. Redress, FIGH. 2010. URL: <https://redress.org/wp-content/uploads/2018/01/Dec-10-The-Pracice-of-Specialised-War-Crimes-Unit.pdf>.

1932 Results of the all-Ukrainian survey "Legal Protection of Victims of War Crimes in Russia". December 2022. URL: https://ratinggroup.ua/files/ratinggroup/reg_files/rg_ukraine_justice_022023.pdf.

1933 The study "Justice for International Crimes as a Result of Russian Aggression: Position of Judges, Veterans and Demand of the Ukrainian Population. 2023. URL: <http://surl.li/rtzx>.

1934 Information obtained from interviews with representatives of the Ukrainian Advisory Legal Group and the Media Initiative for Human Rights.

1935 The International Criminal Court, Kony Case: Confirmation of charges hearing to commence in absentia on 15 October 2024. URL: <https://www.icc-cpi.int/news/kony-case-confirmation-charges-hearing-commence-absentia-15-october-2024>.

1936 Ukrainian Legal Advisory Group, Trials in Absentia: place in national justice in situation of an armed conflict. ULAG. URL: <https://ulag.org.ua/reports-and-materials/trials-in-absentia>.

- › provide alternative jurisdiction over the most serious international crimes (Article 216 of the CPC of Ukraine) under Article 438 of the CC of Ukraine for the investigative bodies of the NPU, which will significantly increase the efficiency of such investigations and reduce the risks of evidence admissibility.
- › eliminate the excessive burden on the Prosecutor General to establish the jurisdiction of criminal offences committed in the TOT of Ukraine¹⁹³⁷, ensuring that the prosecution and pre-trial investigation bodies comply with the requirements of Article 216 of the CPC of Ukraine.
- › ensure effective and compliant with international standards¹⁹³⁸ procedural conditions for the collection, use and proper storage of evidence, including digital open sources, etc.

Special focus should be given to improving the provisions for the protection of victims, witnesses and lawyers in this category of cases. The draft law No. 5751¹⁹³⁹, currently before the Parliament, needs to be revised to take into account the armed conflict and the investigation of the most serious crimes. The importance of work to ensure security, provide legal aid, avoid re-traumatisation and support the motivation of victims and witnesses was also noted during interviews by experts from the NGOs MIHR¹⁹⁴⁰ and ULAG, who assessed this track of work as still insufficiently effective on the part of the state¹⁹⁴¹.

National criminal legislation that is not harmonised with international standards ultimately leads to an unjustified burden on law enforcement agencies and the limited resources of the national justice system in the context of the ongoing war¹⁹⁴². For example, as of the beginning of 2024, according to the OPG, more than 127,000 crimes of aggression and war crimes were registered (and this figure does not include the number of crimes in the period from 2014 to 2022). This in itself is an incredible burden on any justice system. At the same time, as of January 2024, only 44 verdicts were delivered against 62 defendants in cases under Article 438 of the CC of Ukraine, of which 34 verdicts concerning 51 convicts have entered into force and, as noted by an MIHR expert in an interview, citing officially received data from the State Judicial Administration of Ukraine¹⁹⁴³. At the same time, the investigation of more than 16,000 crimes against the foundations of national security requires significant time and human resources of the law enforcement and judicial systems¹⁹⁴⁴. Against this background, it is extremely important to prioritise the work of law enforcement and the justice system in relation to international crimes, the investigation of which and the impossibility of amnesty for which are defined by international standards¹⁹⁴⁵.

1937 On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine: Law of Ukraine of 15.04.2014 No. 1207-VII, Art. 12. URL: <https://zakon.rada.gov.ua/laws/show/1207-18#n68>.

1938 Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source and Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law. 03.01.2022. URL: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/berkeley-protocol-digital-open-source>.

1939 On ensuring the security of participants in criminal proceedings and other persons in the interests of justice: Draft Law of Ukraine, registration No. 5751 of 12.07.2021. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/27335>.

1940 Analytical study "Chilling effect. Motivating victims to become participants in the justice process and supporting them along the way". MIPL. 2024. URL: <https://drive.google.com/file/d/1q8d7OeMb8UV6YhfLuKpQwEww1MQpMypn/view>.

1941 Information obtained from interviews with representatives of the Ukrainian Advisory Legal Group and the Media Initiative for Human Rights.

1942 Needs assessment of Ukraine's justice system: delivering meaningful justice to the victims and survivors of the armed conflict (abridged). ULAG. 2023. URL: https://drive.google.com/file/d/1XPIWwGjW4s7781yt4NiudS6_IMB0wey/view.

1943 Information obtained from an interview with a representative of the NGO Media Initiative for Human Rights.

1944 Information message (infographic) of the Office of the Prosecutor General. URL: <https://www.gp.gov.ua/storage/uploads/9f037fe0-abb7-4ccb-a5f4-e6899cf8936b/warcrime-08032024ua.jpg>.

1945 The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General, S/2004/616*, 23.08.2004. URL: <https://www.securitycouncilreport.org/un-documents/document/pcs-s-2004-616.php>; The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General, S/2011/634*. 12.10.2011. URL: <https://www.securitycouncilreport.org/un-documents/document/rol-s2011-634.php>.

Consequently, all of this significantly affects the quality and effectiveness of justice and the provision of justice for victims of the most serious crimes, which, according to the OPG (under Article 438 of the CC of Ukraine), are about 128,000, and probably even more, according to human rights organisations working with victims and documenting human rights violations as a result of Russian aggression¹⁹⁴⁶.

Recommendations

1. To the Government of Ukraine - to develop and initiate a draft law on amendments to the Criminal Code of Ukraine and the CPC of Ukraine to ensure proper implementation of international criminal and international humanitarian law.
2. To the Parliament of Ukraine - finalise the Draft Law of Ukraine (registration No. 5751 of 12 July 2021) with the involvement of national and international experts, incorporating international standards and challenges of ensuring the safety of witnesses, victims and defence counsels in cases of investigation of the most serious crimes.
3. To the Government of Ukraine - develop and initiate the submission of draft amendments to the criminal procedure legislation to ensure effective investigations of the most serious international crimes with the involvement of national and international experts.
4. To the Ukrainian authorities - promote the introduction of specialisation of pre-trial investigation bodies and judges in the consideration of cases of the most serious international crimes.

Issues for further monitoring

- › Initiating the ratification of the Rome Statute of the ICC and its amendments on the crime of aggression adopted in Kampala on 11 June 2010 (RC/Res.6 (Kampala Amendments))¹⁹⁴⁷ by the President and the Verkhovna Rada.
- › Monitor the status of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law” (registration No. 2689 of 27 December 2019), which is pending Presidential signature, and the Draft Law “On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine” (registration No. 7290 of 15 April 2022, which is under Parliamentary consideration.
- › Development and initiation of a draft law by the Government on amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to ensure effective implementation of international criminal and international humanitarian law (with the involvement of NGOs, academia and experts).
- › Finalising and adopting Draft Law No. 5751 of 12 July 2021 with input from national and international experts, to align with international standards and address challenges in ensuring the safety of witnesses, victims and defence counsels in investigation of the most serious crimes.
- › Development and initiation of amendments to the criminal procedure legislation by legislative initiators to ensure effective investigations of the most serious international crimes, including those committed in the temporarily occupied territories.

¹⁹⁴⁶ Analytical study “Chilling effect. Motivating victims to become participants in the justice process and supporting them along the way”. MIPL. 2024. URL: <https://drive.google.com/file/d/1q8d7OeMb8UV6YhfLuKpQwEvv1MQpMypn/view>.

¹⁹⁴⁷ Resolution RC/Res.6, 11.06.2010. URL: https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/RC-Res.6-ENG.pdf.

Legal guarantees of human rights in the process of reintegration of the liberated territories

The reintegration of the liberated territories is a complex process that includes state policy on maintaining ties with Ukrainian citizens in the occupied territories, planning their involvement in state processes and the restoration of Ukrainian authorities in the liberated territories, a strategy for prosecuting crimes against national security, etc.

The state policy on reintegration has not been finalised at this stage, and some developments before the full-scale invasion established different regulations for TOT - in particular, for Crimea and districts of Donetsk and Luhansk regions. After Russia's full-scale invasion of Ukraine, some approaches were revised, but a unified reintegration strategy was not developed. Practical measures and procedures are prescribed on an ad hoc basis and with insufficient consideration of the interconnectedness of different reintegration processes. Ukraine needs a single comprehensive reintegration policy that applies to all occupied territories, includes unified standards and principles for the restoration of Ukrainian authority and life in the liberated territories, and legislates specific directions and steps, with deadlines and estimated resources for their implementation.

The current legislation provides for prosecution for any interaction with representatives of the aggressor state and the occupation authorities, without taking into account the requirements and standards of international humanitarian law under the occupation regime and the need for such interaction to survive in the occupied territory. The broad wording, which also duplicates the *corpus delicti* of other articles of the CC of Ukraine, violates the principle of legal certainty and leads to unequal application of criminal law, excessive discretion of law enforcement agencies in its application, as well as disproportionate punishment. Necessary amendments to criminal legislation should provide for a clear distinction between *corpus delicti*, clarify broad definitions, and take into account the broader reintegration policy, in particular in the context of lustration.

The development of a lustration policy is part of the process of reintegrating the liberated territories of Ukraine and their residents. It is a tool for protecting democratic institutions in the de-occupied territories, as well as for identifying violations that will not be subject to criminal liability. Such a policy should be based on international standards, contain unified criteria for applying lustration measures, provide for specific categories of positions to be subject to lustration and a clear and transparent lustration procedure.

There is currently no unified strategy for assessing the damage to cultural heritage caused by the Russian Federation. Previous developments are not comprehensive and need to be expanded to include all components of cultural heritage. An integral part of the protection is also the proper cataloguing of cultural property stored in the relevant institutions, cultural property stored in institutions on the occupied territory, as well as cultural heritage objects that were damaged, destroyed or stolen during the armed conflict.

State policy on reintegration

The development of various policies of interaction with citizens who remained under occupation and IDPs has been ongoing since the beginning of the occupation of Ukrainian territories in 2014.

In March 2021, the Strategy for the De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol was approved¹⁹⁴⁸ and in September of the same year, an action plan for its implementation was approved¹⁹⁴⁹.

However, with the onset of the full-scale invasion, both the scale of challenges and the boundaries of the TOT changed, which necessitated the adjustment of the approaches already developed. In April 2023, the Action Plan for the Implementation of the Strategy for the De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol was amended¹⁹⁵⁰, and in August 2023, the Statement of the Verkhovna Rada of Ukraine on the Priority Areas of Ukraine's State Policy in the Field of De-occupation, Reintegration and Restoration of the Autonomous Republic of Crimea and the City of Sevastopol was adopted¹⁹⁵¹. These areas include, in particular, the restoration of Ukrainian authorities in the Autonomous Republic of Crimea and the city of Sevastopol, policy on documents and transactions issued during the occupation, judiciary and restoration of justice, liability for crimes and restrictions on holding office, restoration of business and tourism, infrastructure issues, humanitarian reintegration, restoration of the rights of indigenous peoples, especially the Crimean Tatar people, and cognitive de-occupation. These areas were described in detail in the Priority Steps of the Ukrainian State after the De-occupation of Crimea¹⁹⁵² and the Strategy for the Cognitive De-occupation of Crimea¹⁹⁵³, developed by the Mission of the President of Ukraine in the Autonomous Republic of Crimea.

In addition, in April 2024, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine presented a draft of the State Policy Strategy for the restoration of power and reintegration of the population of the de-occupied territories with the involvement of representatives of the public sector¹⁹⁵⁴.

Most of the current developments, however, are of a visionary nature. Only certain aspects, such as the policy on documents confirming the fact of birth, death, registration (dissolution) of marriage of a person in the TOT and on the non-recognition of the forced automatic acquisition of Russian citizenship by Ukrainian citizens living in the TOT, and the recognition of educational competences acquired in the TOT, are regulated by law. In practice, however, not even all of these issues are clearly regulated: an effective procedure for state registration of civil status acts performed in the TOT has not yet been adopted¹⁹⁵⁵. The question also arises whether the new Russian policy of imposing Russian citizenship falls under the “forced automatic acquisition of Russian citizenship”, since at the moment the imposition of Russian citizenship is conducted

1948 On the Strategy of De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol: Decision of the National Security and Defence Council of Ukraine of 26.03.2021. URL: <https://zakon.rada.gov.ua/laws/show/n0020525-21#Text>.

1949 On approval of the Action Plan for the Implementation of the Strategy for De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol: Order of the Cabinet of Ministers of Ukraine of 29.09.2021 No. 1171. URL: <https://zakon.rada.gov.ua/laws/show/1171-2021-p#n16>.

1950 On Amendments to the Action Plan for the Implementation of the Strategy for De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol: Order of the Cabinet of Ministers of Ukraine of 04.04.2023 No. 288. URL: <https://zakon.rada.gov.ua/laws/show/288-2023-p#Text>.

1951 On the Statement of the Verkhovna Rada of Ukraine on the Priority Directions of the State Policy of Ukraine in the Field of De-occupation, Reintegration and Restoration of the Autonomous Republic of Crimea and the City of Sevastopol: Resolution of the Verkhovna Rada of Ukraine of 23.08.2023 No. 3333-IX. URL: <https://zakon.rada.gov.ua/laws/show/3333-20#Text>.

1952 Priority steps of the Ukrainian state after the de-occupation of Crimea. Mission of the President of Ukraine in the Autonomous Republic of Crimea. 2023. URL: <https://ppu.gov.ua/documents/priorytetni-kroky-ukrayinskoyi-derzhavy-pislya-deokupatsiyi-krymu/>.

1953 Strategy of cognitive de-occupation of Crimea. Mission of the President of Ukraine in the Autonomous Republic of Crimea. 2023. URL: <https://ppu.gov.ua/documents/stratehiia-kohnityvnoi-deokupatsii-krymu/>.

1954 A presentation of the draft Strategy for the Restoration of State Power and Reintegration of the Population of the De-occupied Territories was held. Ministry of Reintegration of the Occupied Territories of Ukraine. 2024. URL: <https://minre.gov.ua/2024/04/10/vidbulasya-prezentacziya-proyektu-strategiyi-vidnovlennya-derzhavnovi-vlady-ta-reintegracziyi-naselennya-deokupovanyh-terytorij/>.

1955 For more details, see the Issues related to citizenship section.

by creating conditions whereby it is impossible to remain in the TOT and have access to basic rights without Russian citizenship, and introducing a formal procedure for taking an oath as an indicator of the voluntariness of such acquisition.

Thus, current developments contain mostly general ideas and are hardly reflected in legislation. This leads to both uncertainty about the reintegration processes that need to be developed now for their effective implementation and the transmission of different political positions.

Recommendations

The following should be considered in further work on reintegration policy development:

- 1) the duration of the occupation and the extent to which the legal regime of the Russian Federation has been extended to the occupied territories after their illegal incorporation into the Russian Federation;
- 2) the need to develop a reintegration policy for all occupied territories, including the Autonomous Republic of Crimea and the city of Sevastopol, as well as districts of Donetsk, Luhansk, Kherson and Zaporizhzhia regions;
- 3) the need to develop a common, comprehensive state reintegration policy that includes standards and principles for restoring life in the de-occupied territories;
- 4) the need to provide for specific directions and steps in the reintegration process as part of this policy, as well as to assess the capacity of state bodies to ensure these processes;
- 5) the need to legislate specific procedures, such as the procedure for state registration of civil acts that took place in the TOT.

Improving liability for collaboration activities

After the start of the full-scale invasion in March 2022, the CC of Ukraine was supplemented with Article 111¹ (“Collaboration Activities”), which contains a list of activities that are considered to be cooperation with the aggressor state and are subject to criminal liability. As of 15 June 2024, a total of 1442 decisions in cases under Article 111¹ of the CC of Ukraine¹⁹⁵⁶ were registered in the Unified State Register of Court Decisions. The vast majority of verdicts (484) concerned public denial of Russian aggression and calls to support the decisions of the aggressor state, i.e. posts on social media and public statements. Meanwhile, compared to September 2023¹⁹⁵⁷, the number of sentences under para. 5 (voluntary occupation by a citizen of Ukraine of a position related to the performance of organisational, administrative or administrative-economic functions in illegal authorities established in the temporarily occupied territory) and 7 (voluntary occupation by a citizen of Ukraine of a position in illegal judicial or law enforcement bodies established in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary groups established in the temporarily occupied territory and/or in the armed formations of the aggressor state) Articles 111¹ – 292 and 236 respectively¹⁹⁵⁸.

In April 2022, Article 111² (“Aiding the aggressor state”) was also added to the CC of Ukraine, which has a general wording that covers both the activities provided for in Article 111¹ of the CC

1956 Analytical report “Collaboration and aiding and abetting the aggressor state: practice of application of legislation and prospects for its improvement”. ZMINA. 2023. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf.

1957 Ibid.

1958 Survival or crime: how Ukraine punishes collaborationism. Analytical report / Syniuk O., Deputat D., Vyshnevskaya I., Volkovynska V., Chervonova V., Eligulashvili M.; edited by Luneva O. - Kyiv, 2024. – p. 104. URL: <https://zmina.ua/publication/vyzyvannya-chy-zlochyn-yak-ukrayina-karaye-za-kolaboracziom/>.

of Ukraine on “collaboration” and Article 111 of the CC of Ukraine (“High treason”). In essence, under the new legislation, any interaction with representatives of the occupation authorities, without taking into account the requirements and standards of international humanitarian law and the need for such interaction for survival in the occupied territory, may result in criminal liability. The Office of the United Nations High Commissioner for Human Rights in its report¹⁹⁵⁹ noted that the law could have a far-reaching impact not only on the rights of people living in the occupied territory, but also on social cohesion and, ultimately, on future reintegration efforts.

Therefore, this and other related articles contain a number of issues, including¹⁹⁶⁰:

- › Broad and unclear wording that leads to unequal implementation of criminal law and excessive discretion of law enforcement agencies in its application. In addition, these broad formulations cover activities that are necessary for the maintenance of life in the occupied territory and the implementation of those activities is in line with the principles of the occupation regime under international humanitarian law.
- › The difficulty of distinguishing between different articles due to the overlap of *corpus delicti* in their dispositions, for example, between Articles 111¹ and 111², as well as 436² of the CC of Ukraine. In particular, any of the acts for which liability is provided in seven parts of Article 111¹ may also fall under the wording “implementation or support of decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state” contained in Art. 111².
- › Unclear wording and duplication of wording leads to different application of the law and disproportionate punishment. For example, denial of armed aggression under part 1 of Article 111¹ is a misdemeanour and is punishable by deprivation of the right to hold certain positions or engage in certain activities, while denial of armed aggression under Article 436² is a crime punishable by correctional labour or imprisonment for up to three years, and up to eight years for officials.

Recommendations

At least twelve draft laws so far proposed do not address these issues. In order to improve liability for collaboration, it is necessary to:

1. Amend the legislation on collaboration to clarify broad wording and clearly delineate the *corpus delicti* provided for, in particular, in Articles 111¹ (“Collaboration”), 111² (“Aiding the aggressor state”) and 436² (“Justification, recognition of the legitimacy, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants”) of the CC of Ukraine.
2. Provide for a clear list of actions that are subject to criminal liability, taking into account the standards of international humanitarian law, in particular, the occupation regime, as well as public danger and the consequences of such activities for Ukraine’s national security, life, health, human safety, etc.
3. Develop an amnesty and lustration policy and consider removing the least serious category of violations within the framework of collaboration from the criminal justice system.

1959 Report on the human rights situation in Ukraine, 01 August 2022 - 31 January 2023”, para. 121. Office of the United Nations High Commissioner for Human Rights. URL: <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-UA.pdf>.

1960 Analytical report “Collaboration and aiding and abetting the aggressor state: practice of application of legislation and prospects for its improvement”. ZMINA. 2023. URL: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf.

4. Develop a unified approach (strategy) for law enforcement agencies dealing with this category of cases, which will include a framework for cooperation between different agencies to prevent duplication of actions, a clear distinction between different articles and interpretation of broad concepts to reduce the discretion of a particular executor (investigator, prosecutor) and the heterogeneity of application of the law, as well as prioritisation of cases within Article 111¹ of the CC of Ukraine.

Lustration

Lustration is one of the means of reintegration policy that can help build a policy of restoring state power in the de-occupied territories, as well as balance the state policy on the responsibility of persons who have cooperated in one way or another with representatives of the aggressor state in the occupied territory.

The elaboration of a lustration policy is, in particular, envisaged in the updated action plan for the implementation of the Strategy for the De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol¹⁹⁶¹, but there is no broad discussion on the issue. The reason for this may be the previous experience of lustration in Ukraine on the basis of the Law of Ukraine “On Purification of Government”¹⁹⁶², which is mostly perceived as unsuccessful¹⁹⁶³ and the tendency to criminalise any cooperation with representatives of the aggressor state in the occupied territory. However, given both the imperfection of the legislation on liability for collaboration and the assessment of the capacity of the law enforcement system to process both existing proceedings on crimes against national security and proceedings that will be opened after the de-occupation of all territories of Ukraine, the lustration procedure can become an effective tool for reintegration. It will help reduce the burden on the law enforcement system, provide a balanced assessment of the actions of those who remained in the TOT, and protect democratic institutions in the de-occupied territories.

The lustration policy should take into account international standards, in particular, the right to defence, the establishment of individual rather than collective restrictions, and facilitate the reintegration of residents of the de-occupied territories who have not committed socially dangerous acts during the occupation, taking into account respective changes to criminal legislation on collaboration. An important aspect of the development is also to study and take into account the positions of the judiciary, law enforcement, relevant ministries, etc.¹⁹⁶⁴.

Recommendations

As part of the lustration policy, it is necessary to provide for:

- 1) unified criteria for applying lustration measures that will apply equally to all liberated territories;

¹⁹⁶¹ On Amendments to the Action Plan for the Implementation of the Strategy for De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol: Order of the Cabinet of Ministers of Ukraine of 04.04.2023 No. 288. URL: <https://zakon.rada.gov.ua/laws/show/288-2023-p#Text>.

¹⁹⁶² On Lustration of Power: Law of Ukraine of 16.09.2014 No. 1682-VII. URL: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>.

¹⁹⁶³ What should we do with lustration?” Ukrinform. 2019. URL: <https://www.ukrinform.ua/rubric-society/2711856-ak-nam-buti-z-lustracieu.html>; Will Lustration Survive in Ukraine? “Kyiv finally lost the case of Polyakh and Others v. Ukraine in the European Court of Human Rights. The ECHR confirmed the decision on the excessiveness of lustration in Ukraine and ordered to pay monetary compensation to the lustrated.” DW. 2020. URL: <https://www.dw.com/uk/чи-виживе-в-україні-люстрація/a-52542762>; 800 civil servants appealed their dismissal: how does lustration work in Ukraine? Ukrainian Helsinki Human Rights Union. 2023. URL: <https://www.helsinki.org.ua/articles/800-derzhavnykh-sluzhbovtziv-oskarzhyly-svoie-zvilnennia-iak-pratsiuie-liustratsiia-v-ukraini/>.

¹⁹⁶⁴ The information is based on the results of an interview with a representative of the Public Holding “Group of Influence”.

- 2) specific categories of positions whose nature requires lustration measures, taking into account the danger to human rights and democracy that may be posed by the person holding such a position;
- 3) a legally enshrined lustration procedure that meets international standards;
- 4) assessing the challenges and obstacles and providing conditions for the involvement of the population of these territories in the reconstituted bodies in the de-occupied territories;
- 5) assessing the quality of legislation, existing investigative and judicial practice and, accordingly, formulating proposals for amendments to criminal legislation, in particular, taking into account reintegration policy – for example, removing certain categories of acts from criminal liability and providing for a lustration procedure for them.

Damage to cultural heritage caused by the Russian Federation

In March 2022, the Cabinet of Ministers of Ukraine adopted the Procedure for Establishing the Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation¹⁹⁶⁵. This act stipulates that the loss of cultural heritage includes the following: damage caused to cultural heritage sites, illegal archaeological research, the Museum Fund of Ukraine, the National Archival Fund, the library fund of the National Library of Ukraine and other cultural property, buildings and centres for the preservation, placement and/or exhibition of cultural property, as well as moral damage caused by the lack of access of citizens to the cultural heritage and cultural property of Ukraine. The Ministry of Culture and Information Policy and the State Film Agency of Ukraine are responsible for establishing damage and losses. The assessment of damage should be carried out in line with the methodology approved by an order of the said Ministry in consultation with the Ministry of Community, Territorial and Infrastructure Development of Ukraine, the State Property Fund, the State Archival Service of Ukraine and the State Film Agency of Ukraine. The relevant methodology has not yet been developed.

In October 2022, the Methodology for Establishing the Damage and Amount of Losses Caused to Enterprises, Institutions and Organisations of All Forms of Ownership as a Result of Destruction and Damage to Their Property in Connection with the Armed Aggression of the Russian Federation, as well as Loss of Profit from the Impossibility or Obstacles to Conducting Business¹⁹⁶⁶, which contains separate provisions for assessing damage to immovable cultural heritage sites, was approved. Accordingly, the methodology does not cover all components of cultural heritage.

According to the Ministry of Culture and Information Policy, a museum register (a database of museum collections) was scheduled to be launched in mid-2024, which should contain a catalogue of valuables in Ukraine, as well as information on their export and return¹⁹⁶⁷. In December 2023, the Ministry announced that it was testing the system with individual museums¹⁹⁶⁸, but as of the end of July 2024, it had not yet been officially launched. There is also

1965 On approval of the Procedure for Establishing the Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation: Resolution of the Cabinet of Ministers of 20.03.2022 No. 326. URL: <https://zakon.rada.gov.ua/laws/show/326-2022-n#Text>.

1966 On Approval of the Methodology for Establishing the Damage and Amount of Losses Caused to Enterprises, Institutions and Organisations of All Forms of Ownership as a Result of Destruction and Damage to Their Property in Connection with the Armed Aggression of the Russian Federation, as well as Loss of Profit from the Impossibility or Obstacles to Conducting Business: Order of the Ministry of Economy of Ukraine, State Property Fund of Ukraine of 18.10.2022 No. 3904/1223. URL: <https://zakon.rada.gov.ua/laws/show/z1522-22#Text>.

1967 The Ministry of Culture plans to launch a museum register in 2024. Interfax-Ukraine. 2023. URL: <https://interfax.com.ua/news/general/953524.html>.

1968 Ibid.

no state register of lost cultural property. Given this, the question arises as to how the valuables stored in museums that ended up in the occupied territory, or were destroyed or damaged in the occupied territory, can be identified and returned.

Recommendations

An effective system for assessing the damage to cultural heritage caused by the Russian Federation needs to be developed:

- 1) elaboration of a comprehensive methodology for assessing damage to cultural heritage, as provided for in the Procedure for Establishing Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation;
- 2) launching a register of cultural property of Ukraine and involving the relevant institutions that store cultural property on a permanent basis in filling the register as widely as possible;
- 3) creating a separate state register of cultural heritage sites that were damaged, destroyed or stolen during the armed conflict;
- 4) formulating a state strategy for the return of cultural property.

Issues for further monitoring

- › Legislative initiatives to amend the legislation on collaboration, in particular, Article 111¹ of the CCU, as well as to restrict the rights of persons suspected or accused of collaboration.
- › Further work on the implementation of the State Policy Strategy for the restoration of power and reintegration of the population of the de-occupied territories, and developments in its individual areas, including lustration.
- › Launch and functioning of the Register of the Museum Fund of Ukraine, developments in assessing damage to cultural heritage and a strategy for the return of cultural property.

Issues related to citizenship

Ukraine adheres to the requirements of international instruments on the principles and rules of citizenship, and has ratified the European Convention on Nationality¹⁹⁶⁹ and the UN Convention on the Reduction of Statelessness¹⁹⁷⁰. The grounds for acquiring and losing citizenship in Ukraine are defined by the Law of Ukraine “On Citizenship of Ukraine”¹⁹⁷¹, but its provisions do not fully comply with Ukraine’s international obligations. Despite the development of legislation and the digitalisation of passport services, the main obstacles to obtaining citizenship are administrative barriers to the relevant procedures, especially for vulnerable groups. In addition, given the historical context of the migration situation in Ukraine, the provisions of Article 7 of the Law of Ukraine “On Citizenship of Ukraine” on the acquisition of Ukrainian citizenship are a serious obstacle to access to citizenship rights.

¹⁹⁶⁹ European Convention on Nationality of 06.07.1997. URL: https://zakon.rada.gov.ua/laws/show/994_004#Text.

¹⁹⁷⁰ UN Convention on the Reduction of Statelessness of 03.08.1961. URL: https://zakon.rada.gov.ua/laws/show/995_240#Text.

¹⁹⁷¹ On Citizenship of Ukraine: Law of Ukraine of 18.01.2001 No. 2235-III, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>.

During the reporting period, Ukraine continues to face three major challenges to access to the right to citizenship. The first problem dates back to independence in 1991 and is the difficult situation with the documentation of stateless persons, persons with irregular status in Ukraine¹⁹⁷² and their children who have been living in Ukraine for decades. The second problem is related to the consequences of the war, which make it difficult to access confirmation of citizenship and restoration of Ukrainian documents, and the third is related to the emergence of a form of protection in Ukraine, such as complementary protection, following the adoption of the Law of Ukraine “On Refugees and Persons in Need of Complementary or Temporary Protection”. This situation leads to serious violations of rights, including freedom of movement, medical care, social protection, as well as access to housing and humanitarian assistance.

During the reporting period, the Russian invasion of Ukraine continues, which leads to an increase in the scale of the problem of exercising the right to citizenship, as a significant number of people lost and continue to lose their Ukrainian documents¹⁹⁷³, and therefore have difficulties with their restoration and confirmation of the right to citizenship. Access to citizenship is particularly difficult for those Ukrainian citizens who have been living in the territories under temporary occupation by the Russian Federation since 2014, and children born in these territories, as the relevant archives of the State Migration Service were lost before 2014¹⁹⁷⁴.

The introduction of martial law and other measures in the interests of national security has led to a review of certain provisions of the legislation on the acquisition of Ukrainian citizenship, and the legislative process shows a tendency to introduce new approaches to the acquisition and loss of Ukrainian citizenship, which complicate access to these procedures. However, given the legitimate discretion of the state when introducing restrictions or additional requirements for the acquisition or loss of citizenship, it is important to observe the principle of balancing the interests of the state and the individual. Thus, it is necessary to take into account the difficult situation of people who have not been able to legalise their residence in the state for a long time, or have legalised but are unable or deprived of the opportunity to exercise their right to citizenship in accordance with Ukrainian legislation and, accordingly, to obtain citizenship, as well as people affected by the consequences of the war. To do this, transparent and simplified procedures for restoring and issuing Ukrainian documents should be introduced even while martial law is still in effect.

The problem of access to citizenship

Children born to persons illegally residing on the territory of Ukraine

Despite the ratification of the European Convention on Nationality¹⁹⁷⁵ and the Convention on the Reduction of Statelessness¹⁹⁷⁶, which oblige the state to grant its nationality to a person born on its territory who would otherwise be stateless, Ukraine’s current legislation on acquisition of citizenship by birth contradicts Ukraine’s international obligations. Thus, as of 2023, children

1972 On approval of the Strategy of State Migration Policy of Ukraine for the period up to 2025: Order of the Cabinet of Ministers of Ukraine of 12.07.2017 No. 482-r. URL: <https://zakon.rada.gov.ua/laws/show/482-2017-%D1%80#Text>.

1973 Information from the Ministry of Reintegration of the Temporarily Occupied Territories. URL: <https://minre.gov.ua/2024/02/26/ukrayinczi-na-tot-zmozhut-oformyty-tymchasove-posvidchennya-gromadyany-na-ukrayiny-za-zayavoyu-chleniv-sim%CA%BCyi-abo-zakonnih-predstavnykiv/>.

1974 Issuance of biometric documents for citizens who have previously been documented in the temporarily occupied territory of Ukraine (certain districts of Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol). Frequently asked questions. State Migration Service of Ukraine. URL: <https://dmsu.gov.ua/faq/documentuvannia-ordlo-krim.html>.

1975 European Convention on Nationality of 06.07.1997. URL: https://zakon.rada.gov.ua/laws/show/994_004#Text.

1976 UN Convention on the Reduction of Statelessness of 03.08.1961. URL: https://zakon.rada.gov.ua/laws/show/995_240#Text.

born in Ukraine to persons who do not have legal grounds for residence in Ukraine do not have the right to acquire citizenship by birth¹⁹⁷⁷. Thus, in case of failure to acquire foreign citizenship, such children become stateless.

Due to the migration processes after the collapse of the USSR in Ukraine and the ongoing war since 2014, a significant number of people¹⁹⁷⁸ in Ukraine have become undocumented and often have no legal connection to any country in the world. There is still a problem of documentation and complicated access to Ukrainian citizenship for citizens of the former USSR (both refugees from the former Soviet republics and those born in the territories of these former republics), many of whom do not have any documents¹⁹⁷⁹, except for the passports of the former USSR, do not have citizenship of any state and are effectively deprived of the possibility to obtain Ukrainian citizenship. Due to the absence of legislative opportunities to regulate their legal status for 30 years, most of these people have been living in Ukraine without legal grounds. Accordingly, the children of such people are also at risk of undocumented status and statelessness.

This situation not only negatively affects the legal status of the children of such persons and their ability to exercise their rights, but also leads to the spread of statelessness. The UN Human Rights Committee¹⁹⁸⁰ has recommended that Ukraine amends its legislation to provide legislative and practical guarantees of the right of the child to a nationality and the right not to be deprived of it on any grounds and regardless of the status of the child's parents. The Committee noted the need to amend the legislation on citizenship to facilitate access to citizenship for children, if otherwise such children would be stateless.

That is why, in order to ensure the rights of children and fulfil its international obligations, Ukraine needs to amend its legislation and ensure the right to acquire citizenship for all children who would otherwise become stateless.

Children born in the territory of Ukraine to parents who are recognised as persons in need of complementary protection (children of persons with complementary protection) and children born in the territory of Ukraine to persons who have applied for recognition as a refugee or a person in need of complementary protection (children of asylum seekers)

Children of persons with complementary protection have the right to acquire citizenship by birth (according to part 4, Article 7 of the Law of Ukraine "On Citizenship of Ukraine") and by territorial origin (according to part 9, Article 8 of this Law), and children of asylum seekers – by territorial origin (according to part 9, Article 8 of this Law).

There is a clear tendency for the State Migration Service, as the central executive body that implements state policy in the areas of migration and citizenship, to deny these children the right to acquire Ukrainian citizenship¹⁹⁸¹.

1977 On Citizenship of Ukraine: Law of Ukraine of 18.01.2001 No. 2235-III, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>.

1978 UNHCR estimate of the number of persons with undetermined citizenship in Ukraine. URL: <https://www.unhcr.org/ua/oco-би-без-громадянства#:~:text=Офіційне%20міжнародне%20визначення%20особи%20без,держави%20в%20рамках%20ї%20законодавства>».

1979 Ibid.

1980 General Comment No. 17 of the UN Human Rights Committee States have the obligation to take all appropriate measures, both domestically and in co-operation with other States, to ensure that any child acquires a nationality at birth (CCPR General Comment No. 17: Article 24 (Rights of the child)). URL: <https://www.refworld.org/docid/45139b464.html>.

1981 Unified State Register of Court Decisions. Case No. 320/1248/24. URL: <https://reyestr.court.gov.ua/Review/116456859>; Case No. 640/25338/19. URL: <https://reyestr.court.gov.ua/Review/99150326>; Case No. 640/15887/20. URL: <https://reyestr.court.gov.ua/Review/93009027>; Case No. 320/12909/21. URL: <https://reyestr.court.gov.ua/Review/114799298>; Case No. 320/12900/21. URL: <https://reyestr.court.gov.ua/Review/106856175>.

Moreover, on 22 January 2024, the President of Ukraine submitted Draft Law No. 10425 to the Verkhovna Rada as an urgent draft¹⁹⁸². Thus, in case of adoption of amendments to Article 7 of the Law of Ukraine “On Citizenship of Ukraine”, children born in the territory of Ukraine to parents who are stateless (residing legally, except for those who reside under a temporary or permanent residence permit) or recognised as persons in need of complementary protection, or children born in the territory of Ukraine to parents who have applied for recognition as a refugee or a person in need of complementary protection (children of asylum seekers), lose the right to acquire the citizenship which they have under the current Law of Ukraine.

Such refusals by the State Migration Service and similar draft laws do not comply with the current legislation of Ukraine¹⁹⁸³ and Ukraine’s international obligations, in particular, the 1961 Convention on the Reduction of Statelessness¹⁹⁸⁴, the 1989 Convention on the Rights of the Child¹⁹⁸⁵ and the practice of EU member states.

For example, according to the Belgian Nationality Code¹⁹⁸⁶ a child born in Belgium and who has not acquired any other nationality automatically acquires Belgian nationality without the need to recognise his or her status or that of the parents, and according to the legislation of the Netherlands¹⁹⁸⁷ a child has the right to acquire nationality provided that he or she has the same documents as the parents (permanent or temporary residence permit issued on the basis of applying for or acquiring protection).

The problem of confirming citizenship and the risk of losing citizenship

As a result of Russia’s ongoing military invasion of Ukraine since 2014, a large number of Ukrainian citizens¹⁹⁸⁸ have either lost documents certifying their legal ties to Ukraine or have never received them. Due to the lack of access of the State Migration Service to the archives that remained in the territory temporarily occupied by Russia since 2014 and had not been digitised, it is difficult to identify such persons and confirm their citizenship of Ukraine. In this regard, such people need to undergo the procedure of identification and to issue or restore documents on facts of legal significance, including birth and marriage.

Despite the simplification of the procedures for issuing a Ukrainian passport and other documents certifying facts of legal significance, administrative obstacles to accessing the relevant procedures continue to exist. In particular, authorised state authorities often provide verbal refusals to accept documents and demand documents that are not stipulated by law, in particular in the procedure for issuing a passport of a citizen of Ukraine. As a result of such unlawful actions, in some cases, Ukrainian citizens who have not been able to confirm their citizenship are forced to obtain stateless status¹⁹⁸⁹.

1982 On some issues in the field of migration regarding the grounds and procedure for acquiring and terminating Ukrainian citizenship: Draft Law of Ukraine, registration No. 10425 of 22.01.2024. URL: <https://td.rada.gov.ua/billInfo/Bills/Card/43564>.

1983 On Citizenship of Ukraine: Law of Ukraine of 18.01.2001 No. 2235-III, Art. 7. URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>.

1984 UN Convention on the Reduction of Statelessness of 03.08.1961. URL: https://zakon.rada.gov.ua/laws/show/995_240#Text.

1985 UN Convention on the Rights of the Child of 20.11.1989. URL: https://zakon.rada.gov.ua/laws/show/995_021#Text.

1986 Wetboek van de Belgische nationaliteit. URL: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1984062835&table_name=wet.

1987 Rijkswet op het Nederlanderschap. URL: <https://wetten.overheid.nl/BWBR0003738/2016-03-31/0>.

1988 Information from the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine. URL: <https://minre.gov.ua/2024/02/26/ukrayinczi-na-tot-zmozhut-oformyty-tymchasove-posvidchennya-gromadyany-na-ukrayiny-za-zayavoyu-chleniv-sim%CA%BCyi-abo-zakonnih-predstavnykiv/>.

1989 History of the beneficiary of the Right to Protection CF. URL: <https://r2p.org.ua/page/istoriya-ostapa-zalishalos-prosto-zabrati-pasport>.

Access to confirmation of citizenship is also affected by the lack of an effective administrative procedure for establishing legal facts of life, such as birth, death, marriage and divorce, which occurred in the temporarily occupied territory of Ukraine¹⁹⁹⁰.

The lengthy and administratively burdensome process of confirming citizenship in Ukraine causes serious human rights violations, restricts the right to an IDP certificate, IDP housing allowance, free medical treatment, rehabilitation and social protection, and denies access to humanitarian assistance. Most of these people have been affected by the hostilities, evacuated, and belong to low-mobility and other vulnerable groups, and as a result cannot take care of themselves and need urgent medical care, rehabilitation and assistance. In addition, there is a problem of limited access for such people to use temporary accommodation, to obtain premises from the housing funds for temporary residence of IDPs, and to compensation procedures for destroyed or damaged residential property, but often their housing is damaged, destroyed, or located in the non-government controlled area.

During the reporting period, there is also a problem of confirming Ukrainian citizenship for Ukrainian citizens who came under occupation and were forcibly moved to the Russian Federation, where their rights are constantly violated. A large number of such persons have lost their documents and are unable to restore them in the territory of the Russian Federation. Ukraine has developed a simplified procedure for processing documents for returning to Ukraine, but administrative obstacles to confirm citizenship for these persons still exist. The problem of confirming citizenship and obtaining documents for returning to Ukraine is particularly acute for forcibly displaced persons who served their sentences.

The European Convention on Nationality provides for the obligation of a state to ensure that applications for the acquisition or confirmation of its nationality are processed within a reasonable time and that decisions on the acquisition or confirmation of nationality are given reasons in writing. The practical implementation of these obligations will contribute to ensuring the right to citizenship of people from the territories under the temporary military control of the Russian Federation.

In addition, the current Strategy of the State Migration Policy of Ukraine for the period up to 2025¹⁹⁹¹, approved by the Cabinet of Ministers of Ukraine on 12 July 2017, No. 482-r, provides for the reduction of administrative barriers to the freedom of movement of the population of Ukraine and the creation of convenient systems for issuing identity documents confirming Ukrainian citizenship, but the objectives of the strategy are not always properly implemented in relation to vulnerable categories of persons and persons at risk of statelessness.

Lack of a simplified procedure for admission to Ukrainian citizenship for persons recognised as persons in need of complementary protection

The current legislation of Ukraine (Article 9 of the Law of Ukraine “On Citizenship of Ukraine”) provides for a shorter period of continuous residence in Ukraine and the absence of certain other conditions for obtaining Ukrainian citizenship only for persons who are recognised as refugees or granted asylum in Ukraine, i.e., it creates a certain simplified procedure for obtaining Ukrainian citizenship for this category of people, unlike other categories of foreigners or stateless persons.

Instead, the Ukrainian legislation fails to provide a simplified procedure for acquiring Ukrainian citizenship for persons recognised as those in need of additional protection.

1990 For more details, see the section “Protection of the rights of victims of Russia’s armed aggression against Ukraine”..

1991 On approval of the Strategy of State Migration Policy of Ukraine for the period up to 2025: Order of the Cabinet of Ministers of Ukraine of 12.07.2017 No. 482-r. URL: <https://zakon.rada.gov.ua/laws/show/482-2017-%D1%80#Text>.

The relevant amendments to the Ukrainian legislation will be in line with the legislation of the EU Member States. For example, most EU member states have a shortened procedure for granting citizenship to persons recognised as persons with complementary protection, in particular, by setting a shorter period of residence than for other foreigners or stateless persons (Belgium, Bulgaria, Cyprus, France, Ireland, the Netherlands, Sweden, and France - 5 years; Greece - 7 years; Germany - 8 years¹⁹⁹²).

Recommendations

1. Amend the Law of Ukraine “On Citizenship of Ukraine” to grant the right to acquire Ukrainian citizenship to all children born in the territory of Ukraine who do not acquire another citizenship at birth.
2. Ensure that the right of children of persons with complementary protection and children of asylum seekers to acquire Ukrainian citizenship is exercised in accordance with the current legislation by detailing the provisions of the Law of Ukraine “On Citizenship of Ukraine”.
3. Adopt the Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of State Registration of Civil Status Acts that Occurred in the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of Ukraine” (registration No. 9069 of 28 February 2023) and ensure effective implementation of the provisions of the legislation on the recognition of documents certifying the legal facts of birth, death, registration of marriage and divorce issued in the territories under the temporary military control of the Russian Federation.
4. Simplify the procedure for issuing a passport of a citizen of Ukraine for people from the territories under the temporary military control of the Russian Federation and where hostilities are ongoing.
5. Ensure that applications for the acquisition or confirmation of Ukrainian citizenship are considered within a reasonable period of time.
6. Establish in the Law of Ukraine “On Citizenship of Ukraine” a simplified procedure for granting Ukrainian citizenship to persons recognised as persons in need of complementary protection, under the same rules as for persons recognised as refugees or granted asylum in Ukraine.

Issues for further monitoring

- › The Draft Law of Ukraine “On Amendments to the Law of Ukraine ‘On Citizenship of Ukraine’ regarding the Grounds and Procedure for Acquiring and Terminating Citizenship of Ukraine” (registration No. 6368-d of 30 June 2022), which fails to address the issue of citizenship acquisition by children born in Ukraine to parents who are illegally residing in Ukraine and may lead to the loss of the existing right to citizenship for certain categories of these children.
- › The Draft Law of Ukraine “On Certain Issues in the Field of Migration Regarding the Grounds and Procedure for Acquiring and Terminating Ukrainian Citizenship” (registration No. 10425 of 22 January 2024), which does not address the issue of acquiring citizenship by children born in the territory of Ukraine to parents illegally residing on the territory of Ukraine who are recognised as persons in need of complementary protection, and children born in the territory of Ukraine to persons who have applied for recognition as refugees or persons in

1992 AIDA. Refugee rights subsiding? Europe’s two-tier protection regime and its effect on the rights of beneficiaries. URL: <https://www.refworld.org/reference/regionalreport/ecre/2016/en/116273>.

need of complementary protection, but, on the contrary, may lead to the loss of the existing right to citizenship of these children.

- › The Draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine on the Introduction of Criminal Liability for Misleading the Authorized Body to Obtain an Identity Document Confirming Citizenship of Ukraine, or Recognition as a Stateless Person or Recognition as a Refugee or a Person in Need of Complementary Protection” (registration No. 11022 of 19 February 2024), which proposes to establish criminal liability for misleading the authorized body to obtain an identity document confirming the citizenship of Ukraine. If adopted, these amendments will become a serious obstacle for undocumented Ukrainian citizens from TOT to access the issuance of a Ukrainian passport, as the process of finding witnesses for this procedure is complicated, and if criminal liability for providing false information is introduced, there is a high risk that applicants and witnesses will refuse to participate in the identification procedure.

Property rights

One of the most pressing issues today related to the protection of property rights is to ensure the proper functioning of the mechanism for providing compensation for damage or destruction of housing as a result of the armed aggression of the Russian Federation. On 23 February 2023, Law of Ukraine No. 2923-IX was adopted¹⁹⁹³. The compensation procedure was also further regulated by a number of resolutions of the Cabinet of Ministers of Ukraine. However, the newly established compensation mechanism does not apply in cases where the destruction or damage to the relevant real estate occurred before 24 February 2022. It also does not apply to properties that were located in the territory of Ukraine temporarily occupied by the Russian Federation as of that date. Such conditions limit citizens' access to the compensation mechanism, preventing them from receiving compensation, and lead to discrimination against some individuals affected by the armed aggression against Ukraine. In this regard, the compensation mechanism needs to be improved to ensure that all conflict-affected persons whose housing was destroyed or damaged as a result of the armed aggression of the Russian Federation can be provided with fair compensation, regardless of the date of destruction or damage, as well as the location of the relevant real estate.

At the same time, it is extremely important for obtaining compensation to have information on the ownership of the relevant real estate object registered in the State Register of Real Property Rights (SRPR). However, the said register does not contain information on a significant number of real estate objects. Further entry of the relevant data into the SRPR may be hindered by the loss or damage of title documents and archives of the technical inventory bureau. To mitigate these risks, the state should take a number of steps to increase the level of digitisation of the archives of the technical inventory bureau.

Issues of compensation for property destroyed or damaged as a result of armed aggression by the Russian Federation

According to the Kyiv School of Economics (KSE) analytical team, as of January 2024, the amount of direct damage to Ukraine's infrastructure during the full-scale invasion, including the

¹⁹⁹³ On Compensation for Damage and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine: Law of Ukraine of 23.02.2023 No. 2923-IX. URL: <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

damage caused by the explosion of the Kakhovka hydroelectric power plant, is almost USD 155 billion. The housing stock suffered the greatest damage. As of January 2024, 250,000 buildings were destroyed or damaged, including 222,000 private houses, more than 27,000 apartment buildings and 526 dormitories. Direct losses from the destruction of such facilities amounted to USD 58.9 billion. The greatest damage was done to housing in Donetsk, Kyiv, Luhansk, Kharkiv, Chernihiv and Kherson regions¹⁹⁹⁴.

In the context of the large-scale destruction of housing stock experienced by various regions of Ukraine over the past two years, special attention in 2023 was paid to the creation and launch of a new mechanism for providing compensation to those whose housing was destroyed or damaged as a result of the armed aggression of the Russian Federation. On 23 February 2023, the Ukrainian Parliament adopted Law of Ukraine No. 2923-IX. Its provisions define the legal and organisational framework for compensation for damage and destruction of residential real estate as a result of hostilities, terrorist acts, diversion caused by the armed aggression of the Russian Federation against Ukraine. However, compensation is provided on condition that the property was destroyed or damaged in the period from 24 February 2022, and that as of 24 February 2022 the relevant property was not located in the temporarily occupied territory of Ukraine.

Only individuals – citizens of Ukraine who are owners, construction customers, investors in the relevant facilities, members of housing cooperatives who have purchased an apartment, other residential premises in a building, a manor house, a garden or a country house of a cooperative but have not registered their ownership, as well as heirs of the above persons - may receive compensation under Law of Ukraine No. 2923-IX. In the case of compensation for damaged common property of an apartment building, the recipients of compensation may include, in particular, associations of co-owners of apartment buildings, managers of apartment buildings, housing cooperatives that maintain the respective buildings¹⁹⁹⁵.

Foreigners and stateless persons legally staying in Ukraine who may have been owners, construction customers or investors in the relevant real estate objects will not be able to receive compensation under Law of Ukraine No. 2923-IX, and therefore their rights remain unprotected¹⁹⁹⁶.

The procedure for providing compensation, as well as a number of related issues, was regulated in more detail by the Government. In particular, the mechanism for providing compensation for damage to certain categories of residential real estate was regulated by the Resolution of the Cabinet of Ministers of Ukraine dated 21 April 2023 No. 381¹⁹⁹⁷. Its provisions define the amount of compensation, regulate the receipt of compensation, reporting on the use of compensation, and the procedure for appealing decisions, in particular, on refusal to provide compensation or its amount.

1994 The total amount of damage caused to Ukraine's infrastructure has increased to almost \$155 billion - KSE Institute's estimate as of January 2024. Kyiv School of Economics. 2024. URL: <https://kse.ua/ua/about-the-school/news/zagalna-suma-zbitkiv-zavdana-infrastrukturi-ukrayini-zroslo-do-mayzhe-155-mlrd-otsinka-kse-institute-stanom-na-sichen-2024-roku/>.

1995 On Compensation for Damage and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine: Law of Ukraine of 23.02.2023 No. 2923-IX. URL: <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

1996 Compensation for damaged and destroyed real estate: analysis of the new regulation. Analytical material. CF "Right to Protection". 2023. URL: <https://r2p.org.ua/page/kompensaciya-za-poshkodzhene-ta-znyshchene-neruhome-majno-analiz-novogo-regulyuvannya>.

1997 On Approval of the Procedure for Providing Compensation for the Restoration of Certain Categories of Real Estate Damaged as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Using the eVindication Electronic Public Service: Resolution of the Cabinet of Ministers of Ukraine of 21.04.2023 No. 381. URL: <https://zakon.rada.gov.ua/laws/show/381-2023-%D0%BF#Text>.

However, the provisions of this resolution apply only to a limited number of damaged objects and do not cover a number of real estate objects for which compensation is provided by Law of Ukraine No. 2923-IX, including construction objects or their components. As a result, it is currently impossible to file a claim and receive compensation for damage to such properties. The mechanism of compensation for their damage requires additional regulation by the Government.

The procedure for granting compensation for destroyed real estate, the formula for calculating the amount of compensation, and the use of housing certificates and funds received as compensation to finance the construction of a manor house, garden or country house are regulated by the Resolution of the Cabinet of Ministers of Ukraine of 30 May 2023 No. 600¹⁹⁹⁸.

On 10 May 2023, the eRestoration programme was launched and applications for compensation for damaged facilities were accepted, and on 8 June 2023, the Ministry of Communities, Territories and Infrastructure of Ukraine (Ministry of Infrastructure) announced the first payments¹⁹⁹⁹.

On 1 August 2023, another stage of the compensation programme was launched - applications for compensation for completely destroyed housing became possible. Compensation for destroyed housing began with compensation in the form of financing the purchase (investment/financing of construction) of housing using a housing certificate²⁰⁰⁰. On 27 December 2023, the Ministry of Infrastructure announced the start of reserving funds under housing certificates for the purpose of further purchase of housing²⁰⁰¹. As of 06 March 2024, it is reported that more than 1000 families have already purchased new housing under the compensation programme²⁰⁰². According to the amendments to the Law of Ukraine No. 2923-IX, which entered into force in April 2024, a housing certificate can now be used to finance the acquisition of not only a residential property (including investment/financing of its construction), but also the land plot on which such property is located and a share in the ownership of such property²⁰⁰³.

At the end of January 2024, it was also announced that compensation for destroyed housing would be provided by allocating funds to finance the construction of a manor house, garden or country house²⁰⁰⁴.

Additionally, it is also expected that the stage of compensation for repairs to the damaged facility already carried out at their own expense, which is provided for by law from 1 January 2024, will begin. However, given that there is still no possibility to apply for compensation for repairs that have already been made, those victims who have repaired their damaged housing at their own expense cannot currently receive the compensation provided for by law. In addition, as part of an international procedure, on 2 April 2024, the Register of Damages Caused by the Russian Aggression against

1998 On Approval of the Procedure for Providing Compensation for Destroyed Real Estate Objects: Resolution of the Cabinet of Ministers of Ukraine of 30.05.2023 No. 600. URL: <https://zakon.rada.gov.ua/laws/show/600-2023-%D0%BF#Text>.

1999 eRecovery: the first payments of housing repair assistance have started. Ministry of Communities, Territories and Infrastructure of Ukraine. 2023. URL: <https://mtu.gov.ua/news/34390.html>.

2000 The results of the new stage of eRestoration: more than 1400 Ukrainians have applied to Diia for compensation for destroyed property. Ministry of Digital Transformation of Ukraine. Government portal. 2023. URL: <https://www.kmu.gov.ua/news/rezultaty-novoho-etapu-ievidnovlennia-ponad-1400-ukraintsiv-podaly-zaiavy-v-dii-pro-otrymannia-kompensatsii-za-zruinovane-maino>.

2001 Oleksandr Kubrakov: From today, we are starting to pay compensation to those Ukrainians whose homes were destroyed by Russians. Ministry of Communities, Territories and Infrastructure of Ukraine. 2023. URL: <https://mtu.gov.ua/news/35078.html>.

2002 Oleksandr Kubrakov: Over 1000 Ukrainian families have purchased new housing under the compensation programme. Ministry of Communities, Territories and Infrastructure of Ukraine. 2024. URL: <https://mtu.gov.ua/news/35374.html>.

2003 On Amendments to Certain Laws of Ukraine Concerning Improvement of Legal Regulation of Issues Related to Prohibition of Alienation of Real Estate Acquired (including Invested/Financed) with the Use of a Housing Certificate for the Acquisition of Residential Real Estate: Law of Ukraine No 3588-IX of 22.02.2024. URL: <https://zakon.rada.gov.ua/laws/show/3588-20#n83>.

2004 Rebuilding on your own land: a new type of compensation for destroyed housing has been launched. Ministry of Communities, Territories and Infrastructure of Ukraine. 2024. URL: <https://mtu.gov.ua/news/35194.html?fbclid=IwAR2UNn8nSAMRHirMs9wNXIECI CrvoxIavXY2D6BMJ07uqAcb8MYGf5fGeXE>.

Ukraine began accepting applications for damaged or destroyed housing. Subsequently, it is expected that the categories of losses for which applications may be submitted to such a Register will be expanded²⁰⁰⁵. However, submitting an application will not mean that the applicant will receive compensation quickly. This, in addition to the launch of the Register itself, will require the creation of an appropriate compensation mechanism²⁰⁰⁶.

Another important issue is the development of a mechanism to provide compensation for the destruction of housing located in the territories occupied after 24 February 2022. To this end, the Government from 14 November 2023 to 14 February 2024, a pilot project was implemented to conduct a survey of certain categories of destroyed real estate, in particular, using remote sensing information products²⁰⁰⁷. The purpose of this project is to establish the fact of destruction of real estate objects and provide compensation to their owners based on the results of the survey carried out using the relevant information products²⁰⁰⁸.

Thus, despite the rapid launch and active implementation of the compensation mechanism, a number of issues still need to be addressed and resolved. The most important issues are the following:

(1) No possibility to receive compensation under Law of Ukraine No. 2923-IX and relevant government resolutions by persons whose real estate was destroyed or damaged as a result of the armed aggression of the Russian Federation before 24 February 2022

A significant number of properties in the Donetsk and Luhansk regions were destroyed or damaged before 24 February 2022. Some owners of destroyed housing were able to receive financial compensation before the full-scale invasion began under the previously introduced procedure²⁰⁰⁹. However, due to the shortcomings of the regulation in place at the time, some conflict-affected persons did not receive any payments for the destruction and damage to their homes that occurred between 2014 and 2021. This is further evidenced by the fact that at the beginning of 2022, the State Budget of Ukraine for the relevant year provided for expenditures in the amount of UAH 80,853.0 thousand under the programme “Monetary compensation to conflict-affected persons whose residential houses (apartments) were destroyed as a result of a military emergency caused by the armed aggression of the Russian Federation” (code 3901070)²⁰¹⁰, with the maximum amount of compensation not exceeding UAH 300 thousand per destroyed housing²⁰¹¹. The solution to this problem should be to extend the compensation mechanism established by Law of Ukraine No 2923-IX and relevant government resolutions to

2005 The Register of Damages for Ukraine starts accepting applications for compensation for damage caused by Russian aggression. Register of damages caused by the aggression of the Russian Federation against Ukraine. 2024. URL: <https://rd4u.coe.int/uk/-/register-of-damage-for-ukraine-opens-for-claims>.

2006 Frequently asked questions. Register of damages caused by the aggression of the Russian Federation against Ukraine. 2024. URL: <https://rd4u.coe.int/uk/faq#f%22379613%22:f6>.

2007 Report on the results of the implementation of the pilot project on conducting a survey of destroyed certain categories of real estate, in particular with the use of information products of remote sensing. Ministry of Development of Communities, Territories and Infrastructure of Ukraine. 2024. URL: https://auc.org.ua/sites/default/files/zvit_eksperymentalnyy_proekt_melitopol_1_1.pdf.

2008 On the implementation of a pilot project to conduct a survey of destroyed certain categories of real estate, in particular with the use of remote sensing information products: Resolution of the Cabinet of Ministers of Ukraine of 27.10.2023 No. 1185. URL: <https://zakon.rada.gov.ua/laws/show/1185-2023-%D0%BF#Text>.

2009 On Approval of the Procedure for Providing and Determining the Amount of Financial Assistance to Victims of Emergency Situations and the Amount of Financial Compensation to Victims Whose Residential Buildings (Apartments) were Destroyed as a Result of a Military Emergency Caused by the Armed Aggression of the Russian Federation: Resolution of the Cabinet of Ministers of Ukraine of 18.12.2013 No. 947. URL: <https://zakon.rada.gov.ua/laws/show/947-2013-%D0%BF#Text>.

2010 On the State Budget of Ukraine for 2022: Law of Ukraine of 02.12.2021 No. 1928-IX. URL: <https://zakon.rada.gov.ua/laws/show/1928-20/ed20211202#Text>.

2011 On Approval of the Procedure for Providing and Determining the Amount of Financial Assistance to Victims of Emergency Situations and the Amount of Financial Compensation to Victims Whose Residential Buildings (Apartments) were Destroyed as a Result of a Military Emergency Caused by the Armed Aggression of the Russian Federation: Resolution of the Cabinet of Ministers of Ukraine of 18.12.2013 No. 947 (as amended on 09.12.2021). URL: <https://zakon.rada.gov.ua/laws/show/947-2013-%D0%BF#Text>.

those persons whose specified categories of real estate were destroyed or damaged as a result of the armed aggression of the Russian Federation before 24 February 2022. If the mechanism for providing them with compensation is to be established by a separate legal act, the solutions proposed therein should be equivalent to those provided for by Law of Ukraine No. 2923-IX and the Government²⁰¹².

(2) Inability to receive compensation for damage and destruction of facilities that as of 24 February 2022 were located in the temporarily occupied territories

The preamble to Law of Ukraine No. 2923-IX stipulates that its effect in terms of compensation does not apply to real estate objects that were located on the territory of Ukraine temporarily occupied by the Russian Federation on the day of entry into force of Presidential Decree No. 64/2022 “On the imposition of martial law in Ukraine” (i.e. as of 24 February 2022). Therefore, the owners of such properties, who are effectively deprived of any opportunity to restore their housing in any way while in the government-controlled territory of Ukraine, are not entitled to compensation under the new compensation mechanism. This approach leads to discriminatory restrictions on the right of some citizens to receive compensation. In view of this, it is necessary to consider the possibility and ways to extend the scope of Law of Ukraine No. 2923-IX to include properties located in such territories and/or to provide other solutions to properly protect the rights of owners of such property and ensure decent living conditions for them in the government-controlled territory of Ukraine²⁰¹³.

Other problems with the implementation of the compensation mechanism include, in particular:

Inability to submit an information notice on damaged and destroyed real estate as a result of hostilities, terrorist acts, diversion caused by the armed aggression of the Russian Federation against Ukraine, in respect of objects destroyed or damaged before 24 February 2022.

The Ministry of Digital Transformation of Ukraine was obliged to provide the opportunity to submit it back in September 2022, but even today there are no technical possibilities to submit such a notification²⁰¹⁴.

The untimely and incomplete introduction of a paper-based application form for compensation.

The legislation provides for the possibility of filing such applications in paper form through social protection authorities, administrative service centres (ASCs) and notaries. In particular, if the owner of the damaged real estate is an incapacitated/limitedly capable person or a person under the age of 18, an application on behalf of such a person may be submitted by one of the legal representatives exclusively in paper form²⁰¹⁵. However, the possibility of submitting applications in paper form became available only at the end of 2023 and still remains limited, as applications can only be submitted through ASCs or notaries. There is currently no possibility to apply for compensation through social protection authorities²⁰¹⁶.

2012 Compensation for destruction and damage to housing: a year of regulation. Analytical material. Right to Protection. CF. 2024. URL: <https://r2p.org.ua/page/kompensatsiia-za-znyshchennia-ta-poshkodzhennia-zhytla-rik-rehuliuвання>.

2013 Ibid..

2014 Ibid.

2015 On Approval of the Procedure for Providing Compensation for the Restoration of Certain Categories of Real Estate Damaged as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Using the eVindication Electronic Public Service: Resolution of the Cabinet of Ministers of Ukraine of 21.04.2023 No. 381. URL: <https://zakon.rada.gov.ua/laws/show/381-2023-%D0%BF#Text>.

2016 Compensation for destruction and damage to housing: a year of regulation. Analytical material. Right to Protection CF. 2024. URL: <https://r2p.org.ua/page/kompensatsiia-za-znyshchennia-ta-poshkodzhennia-zhytla-rik-rehuliuвання>.

Failure to implement the technical functionality of Diia required to implement the compensation mechanism in a timely manner.

On 1 January 2024, new provisions of Law of Ukraine No. 2923-IX came into force, which provide for compensation for damaged real estate by providing cash for construction products purchased and/or repairs to the damaged real estate by the recipient of compensation at their own expense. However, the technical functionality of Diia required for submitting an application for such compensation was not introduced in time. In this regard, those who have repaired their damaged housing at their own expense cannot receive the compensation provided for by law²⁰¹⁷.

Lack of mechanism to provide compensation for the destruction and damage to movable property, including vehicles.

Given the numerous cases of damage to vehicles as a result of armed aggression, as well as the destruction of other movable property located in destroyed and damaged housing, as the next stage in improving the already established compensation mechanism, it would be advisable for the Parliament and the Government to develop a mechanism for recording such damages and providing compensation for damage and destruction of movable property, including vehicles, as a result of armed aggression by the Russian Federation.

To this end, on 3 April 2024, the Verkhovna Rada registered Draft Law No. 11147²⁰¹⁸ on compensation for damage and destruction of motor vehicles as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation against Ukraine. However, this draft law does not establish an effective and fair mechanism for accounting for damage and providing compensation for the destruction and damage to motor vehicles, duplicating in many cases the provisions of Law of Ukraine No. 2923-IX, which addresses damage and destruction of real estate, without adequately adapting these provisions to the specifics of motor vehicles. Moreover, the said draft law require significant revision, as it (i) does not cover damage and destruction of vehicles as a result of the armed aggression of the Russian Federation before 24 February 2022, as well as to vehicles that were located in the territories temporarily occupied by the Russian Federation as of that date; (ii) needs further refinement regarding the range of compensation recipients (currently, compensation is available to Ukrainian citizens and legal entities without limitations on their place of registration or potential control by persons who may be citizens/residents of the aggressor country); (iii) requires additional analysis and refinement in terms of the types of objects – motor vehicles – for which compensation is provided for damage and/or destruction (currently, the draft law covers all motor vehicles, including those that could have been specifically purchased for the purposes of hostilities); (iv) needs improvement in the mechanism for applying for compensation and the rules for its provision.

However, despite a number of shortcomings, the finalisation and adoption of this draft law is an important and necessary step to ensure fair compensation to vehicle owners affected by armed aggression.

Therefore, despite a number of fairly successful steps to introduce a new compensation mechanism, both the legislative regulation and the practical side of its implementation still have a number of shortcomings and aspects that need to be further regulated and improved in order to protect the rights of those whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation.

2017 Ibid.

2018 On Compensation for Damage and Destruction of Motor Vehicles as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Military Aggression of the Russian Federation against Ukraine: Draft Law of Ukraine, registration No. 11147 of 03.94.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43943>.

Improving the SRPR and transferring information from other registers to it

One of the most important issues, which, in particular, affects the possibility of obtaining compensation in case of damage or destruction of real estate as a result of armed aggression, is the confirmation of a person's ownership of the relevant object. The main confirmation of a person's ownership of a real estate object is the information on ownership entered in the SRPR.

The state registration of real rights to immovable property using the SRPR began in 2013. According to analysts, the SRPR is only 40% full, because the vast majority of property rights acquired before 2013, when the use of this register began, were not entered therein. For the territories occupied by Russia in 2014, this share is even lower²⁰¹⁹.

In the absence of relevant information on the ownership of a particular object that originated before 2013 in the SRPR, a person may apply for the relevant state registration of ownership right. In this case, information about such ownership or other property rights may be contained in the archival part of the SRPR.

If the document certifying the acquisition of ownership or other property rights derived from ownership, which were registered before 2013 in accordance with the legislation in force at that time, is damaged or destroyed, the state registration of such right may be carried out in the SRPR at the request of the applicant in accordance with the procedure established by the Government. At the same time, if the relevant registration before 2013 was carried out exclusively on paper data carriers (register books, registration files) maintained by enterprises of the technical inventory bureau, the state registration of the relevant right will now be carried out based on the information from such data carriers²⁰²⁰.

However, in many cases, the circumstances of the armed aggression of the Russian Federation against Ukraine led to the loss or destruction of the relevant paper-based title documents, which makes it impossible to quickly carry out such state registration of property rights. The same risks of loss and destruction are also relevant for the paper archives of the Bureau of Technical Inventory²⁰²¹. Increasing the level of digitisation of the archives of the technical inventory bureau should help to resolve this issue. Steps aimed at improving the efficiency of digitisation of such documentation include, in particular:

- › developing a detailed algorithm for digitising documents, taking into account their chronological and thematic classification, ensuring data integrity when transferred to electronic format;
- › establishing clear scanning quality standards and requirements for electronic document storage;
- › ensure adequate funding and technical support for the digitisation of the archives of the technical inventory bureau;
- › implementation of a system for monitoring and auditing the digitisation process²⁰²².

2019 October 2022 Policy Brief "Rapid Needs Assessment: Protection of Property Rights during and after the War in Ukraine". 2022. URL: https://d1y8sb8igg2f8e.cloudfront.net/documents/Оцінка_потреб_для_захисту_прав_власності_Rapid_Needs_Assessment_-_Ukrainian_2.pdf.

2020 On state registration of real rights to immovable property and their encumbrances: Resolution of the Cabinet of Ministers of Ukraine of 25.12.2015 No. 1127. URL: <https://zakon.rada.gov.ua/laws/show/1127-2015-%D0%BF#Text>.

2021 Publication of the Board Chair of the NGO "ATI "Skhidtekhinventarizatsiya" I.V. Meleshkin on the loss of the BTI archive in Kharkiv region on Facebook. 26.02.2024. URL: <https://www.facebook.com/share/p/v88dTtXcxzRMZa4T/>.

2022 Digitisation of technical documentation: internal challenges in Ukraine and international experience. Analytical material. Right to Protection CF. 2023. URL: <https://2p.org.ua/page/otsyfruvannia-tehnicnoi-dokumentatsii-vnutrishni-vyklyky-v-ukraini-ta-mizhnarodnyi-dosvid>.

In the context of limited access to the State Land Cadastre and the termination of the Public Cadastral Map, there is a problem of access to information about a land plot, such as the purpose of the land plot, type of land, etc. In territories other than the areas of active hostilities and temporarily occupied territories, the transfer of data from the State Land Cadastre that do not pose risks to human life in the current security situation in the country to the SRPR can significantly simplify the exercise of citizens' rights to land.

Russia's full-scale invasion of Ukraine has also affected the ability to perform current registration actions in the SRPR. Following the beginning of the invasion and complete blocking of access to the SRPR, as of March 2024, a limited number of persons, defined by the Government, have the right to perform registration actions in the SRPR. In particular, these include state registrars of real rights to immovable property and their encumbrances who are in an employment relationship with the subject of state registration/subject of state registration of rights, whose location is in administrative-territorial units that do not belong to the territories of active hostilities (except for the territories of active hostilities, where state electronic information resources operate) and the territories temporarily occupied by the Russian Federation, for which the date of completion of hostilities or temporary occupation has not been determined, in line with the list of such territories approved by the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine²⁰²³. Relevant territorial restrictions are also provided for notaries²⁰²⁴. Given the current security situation in Ukraine, this approach to determining the entities that perform registration actions in the SRPR seems generally reasonable. At the same time, once control over the temporarily occupied territories is regained and active hostilities cease, steps will need to be taken to grant access to the SRPR to entities temporarily restricted from it at the moment.

Privatisation of assets and updating the procedures of the State Property Fund of Ukraine

In accordance with the current legislation of Ukraine, the State Property Fund of Ukraine²⁰²⁵ (SPFU) is a central executive body with a special status that implements state policy, in particular in the field of privatisation, lease, use and disposal of state property, and management of state property. In 2023, the regulation of SPFU's activities and organisational structure were amended, inter alia, to ensure that regional offices of SPFU, which operated as separate legal entities, become separate subdivisions of SPFU without legal entity status²⁰²⁶. Additionally, the provisions of the law on the appointment of deputy heads of the SPFU were amended, the provisions on the Unified Register of State Property were updated, and new conditions were established according to which the head or a member of the supervisory board of a state unitary enterprise or business entity in which the state holds more than 50 per cent of the shares (stakes) cannot be (i) an individual who is a citizen and/or resident of a state recognised by the Verkhovna Rada as an aggressor state; and (ii) an individual in respect of whom a special sanctions regime has been applied. In addition, as noted by the SPFU, the relevant legislative changes in May 2023 allow for the resumption of large-scale privatisation²⁰²⁷.

2023 On Approval of the List of Territories where Military Operations are (were) Conducted or Temporarily Occupied by the Russian Federation: Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine of 22.12.2022 No. 309. URL: <https://zakon.rada.gov.ua/laws/show/z1668-22#n13>.

2024 Some issues of state registration and functioning of unified and state registers kept by the Ministry of Justice under martial law. Resolution of the Cabinet of Ministers of Ukraine of 06.03.2022 No. 209. URL: <https://zakon.rada.gov.ua/laws/show/209-2022-%D0%BF#Text>.

2025 On the State Property Fund of Ukraine: Law of Ukraine of 09.12.2011 No. 4107-VI. URL: <https://zakon.rada.gov.ua/laws/show/4107-17#Text>.

2026 On Amendments to Certain Legislative Acts of Ukraine on Optimisation of the Activities of the State Property Fund of Ukraine, Improvement of State Property Management and Increase of Effectiveness of Sanctions Policy: Law of Ukraine of 30.03.2023 No. 3137-IX. URL: <https://zakon.rada.gov.ua/laws/show/3137-IX#Text>.

2027 Large-scale privatisation, sanctioned property, improvement of the SPFU structure: The Verkhovna Rada adopted draft law No. 8250. State Property Fund of Ukraine. 2023. URL: <https://www.spfu.gov.ua/ua/news/9716.html>.

The amendments to the Law of Ukraine “On Sanctions” also provide that the seizure of assets, imposition of a moratorium, prohibition of their disposal or use, or pledging of such assets does not prevent their recovery as state revenue as one of the sanctions provided for by such law. Court decisions on the application of such sanctions are sent to the SPFU on the day they come into force, and the assets in respect of which the decision to apply the relevant sanction was made are transferred to the SPFU, which manages and sells them. The proceeds from the sale of such assets are credited to the State Budget of Ukraine and transferred to the fund for liquidation of the consequences of armed aggression²⁰²⁸.

According to the Analytical Report on the work of the State Property Fund of Ukraine and the progress of state property privatisation for 9 months of 2023, as of 30 September 2023, according to the State Treasury Service of Ukraine, UAH 2,683.4113 million was transferred to the general fund of the State Budget from the privatisation of state property and other revenues directly related to the privatisation process (including the balance as of 01 January 2023 in the amount of UAH 81.3112 million). In addition, as stated in the analytical note, during 9 months of 2023, a total of 343 small-scale privatisation objects were put up for electronic auctions and 302 objects were sold²⁰²⁹. It should be noted that during the legal regime of martial law and within three months from the date of its termination or cancellation, Ukraine does not privatise objects located in the territories of active hostilities, territories of active hostilities where state electronic information resources operate, for which the date of completion of hostilities is not defined, included in the relevant list of territories²⁰³⁰ approved by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine²⁰³¹.

Government Resolution No. 809 of 12 July 2024²⁰³² brought the Procedure for the State Property Fund’s management of assets in respect of which a court decision was made to impose a sanction in accordance with the Law of Ukraine “On Sanctions”, as well as the sale of such assets, in line with Law of Ukraine No. 3587-IX²⁰³³, in terms of the SPFU’s powers to manage (including through sale) such assets, and clarified the Regulation on the Procedure for the Transfer of State Property Objects in terms of supplementing the list of documents submitted with proposals for the transfer. In addition, this resolution supplemented the Procedure for Holding Electronic Auctions for the Sale of Small-Scale Privatisation Objects and Determining Additional Conditions of Sale and the Procedure for Holding Electronic Auctions for the Sale of Large-Scale Privatisation Objects with provisions on the extension of these procedures to assets recovered as state revenue in accordance with the Law of Ukraine “On Sanctions” and the crediting of funds.

2028 On Amendments to Certain Legislative Acts of Ukraine on Optimisation of the Activities of the State Property Fund of Ukraine, Improvement of State Property Management and Increase of Effectiveness of Sanctions Policy: Law of Ukraine of 30.03.2023 No. 3137-IX. URL: <https://zakon.rada.gov.ua/laws/show/3137-IX#Text>.

2029 Analytical note on the work of the State Property Fund of Ukraine and the progress of state property privatisation for 9 months of 2023. State Property Fund of Ukraine. 2023. URL: [https://www.spfu.gov.ua/userfiles/files/Dov_Analit%209%20mis_2023\(1\).pdf](https://www.spfu.gov.ua/userfiles/files/Dov_Analit%209%20mis_2023(1).pdf).

2030 On Approval of the List of Territories where Military Operations are (were) Conducted or Temporarily Occupied by the Russian Federation: Order of the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine of 22.12.2022 No. 309. URL: <https://zakon.rada.gov.ua/laws/show/z1668-22#n13>.

2031 On Amendments to the Procedure for Conducting Electronic Auctions for the Sale of Small-Scale Privatisation Objects and Determining Additional Terms of Sale. Resolution of the Cabinet of Ministers of Ukraine of 23.08.2022 No. 952 (as amended on 26.12.2023). URL: <https://zakon.rada.gov.ua/laws/show/952-2022-%D0%BF/ed20231226#Text>.

2032 On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine on the Management of Assets Recovered for the State Revenue: Resolution of the Cabinet of Ministers of Ukraine of 12.07.2024 No. 809. URL: <https://zakon.rada.gov.ua/laws/show/809-2024-n#top>.

2033 On Amendments to Certain Legislative Acts of Ukraine on Improving Corporate Governance: Law of Ukraine of 22.02.2024 No. 3587-IX. URL: <https://zakon.rada.gov.ua/laws/show/3587-20#Text>.

Simultaneously, on 19 July 2024, the SPFU announced online auctions for large-scale privatisation, i.e. auctions for the sale of objects with a book value of more than UAH 250 million, in the state electronic trading system Prozorro.Sale²⁰³⁴.

Possible areas for further legislative changes, according to the Government portal, include, in particular, improving the processes of privatisation and lease of state property and improving the tools for controlling state-owned objects²⁰³⁵. Meanwhile, further steps in this area should generally be aimed at improving and ensuring the transparency of privatisation processes in order to create a favourable investment climate in the country, especially given the need to attract foreign capital and resources for the country's recovery and post-war reconstruction.

Recommendations

1. Extend the compensation mechanism established by Law of Ukraine No. 2923-IX to persons whose specified categories of real estate were destroyed or damaged as a result of the armed aggression of the Russian Federation before 24 February 2022 by amending the said Law or adopting a separate regulatory act that will provide for equivalent provisions to Law of Ukraine No. 2923-IX on the receipt of compensation by such persons.
2. The mechanism of compensation under Law of Ukraine No. 2923-IX should be extended to cover those housing that were located in the temporarily occupied territories of Ukraine as of 24 February 2022.
3. The Ministry of Digital Transformation of Ukraine should ensure the technical capability (the necessary technical functionality of Diia) for persons whose real estate was destroyed or damaged as a result of the armed aggression of the Russian Federation in the period up to 24 February 2022 to submit information about such objects, as provided by the Government. In addition, it is necessary to timely implement the technical functionality of Diia for submitting applications for compensation, including for repairs already made at their own expense, and to ensure the proper implementation of other provisions of the legislation on compensation.
4. The Cabinet of Ministers of Ukraine should additionally approve the procedure for compensation for damage to a number of objects (construction projects, their components, etc.) not covered by the current regulations.
5. Develop a mechanism to provide compensation for damage and destruction of movable property, including vehicles, as a result of Russia's armed aggression.
6. Take steps to improve the efficiency of digitisation of the archives of the technical inventory bureau in order to ensure that information on ownership of relevant real estate objects, which is currently not available in the SRPR, can be entered into the SRPR.
7. Take measures to ensure transparency and strengthen privatisation processes in order to create a favourable investment climate in the country, especially given the need to attract foreign capital and resources for the country's recovery and post-war reconstruction.

2034 The SPFU announced the first in Ukraine online auctions for large-scale privatisation on Prozorro.Sale. Prozorro.Sale. 2024 URL: <https://prozorro.sale/news/2024/07/19/fdmu-ogolosiv-pershi-v-ukrayini-onlajn-aukcioni-z/>.

2035 The team of the State Property Fund continues to work on improving the regulatory framework. State Property Fund of Ukraine. Government portal. 2024. URL: <https://www.kmu.gov.ua/news/komanda-fondu-prodovzhuie-pratsiuvaty-nad-udoskonalenniam-normatyvno-pravovoi-bazy-diialnosti>.

Issues for further monitoring

- › Introduction of any amendments to the Law of Ukraine No. 2923-IX, in particular, to regulate the provision of compensation for the destruction of and damage to real estate located in the territories of active hostilities or temporarily occupied territories of Ukraine (Draft Law No. 11161 of 10 April 2024).
- › Any changes to the Government's procedure for providing compensation for damage to real estate (in particular, monitoring any amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 381 of 21 April 2023, as well as new Government initiatives in this area).
- › Any changes to the Government's procedure for providing compensation for the destruction of real estate (in particular, monitoring any amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 600 of 30 May 2023).
- › Any changes to the procedure for state registration of real rights to real estate and their encumbrances (in particular, monitoring any amendments to Resolution of the Cabinet of Ministers of Ukraine No. 1127 of 25 December 2015), as well as to the judicial procedure for recognising ownership of real estate (in particular, monitoring amendments to the Civil Procedure Code of Ukraine and the Law of Ukraine "On Court Fees").
- › Regulation of compensation for the destruction and damage to movable property and vehicles as a result of the armed aggression of the Russian Federation (in particular, Draft Law No. 11147 of 03 April 2024).
- › Establishing the procedure for conducting a survey of destroyed certain categories of real estate located in the territories where active hostilities are taking place or in the territories temporarily occupied by the Russian Federation, in particular with the use of remote sensing information products.

Procedural rights

Ukrainian legislation provides for a wide range of procedural rights for persons involved in criminal proceedings. Given that the current CPC of Ukraine was adopted in 2012, it reflects most of the provisions mentioned in the EU thematic directives. However, the key issue is practical implementation, which is sometimes weak. Criminal justice officials, including judges, do not always adhere to the principles of criminal proceedings, such as child-friendly justice or the presumption of innocence. Certain rights are sometimes formally enforced, such as the right to translation or to be informed of procedural rights. At the same time, rights such as the right to defence by the state or to ensure the registration of a detained person have recently been observed at an adequate level, which is the result of systemic reforms. It is also important to respond to the challenges posed by the war – on the one hand, access to justice for Ukrainian citizens in a remote format, which has been actively developing since the COVID-19 pandemic, although not fast enough in criminal proceedings compared to other legal processes; on the other hand, access to justice for persons prosecuted for international crimes and crimes against national security, which since 2014 can be prosecuted in absentia, which requires improvement in terms of The in *absentia* procedure is *permitted* by EU law, but only if there is a proper mechanism for appealing (review or reconsideration) such decisions of the authorities.

Procedural rights are provided for by Ukrainian legislation governing the conduct of court proceedings. First of all, the CPC of Ukraine, other sectoral codes and legislative acts. The Constitution of Ukraine contains a broad list of fundamental human rights and freedoms, and the

CPC of Ukraine, adopted in 2012, provides for the procedure for exercising the right to defence (including the right to have an advocate, translation at state expense, information about rights, presumption of innocence), the right to a fair trial, etc. Prior to its adoption in 2012, the draft CPC of Ukraine underwent a thorough international examination²⁰³⁶ and received a favourable assessment from the Parliamentary Assembly of the Council of Europe. At the same time, the issue of the full implementation of the procedural rights of a person involved in justice remains open.

In 2023, the Ukrainian Parliament Commissioner for Human Rights received 1644 appeals on violations of rights in civil and administrative proceedings, 3151 in criminal proceedings and 1005 appeals on violations of human rights in places of detention. In particular, they refer to violations of the right to a fair trial within a reasonable time, the right to appeal a court decision, and procedural rights during pre-trial investigations²⁰³⁷.

The right to a fair trial is often violated, as evidenced by the 38 judgments issued by the ECHR in 2023²⁰³⁸ in cases against Ukraine for violations of Article 6 of the European Convention on Human Rights (Convention). These issues reflect systemic problems in the work of courts, prosecutors and law enforcement agencies. In 2022-2023, the Business Ombudsman received about 180 complaints about unlawful actions of law enforcement agencies²⁰³⁹, which consisted of violations of the rights of business entities during the investigation of criminal proceedings against them. Most of them are related to non-compliance with the right to defence, excessive interference with the exercise of human rights and freedoms, including outside of judicial control, and failure to meet reasonable time limits for criminal proceedings.

Protection of children's rights in civil and criminal cases (juvenile justice)

Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused in criminal proceedings²⁰⁴⁰ provides additional procedural safeguards to protect children's rights. In addition, in the context of juvenile justice, the Victims' Rights Directive (2022)²⁰⁴¹ provides for a comprehensive system of protection and support for victims and relevant recommendations for vulnerable groups, including children.

The CPC of Ukraine contains a separate Chapter 38 "Criminal proceedings against minors", which regulates the proceedings against a child suspected/accused of committing a criminal offence or in respect of whom proceedings are being conducted to apply compulsory educational measures. At the same time, the CPC of Ukraine contains a number of other provisions on the participation of a child in criminal proceedings in different procedural statuses, reflecting the approaches to juvenile justice and child-friendly justice set out not only in the EU Directive, but also in the Guidelines of the Committee of Ministers of the Council of Europe on Child

2036 Opinion on the draft CPC of Ukraine DGI-I (2011) 16 of 02.11.2011. URL: <https://rm.coe.int/16802e707c>.

2037 Annual Report of the Ukrainian Parliament Commissioner for Human and Civil Rights in Ukraine in 2023. URL: https://ombudsman.gov.ua/storage/app/media/uploaded-files/Щорічна_довідка_Уповноваженого_за_2023_рік.pdf.

2038 Violations by Article and by State 2023. ECHR Statistics. URL: <https://www.echr.coe.int/documents/d/echr/stats-violation-2023-eng?download=true>.

2039 Business Ombudsman Council. Statistics. URL: <https://boi.org.ua/stats/>.

2040 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. URL: <https://eur-lex.europa.eu/eli/dir/2016/800/oj>.

2041 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. URL: <https://eur-lex.europa.eu/eli/dir/2012/29/oj>.

Friendly Justice²⁰⁴², the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)²⁰⁴³ and other international legal documents.

Over the past ten years, there have been significant developments in ensuring children's rights within the criminal justice system²⁰⁴⁴, in particular: 1) specialisation in children's affairs has been significantly deepened - juvenile prevention units have been established in the police, and children's (juvenile) investigators, prosecutors and judges have been introduced; 2) special procedures for considering cases involving children have been introduced at the legislative level, and legislation on the protection of children from domestic violence, bullying, sexual exploitation and sexual abuse has been improved; 3) the practice of using the "green room" methodology²⁰⁴⁵ for interrogating children is becoming widespread, albeit slowly; 4) the possibility of remote interrogation via videoconference has been introduced; 5) free legal aid centres have been established, where assistance to children is guaranteed; 6) mediation in criminal cases of children has been proven to be successful in diverting them from the criminal justice system; 7) the institution of probation has been introduced, including pre-trial reports that provide the court with diverse information about a child in conflict with the law; 8) the number of trainings on child-friendly justice has increased.

Despite this, there are problems that need to be addressed: 1) compliance with legal requirements is often accompanied by excessive formalism, which leads to disregard for the true objectives of the law, international standards and the need to ensure the best interests of the child²⁰⁴⁶; 2) children's specialisation is mostly based on the length of service of a criminal justice officer, but is mostly not supported by special training in working with children; 3) there are not enough psychologists/social workers specially trained to work with children in contact with the law, and there is no register of such specialists; 4) children are mentally traumatised and exhausted by repeated conversations about the same circumstances (with advocates, investigators, experts, judges, etc.); video recordings of the interrogation of a child made by investigators in compliance with procedural safeguards cannot be recognised as a source of evidence; 5) criminal proceedings involving children are often considered in violation of reasonable time limits, as the requirement to prioritise consideration of such cases is not observed in practice (proven by statistical analysis, monitoring of court hearings, and the results of numerous interviews)²⁰⁴⁷.

2042 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17.11.2010, and explanatory note. URL: <https://rm.coe.int/16804c2188>.

2043 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Convention was ratified by Ukraine with declarations by the Law of 20.06.2012 No. 4988-VI. URL: https://zakon.rada.gov.ua/laws/show/994_927#Text.

2044 Standards of child-friendly justice and their implementation in Ukraine (criminal aspect). Report on the results of monitoring of trials in Ukraine. Centre of Policy and Legal Reform. 2021. URL: <https://pravo.org.ua/wp-content/uploads/2021/06/1622532820childcrimreport.pdf>.

2045 "The 'Green Room' is a specially organised system of measures aimed at ensuring the legality, humanity and effectiveness of every decision regarding a child in conflict with the law or in contact with the law. See Guidelines on the organisation of work with children using the Green Room methodology for investigators and juvenile police officers, p. 48. 2021. URL: <https://www.unicef.org/ukraine/media/16976/file/Green%20Room%20Methodology%20for%20Police%20Officers.pdf>.

2046 The best interests of the child is a child protection principle that relates to decision-making. Article 3 of the UN Convention on the Rights of the Child states: "The best interests of the child shall be a primary consideration in all actions involving children, whether carried out by public or private social welfare agencies, the courts, administrative or legislative authorities." In assessing the best interests of the child, a balance must be struck between "all the elements necessary to make a decision in a particular situation for a particular child or group of children".

2047 Child Friendly Justice Standards and their Implementation in Ukraine (criminal aspect). Report on the results of monitoring of trials in Ukraine, pp. 45-46. Centre of Policy and Legal Reform. URL: <https://pravo.org.ua/wp-content/uploads/2021/06/1622532820childcrimreport.pdf>.

In 2023, the Procedure for Implementing a Pilot Project for the Implementation of International Standards for Child-Friendly Justice in Practice²⁰⁴⁸, was approved, which provides for the implementation of the pilot project in Zhytomyr²⁰⁴⁹, Lviv, Kirovohrad, Cherkasy, Chernivtsi regions and the city of Kyiv from 1 June 2023.

In particular, the Procedure contains standard No. 34, which requires: 1) to ensure that investigative actions are carried out with the least trauma to the minor by applying the following algorithm; 2) first of all, to take measures to conduct investigative (procedural) actions without the participation of a minor, if this does not prevent the establishment of circumstances to be proved in criminal proceedings; 3) if such measures cannot be taken, to conduct as few investigative actions with the participation of a minor as possible in cases that are absolutely necessary to achieve the goals of criminal proceedings; 4) use video recording during investigative actions involving a minor (victim, suspect) with his/her consent; 5) use the possibility of remote pre-trial investigation. This standard effectively covers the following best practices: 1) best interests of the child; 2) minimisation of procedural actions involving the child; 3) video recording of procedural actions for further use in court; 4) child-friendly environment; 5) participation in the proceedings (within the meaning of Section III of the Committee of Ministers of the Council of Europe Guidelines on Child Friendly Justice)²⁰⁵⁰.

Standard No. 41 provides for interrogation using the Green Room methodology not only at the place of pre-trial investigation (the office of a law enforcement agency, primarily the National Police), but also in another place with the consent of the minor (at home or another place convenient for the child; conducting investigative actions in child-friendly conditions). This methodology has been used in practice before, but due to the lack of facilities outside police stations or the formal use of a “separate room with green walls” for interrogations, not all law enforcement officers support this approach, so it needs to be unified and supported by the state. In addition, there are no unified regulatory requirements for the arrangement and procedure of interrogating children using the Green Room method, which leads to the use of different variations of this method or its non-use at all.

Protecting the rights of child victims

Along with the protection of the rights of children suspected/accused of committing a criminal offence, there are other pilot projects in the field of protection of the rights of a child who is a party to criminal proceedings, which are more focused on supporting the child as a victim or involving the child as a witness in criminal proceedings to reduce the level of trauma from interaction with the law enforcement and judicial system. For example, there are already six Centres for Protection and Social and Psychological Support in the Justice Process for Child Victims and Witnesses of Violence (Barnahus) in Ukraine. These centres provide comprehensive social, psychological, legal, medical and other types of assistance and services to child victims and witnesses in proceedings on criminal offences related to violence. They allow interrogations or questioning of children in a child-friendly environment and thus prevent further trauma to minors during the proceedings. The implementation of the Barnahus model began in 2020,

2048 On the introduction and implementation of a pilot project on the implementation of international standards of child-friendly justice in practice: Order of the Office of the Prosecutor General, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Social Policy of Ukraine of 01.06.2023 No. 150/445/2077/5/187. URL: <https://zakon.rada.gov.ua/laws/show/v0150905-23#Text>.

2049 Barnahus, a centre for social and psychological support for children who have suffered or witnessed violence, was opened in Zhytomyr. Free legal aid. 2023. URL: <https://legalaid.gov.ua/hovnyy/u-zhytomyri-zapraczyuvav-barnahus-czentr-soczialno-psyhologichnoyi-pidtrymky-ditej-yaki-postrazhdaly-abo-staly-svidkami-nasylstva/>.

2050 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17.11.2010, and explanatory note. URL: <https://rm.coe.int/16804c2188>; Pilot project on the implementation of international standards of child-friendly justice. Higher School of the Bar of the Ukrainian National Bar Association. 2023. URL: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/pilotnii-projekt-shhodo-implementaciyi-miznarodnix-standartiv-pravosuddia-druznyogo-do-ditini>.

and as of today, such centres operate in Vinnytsia²⁰⁵¹, Ternopil²⁰⁵², Chernivtsi²⁰⁵³, Zhytomyr²⁰⁵⁴ regions, as well as in Kyiv (unfortunately, the centre in Mykolaiv was temporarily suspended due to the war).

The juvenile justice system in wartime has also evolved due to the growing number of child victims of the armed conflict. In particular, in 2022, the Office for Procedural Management of War Crimes Related to Sexual Violence (CRSV) was established in the OPG alongside the Department of Child Protection²⁰⁵⁵ which also includes children as victims. In 2023, the Coordination Centre for the Protection of Victims and Witnesses of War Crimes under the OPG was launched²⁰⁵⁶ which directs victims to necessary assistance and monitors the observance of their rights in criminal proceedings.

Recommendations

1. Continue implementing child-friendly justice models in criminal proceedings to reduce the risk of trauma to children as a result of a crime, as well as to obtain reliable information about the crime for further evidence.
2. Develop a Barnahus network of centres for social and psychological support and establish cooperation with all pre-trial investigation bodies in criminal proceedings involving children.
3. Expand child specialisation, in particular, to extend such specialisation of investigators and detectives to cases involving child witnesses and child victims; prosecutors – to cases involving child witnesses; judges – to cases involving child victims, child witnesses, children accused of administrative offences, as well as to issues decided by an investigating judge with the participation of a child, and other issues involving children.
4. Introduce systematic training for children’s detectives, investigators, prosecutors, advocates, psychologists, and probation officers, giving preference to joint, interdisciplinary, interactive training. Create a community of such professionals to share information and communicate more effectively to better ensure the best interests of the child. Through training, increase the sensitivity of relevant professionals to discrimination and gender issues.
5. Acknowledge the possibility of a court recognising as a source of evidence a video recording of a child witness or victim interrogation made at the stage of investigation in compliance with the Green Room methodology, video recording of a child’s report of a crime without re-interrogation in court unless there is an urgent need (not only in martial law, which is currently allowed by Article 615 of the CPC of Ukraine).

2051 The implementation of the Barnahus model in Vinnytsia region, with clear interagency coordination, will serve as an example for other regions. Vinnytsia Regional Military Administration. 2021. URL: <https://www.vin.gov.ua/news/ostanni-novyny/37427-vprovadzhenia-modeli-barnahus-na-vinnychchini-za-umovy-chitkoi-mizhvidomchoi-koordinatsii-stane-prykladom-dlia-inshykh-oblastei-natalia-zabolotna>.

2052 The work of the Barnahus project in Ternopil region: training for participants. Free legal aid. 2021. URL: <https://legalaid.gov.ua/novyny/robova-proektu-barnahus-na-ternopilshhyni-navchalnyj-trening-dlya-uchasnykiv/>.

2053 A child protection and support centre based on the Barnahus model has been operating in Chernivtsi for a year. Chernivtsi Regional Council. 2023. URL: <https://bukrada.gov.ua/novyny-ta-publikacii/u-chernivcyax-vzhe-rik-pracyuye-centr-zaxistu-ta-pidtrimki-ditej-za-modellyu-barnaxus/>.

2054 Centre for Protection and Social and Psychological Support - Barnahus - opened in Zhytomyr. Ministry of Justice of Ukraine. 2023. URL: <https://minjust.gov.ua/news/ministry-u-jitomiri-vidkrili-tsentr-zahistu-ta-sotsialno-psihologichnoi-pidtrimki-barnahus>.

2055 The OPG created a department for investigating sexual crimes of the Russian army in Ukraine. Ukrinform. 2022. URL: <https://www.ukrinform.ua/rubric-ato/3579034-v-ogp-stvorili-upravlinna-z-rozsliduvanna-seksualnih-zlociniv-armii-rf-v-ukraini.html>.

2056 The Coordination Centre for Victims and Witnesses received new premises. Office of the Prosecutor General. 2024. URL: <https://www.gp.gov.ua/ua/posts/koordinacii-centr-pidtrimki-poterpilix-i-svidkiv-otrimav-nove-primishhenya>.

Presumption of innocence, right to information on fundamental procedural rights, right to be present at the trial

Presumption of innocence

Directive 2016/343 (EU)²⁰⁵⁷ on the strengthening of certain aspects of the presumption of innocence and the right to be present at court proceedings provides for the need to implement the basic principle of law – the presumption of innocence, without which no democratic legal system can exist.

The Constitution of Ukraine (Article 62), the CPC of Ukraine (Article 17) and other legislative provisions provide that a person is presumed innocent of committing a crime and cannot be subjected to criminal punishment until their guilt is proved in accordance with the law and established by a court verdict of guilty. No one is obliged to prove their innocence of a crime. The accusation cannot be based on evidence obtained illegally or on assumptions. All doubts about the proof of a person's guilt are interpreted in his or her favour. Therefore, the presumption of innocence is a fundamental procedural guarantee in criminal proceedings.

At the same time, the implementation of this principle (rule) does not always correspond to its normative content. From the procedural point of view, the suspect or accused is not really forced to prove their guilt, and the detailed criminal procedure provides for the treatment of a person as innocent, especially if he or she is not in custody (no exceptional measure of restraint is applied). The same applies to the fact that the prosecution cannot be based on assumptions, which is ensured by clear requirements for the relevance and admissibility of evidence. Criminal procedure also requires a high standard of proof at every stage of prosecution and the highest standard – beyond reasonable doubt²⁰⁵⁸ – at the sentencing stage.

However, there is a problem with public communication of the results of their activities with the authorities – the following practices are common:

1. indicating in the press releases of law enforcement and prosecutor's offices information about detention, notification of suspicion, application of preventive measures, etc. in relation to persons in a way that can be easily identified (for example, by their position or a weakly depersonalised (blurred) image);
2. use of culpability characteristics in public communication regarding the pre-trial stages of criminal prosecution – instead of referring to the "investigative case" or using markers "according to the prosecution", the person's involvement in a criminal offence is directly stated, and sometimes they are directly called a "thief", "hooligan", "bandit", "intruder", etc.²⁰⁵⁹. At the same time, at the end of the press release, certain bodies (NPU, NABU, SBI) make a note that "in accordance with Article 62 of the Constitution of Ukraine, a person is presumed innocent until proven guilty by a court", but this is rather a formality, as it does not correspond to the content of the press release, which is a biased attitude towards the person in question as guilty of a criminal offence.

2057 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. URL: <https://eur-lex.europa.eu/eli/dir/2016/343/oj>.

2058 The standard of proof beyond a reasonable doubt means that the totality of the circumstances of the case, as established in the course of the trial, excludes any other reasonable explanation for the event that is the subject of the trial, other than that the alleged offence was committed and the offender is guilty of it.

2059 See examples: Presumption of innocence: who is guilty and what to do about it. JustTalk. 2020. URL: <https://justtalk.com.ua/post/prezumtsiya-nevinuvatosti-hto-vinuvatij-ta-scho-z-tsim-roboti>.

3. use of detailed audio and video materials indicating the “scheme” of the criminal offence and specific persons involved, who are easily identified in the most high-profile proceedings, for example, in NABU cases, which is done to create a negative attitude in society, and obtain the desired decision to restrict the rights and freedoms of such suspects and accused during the investigation.

The latter practice has been the subject of two separate rulings of the High Anti-Corruption Court (HACC): 1) HACC Ruling²⁰⁶⁰ of 31 October 2023 in case No. 991/392/23 (proceedings 1-kp/991/6/23) – the Court found a violation of the presumption of innocence in a video distributed on the official resources of the NABU, in which the detective, although not naming the accused, but the context of the conversation and his categorically affirmative statements undoubtedly formed an idea of the suspect’s guilt among an unlimited number of viewers/listeners; 2) HACC Ruling²⁰⁶¹ of 17 January 2024 in case No. 991/4071/22 (proceedings 1-kp/99158/22) - the Court found a violation of the presumption of innocence in the statements of the detective during the interview, who described in detail the circumstances of the crime, pointed to the MP using the unique characteristics of his position in the parliamentary committee, party affiliation, etc. that allowed to identify the crime and the person and formed the public perception of his guilt.

This practice of the HACC is a positive step towards guaranteeing the principles of the presumption of innocence in criminal proceedings. At the same time, these rulings did not lead to the recognition of evidence as inadmissible, as they did not significantly violate human rights and freedoms, and their consequence is that the rulings are sent to the Director of the NABU for consideration to decide on disciplinary action. Thus, the circumstances set out in the aforementioned rulings are the subject of an internal investigation, and a professional discussion of the HACC’s position has a general preventive effect on other law enforcement agencies and their practice of communicating the results of their work, which would be in line with the Constitution of Ukraine.

Lack of separate mechanisms for appealing against decisions in absentia

Chapter 24¹ of the CPC of Ukraine regulates the procedure for conducting special pre-trial investigation (*in absentia*) of criminal offences. It involves the investigation and consideration of criminal proceedings in the absence of the accused (*in absentia*) in order to ensure that the tasks of the criminal proceedings are completed within a reasonable time, even when the suspect is not under Ukrainian jurisdiction. Article 297-1 of the CPC of Ukraine provides for a list of criminal offences to which the *in absentia* procedure may be applied: violation of the laws and customs of war; genocide; collaboration; treason; misappropriation, embezzlement or seizure of property through abuse of office, etc.

The EU legal system allows for the possibility of a trial in absentia, but subject to an effective further appeal against such a decision. Council Framework Decision 2009/299/JHA²⁰⁶² of 26 February 2009 provides for the possibility of a new trial or other remedies. These provisions are in line with Directive (EU) 2016/343²⁰⁶³ of the European Parliament and of the Council of 09 March 2016 on

2060 Ruling of the High Anti-Corruption Court of 31.10.2023. Case No. 991/392/23. Proceedings 1-kp/991/6/23. URL: <https://reyestr.court.gov.ua/Review/114797457>.

2061 Ruling of the High Anti-Corruption Court of 17.01.2024. Case No. 991/4071/22. Proceedings 1-kp/991/58/22. URL: <https://reyestr.court.gov.ua/Review/116419129>.

2062 The Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, Official Journal of the European Union L 81. 27.03.2009. URL: <https://hrcak.srce.hr/ojs/index.php/eclic/article/download/7113/4604/>.

2063 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. URL: <http://data.europa.eu/eli/dir/2016/343/oj>.

strengthening certain aspects of the presumption of innocence and the right to be present at criminal proceedings. Article 9 “Right to a new trial” of Section 3 of the Directive states: “Member States shall ensure that, where suspects or accused persons have not been present at the trial and the conditions laid down in Article 8(2) have not been met, they shall be entitled to a new trial or other remedy allowing for a new establishment of the merits of the case, including the examination of new evidence, which may lead to the reversal of the original decision.”

An analysis of the ECHR case law²⁰⁶⁴ indicates that the lack of appropriate remedies would violate Ukraine’s international legal obligations. The imperfection of the national legislation on the mechanisms for appealing against a decision *in absentia* will complicate the extradition by other states of persons convicted *in absentia* by Ukrainian courts²⁰⁶⁵.

According to the criminal statistics²⁰⁶⁶, which is managed by the OPG, the scale of the problem is growing every day, as *in absentia* prosecution is used in international crimes and crimes against the foundations of national security, the number of which is high due to the war. As of the end of 2023, 1) 116,776 international crimes (aggression, genocide and war crimes) were registered, of which 113,448 are violations of the laws and customs of war (Article 438 of the CC of Ukraine); 88 are planning, preparation or unleashing and waging of an aggressive war (Article 437 of the CC of Ukraine); 67 are propaganda of war (Article 436 of the CC of Ukraine); and 3173 other crimes; 2) 15,784 crimes against national security, of which: 3841 are trespassing of the territorial integrity and inviolability of Ukraine (Article 110 of the CC of Ukraine); 2869 are high treason (Article 111 of the CC of Ukraine); 6788 are collaboration activities (Article 111¹ of the CC of Ukraine); 1012 are aiding the aggressor state (Article 111² of the CC of Ukraine); 80 are sabotage (Article 113 of the CC of Ukraine); and 1194 other crimes.

At the same time, this criminal procedure institute does not contain a special mechanism for reviewing a decision that requires a new examination (*ex novo*) in presence of a person concerned. Such mechanisms should be provided for a person convicted *in absentia*, in respect of whom it is established that he/she was not properly notified of the criminal proceedings against him/her or that his/her absence was due to reasons beyond his/her control.

To address this issue, the Government registered the draft law No. 9579²⁰⁶⁷. It proposes to amend part 3 of Article 395 of the CPC of Ukraine “Procedure and Time Limits for Appeal”, whereby a person will have the right to appeal a sentence within 30 days from the date of detention for its execution. Although this is not an *ex novo* review, it establishes a greater guarantee of access to justice than the general appeal procedure, which does not allow such a person to exercise his/her right after the expiry of the appeal period.

The problem of informing suspects in cases *in absentia*

A person is informed of an investigation *in absentia* by sending a notice to their last known place of residence or stay and shall be published in the national mass media and on the official website of the Office of the Prosecutor General. In recent years, the practice of informing through

2064 ECHR, *Colozza v. Italy*, 9024/80, 12 February 1985, § 29. URL: <https://hudoc.echr.coe.int/>.

2065 Trials in absentia, Global Rights Compliance. URL: <https://www.asser.nl/media/795064/grc-trials-in-absentia-english.pdf>.

2066 Unified report on criminal offences for January-December 2023. Office of the Prosecutor General. Statistics. URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

2067 On amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and other legislative acts to ensure criminal proceedings that are impossible to conduct as a result of the armed aggression of the Russian Federation against Ukraine and the temporary occupation of certain territories of Ukraine by the Russian Federation: Draft Law of Ukraine, registration No. 9579 of 07.08.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42467>.

messengers, which allow the addressee to confirm receipt of the message, has also become widespread (legal position set out²⁰⁶⁸ in the decision of the Supreme Court of 21 December 2022 in case No. 759/5737/17).

At the same time, there is a problem with the fact that until 2023 such notifications were made exclusively in Ukrainian, making it impossible for persons who are not citizens of Ukraine to read their content. There was simply no possibility to ensure the right to translation, as the notice on the website was addressed to the public space, and the messages were sent to Ukrainian citizens who were in the temporarily occupied territory and spoke the state language. In 2023, along with the subpoenas addressed to the citizens of the Russian Federation, the official website of the OPG started publishing their translation into Russian²⁰⁶⁹.

To address the issue of informing suspects, on 5 June 2023, MPs registered draft law No. 9351²⁰⁷⁰, proposing that in the case of a notice of suspicion of committing a crime related to sexual violence committed in the context of armed conflict in the media of the national sphere of distribution and on the official website of the OPG – that such reports should be published without specifying the name, patronymic, surname of the victim, their close relatives and family members, as well as other persons subject to security measures, their place of residence or stay, the location of the criminal offence and other information that allows identification. Such changes will reduce security risks for the victim while preserving procedural guarantees for the suspect.

Informing about procedural rights

The CPC of Ukraine provides for the procedure for informing a person of his/her procedural rights. This obligation lies with the person conducting the investigative or procedural action (patrol officer, investigator, prosecutor, authorised official responsible for detainees) and involves informing the person in a language that he or she understands about his or her rights, the possibility of notifying third parties of his or her detention, etc. In addition, the person is handed a memo about his or her rights depending on their procedural status.

The practical issue with informing about rights is that a person: 1) the procedural status of a detainee or suspect of a criminal offence is not always recognised; 2) the procedural status is recognised with a delay, which allows law enforcement officers to take illegal actions to collect evidence while the person is in the “grey zone” and is not aware of their rights not to testify against themselves, to have a lawyer, to file a petition, etc²⁰⁷¹.

In order to avoid such situations, since 2017 Ukraine has been developing the Custody Records system²⁰⁷² – the British experience of recording all actions in relation to a detained person to ensure timely protection of his or her rights and freedoms. The system includes: 1) an inspector (custody officer) responsible for observing the rights of detainees; 2) an electronic system for recording all actions in relation to a detainee, which replaces paper logs and minimises the

2068 Ruling of the Supreme Court of 21.12.2022 in case No. 759/5737/17 (proceedings No. 51-2899km20). URL: <https://reyestr.court.gov.ua/Review/108225763>.

2069 When the process is more important than the result, or reflections on the true cost of criminal proceedings in absentia. Justtalk. 2024. URL: <https://justtalk.com.ua/post/koli-protses-vazhlivishij-za-rezultat-abo-rozdumi-pro-spravzhnyu-vartist-kriminalnogo-provazhennya-in-absentia>.

2070 On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Pre-trial Investigation and Trial in Criminal Proceedings on Crimes Related to Sexual Violence Committed in the Context of Armed Conflict: Draft Law of Ukraine, registration No. 9351 of 05.06.2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41960>.

2071 The prosecutor: Managing? Coordinating? Supervising? Investigating: Report on the results of the study “The role of the prosecutor at the pre-trial stage of the criminal process” / Belousov Y., Wenger V., Mitko V., Orleans A., Sushchenko V., Yavorska V.; under the editorship of Belousov Y. ST-Druk, 2017. - P. 238. URL: <https://ecpl.com.ua/publications/rol-prokurora-na-dosudovi-stadii-kryminal-noho-protsesu/>.

2072 Cusrody Records: a system for recording all actions in relation to a detained person - the state of regulatory regulation. Justtalk, 2022. URL: <https://justtalk.com.ua/post/custody-records-sistema-fiksatsii-vsih-dij-schodo-zatrimanoi-osobi--stan-normativnogo-regulyuvannya>.

possibility of data distortion; 3) a system of “smart” video recording to avoid dead zones, manual control of cameras, possible data destruction, etc. Various devices can be used to monitor the safe treatment of a person, including fixed cameras, rotating cameras, lenses with variable focal lengths that support audio recording, etc. 4) conducting interviews (non-procedural questioning) with the detainee about how the police treated him or her during the detention, whether his or her rights were violated, and checking any information that may indicate the unlawful use of force. As of the end of January 2024, Custody Records was in operation in 88 NPU units, 47 of which implemented it in 2023 (according to the NPU)²⁰⁷³. This process is ongoing, in particular, in February 2013, temporary detention facility No. 1 in Chernivtsi was re-equipped to meet the technical requirements for the Custody Records system²⁰⁷⁴. In addition, the system may eventually be expanded to other agencies – currently, preparatory work²⁰⁷⁵ is underway at the State Criminal Executive Service of Ukraine.

On 21 March 2024, the Verkhovna Rada adopted Law of Ukraine No. 3623-IX²⁰⁷⁶ on amendments to the CPC of Ukraine to enhance the efficiency of the institution of officials responsible for the stay and ensuring the observance of the rights of detainees. It corrects the problem that has existed since the adoption of the CPC of Ukraine in 2012 - it was assumed that the person responsible for detainees should belong to the pre-trial investigation body (investigative department). Instead, he/she should be outside this department to ensure his/her impartiality. For example, custodial officers belong to the Department of the Chief Inspectorate and Human Rights of the NPU and can properly monitor the observance of human rights and freedoms at the stage of detention, as they are not directly subordinate to the head of the pre-trial investigation body. Law of Ukraine No. 3623-IX should correct the shortcomings of the legislation and strengthen the institutional support for the work of custodial officers²⁰⁷⁷.

During the interviews, respondents noted that once the recovery process is underway, it is very important that the Custody Records system is implemented as a nationwide measure in all recovery plans (as part of the state policy), covering all police stations, temporary detention centres and other places where police detainees are held. Attention is also drawn to the problem with the certification of technical equipment installed in the system. Namely, CCTV cameras, because at the time when the entire Custody Records system was developed, its technical support was provided by a single provider of Chinese origin. Instead, the technical level of security must comply with the standards of the European Union regarding the right to privacy, primarily the GDPR²⁰⁷⁸.

Recommendations

1. Respond appropriately to cases of violation of the presumption of innocence and to raise the professional level of all law enforcement officers in terms of public communication of their activities.

2073 The Custody Records project in the National Police is a successful mechanism for protecting human rights. National Police of Ukraine. 2024. URL: <https://www.npu.gov.ua/news/proiekt-custody-records-v-natspolitsii-uspishnyi-mekhanizm-zakhystu-prav-liudyny>.

2074 In Chernivtsi, police opened a renovated temporary detention centre that meets European requirements. Main Department of the National Police in Chernivtsi region. 2023. URL: <https://cv.npu.gov.ua/news/u-chernivtsiakh-politseiski-vidkryly-onovlenyi-izolator-tymchasovoho-trymannia-iakyi-vidpovidaie-ievropeiskym-vymoham>.

2075 A working meeting on the implementation of the Custody records project in the institutions of the SPS of Ukraine. Facebook page of the Department for the Execution of Criminal Sentences. 2022. URL: <https://www.facebook.com/share/p/feP41RMwwJ21QK67/>.

2076 On Amendments to the Criminal Procedure Code of Ukraine to Enhance the Effectiveness of the Institution of Officials Responsible for the Stay and Ensuring the Rights of Detainees: Law of Ukraine of 21.03.2024 No. 3623-IX. URL: <https://zakon.rada.gov.ua/laws/show/3623-IX#Text>.

2077 The Verkhovna Rada supported the overall strengthening of the effectiveness of the institution of officials responsible for the stay of detainees and persons taken into custody. Centre of Policy and Legal Reform. 2024. URL: <https://pravo.org.ua/analytical-materials/shhotyzhnevij-analiz-20-26-bereznia-2024-roku/#link2>.

2078 General Data Protection Regulation (GDPR). URL: kmu.gov.ua/storage/app/media/uploaded-files/es-2016679.pdf.

2. Introduce a system of review of *in absentia verdicts* in the form of not only an appeal, but also a new trial (*ex novo*).
3. Develop a system for informing participants in criminal proceedings about their rights, in particular the Custody Records system, and extend it to all law enforcement agencies that detain persons (except the NPU - the SBI, NABU, SSU, and Bureau of Economic Security).
4. Bring the level of technical security of the tools used in the Custody Records system in line with EU standards, primarily GDPR.

The right of access to an advocate and the right to have an interpreter at the expense of the state

Directive 2013/48/EU²⁰⁷⁹ provides for the right of access to an advocate in criminal and administrative proceedings, as well as the right to inform a third party in case of deprivation of liberty and the right to communicate with third parties and consular authorities during detention.

Under martial law, the system of free legal aid (FLA) continues to develop, which, among other things, provides for secondary assistance - responding to each case of detention on suspicion of committing a criminal offence or administrative offence. Each detainee is provided with a free defence counsel (advocate) for initial investigative (search) actions, who arrives at the place of detention and participates in them. The FLA system has been operating²⁰⁸⁰ in Ukraine since 2013 and has significantly reduced the risk of ill-treatment due to the presence of a third party during detention, application of measures to ensure criminal proceedings, and other investigative and procedural actions.

The Law of Ukraine No. 3022-IX²⁰⁸¹, which entered into force on 03 August 2023, simplified access to free legal aid for certain categories of persons due to the challenges posed to the state's legal system by the war. In particular, the categories of persons entitled to free legal aid have been expanded to include victims of criminal offences against sexual freedom and sexual inviolability, torture or ill-treatment during hostilities or armed conflict, given their vulnerability and the need for legal support from the state.

The right to translation

Directive 2010/64/EU (2010)²⁰⁸² on the right to interpretation and translation in criminal proceedings provides that suspects or accused persons who do not speak or understand the language of criminal proceedings, including during criminal proceedings, shall be provided with an interpreter free of charge during: 1) police interrogation; 2) important meetings between client and advocate; 3) all court hearings and any necessary preliminary hearings. This right also covers the translation of documents important for the defence. At the same time, the translation should not be provided only formally, but should be of high quality. To this end, EU countries are obliged to establish a register of independent and qualified translators and interpreters, which should be accessible to advocates and relevant authorities.

2079 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. URL: <http://data.europa.eu/eli/dir/2013/48/oj>.

2080 On 01 January 2013, the system of free legal aid was launched in Ukraine. Free legal aid. 2013. URL: <https://legalaid.gov.ua/novyny/z-1-sichnya-2013-roku-v-ukrayini-rozpochala-funktsionuvaty-systema-bezoplatnoyi-pravovoyi-dopomogy/>.

2081 On Amendments to Certain Legislative Acts of Ukraine on Simplifying Access to Free Legal Aid: Law of Ukraine of 10.04.2023 No. 3022-IX. URL: <https://zakon.rada.gov.ua/laws/show/3022-20#n98>.

2082 Directive 2010/64/EU of the European Parliament and the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>.

In Ukraine, in accordance with the general principles of criminal proceedings, the language of criminal proceedings is Ukrainian, and court decisions by which the court concludes the trial on the merits are provided to the parties to the criminal proceedings or to the person in respect of whom the issue of compulsory educational or medical measures has been resolved, as well as to the representative of the legal entity in respect of which the proceedings are conducted, in translation into their native or other language in which they are proficient. Translation of other procedural documents of criminal proceedings is carried out only at the request of the said persons (Article 29 of the CPC of Ukraine). At the same time, the costs associated with the participation of victims in criminal proceedings, engagement and participation of interpreters to translate the testimony of a suspect, accused, victim, civil plaintiff and civil defendant, representative of a legal entity in respect of which the proceedings are being conducted, are covered by the State Budget of Ukraine (Article 122 of the CPC of Ukraine).

Since 2013, Ukraine has had a Register of Interpreters²⁰⁸³ (managed by the State Migration Service), which is used, in particular, in criminal proceedings. The judiciary also uses the Register of Sign Language Interpreters²⁰⁸⁴ maintained by the All-Ukrainian Association of Sign Language Interpreters and People with Disabilities.

In practice, investigators and judges face many problems and different approaches to engaging and disqualifying interpreters. First of all, the problem is finding an interpreter and getting them admitted to the proceedings. Usually, the aforementioned register contains teachers of higher education institutions with a degree in philology, whose proficiency in working with legal documents varies greatly. In addition, suspects and accused persons rarely use the opportunity to challenge an interpreter due to the circumstances of their incompetence, which was discovered after their involvement, so there are almost no such motions filed with the court. At the same time, the CPC of Ukraine contains no requirements for an interpreter to have a diploma (speciality), this can be a native speaker, which is confirmed by a secondary education certificate²⁰⁸⁵. It is almost impossible to hire a professional translator from a company (bureau) that translates legal documents or provides legal support to clients on a commercial basis at the expense of the state, since the level of payment (remuneration) for translators is not competitive in the market and professional translators are unwilling to spend their time on such work. At the same time, there are cases in court practice of complaints²⁰⁸⁶ from suspects and accused persons about poor-quality translation with subsequent replacement with another interpreter.

Under martial law, the issue of translation in criminal proceedings in which the suspects or accused are Russian prisoners of war, who, unlike Ukrainian citizens who are almost always bilingual (Ukrainian, Russian), do not speak Ukrainian, has been added. However, due to the aforementioned bilingualism, investigators and prosecutors often perform interpretation functions, and procedural documents are translated using the resources of law enforcement agencies and prosecutors during their working hours. Such actions are primarily aimed at ensuring that the language of the proceedings is understandable to the person concerned, rather than the formal need to engage an interpreter. Thus, the right to a fair trial under Article 6 of the European Convention on Human Rights is respected, as the person understands the essence of the charges brought against him/her by the state of Ukraine.

2083 Register of translators. State Migration Service of Ukraine. URL: <https://dmsu.gov.ua/services/translates.html>.

2084 Register of sign language interpreters. All-Ukrainian Association of Sign Language Interpreters and People with Disabilities. URL: <https://uaslt.org/roster/>.

2085 Ruling of the Supreme Court of 04.03.2021 in case No. 732/415/19 (proceedings No. 51-5669km20). URL: <https://reyestr.court.gov.ua/Review/95382778>.

2086 Ruling of the Supreme Court of 12.07.2021 in case No. 759/4149/17 (proceedings No. 51-5290km20). URL: <https://reyestr.court.gov.ua/Review/98368360>.

Recommendations

1. Develop the system of free legal aid in Ukraine, in particular by expanding the categories of persons who have suffered from war crimes and need protection from the state due to their vulnerability and lack of resources to protect their rights, and to conduct an independent audit of the system's capacity to develop to meet such challenges.
2. Ensure an appropriate level of payment for high-quality professional interpreters in criminal proceedings if they are engaged at the expense of the state budget.

The right to access to justice

According to the United Nations, as of September 2023, there are 6.26 million Ukrainian refugees abroad and about 1.2 million citizens are in the temporarily occupied territory²⁰⁸⁷. For objective reasons, all these citizens cannot attend court hearings in person, so their participation is possible only remotely. Therefore, the biggest challenge to access to justice today is physical presence in the courtroom - on the one hand, not all courts are functioning due to the occupation of part of the territory of Ukraine, the proximity of courts to the front line, the absence of judges who can administer justice in relative safety²⁰⁸⁸, on the other hand, persons who seek protection of their rights in court cannot always attend court for various reasons. Therefore, the issues of remote participation and extraterritorial consideration of cases by courts are extremely relevant today.

Recent legislative reforms have not yet led to a noticeable improvement in the situation, in part because the COVID-19 pandemic and the full-scale Russian invasion have further complicated the widespread application of relevant standards and rules in the law enforcement and judicial sectors, including the right of access to justice and the right to a fair trial within a reasonable time. On the other hand, the Ukrainian justice system is in line with the general trend of digitalisation of justice. In particular, trials via videoconference and verification through electronic digital signatures have become widespread, and there is currently talk of introducing an even wider range of cases of remote participation in court proceedings in view of the challenges posed by the war.

At the same time, the European Commission for the Efficiency of Justice (CEPEJ) noted in October 2022²⁰⁸⁹ that further expansion of online justice meets the needs of the modern justice system. In the current situation in Ukraine, online justice enables the judiciary to act where the alternative would be to suspend the work of the courts entirely or to resort to more serious derogations, such as the use of written procedures. Further expanding the use of remote (online) hearings, including remote participation of judges, court clerks, witnesses and experts or interpreters, as well as allowing judges to deliver judgments electronically or publish them on court websites, is in line with the needs of a modern judicial system. The experts emphasise that the physical presence of judges in the courtroom has never been considered a strict requirement under the provisions of Article 6 ECHR.

2087 Analytical report "Remote hearings in civil, commercial and administrative proceedings". Pravo-Justice. 2023. URL: <https://www.pravojustice.eu/storage/app/uploads/public/658/2d9/813/6582d9813d790644266136.pdf>.

2088 Lis of courts whose territorial jurisdiction was changed due to the inability to administer justice during martial law (summary table). The Supreme Court. URL: https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/.

2089 Analysis of legislative initiatives to improve the legislation of Ukraine on the conduct of court proceedings in a remote (online) mode in conditions of martial law or a state of emergency. Council of Europe. October 2022. URL: <https://rm.coe.int/analysis-of-legislative-initiatives-regarding-judicial-proceedings-in-/1680a99fbf>.

According to court statistics²⁰⁹⁰, the total number of cases (excluding statistics on requests/orders/interrogation requests) in which court proceedings were conducted via videoconference in 2022 was 48363 (the average number of such cases was more than 4000 per month), and the largest number of cases considered in this way was conducted by criminal courts – 25531 (local general courts – 13796; appellate courts – 11735), which led the Directorate of Justice and Criminal Justice of the Ministry of Justice of Ukraine to conclude that this institution can be used effectively²⁰⁹¹.

Paragraph 4.1.4 of the Strategy for the Development of the Justice System and Constitutional Court Procedure for 2021–2023²⁰⁹² provides, in particular, for the task of defining in the procedural codes the development of e-justice taking into account international standards in the field of information technology, its integration into the national e-government infrastructure by introducing the possibility of online consideration of certain categories of cases regardless of the location of the parties and the court and other e-justice services. To implement it, the possibilities of remote participation in court proceedings are gradually expanding through the Unified Judicial Information and Telecommunication System (UJITS) (Law of Ukraine No. 1416-IX²⁰⁹³).

The CPC of Ukraine provides for the possibility of remote participation in case of: 1) impossibility of direct participation of a participant in criminal proceedings in court for health reasons or for other valid reasons; 2) the need to ensure the safety of persons; 3) interrogation of a minor or underage witness, victim; 4) the need to take such measures to ensure the efficiency of court proceedings; 5) other grounds determined by the court to be sufficient (Article 336 of the Code). At the same time, while in civil, commercial, and administrative proceedings, the possibility of participating in court hearings via UJITS modules in a video conference mode outside the court premises using one's own technical means is regulated, in criminal proceedings it is possible only with the help of the court's technical means (for example, a person is in one city and the case is being considered in another). This needs to be improved for the purpose of unification.

On 18 October 2023, Law of Ukraine No. 3200-IX²⁰⁹⁴, was enacted, amending the procedural codes (the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine) and providing for the use of the UJITS and its electronic offices for the exchange of documents. At the same time, it does not apply to criminal proceedings, where the regulation of remote participation is significantly lagging behind.

These issues are regulated by Law of Ukraine No. 3604-IX²⁰⁹⁵, which provides for the gradual introduction of the UJITS in criminal proceedings. In particular, it provides for the possibility of submitting procedural documents in electronic form to the court by the parties to the case using the UJITS, and conducting procedural actions via video conference during court proceedings.

The progress in access to justice in civil cases involving minor disputes is worth noting. In this context, the position of the Constitutional Court of Ukraine (CCU), set out in its decision of 22

2090 Judiciary. Statistics. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022.

2091 Report on the results of monitoring the implementation and analysis of the effectiveness of adopted legal acts 2023. Ministry of Justice. Directorate of Justice and Criminal Justice - P. 31-32. URL: <https://minjust.gov.ua/files/general/2024/02/27/20240227165717-86.pdf>.

2092 On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023: Decree of the President of Ukraine of 11.06.2021 No. 231/2021. URL: <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

2093 On Amendments to Certain Legislative Acts of Ukraine to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System: Law of Ukraine of 27.04.2021 No. 1416-IX. URL: <https://zakon.rada.gov.ua/laws/show/1416-20#Text>.

2094 On Amendments to Certain Legislative Acts of Ukraine Regarding Mandatory Registration and Use of Electronic Offices in the Unified Judicial Information and Telecommunication System or its Separate Subsystem (Module) Enabling Document Exchange: Law of Ukraine of 29.06.2023 No. 3200-IX. URL: <https://zakon.rada.gov.ua/rada/show/3200-20#Text>.

2095 On Amendments to the Criminal Procedure Code of Ukraine to Ensure the Phased Implementation of the Unified Judicial Information and Telecommunication System: Law of Ukraine of 23.02.2024 No. 3604-IX. URL: <https://zakon.rada.gov.ua/laws/show/3604-IX#Text>.

November 2023 No. 10-r(II)/2023²⁰⁹⁶, which declared clauses 1, 5 of part 6 of Article 19 of the Civil Procedure Code of Ukraine as inconsistent with the Constitution of Ukraine (unconstitutional), namely the criterion of insignificance – a certain monetary threshold. In the reasoning of the decision, the CCU stated that in its constitutional proceedings it “takes into account the *acquis communautaire* in general and individual acts of the European Union relevant to the subject of constitutional control in particular” (para. 1 subpara. 3.5, para. 3 of the reasoning part in the Decision of 01 November 2023 No. 9-r(II)/2023). The European Parliament and the Council of the European Union by their Resolution No. 861/2007 of 11 July 2007 approved the European Small Claims Procedure²⁰⁹⁷ as amended (hereinafter – the ESCP Rules), which is an alternative to the ordinary court procedure and has been applicable since 1 January 2009. The ESCP Rules define the list of claims that can be considered under the small claims procedure and the types of claims that cannot be considered under this procedure, in particular: regarding the status or legal capacity of individuals, the regime of property relations of spouses, alimony obligations, inheritance; real estate, except for monetary claims; labour disputes and social security cases; bankruptcy; arbitration; violation of privacy and rights related to a person. In other words, it is necessary to distinguish the category of cases, not just the monetary threshold, when classifying certain disputes as minor. By this decision, the CCU expanded the range of persons entitled to full judicial review of disputes over their property rights in accordance with the provisions governing similar institutions in the EU.

Recommendations

1. Improve the procedures for participation in court hearings via videoconference outside the courtroom using its own technical means for its further effective use in online proceedings regardless of the location of the parties and the court in criminal proceedings.
2. Regulate participation of a judge, witness, interpreter, specialist, expert, and court registrar in a court hearing via videoconference outside the court premises using their own technical means; swearing in witnesses, experts, interpreters participating in a court hearing via videoconference outside the court premises, etc.
3. Introduce extraterritorial consideration of cases through the modules of the UJITS system and define the categories of cases that will be considered without regard to the rules of territorial jurisdiction.

Issues for further monitoring

- › Draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and Other Legislative Acts to Ensure Criminal Proceedings, the Implementation of Which Is Impossible as a Result of the Armed Aggression of the Russian Federation against Ukraine, the Temporary Occupation of Certain Territories of Ukraine by the Russian Federation” (registration No. 9579 of 07 August 2023).
- › Draft Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Pre-trial Investigation and Trial in Criminal Proceedings on Crimes Related to Sexual Violence Committed in the Context of Armed Conflict” (registration No. 9351 of 05 June 2023).

²⁰⁹⁶ Decision of the Constitutional Court of Ukraine of 22.11.2023 No. 10-r(II)/2023 in the case on constitutional complaints of Doroshko Olga Yevhenivna, Yevstifeiev Mykyta Ihorovych, Kushaba Ivan Petrovych, Yakimenko Volodymyr Petrovych on the compliance with the Constitution of Ukraine (constitutionality) of paragraphs 1, 5 of part six of Article 19, paragraph 2 of part three of Article 389 of the Civil Procedure Code of Ukraine (regarding the guarantee of the right to judicial protection in minor disputes). URL: <https://zakon.rada.gov.ua/laws/show/v010p710-23#Text>.

²⁰⁹⁷ Consolidated text: Regulation (EC) № 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. URL: <http://data.europa.eu/eli/reg/2007/861/2017-07-14>.

Progress made in the areas covered by Chapter 23 'Justice and Fundamental Rights' of the European Commission Report during August 2024

RULE OF LAW

Judicial reform

I. High Council of Justice (HCJ)

In August 2024, the HCJ Secretariat completed the acceptance of documents from candidates for two positions of HCJ members who will be elected to the HCJ by the Congress of Judges in March 2025 after their verification by the Ethics Council. A total of 12 candidates submitted their documents.²⁰⁹⁸

In addition, HCJ Head H. Usyk signed an order appointing Peter F. Shenk as a member of the Ethics Council, effective 22 August 2024.²⁰⁹⁹ With this, the Ethics Council is now fully constituted, and the previous recommendation regarding its formation is no longer relevant.

Competition to the HCJ Disciplinary Inspectorate (HCJ DI)

On 26 August 2024, the Competition Commission for the Selection of Disciplinary Inspectors started interviews with candidates for the position of Deputy Head of the HCJ DI and a disciplinary inspector.²¹⁰⁰ Interviews with candidates were conducted online between 26 August and 06 September.

The Competition Commission has also completed the acceptance of documents within the framework of the second competition for the position of the Head of the HCJ DI. In total, 26 people submitted documents, of which 23 people (6 women and 17 men) were admitted to the competition. At the same time, some candidates are already participating in the competition for other positions of the HCJ DI, which creates a risk of not filling all vacancies. Such candidates will be able to count their previous cognitive skills test results for participation in the competition for the position of the head of the HCJ DI.²¹⁰¹

Recommendation

Conduct a competition for the head of the HCJ DI as soon as possible so that the new head can start performing the duties simultaneously with the deputy and disciplinary inspectors.

2098 The Congress of Judges of Ukraine nominated 12 candidates for two positions of HCJ members. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/na-dvi-posady-chleniv-vrp-vid-zyizdu-suddiv-ukrayiny-pretenduyut-12-kandydativ>.

2099 Peter F. Shenk appointed as a member of the Ethics Council. Judiciary of Ukraine. 2024. URL: <https://court.gov.ua/press/news/1656045/>

2100 Interviews with candidates for the position of Deputy Head of the Service of Disciplinary Inspectors. Youtube. 2024. URL: https://www.youtube.com/live/qsFpt_OP_8o?si=YUH45t7A-QKv9Mem.

2101 Announcement. High Council of Justice. 2024. URL: https://t.me/hcj_gov_ua/6093.

II. High Qualification Commission of Judges of Ukraine (HQCJ)

In August, the HQCJ continued the qualification assessment of judges.²¹⁰² A number of candidates passed an anonymous written test.²¹⁰³ Some first instance judges were also interviewed in panels or in plenary with the participation of members of the Public Integrity Council.²¹⁰⁴

Recommendation

Accelerate the qualification assessment, first of all, of the so-called “five-year judges” who have no powers and do not administer justice.

Public Council of International Experts (PCIE)

On 21 August 2024, the Parliament supported in the first reading draft law No. 11426,²¹⁰⁵ which provides for the extension of the PCIE’s mandate until the completion of the competition to the High Anti-Corruption Court (HACC), but no longer than 1 November 2025. Thus, the previous recommendation to adopt this draft law as soon as possible remains relevant.

Public Integrity Council (PIC)

The first year of the PIC’s work has concluded. During this period, the PIC submitted 191 decisions on 163 judges to the HQCJ. The final decisions of the PIC sent to the HQCJ include 111 opinions.²¹⁰⁶

During the qualification assessment, the HQCJ overruled 42 PIC opinions, accounting for 62% of the reviewed PIC opinions. This highlights the need for improved cooperation between the PIC and HQCJ, particularly in terms of access to information and decision-making rationale.

Overall, the statistics suggest a relatively slow pace of work by the current PIC compared to previous compositions that participated in the Supreme Court competition and the qualification assessment in 2018–2019.

At the same time, the PIC states that the problem of access of its members to the files of judges and judicial candidates has not been finally resolved and remains acute, despite the fact that the HQCJ has approved the Procedure for Access of PIC Members to Judicial Files.²¹⁰⁷ However, in order for PIC members to properly and safely process the information contained in the dossiers of judges and judicial candidates, they need to ensure a comprehensive system of personal data protection.

2102 The judge confirmed her suitability for the position. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.vkksu.gov.ua/news/suddya-pidtvordzhenya-vidpovidnist-zaymaniy-posadi-0>.

2103 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/ha5fuBc16hgBfTxk/>.

2104 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/fUqcsr9JUViQamw6/>.

2105 On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and the Law of Ukraine “On the High Anti-Corruption Court” regarding the Public Council of International Experts: Draft Law of Ukraine, registration No. 11426 of 22.07.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44540>.

2106 Publication of the High Qualification Commission of Judges of Ukraine on Facebook. 2024. URL: <https://www.facebook.com/share/p/U7Rj7VyroCZXYyco/>.

2107 Procedure for Access to the Judicial Dossier (Dossier of a Candidate for the Position of Judge) of the Members of the Public Integrity Council: Decision of the High Qualification Commission of Judges of Ukraine No. 37/zp-24 of 22.05.2024. URL: <https://vkksu.gov.ua/doc/pro-zatverdzhennya-poryadku-dostupu-do-suddivskogo-dosye-dosye-kandydata-na-posadu-suddi-chleniv>.

Recommendation

Accelerate the processing of judges dossiers by the PIC members in the qualification assessment procedure.

The PIC should also ensure the proper functioning of the system of protection of personal data of judges and judicial candidates, as well as their family members and third parties, as soon as possible to avoid leakage of personal data and sensitive information in general, and the HQCJ should promptly resolve issues arising when PIC members access the files of judges and judicial candidates and judges.

III. Supreme Court (SC)

To ensure the unity of case law, the SC has developed two new IT products: a software program for recording cases of the Grand Chamber of the SC (GC SC), which is published on the SC's resources on a weekly basis, and Supreme Lab, a resource that allows posting information on cases that are being considered and have been considered by chambers, joint chambers and the GC SC.²¹⁰⁸ Supreme Lab has been successfully tested within the SC and will soon be available to external users, primarily judges and parties to cases.

In total, in the first half of 2024, the SC issued 550 legal opinions in cases: 30 legal opinions by the GC SC, and 520 by the cassation courts within the SC. The relevant opinions were published in the GC SC case law digest and four reviews of the case law of the cassation courts within the SC.²¹⁰⁹

IV. Local and appellate courts

Competition to appellate courts

On 21 August 2024, the HQCJ adopted a decision approving the type of practical task for the qualification exam within the competition to the appellate courts and published on the Commission's official website the numbers of court cases used in the development of model court decisions for the said competition, which candidates are recommended to review.²¹¹⁰

Additionally, the HQCJ's decision of 21 August 2024 excluded certain questions (due to their incorrectness) from the lists of test questions for the qualification exam within the competition to the appellate courts.²¹¹¹ This is another evidence of the poor quality of work of the management and staff of the National School of Judges of Ukraine, who developed these tests.²¹¹²

Change of territorial jurisdiction of court cases

Starting from 2 September 2024, the HCJ changed the territorial jurisdiction of court cases of four courts of Donetsk region located near the contact line, namely: Dzerzhynskyy City Court of Donetsk Region – by transferring it to Samarskyy District Court of Dnipropetrovsk; Dmytrivskyy City Court of Donetsk Region – by transferring it to Babushkynskyy District Court of Dnipropetrovsk; Krasnoarmiyskyy City Court of Donetsk Region – by transferring it to Zavodskyy

2108 Supreme Observe. URL: <https://so.supreme.court.gov.ua/>.

2109 Publication of the Supreme Court on Facebook. 2024. URL: <https://t.me/supremecourtua/3335>.

2110 To the attention of candidates for vacant positions of judges of courts of appeal. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://www.vkksu.gov.ua/news/do-uvagy-kandydativ-na-zaynyattya-vakantnyh-posad-suddiv-apelyaciyneh-sudiv-0>.

2111 To the attention of candidates for vacant positions of judges in the courts of appeal. High Qualification Commission of Judges of Ukraine. 2024. URL: <https://vkksu.gov.ua/news/do-uvagy-kandydativ-na-zaynyattya-vakantnyh-posad-suddiv-v-apelyaciyneh-sudah>.

2112 For more details, see the "National School of Judges of Ukraine" subsection, p. 77.

District Court of Dniprodzerzhynsk, Dnipropetrovsk Region; Selydivskyy City Court of Donetsk Region – by transferring it to Kirovskyy District Court of Dnipropetrovsk.²¹¹³ The change of jurisdiction took place just a few days before the introduction of a 20-hour curfew in the city of Pokrovsk,²¹¹⁴ which indicates a delay in making a decision on the change of jurisdiction.

However, there are still a number of courts in Donetsk region whose jurisdiction needs to be changed due to the approaching hostilities.

Recommendation

The Chief Justice of the Supreme Court, the HCJ, the State Judicial Administration of Ukraine (SJA) should monitor this issue and make timely decisions on changing jurisdiction in the remaining courts of Donetsk region to ensure the safety and health of judges and court staff.

V. Constitutional Court of Ukraine (CCU)

On 13 August 2024, the Presidential Competition Commission announced the start of the competitive selection of candidates for three positions of CCU judges under the presidential quota.²¹¹⁵ Thus, a repeated competition was announced for one vacant position of a CCU judge due to the insufficient number of candidates to continue the previous competitive selection. Two more positions will become vacant in January 2025 due to the expiration of the terms of office of two current CCU judges – Viktor Kolisnyk and Volodymyr Moisyk.

The competition commission will accept the document for 30 calendar days – from 14 August to 12 September 2024 inclusive.

VI. Funding of the judiciary in 2025

At the end of August 2024, the HCJ appealed to the Government and the Ministry of Finance of Ukraine (MoF) to ensure adequate funding of the judiciary in the upcoming year.²¹¹⁶ Currently, the HCJ notes that the results of the processing of the state budget expenditure limits for 2025, along with information from the main spending units within the justice system, show that the proposed funding amounts for 2025 are insufficient.

The proven HCJ expenditure ceiling for 2025 is UAH 351,999.8 thousand, which does not cover the HCJ's need for expenditures required to cover the salaries, payroll and capital expenditures. The deficit of expenditures for 2025 in relation to the approved ceilings is UAH 122,418.2 thousand.

The limit of the SC expenditures for the general fund of the state budget for 2025 is UAH 899.2 thousand less than the one approved in 2024.

The maximum amount of current expenditures for the High Anti-Corruption Court (HACC), as approved by the Ministry of Finance, is UAH 431,733.8 thousand, which is UAH 1,353.8 thousand

2113 The HCJ changed the territorial jurisdiction of four courts in Donetsk region. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zminyly-terytorialnu-pidsudnist-sudovyh-sprav-chotyroh-sudiv-doneckoyi-oblasti>.

2114 Curfews are being tightened in Pokrovsk and its community. Ukrainska Pravda. 2024. URL: <https://www.pravda.com.ua/news/2024/08/27/7472190/>.

2115 Announcement of the launch of a new competitive selection for three positions of judges of the Constitutional Court of Ukraine, appointed by the President of Ukraine. The official website of the President of Ukraine. 2024. URL: <https://www.president.gov.ua/administration/ogoloshennya-pro-pochatok-novogo-konkursnogo-vidboru-kandida-917>.

2116 The HCJ appealed to the CMU and the Ministry of Finance for proper funding of the judiciary. High Council of Justice. 2024. URL: <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-ta-minfinu-shchodo-nalezhnogo-finansuvannya-sudovoyi-vlady-0>.

less than in 2024. This includes salary costs of UAH 342,837.0 thousand, maintained at the 2024 level, despite the increase in HACC staff by 152 persons, including 25 judges.

The financial resource requirement for appellate and local courts, as well as bodies and institutions within the State Judicial Administration (SJA) system for 2025, amounts to UAH 36,278,357.4 thousand. However, the maximum expenditure approved by the Ministry of Finance is UAH 16,882,085.7 thousand, with planned revenues from the special fund expected to be UAH 3,600,000.0 thousand. This means the SJA's financial resource requirement for 2025 is only 56.5% met. The general fund expenditure limits cover only labor remuneration and payroll costs, with all other expenditures expected to be covered by the special fund revenues. The SJA's financial resource deficit for 2025 is UAH 15,796,271.6 thousand.

Under such circumstances, the proper functioning of the courts and judiciary may become a significant issue next year.

Recommendation

To prevent disruptions in court operations and ensure citizens' access to justice, it is crucial to secure an adequate level of funding for the judiciary.

VII. Enforcement of court decisions

The Verkhovna Rada Committee on Legal Policy has approved recommendations from committee hearings on the topic: "Mechanism for Ensuring the Effective Enforcement of Court Decisions".²¹¹⁷ The main areas for further reform of the enforcement system include:

- › transition to a fully mixed model by equalizing the powers of public and private enforcement officers;
- › reviewing the mechanism of state guarantees for court decision enforcement;
- › reassessing existing moratoriums on debt enforcement, including those introduced during martial law;
- › introducing modern tools for identifying debtor assets and ensuring court decision enforcement;
- › establishing an effective mechanism for enforcing non-property decisions, including those by state authorities;
- › introducing legislative incentives for voluntary debt repayment by debtors;
- › strengthening the role of information systems in enforcement proceedings, particularly for asset search, seizure, and recovery.

Recommendation

Begin implementing the proposed recommendations as soon as possible, as this would mark significant progress in the enforcement of court decisions.

²¹¹⁷ The Verkhovna Rada Committee on Legal Policy approved the recommendations of the Committee's hearings on "Mechanism for Ensuring Effective Enforcement of Court Decisions". Association of Private Enforcement Officers of Ukraine. 2024. URL: <https://apvu.com.ua/tpost/xalmca5e51-komtet-verhovno-radi-ukrani-z-pitan-prav>.

Reform of the Bar

I. The Unified Register of Advocates of Ukraine (URAU)

As of July 2024, contrary to the requirements of the law,²¹¹⁸ the public only had ad hoc access to URAU data, with search capabilities limited to individual advocates. Until recently, the Ukrainian National Bar Association (UNBA) continued to ignore the requirements of Government Resolution No. 835²¹¹⁹ and even denied access to the URAU dataset, which led the DEJURE Foundation to appeal to the administrative court in 2023.²¹²⁰ On 26 February 2024, the Lviv District Administrative Court²¹²¹ ruled that the UNBA's actions were unlawful and ordered it to provide the plaintiff with the URAU dataset in the form of open data. The decision was upheld on appeal.²¹²²

On 06 August 2024, the UNBA began publishing its first set of open data of the URAU, which is now available for download in csv format.²¹²³ However, it is worth noting that the published dataset contains only information on the advocate's surname, name, patronymic; the name of the Bar self-government body (BSG) where the advocate is registered; the number and date of the decision to issue the Bar certificate; the number and date of the Bar certificate, as well as the name of the body that issued the Bar certificate. The published version of the URAU lacks other important information available in the web version of the register, such as details on the suspension or termination of the right to practice law and the grounds for the relevant decisions, disciplinary liability of the advocate, information from the section 'Other Information', as well as historical data on the advocate.²¹²⁴ Thus, the UNBA continues to restrict access to the URAU data in violation of current legislation.

However, the published information allowed for the identification of the leading regions in terms of the number of Bar certificates issued per 10,000 population: Kyiv region (28.63%), Poltava region (19.77%), and Zakarpattia region (15.90%).²¹²⁵ The BSG bodies of Zakarpattia region have repeatedly drawn public attention to their activities, as this region notably had 250 people registered in a single apartment who soon became advocates.²¹²⁶ Neither Zakarpattia nor Poltava regions are centers of business or industrial activity where a large concentration of advocates would be expected, making these findings surprising. On the other hand, the city of Kyiv, despite being the capital, is not a leader in the ranking, likely due to systemic problems with Bar self-government that have persisted since 2016.

2118 The problem of the lack of access to the data sets of the Unified Register of Advocates is described in detail in the "Practice of Law" subsection, p. 154.

2119 On Approval of the Regulation on Data Sets to be Disclosed in the Form of Open Data: Resolution of the Cabinet of Ministers of Ukraine of 21.10.2015 No. 835. URL: <http://zakon.rada.gov.ua/laws/show/835-2015-%D0%BF>

2120 DEJURE Foundation won a case against the Ukrainian National Bar Association. DEJURE Foundation. 2024. URL: <https://dejure.foundation/fundacziya-dejure-vygrala-spravu-proty-naczionalnoyi-asocziacziyi-advokativ-ukrayiny/>.

2121 Decision of the Lviv District Administrative Court of 26.02.2024 in case No. 380/24401/23. URL: <https://reyestr.court.gov.ua/Review/117347259>.

2122 Decision of the Eighth Administrative Court of Appeal of 09.07.2024 in case No. 380/24401/23. URL: <https://reyestr.court.gov.ua/Review/120283469>.

2123 "Unified Register of Advocates" open data set. URL: <https://data.gov.ua/dataset/77706d25-57f9-4376-b470-5830b7a495ae>.

2124 UNBA published the first set of open data. DEJURE Foundation. 2024. URL: <https://dejure.foundation/naau-oprylyudnyla-pershij-nabir-vidkrytyh-danyh/>.

2125 Publication of the DEJURE Foundation in Facebook. 2024. URL: <https://www.facebook.com/share/p/KZdBw3g4qkWXcpgk/>; Number of certificates for 10,000 people. URL: https://public.tableau.com/app/profile/julia.wozniak3223/viz/10_17241456971480_Sheet5.

2126 For more details, see the "Access to the profession" subsection, p. 171.

Recommendations

Amend the Law of Ukraine “On the Bar and Practice of Law” (hereinafter - the “Law”) in terms of the obligation of the BSG to publish all URAU data sets in the form of open data in accordance with the requirements of Ukrainian legislation.

II. Continuous professional development

The report highlights several issues related to the system of continuous professional development for advocates in Ukraine, particularly the artificial creation of the UNBA Higher School of the Bar (UNBA HSB), and provides examples where advocates faced disciplinary action, such as suspension of the right to practice law for six months, simply for criticizing the current state of advanced training for advocates in Ukraine.²¹²⁷

The case of advocate A. Donets is not an isolated one in the UNBA’s efforts to compel the Bar community to pursue professional development exclusively through educational activities offered by the UNBA HSB’s platform. This indicates the beginning of a systematic persecution of advocates who seek to improve their professional skills through means other than those provided by the UNBA HSB. On 13 August 2024, the UNBA HSB appealed to the Qualification and Disciplinary Commission of the Bar (QDC) of the Kyiv region to bring advocate N to disciplinary responsibility.²¹²⁸ According to the UNBA HSB, the reason for the appeal was that the advocate had not completed professional development at the UNBA HSB Accreditation Centre in previous years, specifically in 2019, 2020, 2021, 2022, and 2023.

According to the Law,²¹²⁹ among the grounds for bringing advocates to liability there is no direct ground related to ‘failure to improve their professional level’. That is why, in support of its complaint, the UNBA stated that the advocate’s actions constituted a disciplinary offence, namely: failure to fulfil the professional duty under Article 21 of the Law in terms of raising the professional level and violation of subpara. 3 of Art. 11, para. 1 of Art. 65 of the Rules of Ethics of the Bar²¹³⁰ - failure to comply with the decisions of the BSG regarding the advocate’s obligation to constantly improve the professional level and qualifications, to have sufficient information about changes in the current legislation. The disciplinary complaint is currently under consideration by the QDC of Kyiv region.

Of particular concern is a similar complaint filed against an advocate who suspended his practice of law due to mobilisation to the Armed Forces of Ukraine.²¹³¹ Currently, advocate X is serving in the Air Defence Forces of Ukraine. Despite these circumstances, the UNBA HSB, represented by its Director, filed a similar complaint to the QDC with the requirement to ‘Bring advocate X to disciplinary responsibility’.

Particularly unacceptable in these complaints is the claim that the advocate did not receive any further training during 2022-2023, i.e. during the full-scale invasion of Ukraine by the Russian Federation and the existential threat to the entire nation.

2127 For more details, see the “Disciplinary liability” subsection, p. 179.

2128 The information was obtained from the advocate whose actions are complained about by the Higher School of the Bar of the Ukrainian National Bar Association. At the advocate’s request, their personal data will remain confidential during the consideration of the relevant complaint.

2129 On the Bar and Practice of Law: Law of Ukraine of 05.07.2012 No 5076-VI, p. 34. URL: <https://zakon.rada.gov.ua/laws/show/5076-17>.

2130 Rules of Ethics of the Bar: Congress of Advocates of Ukraine of 09.06.2017. URL: <https://zakon.rada.gov.ua/rada/show/n0001891-17#Text>.

2131 The information was obtained from the advocate whose actions are complained about by the Higher School of the Bar of the Ukrainian National Bar Association. At the advocate’s request, their personal data will remain confidential during the consideration of the relevant complaint

Having systematically analyzed the situation regarding disciplinary complaints against the UNBA HSB and the broader issues surrounding its activities²¹³² (such as the artificially created monopoly of the UNBA HSB, the quality and accessibility of its offerings, and the lack of financial transparency), it is evident that the UNBA and the HSB not only continue to overlook the existing shortcomings in the system of continuous professional development for advocates but are also attempting to reinforce the already monopolistic position of the UNBA HSB in this field by using disciplinary proceedings to compel advocates, currently totaling 69,478 individuals, to formally enhance their qualifications exclusively through educational activities provided by this organization.

Prosecution reform

I. All-Ukrainian Conference of Prosecutors

On 27 August 2024, the V All-Ukrainian Conference of Prosecutors²¹³³ took place, with the agenda including the election of a new composition of the Council of Prosecutors of Ukraine (COPU) and the selection of candidates for the new composition of the Qualification and Disciplinary Commission of Prosecutors (QDCP). The conference was attended by 518 delegates from prosecutor's offices of all levels - the Office of the Prosecutor General (OPG), regional and district prosecutor's offices, and the Specialised Anti-Corruption Prosecutor's Office (SAPO) - who were entrusted by prosecutors' groups to represent their interests at the conference.

The conference resulted in the appointment of five members of the QDCP (four prosecutors representing various structural units of the OPG and one prosecutor from the Kharkiv Regional Prosecutor's Office) and two members of the COPU (prosecutors from the Khmelnytskyi Regional Prosecutor's Office and the SAPO).²¹³⁴ In addition, the conference participants approved amendments to the Code of Professional Ethics and Conduct of Prosecutors,²¹³⁵ Regulation on the Council of Prosecutors of Ukraine;²¹³⁶ Regulation on the Procedure of the QDCP²¹³⁷ and the Rules of Procedure of the All-Ukrainian Conference of Prosecutors.²¹³⁸ Currently, the updated documents have not been published, so it is not possible to assess the changes.

II. Candidates for the positions of the QDCP members were selected through a pilot integrity assessment procedure

According to the Head of the COPU A. Iezhov,²¹³⁹ the information about the candidates for the QDCP from the prosecution was collected from open sources. The information gathered

2132 For more details, see the "Reform of the Bar" section.

2133 All-Ukrainian Conference of Prosecutors. Office of the Prosecutor General. 2024. URL: <https://www.gp.gov.ua/ua/posts/vseukrayinska-konferenciya-prokuroriv-2024>.

2134 The All-Ukrainian Conference of Prosecutors appointed five members of the QDCP and two members of the Council of Prosecutors of Ukraine. Office of the Prosecutor General. URL: <https://www.gp.gov.ua/ua/posts/vseukrayinska-konferenciya-prokuroriv-priznacila-pyatyox-cleniv-kdkp-ta-dvox-cleniv-radi-prokuroriv-ukrayini>.

2135 Code of Professional Ethics and Conduct for Prosecutors, approved by the All-Ukrainian Conference of Prosecutors on 27.04.2017. URL: <https://zakon.rada.gov.ua/laws/show/n0001900-17#Text>.

2136 Regulation on the Council of Prosecutors of Ukraine, approved by the All-Ukrainian Conference of Prosecutors on 27.04.2017. URL: <https://zakon.rada.gov.ua/laws/show/n0002900-17#Text>.

2137 Regulation on the Procedure of the Qualification and Disciplinary Commission of Prosecutors, approved by the All-Ukrainian Conference of Prosecutors on 27.04.2017 (as amended). URL: <https://zakon.rada.gov.ua/laws/show/n0003900-17#Text>

2138 Regulations of the All-Ukrainian Conference of Prosecutors, approved by the All-Ukrainian Conference of Prosecutors on 27.04.2017. URL: <https://zakon.rada.gov.ua/laws/show/n0004900-17#Text>.

2139 Announcement for candidates for the positions of members of the Qualification and Disciplinary Commission of Prosecutors. Office of the Prosecutor General. URL: <https://www.gp.gov.ua/ua/posts/ogoloshennya-dlya-kandidativ-na-posadi-chleniv-kvalifikacijno-disciplinarnoyi-komisiji-prokuroriv>.

and analyzed by experts on the candidates for the QDCP was compiled into separate reports, providing an objective and balanced presentation of the facts, without any assessments or conclusions about the candidates.

This step was necessary to pilot the candidate assessment model at this year's All-Ukrainian Conference of Prosecutors, which will be further set out in the format of amendments to the legislation to meet one of the requirements set by the European Commission for Ukraine. This requirement is to conduct an independent and objective pre-selection procedure for all candidates to the QDCP, including their integrity check. The adoption of relevant amendments to national legislation is envisaged in the Ukraine Facility Plan²¹⁴⁰ for 2026.

For this purpose, the COPU requested international partners, in particular, the Council of Europe in Ukraine, the European Union Advisory Mission to Ukraine, the International Development Law Organisation (IDLO) and the EU Pravo-Justice Project to conduct preliminary collection of information from open sources, including requests based on the Law of Ukraine "On Access to Public Information" - from OPG, regional prosecutor's offices for delegates of the All-Ukrainian Conference of Prosecutors.

III. Government approves Action Plan for 2023-2027 to implement the Comprehensive Strategic Plan for Law Enforcement Reform

On 23 August 2024, the Cabinet of Ministers of Ukraine approved the Action Plan for the Implementation of the Comprehensive Strategic Plan for Law Enforcement Agencies as a Part of the Security and Defence Sector of Ukraine for 2023-2027²¹⁴¹ (hereinafter - the "Action Plan"). The Action Plan is aimed at implementing the Comprehensive Strategic Plan for Law Enforcement Reform,²¹⁴² reflects Ukraine's commitments within the framework of European integration as stipulated in the EU-Ukraine Association Agreement, and incorporates the recommendations of the European Commission set out in its 2023 Report on Ukraine as part of the EU Enlargement Package.

The implementation of the Action Plan will have a positive impact on further harmonisation of the criminal and criminal procedure legislation of Ukraine with the EU standards and will ensure reforms in the field of law enforcement and prosecution to address a number of issues, namely: excessive duration of pre-trial investigation; unclear delineation of competence and powers of various law enforcement agencies; duplication of their functions; corruption risks in the activities of law enforcement and prosecution agencies; imperfect mechanisms of appointment and promotion.²¹⁴³

In terms of the functioning of the prosecution service, the action plan also includes measures to:

- › establish a system of criminal policy, crime assessment and alternative tools for measuring latent crime to official criminal statistics;
- › expand the discretionary powers of the prosecutor in criminal proceedings;

2140 Plan for the Ukraine Facility for 2024-2027, pp. 82-83. URL: <https://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/plan-ukraine-facility.pdf>.

2141 On Approval of the Action Plan for the Implementation of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027: Order of the Cabinet of Ministers of Ukraine of 23.08.2024 No. 792-r. URL: <https://zakon.rada.gov.ua/laws/show/792-2024-%D1%80#Text>.

2142 On the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as a Part of the Security and Defence Sector of Ukraine for 2023-2027: Decree of the President of Ukraine of 11.05.2023 No. 273/2023. URL: <https://zakon.rada.gov.ua/laws/show/273/2023#Text>.

2143 Government adopts the Action Plan for the implementation of the Comprehensive strategic plan for law enforcement reform for 2023-2027. CPLR. URL: <https://pravo.org.ua/en/analytical-materials/weekly-analysis-for-21-27-august/>

- › improve the status of the victim, further ensure the safety of the victim, witness, whistleblower and other participants in criminal proceedings;
- › introduce alternative ways of resolving criminal law conflicts;
- › introduce prioritisation and strategic planning of criminal proceedings by the prosecutor's office;
- › strengthen the coordination function of the prosecutor's office in relation to law enforcement agencies in the field of criminal justice during the investigation of criminal offences;
- › introduce the 'integrity' criterion, strengthen anti-corruption requirements, introduce an evaluation system in the activities of the prosecutor's office and other measures for human resources management in this body;
- › comprehensive digital transformation, including steps to gradually implement the SMEREKA electronic criminal proceedings system, etc.

FIGHTING CORRUPTION

I. Implementation of the State Anti-Corruption Programme (SAP)

As of 31 August 2024, the official monitoring of the National Agency on Corruption Prevention (NACP) shows that 20.5% of the measures of the SAP have been implemented and 9.2% have been partially implemented.²¹⁴⁴ The increase is attributed to the fact that the NACP has completed monitoring the implementation of anti-corruption measures for the second quarter of 2024.²¹⁴⁵ However, 221 measures remain unimplemented, and the implementation of 345 measures has not yet begun.

In the summer of 2024, the NACP, together with the NGO StateWatch, presented the results of monitoring the implementation of anti-corruption measures in the defence sector by state authorities for the period from March 2023 to March 2024. Almost 40% of the measures in the Defence Action Plan were partially implemented, 3% were fully implemented, and about 58% remained unimplemented. In addition to security risks, the main reasons for the delay in implementing the SAP were a lack of funding and problems with coordination between co-executors.²¹⁴⁶ According to the NACP, holding such joint public events with civil society organisations is an important component of the nationwide information campaign on public control over the government as an important factor in preventing corruption.²¹⁴⁷

2144 Results of monitoring and evaluation of the effectiveness of the state anti-corruption programme for 2023-2025. National Agency on Corruption Prevention. URL: https://dap.nazk.gov.ua/module/?a%5Bstatus%5D=&a%5Bmain_organ%5D=&a%5Bid%5D=&a%5Bbydate%5D=

2145 e-Entrepreneur, e-permit, transition to the updated international customs IT system: key results of the implementation of the SAP in the second quarter. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/e-pidpryemets-e-dozvil-perehid-na-onovlenu-mizhnarodnu-mytnu-it-systemu-klyuchovi-rezultaty-vykonannya-antikoruptsiynyh-zahodiv/>

2146 Measures of the State Anti-Corruption Programme in the Defence Sector: Status of Implementation and Challenges. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/zahody-derzhavnoi-antikoruptsiynoi-programy-u-sektori-oborony-stan-vykonannya-i-vyklyky/>

2147 Public control against corruption: NACP and partners launch a new information campaign. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/gromadskyy-kontrol-proty-koruptsii-nazk-z-partneramy-pochaly-novu-informatsiyu-kampaniyu/>

It is potentially noteworthy that in autumn 2024 and 2025, as part of the Communication Strategy for Preventing and Combating Corruption,²¹⁴⁸ the NACP and its partners plan to implement several information campaigns aimed at raising public awareness of ways to report corruption, promoting various corruption prevention tools, etc.

Recommendations

Present the interim results of the implementation of the Communication Strategy for Preventing and Combating Corruption to the public.

II. Selection and evaluation of personnel

On 21 August 2024, Parliament adopted draft law No. 11426²¹⁴⁹ as a basis, which proposes extending the PCIE's term of office until the conclusion of the competition to the HACC announced by the HQCJ on 23 November 2023, but no later than 1 November 2025. At the same time, Parliament rejected an alternative draft law, No. 11426-1²¹⁵⁰, which proposed extending the term of office of PCIE members for the duration of their appointment and further regulating their status. The alternative draft law provided a more comprehensive solution to the issue of the PCIE's term of office, making the adoption of draft law No. 11426 appear more like a postponement of the problem.

III. Disciplinary liability

On 08 August 2024, the Director of the National Anti-Corruption Bureau of Ukraine issued an order approving the Register of Risks of Leakage or Disclosure of Information Created and Used in the Activities of the Main Detective Units during Pre-trial Investigation as one of the outcomes of the Working Group on the Causes of Information Leakage in the Agency.²¹⁵¹ This seems to be a step towards solving the problem described in the report.²¹⁵²

IV. Efficiency of court proceedings

On 14 July 2024, the Parliament adopted as a basis the Draft Law No. 11340 amending the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to improve the efficiency of plea bargaining.²¹⁵³

Additionally, on 22 August 2024, the Parliament adopted as a basis the Draft Law No. 11387 on amendments to the Code of Ukraine on Administrative Offences (CUAO), the CC of Ukraine and the CPC of Ukraine in terms of ensuring respect for the court and the promptness of criminal

2148 On Approval of the Communication Strategy for Preventing and Combating Corruption for the Period up to 2025 and Approval of the Operational Action Plan for its Implementation: Resolution of the Cabinet of Ministers of Ukraine of 22.12.2023 No. 1203-r. URL: <https://zakon.rada.gov.ua/laws/show/1203-2023-%D1%80#Text>.

2149 On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and the Law of Ukraine "On the High Anti-Corruption Court": Draft Law of Ukraine, registration No. 11426 of 22.07.2024. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/44540>.

2150 On Amendments to the Law of Ukraine "On the High Anti-Corruption Court" on the Continuation of the Activities of the Public Council of International Experts: Draft Law of Ukraine, registration No. 11426-1 of 06.08.2024. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/44681>.

2151 Response of the National Anti-Corruption Bureau of Ukraine of 19.08.2024 No. 01-299/24035 to the request for access to public information

2152 For more details, see the "Disciplinary Liability" section, p.231.

2153 For more details, see the "Efficiency of court proceedings" subchapter, p. 241.

proceedings.²¹⁵⁴ It proposes to revise the system of penalties applied for contempt of court and failure to fulfil procedural obligations by participants in criminal proceedings, introduce administrative liability for failure to comply with a court order to appear, establish the prosecutor's obligation to ensure the attendance of prosecution witnesses, clarify the criminal procedure and time limits for resolving the issue of recusal of a judge, and reduce the list of participants in court proceedings whose participation in the preparatory court hearing is mandatory.

V. Confiscation of assets derived from corruption-related criminal offences

The previous recommendation to approve an action plan for the implementation of the Asset Recovery Strategy for 2023-2025, which would contain specific steps to improve the work of state bodies in this area, has lost its relevance, as the Government approved the respective plan on 13 August 2024.²¹⁵⁵ At the same time, certain provisions of this plan are debatable, for example, there are often no measurable indicators that would allow us to assert the quality of the measure.

On 12 August 2024, the Government registered in the Parliament Draft Law No. 11473²¹⁵⁶ on the regulation of the procedure for informing prosecutors about the discovery of assets that may be seized in criminal proceedings. This act appears to be a superficial solution to the problem of planning before transferring assets to the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA). For example, it does not differentiate between pre-transfer planning measures depending on the type of property.

VI. Financial control of the NACP after its re-establishment

As of the end of July 2024, the NACP completed 78 full audits of declarations of persons authorised to perform state or local government functions under the new risk-based approach. Every second completed audit revealed inaccurate information totalling almost UAH 364 million and unjustified assets worth UAH 12.3 million. The NACP submitted 40 substantiated conclusions to the competent authorities and sent 2 protocols to the court.

A total of 616 full audits were launched in the first seven months of 2024, of which 284 were completed and 332 are ongoing. Out of 284 completed audits, inaccurate information was found (signs of offences under Part 4 of Article 172⁶ of the Code of Administrative Offences and Article 366² of the Criminal Code of Ukraine were established) in 129, which is 45.4% of the completed audits.²¹⁵⁷ Although the figures for detected unjustified assets remain not very high, it is worth noting the recent strengthening of cooperation between the NACP and the ARMA, aimed at increasing the NACP's effectiveness in finding unjustified assets of declaring entities abroad.²¹⁵⁸

2154 Draft Law on Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code and the Code of Criminal Procedure of Ukraine on Ensuring Respect for Court and Promptness of Consideration of Criminal Proceedings by the Court: Draft Law of Ukraine, registration No. 11387 of 28.06.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44510>.

2155 On Approval of the Action Plan for the Implementation of the Asset Recovery Strategy for 2024-2025: Order of the Cabinet of Ministers of Ukraine of 13.08.2024 No. 759-r. URL: <https://zakon.rada.gov.ua/laws/show/759-2024-%D1%80#Text>.

2156 On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts Regarding the Procedure for Informing Prosecutors of the Identification of Assets that May Be Seized in Criminal Proceedings: Draft Law of Ukraine, registration No. 11473 of 12.08.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44699>.

2157 More than UAH 376 million of violations were detected as a result of 78 completed full audits of declarations in July. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/ponad-376-mln-grn-porushen-vyavleno-za-rezultatamy-78-zavershenyh-povnyh-perevirok-deklaratsiy-u-lypni/>.

2158 NACP and ARMA strengthen cooperation in finding assets hidden abroad. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/nazk-ta-arma-poslylyuyut-spivpratsyu-u-poshuku-pryhovanyh-za-kordonom-aktyviv/>.

Also in the summer of 2024, the NACP signed a memorandum of cooperation with the Basel Institute on Governance (Switzerland), which aims to improve the tracing and recovery of assets illegally transferred from Ukraine.²¹⁵⁹

VII. POLITDATA System

On 9 August 2024, the reporting campaign for parliamentary and non-parliamentary political parties for the second quarter of 2024 concluded. The NACP continues to encounter significant non-compliance, with 168 political parties failing to submit reports to the system.²¹⁶⁰ However, a noteworthy development is that between January and July 2024, the NACP verified 100% of the submitted reports, including 1,236 reports from the central branches of political parties, and 37 reports from four parliamentary parties covering 2020 through the first quarter of 2024. It is important to note that during this period, parliamentary parties received approximately UAH 2.4 billion in state funding.

The NACP's review of political party reports revealed violations in 466 reports, or approximately one in every three. Examples of such cases include:

- › contributions from fictitious donors who, according to the State Tax Service of Ukraine, had no income during the relevant periods;
- › cooperation with entities exhibiting signs of dubious activity, as well as the establishment of transactions solely "on paper";
- › failure to disclose information on the actual amount of contributions/expenses.

As of 10 August 2024, the NACP has drawn up 81 reports on administrative offences as a result of inspections, and is preparing materials on more than three hundred more administrative offences.²¹⁶¹

VIII. Internal anti-corruption programmes of state and local authorities

As of August 2024, only four public authorities joined the list of those with active anti-corruption programmes. Thus, their total number is 135, but 29 bodies still do not have an effective anti-corruption programme four months before the end of 2024.²¹⁶²

IX. Regulatory framework for whistleblower protection

Given the adoption of EU Directive 2024/1069 on combating strategic lawsuits against public participation²¹⁶³ in spring 2024, it is worth putting on the agenda the issue of combating such

2159 NACP and the Basel Institute on Governance signed a memorandum of cooperation. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/nazk-ta-bazelskyi-instytut-upravlinnya-uklady-memorandum-pro-spivpratsyu/>.

2160 Almost 170 political parties failed to submit reports to the NACP for the second quarter of 2024. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/mayzhe-170-politychnyh-partiy-ne-podaly-zvity-do-nazk-za-ii-kvartal-2024-roku/>.

2161 Results of verification of political party reports: NACP found violations in every third report. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/rezultaty-perevirky-zvityv-politpartiy-u-kozhnomu-tretomu-zviti-nazk-vyavylo-porushennya/>.

2162 Anti-Corruption Programmes of Public Authorities. National Agency on Corruption Prevention. 2024. URL: <https://antycorportal.nazk.gov.ua/antycorprogram/>.

2163 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("Strategic lawsuits against public participation"). URL: <https://eur-lex.europa.eu/eli/dir/2024/1069/oj>.

a phenomenon against whistleblowers, which has been previously highlighted by civil society representatives.²¹⁶⁴

Recommendations

Bring national legislation in line with EU Directive 2024/1069, taking into account the experience of implementing the institution of whistleblower protection in Ukraine.

X. Unified Whistleblower Reporting Portal

As of July 2024, about 2,000 organisations have connected to the Portal, which is more than 33% of the total number of connected institutions. Currently, more than 5.9 thousand organisations are connected to the Portal, including more than 1,500 state bodies, more than 300 local governments and about 4,000 legal entities of private and public law (state-owned enterprises, regional structural units of state bodies, educational institutions, etc.).

More than 3,600 reports were registered in the system, resulting in 63 individuals being granted whistleblower status, reports from over 550 people are currently under review, while others have been classified as applicants. According to a survey conducted by the NACP on the implementation of the Portal and its development prospects,²¹⁶⁵ 50% of respondents positively assessed the possibility of expanding its functionality. However, the study also identified several shortcomings in the Portal's mechanisms. Specifically, respondents suggested the introduction of a "whistleblower's office" and a mechanism for sending letters to other organisations and authorised users, among other improvements.²¹⁶⁶ The NACP has reported that work is already underway to address many of these identified shortcomings.

XI. Legislative regulation of excessive influence of oligarchs and lobbying

In early July 2024, experts of the Centre of Policy and Legal Reform prepared and presented a draft Strategy for Deoligarchisation of Ukraine.²¹⁶⁷ This document is a progress in the approach to systemic anti-oligarchic reform and deserves further development.

XII. Limited public control and accountability of the National Police, the SBI, the BES and the SSU

On 23 August 2024, the Government approved the Action Plan for the Implementation of the Comprehensive Strategic Plan for Law Enforcement Reform for 2023-2027.²¹⁶⁸ Thus, the previous recommendation to publicly communicate the results of the development of such an action plan has lost its relevance.

2164 Whistleblower harassment: how public participation is hindered by unfounded lawsuits in the world. Liga.net. 2022. URL: <https://blog.liga.net/amp/user/okalitenko/article/47246>.

2165 "Unified Whistleblower Reporting Portal" research on the implementation of the Portal and its development prospects. National Agency on Corruption Prevention. 2024. URL: <https://drive.google.com/file/d/1HmPvrix6J7pkIvn9kv0CXFcZfpM-OeeH/view>.

2166 In July, more than 2,000 organisations connected to the Unified Whistleblower Reporting Portal. How Connection to the Unified Whistleblower Reporting Portal Affects Corruption Reporting: Research Findings. National Agency on Corruption Prevention. 2024. URL: <https://nazk.gov.ua/uk/novyny/u-lypni-do-edynogo-portalu-povidomlen-vykryvachiv-pidklyuchylsya-ponad-2-tysyachi-organizatsiy-yak-pidklyuchennya-do-edynogo-portalu-povidomlen-vykryvachiv-vplyvae-na-informuvannya-pro-koruptsiyu-dani-doslidzhennya/>.

2167 Experts of the Centre of Policy and Legal Reform presented a draft de-oligarchisation strategy for expert and public discussion. Centre of Policy and Legal Reform. 2024. URL: <https://pravo.org.ua/eksperty-tsentru-polityko-pravovyh-reform-predstavlyi-dlya-ekspertnogo-ta-gromadskogo-obgovorennya-proyekt-strategiyi-deoligarhizatsiyi/>.

2168 On Approval of the Action Plan for the Implementation of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027: Order of the Cabinet of Ministers of Ukraine of 23.08.2024 No. 792-r. URL: <https://zakon.rada.gov.ua/laws/show/792-2024-%D1%80#Text>.

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

I. Ratification of the Rome Statute of the International Criminal Court (ICC)

On 15 August 2024, the President submitted to the Verkhovna Rada two draft laws – “On Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto” (registration No. 0285)²¹⁶⁹ and the implementation draft law “On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine in connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto” (registration No. 11484).²¹⁷⁰ According to the Draft Law No. 0285, Ukraine ratifies the Rome Statute of the ICC as amended, but applies Article 124 of the Rome Statute of the ICC. Namely, Ukraine declares that within seven years after the entry into force of the Rome Statute for Ukraine, it does not recognise the jurisdiction of the ICC over the crimes referred to in Article 8 of the Rome Statute (war crimes), when the crime is allegedly committed by its citizens.

The ratification of the Rome Statute of the ICC was generally supported by representatives of human rights organisations²¹⁷¹ and Ukrainian lawyers.²¹⁷² However, the introduction of a seven-year moratorium on the application of the ICC’s jurisdiction over war crimes committed by Ukrainian citizens has raised reservations²¹⁷³ from representatives of the expert community. In particular, the application of Article 124 of the Rome Statute of the ICC leads to a situation of uncertainty regarding the possible impact of such a restriction on the Court’s jurisdiction, as there is a risk that the ICC will not investigate war crimes committed by citizens of Ukraine or on its territory for seven years. Another risk is that victims of war crimes will be deprived of an important mechanism for ensuring justice, which may lead to their being denied a chance for justice. In general, Article 124 may not only hinder justice processes, but also contribute to the spread of impunity. If the ICC does not investigate war crimes on the territory of Ukraine, it may provoke the commission of even more war crimes.

The Law of Ukraine No. 3894-IX²¹⁷⁴ was adopted by the Verkhovna Rada on 21 August 2024 and returned to the President on 24 August. However, this law will come into force simultaneously with the enactment of the Law of Ukraine “On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine in Connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto” (Draft Law No. 11484), which, as of 1 September, is under consideration by the relevant Committee of the Verkhovna Rada of Ukraine on Law Enforcement. Draft Law No. 11484 introduces the necessary amendments to the CC of Ukraine and the CPC of Ukraine to implement provisions of the Rome Statute of the ICC. Specifically, it adds the concept of “crimes against humanity” to the CC of Ukraine and aligns the definition of these crimes with Article 6 of the Rome Statute. The draft law stipulates that, in addition to the acts listed in the current CC of Ukraine, causing mental disorder with the intent to destroy, in whole or in part, any national, ethnic, racial, or religious group is a criminal offense. Additionally, Draft Law No. 11484 introduces criminal liability for military commanders,

2169 On the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto: Draft Law of Ukraine, registration No. 0285 of 15.08.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44724>.

2170 On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in connection with the Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto: Draft Law of Ukraine, registration No. 11484 of 15.08.2024. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/44725>.

2171 Human rights activists support Ukraine’s ratification of the Rome Statute - position. Human Rights Centre ZMINA. 2024. URL: <https://zmina.ua/statements/pravozahysnyky-pidtrymuuyut-ratyfikacziyu-ukrayinoyu-rymskogo-statutu-pozycziya/>.

2172 UBA welcomes the decision to ratify the Rome Statute. Ukrainian Bar Association. 2024. URL: <https://uba.ua/ukr/news/apu-va-rshennja-pro-ratyfikacju-rimskogo-statutu>.

2173 “Ukraine is getting closer to the court that issued the arrest warrant for Putin. But there is a nuance.” Dzerkalo Tyzhnya. 2024. URL: <https://zn.ua/ukr/LAW/ukrajina-staje-blizhchoju-do-sudu-jakij-vidav-order-na-aresht-putina-ale-je-njuans.html>.

2174 On Ratification of the Rome Statute of the International Criminal Court and Amendments Thereto: Law of Ukraine of 21.08.2024 No. 3909-IX. URL: <https://zakon.rada.gov.ua/laws/show/3909-IX#Text>.

individuals acting in the capacity of military commanders, and other superiors for any crimes committed under Articles 437-439, 442, and 442¹ of the Criminal Code of Ukraine.

Despite the urgent need for ratification of the Rome Statute, and therefore the adoption of the implementation draft law, it needs to be revised (in particular, this is stated in the position of the Main Scientific and Expert Department of the Verkhovna Rada, and similar opinions are expressed by representatives of the expert community). When finalising draft law No. 11484, it is necessary to take into account the needs of the national justice system and its future application in practice, as well as the experience of investigating war crimes that the law enforcement and judicial systems of Ukraine already have.

Recommendation

Involve representatives of human rights organisations that participated in the process of drafting laws on the harmonisation of Ukrainian legislation with international humanitarian and criminal law in the revision of Draft Law No. 11484.

A brief overview of current problems in the areas of justice, anti-corruption and protection of fundamental rights and freedoms, along with recommendations for their solution

№	Problems	Recommendations
JUDICIAL REFORM		
1	Lack of a unified strategy for the development of the judiciary as a basic document that would manage key tasks and expectations from the next stages of reform in this area	Adopt a strategic document on the development of the judiciary for the next 5 years (2025-2030), taking into account all international obligations and available capacities, and develop and approve an action plan for its implementation
2	Lack of thorough analysis of previous stages of judicial reform, their successes and failures	Assess the results of the judicial reform in previous periods, its achievements and failures, including the effectiveness of the adopted legislative changes
3	The High Council of Justice (HCJ) currently lacks four members (quotas of the President and the Congress of Advocates). This affects the quorum, creates risks during voting at meetings and increases the workload of the existing members by at least 20%. If by March 2025 the Congress of Judges fails to elect two new HCJ members to replace those whose terms of office expire, there is a risk that some of the procedures will be suspended. In this case, the HCJ will work on the verge of quorum	<p>To ensure the HCJ's effective functioning and continuous performance of its inherent functions, all possible steps should be taken to elect/appoint four HCJ members under the Presidential and Bar Congress quotas, as well as to elect two new HCJ members under the quota of the Congress of Judges to replace those whose terms of office expire in March 2025. Develop an alternative mechanism for convening and holding the Congress of Advocates (including through electronic services and online voting) and to provide for the responsibility of the leadership of the Ukrainian National Bar Association in case of its failure to hold it.</p> <p>Failure of the President to exercise his powers to appoint members of the HCJ requires a broad legal discussion and development of mechanisms to resolve such situations</p>
4	Since 1 August 2024, the Ethics Council has been missing one member out of three proposed by international and foreign organisations. This will to some extent worsen the situation of a candidate for the position of a HCJ member, since two members of the Ethics Council nominated by international and foreign organisations must vote for the decision on their compliance with the criteria of professional ethics and integrity	Appointment of a new member of the Ethics Council as soon as possible to ensure its effective work, in particular in terms of making the most informed decisions. For this purpose, international partners should submit proposals for a candidate to the Ethics Council as soon as possible, and the HCJ should appoint a new member of the Council without delay
5	The practice of applying to the HCJ with a petition to keep a judge in custody without removing him or her from the administration of justice continues	Amend the Law of Ukraine 'On the High Council of Justice' to ensure that when the HCJ gives its consent to detention or arrest of a judge, the issue of his/her removal from the administration of justice is also resolved

6	Attempts of judges to resign during the qualification assessment procedure and in case of disciplinary complaints against them continue to be recorded to avoid negative consequences	<p>Enshrine in law that if a judge submits a resignation letter, but there are disciplinary complaints filed (but not opened) against the judge, the HCJ shall decide on the opening and consideration of such complaints within 2 months</p> <p>Enshrine in law that the dismissal of a judge during the qualification assessment procedure should be made considering information on the presence or absence of disciplinary complaints against such a judge. In the absence of any complaints, the right to resign may be exercised at any time, without regard to the ongoing qualification assessment of the judge</p>
7	Different practices of the HCJ disciplinary chambers in bringing judges to justice in similar circumstances, which may lead to the cancellation of some HCJ decisions	<p>Conducting a thorough analysis of the HCJ's new practice of bringing judges to disciplinary responsibility and identifying discrepancies.</p> <p>In the future, it would be advisable to publish open data on the HCJ website in the context of the work of each HCJ member, reflecting information on all votes, terms of consideration, number of complaints considered and other issues of bringing judges to justice</p>
8	Prioritisation of disciplinary complaints by the HCJ and their further consideration	Clarify the criteria for prioritising disciplinary complaints and establish clear timeframes for their consideration – 2 months from the date of setting the priority criterion
9	Long-term approval of the Unified Indicators for Assessing Integrity and Professional Ethics of a Judge (Judicial Candidate) does not contribute to the unity of practice in the assessment of judges and judicial candidates, and increases corruption risks	Adopt the Uniform Indicators for Assessing Integrity and Professional Ethics of Judges (Judicial Candidates) as soon as possible so that the assessment of judicial candidates in the initiated competitions is based on the provisions of this act
10	The work of the Selection Panel for the Disciplinary Inspectorate (HCJ DI) is characterised by certain delays, on the one hand, and extremely high requirements during the testing of candidates' cognitive skills - on the other hand, which may result in certain delays in implementing various stages of the competition and even repetition of some procedures, as was the case during the competition for the position of the head of the HCJ DI	<p>Finalize the formation of the Disciplinary Inspectorate as soon as possible in accordance with the principles of openness and transparency.</p> <p>The pass rate for cognitive skills testing should also be reviewed after a thorough study of this issue by experienced testers</p>
11	Despite the absence of an obligation to publish conclusions on the termination of a candidate's participation in the competition to the HCJ DI, there is a risk that some candidates may withdraw from the competition on their own	It is more appropriate to use the so-called positive selection during the competition (as in the selection of candidates to the High Qualification Commission of Judges (HQCJ))

12	There is a problem with the premises where the DI is expected to operate, its technical equipment and other organisational issues of the DI's further operation	The HCJ, together with the Cabinet of Ministers of Ukraine, should resolve the issue of providing the DI with appropriate premises, equipment, etc. in the II quarter of 2024
13	The linkage in the Plan for the Ukraine Facility for 2024-2027 to the number of disciplinary complaints to be resolved with the involvement of the HCJ DI may lead to artificial delays in the consideration of some complaints	Given that bringing judges to disciplinary responsibility is a function of the HCJ, which, after its restoration, is carried out continuously, it seems inappropriate and impossible to establish a clear percentage of disciplinary complaints that should be considered with the involvement of the HCJ DI
14	Dismissal of the former Head of the HQCJ has created a vacancy that needs to be filled quickly	Hold a competition for one position of HQCJ member (under the judicial quota) within a reasonable timeframe
15	The absence of legislative regulation regarding the replacement of a resigned HQCJ member with another candidate who has already passed the competitive procedures necessitates a second competition for that position. This represents an inefficient use of resources, particularly human and financial	The Law of Ukraine "On the Judiciary and Status of Judges" should include a provision stipulating that, in the event of a reduction in the number of Commission members by 1 to 3 persons, new members are appointed from among the candidates who have successfully passed the competitive procedures but have not yet been appointed to the HQCJ by the HCJ. If the reduction exceeds three members, a new competition should be held
16	The Law of Ukraine "On the Judiciary and the Status of Judges" contains a number of gaps that prevent an unambiguous interpretation of the legislator's intentions regarding the status and powers of the HQCJ. The financial dependence on the State Judicial Administration of Ukraine (SJA) affects the work of the HQCJ, which impacts all internal processes of the Commission	Develop and amend the Law of Ukraine "On the Judiciary and the Status of Judges" to more clearly define the HQCJ status and the powers of its plenary board. The adoption of Draft Law No. 11254, which will grant the HQCJ the status of the primary budgetary funds manager for itself and the National School of Judges of Ukraine (NSJU), will enhance the institutional capacity of the Commission. It is advisable to strengthen internal oversight over the use of budget funds and ensure regular reporting by the relevant employees of the HQCJ secretariat to the HQCJ members. Additionally, the financial unit should be reinforced with additional staff resources
17	Conflicts in the procedure for appointment and dismissal of the Head of the HQCJ Secretariat	Regulate the procedure for appointment and dismissal of the management of the HQCJ Secretariat

18	The biggest problem affecting the institutional capacity of the HQCJ is its dependence on other bodies (the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU)) to obtain information from state registers and analyse it regarding judges and judicial candidates and the lack of institutional capacity of the HQCJ to work with the registers independently	It is advisable to establish an independent analytical unit within the HQCJ, whose employees will work with all state registers and analyse the information received from them on judges and judicial candidates. The analytical unit should be created following the example of the HCJ DI. It is advisable to conduct a functional audit of the HQCJ Secretariat to further determine the optimal structure of the HQCJ apparatus
19	Although the HQCJ is taking a number of steps towards digitalisation, its overall level remains low. Another problem is the lack of property rights to the software used by the HQCJ	Further digitalisation of the HQCJ, which is objectively necessary for maintaining the dossiers of judges and judicial candidates in electronic format, exchanging information with state registers, courts, and other judicial authorities. It is also advisable to study the use of artificial intelligence (AI) tools for processing large amounts of data. The issue of property rights to the software and further work on its integration with the UJITS should be resolved
20	The limited term of the Public Council of International Experts (PCIE) (5 November 2024) may create problems with the completion of the competition to the High Anti-Corruption Court (HACC)	Amend the Law of Ukraine “On the High Anti-Corruption Court” to provide for the extension of the PCIE’s term of office for at least one year, for example by adopting Draft Law No. 11426
21	Too short a timeframe for vetting judicial candidates, provided by the PCIE after the candidates have successfully passed the exams	Through amendments to the Law of Ukraine “On the High Anti-Corruption Court”, extend the PCIE’s review of HACC judicial candidates from 30 to 60 days, with the following wording: “Such special joint meeting shall be held no later than the sixtieth day after the announcement of the results of the exam taken by the candidates to determine whether the candidate for the position of a judge meets the criteria of professional competence”
22	Lack of methodology for interviewing candidates for local court judges	The Law of Ukraine “On the Judiciary and the Status of Judges” should provide for the HQCJ’s obligation to develop a methodology for conducting interviews for local courts that will unify (based on existing experience) such a procedure and reduce corruption risks
23	Duplication of the interview stage in competitions to the Supreme Court, courts of appeal, and the HACC	Clarify the provisions of Article 795 of the Law “On the Judiciary and the Status of Judges” in the sense that the provision on the HQCJ interviewing the winner of the competition applies exclusively to the procedure of competitive selection for the position of local court judges
24	Ensuring safety of the candidates during the examinations, especially for the positions of judges in the appellate courts (due to the number of them and the lack of appropriate premises that meet the requirements for a bomb shelter)	In order to ensure the safety of candidates and to comply with the principles of anonymity and continuity during the examination stage of the competition, it is worth considering holding the examination exclusively in premises that meet the requirements of an equipped bomb shelter and can accommodate up to 2,000 people. It is advisable to find and equip such premises as soon as possible

25	Completion of competitions for the High Court of Intellectual Property and its Appeals Chamber to launch the functioning of the respective court	Complete the competition procedures for the High Court of Intellectual Property and the Appeals Chamber of the High Court of Intellectual Property
26	Low level of interest of judicial candidates in working in regions that share a common border with Russia, as well as in regions where active hostilities are taking place, which is a significant problem in itself for filling vacancies in these courts and calls into question the feasibility of further operation of such courts	Consider the results of the competition to local courts when drawing up a new map of courts, as well as the following calculations of the required number of vacant positions for such courts
27	Failure to fill some of the vacancies in the competition to local courts due to the candidates' failure to meet the criteria of competence and integrity, which is revealed after they have been elected as judges, as the interview is held after the winners of the competition are determined	Review the approach to the sequence of stages of the competition to local courts
28	Lack of common indicators for assessing the integrity and professional ethics of judges (judicial candidates), which currently negatively affects the quality of qualification assessment	Approve and adopt the Uniform Indicators for Assessing Integrity and Professional Ethics of Judges (Judicial Candidates) as soon as possible, which will contribute to legal certainty. In this context, the issue of vetting third parties and former family members of judges (judicial candidates) requires a broad discussion and legislative regulation
29	New SC decision on qualification assessment wreaks havoc on the procedure that has been in place for years and undoes previous achievements of judicial reform	Within the framework of a broad discussion between the HQCJ, HCJ, SC and Public Council of Justice (PCJ), to resolve the issue of the impact of the SC decision on the procedures for qualification assessment of judges for their suitability for the position
30	Different quality of negative opinions of the PIC prepared by different PIC members; as well as cases of disclosure of confidential information by a PIC member concerning third parties unrelated to the judge	Given that some PIC members are not lawyers or have little experience in the relevant field, it is advisable to conduct training for all PIC members to develop common approaches to the conclusions provided by the PIC. Separate events should also be organised for PIC and HQCJ members to unify their approaches to integrity and professional ethics assessment

31	<p>Since the Supreme Court lost its leadership and authority within the judiciary after the corruption scandal, this leads to a number of problems such as the rejection of the Supreme Court's practice by judges of first and appellate instances and advocates/prosecutors, which negatively affects the unity of judicial practice and trust in the Court and its decisions</p>	<p>Analysis, including with the involvement of international experts, of the draft Strategy for the Development of the SC for 5 years, its revision in the light of the proposals submitted and adoption by the SC Plenum (it is advisable to provide for the mandatory adoption of such document, public disclosure and annual public reporting on progress in its implementation at the legislative level).</p> <p>It is also important to introduce the publication of all statistical data disaggregated by judge on the judiciary's website (number of cases - considered/not considered, refusals to accept applications for consideration, leaves, business trips, workload, average number of days of consideration of cases, etc. In 2025, it is advisable to implement the relevant pilot project on the basis of the Supreme Court. Extend it to all courts in 2026</p>
32	<p>The possibility of B. Lvov's return to work in the SC due to the decision of the Sixth Administrative Court of Appeal is likely to further undermine the credibility of the SC</p>	<p>The issue of Russian citizenship/passports of officials and judges, confirmed by documents of the Ukrainian special services, requires a broad legal discussion and legislative regulation, as there were no diplomatic relations between Ukraine and Russia during the war.</p> <p>The existence of a mechanism to avoid situations of returning to office (or not dismissing from office) of persons who, according to the Ukrainian special services, have Russian citizenship will help to cleanse state and local authorities, as well as courts, of potential traitors, Russian spies, etc. To this end, it may be possible to enshrine in legislation the inability of such persons to hold public office until they have received convincing evidence that they do not hold Russian citizenship. Satisfaction for a person who did not have Russian citizenship but was dismissed from office (not returned to office) will be compensation of salary on the basis of a separate court decision</p>
33	<p>Suspension of competitions for civil service positions during the war, which allowed for the appointment of court staff loyal to the heads of courts</p>	<p>Legislative return of competitions for all positions in the courts and judiciary. At the same time, it would be advisable to address the issue of "career elevators" in the justice system through the instruments of the National Agency of Ukraine on Civil Service</p>

34	Integrity check of the entire composition of the Supreme Court (SC) in order to restore public trust in the work of this court	<p>In 2024-2025, the integrity of SC judges may be checked through a number of tools, the first of which is a full NACP review of declarations of persons authorised to perform state or local government functions submitted by SC judges in 2021-2023.</p> <p>Clarify the powers of the HQCJ to verify the declarations of integrity and family ties of judges in order to enable the HQCJ to monitor judges' declarations on a regular basis.</p> <p>Conduct a one-time check of the academic integrity of SC judges with the status of candidates or doctors of science, especially those who defended their dissertations while working in the SC. For this purpose, the National Agency for Quality Assurance in Higher Education should be empowered.</p> <p>Academic integrity checks should also become one of the tools for competitions to the courts of appeal, the HACC, etc.</p>
35	Differing decisions by the courts of first and second instance on issues that cannot be referred to the Supreme Court and, as a result, the lack of uniformity of practice and mechanisms to ensure it	Optimisation of filters by giving the SC a discretionary right to accept or not to accept a case for consideration, in particular, by allowing the SC to independently open proceedings in a case that is not appealed to the SC, but whose practice is guided by different appellate courts in different ways, to treat it as exemplary. This requires amendments to the procedural legislation
36	Ensuring the unity of judicial practice in the application of substantive law faced problems (as in previous periods) not only due to the large number of cases, but also due to the rejection by judges of the first instance and appellate courts of certain precedents adopted by the Supreme Court	Moving towards a convincing precedent: explanatory work aimed at making the positions of the Supreme Court understood by a wide range of people (judges, first of all)
37	The institute of exemplary cases is currently introduced only within administrative proceedings	The introduction of the institute of exemplary cases for commercial and civil proceedings through appropriate amendments to the relevant codes may have a positive impact on ensuring the uniformity of judicial practice
38	The ambiguous wording of the concept of "similarity of legal relations" has a negative impact on ensuring the unity of judicial practice	Improving the criterion of "similarity of legal relations" by amending procedural legislation
39	Failure to include some of the Supreme Court rulings in the Unified Register of Court Decisions, which prevents access to the relevant case law of the Supreme Court	Improving the work of the Unified State Register of Court Decisions, including entering all court decisions into it
40	Closed nature of court decisions taken in closed session, which makes it impossible to understand court decisions, including in high-profile cases	Court decisions made in closed sessions should be made public with the places where the closed regime was applied replaced with conditional designations. This requires appropriate legislative framework

41	The problem of finding the relevant legal position of the Supreme Court, since if the Court has deviated from its conclusions in an earlier ruling, the information about this should not be reflected in the text of this ruling in the Unified Register of Court Decisions	<p>The following proposals need to be enshrined in law:</p> <ul style="list-style-type: none"> • If the SC departed from the conclusions in an earlier ruling, the respective information should be reflected in the text of the earlier ruling in the Unified Register of Court Decisions. • Key (pilot) decisions and decisions that do not contain new legal conclusions should be marked accordingly (such marking should be done by the panel or chamber itself when making the decision). • If the Supreme Court applies a rule of law without justifying such application, it should not be considered a conclusion on the application of the rule, and such a decision will not be considered precedent-setting. The consequence of this will be the inability to appeal in cassation on the grounds that the courts did not take into account the “conclusions” of such a SC ruling
42	Excessive workload on HACC judges, which affects both the timing of criminal cases and the prosecution of perpetrators	Prioritising the competition to the HACC over other procedures currently being carried out by the HQCJ to ensure the speedy appointment of new judges to the HACC
43	Providing the HACC with uncharacteristic powers to consider cases on claims for sanctions under clause 11, part 1, Article 4 of the Law of Ukraine “On Sanctions” in administrative proceedings	Transfer the authority to consider sanction cases from the HACC to one of the administrative courts. If a High Administrative Court is established to handle cases involving central executive authorities, it would be advisable to transfer the consideration of sanctions cases to this court
44	All civil and administrative cases under the jurisdiction of the HACC should be reviewed at the first instance level by three-member panels of judges	Adopt the draft law No. 10338 establishing rules for the sole consideration of certain categories of civil and administrative cases under the jurisdiction of the HACC
45	Participation of a significant number of HACC first instance judges (42%) in the competition to the HACC Appeals Chamber, which, according to the results of the competition, may create a problem of staff shortage in the HACC first instance	It would be advisable to separate the competition for the first instance and appellate courts and complete the selection (and appointment) of judges to the HACC Appeals Chamber first. Thus, in case of additional vacancies in the HACC first instance, it will only be necessary to increase the number of vacant positions in this instance for which the competition is held, rather than announce a new selection. To minimise corruption risks, such an increase in the number of vacancies can be made after the results of the examination of candidates for the position of judges in the first instance of the HACC are approved and before the next stages of the competition

46	The crisis with the election of the HACC leadership, which affects the effectiveness of management and the exercise of the court's representative functions	Revision of the HACC's "management structure". The new governance structure of the court should include the election of the Head and two Deputy Heads of the court. At the same time, the President of the court will be elected by all HACC judges, and each of the deputies will be elected in each of the HACC instances. It is also advisable to provide that the Head of the HACC Appeals Chamber is also the ex officio Deputy Head of the HACC
47	Lack of premises for newly elected judges and staff at the HACC	The allocation of new premises, its repair and equipment should be carried out in 2024, for which the Cabinet of Ministers of Ukraine should make appropriate decisions
48	Violation of the terms of appointment of judges by the President of Ukraine, which negatively affects the justice process in general	Timely appointment of judges by the President of Ukraine, followed by their swearing in as soon as possible
49	Significant staff shortages in the courts of first instance and especially appellate courts	To conduct a comprehensive analysis of the situation with judges temporarily transferred (seconded) from courts located in the temporarily uncontrolled territories or in the areas of active hostilities. The issue of permanent transfer of such judges to the courts where they have been working for almost two years should be resolved by law, which will improve the situation with access to justice in the regions where such judges are seconded
50	Problems of excessive workload of judges in most courts	In the short term, there is no alternative to temporary secondments of judges from less busy courts to more busy ones. Increasing the number of judge assistants in courts with an excessive workload can be considered as a temporary tool. Increasing the categories of cases that can be considered in written proceedings. This tool may be used temporarily. In the medium term, the best option for levelling the workload is to simultaneously introduce the possibility of remote consideration of cases and a general redistribution of cases between courts (which should be implemented simultaneously with the process of optimising (consolidating) courts)
51	The leadership of a significant number of courts has not changed for 9-10 years or more	Establish a clearer legal framework for the terms of office of judges as head and deputy heads of courts. Define the concept of rotation of court management, establishing both the terms of administrative positions and the terms of breaks in court management. At the same time, responsibility for circumventing such deadlines by the court's board and management should be established

52	In some courts, the assembly of judges cannot elect court heads for a long period of time, which negatively affects administrative processes within such courts	Include provisions in the Law of Ukraine "On the Judiciary and the Status of Judges" addressing the non-election of court heads by the assembly of judges for a certain period of time
53	Optimisation of the court network and creation of a new court map to improve the efficiency of the administration of justice	Prepare comprehensive terms of reference for future optimisation, including a map of courts in the government-controlled regions, drafts of model court premises for areas where there are currently no appropriate court premises, etc. It is also necessary to develop an effective methodology for determining the "hub court". In the short term, it is important to start implementing a pilot project to optimise courts in Zakarpattia region, developed with the support of the EU Pravo-Justice project
54	The work of courts in the frontline regions is not regulated, which negatively affects the right of citizens to access justice	Identify and legislate the conditions whereby the introduction of remote work of judges is advisory and mandatory (location of the contact line 50 km from the court; location of the court building 50 km from the border with Russia; destruction of the court building)
55	There are no clearly established criteria for changing the jurisdiction of courts close to the contact line	Identify and legislate the conditions under which the change of jurisdiction of court cases is recommended and under which it is mandatory (location of the court building near the contact line or at a distance of 30 km from the border with Russia; location of the court in the territory where active hostilities are taking place or in the temporarily occupied territories). Before the proposed amendments are adopted, it is advisable to conduct in-depth monitoring of the situation in the frontline regions by the HCJ, primarily in Donetsk region, and to change the jurisdiction of those courts that are destroyed or located in the occupied territories as soon as possible
56	Complicated access to justice in Kyiv in administrative cases after the liquidation of the District Administrative Court of Kyiv (DACK)	Prompt launch of the competition to the Kyiv District Administrative Court as a court of first instance to consider administrative cases in Kyiv instead of the DACK. Redistribution of cases between KDAC and other district administrative courts, in accordance with the procedure determined by the SJA and the provisions of Law of Ukraine No. 3863-IX
57	Failure to comply with judicial guarantees for DACK judges who are fit for office and dismissal of DACK judges who are not fit for office	DACK judges should undergo a qualification assessment as soon as possible. Based on the results, honest judges should be transferred to other administrative courts, and dishonest judges should be dismissed
58	Failure to hold a competition to the Kyiv District Administrative Court, established instead of the DACK, as a court of first instance	Launch the competition for the Kyiv District Administrative Court to be established instead of the DACK as a court of first instance to hear administrative cases in Kyiv as soon as possible
59	Lack of action to establish the High Administrative Court to hear cases against central authorities and further selection of judges to this court	Adoption of the draft law "On the High Administrative Court" and launch of the competition to this court

60	Lack of clear terms and conditions for the launch of the HCIP's operation, as well as legislative definition of the jurisdiction of such court	Make significant improvements to Draft Law No. 6487, in particular in terms of clarifying and differentiating between cases under the jurisdiction of the HCIP and commercial courts to avoid manipulation of court jurisdictions and reduce corruption risks. HQCJ to complete competitive procedures for positions of judges in the HCIP
61	Significantly different levels of salaries in court administrations and territorial offices of the State Judicial Administration (SJA), which led to an outflow of personnel from court administrations; non-payment of salaries to some judges; lack of accounting for judges who remained in the occupied territories and other persistent organisational, personnel and functional problems	Conduct a functional audit of the SJA and all its territorial offices. Based on the results of the audit, an updated model of the judiciary support system should be developed, which, among other things, should include reorganisation of the SJA and its territorial offices (including their liquidation) and transfer of functions of territorial offices to the central office of the SJA and appellate courts of the respective regions in 2025
62	Provision of incomplete information by the SJA territorial departments on the functioning of courts in areas close to the contact line, which leads to erroneous management decisions regarding such courts	In-depth monitoring of the situation in the regions where active hostilities are taking place to establish the actual situation in courts located near the contact line
63	Failure to appoint the Head of the SJA within a year after the corruption scandal, which negatively affects the work of this body	The selection and appointment of the Head of the SJA, which is currently ongoing, should be completed urgently, and in case none of the candidates is appointed to this position, a second competition should be promptly announced. When processing the dossiers of candidates for this position, it is advisable to consider the information published by CSOs, and if a candidate is recognised as the winner of the competition, in respect of whom such organisations have certain reservations, the appointing authority should provide appropriate explanations
64	Lack of proper organisational and security conditions for the Congress of Judges of Ukraine	It is advisable to regulate the issue of holding meetings of judges, meetings of the Council of Judges of Ukraine (COJ) and the Congress of Judges online and voting through secure electronic services
65	Cases of "backstage" in the work of the Congress of Judges of Ukraine, in particular on issues related to the nomination of candidates for the position of members of the SOJ and the election of members of the HCJ, appointment of judges of the Constitutional Court of Ukraine (CCU)	The expediency of further secret ballots during the election of court presidents, deputy presidents, members of the HCJ, the COJ, and judges of the CCU and the search for a balance between transparency, accountability and independence of the judiciary require a broad discussion

66	The current formula for electing delegates to the Congress of Judges and holding the Congress of Judges offline does not currently meet either security or transparency and independence requirements	The concept of “congress of judges” needs to be revised in legislation, which, in the case of online voting, may provide for the participation of all judges of Ukraine, rather than delegates on a quota basis
67	Election of the members of the COJ without any pre-nomination procedure and any verification makes it virtually impossible to elect members of the COJ in a democratic manner and without the use of “lists”, “package deals”, influence of court presidents and third parties and, in fact, corruption	Revise the COJ composition formula. Settle the issue of pre-nomination of candidates to the COJ and their preliminary vetting. The vetting of candidates to the COJ should be carried out at least until the qualification assessment of judges is completed and disciplinary complaints against them are considered
68	Election to senior positions in the COJ of judges in respect of whom the PIC has issued negative opinions and expressed reservations about their reputation, which affects the credibility of the COJ, its decisions, etc.	Pre-nomination of candidates for managerial positions in the COJ and their preliminary vetting
69	The National School of Judges of Ukraine, unlike all other bodies and institutions of the justice system, has not undergone any reforms over the past 10 years. Administrative positions were retained by persons appointed before the Revolution of Dignity, while no attestation or any other similar checks were carried out in the NSJU	In 2024 – early 2025, it is advisable to conduct a full functional, personnel and financial audit of the NSJU. In 2025, based on the results of the audits, it is advisable to transform the NSJU into a modern training centre within the HQCJ (an independent unit), introducing relevant amendments to the Law of Ukraine “On the Judiciary and the Status of Judges”
70	The high level of discretion exercised by the management of the NSJU allows for management and personnel decisions to be made without accountability or control. There is no mechanism for selecting the staff of the NSJU and seconded judges to develop training courses and conduct trainings The NSJU employs a number of people with low qualifications and dubious reputations, which negatively affects the credibility of the entire body and the judiciary The state lacks control over the management and employees of the NSJU in matters of income and property declaration, violations of integrity, family ties and potential conflicts of interest	Due to changes to the legislation in 2024, the provisions on mandatory declarations (the same types of declarations as those submitted by current judges), competitions for all positions in the NSJU, etc. should be extended to the management and employees of the NSJU. At the same time, the law should provide for the submission of declarations for 2023 as well

71	Low qualification level of some candidates and judges who had previously been successfully trained at the NSJU	<p>In the short term, it is advisable to certify the entire management staff of the NSJU, including the regional level.</p> <p>Audit and revise all training programmes and courses, and update them.</p> <p>The approaches to assessing the success of training of judges and other categories of NJSU trainees shall be subject to review</p>
72	<p>The extensive organisational structure of the NSJU is outdated and does not meet the security challenges of the war.</p> <p>There is duplication of functions between the central office and regional offices of the NSJU</p>	<p>It is advisable to conduct all types of training mainly online.</p> <p>All regional branches of the NSJU should be liquidated in 2025. Their premises should be better used to house courts or other justice system institutions</p>
73	Poor quality of tests developed by the NSJU has a negative impact on the passing of exams by judicial candidates and verification of their results	It is advisable to establish a modern testing unit on the basis of the HQCJ, removing the development of tests and practical tasks for competitions and judicial evaluation procedures from the NSJU's responsibilities. To do this, it is necessary to amend the Law of Ukraine "On the Judiciary and the Status of Judges", select the relevant personnel through competitive procedures and train them according to international best practices with support from international technical assistance projects. Current judges should not be involved in the development of tests and practical tasks, but may participate in their preliminary testing
74	CCU judges appointed prior to the 2016 reform, to whom there are public complaints about their integrity and professionalism	Judges who were appointed under other procedures, especially those who took office after the constitutional crisis of 2020, should be offered to voluntarily undergo the checks provided for by the new provisions of the Law of Ukraine "On the Constitutional Court of Ukraine"
75	Conflicting provisions on the powers of the CCU and the SC raise doubts about the real protection of the rights of complainants	The legislative settlement of the conflict between the powers of the CCU and the SC requires a broad legal discussion
76	Ineffective protection of constitutional rights through the institution of constitutional complaints	The issue of improving the institution of a constitutional complaint requires a broad legal discussion
77	Delays in the consideration of constitutional proceedings do not allow the CCU to respond to institutional conflicts in a timely manner, which negatively affects the effectiveness of the entire mechanism of checks and balances. The problem of political motivation of CCU decisions has the same consequences	A broad legal debate is needed on the issue of motivation for court decisions and requirements for compliance with the time limits of constitutional proceedings

78	Competition to the CCU brings to the fore a global staffing crisis among legal professionals	The state should create mechanisms to motivate the best lawyers to participate in competitions for key positions, in particular by introducing clear and unified competition rules, high salaries, respect for decisions after appointment and guarantees of immutability of key rules of work in any position
79	Outdated approaches to the organisation of the CCU have led to internal politicisation of the Court for years	<p>It is important to review the organization of processes within the CCU to reduce its politicization .</p> <p>Consideration should be given to restructuring the CCU's internal processes based on the model of the European Court of Human Rights. This issue should be addressed as part of finalizing the draft law "On Constitutional Procedure" (registration No. 4533) to implement a comprehensive approach to resolving the urgent problems of the CCU at the legislative level.</p> <p>Additionally, adopting a Code of Ethics for CCU judges, similar to the Code of Judicial Ethics, is advisable. This Code should include provisions ensuring that standards of academic integrity apply to CCU decisions and dissenting opinions of its judges.</p> <p>The issue of disciplinary liability for CCU judges, particularly for violating reasonable time limits for case consideration, also requires broad discussion</p>
80	<p>Prolonged non-appointment of new judges threatens the CCU quorum.</p> <p>The low quality of candidates who applied for the competition prevented the filling of all available vacancies in the first round under all quotas. Consequently, the appointment of only one judge out of six vacancies raises doubts about the ability to resolve the staffing crisis in the CCU by the end of this year. For instance, the lengthy procedures for convening and holding the Congress of Judges of Ukraine will likely delay the appointment of new CCU judges for another 4-5 months</p>	<p>Appoint CCU judges as soon as possible (at least according to the parliamentary quota) immediately after the second competition.</p> <p>The appointment of CCU judges under the quota of the Congress of Judges of Ukraine should occur in two stages: the first for one vacancy in September 2024, provided the Congress of Judges demonstrates high responsibility by selecting one of the two candidates, and the second for two vacancies immediately following the second competition.</p> <p>The President should soon announce a competition for three CCU judge positions: one for the vacancy that has already concluded early and two for the upcoming vacancies, as the terms of office for CCU judges Viktor Kolisnyk and Volodymyr Moisyk expire on January 27, 2025.</p> <p>The President should appoint CCU judges within his quota within a reasonable time after the Advisory Group of Experts submits the relevant candidates</p>

81	The HCJ fails to take sufficient measures to effectively communicate its position on what is considered interference with the administration of justice and what is not	Summarise the HCJ's practice of considering reports of interference with the administration of justice. Formulate a clear position on "typical" reports of interference with the administration of justice. Take active measures to reduce the number of reports that do not contain information about interference with the administration of justice in accordance with the HCJ practice
82	Current legislation does not contain sufficient sanctions for failure to take appropriate measures in response to HCJ requests for interference with the administration of justice	Draw up reports on administrative offences in case of failure to respond or delayed response to HCJ submissions on interference with the administration of justice
83	The HCJ does not fully use the potential of the available means of responding to the ignoring of the HCJ's conclusion on interference with the administration of justice by the authorised body	Consider expanding liability for failure of responsible authorities to take appropriate measures to respond to interference with the administration of justice
84	For several years, there has been a violation of constitutional guarantees of judicial independence in terms of material support	Since the problem has been stated in the decisions of the Supreme Court and the CCU, its solution shall be ensured by the state
85	Problems with funding the judiciary, including artificial restrictions on judicial remuneration	Ensure adequate funding for the judiciary, including the suspension of restrictions on judicial remuneration
86	Restoration of damaged and destroyed courthouses and justice system institutions, which requires significant investment	Gradual financing of the restoration of damaged and destroyed premises, including through the involvement of international technical assistance (ITA) projects
87	Chaotic and disproportionately low funding for the digitalisation of judicial proceedings	Gradual financing of relevant expenditures for the digitalisation of justice, including through the involvement of ITA projects
88	Ensure consistent operation of the existing eJustice system and gradual development of the new system	Implementation of the results of the technical audit of the UJITS, completion of the functional audit and development of the concept and terms of reference for the modular and phased deployment of the new eJustice system in 2025-2027. Stabilisation of the current eJustice system. To do this, it is worth following the recommendations provided by the experts who conducted the technical audit of the UJITS
89	Low staffing capacity of the SJA and the DI that administers the UJITS	Addressing the problem of low staff capacity of SJA and DI by recruiting relevant specialists and providing comprehensive training to existing staff

90	Lack of uniformity of practice in setting bail amounts and reducing them	Summarise the practice of setting bail amounts at the HACC level and formulate approaches to logical and consistent reduction of such amounts, which will promote uniformity of practice, legal certainty and trust in court decisions
91	The issue of suspension of judges from the administration of justice, as well as suspension of judicial remuneration after the HCJ has adopted a decision to suspend such judges from the administration of justice or a decision to grant consent to their detention, needs to be streamlined and unified	Regulate the practice of suspending judges from the administration of justice, which will contribute to legal certainty (it is mandatory to suspend a judge when giving consent to detain him/her in custody). Consider the issue of suspension of judicial remuneration after the HCJ makes a decision to remove a judge from the administration of justice. In case of acquittal by the court or failure to prove his/her guilt, the judge will be entitled to receive compensation of judicial remuneration for the period of suspension of such payments
92	In practice, the judicial control declared in the Constitution of Ukraine has not become a mechanism that guarantees full and timely execution of court decisions	Improve the legislation regulating judicial control over the enforcement of court decisions and increase the effectiveness of such control tools and change the method and procedure for the enforcement of binding court decisions, in particular by adopting the draft law No. 9462
93	A significant number of legislatively regulated moratoriums on the enforcement of property/funds from certain categories of debtors (approximately 15)	Review legislative acts for the expediency of so many moratoriums on the enforcement of property/funds from certain categories of debtors and, accordingly, to cancel those that are clearly irrelevant
94	Problems with the enforcement of court decisions against persons subject to sanctions	Address at the regulatory level the specifics of enforcement proceedings involving persons subject to sanctions in order to minimise the risks of non-enforcement or improper enforcement of a court decision and the likelihood of liability for non-compliance with enforcement or sanctions legislation
95	Lack of full access of public and private enforcement officers to registers containing information on debtors or outdated data	Provide public and private enforcement officers with access to the maximum possible list of state registers that may contain information on the property and funds of debtors
96	Lengthy search for debtors' accounts in different banking institutions, as banks are not obliged to notify the tax authorities of bank accounts opened by individuals	Adopt legislation on automated seizure of funds and ensure the full operation of the relevant software
97	Low level of debtor liability for failure to comply with binding court decisions	Strengthen the liability of debtors in one of the following ways: <ul style="list-style-type: none"> • increase the amount of fines for failure to comply with a decision obliging the debtor to perform certain actions and a decision on reinstatement of employment without good reason within the time limit set by the enforcement officer; • to provide for the possibility of collecting a penalty (astrent) for each day of delay in the debtor's execution of a binding decision

98	The provisions of the Procedure for Admission to the Profession of a Private Enforcement Officer (Order of the Ministry of Justice of Ukraine No. 3053/5 of 25.10.2016) do not comply with the law, as the third practical task is not automated and is not a test	Improve the procedure for passing the qualification exam by a person wishing to become a private enforcement officer by automating the practical task and changing the order of training, internship and exam
99	The actual interference of the Ministry of Justice in the process of enforcement of decisions, including through the participation of four of its representatives in the Disciplinary Commission, calls into question the principle of independence of private enforcement officers	Review the regulatory role of the Ministry of Justice, in particular by reducing the quotas of its representatives in the Disciplinary Commission
100	Lack of adequate budgetary funding for the enforcement of court decisions and lack of adequate and effective means of compensation for delays in the enforcement of court decisions (which again requires budgetary funding)	Solve the problem of non-enforcement of judgements in categories of social dispute cases, the state budget should provide for the funds necessary to eliminate the existing arrears and further avoid "populist" practices and the establishment of social guarantees that cannot be provided with the necessary funding
101	De facto discrimination in the powers of private enforcement officers compared to those of state enforcement officers	Equalise the powers of public and private enforcement officers as much as possible, resulting in a positive impact on the number and timeliness of court decisions
102	Non-functioning Unified State Register of Enforcement Documents	Ensure the full functioning of the Unified State Register of Enforcement Documents, including the possibility of combining it with the Unified State Register of Court Decisions
103	Failure to enforce court decisions of national courts leads to the need for citizens to apply to the European Court of Human Rights for protection of their rights	Take all possible measures to ensure timely and high-quality execution of judgements of the European Court of Human Rights and to take further steps to ensure timely execution of judgements of national courts
PROSECUTION REFORM		
1	The remuneration of prosecutors does not always adequately reflect the specifics of their work and is not a deterrent to their independence	Set the salary for prosecutors at the level of the salary of judges of the respective court (prosecutor of the district prosecutor's office - judge of the city district court, prosecutor of the regional prosecutor's office - judge of the court of appeal, prosecutor of the Office of the Prosecutor General (OPG) - judge of the Supreme Court) and additional payments for length of service, performance of duties in an administrative position, as well as for work involving risk to life and health and access to state secrets, while excluding the possibility of bonuses for prosecutors

2	Unresolved peculiarities of prosecutors' work in the conditions of proximity to the front line in view of the armed aggression of the Russian Federation	Provide for the proper specialisation of prosecutors of specialised defence prosecutor's offices, inclusion of prosecutors with military service experience as officers in these offices, their professional development, establishment of district specialised prosecutor's offices in the frontline and in certain garrisons, their proper transport, military and other support, as well as payment of remuneration for the risk to life and health. At the same time, the Law of Ukraine "On the State Bureau of Investigation" should provide for the establishment of territorial units of the State Bureau of Investigation (SBI) in the frontline and in the relevant military garrisons
3	Excessive concentration of powers in the hands of the Prosecutor General in cases where they could be exercised by prosecutors themselves through prosecutorial self-government	Expand the powers of the All-Ukrainian Conference of Prosecutors and the Council of Prosecutors of Ukraine by narrowing the powers of the Prosecutor General
4	The inability of local prosecutors to properly engage in prosecutorial self-government. Lack of meetings of local prosecutors	Define in the Law of Ukraine "On the Public Prosecutor's Office" that prosecutorial self-government shall be carried out through meetings of prosecutors of all levels, the All-Ukrainian Conference of Prosecutors and the Council of Prosecutors of Ukraine; provide for the creation of such an organisational form of prosecutorial self-government as meetings of prosecutors of the OPG, the Specialised Anti-Corruption Prosecutor's Office (SAPO), regional and district prosecutor's offices. Provide the assembly of prosecutors with real self-governing powers, in particular, to: discuss the internal organisation of the prosecution service, the work of individual prosecutors (workload of prosecutors, determination of their specialisation, etc.); hear reports of prosecutors holding administrative positions; consult with the leadership of the prosecution service; discuss violations of guarantees of independence of prosecutors and appeal to the relevant authorities in this regard
5	Lack of information on the number of reports of threats to the independence of prosecutors	Provide for the obligation of the Prosecutor General to announce in the annual report of the Prosecutor General the number of reports on violations of guarantees of independence of prosecutors (based on information provided by the Council of Prosecutors and the Qualification and Disciplinary Commission of Prosecutors (QDCP))
6	Insufficient representation of prosecutors in the prosecutorial self-government (a minority of the QDCP members are prosecutors, so this body does not achieve the goals of prosecutorial self-government)	Reduce to two persons the quota of the Ukrainian Parliament Commissioner for Human Rights for the appointment of members of the QDCP; accordingly, increase the number of prosecutors appointed by the All-Ukrainian Conference of Prosecutors
7	Reduction of the status of a trainee prosecutor despite the unified status of prosecutors	To exclude from the Law of Ukraine "On the Public Prosecutor's Office" all provisions that may be regarded as limiting the independence of a trainee prosecutor, taking into account the requirements of part 5 of Article 7 of the Law of Ukraine "On the Public Prosecutor's Office", which provides for the unity of the prosecution system of Ukraine, which is ensured by the unified status of prosecutors

8	Legal uncertainty of certain elements of disciplinary offences	Exclude from the Law of Ukraine "On the Public Prosecutor's Office" or to substantially clarify such grounds for disciplinary liability as "committing actions that defame the title of a prosecutor and may raise doubts about his/her objectivity, impartiality and independence, about the honesty and integrity of the prosecution authorities", systematic or one-time "gross violation of the rules of prosecutorial ethics"
9	Prosecutors are equally liable for very different offences, which does not contribute to the principle of individualisation of punishment	Expand the list of disciplinary sanctions to increase their proportionality and effectiveness, as well as the general conditions for their application and circumstances mitigating and aggravating the prosecutor's liability. Provide for a gradation (correspondence) between disciplinary offences, their severity and penalties that may be imposed in case of their commission, based on the provisions of the Law of Ukraine "On the Judicial System and Status of Judges"
10	Overwork of the members of the QDCP, lack of sufficient support in the preparation of the case file	Introduce a disciplinary inspectorate to improve the quality of materials assessed when considering bringing a prosecutor to disciplinary responsibility
11	Low requirements for the professional level of the Prosecutor General	Increase the qualification requirements for candidates for the position of Prosecutor General in terms of age, work experience, professional competence, integrity and ethics
12	The political procedure for the appointment of the Prosecutor General, which negatively affects the independence of this official and the entire prosecution system	Introduce an exclusively competitive procedure for filling the position of the Prosecutor General with the involvement of independent experts
13	The political procedure for dismissal of the Prosecutor General, which negatively affects the independence of this official and the entire prosecution system	Define an exhaustive list of grounds for early dismissal or termination of the powers of the Prosecutor General, as well as develop a special procedure for their application
14	The need to create institutional conditions for the continuous development of prosecutors, in particular, to empower prosecutors to respond to the challenges of today	Promote the implementation of the Development Strategy of the Prosecutors' Training Centre of Ukraine for 2024-2026
15	Insufficient implementation of uniform standards in the training of judges and prosecutors as officers of justice	Consider optimising the network of educational institutions for training and professional development of personnel for the justice system, in particular, to merge the National School of Justice and the Prosecutors' Training Centre of Ukraine (PTCU), synchronise programmes and unify forms of training
16	Insufficient representation of criminal justice professionals from outside the prosecution system	Involve specialists from outside the prosecution system in the training activities of the PTCU, in particular, provide support to NGOs that adapt the best international practices and methodologies in the field of prosecutorial training

17	The existence of two parallel electronic systems with similar functionality negatively affects the speed and quality of digitalisation of criminal proceedings	After the piloting of the E-Case Management System is completed, it should be integrated into the SMEREKA system to ensure the full functioning of a single digital solution within the framework of electronic criminal proceedings
18	Outdated functionality of the Unified Register of Pre-trial Investigations (URPTI), which limits the prosecution's ability to implement digital solutions, access to analytical data and operational monitoring of criminal proceedings	Implement the SMEREKA system in all prosecutor's offices, synchronising it with the URPTI and other relevant systems, with the subsequent absorption of the said register by the SMEREKA system
19	Possibility of manipulating information in the URPTI for the purpose of misconduct	Introduce automation of appointment of the prosecutor-procedural supervisor in criminal proceedings simultaneously with the entry of information about a criminal offence into the URPTI, taking into account the established clear objective criteria (including the criterion of specialisation) in combination with guarantees of protection against possible abuse
20	Improper work with witnesses and victims of war crimes, which, on the one hand, leads to their "secrecy" and the inability to obtain evidential information from them, and on the other hand, creates the risk of repeated and secondary victimisation. On the other hand, it leads to repeated and secondary victimisation of these persons	Develop a system of support for victims and witnesses of war crimes in order to obtain quality information from them to further prove these crimes, while preventing secondary or repeated victimisation of such persons
21	Lack of long-term institutional support for the prosecution of international crimes	Build institutional capacity for long-term work on prosecution of international crimes, including "protected" state budget items, additional guarantees of independence, and security measures for prosecutors working in this area
22	Insufficient presence of specialised prosecutors in the regions	Expand the presence of the OPG Department for Combating Crimes in the Context of Armed Conflict at the regional level
23	The delay in ratifying the Rome Statute of the International Criminal Court prevents Ukraine from enjoying full rights in its interaction with the Court	Ratify the Rome Statute of the International Criminal Court immediately, without waiting for the end of martial law
24	Effective use of resources in view of the peculiarities of international criminal law	Continue the previously defined approaches to the allocation of resources for proving international crimes using various instruments, combining the efforts of national criminal prosecution authorities and foreign and international institutions

25	The lack of regulation of the procedure for the activities of Joint Investigation Teams (JIT) in national legislation may lead to the loss of investigation results, including the recognition of evidence as inadmissible	Regulate at the legislative level the activities of joint investigative teams on the territory of Ukraine
BAR REFORM		
1	The current structure of the Bar organisation is characterised by excessive dependence of advocates on the Bar self-government (BSG) bodies and legal uncertainty in the regulation carried out by such bodies, as well as a number of other problems. The current legislation fails to provide for mechanisms of accountability of the Bar to the public, although according to the 2016 amendments to the Constitution of Ukraine, the Bar is an institutional element of the justice system with functions delegated by the state and has a monopoly right to provide professional legal aid. Also, the law contains an ineffective mechanism of accountability of the BSG towards the advocates	Amend the legislation of Ukraine on the Bar in order to bring it into line with the spirit of the provisions of the Constitution of Ukraine, primarily by introducing a system of checks and balances to moderate the monopolistic right to provide professional legal aid and additional mechanisms to guarantee its quality. For example, as one of the possible options, if each advocate is required to be a member of a voluntary professional Bar association, the provision stating that the only such association is the Ukrainian National Bar Association (UNBA) should be removed. At the same time, the procedure for the election and functioning of the BSG, the procedure for admission to the profession and disciplinary liability of advocates, the procedure for the formation and expenditure of the association's budget, procurement, and the procedure for the publication and entry into force of acts of the Bar Self-Government should be regulated uniformly for all associations
2	Many of the provisions of the Procedure for Maintaining the Unified Register of Advocates of Ukraine, approved by the Bar Council of Ukraine dated 22.08.2022 No. 74, directly contradict the Law of Ukraine "On the Bar and Practice of Law" and the Government Resolution No. 835 of 21.10.2015 "On Approval of the Regulation on Data Sets to be Disclosed in the Form of Open Data"	To bring the procedure for maintaining the Unified Register of Advocates of Ukraine (URAU) in line with the requirements of the law. Given the decentralisation of the Bar and the possibility of voluntary formation of several Bar associations with mandatory membership in at least one such association, it is advisable to transfer the maintenance of the URAU register to one of the judicial authorities, for example, the SJA or the HCJ
3	The BSG created a complex and non-transparent quota system for delegating advocates to the Congress of Advocates of Ukraine, which unnecessarily complicates the voting procedure and makes it vulnerable to abuse	At the legislative level, change the procedure for electing the BSG to apply the principle of direct voting: one advocate - one vote using digital means (e.g., the UJITS system or another technological solution that can be developed by the Ministry of Digital Transformation or one of the judicial authorities)
4	The law establishes a general five-year term of office in the BSG, which is inconsistent with European practices (usually from 1 to 3 years), prevents proper regularity of the BSG renewal and, on the contrary, negatively affects and cements the existing problems in the Ukrainian legal profession	At the legislative level, reduce the total term of office in the BSG from 5 to a maximum of 3 years, in line with European standards

5	<p>Failure to hold elections to the BSG for two years now threatens the quality of their work, and thus the effectiveness of the entire Bar self-government, due to the loss of its legitimacy. One of the consequences of this problem is the failure of the Bar to fulfil its constitutional functions in the justice system: in particular, two members of the HCJ and one member of the QDCP have not been delegated</p>	<p>Reboot the BSG:</p> <ul style="list-style-type: none"> • option 1) amend the law to provide for a new system of elections to the BSG based on the principle of direct voting with the possibility of using the electronic voting mechanism and require the BSG to hold elections at the regional and national levels; • option 2) amend the law to provide for the liquidation of the single UNBA (with appropriate transitional mechanisms), while maintaining the mandatory membership of advocates in a professional association and providing for the right of advocates to voluntarily form associations and elect the BSG bodies
6	<p>The UNBA takes a non-constructive position on the protection of the national security of Ukraine in the issues of the armed aggression of the Russian Federation against Ukraine, has no clear and unified position on the advocates who received certificates of the right to practice law in accordance with the legislation of the occupation authorities, and insists on the impossibility of bringing such advocates to disciplinary responsibility</p>	<p>The threat to national security, which is not addressed by the BSG, needs to be resolved at the legislative level: advocates in TOT should be disbarred as having violated their oath of office</p>
7	<p>The system for distributing funding to the BSG bodies is fraught with risks of abuse, is non-transparent, and lacks effective control and accountability tools. The regulatory framework for the funding of the BSG is implemented through numerous acts of the BSG bodies, which often contradict the legislation of Ukraine</p>	<p>At the legislative level, introduce mechanisms to ensure a sufficient level of transparency and detail in the financial reporting of the BSG bodies to prevent abuse. In particular, this applies to the need to:</p> <ul style="list-style-type: none"> • regulate the procurement procedure for works and services; • detailed and itemised reporting; • disclosure of contracts for the procurement of goods and services; • disclosure of the number of employees, including their positions, salaries and the amount of accrued and paid wages; • the requirement for the BSG bodies to have the financial statements regularly confirmed by an independent auditor

8	The current legislation sets too low requirements for persons wishing to become advocates, which is in particular in contrast to the requirements for judges and prosecutors and therefore inconsistent with the spirit of the relevant provisions of the Constitution of Ukraine. This has a direct impact on the quality of professional legal aid, and thus on the quality of justice in general and the ability to exercise the right to a fair trial	At the legislative level, to strengthen the qualification requirements for persons intending to gain access to the Bar, as well as to introduce requirements for the integrity of those intending to become an advocate, providing for their obligation to file a declaration in line with the requirements of the Law of Ukraine "On Prevention of Corruption"
9	The current procedure for access to the profession fails to meet the technical requirements and time constraints (tickets for the qualification exam are still in paper form; there is no video recording during the exam, etc.), which contrasts with similar procedures for access to the profession of judges and prosecutors	Reform the qualification exam procedure at the legislative level to create a transparent, efficient and corruption-free system of access to the profession
10	The internship procedure for a person who has received a certificate of passing the qualification exam in Ukraine is not effective and is not in line with the actual purpose of the internship. The statutory period for completing an internship in Ukraine is too short compared to the EU countries. An internship in free time from the main job for six months cannot ensure the development of skills necessary for the practice of law	Improve the internship model based on the experience of the European Union
11	The issue of obtaining a Bar certificate, as well as the continued practice of law by citizens of the aggressor state (the Russian Federation and the Republic of Belarus) is not addressed at the legislative level	To regulate the admission of foreign advocates to the practice of law in Ukraine by prohibiting at the legislative level the advocates of the aggressor country (the Russian Federation and the Republic of Belarus) to practice law in Ukraine
12	For a long time, international organisations have been expressing critical remarks on the legal regulation and practical aspects of the implementation of disciplinary procedures in relation to advocates, in particular in terms of: the absence of a definition of disciplinary misconduct of an advocate in the law; uncertainty about the range of persons who may file a complaint against the actions of an advocate; a narrow list of disciplinary sanctions that fails to ensure compliance with the principle of proportionality when choosing the type of disciplinary sanction, etc.	To introduce amendments at the legislative level in order to streamline and eliminate the shortcomings of the legal regulation of the procedure for bringing the advocate to disciplinary responsibility. In particular, to define the concept of disciplinary misconduct of an advocate and the range of persons who may file a complaint against the advocate's actions; to define the requirements for the content of the application (complaint) that may result in disciplinary liability of an advocate, etc.; to enshrine in law the rule that an appeal against a decision in a disciplinary case suspends its execution

13	The existing BSG bodies use disciplinary prosecution as a means of pressure on advocates. In particular, through the application of Article 12 of the Rules of Professional Conduct, which effectively prohibits criticism of the BSG and contains such value judgements as “humiliation of the authority of the Bar”, etc. This is evidenced by the numerous cases of disbarment of advocates for justified criticism of the BSG and the Bar	Enshrine the observance of the fundamental principles of legal ethics at the legislative level, including by amending the Rules of Professional Conduct. The Rules of Professional Conduct should also be improved in line with the best ethical standards of EU countries and prevented from being used as an instrument of pressure on advocates
14	There is a stagnation of the continuous professional development system for advocates due to significant shortcomings in the current legislation on the Bar, combined with the artificial elimination of competition among providers of educational programmes for professional development and monopolisation of the sector. The existing system of professional development of advocates is not accessible to some advocates and is purely formal	At the legislative level, amend the system of advanced training of advocates in Ukraine to ensure its active development in line with international standards of organisation and operation of the Bar, prevent corruption risks and formalisation of the process, as well as abuse of the BSG
15	The BSG artificially created the UNBA Higher School of the Bar, which is a de facto monopolist in the field of continuous professional development of advocates, and is also empowered to conduct certification and accreditation procedures for third-party organisations and training programmes. These actions of the BSG are not provided for by the Law of Ukraine “On the Bar and Practice of Law” and lead to the degradation of the system of continuous professional development of advocates and lower standards of legal aid provision	Develop a clear and transparent procedure for accreditation of CPD operators and certification of individuals admitted to professional development events for advocates. Abolish the payment of fees for accreditation of third-party operators, administrative fees for processing and recording of credits and issuance of relevant certificates, which are not provided for by the Law of Ukraine “On the Bar and Practice of Law”
16	Access to the system of advanced training of advocates is granted only to advocates without arrears in the payment of annual fees for the exercise of the Bar self-government, which is a violation of their right to continuous professional development and an illegal obstacle to the fulfilment of their statutory obligation to regularly improve their skills	Provide access to the system of professional development for all advocates, including those who are in arrears in paying annual contributions to the bar to ensure the exercise of the Bar self-government

17	<p>Unlike the judiciary and the prosecution, the Bar lacks a mechanism for checking the integrity of its members. The issue of creating safeguards against corruption in the Bar remains open. Declarations of advocates, including members of the BSG, may be an element of the currently absent mechanism of accountability of the Bar to the public</p>	<p>Introduce mandatory declarations by advocates, including members of the BSG, in the law</p>
18	<p>Despite the positive intentions, the new legislative regulation in the field of mediation does not fully facilitate the introduction of quality mediation services, as very often in social services such facilities are provided only on paper or by specialists who are not practicing mediators and/or have not received appropriate training, especially in small communities.</p> <p>There is also currently no complete information on the number of mediators in Ukraine; the number and categories of cases in which mediation was conducted; the number of cases that resulted in reconciliation. Without analysing and taking into account such information, it is impossible to improve the legislation in the field of mediation</p>	<p>Develop the state policy in the field of mediation training for social service professionals to ensure the quality of social mediation services for people in difficult life circumstances and vulnerable groups.</p> <p>Approve the State Standard for Social Mediation Services with further collection of statistics on the provision of such services (category of dispute, duration of the mediation procedure, impersonal data on the number, age and gender of the parties, grounds for termination of mediation).</p> <p>Introduce a list of categories of court disputes for which mediation is mandatory</p>
19	<p>Despite the adoption by the Parliament of the Law of Ukraine "On Administrative Procedure", which, inter alia, provides that the parties have the right to reach conciliation at any stage of administrative proceedings on a complaint, the implementation of the relevant procedure requires the following details and clarification, including among citizens</p>	<p>Organise work on developing mechanisms to encourage public authorities to implement the provisions of the Law of Ukraine "On Administrative Procedure" regarding the possibility of conciliation in administrative proceedings on complaints.</p> <p>Promote the development of mediation in administrative cases, conduct legal education work with public authorities, local self-government bodies, and administrative courts</p>
20	<p>Currently, there is no provision in the legislation that would regulate the engagement of associations of mediators (mediation service providers) by local governments on a competitive basis, which could potentially negatively affect compliance with the principle of transparency and contribute to corruption risks</p>	<p>To regulate the mechanism for engaging associations of mediators (mediation service providers) by local governments on a competitive basis and provide for the possibility of paying for their work</p>

21	Discussions in mediation circles are still ongoing regarding the practical mechanism of bringing to justice for violation of professional ethics by a mediator. In particular, the issue of who exactly makes the decision to bring a mediator to liability, whether it is done individually or collectively, what sanctions are provided for a mediator in case of violation of professional ethics, etc. is not resolved	The community of mediators should develop a mechanism for holding mediators accountable for violations of ethical standards so that this provision of the law does not remain declarative
22	Despite the success of the Recovery Programme for Juveniles Suspected of Committing a Criminal Offence project, the free legal aid system is still implementing it as a pilot project	To ensure the possibility of implementing the “Recovery Programme for Juveniles Suspected of Committing a Criminal Offence” project on a permanent basis
REFORM OF LEGAL EDUCATION		
1	Legal education in Ukraine is often criticised for being disconnected from practice, outdated curricula, and for failing to provide students with soft skills. These standards in Ukraine are regulated in the form of the Framework Standards for Higher Education, which are rather formal documents and do not have a decisive impact on the content and quality of education	Assess the impact of higher education standards and professional standards on legal education in order to formulate recommendations for their improvement, ensure quality implementation in educational programmes and effective monitoring, and review the role of these standards as a tool for improving the quality and content of legal education, including modernising the content with a focus on the competencies required to meet the current challenges of the profession
2	Legal education programmes exist in many higher education institutions that are under the jurisdiction of other authorities, including the Ministry of Internal Affairs. The existence of this system of institutions blocks the reform of legal education, is used to achieve political goals, students do not receive proper quality education, and significant resources are spent on maintaining the system	Separate legal education and law enforcement training as a key condition for modernising legal education in Ukraine by integrating qualified units and specialists into classical universities, while revising the law enforcement training system
3	The process of accreditation of law degree programmes fails to ensure proper control over the quality and content of these programmes, is mainly confined to the academic environment and does not involve representatives of law associations	Strengthen the role of law associations in the accreditation of law schools by increasing and expanding their representation in the sectoral expert council and mandatory participation in expert councils for accreditation of educational programmes

4	Ukraine spends a lot of money on “state order” for lawyer training, which is not responsive to market needs, encourages excessive enrolment in law programmes and leads to a quantitative imbalance of lawyers in the absence of their quality training	Move to grant funding for students of law programmes, which will help support the most promising and motivated students of legal education and is in line with government initiatives
5	Professional and academic dishonesty in the process of obtaining legal education, especially in the context of the rapid expansion of the use of artificial intelligence technologies, has a negative impact on the training of lawyers, hinders the achievement of positive processes of legal education reform and has a negative impact on the rule of law in Ukrainian society in the long term	Restrict admission to law programmes only through external independent evaluation, prevent corruption risks in the process of student learning and control the quality of education through digitalisation of the educational process, develop academic integrity policies to minimise plagiarism in view of the use of artificial intelligence technologies and regulate the process of their application
FIGHTING CORRUPTION		
1	The State Anti-Corruption Programme (SAP) has a variety of problems that are described as large-scale tasks, but are defined by only one framework measure. This makes it difficult to effectively monitor such measures and track progress or regression	Review and reformulate large-scale measures of the SAP and divide them into more specific tasks
2	Some measures in the SAP have biased deadlines that are not always realistic for the implementers, especially given their possible personnel changes and other circumstances	Review the deadlines for implementation of measures, especially complex ones, and set more realistic terms that reflect the capabilities of their implementers
3	Some issues, especially those that arose during martial law, are not provided for in the SAP at all. Certain measures aimed at eliminating corruption risks require a review of their essence to achieve the expected strategic result, as they have lost their relevance due to changes in actual circumstances, the regulatory framework and the capacity of executors. At the same time, the problem itself remains relevant	<p>Analyse and revise the essence of certain SAP measures to reflect new circumstances and changes;</p> <p>The new measures should be aimed at achieving the expected strategic result in accordance with the current conditions, taking into account the legal regime of martial law, and the resources of public authorities;</p> <p>Each measure should have a detailed implementation plan with specific stages, percentage of implementation and performance indicators</p>

4	In the approved edition of the SAP, due to political pressure from the authorities at the stage of its adoption, the indicators for the implementation of measures in the context of the SAP were weakened. The results of such measures are assessed only upon development or submission of draft laws to the Parliament or the Government - their advocacy and approval are not required	Provide for successful advocacy and adoption of legal acts as indicators of implementation of relevant SAP measures, not just their registration as projects
5	The current legislation provides for administrative liability for failure to comply with the NACP's order. However, the binding instrument of the NACP's order does not apply to the executors of the SAP in case of violation, which does not contribute to the proper and timely implementation of the SAP	Conduct a broad legal discussion with the participation of all key stakeholders on the possibility of applying influence measures to the executives of the implementing agencies (institutions, enterprises, organisations) in case of failure to implement the SAP measures without sufficient grounds. In particular, to consider empowering the NACP to issue instructions to the respective managers of the executors of the SAP measures
6	The NACP lacks sufficient capacity for its own meaningful monitoring, especially of sectoral measures of the SAP, and therefore needs expert support in assessing the implementation of the SAP. This may lead to formal implementation of the SAP measures. Given the difficulties in communicating with the SAP implementers at the stage of its approval and with a view to significantly mitigating them, there is a risk that the programme implementers may offset the NACP's negative feedback on their work on the implementation of the SAP	Create an option in the Information System Monitoring of the SAP (ISM SAP) to allow for non-personalised public feedback (without the use of a qualifying electronic signature) at the level of a specific measure or expected strategic result. This option may encourage the public to share their corruption experiences, assessments or warnings outside of social media and the Unified Whistleblower Reporting Portal, where specific offences are reported
7	The ISM SAP has unfulfilled potential to promote itself as a tool for monitoring the SAP, and is not sufficiently linked to the context surrounding the SAP activities	In order to promote the ISM SAP, place in a separate tab information on events, trainings, round tables, conferences, etc. organised by the SAP implementers or external stakeholders in areas relevant to the SAP, which could be useful for the implementing specialists in terms of, for example, obtaining answers to complex questions or sharing experience, etc.
8	Implementers lack the human and financial resources to fully implement the SAP measures. Lack of funding from the state budget or development partners may in the future become a reason for the authorities to justify why they have not implemented a particular SAP measure	Identify the key measures among the actions of the SAP that could be implemented by the project teams with the support of development partners and the public sector

9	The Coordination Working Group on Anti-Corruption Policy, which is to be established under the NACP, has an unbalanced composition of the Head of the NACP, a Minister of the Cabinet of Ministers, implementers of the SAP measures and MPs (by agreement)	Introduce amendments to the legislation that would allow for the inclusion of representatives of development partners and civil society in the Coordination Working Group on Anti-Corruption Policy with the involvement of observers, as well as optimisation of its format
10	The National Report on the effectiveness of the implementation of the state anti-corruption policy and the draft of the new anti-corruption strategy should be prepared by the NACP before the end of the current anti-corruption strategy, which disproportionately increases the workload of the NACP and may make the prepared documents irrelevant	Introduce amendments to the legislation that would allow the NACP to prepare a national report on the effectiveness of the implementation of the state anti-corruption policy, as well as a draft new anti-corruption strategy in the year following the last year of the previous anti-corruption strategy and the SAP
11	Due to the previous negative experience with the delay in the adoption of the anti-corruption strategy by the Verkhovna Rada, there are proposals from some stakeholders to transfer the relevant powers to the Cabinet of Ministers of Ukraine	Given all the risks, defend the position of preserving the current version of the Law of Ukraine "On Prevention of Corruption", which provides for the approval of the anti-corruption strategy for the respective year by the Parliament through the adoption of a separate law
12	Selection committees for the selection of the NABU and SAPO leadership propose several candidates to the appointing authorities. This adds unreasonable discretion to the political leadership and prevents the commissions from completing their work by selecting the one candidate who best meets the criteria	Amend the legislation to provide that following the results of the competitive selection for the position of the head of the NABU/SAPO, the competition commission selects only one candidate and submits a proposal for his/her appointment to the Prime Minister/Prosecutor General
13	The first external independent audit for the NABU and the next one for the NACP may be conducted for all or part of the period when the agency was headed by the previous head. The legislation does not specify the consequences of negative audit findings for the heads whose activities were not covered or not fully covered by the periods assessed by the commission	Consequences of negative conclusions of external independent audits of NABU, SAPO and NACP should be specified for the heads of these agencies whose activities did not relate to the periods when the deficiencies that affected their effectiveness were committed

14	Although the Head of the SAPO is an independent procedural authority, certain powers related to the initiation of criminal proceedings against individual actors and certain international cooperation activities are still vested in the Prosecutor General alone. The Prosecutor General is a political office in Ukraine, and in previous years there have been cases of his interference in criminal proceedings of the NABU and the SAPO	Strengthen the procedural weight of the Head of the SAPO by empowering him/her to: <ul style="list-style-type: none"> • initiate criminal proceedings and approve investigative actions against MPs; • submit extradition requests to the competent authority of a foreign state; • consider and decide on the establishment of joint investigative teams at the request of the pre-trial investigation body of Ukraine, the Prosecutor General of Ukraine and the competent authorities of foreign countries
15	In the past, some decisions of the CCU and the Verkhovna Rada on the NACP's mandate (termination of verification of declarations or reports of political parties, etc.) have threatened the NACP's ability to perform its functions in full	Ensure that future amendments to the NACP legislation are discussed with the participation of all stakeholders and the NACP itself, as current practice has already led to the actual absence of results of the institution's work in such important areas as financial control (except for lifestyle monitoring, which findings are ambiguous due to significant shortcomings in the bylaws regulating this procedure) and control over compliance with the legal restrictions on the financing of political parties, etc.
16	Judges have the opportunity to report interference in their work to the HCJ. However, there is no information on the effectiveness of such appeals	The outcomes of measures taken to respond to reports of interference in the administration of justice by judges should be communicated by the HCJ to track their effectiveness
17	The performance of NABU detectives is assessed mainly by quantitative indicators and does not reflect qualitative criteria	Improve the criteria for evaluating NABU detectives, focusing not only on quantitative but also on qualitative characteristics. For example, to take into account the cancellation of detective decisions by SAPO prosecutors and investigating judges, confirmation of violations by these entities, as well as the results of court proceedings in criminal proceedings (for example, regarding the admissibility of evidence collected by NABU detectives)
18	Given the current absence of territorial offices of the NACP, as well as the new focus of its mandate - monitoring of lobbying legislation, the maximum number of employees of the Agency should be increased. Otherwise, the NACP will not have enough human resources to perform its functions efficiently	Increase the maximum number of employees of the NACP apparatus and restore the procedures for selecting new employees of the agency on the basis of an open competition
19	The current system of evaluation of prosecutors is used only for bonus purposes	To regulate the management processes in the prosecutor's office at the appropriate level in order to introduce a system of performance evaluation of prosecutors, including SAPO prosecutors, based on predefined performance criteria

20	The headcount of NABU, SAPO and HACC has been increased, which requires an increase in logistical support. Additionally, it should be noted that the salaries of HACC judges, as well as other judges, still depend on the subsistence minimum set for 2021. At the same time, the salaries of law enforcement officers are increasing from year to year	Provide anti-corruption institutions with adequate financial resources, which can stimulate an increase in their efficiency
21	The experience of the previous competition of HACC judges showed that the lack of a defined weight for each of the criteria by which candidates are evaluated, as well as the failure to publish certain HQCJ decisions and practical tasks, undermine the credibility of the competition	Improve the bylaws governing the competition to the HACC to ensure greater transparency and methodological certainty (develop methodologies for determining the scores for each of the qualification criteria)
22	The PCIE's powers expire in November 2024. There is a possibility that the competition for HACC judges will not end by then. The 30-day deadline is insufficient for a full analysis of the candidates admitted to the interviews	Improve the Law of Ukraine "On the High Anti-Corruption Court" by extending the term of office of the PCIE (part 1 of Article 9) to 12 years, as well as extend the term of a special joint meeting of the PCIE and the HQCJ to 60 days (part 5 of Article 8 of this Law)
23	Court decisions establish cases of violations of the presumption of innocence committed by NABU detectives, but there is no public reaction to the results of internal investigations into these cases. Certain grounds for disciplinary liability of judges and prosecutors are extremely broad and do not comply with the principle of legal certainty	The NABU should strengthen public communication on the results of internal investigations into violations established by HACC judges, as well as the effectiveness of the internal oversight system in general; Separate grounds for disciplinary liability of prosecutors and judges should be specified
24	The report of the NACP's external independent assessment highlights the recommendation that the existing disciplinary procedures could be applied more effectively not only in exceptional cases, but also in cases of gross errors or other significant shortcomings in the work of employees	Disciplinary procedures should be applied more effectively to strengthen the accountability of the NACP employees in cases of gross errors or other significant shortcomings in their activities
25	The NABU's development strategy covered 2021–2023, but no analysis of its implementation was published	The NABU should evaluate the implementation of the Development Strategy for 2021-2023 and take into account the relevant outcomes when working on the next strategic document
26	The SAPO had no development strategy, as it was established as a department of the OPG	The SAPO needs to conduct a study of challenges, threats and opportunities in its work, define strategic goals and a mechanism for their implementation and set them out in the development strategy of the body

27	In 2023, with the support of donors, a strategic session was held with HACC judges and staff to identify areas for organisational development and improve performance. However, there is no formalised development strategy for the HACC at present	The HACC should formalise its own findings on challenges, threats and opportunities in its work, as well as define strategic goals and a mechanism for their implementation in the development strategy
28	In 2024, the NACP presented its own Institutional Strategy for Continuous Development as a Highly Effective Organisation until 2028. However, it does not fully meet the standard of a strategic document and needs to be updated	The NACP's development strategy until 2028 should be reviewed by the new leadership of the agency, in particular, in terms of updating the challenges and expected strategic results of institutional development
29	Interaction between analysts and detectives was bureaucratic and overly formalised. The situation has improved after some analysts were assigned to detective units, but this is not enough to ensure effective integration)	The NABU's organisational structure and interaction between departments can be improved by reviewing the internal distribution of staff, the role and location of individual structural units, and the organisation of work
30	Despite the amendments to the legislation, the NABU still does not have the ability to provide wiretapping independently	Enable the NABU to conduct wiretapping independently of the SSU
31	The eCase system is currently being implemented only at the level of the NABU, the SAPO and the HACC and covers a limited range of procedural actions	For the eCase system to function properly, it is necessary to develop a technical capability and regulatory framework for involving other participants in criminal proceedings in electronic criminal proceedings
32	Appointment and conduct of examinations in criminal cases investigated by the NABU is quite complicated due to influence on experts, leakage of information, and long timeframes for examinations	Forensic support for the NABU should be strengthened through the creation of a special forensic institution. It will be necessary to ensure the independence of experts and management from both the NABU and third-party actors
33	For the NACP to cooperate with the competent authorities of other countries, in particular, to exchange data for the purposes of administrative inspections within the scope of the NACP's authority, for example, on the basis of Article 43 of the UN Convention against Corruption or on the basis of provisions of other existing international treaties, there is a lack of clear establishment that the NACP has the authority to act as a competent authority	The NACP should be legally defined as a competent authority within the meaning of Article 43 of the UN Convention against Corruption in order to exchange data with competent authorities of other countries for the purposes of administrative inspections within the NACP's powers

34	The NACP was a member of the International Sanctions Group based at Stanford University. To implement the decisions of this group, the NACP, with the support of the Ministry of Foreign Affairs of Ukraine, created the War and Sanctions portal, which was not envisaged by the NACP's legislative mandate, as set out in the Law of Ukraine "On Prevention of Corruption"	Relevant developments in the NACP's sanctions activities, should be fully transferred to another competent authority to preserve the mass of information, and the inclusion and exclusion from the 'International Sponsors of War' list should be properly regulated
35	The NABU Audit Commission approves and publishes the criteria and methodology for performance evaluation. At the same time, if each commission approves significantly different criteria for such an assessment, this will not serve the sustainability of the audit and may also negatively affect the work of the NABU. Given the similarity of regulation of the NABU and SAPO audit processes and the problem of certainty and sustainability of criteria, the methods of external independent assessment (audit) of the SAPO performance may be relevant for this body as well	To amend the legislation to transfer the authority to approve the general framework of criteria for performance evaluation of the NABU and the SAPO from the commissions to the Government. This document should be developed with the active participation of competent experts. With the approved general framework in place, the relevant commissions will be able to immediately start specifying them in the process of evaluating the NABU and the SAPO without spending much time on procedural issues. The formulated criteria should allow for a prompt and qualitative assessment of the effectiveness of the NABU and the SAPO
36	Participants in criminal proceedings abuse their procedural rights to obstruct the trial within a reasonable time	Finalise the draft law on the introduction of an institution to counteract the abuse of procedural rights in criminal proceedings and submit it to the Parliament
37	Currently, the court does not have the authority to assess the extent to which the pre-trial investigation has been delayed has affected the exercise of the defendant's rights. This leads to the fact that criminal proceedings are closed even due to a slight delay, which is disproportionate to the nature of the procedural violation	Amend the Criminal Procedure Code of Ukraine (CPC of Ukraine) to remove the obligation of the court to close criminal proceedings due to the expiration of the pre-trial investigation (clause 10, part 1, Article 284 of the CPC of Ukraine) and empower the court to do so in case of violation of the accused's right to consider criminal proceedings within a reasonable time
38	There is no consensus on the possibility to condition the release from serving a sentence under a plea agreement in corruption cases	Introduce in the Criminal Code of Ukraine (CC of Ukraine) the possibility of using preferential criminal law provisions when concluding plea agreements for corruption and corruption-related criminal offences with safeguards against abuse of these opportunities. Additionally, make compensation for damages, restitution to another person, or payment of a fine, along with the confiscation of criminal proceeds, conditions for exemption from serving a sentence in connection with probation when concluding a plea agreement
39	When reviewing and approving plea agreements in corruption-related criminal offences, different court practices have been identified when assessing the category of 'public interest'. This leads to different interpretations of criminal law	Ensure uniformity of judicial practice in assessing the category of 'public interest' when approving plea agreements for corruption and corruption-related criminal offences

40	Judges do not have the opportunity to study the pre-trial investigation materials when approving plea agreements. This has a negative impact on the quality of verification of the correctness of the criminal law qualification of a person's actions	Amend the CPC of Ukraine to empower the court to request the collected pre-trial investigation materials when considering plea agreements
41	The issue of early release from serving a sentence is decided by local courts, not the HACC. There are already more than 3 cases in which local courts have decided that the purpose of the sentence imposed by the HACC has been achieved. This is a field for abuse	Amend Article 539 of the CPC of Ukraine to provide that issues related to the execution of a court verdict under which a person was convicted of a corruption criminal offence shall be considered by the HACC
42	Despite the existence of such powers, the Supreme Court plenum has not summarised the practice of bringing to criminal responsibility those guilty of corruption and corruption-related criminal offences. This negatively affects the quality of the relevant practice	The SC Plenum should provide explanations of a recommendatory nature on the application of legislation in court cases on bringing to criminal responsibility those guilty of corruption and corruption-related criminal offences
43	Certain corpus delicti of criminal offences are formulated rather vaguely, and judges understand and apply the terms used in Article 364 of the CC of Ukraine in different ways. There are also gaps in the definition of the term "extortion" in the composition defined in part 3 of Article 369 ² of the CC of Ukraine	Bring the disposition of Article 364 of the CC of Ukraine in line with international obligations and define in the CC of Ukraine the term "extortion" provided for in part 3 of Article 369 ²
44	Proposals to amend the legislation on the OECD Convention on Combating Bribery and Related Instruments are currently being developed. However, no public reports on consultations with various stakeholder groups have been published	Hold public consultations on the harmonisation of Ukrainian legislation with the OECD Anti-Bribery Convention and related instruments
45	The National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes (ARMA), together with the concerned central executive authorities, had to develop and submit to the Cabinet of Ministers of Ukraine a draft action plan for the implementation of the Strategy within three months. Within four months from the date of approval of the Strategy, the government had to approve the action plan, i.e. by 01 December 2023. However, the action plan for the implementation of the Strategy has not yet been approved	Adopt an action plan for the implementation of the Asset Recovery Strategy for 2023–2025, which will contain specific steps to improve the work of state bodies in this area

46	As of 31 December 2023, there were 24 HACC verdicts that had entered into force and ordered confiscation of property in the public domain. Of this number of verdicts, only 5 were enforced in terms of confiscation, as evidenced by the completion of enforcement proceedings. The reason for such low figures is a number of legislative and organisational problems with asset recovery	Measures to confiscate corrupt assets should be improved. For example, the procedure for confiscation of property should be brought in line with generally accepted international standards; the CC of Ukraine should provide for 'extended' confiscation of property; initiate the conclusion of new and improvement of existing bilateral treaties on legal assistance in criminal cases in terms of confiscation of assets obtained through criminal means
47	There is no complete statistical reporting on the status of enforcement of court sentences in terms of confiscation of property and special confiscation. Only partial	Statistical reporting on the status of execution of court sentences in terms of confiscation of property and special confiscation should be made public, and the results should be analysed to improve the work of the competent authorities
48	ARMA lacks institutional capacity. As a result of the external audit of ARMA's activities in 2022, the auditors found that most of the Agency's functions were not performed properly in 2022	Asset tracing and management of seized assets should be improved by strengthening the institutional capacity of ARMA. For example, introduce: a system of transparent selection of the Head of ARMA; a legal and qualitative external independent assessment of ARMA's performance; full joint planning between law enforcement agencies and ARMA on possible measures to manage specific seized assets; prioritisation of asset seizures by criminal courts; transparent procedures for asset management, sale and valuation; unblocking the possibility of corporate rights management
49	At present, due to the wording of the criminal law provisions on the statute of limitations for bringing to criminal liability, many defendants in corruption and corruption-related cases avoid responsibility	Take measures to ensure that the state is able to timely disclose and consider cases against persons accused of committing corruption-related criminal offences. For example, to expand the grounds for suspension of the statute of limitations, to increase criminal liability for certain corruption-related criminal offences and those involving obstruction of the investigation, and to shift the time of expiry of the statute of limitations to the time of the verdict rather than its entry into force

50	<p>In December 2023, the Parliament passed a law amending the Law of Ukraine “On Prevention of Corruption” to bring certain provisions in line with the European Commission’s conclusions on Ukraine. However, the Law on Prevention of Corruption still contains provisions that are poorly justified and need to be corrected</p>	<p>Improve the provisions of the Law of Ukraine “On Prevention of Corruption” in terms of requirements for electronic declaration and the procedure of full verification carried out by the NACP, namely:</p> <ul style="list-style-type: none"> • remove the provisions allowing MPs not to indicate in their declarations information about rented real estate up to 75 m2 if the costs of such real estate are reimbursed to them; • remove the provision on specifying information about the same asset in only one section of the declaration; • restrict the right of the declarant to review all the materials of the full audit of themselves based on its findings; • expand the range of officials of a legal entity under public law and include heads of separate divisions and branches of legal entities and their deputies in the list of declarants
51	<p>For declaration purposes, the NACP provides the most comprehensive explanations of the various life circumstances of declarants, some of whom are currently required to submit three years’ worth of missed declarations. However, this leads to the explanations becoming increasingly voluminous and creating difficulties in finding the necessary information for the average declarant</p>	<p>The NACP should improve navigation in the “Explanations” section on its website and consider the possibility of integrating this section into the declaration filling process as much as possible</p>
52	<p>After almost four years of refusal, the NACP approved the procedure for lifestyle monitoring of declarants in autumn 2023 and registered it with the Ministry of Justice, but the content of this procedure has not undergone any conceptual changes, which has been criticised by the public. In particular, the procedure does not specify clear deadlines for lifestyle monitoring, which should be limited in time to avoid excessive interference with the declarant’s private life</p>	<p>The NACP’s bylaws on the new lifestyle monitoring procedure should be revised to avoid excessive interference with declarants’ privacy</p>
53	<p>There are a number of issues that reduce the effectiveness of certain aspects of financial oversight. These include the closed procedures for inspections of intelligence officers and their illegal inspections by the NACP’s internal oversight unit, closed rules of logical and arithmetic control, as well as artificially isolated oversight over the completeness of declarations, etc.</p>	<p>The NACP needs to comprehensively assess the entire system of business processes of financial oversight, identify procedures where there may be duplication, conflicts or discrepancies between bylaws and the concept of the law. Based on the results of such an assessment, make the necessary changes to the legislative regulation to improve the financial oversight procedure</p>

54	In December 2023, the NACP introduced automation of full verification of declarations, which was criticised by the public. The purpose of this update, which is also not provided for in the relevant law, remains ambiguous and insufficiently distinguished from the artificially separated control of the completeness of the declaration	The NACP should return to the previous concept of full verification of declarations, which did not include declarations that could be verified automatically
55	On 26 December 2023, the law restoring the reporting of political parties came into force. However, there may currently be some controversial differences in the NACP's interpretation of its bylaws compared to the current legislation. In particular, regarding party branches that were located in the temporarily occupied territories during the reporting period	The NACP should develop amendments to its own acts to bring them in line with the legislative changes and hold a broad public discussion with external stakeholders
56	There is still a need to review the entire concept of the system of state funding of political parties, not just the specific issue of reducing the barrier to state funding from 5% to 3%. Some parties have adapted to the current legislation and continue to practice shadow funding	The working group should resume its work on the development of a new draft law on the activities of political parties to submit it to the parliament
57	The amount of work that the NACP will have to do in connection with the resumption of reporting by political parties will be a big challenge for the responsible NACP staff and has the risk of becoming a more formal activity	The NACP's capacity to verify political party reports should be strengthened with additional human resources as well as through the introduction of annual auto-distribution of batch inspections among the body's employees
58	It is expected that parties will be more active in reporting for 2020, when local elections were held, and where the statute of limitations for prosecution for possible administrative or criminal violations, etc. has already expired, but it is still possible to suspend or withhold state funding until the relevant violations are resolved, etc. The reports for 2021-2023 will contain much less information	The criteria for verification of the NACP's reports as a preventive body should be widely discussed with parties and external stakeholders, and instead of classifying such criteria as 'for official use only', they should be made available to the public.
59	The results of inspections of political parties' reports were published in the form of news on the NACP website, which makes them difficult to find in the absence of a single, separate location	The findings of the new audits of political parties' reporting should be made public in a comprehensive manner, not in fragments

60	The problem of insufficient balance and proportionality of sanctions for violations of the law by political parties remains. In particular, for example, a sanction in the form of termination of state funding of a political party, which may amount to tens or hundreds of millions of hryvnias, may be imposed for inaccurate information in party reports in the amount of tens or hundreds of thousands of hryvnias	Review the system of sanctions for violation of legal requirements by political parties to make it more balanced, proportionate and broader
61	In the 8 years of the reform of state funding of political parties, not a single case opened on the basis of the NACP's materials has been brought to court by the National Police, which also jeopardises the effectiveness of the NACP's inspection	The National Police should more thoroughly investigate the materials from the NACP on possible criminal offences by political parties, and the prosecutor's office should submit them to the court
62	Due to the recommendatory status of the NACP's explanations for political parties, they can be ignored by the National Police in favour of the law	Amend the Law of Ukraine "On Prevention of Corruption" and clarify the status of the NACP's explanations, in particular to political parties, to remove their advisory nature. The NACP should reconsider its approach to providing explanations to avoid provisions contradicting the law by organising a public discussion of such explanations
63	Currently, POLITDATA has data up to 2020, with the exception of 2016-2017, as the law requires that reports be kept public for 5 years. However, the starting point for these 5 years is debatable, as the system has been closed to public access for a long time, and this period does not allow for comparisons of reports even from parliamentary parties of different convocations	The NACP should ensure that the 2016-2017 reports of political parties are publicly available, and initiate amendments to the law so that the reports remain public for more than 5 years to maintain continuity and allow for comparison of their dynamics
64	Another problem is that the POLITDATA system is not very user-friendly for third-party analysts. It does not have an advanced search tool for the content of reports, aggregated general statistical information, etc., but rather separate reports that need to be studied individually. The system provides for an ARI, but its use requires some experience with the relevant software, which may not be available to the average citizen	The NACP should further upgrade the POLITDATA system to improve its use by political parties and other users, in particular by adding automatic verification of available information and interaction with other state registers
65	According to the statistics, as of 2024, 33 authorities still do not have anti-corruption programs in place, which is an alarming indicator of non-compliance with the Law	The authorities and local self-government bodies should speed up the process of developing anti-corruption programmes for 2024 and approving them by the NACP

66	The list of entities required to adopt an internal anti-corruption programme is not exhaustive in terms of potential corruption risks and needs to be expanded	Include village and settlement councils, district state administrations and separate structural units of local state administrations in the legislative list of entities that adopt anti-corruption programmes
67	The model anti-corruption programme for legal entities approved by the NACP in early 2024, which will come into force in August 2024, does not distinguish between the public, municipal and private sectors, taking into account the specifics of the activity, inherent corruption risks and the specifics of the organisational structure. In addition, the document itself contains parts that apply to either certain legal entities or all of them. This approach does not make it easy to understand what exactly needs to be done, and this may be the reason why approximate 20% of government agencies still do not have mandatory anti-corruption programmes for 2024	The NACP should revise its guidelines on anti-corruption programmes to simplify them, and pay more attention to how documents in this area are communicated to specific actors, as they should then effectively use them in their own activities
68	The findings of the expert review, including the public one, are subject to mandatory consideration by the issuing authority, according to Article 55(8) of the Law of Ukraine "On Prevention of Corruption". However, the law does not provide clear guidance on the review procedure and timeframe, allowing the authorities to act at their own discretion and ignore the findings of the expert assessments. In addition, the law does not mandate the disclosure of all the results of expert examinations, allowing in certain cases for their concealment by the body that conducted the examination	To amend the legislation to provide for measures aimed at eliminating gaps and legal uncertainty in the legislation in the field of anti-corruption expertise, in particular: <ul style="list-style-type: none"> • provide clear terms and procedure for consideration of the results of anti-corruption expertise by the Verkhovna Rada; • to make all results of anti-corruption expertise publicly available; • limit the NACP's discretion in selecting draft legal acts for anti-corruption expertise
69	The low number of protocols drawn up by the NACP that resulted in administrative penalties in court remains a negative trend that has been going on for more than 10 years. The main reason for this is the shortcomings of the administrative process of reviewing such cases, in particular, too short timeframes for imposing an administrative penalty	Consider comprehensive amendments to the Code of Ukraine on Administrative Offences (CUAO) to improve the provisions on: guaranteeing equality of parties; introducing an effective way to notify persons of the protocol on committing an offence and sending it to court; defining clear and sufficient time limits to allow the NACP to collect the necessary evidence and timely submit the case file to the court in accordance with the established procedures
70	At present, the NACP's protocols are presented in court by prosecutors, not by the Agency's employees. This also negatively affects the quality of consideration of such protocols	Supplement the CUAO with a provision stating that the NACP has the right to participate in court hearings against a person against whom it has drawn up a report on an administrative offence. Also, grant the NACP the right to appeal in cases of administrative offences related to corruption

71	There is currently no law protecting whistleblowers of information of public interest (e.g., abuse of power, violations of food, transport or environmental safety, torture or other human rights violations, etc.) in the so-called "broad definition"	Adopt a separate legislative act that would provide for a "broad definition" of a whistleblower of socially important information
72	Ukrainian legislation does not fully reflect the requirements of Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of whistleblowers	Adopt a separate legislative act that would extend protection guarantees to: persons who assisted whistleblowers and facilitated disclosures; persons who were perceived to be whistleblowers; persons who were preparing to make a disclosure but did not have time to complete it; persons who participate in professional organisations; volunteers and interns, etc.
73	The security of persons involved in criminal proceedings is regulated by an outdated law, which is not systematically implemented in practice, in particular due to insufficient funding for the implementation of such security measures and does not apply to persons involved in administrative proceedings, etc.	Adopt a separate legislative act that would provide for the security of participants in proceedings without reference to criminal justice
74	The definition of the reporting channels themselves, in particular the regular channel, was significantly worsened by the legislative changes that introduced the Unified Whistleblower Reporting Portal in the summer of 2021. In particular, the possibility of sending a report to bodies with oversight, supervisory or law enforcement functions was narrowed, etc.	Adopt a separate legislative act that would extend the definition of a regular reporting channel to public authorities whose competence includes consideration and decision-making on issues where relevant information is disclosed. Regular channels must be established by specially authorised anti-corruption bodies, pre-trial investigation bodies, bodies responsible for monitoring compliance with laws in the relevant areas, and other relevant state bodies, institutions and organisations
75	The NACP's continued failure to address the Portal's shortcomings and ensure proper anonymity and confidentiality of whistleblowers may lead to an increase in the number of cases of violations of whistleblower rights and, in general, undermine public confidence in the work of the whistleblowing institution	Adopt a separate legislative act that would provide for the communication of restricted information, including state secrets, through an external communication channel if it is of public interest, without bringing to liability
76	The portal does not fully comply with best practices, especially in terms of usability, anonymity and confidentiality. There is insufficient visualisation and explanation of the Portal as an internal reporting channel, especially as some of its features are quite inherent in regular reporting channels	The portal should comply with international standards and best practices in terms of guaranteeing anonymity and confidentiality of whistleblowers

77	The portal was launched without proper publicity about its launch and functions. The public pointed out a number of shortcomings in the NACP's fulfilment of its whistleblower protection mandate	The NACP should conduct a comprehensive communication campaign to promote the Portal among potential whistleblowers and inform the anti-corruption commissioners about its capabilities. The NACP should take into account the recommendations of civil society representatives to improve its work with whistleblowers
78	In July 2023, a report on the results of an independent external assessment of the NACP's performance was published. Immediately afterwards, the NACP issued a statement stating that it would soon analyse the Commission's report in detail and develop an Implementation Plan to improve its performance. However, there is currently no publicly available information on the approval of the relevant Plan	The NACP should hold a public discussion and publish an Implementation Plan for all recommendations of the external performance assessment, along with public reporting on the status of implementation of the recommendations
79	The methodology and criteria approved by the Cabinet of Ministers of Ukraine in 2020 without open and inclusive consultations with stakeholders are complicated, not fully relevant and do not leave much room for the Commission's assessment	The Cabinet of Ministers of Ukraine should update the Methodology and Criteria for External Evaluation of the NACP's Performance after a broad discussion with stakeholders, including the NACP (which should be able to express its position, but should not have a significant influence on the final content of the documents) and the public. Further, legislative changes should be made to ensure that the government approves the general framework of criteria for assessing the NACP's performance, and the Independent Evaluation Commission itself specifies public criteria and methodology for evaluation, similar to external audits of the NABU and the SAPO
80	The NACP's performance is assessed by 237 criteria, and a number of them are duplicated or focused on more formal implementation or availability of certain legal acts rather than on the NACP's impact on fighting and preventing corruption	Reduce the number of evaluation criteria, eliminate their duplication and ensure that they focus on qualitative indicators of the NACP's impact on corruption prevention, giving the Commission the appropriate discretion to do so
81	The audit criteria do not cover the assessment of the implementation of the legislative changes regarding judges and CCU judges introduced in late 2020, as well as the new lobbying legislation that was recently adopted and expanded the NACP's mandate. There are also a large number of personal criteria missing	Provide for new objects of evaluation - monitoring of lobbying requirements and an expanded range of personal criteria for evaluating the NACP Head, including his or her accountability, leadership, independence, competence, etc. Unsatisfactory results in this block should serve as grounds for early termination of the Head's powers. The mathematical formula for the number of unfulfilled non-personal assessment criteria for such early termination of powers should be made less demanding. Similarly, new evaluation criteria for judges and CCU judges should be added to comply with changes in legislation, in particular, regarding the NACP's compliance with the guarantees of independence of judges and CCU judges in the exercise of its powers
82	The previous baseline questionnaires for external stakeholders and state authorities were too detailed and could have been difficult to complete	Significantly simplify basic questionnaires for external stakeholders and public authorities

83	<p>The Law vests the Security and Defence Council of Ukraine with powers not expressly provided for in the Constitution. In addition, it prohibits persons listed in the Register of Oligarchs from financing the activities of political parties and any political campaigning, and from being buyers in the privatisation process, thus restricting the constitutional right of citizens to freely elect and be elected to public authorities and local self-government bodies and violating the constitutional principle of equality of Ukrainian citizens. This may also be a potential violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and other international human rights standards</p>	<p>The Law of Ukraine “On Prevention of Threats to National Security Associated with Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” needs to be significantly amended, as the current iteration carries significant risks of violating the Constitution of Ukraine and international human rights standards</p>
84	<p>In its conclusion, the Venice Commission provided many reservations that closely echo the criticisms of the public and experts. In particular, the Venice Commission also concluded that there is a risk of political influence of the President on the decision of the Security and Defence Council of Ukraine to recognise a person as an oligarch. It also noted the inadmissibility of completely restricting oligarchs’ access to the political life of the country and imposing an obligation on them to submit asset declarations</p>	<p>The authorities, in cooperation with national and international experts and civil society, should develop a new comprehensive approach to implementing anti-oligarchic measures based on a strategic document similar to the Anti-Corruption Strategy and the SAP</p>
85	<p>In 2021, the Government adopted the Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs). This Plan was aimed at strategic planning and comprehensive implementation of anti-oligarchic reform, but it was developed without involvement of the public and experts, which resulted in its superficiality, blanket nature and lack of a monitoring mechanism</p>	<p>The existing Action Plan to Prevent the Abuse of Undue Influence by Persons with Significant Economic and Political Weight in Public Life (Oligarchs) needs to be revised in cooperation with national and international experts and the public. This will help to avoid declarative and vague reform processes, and thus its ineffectiveness</p>

86	The initiators of the draft law “On Lobbying” did not launch an information campaign before its adoption and did not distinguish between advocacy and lobbying in clear public communication. This may lead to a general misunderstanding of the consequences and meaning of lobbying regulation by the public, as the available public communication was mainly limited to the message that the law is European integration and therefore needs to be adopted	A communication campaign should be conducted to reduce the negative perception of lobbying and explain the meaning of its regulation, in particular to increase the transparency of the work of state bodies
87	The law does not create effective mechanisms to identify the influence of oligarchs on decision-making, nor does it lead to the registration of lobbyists in the Transparency Register, which is to be created in a rather short time frame	Introduce amendments to the law that would improve the regulation of commercial lobbying and achieve the goals of its introduction
88	A major gap in the Law “On Lobbying” lies in the fact that it does not regulate the forms of lobbying that have historically been carried out in Ukraine through patronage. Some freelance advisors in reality have the same or even greater powers than some ministers, and they are not subject to anti-corruption legislation. There is also a lack of transparency and proportionality in the legislative regulation of the activities of the Verkhovna Rada staff and MPs’ assistants	Extend the scope of the Laws of Ukraine “On Lobbying” and “On Prevention of Corruption” to patronage services, including advisers to top officials, and change the legal framework regarding the number, status and activities of assistants to MPs. It is necessary to limit the maximum number of relevant assistants to 6 persons, as well as to narrow the powers of MPs’ assistants who do not work under an employment contract. Alternatively, the status of pro bono MPs could be cancelled altogether. To increase the transparency of the aides’ work, a comprehensive publication of their profiles and reports on their activities on the website of the Verkhovna Rada should be introduced. In addition, it is necessary to include a requirement to disclose private interests of MPs’ advisers and to introduce a provision prohibiting relatives of MPs from being their assistants
89	Insufficient salaries and the lack of unified ethical standards of behaviour for MPs and city councillors are additional corruption-prone factors	MPs’ salaries should be increased, and at the same time, a code of ethics for MPs should be adopted, along with amendments to the legislation on local self-government bodies that would oblige local councils to adopt their own codes of ethics.
90	The existing short limitation periods do not allow for a realistic prospect of bringing to administrative responsibility for violations of lobbying requirements	Amendments should be made to the CUAO to allow administrative penalties for lobbying offences to be imposed within six months of their detection, but no later than two years from the date of their commission, similar to what is currently provided for corruption-related offences

91	There is still a practice whereby the NABU and another law enforcement agency (body with law enforcement functions) each register the same fact indicating the commission of a criminal offence, the investigation of which falls within the NABU's jurisdiction. The subsequent parallel pre-trial investigation by such bodies makes it difficult for the NABU to conduct a full, comprehensive and impartial investigation	The SSU, SBI, NPU, BES and prosecutors should strictly adhere to the requirements of procedural law regarding the jurisdiction of NABU cases and to this end, effectively cooperate with each other. For example, if the SSU discovers facts of corruption and corruption-related criminal offences committed by a suspect in the course of investigating a case under its specialisation, which are under the NABU's jurisdiction, it should ensure that the relevant case files are transferred to the NABU in a prompt and efficient manner
92	Failure to comply with the rules of jurisdiction may lead to inadmissibility of evidence collected by the pre-trial investigation body and, as a result, acquittal of a person	Consider establishing disciplinary liability for the heads of pre-trial investigation bodies (i.e. investigative units) for the fact that their units investigate cases in violation of the NABU's exclusive jurisdiction, as well as for prosecutors who have not correctly determined the jurisdiction of criminal proceedings
93	Since corruption investigations are not the sole responsibility of the NABU, the legal framework for the functioning of other pre-trial investigation agencies must be improved. This is the focus of the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027. However, the action plan for its implementation has not yet been published or publicly discussed	Publicly communicate the results of the development of an action plan aimed at implementing the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027. Particular emphasis should be placed on the provisions on external monitoring of law enforcement and prosecution agencies
94	The selection of the heads of the NPU, the SBI and the BES is subject to politically motivated appointments, not based on a qualitative assessment of integrity and competence. However, these bodies are also empowered to investigate corruption	Improve the legal framework for the selection of heads of the NPU, SBI and BES in terms of transparency and professionalism. Particular attention should be paid to the fact that the position of development partners that should be involved in the selection panels should be unanimous
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS		
1	The provisions of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" are not consistent with the Paris Principles in terms of nomination and appointment of the Commissioner, ensuring his/her independence, including financial one	Introduce comprehensive amendments to the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" to bring it in line with the standards and best practices of national human rights institutions, in particular, to strengthen the independence of the institution by allowing civil society organisations to nominate candidates for the position of the Commissioner, introducing an open competition for the position, ensuring the financial independence of the institution (for example, by determining the impossibility of reducing expenditures on its activities)

2	The amendments to the Law of Ukraine “On the Legal Regime of Martial Law” created a conflict that allows for the dismissal of the Ombudsman during the period of martial law, which is expressly prohibited by the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”. This conflict creates risks for the Ombudsman’s independence and political pressure on the institution	Amend Article 12 of the Law of Ukraine “On the Legal Regime of Martial Law” to eliminate the possibility of dismissing the Ombudsman of the Verkhovna Rada of Ukraine during the legal regime of martial law
3	There are no systematic efforts to engage and train civic monitors — participants of the National Preventive Mechanism (NPM), to encourage them to participate in visits to places of detention. This can lead to a deterioration in the quality of visits, which, in turn, carries the risk of reducing the effectiveness of the NPM	Ensure systematic work on engaging and training NPM monitors, encouraging them to participate in visits to places of detention
4	There is no instrument to bring to administrative responsibility for discrimination	Introduce comprehensive amendments to the legislation regulating the issue of prosecution for discrimination, granting the Ukrainian Parliament Commissioner for Human Rights the right to draw up protocols on discrimination as an administrative offence
5	The national legislation on personal data protection is not synchronised with the relevant legislation and requirements for the processing and storage of personal data in the European Union	Adopt the Draft Law of Ukraine “On the National Commission for Personal Data Protection and Access to Public Information” (Reg. No. 6177 of 18.10.2021) and the Draft Law of Ukraine “On Personal Data Protection” (Reg. No. 8153 of 25.10.2022)
6	Inconsistency of national legislation with international standards in defining the subject of the offence of torture	Amend Article 127 of the CC of Ukraine to establish a special subject of the crime of torture - state officials or other persons acting as official
7	Ineffective documentation and investigation of torture and other cruel, inhuman or degrading treatment or punishment	Ensure the proper implementation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol). Re-prioritise the work of the SBI to increase its focus on documenting and investigating torture and other cruel, inhuman or degrading treatment or punishment
8	Inadequate medical care and insufficient staffing and equipment of medical units in penitentiary institutions, mobilisation of some paramedics and doctors, which leads to poor quality and untimely provision of medical services and violation of the right to healthcare of prisoners	Ensure the improvement of medical care and the gradual integration of medical care for convicts and detainees in a single (common) medical space, as envisaged by the Strategy for Reforming the Penitentiary System until 2026. Provide for adequate funding for the healthcare system. Develop and implement a strategy and plan for working with medical personnel, which should include fair remuneration and social guarantees for medical workers

9	Separate detention of different categories of prisoners in penitentiary institutions, including first-time offenders and those who have previously served their sentences, is a violation of internal regulations in penitentiary institutions	Strengthen control over the separation of different categories of prisoners in penitentiary institutions, including first-time offenders and those who have previously served their sentences
10	Lack of a meaningful strategy to mitigate the risks of the penitentiary system in the context of risks caused by military aggression. Threat to the life and health of persons in places of detention in the frontline areas. Insufficient number of shelters from rocket and bomb attacks in places of detention	Review the strategic documents of the authorities to take into account the existing risks of the ongoing armed conflict, prepare effective plans to reduce the level of danger to persons in places of detention. Ensure the transfer of convicts serving their sentences in institutions located in the frontline areas to safer areas, and provide appropriate funding for such transfer and placement. Create and equip the necessary number of shelters from rocket and bomb attacks in places of detention
11	The staff of the probation system, especially in the regions, lacks necessary resources. Only the needs of the central office are fully funded. The gap in salaries between the central office and employees who work directly with prisoners is tenfold. Probation bodies are unable to provide real work with convicts	Ensure legal and social protection of probation staff in line with the approaches laid down in the European Probation Rules, reduce the gap in remuneration between the central office and those who work directly with convicts; create conditions for the proper performance of their functions. Review the capacity of probation bodies to provide real work with convicts. Amend the current legislation to improve the grounds for applying extreme measures to convicts that adversely affect their situation, as well as the content and forms of penitentiary probation in line with European approaches
12	Threat to the independence of the National Council of Ukraine on Television and Radio Broadcasting (National Council) due to changes in the funding procedure, as well as the obligation for regulatory legal acts of the National Council to undergo the procedure of their state registration by the Ministry of Justice of Ukraine	Stop the practice of suspending the provisions of the Law of Ukraine "On Media" in terms of financing the National Council, in particular in terms of remuneration of the head, first deputy head, deputy head, executive secretary and members of the media regulator, and to fully comply with the provisions of the said Law. Cancel the obligation for regulatory legal acts of the National Council to undergo the procedure of their state registration by the Ministry of Justice of Ukraine
13	Significant underfunding of the public broadcaster	Ensure proper funding of the public broadcaster in accordance with the requirements of the Law of Ukraine "On Public Media of Ukraine"

14	Unification of national TV channels on a single information platform of the round-the-clock information marathon “United News #UAtogether”, which contains risks for media pluralism in Ukraine	Review the feasibility of further uniting national TV channels on a single information platform of the round-the-clock information marathon “United News #UAtogether”, change the format of implementing a unified information policy during martial law
15	Inconsistency of the Law of Ukraine “On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” with the rule of law and its ineffectiveness in addressing the problem of excessive influence of oligarchs	Recognise the Law of Ukraine “On Prevention of Threats to National Security Related to Excessive Influence of Persons with Significant Economic and Political Weight in Public Life (Oligarchs)” as invalid and prepare amendments to Ukrainian legislation in line with the recommendations of the Venice Commission
16	The existence of a conflict related to the procedural issues of appointment and dismissal of the Head of the Antimonopoly Committee of Ukraine, which undermines its independence and makes it vulnerable to political pressure, in particular in the context of granting the Antimonopoly Committee of Ukraine the authority to determine the boundaries of markets in the media sector and the market for the dissemination (distribution) and consumption of advertising information	Bring the provisions of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” in line with the Constitution of Ukraine in terms of the procedure for appointment and dismissal of the Head of the Antimonopoly Committee
17	Deterioration in the effectiveness of investigations into offences committed against journalists and other media workers. Pressure on journalists, covert surveillance of journalists and other media workers, threat to the protection of journalistic sources	Ensure proper implementation of the judgement of the European Court of Human Rights in the case of Gongadze v. Ukraine, in particular, to increase the efficiency of investigations of offences committed against journalists and other media workers, as well as to amend the legislation of Ukraine to implement the judgement of the European Court of Human Rights in the case of Sedletska v. Ukraine
18	Lack of a clear list of grounds for denying accreditation to journalists and other media workers in the areas of hostilities	Amend the Commander-in-Chief’s Order No. 73 to include a clear and exclusive list of grounds for refusing to grant accreditation to journalists in combat areas
19	Lack of adequate insurance for journalists, other media workers and recorders, in particular in the context of hostilities	Ensure proper insurance of journalists, other media workers and recorders against the risks associated with working in the context of hostilities

20	Sanctions legislation continues to be used to block websites without proper legal basis and transparency	<p>Amend the Law of Ukraine “On Sanctions” to introduce the relevant measure and establish requirements for the publication of reasons for its application. In particular, clarify the grounds and procedure for restricting access to websites and ensure that the sanctions procedure is applied exclusively to foreign individuals or legal entities, stateless persons, as well as organisations recognised as terrorist under international law or national legislation, and is not used to block the activities of national media and NGOs.</p> <p>Develop and adopt comprehensive legislation on countering terrorist content, based on EU Regulation 2021/784 on countering the dissemination of terrorist content online</p>
21	The scope of powers of the National Centre for Operational and Technical Management (NCM) of telecommunications networks in the field of blocking websites during martial law is excessively vague	Amend the Resolution of the Cabinet of Ministers of Ukraine No. 812 of 29.06.2004 to clarify the powers of the National Centre for the Blocking of Websites, provide proper justification for such blocking, indicating the grounds for blocking, and introduce requirements for the publication of orders of the National Centre that do not contain restricted information
22	<p>Law enforcement agencies are not effective enough to prevent the persecution of activists and human rights defenders. Investigations and trials in crimes against activists and human rights defenders either do not take place at all or take too long, are subject to unlawful influence and require constant attention from civil society.</p> <p>There are cases of unjustified persecution of civil society representatives, in particular in criminal proceedings. The law enforcement system does not communicate abuses of its employees well, and does not bring them to justice</p>	<p>Law enforcement agencies should prevent unlawful acts against civil society representatives and investigate them properly and within a reasonable time. Investigative bodies should stop the practice of unjustified prosecution of civil society representatives. To this end, the government should continue to reform law enforcement and law enforcement agencies, including the police and legal education.</p> <p>The law enforcement system needs to develop an effective mechanism for cooperation and direct communication with representatives of human rights organisations. This mechanism should prevent cases of unjustified restriction of rights and persecution of civil society representatives by law enforcement officials. Also, with the help of this mechanism, law enforcement and human rights defenders should conduct an inventory of problematic criminal proceedings (where the investigation was conducted at a low level or closed in violation of procedural law) and resume the investigation to ensure its quality (exhausting all appropriate investigative actions) and bring those responsible for persecution to justice.</p> <p>The leadership of law enforcement agencies should begin to speak openly about mistakes in their work and bring to justice officials responsible for the unlawful persecution of activists and volunteers.</p> <p>The judicial system should become an arbiter in such cases, independent of the prosecution, political, corporate and other types of illegal influence. In addition, trials in cases of attacks on activists and human rights defenders should be prioritised in view of their public importance</p>

23	The procedure for banning political parties is insufficiently regulated by law and does not fully comply with democratic standards. This may lead to undue restrictions on the right to freedom of association by the government	<p>Decisions to ban parties should be based on relevant evidence, proper justification, and meet the requirements of international organisations. Such decisions should be made in open court sessions with the possibility of public discussion of the evidence.</p> <p>Comprehensive amendments to the legislation on political parties should be adopted. The draft law should be developed through an inclusive consultation process, taking into account the OSCE’s findings. The draft law should also include issues of interaction between the Ministry of Justice and other state authorities, specify the procedure for collecting evidence to prepare cases for trial, etc.</p>
24	The National Human Rights Strategy needs to be updated due to changes in the situation in Ukraine while the document was pending approval by the President. There is no action plan for its implementation for the next three years. The absence of an updated Strategy and an action plan for its implementation makes it impossible for the government to improve the state’s efforts to promote and ensure human rights and freedoms, create effective mechanisms for their implementation and protection, and address systemic problems in this area	<p>The government, with the involvement of international and Ukrainian organisations, should update the National Human Rights Strategy and approve it as soon as possible.</p> <p>For the government, in partnership with civil society and human rights organisations, to develop a new action plan to implement the Strategy for 2024–2027</p>
25	The government develops and implements decisions related to volunteers, civic and charitable organisations, and the provision of humanitarian assistance without their broad involvement. This negatively affects the quality of government policies and their implementation, and creates obstacles for civil society organisations. Legislation on volunteers continues to contain threats and restrictions for the work of volunteers and civil society organisations (CSOs)	<p>The government is advised to:</p> <ul style="list-style-type: none"> • consider and implement CSOs’ recommendations on improving the legislation in the field of volunteering in accordance with Section 5 “Development of Volunteering” of the Legal Reforms Map; • reinstate the right to compensation for volunteers who have been injured while providing assistance to civilians, or at least to introduce tax benefits for private insurance for such volunteers, by adopting draft law No. 10040; • develop decisions related to volunteers and CSOs’ activities only with their involvement. One of the tools for this is the adoption of the draft law “On Public Consultations”. However, public authorities should involve citizens in the development and implementation of decisions on a regular basis, even until special legislation is adopted. Such legislation should only facilitate the process of engaging citizens

26	Foreign volunteers and stateless persons still face migration and other administrative restrictions in the legislation that prevent them from effectively carrying out their activities in Ukraine and cause additional costs	<p>The government should allow foreign volunteers and stateless persons to obtain a temporary residence permit for volunteering without the need to obtain a visa in advance</p> <p>The need to register a place of residence for foreign volunteers and stateless persons during martial law and 90 days after its termination should be cancelled</p>
27	Despite the preservation and partial increase of opportunities for funding CSOs by the government, in general, the mechanisms of state funding remain rather limited. The lack of opportunities to attract additional resources limits the ability of CSOs to develop and operate	The government should continue to address issues and improve legislation in the area of fair distribution of public funds for CSOs, in particular, expand the range of CSOs that receive state support for project financing. In general, the government should take into account and implement the recommendations contained in Section 3 of the Legal Reforms Map "State Support for CSOs". The Parliament should adopt draft law No. 7500 on the introduction of a percentage deduction mechanism to support non-profit organisations
28	Draft law No. 4254 "On Public Consultations" to ensure that legislative and executive authorities at the central and local levels consult with the public has not yet been signed by the President. This deprives citizens and CSOs of an important tool for engaging in the development of public decisions	The President should sign the Law of Ukraine "On Public Consultations" (Draft Law No. 4254)
29	The adopted Law of Ukraine "On Fair Lobbying" contains potential risks for civil society, which includes the possibility that its provisions will be used in the future to harass and discredit CSOs	The NACP as a supervisory body in the field of lobbying should prevent cases of unjustified extension of the Law of Ukraine "On Lobbying" to CSOs. The courts should refrain from ruling on bringing CSO leaders and members to liability in connection with the Law
30	Ukrainian legislation on preventing and combating money laundering, terrorist financing and proliferation of weapons of mass destruction imposes an obligation on public and charitable organisations to provide information about their ultimate beneficial owners, which they usually do not have. As a result, CSOs are subject to government control measures and financial monitoring, which become a significant bureaucratic burden for them and can lead to long-term blocking of financial transactions	The government should exclude public and charitable organisations from the list of entities with ultimate beneficial owners in the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction"

31	Draft law No. 7033-d restricts access to information and decisions of the Unified State Register of Court Decisions, which are of significant public interest and important for the implementation of the functions of public control over the activities of law enforcement agencies. The proposed changes contradict the principles of a democratic society and Ukraine's European integration commitments	Members of Parliament should reject the draft law 'On Amendments to Certain Laws of Ukraine on Preventing the Disclosure of Certain Information in the Texts of Court Decisions' (registration No. 7033-d of 13 January 2023)
32	Since the beginning of the large-scale invasion after 24.02.2022, Russia has committed and continues to commit all kinds of grave violations of the rights of Ukrainian children, including abducting and deporting Ukrainian children to its territory	<p>Ensure that all crimes committed by the Russian military against children are recorded: murders, mutilations, child abuse and others.</p> <p>Involve international partners to monitor the situation of children deported to Russia and their return to Ukraine or to third safe countries</p>
33	Alternative services for children in contact with and in conflict with the law have not yet been established, including rehabilitation and correctional programmes for juvenile offenders. Relevant services in the child-friendly justice system are not fully institutionalised, and juvenile (family) courts are not functioning	Apply child-friendly justice, which has a range of not only punitive tools, but also relevant services to support children in contact with and in conflict with the law
34	The deinstitutionalisation reform has been effectively suspended in Ukraine. Social services for children in the community are being developed very poorly. Children, in particular those with parents, continue to live in institutional facilities, which generally contradicts the generally accepted approach to the need for deinstitutionalisation	<p>Continue the deinstitutionalisation reform in Ukraine.</p> <p>Envisage state funding programmes for social services for children in communities to stimulate their development.</p> <p>Prohibit by law the admission of new children to institutional care facilities.</p> <p>Review the grounds for placing children in institutional care, and instead of placing children in boarding schools, make family-based forms of care more capable</p>
35	Limited resources of social services prevent the full implementation of the policy of ensuring the best interests of the child in communities, in particular, the placement of children in family-based care	<p>Create appropriate conditions for the placement of children exclusively in family-based forms of care (foster families, adoptive families, family-type children's homes, etc.).</p> <p>Urgently finalize the structure of children's services, strengthen its status at the community level with the provision of appropriate resources, including staff, funding, and provide for liability for failure to meet the requirements of services to protect the interests of children.</p> <p>Encourage communities and local governments to create non-institutional services for children and families, support foster families, leisure and recreational services for children and parents.</p> <p>Adopt a state programme to support families in difficult life circumstances</p>

36	Inconsistent and incomplete list of protected grounds in different legal acts, lack of references to sexual orientation and gender identity (SOGI) in the basic anti-discrimination legislation and in the CC of Ukraine, which leads to a violation of the principle of equality in relation to groups that cannot benefit from the protection of the law	Amend key legal acts to unify a wide range of protected grounds, including SOGI and other grounds (health status, internal displacement, HIV-positive status, veteran status, etc.)
37	Lack of definitions and explicit prohibition of certain forms of discrimination, such as multiple discrimination, victimisation, segregation, denial of reasonable accommodation, etc.	Introduce definitions and prohibitions of these forms in the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” (multiple discrimination, victimisation, segregation, refusal of reasonable accommodation)
38	The Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” and other legal acts do not create the possibility of administrative liability for discrimination in any form, nor do they vest any central executive body with the power to impose fines for discrimination	Expand the possibilities of legal protection for victims of various forms of discrimination, in particular, to provide for administrative liability for various manifestations of discrimination, including hate speech (except for severe cases, which should be criminalised)
39	The current CC of Ukraine provides for punishment for manifestations of violations of the equality of citizens that are not related to physical violence. Article 161 of the CC of Ukraine contains an extensive list of offences that do not comply with the principle of proportionality of punishment. Criminal proceedings are not a means of effective protection against many forms of discrimination, as shown by the case law of Ukraine	Reform Article 161 of the CC of Ukraine, introduce administrative liability for various manifestations of discrimination, and empower various executive authorities to consider complaints of discrimination according to the scope and severity of the discrimination
40	At the pre-trial investigation stage, the motive of hatred is often not taken into account; Article 294 of the CC of Ukraine (hooliganism) is mainly used to investigate crimes not involving grievous bodily harm, and consequently, there is no established practice of effective investigation by law enforcement agencies of hate crimes and consideration by the court of the motive of hatred	Take measures to ensure that the motive of intolerance is properly taken into account at the pre-trial investigation and trial stage, including developing and adopting relevant instructions, introducing specialisation among prosecutors, and creating standard operating procedures for investigating hate crimes

41	<p>Contrary to Article 8 of the Framework Decision 2008/913/JHA, the initiation of proceedings under Article 161 of the CC of Ukraine is only carried out in the form of private prosecution, i.e. depends on the notification of the victim, and in many cases perpetrators avoid punishment due to the absence of a specific victim or the victims' unwillingness to undergo lengthy and exhausting criminal proceedings</p>	<p>Establish criminal liability for the conduct expressly set out in Framework Decision 2008/913/JHA (in Articles 1(c) (public condonation, denial or gross understatement of crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court) and (d) (public condonation of denial or gross understatement of crimes as defined in Article 6 of the Statute of the International Military Tribunal), provide for the liability of a legal person for racist and xenophobic offences, as well as for incitement and aiding and abetting such offences, in accordance with Article 5 of Framework Decision 2008/913/JHA. Ensure that proceedings can be initiated in the absence of private prosecution by specific victims (amend Article 477 of the CPC of Ukraine)</p>
42	<p>The low efficiency of investigating cases of hate crimes, lack of support for victims and assessment of their needs lead to underreporting of hate crimes and, accordingly, an unresolved problem in society when manifestations of hatred go unpunished. The absence of legislatively enshrined victim protection norms, including the definition of vulnerable categories of victims of crime, contradicts the provisions of Directive 2012/29/EU</p>	<p>In line with Directive 2012/29/EU, which sets minimum standards for the rights, support and protection of victims of crime, develop a comprehensive law to ensure the rights of victims of crime, including vulnerable categories of victims</p>
43	<p>The lack of a systematic approach to collecting and analysing disaggregated data on various manifestations of discrimination and intolerance, as well as the results of response and restoration of violated rights, makes it impossible to assess the real state of affairs or effectively formulate state policy on preventing and combating discrimination in Ukraine</p>	<p>Establish criteria and systems for the thorough collection of disaggregated data on all cases of discrimination, as well as mechanisms for data exchange and generalised analysis between different public authorities and self-regulatory bodies</p>
44	<p>The CC of Ukraine does not contain provisions on certain forms of hate speech that constitute a crime in accordance with international standards. No distinction is made between different forms of expression: Article 161 of the CC of Ukraine lumps together behaviour defined as "incitement", "humiliation of national dignity", "insult to feelings", which may include an overly broad range of actions. This leads to a lack of effective remedies for victims of hate speech and impunity</p>	<p>It is necessary to develop and implement approaches and algorithms for responding to various manifestations of hate speech and bringing those responsible for its dissemination to justice in order to effectively respond to hate speech at various levels - in social networks, in the media, in public speeches by representatives of state authorities, local self-government, etc., including cases of responding to hate speech in the provision of services and goods (business)</p>

45	The State Employment Centre still does not disaggregate data in the category “people with disabilities” by gender, age or type of disability, despite the provisions of the Concluding Observations on Ukraine’s first report to the UN Committee on the Rights of Persons with Disabilities in 2015	Reform the system of statistical data collection to allow disaggregation of information in the category “people with disabilities” by gender, age, type of disability
46	A number of provisions of the draft law No. 5344-d “On Amendments to Certain Laws of Ukraine on Ensuring the Rights of Persons with Disabilities to Work” contradict EU Council Directive 2000/78/EC and the UN Convention on the Rights of Persons with Disabilities. Namely, the inconsistency of the concept of “reasonable accommodation” with international standards and EU norms hinders the exercise of the right to work of persons with disabilities (Article 27 of the UN Convention on the Rights of Persons with Disabilities)	Engage international institutions, such as the Council of Europe, in a comprehensive assessment of draft law No. 5344-d
47	There is a deep stigma in society and prejudice among employers against the employment of female and male veterans with disabilities, which often leads to discrimination. Discrimination against people with disabilities in employment is prohibited not only by Ukrainian law (Article 21 of the Labour Code of Ukraine), but also by Articles 5 and 27 of the UN Convention on the Rights of Persons with Disabilities	The authorities should conduct information campaigns and awareness-raising activities targeting employers in cooperation with civil society to prevent discrimination and combat prejudice against women and men veterans with disabilities
48	The state lacks a comprehensive approach to deinstitutionalisation in Ukraine. This makes it impossible to approach this process in a comprehensive and systematic way. Institutionalisation of persons with disabilities is a discriminatory practice prohibited by Article 5 of the UN Convention on the Rights of Persons with Disabilities, and the UN Committee on the Rights of Persons with Disabilities has recognised it as a form of violence against persons with disabilities	A National Strategy and Action Plan for deinstitutionalisation should be developed together with civil society in line with the Government’s Priority Action Plan for 2024. The draft law “On Amendments to Certain Legislative Acts of Ukraine on Changing Approaches to Assessment of Needs and Mechanisms for Providing Needs for Persons with Disabilities and Reforming the System of Medical and Social Expertise in Ukraine Based on the Results of the Analysis and in accordance with the Target Model of the System of Provision of Services to Persons with Persistent Disabilities” should be adopted, taking into account the recommendations of civil society

49	<p>State supervision over compliance with accessibility standards in the process of rebuilding the country has been suspended. This is one of the problems that currently hinder the process of inclusive construction/reconstruction of facilities. Failure to ensure that people with disabilities have access to the physical environment, transport, facilities and services on an equal basis with others is a violation of Article 9 of the UN Convention on the Rights of Persons with Disabilities</p>	<p>Amend the Government Resolution No. 303 of 13.03.2022 “On Termination of State Supervision (Control) and State Market Supervision under Martial Law” and restore state control over the reconstruction process, especially for facilities with medium (CC2) and significant (CC3) consequences, which are subject to mandatory examination for compliance with accessibility standards.</p> <p>Establish commissions, working or expert groups with the participation of specialists and civil society representatives at local state architectural and construction control bodies to improve the quality of monitoring and control over compliance with architectural accessibility standards during reconstruction</p>
50	<p>The process of checking project documentation for compliance with accessibility standards is not sufficiently regulated, which often leads to the commissioning of facilities that are inaccessible to people with disabilities. Failure to ensure that people with disabilities have access to the physical environment, transport, facilities and services on an equal basis with others is a violation of Article 9 of the UN Convention on the Rights of Persons with Disabilities</p>	<p>Amend the Law of Ukraine “On Regulation of Urban Development” to require an accessibility assessment of CC1 class facilities to be carried out to ensure that the maximum number of rebuilt facilities are accessible.</p> <p>Introduce mandatory criteria and parameters for assessing the accessibility of an object, which should be specified in the expert opinion on construction projects.</p> <p>Conduct training in the field of architectural accessibility, improve the qualifications of experts from organisations that conduct expert assessments of construction projects</p>
51	<p>Access to information on the stages of construction, the use of funds, and documentation on construction projects within the reconstruction is limited. This affects the effectiveness of the process of monitoring and analysing the implementation of accessibility standards during reconstruction by civil society organisations, including organisations of people with disabilities, which are currently almost not involved in this process</p>	<p>It is necessary to start collecting data on the availability/inaccessibility of construction projects on the DREAM platform</p>

52	<p>The disproportionate impact of full-scale war on women, in particular those from marginalised groups, which manifests itself in the difficulty of access to basic rights, deepening of stereotypical roles and worsening of women's involvement in public processes: consequently, their interests are not taken into account and this deepens gender inequality in society</p>	<p>Further implement measures to address the disproportionate impact of the war on certain groups of people in the areas of access to security, justice, social services, mental, sexual and reproductive health services, and employment.</p> <p>When implementing measures, pay special attention to their accessibility for women from categories subject to intersectional discrimination.</p> <p>Further implement measures to ensure women's proportional participation in post-war reconstruction.</p> <p>Implement the measures envisaged by the State Strategy for Ensuring Equal Rights and Opportunities for Women and Men until 2030 and the National Action Plan for the Implementation of UN Security Council Resolution 1325 to combat the consequences of the disproportionate impact of war on certain groups of people.</p> <p>Monitor the impact of implemented measures on women from categories subject to intersectional discrimination.</p> <p>Increase public awareness of gender equality through the development and implementation of information campaigns focusing on the problems and difficulties faced by women, in particular those from marginalised groups</p>
53	<p>Lack of unimpeded access to systematic information on the status of implementation of key documents aimed at ensuring gender equality, which makes it difficult to track overall progress and identify areas that require additional attention and support, and consequently, slows down the effective implementation of measures by the state aimed at achieving gender equality</p>	<p>Ensure access to consolidated information and interim reports on the status of implementation of the Strategy for Equal Rights and Opportunities for Women and Men and the Action Plan for the Implementation of UN Security Council Resolution 1325.</p> <p>Ensure synchronisation of information on the status of implementation of measures to implement UN Security Council Resolution 1325 at the sectoral, regional and local levels.</p> <p>Ensure publication of statistical data on the implementation of key documents aimed at ensuring gender equality</p>

54	Strengthening of stereotypical gender roles in wartime, which is manifested in the reduced participation of women in the political sphere and low involvement in the media as experts (especially in the areas of security and defence), which in the short and long term worsens the overall visibility of women and their full participation in the post-war reconstruction of the country, and as a result, deepens gender inequality in society due to the non-inclusiveness of social structures and failure to take into account the needs and interests of women	<p>Introduce measures to increase the visibility of women in the media, in public and political processes, especially in the security and defence sector.</p> <p>Abolish restrictions on border crossings for women MPs.</p> <p>Adopt a draft law to improve quota mechanisms for use in future elections.</p> <p>Adopt a draft law to remove obstacles to women's participation in political affairs by removing the requirement for continuous residence in Ukraine</p>
55	Difficult access to paid work for certain groups of women and insufficient representation of women in leadership positions, which leads to an increase in the income gap and limits women's career opportunities, and as a result, negatively affects gender equality in society	<p>Introduce special communication campaigns and measures to increase the involvement of women subject to intersectional discrimination in entrepreneurship.</p> <p>Focus efforts on improving the representation of women in senior and highly paid positions</p>
56	Insufficient provision for women's needs and imperfect mechanisms for combating and investigating sexual and gender-based violence in the Armed Forces, which increases the vulnerability of women in the army and creates obstacles to the effective recruitment of women into military service, and, as a result, creates disproportionate representation in the security and defence sector and excludes women from decision-making in the relevant areas	<p>Further ensure that women in the Armed Forces are provided with appropriate military uniforms, equipment and hygiene products.</p> <p>Introduce measures to promote women in the service and ensure equal access to combat positions.</p> <p>Adopt and ensure implementation of improved and developed mechanisms for preventing and responding to sexual and gender-based violence in the AFU</p>

57	Increased gender-based, domestic and sexual violence, which perpetuates stereotypical gender roles, restricts women's freedom and fulfilment and hinders the achievement of gender equality. Lack of effective measures taken by the state to implement and enforce the Istanbul Convention in order to introduce effective mechanisms and best practices to prevent and combat gender-based, domestic and sexual violence	<p>Ensure monitoring of gender-based violence.</p> <p>Improve mechanisms for informing the public about gender-based violence.</p> <p>Introduce measures to integrate information on gender-based violence into the education system.</p> <p>Ensure adequate support for survivors of gender-based violence.</p> <p>Increase funding for all parts of the system for combating gender-based violence, including for centres and shelters for victims.</p> <p>Immediately ensure that the necessary legislative changes are made to implement the Istanbul Convention.</p> <p>Systematise and improve access to information on the implementation of the Istanbul Convention.</p> <p>Ensure coordination and exchange of information between public authorities on the implementation of the Istanbul Convention</p>
58	Lack of official recognition of LGBTIQ+ family unions, which leads to the state's failure to ensure their right to private and family life and increases the stigmatisation of LGBTIQ+ people in society	Immediately adopt the draft law on the introduction of civil (registered) partnerships (registration No. 9103)
59	Lack of measures to prevent and combat hate crimes based on SOGI by the state, which, as a result, increases stigma and enables discrimination against LGBTIQ+ people in society and violations of their rights	<p>Immediately adopt the draft law to enable proper qualification of hate crimes on the basis of SOGI (registration No. 5488).</p> <p>Ensure proper and systematic monitoring of hate crimes based on SOGI.</p> <p>Introduce measures to train law enforcement and judicial officials on the proper qualification, investigation and trial of cases involving hate crimes based on SOGI.</p> <p>Ensure public awareness of LGBTIQ+ rights</p>
60	Lack of a unified state policy on the inclusion of LGBTIQ+ people in the Armed Forces, which increases the vulnerability of LGBTIQ+ people in the army and creates obstacles to their effective involvement in military service, and, as a result, excludes LGBTIQ+ people from decision-making processes in relevant areas and causes further deepening of non-inclusive structures	<p>Adopt a policy of LGBTIQ+ inclusion in the Armed Forces.</p> <p>Monitor the problems and risks for LGBTIQ+ people in the Armed Forces.</p> <p>Appoint a responsible person to prevent and respond to discrimination or hate crimes based on SOGI.</p> <p>Improve awareness in society and the Armed Forces of LGBTIQ+ people in the army</p>

61	<p>The concept of a person affected by the armed aggression against Ukraine remains undefined in Ukrainian legislation, and therefore the categories and criteria for assigning victims to a particular category are not defined. There is also no comprehensive system of compensation, reparation, or restitution for damage caused by the armed aggression against Ukraine since 2014</p>	<p>Develop a draft law that should contain general approaches to determining the categories of persons who may be considered victims of armed aggression against Ukraine.</p> <p>Introduce a system of urgent reparations for persons who suffered the greatest damage to their lives and health as a result of the armed aggression against Ukraine.</p> <p>Establish a mechanism for accounting for non-property damage caused by armed aggression against Ukraine</p>
62	<p>The government's policy towards internally displaced persons (IDPs) is inconsistent and therefore difficult to predict. All the changes that took place during the year in the state support for IDPs were not communicated in advance, which led to a critical increase in calls to hotlines of NGOs and government contact centres. The desire to reduce expenditures on IDPs' living allowances leads to IDPs returning to their places of residence, including the temporarily occupied territory, or travelling to the border</p>	<p>Develop a variety of housing programmes for IDPs, including a temporary housing programme, preferential lending, lease-to-own programmes, etc.</p> <p>Ensure the development of social services for IDPs in communities.</p> <p>Ensure balanced and timely communication on state support for people affected by the armed aggression against Ukraine.</p> <p>Communicate changes in state support programmes to IDPs in advance.</p> <p>Adopt comprehensive amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" that will ensure that the provisions of the law are in line with the situation of large-scale armed aggression against Ukraine.</p> <p>Conduct an independent assessment of the implementation of the State Policy Strategy on Internal Displacement until 2025 and the Operational plan for its implementation in 2023-2025, and update the Operational Plan based on the results of monitoring and evaluation</p>
63	<p>IDPs who left the territory of the AR of Crimea after 24.02.2022 found themselves in a vulnerable position following the refusal of the Pension Fund of Ukraine to pay pensions on the grounds that they are considered to be entitled to pensions from the Russian Pension Fund. In April 2024, the Law of Ukraine No. 3674-IX of 25 April 2024 "On Amendments to Certain Laws of Ukraine on Proportional Calculation of Insurance Period for Persons Who Worked Outside Ukraine" was adopted, which provides for the possibility of applying for and granting pensions to residents of the temporarily occupied territory of Ukraine</p>	<p>The government should develop and adopt the necessary bylaws to ensure the full implementation of the Law of Ukraine of 25 April 2024 No. 3674-IX "On Amendments to Certain Laws of Ukraine on Proportional Calculation of Insurance Period for Persons Who Worked Outside Ukraine" and create conditions for the registration and payment of pensions to residents of the temporarily occupied territory of Ukraine</p>

64	<p>Russia has illegally extended its legislation to the temporarily occupied territory of Ukraine. Therefore, during the occupation, Ukrainian citizens residing in the temporarily occupied territories received documents issued by the occupation authorities (birth, death, marriage, divorce certificates, court decisions, deeds, etc.) These documents are invalid and do not create legal consequences under Ukrainian law. However, the complete non-recognition of all documents leads to a violation of citizens' rights and may have a negative impact on the de-occupation and further reintegration of the territories</p>	<p>The government should develop and initiate a draft law amending the CC of Ukraine and the CPC of Ukraine to ensure proper implementation of international criminal and international humanitarian law.</p> <p>Adopt the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of State Registration of Civil Status Acts that Occurred in the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of Ukraine" (registration No. 9069 of 28.02.2023).</p> <p>Develop a concept (procedures) for the use of information from documents issued in the temporarily occupied territory of Ukraine</p>
65	<p>Despite numerous international crimes committed since 2014 as a result of Russian aggression, as well as its obligations under the Association Agreement with the EU, the state has not yet ratified the Rome Statute of the International Criminal Court. The government's decision proposed to postpone ratification until the end of the war, indicating a de facto lack of political will to take this important step to bring to justice those responsible for the most serious crimes resulting from Russian aggression and to ensure Ukraine's full participation in the international criminal justice system</p>	<p>The President of Ukraine to submit a legislative initiative to the Verkhovna Rada of Ukraine, and the Verkhovna Rada of Ukraine to adopt a decision on ratification of the Rome Statute of the International Criminal Court and its amendments on the crime of aggression adopted in Kampala on 11.06.2010 (RC/Res.6 (Kampala Amendments))</p>
66	<p>Ukraine has not yet harmonised its criminal legislation with international law to ensure effective investigations of international crimes. Although the draft law No. 7290 of 15.04.2022, which is currently in the parliament, proposes a solution to this issue, it contains a number of significant gaps (unlimited composition of the subjects of the crime of aggression, restrictions on command responsibility, etc.), worsening the prospects for prosecution for international crimes. The President has not yet signed the law (registration No. 2689). At the same time, strengthening the state's capacity to ensure effective prosecution of the most serious international crimes requires significant improvement of criminal procedure legislation</p>	<p>For the President of Ukraine to sign the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law" (registration No. 2689 of 27.12.2019).</p> <p>To the Parliament of Ukraine, with the involvement of national and international experts, to finalise the draft Law of Ukraine (registration No. 5751) to ensure the safety of witnesses, victims and defenders in cases of international crimes.</p> <p>To the Government of Ukraine to develop and initiate draft amendments to the criminal procedure legislation to ensure effective investigations of the most serious international crimes</p>

67	There is no comprehensive state policy on reintegration, and the existing developments are fragmented and do not take into account the interconnection with other reintegration processes	Develop a single comprehensive reintegration policy that will apply to all occupied territories, including unified standards and principles for the restoration of Ukrainian government and life in the liberated territories, as well as specific directions and steps, with deadlines and resource estimates for their implementation, enshrined in law
68	Legislation on liability for collaboration fails to take into account the requirements and standards of international humanitarian law within the occupation regime and the need for cooperation for survival in the occupied territory, and does not comply with the principle of legal certainty	Amend criminal legislation to clearly distinguish between corpus delicti, clarify broad definitions, and take into account international humanitarian law and broader reintegration policy, including in the context of lustration
69	The lack of an established lustration policy within the framework of reintegration processes limits the means of responding to the cooperation of Ukrainian citizens in the temporarily occupied territories with the occupation authorities to criminal liability. This creates an additional burden on the law enforcement system and will impede the reintegration of persons who did not commit socially dangerous acts during the occupation	Develop a lustration policy in line with international standards, with uniform criteria for applying lustration measures, a list of specific categories of positions to be subject to lustration, and a clear and transparent lustration procedure
70	Lack of a comprehensive strategy for assessing the damage to cultural heritage caused by the Russian Federation, which prevents both proper recording of the damage and the identification and return of those valuables that ended up in the occupied territory or were destroyed or damaged in the occupied territory	Develop methods for assessing damage to cultural heritage caused by the Russian Federation, including all components of cultural heritage. Develop registers of cultural property stored in relevant institutions, cultural property stored in institutions on the occupied territory, as well as cultural heritage sites that were damaged, destroyed or stolen during the armed conflict
71	Children born to persons illegally residing the territory of Ukraine are deprived of access to Ukrainian citizenship. Children born on the territory of Ukraine to parents recognised as persons in need of complementary protection and children born on the territory of Ukraine to persons who have applied for recognition as refugees or persons in need of complementary protection face denials of citizenship, which is contrary to the Law of Ukraine "On Citizenship of Ukraine"	Amend the Law of Ukraine "On Citizenship of Ukraine" to grant the right to Ukrainian citizenship to all children born on the territory of Ukraine who do not acquire another citizenship at birth. Ensure the right of children of persons with complementary protection and children of asylum seekers to acquire Ukrainian citizenship, as provided for by the current legislation, by detailing the provisions of the Law of Ukraine "On Citizenship of Ukraine"

72	Due to the war on the territory of Ukraine since 2014, a large number of Ukrainian citizens living in the territories under the temporary military control of the Russian Federation cannot confirm their Ukrainian citizenship and are at risk of losing it, which complicates access to the rights provided for by Ukrainian legislation and the reintegration of such people	<p>Simplify the procedure for issuing a passport of a citizen of Ukraine.</p> <p>Ensure the effective implementation of the legislation on the recognition of documents issued in the territories under the temporary military control of the Russian Federation, which will allow the receipt of Ukrainian documents and simplify access to the procedure for confirming citizenship.</p> <p>Ensure proper and effective implementation of the rights guaranteed by law when confirming citizenship and issuing a passport of a citizen of Ukraine by authorised state authorities</p>
73	Lack of a simplified procedure for admission to Ukrainian citizenship for persons recognised as persons in need of complementary protection	Establish in the Law of Ukraine “On Citizenship of Ukraine” a simplified procedure for admission to Ukrainian citizenship for persons recognised as persons in need of complementary protection, according to the same rules as for persons recognised as refugees or granted asylum in Ukraine
74	Individuals whose real estate objects were destroyed or damaged as a result of the armed aggression of the Russian Federation in the period up to 24 February 2022, are deprived of the opportunity to receive compensation under the Law of Ukraine “On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine” (hereinafter – Law No. 2923-IX)	Ensure the availability of a compensation mechanism for those whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation by 24 February 2022
75	Persons whose real estate was destroyed or damaged as a result of the armed aggression of the Russian Federation in the period up to 24.02.2022 cannot submit an information report on damaged and destroyed real estate as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine. Such restrictions are another obstacle for the owners of such property (persons who invested/financed the construction of the relevant facilities, etc.) to receive fair compensation and lead to unlawful discrimination against some victims of armed aggression	The Ministry of Digital Transformation of Ukraine should ensure the technical (actual) possibility for persons whose real estate was damaged or destroyed as a result of the armed aggression of the Russian Federation in the period up to 24.02.2022 to submit a relevant notification, as provided for by government resolutions

76	Law No. 2923-IX in terms of compensation for damage and destruction of real property does not apply to objects that were located on the territory of Ukraine temporarily occupied by Russia on the day of the introduction of martial law	In order to avoid discrimination against some of the victims of armed aggression, it is proposed to extend the provisions of Law No. 2923-IX to cover real estate that as of 24.02.2022 was located in the temporarily occupied territories, or to provide other proportionate solutions to protect the rights of owners of such real estate
77	From 01 January 2024, the provision of compensation for repairs already carried out at their own expense on the damaged property was to begin. However, due to the lack of appropriate technical functionality of the Diia, it is currently impossible to apply for such compensation. This makes it impossible for victims of armed aggression who have made repairs to damaged properties at their own expense to receive the compensation provided for by law and leads to discrimination against some owners of damaged properties	In order to ensure proper protection of the rights of persons whose real property was destroyed or damaged as a result of the armed aggression of the Russian Federation, it is necessary to timely implement the technical functionality of the Diia required for submitting relevant applications for compensation
78	In the context of receiving compensation, it is important to have information on the ownership of the relevant real estate object in the State Register of Real Property Rights (SRPR). However, information on a significant number of properties is not available in the said register. Further entry of the relevant data into the SRPR may be hampered by the loss or damage of title documents and archives of the technical inventory bureau	In addition to efforts to optimise the procedure for entering information on the ownership of damaged or destroyed real estate into the SRPR, a number of steps should be taken to improve the level of digitisation of the archives of the technical inventory bureau
79	Insufficient implementation of child-friendly justice approaches in national justice practices	Continue implementing child-friendly justice models in criminal proceedings to reduce the risk of trauma to children as a result of a crime, as well as to obtain reliable information about the crime for further evidence
80	Insufficient social and psychological support for children involved in criminal proceedings	Develop a network of “Barnahus” (Centres for social and psychological support) and establish cooperation with all pre-trial investigation bodies in criminal proceedings involving children
81	Insufficient awareness of judges of child-friendly justice approaches, which sometimes leads to trauma for child participants in justice and poor quality of case consideration	Expand child specialisation, in particular, to extend such specialisation of investigators and detectives to cases involving child witnesses and child victims; prosecutors to cases involving child witnesses; judges to cases involving child victims, child witnesses, children accused of administrative offences, as well as to issues decided by an investigating judge with the participation of a child, and other issues involving children

82	Poor professionalism of other criminal justice system staff, which sometimes traumatises child justice participants	Introduce systematic training for children's detectives, investigators, prosecutors, lawyers, psychologists, and probation officers, with a focus on joint interdisciplinary and interactive training. Create a community of such professionals to share information and communicate more effectively to better ensure the best interests of children. Through training, increase the sensitivity of relevant professionals to discrimination and gender issues
83	The practice of multiple interrogations on the same issue by different investigators and prosecutors at the pre-trial investigation stage, which causes psychological trauma to the child	Establish the possibility for the court to recognise as a source of evidence a video recording of the interrogation of a child witness or victim made during the investigation in compliance with the "green room" methodology, video recording of a child's report of a crime without re-interrogation in court unless there is an urgent need (not only in martial law, which is currently allowed by Article 615 of the CPC of Ukraine)
84	Violation of the presumption of innocence in public communication by law enforcement and prosecutors in their work	Respond appropriately to cases of violation of the presumption of innocence and to raise the professional level of all law enforcement officers in terms of public communication of their activities
85	Insufficient access to justice for persons subject to <i>in absentia</i> proceedings	Introduction of a system of review of <i>in absentia</i> sentences in the form of not only an appeal, but also a new trial (<i>ex novo</i>)
86	The risk of ill-treatment at the stage of arrest and detention	Develop a system for informing participants in criminal proceedings about their rights, in particular the Custody Records system, and extend it to all law enforcement agencies that detain persons (except the National Police - SBI, NABU, SSU, BES)
87	Potential harmful access by foreign countries unfriendly to Ukraine to personal data of detainees, including data from CCTV cameras operating in the Custody Records system	Bring the level of technical security of the tools used in the Custody Records system in line with EU standards, primarily GDPR
88	Insufficient provision of the right to access to an advocate in cases where a person does not have an advocate and wants to use free legal aid services	Develop the system of free legal aid in Ukraine, in particular by expanding the categories of persons who have suffered from war crimes and need protection from the state due to their vulnerability and lack of resources to protect their rights, and conduct an independent audit of the system's capacity to develop to meet such challenges
89	Failure to engage interpreters or poor quality interpretation if the suspect/accused person does not speak the language of the proceedings	Ensure an appropriate level of payment for high-quality professional interpreters in criminal proceedings if they are engaged at the expense of the state budget

90	<p>Limited tools for remote trial in criminal proceedings if a person cannot appear in court, especially for security reasons in times of war</p>	<p>Improve the procedures for participation in court hearings via videoconference outside the courtroom using its own technical means for its further effective use in online proceedings regardless of the location of the parties and the court in criminal proceedings.</p> <p>Regulate the participation of a judge, witness, interpreter, specialist, expert, court registrar in a court hearing via videoconference outside the court premises using their own technical means, as well as the swearing in of witnesses, experts, interpreters participating in a court hearing via videoconference outside the court premises, etc.</p> <p>Introduce extraterritorial consideration of cases through modules of the Unified Judicial Information and Telecommunication System and define categories of cases that will be considered without regard to the rules of territorial jurisdiction</p>
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**Consolidated table on the judiciary reform as defined in national acts
and international programmes (commitments)**

Title of the event	Ukraine Facility Plan for 2024-2027	Reform matrix presented to donors by the Ministry of Finance	Action plan for the implementation of the recommendations of the European Commission presented in the Report on Ukraine's progress within the framework of the 2023 EU Enlargement Package, approved by the Government Decree No. 133-r of 09.02.2024	The European Commission's report with recommendations dated 08.11.23	The Government's priority action plan for 2024, approved by the Government Decree of 16.02.2024. No. 137-r	List of priority reforms from the White House Deputy National Security Advisor for International Economic Affairs Mike Pyle «DELIBERATIVE // PRE-DECISIONAL WORKING DRAFT – SUBJECT TO REVIEW»	IMF (11.12.2023) The IMF Executive Board completed the second review of the programme under the Extended Fund Facility for Ukraine	G7 Ambassadors' priorities for 2024
Establishment of the High Administrative Court	Establishment of a new court for administrative cases involving national state bodies, staffed by vetted judges, consisting of first instance and appellate courts, with judges selected after integrity and professionalism checks with the involvement of independent experts.	Establishment of the High Administrative Court of Ukraine (HACU) to hear administrative cases against national state bodies.	—	Following the liquidation of the District Administrative Court of Kyiv, a new administrative court should be established to hear cases involving central government agencies, staffed by properly vetted judges.	The Ministry of Justice should ensure that a draft law on the High Administrative Court is developed and submitted to the Cabinet of Ministers. Accordingly, the Cabinet of Ministers should ultimately approve it and submit it to the Verkhovna Rada of Ukraine	Adopt a law to establish a new specialised court to consider administrative cases against national state bodies, staffed by duly vetted judges, following the liquidation of the District Administrative Court of Kyiv.	Adoption of a law establishing a new administrative court (to replace the liquidated DACK) to ensure independent, competent and objective consideration of administrative cases filed against the NBU, NABU, NACP and other national state bodies by judges who are duly vetted for professional competence and integrity ("following similar selection procedures for anti-corruption judges").	Support steps to establish a new administrative court in Kyiv to hear administrative disputes involving central government agencies after a transparent and merit-based selection of its judges, including reliable vetting of their integrity and professional competence by independent experts.

<p>Integrity check of the Supreme Court judges</p>	<p>Overcoming corruption risks in the Supreme Court and other courts, including by strengthening the system of verification of judges' integrity declarations. It is also important to further improve the selection of new Supreme Court judges by improving the integrity check procedure and meaningful involvement of independent experts.</p>	<p>Adopt legislation that establishes a legal framework for reviewing the integrity of judges working in the SC. Select new SC judges to fill the vacant seats in due course. Take effective measures to eliminate corruption risks in the Supreme Court.</p>	<p>Take effective measures to eliminate corruption risks in the Supreme Court.</p> <p>By June 2024, the HQCJ should verify the declarations of integrity and declarations of family ties of the Supreme Court judges (on the grounds specified by law).</p> <p>By December 2024, special checks should be conducted on candidates for the positions of Supreme Court judges.</p> <p>Also, by December 2024, the NACP, HQCJ, and HCJ should monitor the lifestyles of Supreme Court judges and conduct a full verification of the declarations submitted by these judges on the grounds provided for by law.</p>	<p>Take effective measures to eliminate corruption risks in the Supreme Court.</p>	<p>—</p>	<p>Check the integrity of current Supreme Court judges in connection with high-profile corruption cases involving the former Chief Justice and the Grand Chamber of the Supreme Court and select new Supreme Court judges to fill vacancies through a transparent process involving independent experts and civil society.</p>	<p>—</p>	<p>Encourage the strengthening of existing integrity instruments, including the verification of judges' integrity declarations, to address corruption risks in all Ukrainian courts, including the Supreme Court; support the renewal of the Supreme Court by further improving the selection of its judges through an open, competitive, merit-based selection process, with mandatory integrity checks and a significant role for independent experts and civil society.</p>
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<p>Disciplinary liability of judges, HCJ DI</p>	<p>Ensure effective and independent work of the HCJ, including the full launch of the service of disciplinary inspectors.</p>	<p>Disciplinary proceedings against judges are now handled by the Disciplinary Inspectorate of the High Council of Justice.</p>	<p>Establish the Disciplinary Inspectorate following a transparent competitive selection process and resume disciplinary proceedings against judges; prioritise consideration by the Disciplinary Inspectorate of high-profile cases and cases that are about to expire.</p> <p>Thus, by June 2024, the High Council of Justice should hold an open competition for the position of the Head of the Disciplinary Inspectorate of the High Council of Justice, the deputy, and disciplinary inspectors.</p> <p>By December, the HCJ should take measures to transfer the functions of disciplinary proceedings against judges from the Disciplinary Chambers established by the High Council of Justice to the Disciplinary Inspectorate.</p>	<p>Establish a disciplinary inspectorate following a transparent and meritocratic selection process and resume consideration of disciplinary proceedings against judges, giving priority to high-profile cases and cases approaching the statute of limitations.</p>	<p>_____</p>	<p>Establish the Disciplinary Inspectorate with direct and meaningful participation of independent experts, ensuring the selection of highly qualified inspectors, who are honest, professional and adequately remunerated, and restore the HCJ's disciplinary function (draft laws 9261 and 9483).</p>	<p>_____</p>	<p>Supporting the establishment of the Disciplinary Inspectorate and the resumption of disciplinary proceedings against judges, with priority given to high-profile cases and cases where the statute of limitations has expired.</p>
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<p>HACC</p>	<p>Increase the staffing of the High Anti-Corruption Court (number of HACC judges by 60%, HACC staff by 40%).</p>	<p>Amend the legislation to allow certain cases to be heard by a single judge instead of a three-judge panel; complete the process of selecting new HACC judges for the first and appellate chambers; increase the number of judges by 50%.</p>	<p>By March 2024, the HQCJ will take measures to restore the activities of the Public Council of International Experts, which is being established by the HQCJ. And by June 2024, it shall ensure that a competition for the positions of judges of the High Anti-Corruption Court is held with the participation of the Public Council of International Experts.</p>	<p>Increase the number of judges of the High Anti-Corruption Court by restoring the activities of the Public Council of International Experts and allowing the court to hear individual cases alone.</p>	<p>—</p>	<p>Amend the legislation to increase the number of judges and allow certain cases to be heard by a single judge rather than a panel of three judges, which will facilitate fair and efficient consideration of the growing number of corruption cases</p>	<p>Adoption of the law on streamlining the consideration of cases by the High Anti-Corruption Court by a single judge or a panel of judges, which will increase the efficiency and effectiveness of consideration of numerous and complex corruption cases.</p>	<p>Further enhance the effectiveness, independence, integrity and capacity of the NABU, the SAPO and the High Anti-Corruption Court (HACC), including through legislative improvements.</p> <p>Advocate for an objective, transparent, merit-based and timely selection of HACC judges, with the substantial participation and decisive role of the Public Council of International Experts in this process.</p>
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<p>HQCJ procedures</p>	<p>Improving the judicial selection procedure by regulating the stages of selection and changing their order and reviewing the duration of mandatory initial training of judges will ensure that the state fulfils its international obligations and will enable prompt filling of judicial vacancies based on the criteria of professional competence and integrity, which will fully ensure the right to access to justice and fair trial.</p> <p>In particular, the newly reformed HQCJ should resume the selection of new judges to fill at least 20% of judicial vacancies. The HQCJ should also resume and complete the qualification assessment of sitting judges.</p>	<p>Resume the qualification assessment of judges (vetting) suspended in 2019.</p>	<p>Resume the selection of judges based on improved legislation, including “clear criteria of integrity and professionalism and a strong role of the Public Integrity Council”.</p> <p>By June 2024, the HQCJ should approve and publish regulations on the competition for a vacant judicial position with clear criteria and evaluation methodology. And by December 2024, it should decide to launch the selection procedure for the position of a judge on the basis of an improved legal framework.</p>	<p>The renewed HQCJ should improve the rules for the selection of judges and qualification assessment, including by developing and publishing clear criteria for integrity assessment and assessment methodology. Given the low level of public trust in the judiciary and recurrent cases of judicial corruption, the continued involvement of the Public Integrity Council (PIC) in both the qualification assessment and selection procedures remains critical. The PIC’s task is to provide the HQCJ with substantiated opinions on the integrity of current judges undergoing qualification assessment, as well as candidates for the position of judge in higher courts.</p>	<p>_____</p>	<p>Restart the selection and qualification assessment of judges within the newly established HQCJ with the active participation of the PIC. Amend the legislation to improve the selection of judges by optimising the stages of the competition, reviewing the duration of mandatory training for judges, approving and promulgating regulations, including clear evaluation criteria and scoring methodology. Support the relaunch of the judicial selection process to fill about 2,000 judicial vacancies and qualification assessment of about 1,500 current judges with the meaningful participation of the reconstituted PIC.</p>	<p>_____</p>	<p>Support the resumption of the selection and qualification assessment of judges by the reformed HQCJ with the substantial participation of the Public Integrity Council.</p>
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CCU	Complete the selection and appointment of CCU judges in accordance with the new legal framework.	Fill open vacancies in the CCU in accordance with the adopted legislation.	By June 2024, the Advisory Group of Experts should complete the competition for the vacant positions of judges of the Constitutional Court of Ukraine. Appointments are to be made by September.	Filling the existing vacancies in the CCU in accordance with the provisions of the adopted legislation. The CCU reform should continue with the adoption of a law on constitutional procedure, in line with the recommendations of the Venice Commission, to increase transparency and accountability in the CCU's work and make the constitutional procedure more efficient.	—	Implementation of the recently adopted law No. 3277-IX by establishing an Advisory Group of Experts with the active participation of experts from the Venice Commission, the EU and the US, and by supporting the vetting process of candidates for the positions of CCU judges.	Appoint CCU judges according to the new procedure.	Facilitating the ongoing implementation of the Constitutional Court reform, supporting the activities of the Advisory Group of Experts and the vetting process for candidates for the positions of CCU judges.
IT audit in the judicial system / building the UJITS cloud-based	Implementation of new IT solutions in the judicial system that replace and/or upgrade the UJITS modules/implement new IT systems developed on the roadmap in place.	Complete a comprehensive IT audit of the judiciary, including the development of a new case management system.	—	To increase transparency, efficiency and access to justice, Ukraine should also continue its efforts to digitalise the judiciary.	—	—	—	—
High Court of Intellectual Property	—	—	The HQCJ should continue to hold a competition to fill vacant positions of judges of the High Court of Intellectual Property.	—	—	—	—	—

Description of some high-profile cases against judges and judicial officials being considered by the High Anti-Corruption Court

Case no. 1: Chief Justice of the Supreme Court Vsevolod Kniazev

Case no.: 991/1692/24

Presiding judge: **Serhii Myroslavovych Moissak**; reporting judge: Serhii Myroslavovych Moissak, judge on the panel: **Tymur Rafailovych Khamzin**, judge on the panel: **Vira Volodymyrivna Mykhailenko**.

The case is at the stage of the preparatory hearing.

On 13 March, the High Anti-Corruption Court (HACC) denied the motion of the defence counsel and the accused V. Kniazev to return the indictment to the prosecutor.

On 13 March, during the preparatory hearing, V. Kniazev's counsel requested that the indictment be returned to the prosecutor of the Specialised Anti-Corruption Prosecutor's Office (SAPO), as, in his opinion, it failed to meet the requirements of the law and was drawn up with errors.

The counsel, in particular, appealed to the fact that the indictment did not specify the co-perpetrators of the crime charged against V. Kniazev. Thus, according to the defence counsel, the indictment does not mention either lawyer **Oleh Horetskyi**, who entered into a plea agreement with the investigation, or businessman **Kostiantyn Zhevago**, whose case is being investigated separately.

According to V. Kniazev, he is accused of receiving a bribe offer, but it is not specified when, where and under what circumstances the bribe offer was made and when he agreed to accept it. "The indictment in this part is completely abstract," the former Chief Justice noted.

He also added that the indictment does not specify the actual circumstances of when, where and under what conditions V. Kniazev entered into a conspiracy with the judges of the Supreme Court (SC), in what form they agreed to receive an illegal benefit. "That is, the data on the consent of the judges of the Grand Chamber of the SC to receive an unlawful benefit has not been confirmed," said V. Kniazev.

In turn, the SAPO prosecutor asked to dismiss the motion to return the indictment, calling it aimed at delaying the case.

On 27 May 2024, the High Anti-Corruption Court (HACC) removed V. Kniazev's electronic bracelet and permitted him to move freely within Ukraine. In July, it was reported that V. Kniazev was stopped near the Romanian border for a document check. He stated that he was traveling to a border sanatorium for treatment. The HACC extended the term of obligations imposed on V. Kniazev until 17 September 2024.

The preparatory hearing has been ongoing since March 2024.

On 6 August 2024, the High Council of Justice (HCJ) dismissed V. Kniazev from his position as a judge of the Supreme Court as part of disciplinary proceedings for committing a significant disciplinary offense.

The essence of the indictment against Kniazev

On 4 March 2024, the SAPO prosecutor, based on the National Anti-Corruption Bureau of Ukraine (NABU) pre-trial investigation, sent to court an indictment against the former Chief Justice of the SC, accused of receiving an illegal benefit on a particularly large scale.

In 2002, a Ukrainian businessman acquired a 40.19% stake in a mining and processing plant (the "MPP") from four companies (the "former shareholders"). 18 years later, the former shareholders filed a lawsuit with the commercial court to invalidate the securities sale and purchase agreement and to regain their shares in the MPP. However, the court dismissed the claim.

In 2022, the Court of Appeal overturned the first instance decision and invalidated the securities sale and purchase agreement.

In order to prevent the loss of the shares, in early March 2023, the businessman entered into a conspiracy with lawyer **Oleh Horetskyi**. Between March and April 2023, the businessman transferred USD 2.7 million to the lawyer. USD 2.7 million (USD 1.8 million to the judges of the SC, the rest as "payment" for intermediary services). On 19 April 2023, the SC ruled in favour of the businessman.

During the investigation, the NABU and the SAPO documented the transfer and receipt of USD 1.8 million in two tranches. When receiving the second tranche of USD 450,000 on 15 May 2023, the Chief Justice and the lawyer were caught red-handed.

The actions of the former Chief Justice are qualified under part 4 of Article 368 of the Criminal Code of Ukraine (CC of Ukraine). The sanction of the article provides for a sentence of imprisonment for a term of eight to twelve years with disqualification to hold certain positions or engage in certain activities for up to three years, with confiscation of property.

Meanwhile, on 12 October 2023, the HACC approved the plea agreement concluded between the SAPO prosecutor and lawyer **Oleh Horetskyi**, who, together with the former Chief Justice of the SC, was caught receiving USD 2.7 million in undue advantage.

On 10 July 2024, the HACC investigating judge upheld the position of the SAPO prosecutor and imposed a preventive measure in the form of detention on the owner of the Finance and Credit Group, Kostiantyn Zhevago, suspected of providing undue benefit to the Chief Justice and judges of the Supreme Court (part 4 of Article 369 of the Criminal Code of Ukraine). Zhevago appealed his arrest in absentia to the HACC Appeals Chamber.

Reduction of bail

On 18 May 2023, the HCJ granted permission to keep Kniazev in custody. On the same day, the HACC imposed a preventive measure of detention on the former Chief Justice in the form of UAH 107.3 million bail.

On 31 May, the HACC Appeals Chamber reduced the bail amount to UAH 75 million.

On 7 September, the HACC extended the former Chief Justice's detention until 16 October with the possibility of posting UAH 55 million bail.

On 26 September, the Appeals Chamber of the HACC left V. Kniazev in pre-trial detention, but reduced his bail to UAH 45 million.

On 13 October, the HACC extended the preventive measure against former Chief Justice V. Kniazev for another two months and reduced his bail from UAH 45 million to UAH 35 million.

On December 5, the HACC extends the preventive measure for Kniazev and reduces his bail from UAH 35 million to UAH 27 million.

On December 21, the Appeals Chamber of the HACC reduces the bail for the former Chief Justice from UAH 27 million to UAH 20 million.

On 30 January 2024, an investigating judge of the High Anti-Corruption Court reduces bail for Kniazev from UAH 20 million to UAH 18.168 million.

On 31 January 2024, the former Chief Justice of the SC is released from custody on bail of UAH 18.168 million.

Case no. 2: Head of the State Judicial Administration of Ukraine Oleksii Salnikov

Case no.: 991/1196/24

Presiding judge: **Vira Volodymyrivna Mykhailenko**; reporting judge: Vira Volodymyrivna Mykhailenko, judge on the panel: **Tymur Rafailovych Khamzin**, judge on the panel: **Serhii Myroslavovych Moissak**

On 7 May 2024, the preparatory hearing in the case against the former head of the State Judicial Administration of Ukraine (SJA), Oleksii Salnikov, ended. The HACC is currently considering the case on the merits.

On 14 February 2024, the SAPO prosecutor, based on the NABU pre-trial investigation, sent to court an indictment against the former head of the State Judicial Administration of Ukraine (SJA), who was found to be inciting the provision of undue benefits to judges of the SC for ruling in favour of a commercial enterprise and for seizing another's property by fraud.

The pre-trial investigation established that in March 2023, the Head of the SJA of Ukraine received USD 7.5 thousand from his friend Oleksii Honchar. He was supposed to keep part of these funds for himself, and USD 5 thousand was supposed to be transferred to the judges of the Supreme Court's Administrative Court of Cassation for making a decision in the interests of a commercial enterprise.

Subsequently, the head of the SJA informed the individual that the matter was being resolved and that he had spoken to the Chief Justice of the SC about the case. However, he explained the delay in making a decision by objective reasons.

After the exposure of the former Chief Justice of the SC, **Oleksii Salnikov** continued to convince that the agreed decision would be made and that he planned to talk to the Head of one of the cassation courts on this matter. At the same time, he had no intention of communicating, he was not going to transfer funds to anyone to resolve this issue, nor was he going to return the money he had received.

The actions of the former head of the SJA are qualified under Part 2 of Article 15, Part 4 of Article 27, Part 4 of Article 369, Part 2 of Article 190 of the CC of Ukraine.

Preventive measure and dismissal from office

On 28 July 2023, investigating judge of the HACC **Larysa Zadorozhna** heard a motion filed by a NABU detective to apply a preventive measure to **Oleksii Salnikov**, the head of the SJA (case 991/6663/23).

The prosecutor's office requested that Oleksii Salnikov be held in custody in the form of bail in the amount of 400 subsistence minimums, or UAH 1.73 million.

Consequently, the judge imposed a preventive measure on Salnikov in the form of UAH 805,200 bail. He posted the bail.

On 7 December 2023, the HCJ decided to bring the Head of the SJA Oleksii Salnikov to disciplinary responsibility in the form of dismissal from the civil service.

Case no. 3: "Vovk tapes"

Case no.: 991/2030/22

Presiding judge of the HACC: **Viktor Viktorovych Nogachevskyi**; judge on the panel: Viktor Viktorovych Nogachevskyi, judge on the panel: **Markiyan Vasylovych Halabala**, judge on the panel: **Olena Vitaliivna Tanasevych**.

On 15 April, the preparatory hearing in the Vovk tapes case concluded. The case is currently being considered on a weekly basis.

The accused are 7 judges of the District Administrative Court of Kyiv (DACK):

Pavlo Vovk, articles - part 1 of Article 255, part 3 of Article 27, part 1 of Article 109, part 2 of Article 369-2, part 2 of Article 344, part 2 of Article 344 of the CC of Ukraine;

Yevhen Ablov, part 1 Article 255, part 1 Article 109 of the CC of Ukraine;

Volodymyr Keleberda, part 1 Article 255, part 1 Article 109 of the CC of Ukraine;

Oleksii Ohurtsov, Ihor Kachur, Bohdan Sanin, Ihor Pogribnichenko, part 1 Article 255, part 1 Article 109, part 5 Article 27, Article 351-2 of the CC of Ukraine.

The accused also include former members of the High Qualification Commission of Judges of Ukraine (HQCJ) **Serhii Ostapets** and **Mykola Sirosh** (both under Art. 255, Art. 351-2; Art. 109, Part 1 of the CC of Ukraine), and a lawyer (former judge of the District Administrative Court of Kyiv) **Oleksandr Krotiuk** (Art. 351-2 of the CC of Ukraine).

The proceedings against the former head of the SJA **Zenovii Kholodniuk** were closed by the court on **5 June 2023**, as the statute of limitations had expired under his article (part 1 of Article 369-2 of the CC of Ukraine).

Chronology of events

On 17 July 2020, NABU detectives served a notice of suspicion to the DACK head, his deputy and five other judges of the court, and the head of the SJA. A few days later, the NABU conducted searches at the DACK and released a transcript of videos that showed conversations about pressure on judges and other state agencies.

On 3 November 2020, the NABU placed DACK head Pavlo Vovk on the wanted list.

On 23 December 2020, Vovk was served with a summons to appear before the HACt.

On 15 March 2021, the HACC suspended the court proceedings while the DACK head was being searched.

On 17 March 2021, the NABU completed the investigation, and the investigation materials were opened to the suspects for review before the indictment was sent to court.

On 17 June 2022, the NABU and the SAPO sent to court a case on the facts of conspiracy to seize state power, obstruct the work of the HQCJ, as well as participation in a criminal organisation and abuse of influence by the head and judges of the DACK in collusion with a number of other persons.

According to the investigation, these individuals acted as part of a criminal organisation headed by the DACK head, which aimed to seize state power by establishing control over the HQCJ and the HCJ and creating artificial obstacles to their work.

In fact, this organisation made customised decisions in its own interests, as well as in the interests of political elites and business circles. For more details, see the [video of declassified investigative materials revealing the details of the crimes](#).

[On 15 April 2024, following the results of the preparatory hearing, which lasted from June 2022, the HACC panel of judges scheduled the so-called 'Vovk tapes' case for trial - regarding abuses at the DACK, conspiracy to seize state power, creating artificial obstacles to the work of the HQCJ and its members, creating, leading and participating in a criminal organisation, and abuse of influence by the Head of the DACK.](#)

[The substantive hearing is scheduled for 22.04.2024.](#)

Case no. 4: The case of judges of the Kyiv Court of Appeal

The judges of the Criminal Chamber of the Kyiv Court of Appeal, **Viktor Petrovych Hlynianyi, Ihor Hryhorovych Palenyk, Viacheslav Viktorovych Dziubin and Yurii Mykhailovych Slyva**, are suspected of committing a corruption offence.

Judges Viktor Hlynianyi (UAH 5 million), Yurii Slyva (UAH 2.5 million), and Viacheslav Dziubin (UAH 4 million) posted bail in December last year and are at large. They have now had their electronic bracelets removed; the HACC has also allowed them to move within a region or two.

The actions of the judges of the Kyiv Court of Appeal are classified under part 3 of Article 28, part 4 of Article 368 of the CC of Ukraine (acceptance by a group of persons holding a particularly responsible position of an offer, promise or receipt of an unlawful benefit).

On 29 November 2023, four judges of the Kyiv Court of Appeal were found to have received an undue benefit of \$35,000 for ruling to cancel the seizure of property - two aircraft related to Motor Sich, whose former head was former MP **Viacheslav Bohuslaiev**, who is currently a suspect in a treason case.

The judges, after issuing the relevant ruling to lift the arrest, distributed the money as follows: **Viacheslav Dziubin** - \$10,000; the other judges received \$8,300 each from V. Dziubin.

On 19 April 2024, the SAPO prosecutor decided to complete the pre-trial investigation in this case.

After 19 September 2024, the SAPO will send to court an indictment against four judges of the Kyiv Court of Appeal—Viktor Hlynianyi, Ihor Palenyk, Viacheslav Dziubin, and Yurii Slyva—for receiving an unlawful benefit of USD 35,000.

By the HACCU decision of 4 July, the defense’s timeframe for reviewing the investigation materials is limited until that date.

Case no. 5: Liudmyla Saltan, judge of the Kyiv District Court of Odesa

Case no.: 991/5786/23

The presiding judge is **Volodymyr Dmytrovych Voronko**, judge on the panel - **Andrii Volodymyrovych Bitsiuk**, and judge on the panel - **Nataliia Volodymyrivna Movchan**.

The case is being considered by the HACC on the merits.

The judge was caught receiving an undue benefit of \$4,000 on 29 March 2023. According to the investigation, Liudmyla Saltan received the money from **Serhii Baranetskyi**, a resident of Odesa, for resolving a civil case in his favour (in a case of debt collection and expenses for legal assistance).

The amount of bail for the judge is UAH 2 million 15 thousand.

The judge’s actions are classified under part 3 of Article 368 of the CC of Ukraine (acceptance of an offer, promise or receipt of an unlawful benefit by an official).

Case no. 6: Ilia Lonskyi, judge of the Prymorskyi District Court of Odesa

Case no.: 991/10516/23

The presiding judge is **Tymur Rafailovych Khamzin**, judge on the panel - **Serhii Myroslavovych Moisak**, the judge on the panel - **Vira Volodymyrivna Mykhailenko**.

On 25 July 2024, the HACC suspended the hearing of the case on the merits on charges of incitement to give undue advantage and fraud against judge Ilya Lonskyi of the Prymorskyi District Court of Odesa, as Lonskyi had been drafted into the army.

On 4 August 2023, the NABU and the SAPO served a judge of the Prymorskyi District Court of Odesa with a notice of suspicion of attempted bribery of another judge of the same court for making a positive decision in a case of an administrative offence under Article 130 of the Code of Ukraine on Administrative Offences (CUAO) (driving under the influence of alcohol or drugs), as well as obtaining part of the bribe by deception.

Judge Illia Lonskyi, after receiving money from Yevhen Berestovyi’s lawyer, tried to persuade his colleague, also a judge of the Primorsky District Court, Anzhelika Rusieva, who was considering a case under Article 130 of the CUAO against Yevhen Berestovyi, to make the “right” decision in the case.

Yevhen Berestovyi received \$2,000 from the client, a local resident, for “resolving the case”. Judge **Ilia Lonskyi** was to give \$1,000 to Judge Anzhelika Rusieva, and keep \$250 for “mediation services”.

The amount of bail for the judge is UAH 805,200.

The judge’s actions are classified under part 3 of Art. 15, part 3 of Art. 369, part 2 of Art. 190 of the CC of Ukraine (attempt to give an unlawful benefit to another judge for making a positive decision in an administrative offence case, as well as to obtain part of the unlawful benefit by deceiving a judge of the Prymorskyi District Court of Odesa).

Case no. 7: Pavlo Ivchenko, judge of the Oleksandrivsky District Court of Kirovohrad region

Case no.: 991/264/23

The presiding judge is **Tymur Rafailovych Khamzin**, the judge on the panel is **Serhii Myroslavovych Moisak**, and the judge on the panel is **Vira Volodymyrivna Mykhailenko**.

The case is being considered by the HACC on the merits.

According to the prosecution, together with his two assistants, **Pavlo Ivchenko** helped drivers who were driving while intoxicated to avoid liability under Article 130 of the CUAO. The last time he received an undue benefit from a local resident in the amount of \$1,000 for closing the protocol under Article 130, but on 26 August 2022, he was exposed by the SSU and NABU.

The actions of the judge and his assistants are classified under part 2, Article 28, part 3, Article 369-2 of the CC of Ukraine (obtaining an undue advantage, combined with extortion of such advantage, for oneself and a third party for influencing the decision-making of a person authorised to perform state functions, by prior conspiracy by a group of persons).

The amount of bail for a judge is UAH 148,860. For judge assistants - almost UAH 50,000 bail each.

Qualification of the judge’s actions - part 2 of Article 28, part 3 of Article 369-2 of the CC of Ukraine (acceptance of an offer, promise or receipt of an unlawful benefit for oneself or a third party for influencing the decision-making of a person authorised to perform the functions of the state or local self-government, combined with extortion of such benefit).

Case no.8: Oleksandr Boyarskyi, judge of the Bilhorod-Dnistrovskyi City District Court of Odesa Region

On 16 January 2024, the HACC imposed a preventive measure on **Oleksandr Boyarskyi**, a judge of the Bilhorod-Dnistrovskyi City District Court of Odesa Region, who is suspected of taking a bribe to issue a decision that would help him avoid mobilisation.

The HACC arrested the judge for two months, with the possibility of bail. The bail amount is UAH 1,059,800.

According to the investigation, the judge received \$1,500 for a promise to make a decision on establishing the child's place of residence with the father. In the future, the man could use the document to avoid mobilisation and as a basis for travelling abroad with the child.

The SAPO added that in 2022-2023, the Bilhorod-Dnistrovskiy court issued more than 1,000 decisions in this category of cases. Also, according to prosecutors, there were cases of men travelling abroad unaccompanied by children, determining the child's place of residence in the temporarily occupied territory, forging procedural documents from plaintiffs and interfering with the automated case distribution system.

Qualification of the judge's actions - part 3 of Article 368 of the CC of Ukraine (acceptance of an offer, promise or receipt of an unlawful benefit by an official).

From 11 April 2024, Judge O. Boyarsky returned to work in court and has been administering justice, as evidenced by the Unified State Register of Court Decisions.

Case no. 9: Volodymyr Serdynskiy, judge of the Brovary City District Court of Kyiv Region

Case no.: 991/452/24

The presiding judge is **Serhii Myroslavovych Moysak**, judge on the panel - **Tymur Rafailovych Khamzin**, judge on the panel - **Vira Volodymyrivna Mykhailenko**.

The case is being considered by the HACC on the merits.

According to the investigation, on 26 September 2023, Judge **Volodymyr Serdynskiy** received an undue benefit of \$4 thousand from lawyer **Oleksandr Vorotylenko** for ruling on interim relief in a civil case.

The judge's actions are classified under part 3 of Article 368 of the CC of Ukraine (acceptance of an offer, promise or receipt of an unlawful benefit by an official).

The amount of bail for the judge is UAH 1.5 million.

In July, the Security Service of Ukraine served another suspicion notice to V. Serdynski, a judge of the Brovary City District Court of Kyiv Region. He is accused of forging documents that allowed him to travel to the Caribbean on a cruise ship under the guise of a business trip. The pre-trial investigation into this episode is ongoing.

Case no. 10: Volodymyr Honchar, judge of the Kropyvnytskyi Appellate Court

On 21 March 2023, the Dobrovelychkivskiy District Court of Kirovohrad Region sentenced a local resident, **Denys Derkach**, to 3 years in prison with a 2-year deprivation of the right to drive vehicles under part 2 of Article 286 (violation of traffic safety rules if they caused the death of the victim) of the CC of Ukraine.

In February 2022, Denys Derkach, driving a technically defective motorcycle, hit a woman who was riding a bicycle. The woman died from her injuries.

According to the SAPO, on 26 May, Judge **Volodymyr Honchar** entered into a conspiracy with a person who was interested in Denys Derkach receiving a non-custodial sentence.

On 26 September, **Volodymyr Honchar**, who had been appointed to preside over Denys Derkach's case, received \$10,500 from an intermediary for the "necessary" decision of the panel of judges.

However, on 28 September 2023, the panel of judges in the case upheld the verdict of the court of first instance.

Thus, the agreement to "resolve" the case was not fulfilled. On the same day, 28 September, according to the investigation, **Volodymyr Honchar** returned \$10 thousand to the intermediary.

At the same time, according to the SAPO, the judge kept about \$500 for his "troubles", which were found in the judge's office during a search on 26 October 2023.

Qualification of the judge's actions - part 3 of Art. 368 (acceptance of an offer, promise or receipt of an unlawful benefit by an official holding a responsible position) of the CC of Ukraine.

The judge was granted bail in the amount of UAH 1,017,736.50.

The pre-trial investigation in the case has been completed, and the case has been under consideration by the HACC since 19 March 2024.

On 7 March, the HACC approved the plea agreement concluded with Viacheslav Danshyn, whom the SAPO considers to be an accomplice of Kropyvnytskyi Court of Appeal Judge Volodymyr Honchar.

