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# Rule of Law Reform after Zelenskyi's First Year

## A Return to Business as Usual in Ukraine



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In 2019, Volodymyr Zelenskyi won a strong mandate to fundamentally change Ukraine and make it less corrupt. One year into his presidency, however, there have been no significant breakthroughs. Powerful vested interests and a lack of strategic vision have fragmented Zelenskyi's leadership. Progress in rule of law reform has again been held up by Ukraine's old system heavily invested in preserving the status quo. Western pressure and financial conditionality are now the key remaining incentives for reform.

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- To bolster progress on rule of law reform, international assistance needs to be conditional on performance in this area. Because such reform is complex and takes time, the EU and other development partners should also include reform implementation in their support schemes.

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  - The EU needs to conduct a transparent and objective assessment of its assistance approach to Ukraine to encourage more effective rule of law reform. Such an evaluation could help Brussels and other EU capitals streamline funding for programs that work and make cuts to ones that have little or no impact.

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  - To improve the effectiveness of EU assistance and provide Ukraine's civil society with more tools to influence the course of reforms, the EU should employ the same assessment tools to measure progress on rule of law reform in Ukraine that it uses for its member states.
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## EXECUTIVE SUMMARY

- Rule of law reform, fundamental to the consolidation of any country's democratic future, is missing in Ukraine. Building independent rule of law institutions is a process that takes both years and coordinated efforts across multiple governments to mature. While one political cycle or the mandate of one president is not sufficient for this endeavor to succeed, it can set a promising course.
- Ukrainians have entrusted Volodymyr Zelenskyi and his party, the Servant of the People, with unprecedented legitimacy to deliver justice and free public institutions from corruption.
- At the beginning of their mandate in Ukraine's premier-presidential system, President Zelenskyi and his parliamentary supermajority had a historic opportunity to initiate sweeping reforms that would have been impossible to push through under the usual conditions of a competitive democratic system.
- A lack of strategy and long-term commitment to pursuing profound and sustainable rule of law reform resulted in half-step initiatives by President Zelenskyi and his team.
- While Zelenskyi's legislative initiatives and appointments from early in his tenure set the right course for reforming some rule of law institutions, his weakness for immediate results and high approval ratings put pressure on the reformers to deliver or leave office – providing power groups interested in stifling change with opportunities for leveraging the political system.
- Appointing Ruslan Ryboshapka as prosecutor general was a major achievement for prosecution reform in Ukraine. But his subsequent dismissal by the Rada after only seven months in office, as well as the president's decision to take no action to protect him, is one of the biggest failures for the course of this institution's reform.
- One year into his presidency, Zelenskyi's leadership is weakened and fragmented by powerful financial groups interested in maintaining the status quo. Strong vested interests have consolidated to put yet more brakes on reforming the rule of law.
- Western pressure and, most importantly, the financial conditionality of international institutions are the strongest safeguard of both the reform process and progress in Ukraine.

## INTRODUCTION

Widespread disappointment with previous patterns of governance and traditional politics marred by corruption helped Volodymyr Zelenskyi, a political novice, win Ukraine's presidential elections by an unprecedented landslide of 73 percent of the vote in April 2019. In July 2019, his party, the Servant of the People (*Sluha Narodu*) – a motley collection of political interest groups – won parliamentary elections with the first single-party majority in modern Ukrainian history. Together, these results gave Zelenskyi and the country's young prime minister, Oleksiy Honcharuk, almost unrestrained executive and parliamentary power to change Ukraine.

For any political force freshly installed into office, the first few months are key for launching difficult and usually unpopular reforms. These then set the course for a new political cycle. Zelenskyi and the Honcharuk government took many skeptics and critics by surprise with the accelerated course of reform they initiated in a so-called turbo regime. Indeed, the reforms undertaken before the March 2020 government reshuffle, which replaced the government of Honcharuk with that of Denys Shmyhal, inspired cautious hope.

One year into Zelenskyi's presidency, however, Ukrainians have not seen sufficient progress on the bold changes that were promised during 2019's election campaigns: delivering justice, standing up to oligarchs, strengthening the economy, and bringing peace to Donbas (Figure 1). While Zelenskyi has pushed forward legislative initiatives and appointments that have set an initial course for rule of law reform, his lack of clear strategy and commitment – coupled with his weakness for pursuing immediate results – were exploited by strong vested interests that again quashed headway.

Although some positive achievements were made, judicial reform is currently stalled and undermined from within. The clean-up of the country's prosecution was interrupted. Anti-corruption agencies are under attack where they work. Reform of the National Security Service of Ukraine (SBU) has not even begun while other law enforcement agencies need further work. High-level convictions have yet to take place. The old guard's power to stifle change according to its interests is again increasing at the expense of the government's capacity to defend the values

## ACRONYMS

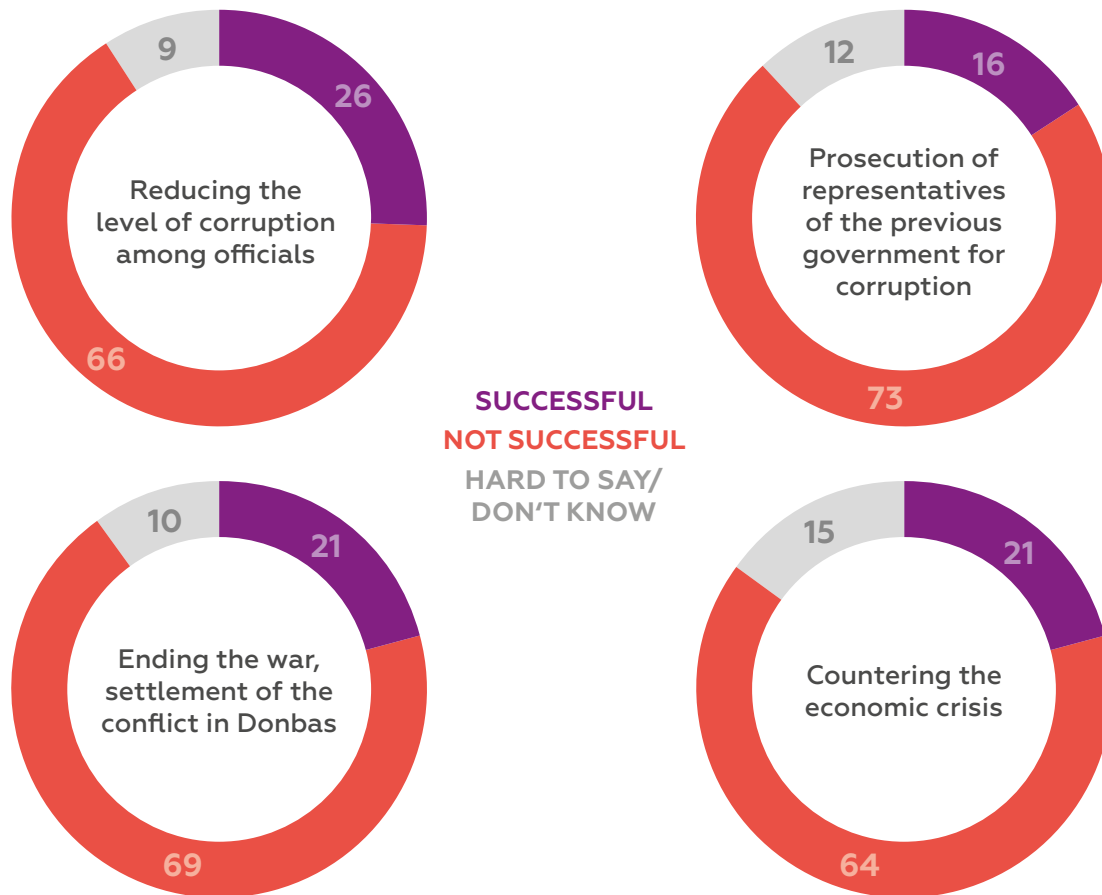
<b>BFI</b>	Bureau of Financial Investigations
<b>CIE</b>	Commission on Integrity and Ethics
<b>CC</b>	Constitutional Court of Ukraine
<b>HACC</b>	High Anti-Corruption Court
<b>H CJ</b>	High Council of Justice
<b>HQCJ</b>	High Qualification Commission of Judges of Ukraine
<b>KDAC</b>	Kyiv District Administrative Court
<b>NABU</b>	National Anti-Corruption Bureau
<b>NAPC</b>	National Agency for the Prevention of Corruption
<b>OPG</b>	Office of the Prosecutor General
<b>PGO</b>	Prosecutor General's Office
<b>SAPO</b>	Specialized Anti-Corruption Prosecutor's Office
<b>SBI</b>	State Bureau of Investigations
<b>SC</b>	Supreme Court of Ukraine
<b>SBU</b>	National Security Service of Ukraine
<b>SGUA</b>	EU's Support Group for Ukraine
<b>VLAP</b>	Visa Liberalization Action Plan

and institutions of the rule of law, which are at the heart of Ukraine's process to consolidate its democratic transformation.

Moreover, reforming the rule of law is a complex endeavor that needs to be backed by bold political leadership and strong administrative capacity. In order for such reforms to consolidate, it takes decades, multiple governments, coordinated effort, and a widespread pro-reform consensus among major stakeholders. The reshuffle of the Ukrainian government on March 4, 2020 – just as the country was plunging into the COVID-19 pandemic – was a turning point for President Zelenskyi and national politics, marking the beginning of a deep crisis both in the president's team and his political party. The developments around the fragmentation of Zelenskyi's political leadership, together with the government's weakened capacity to protect institutions and reforms, create unfavorable ground for further progress on genuine and sustainable reforms.

In order to understand what the international community can expect from the remainder of President

FIGURE 1 – EVALUATION OF THE SUCCESS OF VOLODYMYR ZELENSKYI'S FIRST YEAR IN OFFICE, IN %



Source: "One Year of President Zelensky, Fighting the Coronavirus Pandemic, May Holidays and Political Ratings," Kyiv International Institute of Sociology, May 19, 2020: <<http://www.kiis.com.ua/?lang=eng&cat=reports&id=945&page=1>> (accessed May 25, 2020).

Zelenskyi's political mandate in the rule of law area, this paper analyzes the major initiatives undertaken within the first year of his tenure in regard to the judiciary, prosecution, anti-corruption institutions, and key law enforcement agencies. It also provides a list of recommendations for the EU and its member states on how to help Ukraine consolidate its rule of law.<sup>1</sup>

## DOMESTIC AND INTERNATIONAL CONTEXT FOR RULE OF LAW REFORM

The Revolution of Dignity in 2014 raised Ukrainians' hopes and expectations for the consolidation of their country's European future within a new polit-

ical and economic order. Since that time, the country has embarked on a strenuous path of reforms supported by its international partners, most importantly the European Union and the International Monetary Fund. Consequently, Ukraine has achieved important results over the last five years, which were only possible due to the strong pressure applied domestically by reform-minded actors and internationally by the conditionality mechanisms of its partners – the so-called "sandwich effect."

### Increased Domestic Demand for Reform

Progress on rule of law in Ukraine, however, has not been systematic. Indeed, important systemic problems remain that affect the country's dem-

<sup>1</sup> This paper borrows from the European Commission's definition of the rule of law. It states that all members of a society, including those in government and parliament, are equally subject to the law and the control of independent courts – irrespective of the political majorities in office. Consequently, states require independent and accountable institutions of justice, prosecution, anti-corruption, and law enforcement.

ocratic transformation. In particular, strong vested interests, weak rule of law institutions, and endemic corruption (Figure 2) still seriously affect Ukraine's economy, governance, and society. These challenges directly impact the volume of foreign direct investment entering the country. Investors are unwilling to invest when poor institutions encourage corruption, nepotism, and red tape that all increase the costs of doing business.<sup>2</sup> Moreover, weak rule of law erodes democratic governance. It also impacts the level of trust that citizens have in political institutions.

These poorly addressed grievances propelled Volodymyr Zelenskyi to the fore of Ukrainian politics in 2019's national elections. Yet, if in early autumn 2019, his unprecedented societal support coupled with a united political force in parliament helped the president easily push reformist legislative acts through the Verkhovna Rada, this momentum is now over. In November 2019, against the background of lack of progress on either Donbas or domestic reforms, Zelenskyi's high popular support started fading away, hitting a new low this April (Figures 3A and 3B) despite the March government reshuffle meant to stop its decline. Currently, however, the president is still the political figure whom Ukrainians most trust. Only 32 percent of respondents to a recent poll do not trust Zelenskyi; all other political actors have higher levels of distrust (Figure 4). As of May 2020, the president's party, Servant of the People (SoP), also remains the dominant political force (Figure 5). It is, however, deeply fragmented and heavily influenced by strong political and economic groups with high stakes in the course of reforms. In 70 percent of the voting in the Rada in March, SoP lacked the necessary amount of votes within the party to pass laws. In fact, out of 25 laws adopted, only 7 of them were passed with sufficient votes from the SoP alone.<sup>3</sup> With his party in crisis, President Zelenskyi's capacity to push forward his reform agenda is further undermined.

### The International Context: An Opportunity and a Hindrance for Reform

Against the background of stalled progress on both conflict settlement in Donbas and domestic reforms,

Ukraine was close to losing the attention of the international community. The unexpected and overwhelming electoral support that President Zelenskyi and his party received in 2019, however, gave the EU, its member states, and other international partners cautious hope for renewed momentum. While development partners had previously paid particular attention to supporting Ukraine's fight against corruption, there is now a window of opportunity to broaden their interest into wider progress on the rule of law.

During a two-day visit to Ukraine this February, Oliver Varhelyi, the EU's Commissioner for Neighborhood and Enlargement, stated that he wants to bring relations between Ukraine and the EU to a new level. He said that the EU will continue its support for good governance and rule of law reforms in Ukraine, as well as prioritize boosting the Ukrainian economy.<sup>4</sup> Moreover, in her statement on Ukraine in December 2019, IMF managing director Kristalina Georgieva said that, following a telephone conversation with Zelenskyi, they both agreed that "Ukraine's economic success depends crucially on strengthening the rule of law, enhancing the integrity of the judiciary, and reducing the role of vested interests in the economy," among other important reforms.<sup>5</sup>

Because of strong societal support for Ukraine's European future, the EU and other international partners, such as the IMF, have always been influential for Ukraine's course of reforms. Moreover, their conditionality mechanisms came in handy for helping to pass difficult reforms when domestic political will was insufficient. Given the uncertainty resulting from the COVID-19 pandemic and its economic aftermath – alongside shifting priorities resulting from multiple crises that the EU is managing both internally and at its external borders – it will be a challenge for Ukraine to remain a priority on the agendas of its development partners. This also means that the pressure for difficult reforms may remain mostly on the shoulders of the country's own pro-reformist constituencies.

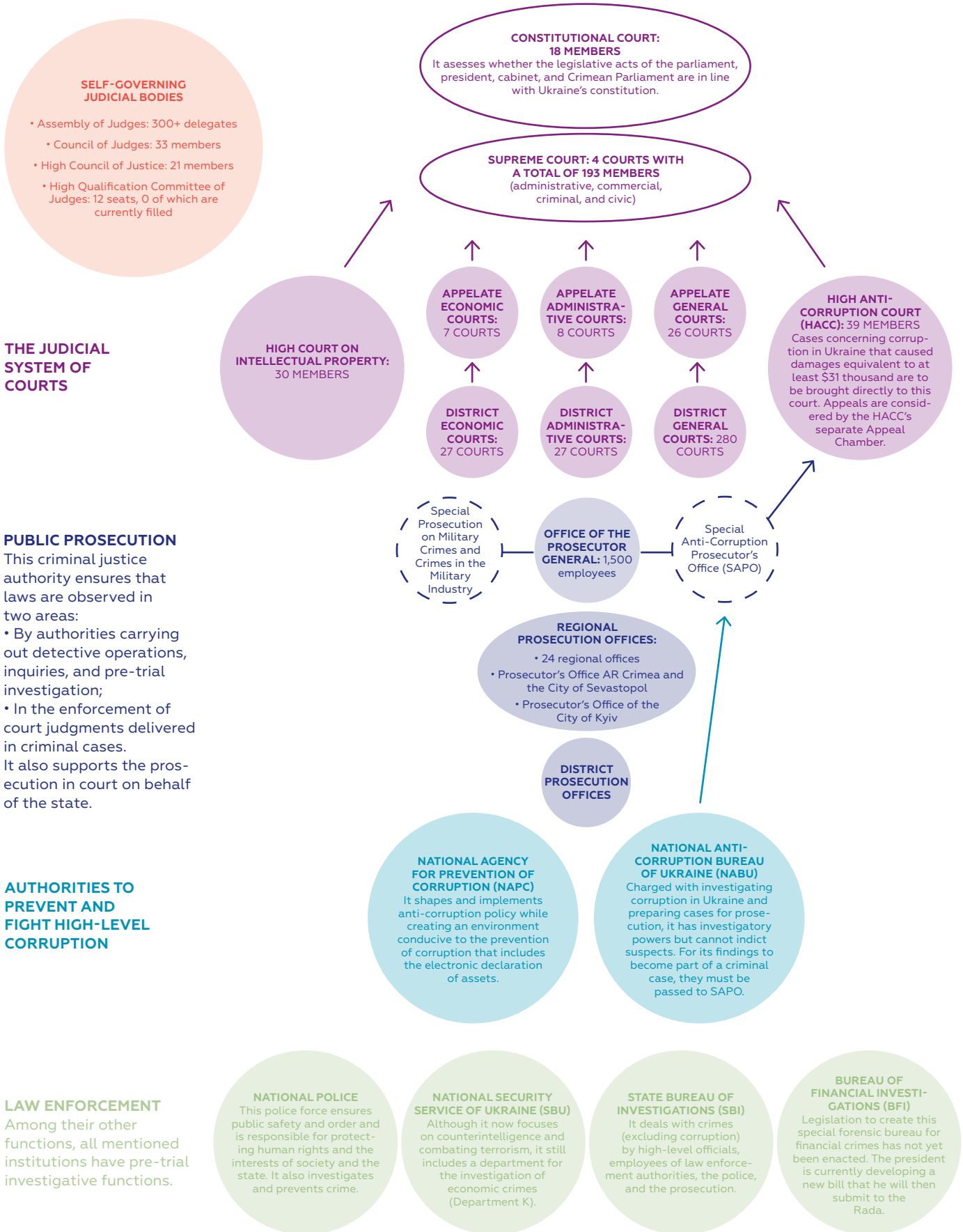
<sup>2</sup> Bonnie G. Buchanan et al., "Foreign Direct Investment and Institutional Quality: Some Empirical Evidence," *International Review of Financial Analysis* 21 (2012), pp. 81–89.

<sup>3</sup> Committee of Voters of Ukraine, "Mono-majority failed supporting the voting in 70% of legal acts passed by the Rada," *KVU News*, March 31, 2020: <<http://www.cvu.org.ua/nodes/view/type:news/slug:monobilshist-provalyala-holosuvannia-za-70-ostannikhrishen-rady-kvu>> (accessed May 1, 2020).

<sup>4</sup> "Remarks by Commissioner Várhelyi at a press conference with Prime Minister of Ukraine, Oleksiy Honcharuk," *European Commission*, February 12, 2020: <[https://ec.europa.eu/commission/commissioners/2019-2024/varhelyi/announcements/remarks-commissioner-varhelyi-press-conference-prime-minister-ukraine-oleksiy-honcharuk\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/varhelyi/announcements/remarks-commissioner-varhelyi-press-conference-prime-minister-ukraine-oleksiy-honcharuk_en)> (accessed May 3, 2020).

<sup>5</sup> "Statement by the IMF Managing Director on Ukraine," Press Release no. 19/446, *International Monetary Fund*, December 7, 2019: <<https://www.imf.org/en/News/Articles/2019/12/07/PR19446-Statement-by-the-IMF-Managing-Director-on-Ukraine>> (accessed May 3, 2020).

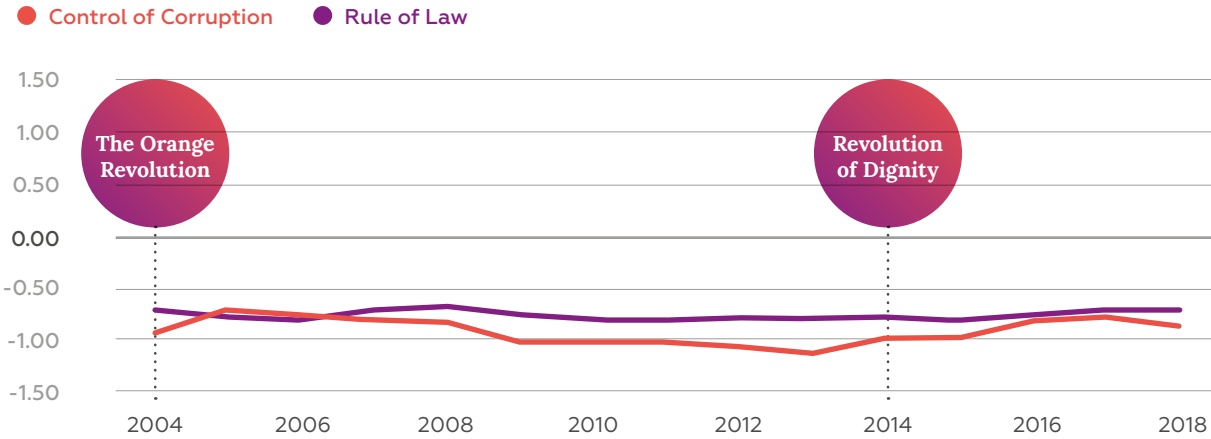
**UKRAINE'S INSTITUTIONAL SETTING FOR RULE OF LAW**



Source: Authors' compilation of data as of May 1, 2020 from the legislation on all respective institutions and their institutional websites.



FIGURE 2 – RULE OF LAW AND CONTROL OF CORRUPTION IN UKRAINE, 2004–2018



Source: World Bank, World Governance Indicators, 2019  
 Note: Estimate gives the country's score on the aggregate indicator, ranging from -2.5 (low) to 2.5 (high).

### RULE OF LAW REFORM DURING ZELENSKYI'S PRESIDENCY SO FAR

Zelenskyi's campaign promise to get rid of corruption could not be fulfilled without addressing rule of law issues. When he became president, he promised to initiate long-awaited reforms in the judiciary, prosecution, security sector, and other law enforcement agencies that would strengthen the fundamentals of Ukraine's democratic transformation. With very few exceptions,<sup>6</sup> however, the rule of law reforms initiated so far have hardly produced any tangible results. The following sections analyze the main changes that have been undertaken in these areas to gauge expectations for further reform progress in the remaining years of Zelenskyi's tenure.

#### Petro Poroshenko's Legacy: Rule of Law Reforms from 2014 to 2018

We cannot assess the impact of Zelenskyi's proposed solutions in this field unless we first understand the institutional challenges and problems he inherited from his direct predecessor, Petro Poroshenko who served as Ukraine's president from 2014 to 2019.

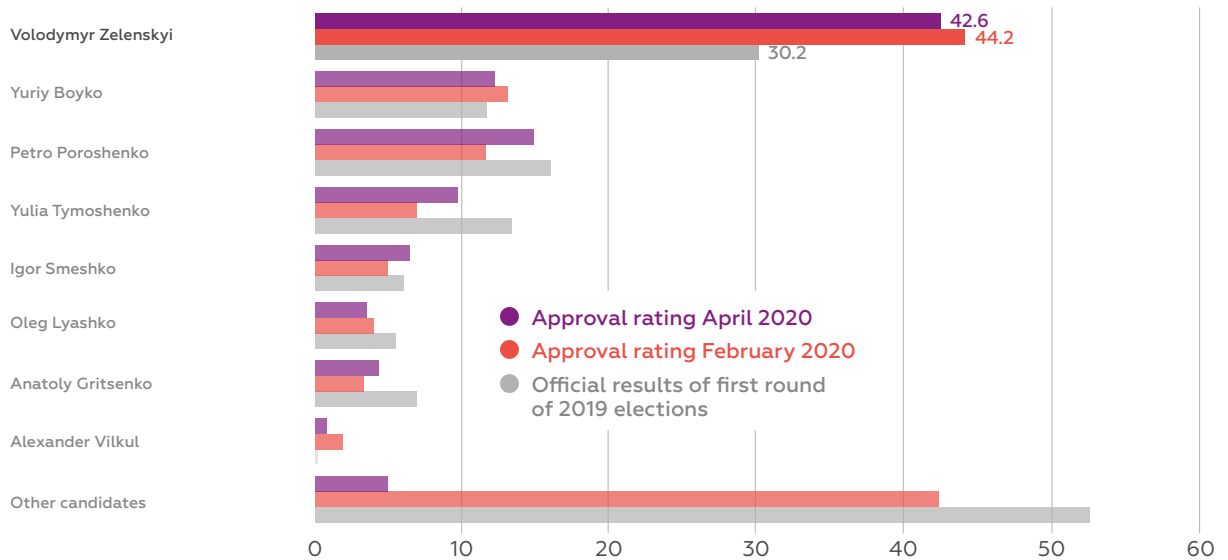
Upon his election one year ago, Zelenskyi took over both new and old rule of law institutions, most of which were weak. Before we explore them, however, we must mention the change of the constitutional balance of powers in Ukraine after 2014's Revolution of Dignity that helps explain how much of the successes and failures in rule of law reform can be at-

tributed to the country's presidents. The change restored the premier-presidential system of 2004, which helps prevent the concentration of political power in the sole hands of the president and makes the prime minister's powers nearly as strong. Hence, the institution of the presidency is not currently as powerful as it used to be during the eras of Leonid Kuchma and Viktor Yanukovych, who served as the country's presidents from 1994 to 2004 and 2010 to 2014, respectively. Still, in the current system of governance, the president is the commander in chief of the armed forces, has sole authority over the SBU, and retains sufficient control over the office of the prosecutor general (OPG), the judiciary, and law-enforcement bodies. In addition, many informal tools are left in the president's hands, which also create important power imbalances in his favor.

Although during Poroshenko's presidency authorities undertook the boldest rule of law reforms to increase transparency and limit opportunities for corrupt practices since Ukraine's independence, these were patchy and suffered from many deficiencies (see page 11). Thus, Zelenskyi inherited mostly weak rule of law institutions and key unsolved problems from the country's old system were passed on, among them corruption, nepotism, and political influence over judges, prosecutors, and law enforcement authorities. Moreover, the power of the country's entrenched vested interests was merely reshuffled and continued unabated. Most importantly, reforms failed to bring policy-makers and officials who abused their public offices to justice –

<sup>6</sup> In October 2019, Ukrainian lawmakers reinstated criminal liability for illegal enrichment of government officials after the Constitutional Court of Ukraine overturned the previous law on illicit enrichment in February 2019 just before Petro Poroshenko left office.

FIGURE 3A – COMPARATIVE APPROVAL RATINGS OF DECIDED VOTERS, IN %



Source: Authors' compilation of data from Kyiv International Institute of Sociology for Feb 2019, Feb 2020, and Apr 2020 (accessed May 5, 2020).

a fact that has angered many Ukrainians for whom high-level convictions are a key performance indicator. This has led to the persistence of the public's perception that rule of law institutions are amongst the most corrupt in Ukraine. The very low levels of trust are reflective of this situation (Figure 6).<sup>7</sup>

### The Judiciary: Resilient to Reform

Because Ukrainians perceived the judicial system and law enforcement agencies to be the main pillars of former President Yanukovich's authoritarian regime, seeking justice has been one of their key priorities. During the Revolution of Dignity, both institutions played a key role in legalizing the old regime's crimes such as the prosecution and jailing of protesters. But when citizens demanded that the system be purged of the judges who were dependent on politicians and oligarchs,<sup>8</sup> the Ukrainian judiciary has again proven resistant to change. As a result, President Zelenskyi inherited an unreformed judiciary, which was mostly dominated by the interests of the old system. Many of Ukraine's judges also were part of this system, hence reinforcing it.

Indeed, according to an assessment by the Ukrainian DEJURE Foundation in 2019, "the courts have failed to gain meaningful independence – independent judges continue to be pressured, while others continue to be used for political purposes. Despite the introduction of a constitutional amendment requiring a competitive selection process to the Constitutional Court, the process remains politically motivated..."<sup>9</sup>

Following constitutional amendments in 2016, the authority to appoint judges was transferred from parliament to the High Council of Justice (HCJ), a key body conceived to be self-governing and autonomous from the rest of the judiciary, as well as the legislative and executive branches. Together with the High Qualification Commission of Judges (HQCJ), the HCJ was given the responsibility to reform the system from within. As the culmination of this process – after a qualification assessment of 2,038 judges in 2019 that was intended to be rigorous – the HCJ dismissed only 15 judges from the system. Five years after the revolution, 227 of the 337 judges who prosecuted activists maintained their seats.<sup>10</sup> Moreover, 44 of the 193 judges appointed to the new Supreme

<sup>7</sup> "2019 Results and 2020 Forecasts: Public Opinion," *Democratic Initiatives Foundation* and the *Razumkov Centre*, December 26, 2019: <<https://dif.org.ua/article/pidsumki-2019-gromadska-dumka>> (accessed April 5, 2020).

<sup>8</sup> Olena Makarenko, "Five years after Euromaidan, 227 judges who persecuted activists keep their seats," *Euromaidan Press*, February 26, 2019: <<http://euromaidanpress.com/2019/02/26/five-years-after-euromaidan-227-judges-who-persecuted-activists-keep-their-seats/>> (accessed April 30, 2020).

<sup>9</sup> "New Justice System: Manifesto," *DEJURE Foundation*: <<https://en.dejure.foundation/manifesto>> (accessed April 30, 2020).

<sup>10</sup> Iryna Shyba, "Project 'New Leaders'" [in Ukrainian], *Democracy Justice Reforms (DEJURE)*, 2019: <[https://drive.google.com/file/d/1c-JRaoOVEs0mIDdy2E0V75\\_Quo2IUZw9/view](https://drive.google.com/file/d/1c-JRaoOVEs0mIDdy2E0V75_Quo2IUZw9/view)> (accessed April 30, 2020).

## RULE OF LAW REFORMS FROM 2015 TO 2017

Between 2015 and 2017, Ukraine's reformers worked intently to establish new formal structures and processes to expose, investigate, and prosecute high-level corruption. Among the most important institutions to result from this work were the National Agency for Prevention of Corruption (NAPC), the Special Anti-Corruption Prosecutor's Office (SAPO), the State Bureau of Investigation (SBI), the National Anti-Corruption Bureau of Ukraine (NABU), and the High Anti-Corruption Court (HACC).

The NAPC has not gained credibility; rather, it has been a source of controversy since its establishment. Confronted by allegations that its leadership is not politically independent and that it sabotaged the process for verifying the asset declarations of state and local government officials, the NAPC was in dire need of a complete organizational re-boot and new top leadership. The reputation of the SAPO was damaged by the revelation that its head, Nazar Kholodnitsky, used undue influence to sway the outcome of an investigation. The SBI, which was created to deal with the crimes committed by top officials, law enforcers, military officers, and judges, failed to bring new blood into the system with a compromised recruitment process for its senior leadership. The reform of the OPG has also been thin; because having a loyal individual in the country's top investigative position has always been important for Ukraine's heads of state, genuine reform was never a priority.

In 2016, judicial reform advanced with the creation of a new Supreme Court and the reduction of the number and levels of courts from four to three. Also, a new electronic asset declaration system was introduced, which obliged officials to declare all assets they possess inside and outside Ukraine, as well as all assets officially registered in the name of their relatives. Although the need

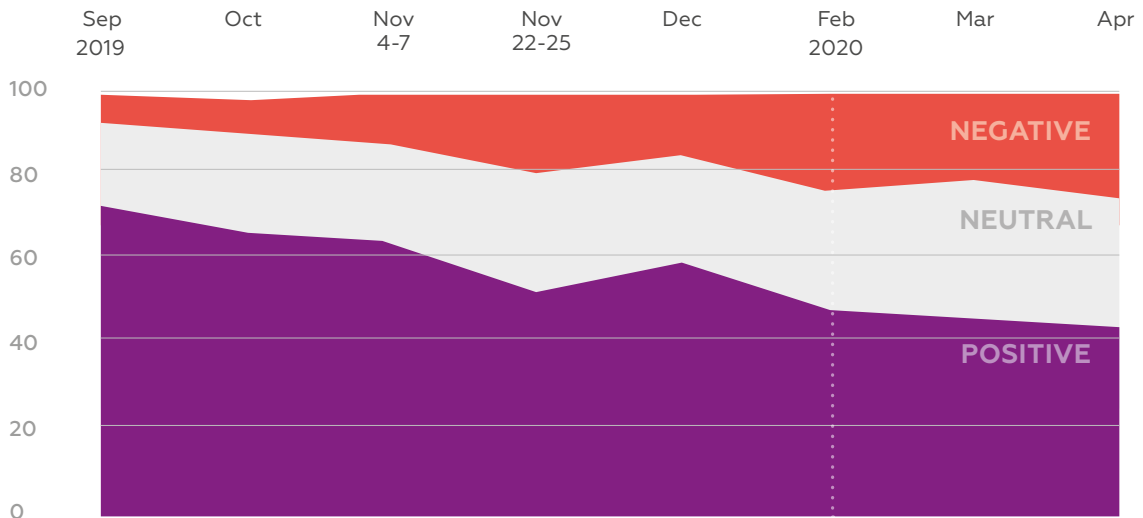
to comply with this policy made more than 2,000 judges voluntarily leave their positions, and thus brought fresh cadres to the system, this was not enough to significantly remedy the judiciary. The recruitment process for the new Supreme Court, which ended in late 2017, was only partially transparent. With nearly 80 percent of the newly appointed judges having been part of the previous system, there is little evidence to show that the new Supreme Court has now started to be fully independent or started to avoid exerting any undue political influence. The clean up of Ukraine's lower courts also appears to have been superficial.

The establishment of an independent NABU through a legal setup that ensures its institutional independence and a rigorous recruitment process was one of the main successes that was achieved during this same period. While its independence and subsequent achievements have attracted numerous attacks, NABU's greatest challenge during Poroshenko's presidency was the lack of a properly functioning judiciary able to independently try its cases.

Alongside preserving an independently functioning SAPO, saving institutions such as NABU from power groups interested in retaining their monopoly on law enforcement and justice also required the creation of an independent anti-corruption court (HACC). While HACC was established during Poroshenko's presidency under heavy pressure from international partners and its rigorous recruitment process of judges ended in April 2019, this new court only started working in September 2019.

With the exception of the patrol police, there has been no significant reform of law enforcement agencies. The proposal to limit the powers of the National Security Service of Ukraine (SBU), has failed, as have efforts to have it overseen by a specialized parliamentary committee.

FIGURE 3B – ATTITUDES TOWARD VOLODYMYR ZELENSKYI'S POLICIES, IN %



Source: "Assessment of Government Success and Public Response to the Coronavirus Epidemic and Political Developments in the Country," Kyiv International Institute of Sociology, April 14, 2020

Court also have integrity issues.<sup>11</sup> There is further evidence that the HCJ exercises pressure over independent judges via disciplinary investigations.<sup>12</sup>

Zelenskyi raised a lot of hopes for the reform of Ukraine's limping judicial system when, in November 2019, he put forward a law meant to improve the system's weakest points.<sup>13</sup> Among the major changes the law proposed was the overhaul of the HQCJ, including setting up competitive selection procedures for its members. The HQCJ is in charge of selecting judges and conducting their assessment as well as recommending judges to the HCJ for their subsequent appointment or transfer. The law also established a separate Commission on Integrity and Ethics with the power to cleanse both the HQCJ and HCJ. Further, it reduced the number of Supreme Court judges from 200 to 100.

The law, however, contained significant flaws and was only partially supported by civil society. Ideally, the reform of the HQCJ and creation of the Commis-

sion on Integrity and Ethics would have resulted in ensuring the high institutional integrity of the HQCJ and HCJ as two self-governing bodies of the judiciary. In reality, however, the law gave too much power over the process to the HCJ, which itself was in bad need of renewal.<sup>14</sup> The law's implementation revealed exactly this problem as the HCJ subsequently blocked its progress. In December 2019, for example, when the HCJ adopted the rules for selecting new HQCJ members, it watered down the role that international experts were to play in the process of ensuring their integrity. While the participation of international experts had been considered to have been a move in the right direction, the current form of the regulations still allows for the appointment of HQCJ members who lack integrity. Moreover, the February 2020 deadline for completing the setup of the new HQCJ and ethics commission was missed. Ukrainian anti-corruption activists accused the HCJ of intentionally sabotaging and delaying judicial reform<sup>15</sup> while the latter blamed international organizations instead.<sup>16</sup>

11 Olena Makarenko, "Judicial reform 2.0: Zelensky comes with initiatives only partly supported by society," *Euromaidan Press*, September 4, 2019: <<http://euromaidanpress.com/2019/09/04/judicial-reform-2-0-zelensky-comes-with-initiatives-only-partly-supported-by-society/>> (accessed April 30, 2020).

12 Iryna Shyba, "Project 'New Leaders'" [in Ukrainian], *Democracy Justice Reforms (DEJURE)*, 2019: <[https://drive.google.com/file/d/1c-JRaoOVEs0mlDDy2E0V75\\_Quo2lUZw9/view](https://drive.google.com/file/d/1c-JRaoOVEs0mlDDy2E0V75_Quo2lUZw9/view)> (accessed April 30, 2020).

13 The Law of Ukraine "On Amending the Law of Ukraine 'On Judiciary and the Status of Judges' and other Laws of Ukraine on Functioning of Judicial Governing Bodies," Document 193-IX, adopted October 16, 2019 (came into force November 6, 2019): <<https://zakon.rada.gov.ua/laws/show/193-20>> (accessed May 5, 2020).

14 Mykhailo Zhernakov, "Judicial Reform in Ukraine: Stalled, Damaged, and Abandoned," *3 DCFTAs*, Op-ed No. 11/2020 (April 2020): <<https://3dcftas.eu/op-eds/judicial-reform-in-ukraine-stalled-damaged-and-abandoned/>> (accessed May 1, 2020).

15 "The High Council of Justice blocks judicial reform" [in Ukrainian], *DEJURE Foundation*, November 22, 2019: <<https://dejure.foundation/news/vyschada-pravosuddia-blokue-sudovu-reformu>> (accessed May 1, 2020).

16 "The HCJ blames international partners for blocking the judicial reform," *DEJURE Foundation*, February 12, 2020: <<http://en.dejure.foundation/news/hcj->

## THE KYIV DISTRICT ADMINISTRATIVE COURT: A SYMBOL OF JUDICIAL CORRUPTION

The Kyiv District Administrative Court (KDAC) is infamous for its controversial rulings and obstruction of the judicial reform process. Among the numerous decisions in its portfolio that have sparked public anger are the legitimization of the dispersal of peaceful protesters during the Revolution of Dignity, the suspension of the duties of pro-reformist Acting Health Minister Uliana Suprun, the ruling that the nationalization of PrivatBank was illegal despite charges against it, and the blocking of investigations of high-profile corruption.

KDAC judges became the target of a corruption probe by NABU in July 2019. The investigation revealed that they used their connections to appoint politically loyal members to the HQCJ in order to bypass its mandatory qualification assessment. In early August 2019, the PGO

pressed criminal charges against KDAC chairman Pavlo Vovk and two other judges. In connection to this, Vovk temporarily stepped down from the post, which he had occupied since 2010.

Soon afterwards, the HCJ rejected the prosecutor general's motion to suspend Vovk from office during the ongoing criminal proceedings against him. Later, in November 2019, the court rejected the case that the PGO had prepared for trial, stalling the case indefinitely.

In January 2020, KDAC judges reelected Vovk as chairman. Vovk was reinstated to the KDAC just days after Ukraine's parliament rejected important amendments that would have transferred several key competences of the ill-reputed institution to the Supreme Court – including the adjudication of disputes on the composition of the HQCJ, an important body for judicial reform. Ukrainian civil society lamented that Vovk's comeback under such circumstances was a clear sign that the country's corrupt judiciary is escaping reform.

In addition, the law's stipulation to halve the number of Supreme Court judges was controversial from the outset. Although Ukraine's Supreme Court is unable to process all of the cases it receives – as of January 2020, there was backlog of 50,000 – some consider the 193 judges currently serving on that court to be an unjustified luxury, given that local-level courts are understaffed and fail to rule on basic but important cases for ordinary citizens. Independent legal experts from the DEJURE Foundation, on the other hand, calculated that 198 judges would be an appropriate number to have on the Supreme Court for the next three years with possible revision after that.<sup>17</sup> The Venice Commission also criticized the law's provisions for failing to specify procedures for selecting a new Supreme Court. According to its issued opinion, the lack of such procedures might lead to the politicization of the selection process, for example,

through the dismissal of judges who are disloyal to the government or keeping those who have integrity issues.<sup>18</sup>

In March 2020, old guard judges made it clear that the system will not only not change from within, but it will also resist politicians' attempts to change the status quo. On March 11, in response to a submission by the Supreme Court, the Constitutional Court of Ukraine (CC) ruled that most provisions of Zelenskyi's law are unconstitutional.<sup>19</sup> In February 2020, the CC had already annulled parts of the judicial reform of 2016 when it declared the liquidation of the former Supreme Court to be unconstitutional and restored the rights of the old guard judges. Some argue that, since 9 out of the 15 members of the CC were entrenched in the old legal establishment, "the CC has a tendency to rule in favor of the

blames-int-partners-for-blocking-judicial-reform> (accessed May 1, 2020).

<sup>17</sup> "200 vs 100: how many judges are needed in the Supreme Court" [in Ukrainian], *DEJURE Foundation*, January 30, 2020: <<https://dejure.foundation/newsroom/200vs100-skilky-suddiv-potribno-u-verkhovnomu-sudi>> (accessed May 1, 2020).

<sup>18</sup> Opinion of the Venice Commission, "Ukraine. Law No. 193 of Ukraine 'On Amending Certain Laws of Ukraine Regarding Activity of Judicial Governance Bodies' and Explanatory Note," Opinion No. 969/2019, November 20, 2019: <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2019\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2019)039-e)> (accessed May 1, 2020).

<sup>19</sup> "Judgement on the Case of the Supreme Court's Constitutional Appeal Regarding the Judiciary and the Status of Judges" [in Ukrainian], Constitutional Court of Ukraine, March 11, 2020: <[http://ccu.gov.ua/novyna/uhvaleno-rishennya-u-spravi-za-konstytucijnym-podannam-verhovnogo-sudu-shchodo-oustroyu?fbclid=IwAR0Ns7coxLvjnZY\\_BUW6AoNjKESwTwrFC\\_LMZUQPWxNT0Z6qacRSd37eJUs](http://ccu.gov.ua/novyna/uhvaleno-rishennya-u-spravi-za-konstytucijnym-podannam-verhovnogo-sudu-shchodo-oustroyu?fbclid=IwAR0Ns7coxLvjnZY_BUW6AoNjKESwTwrFC_LMZUQPWxNT0Z6qacRSd37eJUs)> (accessed April 29, 2020).

incumbent judges and the ‘judicial corporation.’”<sup>20</sup> In other words, the CC will almost always rule against any judicial reform that endangers its members’ interests and positions. Moreover, the selection process for CC judges also remains largely politicized.

It is not clear whether the CC coordinated its decisions with the office of the president, but it has effectively put an end to Zelenskyi’s attempt to reform the judiciary. Moreover, judicial developments on the ground midway through the first year of Zelenskyi’s tenure illustrate just how much the “old guard” is capable of preventing reform. Please see the info box on page 13 for a telling example provided by the Kyiv District Administrative Court.

Rebooting the reform process would require bolder political vision accompanied by legislative actions as well as behavioral change on behalf of the judges themselves – in equal measure. Considering how resilient the judicial corporation is to reforming itself from within, the latter is currently highly unlikely.

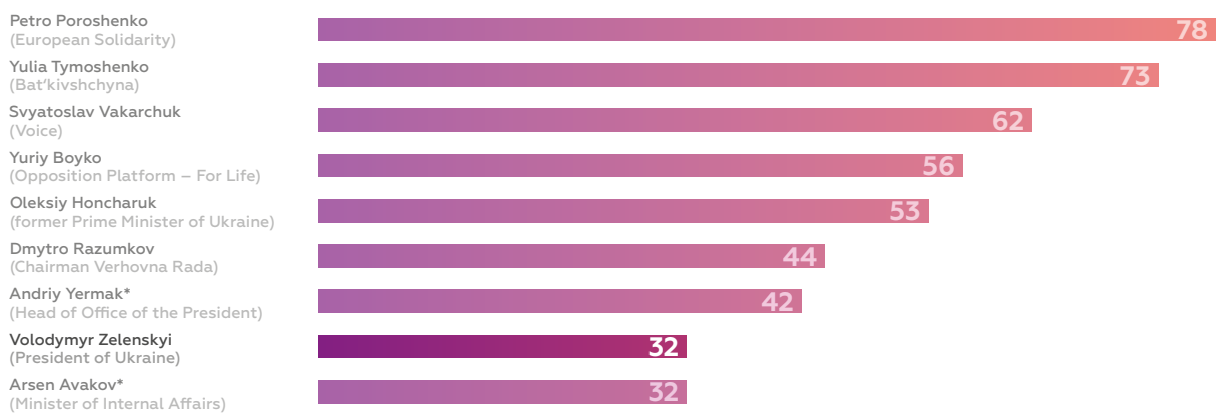
**Anti-corruption Institutions: Under Growing Attacks**

The reform and activity of anti-corruption institutions during the first year of Zelenskyi’s presidency show positive, though not irreversible, results. The establishment of NABU in 2015 and the HACC in 2019 were perhaps the most successful achievements of 2014 to 2019. Both institutions, however, were set

up under heavy pressure from the West – especially due to IMF conditionality – rather than on the initiative of incumbent Ukrainian elites. Moreover, NABU’s future independence looks uncertain. It will also take more time for the HACC to hand down its first high-level convictions. In this regard, 2020 will be a test of the efficiency of the country’s newly established anti-corruption system.

As during Poroshenko’s presidency, NABU continues to experience pressure and attacks from political and financial power groups with strong interests in preserving the old system. These include oligarch Ihor Kolomoisky who was not only under investigation by the SBI at that start of Zelenskyi’s presidency, but who is also backing a group of MPs in Zelenskyi’s own political party.<sup>21</sup> Kolomoisky’s attempts to exert undue influence grew in 2019 and 2020. One explanation for this increase is the greater threat that NABU poses now that it can work together with the HACC and cases are more likely to be reviewed and put on trial more quickly. At this point, more than 400 cases have been submitted to the HACC and important high-level convictions and imprisonments could take place as early as 2020. Provided that cases of selective justice will not occur, initial high-level imprisonments will be the most vivid indicators for society and the international community at large that the Ukrainian judiciary and law enforcement system is finally working. Financial interest groups, however, are not expected to simply observe this happening but rather use all of the informal tools of

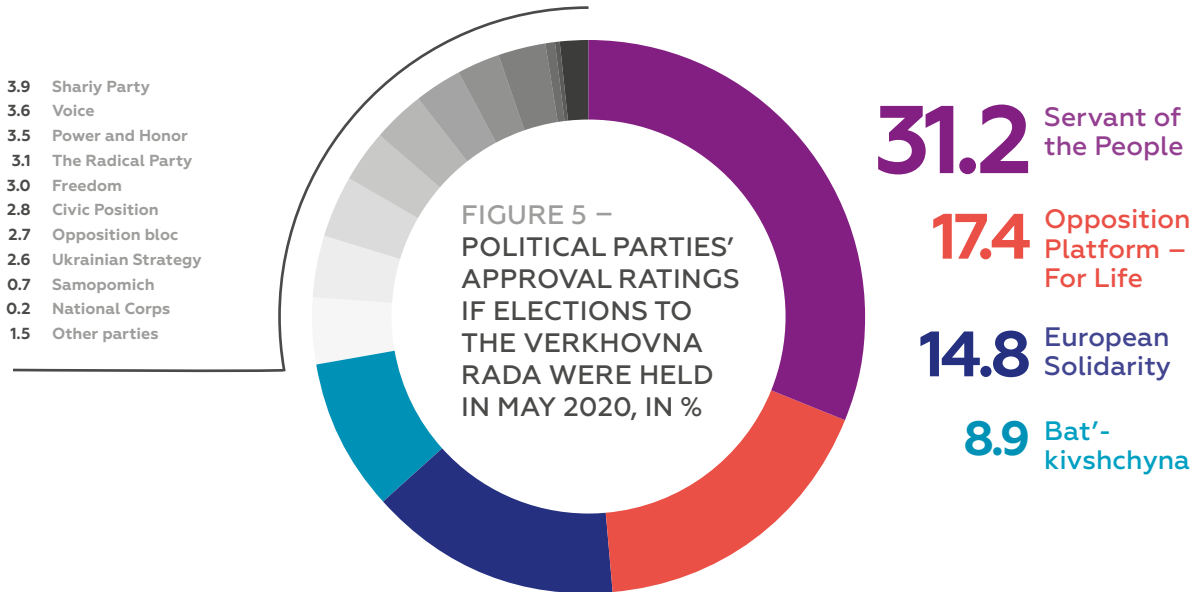
FIGURE 4 – NEGATIVE APPROVAL RATINGS, JANUARY 2020, IN %



Source: “Socio-political Moods of Population (January 22–26, 2020),” Sociological Group Rating, February 4, 2020  
 \* Data from April 2020 published by Kyiv International Institute of Sociology on May 4, 2020 since not included in previous survey.

<sup>20</sup> Mykhailo Zhernakov, “Judicial Reform in Ukraine: Stalled, Damaged, and Abandoned,” *DEJURE Foundation*, March 16, 2019: <<http://en.dejure.foundation/column/judicial-reform-in-ukraine-stalled-damaged-and-abandoned>> (accessed May 1, 2020).

<sup>21</sup> Sergii Leshchenko, “Vengeful politicians, worried oligarch join forces to destroy NABU,” *Kyiv Post*, April 29, 2020: <<https://www.kyivpost.com/article/opinion/op-ed/sergii-leshchenko-vengeful-politicians-worried-oligarch-join-forces-to-destroy-nabu.html>> (accessed April 29, 2020).



Source: "One Year of President Zelensky, Fighting the Coronavirus Pandemic, May Holidays and Political Ratings," Kyiv International Institute of Sociology, May 19, 2020: <<http://www.kiis.com.ua/?lang=eng&cat=reports&id=945&page=1>> (accessed May 25, 2020).

control available to them to stifle change – including their influence on and from within the state institutions themselves.

In February and March, two bills were registered in the Rada aimed at amending the legislation on NABU in such a way that would weaken its independence and eventually enable the dismissal of its director, Artem Sytnyk. An overwhelming majority of MPs across several parliamentary factions, including the Servant of the People, signed those.<sup>22</sup> In late April, one of the bills passed the preliminary approval by the relevant parliamentary committee.<sup>23</sup>

Earlier, Sytnyk was accused and found guilty of taking an elite vacation, allegedly paid for by a businessman and friend. According to Sytnyk, he paid for the vacation himself, and the legal developments targeting him are related to two cases on which NABU was working. The first was a corruption case against the son of Minister of Internal Affairs Arsen Avakov, which was closed by the SAPO in 2018,

allegedly due to insufficient incriminating evidence. The second is a case against oligarchs Kolomoisky and Gennadiy Boholyubov, the former owners of PrivatBank, Ukraine's largest bank, which was nationalized in 2016 after authorities discovered a \$5.5 billion hole in its ledgers. The case was completely transferred by the Prosecutor General's Office (PGO) to NABU in November 2019.<sup>24</sup> Following the example of the first case that was closed without reaching trial, the targets of the latter are also trying to get it dropped, undermining the investigation process by deploying resources to stall NABU's activity, such as media pressure and undue influence over MPs. Anti-corruption experts believe that both the investigation and the ruling of the court in Sytnyk's case are politically motivated.<sup>25</sup> Moreover, they doubt that there are valid grounds for the subsequent proceedings to initiate Sytnyk's dismissal.<sup>26</sup>

Immediately after the first resolution was registered in parliament, the G7 Ambassadors in Ukraine supported NABU in a Twitter statement, warning against

22 "Draft resolution to dismiss NABU chief registered in Ukraine's parliament," UNIAN, February 8, 2020: <<https://www.unian.info/politics/10865558-draft-resolution-to-dismiss-nabu-chief-registered-in-ukraine-s-parliament.html>> (accessed April 29, 2020).

23 Vitaliy Shabunin, "Dismissal of Sytnyk: how and why Kolomoisky, Avakov, and Poroshenko undermine agreement with IMF" [in Ukrainian], *Ukrainska Pravda*, April 28, 2020: <<https://www.pravda.com.ua/columns/2020/04/28/7249737/>> (accessed April 30, 2020).

24 "Avakov, Kolomoisky and 216 more troubles of Artem Sytnik. Interview with NABU Director" [in Ukrainian], *Liga.net*, February 12, 2020: <[https://ua-news.liga.net/politics/articles/avakov-kolomoyskiy-i-sche-216-nepriemnostey-artema-sitnika-intervyu-z-direktorom-nabu-4215811?fbclid=IwAR0wHujTg\\_AmtBc6jvip\\_NTKGjThi6YQlimDg3KfKi95V5aJ\\_-NEyEW24f4->](https://ua-news.liga.net/politics/articles/avakov-kolomoyskiy-i-sche-216-nepriemnostey-artema-sitnika-intervyu-z-direktorom-nabu-4215811?fbclid=IwAR0wHujTg_AmtBc6jvip_NTKGjThi6YQlimDg3KfKi95V5aJ_-NEyEW24f4->)> (accessed May 1, 2020).

25 Anti-Corruption Action Centre, "Law-Enforcement Committee of the Rada promotes illegal bill to dismiss Sytnyk, initiated by MPs controlled by Avakov and Kolomoisky" [in Ukrainian], *ANTAC News*, February 19, 2020: <<https://antac.org.ua/news/pravookhoronnyy-komitet-rady-z-initsiatyvy-deputativ-avakova-ta-kolomoys-koho-prosvaienezakonnu-postanovu-pro-zvil-nennia-sytynka/>> (accessed May 1, 2020).

26 Anti-Corruption Action Centre, "Why dismissal of NABU director by the Parliament is a self-inflicted mistake. Legal explanation," *ANTAC News*, February 25, 2020: <<https://antac.org.ua/en/news/dismissal-nabu-directorself-inflicted-mistake/>> (accessed May 1, 2020).

attempts to unlawfully remove its head.<sup>27</sup> Later, a similar warning came from the IMF. A letter from the head of IMF's mission to Ukraine, Ron van Roden, to the office of the president stated that dismissing Sytnyk or diluting NABU's powers would jeopardize the approval of a \$5 billion lending program to Ukraine.<sup>28</sup> President Zelenskyi's ability to secure NABU's institutional independence will be a key test of his political will and capacity to withstand domestic pressure in the fight against high-level corruption.

One achievement has been the reshuffling of NAPC, the National Agency for the Prevention of Corruption. Under then President Poroshenko, the institution, which he helped establish in 2016, failed to perform well in checking the electronic asset declarations of public officials. This resulted in the resignation of some of its members, among them Ruslan Ryaboshapka in 2017. Ryaboshapka later served as Ukraine's prosecutor general from August 2019 to March 2020. In December 2019, new leadership was selected for NAPC through a rigorous and transparent recruitment process. As a result of this achievement, USAID resumed its direct support of NAPC at the end of January 2020 – assistance that had previously been dropped due to NAPC's poor institutional performance.<sup>29</sup>

Although it acted professionally in many instances, SAPO, the Specialized Anti-Corruption Prosecutor's Office that is another of Ukraine's institutional pillars in fighting corruption, had become infamous for blocking investigations submitted by NABU, among other things. In March 2019, civil society activists, as well as then-US Ambassador to Ukraine Marie Yovanovitch, demanded the dismissal of SAPO's head, Nazar Kholodnytsky. At that time, Hugues Mingarelli, who was serving as EU's ambassador to Ukraine, also criticized Kholodnytsky for not cooperating properly with NABU, thus undermining its efforts to investigate corruption.<sup>30</sup> Under the leadership of former prosecutor general Ruslan Ryaboshapka, however,

NABU and SAPO managed to improve their inter-institutional cooperation. In the second half of 2019 alone, these institutions announced more corruption investigations than they had during all of 2018 (84 versus 79).<sup>31</sup>

Because anti-corruption institutions have been a key focus of reforms after the Revolution of Dignity, they have finally started picking up the pace of their activity. Of the three institutions showing most progress at the moment, NABU is increasingly under strong attack. Whether these young anti-corruption institutions can continue to act independently and keep up their new pace will be a key indicator of the government's success in supporting the fight against corruption. Considering, however, that international partners such as the IMF are strongly backing NABU with stern warnings against the Rada's bills aimed at dismissing Sytnyk, it might be impossible to determine whose success it would be to preserve NABU's independence: President Zelenskyi's, the IMF's, or a combination of the two.

### The Office of the Prosecutor General: Reform Interrupted

For years, Ukraine's Prosecutor General's Office (PGO) was a tool for repressing the regime's opponents and an instrument of political games. The country's least trusted institution, it hadn't been reformed since Ukraine's independence.<sup>32</sup> Zelenskyi broke this vicious circle by appointing Ruslan Ryaboshapka, a prominent anti-corruption activist and professional, to be prosecutor general (PG) in August 2019. The Rada's decision, in March 2020, to dismiss Ryaboshapka after a tenure of only seven months illustrates three main things: how resistant the old system is to change, how Zelenskyi favors loyalty over merit, and how the president's power over his own parliamentary majority has faded away.

On September 25, 2019, Zelenskyi's Law "On Urgent Measures to Reform the Country's Prosecution Au-

<sup>27</sup> Post on the Twitter account of the US Presidency of the G7 Ambassadors' Support Group in Kyiv, February 10, 2020: <<https://twitter.com/G7AmbReformUA/status/1226796085433249792>> (accessed May 1, 2020).

<sup>28</sup> Jack Laurenson, "Business Update: April 29 – IMF warns that Ukraine government must protect NABU independence," *KyivPost*, April 29, 2020: <<https://www.kyivpost.com/business/business-update-april-29-imf-warns-that-ukraine-government-must-protect-nabu-independence.html>> (accessed May 1, 2020).

<sup>29</sup> Ivan Presniakov, Deputy Chairman of NAPC, Facebook post, January 31, 2020: <[https://www.facebook.com/story.php?story\\_fbid=10159018039408132&id=680853131&ref=content\\_filter](https://www.facebook.com/story.php?story_fbid=10159018039408132&id=680853131&ref=content_filter)> (accessed May 1, 2020).

<sup>30</sup> Serhii Sydorenko, "EU Ambassador: I do not want to constantly say in Ukraine 'corruption, corruption, corruption'" [in Ukrainian], *European Truth*, July 29, 2019: <<https://www.eurointegration.com.ua/interview/2019/07/26/7098936/>> (accessed May 1, 2020).

<sup>31</sup> "Avakov, Kolomoisky and 216 more troubles of Artem Sytnik. Interview with NABU Director" [in Ukrainian], *Liga.net*, February 12, 2020: <[https://ua-news.liga.net/politics/articles/avakov-kolomoisky-i-sche-216-nepriemnostey-artema-sitnika-intervyyu-z-direktorom-nabu-4215811?fbclid=IwAR0wHuJTg\\_AmtBc6jvip\\_NTKGjThi6YQlimDg3Kfki95V5aJ\\_-NEyEW24f4->](https://ua-news.liga.net/politics/articles/avakov-kolomoisky-i-sche-216-nepriemnostey-artema-sitnika-intervyyu-z-direktorom-nabu-4215811?fbclid=IwAR0wHuJTg_AmtBc6jvip_NTKGjThi6YQlimDg3Kfki95V5aJ_-NEyEW24f4->)> (accessed May 1, 2020).

<sup>32</sup> Robyn Dixon and David L. Stern, "How Ukraine's Zelensky lost the anticorruption movement," *Washington Post*, March 17, 2020: <[https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25\\_story.html](https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25_story.html)> (accessed May 1, 2020).



thorities" came into force.<sup>33</sup> This law paved the way for replacing the PGO with the Office of the Prosecutor General (OPG), a new institution. It also allowed for prosecutors to be asked for reassessment through a merit-based and transparent process of computer testing and interview. Thus, a complete reshuffling of the prosecution system became possible.

By the end of 2019, the assessment process at the central level was completed and deemed successful. Of the 1,083 prosecutors who wished to go through the reassessment process (80 percent of all prosecutors), only 610 (56 percent) passed. Thus, on January 2, 2020, the new OPG started working with approximately 1,500 employees, down from the 2,400 who had worked previously for the old PGO. Their salary also increased four fold – from UAH 7 thousand to 29 thousand<sup>34</sup> – making the job of prosecutor more attractive and financially sustainable. In 2020, regional and local prosecutors are scheduled to undergo the same reassessment process. It is expected that the overall number of prosecutors in the system will go down from 15,000 to 10,000, a number envisaged by the new law and considered more reasonable. According to Ryaboshapka, Ukraine has one of the highest number of prosecutors per 100,000 people in the world.<sup>35</sup>

The law introduced additional structural changes as well. For instance, military prosecution was dismantled and two separate specialized departments were planned: one to deal with armed conflict, which has already been established, and the other to address torture and other gross human rights violations, which is yet to come. Also, in November 2019, the prosecution lost the rights to open and conduct criminal investigations, having transferred them to the relevant pre-trial investigation authorities: SBI, NABU, SBU, and the National Police. Since then, prosecution authorities can only provide procedural guidance in criminal proceedings.

Although the law brought about the most sweeping reform of Ukraine's prosecution system in the country's history,<sup>36</sup> it has been criticized for being fully concentrated in the hands of the new prosecutor general. Zelenskyi trusted Ryaboshapka and gave him *carte blanche* to carry out the reforms. While the integrity and professional record of Ryaboshapka and his deputies have never been questioned, the decision to remove the Qualification Disciplinary Commission from the process of selecting public prosecutors was considered problematic. The commission had been established in 2014 and started its work in 2017. The law adopted in September 2019 engaged external actors in the selection process instead. Legal experts feared that many prosecutors who were removed through their reassessment by external actors would later be able to restore their positions in court, as had happened in the case of the national police (see below). Indeed, since the start of 2020, 124 prosecutors who did not pass the last stage of selection – based on an interview and thus prone to subjectivity – brought their cases to court.<sup>37</sup>

Reforms initiated by Ryaboshapka were interrupted by his dismissal on March 5 by a cross-party vote in parliament. His dismissal took place despite recognition by the G7 Ambassadors to Ukraine of his substantial progress in reforming the OPG<sup>38</sup>; according to Ryaboshapka, it came without explanation. President Zelenskyi, however, criticized him for the lack of progress on high-level cases.<sup>39</sup> With his removal of Ryaboshapka, Zelenskyi not only demonstrated that he prioritizes loyalty of appointees over genuine independent institution-building, but that, by defying the pressure of the G7 Ambassadors, he is also better able to withstand international than domestic pressure.

On March 16, Iryna Venediktova, a former adviser to Zelenskyi and lawmaker from his party, was appointed the new PG. Her background and profile

<sup>33</sup> The Law of Ukraine "On Amending Certain Laws of Ukraine as to Urgent Measures to Reform the Prosecution Authorities," Document 113-IX, adopted on September 19, 2019 (came into force on September 25, 2019): <<https://zakon.rada.gov.ua/laws/show/113-20>> (accessed May 5, 2020).

<sup>34</sup> "Prosecutor's Reform: Prosecutors' Salaries of General Prosecutor's Office Increased Compared to Prosecutors' of the Liquidated GPU" [in Ukrainian], Office of the Prosecutor General, January 11, 2020: <[https://www.gp.gov.ua/ua/news/?\\_m=publications&\\_c=view&\\_t=rec&id=264480](https://www.gp.gov.ua/ua/news/?_m=publications&_c=view&_t=rec&id=264480)> (accessed May 1, 2020).

<sup>35</sup> Ukrainian Radio, "We will change the mentality of prosecutors: Ruslan Ryaboshapka on prosecution reform," Interview in Ukrainian with Prosecutor General Ruslan Ryaboshapka, February 26, 2020: <<http://www.nrcu.gov.ua/news.html?newsID=92794>> (accessed May 1, 2020).

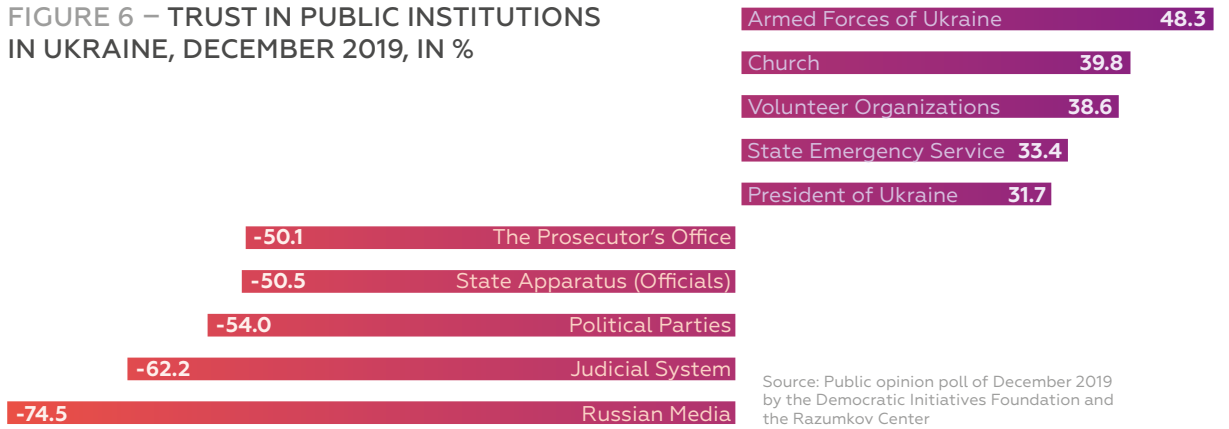
<sup>36</sup> Robyn Dixon and David L. Stern, "How Ukraine's Zelensky lost the anticorruption movement," *Washington Post*, March 17, 2020: <[https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25\\_story.html](https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25_story.html)> (accessed May 1, 2020).

<sup>37</sup> Vyacheslav Khripun, "Iryna Venediktova: we will not be able to win in court cases following interviews with prosecutors" [in Russian], *Sud*, April 18, 2020: <<https://sud.ua/ru/news/publication/166659-irina-venediktova-my-ne-smozhem-vyigrat-v-sudebnykh-sporakh-po-itogam-sobesedovaniy-s-prokurorami>> (accessed May 1, 2020).

<sup>38</sup> Post by the US Embassy in Kyiv, on behalf of the G7 Ambassadors' Support Group in Kyiv, on the social media platform Twitter, March 3, 2020: <<https://twitter.com/USEmbassyKyiv/status/1234782739141931009>> (accessed May 5, 2020).

<sup>39</sup> "Zelensky about Prosecutor General Ryaboshapka: MPs vote, my opinion is that if there is no result – it should not take the place" [in Russian], *Interfax*, March 5, 2020: <<https://interfax.com.ua/news/political/645223.html>> (accessed May 1, 2020).

FIGURE 6 – TRUST IN PUBLIC INSTITUTIONS IN UKRAINE, DECEMBER 2019, IN %



are considered “unsuitable” for the position.<sup>40</sup> She is expected to be fully loyal to and dependent on Zelenskyi, posing a real risk of politically motivated prosecutions. When Venediktova served as acting head of the SBI between December 2019 and March 2020, she took some highly controversial steps (detailed in the next section). In 2015, she failed to be appointed as judge of the Supreme Court when she scored less than the minimum required points. Soon after becoming PG, she removed Viktor Trepak who was heading the investigation of the November 2018 murder of anti-corruption activist Kateryna Handziuk and making progress.<sup>41</sup> One month later, Venediktova’s deputy declared the investigation complete and redirected the case to the court. Ukraine’s human rights community stated that this decision was premature and aimed at acquitting the high-level official who allegedly ordered the murder.<sup>42</sup>

Reforming an institution that had not been addressed since independence is certainly complex, especially given the strong vested interests in preserving the status quo. Still, President Zelenskyi’s expectation of immediate verdicts in high-profile cases and quest to maintain high approval ratings hint at his short-sightedness when it comes to deep structural change. Moreover, Zelenskyi’s motives concerning Ryaboshapka are unclear. Did he appoint him believing more in his loyalty than his prospects

for successfully reforming such a corrupt institution? Did he have to sacrifice him as part of a larger power struggle with the Ukrainian oligarchs and regional political forces? What is certain is that Zelenskyi interrupted what was considered the most sweeping reform in prosecution that Ukraine has experienced to date, damaging his reputation as reformer both domestically and among international partners.

**State Bureau of Investigations: In Limbo**

President Zelenskyi also aimed to reboot the SBI, but his choice for its head did not inspire much hope. The SBI was created in 2017 to investigate the crimes of high-level officials, law enforcement authorities, police, and prosecutors (excluding corruption, which is the responsibility of NABU). However, its former leadership proved to be ineffective and there were complaints that the institution was “drowning in scandals.”<sup>43</sup>

On December 3, 2019, the Rada adopted the Law “On the Optimization of the Work of the SBI,” which was proposed by President Zelenskyi to improve the activity of the institution.<sup>44</sup> It provided a change in its legal status, gave the SBI director broader powers, and strengthened its parliamentary oversight. After the law came into force, its director, Roman Truba, was dismissed. Iryna Venediktova was then appointed SBI’s acting director by President Zelenskyi until a perma-

40 Robyn Dixon and David L. Stern, “How Ukraine’s Zelensky lost the anticorruption movement,” *Washington Post*, March 17, 2020: <https://www.washingtonpost.com/world/europe/ukraine-corruption-zelensky-ryaboshapka-venediktova-trump-biden/2020/03/17/7dcab542-6636-11ea-912d-d98032ec8e25\_story.html> (accessed May 1, 2020).  
 41 Halya Coynash, “Chief prosecutor in Handziuk murder investigation removed just as progress,” *Kharkiv Human Rights Protection Group*, March 30, 2020: <http://khp.org/en/index.php?id=1585360166> (accessed May 1, 2020).  
 42 Halya Coynash, “Handziuk murder: Ukraine’s Prosecutor General sabotages case against high-ranking suspect,” *Human Rights in Ukraine*, April 28, 2020: <http://khp.org/en/index.php?id=1588024740> (accessed May 2, 2020).  
 43 Natlia Lebed, “Why State Bureau of Investigations didn’t become Ukraine’s FBI but swamped with scandals?,” *112 International*, January 31, 2020: <https://112.international/ukraine-top-news/why-state-bureau-of-investigations-didnt-become-ukraines-fbi-but-swamped-with-scandals-48066.html> (accessed April 23, 2020).  
 44 The Law of Ukraine “On Amending Certain Laws of Ukraine to Improve the Work of the State Bureau of Investigations,” Document 305-IX, adopted on December 12, 2019 (came into force on December 27, 2019): <https://zakon.rada.gov.ua/laws/show/305-20> (accessed May 5, 2020).

ment one could be selected through a competitive merit-based process. During her short tenure at SBI, Venediktova officially announced that she favors abolishing the law that grants amnesty to the 2014 Maidan protesters. She also launched an investigation of former President Poroshenko that Ryaboshapka had refused because he considered it politically motivated and argued that evidence for such a case was missing. In addition, Venediktova filled two deputy posts through an opaque competition process.<sup>45</sup>

Importantly, the renewed SBI is in charge of investigating crimes committed during the Revolution of Dignity. It is worth noting that the employees who were working on cases related to the revolution at the old PGO when it was abolished were then moved to the SBI to work on them there. This was done so that institutional memory, as well as the work carried out on those investigations so far, would be preserved – an important step as the risk of the investigations falling apart in the transfer process to other institutions was high. But one of the deputies recruited by Venediktova is a former lawyer of former President Yanukovich who was removed from office by 2014's protests.

While Venediktova was directly responsible for all top appointments at SBI during her tenure as acting director, it was President Zelenskyi who appointed her. At best, his choice signaled an increased risk of ineffectiveness. And now, with Zelenskyi having moved Venediktova to the post of prosecutor general in March, the SBI has been left in limbo until he appoints a new head.

### National Security Service: Reform Still to Come

Reforming the SBU is among the most urgent and challenging tasks that President Zelenskyi needs to undertake. With more than 32,000 employees and broad powers, including the investigation of financial violations, it currently poses a real threat to Ukraine's business climate. In fact, 50 percent of foreign investors consider the repressive actions of SBU to be an obstacle to investment.<sup>46</sup> Yet despite SBU's impor-

tance and the campaign promises of both Zelenskyi and his party, no reform has taken place to date.

In August 2019, Zelenskyi appointed Ivan Bakanov, his childhood friend and former head of his production studio, as the new head of SBU. Bakanov immediately made bold statements about imminent change and, in mid-October, presented a new draft law intended to reset the SBU according to international standards. This draft law redefines the functions of SBU so that they do not overlap with other intelligence agencies. It takes away SBU's economic security functions, optimizes its organizational structure, and foresees its demilitarization and depoliticization. Despite sounding encouraging, these provisions are not predicted to lead to systemic changes but rather to "preserve the Soviet inheritance." Instead of reforming SBU to European standards, which was the law's declared intention, it tries to save the institution's investigative powers and competences regarding the fight against organized crime. Furthermore, some of the law's proposed norms undermine the procedural independence of other law enforcement agencies and allow SBU to interfere in any criminal proceedings at its discretion.<sup>47</sup>

In addition to reforming SBU, the government also plans to create a separate institution, the Bureau of Financial Investigations (BFI). The establishment of such an institution is one of the priorities of IMF's cooperation with Ukraine.<sup>48</sup> If created, it will investigate all commercial economic crimes against the state. Until now, several institutions shared these competences: the ministry of internal affairs, which had dismissed its own department in charge of financial crimes in September 2019; SBU; and the taxation police. Experts argue that BFI will reduce tax pressure on entrepreneurs and improve Ukraine's business climate.<sup>49</sup> Equally important for BFI to be a truly independent institution, other bodies – foremost SBU – must simultaneously be deprived of their competence to investigate economic crimes. While the bill on BFI was approved by the Rada in its first reading in October 2019, it failed in its second reading in January 2020. Although the president is ex-

45 Natlia Lebed, "Why State Bureau of Investigations didn't become Ukraine's FBI but swamped with scandals?", *112 International*, January 31, 2020: <<https://112.international/ukraine-top-news/why-state-bureau-of-investigations-didnt-become-ukraines-fbi-but-swamped-with-scandals-48066.html>> (accessed April 23, 2020).

46 Olena Shcherban, "Will Zelenskyi use historical chance to reform SBU: analysis of draft law of SBU," *AntAC*, December 13, 2019: <<https://antac.org.ua/en/news/analysis-of-draft-law-of-sbu/>> (accessed April 22, 2020).

47 "The new draft law on the SBU reform preserves Soviet system of work," *Reanimation Package of Reforms*, November 15, 2019: <<https://rpr.org.ua/en/news/the-new-draft-law-on-the-sbu-reform-preserves-soviet-system-of-work-2/>> (accessed April 2, 2020).

48 Petro Shevchenko, "Ze-Bureau. Why Ukraine has delayed implementation of IMF agreements and does not adopt a law on financial investigations" [in Ukrainian], *Nv.ua*, January 14, 2020: <<https://nv.ua/ukr/biz/finance/prezident-volodimir-zelenskiy-virishiv-vzyati-pid-kontrol-byuro-finansovih-rozsliduvan-novini-ukrajini-50063983.html>> (accessed April 2, 2020).

49 Maria Repko, "Banking Fragility Rooted in Justice Failures: Evidence from Ukraine," *CEPS*, May 10, 2019: <<https://www.ceps.eu/ceps-publications/banking-fragility-rooted-in-justice-failures/>> (accessed May 5, 2020).

pected to submit a new bill on BFI, he has not yet done so.

### The National Police: No Reform So Far

Despite high societal demand for reform of Ukraine's law enforcement authorities and several attempts by the government, there has been only one real achievement so far: the introduction of the road patrol police in 2015. This newly created institution, although formally a unit of the Ukraine's national police, recruited and trained new personnel with the help of Western donors. Ninety-three percent of those hired came from outside the system.<sup>50</sup>

The national police was itself established in 2015. Although the institution differs from its post-Soviet predecessor, it has hardly been reformed. The renewal of its personnel, by and large, failed. By 2018, 92.3 percent of old staff had gone through a reassessment process and was then taken over by the new police body. As for those who made up the 7.7 percent that was fired, they were not only reinstated in their previous positions by the courts, but they also received more than €1.6 million in compensation for their forced absence, draining the public budget.<sup>51</sup>

Effectively, all progressive initiatives within the police that were started in 2015 came to an end in 2016. Since then, there has been no political will to genuinely reform the institution.<sup>52</sup> Arguably, the main challenge that the national police must still address is the excessive influence of the minister of internal affairs. Due to reforms, the ministry of internal affairs has formally become a body which no longer controls the work of five different institutions – the national police, state border guard service, migration service, national guard, and state service on emergency situations – but merely coordinates and allocates resources for them.<sup>53</sup> In reality, however, things stand differently.

Under the leadership of the current minister of internal affairs, Arsen Avakov – who was appointed just

after the Revolution of Dignity on February 22, 2014, and has remained in this position ever since, having survived four governments and two presidents – the ministry has become a very powerful institution, a “state within the state.”<sup>54</sup> Avakov seems to have been responsible for sustaining the deficiencies of the national police in an attempt to maintain and increase his influence. Since 2014, none of the high-profile crimes committed against journalists and civil activists have been properly investigated; nor have the crimes in which police officers were allegedly involved.<sup>55</sup> Despite the continuous demand by civil society activists for Avakov's removal, President Zelenskyi not only appointed him to serve in the government of Prime Minister Honcharuk, but also kept him in his second government under Prime Minister Shmyhal. Zelenskyi's decision could mean at least three things: he has no intention to genuinely reform Ukraine's law enforcement system, he underestimates the danger that the powerful minister poses to his authority and approval ratings, or he has struck a deal with Avakov in exchange for the security services that he can provide.

### SIGNPOSTS ON WHERE UKRAINE IS HEADING

A government's commitment to conducting painful but necessary reforms is often measured by how much elites are willing to build strong institutions and curb entrenched vested interests. A litmus test for governments in democratizing societies such as Ukraine is whether they use their political power to help consolidate rule of law institutions. In the post-Soviet space, where nearly thirty years of transition have cemented the strength of vested interests, consolidation of rule of law is critical – not only for the democratic paths of the societies themselves, but also for the international community who can help support them and foreign investors who consider investing in these countries.

Volodymyr Zelenskyi's unprecedentedly high legitimacy and initial overwhelming majority in parlia-

50 Yevhen Zakharov, “Police Reform and Human Rights,” *Kharkiv Human Rights Protection Group*, July 3, 2017: <<http://khpg.org/en/index.php?id=1499110653>> (accessed May 2, 2020).

51 Tetiana Goncharuk, “Where is Ukraine's new police force?,” *Open Democracy*, January 31, 2018: <<https://www.opendemocracy.net/en/odr/where-is-ukraines-new-police-force/>> (accessed May 2, 2020).

52 Olena Makarenko, “Ukraine's photogenic ‘new cops’ went viral, but the real police reform is yet to start,” *Euromaidan Press*, June 13, 2018: <<http://euromaidanpress.com/2018/06/13/ukraines-photogenic-new-cops-went-viral-but-the-real-police-reform-is-yet-to-start/>> (accessed May 2, 2020).

53 Ibid.

54 Anti-Corruption Action Center, “Avakov's Octopus: As the ‘Interim Minister’ Increases Its Influence in the Power Bloc” [in Ukrainian], *Ukrainian Pravda*, January 28, 2020: <<https://www.pravda.com.ua/articles/2020/01/28/7238587/>> (accessed May 2, 2020).

55 “What is wrong with Avakov: high-profile crimes unveiled by police” [in Ukrainian], *Slidstvo*, February 23, 2020: <<https://www.slidstvo.info/articles/shhone-tak-z-avakovym-guchni-zlochyny-nerozkryti-politsiyeyu/>> (accessed May 2, 2020).

ment raised hopes, particularly among those who believe that a new Ukraine needs a radical rupture with its past and traditional politics. His election also raised serious concerns among those segments who believe that a political novice with unclear ties to the old system is unable to change the country or is even dangerous for Ukraine's statehood. One year into Zelenskyi's presidency – with control lost over his SoP party in the Rada and reforms initiated that have disturbed the old system but not sufficiently to change the status quo – Ukraine's future is less bright even for those who trusted his capacity and political will to act.

During the past year, civil society and the international community witnessed several attempts to reboot parts of Ukraine's system of rule of law institutions. While Zelenskyi's decision to give a free hand to his newly appointed prosecutor general in August 2019 has transformed into one of the boldest reforms that the prosecution system has witnessed so far, his decision to let the judiciary reform itself from within with minor reform intervention brought less positive results. Considering the complexity of judicial reform amid the numerous challenges that Ukraine faces at the moment, it seems that it fell off the list of priorities. Judicial reform is, hence, currently stalled for an indefinite time.

Prosecution clean-up got interrupted. Zelenskyi has been unable or unwilling to protect Ryaboshapka's course of reform of the prosecution system, and preferred replacing him with someone more loyal. With this decision, Ukraine has missed the opportunity of a lifetime to bring order to one of the most difficult sectors to reform. The newly appointed prosecutor general may not stand up to the magnitude of the challenge that the prosecution system is posing but this remains to be seen.

The effect of Zelenskyi's tenure on Ukraine's anti-corruption system is yet uncertain. The anti-corruption institutions that were established during Poroshenko's presidency under strong pressure from domestic reform-minded constituencies and the international community are just starting their full-fledged activity. If these institutions are able to perform the duties well that they have been assigned, the years 2020 and beyond will bring major convictions. Their initial achievements have already put vested interests under severe stress. As a result, anti-corruption agencies are under strong attack

where they work. One test of Zelenskyi's position on anti-corruption will be whether the current head of NABU will be sacked, a major concern for civil society actors and the international community. Even if he is not, considering the inaction of the president on the matter so far, this will most likely not be to Zelenskyi's credit, but rather – yet again – due to pressure from international partners.

Regarding the reform of law enforcement agencies, no major changes have been adopted or implemented to date. Impartial investigations and convictions on cases of violence against civil society activists and journalists, as well as on those where police themselves are involved, have yet to take place. The power of the old guard is strengthening at the expense of the president's capacity to defend the values and institutions of the rule of law, which are at the heart of consolidating Ukraine's democratic transformation. As after the Revolution of Dignity, the old system has again proven actively resistant to change.

Consolidating rule of law is a complex process that takes a prolonged period of time, coordinated and consistent effort on behalf of multiple governments, and widespread pro-reform consensus among major stakeholders. The government reshuffle on March 4 was a turning point for Zelenskyi's presidency which wound up demonstrating that his capacity to defend institutions and reforms when they need protection from the power groups opposing them is showing deep cracks. But according to his former pro-reform prosecutor general, Ruslan Ryaboshapka, who was ousted after the reshuffle, without presidential support "it's not possible to establish rule of law" in Ukraine.<sup>56</sup>

Despite pushing forward many constructive provisions in various laws (most of which can be credited to the established and readily available expertise of civil society), Zelenskyi failed to demonstrate the capacity or political will to enforce his and his team's decisions and get them through the Rada. Also, his replacement of the government of Oleksyi Honcharuk after just six months in the office, showed that Zelenskyi has a highly populist approach that is guided by his approval ratings and lacks the vision and power to protect reforms from being hijacked by oligarchic interests. Moreover, with the reshuffle and particularly the dismissal of PG Ryaboshapka, Zelenskyi demonstrated that he prioritizes the

<sup>56</sup> Brian Bonner, "Ryaboshapka: Zelensky Has Lost his Way," *UkraineToday.org*, May 1, 2020. < <https://ukrainetoday.org/2020/05/01/ryaboshapka-zelensky-has-lost-his-way/> > (accessed May 5, 2020).

loyalty of appointees over genuine independent institution-building.

Zelenskyi's current political crisis becomes even more serious against the unfolding background of the effects of COVID-19. The president's capacity to hold his party together and continue with governmental reforms will be further undermined by the pandemic's projected economic aftermath for 2020: a GDP decline of 5 percent and an unemployment rate of 9.4 percent of the labor force (1.5 million to 2 million people).<sup>57</sup> Addressing such dramatic hardship will detract attention from other essential reforms. Consequently, there is a high risk that rule of law reform will be dropped as a priority during Zelenskyi's presidency.

## HOW INTERNATIONAL PARTNERS CAN FURTHER SUPPORT RULE OF LAW REFORM

While there is no official impact assessment of the overall external assistance provided to Ukraine since 2014, this section is a modest attempt to provide an overview of which mechanisms worked and which did not over the past five years. It aims to help Western development partners understand how they can further their support most effectively, particularly to promote rule of law reform in Ukraine. It concludes with a list of policy recommendations.

### Western Assistance So Far

Since the 1990s, Ukraine has been part of various international assistance programs and projects that target rule of law reform. When the launch of the European Neighborhood Policy in 2004 and the signing of the EU-Ukraine Action Plan in 2005 mandated annual progress reports, rule of law became an integral part of the EU-Ukraine bilateral agenda. The EU's broader assistance between 1992 and 2013 helped to raise awareness of European rules and standards in Ukraine, but it had a minor impact on the functioning of state institutions.<sup>58</sup> The EU had little leverage to make a real difference to the effectiveness of the governance process. While the IMF was also an important actor, no conditionality was attached to rule of law reforms before 2014.

The EU is divided on how to protect the rule of law inside its own member states, as the cases of Hungary and Poland have shown.<sup>59</sup> Moreover, it has no blueprint for what constitutes "a right path for reform" to establish and consolidate the rule of law – although it has frequently expected its eastern partners, including Ukraine, to produce one domestically. At other times, the EU has been criticized for being over prescriptive to others when it lacks a blueprint itself and faces serious rule of law challenges of its own domestically. The EU has, however, learned from its experience with past enlargement waves in Central and Eastern Europe and, today, it applies some of those lessons farther east. Yet, after Ukraine's Revolution of Dignity, it mostly relied on conditionality measures related to anti-corruption and more abstract criteria applied to rule of law reform without specific benchmarks or performance indicators. Having no benchmarks for rule of law reform makes it almost impossible to objectively assess progress and leaves space for interpretation and politicization of the process both in Ukraine and the EU's capitals.

On the other hand, there are instruments that work and need to be continued and further improved. Here, we look at the positive role of conditionality, assistance, and political engagement and diplomatic pressure.

First, the **financial and political conditionality** tools of the IMF and EU have played key roles in encouraging difficult and, sometimes, what seemed to be unacceptable reforms for certain powerful domestic actors. The approval and disbursement of loans have been the IMF's major instruments, while the EU's, so far, has been the Visa Liberalisation Action Plan (VLAP). In both cases, corruption-related conditionality measures have been the most common in the past, while issues such as judicial reform received much less attention.

With its approval of visa-free travel for Ukrainians in 2017, the EU is considered to have exhausted one of its most important instruments for pushing rule of law reforms in the country. The EU's financial conditionality has also played a role since, most prominently, its three programs of Macro-Financial Assistance (MFA) that have been in effect

<sup>57</sup> Jack Laurenson, "Business Update – March 30: GDP to shrink, unemployment increases, banks vulnerable," *KyivPost*, March 30, 2020: <<https://www.kyivpost.com/business/business-update-march-30-gdp-to-shrink-unemployment-increases-banks-vulnerable.html>> (accessed May 2, 2020).

<sup>58</sup> Kataryna Wolczuk and Darius Zeruolis, "Rebuilding Ukraine. An Assessment of EU Assistance," Research Paper, *Chatham House* (August 2018): <<https://reader.chathamhouse.org/rebuilding-ukraine-assessing-eu-assistance-ukraine#>> (accessed May 2, 2020).

<sup>59</sup> Eszeter Zalan, "EU divided on how to protect rule of law," *EUobserver*, September 16, 2019: <<https://euobserver.com/political/145957>> (accessed May 2, 2020).

since 2014 included legislative and institutional anti-corruption benchmarks. In late 2017, Ukraine lost an MFA tranche of €600 million because it failed to meet several anti-corruption conditions.

Both the IMF and the EU's VLAP conditionality contributed to important achievements. These include the establishment of NABU and its independent and effective operation, the establishment of SAPO and the transparent selection process of its director, the establishment of HACC and its competitive selection process of judges, the establishment of NACP and the introduction of the electronic declaration of assets (although there have been problems with verification), the adoption of legislation on asset-recovery, greater transparency in public procurement, and transparency of funding for political parties.<sup>60</sup> It is equally true that the EU's conditionality mechanisms have sometimes encouraged box ticking during the adoption process of anti-corruption laws and have had a less consistent impact on their implementation. Conditionality was only possible once Ukraine's major Western development partners, along with strong civil society constituencies, understood the importance of rule of law reform.

Second, a number of successful innovations to the **partners' assistance approach** have been introduced since 2014. These include the creation of a special Support Group for Ukraine (SGUA) and of the EU Advisory Mission for Civilian Security Sector Reform under the CSDP track. The SGUA's coordination and planning of assistance have focused on developing an approach that embraces whole sectors. In contrast, assistance before 2014 consisted of a large number of individual projects.<sup>61</sup> The SGUA has also helped the EU better coordinate its efforts with that of other international donors. In addition, a donor coordination platform led by the EU Delegation on the ground works toward avoiding overlaps and channeling broader development assistance efforts more effectively.

Another innovation is the strategic focus on the reform-oriented dimension of EU policies. Rule of law has received important attention in the new form

of EU assistance to Ukraine – the “delegated agreements,” which are resource programs implemented by development agencies of EU member states. Thus, in 2017, a €16 million anti-corruption program was launched that was implemented by Denmark's development agency.<sup>62</sup> Several other programs have been launched as well, including the Support Rule of Law Reforms in Ukraine (PRAVO) for judiciary and law enforcement. Altogether, the EU and its member states have allotted €17 billion in assistance to Ukraine since 2014.<sup>63</sup>

Finally, **political engagement and diplomatic pressure** on the ground have also shown positive results. This is where the EU has significantly improved its performance over the years. EU Ambassadors to Ukraine Jan Tombinski and Hugues Mingarelli, who served from 2012 to 2019, did not shy away from commenting on bills, appointments, and processes during the period when most anti-corruption institutions were created. The EU has also directly participated in anti-corruption reform implementation: its delegates worked in commissions that selected the heads of NABU and HACC, having contributed to the independence and higher professional quality of the selection results.<sup>64</sup> It is also worth mentioning the positive role of the Ukraine Support Group within the Group of Seven (G7), which has come up with a number of political statements on reforms in Ukraine and, less publicly, has met with various key actors in the reform process. With these, it has proved to be an important promoter of reforms in Ukraine.

<sup>60</sup> Anti-Corruption Action Center, “Map of Anticorruption Conditionality by AntAC”: <<https://map.antac.org.ua/>> (accessed May 1, 2020).

<sup>61</sup> Kataryna Wolczuk and Darius Zeruolis, “Rebuilding Ukraine. An Assessment of EU Assistance,” Research Paper, *Chatham House* (August 2018): <<https://reader.chathamhouse.org/rebuilding-ukraine-assessing-eu-assistance-ukraine#>> (accessed May 1, 2020).

<sup>62</sup> See details about this project here: <[https://eeas.europa.eu/delegations/ukraine\\_en/49261/EU%20Anti-Corruption%20Initiative%20in%20Ukraine](https://eeas.europa.eu/delegations/ukraine_en/49261/EU%20Anti-Corruption%20Initiative%20in%20Ukraine)> (accessed May 2, 2020).

<sup>63</sup> “Remarks by Commissioner for Neighbourhood and Enlargement Olivér Várhelyi after the EU-Ukraine Association Council,” *European Commission*, January 28, 2020: <[https://ec.europa.eu/commission/commissioners/2019-2024/varhelyi/announcements/remarks-commissioner-neighbourhood-and-enlargement-oliver-varhelyi-after-eu-ukraine-association\\_en](https://ec.europa.eu/commission/commissioners/2019-2024/varhelyi/announcements/remarks-commissioner-neighbourhood-and-enlargement-oliver-varhelyi-after-eu-ukraine-association_en)> (accessed May 3, 2020).

<sup>64</sup> See more specific examples of political engagement and diplomatic pressure in Dmytro Shulga, “The EU as a promoter of accountable governance: the case of Ukraine,” unpublished paper, January 2020.

## Recommendations

The remainder of President Zelenskyi's term will be primarily defined by how Ukraine responds to the humanitarian and economic effects of the COVID-19 pandemic. Depending on the magnitude of consequences, there may be space for maintaining the course of reforms that Ukraine embarked on after the Revolution of Dignity, but this will likely be further undermined by the fragmentation of Zelenskyi's power and capacity to push legislation in the Rada. This space will also be defined by Russia's goals towards its neighbor, the strength of the fight that financial power groups within Ukraine are ready to engage in to maintain their influence, the demand for reform that is building up inside the country itself, and, last but not least, the pressure that the international community is ready to apply.

International partners and donors are key players in terms of their ability to influence the course of reforms in Ukraine. The EU, in particular, has a unique ability to externally influence the domestic transformation of Ukraine that is based on its positive image and wide societal support for European integration. To keep political elites engaged in rule of law reform, as well as to discourage reversing the reforms already undertaken, the international community needs to take the following actions:

### 1. Prioritize rule of law reform

The EU has managed to actively drive anti-corruption reform in Ukraine since 2014, but it has rather modestly supported the prioritization of reforms of the judiciary, prosecution, and law enforcement. As a result, there was no substantial progress in reforming law enforcement agencies, particularly the SBU, the landmark component of security sector reform. These institutions are equally important for a successful fight against corruption and, consequently, require a complete overhaul. Together with other international partners such as the IMF, the EU needs to prioritize reform of the judiciary and other rule of law sectors mentioned in this analysis.

### 2. Condition funding on rule of law performance

Rule of law reform priorities need to become part of EU conditionality, for instance in future MFA programs that the EU negotiates with Ukraine, as well as part of conditionality for IMF funds. One step in the right direction is the comment by the IMF's managing director on the importance of an indepen-

dent judiciary for the disbursement of its loan package referred to above. This seems to be the first time that the IMF has named the independence of the judiciary as one of the objectives that need to be fulfilled in relation to a financial support program.<sup>65</sup>

### 3. Develop tools for objective performance assessment

While there are no predefined benchmarks for performance assessment in the rule of law area, the EU did develop several tools to assess its member states' performance in this field. The EU currently uses the EU Justice Scoreboard for the regular assessment of the state of the judiciary in its member states, and it is currently working to develop the EU's future Rule of Law Mechanism. This mechanism is expected to replace the EU Justice Scoreboard and the EU Anti-Corruption Report, which assesses the state of the fight against corruption. The question is whether the EU could also apply the tools it uses for internal assessment to countries like Ukraine. In 2018, the Ukrainian government officially proposed that the EU develop a new Agenda in the area of Freedom, Justice, and Security (issues covered in Title III of the EU-Ukraine Association Agreement). Negotiations on the content of the draft proposal that Ukraine submitted are still ongoing. Considering the interest of Ukrainian authorities and in order to improve the effectiveness of EU assistance to reforms, as well as to identify priorities and benchmarks for providing further assistance, the EU should use the same assessment tools to measure progress reform in Ukraine.

### 4. Tie assistance to implementation

Implementation is where even the most advanced institutional reforms currently lag behind. In addition, this is the phase where many reforms stall altogether and no tangible results reach citizens. International partners should also tie their assistance to the implementation phase by granting longer periods and more active guidance for implementation. This should include more detailed elaboration and specification of implementation benchmarks to help embed the adopted reforms and avoid simple box ticking. Moreover, it could define new directions for subsequent assistance based on the deficiencies identified during the reform assessment process.

### 5. Continue supporting successful reform tools

So far, the "sandwich model" of reform, in which international partners work closely with civil society experts and other reform-minded constit-

<sup>65</sup> Mykhailo Zhernakov, "Judicial Reform in Ukraine: stalled, damaged, and abandoned," *DEJURE Foundation*, March 16, 2019: <<http://en.dejure.foundation/column/judicial-reform-in-ukraine-stalled-damaged-and-abandoned>> (accessed May 1, 2020).



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uencies in Ukraine to push for reform, has proven successful along with other innovative initiatives such as the Brussels-based SGUA. Moreover, political engagement and diplomatic pressure (through the EU Delegation in Kyiv) to promote coordinated messaging with reform minded-constituencies on the ground in Ukraine, as well as the further coordination of assistance provided by Ukraine's development partners, should be preserved and strengthened. The EU also needs to conduct a transparent and objective assessment of its assistance approach and the tools it already employs to encourage reform in a more effective manner by redirecting funds to programs that work and making cuts to the programs and institutions that have little or no impact.

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