Entrance exam for Ukraine:

what we should do to implement EU recommendations

INTRODUCTION

On June 23, 2022, a historic event took place – Ukraine was granted a status of a candidate for membership in the European Union. This achievement is a result of many years of enthusiastic work and cooperation between the authorities, international partners and citizens of Ukraine on the way to the implementation of the Association Agreement attained by Ukraine following the Revolution of Dignity.

The implementation of seven recommendations worded by the European Commission is the condition for continued European integration of Ukraine. Therefore, the performance of these recommendations is a crucial precondition for the subsequent steps of Ukraine on its way to the European Union.

The Reanimation Package of Reforms Coalition, together with experts representing members of the association, as well as some external experts, developed explanations concerning the implementation of the European Commission's recommendations, "***Entrance exam for Ukraine: what we should do to implement EU recommendations***" which concern granting Ukraine the status of the candidate for membership in the European Union (EU). The roadmap provides detailed explanations of actions required to fully implement the recommendations of the European Commission, as well as the analysis of steps already taken and their success. This is why monitoring of their implementation will help assess their success. The document represents a detailed overview of each recommendation of the European Commission and views them in two aspects:

1) What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?
2) What else do the authorities need to do to fully follow the recommendations and why?

This document demonstrates Ukraine's progress in following the recommendations on its way to the EU as of December 2022, as well as highlights issues and debatable aspects of the implementation of these recommendations that should be noted.

Authors and reviewers:

Oleksandr Marusiak, expert at the Center of Policy and Legal Reform;
Yuliia Kyrychenko, Co-chairwoman of the RPR Coalition Board, co-chairwoman of the Board of the Centre of Policy and Legal Reforms
Olena Boryskavska, Professor at the Department of Constitutional Law of Lviv Ivan Franko National University;
Roman Smaliuk, expert at the Centre of Policy and Legal Reform;
Ivan Piatak, senior analyst at CHESNO. Filter the Judiciary!;
Mykhailo Serebriakov, Director at "Together Against Corruption" PO;
Mykola Khavroniuk, Director for Scientific Development and Board Member at the Centre for Policy and Legal Reform;
Yevhen Krapyvin, expert at the Centre for Policy and Legal Reform;
Volodymyr Petrakivskyi, expert at the Centre of Policy and Legal Reform;
Olesia Arkhypska, governance expert at Transparency International Ukraine, co-chair of the Coordinating Council on Implementation of the Open Government Partnership Initiative in Ukraine;
Nataliia Povtar, Lawyer in the field of legislation on CSO organization activities, Centre for Democracy and Rule of Law;
Ihor Burakovskyi, Co-chairman of the RPR Coalition Board, director at The Institute for Economic Research and Policy Consulting;
Ihor Koliushko, Chair of the Board at the Centre for Policy and Legal Reform;
Vadym Miskyi, Program Director at Detector Media PO;
Ihor Rozkladai, Deputy Director at the Centre for Democracy and Rule of Law;
Yuliia Tyshchenko, expert at the Ukrainian Center for Independent Political Research;
Alona Lunova, Advocacy Manager at ZMINA Human Rights Center.

The document is prepared by the RPR Coalition team:

***Denys Davydenko**, head of the advocacy and international relations department, **Yuriy Mykytyuk**, regional program coordinator and advocacy manager, **Olga Lymar**, executive director, **Margaryta Khvostova**, advocacy manager, **Dmytro Kryvosheiev**, PR manager.*

This document is prepared by the Reanimation Package of Reforms Coalition with the financial support of the United States Agency for International Development (USAID) within the framework of the project " Ukraine Responsive and Accountable Politics Program" (U-RAP), which is implemented by the National Democratic Institute. The opinions expressed in this document belong to the authors and do not necessarily reflect the views of USAID.

Table of Contents

Recommendarion 1:

Enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations

Author: ***Oleksandr Marusiak****, expert at the Centre for Policy and Legal Reform;*
Reviewer: ***Olena Boryslavska****, Professor at the Department of Constitutional Law of Lviv Ivan Franko National University;* ***Yuliia Kyrychenko****, Co-chairwoman of the RPR Coalition Board, co-chairwoman of the Board of the Centre of Policy and Legal Reforms*

Law of Ukraine "On Introducing Changes to the Constitution of Ukraine (On Justice)" dated June 2, 2016, No. 1401-VII, considerably changed the procedure for appointing and dismissing judges of the Constitutional Court and updated qualification requirements to candidates for such positions. In particular, under Article 141 of the Constitution of Ukraine, as revised by Law No. 1401-VII, a judge of the Constitutional Court may be a citizen of Ukraine who:

- knows the official language;
- has reached 40 years of age at the time of appointment;
- has a degree in Law;
- has professional experience of at least fifteen years in the field of law;
- possesses high moral qualities;
- is a lawyer with an acknowledged level of competency.

The Constitution of Ukraine stipulates that the President of Ukraine, the Verkhovna Rada of Ukraine and the congress of judges of Ukraine shall each appoint six judges of the Constitutional Court of Ukraine (clause 26 part one of Article 85, clause 22 part one of Article 106, part two of Article 148), however candidates for the position of a judge of the Constitutional Court of Ukraine shall be selected on a competitive basis in a manner determined by law (part three of Article 148).

The Law of Ukraine "On the Constitutional Court of Ukraine" dated July 13, 2017, No. 2136-VIII, adopted to implement this constitutional reform, provides that each appointment entity shall hold a separate competition at their own discretion (see Article 12–15), yet in practice, these requirements for the competitions were either ignored altogether or were fulfilled only partially. For instance, from 2017 to 2021, the President of Ukraine conducted a competitive selection of judges for the Constitutional Court of Ukraine himself through *ad hoc* selection commissions set up by him, and Article 208-4 of the Regulations of the Verkhovna Rada of Ukraine stipulated a mandatory preliminary political support of candidates for judges of the Constitutional Court of Ukraine from MP factions, which set off the entire logic of competitive selection of these judges by the appointment entity. When it comes to the congress of judges, this body of judicial self-government has not held any competitive selections of judges for the Constitutional Court of Ukraine. In addition, appointment entities have not developed unified rules of competitive selection and verification of the level of competence and integrity of candidates for positions

of judges of the Constitutional Court of Ukraine, and consequently, each appointment entity was guided by their own approaches when assessing the professionalism and integrity of candidates for positions of judges of the Constitutional Court of Ukraine.

The Constitution of Ukraine provides that judges of the Constitutional Court of Ukraine who were appointed before the enactment of the Law of Ukraine No. 1401-VIII, continue performing their powers until the termination of these powers or dismissal in the manner stipulated by Article 149-1 of the Constitution of Ukraine, without the right of re-appointment (subclause 8 clause 16-1 of Section XV "Transitional Provisions"). This resulted in a situation when unscrupulous judges of the Constitutional Court of Ukraine who had been appointed before the Revolution of Dignity kept their positions.

Upon the adoption by the Constitutional Court of a high-profile decision in the case on the correspondence to the Constitution of Ukraine of certain provisions of the Law of Ukraine "On Prevention of Corruption" and the Criminal Code of Ukraine No. 13p/2020 dated October 27, 2020, Ukraine asked the European Commission For Democracy Through Law (Venice Commission) to provide an opinion on the respective decision. In December 2020, Venice Commission published two urgent opinions: (1) on the legislative situation in Ukraine following the decision of the Constitutional Court of Ukraine No. 13p/2020 in the context of anti-corruption mechanisms (CDL-AD(2020)038); (2) on the reform of the Constitutional Court of Ukraine (CDL-AD(2020)039). In the latter, Venice Commission called on Ukraine to:

- foresee a new procedure for selecting candidates for positions of judges of the Constitutional Court of Ukraine, in particular, with the involvement of a specialized screening body with an international component, which will be composed of both representatives of civil society and international experts in the field of human rights (para 77, 79, 81, 102.9);
- refrain from filling existing vacancies in the Constitutional Court of Ukraine until the updated rules for selecting candidates for judge positions are implemented in the Ukrainian legislation (para. 104).

Following this Venice Commission's opinion, MPs registered two draft laws related to the Constitutional Court of Ukraine: (1) a draft law on the constitutional procedure (registration No. 4533 dated December 21, 2020); and (2) an alternative draft law on the procedure for consideration of cases and enforcement of the decisions of the Constitutional Court of Ukraine (registration No. 4533-1 dated January 6, 2021). These draft laws were marketed as the ones that may optimize the procedure for the fulfilment of its powers by the Constitutional Court of Ukraine in the consideration of cases under constitutional jurisdiction, yet they did not provide for the procedures of competitive selection of judges of the Constitutional Court of Ukraine. Both draft laws received positive feedback from Venice Commission (CDL-AD(2021)006-e), however, in the very same opinion, Venice Commission criticized the lack of relevant provisions in draft laws on the competitive selection of judges of the Constitutional Court and reiterated its call on Ukraine to take the required steps to ensure competitive selection of judges of the Constitutional Court (para. 20, 22, 62, 84, 86). Draft Law No. 4533 was adopted in the repeated first reading on April 15, 2021 (resolution of the Verkhovna Rada of Ukraine No. 1390-IX), but the Parliament has not considered this draft law ever since.

On January 25, 2021, G7 ambassadors published a roadmap for the strengthening of anti-corruption institutions and reforming the judiciary, which, among other things, included a recommendation to

immediately introduce a clear and transparent process for selecting candidates for positions of judges of the Constitutional Court while ensuring a considerable role of representatives of international partners in the screening. Also, on September 23, 2021, G7 ambassadors reported on their Twitter account that they were further concerned by draft law No. 4533 and Constitutional Court reform should ensure the transparent, competitive selection of new CCU judges & the safeguard of a temporary increase in voting requirements, in line with Venice Commission recommendations.

On February 28, 2022, Ukraine submitted an official application for membership in the European Union. On June 17, the European Commission recommended granting Ukraine the status of a candidate for EU membership, and on June 23, this decision was supported by the European Parliament and the European Council. Given the history of developments with the Constitutional Court of Ukraine, there are no questions as to why the European Commission out of all its recommendations for Ukraine singled out as the first one the recommendation to *enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations*.

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

Contrary to the recommendations of the European Commission and in violation of the requirements of paragraph 2 of part 3 of Article 11 of the Law of Ukraine "On the Constitutional Court of Ukraine", on July 27, 2022, the Verkhovna Rada of Ukraine appointed a MP of Ukraine (a member of the parliamentary faction of the political party "Servant of the People") as a judge of the CCU (resolution No. 2442 -IX).

On August 12, 2022, MPs registered with the Verkhovna Rada of Ukraine a draft law on amending some legislative acts of Ukraine on the improvement of the procedure for selecting candidates for the position of a judge of the Constitutional Court of Ukraine on a competitive basis (registration No. 7662). The Explanatory Note to the draft law contains a reference to positions of the European Commission and Venice Commission concerning the competitive selection of judges of the Constitutional Court of Ukraine, as well as notes that the "improvement of the competitive selection of candidates for positions of judges of the Constitutional Court of Ukraine is a relevant and crucial issue, which must be properly settled. (...) Quality changes adopted by the Verkhovna Rada of Ukraine in 2016–2017, require extension and further development, which is noted by Ukrainian society and international partners of Ukraine that our country is cooperating with in the field of rule of law and justice."

Draft Law No. 7662 suggests involving a new specialized body – an Advisory group of experts – in the conduct of the competitive selection of candidates for the position of a judge of the Constitutional Court of Ukraine, which will facilitate entities appointing judges of the Constitutional Court of Ukraine in assessing moral qualities and the level of competence in the field of law of the candidates for the position of a judge of the Constitutional Court of Ukraine. This Advisory body will be composed of six people nominated by the President of Ukraine, the Verkhovna Rada of Ukraine, the congress of judges of Ukraine, the Venice Commission, as well as international and foreign organizations that have been providing

Ukraine with international technical aid in the field of constitutional reform and/or rule of law, and/or human rights protection, and/or preventing and combating corruption for the past five years under international or interstate treaties. The draft law also sets rules and procedures for determining members of the Advisory group of experts, details the procedure for holding a competitive selection and the procedure for appointing CCU judges. This draft law is not devoid of shortcomings (in particular, serious issues may arise with the setup of the Advisory group of experts in a manner stipulated by the draft law), however, to date, this is the first and so far, the only draft law submitted to the Verkhovna Rada of Ukraine, which actually provides for the competitive selection of judges of the Constitutional Court of Ukraine by all appointment entities.

To date, this is the first and so far the only draft law dedicated to the issue of competitive selection of judges of the CCU, which has been submitted to the Verkhovna Rada of Ukraine, but it is not without significant shortcomings. In particular, the main flaws of draft law No. 7662 include the following:

- establishing a real competition only for CCU judges who are appointed according to the quota of the President of Ukraine;
- preservation of a significant part of the provisions on the appointment of judges of the CCU in the Regulations of the Verkhovna Rada of Ukraine, although these issues should be comprehensively regulated by a single law;
- giving the Advisory Group of experts only a secondary role in assessing the moral and competence qualities of candidates;
- preservation of the illogical role of the committee of the Verkhovna Rada of Ukraine and its authority to conduct interviews with candidates, provided that it is assigned the role of preparing issues for consideration at meetings of the Verkhovna Rada of Ukraine;
- the cumbersomeness of the process of selecting candidates and appointing judges due to the burden of excessive detailing of small procedural issues and their duplication;
- imperfect law-making technique, complex, cumbersome wording of the provisions of the draft law, which may lead to their ambiguous understanding when applied;
- in practice, serious problems may arise with the formation of the Advisory Group of Experts in the manner provided by the draft law.

On September 6, 2022, the Parliament adopted draft law No. 7662 in the first reading.

On October 10, 2022, the Chairman of the Verkhovna Rada of Ukraine appealed to the Venice Commission regarding the assessment of draft law No. 7662, and already on November 23, the Venice Commission published an urgent opinion (CDL-PI(2022)046) regarding this draft law. In general, it spoke positively about the intentions and efforts of Ukraine to improve the competitive selection of candidates for the office of judge of the CCU and believes that draft law No. 7662 will greatly contribute to the implementation of the recommendations of the previous conclusions of the Venice Commission (paragraph 68 of the Conclusion), but it was not without critical remarks and recommendations. In particular, the following recommendations are listed in the conclusion (paragraph 69):

- to provide for a limitation of the term of participation (a sunset clause) of international representatives in the process of selecting judges of the CCU (paragraphs 44–46);

- provide for a clear term of office of the international members of the Advisory Group of Experts, as well as their appointment through an official act of the authorized government body of Ukraine (paragraphs 39, 44–46, 48);
- to simplify the procedure for selection by the Verkhovna Rada of Ukraine of a member of the Advisory Group of Experts in order to avoid blocking the work of the institution (item 38);
- to provide for the election or appointment of additional members (substitute members) of the Advisory Group of Experts (at least for international members), who could replace the main members of the Advisory Group of Experts in case of early termination of the powers of the latter (paragraph 49);
- provide that the criteria for appointing judges of the CCU must take into account the standards of gender equality (paragraph 62);
- provide for the Advisory Group of Experts to provide the relevant subject of appointment of CCU judges with the names of verified candidates along with their assessment of the moral qualities and professional competence of each of them. Such information with the evaluation of candidates must be available to the public (paragraph 60);
- the methodology for assessing the moral qualities and legal competence of the Advisory Group of Experts should be based on international best practices (paragraph 51);
- provide for legislative provisions (anti-deadlock mechanism) to resolve situations when the Advisory Group of Experts cannot make a decision (paragraph 56);
- establish deadlines for the selection procedure and submission of candidates for the post of judge of the CCU to the appointing subjects (paragraph 58);
- to ensure that the decisions of the subjects of appointment of judges of the CCU on the appointment or refusal to appoint relevant candidates are subject to public scrutiny, that is, they are presented to the public (paragraph 65);
- to involve civil society in the process of selecting candidates for the position of judge of the CCU in order to provide information and feedback about the candidates, as well as to ensure monitoring of the process (paragraphs 31–33).

It is worth noting that in this conclusion, the Venice Commission evaluated only the model of competitive selection proposed in draft law No. 7662, and did not make proposals regarding any alternative models of such selection (for example, through the use of a unified approach to the competitive selection of all judges of the CCU, regardless of the subject of appointment — namely this model mentioned in the previous opinion CDL-AD(2020)039).

What else do the authorities need to do to fully follow the recommendations and why?

To fully fulfil the recommendations of the Venice Commission and the European Commission concerning the introduction of the competitive procedure for selecting CCU judges, including the process of pre-selection based on the evaluation of their integrity and professional skills, draft law No. 7662 should be finalized and adopted, or another similar draft law should be submitted to the Verkhovna Rada of Ukraine and adopted, which would contain, inter alia, the following provisions:

- introduction of amendments to the Law of Ukraine "On the Constitutional Court of Ukraine", which stipulate a single procedure for a competitive selection for all candidates for the position of a judge of the Constitutional Court of Ukraine, regardless of the appointment entity, and revise Article 208-4 of the Regulations of the Verkhovna Rada of Ukraine;
- creating a single selection commission, which will develop identical requirements for professionalism (*what does it mean to be* "*a lawyer with a recognized level of competence"?*) and integrity (*what are "high moral values"*) for all potential candidates for positions of judges of the Constitutional Court of Ukraine, as well as approve the methodology and procedure for their screening using standard tools (exam, testing, interview, special vetting, etc.);
- the competitive commission will conduct the selection of all candidates for positions of judges of the Constitutional Court of Ukraine, including, it will verify the compliance by candidates with formal requirements established by the Constitution of Ukraine and the Law "On the Constitutional Court of Ukraine" and evaluate the correspondence of candidates for the position of a judge of the Constitutional Court of Ukraine to criteria of professionalism and integrity;
- the selection commission will be a permanent body that will gather for meetings in two cases only: in case of the appearance of a vacant position within the Constitutional Court (should the powers of the CCU judge be terminated early) or in the event of the upcoming appearance of the vacant position, for instance, three months before the expiration of the 9-year tenure of any CCU judge;
- competitive selection of judges of the CCU may consist of three stages: the announcement of the start of competitive selection; submission of the application and other documents to the selection commission by persons wishing to occupy the position of a CCU judge; preliminary examination of documents by the selection commission and admission of candidates for the position of a CCU judge to the professional assessment stage; specialized screening procedure for candidates admitted to the stage of professional assessment; professional assessment of candidates for the position of a CCU judge; concurrently – evaluation of the integrity of candidates for the position of a CCU judge; adoption of the decision by the selection commission on the recommendation to appointment entities of candidates for the position of a CCU judge; scheduling and holding a repeated competition (as needed);
- the selection commission will recommend the relevant appointment entities a single list of candidates, and these entities will them appoint as judges of the Constitutional Court of Ukraine those persons who were recommended by the selection commission;
- a list of candidates who received the recommendation from the selection commission must be at least twice the number of current available vacant positions in the Constitutional Court of Ukraine.

What concerns the status and procedure of shaping a selection commission, such draft law may propose the following:

- qualification requirements not lower than those posed for judges of the CCU shall be applied to members of the selection commission;
- the draft law must provide for the correlation between the number of selection commission members appointed by state authorities and international organizations working in the field of constitutionalism, rule of law, human rights, preventing and combating corruption, and the number of selection commission members must be odd;

- the selection commission shall be composed exclusively of the citizens of Ukraine: international organizations may delegate their representatives to the composition of the commission, yet they must be citizens of Ukraine;
- entities forming the personal composition of the selection commission may include entities appointing judges of the CCU based on the quota principle; if several entities take part in the formation of the selection commission composition, then the process of appointing members of the selection commission should take place in the manner that makes it impossible to hypothetically block the work of such a commission through non-appointment or untimely appointment of commission members by other entity(ies);
- members of the selection commission may be appointed both for a fixed term of tenure and without it; if members of the selection commission are appointed without a fixed term of tenure, then the procedure for forming the first personal composition of the selection commission may differ from the procedure for forming all subsequent compositions of the selection commission (for instance, due to the application of the co-optation principle);
- personal composition of the selection commission must be approved by the act of the state authority;
- the draft law must contain the provision on quorum, the procedure for voting by selection commission members, and on the number of votes needed to adopt procedural (organizational) and staff (regarding the recommendation of the candidate for the position of a CCU judge) decision;
- members of the selection commission work pro bono, and the commission shall not be a power entity or a part of the public administration;
- the draft law as a regulatory act should not contain personalized provisions on specific names of the selection commission members.

Thus, the adoption of the draft law, which will introduce a fair and transparent competitive selection of judges of the Constitutional Court of Ukraine will not only strengthen the independence of the CCU but will also serve as proof that Ukraine as a sovereign state treats its commitments before the European Union seriously and responsibly, which will only contribute to the international image of Ukraine as a reliable and predictable partner.

Finalise the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of a candidate to establish the High Qualification Commission of Judges of Ukraine

Author: ***Roman Smaliuk****, expert at the Centre for Policy and Legal Reform;*
Reviewer: ***Ivan Piatak****, senior analyst at "CHESNO. Filter the Court!"*

2016 constitutional amendments in the field of justice and law adopted to implement them minimized the formal influence of political bodies on the judiciary by bringing key issues to the competence of judicial governance bodies – the High Qualification Commission of Judges of Ukraine (hereinafter referred to as the HQCJ) and the High Council of Justice (hereinafter referred to as the HCJ). These bodies were authorized to resolve issues concerning the appointment, transfer, disciplinary action against, and dismissal of judges. Said amendments also started the procedure for the qualitative assessment, where the HQCJ and HCJ played a key role and which was to become an effective tool for purging the judicial corps of unscrupulous judges. However, the political authorities made a strategic mistake by giving away the majority in the composition of these bodies to representatives of the judicial corps which was not yet formed at the time. When combined with non-transparent and ineffective procedures for appointing members of HQCJ and HCJ, which allowed manipulations with results or provided a wide range of possibilities for appointing loyal persons to the composition of these bodies, it has become clear in several years that these bodies have not become agents of change, but rather conserved with their activities negative phenomena (corruption, mutual responsibility cover-up, political dependence) existing in the judiciary.

In particular, the HQCJ failed the selection of new and qualification assessment of existing judges. Based on the results of the assessment of over two thousand judges, less than 1% were dismissed. Some assessment stages were non-transparent, there were frequent cases of inconsistent policy on the part of commission members in the assessment of similar actions of various judges and unjustified decisions of the commission following assessment results (usually the motivation of the decision was reduced to assigning points based on indicators without providing any arguments). The commission also ignored public opinion represented by the Public Integrity Council (hereinafter referred to as the PIC) in the conduct of its assessment. Even the European Parliament in its resolution in February 2021 on the condition of Ukrainian reforms expressed pity that the HQCJ did not consider PIC's opinions and called for such opinions to be taken into account in the future, in particular, during the selection of new judges. The analysis held in 2019 by experts from public organizations identified 35 considerable shortcomings in the procedure of qualification assessment arranged by the HQCJ.

The situation was no better with the HCJ. The lack of any independent evaluation of the integrity of candidates for the composition of the council allowed appointment/election entities to appoint their loyal persons to the HCJ. Consequently, instead of a powerful body that was supposed to defend independence and establish standards of integrity in the activities of the judicial corps, the council turned into a tool for prosecuting disagreeable persons and protecting unscrupulous judges. Out of an anticipated leader of judicial reform, the HCJ became an even bigger threat to it and some of its members were

involved in corruption-related scandals. In May 2022, Venice Commission noted that judicial reform, which could not eliminate the issue of the HCJ functioning and the integrity of its members was doomed to failure.

A catastrophic situation with integrity and efficiency of the activities of the JQCJ and the HCJ even became the subject of international discussion. In June 2020, Ukraine committed before the International Monetary Fund to introduce legislative amendments to enhance the quality of selection to the HCJ, so that only people with impeccable reputation and integrity could be members of the council. For this, a commission was to be created with the decisive participation of recognized experts, which would conduct a pre-vetting of HCJ candidates' integrity and evaluate the integrity of acting council members. In the memorandum, this reform was identified as one of the structural beacons. In August of the same year, the Parliament ratified a memorandum of understanding between Ukraine and the European Union, where in addition to the above reform of the HCJ, Ukraine undertook to create a new HQCJ through a transparent selection procedure conducted by the Selection Commission with the international involvement.

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

The first attempt at reloading the activities of the HQCJ and HCJ was made back in October 2019. At the time, the presidential law prematurely terminated the powers of all members of the HQCJ and introduced a competitive selection of new HQCJ members by an independent commission with international participation, as well as provided for the establishment of the Commission for Integrity and Ethics that had to verify the integrity of acting members of the HCJ and evaluate the integrity of candidates for council members. The implementation of the law was opposed by the judicial environment and the HCJ, and eventually, most provisions of the law were recognized as unconstitutional in March 2020, which completely blocked the reform of the judiciary.

Political authorities were reluctant to unblock the reform and it was only in July 2021, that under the pressure of the public and insistence on the part of international partners, laws on the resumption of the work of the HQCJ (Law No. 1629-IX) and renewing the HCJ (Law No. 1635-IX) were adopted. Essentially, the recommendation of the European Commission is related to the complete and proper implementation of said laws.

Law No. 1629-IX introduced a competitive selection of HQCJ members, which is supposed to be held by an independent selection commission. This commission shall consist of six members, of which three should be delegated by the Council of Judges of Ukraine, one each by the bar, prosecuting and scientific societies. For the transitional period, the place of representatives from the non-judicial environment should be taken by international experts endowed with the decisive vote.

In September 2021, the acting Chair of the HCJ approved the personal composition of the Selection Commission for Members of the HQCJ, and the first official meeting of the commission took place on January 21, 2022. During this meeting, the documents required to hold the selection were approved, and

the competition was announced, which started on February 4, 2022. The deadline for submitting documents was supposed to be March 4, however, because of the start of the full-scale invasion of Ukraine by the Russian Federation on February 24, the Selection Commission suspended its functioning.

On July 13, the Selection Commission informed about the resumption of its operation and the relaunch of the competition to the HQCJ. The documents were accepted from participants from July 15 to August 22. 302 candidates submitted documents for participation in the competition, out of whom the commission admitted 301. Subsequently, the Selection Commission has to conduct a vetting procedure and compile a list of candidates admitted to the interview (four candidates per one vacant position). Following the results of interviews with candidates, the commission is to compile a list of candidates recommended for appointment (at least two candidates per each vacant position of the HQCJ member). The HCJ has to appoint members of the HQCJ from this very list of recommended candidates.

Under the law, the HQCJ consists of 16 members (eight of whom must be appointed from among judges or retired judges), but for the HQCJ to be competent, it is enough to appoint 11 members (of whom at least six must be judges/retired judges).

That is, *the implementation of the recommendation of the European Commission in terms of the selection of HQCJ members is at its initial stage*.

Law No. 1635-IX introduced a new stage in the procedure of selecting HCJ members – mandatory vetting of the candidates' integrity by an independent Ethics Council. Only candidates recommended by the Ethics Council may be appointed/selected to the CHJ. During the transitional period, the council included three representatives from the judiciary and three international experts (further, their spots will be taken by representatives from the bar, the prosecutor's office and the scientific society). Despite the delay and blocking on the part of judicial governance bodies, the first official meeting of the Ethics Council was held already on December 1, 2021. Transitional provisions of the law obliged the entities selecting (appointing) HCJ members to announce competitions for vacant positions of HCJ members, therefore, the Ethics Council started its work on assessing candidates, who applied for announced competitions.

Vetting the integrity of current HCJ members with the possibility to introduce a recommendation for their dismissal is one of the important powers of the Ethics Council. HCJ members tried to prevent this vetting, but when they failed, 12 members of HCJ resigned thus artificially blocking this body's operation. Subsequently, one more council member was dismissed under the law because he was recognized by the Ethics Council as such that does not meet the criteria of professional ethics and integrity. As a result, 17 vacant positions appeared within the HCJ, which allowed updating its composition by 80%.

Currently, only 7 positions have been filled in the HCJ and three of them (two based on the Parliament's quota and one under the quota for scientists) were filled under a new procedure, i.e., with the involvement of the Ethics Council. The Ethics Council still has to participate in the procedures for filling another 14 vacant positions (eight under the quota for judges, two under the quota for lawyers, and one each under the quota for the President and scientists).

At the same time, to resume the functioning of the HCJ, at least 15 members are needed, of which the majority will be judges or retired judges. That is, to launch the work of the HCJ and form the HQCJ

based on the results of the competition, it is critical to ensure the selection of at least 8 members, with at least 4 of them being judges or retired judges.

On November 1, 2022, the Ethics Council approved a list of candidates recommended by the congress of judges for selection for positions of HCJ members. The congress date is yet to be announced, but the preparation thereto is already underway. For now, the Ethics Council is conducting interviews with candidates for the HCJ under the quota for prosecutors, and the selection of candidates under quotas for scientists and the President is expected. At the same time, the Ukrainian Bar Association has been refraining from announcing the competition for vacant positions in the HCJ under its quota for over 6 months now. It was only on September 6, 2022, that the Ukrainian Bar Association adopted the decision on convening the congress of lawyers where the issue of appointing HCJ members is to be resolved, among other things.

Thus, *the fulfilment of the European Commission's recommendation in the sense of vetting the integrity of candidates for members of the High Council of Justice is in its active stage and is approaching completion. At the same time, depending on the decisions of the entities appointing/selecting HCJ members, it may be needed to announce new competitions for members of the HCJ, and respectively, new screening procedures to be conducted by the Ethics Council*.

What else do the authorities need to do to fully follow the recommendations and why?

At this stage of recommendation fulfilment, the participation of the political authorities should be minimized. Framework legislation adopted in 2021 gave a good regulatory framework for relaunching the HQCJ and HCJ. Independent entities set up to implement these laws (Ethics Council, Selection Commission for Members of the HQCJ) adopted acts required to hold competitions and started their work. Therefore, at this stage, it is crucial to disallow any political or other interference with their activities.

Moreover, it is critical to prevent the adoption of laws allowing to appoint, continue the performance of duties of a judge bypassing the procedures for qualification assessment and selection of judges, which will be held by the newly established HCJ and HQCJ. Draft law on the restoration of powers of “five-year courts” can serve as an example of such initiatives.

At the same time, the war had an adverse impact on the publicity of the Ethics Council's activities. The law requires to broadcast interviews with HCJ candidates online. Before the hostilities, the Ethics Council held such broadcasting, but since the war started, the council stopped broadcasting interviews substantiating this decision by the need to protect the applicants and promising to promulgate video recordings of these interviews once martial law is over. This being said, it is unclear how and which information on the candidate, made public during the interview, may threaten their safety in the government-controlled territory of Ukraine. Naturally, this steered criticism on the part of public organizations and has an adverse impact on the legitimacy of council decisions (especially those concerning the recommendation of candidates the integrity of whom the public questions).

To fully implement the recommendation related to the HCJ:

- The Ethics Council should ensure complete and efficient screening of applicants for vacant positions in the HCJ, which will result in the recommendation to appoint/select exclusively candidates whose integrity and independence are beyond doubt. It is important to ensure publicity and transparency of the selection, including through online broadcasting of interviews with candidates (disguising a certain part of the interview when researching "sensitive information", as needed) and publicly publishing video recordings of already conducted interviews, as well as through proper reasoning decisions following the results of candidate assessment (in particular, recommendations related to candidates whose correspondence to the integrity criterium is in question due to facts identified by the public). It should be remembered that without the publicity of the selection procedure, trust in its results is impossible.
- Appointment/selection entities should ensure the transparency of the procedure of appointing competition winners to vacant positions of HCJ members within acceptable terms. Currently, this stage is the weakest link in the process of HCJ relaunch, since the experience of previous years showed that appointment/selection entities are interested in appointing to the HCJ not so much honest and independent candidates, as candidates who will defend their interests. The history of selecting HCJ members knows cases when the President abolished decrees passed by his predecessor on the appointment of HCJ members or cases of repeated announcements of the competition, even though the selection commission recommended candidates for all vacant positions. In some cases, the congress of judges selected preliminarily agreed candidates, as the names of those who would be selected by the congress were known even before the voting. In a long run, it is expedient to introduce a mechanism of direct voting of judges, prosecutors and lawyers for members of the HCJ, which will make it practically impossible to select candidates that were agreed upon in advance.

The risk of non-appointment of candidates recommended by the Ethics Council should not be ruled out either, as it will lead to the announcement of a new competition.

Noteworthy, the launch of the renewed HQCJ is fully dependent on the success of the HCJ reform, since this council will later appoint competition winners to positions in the HQCJ. That is, the failure or delay in launching the operation of the HCJ also will postpone the resumption of HQCJ functioning, and the integrity and independence of HQCJ members are directly dependent on the integrity and independence of the HCJ members.

What concerns the HQCJ reform, a key recommendation consists in preventing a mistake made by the Ethic Commission – the publicity of the selection procedure should not be limited. Online broadcasting of interviews with candidates and adequate reasoning of decisions following the competition results should be ensured.

Recommendation 3:

Further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine

Author: ***Mykhailo Serebriakov****, Director of "Together Against Corruption" PO*
Reviewer: ***Mykola Khavroniuk****, Director for Scientific Development and Board Member at the Centre for Policy and Legal Reform*

The recommendation refers to the need to solve the main institutional problems of the bodies of the anti-corruption infrastructure of Ukraine.

It briefly covers key components of the anti-corruption reform in Ukraine aimed at demonstrating the efficiency of the anti-corruption infrastructure formed and implemented in recent years, especially following the launch of the High Anti-Corruption Court, when all legal, institutional and organizational barriers to bringing top corrupt official to responsibility dropped off.

The European Commission specifically (and unprecedentedly) noted the need to approve the "determined competition winner" for the position of the Head of the Specialized Anti-Corruption Prosecutor's Office. Such a recommendation is due to the durable (since 2021) blocking of the process of determining the competition winner.

Similarly, Ukraine's membership in the EU was made dependent on the honest and transparent competition for determining a new Head of the National Anti-Corruption Bureau of Ukraine (NABU).

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

Since 2014, anti-corruption infrastructure has been fully formed in Ukraine and tools to identify, investigate and prosecute officials, including high-ranking officials, for corruption have been introduced. The following institutions started operating:

- NABU – for pre-trial investigation of corruption-related offences of high-ranking officials
- Specialized Anti-Corruption Prosecutor's Office – for procedural management of pre-trial investigation and maintaining public charges in relevant criminal proceedings conducted by NABU
- High Anti-Corruption Court – for administering justice against high-ranking corrupt officials

Furthermore, to shape anti-corruption policy and prevent corruption at the general level, the National Agency on Corruption Prevention (NACP) was established, and Asset Recovery and Management Agency (ARMA) was set up to find, trace and manage assets derived from corruption.

In addition, to prevent corruption and ensure the implementation of anti-corruption policy in Ukraine, the authorities introduced and launched the system of e-declaration, public reporting of political parties, Register of persons who committed corruption or corruption-related offences (Register of Corrupt Persons), public procurement and sale of state and communal property via e-auctions using the ProZorro and ProZorro.Sale systems.

Out of specific 2022 recommendations, so far only one has been fulfilled: on July 19, 2022, a competition winner, Oleksandr Klymenko, was appointed the Head of the Specialized Anti-Corruption Prosecutor's Office.

Concerning the appointment of the new NABU head. The tenure of Artem Sytnyk as NABU Director expired on April 16, 2022, due to the completion of the 7-year term of office. Today, the First Deputy Director of NABU Gizo Uglava is performing the duties of the NABU Director until the new director is elected. The Cabinet of Ministers approved the composition of the Commission for Selecting NABU Director back in early 2022. Several Commission meetings were held as part of the competition with the last one being held on November 14, 2022, where the start of the competition was determined. Candidates can submit their documents from November 16 to December 7.

What else do the authorities need to do to fully follow the recommendations and why?

The sabotage of anti-corruption reform or its rollback is a key “red line”, which is followed by a direct threat of losing the status of the candidate for membership in the EU or the loss of any chances to become an EU member, i.e., failure to fulfil Ukraine's constitutional priority.

In addition, since Ukraine received the status of a candidate for membership in the European Union together with Moldova, lagging behind along the way to reforms and Moldova's outrunning of our country in the subsequent stages of European integration will considerably lower Ukraine's chances to join the European Union (or will once again lead to the postponement of this prospect in time).

Conducting an honest, transparent, and unbiased competition for the position of NABU Director, as well as stopping attempts to disrupt it are particularly important for the successful implementation of the anti-corruption reform. Not least due to manual reshuffling in law enforcement agencies – unexpected and rapid dismissal of the Head of the Security Service of Ukraine (SSU) and Prosecutor General and just as quick appointment of their successors (in the case of the SSU Head – an acting Head) – ensuring actual independence of the anti-corruption vertical in the country is becoming particularly relevant.

Full-fledged fulfilment of the recommendation given by the European Commission concerning the implementation of anti-corruption reform directly depends on the country management and the institute of the President of Ukraine, as a de facto leader within the state. In addition to conducting a truly unbiased competition for the position of NABU Director, the country leadership must ensure non-interference and refrain from encroachments on the independence of anti-corruption institutions, so that they could fulfil

their mission of healing the country from corruption, as well as prevent any attempts to rollback reforms, including at the political level.

When it comes to specific changes, the fulfillment of the European Commission's recommendation regarding ***the strengthening of the combat against corruption, in particular, at the high level, through active and efficient investigations and ensuring adequate dynamics of court cases and verdicts*** will be either impossible or utterly difficult without the implementation of such priorities:

- fulfil the requirement of the law concerning the provision of NABU with the possibility to conduct an independent (without SSU resources) retrieval of information from communication channels of persons involved in their proceedings in order to neutralize threats of information leakage, delays and sabotage by the SSU of NABU's pre-trial investigations;
- leverage all political, financial, organizational and technical possibilities to speed up pre-trial investigation in criminal proceedings conducted by NABU, improving the efficiency of procedural guidance on the part of the Specialized Anti-Corruption Prosecutor's Office, as well as compliance with reasonable terms of case consideration within the High Anti-Corruption Court so that the pace of the fight against corruption in Ukraine does not become unacceptably law;
- elect a NABU Director and Head of ARMA at independent, objective, honest, and transparent competitions to ensure real independence in the activities of these institutions;
- conduct an SSU reform, deprive it of extraneous functions in the field of corruption prevention and fight against economic offences and organized crime to stop the practice of abuse of power and conflict of anti-corruption authorities;
- approve an effective and functional State program for the implementation of the recently adopted Anti-Corruption Strategy for 2021–2025, which has just moved through the public discussion stage;
- remove NACP's powers that are not inherent to this body, related to the provision of proposals concerning the imposition of international sanctions and instead renew the verification of declarations submitted by persons authorized to perform functions of the state or local self-government and improve the performance of NACP in terms of financial control;
- launch the portal of exposers;
- restore criminal liability for adoption by the judge (judges) of knowingly unlawful court decisions to prevent the degradation of the judiciary and stop the impunity of judges for clearly illegal and unjustified court decisions.

Ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF)

*Author: **Olesia Arkhypska**, governance expert at Transparency International Ukraine, co-chair of the Coordinating Council on Implementation of the Open Government Partnership Initiative in Ukraine*
*Reviewer: **Nataliia Povtar**, Lawyer in the field of legislation for CSO activities, Centre for Democracy and Rule of Law*

1.1. Recommendations from FATF, EU

FATF 40 Recommendations are the international standard for combating money laundering and financing terrorism. In particular, Recommendation 24 stresses that countries should take steps to prevent the illegal use of legal entities for money laundering or financing terrorism. Moreover, countries should make sure that competent authorities are **provided with adequate, accurate and relevant information on ultimate beneficial owners and control over legal entities or ensure timely access to such information**. This requirement has become even more relevant in the context of recent data leaks on ultimate beneficial owners, such as the Panama papers, Paradise papers, and Pandora papers, which caused an unprecedented global outcry. As a result, FATF is now making efforts to revise Recommendation 24 to ensure greater transparency of the beneficial ownership of legal entities and take measures to mitigate risks.

The Fifth EU Directive on anti-money laundering requires that member states introduce registers of beneficial owners of all legal entities, trusts and similar legal organizations (including scientific and production associations (SPA)) and also demands that entities that directly fight terrorism and/or are involved in the fight against terrorism identify beneficial owners of their counterparties, including SPAs.

Part 6 of Article 3 of the Fourth Directive of the European Parliament and of the Council (EU) on the prevention of money laundering defines beneficial owners as "any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted." Legal entities may exercise control through direct or indirect ownership (with a sufficient percentage of shares). In the case of trusts, beneficial owners may include "the settlor; (ii) the trustee(s); (iii) the protector, if any; (iv) the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates."

1.2. Global trends

The provision of more information on beneficial ownership transparency (BOT) to those who can make efficient use of it helps solve issues related to corporate accountability and illegal financial flows. BOT is gaining momentum across the globe with over 100 countries committing to implement reforms. G7, G20, Financial Action Task Force (FATF), World Bank, International Monetary Fund (IMF) and the

UN have also supported BOT. Companies disclosing and leveraging information on beneficial ownership also support BOT.

In practice, this means that more and more jurisdictions require companies to disclose information on their actual (beneficial) owners to make this information accessible to law enforcement agencies or the general public. However, in some countries, access to information on actual company owners can still be complicated. This may be because they have not yet introduced reforms or because they have been introduced poorly.

According to the Recommendations of the Financial Action Task Force (FATF), countries must make measures to prevent the illegal use of legal entities for the purpose of money laundering or terrorist financing. Countries should ensure the availability of adequate, accurate and timely information on beneficiary ownership and control over legal entities that can be quickly obtained or accessed by competent authorities. Countries should review issues on measures to simplify access to information on beneficial ownership and control for financial institutions and DNBFP (designated non-financial businesses and professions) that made commitments under Recommendations 10 and 22.

The disclosure of ultimate beneficial owners is one of the strategic areas for implementing an **Open Government Partnership (OGP)** International Initiative, joined by 77 countries of the world and 106 local governments. As of August 2020, almost 30 OGP countries undertook to promote global norms of transparency of beneficial ownership. Improvement of information compatibility using general standards, including the standard beneficial ownership data.

According to the analysis of the Financial Secrecy Index 2020:

→ Lack of regulation rules: over half of members of OGP members do not require to register information on beneficial ownership, let alone publicly disclose it. → Very few publish exhaustive data: only some members of the OGP Initiative publish data on beneficial ownership online, including Denmark, Ukraine and Great Britain.

Since 2021, International Monetary Fund has been focusing the attention of member states of the Open Government Partnership (OGP) Initiative on the need to disclose information on ultimate beneficial owners.

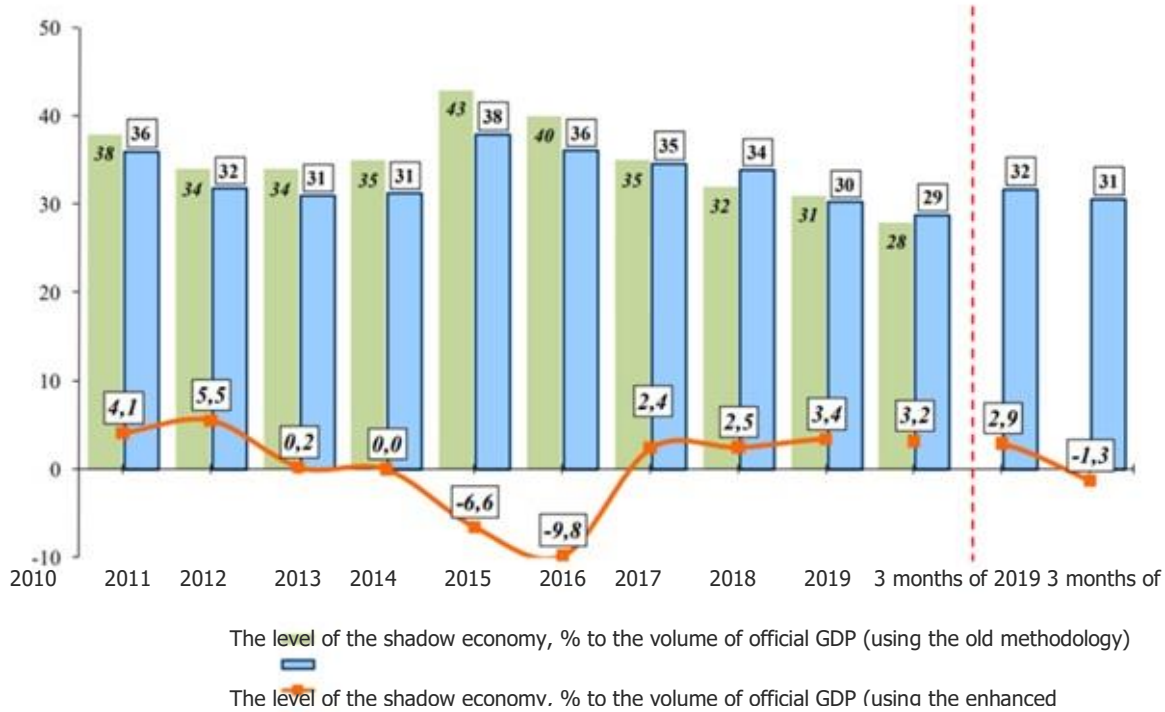
What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

2.1. General trends of the shadow economy in Ukraine

Currently, most countries have a problem with the shadow economy, which has a negative impact on social and economic processes and directly influences the level of life of the people. In developed countries, this indicator varies from 5 to 15% of GDP. In third-world countries, the indicator of the shadow economy may constitute up to 45%. The value of the shadow economy indicator is calculated according to Methodological recommendations for calculating the level of the shadow economy, developed by the Department of economic security and economy de-shadowing of the Department of Macroeconomy if the

Ministry of Economy and approved by the Order of the Ministry of Economy on February 18, 2009, No. 123.

Based on the typological research "Laundering of income derived from tax offences" of the State Financial Monitoring Service, general trends of the shadow economy in Ukraine for the period from 2010 – three months of 2020 have the following indicators:



BASIC STATISTICAL DATA[1]

- USD 11 billion – illegal financial flows of annual withdrawal of money from Ukraine;
- Ukraine is in the TOP 15 countries of the world in terms of capital withdrawal;
- The Moneyval Committee of Experts of the Council of Europe plans to make changes to the methodology of determining UBO (ultimate beneficial owners).

2.2. Disclosure of information on ultimate beneficial owners in Ukraine. The creation of a comprehensive mechanism to verify information on the UBO

In Ukraine, the disclosure of information of ultimate beneficial owners (UBO) started following the Revolution of Dignity (2014) as part of the fulfilment of commitments under national action plans of the Open Government Partnership (OGP) Initiative.

[1] The information was presented during the integrated panel discussion "Financial Monitoring 2021", December 2-3, 2021.

Since 2015, Ukraine guarantees everyone's right to access public information based on the principle of maximum transparency. In particular, the Law of Ukraine "On Access to Public Information" determines the procedure for accessing public information through its mandatory provision/disclosure in the format, which allows its automated processing by electronic means, public and free access to this information, as well as its subsequent use for diverse purposes, including for scientific research, innovations, business projects, and for public control over the activities of the state authorities and local governments, etc.

Today, access to open data is actively supported and developed by international initiatives and organizations. As part of the Open Government Partnership (OGP) Initiative, Ukraine committed to implementing the principles of the Open Government Declaration concerning the openness and transparency of the state policy. According to these principles, member states undertake to increase the accessibility of information on the activities of state bodies at each level of authorities, and information should be provided timely and bear high value, as well as be provided in formats that are easy to find, understand, use and subsequently re-use many times.

Ukraine has become the first country in the world that made public information on beneficial owners at the national level by opening its registers in 2014. Ukraine was also the first in the world to join the Global Beneficial Ownership Register in 2017 (an initiative of the Government of Great Britain).

Ukraine is one of the leaders in disclosing information about UBO within the framework of the Open Government Partnership (OGP) International Initiative. The Initiative was launched by 8 countries led by the USA during the session of the UN General Assembly in 2011.

Ukraine signed the European Union Association Agreement, adapting recommendations given by FATF and the 4th and 5th Directives of the European Union.

The Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations" established an obligation for legal entities to disclose information on ultimate beneficial owners during any registration action. The only state register of legal entities, individual entrepreneurs and public organizations is fully open and accessible to the public. With upgraded software, it has separate structural fields for entering the required information on ultimate beneficial owners.

The Law of Ukraine dated December 6, 2019, NO. 361-IX, "On Prevention and Counteraction to Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" establishes new requirements for notifications about beneficial owners under the Fourth and Fifth EU Directives on preventing money laundering and Recommendations 24 and 25 that are part of FATF 40 Recommendations.

Clause 30 Article 1 of the above Law of Ukraine defines the ultimate beneficial owners as *"any individual who exercises decisive influence (control) on the activities of the client and/or the individual on whose behalf the financial transaction is conducted"*.

Under the Law, the process of inventory and updating information on UBO has started. The Unified State Register (USR) has been updated, as well as the structure of beneficial ownership and the format of submitting information in the form of open data.

Noteworthy, the Law **does not oblige** political parties, structural units of political parties, trade unions, their associations, organizations of trade unions stipulated by the charter and their associations,

creative associations, local hubs of creative associations, organizations of employers, their associations, law firms, chambers of trade and commerce, associations of co-owners of apartment buildings, religious organizations, organizations of water supply users, state authorities, local governments, their associations, state and communal enterprises, institutions, and organizations to provide information on UBO FATF Recommendations 24 and 25 establish requirements for the transparency of beneficial ownership. FATF Recommendation 24 is related to legal entities and FATF Recommendation 25 concerns legal organizations. Both recommendations require essentially the same thing: to ensure the availability of "sufficient, accurate and relevant information" on the beneficial ownership of legal entities and legal organizations, that may be "quickly accessible by competent authorities". Recommendations 24 and 25 stress the importance of transparency and adequate management of any legal entity or legal organization, including scientific and production enterprises.

The Ministry of Finance approved the Regulation on the form and content of the ownership structure with its order No. 163 dated March 19, 2021. It was this document that was lacking in order to launch the procedure of bulk information update on ultimate beneficial owners (UBO). On July 11, 2021, Order No. 163 took effect and since then, the countdown of the time started during which legal entities have to provide updated information on ultimate beneficial owners and the ownership structure. **All legal entities** whose information on the ultimate beneficial owners should be included in the Unified State Register (USR) of Legal Entities, Individual Entrepreneurs and Public Organizations and which were **registered** before the enactment of Order No. 163, must submit to the state registrar information on the UBO and the ownership structure. This should be done within a **year** from July 11, 2021.

From now on, the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (USR) will include data on the **nature and extent** (level, degree, share) of beneficial ownership (benefit, interest, influence) among other information on beneficiaries.

To recall, currently, **the following data on beneficiaries** are being specified in the USR:

- last name, first name, patronymic;
- date of birth and country of citizenship;
- series and number of passport of the citizen of Ukraine or identifying document of the foreigner;
- place of residence;
- registration number of taxpayer's record card;
- full name and identification code of the founder of the non-resident legal entity where this person is a beneficiary.

Legal entities have a triple duty of disclosing data on beneficiaries:

- submit relevant data during all registration actions;
- quickly update these data in the USR;
- annually confirm the information on beneficiaries. This rule does not refer to political parties, their structural units, trade unions, their associations, organizations of trade unions stipulated by the charter and their associations, creative associations and their local hubs, organizations of employers, their associations, law firms, chambers of trade and commerce, associations of co-owners of apartment buildings, religious organizations, organizations of water

supply users, state authorities, local governments, their associations, state and communal enterprises, institutions, and organizations.

State registrars are now obliged to verify data on the ultimate beneficial owner **at the time of**:

- registering a legal entity, save for cases of state registration of company termination;
- submission by the company of information on its beneficiary.

To fulfil this task, **state registrars were provided with access to**:

- State Register of Citizens' Civil Status;
- Unified State Demographic Register (hereinafter referred to as the USDR);
- State Register of Natural Persons Taxpayers;
- Unified Information System of the MIA on the search for missing persons and stolen (lost) documents based on citizen appeals.

Noteworthy, the need to submit information on the ultimate beneficial owner caused objections and difficulties during registration, a lack of understanding and clarity of the ways to identify UBO, in particular, among representatives of some scientific and production associations. According to FATF Recommendations and Directive (EU) 2015/849 (with amendments made under Directive (EU) 2018/843), the term "beneficial ownership" is not restricted to the determination of natural persons owning a certain share or ownership in the legal entity. This term defines a natural person or persons exercising effective ultimate control over or having an influence on the activities of the legal entity. Hence, scientific and production associations may have no owners or shareholders (which the companies have), but then central attention should be paid to the identification of the natural person or persons controlling or influencing the activities of these organizations as their UBO.

Ukraine created **the world's first interactive online course** "Determining the ultimate beneficial owner" (in Ukrainian and English) – July 2021. As of December 1, 2021, the number of unique hosts (visitors) constitutes over 15,000 users from Ukraine and over 1,000 from other countries (USA, Great Britain, Austria, France, Netherlands, Germany, Poland, Finland, Hungary).

A memorandum was signed and a **Strategic Group for developing a mechanism for verifying information on UBO** was set up with representatives of the authorities, public organizations, business and international organizations – 12 partners (2020). The conceptual vision of the mechanism for verifying information on UBO was developed. Ukraine is the first country in the world planning to create a **Transnational electronic laboratory (TeLAB)** for the purpose of proper development of the mechanism for verifying data on UBO.

Two independent pieces of research were conducted:

- analysis of open data (in a machine-readable format) of the USR of legal entities and natural persons in 2019 (Anti-Corruption Action Center, The White Collar Hundred NGO);

- **independent audit of state registers and databases, required to implement a single UBO verification system** (results were presented on December 21 (Transparency International Ukraine, Open Up Ukraine Initiative, YouControl LLC) – **the presentation is attached.**

83 state bodies (77 central executive authorities and 6 bodies with special status) took part.

The total number of data set registers processed is 199.

In conclusion, **a single system of UBO data verification requires the participation of 21 authorities, 50 registers and data sets. The lack of a single approach to the verification of ultimate beneficial owners** reduces the level of trust in the information reflected in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, which leads to unscrupulous conduct of economic activities, abuses, promotion of corruption, avoidance of adequate taxation, laundering of criminal proceeds.

2.3 Martial law in Ukraine and open access to information on ultimate beneficial owners

Under the Law of Ukraine "On the Legal Regime of Martial Law", the Decree of the President of Ukraine "On Introduction of Martial Law in Ukraine", Resolution of the Cabinet of Ministers of Ukraine No. 209 dated March 6, 2022 "Some Issues of State Registration Under Conditions of Martial Law and Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 164 date February 28, 2022", access to the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations is open exclusively to state registrars, officials of the Ministry of Justice of Ukraine and its territorial bodies.

In late March, the Ministry of Justice of Ukraine updated the procedure of state registration given the need to ensure the credibility of data in the USR, realizing the possibility of conducting the most urgent registration actions, including changes thereto.

With its Resolution No. 179 dated June 24, 2022, the Cabinet of Ministers of Ukraine made amendments to some resolutions of Ukraine on notaries and state registration under conditions of martial law. Access to unified and state registers, maintained by the Ministry of Justice of Ukraine, is granted to users (local governments, state authorities, notaries, lawyers, banking and financial institutions, natural persons and legal entities for conducting activities, and so on) upon their motion to the technical administrator of such registers.

Hence, access to the USR has been actually restored to the pre-war state, however, public access to information is still closed.

On August 1, the Ministry of Digital Transformation announced the resumption of the functioning of the Open Data Portal Data.gov.ua and the intention to hold public discussions about amendments to the legislation for the purpose of establishing new access rules for open data during martial law in Ukraine.

2.4 Adopted Laws of Ukraine from September to December 1 2022

The Law of Ukraine with its order No. 2571 dated September 6, 2022 "On Amendments to Certain Laws of Ukraine on Improving the Regulation of Ultimate Beneficial Ownership and Ownership Structure of Legal Entities" updates the procedure of improving the regulation of ultimate beneficial ownership and ownership structure of legal entities. The law will enter into force on December 29, 2022.

The main changes regarding informing about the UBO:

• cancellation of annual informing about the ultimate beneficial owners, information about the ultimate beneficial owners must be updated in the USR in case of change;

• electronic form of notification of ultimate beneficial owners — submission of copies certified by a qualified electronic signature (QES) of the head of a legal entity, notarized copies can also be submitted;

• partial automation of the checking information process of the ultimate beneficial owners, submitted to the USR with data from state registers;

• a note in the USR about the possible unreliability of the information on the ultimate beneficial owners. Discrepancies refer to incompleteness, inaccuracies or errors in the beneficial ownership or ownership structure data. A request for an explanation is sent to the legal entity. The providing explanations procedure should be developed;

• fines for failures in providing information on ultimate beneficial owners, including at the request of another legal entity. The fine is imposed on the legal entity itself. A fine is imposed on legal entities that did not provide information at the request of another legal entity;

• development of the methodology for determining the ultimate beneficial owner;

• development of provisions on the ownership structure;

• reduction of the list of legal entities that are obliged to submit data on ultimate beneficial owners;

• information about the ultimate beneficial owners is not submitted in case of the following registration actions: transition of the LLC to the model charter or from the model charter; termination of a legal entity due to reorganization; in case of a separate unit formation process, changes to it or termination.

Liability for failure to inform about the ultimate beneficial owners is not provided during martial law and three months after its end.

Law of Ukraine with its order No. 2736-IX dated November 4, 2022 "On Amendments to Certain Laws of Ukraine Regarding the Protection of the Financial System of Ukraine from the Actions of a State Carrying Out Armed Aggression Against Ukraine, and Adaptation of Ukrainian Legislation to Certain Standards of the Group for the Development of Financial Anti-Money Laundering Measures of money (FATF) and the requirements of EU Directive 2018/843"

Installed:

• prevention persons who are citizens of the Russian Federation and the Republic of Belarus to lead and manage entities of primary financial monitoring;

• expansion of the list of high-risk clients of subjects of primary financial monitoring by citizens and legal entities who are residents of a state that carries out armed aggression against Ukraine (except for citizens of Russia and/or Belarus, who were granted the status of a participant in hostilities after April 14, 2014);

• establishment of an obligation for subjects of primary financial monitoring to report to the State Financial Monitoring Service of Ukraine on threshold transactions (400,000 UAH and more) with subjects related to Russia and/or Belarus.

Those subjects of primary financial monitoring who are in the territory of hostilities, temporarily occupied territories of Ukraine and do not have the opportunity to perform the duties of subjects of primary financial monitoring are exempted from responsibility for failure to fulfill some duties.

Provided:

• improvement of regulation and supervision of specially defined subjects of primary financial monitoring (the restriction on the application of financial sanctions to subjects of primary financial monitoring (SPFM) is removed);

• assigning to the subjects of primary financial monitoring art dealers and intermediaries in such trade and economic entities that provide intermediary or consulting services regarding the rental of real estate, but if the monthly amount of rent is UAH 400,000 or more. State regulation and supervision of these actors is entrusted to the Ministry of Finance of Ukraine.

The term of the status of Politically Exposed Persons (PEP) has been shortened from lifelong to three years after leaving office. Instead, international standards for combating money laundry, terrorist financing and the proliferation of weapons of mass destruction, FATF Recommendation 12, require that public persons (PEP) conduct permanent monitoring of business relationships. The requirements for all types of public persons should also be applied to their family members and persons related to them.

Law of Ukraine with its No. 6321 dated November 16, 2022 "On Amendments to Article 166-11 of the Code of Ukraine on Administrative Offenses in Connection with Changes in the Procedure for Submitting Information on the Ultimate Beneficial Owner of a Legal Entity to the State Registrar", which provides amendments to the Code on Administrative Offenses. For non-submission or untimely submission of information about the ultimate beneficial owner of a legal entity or its absence or absence of documents which confirm information about the ultimate beneficial owner - imposition of a fine on the head of a legal entity or a person authorized to act on behalf of a legal entity (executive body) from one to three thousand tax-free minimum incomes of citizens.

What else do the authorities need to do to fully follow the recommendations and why?

GLOBAL CHALLENGES

- The construction of a comprehensive mechanism to verify information on UBO is a global challenge. No country has a fully functional mechanism.
- Disguised beneficiaries mean potential money laundering and terrorist financing.
- Lack of leadership and insufficient attention to issues of UBO at the global level.

LESSONS LEARNED AND CHALLENGES FOR UKRAINE

- The lack of the **authority responsible** for shaping and implementing the state policy on beneficial ownership and setup of a mechanism to verify UBO.
- The introduction of a mechanism of UBO verification presupposes **cooperation between all authorities**: executive, legislative, judicial, bank system and law enforcement agencies.
- **Amendments to regulatory acts** are required. A significant share of processes determined by the law is not being implemented.
- **Non-systematized and unreliable data** in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (USR). **Lack of validation and interoperability of data** in state registers, data sets.
- Lack of **control and responsibility for entering unreliable/false information on the** UBO.
- Lack of a single approach to the organization and conduct of the **monitoring of proper UBO determination.**
- Lack **of systematic learning, educational training, and communicative explanatory campaign** on the need to identify and verify UBO.

RECOMMENDATIONS

Supporting Ukraine's strategic course for de-oligarchization as a priority of national security of Ukraine, the fight against corruption and Ukraine's accession to the EU and NATO;

realizing the need to create an ecosystem of the mechanism for verifying information on UBO;

introducing innovative formats and standards of responsible partnership, the policy of equal opportunities and good governance, it is hereby proposed:

STRATEGIC PROPOSALS

1. To the President of Ukraine – to initiate **an institute of Presidential leadership**, and political responsibility for the **creation of an ecosystem of proper identification of beneficial ownership** at the level of member states of the "Open Government Partnership" Initiative.
2. **Determine the authority** responsible for shaping and implementing the state policy on beneficial ownership and setup of a mechanism to verify information on UBO.
3. **To create a coordination center or set up a National Coordination Center** for creating a comprehensive mechanism to verify information on UBO within the determined state authority, which will be aimed at setting up a mechanism for the verification of credibility of information on UBO and developing a "global approach" (transnational level) to the verification of information on UBO with the involvement of representatives from state authorities and institutes of civil society and business.
4. To the Verkhovna Rada, the Cabinet of Ministers of Ukraine – **to amend regulatory acts** related to the introduction of the mechanism used to verify UBO.
5. To the Ministry of Digital Transformation – **to analyze data quality in the registers/data sets** in terms of data format validity.

6. Review the **existing system of work with trusts** in terms of correspondence to international FATF and AML standards.

7. **Develop and approve plans of information and methodological support for the proper disclosure and verification of information on UBO**, aimed at the detailed clarification to registrars and notaries (developing a video tutorial and onboarding for the upgraded functionality), executive authorities, business associations, and civil society institutions.

8. Organize and hold awareness-raising and training events **on the issues of identifying UBO, including for scientific and production associations. Develop specific additional recommendations for scientific and production associations concerning the identification of their UBO and requirements for reporting**.

Technical approach

1. Develop a scoring model to be used to verify UBO, which will automatically analyze responses from registers/data sets and generate respective warnings (alerts) for further decision-making, depending on how critical alerts are and the total score.

2. Describe warnings (alerts) depending on the possible responses from registers/data sets and determine how critical each possible response is. Assess the level of leverage for each of the alerts.

3. Develop terms of reference for the implementation of the system of determining the UBO in terms of interaction between:

1. all determined registers/datasets;
2. registrar's software and customer's app;
3. scoring model;
4. data storage (incoming, outgoing, alerts, logs, etc.).

4. Determine responsible state authorities and their structures that will participate in the identification of critical alerts during the verification of UBO.

5. Establish the interoperability of registers, which will allow to synchronize registers, unify requirements for data sets, reduce the number of mistakes when entering data, minimize risks of intentional registration of fictitious or fraudulent companies and simplify automatic data processing.

BENEFITS FOR UKRAINE

- Creating (institutionalization) of the management strategic body for the proper construction of a comprehensive mechanism for verifying information on UBO as a confirmation of the intention to introduce a strategic reform in Ukraine and implement an ambitious challenge.
- Ukraine is the world's first country to create such a structure.
- Ukraine is signaling to other countries, international structures confirming its political will for de-oligarchization.
- Ukraine is introducing the institute of the leadership of the President of Ukraine in the field of disclosing information on UBP at the level of the “Open Government Partnership” Initiative – a new format of the Initiative among member states.
- Ukraine may become the first country in the world to introduce a comprehensive mechanism for verifying information on UBO.
- Ukraine may be the first country in the world to start working at the transnational level: a comprehensive mechanism for verifying information on UBO = other systems, registers,

and databases, which will give impetus to the development of a global (transnational) comprehensive system for UBO information verification.

Adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment

Author: ***Yevhen Krapyvin****, expert at the Centre for Policy and Legal Reform*
Reviewer: ***Volodymyr Petrakovskyi****, expert at the Centre for Policy and Legal Reform*

Following the Revolution of Dignity, another attempt was made to reform law enforcement agencies and the prosecutor's office, which are responsible for internal security in Ukraine. Not all attempts were unsuccessful, but there was a lack of coordination of reforms and no systematicity in their implementation, as well as excessive political influence on these processes. At the same time, one cannot but note that the partial success of the reform of the police and the prosecutor's office, as well as the setup of specialized pre-trial investigation bodies (NABU, State Bureau of Investigation (SBI), Bureau of Economic Security (BEC)), are the achievements that cannot be denied, although the implementation of reforms sometimes did not fully correspond to their intention.

Since 2019, there has been an ongoing debate on the need to adopt the Criminal Justice Reform Concept – a document that would continue the planning tradition at the level of public (state) policy, laid down back in 2008 by the corresponding Concept, approved by the Decree of the President of Ukraine No. 311/2008 dated August 4, 2008, which was successfully implemented (it concerned the new Criminal Procedure Code of Ukraine and criminal offenses, new design of law enforcement agencies, etc.). It was driven by the new revision of the Law of Ukraine "On the Prosecutor's Office", which implemented the coordinating role of the prosecutor's office in relation to pre-trial investigation bodies at the legal level, in accordance with amendments to the Constitution of Ukraine in the field of justice (June 2016). As of early 2022, such document was developed by the working group working under the auspices of the Prosecutor General's Office as a body coordinating the activities of all bodies in the field of criminal justice in the process of preventing and combating crime.

As for the Ministry of Internal Affairs of Ukraine, even though it received a new head in July 2021, the reform process at the level of public (state) policy is not clearly outlined, because the Strategy for the Development of the Ministry of Internal Affairs Bodies (2017–2020) has not been implemented in full. Despite efforts to continue the action plan for its implementation in 2021–2022 (efforts that were partially successful, for example, approval of the 2021–2023 sectoral program for informatization of the MIA system), this was not reflected in formal documents. Therefore, this area of MIA development remains in question, especially under conditions of Russian military aggression against Ukraine.

Since February 24, 2022, both the criminal justice system and the law enforcement system has been refocused on wartime needs in terms of public security. The former focused on investigating international crimes, primarily war crimes, and the latter – on maintaining order in the country and coordinating its activities with the Armed Forces of Ukraine, in particular working with de-occupied territories, countering sabotage and reconnaissance groups in cooperation with the SSU, etc. Despite new challenges faced by the law enforcement system under conditions of war, the latter keeps developing, so the need to regulate, systematize, and guide this process is an essential task for Ukraine's security both during the war and after its completion.

The European Commission Opinion concerning Ukraine (June 17, 2022) contains recommendations, which include the above-mentioned direct recommendations regarding the need for development: "**adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment.**"

Noteworthy, the reform of the criminal justice system is part of the law-and-order sector, as it covers only the prevention of crime and combating crime in Ukraine. The concept of the "law and order sector" or the "law and order system" also covers issues of public safety, preventing and counteracting non-criminal security threats, increasing the sense of safety among the population, etc.

Shortly after, on July 4, the Recovery and Development Plan of Ukraine was presented in Lugano (Switzerland), and the mobilization of resources for its implementation is already underway. Among other things, the Plan developed by the National Recovery Council includes a "Justice" section, which addresses issues related to the development of the criminal justice system in the context/after the end of armed conflict as part of the law-and-order sector.

Thus**, the EU recommendation covers the law-and-order sector consisting of both the activities of criminal justice bodies coordinated by the Prosecutor General's Office and the public security block, where the leading role belongs to the Ministry of Internal Affairs as a body shaping the state policy in the field of maintaining public security and order and providing police services to the population.**

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

Speaking of the need to adopt an overarching strategic plan of reform of the entire law enforcement sector, it can be adopted in the near future based on the work already done by the Ministry of Internal Affairs (completion of the implementation of the Strategy for the Development of the Ministry of Internal Affairs Bodies by 2020), the Ministry of Justice (within the "Justice" sector of the Recovery Plan of Ukraine), and the Office of the Prosecutor General (draft Criminal Justice Reform Concept until 2030). It does not matter so much whether these will be three (or more) separate documents or one comprehensive document with a relevant division into responsibility areas. In our opinion, the European Commission recommendation may be fulfilled using both ways. Let us review each of these documents in more detail.

1. Completion of the implementation of the Strategy for the Development of the Ministry of Internal Affairs Bodies by 2020

As noted above, the Strategy for the Development of the Ministry of Internal Affairs Bodies by 2020 has been implemented only partially. The MIA of Ukraine gathered proposals for the Action Plan for 2021 and has certain developments concerning pilot projects on security within communities.

Hence, the summarizing of security initiatives may serve as the basis for the adoption of the Strategy for the Development of the Ministry of Internal Affairs Bodies by 2022–2025, taking into account new challenges faced by Ukraine under conditions of armed conflict.

For instance, the Ministry of Internal Affairs of Ukraine is currently developing a draft Decree of the Cabinet of Ministers of Ukraine "On the National Safe Community Concept", which provides for the regulation of the issue of the participation of public organizations ensuring security in territorial communities on a volunteer basis, which should replace voluntary public order organizations (VPOO) that were set up temporarily, for the war period, etc.

2. Proposals within the "Justice" sector of Ukraine's Recovery Plan

The "Justice" section within Ukraine's Restoration Plan consists of a subsection related to the improvement of the system of prosecution authorities and the development of a system of criminal justice authorities that will be part of the law enforcement sector.

In particular, the measures are adapted to the requirements of the war, because it is expected to solve such issues as the conduct of criminal proceedings in a state of emergency, standardization of the rules of jurisdiction with account for limits for improving the activities of law enforcement agencies, enhancement of the institute of criminal proceedings enforcement measures, additional staffing of the institute of criminal offenses, improvement of the principles of operative and investigative activities of law enforcement agencies. It is anticipated that the achievement of specified objectives will shape within the country the policy of preventing criminal offenses instead of responding to already committed ones.

3. Draft Criminal Justice Reform Concept until 2030

The Prosecutor General's Office has already developed a draft Criminal Justice Reform Concept for 2022–2030 and was finalizing work on it, in particular, coordinating the draft Concept with other authorities operating within the system of criminal justice, just before the Russian invasion on February 24, 2022.

The Draft Concept includes areas of further development of the criminal justice system, in particular, it determines the procedure for developing and implementing a criminal law policy, implementing a coordinating role in the field of prevention and counteraction of criminal offenses by the prosecutor's office, resolving critical issues of the criminal, criminal procedure and criminal enforcement legislation, etc. The adoption of this document is to summarize the achievements of criminal justice reform since the enactment of the Criminal Procedure Code of Ukraine in 2022, identify regulatory and organizational gaps, and answer the question of how the system will be improved in the next ten years.

Currently, the finalization of the draft Concept is underway with account for issues raised by the war, primarily those related to the military (investigation of criminal offenses in the Armed Forces of Ukraine) and military justice (investigation of war crimes and crimes of aggression).

What else do the authorities need to do to fully follow the recommendations and why?

From the formal viewpoint, Ukraine can simply adopt the above developments and consider one of the European Commission's recommendations fulfilled. Beyond that, the experience of considering (especially in political life) documents in the field of public (state) in the reform of authorities shows shallow respect for their status and a lack of understanding of the reasons for the public (state) policy cycle existence and the need for all decisions to be based on serious analysis and planning.

Therewith, the participation of the public, in particular expert and scientific circles, has already had a positive effect on the elaboration of the above-mentioned draft documents and developments. Currently, **the key to this is a preliminary discussion of draft texts of individual documents in the field of law and order or a single document – the Strategy for the Law Enforcement Sector Development (law and order sector) in Ukraine, with their subsequent adoption as soon as possible (beginning of 2023).**

At the same time, we cannot just take pre-war developments and start implementing them, although most of the mentioned developments should be adopted exactly in this form, because security challenges that existed before February 24, 2022, are still there. Indisputably, this is right, because crime, fighting crime, effective investigation, justice issues, etc. will not disappear.

At the same time, **Ukraine has already faced new challenges** in the form of the need to bring to justice persons guilty of committing international crimes, namely war crimes and the crime of aggression. First of all, the problem is evidenced by more than 32,000 criminal proceedings under this qualification, as well as the public demand for the restoration of justice, which includes both the punishment of perpetrators and compensation for the damage caused by the war. We also understand that after the de-occupation of the south and the east of our country, the number of these crimes will grow by many times, and each new day of the armed conflict increases this number considerably.

Furthermore, when it comes to internal security, the **country at war still suffers from crime**, as the number of registered criminal offenses reduced by only 14% (in the first 6 months of 2022 as compared to the first 6 months of 2021). At the same time, when speaking of the crimes against the fundamentals of the national security of Ukraine, their quantity increased from 332 offenses to 10.4 thousand (an increase by 31 times, yet the number of criminal proceedings sent to the court with an indictment increased by only 5 times). Hence, all other areas of public safety, such as the use of preventive measures during rail travel or stay at places of mass gathering of people, etc., require decisive responses.

Therefore, **the overall security situation has deteriorated due to external factors, resulting in both internal security threats associated with armed conflict and the need to respond to external threats (war) using legal instruments, for which the law-and-order system registers and investigates war crimes and works on compensating damage caused by them.**

From the standpoint of developments in the field of law enforcement sector that were not considered in the aforementioned drafts, the following critical focus areas of reform should be noted given the armed conflict in Ukraine.

1. In the context of *martial justice*:

- determine which law enforcement agencies have to conduct a pre-trial investigation of war crimes – whether a specialized body or interdepartmental groups composed of various bodies;
- provide the required resources for the independent specialization of investigators/detectives from these bodies and additional safety measures or other guarantees for employees of such body(-ies);
- ensure institutional independence of the prosecutor's office, which carries out procedural management in this category of cases (either in the format of a Department within the Prosecutor General's Office, or a Specialized Prosecutor's Office, such as Specialized Anti-Corruption Prosecutor's Office, with similar additional activity guarantees);
- determine which courts will consider this category of cases: whether judges of district courts of general jurisdiction, or whether it is necessary to talk about the setup of a specialized court for consideration of war crimes within the Ukrainian judiciary (we will draw an analogy with the High Anti-Corruption Court of Ukraine and the future High Intellectual Property Court);
- improve the system of international legal aid in criminal proceedings (Interpol, Europol, enforcement of verdicts, etc.).

2. In the context of *military justice:*

- temporarily, for the period of martial law, provide the Military Law-Enforcement Service (MLES) with the functions of a pre-trial investigation body for the effective prevention and counteraction of war crimes that undermine the combat power of the Ukrainian army;
- develop the specialization of military prosecutors while retaining a single status of the prosecutor within the prosecution system;
- adopt organizational and management decisions for the unimpeded access of investigators of the State Bureau of Investigation (or in case of jurisdiction change – MLES investigators) and military prosecutors to war crimes scenes, as well as the ability to carry out investigative and procedural actions against perpetrators.

3. In the context of *public order:*

- reduce the negative political influence on the leadership of law enforcement agencies of all levels and provide more opportunities for local heads of law enforcement agencies to take the initiative in matters of security organization in their region, considering military threats, proximity to the contact line, the allocation of resources by the state, the rear load on the infrastructure of shifted economic and social processes, etc.;
- implement a comprehensive normative regulation of the activities of public order protection organizations (VPOO, public funds, municipal guards, etc. – to unify the status and provide a real opportunity to work and ensure order in the consolidated community);
- provide actual opportunities for work to the community police officer as an independent link of the police service, which is supported by the population and partially funded by it at the grassroots level;

- considering the requirements of martial law, develop and implement comprehensive measures for the prevention of terrorist, sabotage and other acts in public places, especially during the performance of functions by critical infrastructure entities.

Recommendation 5:

Implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation

*Author: **Ihor Burakovakyi**, Co-chairman of the RPR Coalition Board, director at the Institute for Economic Research and Policy Consulting*
*Reviewers: **Ihor Kulishko**, Board Manager at the Centre for Policy and Legal Reform; Vadym Miskyi, Program Director at Detector Media PO, **Mykola Khavroniuk,** Director for Scientific Development and Board Member at the Centre for Policy and Legal Reform.*

Ukraine applied to join the EU on February 28, 2022, i.e., on the fifth day after the full-scale Russian aggression.

On June 17, 2022, the European Commission promulgated its opinion to recognize Ukraine's European prospect and grant Ukraine the status of a candidate for membership in the EU.

On June 23, the European Parliament adopted a resolution calling to provide the status of the candidate for membership in the European Union and supported the European prospect for Georgia. On the same day, the European Council granted this status to Ukraine.

One of the EC recommendations was the requirement to "implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation."[2]

The oligarchic system, that developed in Ukraine, is the result and factor of political corruption, distorts economic proportions, including through the development of monopolies, leads to inefficient distribution of resources in society, inhibits political and economic reforms, etc. These and other issues are outlined in detail in the works of Ukrainian and foreign experts.[3]

The Recommendation of the European Commission concern the effective Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having

[2] " … implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation" in EU Commission's Reommendations for Ukraine's EU candidate status 17.06.2022 // https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

[3] Balabushko, Oleksii; Betliy, Oleksandra; Movchan, Veronika; Piontkivsky, Ruslan; Ryzhenkov, Mykola. 2018. Crony Capitalism in Ukraine : Relationship between Political Connectedness and Firms' Performance. Policy Research Working Paper;No. 8471. World Bank, Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/29900; John Lough. The system of crony capitalism in Ukraine. The complexity of system dimantling. Chatham House (the Royal Institute of International Affairs, London), Russia and Eurasia Programme, July 2021 https://www.chathamhouse.org/sites/default/files/2021-11/2021-07-01-ukraine-crony-capitalism-ukrainian-lough.pdf

Considerable Economic and Political Weight in Public Life (Oligarchs)" dated September 23, 2021 (hereinafter referred to as the Law on Oligarchs).[4]

The Law provides for the creation of legal and organizational foundations for the functioning of the system of prevention of excessive influence of persons having economic and political weight in public life (oligarchs), the content and procedure for exercising an influence on these persons.

Such a system is a tool for overcoming the conflict of interests caused by the merger of politicians, the media and big business, making it impossible to use political power to increase one's own capital, ensuring the national security of Ukraine in the economic, political and informational spheres, protecting the constitutional rights and freedoms of the citizen, protecting democracy, ensuring the state sovereignty and avoiding cases of manipulation of the consciousness of citizens by deliberately distorting information in order to gain access to resources owned by the Ukrainian people.

The Law on Oligarchs of September 23, 2021, is not the first attempt to destroy the oligarchic system. On April 7, 2015, a "Draft Law on the Fundamentals of the State De-Oligarchization Strategy of Ukraine for 2015–2020 was registered with the Verkhovna Rada (Strategy for De-Oligarchization of Ukraine)", No. 2573. However, this draft law was withdrawn from consideration.

What has been done so far?

On September 10, 2021, the then Chair of the Verkhovna Rada Dmytro Razumkov, submitted the draft law "On Prevention of Threats to National Security Associated With Excessive Influence of Persons Having Considerable Economic or Political Weight in Public Life (Oligarchs)" (No. 5599) for examination by the European Commission For Democracy through Law (Venice Commission) at the request of the Parliament Commissioner for Human Rights Liudmyla Denisova and representatives of four opposition factions.

September 23, 2021. The Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)" was adopted.[5]

This Law takes effect on the day following the day of its publication and shall be enforced after six months of its enactment. The Law shall lose effect 10 years after its enactment.

This allows to conclude that the issue of the excessive influence of certain persons will be resolved, whereafter this legal and institutional system set up to implement the corresponding Law shall lose effect. The question arises as to the creation of safeguards for the emergence (or minimization of the risks of emergence) of the excessive influence of relevant persons after the law loses effect.

[4] Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)" //
(Bulletin of the Verkhovna Rada of Ukraine (BVR), 2021, No. 51, p. 421)

[5] Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)" //
(Bulletin of the Verkhovna Rada of Ukraine (BVR), 2021, No. 51, p. 421)

To implement the Law on Oligarchs, the Cabinet of Ministers of Ukraine approved the Action Plan on Preventing Abuse of Excessive Influence by Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs) on November 24, 2021.[6]

As of now, this is the only document containing a list of draft laws, drafts of other regulatory acts and proposals to international treaties to which Ukraine is a party, which must be adopted to overcome the excessive influence of persons with significant economic and political weight in public life.

Detailed information on the state of Plan implementation is available in Annex 1.

It is complicated to assess the implementation of a series of Plan items as the authors failed to find the respective information in the process of preparing this report.

On June 29, 2022, the National Security and Defense Council of Ukraine approved the Regulation on the Register of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs). On that day (June 29, 2022), the President signed Decree No. 459/2022 "On Approving the Regulation on the Register of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs), the Procedure for its Formation and Maintenance."[7]

Under the Decree, the scope of functionality of the Register of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs) stipulated by the Regulation shall be implemented in two stages:

Stage 1. Ensuring the functioning of the Register – enabling a basic set of Register features to ensure compliance with legislative requirements.

Stage 2. Ensuring the development of the Register and further expansion of Register functionality to the full extent stipulated by the scope of the Regulation.

On July 28, 2022, the National Council of Television and Radio Broadcasting of Ukraine approved the Procedure for verifying the business reputation of the buyer (potential buyer) of the media outlet.[8]

What else do the authorities need to do to fully follow the recommendations and why?

1. The law should be implemented taking into account Venice Commission opinions. There are no such opinions so far. Evidently, future opinions and recommendations of the Venice Commission may necessitate changes to the corresponding Law and associated relevant legislative and regulatory acts, as well as the schedule for processing of respective documents.

[6] "On Approving the Action Plan on Preventing Abuse of Excessive Influence by Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)". Resolution of the CMU dated November 24, 2021, No. 1582-p. Source: https://zakon.rada.gov.ua/laws/show/1582-2021-%D1%80#Text

[7] Decree No. 459/2022 "On Approving the Regulation on the Register of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs), the Procedure for its Formation and Maintenance": https://www.president.gov.ua/documents/4592022-43085

[8] National Council of Television and Radio Broadcasting of Ukraine. On Approving the Procedure for Verifying the Business Reputation of the Buyer (Potential Buyer) of the Media Outlet. Decision No. 495, dated July 28, 2022. Source: https://zakon.rada.gov.ua/laws/show/z0865-22#Text

2. Until now, the Register of Oligarchs stipulated by the Law has not been created. The lack of this document indicates issues with the development of an effective methodology for attributing a specific person to oligarchs.

On the other hand, the change in the economic situation of the owners of relevant assets resulting from the war objectively makes it difficult to use the relevant criterion.

3. De-oligarchization as depriving persons with considerable economic and political weight in the public life of excessive influence to prevent threats to national security, does not mean depriving relevant persons of the right to formulate their vision of respective issue resolution, evaluate corresponding decisions of state authorities or participate in the development and adoption of regulatory acts.

On the other hand, large business entities are equal national producers, just as other economic agents, and as such, they have the right to respective treatment on the part of the state.

This is why in 2020–2021, several attempts were made to legislatively regulate the interaction between the authorities and society in terms of advocacy of the interests of certain stakeholders, and some initiatives appeared even before the adoption of the Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)." In particular, on November 6, 2019, the Committee on Anti-Corruption Policy set up a working group for preparing a Draft Law of Ukraine on lobbyism; similar initiatives emerged in other committees too. The goal of these initiatives is the legislative definition of the framework of lobbying activity, in particular, its content, the legal status of its participants, lobbying mechanisms and tools, etc. Noteworthy, authors of existing initiatives generally agree on many things, when it comes to the understanding of lobbying activity, but there are differing views and proposals concerning many aspects.

At the same time, there is an opinion among politicians and experts regarding the impracticality of adopting such a Law due to fears that it may complicate the activities of public organizations engaged in advocating the solution of socially important issues at various levels. On the other hand, there are warnings about the danger of using public organizations for lobbying by stakeholders.[9]

Overall, we believe, the Law on Lobbying is needed as an anti-corruption element in general and one of the tools during the period of elaboration and implementation of plans for Ukraine's post-war recovery in particular. After all, corrupt schemes for the use of funds will negatively affect the implementation of relevant projects and cooperation with foreign partners helping Ukraine recover after the war.

4. Due to the adoption of anti-oligarchic legislation, the mechanism of financing political parties in Ukraine needs clarification. This can be done during the work on Proposals of the President of Ukraine to the Law "On Amendments to the Law of Ukraine "On Political Parties in Ukraine" regarding the improvement of the legal regulation of financing the activities of political parties."

5. The procedure for submitting by public officials a declaration about contacts with persons with considerable economic and political weight in public life (oligarchs), the storage and use of relevant information, and liability of public officials for violating the requirements for submitting such a declaration, requires statutory regulation.

---

[9] Taras Shevchenko: Ukraine does need the Law on Lobbying. May 14, 2020 // https://cedem.org.ua/news/zakon-pro-lobizm-ne-potriben/

Annex 1.

Item of the Plan	**Objectives and Measures**
1.	**Objective:** Implement the Law of Ukraine "On Prevention of Threats to National Security Associated with Excessive Influence of Persons Having Considerable Economic and Political Weight in Public Life (Oligarchs)." **Measures:** Decree of the President of Ukraine No. 459/2022 "On Approving the Regulation on the Register of Persons with Considerable Economic and Political Weight in Public Life (Oligarchs), the Procedure for its Formation and Maintenance." A tender was held for the development of the software "Register of persons having significant economic and political weight in public life (oligarchs)". National Council of Television and Radio Broadcasting of Ukraine. On Approving the Procedure for Verifying the Business Reputation of the Buyer (Potential Buyer) of the Media Outlet. Decision No. 495, dated July 28, 2022.
2.	**Objective:** Strengthen the institutional capacity of the Anti-Monopoly Committee **Measures:** Draft Law "On Amending Some Legislative Acts of Ukraine on Improving the Activities of the Anti-Monopoly Committee of Ukraine" (registration number 5431) **Status:** a comparative table provided (second reading) Draft Law "On Amending the Code of Ukraine on Administrative Offenses Concerning the Responsibility for Violating the Legislation on the Protection of Economic Competition" (registration number 5432) **Status**: included on the agenda on July 27, 2022 Draft Law "On Amending the Code of Ukraine on Administrative Offenses Concerning the Responsibility for Violating the Legislation on the Protection of Economic Competition" (registration number 5432 dated May 13, 2021, alternative draft). **Status**: included on the agenda on June 1, 2021
3.	**Objective:** Ensure the transparency of activities of people trying to influence the content of legal acts under development or managerial decisions (lobbying activities) and restrict corruption risks associated with such activities. **Measures:** Draft Law on State Registration of Lobbying Entities and Lobbying in Ukraine, No. 3059 dated March 17, 2020. **Status**: being processed by the committee. Draft Law on Lobbying, 3059-1 dated February 28, 2020. **Status**: on March 17, 2021, the draft law was returned for finalization to the initiative entity.

	The draft law on legal and transparent regulation of lobbying activities, No. 3059-2 dated March 2, 2020. **Status**: on March 17, 2021, the draft law was returned for finalization to the initiative entity. Draft Law on lobbying activities, No. 3059-3 dated March 3, 2020. **Status**: on March 17, 2021, the draft law was returned for finalization to the initiative entity.
4.	**Objective:** Ensure fair and transparent effective justice **Measures**: Strategy for the development of the justice system and constitutional judiciary for 2021–2023, approved by the Decree of the President of Ukraine No. 231 dated June 11, 2021. **Status**: under implementation Action Plan on the implementation of the Strategy for the justice system and constitutional judiciary for 2021–2023, approved by the Committee for Legal Reform **Status**: under implementation.
5.	**Objective:** Ensure the safety of the electricity supply **Measures**: Draft Law of Ukraine "On Amending Some Laws of Ukraine (On the Regulation of the Security of Electricity and Natural Gas Supply)." Deadline: March 2022. Comment: On December 24, 2021, the Ministry of Energy published a Draft Law of Ukraine "On Amending Some Laws of Ukraine (On the Regulation of the Security of Electricity and Natural Gas Supply)."
6.	**Objective:** Ensure the safety of the natural gas supply **Measures**: Draft Law of Ukraine "On Amending Some Laws of Ukraine (On the Regulation of the Security of Electricity and Natural Gas Supply)." Deadline: March 2022. Comment: On December 24, 2021, the Ministry of Energy published a Draft Law of Ukraine "On Amending Some Laws of Ukraine (On the Regulation of the Security of Electricity and Natural Gas Supply)."
7.	**Objective:** Ensure the integrity and transparency of the wholesale energy market **Measures**: Draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine on the Implementation of Provisions of the European Union Legislation on Integrity, Transparency and Prevention of Competition on Wholesale Markets." Deadline: November 2022. Comment: back in the day, to address this issue, several legislative initiatives were registered with the VRU: 1. Draft Law on Amending Some Legislative Acts of Ukraine on the Implementation of Provisions of the European Union Legislation on Integrity, Transparency and Prevention of Competition on Wholesale Markets. Registration number: 4503 dated December 16, 2020.

	Status: a conclusion on deviation provided by the Committee. 2. Draft Law on Amending Some Legislative Acts of Ukraine on the Implementation of Provisions of the European Union Legislation on Integrity, Transparency and Prevention of Competition on Wholesale Markets. Registration number: 4503-1 dated December 31, 2020. Status: a repeated opinion provided by the Committee on June 9, 2021.
8.	**Objective:** Reduce the influence of certain groups and individuals on the energy sector and abuse of such influence. **Measures**: Integration of the energy sector into the political, technological, technical, economic and legal space of the EU. Deadline: September 2023. **Comment:** currently, it is hard to assess the state of this objective's implementation.
9.	**Objective:** Create a system of energy security **Measures:** Approving an action plan for the implementation of the Energy Security Strategy. Deadline: February 2022. **Status:** n/a. Approving the methodology for assessing the level and threats to Ukraine's energy security Deadline: August 2022. **Status:** n/a. Preparing the assessment of the level and threats to Ukraine's energy security. Deadline: January 2023. **Status:** n/a.
10.	**Objective:** Developing a list of critical infrastructure facilities of the fuel and energy complex. **Measures**: Approving a list of critical infrastructure facilities of the fuel and energy complex, including privately owned facilities, and their categorization. Deadline: December 2021. **Status**: documents not accepted yet. Comment: On October 9, 2020, the CMU adopted Resolution No. 1109 “Some Issues of Critical Infrastructure Facilities”. This is the last document of this type, which took effect on December 31, 2021. In general, relevant issues are regulated by the Law of Ukraine No. 1882-IX “On Critical Infrastructure” dated November 16, 2021, which came into force on June 15, 2022.
11.	**Objective:** Reducing the level of oligarch's abuse of influence on television and radio broadcasting. **Measures**: Draft Law of Ukraine No. 2693-д “On Media” dated July 2, 2020. **Status**: accepted as the basis on August 30, 2022; the draft law is being prepared for the second reading. Comment: deadline – December 2022.
12.	**Objective:**

	Intensify control over the financial transactions of oligarchs. **Measures**: Draft Law of Ukraine "On Amending Article 12 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" Concerning the Intensified Control Over the Activities of Oligarchs." Initiator: CMU Comment: deadline – December 2022. Draft Law of Ukraine "On Amending Some Law of Ukraine Concerning the Enhancement of Mechanisms to Verify and Identify Information on Ultimate Beneficial Owners of Business Entities Owned by Oligarchs." Initiator: CMU Deadline: December 2022.
13.	**Objective:** Improve the mechanism for verifying and identifying information on ultimate beneficial business entities owned by oligarchs. **Measures**: Draft Law of Ukraine "On Amending Some Law of Ukraine Concerning the Enhancement of Mechanisms to Verify and Identify Information on Ultimate Beneficial Owners of Business Entities Owned by Oligarchs." Deadline: December 2022.
14.	**Objective:** Introduce a comprehensive anti-corruption program. **Measures**: Draft Law of Ukraine "On the Principle of State Anti-Corruption Policy for 2021–2025", registration number 4135 dated September 21, 2020. Draft law initiator: CMU Status: The Law "On the Principle of State Anti-Corruption Policy for 2021–2025" was adopted on June 20, 2022. Draft state anti-corruption program for Anti-Corruption strategy implementation. Deadline: April 2022. Comment: on September 14, 2022, the National Agency on Corruption Prevention started a series of public debates about the draft State anti-corruption program for 2023–2025 (SACP).
15.	**Objective:** Minimize the potential oligarchic influence on political parties and election campaigns. **Measures:** Draft law on amending the Law of Ukraine "On Political Parties of Ukraine." Deadline: September 2022. Comment: under development.
16.	**Objective:** Enhance the efficiency of legal responsibility mechanisms as a means of restricting the influence of oligarchs. **Measures**: The draft law on amendments to the Criminal Procedure Code of Ukraine, the Code of Ukraine on Administrative Offenses and the Law of Ukraine "On the High Anti-Corruption Court." Deadline: June 2022. Comment: under development.

17.	**Objective:** Bring railway cargo transportation within Ukraine to the economically reasoned level. **Measures**: Developing a relevant order of the Ministry of Infrastructure. Deadline: December 2022. Comment: evidently, a complete resolution of the pricing issue is only possible during the post-war period.
18.	**Objective:** Establish an economically-feasible rate for re-loading export cargo at the state enterprise "Yuzhnyi Sea Trade Port". **Measures**: Introducing a single economically-feasible approach to the establishment of the rate for re-loading of export cargos at the state enterprise "Yuzhnyi Sea Trade Port". Deadline: February 2023. Comment: evidently, a complete resolution of the rate issue is only possible during the post-war period.
19.	**Objective:** Ensure the functioning of a competitive market of air transportation market. **Measures**: The creation of a national airline is anticipated. Deadline: December 2022. Comment: no official information could be found on these actions. On November 25, 2021, the Ukrainian Ministry of Infrastructure and Airbus signed a memorandum of understanding concerning the creation in Ukraine of the international airline – Ukrainian National Airlines (UNA) during the forum "Major Construction –Aviation and Tourism".
20.	**Objective:** Preventing oligarchs from abusing the international legal tools used to bring the state of Ukraine to justice, which were created to attract foreign investments and protect foreign investors **Measures**: The implementation of a number of steps is expected during 2022–2023, which can be evaluated later.

Recommendation 6:

Tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator

Author: ***Ihor Rozkladai****, Deputy Head of the Centre for Democracy and Rule of Law*
Reviewer: ***Vadym Miskyi****, Program Director at Detector Media PO*

Freedom of speech and expression is one of the cornerstones of democracy. Without freedom of speech, free debates on important social, economic, and political problems, internal reflection and dialogue, as well as support for cultural issues, and protection of vulnerable groups, children, and national minorities are impossible. The main player in this area is the media, which should provide consumers with up-to-date and verified information about socially important phenomena, conduct analysis, ensure discussions, and carry an educational and entertaining function.

As early as 2005, Ukraine, as part of its obligations to the Council of Europe, undertook to transform state television and radio companies into public broadcasting channels; guarantee transparency of media ownership; create a level playing field for all mass media by revising the 1997 law on state support of mass media and social protection of journalists; ensure compliance of the new version of the law on television and radio broadcasting with the standards of the Council of Europe and recommendations of its experts.

After the Revolution of Dignity, Ukraine finally created public broadcasting, which played an important role during the war of aggression by the Russian Federation. At the same time, the issue of frankly outdated legislation regulating traditional media persists, and not-so-new forms of media that exist on the Internet remain outside the regulation of media legislation. The importance and influence of the media sphere could not fail to attract the attention of the European Commission. Thus, on June 17, 2022, the European Commission provided an Opinion where it recommended granting Ukraine the status of a candidate for membership in the EU. The European Commission's opinion is based on the Copenhagen Criteria EU3 (1993) and the fulfillment of the EU Association Agreement requirements.

On June 23–24, 2022, the European Council supported the conclusions on Wider Europe, which in particular granted Ukraine and Moldova the status of candidate countries. The Opinion of European Commission notes that in 2022, Ukraine has to complete 7 steps related to justice, strengthening the fight against corruption, protecting the rights of national minorities, fighting against the influence of oligarchs, and adopting legislation on the media. Only the fulfillment of these requirements will enable the Council to determine further steps regarding Ukraine's further integration.

In the context of the media sphere, the European Commission noted that Ukrainian citizens enjoy the benefits of freedom of expression, and media freedom has gained a significantly stronger foothold in recent years, especially thanks to online media. However, the European Commission notes that media controlled by oligarchs have a disproportionate influence, especially in the television sector. In the context of the war, Ukraine has a good balance between protecting media freedom and countering Russian hybrid and massive disinformation attacks, including broadcast media in Ukraine. The European Commission

also noted progress in the development of the information society and media, in particular, the adoption of laws on electronic communications and the telecommunications regulator and their implementation since 2022. However, in terms of media, Ukraine should complete the reform of legislation on the media, especially in the context of the independence of the media regulator, transparency of media ownership and equal conditions on the market.

Noteworthy, the obligation to reform the audiovisual sector is contained in the Association Agreement's subsection of Section V "Economic and sectoral cooperation", chapter 15 "Policy on issues of the audiovisual sector" (Articles 396–398)

Under this chapter, Parties provide for the promotion of development and cooperation:

- promoting the audiovisual industry in Europe and encouraging co-production in the field of cinematography and television;
- preparing journalists and other media sector employees;
- supporting mass media (public and private), with the aim of strengthening their independence, professionalism and connections with other European mass media;
- gradual approximation to the EU law and regulatory framework, as well as international legal documents in the field of audiovisual policy (Directive No. 2010/13/EC of the European Parliament and of the Council of March 10, 2010).

As far as the latter is concerned, Annex XXXVII to Chapter 15 stipulates that provisions of the Directive must be implemented within 2 years from the date of enactment of this Agreement. Hence, Ukraine should have implemented this obligation by September 2019.

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

The requirement of the European Commission in its Opinion reads as follows:

Overcoming the influence of entities with vested interests through the adoption of the law on the media that aligns Ukrainian legislation with the EU Audiovisual Media Services Directive and empowers an independent media regulator.

The formation of the Ukrainian media market is significantly different from the countries of Eastern and Central Europe, and even more so from Western Europe, where the media has undergone an evolutionary development of the entire environment. Early in their independence stage in the late 1980s – the beginning of the 1990s, many of these countries engaged state-owned broadcasting in the form of enterprises, which were eventually transformed into public broadcasting. The market of commercial radio and TV stations developed in parallel. Ukrainian state broadcasting existed in the form of incorporation into the executive power, and at the time of independence, it became a company with powerful functions of issuing broadcasting permits to other entities. The non-market approach to audiovisual and print media in the early days of our independence distorted the course of development and paved the foundation for the possibility of the political and economic model of this sector's existence, instead of running a media

business. This situation disabled the existence of self-regulation in the media sphere, and the regulator, the National Council on Television and Radio Broadcasting of Ukraine was repeatedly compromised by scandals, such as the persecution of Channel 5 during the Orange Revolution, forcing out media from digital airwaves during the 2012 competitions, etc.

A version of the Law of Ukraine "On Television and Radio Broadcasting" adopted in 2006, and a year earlier – the Law of Ukraine "On the National Council on Television and Radio Broadcasting of Ukraine", although formally submitted as part of the fulfillment of obligations to the Council of Europe, in reality, did not address any issues, but rather added new ones, one of which was the lack of an adequate mechanism for the transition to over-the-air digital broadcasting.

Failures in the transition to digital broadcasting, the corruption component and lack of transparency showed that the current law did not fulfil its function. Under public pressure, the process of preparing a new version of the law on television and radio broadcasting started in 2012. Already on June 6, its Concept was approved. This day can be considered a start of the development of the new law on media.

In 2015, amendments were made to the Law on Television and Radio Broadcasting in terms of transparency of ownership, which required licensees to submit reports and disclose ownership schemes. However, the amendments turned out to be only partially effective, because the National Council could not apply sanctioning mechanisms for the concealment of persons within the ownership scheme due to their absence.

Since 2019, a working group has continued developing the draft law, but with the expansion of its scope not only to electronic but all types of media, including the online press. As a result of numerous negotiations and agreements, on July 2, 2020, draft law 2396-д "On Media" was registered with the Parliament, and on August 30, 2022, it was adopted in the first reading. The draft law received over 2,000 amendments from MPs and is now being prepared for the second reading. The draft law combines 2 main ideas: to fulfil obligations regarding the requirements of the directive and to update media legislation, including to implement the 2005 Council of Europe recommendations.

In case of the successful adoption of the draft law, Ukraine will partially fulfil its obligation under the Association Agreement to comply with the European Commission's opinion.

What else do the authorities need to do to fully follow the recommendations and why?

The adoption of the law will start the stage of durable implementation. First of all, this is due to a paradigm shift in the attitude towards the media as a form, and to the entity in the field of media as a service provided to consumers. In addition, the range of entities falling into the field of regulation is changing, and the regulator is significantly strengthening its powers, which transform from exclusively repressive to more interactive, where the goal is not to punish but to encourage compliance with the law and develop co-regulation rules.

The first step at the stage of the second reading should be deferred parallel work on a number of amendments to the law on advertising. Since the directive on audiovisual media services contains a section that will not be included in the draft law on media and specifically refers to the scope of the Law of Ukraine on Advertising in the national legislation of Ukraine. It concerns TV advertising and TV sales. These sections require adaptation by introducing a separate draft law. Such draft law should be developed and adopted as soon as possible to fulfil the requirement of the EU Opinion on the media. It is worth noting that the development of the draft law was not possible before because this draft law is directly related to the terminological basis of the draft law on media. Deadline – end of 2022.

The second step is implementation. After the signing and publication of the law on media, several dozens of acts of both the National Council and of the ministerial level are to be reviewed or developed, which will be aimed at launching mechanisms stipulated by the new law, as well as at eliminating mechanisms that will no longer exist, such as the registration of news agencies. Deadline – 2024.

The third stage is training. The efficiency of the law is directly related to the process of training interested players, both the office of the National Council and licensees and representatives of the media sector. Given the scale and complexity of this act, effective implementation is related to the understanding and high-quality training of specialists. Deadline – at least 5 years.

The fourth step is the protection of national interests. A separate issue causing numerous discussions with both European experts and activists is the issue of protecting the national space, namely, maintaining restrictive and prohibitive functions and lists of persons who pose a threat to national security. Obviously, the voluntary approach to blocking the most odious representatives of the agitprop must be applied in compliance with democratic principles, and above all, the principles of legality and substantiation. It is also important to ensure a recurrent review of sanctions to confirm the adopted decisions on inclusion in the restrictive lists.

Recommendation 7:

Finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms

Author: ***Yuliia Tyshchenko****, expert at the Ukrainian Center for Independent Political Research*
Reviewer: ***Alona Lunova****, advocacy manager at ZMINA Human Rights Center.*

One of the EU evaluation criteria in terms of promoting European integration in Ukraine is the reform of legislation on national minorities according to the recommendations of the Venice Commission of the Council of Europe, it is proposed to "*complete the reform of the legal framework for national minorities, which is currently being prepared, in accordance with the recommendations of the Venice Commission, and adopt mechanisms for its immediate and effective implementation*."

The experience of EU expansion in previous years (Romania, Bulgaria, Croatia, etc.) showed that steps towards membership were connected with the modernization of legislation in the field of protection and development of the rights of national minorities. This process took place along with a dialog with relevant European institutions (Croatia, Bulgaria, Romania, etc.).

At the end of August 2022, Deputy Prime Minister for European Integration, O. Stefanishyna, stated that "the government plans to adopt a law on national minorities from the package of EU conditions for Ukraine as a framework law, and then elaborate a state program with account for the interests of each minority." Therefore, the adoption of comprehensive legislation, the modernization of legislation in the field of protecting the rights of national minorities is associated with issues of further democratization of society and European integration tools.

In the Ukrainian context, updated legislation on national minorities, indigenous peoples, education in the languages of national minorities, and the definition of clear mechanisms for the exercise of the rights of national minorities in the social, educational, and cultural spheres have repeatedly been presented as relevant tasks by representatives of minorities, international organizations, and governments of other countries (Hungary, Romania, Bulgaria – the issue of education in the languages of national minorities, consolidation of districts during the reform of the district system – Bulgaria, Hungary, Romania).

The need to adopt a new law on national minorities was discussed in numerous recommendations of international organizations and institutions (OSCE High Commissioner for National Minorities, Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committees of Ministers of the Council of Europe, etc.). Hungary's criticism of the introduction of new legislation in the field of education in Ukraine (2017) received considerable international attention. According to the government of Hungary, Ukraine's decisions in the field of the language of education narrowed the rights of the Hungarian minority in terms of the study of Hungarian in educational institutions. This criticism has led to the serious deterioration of bilateral relations. Despite the criticism

of language and educational initiatives by Romania and Bulgaria, a dialogue was started at the initiative of all parties, memoranda were signed with the Ministry of Education and Science to address relevant issues.

What did the authorities do to implement the recommendations? Which of the completed steps needs to be improved?

In 2017–2022, the Verkhovna Rada Committee on Human Rights, Deoccupation and Reintegration of Temporarily Occupied Territories, National Minorities, and Interethnic Relations worked on a new draft law on national minorities. Consultations were held with representatives of national minorities and experts. In 2021, President of Ukraine V. Zelenskyi spoke on the need to develop a new law on national minorities. A proposal to use the term "national communities" instead of the usual "national minorities" was announced, which was perceived by the expert environment with criticism.

In 2022, the National Council for the Recovery of Ukraine from the War developed an Action Plan for post-war recovery and development of Ukraine. Working groups' proposals included issues of protection of the rights of persons belonging to national minorities and indigenous peoples. In particular, these components were part of the developments of the Human Rights group. Under the Strategy for Deoccupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol (2021), the important focus area of state policy on temporarily occupied territories is to promote the preservation of the ethnic and religious identity of Ukrainian citizens living in the temporarily occupied territory, the creation of conditions, in particular institutional conditions, for the development of the culture of Crimean Tatars and other indigenous peoples, national minorities.

Overall, since 2014, in the field of protection of the rights of national minorities, and indigenous peoples, and decisions on the governance of Ukraine, measures have been taken

- to develop legislation on the protection of the rights of national minorities (language, edition, culture, decentralization, etc.), legislation on securing the rights of indigenous people and minorities within temporarily occupied territories;
- create a specialized state institution in the field of management of various ethnopolitical issues, and develop consultative and advisory tools for interaction between the government and persons belonging to national minorities.

The development of Ukrainian legislation on the protection of the state language and the development of Ukrainian education took place against the background of Russian aggression (occupation and attempted annexation of Crimea, ORDLO). This posed additional risks in the field of language policy, the use by the Russian Federation of the topic of "language policy" as one of the grounds for the invasion of Ukraine (for example, in relation to Crimea in 2014). This rhetoric did not reflect the reality, as indicated

by international organizations, but was widely used by the Russian Federation to legitimize aggression, and was also leveraged in the unconventional war of the Russian Federation against Ukraine.

It is time to adopt legislation in the field of protection of the rights of minorities, which should a) contain clear implementation mechanisms; b) not to narrow the range of persons belonging to national minorities; c) be in line with international legal definitions of the concept (take into account framework definitions of national minorities); d) correspond to the general task of integrating Ukrainian society based on respect for diversity and observance of human rights, development of democratic practices of dialogue; e) establish a general framework and balance between education in minority languages and the study of Ukrainian as the state language; g) develop anti-discrimination policies and effective mechanisms for responding to possible manifestations.

Legislative reforms related to securing the rights of persons belonging to national minorities (various spheres and policy areas) (2014–2022)

Ensuring and protecting the rights of indigenous peoples and national minorities in Ukraine in line with international, including European, human rights standards is defined as a strategic goal within the framework of the National Human Rights Strategy approved by the Decree of the President of Ukraine No. 119 dated March 24, 2021 (and in 2016).

The Constitution of Ukraine guarantees comprehensive rights for national minorities and indigenous peoples: the right to exist, support policies, use cultural achievements and languages (including in education) are guaranteed by Articles 10, 11, 22, 53 and 119 of the Constitution. The basic law on securing the rights of national minorities is the Law of Ukraine on "National Minorities in Ukraine" (1992) Law No. 2494-XII of June 25, 1992. It was adopted even before the completion of the constitutional process. The law guarantees national minorities broad rights for the development of language, culture, and representation; it confirms constitutional principles, while representatives of international organizations and experts pointed out that this framework document did not fully contain detailed mechanisms for the exercise of rights. Ukraine signed and ratified the Framework Convention for the Protection of National Minorities in 1995. Law No. 703/97-B on the ratification of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages of December 9, 1997, was signed in 1996 and ratified in 1998 by Law No. 802-IV on the ratification of the European Charter for Regional or Minority languages of May 15, 2003.

After 2014, reforms in the field of language policy, decentralization, and education started, which were in line with the field of securing the rights of persons belonging to national minorities. However, these changes did not bring clear standardization of mechanisms for exercising minority rights. This is especially true for education and language policy. The dialog between the government and representatives of minorities concerning the further improvement of policy implementation tools is ongoing.

The development of the draft Law of Ukraine on Ethnic Communities (2021–2022) caused criticism from representatives of minorities and experts due to the proposed terminology. The vagueness of certain provisions regarding the ratio of the scope of rights of national minorities and indigenous peoples, in particular in the field of language, was assessed negatively. National minorities and indigenous peoples were united in one term – national communities. The relevant definition (national communities) does not correspond to the international practice of protecting the rights of minorities and those

international legal documents on ensuring the rights of minorities to where Ukraine of a party. Today, the law of Ukraine "On Indigenous Peoples of Ukraine" defines the rights of indigenous peoples more clearly than the draft law "On Communities".

Legislation on indigenous peoples of Ukraine.

The Strategy for the Deoccupation of the Republic of Crimea and the city of Sevastopol (2021) identified key areas in the protection of the rights of indigenous peoples and national minorities living on the Crimean Peninsula; a plan was developed for its implementation, which also included steps to protect rights of indigenous peoples. In 2014, the Resolution of the Verkhovna Rada of Ukraine "On the Statement of the Verkhovna Rada of Ukraine regarding the guarantee of the rights of the Crimean Tatar people as part of the Ukrainian State" **(**1140-VII) was adopted, which defined indigenous peoples of Ukraine as Crimean Tatars, Karaites and Krymchaks. Ukraine acceded to the UN Declaration on the Rights of Indigenous Peoples. In 2015, the Ukrainian parliament recognized the forced deportation of Crimean Tatars in 1944 by the Soviet Stalinist regime as an act of genocide against the Crimean Tatar people.

In 2021, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Indigenous Peoples of Ukraine" (1616-IX). The law regulates the legal status of the indigenous peoples of Ukraine and establishes legal guarantees for the full possession of all human rights and fundamental freedoms of persons belonging to the indigenous peoples of Ukraine, established by the norms of international law, as well as stipulated by the Constitution and laws of Ukraine. The Law developed relevant resolutions of the Verkhovna Rada of Ukraine (2014) on the recognition of the Crimean Tatar People as indigenous people of Ukraine. The work on the draft Law of Ukraine on the status of the Crimean Tatar people in Ukraine, which will determine real mechanisms for guaranteeing the rights of Crimean Tatars, the interaction between the state and representative self-governing bodies of the Crimean Tatars, is underway. Government resolutions regulating the interaction between the Cabinet of Ministers of Ukraine and the representative, self-governing structures of the Crimean Tatars are being considered.

On February 23, 2022, the Strategy for the Crimean Tatar Language Development for 2022–2032 and the operational plan were adopted. The Crimean Tatar language, as the language of one of the indigenous peoples of Ukraine, was recognized as an element of the identity and ethnocultural integrity of the Ukrainian nation, and operational and strategic goals and objectives for its development were proposed.

On the language of education, language policy

In 2017, Law of Ukraine No. 2145-VIII "On Education", dated September 5, 2017, was adopted. The provision of the law has been subjected to comprehensive criticism by a number of countries as such that is narrowing the rights of national minorities to education in minority languages. In the opinion of the European Commission for Democracy through Law (Venice Commission), the Council of Europe positively accepted the guarantee of education in the languages of national minorities in primary school but noted the challenges of teaching minority languages in secondary school.

According to the Recommendations of the Venice Commission, a longer transition period was provided for the gradual implementation of the reform, changes were made in terms of the transition period

until September 1, 2023, – persons studying in minority languages, which are official languages of the EU, continue such education until September 1, 2023 (initial option – until September 1, 2020). Thus, "minorities continue acquiring such education under the rules that existed before this Law entered into force, with a gradual increase in the number of academic subjects studied in Ukrainian." The period of adaptation, improvement of teachers' qualifications, and development of new textbooks, curricula, and methods continues. Representatives of the Hungarian community also raised the issue of the methodology of teaching Ukrainian in Hungarian schools – as Ukrainian for foreigners.

In January 2020, the Law of Ukraine No. 463-IX "On Complete General Secondary Education" was adopted. Experts state that some of the Venice Commission recommendations were taken into account. In particular, the possibility of using minority languages in private educational institutions, the free choice of the language of the educational process in such institutions, but without exemption from the obligation to ensure that students master Ukrainian at the level of state standards.

In 2019, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Supporting the Functioning of the Ukrainian Language as the State Language" (No. 2704-VIII). The Law indicated that the Ukrainian language is a determining factor and the main feature of the identity of the Ukrainian nation, which has been shaped historically and for many centuries has continuously lived in its own ethnic territory, constitutes the vast majority of the country's population and gave the official name to the state, and is a core component of the Ukrainian civil nation. It was stated that the norms of the law are also based on the opinion of the European Commission for Democracy through Law, which stipulated that under special conditions that have developed in Ukraine, a balanced policy in the language sphere requires adequate guarantees for the preservation of the state language as a tool of social unity. The Law introduced guarantees for the protection of the Ukrainian language in state governance, media, service sector, etc. It shaped institutions for the monitoring of compliance with the provisions of the law on the protection of the state language. The law did not extend to the language of religious ceremonies and private communication between individuals. At the same time, provisions of the law caused criticism from representatives of national minorities and questions about the need to regulate the use of languages of national minorities. The Opinion of the Venice Commission No. 960/2019 of December 9, 2019, recommended adopting a law that would protect the linguistic rights of national minorities at the level of state language protection.

Anti-discrimination policy

The framework anti-discrimination law was adopted in 2012 and subsequently amended. The Law of Ukraine "On Principles of Counteracting Discrimination" prohibits any restriction on rights due to a number of characteristics, including race, skin color, religious beliefs, ethnic origin and language. At the same time, the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities dated March 10, 2017, stresses the lack of effective mechanisms for monitoring the implementation of the relevant law. (Fourth opinion on Ukraine, adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities dated March 10, 2017, ACFC/OP/IV (2017)002, Strasbourg)

Roma policy

On July 28, 2021, the Cabinet of Ministers of Ukraine approved the "Strategy promoting the realization of the rights and opportunities of persons belonging to the Roma national minority in Ukrainian society for the period up to 2030". During the strategy development, European policy areas and EU strategic documents were taken into account – EU Roma strategic framework for equality, inclusion and participation for 2020–2030; Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020–2025); Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area.

The processing of previous documents in the field of Roma integration strategies and the specifics of their implementation deserves attention. In 2019, the Parliament Commissioner for Human Rights noted that despite the adoption in 2013 of the Strategy for the Protection and Integration into the Ukrainian Society of the Roma National Minority till 2020, significant positive changes occurred neither at the central, nor at local levels of government. It was recommended to consider the completeness of data regarding the needs of Roma organizations, the involvement of representatives of the Roma community in the development, implementation and monitoring of its implementation when elaborating new strategic documents. After the beginning of the armed aggression of the Russian Federation against Ukraine, a number of human rights organizations called for a change in the strategy of protection and integration of the Roma community, adapting it to the new realities of a full-scale war with the Russian Federation.

Decentralization. After 2014, the issue of protection of the rights of national minorities, and their consideration during reforms was also considered at various stages of administrative reform. Article 4 of the Law of Ukraine "On the Voluntary Consolidation of Territorial Communities" (2015) introduces clear criteria: when making a decision on the voluntary consolidation of territorial communities, historical, natural, ethnic, cultural and other factors must be taken into account, which have an impact on the social and economic development of consolidated communities (CC).

New competencies of CCs consisted in securing the educational, medical, social, and cultural spheres. According to research by the Council of Europe, national minorities generally "agreed that the reform of local self-government moves the country in the right direction and gives local communities more opportunities, in particular, through the decentralization of powers and financial resources." Nonetheless, there are general problems and challenges in the process of reform associated with the resource support for schools and cultural institutions in the newly created communities.

Institutional development, securing the rights of national minorities

From 1996 to 2014, the management system in the field of minority rights was transformed more than 10 times. International organizations and national minorities have repeatedly given proposals concerning the establishment of a specialized state institution for communication and policy in the field of policy-making and implementation of the policy on national minorities. In 2019, the State Service of Ukraine for Ethno-Politics and Freedom of Conscience was created – a dedicated body of the executive power that implements the state policy in the field of international relations, religion, and securing the rights of national minorities and religious organizations in Ukraine. The relevant institution has monitoring, analytical, mediation and educational functions in the field of ethnopolitics and freedom of conscience. The service is also entrusted with providing administrative functions in the field of the activities of religious organizations (for example, registering charters of religious organizations and approving canonical activities of foreign preachers and clerics in Ukraine).

Institutional mechanisms of consultations with national minorities are applied. Public councils operate as temporary auxiliary consultative and advisory bodies within central and local executive authorities, additional consultative and advisory entities may be created. Specialized councils are operating within central executive authorities. For instance, a Council of representatives of public organizations of indigenous peoples, and national minorities of Ukraine was set up within the Ministry of Education and Science of Ukraine.

According to the State Service of Ukraine for Ethno-Politics and Freedom of Conscience, as of January 1, 2021, there are 17 specialized consultative and advisory authorities acting within regional state administrations of Ukraine, 1 council within the district state administration, and 4 other consultative and advisory bodies within state authorities, where the representation of various ethnic communities of Ukraine is ensured.

Separate cooperation mechanisms have been shaped to implement initiatives of national minorities. Thus, according to the State Service of Ukraine for Ethno-Politics and Freedom of Conscience, during 2018–2020, the Ukrainian Cultural Foundation supported almost 90 (UAH 71 mln) out of 338 projects from organizations of national minorities as of July 1, 2020. Resources were forwarded to support Greek, Georgian, Jewish, Crimean Tatar, German, Polish, Roma and other cultural projects.

What else do the authorities need to do to fully follow the recommendations and why?

The issue of observing the rights of persons belonging to national minorities and indigenous peoples is ensured by a number of laws and regulatory acts, rather than by just one separate document. Minority rights are reflected in the field of education, decentralization, broadcasting, culture, involvement and management, and prevention of discrimination. At the same time, Ukraine needs to update legislation in the field of securing effective mechanisms for the exercise of the rights of persons belonging to national minorities. Legislation on ensuring the rights of the indigenous peoples of Ukraine needs further development.

It makes sense to support the activities of consultative and advisory entities within authorities of various levels to secure the rights of persons belonging to national minorities. It is important to support the monitoring and documentation of violations of the rights of national minorities and indigenous peoples in the temporarily occupied territories.

Today, the Government and the Verkhovna Rada, Permanent Representative Office of the President of Ukraine to the Autonomous Republic of Crimea are developing, with the involvement of experts, draft laws “On National Communities in Ukraine”, “On the Status of the Crimean Tatar People in Ukraine”. The Ministry of Foreign Affairs, the Parliament Commissioner for Human Rights, and experts are involved in this activity. The draft law on national minorities should take into account proposals of the Venice Commission to improve legislation in the field of securing the exercise of the rights of national minorities and determine exact mechanisms for interaction under the Council of Europe Framework Convention for the Protection of National Minorities.

It is important to continuously implement a series of recommendations of the Venice Commission regarding combating discrimination, improving the quality of teaching the state language, promoting dialogue (developing consultative and advisory mechanisms, cooperating with representative bodies of indigenous peoples), and taking into account the needs of minorities during decentralization.

Recommendations

- During the work on the legislation related to securing the rights of persons belonging to national minorities, it is expedient to regulate the definitions and terms in draft laws using established terminology, in particular, "national minorities", harmonize new legislative proposals regarding the rights of minorities with existing legislation;
- It is advisable to develop legislation and mechanisms for the implementation of legal acts on protecting and securing the rights of indigenous peoples. These policy focus areas are crucial in view of the de-occupation of Ukrainian territories (Autonomous Republic of Crimea);
- In terms of regulating the development of the Ukrainian language, it is essential to find a balance to eliminate the consequences of the colonial situation of Ukrainian and to shape mechanisms to ensure support for education in the languages of national minorities. Satisfy the needs for the development of the state language and languages of national minorities. Consider the need for the holistic integration of national minorities and the consolidating function of Ukrainian as the state language.
- Legislation in the field of securing the rights of minorities should be developed in clear communication with the European Commission and the Council of Europe (Venice Commission) in terms of the assessment of the provisions of legislative proposals concerning the protection of the rights of persons belonging to national minorities;
- Regulatory acts on securing the rights of persons belonging to national minorities and indigenous peoples should be developed with the involvement in consultations of experts, organizations, and persons belonging to national minorities.
- It is advisable to coordinate the development of new legislation on the rights of national minorities and indigenous peoples between various committees of the Verkhovna Rada responsible for certain areas of policies associated with the rights of national minorities.

Further consideration and adoption of laws on securing the rights of national minorities should be promoted after the recommendations of the Venice Commission have been elaborated, taking into account specific draft decisions.