

## Answers on the form.

### **Consultative Council of European Prosecutors (CCEP) “The role of prosecution authorities outside the field of criminal justice”**

#### **Part 1.**

1. Yes, the prosecuting authorities have the competence outside the field of criminal justice.

**2.a.** The competence of the prosecuting authorities of Ukraine is determined by Article 121 of the Constitution of Ukraine and by the law of Ukraine “On the Prosecution Service” in accordance with which the Public Prosecutor’s Office performs such functions outside the field of criminal justice:

- representation of interests of citizens or the State in court in cases provided by law;
- supervision over the observance of citizen’s and human rights and freedoms supervision over the observance of laws on these issues by the executive authorities, local government authorities, their functionaries and officials.

Moreover, in conformity with point 9 of the transitional provisions of the Constitution of Ukraine, the Public Prosecutor’s Office continues exercising, in accordance with the laws in force, the function of supervision over the observance and application of laws till the laws regulating the activity of state bodies with regard to the control over the observance of laws are put into force.

In accordance with the legislation of Ukraine the Public Prosecutor’s Office doesn’t have the competence to perform supervision over the activity of courts, because the judicial system in Ukraine is sovereign and independent governmental department.

Also we have to admit, that in conformity with Article 131 of the Constitution of Ukraine the Prosecutor General of Ukraine is ex officio a member of the High Council of Justice, which along with other functions considers the complaints regarding decisions on bringing to disciplinary liability of prosecutors.

**b.** The existence of aforementioned competences is obligated by the requirements of the Constitution of Ukraine, of the law of Ukraine “On the Prosecution Service”, of procedural and other legislation and also by the features of the socio-economic development of our country on the present stage.

**c.** In accordance with the current legislation of Ukraine the prosecutors, realizing the competence outside the field of criminal justice, provide the executing of their permissions by performing supervision over the fulfillment of laws, which lies in carrying out of verifications, bringing to the corresponding authorities and to officials of the documents of prosecutor reaction with the purpose to eliminate the ascertained violations of law, to resume the rights and freedoms of citizens and interests of state, to indemnify the caused damage.

**d.** The decisions taken by the prosecutors might be appealed to the prosecutor of higher level or at the court. The complaint might be filed to the court

as well as on actions of the prosecutor as on his inactivity with regard to questions connected with the performing of the prosecution supervision.

**3.** As the practice shows, the effectiveness of the work of the prosecuting authorities outside the field of criminal justice is high enough. The size of this work of the Prosecutor's Office is about 40% from all actions, which are accomplishing by the Prosecutor's Office.

During the year 2006 the number of 15 133 criminal matters were initiated by the prosecuting authorities according to the results of supervision over the observance of laws with regard to citizen's rights and freedoms and interests of the State. As the result of pre-trial investigation the number of 10 455 of matters of this category were referred to Court. 47 193 protests made against unlawful actions and activities of the officials were satisfied, 84 230 prescriptions and prosecutor's applications were considered with assuming of measures. Under the prosecutor's acts of reaction: 111 747 officials were brought to different kinds of responsibility, including 37 898 – to administrative responsibility, 2 472 218 UAH of damage and other social payments were indemnified, 844 274 of them were indemnified to the budget.

The prosecutors referred 115 933 suits to all kinds of courts, 78 109 of which were considered and the writs were satisfied in 76 466 cases. The sum of the satisfied suits is 1 085 565 thousand UAH (747 493 – to the budget), de facto they were executed to the amount of 722 428 thousand UAH (354 685 – to the budget).

In the order of the civil justice the prosecutors brought 76 375 suits. From this amount the courts considered 53 976 suits, 53 182 of them are satisfied to the amount of 255 150 thousand UAH (to the budget – 199 201). De facto courts' decisions were executed to the amount of 172 411 thousand UAH (to the budget – 130 854).

In the order of economic justice 21 513 suits were brought. The courts considered 13 652, 13 112 of them were with the satisfaction of the prosecutor's demands to the amount of 626 066 thousand UAH (to the budget – 433 617 thousand UAH). De facto courts' decisions were executed to the amount of 451 067 thousand UAH (to the budget – 188 952 thousand UAH).

In the order of the administrative justice 18 045 suits were brought, 10 481 of them were considered by courts and 10 172 were satisfied. The sum of the satisfied suits is 204 349 thousand UAH (to the budget – 114 675 thousand UAH), of which de facto were executed to the amount of 98 950 thousand UAH (to the budget – 34 879 thousand UAH).

**4.** Nowadays there is a reformation of all legal framework including the Prosecutor's Offices, in conformity with the foundations of the democratic society.

On our opinion, the Prosecutor's Office should become an independent state authority in the system of judicial power, which within the framework of its competence should protect the rights and freedoms of citizens and the interests of society and state.

That is why in future only one function, non-connected with the competence in criminal sphere should be advisably delegated to the Prosecutor's Office – the protection of citizen's and human rights and freedoms, public and state interests and also representation of their interests in court in cases provided by law.

Simultaneously, in future we see the main role of the Prosecutor's Office exactly in the area of the criminal justice. Above all it regards the criminal proceedings in pre trial investigation and maintaining of the state accusation in court and also supervision over the observance of laws by bodies conducting operative search activities and pre-trial investigation.

Last year the Prosecutor General's Office of Ukraine prepared the project of appropriate changes to the Constitution of Ukraine in which the indicated propositions are reflected. The Venice Commission of Council of Europe in its conclusion of 17 October 2006 estimated in general the bill approvingly and recommended the Ukraine to move this way in reforming of the Prosecutor's Office in according with the European standards.

Also nowadays, the workgroups of the Verkhovna Rada of Ukraine and of the Ministry of Justice of Ukraine are creating the project of new redaction of the law "On the Prosecution Service", which within the framework of the provisions in effect of the Constitution of Ukraine concerning the Prosecutor's Office should become the step forward on the way of its reformation in conformity with the democratic rules of law.

## **Part II**

**5.** Yes, the Prosecutor General's Office of Ukraine, the Prosecutor's Offices of the regional level have in its organization the corresponding structural subdivisions, which act outside the field of criminal justice.

At the Municipal and Regional Prosecutor's Offices this activity is among the competence of the specific prosecutors according to the allocation of responsibilities.

**6.a.** In the civil, economic and administrative justice, i.e. outside the field of the criminal justice, the prosecutor in Ukraine enjoys the same rights as other parts at court.

**b.** These functions of the prosecutor are regulated by laws: the Civil Procedural Code of Ukraine, the Code of Economic Procedure of Ukraine, the Code of Administrative Justice of Ukraine and the Code of Ukraine on Administrative Violations, the Law of Ukraine "On Prosecution Service", as well as by the corresponding departmental orders of the Prosecutor General of Ukraine.

**c.** Other prosecutor's rights and responsibilities outside the field of criminal justice are stated at points 2.a. and 2.c of Part I of this Questionnaire.

**7.a.** According to the "Analysis of the system problems, which underlie the decisions of the European Court of Human Rights made concerning Ukraine and ways of their solution", made by the State Representative to the European Court of

Human Rights, this international judicial organization didn't approve decisions on this theme (concerning the competence of the prosecutor outside the field of criminal justice).

**b.** For this reason the Constitutional Court of Ukraine made two decisions.

In the decision of April 8<sup>th</sup>, 1999 No.3-пн the Constitutional Court of Ukraine noted that under the Ukrainian Prosecutor Office's representation of the State interests at the arbitration court the legal relationship should be understood, in which a prosecutor realizing responsibilities prescribed by the Constitution of Ukraine and Laws of Ukraine carries out procedural actions at court with the aim of protection of the State interests. These actions include submission by the prosecutor of writ to the arbitration court, his/her participation during the consideration of the matter according to the writ and during the consideration of any other matter by court on the initiative of the prosecutor or by the court decision if it is necessary for the protection of the State interests.

In the summary of October 12<sup>th</sup>, 2004 No. 2-В concerning the changes to the Constitution of Ukraine including the supervision of the Prosecutor's Office over Observance of Citizen's and Human Rights and Freedoms, law observance on these issues by the executive agencies, local government authorities, their functionaries and officials, the Constitutional Court of Ukraine declared these changes like those corresponding to Article 157 and 158 of the Fundamental Law (these Articles envisage the requirements for the order and the sense of changes to the Constitution of Ukraine).

**8.** Among the competences of the prosecuting authorities outside the system of criminal justice we consider the functions of the representation of citizen's and State interests at Court in the cases established by law and supervision over observance on the Citizen's and Human Rights and Freedoms, law observance on these issues by the executive agencies, local government authorities, their functionaries and officials to be the most important for the reinforcement of rule of law and protection of human rights.

Translators of the Prosecutor General's Office of Ukraine:

A.Marchenko  
A.Shumeiko