



# International Covenant on Civil and Political Rights

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## Information received from Ukraine on follow-up to the concluding observations on its eighth periodic report\*

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## **Interim information on the implementation of paragraphs 42, 44, 48 of the Human Rights Committee's concluding observations on the eighth periodic report of Ukraine (CCPR/C/UKR/CO/8)**

1. This Interim information has been prepared in accordance with paragraph 54 of the Human Rights Committee's Concluding observations on the eighth periodic report of Ukraine on the implementation of the International Covenant on Civil and Political Rights.

### **A. Information relating to paragraph 42 Right to privacy**

#### **Current legislation and relevant statistical data**

2. Article 32(1) of the Constitution of Ukraine stipulates that no one shall be subjected to interference with his/her private and family life (except in cases provided for by the Constitution of Ukraine).

3. Legal relations related to the protection and processing of personal data, protection of fundamental human and civil rights and freedoms, including the right to privacy, in connection with the processing of personal data are regulated by the Law of Ukraine No. 2297-VI "On Personal Data Protection" of June 1, 2010.

4. According to Article 7(1) of the Criminal Procedure Code of Ukraine (hereinafter - CPC), the content and form of criminal proceedings must comply with the general principles of criminal proceedings, which include, *inter alia*, non-interference in private life.

5. Article 15 of the CPC stipulates that during criminal proceedings, everyone is guaranteed non-interference in private (personal and family) life. No one may collect, store, use and disseminate information about a person's private life without his/her consent (except in cases provided for by the CPC). Information about a person's private life obtained in accordance with the procedure provided for by the CPC may not be used other than to fulfill the tasks of criminal proceedings. Everyone who has been granted access to information about private life is obliged to prevent the disclosure of such information.

6. Pursuant to Article 258 of the CPC, no one may be subjected to interference in private communication without the investigating judge's ruling. Prosecutor or investigator upon approval of the prosecutor shall be required to apply to the investigating judge for permission to interfere in private communication in accordance with the procedure provided for by the CPC, if any investigative (detective) action involves such interference.

7. At the same time, interference in private communication between a defence counsel or a chaplain and the suspect, accused, convict or acquitted person is prohibited.

8. Article 233(1) of the CPC provides that no one has the right to enter a person's home or other estate for any purpose, except with the voluntary consent of the owner or based on the ruling of an investigating judge, except in cases established by this article.

9. Article 234(2) of the CPC stipulates that a search is conducted on the basis of a decision of the investigating judge of the local general court within the territorial jurisdiction of which the pre-trial investigation body is located, and in criminal proceedings concerning crimes within the jurisdiction of the High Anti-Corruption Court - on the basis of a decision of the investigating judge of the High Anti-Corruption Court.

10. Article 246(2) of the CPC stipulates that covert investigative (detective) actions shall be conducted where information on criminal offense and its perpetrator cannot be obtained otherwise. Covert investigative (detective) actions are provided for in a number of articles, in particular, Article 260 (audio and video monitoring of a person), Article 261 (arrest of correspondence), Article 262 (inspection and seizure of correspondence), Article 263 (collecting information from transport telecommunication networks), Article 264 (collecting of information from electronic information systems), Article 267 (inspecting

publicly inaccessible places, home or other estate of a person), Article 269 (surveillance of an individual, an object or a place), Article 269-1 (monitoring of bank accounts), Article 270 (audio and video monitoring of a place) of the CPC shall be conducted exclusively in criminal proceedings in respect of grave or special grave crimes.

11. Pursuant to Article 246(3) of the CPC, decision to conduct covert investigative (detective) actions shall be made by investigator, prosecutor, and in cases provided for by the CPC, investigating judge upon request of prosecutor or upon request of investigator approved by prosecutor. Investigator is obliged to notify prosecutor of the decision to conduct certain covert investigative (detective) actions and the results obtained.

12. Prosecutor has the right to prohibit or terminate further covert investigative (detective) actions.

13. Thus, in 2023, given the absence of further need to interfere with private communication of persons during covert investigative (detective) actions in accordance with the provisions of Article 246(3) of the CPC, prosecutors in criminal proceedings decided to terminate 1863 such investigative actions, and in the first half of 2024 – 1194.

14. In addition, in 2023, prosecutors denied 1360 requests from investigative bodies of the National Police for permission to conduct covert investigative (detective) actions in criminal proceedings, and in the first half of 2024 – 762 requests.

15. Article 253 of the CPC provides that persons whose constitutional rights were temporarily restricted during covert investigative (detective) actions, as well as the suspect and his/her defence counsel, shall be informed about such restriction in written form by prosecutor or upon his instruction by investigator. Relevant notification of the fact and results of covert investigative (detective) actions shall be made within twelve months from the date of termination of such actions, but not later than an indictment has been produced to court.

16. As of October 01, 2024, pre-trial investigation bodies of the National Police of Ukraine initiated investigations into 1139 criminal offenses for violations of privacy. Pre-trial investigation of 601 criminal proceedings was completed, of which: 297 were sent to court, including 245 regarding criminal offenses committed repeatedly or that caused significant damage to the rights, freedoms and interests of a person; 304 were closed due to the absence of an event or corpus delicti.

17. Article 182 (violation of personal privacy) of the Criminal Code of Ukraine (hereinafter - CC) establishes criminal liability for unlawful collection, storage, use, destruction, dissemination of confidential information about a person or unlawful modification of such information, except as provided for by other Articles of the CC, including those committed repeatedly, or if such actions caused significant damage to the rights, freedoms and interests of a person protected by law.

18. According to the State Judicial Administration of Ukraine (hereinafter - SJA), the number of proceedings considered, including those with a sentencing under Article 182 of the CC was as follows: (i) in 2021 - 9 reviewed proceedings, 4 of which resulted in sentencing and conviction of 9 persons; (ii) in 2022 - 5 reviewed proceedings, 3 of which resulted in sentencing and conviction of 4 persons; (iii) in 2023 - 9 reviewed proceedings, 6 of which resulted in sentencing and conviction of 6 persons.

19. In the context of legal protection of victims, it should be noted that from 2021 till August 31, 2024, free legal aid (hereinafter - FLA) centres registered 34 applications for FLA on issues related to violation of privacy, including 32 for free primary legal aid (consultations, clarifications on legal issues) and 2 for free secondary legal aid to represent the interests of victims in criminal proceedings under Article 182 of the CC.

20. In addition, during the abovementioned period, FLA centres registered 4 applications for on issues related to violation of the secrecy of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or via computer, as provided for in Article 163 of the CC, including 3 applications for free primary legal aid and 1 application for free secondary legal aid.

21. In the context of termination illegal collecting and disseminating of personal data of individuals on the Myrotvorets website, in addition, it should be noted that law enforcement agencies have initiated criminal proceedings over these facts, which have been consolidated into one criminal proceeding. The relevant pre-trial investigation is underway.

***Legislative initiatives***

22. In order to harmonize Ukrainian legislation with international standards in the field of personal data protection, the draft Laws of Ukraine “On the National Commission on Personal Data Protection and Access to Public Information” (Reg. No. 6177 of October 18, 2021) (hereinafter - Draft Law No. 6177) and “On Personal Data Protection” (Reg. No. 8153 of October 25, 2022) (hereinafter - Draft Law No. 8153) were developed and submitted to the Verkhovna Rada of Ukraine.

23. The Draft Law No. 6177 provides for the establishment of an independent supervisory authority - the National Commission on Personal Data Protection and Access to Public Information (hereinafter - National Commission).

24. Thus, Article 15 of the mentioned Law proposes to authorize the National Commission's inspectors to conduct investigations into complaints of violations of the legislation on personal data protection and access to public information.

25. Draft Law No. 8153, among other things, proposes to establish requirements for the processing of personal data by law enforcement and intelligence agencies, as well as for the transfer of personal data to the territory of another state for law enforcement purposes.

**B. Information relating to paragraph 44**

**Independence of the judiciary and administration of justice**

**Regarding the guarantee of the independence of judges**

26. According to the provisions of Article 126 of the Constitution of Ukraine and Article 48 of the Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges” of June 2, 2016 (hereinafter – Law No. 1402-VIII), the independence and immunity of judges are guaranteed by the Constitution and laws of Ukraine. Any influence on judges is prohibited.

27. A judge may not be detained or kept under the custody or arrested without consent of the High Council of Justice (hereinafter – HCJ) before a sentence is passed by the court, with the exception of detention of the judge during or immediately after committing a grave or especially grave crime.

28. A judge may not be held liable for a court decision made by him/her, except for the commission of a crime or a disciplinary misdemeanour.

29. A judge shall hold office for an unlimited term.

30. The independence of a judge is ensured by: a special procedure for his/her appointment, prosecution, dismissal and termination of powers; inviolability and immunity of a judge; irremovability of a judge; the procedure for the administration of justice determined by the procedural law, secrecy of taking court decisions; prohibition of interference in administration of justice; liability for contempt of court or judge; a separate procedure for financing and organizational support of the courts established by law; proper material and social security of judges; functioning of judicial governance bodies and self-government; means of ensuring personal security of judges, their family members, property, as well as other means of their legal protection, as determined by law; the right of a judge to resign.

31. The protection of judges at the level of the Constitution of Ukraine is the most important guarantee of the independence of the judiciary, unbiased, objective, impartial and independent performance by judges of their duties to protect human and civil rights and freedoms, as well as is a guarantee of the rule of law and the constitutional order in the state

(Decision of the Grand Chamber of the Constitutional Court of Ukraine No. 11-r/2018 of December 04, 2018).

**Regarding selection, appointment and qualification assessment of a judge or candidate for the position of a judge**

32. According to Article 70 of the Law of Ukraine No. 1402-VIII the High Qualification Commission of Judges of Ukraine (hereinafter - HQCJ) ensures transparency and openness of the selection of judges.

33. Pursuant to Article 84(4) of this Law the qualification assessment is conducted in a transparent and public manner in the presence of the judge (candidate for judicial office) who is being assessed and any interested persons.

34. Thus, when candidates for the position of judge take the qualification exam, as well as at the HQCJ meetings on decision-making on the results of the relevant stages of the selection process, representatives of media, public associations, judges, lawyers, representatives of judicial self-government bodies, the candidate for judicial office in question, as well as other interested persons invited by the HQCJ may be present.

35. Article 74 of Law No. 1402-VIII stipulates that the qualification exam is recorded by means of video and audio recording equipment. Information on the results of qualification exam is publicly available and published on the official website of the HQCJ.

36. Pursuant to Article 75 of Law No. 1402-VIII, from the date of publication of the HQCJ's decision on admission of a candidate for judicial office to the special screening, any person has the right to provide the Commission with information and materials regarding the non-compliance of the particular candidate with the requirements established by this Law.

37. The HQCJ may take into account such information and materials when conducting the selection of judges. Information and materials received from anonymous sources, as well as information and materials whose origin cannot be established, are not considered by the HQCJ.

38. Pursuant to Articles 77 and 78 of Law No. 1402-VIII the HQCJ approves rating for each court specialization (administrative, commercial and general (civil and criminal)). After approving the ranking of candidates for judicial office, the Commission places all candidates in the reserve for vacant judicial positions. A candidate for judicial office enrolled in the reserve may participate in competitions for vacant judicial positions throughout the entire period of his/her stay in the reserve.

39. On August 05, 2021, the following laws of Ukraine came into force:

- No. 1629-IX “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Laws of Ukraine on the Resumption of the Work of the High Qualification Commission of Judges of Ukraine” of July 13, 2021, which provides for the resumption of the HQCJ's work by establishing Ethic Council with the participation of international experts;
- No. 1635-IX “On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice” of July 14, 2021, which provides for the improvement of the procedure for election (appointment) to the positions of HCJ members by establishing an Ethics Council with the participation of international experts.

40. In addition, on December 09, 2023, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 3511-IX “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” and Certain Legislative Acts of Ukraine on Improving the Procedures for Judicial Career” (hereinafter - Law No. 3511-IX).

41. This Law provides, among other things, for shortening the stages of selection and competition procedures, changing the formation procedure, establishing the specifics of completing selection and competition procedures not completed by the HQCJ, as well as

the possibility for the HQCJ to check the personal moral and psychological qualities of candidates for the position of a judge, and defining the components of the qualification exam - anonymous testing and a practical task.

42. In addition, according to Article 83 of Law No. 1402-VIII, the HQCJ conducts a qualification assessment to determine the ability of a judge (candidate for the position of a judge) to administer justice in the relevant court according to the criteria established by law.

43. One of the criteria for qualification assessment is integrity.

44. The HCJ approves the Unified Indicators for Assessing the Integrity and Professional Ethics of a Judge (candidate for judicial office) after consultation with the HQCJ, the Council of Judges of Ukraine, and the Public Integrity Council.

45. It should be added that, in accordance with Article 93 of Law No. 1402-VIII, the HQCJ, for conducting its power, has the right to request and receive necessary information from judges, courts, the State Judicial Administration of Ukraine, judicial self-government bodies, other bodies and institutions in the justice system, public authorities and local governments, their officials, enterprises, institutions, organizations regardless of ownership and subordination, associations of citizens and individuals. Failure to provide such information at the request of the Commission shall entail liability established by law.

46. Members and authorized employees of the HQCJ Secretariat have direct access to automated information and reference systems, registers and data banks owned (administered) by state or local self-government bodies, use the state, including governmental ones, means of communication and information, special communication networks and other technical means.

47. Also in August 2023, the Public Integrity Council was formed, which was established under the HQCJ on a permanent basis and operates on a collegial basis to assist in establishing the compliance of a judge or candidate for the position of judge with the criteria of professional ethics and integrity, and is intended to represent the interests of citizens in the formation and implementation of state policy in terms of forming a highly professional judiciary and its integrity.

48. Article 88 of Law No. 1402-VIII (as amended on December 09, 2023, by Law No. 3511-IX) stipulates that if the Public Integrity Council in its opinion establishes that a judge (candidate for the position of judge) does not meet the criteria of professional ethics and integrity, the HQCJ may make a reasoned decision to confirm the ability of such a judge (candidate for the position of judge) to administer justice in the relevant court only if such decision is supported by two-thirds of the votes of the appointed members of the Commission, but not less than nine votes.

49. Pursuant to subparagraph 4 of paragraph 16-1 of Section XV "Transitional Provisions of the Constitution of Ukraine", from the date of entry into force of the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding Justice)", the suitability for the position of a judge who has been appointed for a five-year term or elected as a judge for an unlimited term before the entry into force of the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding Justice)" must be assessed in accordance with the procedure established by law. If the results of such evaluation reveal that the judge is not suitable for the position in terms of competence, professional ethics or integrity, or if the judge refuses to undergo such evaluation, this shall be grounds for dismissal.

50. Thus, the mechanisms for verifying the integrity of candidates for judicial office provided for in the law will help to increase the independence of judges.

51. In addition, it should be noted that Article 84(6) of Law No. 1402-VIII stipulates that if during the qualification assessment of a judge the HQCJ becomes aware of circumstances that may indicate that the judge has violated the legislation on prevention of corruption, the Commission shall immediately notify the specially authorized entities in the field of combating corruption.

### **Regarding the relevant statistical data**

52. After the HCJ appointed the authorized composition of the HQCJ on June 1, 2023, and resumed its work on November 13, 2023, the HQCJ resumed the qualification assessment of judges for their suitability for the position.

53. As of October 14, 2024, 1649 judges of local and appellate courts have to undergo the qualification assessment, of which 53 need to conduct (determine the results) the first stage of the qualification assessment "Exam", 1596 - the second stage of the qualification assessment "Dossier research and interview".

54. In total, as of October 14, 2024, the maximum number of judges in courts (whose work has not been terminated and whose jurisdiction has not been assigned to another court) amounted to 6,617, of whom 4,511 were appointed (elected) to the positions of judges.

55. In 2023–2024, in order to fill the vacant positions of judges, HQCJ made the following:

- the competition announced in 2019 for 7 vacant positions of judges of local general courts of Donetsk and Luhansk regions was completed. The HQCJ submitted recommendations to the HCJ on the appointment of 5 candidates for the position of a judge;
- the competition for 35 vacant positions of local court judges announced in 2019 for candidates for the position of a judge was completed. The HQCJ submitted recommendations to the HCJ on the appointment of 21 candidates for judicial office;
- the competition for 560 vacant judicial positions in local courts announced in 2023 for candidates for judicial office included in the reserves for filling vacant positions of local court judges was completed. The HQCJ submitted recommendations to the HCJ on the appointment of 390 candidates for the position of a judge;
- the competition for 550 vacant positions of judges in appellate courts, announced in 2023, is being held;
- the competition for 25 vacant positions of judges of the High Anti-Corruption Court, announced in 2023, is underway.

56. The next selection of candidates for judicial office is scheduled to be announced in the fourth quarter of 2024.

57. We would like to note that on May 08, 2024, and July 04, 2024, the President of Ukraine issued decrees appointing 329 judges, including:

- 286 persons were appointed as local court judges for the first time;
- 42 persons, whose five-year term of appointment as judges has expired, were appointed as judges of local courts for an unlimited period;
- 1 person was appointed as a judge of the Supreme Court.

### **Regarding the transfer of judges to another court**

58. Article 82 of Law No. 1402-VIII stipulates that a judge may be transferred, including temporarily by the means of secondment, to a position of a judge in another HCJ court in accordance with the procedure provided by law.

59. Transfer of a judge to another court is carried out on the basis and within the framework of the HQCJ's recommendation made on the basis of the results of the competition for the vacant position of a judge held in accordance with the procedure established by law.

60. A judge may be transferred to another court of the same or lower level without competition only in cases of reorganization, liquidation or termination of the court in which such judge holds the position of a judge.

61. In connection with the impossibility of administering justice in the relevant court, the detection of an excessive level of judicial workload in the relevant court, the suspension of the court's work due to a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, by a decision of the HCJ adopted on the basis of a proposal by the HQCJ, a judge may, with his or her consent, be seconded to another court of the same level and specialization to administer justice.

62. During the period of the state of emergency or martial law and subject to the change of territorial jurisdiction of court cases considered in the relevant court, in accordance with the procedure provided for in Article 147(7) of Law No. 1402-VIII, a judge of the court whose territorial jurisdiction is changed may be seconded without his/her consent to administer justice to the court that determines the territorial jurisdiction of the cases that were in the proceedings of the court in which the judge works, and in the absence of vacancies in this court - to another court of the same level and specialization. The procedure for secondment of a judge to another court of the same level and specialization (as a temporary transfer) was approved by the HCJ decision No. 54/0/15-17 of January 24, 2017.

#### **Regarding the guarantee of the independence of prosecutors**

63. Pursuant to the Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of October 14, 2014 (Law No. 1697-VII), the Prosecutor's Office of Ukraine is a unified system that, in accordance with the procedure provided for by this Law, performs functions established by the Constitution of Ukraine in order to protect human rights and freedoms, the general interests of society and the state.

64. According to Article 15(2) of Law No. 1697-VII, prosecutors in Ukraine have the same status regardless of the place of the prosecutor's office in the system of the prosecutor's office of Ukraine or the administrative position held by the prosecutor in the prosecutor's office.

65. Article 16 of the Law No. 1697-VII guarantees the independence of the prosecutor, which is ensured by: a special procedure for his/her appointment, dismissal, disciplinary liability; the procedure for exercising powers determined by the procedural and other laws; prohibition of unlawful influence, pressure or interference in the exercise of powers of the prosecutor; the procedure for financing and organizational support of the prosecution established by law; proper material, social and pension provision of the prosecutor; functioning of the prosecutor's self-government bodies; means of ensuring personal security of the prosecutor, his/her family members, property, as well as other means of their legal protection, as determined by law.

66. Law No. 1697-VII stipulates that in exercising the functions of the prosecutor's office, the prosecutor is independent of any unlawful influence, pressure, interference and is guided in his/her activities only by the Constitution and laws of Ukraine. State authorities, local self-government bodies, other state bodies, their officials and employees, as well as individuals and legal entities and their associations are obliged to respect the independence of the prosecutor and refrain from exercising any form of influence on the prosecutor in order to impede the performance of official duties or to make an illegal decision.

67. A prosecutor has the right to report a threat to his or her independence to the Council of Prosecutors of Ukraine, which is obliged to immediately check and consider such a report with his or her participation and take the necessary measures to eliminate the threat within the limits of its powers under this Law.

68. Pursuant to Article 17 of Law No. 1697-VII, prosecutors exercise their powers within the limits established by law and are subordinated to their superiors only in terms of execution of written administrative orders related to organizational issues of prosecutors and prosecution bodies.

69. In conducting of powers related to the prosecution functions, prosecutors are independent, independently decide on the procedure for conducting such powers, guided by the provisions of the law, and are obliged to execute only such instructions of a higher-level prosecutor that were given in compliance with the requirements of this Article.

70. In addition, the procedural independence of prosecutors is enshrined in Article 36 of the CPC, namely, the prosecutor, exercising his or her powers in accordance with the requirements of this Code, is independent in his or her procedural activities, and interference in which by persons not legally authorized to do so is prohibited. State authorities, local self-government bodies, enterprises, institutions and organizations, officials and other individuals are obliged to comply with the legal requirements and procedural decisions of the prosecutor.

#### **Regarding selection, appointment, promotion, transfer, and dismissal of prosecutors**

71. On March 15, 2023, the Law of Ukraine No. 2203-IX "On Amendments to Certain Laws of Ukraine on Improving the Selection and Training of Prosecutors" of April 14, 2022, came into force, which amended, in particular, Law No. 1697-VII and changed the procedure for selecting candidates for the position of a district prosecutor, namely excluded the requirement for candidates to have two years of work experience in the field of law, introduced the institute of a trainee prosecutor with initial training at the Training Centre of Prosecutors of Ukraine and internship at the district prosecutor's office in order to acquire theoretical knowledge and practical skills for independent work as a prosecutor; determined the Qualification and Disciplinary Commission of Prosecutors (hereinafter - QDCP) as the body conducting disciplinary proceedings and empowered this body to make final decision on the success or failure in passing the training, terminating the participation of a person in the selection.

72. Articles 73, 74, 77 of Law No. 1697-VII stipulate that the collegial body responsible for selecting candidates for the position of prosecutor, transferring prosecutors to a higher-level prosecution body and conducting disciplinary proceedings against prosecutors is the HQCJ, which is a legal entity separated from the prosecution system of Ukraine.

73. The CDCJ consists of 11 members appointed by different entities: five prosecutors are appointed by the All-Ukrainian Conference of Prosecutors; two persons (academics) are appointed by the Congress of Representatives of Law Schools and Research Institutions; one person (lawyer) is appointed by the Congress of Advocates of Ukraine; three persons are appointed by the Ukrainian Parliament Commissioner for Human Rights in consultation with the Verkhovna Rada Committee responsible for the organization and operation of the prosecution authorities.

74. The procedure for selecting candidates for the position of a district prosecutor is regulated by Section V of Law No. 1697-VII and includes the following stages, in particular: passing a qualification exam (including anonymous testing and anonymous completion of a practical task); conducting a special check of a candidate for the position of a prosecutor in accordance with the procedure established by the legislation on corruption prevention; holding a competition for appointment as a trainee prosecutor of the district prosecutor's office, and undergoing special training by the trainee prosecutor.

75. In addition, we note that in accordance with Article 27(6) of Law No. 1697-VII (as amended by paragraph 3 of this part the Article by Law No. 524-IX of 04.03.2020), a person who has an unexpunged or unspent criminal record or who has been subject to an administrative penalty for committing a corruption-related offense may not be appointed as a prosecutor.

76. Transfer to a higher-level prosecutor's office is based on the results of a competition, the procedure for which is determined by the QDCP (Article 38 of Law No. 1697-VII).

77. The procedure for conducting a competition for a vacant or temporarily vacant position of a prosecutor in the procedure of transfer to a higher-level prosecutor's office was approved by the decision of the QDCP dated 26.10.2021 No. 133п-21 (as amended).

78. The competition includes an anonymous practical task, integrity checks, and an interview. The competition procedure provides for an Evaluation Methodology with specific evaluation criteria and indicators (in particular, skills in implementing and applying the law, ability to apply knowledge in practice, correspondence of income to expenses and

property, proper declaration of the candidate's property, and compliance with professional ethics).

79. In the context of transparency of qualification procedures, it should be noted that according to Article 78(5) of Law No. 1697-VII, the QDCP meetings, including those on selection and transfer of prosecutors to a higher-level prosecution body, are held openly and publicly, except in cases established by law. In addition, the QDCP's meetings on considering these issues are broadcasting in real time on the Internet.

80. The procedure for appointing a prosecutor to an administrative position is provided for in Article 39 of Law No. 1697-VII.

81. When deciding on the appointment of a prosecutor to an administrative position, information on integrity, whether the candidate has a conflict of interest, and restrictions related to the joint work of close relatives is examined, and professional, moral and business qualities, managerial and organizational skills, and work experience are taken into account.

82. Article 39(4) of Law No. 1697-VII also defines administrative positions in the prosecution authorities, which are appointed on the basis of the recommendation of the Council of Prosecutors of Ukraine, which is the highest body of prosecutorial self-government in the period between all-Ukrainian conferences of prosecutors.

83. In order to ensure a transparent and inclusive procedure for the selection of prosecutors to fill administrative positions, which are appointed on the recommendation of the Council of Prosecutors of Ukraine, the Prosecutor General approved the Regulation on the Procedure for Selection of Candidates for Inclusion in the Personnel Reserve for Administrative Positions in the Prosecutor's Office of Ukraine by Order No. 236 of October 14, 2024.

84. The Regulation introduces a procedure for selection of candidates by the Commission for Selection of Candidates to the Personnel Reserve, which will consist of two persons appointed by the Prosecutor General, one person delegated by the Council of Prosecutors of Ukraine, three persons proposed by international and non-governmental organizations, international technical assistance projects that, in accordance with international or interstate agreements, have been providing during the last five years the international technical assistance to Ukraine in the field of justice reform, prevention and combating corruption, criminal justice reform, and who have a higher legal education, work experience in the field of law, impeccable business reputation, high professional and moral qualities, public authority.

85. The procedure for dismissal of a prosecutor from an administrative position and termination of his/her powers in this position is provided for in Article 41 of Law No. 1697-VII.

86. In addition, it should be noted that on September 19, 2019, the Law of Ukraine No. 113-IX "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecutor's Office" was adopted, which, in particular, empowers the Prosecutor General to determine the procedure for reviewing appeals regarding the improper performance of official duties established for the relevant administrative position by a prosecutor holding an administrative position.

87. The procedure for consideration of the relevant appeals was approved by the Order of the Prosecutor General No. 113 of July 1, 2022. In addition, the Order of the Prosecutor General No. 161 of August 19, 2022, established the Commission for Review of Appeals on Improper Performance of Duties by a Prosecutor Holding an Administrative Position, which ensures consideration of relevant appeals.

88. Anyone who is aware of the facts of improper performance of official duties by a prosecutor has the right to file an appeal with the Commission.

89. The general conditions for dismissal of a prosecutor and termination of his or her powers as a prosecutor are set forth in Article 51 of Law No. 1697-VII.

90. The following should be noted in the context of further improvement of the procedure for selecting prosecutors:

- subparagraph 2 of paragraph 27 of the Action Plan for the implementation of the recommendations of the European Commission presented in the Progress Report of Ukraine within the framework of the European Union Enlargement Package 2023, approved by the Order of the Cabinet of Ministers of Ukraine No. 133 of 09.02.2024, provides for the introduction of transparent and merit-based selection of prosecutors for senior positions by amending legislative acts and implementing necessary institutional measures and strengthening disciplinary system for prosecutors by improving existing legal and institutional framework.
- the Cabinet of Ministers of Ukraine issued Resolution No. 244 of March 18, 2024, to implement the European Union Initiative “Ukraine Facility”, introduced by Regulation (EU) No. 2024/792 of the European Parliament and of the Council of February 29, 2024, which, *inter alia*, provides for the entry into force of legislation ensuring transparent and merit-based selection of prosecutors for senior positions in the prosecution authorities with a deadline of the first quarter of 2026, as well as the entry into force of legislation that improves the disciplinary system of prosecutors and increases the capacity of the QDCP, with a deadline of the third quarter of 2026.

## C. Information relating to paragraph 48

### Freedom of expression

#### **Current legislation and legislative initiatives, including in the context of guaranteeing the activities of journalists and protecting confidentiality of their sources**

91. Article 34 of the Constitution of Ukraine guarantees everyone the right to freedom of thought and speech and free expression of his/her views and beliefs.

92. On March 31, 2023, the Law of Ukraine No. 2849-IX “On Media” of December 13, 2022 (hereinafter - Law No. 2849-IX) came into force, aimed at ensuring the exercise of the right to freedom of expression, the right to receive comprehensive, reliable and timely information, to ensure pluralism of opinions and free dissemination of information, to protect national interests of Ukraine and the rights of users of media services, to regulate media activities in accordance with the principles of transparency, fairness and unbiasedness, to stimulate a competitive environment, equality and independence of the media.

93. Article 4 of the Law No. 2849-IX provides for freedom of activity in the media, in particular the principles of freedom of expression, freedom of dissemination, exchange and receipt of information, freedom of activity of media entities, including free determination of the content of information, freedom of economic activity in the media, guarantee of the right to information, openness and accessibility of information, accuracy and completeness of information, legality of obtaining, using, disseminating, storing and protecting information, protection of a person from interference in his/her personal and family life, and censorship is also prohibited.

94. Article 117 of the Law also provides for cases of exemption from liability of media entities and their employees.

95. The Law of Ukraine “On Information” (hereinafter - Law No. 2657-XII), in particular Article 24(2), prohibits interference in the professional activity of journalists; prohibits control over the content of information disseminated by journalists, in particular for disseminating or preventing the dissemination of the particular information, withholding socially necessary information; prohibits to impose a ban to cover certain topics, display certain persons or disseminate information about them, criticize public authorities, except for the cases determined by law, an agreement between a founder (owner) and employees, editorial's articles of association.

96. Article 25 of the Law No. 2657-XII defines guarantees for the activities of the media and journalists, including the right not to disclose the source of information or information

that allows identifying the source of information, unless the journalist is obliged to do so by a court decision on the basis of law.

97. The Law of Ukraine No. 540/97-VR "On State Support of Media, Guarantees of Professional Activity and Social Protection of Journalists" of September 23, 1997, provides for the rights and obligations of journalists, guarantees of professional activity and social protection of journalists, etc.

98. Thus, taking into account the amendments introduced by the Law No. 2849-IX (supplemented by Article 11-1), the above-mentioned Law guarantees journalists the right:

- to make written, audio and video recordings using the necessary technical means (except for the cases provided for by law) in the course of performing professional duties;
- to visit without any obstacles premises of public authorities, open events held by them, and be personally received within reasonable periods of time by their officers and officials (except for the cases determined by legislation);
- not to disclose the source of information or information enabling to determine the sources of information, except for the cases he/she is obliged to do so under a judgment based on the law;
- to collect information in areas of natural disasters, catastrophes, accidents, mass disorders, military operations (except in cases provided for by law) upon presentation of a document confirming the status of a journalist;
- to disseminate materials (sound recordings, video recordings, written texts, etc.) prepared and signed (written) personally by him/her or under an operational name (alias);
- to waive the authorship (signature) of the material if the content thereof after the editor's alterations (editing) is contrary to his/her beliefs;
- to have free access to statistical data, archival, library and museum collections; restrictions on this access are limited only by specifics of valuables and special conditions for their safety, as determined by law.

99. On October 10, 2024, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Article 15 of the Law of Ukraine "On State Support of the Media, Guarantees of Professional Activity and Social Protection of Journalists" (sent to the President of Ukraine for signature).

100. The law proposes to amend Article 15 of the abovementioned Law by providing for the obligation of media entities to provide life, health, work capacity insurance for journalists and other employees against accidents in accordance with the 1-st insurance class, as defined in Article 4 of the Law of Ukraine "On Insurance", at their own expense or at the expense of any other sources not prohibited by law, for the period of their business trip to the areas of military (combat) operations and/or temporarily occupied territories of Ukraine.

101. Thus, the procedure and terms of such insurance shall be determined by the central executive body responsible for the formation and introduction of the state policy in media, information and publishing sector, as agreed with the National Bank of Ukraine.

102. Taking this opportunity, we note that the international non-governmental organization "Reporters Without Borders" (RSF) has published the Freedom of Speech Index for 2024, which includes 180 countries, according to which Ukraine is ranked 61st, having raised by 18 positions over the year.

#### **Regarding liability for obstructing activities of journalists and human rights defenders**

103. The CC as a guarantee of non-interference in the legitimate exercise of the right to freedom of expression of human rights defenders and journalists, guaranteeing them effective protection against any type of threats, pressure, intimidation or attack, establishes

criminal liability for obstruction of legitimate professional activities of journalists (Article 171 of the CC), threat or violence against a journalist (Article 345-1 of the CC), intended destruction or damage to the property of a journalist (Article 347-1 of the CC), encroachment on the life of a journalist (Article 348-1 of the CC), capturing a journalist as a hostage (Article 349-1), interference with activity of a defence attorney or legal agent (Article 397 of the CC), threats or violence against a defence attorney or legal agent (Article 398 of the CC), intentional destruction or damage to property owned by a defence attorney or legal agent (Article 399 of the CC) and encroachment on the life of a defence attorney or legal agent in connection with their activity related to legal aid provision (Article 400 of the CC).

104. Thus, in 2023, the National Police of Ukraine initiated investigations into 75 criminal offenses committed against media representatives (Article 171 of the CC - 53, Article 345-1 of the CC - 20, Article 347-1 of the CC - 2), of which: 10 were sent to court (Article 171 of the CC - 6, Article 345-1 of the CC - 4), 48 were closed due to the absence of an event or corpus delicti of a criminal offense (Article 171 of the CC - 38, Article 345-1 of the CC - 10); in 17 criminal proceedings, pre-trial investigation is ongoing (Article 171 of the CC - 9, Article 345-1 of the CC - 6, Article 347-1 of the CC - 2).

105. As of October 01, 2024, the National Police initiated investigations into 49 such criminal offenses (Article 171 of the CC - 35, Article 345-1 CC - 13, Article 347-1 CC - 1), of which: 3 were sent to court (Article 345-1 CC); 21 were closed due to the absence of an event or corpus delicti of a criminal offense (Article 171 CC - 19, Article 345-1 CC - 2); the investigation is ongoing in 25 ones (Article 171 CC - 16, Article 345-1 CC - 8, Article 347-1 CC - 1).

106. In the context of the cases referred to in paragraph 47 of the Concluding Observations, it is worth noting that:

- following the investigation into the murder of the editor-in-chief of the *Segodnya* newspaper, *Oles Buzyna*, in June 2015, two persons were detected and served a notice of suspicion and detention was imposed as a measure of restraint. The indictment against the accused was sent to court. The trial is underway.
- In order to identify the organizers of the murder of O. Buzyna, as well as the accomplices of the accused, the materials were disjoined into separate proceedings.
- following the investigation into the murder of journalist Pavel Sheremet in July 2016, three persons were detected, and the indictments were sent to court in May 2020.
- Pre-trial investigation in the criminal proceedings against unidentified customers of Sheremet's murder is underway.
- pre-trial investigation into the murder of editor-in-chief of the *Cherkassy Vidomosti* newspaper, Vadym Komarov, in May 2019 is underway. More than 25 forensic examinations and more than 170 covert investigative (detective) actions have been conducted, and more than 1,500 people have been interrogated.

107. The National Police of Ukraine, in cooperation with representatives of the journalistic community, holds working meetings to exchange information on violations of journalists' rights, discuss issues that arise in the course of professional journalistic activity, and constantly monitors notifications posted on the Council of Europe's Platform for the Protection of Journalists.