

IAP Information Note No. 3

COE COMMENTS ON CERTAIN PROVISIONS OF THE CRIMINAL PROCEDURE CODE OF UKRAINE ADOPTED IN 2012

In the course of development of the text of the Criminal Procedure Code (“CPC”, “Code”) adopted in 2012, the Code was subject to examination by a number of experts within the framework of the ‘Joint Programme between the European Union and the Council of Europe on Transparency and Efficiency of the Judicial System of Ukraine’. In their first opinion in November 2011, the experts noted many positive developments embodied in the new CPC.¹ They subsequently commended the draft as being satisfactory and concluded in their final opinion in May 2012 that, although there remained some provisions that needed to be improved, the draft took into consideration recommendations made in the process of consultations.²

In their opinions on the draft the experts noted that one of the positive developments contained in the new CPC was a departure from the old Soviet-type procedure which required the adoption of a formal decision on the institution of, or refusal to institute, criminal proceedings following a ‘pre-investigative inquiry’. The new CPC removed the need to adopt a formal decision on the institution of criminal proceedings. As noted above, pre-trial investigations commence with the introduction of relevant information into the Unified Register of Pre-Trial Investigation.³ In addition, the current CPC requires that information, which follows a complaint or notice about a crime, or the discovery of circumstances which may attest to the occurrence of a crime, should be introduced into the Register within twenty-four hours. A refusal to do so is prohibited.

Another positive development noted by the experts was the inclusion of progressive provisions relating to the right of liberty and security. The current CPC requires the decision on pre-trial detention to specify the circumstances giving rise to a reasonable suspicion and the relevant prevailing risks that are such as to justify deprivation of liberty. It also requires substantiation of the reasons why such risks cannot be addressed by less stringent measures than the deprivation of liberty.⁴

One of the initial concerns expressed by the experts related to the investigation of crimes committed by officials. The early draft proposed that crimes committed by the Ministry of the Interior (“MoI”) officials should be investigated by the Security Service of Ukraine (“SSU”) and *vice versa*. In the experts’ opinion, even though this provided for apparent institutional independence, it did not take into consideration the more complex requirements of independence; thus, both of these bodies belonged to law enforcement authorities, deployed uniformed officers and bore other attributes that might undermine the appearance of their independence. In the situation of Ukraine, a country that had a long record of tolerating impunity for human rights offences committed by law enforcement officials, the most appropriate response to this problem would, in the view of the experts, be to establish a fully independent law enforcement complaints investigative body.⁵ This provision of the draft CPC was subsequently amended to envisage the establishment of a separate body – the State Bureau of Investigations – entrusted with investigating crimes committed by officials,

¹ See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 2 November 2011, § 21.

² See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 10 May 2012, §§ 265-6.

³ See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 2 November 2011, §§ 22-23.

⁴ *Ibid.*, § 24

⁵ *Ibid.*, §§ 41-42

including law-enforcement abuses. The change was welcomed by experts who considered that this “amendment implemented conceptual recommendations and concern (as to a system of investigation of relevant crimes) that had been constantly reiterated from the initial stages of the series of consultations.”⁶ The new CPC has also limited the number of bodies authorised to handle investigations and prohibits the unauthorised intervention of ‘operative units’ into investigations.⁷

In their first opinion the experts also draw attention to possible risks which might attach to a system providing for a strong dependence of investigators on public prosecutors, and empowering prosecutors, in particular, to give precise instructions to investigators and to appoint or dismiss investigators in specific cases.⁸ However, as was noted by the experts in their subsequent opinion, the concern about the direct powers to dismiss investigators had been further remedied.⁹

Despite the concerns expressed by experts, as mentioned before, the adoption of the new CPC was considered to be a substantially positive achievement that could serve as a basis for constructing a fair and effective criminal justice system.¹⁰

⁶ See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 10 May 2012, § 102.

⁷ See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 2 November 2011, § 23.

⁸ *Ibid.*, § 106.

⁹ See Analysis of the Extent to which the Revised Draft Criminal Procedure Code of Ukraine Implements Recommendations and Suggestions Made in the Expertise and Subsequently, § 56.

¹⁰ See [Opinion](#) on the Draft Criminal Procedure Code of Ukraine, 10 May 2012, § 269.