HUMAN RIGHTS COMPLIANT CRIMINAL JUSTICE SYSTEM IN UKRAINE

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AN ASSESSMENT OF THE INTRODUCTION OF THE CRIMINAL MISDEMEANOURS IN UKRAINE

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EXECUTIVE SUMMARY

On July 1, 2020, after many years of expectation, the criminal misdemeanours were introduced in Ukraine, with the aim to increase the effectiveness of pre-trial investigation and court proceedings in non-grave criminal cases. On the one hand, due to the establishment of the inquirer as a participant of the proceedings, the system will be able to exonorate investigators for more effective investigations of grave crimes; on the other hand, the simplification of the inquiry procedure will speed up the investigation of non-grave, open-and-shut criminal cases that require a minimum of information as evidence to establish a person's guilt beyond the reasonable doubt.

At the same time, the current version of the legislation on criminal misdemeanours does not incorporate all critical remarks of Council of Europe experts, expressed in the Opinion of the Directorate General Human Rights and Rule of Law DGI(2018) concerning the draft Law 7279-D and issued before the draftLaw passed the second reading in the legislature.

One may assert that during the first three months of the implementation of criminal misdemeanours, the National Police, which is responsible for investigating the majority of them, managed to restructure its bodies by establishing inquiry units and authorising other police officers to conduct inquiries. In total, more than 9,000 people are currently available for investigating misdemeanours. As for other bodies, neither the State Bureau of Investigation, which has jurisdiction over a few misdemeanours nor the State Fiscal Service and State Security Service, which formally can act as inquiring entities, have established specialised units. But inquiry may be conducted by investigators, so that is not a priority for them (as expected).

Most concerns refer to the right to present a defence and to a simplified procedure for collecting evidence without providing procedural guarantees for the suspect. The law provides that where a person gets convicted *in absentia* by a court without a court hearing and participation of the suspect, such a decision is taken on the basis of a written request of the suspect represented by a lawyer, who shall explain to the suspect their rights and ensure voluntariness of such a choice. A lawyer's participation is obligatory. The actual practice of application of this provision remains to be seen in the future when more empirical data on misdemeanours will be available.

As for the collection of evidence, including specialist opinions, the use of explanations as evidence, in particular before entering information into the Integrated Register of Pre-Trial Investigations, the practice has developed so that traditional expert opinions are commissioned and full interrogations are conducted

in criminal misdemeanour cases to ensure the admissibility of evidence under the general procedure. However, without the case analysis, we can offer only preliminary conclusions based on the opinions of a few interviewed professionals.

As for the overall impact of the criminal misdemeanours on the criminal justice system, it is mostly positive. The system itself has become more humane, as the number of arrests has decreased, and the number of measures of restraint imposed during inquiry has decreased to a minimum. The average duration of the investigation was more or less halved and holding trials without a court hearing, and the participation of the parties (this option was chosen by most suspects) freed up the judges for more difficult hearings and accelerated the trialsto a certain degree. Eventually, the investigators' workload halved. Over time, it will be possible to evaluate how much the results of the investigation of grave crimes have improved.

The only negative aspect of the criminal misdemeanours that is currently observed is an increase in the severity of penalties. Where previously the minimum fine was UAH 850 (= EUR 25), now it stands at 17,000 (= EUR 500). Such a sum is sometimes unaffordable for a convict, so they have no way but to disobey a court decision so that later the same court replaces the initial sentence with community service, which the law defines as a more severe sanction, but which becomes less severe *de facto* for some individuals with low and even average income. Thus, the burden of such penalties does not contribute to the humanisation of punishment, and the limits of fines need to be proportionate to the economical well-being of offenders. It seems like Ukraine can accept positive practise of paying 50% of the fine, if person pays within 8 days from the day of verdict. If he doesn’ t p a y w i this 8 days, he can either appeal the decision or pay the full amount of the fine. Based on USA and European experience it appears that the payment of half of the fine has positive psychological effect on the defendants so it gave very good results.

In conclusion, the introduction of criminal misdemeanours has accelerated investigations by reorganising the National Police`s structure and court proceedings through the summary procedure.In general, we expect that repeating this assessment after the criminal misdemeanourswill have been implemented for a longer period (1 year or more) will allow us to assess the institution's positive effects on the criminal justice system as a whole.

1. INTRODUCTION. GOALS OF THE ASSESSMENT

1. The Law No. 2617-VIII entered into force on July 1, 2020, introducing systemic changes to the criminal justice legislation. From that moment on, criminal offences are divided into crimes and criminal misdemeanours, and the exclusive right to investigate criminal offences was granted, along with investigators, to inquirers performing inquiry, which is the investigation of a special (simplified) character.

2. Grave and especially grave crimes are still classified as crimes, while petty crimes and some medium-gravity crimes have been reclassified as criminal misdemeanours. Crimes still carry the most severe penalties for their commission, and their investigation may involve covert investigative (search) actions (CISAs), the application of measures of restraint involving restrictions of freedom, and so on.

3. Meanwhile, the sanctions (penalties) for criminal misdemeanours do not include imprisonment and/or a sizeable fine (more than three thousand tax-exempt minimum incomes, or UAH 51,000), while a conviction for their commission does not entail a legal consequence in the form of a conviction record. A person suspected of committing a misdemeanour may only be required to provide personal commitment and personal warranty as measures of restraint.

4. The path to the introduction of the criminal misdemeanours into the practice of pre-trial investigation bodies has been a long one, as its introduction into Ukrainian law had been discussed since at least 1997 (the Concept of Administrative Law Reform). The real beginning of this process can be dated to 2008 when the President of Ukraine approved the Concept of Criminal Justice Reform. It provided for the transformation of a certain category of crimes into criminal (triable) misdemeanours in order to humanise criminal law and determined the conceptual differences between the crime and the misdemeanour (Section II of the Concept).

5. At the beginning of 2012, two draft laws were introduced (No. 10126 of 28/02/2012 and No. 10146 of 03/03/2012) criminal misdemeanours, but none was adopted.

6. Finally, the 2012 Criminal Procedure Code (CPC) of Ukraine introduced the concept of misdemeanour into Ukrainian legislation, while its transitional provisions imposed on the legislator the obligation to adopt legislation in this field without specifying the date of its implementation.

7. The 8th convocation of the Verkhovna Rada of Ukraine dealt with legislative initiatives on criminal misdemeanours thrice in 2015-2018. All these draft laws (No. 2897 of 19/05/2015; No. 7279 of 10/11/2017 and No. 7279-d of 20/04/2018) originated in the Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement Activities. Scholars, experts and representatives of international organisations also took part in the work on the texts of these legislative initiatives.

8. The Opinion of the Directorate-General for Human Rights and Rule of Law of the Council of Europe on the Draft Law of Ukraine No. 7279 "On Amending Certain Legislative Acts Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences" [1] (hereinafter the Opinion) was prepared on October 12, 2018, on the basis of expertise by Lorena Bachmaier Winter and Jeremy McBride under the auspices of the Council of Europe's Project "Continued Support to the Criminal Justice Reform in Ukraine" funded by the Danish government.

9. According to the Opinion, critical remarks were made regarding the text of the draft law which were sent to the Verkhovna Rada Committee on Legislative Support of Law Enforcement Activities.

10. The Opinion notes that the implementation of the recommendations set out in it would undoubtedly mitigate the way in which the proposed amendments run counter to European standards. However, it would be worth giving further consideration as to how the draft law's provisions might be improved before its adoption so that its contribution to humanisation and increased efficiency of the criminal justice system would be really significant.

11. Finally, a revised version of the draft Law No. 7279-d was adopted by the legislature on November 22, 2018. On April 19, 2019, it was signed into law by the President of Ukraine, and on April 24 of the same year, it was published in the official “Holos Ukrainy” publication (No. 79) as the Law No. 2617-VIII.

12. As for its temporal scope, according to the Law's Section II "Final and Transitional Provisions", it was to enter into force on January 1, 2020, but due to the adoption of the Law No. 321-IX of 03/12/2019, the former law's entry into force was postponed to July 1, 2020. The reason for the postponement was the unpreparedness of law enforcement agencies to investigate criminal misdemeanours, as well as the inability of the software, called the Integrated Register of Pre-Trial Investigations (IRPI), to work with misdemeanours.

13. The post-adoption examination of the Law, performed on May 2, 2019, which was to establish whether it incorporated the remarks of the Council of Europe's

[1] The DGI (2018)07 Opinion of October 12, 2018. Link: https://rm.coe.int/coe-ukraine-law-on-misdemeanours-oct-2018-final/16808eaeaf. Accessed on 20/12/2020.

international consultants set out in the Opinion, showed that the principal critical remarks had not been incorporated during the adoption of the draft law.

14. The criminal misdemeanours were finally introduced in Ukraine on July 1, 2020. Most amendments were introduced to the Criminal Code of Ukraine (regarding the substantive aspect of misdemeanours) and the Criminal Procedure Code of Ukraine (regarding the procedural aspect of misdemeanours). Dozens of other legislative acts dealing with the criminal procedure were altered as well.

15. Given the long and difficult path to adopting the legislation establishing the criminal misdemeanours, a number of legislative and organisational (technical) issues have arisen that may hinder the achievement of the goals set by the initiators of these alterations, namely the humanisation of criminal law and improving the efficiency of pre-trial investigation and judicial proceedings in most criminal offence cases.

16. The introduction of the criminal misdemeanours into Ukrainian law is a significant step in the criminal justice reform, and therefore it requires careful attention of the legislator and stakeholders of the reform to the quality of its implementation in the practical law enforcement work.

The Methodology (Annex No. 1) has become the tool for assessing the degree of the introduction of the criminal misdemeanours.

18. The assessment's objective is to analyse the first three months (from 01/07/2020 to 01/10/2020) of the criminal misdemeanours operation in the law enforcement practice, identify the state of application of new legislation, weaknesses and strengths of such application, and the presence of problems that prevent the achievement of the objectives envisaged when introducing the criminal misdemeanour concept.

19. The assessment consists of two parts, which are as follows:

a) an assessment of the state of the introduction of the criminal misdemeanours in Ukraine among law enforcement agencies and prosecution service bodies. *It measures the degree to which the criminal misdemeanours is operation-ready from the standpoint of legislative, organisational and technical aspects.*

b) an assessment of the practical impact of the introduction of the criminal misdemeanours on the effectiveness of pre-trial investigation (speed of the investigation; the number of resources spent on the investigation; quality of the pre-trial investigation and court proceedings regarding criminal misdemeanours). *It measures the general impact of the criminal misdemeanours on the pre-trial investigation of criminal offences, both crimes (reduction of the investigators' caseload, which increases their ability*

to investigate cases, etc.) and criminal misdemeanours ("minor crimes" that were not always investigated effectively when subject to the general investigation procedure).

20. The assessment used two principal research toolkits:
a) *a desk study:* analysis of legislation on criminal misdemeanours, analysis of public speeches, interviews with the leadership of law enforcement agencies and prosecution service bodies, analysis of criminal and judicial statistics, sending requests for information;
b) *field research:* 1 focus group made of the leadership of the National Police's Inquiry Department; 1 focus group with prosecutors of prosecution service bodies at various levels; 1 focus group with judges and lawyers.

21. Due to the limited nature of our toolkits, the conclusions drawn from the evaluation are not conclusive and constitute only assumptions on the practice of the application of the criminal misdemeanour legislation. The short time elapsed since the introduction of the misdemeanours (three months), the limited nature of the toolkits due to the focus groups lacking in representativeness (the study dealt only with the practice of individual units in the city of Kyiv and Kyiv Oblast), lack of statistical data for comparison (not all data are published monthly) do not allow us to safely extrapolate these assumptions to the practice of law enforcement agencies and prosecution service bodies in general.

22. All the same, such preliminary conclusions (assumptions) are needed to understand the impact of the criminal misdemeanours on the criminal justice system as a whole and the appropriateness of modifying legislation or its practical application in the early stages of its implementation.

2. OVERALL STATUS OF THE INTRODUCTION

2.1 Inquiring entities

23. According to the Criminal Procedure Code of Ukraine, pre-trial investigation of criminal offences shall be conducted in the form of pre-trial investigation (for crimes) and inquiry (for criminal misdemeanours).

24. The criminal offence is a generic concept covering both crimes and criminal misdemeanours, which differ in their degree of danger to the public and, accordingly, the tools of their investigation (in the form of pre-trial investigation and inquiry, respectively).

25. The substantive criterion for distinguishing between a criminal misdemeanour and a crime is the type and amount of the sanction. Criminal misdemeanours carry non-custodial sanctions, while the amount of the fine may not exceed three thousand tax-exempt minimum incomes (UAH 51,000) (Article 12.2 of the Criminal Code (CC) of Ukraine).

26. Criminal misdemeanours shall be investigated by an **inquirer** in the form of inquiry.

27. According to Article 3.1, Clause 4-1 of the CPC of Ukraine, the inquirer is an official serving with:

a)

1) the inquiry unit of a National Police body[2];
2) a security service body[3];
3) the body that monitors compliance with tax legislation[4];
4) a body of the State Bureau of Investigation (SBI)[5];

or

[2] Conducts inquiries into all criminal misdemeanours not subject to the jurisdiction of other bodies.
[3] This body has no jurisdiction over any criminal misdemeanours.
[4] This body has no jurisdiction over any criminal misdemeanours.
[5] In accordance with the rules of personal jurisdiction, they conduct inquiries into criminal misdemeanours committed by the appropriate persons (for example, Article 371.1 of the CC of Ukraine - illegal arrest committed by a law enforcement officer); in accordance with the rules of subject jurisdiction, they conduct inquiries into careless destruction of or damage to military property (Article 412.1 of the CC of Ukraine).

b) an authorised person of another unit of the said bodies which are authorised, within the competence provided by the CPC of Ukraine, to conduct pre-trial investigations of criminal misdemeanours[6].

28. Thus, **the inquirer may be either 1) an official of the inquiry unit of a pre-trial investigation body or 2) an authorised person of another unit of the pre-trial investigation body**, such as station inquiring officer. The precise design of the inquiry infrastructure depends on the head of the pre-trial investigation body, as the CPC of Ukraine provides for both options.

29. As for the inquiry units in the security service bodies (the Security Service of Ukraine (SSU)) and the body that monitors compliance with tax legislation (the State Fiscal Service (SFS) of Ukraine), they may be created only to assist other pre-trial investigation bodies, since they have no jurisdiction over criminal misdemeanours. The Prosecutor General, the head of a regional prosecutor's office, their first deputies and deputies are empowered to entrust by their reasoned decision the pre-trial investigation of any criminal offence to another pre-trial investigation body, including a higher-level investigative unit within the same body, if they deem the pre-trial investigation to be ineffective[7]. This rule also allows for transferring an inquiry from the National Police or the SBI to the SSU and the SFS, but **these bodies have not established inquiry units due to the inexpediency of such a step, as no criminal offence is directly under their jurisdiction.**

30. At the same time, should the policy on the expediency of the existence of inquiry units in the SSU and the SFS be reviewed, there is a completely legal basis for establishing such units. In addition to them being mentioned in the CPC of Ukraine, some secondary legislation acts contain the prerequisites for it. For example, the Regulations on the IRPI Maintenance list inquirers of inquiry units of the National Police of Ukraine and the SBI as well as "other pre-trial investigation bodies (code 118)" among units that have prevented or detected a criminal offence or are conducting a pre-trial investigation[8].

31. In accordance with Article 40-1 of the CPC of Ukraine, when conducting an inquiry, the inquirer shall be endowed with the powers of an investigator, that is, they may perform all procedural and investigative actions within the inquiry, taking into account the special provisions of Section 25 of the CPC of Ukraine[9].

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[6] Article 40 of the CPC of Ukraine; Clause 1 of Section V of the Regulations on the Organisation of Work of Inquiry Units at Bodies of the National Police of Ukraine, approved by the Order of the Ministry of Internal Affairs (MIA) of Ukraine No. 405 of May 20, 2020.

[7] Article 35.6 of the CPC of Ukraine.

[8] Glossary 2 of the Regulations on the IRPI, the Procedure of Its Formation and Maintenance, approved by the Prosecutor General's Order No. 298 of June 30, 2020.

[9] The powers of the inquirer are partially summarised in Article 40-1 of the CPC of Ukraine, but the list is not exhaustive, because clause 8 of of Article 40-1.2 of the CPC of Ukraine empowers them to exercise other powers provided for in the Code.

32. A systematic interpretation of criminal procedural law allows one to reach the conclusion that both the concept of the inquirer and their powers are well-defined.

33. *Participation of a prosecutor as the supervisor of pre-trial investigation is another important aspect of inquiry*. Special features of the pre-trial investigation of criminal offences are defined by Section 25 of the CPC of Ukraine, among which the prosecutor's powers include:

1) making prosecutorial requests to the investigating judge on the use of evidence obtained during the inquiry in criminal law proceedings concerning a crime (clause 2 of Article 298-1.1 of the CPC of Ukraine);

2) receiving a copy of the detention report on a person detained for committing a criminal misdemeanour (Article 298-2.4 of the CPC of Ukraine);

3) sanctioning notification of a person of suspicion of committing a criminal misdemeanour (Article 298-4.1 of the CPC of Ukraine);

4) considering a request for expert examination received from the suspect in case of their disagreement with the outcome of a medical examination or the opinion of a specialist (Article 298-4.2 of the CPC of Ukraine);

5) extending the duration of inquiry (Article 298-5.1 of the CPC of Ukraine);

6) releasing a person from custody where the maximum duration of detention is exceeded (Article 298-5.2 of the CPC of Ukraine);

7) reviewing the results of the inquiry and completing the inquiry in the forms provided by the Code (Article 301 of the CPC of Ukraine);

8) intiating simplified court proceedings on the indictment (Article 302 of the CPC of Ukraine).

34. The Office of the Prosecutor General is also the Registrar[10] of the Integrated Register of Pre-Trial Investigations, where basic information on criminal proceedings (cases) is kept, including inquiry files.

35. Thus, the PPOs (the Office of the Prosecutor General, oblast and local (district) prosecutor's offices) *provide procedural supervision during inquiries, as well as present indictments in court*.

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[10] Registrar of the IRPI shall perform:
- development of the means of organisational, methodological, program and technical maintenance of the Register;
- the functions of the Register administrator (technical and technological creation and maintenance of the Register software, its administration and monitoring of the use of information, storage and protection of the Register data, control of the access rights, etc.);
- organisation of interaction with other government information systems, registers and databases;
- development and improvement of the regulatory framework for the functioning of the Register.
(clause 5 of Section I of the Regulations on the IRPI, the Procedure of Its Formation and Maintenance, approved by the Prosecutor General's Order No. 298 of June 30, 2020).

Inquiry organisation: inquiry units (the National Police of Ukraine)

36. On 20 May 2020, the Ministry of Internal Affairs of Ukraine approved by its Order No. 405 *the Regulations on the Organisation of Work of Inquiry Units at Bodies of the National Police of Ukraine*[11].

37. It provides that inquiry units are constituent units of the central police administration body, its territorial branches - the main directorates of the National Police in oblasts, and territorial (separate) units of the National Police Main Directorates (NPMD). Thus, they are subordinated vertically to the leadership of the NPMD in the oblast, which is the classic administration model for police investigative units (as opposed to the administrative hierarchy of interregional territorial bodies, such as patrol police, which are directly subordinated to the central office in the city of Kyiv and stay outside the regional administration hierarchy).

38. The functions of the inquiry units include:

- performing a comprehensive, complete and impartial examination of the circumstances of a criminal misdemeanour, identification of circumstances that tend to prove the suspect's guilt and those that exculpate the suspect or accused, as well as circumstances that mitigate or aggravate their penalty, making a proper legal assessment of such circumstances and ensuring making lawful and reasonable procedural decisions;
- performing analysis of the practice of pre-trial investigation of criminal misdemeanours, organisation and results of inquirers' work, and submitting proposals to improve the efficiency of inquiry units' work on the basis of such analysis and in the prescribed manner;
- taking measures to improve the quality of inquiry and compliance with the time limits set for it;
- studying and summarising the good practice of inquiry, its introduction into the practice of inquiry units, development of modern methods of investigation of certain types of criminal misdemeanours;
- organising interaction of inquiry units with other units of the National Police, investigators and detectives of other law enforcement agencies, entities and persons engaged in forensic work, units carrying out criminal intelligence and surveillance operations, as well as prosecutors supervising compliance with the law during pre-trial investigations in the form of procedural supervision of pre-trial investigations;
- studying the practice of application of legal norms by inquirers and developing proposals for improving the legislation of Ukraine;
- ensuring the selection, placement and education of personnel for inquiry units, improving their skills and professionalism;

[11] Registered with the Ministry of Justice of Ukraine on June 3, 2020 with No. 491/34774.

- organising in accordance with the legislation of Ukraine processing and acting on citizens' submissions received in connection with the conduct of an inquiry.

39. The powers of the head of an inquiry body[12] shall be exercised by the heads of the Inquiry Directorate, the heads of the inquiry departments (sectors) of the NPMD and the inquiry departments (sectors) of the territorial police units. They shall be responsible for organising work of the inquiry unit, the state of the pre-trial investigation of criminal misdemeanours, and performing other tasks by subordinate inquiry units.

40. The powers of the head of the inquiry department (sector) of a territorial police body include managing inquirers and constant monitoring of the operational situation in the service area. It is precisely this level that performs the everyday work of the head of an inquiry unit.

41. It should be noted that their tasks include establishing the specialisation of inquirers in the investigation of criminal misdemeanours of certain categories, that is, *the legislation itself provides for the specialisation of investigators*. In particular, the Regulations provide for a dedicated inquirer dealing with misdemeanours committed by minors.

42. *Such specialisation is non-existing in practice*[13]. All inquirers investigate all criminal misdemeanours in accordance with the secondary legislation and are therefore universal professionals. However, this does not mean that inquiry units cannot develop informal practices for allotting a specialisation to a particular inquirer, for example, due to their experience or special knowledge of a subject or just their skills, such as the ability to better establish psychological rapport with a victim of a violent crime. Therefore specialisation is nessecary fo the effective inqury, it will be right step for the National Police to implement specialisations of inquirers.

43. The head of an inquiry body is also responsible for reviewing complaints and reports of criminal misdemeanours, and not only for monitoring the timeliness and completeness of information entered into the IRPI by inquirers.

44. Data obtained by studies in the field of criminal justice[14] show that when investigating ordinary crimes (henceforth misdemeanours), it is common for

[12] Article 39 of the CPC of Ukraine.
[13] As asserted by the leadership of the inquiry unit of the National Police of Ukraine during a focus group session.
[14] *Prava poterpilykh vid nasylnytskykh zlochyniv v Ukrayini: mizhnarodni standarty ta natsionalni praktyky* [Rights of the Victims of Violent Crimes in Ukraine: International Standards and National Practices] (A. Orlean, T. Pavliukovets, Ye. Krapyvin, D. Lotiuk, V. Chovhan; ed. by V.

inquirers to have the criminal misdemeanour inquiry file pre-approved before it is entered into the IRPI within the 24 hours period allocated for such entry. Mandatory pre-approval of such data before their entry into the IRPI with the inquirer's superiors is often the reason for "filtering" a complaint/report of a criminal offence depending on its "prospects" in court, that is, it may lead to a failure to enter such data into the IRPI (concealment of a criminal offence from registration).

45. Thus, the already existing practice has now moved to the normative level, and henceforth *the head of an inquiry body is duty-bound to pre-approve acting on every complaint/report of a criminal offence* received by the police[15]. Meanwhile, inquirers and prosecutors acting as procedural supervisors opined during focus group sessions that this procedure does not complicate the registration of complaints and reports filed by persons who contact the police, since the obligation to enter such information within 24 hours is still there. Failure to enter it within this period is an infraction subject to sanctions in the manner prescribed by law.

46. The only issue here that may arise is related to the resources (working time) spent by inquiry heads on each such approval; however, given that not all inquirers have work experience, and some of them may have limited knowledge of procedural law, such approval is an instrument of internal control over the quality of police work.

Persons who are authorised to conduct inquests (the National Police of Ukraine)

47. If the inquirer does not belong to an inquiry unit, that is, she/he is a police officer of another unit authorised to conduct inquiries, this shall be recorded in an appropriate administrative act.

48. An order shall be issued authorising a police officer of another unit to conduct a pre-trial investigation of criminal misdemeanours. A duly certified copy of the order authorising a police officer to conduct a pre-trial investigation of criminal misdemeanours shall be sent to the prosecutor's office at the appropriate level for the IRPI administrators to enter the relevant information about the registering person into the IRPI organisational structure directory and provide the police officer authorised to conduct a pre-trial investigation of criminal misdemeanours with access to the IRPI.

Chovhan). Kyiv: ArtEk Publishers, 2020. P. 27-28.*Prokuror: keruie? koordynuie? nahliadaie? : Zvit za rezultatamy doslidzhennia «Rol prokurora na dosudovii stadii kryminalnoho protsesu»* [Is the Prosecutor Running/Coordinating/Supervising the Proceedings? : Report on the Results of the Study "The Role of the Prosecutor at the Pre-Trial Stage of the Criminal Proceedings] (Yu. Bielousov, V. Venher, V. Mitko, A. Orlean, V. Sushchenko, V. Yavorska; ed. by Yu. Bielousov. Kyiv: ST-Druk, 2017. P. 90-91.

[15] Inquiry bodies refers to paragraph 8 part 4 chapter IV Inquiry bodies regulation (underlaw legislation of MIA №4 0)5where such approval mentioned as a power of the head of inquiry body // https://zakon.rada.gov.ua/laws/show/z0491-20#Text.

49. Such police officers shall be station police officers (community police officers), juvenile prevention officers, criminal investigation officers and officers of other units.

50. It should be noted that officers of interregional territorial police bodies (the Directorate of Patrol Police, the Directorate of Strategic Investigations; the Directorate of Cyberpolice; the Directorate for Combating Drug Crime; the Directorate of Internal Security; the Security Police) are not authorised to conduct inquiries due to their lack of subordination to the head of the oblast NPMD (NPD).

51. Thus, **the National Police of Ukraine has established a list of persons authorised to conduct inquiries and approved this list by appropriate orders.**

The number of inquirers (the National Police of Ukraine)

52. The number of inquirers appointed to positions in the inquiry units of the National Police totals 3,000. These inquirers have been recruited by transfer from investigative units (2,000) and transfer from other units that were not engaged in pre-trial investigation of criminal offences (1,000)[16].

53. They were initially appointed to the positions of inspectors, and not inquirers since the provision on establishing the salary of an inquirer was added to the Order No. 988 of the Cabinet of Ministers of Ukraine (CMU) "On Salaries of the National Police officers" only on September 23, 2020, by amendments introduced by order of the CMU No. 865 of September 23, 2020. On the passage of these amendments, inspectors were reappointed as inquirers.

54. At the same time, the number of persons authorised to conduct inquiries in other police units (criminal investigation, district inspectors, prevention units) is over 6,000.

55. Thus, *the total number of persons investigating criminal misdemeanours in the form of inquiries is over 9,000.*

56. The staffing levels of the inquiry units stand at 83-85% of the authorised strength, which is similar to the overall staffing level of the National Police of Ukraine[17].

[16] Due to the numbers which are named by head of inquiry department of National Police during the interview.

[17] In the middle of 2020 deputy head of MIA A. Geraschenko mentioned that luck of officers stand at 17% all over police // https://www.unn.com.ua/uk/exclusive/1882681-u-mvs-povidomili-pro-prichinu-istotnoi-nestachi-kadriv-v-politsii.

57. It should be noted that while for an inquirer of an inquiry unit such activity is the main responsibility and occupies all their working time, the persons authorised to conduct inquiries are not relieved of their duties in their permanent positions, which diminishes their work effectiveness compared to permanent inquirers. Also, they receive no additional remuneration for performing the functions of an inquirer; that is, no extra pay is added to their salaries[18].

58. At the same time, the National Police's inquiry leadership did not comment on the additional remuneration during the focus group sessions, nor did it indicate the current number of inquirers as a problem (in other words, they believe that this number is sufficient to carry out the tasks assigned to the police).

Professional training of inquirers (the National Police of Ukraine)

59. All persons appointed to the positions of inquirers or authorised to conduct inquiries have obtained appropriate professional training at departmental educational institutions of the MIA and received certificates of such training.

60. In addition to basic training, the professional development of investigators is currently supported by international institutions, such as the European Union Advisory Mission (EUAM), which is conducting a separate pilot course for inquirers in the city of Khmelnytsky, which they intend to extend to the whole territory of Ukraine.

61. Meanwhile, lawyers opined during the focus group session that the professionalism level of the inquirers needs to be improved. Obviously, persons who have been transferred from pre-trial investigation bodies have less need to learn peculiarities of criminal misdemeanour investigation, but persons who have not previously dealt with criminal proceedings are indeed forced to learn on the job at first (not everything can be learned during formal professional training), which affects the quality of their work.

62. On the other hand, the final outcome of an investigation, that is, the indictment, depends on the prosecutor. Similarly, procedural supervision in criminal proceedings presupposes the approval of all key procedural decisions, so the insufficient professional training of the inquirer should be compensated by the professionalism and work experience of the prosecutor.

Inquiry organisation (the State Bureau of Investigation)

[18] Due to the information which is named by head of inquiry department of National Police during the interview.

63. The structure of the State Bureau of Investigation has not changed since February 5, 2020[19].

64. The investigation of criminal misdemeanours is not a priority for the SBI, and according to data provided by its territorial offices, the crimes not related to the service of law enforcement officers account for less than 20 per cent of the total, which can be extrapolated to the crimes of public servants as a whole[20]. It may be safely asserted; therefore, that very few criminal misdemeanours are covered by the SBI jurisdiction.

65. In view of this circumstance, *the State Bureau of Investigation has not set up separate inquiry units (has not submitted such proposals to the Office of the President of Ukraine) and has not authorised SBI officers to conduct inquiries* (moreover, apart of investigators, there are currently very few operative officers in that body, who were recruited less than a year ago and are fully employed in intelligence work there).

66. Therefore, *criminal misdemeanours are investigated in the form of inquiry by investigators* of the State Bureau of Investigation, who rely on a formal-logical and teleological interpretation of Art. 40-1 of the CPC of Ukraine, which stipulates that when conducting an inquiry, the inquirer shall be endowed with the powers of an investigator. Therefore, an investigator is authorised to conduct inquiries by default.

Public Prosecution Offices

67. The structure of the PPOs has not changed either.

68. Procedural supervision in criminal misdemeanour cases is provided by prosecutors of the departments of procedural supervision and the rule of law oversight in criminal cases assigned to the jurisdiction of the National Police of Ukraine of the Office of the Prosecutor General, region and local (district) prosecutor's offices (where the police are involved). Or the departments of the organisation and procedural supervision of pre-trial Investigations of the State Bureau of Investigations bodies of the Office of the Prosecutor General, region and

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[19] Decree of the President of Ukraine No. 41/2020 "On Approval of the Organisational Structure of the State Bureau of Investigation" / Website of the President of Ukraine. Link: https://www.president.gov.ua/documents/412020-32269. Accessed on: 22/11/2020. In accordance with Article 9.1 of the Law of Ukraine "On the State Bureau of Investigation" approval of the structure of the SBI is the exclusive power of the President of Ukraine.

[20] For example: Annual Work Program of the SBI's territorial directorate in the city of Kyiv for the 4th Quarter of 2020 and Year 2021/ Website of the the State Bureau of Investigation. Link: https://dbr.gov.ua/sites/default/files/2020-11/%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0%20%D0%BA%D0%B8%D1%96%CC%88%D0%B0.pdf . - C. 10. Accessed on: 22/

local (district) prosecutor's offices or the Department of Procedural Supervision in Criminal Proceedings in Cases of Torture and Other Serious Violations of Citizens' Rights by the Law Enforcement Agencies of the Office of the Prosecutor General (regarding the criminal misdemeanour provided for in Article 371.1 of the CC of Ukraine) (where the SBI is involved).

69. In other words, the same prosecutors who provided procedural supervision and court representation (public prosecution) in petty and medium-gravity crimes similar to criminal misdemeanours continue to provide procedural supervision regarding the relevant criminal misdemeanours.

Information and analytic support of inquiries

70. On June 30 2020, the Prosecutor General approved by her Order No. 298 the new Regulations on the IRPI, the Procedure of Its Formation and Maintenance (the second such document since the entry into force of the 2012 CPC of Ukraine), which take into account all elements of the electronic register which are needed for the conduct of inquiries.

71. The rights of the user and registrar of the IRPI were given to heads of inquiry bodies (units) and inquirers of these units as well as officials authorised to conduct inquiries.

72. These amendments resolved the issue of the IRPI's unpreparedness for dealing with criminal misdemeanours, remarked upon during the Committee hearings in November 2019, after which it was decided to postpone the entry into force of the misdemeanour provisions from January 1 to July 1, 2020.

73. ***At present, the IRPI is fully compliant with the requirements for criminal misdemeanour inquiries.***

Logistical support of inquiries

74. As the National Police has redistributed existing resources to cover the needs of the newly created inquiry units (salaries for police officers, working places, special tools etc.), there are no problems with the logistical support of inquirers, according to the Inquiry Department leadership.

75. The only issue indicated by the Inquiry Department leadership is the shortage of the department's own forensic units. As full-time forensic scientists serve with pre-trial investigation bodies, it has become more difficult to recruit them for conducting a speedy forensic investigation, for example, during investigative procedures such as an incident scene inspection or a personal medical examination.

76. ***Due to the limited toolkit of this assessment, we have been unable to identify logistical problems. Given the scale of the issue, it requires a full-fledged study using a much larger toolkit. In particular, based on its results, it would be possible to answer the question of whether it is necessary to create police forensic scientist positions in inquiry bodies to speed up the inquiry procedures.***

Methodological support of inquiries

77. Officers of the Inquiry Directorate and inquiry departments (sectors) of the NPMD are entrusted with organisational and methodological functions of providing practical and methodological assistance regarding the organisation of the work of territorial police bodies' inquiry units.

78. In particular, their functions include monitoring the practical application of the law by inquirers in the exercise of their powers, namely in the following matters:

- the reasonableness of inquirers' decisions to close criminal proceedings;
- compliance with inquiry time limits and reasons for non-compliance;
- detaining persons who have committed criminal misdemeanours in the manner prescribed by Article 298-2 of the CPC of Ukraine;
- correctness and completeness of information about the course of criminal proceedings, entered in the IRPI by inquirers, and timeliness of entering such information on the decisions made by inquirers;

79. Another task is keeping the records of criminal proceedings in which (a) prosecutors revoked the inquirer's decision to close the criminal proceedings or (b) the investigating judge issued a decision revoking the decision of the inquirer or obliging them to terminate or take a certain action. Also they are keeping situations when the court ruled during the trial to close the criminal proceedings owing to the absence of elements of a crime in the act committed, or the court acquitted the suspect(s).

80. In particular, the following situations are also recorded (with regard the deadlines):

- in which the inquiry has not been completed within seventy-two hours after a person's notification of suspicion of committing a criminal misdemeanour or detention of a person in the manner prescribed by Article 298-2.4 of the CPC of Ukraine;
- in which the inquiry is not completed within 20 days in case of a person having been notified of suspicion of committing a criminal misdemeanour and not pleading guilty, or in case of the need arising for additional investigative actions, or in case of a criminal offence having been committed by a minor;
- in which the inquiry is not completed within one month in case of a person having been notified of suspicion of committing a criminal misdemeanour and

having made a request for expert examination in the case provided for by Article 298-4.2 of the CPC of Ukraine;

- in which the pre-trial investigation in the form of inquiry has been suspended in the reporting period owing to the suspect having been put on the wanted list (indicating the numbers of fugitive cases), or the suspect's grave illness which prevents their participation in criminal proceedings (provided there is a medical opinion that confirms this fact), or the need to perform procedural actions within the framework of international cooperation (indicating the status of the request for international legal assistance).

81. In the PPOs and the State Bureau of Investigation, all methodological functions related to summarising law application practice are performed by the same methodological support units that did it before the introduction of the criminal misdemeanours.

82. ***Due to the limited toolkit of this study, we have been unable to assess the work of the methodological support units of the police and the prosecution service. At the same time, the practice of investigating criminal offences in the form of inquiry, as summarised by methodological departments, should be taken into account when drafting further amendments to the legislation and structural reforms in these bodies.***

2.2 Rules for the inquiry in criminal proceedings active at the time of the Law's entry into force

83. Criminal misdemeanour legislation of Ukraine has entered into force on July 1, 2020. From that day on, all new criminal proceedings initiated on the basis of a criminal misdemeanour complaint/ report or its independent detection by an investigator, prosecutor, inquirer, shall be investigated according to the new procedure provided for inquiry.

84. In accordance with the transitional provisions of the Law No. 2617-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences" (the basic legal act that has introduced criminal offences into the legislation of Ukraine), criminal proceedings concerning crimes which have become misdemeanours may, if they were initiated before July 1, 2020, be investigated either under the old rules or under the new ones (depending on the progress of the investigation).

85. This means the following:

1) if no one has been notified of the suspicion against them in the proceedings, then further investigation shall be carried out according to the new rules, that is, according to the procedure of inquiry. The proceedings themselves shall be transferred by the investigator to the prosecutor within a month for the latter to

determine who will conduct the inquiry. According to inquirers and prosecutors, there have been no issues with the transfer of such proceedings, it has been enough to change the form of investigation in the IRPI;

2) if at least one person has been notified of the suspicion against them in the proceedings, then further investigation shall be conducted by the same pre-trial investigation body that investigated them before, but now according to the procedure of inquiry. Such persons shall be served with a new notice of suspicion of committing a criminal misdemeanour within 72 hours (in order to calculate the time limits of the subsequent inquiry according to the general rules of inquiry). At the same time, if such persons have been subjected to measures of restraint involving restrictions of freedom (house arrest or detention), such measures shall remain in force until they are changed, revoked or suspended, but the investigator shall ask the court to revoke them within 72 hours, as subsequent inquiry does not require the application of such severe measures of restraint. Such a procedure has not encountered any issues in practice either.

86. The only issue where procedural supervisors noticed the inconsistency of practical approaches to its resolution has been arising in situations where the indictment for committing a crime had already been sent to the court at the time the criminal misdemeanour provision came into force. Depending on the region, prosecutors either revised the indictment and sent it to the court again with the same suspicion of committing a crime, claiming that the issue had not been clarified by the transitional provisions of the law, or served the suspect with a new suspicion, only now it was a suspicion of committing a criminal misdemeanour and sent the indictment to the court.

In the latter case, there was a disagreement regarding the time limits for the inquiry: whether it was deemed to commence:

1) on the day of the notification of suspicion, since the 30-day deadline, and more so the 72-hour deadline, had long expired; or

2) from the date of the indictment having been returned for revision.

Therefore, for the most part, prosecutors decided to suspend the proceedings until the indictment was revised and the second suspicion was served, although Article 283 of the CPC of Ukraine does not provide such grounds for the suspension of criminal proceedings.

88. At the same time, according to the judges who took part in the focus group, such transitional issues did not cause any problems in the courts, as the legislator's intention was clear, and systematic analysis of criminal procedure law allowed such a legal analogy to be applied.

89. The assessment made thus allows us to make a preliminary conclusion that **any issues concerning the regulation of the procedure for notifying a person of suspicion of committing a criminal misdemeanour that emerged in connection**

with the entry into force of the legislation on criminal misdemeanours were in practice insignificant.

2.3 Issues of the temporal scope of the offence of driving under the influence of intoxication (including alcohol, drugs etc.)

90. On June 17, 2020, the Verkhovna Rada of Ukraine passed Law No. 720-IX, which introduced mostly "technical" amendments to the legislation of Ukraine[21] which were necessary for the full functioning of the criminal misdemeanours. However, a situation of legal uncertainty occurred, as the Law entered into force after its signing by the President of Ukraine on July 2 and its publication in the newspaper Holos Ukrainy on July 3, while its transitional provisions provided for its simultaneous entry into force with the above-mentioned Law No. 2617-VII (the basic law).

91. A situation of legal uncertainty arose between July 1 and July 3 and from July 3 until now, which has been interpreted differently by various government bodies and courts.

92. In particular, driving under the influence of alcohol, drugs or other intoxicants or under the influence of medicines that impair attention and speed of reaction has become a criminal misdemeanour. The Law No. 720-IX abolished this designation, and driving under the influence was to be reinstated in the Code of Ukraine on Administrative Offences (CUAO) and become an administrative offence once again.

93. According to the experts of the Centre for Political and Legal Reforms who co-developed the criminal misdemeanour provisions by co-drafting Law on misdemeanours (amendments to CCU and CPC of Ukraine), the amendments that repealed Art. 286-1 of the CC of Ukraine and reinstated the previous version of Art. 130 of the CUAO have no legal force due to violation of the procedure, because amendments to the CC of Ukraine must be made by a special law, and not a law on amendments to a law on amendments (in other words, the Law No. 720 should have amended not the Law No. 2617, but the most recent version of the CC of Ukraine as of the moment of the law's passage). Thus, the Law No. 720-IX, which was published on July 3 and which was to enter into force at the same time as the criminal misdemeanour provisions, did not abolish criminal punishability of driving under the influence and did not reinstate administrative punishability of that act, as it did not made amendments directly to the bodies of the CC of Ukraine and the CUAO

[21] Let us address the terminological unification first. Such unification involves actions like substituting "criminally unlawful intent" for "criminal intent" etc.

concerning these issues[22]. In other words, the position of experts (which is not an official interpretation of the law) is that *driving under the influence remains a valid criminal misdemeanour under Article 286-1 of the CC of Ukraine*.

94. According to the Clarification [23]of the Committee of the Verkhovna Rada of Ukraine on Law Enforcement[24] which deals with this situation, taking into account the provisions of Article 94.5 of the Constitution of Ukraine, the Law No. 720-IX entered into force on July 3, that is, on the day of its publication. And from July 3, 2020, on, Article 130 of the CUAO shall be applied in the version in force before the entry into force of the Law No. 2617-VIII (the basic law), while Article 286-1 is removed from the CC of Ukraine. In other words, the position of Committie (which is not an official interpretation of the law) that *from July 1 to July 3, driving under the influence was a criminal misdemeanour under Article 296-1 of the CC of Ukraine, while from July 4, this article is removed due to the reinstatement of the previous version of Article 130 of the CUAO (the version in force till July 1).*

95. The body having jurisdiction over inquiries in cases of driving under the influence (National Police) took the position that such action was an administrative offence under Article 130 of the CUAO, and only actions committed between July 1 and July 3 were to be investigated in the form of inquiry as criminal misdemeanours. The case law reflects the same position.

96. Neither the inquirers, nor the prosecutors, nor the lawyers who participated in the focus groups consider this to be a practical problem of law application, but rather a theoretical problem.

97. In turn, not all judges agreed with this interpretation during the focus group, and some of them noted that driving under the influence was criminalised under Article 286-1 of the CC of Ukraine, and that article entered into force. At the same time, these same judges, when they receive police reports under Article 130 of the CUAO (driving under the influence), deal with them according to the procedure for cases of administrative offences, that is, they accepted the general line of interpretation of amendments to the legislation which was described above. But it is just their legal opinion, not a judicial practise.

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[22] For the details see: the Centre for Political and Legal Reforms' Opinion "Since July 1, driving under the influence is criminally punishable. The law of July 3 has not changed this" (July 7, 2020) Link: https://tinyurl.com/y7hwvj2k. Accessed on: 22/11/2020.

[23] Clarification of Certain Provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences" No. 720-IX of June 17, 2020 / Link: http://komzakonpr.rada.gov.ua/uploads/documents/32667.pdf. Accessed on: 22/11/2020.

[24] Committees may provide clarifications on the application of the provisions of the laws of Ukraine concerning issues within their competence (Article 21.3 of the Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine").

98. The situation is additionally aggravated by the fact that the official website of the Verkhovna Rada of Ukraine still contains in its section Legislation an intermediate version which was in force between July 1 and July 3, 2020, according to which driving under the influence is a criminal misdemeanour under Article 286-1 of the Criminal Code of Ukraine.

99. From the point of view of legal certainty, this creates a problem during court hearings, as the defendants believe that the official text of the law is one published on the website of the Verkhovna Rada of Ukraine. ***Although this is not true legally speaking, the Verkhovna Rada of Ukraine still needs to harmonise as soon as possible the versions of the CC of Ukraine and the CUAO published in official print media and on the Rada's website. Also Supreme Court of Ukraine after some time of cassation practise on article 130 of CUAO should explain in it`s legal position the right answer to such legal uncertainty.***

2.4 Issues of the exercise of procedural powers

100. Despite the introduction of numerous amendments to the legislation of Ukraine by several laws, the current CPC of Ukraine still suffers from technical procedural problems pointed out by inquirers and prosecutors.

101. For instance, the inquirer is not listed among officials empowered to file a request for seizure of property[25] along with the investigator and the prosecutor, although such a need constantly arises, primarily for the seizure of any property temporarily seized during the detention of a person.

102. Also, the inquirer is not listed among officials empowered to file a request for a search[26], although it is common in cases of criminal misdemeanours.

103. In practice, this difficulty is resolved by prosecutors filing such requests, which imposes an additional burden on them, since the inquirer may not take part in consideration of such a request by the investigating judge as a participant in the criminal proceedings.

104. This issue can be resolved through amendments to the CPC of Ukraine. It also seems possible to enable the courts to accept such requests from inquirers with reference to Article 40-1 of the CPC of Ukraine, which provides that when conducting an inquiry, the inquirer is endowed with the powers of an investigator, so they may be identified with an investigator for the purposes of making a request.

[25] Article 171 of the CPC of Ukraine.
[26] Article 234 of the CPC of Ukraine.

However, no such case law is emerging at the moment, because the courts, as the inquiry leadership and the prosecutors opined during the focus groups, simply do not accept requests from officials whom they consider to be inappropriate makers of requests.

105. At the end of October 2020, the Inquiry Department of the National Police of Ukraine requested clarification from the Supreme Court on this issue. Although clarifications of the Supreme Court, unlike the legal positions formulated by that body as a result of a case being considered in the cassation instance, are not binding on the courts of first and second instance, they are usually used as guidance by judges. Therefore, the issue may be solved in this way until the legislation is amended. At the moment of this assessment's completion, the Supreme Court has not provided the requested clarification yet.

106. ***Due to the limited toolkit of this assessment, we have been unable to verify whether investigating judges actually frequently refused to accept inquirers' requests to seize property or conduct searches, citing their absence from the list of officials empowered to send requests to the courts by the CPC of Ukraine. At the same time, there is an assumption that such requests may be accepted, given that when conducting an inquiry, the inquirer is endowed with the powers of an investigator, so this issue might not require any legislative amendments for its resolution, also depending on the forthcoming clarification by the Supreme Court.***

3. INFLUENCE ON THE EFFECTIVENESS OF PRE-TRIAL INVESTIGATION

107. Between July 1 and October 31, 50.4% of all registered criminal misdemeanours were investigated in the form of inquiry (130,700 criminal misdemeanours out of 259,300 criminal offences in total)[27].

108. These are widespread misdemeanours such as common theft (37%), minor bodily injury (20%), fraud (16%), unlawful drug handling with no intent to sell (9%), and so on. There are 98 criminal misdemeanours in total, described in 117 sections of the Special Part of the CC of Ukraine[28].

109. Thus, criminal misdemeanours are the most massive component of criminal justice, so the simplification of the investigation procedure and the introduction of the inquirer as a new participant of the proceedings should have had a positive effect on the efficiency of the system as a whole. Principal objectives of introducing the criminal misdemeanour provisions:

1) humanisation of criminal sanctions;
2) acceleration of the investigation and trial in cases of minor criminal offences;
3) lessening the investigators' caseload to enable them to better investigate grave and especially grave crimes.

110. The analysis of the legislation allows us to reach the conclusion that the introduction of the criminal misdemeanour provisions has led to the decriminalisation of a number of crimes, limiting the scope of custodial sentences, replacing them with criminal law measures that do not entail a criminal record, that is, it overall resulted in weakening the criminal repression activity of the state. To put it simpler, it has led to the humanisation of criminal sanctions imposed in cases of minor criminal offences.

111. ***Criminal misdemeanours have reduced the number of arrests in cases of minor criminal offences, as well as measures of restraint imposed on suspects.***

112. Since Article 298-2 of the CPC of Ukraine recognises narrower grounds for arrest than Article 208 of the CPC of Ukraine (the general procedure), the number of arrests made at the scene of a criminal offence has decreased. Statistical data show that the National Police arrested 612 people under Art. 298-2 of the CPC of Ukraine between July and the first half of November 2020[29].

113. Meanwhile, the average annual number of arrests under Article 208 of the CPC of Ukraine for crimes which were analogous to criminal misdemeanours

[27] The statistics was provided by the National Police of Ukraine by letter No. 731/49/1-2020 in response to the request for information No. 8665/2020/19/1 of November 19, 2020.
[28] Ibid.
[29] Ibid.

amounted to about 9,000-10,000 until July 1, 2020. Although the statistical data do not allow us to single out arrests for minor crimes, given that criminal misdemeanours account for half of all criminal offences, there is a significant difference. Prosecutors estimate that the number of arrests made at the scene of the crime or immediately after the crime is committed "has halved[30]." It is positive trend from the point of right to liberty.

114. The same applies to measures of restraint. Since only personal commitment and personal warranty may be required in cases of criminal misdemeanours, these measures of restraint are used infrequently, as shown in the paragraph 115 below. The reason is that in case of the suspect violating them, it is impossible to choose a more severe measure of restraint to ensure the participation of the suspect in the inquiry, including their timely arrival for investigative procedures, refraining from putting pressure on witnesses or the victim, etc. Also, according to opinions voiced by inquirers and prosecutors during the focus group, making such a request to court necessitates its preparation and submission, which takes up working time that can be instead saved and used to investigate other criminal cases.

115. Thus, most suspects in criminal misdemeanour cases are not subjected to any measures of restraint at all. Only 161 persons had a measure of restraint imposed on them in the form of personal commitment, and 2 more persons in the form of personal surety, at the request of inquiry units in three months from July 1, 2020, to October 1, 2020[31].

116. ***Criminal misdemeanours decreased the average duration of pre-trial investigation and trial in cases of minor criminal offences, especially in cases where the suspect pleads guilty.***

117. The pre-trial investigation of criminal misdemeanours after notifying a person of suspicion has been accelerated, as the inquirer now has 72 hours (if the person pleads guilty and there is no need for additional investigative procedures) or 20 days (if the person is a minor) or 30 days (if the person does not plead guilty and an inquiry needs to be conducted) to complete the inquiry[32]. Previously, the generally applicable investigation period of two months applied to petty and medium-gravity crimes, which were analogous to criminal misdemeanours, as well.

118. Usually, the inquiry period is not extended, and even if an extension is granted by the decision of a prosecutor, it may be done only once. According to opinions of inquirers and prosecutors voiced during the focus groups, the lower limit of 72 hours is unjustified and has led to notices of suspicion being served after the

[30] These assumptions were voiced during the prosecutor focus group.
[31] The statistics was provided by the National Police of Ukraine by letter No. 731/49/1-2020 in response to the request for information No. 8665/2020/19/1 of November 19, 2020.
[32] Article 219 of the CPC of Ukraine.

examination and collection of other evidence are completed, to enable the inquirer to comply with the limit. They opined that it would be expedient to abolish the lower limit of the inquiry period (72 hours) and use only what is currently the upper limit (20\30 days). Another proposal calls for establishing the period of 3 business days, since the currently applicable 72 hours may include weekends and holidays. The short inquiry period applicable in cases where a person pleads guilty, and there is no need for further investigative procedures may lead to violations of the right to present a defence, in particular by delaying the notification of suspicion and performing such notification immediately before the indictment is sent to court, which gives the person little time to prepare their defence.

119. Although the CPC of Ukraine does not clearly define how many times a prosecutor may extend the inquiry period, it is maintained in practice [33]that the extension may not be granted more than once. This means that the maximum inquiry period after the notification of suspicion is 60 days, and usually, the whole procedure ends earlier.

120. According to the statistical data[34], inquiries were completed in cases of the criminal misdemeanours registered since July 1, 2020, within the following periods since their registration:

- under 1 day (0.9%);
- from 1 to 3 days (2.9%);
- from 3 to 10 days (20.4%);
- from 10 to 20 days (28.4%);
- from 20 days to 1 month (20.4%);
- from 1 to 2 months (21.2%);
- more than 2 months (5.6%).

121. That is, 73% of criminal proceedings conducted in the form of inquiry were completed within the basic period of 1 month. Another 20% had the period extended once, which is provided for in the CPC of Ukraine, while the controversial version described above arose only in 5.6% of cases.

122. Compared with the pre-trial investigation period, set at 2 months with the possibility of extension to 6 months (but not more) as provided in Articles 219 and 294 of the CPC of Ukraine for petty and some medium-gravity crimes which are analogous to criminal misdemeanours, investigations have accelerated, in particular, due to the reduction of the upper (maximum) limit. *The available data suggest that the average duration of pre-trial investigation of criminal misdemeanours has been halved by legislative restrictions of the inquiry period.*

[33] This thesis was voiced by inquirers and prosecutors during the focus groups.

[34] The statistics was provided by the National Police of Ukraine by letter No. 731/49/1-2020 in response to the request for information No. 8665/2020/19/1 of November 19, 2020.

123. With regard to the trial, the period prescribed for it has not changed where cases of criminal misdemeanours are considered under the generally applicable procedure. However, given that most such persons (80% of defendants plead guilty in whole or in part) are subject to a simplified procedure in which the case is tried without scheduling a court hearing and in the absence of the parties involved, the average duration of judicial proceedings has decreased as well, especially under conditions of quarantine restrictions linked to the COVID-19 pandemic. Although a summary procedure for considering cases without examination of evidence if a person pleads guilty existed before and is provided for in Article 349.3 of the CPC of Ukraine, however, the court still had to summon the parties and schedule a court hearing, which took much longer than the preparation of a decision in absentia today. At the same time, the right to defence of such people is guaranteed: the request for consideration of the case in a simplified procedure cannot be made without a defence attorney and the general rules of admissibility apply to evidence etc.

124. ***Criminal misdemeanours has optimised the use of the investigator's resources (unburdened investigation units).***

125. One of the main objectives of the introduction of the criminal misdemeanour provisions was to unburden the investigation units of minor criminal offences in order to optimise the use of resources that can then be used for better pre-trial investigation of crimes.

126. The average workload of a National Police investigator used to be 280-300 criminal proceedings at a time[35]. Given that the number of investigators has decreased by 2,000 (the total number is now about 16,000) and that 50% of criminal offences are crimes, *the workload of an investigator has been almost halved, so it is now about 160 criminal proceedings at a time.*

127. The average workload of an inquirer ranges from 90 to 180 criminal proceedings[36]. Due to the limited toolkit of this assessment, we have been unable to establish the reason for such uneven distribution (the difference is almost twofold).

128. Given the complexity of criminal proceedings in cases of crimes investigated by investigators, three months is not enough to reliably assess qualitative changes in this area, so ***this study cannot confirm or refute the assumption that investigation units have been unburdened not only formally but also in practice so that it has had a positive effect on the quality of crime investigations.***

[35] Accroding to words of the head of General investigative unit of National Police Maksym Cuckiridze (2019) // https://www.kmu.gov.ua/news/nacpoliciya-u-megapolisah-u-serednomu-odin-slidchij-policiyi-rozsliduye-300-kriminalnih-provadzhen.
[36] According to information from interview with the head of Department of inquiry of National Police.

129. ***Criminal misdemeanours have optimised the use of the judges' resources (somewhat unburdened judges of general jurisdiction).***

130. Simplified consideration of criminal misdemeanours by a judge is analogous to trial without examination of evidence, which was previously used in similar cases in accordance with Article 349.3 of the CPC of Ukraine. The difference is that now, in the case of the simplified procedure being used, no preparatory court hearing is held, no court hearing is scheduled, and the parties to the criminal proceedings are not summoned (the sentence is rendered in absentia). Also, such a sentence may be appealed against.

131. Thus, much less of the judge's working time is taken up, as there is no need to adjourn court hearings due to non-appearance of participants or other issues, including the preparatory hearing. Meanwhile, the prosecutor, the victim, the accused, and other persons normally involved in the organisation of the court hearing have no time taken up by the hearing at all.

132. As to the appellate court, since the accused had already admitted their guilt, they previously might not appeal against such sentences. However, prosecutors sometimes appealed the sentences because of the "excessive mildness" of the penalty even in such cases[37], so the burden carried by the appellate courts is unlikely to change.

133. Moreover, taking into account the limitations on the administration of justice in Ukraine due to the spread of the COVID-19 pandemic, such hearings were previously very often postponed, and sentencing was thus delayed. The possibility of considering the indictment in absentia eliminates this problem completely.

134. At the same time, from a practical point of view, ***criminal misdemeanours have had a negative effect on the proportionality between sentences and offences in certain cases.***

135. Where previously the Criminal Code provided for a fairly extensive range between the lower and upper limits of penalties, which allowed to individualise the penalty as much as possible depending on the guilt of the person, mitigating and aggravating circumstances, their property status and behaviour during the pre-trial investigation and trial, that range has been significantly narrowed.

136. For certain criminal misdemeanours, such as intentional minor bodily injury (Article 125 of the CC of Ukraine), common theft (Article 185.1 of the CC of Ukraine) or possession of precursors (drugs) (Article 311 of the CC of Ukraine), the minimum sanction was, before the entry into force of criminal misdemeanours , a

[37] From the focus-group with attorneys.

fine of fifty tax-exempt minimum incomes (UAH 850). Currently, the minimum fine in cases of such misdemeanours is set at one thousand tax-exempt minimum incomes (UAH 17,000). Thus, despite the fact that the relevant criminal offences have been reclassified as less socially dangerous criminal misdemeanours, the minimum penalty for their commission has increased 20-fold, which does not seem logical.

137. Given the minimum subsistence level in Ukraine, standing at UAH 2,118 as of July 1, 2020, this high fine is unaffordable for certain categories of citizens, and moreover, the amount of the sanction may exceed manifold or even by order of magnitude the amount of damage from the offence, when the said offence is theft, which is treated as an offence where the value of a stolen property is greater than or equal to UAH 210 (as of 2020). Courts often have to deal with cases of theft of a bottle of alcohol valued at an amount slightly exceeding the minimum, or some other similar item of property.

138. ***Thus, in such cases, judges are forced to impose penalties that are disproportionate to the criminal misdemeanour committed.*** It seems like Ukraine can accept positive practise of paying 50% of the fine, if person pays within 8 days from the day of verdict. If he doesn't pay within 8 days he can either appeal the decision or pay the full amount of the fine. Based on USA and European experience it appears that the payment of half of the fine has positive psychological effect on the defendants so it gave very good results.

139. In paragraph 26 of the Opinion of the Directorate-General for Human Rights and Rule of Law of the Council of Europe on the Draft Law of Ukraine No. 7279 "On Amending Certain Legislative Acts Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences"[38], it is stated that it is necessary to reconsider the approach to penalties and, in particular, to change the amounts of fines that could be imposed to ensure that the adopted scheme complies with the principles of equality and proportionality. This remark is still applicable.

140. In addition, the issue may be resolved by imposing different monetary fines on persons with different economic status and incomes. As a result, fines should, as far as possible, reflect the offender's actual income and/or economic status. Otherwise, certain fines will serve as a deterrent only for those with lower incomes, while more affluent people will be influenced by such measures to a lesser degree or not at all (paragraph 25 of the Opinion).

141. As for the attitude of judges to proportionality, judges[39] indicated that they sometimes imposed a milder sentence than provided by the law, which is allowed by Article 69 of the CC of Ukraine (better known as "sentencing below the lower

[38] The DGI (2018)07 Opinion of October 12, 2018. Link: https://rm.coe.int/coe-ukraine-law-on-misdemeanours-oct-2018-final/16808eaeaf. Accessed on 20/12/2020.
[39] These opinions were expressed by judges during the focus groups.

limit"). In the presence of several circumstances that mitigate the penalty and significantly reduce the severity of the criminal offence, and taking into account personal traits of the offender, the court may, through a reasoned decision, impose a principal sentence below the lower limit set in the sanction section of the relevant article.

142. However, such a course of action is risky for the judge, as such a decision may be reversed by the appellate court if it concludes that such a set of circumstances did not actually exist. Although the reversal of a decision does not formally have negative consequences for the judge, it, nevertheless, influences qualification assessments for the purpose of transfer to a higher court etc. Therefore, there is a risk that judges will refrain from using this mechanism.

143. In addition, some judges indicated that a particular practice emerged in their region: in the event of non-payment of a fine by a convicted person, such non-compliance results in the imposition of a different punishment, primarily community service, which for many people having a low income or no income at all is a more proportionate (moderate) punishment than a fine.

144. ***However, given the general trend of the humanisation of criminal justice, it seems appropriate to reduce the minimum fine to the previous level, which would give the judge more discretion in sentencing in order to maximise the individualisation of punishment.***

Conclusions

145. The present assessment of the first 3 months since the introduction of criminal misdemeanours allows preliminary conclusions to be drawn, as far as possible, as to its impact on the criminal justice system. Clearly, this reform was long in works and awaited for a long time, so assessing its impact on the system as a whole is extremely important.

146. The analysis done allows to reach the conclusion that the criminal misdemeanours has had a *positive* effect on the duration of the resolution of a criminal conflict, that is, it has created more optimistic expectations regarding the resolution of the dispute between the offender and the victim. After all, the average duration of pre-trial investigation and trial in criminal misdemeanour cases, especially in cases where the suspect pleads guilty, has been almost halved.

147. In addition, it is reasonable to assume that criminal misdemeanours has optimised the use of the investigator's resources (it unburdened investigation units, as their workload has almost halved while most investigators remained in office), which can be used to better investigate crimes.

148. The same applies to judges: criminal misdemeanours has optimised the use of judges' resources (it slightly reduced the workload of judges of general jurisdiction) through the summary procedure under which the case is tried in the absence of the parties and without scheduling a court hearing. Such steps save a lot of work time, which can be used to better consider more complex cases.

149. Criminal misdemeanours have somewhat limited the State's interference with the right to liberty, as the only measures of restraint applicable to such offenders are personal commitment and personal warranty. Their application has significantly decreased in practice due to the fact that violation of such obligations does not empower the court to choose more serious measures. In addition, the number of arrests for committing criminal misdemeanours has decreased as well.

150. However, not all preliminary conclusions regarding the impact of the criminal misdemeanours on the system are positive. The criminal misdemeanours has had a negative impact on the proportionality of sentence to the offences committed in some cases: where previously the lower limit of sanction for some misdemeanours was UAH 850; now it stands at 17,000 (a 20-fold increase), which is equal to ten minimum subsistence levels and is a disproportionate sanction for the poor and given the nature of the offences.

151. Taking into account the limitations of this study's toolkit, it is clear that such conclusions reflect only one side of the prevailing trends. Quite likely, there is a downside to these positive achievements. For instance, a decrease in the number of arrests for committing a criminal misdemeanour may merely mean that now there are more unregistered ("shadow") arrests, which violate the basic procedural guarantees applicable to a person participating in criminal proceedings. Therefore, a comprehensive study of this issue requires both a broader set of assessment tools and a longer period of observing the criminal misdemeanours in action.

152. Another example is criminal misdemeanours impact on the quality of crime investigation by investigators whose caseload has been almost halved. Given that this issue is a matter of effective management and that even 180 simultaneous criminal proceedings are still too many for any investigator to keep in mind, such unburdening may not automatically lead to qualitative changes in crime investigation.

153. Thus, every positive trend needs to be studied more closely. Meanwhile, the negative impact, namely the disproportionate nature of penalties, requires prompt legislative changes.

ANNEX NO. 1: METHODOLOGY FOR ASSESSING THE APPLICATION OF THE CRIMINAL MISDEMEANOURS IN UKRAINE

Review of the initial three months since the introduction of criminal misdemineaours

August 24, 2020

Prepared by Yevhen Krapivin within the framework of the Council of Europe project "Human Rights Compliant Criminal Justice System in Ukraine."

1. INTRODUCTION – OBJECTIVES OF THE METHODOLOGY AND GOALS OF THE ASSESSMENT

The introduction of the criminal misdemeanours into Ukrainian law is a significant step in the criminal justice reform, and therefore it requires careful attention of the legislator and stakeholders of the reform to the quality of its implementation in the practical law enforcement work. We propose as a tool for such monitoring *the* Assessment the application of the criminal misdemeanours in Ukraine *according to the Methodology* which is set out below.

The objectives of the Assessment are as follows:
1. An assessment of the state of the introduction of the criminal misdemeanours in Ukraine among law enforcement agencies and prosecution service bodies.
2. An assessment of the degree of practical implementation of the critical remarks set out by the Council of Europe experts in their Opinion, which point out issues that may lead to human rights violations.
3. An assessment of the practical impact of the introduction of the criminal misdemeanours on the effectiveness of the pre-trial investigation (speed of the investigation; the number of resources spent on the investigation; quality of the pre-trial investigation and court proceedings regarding criminal misdemeanours).

The temporal scope of the assessment is from 01/07/2020 to 01/10/2020 (the first 3 months since the introduction of the criminal misdemeanours) – a period of time that allows the government to draw early conclusions, assess existing successes and shortcomings, timely adjust certain elements of implementation in partnership with stakeholders.

2. STAKEHOLDERS

According to the provisions of the Criminal Procedure Code of Ukraine (hereinafter the CPC of Ukraine), pre-trial investigation of criminal offences shall be conducted in the form of pre-trial investigation (for crimes) and inquiry (for criminal misdemeanours).

Criminal misdemeanours shall be investigated by **an inquirer** in the form of inquiry.

According to Article 3.1, Clause 4-1 of the CPC of Ukraine, the inquirer is an official serving with:
a)
1) the inquiry unit of a National Police body (*they conduct inquiries into all criminal misdemeanours not subject to the jurisdiction of other bodies*);
2) a security service body (*this body has no jurisdiction over any criminal misdemeanours*);
3) the body that monitors compliance with tax legislation (*this body has no jurisdiction over any criminal misdemeanours*);
4) a body of the State Bureau of Investigation (*in accordance with the rules of personal jurisdiction, they conduct inquiries into criminal misdemeanours committed by the appropriate persons (for example, Article 371.1 of the CC of Ukraine - illegal arrest committed by a law enforcement officer); in accordance with the rules of subject jurisdiction, they conduct inquiries into careless destruction of or damage to military property (Article 412.1 of the CC of Ukraine);*

or

b)
an authorised person of another unit of the said bodies which are authorised, within the competence provided by the CPC of Ukraine, to conduct pre-trial investigations of criminal misdemeanours.

Thus, **the inquirer may be either 1) an official of the inquiry unit of a pre-trial investigation body or 2) an authorised person of another unit of the pre-trial investigation body**, such as a patrol inquiring officer regarding criminal misdemeanours linked to traffic violations. The precise design of the inquiry infrastructure depends on the head of the pre-trial investigation body, as the CPC of Ukraine provides for both options.

As for the inquiry units in the security service bodies (the Security Service of Ukraine (SSU)) and the body that monitors compliance with tax legislation (the State Fiscal Service (SFS) of Ukraine), they may be created only to assist other pre-trial investigation bodies, since they have no jurisdiction over criminal misdemeanours. Theoretically, the Prosecutor General, the head of a regional prosecutor's office,

their first deputies and deputies may use their powers to entrust by their reasoned decision the pre-trial investigation of any criminal offence to another pre-trial investigation body, including a higher-level investigative unit within the same body, if they deem the pre-trial investigation to be ineffective (Article 36.5 of the CPC of Ukraine), that is, to transfer an inquiry from the National Police or the SBI to the SSU or the SFS, but it is unlikely that these bodies will establish inquiry units.

Participation of a prosecutor as the supervisor of pre-trial proceedings is another important aspect of inquiry. Special features of the pre-trial investigation of criminal offences are defined by Section 25 of the CPC of Ukraine, among which the prosecutor's powers include:
1) making prosecutorial requests to the investigating judge on the use of evidence obtained during the inquiry in criminal law proceedings concerning a crime (clause 2 of Article 298-1.1 of the CPC of Ukraine);
2) receiving a copy of the detention report on a person detained for committing a criminal misdemeanour (Article 298-2.4 of the CPC of Ukraine);
3) sanctioning notification of a person of suspicion of committing a criminal misdemeanour (Article 298-4.1 of the CPC of Ukraine);
4) considering a request for expert examination received from the suspect in case of their disagreement with the outcome of a medical examination or the opinion of a specialist (Article 298-4.2 of the CPC of Ukraine);
5) extending the inquiry (Article 298-5.1 of the CPC of Ukraine);
6) releasing a person of custody where the maximum duration of detention is exceeded (Article 298-5.2 of the CPC of Ukraine);
7) reviewing the results of the inquiry and completing the inquiry in the forms provided by the Code (Article 301 of the CPC of Ukraine);
8) initiating summary court proceedings on the indictment (Article 302 of the CPC of Ukraine).

The Office of the Prosecutor General is also the administrator of the Integrated Register of Pre-Trial Investigations, where basic information on criminal proceedings (cases) is kept, including inquiry files.

Accordingly, **stakeholders of the assessment of the degree of the introduction of the criminal misdemeanours are:**
1) **the National Police of Ukraine**;
2) **the State Bureau of Investigation**
which have primary jurisdiction over criminal misdemeanour inquiries.
3) **the Security Service of Ukraine**;
4) **the State Fiscal Service of Ukraine**
which have no jurisdiction over any criminal misdemeanours, but according to the decision of the prosecutor's office, their inquirers (if such positions are created) may conduct inquiries in criminal misdemeanour cases.

5) **the prosecution service bodies** (the Office of the Prosecutor General, regional (oblast) and local (district) prosecutor's offices)
provide procedural supervision during inquiries, as well as present indictments in court.

3. INDICATORS OF THE DEGREE OF INTRODUCTION

Indicators of the degree of the introduction of the criminal misdemeanours are a set of legislative, organisational and technical measures for their implementation, taking into account the need to deal with critical remarks on human rights violations expressed in the Council of Europe Opinion, as well as the outcome of the efforts to solve the issues which the criminal misdemeanours is intended to solve.

Therefore, the indicators are divided into three subsets:
1) overall status of the introduction
It measures the degree to which the criminal misdemeanours is operation-ready from the standpoint of legislative, organisational and technical aspects.

2) degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion
It measures the degree of the practical implementation of the criminal misdemeanours from the standpoint of violation or probable violation of human rights during the inquiry.

3) influence on the effectiveness of the pre-trial investigation
It measures the general impact of the criminal misdemeanours on the pre-trial investigation of criminal offences, both crimes (reduction of the investigators' caseload, which increases their ability to investigate cases, etc.) and criminal misdemeanours ("minor crimes" that were not always investigated effectively when subject to the general investigation procedure).

Some indicators have a numerical (quantitative) expression, while others only establish the presence or absence of some measure. In any case, the general list of indicators ("checklist") needs an expert description (interpretation), taking into account the law application context. Effectively, the criminal misdemeanours operates regardless of any eventual shortcomings in implementation, but at the same time, some indicators may be less important, and others more important for achieving the goals behind their introduction. The expert description can answer the question of the degree to which the criminal misdemeanours has been introduced in Ukraine only when taking into account the big picture.

INDICATORS: group No. 1 (overall status of the introduction)

1.1 Legislation

1.1.1 How well-defined are the terms (concepts) concerning criminal misdemeanours (inquiry, inquirer, etc.)
a) properly defined;
b) require minor improvements;

c) require major amendments.

1.1.2 How well-defined are the powers of the inquirer and the head of the inquiry unit
a) properly defined;
b) require minor improvements;
c) require major amendments.

1.1.3 Are there any issues in practice with the regulation of the procedure for entering information into the IRPI and carrying out priority procedures
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.1.4 Are there any issues in practice with the regulation of the procedure for arresting a person for committing a criminal misdemeanour
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.1.5 Are there any issues in practice with the regulation of the procedure for notifying a person of suspicion of committing a criminal misdemeanour
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.1.6 Are there any issues in practice with the regulation of the use of the measures of restraint during the inquiry
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.1.7 Are there any issues in practice with the regulation of the procedure for collecting evidence (primarily conducting investigative procedures) in criminal misdemeanour cases
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.1.8 Are there any issues in practice with the regulation of the procedure for completing the inquiry in criminal misdemeanour cases
a) yes, multiple issues;
b) yes, but the issues are minor;
c) no, there are no issues.

1.2 Inquiry organisation

1.2.1 Determined and approved structure of inquiry units in the National Police
a) determined and approved;
b) determined, but duties have been allocated through micromanagement;
c) structure of inquiry units has not been determined.

1.2.2 Determined and approved structure of inquiry units in the State Bureau of Investigation
a) determined and approved;
b) determined, but duties have been allocated through micromanagement;
c) structure of inquiry units has not been determined.

1.2.3 Determined and approved structure of inquiry units in the SSU/SFS
a) determined and approved;
b) determined, but duties have been allocated through micromanagement;
c) structure of inquiry units has not been determined.

1.2.4 Determined and approved the list of National Police officials who are authorised to conduct inquiries (but are not officials of an inquiry unit)
a) determined and approved;
b) the list of authorised officials is not determined.

1.2.5 Determined and approved the list of State Bureau of Investigation officials who are authorised to conduct inquiries (but are not officials of an inquiry unit)
a) determined and approved;
b) the list of authorised officials is not determined.

1.2.6 Determined and approved the list of SSU/SFS officials who are authorised to conduct inquiries (but are not officials of an inquiry unit)
a) determined and approved;
b) the list of authorised officials is not determined.

1.2.7 Sufficiency of the number of inquirers and persons authorised to conduct inquiries for the number of criminal misdemeanour cases, which is needed for the effective performance of the functions assigned to the body
a) the number is sufficient for the effective performance of these functions;
b) the number is insufficient, but it is not critical for the performance of these functions (the deficiency can be compensated through other mechanisms of inquiry process optimisation);
c) the number is critically insufficient, and the body needs more officials (more actual positions) for the performance of its functions;

1.2.8 Specialised training of inquirers of the National Police inquiry units
a) present, they have completed a further education course on misdemeanours;
b) present, they mastered the new legislation on their own but had their proficiency verified through a competitive selection or a similar procedure
c) absent, they rely on assistance and advice of the inquiry head or other persons
d) completely absent

1.2.9 Specialised training of inquirers of the State Bureau of Investigation inquiry units
a) present, they have completed a further education course on misdemeanours;
b) present, they mastered the new legislation on their own but had their proficiency verified through a competitive selection or a similar procedure
c) absent, they rely on assistance and advice of the inquiry head or other persons
d) completely absent

1.2.10 Specialised training of National Police officials (if any) who are authorised to conduct inquiries
a) present, they have completed a further education course on misdemeanours;
b) present, they mastered the new legislation on their own but had their proficiency verified through a competitive selection or a similar procedure
c) absent, they rely on assistance and advice of the inquiry head or other persons
d) completely absent

1.2.11 Specialised training of State Bureau of Investigation officials (if any) who are authorised to conduct inquiries
a) present, they have completed a further education course on misdemeanours;
b) present, they mastered the new legislation on their own but had their proficiency verified through a competitive selection or a similar procedure
c) absent, they rely on assistance and advice of the inquiry head or other persons
d) completely absent

1.2.12 Specialised training of prosecutors providing procedural supervision
a) present, they have completed a further education course on misdemeanours;
b) present, they mastered the new legislation on their own but had their proficiency verified through a competitive selection or a similar procedure
c) absent, they rely on assistance and advice of the prosecution service body head or other persons
d) completely absent

1.3 Technical readiness

1.3.1 Availability of working premises for the National Police inquiry units that meet the technical requirements (strongboxes for storage of inquiry files etc.)
a) working premises are available;

b) working premises are available, but need improvements (repairs), which can be done within the budget of the body for 2020-2021;
c) working premises are available but need improvements (repairs), which cannot be done within the budget of the body for 2020-2021 (international technical assistance is needed);
d) there are no dedicated working premises.

1.3.2 Availability of working premises for the State Bureau of Investigation inquiry units that meet the technical requirements (strongboxes for storage of inquiry files etc.)
a) working premises are available;
b) working premises are available, but need improvements (repairs), which can be done within the budget of the body for 2020-2021;
c) working premises are available but need improvements (repairs), which cannot be done within the budget of the body for 2020-2021 (international technical assistance is needed);
d) there are no dedicated working premises.

1.3.3 Availability of working premises for the National Police officials authorised to conduct inquiries (if any) that meet the technical requirements (strongboxes for storage of inquiry files etc.)
a) working premises are available;
b) working premises are available, but need improvements (repairs), which can be done within the budget of the body for 2020-2021;
c) working premises are available but need improvements (repairs), which cannot be done within the budget of the body for 2020-2021 (international technical assistance is needed);
d) there are no dedicated working premises.

1.3.4 Availability of working premises for the State Bureau of Investigation officials authorised to conduct inquiries (if any) that meet the technical requirements (strongboxes for storage of inquiry files etc.)
a) working premises are available;
b) working premises are available, but need improvements (repairs), which can be done within the budget of the body for 2020-2021;
c) working premises are available but need improvements (repairs), which cannot be done within the budget of the body for 2020-2021 (international technical assistance is needed);
d) there are no dedicated working premises.

1.3.5 Functioning of the Integrated Register of Pre-Trial Investigations regarding criminal misdemeanours
a) fully adapted to criminal misdemeanours;
b) partially adapted to criminal misdemeanours, some improvements needed;

c) not adapted to criminal misdemeanours, changes are critically needed now.

INDICATORS: group No. 2 (the degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)

Below are excerpts from the Opinion and indicators of their practical implementation (confirmation). Where needed, the context is provided in square brackets as an excerpt from the Opinion.

2.1...*any setting aside of an investigator be reasoned (para. 70).*
a) inquirers are set aside by a motivated resolution of the head of inquiry (indicating the reasoning for such a decision, and not only the grounds for setting them aside);
b) inquirers are set aside by an unmotivated resolution of the head of inquiry (indicating no reasoning for such a decision, but only the grounds for setting them aside).

2.2...*to limit the possibility of providing conclusions only in respect of actions conducted after the entry of information in the Integrated Register (para. 77).*
a) the opinions of specialists are provided in respect of actions conducted before the entry of information in the IRPI (para. 7, Article 71.4 of the CPC of Ukraine);
b) the opinions of specialists are not provided in respect of actions conducted before the entry of information in the IRPI (para. 7, Article 71.4 of the CPC of Ukraine), but only in respect of actions conducted after such entry;

2.3...*there is a need to provide for the possibility to obtain judicial review of the provisional seizure of property before any trial (para. 85).*
a) judicial review of the seizure of property and documents of a person suspected of committing a criminal misdemeanour (Article 298-3 of the CPC of Ukraine) is absent, but the property is returned at the request of the suspect before the trial (= the range of exceptional cases provided for in para. 3 of Article 298-3 of the CPC of Ukraine is broad enough);
b) judicial review of the seizure of property and documents of a person suspected of committing a criminal misdemeanour (Article 298-3 of the CPC of Ukraine) is absent. Property is usually not returned at the request of the suspect before the trial (= the range of exceptional cases provided for in paragraph 3 of Article 298-3 of the CPC of Ukraine is too narrow).

2.4 ... [it is necessary to prevent] *the possibility of the inquiry body taking certain actions before entering information about a criminal misdemeanour into the IRPI (paras. 91-98, para. 102).*
a) no procedural actions aimed at obtaining evidence are carried out until the information is entered into the IRPI;
b) before entering the information into the IRPI, procedural actions are carried out to obtain the evidence as provided by the CPC of Ukraine.

2.5 *There is thus a need to modify the rules in the proposed amendments to Articles 301 and 314 [on the particular features of the disclosure of inquiry files] so that the requirements of the right to a fair trial under Article 6 of the European Convention are respected* (para. 124).
a) the defence examines the inquiry file on its completion in a manner analogous to the pre-trial investigation of crimes (under the general procedure);
b) where the defence unreasonably delays its own examination of the inquiry file, it is subjected to informing which is equated with the examination of the inquiry file (Article 301.5, Article 314 of the CPC of Ukraine).

2.6 ...*medical examinations should not be conducted before the entry of information in the Integrated Register* [of Pre-Trial Investigations]... *(para. 151).*
a) medical examinations are not conducted before the entry of information on a criminal misdemeanour in the IRPI;
b) medical examinations are conducted before the entry of information on a criminal misdemeanour in the IRPI.

2.7 *[it is necessary to prevent any investigative and procedural actions aimed at collecting evidence before the information is entered into the IRPI, except for incident scene inspection] (para. 164).*
a) only incident scene inspection is conducted before the information is entered into the IRPI;
b) even before the information is entered into the IRP, along with incident scene inspection, explanations are obtained, medical examinations are carried out, specialist opinions are obtained, the readings of technical devices are taken, tools and means of committing a criminal misdemeanour are seized.

2.8 *There is thus a need to reconsider the making of covert investigative (search) actions applicable to all criminal misdemeanours (para. 166)*.
a) covert investigative (search) actions provided for, in Articles 264, 268 of the CPC of Ukraine are conducted in practice.
b) covert investigative (search) actions provided for in Articles 264, 268 of the CPC of Ukraine are not conducted in practice.

2.9 *There is thus a need for the proposed amendments to Articles 381, 382 of the CPC of Ukraine to be substantially recast so as to ensure that the accused is afforded a hearing that fully complies with the requirements of Article 6 of the European Convention [that is, to have the case considered by an independent and impartial tribunal established by law and to defend themselves in person or through legal assistance if they choose so] (para. 179).*
a) the courts consider indictments for the commission of a criminal misdemeanour without a court hearing and in the absence of the participants in the proceedings;

b) the courts comply with Article 6 of the Convention and do not consider indictments for the commission of a criminal misdemeanour without a court hearing and in the absence of the participants in the proceedings.

2.10 ...*[Information on the commission of a criminal misdemeanour may not be verified before its entry in the IRPI] (para. 184)*.
a) information on the commission of a criminal misdemeanour is "automatically" entered into the IRPI without verification of the event or the elements of the criminal misdemeanour;
b) information on the commission of a criminal misdemeanour is verified before it is entered into the IRPI under the procedure established by the CPC of Ukraine concerning the event or the elements of the criminal misdemeanour.

INDICATORS: group No. 3 (influence on the effectiveness of pre-trial investigation)

3.1 Caseload of the National Police pre-trial investigation bodies
a) caseload of investigative units has fallen which has increased the effectiveness of crime investigation;
b) caseload of investigative units has fallen, but it has not increased the effectiveness of crime investigation (other factors have a greater impact);

(c) the caseload of investigative units has fallen, but due to the fact that some investigators have transferred to the positions of inquirers, there was no actual reduction in the caseload of the pre-trial investigation body, and so the existing effectiveness of criminal investigation has not been affected in the slightest;
d) the number of investigators of the pre-trial investigation body has decreased, and the investigation body's caseload has only increased, which negatively affects the effectiveness of crime investigation.

3.2 Speed of inquiry (investigation of criminal misdemeanours)
a) speed of investigation has increased on average 4-fold;
b) speed of investigation has increased on average 3-fold;
c) speed of investigation has increased on average 2-fold;
d) speed of investigation has not increased on average;
e) speed of investigation has decreased on average, and investigations take more time now.

3.3 Effectiveness of investigation (inquiry) into criminal misdemeanours according to the statistical indicators of notification of suspicion, sending an indictment to court (a positive ratio of registered proceedings to the results of inquiries in them under the new procedure and registered proceedings to the results of their investigation under the old procedure)
a) the indicators have increased manifold;

b) the indicators have increased insignificantly;
c) the indicators have stayed the same;
d) the indicators have increased (a negative result).

3.4 Speed of criminal misdemeanour court proceedings under the new procedure compared to the old one
a) speed has increased on average 4-fold;
b) speed has increased on average 3-fold;
c) speed has increased on average 2-fold;
d) speed has not increased on average;
e) speed has decreased on average, and court proceedings take more time now.

4. ASSESSMENT TOOLS AND INFORMATION SOURCES

To assess the state of introduction of the criminal misdemeanours in Ukraine in the first three months of its operation, it is enough to conduct a desk study as well as several interviews with stakeholders, perform analysis of a small array of statistical data and look for information in public sources.

Accordingly, the main tools that will be used for the assessment and their sources are:

Tool	Indicator group	What is being established	Notes
1) *analysis of the criminal misdemeanour legislation*;	**Group No. 1 (overall status of the introduction)** *1.1 Legislation*	Legislation quality	
2) *interviews with the leadership of pre-trial investigation bodies and prosecution service bodies.*	**Group No. 1 (overall status of the introduction)** *1.2 Inquiry organisation* *1.3 Technical readiness* **Group No. 2 (degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)** **Group No. 3 (influence on the effectiveness of pre-trial investigation)**	Organisation of inquiry units and prosecutors in inquiry cases (human resources) and the practice of their work as seen by their leadership	**Tentative questions:** - how do you assess the state of the introduction of the criminal misdemeanours in the practice of your body? (on a scale from 1 to 10); - has the pre-trial investigation body's caseload decreased, and has investigators' work become, accordingly, more effective? - how many inquirers and persons authorised to conduct inquiries are there? Are there enough of them to

			effectively investigate the number of criminal misdemeanour cases registered by this law enforcement agency? - have they managed to speed up the process of investigating criminal misdemeanours (compared to minor crimes which corresponded to them in terms of the elements of the crime) ?; - what improvements have been achieved in general with the introduction of the criminal misdemeanours?; - What are the negative consequences (including side effects) of the introduced criminal misdemeanours? (if any); - what legislative amendments are needed to improve the criminal

			misdemeanours? (if any); - what organisation and technical changes are needed to improve the criminal misdemeanours? (if any);
3) *a focus group with inquirers or persons authorised to conduct inquiries or heads of inquiries or prosecutors serving as procedural supervisors in inquiry cases.*	**Group No. 1 (overall status of the introduction)** *1.3 Technical readiness* **Group No. 2 (degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)** **Group No. 3 (influence on the effectiveness of pre-trial investigation)**	(Technical) readiness for full-scale work with the criminal misdemeanours. Application issues of the criminal misdemeanour legislation; General assessment of the effectiveness of the criminal misdemeanours and the need for such an institution	**Tentative questions:** - do you agree that the investigation of minor crimes (criminal misdemeanours) has become more effective? - do you agree that the investigation of minor crimes (criminal misdemeanours) has become speedier? if so, by how much on average? - has the procedure for investigating criminal misdemeanours become simpler (easier)? - what practical issues of the current legislative regulation of criminal

			misdemeanours can you name? Which of them can be solved, and how exactly? - what practical issues of organisational and technical support of your work can you name? have you approached the leadership with proposals for their solution? If so, what changes are we talking about? - are there any practical issues with the procedural supervision of inquiries? If so, what they are and how do you think they can be solved?
4) *a focus group with lawyers who have practical experience of appearing for defence in criminal misdemeanour cases*.	**Group No. 1 (overall status of the introduction)** *1.1Legislation* *1.2* **Group No. 2 (degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)**		**Tentative questions:** - do you believe that the criminal misdemeanours is effective? Has it improved the position of the defence? - what practical issues of the criminal misdemeanour legislation have

	Group No. 3 (influence on the effectiveness of pre-trial investigation)		you encountered in practice? - do you believe that consideration of criminal misdemeanours by a judge (without a court hearing and defence counsel) is a violation of the right to present a defence? - what critical changes are needed to increase the effectiveness of inquiries in criminal misdemeanour cases?
5) *a focus group with judges who have practical experience of considering criminal misdemeanour cases*.	**Group No. 1 (overall status of the introduction)** *1.1Legislation* **Group No. 2 (degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)** **Group No. 3 (influence on the effectiveness of pre-trial investigation)**	Issues in the criminal misdemeanour legislation; Risks of human rights violations as seen by lawyers Overall effectiveness of the criminal misdemeanours	**Tentative questions:** - how do you assess the effectiveness of the criminal misdemeanour (inquiry) institution in general? - what practical issues have you encountered when considering criminal misdemeanour cases (including in your capacity as the investigating

			judge at the stage of inquiry)? - how do you assess the simplified procedure for the courts to consider criminal misdemeanour cases (in the absence of the accused and defence counsel)? Do you see in it any risks of violating the right to present a defence? - What critical changes are needed to increase the effectiveness of inquiry and court proceedings in criminal misdemeanour cases?
6) *analysis of the statistical data of criminal statistics* which is administered by the Office of the Prosecutor General;	**Group No. 3 (influence on the effectiveness of pre-trial investigation)**	Effectiveness of the criminal misdemeanours	The data for 3 months (July, August, September) of 2020 are compared with the same period of 2019 concerning: - the number of registered proceedings; - the number of notices of suspicion;

			- the number of closed criminal proceedings; - the number of criminal proceedings that were sent to court. The data being compared apply to minor crimes (= criminal misdemeanours in the legislation currently in force). We use for it five most common criminal misdemeanours (theft, minor bodily injury etc.).
7) *analysis of the statistical data of judicial statistics* which is administered by the State Court Administration of Ukraine;	**Group No. 3 (influence on the effectiveness of pre-trial investigation)**	Effectiveness of the criminal misdemeanours	The data for 3 months (July, August, September) of 2020 are compared with the same period of 2019 concerning: - the severity of the measures of restraint chosen at the stage of pre-trial investigation; - the number of sentences in cases; - the number of sentences which were reversed or

			amended by the appellate courts (if any). The data being compared apply to minor crimes (= criminal misdemeanours in the legislation currently in force). We use for it five most common criminal misdemeanours (theft, minor bodily injury etc.).
8) *analysis of publications on the official websites of pre-trial investigation bodies and prosecution service bodies* regarding the functioning of the criminal misdemeanours;	**Group No. 1 (overall status of the introduction)** *1.2 Inquiry organisation* *1.3 Technical readiness*	Positions of pre-trial investigation bodies and prosecution service bodies regarding the state of the introduction of the criminal misdemeanours	
9) *analysis of public speeches, interviews, broadcasts etc. of the heads of pre-trial investigation bodies and prosecution service bodies* regarding the functioning of the criminal misdemeanours;	**Group No. 1 (overall status of the introduction)** *1.2 Inquiry organisation* *1.3 Technical readiness* **Group No. 3 (influence on the effectiveness of pre-trial investigation)**	Positions of pre-trial investigation bodies and prosecution service bodies regarding the state of the introduction of the criminal misdemeanours	

10*) public information requests* regarding data that are not publicly available.	**Group No. 1 (overall status of the introduction)** *1.1 Legislation* *1.2 Inquiry organisation* *1.3 Technical readiness* **Group No. 2 (degree of confirmation of the risks of human rights violations expressed in the Council of Europe Opinion)** **Group No. 3 (influence on the effectiveness of pre-trial investigation)**	More specific official information is obtained (for example, where criminal statistics data are for some reasons absent etc.)	