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BRIEF ON THE STATE OF AFFAIRS IN THE SECTOR OF LAW AND ORDER

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1. Key events in the state policy area, at least after the Revolution of Dignity and the signing of the Ukraine-EU Association Agreement

After Revolution of Dignity in Ukraine, there has been more than one attempt to reform law enforcement agencies and the prosecutor's office, which are responsible for domestic security environment in Ukraine. It cannot be said that all attempts were unsuccessful, but there was a lack of reforms coordination and a lack of consistency in their implementation, as well as excessive political influence on these processes.

At the same time, a partial success of the reform of the Ministry of Internal Affairs and the National Police (2015-2017) should not be ignored. The new Law of Ukraine "On the National Police" (2015) provided for many progressive changes – in particular, police depoliticization and service-oriented nature of its activity. However, the reform bypassed the largest section of this agency – the investigative units and criminal detection. Furthermore, even though reforms of the prosecutor's office (2014-2016) were conducted, these two areas were not coordinated with each other, even though investigators and operative police officers work closely with prosecutors in criminal proceedings towards the same criminal justice goals.

A similar situation occurred with the formation of specialized pre-trial investigation bodies (National Anti-Corruption Bureau - 2015; State Bureau of Investigation - 2016; Bureau of Economic Security - 2019) and Specialized Anti-Corruption Prosecutors Office (SAPO, 2015): while all of these became accomplishments that cannot be denied, the implementation of reforms occasionally did not fully correspond to their spirit. Each of the above-mentioned reforms was accompanied by the adoption of specialized legislation - special laws and regulations of varying levels of quality, which mostly require amendments, especially in terms of their depoliticization of these agencies, harmonization and coordination of functions and powers, improvement of the mechanism of checks and balances in the middle of the system of anti-corruption bodies.

At the same time, the judicial system, which needs to complete the reform process, is a demotivating factor in the activity of law enforcement agencies. The coordinated work of pre-trial investigation agencies and prosecutors is sometimes nullified by the low-quality work of the courts, and appeals or cassation appeals can drag on for years. A positive step in overcoming this problem was the creation of the Higher Anti-Corruption Court of Ukraine (2019), which already demonstrates new approaches to work and the quality of justice. At the same time, the entire judicial system is still in the process of constant reformation, which affects the final result of the consideration of materials collected by the pre-trial investigation bodies and presented by the prosecutor's office.

In 2018, the Law of Ukraine "On the National Security of Ukraine" was adopted, the provisions of which, among other goals, were supposed to launch a comprehensive reform of the Security Service of Ukraine by divesting its law enforcement functions (pre-trial investigation functions) and turning it into a classical counter-intelligence body in the area of national security. At the beginning of 2021, the Verkhovna Rada of Ukraine adopted in the first reading the draft [Law "On Amendments to the Law of](#)

[Ukraine “On the Security Service of Ukraine” regarding improvements of the organizational and legal framework for the activity of the Security Service of Ukraine” \(Registration № 3196-d of October 26, 2020\)](#) that, among others, provides for gradual reorganization of the Service, which should remove it from the law and order system by 2024. At the end of 2021, the MPs were provided with a comparative table for the second reading, after which this process stopped, although the adoption of this document as a basis can be considered as a statement of intent in the area of public policy.

Also *personnel problem* needs special attention. An imperfect system of training specialists for law enforcement agencies and employment of graduates of higher education institutions with specific conditions of study leads to the fact that unmotivated and/or incompetent employees end up in positions. The consequence of this is high staff turnover or the adoption of corrupt practices by young employees from senior mentors. This problem has increased after the introduction of anti-epidemic measures in 2019 and martial law in 2022.

2. Key issues and challenges as of the beginning of 2022

The key issues in the area of law and order are as follows:

- imperfect personnel selection procedure, in particular for positions that require a high level of managerial competence;
- weak management system, under which the most capable employees or those who enjoy informal support are appointed to management positions, rather than managers who know how to work with people;
- imperfection or lack of normative regulation of disciplinary practice (disciplinary statutes);
- lack of transparency and efficiency in some internal management processes of the prosecutor's office, in particular, the practice of unmotivated dismissal of prosecutors;
- the presence of old illegal methods practice of working with people, in particular, the investigation of crimes that, along with corruption and tolerance for human rights violations, results in a law and order system oriented towards its own departmental needs, rather than to the needs of citizens. In other words, understanding the problem of the person who applied and helping him are secondary to the goal of correctly “solve” the criminal offense and reporting on it;
- the use of approaches focused on the reproduction of quantitative and statistical indicators of success, which do not involve an external objective assessment of the activities of law enforcement agencies and lead to corrupt practices and violations of citizens' rights;
- low trust in the law and order system and, as a result, unwillingness of citizens to assist these bodies, primarily to report offenses, share information, participate in proceedings as witnesses, etc.;
- the use of approaches focused on reproduction of quantitative and statistical indicators of success, rather than the opinion (feedback) of citizens;

- inconsistency of functions and/or duplication of powers, which, on the one hand, leads to excessive workload of law enforcement officers, and on the other, to confrontation in the middle of the system, which is destructive or distracting from the main tasks; availability of discretionary powers;
- ineffectiveness and non-transparency of the mechanisms of appointment and promotion in law enforcement agencies, as well as low level of efficiency of official investigations and bringing to disciplinary responsibility, the system of which is non-transparent and accompanied by excessive influence of a direct supervisor;
- low level of trust in the law and order system and, as a consequence, unwillingness of ordinary citizens to help these bodies, primarily by going to these bodies with their problems, sharing information, participating in proceedings as witnesses, etc.;
- inefficient use of resources by the state: new law enforcement bodies receive significant funding, while law enforcement bodies that perform an equal amount of work are pushed to the background and lose motivation for development;
- low level of financial support for law enforcement officers of lower and middle tiers, as well as low level of logistical, social, and medical support;
- the presence of a conflict of interests during investigations of offenses committed by employees of specialized law enforcement agencies.

The key challenges in the area of law and order are as follow:

- reducing the excessive influence of political forces on the leadership of law enforcement bodies;
- establishment of the sustainable state policy in the area of law and order (law enforcement area);
- inability to properly coordinate law enforcement bodies from various agencies and services in order to ensure their effective work;
- obsolete nature of the system of education and personnel training in the law enforcement system;
- taking into account scientifically based data and models, foreign experience to solve law and order problems at the legislative and administrative levels;
- elimination of political confrontations, which lead to delays in the adoption of personnel decisions and decisions related to reforming and ensuring the activities of law enforcement agencies.

3. Plans and actions of the authorities in this area as of beginning of 2022

Since 2019, there has been an active discussion about the *need to adopt the Concept of Criminal Justice Reform* – a document that would continue the tradition of planning at the level of public (state) policy that started back in 2008 as a [corresponding Concept Paper](#) (approved by the President’s Decree of August 4, 2008 № 311/2008) and was successfully implemented (regarding the new Criminal Procedure Code of Ukraine, criminal misdemeanors, the new design of law enforcement system, etc.).

The impetus behind this was the new version of the Law of Ukraine “On the Prosecutor’s Office”, which implemented into law the coordinating role of the prosecutor’s office in relation to pre-trial investigation bodies, in accordance with the

amendments to the Constitution of Ukraine in the area of justice (June 2016). As of the beginning of 2022, such a document was [developed](#) by a working group that worked [under the auspices of the Office of the Prosecutor General](#) as a body that coordinates the activities of all criminal justice bodies in the process of preventing and combating crime.

Regarding the Ministry of Internal Affairs of Ukraine, despite the fact that this agency received a new leader 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) remains not implemented in full. Despite efforts to continue measures towards its further implementation in 2021-2022 (efforts that were partially successful – for example, the [approved](#) sectoral program for informatization of the MIA system for 2021-2023), this was not formalized in any official documents. Therefore, as of the beginning of 2022, the further development direction of the Ministry of Internal Affairs remained in question. Therefore, the issue of further development of the Ministry of Internal Affairs remained open as of the beginning of 2022. The activation of the further formation and implementation of state policy in the spheres belonging to the competence of the Ministry of Internal Affairs would be greatly facilitated by the restoration of the work of the Public Council under the Ministry of Internal Affairs, which ensured public participation in the regulatory activities of the Ministry, but actually ceased its activities in September 2021 due to the completion of term of office of its members. Currently, the ministry does not in any way demonstrate the intention of further interaction with the public in the exercise of its powers.

Regarding the reform of Security Service of Ukraine, as of the beginning of 2022, it was expected that the draft Law № 3196-d, which would launch a gradual plan for reorganization of the Service, reduce its staff, change functions, and implement other components provided for by the reform of the Security Service of Ukraine as reflected in a joint legislative initiative by executive and legislative powers, would be adopted in the second reading. In addition to threats to national security, the additional burden on criminal justice and prosecutor's offices creates a surge in crimes against human will and sexual freedom, cases of looting, as well as offenses related to the circulation of humanitarian goods. In the same way, general criminal crime needs a proper response, because delaying the investigation of these crimes will increase the disorder in the state, mistrust of legal instruments for the protection of citizens' rights, etc.

4. The influence of the war and martial law on this area of state policy

Since February 24, 2022, the date of the full-scale invasion of Russian Federation's armed forces using the territory of Belarus, both the criminal justice system and the law and order system component of public safety underwent significant adjustment in light of the needs of wartime.

With regards to the criminal justice system, it reoriented towards investigating international crimes - first and foremost, war crimes, as well as the crime of aggression by the military-political leadership of the Russian Federation – in addition to ordinary everyday crimes. At the same time, crimes against national security have increased significantly, as all types of saboteurs, fire spotters, collaborators, and others directly threaten the existence of the state under the war circumstance. Therefore, the National Police and the Security Service of Ukraine are mostly maintaining order within the country and coordinating actions with the Armed Forces of Ukraine, including working with de-occupied territories, countering sabotage and intelligence groups in cooperation with the SSU, as well as preventing and countering crimes against national security.

As for the public security sector, the demand for the state's security services has increased significantly, which requires strong coordination between the Ministry of Internal Affairs, social services, the Armed Forces, and other bodies that ensure the state's critical infrastructure operation in order to enable the population to maintain sufficient standard of living during the war. Apart from constant new challenges associated with hostilities, rocket attacks, and sabotage, the amount of work related to identifying dangerous objects, demining of territories, ensuring the security of territories adjacent to hostility zones, etc., has increased. In addition, in conditions of war, law enforcement agencies perform functions that are not characteristic of them, in particular, with regard to facilitating and/or ensuring the evacuation of the population, delivering humanitarian aid (food, hygiene products, etc.) to regions that are under constant enemy fire, or in a combat zone, prevention of humanitarian disasters.

Also, cyber security units are working in an intensified mode under conditions of significant psychophysical stress, as a large-scale information attack by the Russian Federation has been activated.

Despite the new challenges facing the system of law and order in the conditions of war, the system continues to develop, and the need to regulate, systematize, and direct this process in the right direction is an important task for the security of Ukraine both during the war and after its end.

In addition, the European Commission's recommendation to strengthen the fight against corruption, particularly at a high level, through active and effective investigations, as well as ensuring the proper dynamics of court cases and issued verdicts (*further strengthen the fight against corruption, in particular at a high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions*). Taking into account a number of corruption scandals in the sphere of security and defense of Ukraine, as well as an eloquent example of the negative impact of corruption on the state of ensuring the rights, freedoms and security of citizens in Russia, the fulfillment of this requirement becomes even more important.

5. EU requirements and standards in this area, as well as other international documents binding on Ukraine.

[Opinion](#) of the European Commission regarding Ukraine (June 17, 2022) contains recommendations, including a direct recommendation for the need to develop and: *“adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine’s security environment”*.

It should be noted that the reform of the criminal justice system is part of the law and order sector reform, as it covers only the prevention and countering crime in Ukraine. The concept of “law and order sector” or “law and order system” also *covers issues of public safety, preventing and countering security threats of a non-criminal nature, increasing the sense of security among the public, etc.*

6. Current plans of the authorities as of the Fall of 2022, including Ukraine’s Recovery Plan

According to the government's words starting August 1, a working group has been created in the Office of the President of Ukraine, which is charged with developing the *Strategy for the Post-War Reform of Public Administration in Ukraine* (1).

At the same time, before February 24, the Office of the Prosecutor General (OPG) developed the *Criminal Justice Reform Concept for 2022-2030* (2), which includes most of the issues covered for by the European Commission’s recommendation, and the Ministry of Internal Affairs has certain developments relating to the public security sector – *follow-on to the Development Strategy of the Ministry of Internal Affairs for 2017-2020* (3) and *the Safe Community Concept* (developed jointly with the Ministry of Communities and Territories Development of Ukraine) (4).

Thus, there exist at least four different documents in the area of public policy that cover the subject of law and order, none of which have been finalized and published, even if only for consultations with the public and experts in the area of law and order. Therefore, *it is currently difficult to speak affirmatively to the content of these documents.*

In the summer of 2022, the Anti-Corruption Strategy for 2021-2025 came into force. Among the priorities, it identifies problems related to the functioning of the prosecutor's office and law enforcement agencies, as well as expected strategic results, the achievement of which should contribute to increasing the level of trust in these agencies among the population. In case of timely approval by the Cabinet of Ministers of Ukraine of the state anti-corruption program for the implementation of the Anti-Corruption Strategy and its successful implementation, a number of the problems described above will be solved in full or in part.

On November 11, 2022, by Order No. 248 of the Prosecutor General, the Interagency Working Group (IWG) was [established](#). The participants of the interdepartmental group are the heads of the Prosecutor General's Office, the Ministry of Internal Affairs, the Ministry of Justice, the State Security Service, the National Police, the Security Service, the State Border Guard Service, the State Customs Service, as well as representatives of the Office of the President of Ukraine, the Cabinet of Ministers of Ukraine, international experts from the CIS, the EU project "PRAVO - JUSTICE", of the Office of the Council of Europe in Ukraine, the law enforcement department of the US Embassy in Ukraine, the International Development Law Organization (IDLO).

By the end of 2022, a ready draft of the document was expected, which will be sent for approval to the President of Ukraine, who has the relevant powers in the field of security and defense.

On January 11, 2023, Prosecutor General Andriy Kostin [reported](#) that the Interdepartmental Working Group has developed a project of the Comprehensive Strategic Plan for the Reform of Law Enforcement Bodies as a Part of the Security and Defense Sector of Ukraine for 2023-2027 and is sending it to the Office of the President of Ukraine for study and further approval by Decree of the President of Ukraine. Currently, the text of the Comprehensive Strategic Plan is not publicly available.

During the preparation of the project of this document, the expert group processed a set of proposals and comments that helped to formulate six strategic priorities for the reform of law enforcement agencies as part of the security and defense sector of Ukraine. This will allow it to be modernized and brought into line with the standards that Ukraine must achieve on the way to EU membership. The foundation for further steps on this path is also laid - the formation of an operational plan.

Strategic priorities for law enforcement reform include:

1. The effectiveness and efficiency of law enforcement agencies and the prosecutor's office, as an integral component of the security and defense sector, within which they ensure the national security of Ukraine, including public safety and order, crime prevention taking into account strategic goals and in accordance with human rights standards, basic rights and freedoms, as well as the principles of gender equality.
2. A consistent criminal policy, the priority of which is the prevention of crime, the inevitability of responsibility, the protection of the individual, society and the state from criminal offenses, ensuring the interests of the victim.
3. Promptness of criminal proceedings in compliance with international standards and the principle of the rule of law.
4. A management system oriented to the result in accordance with the established priorities.
5. Comprehensive digital transformation.

6. Openness, transparency, accountability, independence and political neutrality.

Currently, all experts in the field of reform of law enforcement agencies within the working group are waiting for the publication of the approved Comprehensive Strategic Plan, because then it will be possible to analyze the key directions of the state's development and express their proposals regarding the Action Plan for its implementation. Up to this point, most experts simply refuse to adjust the already developed vision "Ukraine - 2030", in order not to duplicate the work that is carried out within the authorities with the involvement of the expert community.

Thus, all proposals regarding the vision of the development of the Law Enforcement system expressed in the document prepared by the expert group for this project remain relevant. Likewise, their relevance – it is necessary to determine, first of all, the issue of war and military justice, the reform of the Security Service of Ukraine in conditions of war, and a separate component of the reform of law enforcement agencies, which cannot take place in conditions of war and must be postponed for a certain time after its end.

At the same time, it should be noted that although the Office of the General Prosecutor coordinates the activities of law enforcement agencies in the field of criminal justice, it is not only about criminal justice, because the "law and order sector" or "law and order system" have a broader meaning, because they cover issues of public safety, prevention and counteracting security threats of a non-criminal nature, strengthening the sense of security among the population, performance of control functions by authorities in the field of public law, etc.

Thus, as the concept of "law enforcement agencies" remains undefined, individual components of the security and defense sector, such as the activities of the SBU, which is primarily a counter-intelligence body, are under question - whether they should be taken into account in this development plan, given their pre-trial function investigation or not.

The working group under "law enforcement agencies" understands primarily pre-trial investigation agencies and agencies empowered to carry out operational and investigative activities, but the criminal aspect of law enforcement - public security agencies, control agencies in the field of public law are not taken into account.

The approach to defining the subject of the Comprehensive Strategic Plan is rather instrumental, because there is an approximate list of bodies that Ukraine's partners in the European Union refer to as law enforcement agencies. Through official communication with the Deputy Prime Minister of Ukraine Olga Stefanishyna and the Consultative Mission of the European Union in Ukraine (ECM), relevant recommendations were made.

They expressed specific recommendations for the preparation of the Comprehensive Strategic Plan - it should, in particular, cover the following subjects: the Ministry of Internal Affairs, the National Police, the State Border Service, the State Bureau of Investigation, the Bureau of Economic Security, the Security Service of Ukraine and the State Customs Service. Judicial and anti-corruption institutions are not included in the list.

The subject should be about the development of such components as:

- 1) management of law enforcement bodies must be carried out in accordance with the results of work; annual strategic goals are set by the political leadership, which limits political dependence (in peacetime). Productivity and efficiency of the security sector is measured qualitatively and quantitatively according to established priorities.
- 2) modern management methods and organizational structures ensure efficiency and effectiveness of work.
- 3) special inspection, constant monitoring of integrity (including re-examination of high-risk personnel), implementation of the code of conduct, transparent management of human resources, related to the general reform of public administration in Ukraine, for which the selection is based on the merits of employees.
- 4) practices and procedures that reduce corruption and promote integrity.
- 5) institutionalized mechanisms of external and internal supervision, implemented in state bodies, with the involvement of civil society in democratic control and development of policies. Strengthening the attention of public authorities to quality, measured by the "level of trust of citizens", and a service-oriented, controlled approach.
- 6) the body's work is based on internal and interdepartmental demarcation and coordination, optimization of resources and synergy.
- 7) international cooperation to promote the strategic and operational capabilities and stability of the parties.
- 8) it is necessary to develop a strong potential for interaction with foreign law enforcement agencies (especially with neighboring EU countries) and European and international agencies, such as EUROPOL, INTERPOL, etc. It is better and systematic to bring the powers of Ukrainian law enforcement agencies in line with the best international practices (for example, the return of the criminalization of smuggling in large volumes).
- 9) ensuring the active participation of civil society in the development and implementation of preventive policies.
- 10) digital transformation promotes organizational change, efficiency and joint solutions.
- 11) thanks to a comprehensive program of replacement and modernization of equipment, the interoperability of IT systems (including the interdepartmental case management system) is improved and technologies are modernized.
- 12) improved asset and budget management.
- 13) gradual termination of legal education in police academies and a clear distinction between police and legal education.

In summary, there is currently no unified vision regarding:

- 1) **which measures to reform law enforcement agencies will be of primary importance** - this is the question of the further Action Plan, which will be adopted for the implementation of the Comprehensive Strategic Plan;
- 2) **what exactly refers to "law enforcement agencies" and which area is subject to reform** - consensus exists only regarding the "criminal aspect" of law enforcement agencies, but does not cover a wider range of law enforcement agencies that provide it;
- 3) **The comprehensive strategic plan seems in this stage as non-systematic and has a number of unresolved issues** - in connection with the short preparation period, as well as the desire to satisfy European partners, to unite the criminal aspect of law enforcement agencies and a wider range of security agencies, for example, the SSU as a whole, the final document will be non-systematic, which will negatively affect the realism of the preparation of the Action Plan in a short period of time and the start of its implementation.

It would be more appropriate to divide it into three separate documents:

- 1) Concept of reform of the criminal justice system;
- 2) Concept of development of law enforcement agencies as a component of executive power;
- 3) The concept of the development of military justice system bodies and the functioning of law enforcement agencies in the transition period during an armed conflict.