1. Evaluation of reform policies of the Parliament and Government during the period of September 2019 – July 2020 and its compliance with the Toronto Principles (based on the analysis of the Government Program, the plans of the ministries and the adopted/rejected regulatory acts)

Strategic planning of the Cabinet of Ministers of Ukraine (hereinafter — CMU, the Government) activities shows problems that are typical for Ukraine. Plans, strategies, and other policy documents are inconsistent, including numerous minor tasks that do not profoundly affect the situation.

The authorities focus their attention on the new anti-corruption institutions and the State Bureau of Investigation (SBI). Other issues remain on the periphery of their interests. None of major systemic reform of any law enforcement agency has been implemented yet. Instead, each new government aims to gain full control over such bodies, including those with high guarantees of independence.

Thus, there was an attempt to amend the Constitution of Ukraine, directly stipulating the powers of the President of Ukraine to create the National Anti-Corruption Bureau of Ukraine (hereafter — NABU) and to appoint and dismiss NABU and SBI directors. The Constitutional Court of Ukraine (hereafter — CCU) sharply criticized such legislative initiative for violating the principle of separation of powers and attempting to practically usurp the powers, and thus, declared the bill unconstitutional.

In December 2019, according to the law, the director of the SBI and his deputies were dismissed from office, which contradicted the guarantees of their independence and did not comply with the rule of law. The President appointed the head of the Parliamentary Committee on Legal Policy, Iryna Venediktova, on the position of the interim director. On March 17, 2020, she was appointed as the Prosecutor General. As a result, the SBI Deputy Director, Oleksandr Sokolov, was appointed as the new head of the organization by Iryna Venediktova after a somewhat dubious competition held in violation of the rules. For more than half a year, the SBI has been existing without a permanent director, which undermines its development and stability. The SBI lost the legal status of a central executive body subordinate to the Cabinet of Ministers of Ukraine (CMU) and received a legally undefined status of a state law enforcement agency. The President’s authority to influence the SBI was also expanded.

The monopoly of state institutions to conduct forensic analysis in criminal proceedings (which existed during the Soviet times and then was restored in 2017 by the «Lozovy amendment») has been abolished, which can be positively assessed, but the entire list of «Lozovy’s
amendments», in particular, the new system for calculating the duration of pre-trial investigations and the possibility to file appeal on the suspicion notice, has not been cancelled yet.

On 7 August 2019, President of Ukraine Volodymyr Zelensky established the Legal Reform Commission⁷, which was entitled with a wide range of tasks. Despite some initial optimism, it can already be stated that the commission has not been involved in the key changes to the legislation and in the preparation of amendments to the Constitution of Ukraine related to the law enforcement reform, which have taken place since the beginning of the new Parliament convention.

On 1 January 2020, amendments to the Code of Criminal Procedure of Ukraine (hereafter - CCP of Ukraine) that "abolished the parliamentary immunity"⁸ came into force. At the same time, a new special procedure for bringing the MPs of Ukraine to account was implemented. The Prosecutor General was enshrined with exclusive powers to upload the information about the crime committed by the MP to the Integrated Register of Pre-trial Investigations; approve the petitions submitted to the investigating judge; and to file the suspicion notice. In practice, the independence of the procedural head is substantially limited by the Prosecutor General. It is only possible to detain a Member of Parliament at the scene of a crime for a violent crime, and the MP should be present during the consideration of petitions by the investigating judge (except for the house search and undercover investigative actions).

On July 1, 2020, the institute of criminal offenses was launched. It provides for the differentiation of the investigation procedure depending on the gravity of the crime and giving investigators the right to commit it⁹, which should partially unload the investigation in order to increase the efficiency of investigators. At the same time, there are still some unresolved issues that contradict the conclusion of the Directorate General of the Council of Europe¹⁰. In November 2019, the Government proposed legislative changes to eliminate the threat to infringing the human rights, but due to the change of Government they were withdrawn, but were not re-introduced in the Parliament¹¹.

On January 17, the Parliament rejected a bill establishing the Bureau of Financial Investigation¹² (hereafter – BFI). The document echoed that of the previous Government, in which the Minister of Finance of Ukraine, Oleksandr Danylyuk, promoted¹³ the idea of the Financial Investigation Service, which was to replace the pre-trial investigation body of the State Fiscal Service of Ukraine (tax police), the National Police and Economic Security Intelligence Services of the Security Service of Ukraine (hereafter — SSU). Currently, the Office of the President of Ukraine has submitted a new bill on the BFI (№ 3087-d)¹⁴ to the Parliament.

2. Current challenges / issues in the relevant policy area

The reforms lack legal certainty, coherence and coordination between the various political players. The position of the expert, scientific community and civil society is rarely taken into consideration. Certain processes are contrary to the Constitution of Ukraine or lack transparency.

The National Guard of Ukraine is under the triple authority of the Ministry of Internal Affairs of Ukraine, the Ministry of Defence of Ukraine and the President of Ukraine, which also contravenes the Constitution¹⁵,¹⁶. The situation with the State Border Service of Ukraine is similar.

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⁷ https://www.president.gov.ua/documents/5842019-28949
⁹ Law of Ukraine from 03.12.2019 № 321-IX.
¹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67340
¹² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66887
¹⁵ https://dt.ua/internal/zhandarmeriya-zelenskogo-322848_.html
The Law on National Security of Ukraine\textsuperscript{17} adopted in 2018, reduces the functions of the Security Service of Ukraine to four – combating terrorism, counterintelligence, protection of state secrets and countering intelligence and subversion. Instead, the intelligence service continues to put pressure on businesses and participate in the political struggles. The key idea of the reform is to remove the function of pre-trial investigation from the SSU authority and to eliminate the places of detention. The high-profile statements made by top officials about the need for reform are remain mere promises\textsuperscript{18}, and the new version of the Law of Ukraine on the SSU\textsuperscript{19}, submitted to the President, was rejected by the Parliament and sent for another first reading.

The Criminal Code of Ukraine (CCU) was adopted in 2001. For 20 years, unsystematic editing has led to a situation where the same sanctions are imposed for rape, forest smuggling or car theft\textsuperscript{20}. On 16 January 2020, a law that equated sanctions for homicide coupled with sex offence with sanctions for the second sexual offence against minors came into force\textsuperscript{21}. The Working Group on Criminal Law Development of the Legal Reform Commission, which is developing the new Criminal Code of Ukraine, deserves some cautious optimism.

In almost all cities, local self-governments are implementing public video surveillance systems, and create local guards despite the lack of legitimate grounds for such actions\textsuperscript{22}. Information insecurity, interference with citizens’ privacy, violation of personal data laws, etc. remain to pose serious problems\textsuperscript{23}.

The police reform has ended without even being started. No substantial amendments were introduced into the criminal bloc. Promotion decisions remain the prerogative of the respective chiefs, not of an independent structure\textsuperscript{24}.

The system of quantitative indicators (the “ticket quota system”\textsuperscript{25}), despite its formal abolition, continues to operate in practice, and the evaluation of police activity by the level of public confidence does not work properly.

3. Recommendations for priority actions in 2020–2021, in particular, for the agenda of Parliament’s fourth session

In order to resolve the common problems, reforms should be coordinated and harmonized, as well as involve the public and experts. Among the most urgent and topical recommendations are the following:

1. Improve the institution of criminal misconduct. High-quality legislation on criminal misconduct will facilitate the proper and prompt investigation of small crimes, unload of pre-trial investigation bodies and allow to focus released resources on investigation of serious crimes.

2. Establish of the Bureau of Economic Security in accordance with international standards and best practices of a single body, which would be responsible for the investigation of economic crimes.

3. Reform of the SSU, adopt new legislation on the SSU without the functions of pre-trial investigation and places of detention.

4. Harmonize of laws with the Constitution of Ukraine. In particular, to change the subordination and functionality of the National Guard of Ukraine and the State Border Guard Service of Ukraine towards militarization and transfer of law enforcement functions to the police; deprive the Parliament and the President of the unconstitutional functions related to NABU and SBI with their transfer / return to the executive branch of power.

\textsuperscript{17} https://zakon.rada.gov.ua/laws/show/2469-19
\textsuperscript{19} http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68347
\textsuperscript{20} https://dt.ua/internal/spisku-pedofiliv-dlya-pedagogiv-chi-zahistit-dite-reyestr-seksualnih-zlochinciv-334753_.html
\textsuperscript{21} https://zakon.rada.gov.ua/laws/main/409-IX
\textsuperscript{22} https://dt.ua/SOCIUM/gostre-okho-starshogo-brata-328171_.html
\textsuperscript{23} http://umdpl.info/library/cctv-report
\textsuperscript{24} http://umdpl.info/library/politsejski-komisiji-v-ukrayini-zvit-za-rezultatamy-doslidzhennya
5. Legitimize the video surveillance by providing the legal basis and secondary legislation for the creation and operation of public video surveillance systems.

6. Completely abolish the “Lozovy amendments” to the CCP of Ukraine, namely the system for calculating the duration of pre-trial investigations and the possibility to file appeal on the suspicion notice according to the Law No. 2147-VIII.

These analytical briefings have been developed by civic experts and reflect the position of civil society. All briefings have gone through a process of public consultation and discussion and adequately reflect the views of citizens.