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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Ukraine

Information note by the co-rapporteurs on their fact-finding visit to Kyiv (5-7 July 2021)

Co-rapporteurs: Mr Alfred Heer, Switzerland, Alliance for Liberals and Democrats for Europe and Mr Birgir Thórarinnsson, Iceland, Group of the European People's Party

¹ Document declassified by the Monitoring Committee at its meeting on 16 November 2021.

1. Introduction

1. This visit took place after a hiatus in fact finding visits by the Monitoring Rapporteurs for Ukraine as a result of the election cycle in Ukraine and the impact of Covid-19 pandemic. The political environment has changed considerably since our last visit with a new President and government, as well as completely new ruling party in the Verkhovna Rada. The changes and reforms in Ukraine have continued unabated. The priorities of the new government remain the fight against the endemic corruption in the country, the reform of the judiciary with a view to ensuring both its efficacy and independence, as well as the conflict in Eastern Ukraine. Close co-operation with the Council of Europe including with the Venice Commission has continued on these reforms, which we have warmly welcomed. As a result, we covered a broad range of subjects during our visit but focussed on the reform of the judiciary, the fight against corruption, decentralisation, the media environment and national minority and language policies. The statement we issued at the end of our visit is attached in Appendix 1.

2. During this visit we met with, inter alia: the Minister for Communities and Territorial Development, the Deputy Speaker of the Verkhovna Rada, the Deputy Minister of Culture and Information Policy, the Deputy Head of the Presidential Administration, the Prosecutor General of Ukraine, the President of the High Anti-Corruption Court (HACC), the Head of National Anti-Corruption Bureau (NABU), the Head of the National Agency on Corruption Prevention (NACP), the Deputy Specialised Anti-Corruption Prosecutor (SAPO), the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), the Chairpersons and members of the Verkhovna Rada Committees on Anti-Corruption Policy, Legal Policy, "State Building, Local Governance, Regional and Urban Development", and on Human Rights and on Media Freedom, the Chairperson and members of the Ukrainian Delegation to PACE, as well as members of the diplomatic community and representatives of civil society organisations in Ukraine. The programme of our visit is attached to this note in Appendix 2.

3. We would like to thank the Verkhovna Rada for the organisation of our programme, and the Head of the Council of Europe Office and his staff for the support given to our delegation. We also wish to express our gratitude to the Ambassador of Switzerland in Kyiv and his staff for the hospitality extended.

2. Main Political Developments since our last visit

4. In 2019, Presidential elections took place, followed by parliamentary elections that completely changed the political environment in Ukraine.

5. Presidential elections took place on 31 March (first round) and 21 April (second round) in a difficult political and economic climate and against the backdrop of the interconnected issues of the illegal annexation of Crimea by the Russian Federation and the conflict in Eastern Ukraine. In total 39 candidates were registered for these elections. The surprise candidate was Volodymyr Zelensky, until then a well-known comedian and actor - who played the role of a Ukrainian President in a popular sitcom – but (then) a political novice. The election campaign was dominated by the difficult economic situation as well as the public's exasperation with the endemic corruption in the country, including within the judiciary. The popular discontent with the political class was well used by Mr Zelensky who won the first round of the elections with 30% of the vote, followed by incumbent President Poroshenko with 16% and Ms Yuliya Tymoshenko with 13% of the vote. The second round between Mr Zelensky and Mr Poroshenko was won by Mr Zelensky by a landslide with 73% of the vote. The International Election Observation Mission (IEOM), of which the Assembly was a part, concluded² that these elections had been competitive and held with respect for fundamental freedoms. However, while candidates could campaign freely, the observers regretted the reports of widespread abuse of administrative resources and allegations of vote buying.

6. Following the Presidential elections, there was a unique situation with the incoming Presidential administration not being represented in the Verkhovna Rada severely limiting the possibility for the new President to govern. On the day of his inauguration, President Zelensky therefore dissolved the parliament and announced pre-term elections for 21 July 2019, four months ahead of the scheduled elections. His decision was contested before the Constitutional Court, which however sided with the President.

7. The parliamentary elections, which were conducted on the basis of a mixed proportional-majoritarian election system, were won by a landslide by the newly founded party of President Zelensky - "Servant of the People" - which obtained a majority of 254 of the 450 seats in the Verkhovna Rada. The "Opposition Platform"

² [OSCE](#) - Ukraine, Presidential Election, 31 March 2019: Statement of preliminary findings and conclusions.

[OSCE](#) – Ukraine, Presidential Election, Second round, 21 April 2019: Statement of preliminary findings and conclusions. [Doc. 14896](#).

came in second with 43 seats, Yuliya Tymoshenko's "Batkivshchyna" (Fatherland) obtained 26 seats and former President Poroshenko's "European Solidarity" obtained 25 mandates. A new party called "Voice", founded by popular rock singer Svyatoslav Vakarchuk, obtained 20 seats. Other parties failed to obtain significant numbers of seats. The IEOM, of which the Assembly was a part, which concluded that the elections were competitive with fundamental freedoms, including the freedom of assembly and expression, being respected. However, the observers underscored that the widespread vote buying and the abuse of incumbency by sitting MPs and local authority officials running for national office.

8. These two elections resulted in a completely new administration and ruling majority. However, even if President Zelensky was a novice in politics, his political team and administration included a considerable number of well-connected and experienced politicians. While he campaigned on the fact of being a political outsider, he was widely seen as being close to one of Ukraine's most powerful oligarchs, Mr Kolomoisky, although the relationship between the two men reportedly has recently soured.

9. Local elections took place in Ukraine on 25 October 2020, under pandemic conditions. These elections followed an extensive decentralisation and local administration reform which had considerably reduced the number of local governments while increasing their powers. These local elections took place on the basis on a new unified election code that was adopted in December 2019. The adoption of a Unified Election Code (UEC), that would govern all aspects of all elections, has been a long-standing recommendation of the Assembly as well as Venice Commission and OSCE/ODIHR. However, while drafted in an inclusive process the adoption of the UEC was reportedly done in a hasty manner and not all of the aspects of the legislation that governs elections were included. As a result, a number of deficiencies and shortcomings remained in the legislation. The amendment process to address these deficiencies was cut short as a result of the impact of the Covid-19 pandemic. In a positive development, because of amendments adopted to the election legislation in June 2020, during the local elections IDPs were allowed to vote in their place of residence instead of the place where they are formally registered. The previous requirement that persons could only vote in the places where they were formally registered had resulted in the de facto disenfranchisement of IDPs during previous elections.

10. Due to the pandemic situation, no large-scale international presence could be present to observe the proceedings on Election Day. However, the elections were observed remotely by the Congress of Local and Regional Authorities of the Council of Europe, and in Ukraine by a long-term Limited Election Observation Mission (LEOM) of the OSCE/ODIHR. According to the observers, while the pandemic situation clearly had an impact on these elections, contestants could campaign freely, and basic freedoms of assembly and expression were respected. These local elections were the first since President Zelensky and his party Servant of the People had come to power and widely seen as an opportunity for the President and his party to consolidate their power and to extend it to the local and regional level. This influenced the election strategies of both the ruling majority and the opposition parties. Regrettably the observers reported the widespread use of administrative resources by local and regional authorities in favour of one candidate or the other.

11. We were informed that in total more than 50 criminal investigations were started against former President Poroshenko, including reportedly for what seem to be political decisions he took as a President. This raises some concerns about possible political motivations behind these charges, as alleged by the former President Poroshenko's supporters. We raised this issue with the Prosecutor General, who denied any political motivation and emphasised that the charges covered actions unrelated to his Presidential functions. We intend to continue following this issue closely, also in the light of the Assembly's position on the separation of criminal and political responsibility.

3. Reform of the Judiciary

12. President Zelensky and his party had run their campaign on the promise to, inter alia, tackle the endemic corruption in Ukraine, including within the judiciary. His administration therefore started an ambitious set of interlinked reforms of the judiciary and anti-corruption structures. Possibly due to a perceived need to show tangible results quickly, some of the reforms were initiated in a rather hasty manner and without proper consultation with the relevant stakeholders, which affected the efficacy of these reforms. However, the close co-operation between the authorities and the Venice Commission regarding these reforms was maintained. The Venice Commission produced several opinions on request of the authorities, which resulted in adopted legislation being amended to address concerns and, in some cases, draft laws being withdrawn. We welcome this clearly existing political will of the authorities to co-operate with the Venice Commission and to implement their recommendations.

13. In the view of the authorities, as well as several other stakeholders, the functioning of the High Council of Justice (HCJ)³ and the Supreme Court of Ukraine (SC) are seen as major obstacles to the independence and impartiality of the judiciary. The first major proposal for the reform of the judiciary was Law 193-IX which amended the legal framework governing the Supreme Court and the bodies of judicial governance. This bill introduced new rules for the structure and role of the HCJ and the High Qualification Commission of Judges (HQCJ); set new rules for disciplinary measures; and reduced the number of judges in the Supreme Court. The original draft had also contained provisions to extend the lustration process, but these provisions were dropped when adopting the law. This law was adopted in a fast-track process with little or no consultation with the major stakeholders. On our proposal the Monitoring Committee requested the Venice Commission for an opinion on this law. The Venice Commission adopted this opinion⁴ during its plenary on 6 and 7 December 2019.

14. In its opinion, the Venice Commission underscored the need to reform the judiciary, which it considers the “most crucial reform of all Ukraine⁵”. In this context, it highlighted the enormous number of vacancies of judicial posts also as a result of the non-functioning HQCJ, compounded by the fact that the HQCJ was terminated by the adoption of the new law. In its opinion on the law⁶, the Venice Commission recommended that the judicial reforms should focus on the first and second instance courts and to urgently nominate candidates to the vacancies in these courts on the basis of the work already done by the HQCJ. It also considered that the reduction in size of the SC and the manner in which this would be done de facto amounted to a second vetting of the SC, which would run counter to international norms, and should therefore be removed from the law. Lastly, the Venice Commission recommended that the disciplinary procedure should be simplified.

15. On 18 February 2020 the Constitutional Court of Ukraine declared parts of the new law unconstitutional, in particular: the reduction of the number of members of the HQCJ, the reduction of the size of the SC, the provisions relating to the proposed ethics board and some of the disciplinary provisions. Moreover, the Constitutional Court reinstated 8 judges of the old SC that had refused to participate in, or failed, the first vetting procedure. In July 2020, the Ukrainian government and the European Union concluded a MoU on the reform of the judiciary in which they agreed to, inter alia, establish a new HQCJ through a special selection commission with international participation and to set up an ethics commission with international participation that would assess the HCJ. The authorities drafted amendments to the relevant laws to address the first part of this agreement. These were sent to the Venice Commission for opinion by the Speaker of the Verkhovna Rada.

16. In its opinion, the Venice Commission welcomed the fact that these amendments were made in close consultation with the relevant stakeholders. The draft law establishes a mixed international/national Competition Committee to select the new HQCJ members. The Venice Commission welcomed the intend to re-establish the HQCJ and recommended that it be clear in the law that the international members have a crucial role to play in the appointment process similar as what was stipulated for the High Anti-Corruption Court of Ukraine. The draft law no longer requires that the HQCJ is at least for 50% composed of judges. The Venice Commission recommended that this be changed. The draft law also foresees additional competences for the HCJ. Given the low level of trust in the HCJ and questions about its proper functioning, the Venice Commission strongly recommends that no additional competences are given to the HCJ before it is fully reformed. The amendments remove entirely the maximum number of SC judges and leave that number to be determined by the HCJ on recommendation of the State Judicial Administration. The Venice Commission recommended that the law makes it clear that the decision of the HCJ in this respect is not subordinated to the State Judicial Administration. Lastly the Venice Commission stressed the need for wider reforms of the justice system.

17. The reform of the HCJ, and in particularly addressing the widespread questions with regard to the integrity of some of its members is an essential precondition for a successful reform of the judiciary with a view to ensuring its independence and impartiality, as well as to address the widespread corruption within the judiciary. The problematic composition and functioning of the HCJ was underscored by most of the interlocutors we met during our visit. To this extend the authorities have prepared a draft law which amends various legislative acts with a view to establishing an Ethics Council, composed of 3 national members as well as 3 members proposed by the international partners of Ukraine. This Ethics Council would be responsible for vetting the integrity of candidates for the HCJ, as well as to perform a one-time vetting of the current members of the HCJ. In addition, the law also established a Disciplinary Inspectorate as a service of the HCJ.

³ The HCJ is the constitutional structure of judicial self-government in Ukraine.

⁴ [CDL-AD\(2019\)027](#).

⁵ [CDL-AD\(2020\)022](#).

⁶ [CDL-AD\(2019\)027](#).

18. The Ukrainian authorities requested an opinion of the Venice Commission on this draft Law, which was adopted⁷ under urgent procedure on 5 May 2021. In its opinion the Venice Commission reiterates its recommendation that the Ukrainian authorities should adopt one holistic reform of the judiciary, instead of a series of individual laws addressing various aspects of the judiciary, that are not always well synchronised. That said, the Venice Commission recognises the importance of the subject matter of this law which would warrant its urgent adoption as a separate law. Indeed, the Venice Commission in previous opinions underscored that *“the issue of integrity and ethics of the HCJ should be addressed as a matter of urgency”*⁸.

19. The Venice Commission welcomed the establishment of an Ethics Council for a single period of 6 years to ensure that the members of the HCJ meet the highest standards of professional ethics and integrity. The law stipulates that this Council will be composed of three active or retired judges appointed by the Council of Judges and three members proposed by the international organisations that assist Ukraine with the reform of the judiciary and fight against corruption. The law foresees that the Ethics Council would provide the HCJ a list of twice the number of candidates as there are vacancies. This would imply that the Ethics Council would rank the candidates which would be problematic under its mandate and possibly run counter to constitutional provisions. Instead, the Venice Commission recommends that the law should clearly state that the Ethics Council forwards all candidates who fulfil the ethical and integrity standards to the HCJ. The law also provides that the decisions in the Ethics Council should be taken by a qualified majority of four members of which all 3 international members should be part. This erroneously assumes that the international members would vote as a bloc and would give each of these members a *de facto* veto over appointments, which is problematic. The Venice Commission recommends that the 4-member qualified majority is maintained but that only 2 of the international members should be part of this majority for the decision to be valid. In addition, the Venice Commission recommends adopting a procedure in case of cast votes. The Venice Commission also recommended that the draft law should clearly establish that any decisions of the Ethics Commission can be appealed before a Court. In this case it recommended that the law should establish that the appeal will be heard by the Supreme Court and not by the Kyiv City Administrative Court⁹ which is still unreformed and whose integrity and impartiality itself is questioned. Regarding the establishment of the Disciplinary Inspectorate Service, the Venice Commission reiterated its standing recommendation that no new competences should be given to the HCJ until it has been fully reformed, and its members vetted.

20. On 13 July 2021, the Verkhovna Rada, adopted in final reading the two laws to reboot the HQCJ and HCJ. The adoption of these laws, that include establishment of the above-mentioned Ethics Council, was hailed by the international community and domestic stakeholders as a decisive step forwards in the reform of the judiciary. It was hoped that the relaunch of the HQCJ would now result in the many vacant judicial posts being filled as an urgency as this large number of vacancies is undermining the efficient administration of justice in Ukraine. Regrettably certain sectors of the judiciary itself seem intent on stalling or even blocking these reforms. While the international Community nominated its representatives to the Ethics Council, the Council of Judges, on 23 September, passed the deadline to appoint its share of members in this Council.

21. Regrettably, this was not the first time some – powerful – sectors of the judiciary, seem to interfere in the reform process, especially in relation to the fight against corruption. In 2020, the Constitutional Court (CC) took several controversial decisions that invalidated a number of key laws and decisions regarding the fight against corruption. The reasoning and legal basis for these decisions was widely questioned, including by the EU and Venice Commission, and seen as aimed at self-preservation and protecting vested interest in the judiciary in the context of the fight against corruption. The widespread indignation at these decisions led to calls for the reform of the Constitutional Court. President Zelensky originally introduced a draft law that would have terminated the mandates of all CC judges. However, in reaction to the widespread concerns expressed about this law by domestic and international counterparts, including by us,¹⁰ President Zelensky withdrew this proposal.

22. On request of President Zelensky, the Venice Commission produced two urgent opinions, one on the anti-corruption mechanisms following the CC decisions¹¹ and one on the possible reform of the Constitutional Court¹². In these opinions the Venice Commission concluded that the reasoning of the CC in its decisions had been incomplete and unpersuasive and had misused international standards. Moreover, despite formal recusal requests, the CC had failed to adequately deal with serious allegations of possible conflicts of interests, and its decisions had gone considerably beyond the scope of the constitutional reviews requested. Nevertheless,

⁷ [CDL-PI\(2021\)004](#).

⁸ *Idem*, § 16.

⁹ By law, all legal appeals against decisions and actions of government institutions are filed before the Kyiv Administrative Court.

¹⁰ [Statement](#) by the co-rapporteurs [04.11.2020].

¹¹ [CDL-AD\(2020\)038](#).

¹² [CDL-AD\(2020\)039](#).

the Venice Commission underscored that CC decisions are final and binding, and that in a state governed by the rule of law, these decisions should be implemented. At the same time the Venice Commission considered it clear that a reform of the CC was needed, in particular with regard to: strengthening the requirements for reasoned decisions, improving the courts practices and mechanisms to deal with potential conflicts of interests, providing clarity regarding disciplinary procedures against judges that violate their judicial obligations, and an improved selection and appointment process for CC judges, including the establishment of an ethics body with international participation to screen the integrity of the candidate judges¹³. In this context the Venice Commission recommended that the current vacancies at the CC only be filled after a new appointment system is in place and after a Constitutional Amendment is adopted that would provide for the election of the judges from parliamentary quota by a qualified majority. Also based on these recommendations the authorities tabled a Draft Law on Constitutional Procedure that was sent to the Venice Commission for opinion¹⁴.

23. In its urgent opinion, the Venice Commission noted that the draft law does not address the appointment procedure, nor the establishment of an integrity screening body with international participation which the Venice Commission considered essential for the overall success of the reform of the Constitutional Court. While the law does introduce criteria for the position of Constitutional Court judge, these new criteria remove the existing interdiction that a CC judge cannot be an active member of government or parliament, which is problematic for the independence of this Court.

24. The law also regulates the disciplinary proceedings against CC judges which can be initiated by 3 judges of the CC or the appointing authorities (President, Verkhovna and Congress of Judges). The Venice Commission reiterated its view that a Head of State should not be in a position to start disciplinary proceedings against Constitutional Court judges and recommended that the President's mandate be transferred to the National Agency for the Prevention of Corruption. The Venice Commission also expressed its reservations about the lack of graduated sanctions¹⁵ and the high qualified majority needed by the Court to decide on sanctions which make it effectively nearly impossible to sanction a CC judge. The Venice Commission therefore recommended lowering the voting majority and the introduction of a range of graduated sanctions.

25. The Law on Constitutional Procedure contains several positive elements: it introduces mechanisms to increase the transparency of Constitutional adjudication, which was strongly welcomed by the Venice Commission. A new process for the distribution of cases and the establishment of the benches and rapporteur judges has been introduced which includes an automated management system. The draft law provides clear rules for the recusal of judges. The law stipulates that a judge should recuse himself when having a direct or indirect interest in the results of the case or if the judge is a family member or relative of the individuals involved in the case or if the judge has publicly expressed his opinion on the ongoing case after it commenced or when his objectivity and impartiality are in doubt. In addition, the law now specifies that the scope of a decision by the CC cannot go beyond the scope of the petition, which is a clear improvement in the light of the criticism levelled at the CC decisions regarding the anti-corruption mechanisms.

26. During our visit nearly all interlocutors underscored the importance of, and urgent need for, the reform of the Kyiv District Administrative Court (KDAC). This Court is of special importance as it hears appeals against decisions of state and local authorities, including all cases concerning the Central Election Commission of Ukraine (CEC), the Cabinet of Ministers and Ministries, the National Bank, the National Agency for the Prevention of Corruption (NACP) and the National Anti-corruption Bureau of Ukraine (NABU). Many of its rulings against government decisions have been questioned and are widely seen as attempts to undermine the authority's reform and anti-corruption efforts. A number of allegations of corruption have been levelled at the Kyiv District Administrative Court and its judges, including by the anti-corruption institutions¹⁶.

27. Despite all these reforms the public trust in the judiciary is reportedly still very low. Most interlocutors blamed this on the lack of a holistic reform strategy for the judiciary. We therefore wish to echo Venice Commission's recommendation that a holistic overall strategy for reform of the judiciary is still urgently needed.

4. Fight Against Corruption

28. The fight against the widespread corruption in Ukraine continues to be a stated priority of the authorities and was an important plank of the election programme of the President and the ruling party. These efforts are slowly showing tangible results which has also resulted in increased attempts to undermine the institutions and policies that have been put into place to fight corruption, some of which we already outlined above. In this

¹³ [CDL-AD\(2021\)006](#), § 10 -12.

¹⁴ [CDL-AD\(2021\)006](#).

¹⁵ The only sanction currently in the law is dismissal from the Constitutional Court.

¹⁶ See for example the [NABU](#).

respect we wish to highlight that the integrity and independence of the persons heading the anti-corruption institutions is of key importance. The post of the Special Anti-Corruption Prosecutor is vacant while the post of the Head of the Anti-Corruption Bureau will become vacant in the near future. The outcome and the process followed to fill these positions will be a litmus test for the authorities political will to tackle corruption at all levels in the Ukrainian society.

29. Ukraine has a five-tier set of institutions to implement its anti-corruption strategy: the National Anti-Corruption Bureau (NABU), the Specialised Anti-Corruption Prosecutor's Office (SAPO); the National Agency for the Prevention of Corruption (NAPC), the Assets Recovery and Management Agency (ARMA) and the specialised anti-corruption court (HACC). In a welcome development, the contentious relationships between SAPO, NABU and the NAPC on which we reported in previous notes, have been resolved and all stakeholders describe them now as normal and effective, which has benefitted the anti-corruption efforts.

30. The functioning of the NAPC used to be a weak link in the anti-corruption framework. A main responsibility of the NAPC is the implementation of the electronic asset declaration system for public officials, the so-called e-declaration system. In our last information note we outlined the problematic functioning of the NAPC which is supposed to check over 1 million asset declarations on a yearly basis. However, until its recent reform NAPCs results were limited. In a welcome development, the Verkhovna Rada adopted, in October 2019, a law on rebooting the NACP. This law changed the management structure of the NAPC and has strengthened its staffing. Instead of by five Commissioners, the NAPC is now led by a Head of Agency, which has been selected with the involvement of the international community. This Head is appointed for one non-renewable term of four years. The law on rebooting the NAPC also provided for access by the NAPC to all state and local government registers and databases to verify the asset declarations it received. This addressed a key weakness noted in previous information notes. The verification of assets declarations got another boost when, on 15 January 2019, the electronic assets declaration system, developed in cooperation with the United Nations Development Programme (UNDP), went online. Lastly, the law on rebooting the NAPC also provides for access by NABU to all state registries, including the assets declarations databases in the course of their investigations. The absence of such legal provisions had hampered the investigations by NABU. All in all, the reboot of the NACP has considerably strengthened the independence of this institutional and the effectiveness of its work.

31. Regrettably, the effectiveness of the work of the NACP suffered a major setback when, on 27 October 2020, the Constitutional Court adopted a decision that rendered asset declaration system - which is a key instrument in the fight against corruption - largely ineffective. In particular, the decision invalidated the criminal responsibility for failure to submit an asset declaration and for filing inaccurate asset declarations. As a result of this decision all criminal cases for failing to submit an asset declaration or for submitting an incorrect asset declaration were terminated. During our meeting with him, the head of NABU described this ruling as a *de facto* amnesty for corrupt behaviour by a number of high officials. As mentioned, the Venice Commission has questioned the legal reasoning behind this judgment by the Constitutional Court and expressed its concern about the clearly existing conflicts of interests, as the asset declarations of several of the judges that ruled on this issue were themselves being investigated by NABU for inaccuracies.

32. On 4 December 2020, the Verkhovna Rada amended the Criminal Code to implement the Constitutional Court ruling. The amendments removed the possibility of custodial sentences for failing to submit, or submitting an incorrect, assets declaration. In addition, it increased the threshold for criminal liability and introduced three categories of administrative liability depending on the amount of assets that was incorrectly declared. These amendments were adopted with the support of nearly all members of the Verkhovna Rada in a fast-track procedure. They were however criticised by civil society and the international community as unreasonably mild and therefore ineffective as a deterrent. In its opinion on the CC ruling, the Venice Commission argued that sanctions should be maintained at a level that is meaningful as a punishment and deterrent and that therefore the possibility of prison sentences for the most serious violations should be maintained. In December 2020, President Zelensky proposed further amendments to the Criminal Code and Code of Administrative Offences, that increase the liability for failure to submit accurate asset declarations and lower the threshold for the most serious cases. In addition, they increased the penalties and reintroduce custodial sentences for up to two years for the most serious cases.

33. In its opinion¹⁷, the Venice Commission welcomed that these amendments re-introduced prison sentences for the most serious violations and increased the sanctions for less serious cases. It considered these amendments both in line with international norms and Ukraine's international obligations as well as with the CC decision, as a certain category of violations would remain decriminalised, and the sanction of imprisonment only reserved for the most serious cases. These amendments were adopted by the Verkhovna

¹⁷ [CDL-PI\(2021\)010](#).

Rada on 3 June 2021. However, during the adoption process changes were introduced that substantially weakened the amendments. As a result, President Zelensky, following calls by both NACP and NABU, vetoed the amendments. Further amendments, that re-introduced the President's proposals were adopted by the Verkhovna Rada on 29 June 2021.

34. In previous information notes, we expressed our concerns about amendments to the law on asset declarations that required anti-corruption activists and leadership of civil society organisations active in the field of fighting corruption to submit an electronic asset declaration. In an opinion requested by the Monitoring Committee, the Venice Commission recommended that this requirement be abolished. These amendments were declared unconstitutional by the Constitutional Court and formally withdrawn. We welcome that this requirement has been removed from the law in line with our recommendations.

35. As we outlined in our previous note, the National Anti-Corruption Bureau of Ukraine (NABU), was established in 2015 with, inter alia, the task of investigating corruption among high level government officials, members of government and parliament as well as the judiciary. Despite recurrent attempts to bring this important agency under political control or to render its work ineffective, it is generally considered to be effective and independent. In the summer of 2020, the Constitutional Court issued two decisions following an appeal of 50 MPs. On 28 August 2020, the CC ruled that President Poroshenko had overstepped his Constitutional Powers by appointing, in 2015, Mr Artem Sytnyk as the Director of NABU. In a second judgement on 16 September 2020, the CC ruled that, inter alia, the legal provisions relating to the powers of the President of Ukraine to set up NABU and to appoint or dismiss its director were unconstitutional. The CC gave the Ukrainian authorities three months to regulate the situation, before invalidating said provisions. In a reaction to these decisions, which were widely seen as an attack on the functioning and independence NABU, President Zelensky announced that he did not intend to replace Mr Sytnyk, nor that the CC decision would mean that the NABU would be disbanded or stop functioning. In order to address the CC ruling, the Verkhovna Rada adopted, on 16 March 2021, a law that confirmed the President's powers to appoint or dismiss the NABU director, subject to formal confirmation by the Verkhovna Rada. In addition, following pressure by Ukraine's international partners, the Verkhovna Rada adopted amendments to the law on NABU that aim to safeguard NABU's independence from political interference. The adoption of these amendments was a condition for the release of 5 billion US\$ in Covid-19 aid by the International Monetary Fund (IMF). According to these amendments, the Head of NABU shall be appointed on the basis of an open competition in which Ukraine's international partners will play a significant role. In addition, the government is explicitly prohibited from interfering in the work of NABU. Further amendments to address the CC ruling were reportedly adopted on 20 October 2021.

36. The term of the previous Special Anti-Corruption Prosecutor expired in November 2020. However, the Special Prosecutor, whose functioning had recently become controversial, already resigned in August 2020. After several failed attempts, on 17 September 2020, the Verkhovna Rada appointed its 7 of the 11 members of the appointment commission for a new Special Prosecutor. The European Parliament and other international partners of Ukraine publicly expressed concerns about the appointment process as they felt the authorities were hastily pushing candidates that lacked the proper experience for this post. The Selection Commission announced the start of the selection process on 20 January 2021, which is still ongoing at the moment of writing. During our visit we were informed that the prosecutorial powers of the SAPO, in his or her absence, are not delegated to the Deputy SAPO but to the Prosecutor General of Ukraine. This could undermine the confidentiality and in the end effectiveness of the functioning of SAPO as the Prosecutor General is considered to be a political appointee. We therefore have called upon the authorities to amend the legal framework in order to ensure that in his or her absence the prosecutorial powers of the SAPO are delegated to his Deputy and not to an official outside of SAPO.

37. A key institution in the fight against corruption, the High Anti-Corruption Court (HACC) is fully functional since 5 September 2019. It is widely considered to be effective and tangible results have already been booked. The President of the HACC informed us that the Court at that moment had already taken up more than 200 high profile¹⁸ cases. In 33 cases a verdict had already been reached, leading to 181 convictions (many cases have more than one accused) and 5 acquittals. The President of the Court informed us that with the current caseload the Court's 5 panels would soon be saturated. In our statement we therefore urged the authorities to increase the number of judges on the court to ensure that all cases can be handled efficiently in due time in line with the requirements of the rule of law.

38. The ARMA is the agency that is responsible for the tracing and recovery of assets derived from corruption and other crimes, as well as the management of these assets while the corruption cases are before the courts. While it is a crucial part of the anti-corruption structures, its effectiveness is questioned by some of

¹⁸ including against the Kyiv District Administrative Court and its President Pavlo Vovk.

the stakeholders who have called for its reform¹⁹. Nevertheless, it should be noted that ARMA has recovered more than 100 billion UAH (approximately 3.3 billion Euros) in its five years of existence. Just prior to our visit the Verkhovna Rada had passed a draft law on the ARMA that reportedly considerably limited the possibilities for ARMA to sell assets when court cases are still taking place. ARMA has called for this reform to be reconsidered and argued that the possibility to sell assets is needed to deal with non-manageable assets, such as assets that are subject to spoilage, depreciate quickly over time or need special storage and conservation conditions that ARMA cannot provide. Both Transparency International Ukraine and the EU Anti-Corruption Initiative in Ukraine (EUACI) called upon the Verkhovna Rada not to adopt the law as it would introduce serious shortcomings into Ukraine's asset recovery and management capacity²⁰.

39. In June 2021, President Zelensky tabled the so-called anti-oligarch law that would prohibit oligarchs from financing political parties and taking part in privatisations, as well as requiring them to submit an annual assets declaration. In addition, senior officials, including the President and members of the government would be required to declare any contacts with oligarchs. While lauding the objective to limit the power of the oligarchs and their grip on Ukrainian society and politics, several of our interlocutors raised questions regarding the draft law, in particular the fact that a person would be declared an oligarch, and as a result considerably limited in their rights, by a decision of the President in consultation with the National Security and Defence Council, who would have very broad discretion in this respect and whose decision cannot be appealed before the Court. In addition, it was noted that many aspects of questionable behaviour that the law tries to regulate should be regulated in general and not only for a small group of persons classified as oligarchs. This law was adopted in first reading by the Verkhovna Rada on 1 July 2021. On 6 September 2021 the Verkhovna Rada Human Rights Commissioner (Ombudsperson), raised concerns about the constitutionality of the law and urged the Verkhovna Rada to ask a Venice Commission opinion before adopting the law in final reading. In response, on 13 September 2021, the then Speaker of the Verkhovna Rada, Dmytro Razumkov, sent the draft bill to the Venice Commission for opinion. His decision was controversial and quickly became politicised. On 23 September 2021, following a failed assassination attempt on an aide to President Zelensky the day before, the Verkhovna Rada adopted the law in final reading without waiting for the Venice commission opinion. On 5 October 2021, the Verkhovna Rada voted to remove Mr Razumkov, whose relationship with the President had reportedly become strained, as speaker citing his opposition to the anti-oligarch law. Nevertheless, as mentioned, several interlocutors expressed concerns about different aspects of the law and we therefore urge the Verkhovna Rada to address any concerns and recommendations raised in the opinion the Venice Commission is preparing on this law.

5. Decentralisation

40. Decentralisation is an important issue in Ukraine, not only to improve the effectiveness of governance but also in the context of the implementation of the Minsk agreements. Following the Maidan events, the newly elected administration of President Poroshenko initiated a far-reaching Constitutional reform. This reform concentrated on the Judiciary and Decentralisation Chapters in the Constitution. This reform process is outlined in the last report on the functioning of democratic institutions in Ukraine which was debated in the Assembly in January 2017. The Constitutional amendments on the judiciary, which were developed in close co-operation with the Venice Commission were adopted by the Verkhovna Rada on 2 June 2016. However, the amendments dealing with decentralisation, which were also developed in closed co-operation with the Venice Commission and the Congress of Local and Regional Authorities could not find the required constitutional support for their adoption. The main reason for this was the inclusion of article 18 of the transitional provisions in the package of amendments to the Constitution dealing with decentralisation. This article stated that "Specific arrangements for self-government of some parts of Donetsk and Luhansk oblasts shall be set forth in a separate law." In the context of the developments in Eastern Ukraine this article was very controversial and lacked support almost cross the board among the population and among the members of the Verkhovna Rada. As a result of this there was no constitutional majority in the Verkhovna Rada to adopt the package of constitutional amendments dealing with decentralisation. The current authorities have pledged (see below) to reintroduce the Constitutional amendments but without the transitional article 18, but most interlocutors estimate the current support for these amendments in the Verkhovna Rada would fall short of the 2/3 majority needed to adopt them.

41. Irrespective of the Constitutional amendments, the decentralisation process and reform of local self-government has continued unabated and is generally considered to be a successful reform.

42. In February 2020 the Verkhovna Rada requested an opinion of the Venice Commission on a draft law on Constitutional Amendments that was tabled by President Zelensky. These amendments contained a new

¹⁹ [Transparency International](#) Ukraine [23 February 2021].

²⁰ [Interfax](#) Ukraine [09.07.2021].

text for the decentralisation chapter which, in general, was the same as the Chapter that was proposed in 2015/2016, minus the infamous paragraph 18 of the transitional provisions. The draft law for constitutional amendments was later withdrawn to ostensibly allow for more reflection on the draft text, but also, as already mentioned, the required majority to adopt these amendments was lacking.

43. In their joint opinion²¹, the Venice Commission and the Democracy Directorate (Directorate II) of the Council of Europe, recalled that the Venice Commission had given a largely positive opinion on the original amendments and that its opinion was therefore largely similar for Presidents Zelensky's proposal. The draft amendments propose the introduction of a three-tiered system of local government based on municipalities (hromadas), rayons (okruhs) and regions (oblasts). The amendments provide extensive powers to local government, including delegated competences. In addition, the amendments propose the introduction of a prefecture institution (following the French example) to represent the central executive authorities at regional level and to supervise the local authorities in the regions. The proposed introduction of the prefecture institution was the most controversial aspect of the Constitutional amendments regarding decentralisation in 2015/2016, and continues to be so today.

44. In this context the opinion noted that, with regard to representing the executive central authorities, the prefecture system is in line with European standards and replaces a system where the Head of the Oblast would actually combine this function with that of being the head of the regional executive power, which, unlike the prefecture system, is not in line with the Charter on Local Self-Government. With regard to supervision, the opinion noted that this is an important element of local and regional self-government, but that excessive supervision should be avoided as it would risk paralysing local self-government. The detailed technical recommendations in the opinion on the draft amendments were based on these two overarching principles.

45. In absence of the Constitutional amendments the authorities drafted a Law on Local Self-Government to provide the legal framework for the merger of municipalities and rayons as well as for the introduction of the prefecture institution, presumably once the constitutional amendments are introduced. As a result of these reforms, the number of hromadas was reduced from 11.000 to 1500 and the number of okruhs from 400 to 140.

6. Media

46. Media is a sensitive issue in Ukraine as it is closely linked to, and affected by, the ongoing information war with the Russian Federation in the context of its aggression in Eastern Ukraine and illegal annexation of Crimea. This is compounded by shortcomings in legal framework for the media. A new framework Media law was registered in 2012 but has never been adopted and the media environment is governed by several sectorial laws. As a result, grey areas exist such as for instance online and social media, which can be used as political tools but that are not yet, or only partially, regulated. In this context a key issue has been the question on how to address misinformation, fake news and propaganda in the context of the ongoing information war with the Russian Federation. With regard to online media, the SBU has blocked a number of online media for spreading fake news and misinformation which has underscored the need for proper legislation in this respect.

47. On 20 January 2020, the Ukrainian authorities presented a draft law on combating disinformation to regulate media activity regarding fake news, that raised concerns among journalist and media outlets. However, in response to the criticism received, the draft law was removed from the agenda of the Verkhovna Rada and the issue is considered to be resolved by the Council of Europe Platform to promote the protection of journalism and safety of journalists.

48. A law on sanctions has been adopted on which basis a number of televisions channels that were used for misinformation and propaganda for the Russian Federation were closed by the National Security and Defence Council, most prominently 3 stations owned by Ukrainian oligarch and Opposition Bloc leader Viktor Medvedchuk. Mr Medvedchuk is a controversial oligarch in Ukraine with close ties to the Russian ruling elite²² and widely seen as an ally of the Russian Federation in Ukraine. Most interlocutors we met considered that the closure of these channels had been warranted, but questioned the legal means used to do so, in particular the lack of oversight by the Courts over decisions to close media outlets. On 15 July and 26 August Mr Medvedchuk filed complaints with the European Court of Human Rights against the legal actions taken against him by the Ukrainian authorities, including the closure of his television stations, which he alleges are politically motivated.

²¹ [CEGG/LEX\(2020\)5](#).

²² He is a close friend of Mr. Putin, who is reportedly the godfather of one of Mr. Medvedchuk's daughters.

49. In addition to the impact of the information war, media stakeholders identified pressure on the supervisory board of the public broadcaster to change the management of the latter, the Law on De-oligarchisation and a new tender for Free to Air (FTA) channels as main challenges for the media environment in the near future.

50. A number of welcome reforms have taken place in Ukraine since 2014, including the adoption of a Law on Media ownership transparency²³. The Deputy Minister for Media informed us that a new Media Law was being drafted and would hopefully soon be presented to the Verkhovna Rada. Stakeholders in general noted an improved co-operation with the authorities, including in the framework of the Council of Europe Platform to promote the protection of journalism and safety of journalists. Since 2015 Ukraine has responded and resolved 96% of the alerts concerning journalists on the platform. Regrettably, violence against journalists continues to be recorded, especially against those investigating corruption at local and regional level, and against journalists that are seen as agents of the Russian authorities and their interests. Attacks are seldomly effectively or transparently investigated, leading to a sense of impunity for such crimes. As a result, Ukraine lowered one place (from 96 to 97) in the 2021 World Press Freedom Index published by Reporters Without Borders. During our visit we urged the authorities to ensure that all acts of violence against journalists are fully and transparently investigated and perpetrators brought before the Courts.

7. Minorities

51. The interrelated issues of minorities and of the protection of the state language and status of minority languages in Ukraine are complex and sensitive, especially in the context of the illegal annexation of Crimea by the Russian Federation and the ongoing conflict in Eastern Ukraine. A key aspect of this is the position of the Russian language, which is the largest minority language in Ukraine and the main language for many non-Russian minorities²⁴, and also widely used in daily life by many ethnic Ukrainians. The wish of the Ukrainian authorities to protect and strengthen the use of Ukrainian as a State language is therefore fully understandable²⁵ and has even been recommended by the Venice Commission in its previous opinions on the 2012 law on the Principles of the State Language Policy. However, in their efforts to protect the State language the authorities have often failed to provide an appropriate balance between the protection of Ukrainian as a State Language on the one hand, and the protection of minority languages on the other.

52. The protection and promotion of Ukrainian as the State language, as well as the right of national minorities to use their languages are guaranteed in the Ukrainian Constitution. In 2012 the Verkhovna Rada adopted the Law on the Principles of the State Language, which was found by the Venice Commission as to disproportionately strengthen the position of the Russian language. The Law was amended but still mostly focussed on the protection and use of the Russian language to a level almost equal to the State language. The law allowed for minority languages to be declared regional languages in those regions where they were spoken by more than 10% of the population allowing for their use in education and local government communications in those regions. Following the Maidan events, the Verkhovna Rada voted to abrogate the Law on the Principles of the State Language, but this was never enacted by the President of Ukraine. The law therefore remained in force till February 2018, when it was declared unconstitutional by the Constitutional Court of Ukraine. In May 2019 the Verkhovna Rada adopted a Law on supporting the functioning of the Ukrainian Language as the State Language in order to address the legal vacuum resulting from the CC decision. This law was sent to the Venice Commission for opinion, which it adopted²⁶ in December 2019.

53. The Venice Commission expressed its understanding for the need to protect the State Language in Ukraine and welcomed the positive provisions to achieve that objective and to provide each citizen of Ukraine with the opportune for mastering the State language. Moreover, it noted that the law now formally allows for

²³ Reporters Without Borders – 2021 World Press Freedom Index.

²⁴ According to the 2001 census, ethnic Ukrainians make up around 78% of the population while ethnic Russians amount to around 17%. The percentage of ethnic Russians in the west and centre of the country is between 1.2% to 9%, while in the east and south, ethnic Russians make up between 14% and 40% of the population. The Crimea is the only region of Ukraine where ethnic Russians are in the majority, with 58%. According to the same census, Russian is the native language of approximately 30% of the population and Ukrainian around 67%. Again, the use of Ukrainian is much more prevalent in the west and centre where for 81% to 97% of the population Ukrainian is the native language (and Russian the native language for 1% to 10%). In the east and south, Ukrainian is the native language for 24% to 70% (and Russian the native language for 25% to 75%) of the population. Again, the exception is Crimea where Russian is the native language of 77% of the population (90% in Sevastopol). It should be noted that the use of the Russian language in Ukraine is larger than the percentage of persons who speak it as a native language. A number of polls have been conducted that show that 40% to 50% of the population consider Russian to be their main language of communication. ([Doc 13482](#)): Recent developments in Ukraine: threats to the functioning of democratic institutions).

²⁵ See also [CDL-AD\(2019\)032](#) § 134.

²⁶ [CDL-AD\(2019\)032](#).

the use of minority languages in parallel with the State language. These provisions clearly respond to a need in the Ukrainian society. At the same time the Venice Commission regretted that the law had been drafted without adequate consultation with representatives of national minorities. As a result, the law did not find a proper balance between the protection of the State language on the one hand, and the protection of minority languages on the other, as required under the relevant international treaties (Framework Convention for National Minorities and European Charter for Regional and Minority Languages) that Ukraine is party to. This is compounded by the fact that the current Law on National Minorities is inadequate, and the new one that is being drafted has no clear timetable for its adoption. As a result, there are lacunes in the protection of minority rights, including language rights.

54. The Venice Commission called on the authorities to adopt a new law on minorities without further delay. During our visit we were informed that a new law on minorities is in its final stages of preparation and should soon be presented to the Verkhovna Rada. This law has, according to the authorities, been developed in consultation with the minorities and can count on the support of most of them. The minority representatives agreed that communication and consultations had improved but had until now not resulted in many tangible results. The minority representatives especially stressed that it would be important that the new law would move always from a strictly cultural to a more social and human rights approach towards minority issues.

55. The language law provides for a differential treatment between three categories of minority languages, namely the languages of indigenous people of Ukraine²⁷; national minority languages that are also official languages of the EU, and languages of national minorities that are not languages of the EU. In addition, the law provides a special place for the use of the English language. While the Venice Commission noted that special protection for indigenous language could be warranted, it objected to the differentiation made between national minority languages that are also official EU languages, and those that are not. This differential treatment was also used in the law on the use of minority languages in the Ukrainian education system (see below) and considered by the Venice Commission to be at variance with the principles of non-discrimination. Moreover, the Venice Commission also noticed that some of the provisions in the law impose limitations on the freedoms of expression and assembly. While recognising that these limitations may serve a legitimate aim, the Venice Commission emphasised that such limitations should be proportionate, which was not always the case in the new Law on supporting the functioning of the Ukrainian Language as the State Language.

56. The Law on supporting the functioning of the Ukrainian Language as the State Language includes an article that is meant to replace the controversial article 7 in the education law that governs the use of minority languages in the education system. However, this article continues to treat minority languages that are also EU languages more favourable than other minority languages, and while ensuring an appropriate level of teaching of the State language at multi-lingual schools, which is welcome, it does not ensure that a sufficient enough proportion of the education would be in a minority language to obtain a high level of proficiency. In a welcome development however, the law lifts any restrictions on the teaching of minority languages in private educational establishments, as long as they also provide their students with proficiency in the State language. The limitations on minority language teaching in private schools had been a point of concern in the Venice Commission opinion on the law on education.

57. With regard to the Media, the law increases the proportion of Ukrainian language content for national broadcasters from 75 to 90% and for local broadcasters from 60 to 80%. To the extent that these quotas would apply to private broadcasters it should be ensured that such limitations are proportional to the aim they seek to serve. While printed media may be published in minority languages, they should also ensure that the same content is available in Ukrainian, which would place a great burden on publishers and thus may run counter to the principle of freedom of expression. The law also foresees the introduction of a Commissioner for the protection of the State language. The Venice Commission recommended that his or her term of reference be enlarged to also include the protection of minority languages. Moreover, while the Commissioner can levy administrative fines to ensure implementation of the law, the Venice Commission recommended that the focus of the language commissioner should be on promotion and not on enforcement.

58. On 1 July 2021, the Verkhovna Rada adopted in a special session a law on indigenous people in Ukraine. This law, which seems mostly to be aimed at the minority situation in Crimea, according to the Minister of Culture strictly adheres to the United Nations General Assembly (UNGA) definition of an indigenous minority, which is an ethnic minority that does not have a kinstate. According to this definition most ethnicities in Ukraine, including ethnic Ukrainians and ethnic Russians, are not considered an indigenous people of Ukraine, which not unexpectedly raised some concerns among some of Ukraine's neighbours.

²⁷ Indigenous peoples are defined as minorities that do not have a kinstate.

8. Conflict in Eastern Ukraine

59. A key plank of Mr Zelensky's election campaign had been his promise to give a new impetus to the resolution of the conflict in the Donbas. Initially some limited progress was indeed achieved in the framework of the Minsk agreements, especially regarding the exchange of prisoners. A major prisoners' exchange, that include Ukrainian filmmaker Mr Sentsov, took place on 7 September 2019. This exchange was somewhat overshadowed by the fact that the Russian Federation insisted, and Ukraine agreed to, that Mr Volodymyr Tsemakh, a former commander of Russian-backed separatist forces in Eastern Ukraine, who is subject to a request for extradition by the Dutch government for his role in the downing of MH17, would be included in the exchange. This prisoners' swap was widely seen as a pre-condition for a new summit of the so-called Normandie group (France, Germany, Ukraine, and the Russian Federation) that took place on 9 December 2019 in Paris.

60. This summit led to an agreement to de-escalate the tense situation in the Donbas region and to give new impetus to the implementation of the Minsk agreements. As a first step, the Ukrainian authorities and the Russian backed rebel forces agreed to initially disengage in two areas in Luhansk and Donetsk before the end of 2019. This process was monitored by the OSCE. An additional three areas were agreed upon for disengagement by March 2020. While these disengagements are a welcome step and (initially) reduced tensions along the contact line, frequent cease fire violations from all sides are still recorded on a daily basis by OSCE Monitoring bodies. The continuation of violations of the ceasefire agreement was used as a justification by the Russian Federation for its military build-up along the Ukrainian border in spring 2021.

61. In a welcome development, President Putin, and President Zelensky agreed during the summit to an "all-for all" prisoner swap between the Ukrainian authorities and the Russian backed *de facto* authorities in the Luhansk and Donetsk areas that are not under the control of Kyiv. This prisoner swap took place on 29 December 2019 and involved 200 prisoners, 74 released by the pro-Russian rebel forces and 124 by the authorities in Kyiv.

62. Unfortunately, little or no progress has been achieved towards a political solution for the conflict. Spring and early summer of 2021 saw a steep build-up of Russian military troops along the border with Ukraine. As mentioned, the Russian Federation argued that this build-up, had been in reaction to the ongoing ceasefire violations in the Donbas. This build-up was decried by the international community, which also questioned the reasons given by the Russian Federation, given that the ceasefire violations were comparatively lower than in previous periods.

63. On 23 August 2021, Ukraine organised the inaugural summit of the Crimea Platform, which is "*a consultative and coordination format with the aim of peacefully ending the Russian Federation's temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol and to restore control of Ukraine over this territory in full accordance with international law*"²⁸. The summit had a wide and high-level participation, including by the Secretary General of the Council of Europe and the President of the European Council. As the summit took place after our visit, we hope to be able to provide a more detailed update on this platform and its work in a future information note.

64. We have accepted an invitation by our Ukrainian counterparts to visit to conflict area during one of our next visits to the country.

²⁸ [Declaration | Crimea Platform \(crimea-platform.org\)](https://crimea-platform.org/)

PACE Ukraine monitors: marked progress in many areas, but considerable challenges remain

09/07/2021| Monitoring

Following a visit to Kyiv from 5 to 7 July 2021, the PACE co-rapporteurs for the monitoring of Ukraine have welcomed the marked progress made on reforms in many crucial areas in the country, but emphasised that considerable challenges remain. In general, they underscored that the many reforms need not only to be adopted but also implemented and enforced.

The co-rapporteurs, Birgir Thórarinsson (Iceland, EPP/CD) and Alfred Heer (Switzerland, ALDE), warmly welcomed that all key institutions established to fight the widespread corruption in the country are now fully up and running and have delivered their first tangible results. They urged the authorities to continue taking all necessary steps to protect the independence of these institutions, including from challenges by other state agencies and institutions that could undermine the effectiveness of the fight against corruption. In this respect they recommended that the authorities consider increasing the number of judges in the High Anti-Corruption Court (HACC) and provide full prosecutorial powers to the Deputy Specialised Anti-Corruption Prosecutor while the appointment process for the Special Prosecutor takes its course.

Reform of the judiciary is both the foundation of and litmus test for wider reform of Ukraine's democratic institutions. In this respect the co-rapporteurs welcomed the recently adopted reform of the High Council of Justice and the High Qualifications Commission of Judges, which will ensure that Ukraine's international partners have a meaningful voice in the appointment of the members of these two crucial judicial bodies. It is hoped this in turn will mean that the large number of vacant judge positions will now soon be filled with fully qualified candidates. The co-rapporteurs also welcomed the announced reform of the Constitutional Court, including with regard to the integrity of the judges, and hoped that a reform of the controversial Kyiv District Administrative Court, in line with international rule of law standards, would soon follow. While they understood the need for the more limited and focussed reforms under way, they hoped that these would not become a substitute for a holistic and strategic reform of the judiciary, which is still clearly needed in Ukraine.

The co-rapporteurs also welcomed reform in the area of decentralisation, which is widely regarded as an important step forward in strengthening local and regional self-government. They called on all members of the Verkhovna Rada to now adopt the necessary constitutional amendments to allow the next phase of decentralisation to be implemented.

Lastly the co-rapporteurs welcomed the announcement by the Deputy Speaker of the Verkhovna Rada that she expected Ukraine would soon ratify the Istanbul Convention, which sends an important message to the region.

Appendix 2**Programme of the fact-finding visit to Kyiv (5 to 7 July 2021)**

Co-rapporteurs: Mr Alfred Heer (Switzerland, ALDE)
Mr Birgir Þórarinnsson (Iceland, EPP/CD)

Secretariat: Mr Bas Klein, Deputy Head of Secretariat, PACE Monitoring Committee

Monday, 5 July 2021

09:00	Briefing by the Head of the Council of Europe Office in Ukraine
09:30 -11:00	Roundtable with experts and civil society representatives on Reform of the Judiciary and Fight against corruption
11:30 -12:30	Roundtable with experts and civil society representatives on Electoral reform and decentralisation
12:30	Lunch
14:00 -15:00 15:30-16:15	Roundtable with experts and civil society representatives on Media Environment Meeting with Ms Olena Kondratiuk, Deputy Chairperson of the Verkhovna Rada of Ukraine
16:30-17:15	Meeting with the Chairperson and members of the Ukrainian Delegation to the Assembly

Tuesday, 6 July 2021

09:00-10:00	Roundtable with experts and civil society representatives on minority and language policies
10:30-11:00	Meeting with the Chairperson and members of the Committee on Anti-Corruption Policy
11:05-11:35	Meeting with the Chairperson and members of the Committee on Legal Policy
11:40-12:10	Meeting with the Chairperson and members of Committee on State Building, Local Governance, Regional and Urban Development
12:15-12:45	Meeting with the Chairperson and members of Committee on Human Rights
12:50-13:20	Meeting with Chairperson and Parliamentary Committee on Media Freedom
15:00-15:45	Meeting with the Deputy Specialized Anti-Corruption Prosecutor (SAPO)
16:10-16:55	Meeting with Ms Iryna Venediktova, Prosecutor General of Ukraine
17:25-18:10	Meeting with Mr Oleksandr Novikov, Head of the National Agency on Corruption Prevention (NACP)

Wednesday, 7 July 2021

09:00	Meeting with Ambassadors
10:30-11:15	Meeting with Ms Lyudmyla Denisova, Ukrainian Parliament Commissioner for Human Rights (Ombudsman)
11:30-12:30	Meeting with Mr Vitaliy Sigidin, Head of the Agency for Investigation and Management of Assets (ARMA)
13:00-13:40	Meeting with Ms Olena Tanasijevich, Head of the High Anti-Corruption Court (HACC)
14:00-14:45	Meeting with Mr Artem Sytnyk, Head of National Anti-Corruption Bureau (NABU)
15:15-16:00	Meeting with the Deputy Head of the Presidential Administration of Ukraine
16:30-17:15	Meeting with Mr Oleksiy Chernyshov, Minister for Communities and Territorial Development
17:40-18:25	Meeting with Mr Taras Shevchenko, Deputy Minister of Culture and Information Policy
20:00	Dinner hosted by the Ambassador of Switzerland to Ukraine