

**CRIMINAL  
PROCEDURE CODE  
OF UKRAINE**



## Table of Content

Section I. General Provisions .....	6
Chapter 1. Criminal Procedure Law of Ukraine and Its Scope .....	6
Chapter 2. Principles of Criminal Proceedings .....	9
Chapter 3. Court, Parties, and Other Participants in Criminal Proceedings .....	17
§ 1. Court and jurisdiction .....	17
§ 2. Prosecution .....	21
§ 3. Defense .....	26
§ 4. Victim and his representative .....	32
§ 5. Other participants in criminal proceedings .....	35
§ 6. Recusals .....	43
Chapter 4. Evidence and Proving .....	46
§ 1. Notion of evidence, adequacy and admissibility when founding a knowledge evidence .....	46
§ 2. Proving .....	48
§ 3. Testimonies .....	50
§ 4. Physical evidence and documents .....	52
§ 5. Expert's findings .....	55
Chapter 5. Recording Criminal Proceedings. Procedural Decisions .....	56
Chapter 6. Notifications .....	60
Chapter 7. Procedural Time Limits .....	61
Chapter 8. Procedural Expenses .....	62
Chapter 9. Repair (Compensation) of Damage in Criminal Proceedings .....	64
Section II. Measures to Ensure Criminal Proceedings .....	66
Chapter 10. Measures to Ensure Criminal Proceedings and Grounds for Application of Such Measures .....	66
Chapter 11. Summons by Investigator, Public Prosecutor, Court Summons and Compelled Appearance .....	67
Chapter 12. Imposition of Pecuniary Penalty .....	71
Chapter 13. Temporary Restriction of the Enjoyment of a Special Right .....	72
Chapter 14. Suspension from Office .....	75
Chapter 15. Provisional Access to Objects and Documents .....	77
Chapter 16. Provisional Seizure of Property .....	81
Chapter 17. Attachment of Property .....	82
Chapter 18. Measures of Restraint, Apprehension of a Person .....	85
§ 1. Measures of restraint, apprehension of a person based on investigating judge's, court's decision .....	85
Article 179. Personal commitment .....	87
Article 180. Personal warranty .....	87
§ 2. Apprehension of a person without investigating judge's, court's ruling .....	102
Section III. Pre-trial investigation .....	105
Chapter 19. General provisions in respect of pre-trial investigation .....	105
Chapter 20. Investigative (Detective, Search) Actions .....	110
Chapter 21. Covert Investigative (Detective) Actions .....	124
§ 1. General provisions related to covert investigative (detective) actions .....	124
§ 2. Interference in private communication .....	130
§ 3. Other types of covert investigative (detective) actions .....	133

Chapter 22. Notification of Suspicion.....	137
Chapter 23. Suspension of pre-trial investigation.....	138
Chapter 24. Completion of pre-trial investigation. Extension of time limits for pre-trial investigation.....	140
§ 1. Forms in which pre-trial investigation should be completed.....	140
§ 2. Relief of a person from criminal liability.....	141
§ 3. Submitting an indictment to court, motion to enforce compulsory medical or educational measures.....	144
§ 4. Extending time limit for pre-trial investigation.....	147
Chapter 25. Specifics of pre-trial investigation of criminal misdemeanors.....	150
Chapter 26. Challenging Decisions, Acts or Omissions during Pre-trial Proceedings.....	152
§ 1. Challenging decisions, acts or omissions of the pre-trial investigation agencies or public prosecutor during pre-trial proceedings.....	152
§ 2. Challenging rulings of the investigating judge passes during pre-trial proceedings.....	155
§ 3. Challenging of the public prosecutor's decisions, acts or omissions by the investigator.....	156
Section IV. Court Proceedings in the First Instance.....	157
Chapter 27. Preparatory Proceedings.....	157
Chapter 28. Trial.....	158
§ 1. General provisions governing trial.....	158
§ 2. Scope of the trial.....	166
§ 3. Procedure for trial.....	169
Chapter 29. Court Decisions.....	178
Chapter 30. Special procedure of criminal proceedings in the court of first instance.....	183
§ 1. Simplified Procedure for Criminal Misdemeanors.....	183
§ 2. Proceedings in Trial by Jury.....	184
Section V. Criminal Proceedings Related to Reviewing Court's Decisions.....	187
Chapter 31. Criminal Proceedings in the Court of Appellate Instance.....	187
Chapter 32. Criminal Proceedings in Court of Cassation.....	200
Chapter 33. Proceedings in the Supreme Court of Ukraine.....	207
Chapter 34. Criminal Proceedings upon Discovery of New Circumstances.....	213
Section VI. Special Procedures for Criminal Proceedings.....	216
Chapter 35. Criminal Proceedings Based on Agreements.....	216
Chapter 36. Private Criminal Proceedings.....	221
Chapter 37. Criminal Proceedings with Regard to a Specific Category of Individuals.....	223
Chapter 38. Criminal Proceedings in Respect of Underage Persons.....	225
§ 1. General rules of criminal proceedings in respect of underage persons.....	225
§ 2. Application of compulsory educational measures on underage persons who have not attained the age of criminal discretion.....	229
Chapter 39. Criminal proceedings in the matter of application of compulsory medical measures.....	230
Chapter 40. Criminal Proceedings Containing State Secret.....	235
Chapter 41. Criminal Proceedings in the Territory of Diplomatic Missions, Consular Posts, Ships of Ukraine.....	236
Section VII. Restoring Lost Records of Criminal Proceedings.....	238
Section VIII. Execution of Court Decisions.....	239
Section IX. International Cooperation In Criminal Proceedings.....	243

<a href="#">Chapter 42. General Principles of International Cooperation .....</a>	<a href="#">243</a>
<a href="#">Chapter 43. International Legal Assistance in the Conduct of Procedural Actions.....</a>	<a href="#">246</a>
<a href="#">Chapter 44. Surrender of Persons Who Have Committed Criminal Offense (Extradition) .....</a>	<a href="#">255</a>
<a href="#">Chapter 45. Takeover of Criminal Proceedings.....</a>	<a href="#">265</a>
<a href="#">Chapter 46. Recognition and Execution of Judgments of Courts of Foreign States and Transfer of Sentenced Persons.....</a>	<a href="#">268</a>
<a href="#">Section X. Final Provisions .....</a>	<a href="#">276</a>
<a href="#">Section XI. Transitional Provisions .....</a>	<a href="#">277</a>

## **Section I. General Provisions**

### **Chapter 1. Criminal Procedure Law of Ukraine and Its Scope**

#### **Article 1. Criminal procedure law of Ukraine**

1. The rules of criminal proceedings in the territory of Ukraine are defined only by the criminal procedural law of Ukraine.

2. The criminal procedure law consists of relevant provisions of the Constitution of Ukraine, international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, and the present Code and other laws of Ukraine.

#### **Article 2. Objectives of criminal procedure**

1. The objectives of criminal procedure are the protection of individuals, society and the state from criminal offence, the protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence were prosecuted in proportion to his guilt, no one innocent were accused or convicted, and no one were subjected to ungrounded procedural compulsion and that an appropriate legal procedure applied to each party to criminal proceedings.

#### **Article 3. Definition of the Code's principal terms**

1. For the purpose of this Code, terms, in the absence of special indications, shall mean:

1) Close relatives and family members are: husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, (whole) brother, sister, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great grandson, great granddaughter, adopter or adopted, tutor or custodian, a person subjected to guardianship or caretaking or as well as individuals who cohabitate, are connected by common life and have mutual rights and duties, including individuals who cohabitate but are not married;

2) President Judge is a professional judge who presides over a trial by several judges (panel) or conducts it alone;

3) State accusation is a procedural activity of a public prosecutor that consists in proving accusation before court with the purpose of ensuring prosecution of a person who committed a criminal offence;

4) Inquiry is a form of pre-trial investigation where criminal misdemeanors are investigated;

5) Pre-trial investigation is a stage in criminal proceedings which begins from the moment information on a criminal offence is entered in the Integrated Register of Pre-trial Investigations and ends with closure of the criminal proceedings or with submission to court of an indictment, a motion on enforcement of compulsory medical or educational measures, a motion on discharge of the person from criminal liability;

6) Pre-trial investigation is a form of investigating judicial scrutiny where crimes are investigated;

7) the Law of Ukraine on criminal liability is legislative acts of Ukraine that establish criminal liability (the Criminal Code of Ukraine and the Law of Ukraine on criminal misdemeanors).

8) Head of a pre-trial investigation agency is the Head of the Chief Investigation Department, that of an investigation office, division, branch of a body of internal affairs, a security agency, the agency supervising compliance with the tax legislation, of the National Anti-Corruption Bureau of Ukraine, of a Ukrainian State Bureau of Investigations' unit and their deputies acting within the scope of their powers; *{Subparagraph 8 of Paragraph 1 of Article 3 as amended by Law № 1698-VII of 14.10.2014}*

9) Head of a prosecutor's office is the Prosecutor-General of Ukraine, public prosecutors of the Autonomous Republic of Crimea, oblasts, the cities of Kyiv and Sevastopol, inter-district public prosecutors, city and district public prosecutors and those granted the same status, and deputies of same, acting within their competence;

10) Criminal proceedings is pre-trial investigation and court proceedings, procedural actions in connection with commission of an action specified in Ukrainian law on criminal liability;

11) Minor is a child prior to attaining the age of fourteen;

12) Underage person is a minor and also a child aged between fourteen and eighteen;

13) Accusation is a statement on commission by a certain person of an action specified in Ukrainian law on criminal liability filed in accordance with the procedure established by the present Code;

14) criminal prosecution is a stage in criminal proceedings, which commences when a person is informed of an allegedly committed criminal offense;

15) prosecutor is the Prosecutor-General of Ukraine, First Deputy, Prosecutor-General of Ukraine's deputies, their senior assistants, assistants, prosecutors of the Autonomous Republic of Crimea, oblasts, the cities of Kyiv and Sevastopol, city and district prosecutors, prosecutors in boroughs of towns, inter-district and specialized prosecutors, their first deputies, prosecutor deputies, heads of headquarters, departments and divisions at prosecutor offices, their first deputies, prosecutor deputies, senior prosecutors and prosecutors of prosecutor offices at all levels acting within the limits of their powers as specified in this Code;

16) Minimum wage is the sum of money equal to the monthly minimum wage as provided for by law as of the 1<sup>st</sup> day of January of the calendar year during which a procedural decision is taken or a procedural action, conducted.

17) Investigator is an official of a body of internal affairs, security agency or agency supervising compliance with the tax legislation, the National Anti-Corruption Bureau of Ukraine, a Ukrainian State Bureau of Investigations' unit authorized within his competence specified by the present Code, to conduct pre-trial investigation of criminal offences;

*{Subparagraph 17 of Paragraph 1 of Article 3 as amended by Law № 1698-VII of 14.10.2014}*

18) Investigating judge is a judge of a court of first instance charged with carrying out, in accordance with the procedure established by the present Code, court supervision over the observance of rights, freedoms and interests of persons involved in criminal proceedings, and, in a case specified in Article 247 of the present Code, the chairperson or, upon the chairperson's determination, another judge of the Court of Appeals of the Autonomous Republic of Crimea, oblast and the cities of Kyiv and Sevastopol's appeals courts. Investigating judges (investigation

judges) in a court of first instance shall be elected by a meeting of judges from the complement of judges of the court concerned;

19) Parties to criminal proceedings are, for the prosecution, the investigator, head of pre-trial investigation agency, public prosecutor, as well as the victim, his representative and legal representative in cases specified by the present Code; and, for the defence, the suspected, the accused (defendant), the convicted, the acquitted, as well as the person in whose respect it is provided to apply compulsory medical or educational measures or the issue of applying such was considered, their defense counsels and legal representatives;

20) Court of an appellate instance is the Appeals Court of the Autonomous Republic of Crimea, and the cities of Kyiv and Sevastopol's appeals courts within territorial jurisdiction of which the court of first instance that passed the appealed court decision, is located;

21) Court of cassation is the Higher Specialized Court of Ukraine for disposal of civil and criminal cases;

22) Court of first instance is a district, urban district court, city and city-district court authorized to pass or render a ruling on closure of criminal proceedings;

23) Judge is a chairperson, deputy chairperson, judge of the Supreme Court of Ukraine, the Higher Specialized Court of Ukraine for disposal of civil and criminal cases, the Appeals Court of the Autonomous Republic of Crimea, appeals courts of oblasts, the cities of Kyiv and Sevastopol, district, urban district, city and city-district courts which according to the Constitution of Ukraine are authorized on professional basis to administer justice, as well as a juror;

24) Court proceedings are criminal proceedings in a court of first instance which includes a preliminary hearing, trial and passing and pronouncement of a court decision, proceedings to review court decisions in appellate, cassation procedure, by the Supreme Court of Ukraine, as well as upon discovery of new circumstances;

25) Participants in criminal proceedings are the parties to criminal proceedings, victim, his representative and legal representative, civil plaintiff, his representative and legal representative, civil defendant and his representative, representative of the legal person in whose regard the proceedings are taken, person considered to be surrendered (extradited) to a foreign country, applicant, witness and his counsel, witness of an investigative action, bailor, translator, expert, specialist, secretary of court session, and bailiff.

*{Subparagraph 25 of the first paragraph of Article 3 as amended by Law No. 314 of 23.05.2013}*

26) Participants in court proceedings are the parties to criminal proceedings, victim, his representative and legal representative, civil plaintiff, his representative and legal representative, civil defendant and his representative, representative of the legal person in whose respect the proceedings are taken, as well as any other persons on whose request or complaint, where this Code so provides, court proceedings are held.

*{Subparagraph 26 of the first paragraph of Article 3 as amended by Law No. 314 of 23.05.2013}*

2. Other terms used in the present Code are defined by special norms in the present Code and other laws of Ukraine.

#### **Article 4. Operation of the Code in space**

1. Criminal proceedings in the territory of Ukraine shall be conducted based on grounds and in accordance with the procedure specified in the present Code whatever the place where a criminal offence has been committed.

2. Criminal procedure law of Ukraine shall be also applicable in the course of proceedings initiated in respect of any criminal offences committed in the territory of a diplomatic mission or consular post of Ukraine abroad, at an aircraft, sea or river ship which is outside the boundaries of Ukraine under the flag or distinguishing emblem of Ukraine if the home port of such aircraft or ship is located in Ukraine.

3. Whenever an international treaty to which the Verkhovna Rada of Ukraine consented to be bound extends Ukrainian jurisdiction to servicemen of the Military Forces of Ukraine who are deployed in the territory of another State, proceedings in respect of criminal offences committed in the territory of another State in respect of such serviceman shall be conducted as prescribed in the present Code.

4. In conducting in the territory of Ukraine of individual procedural actions at the request (commission) of competent organs of foreign states within the framework of international cooperation provisions of this Code shall apply. If requested by a competent body of a foreign state, in the course of such procedural actions the procedural law of this foreign state may apply where this is provided for by the international treaty and the consent for this treaty to be binding has been given by the Verkhovna Rada of Ukraine, and where such international treaty of Ukraine is non-existent, this request has to be consistent with the current Ukrainian legislation.

#### **Article 5. Operation of the Code in time**

1. Procedural action shall be conducted, and procedural decision shall be taken in accordance with the provisions of the present Code which are applicable at the time when such an action has begun or such decision has been taken.

2. Admissibility of evidence shall be determined in accordance with the provisions of the present Code which are applicable at the time when such information has been received.

#### **Article 6. Operation of the Code in respect of individuals**

1. Criminal proceedings in accordance with the rules of this Code shall be conducted in respect of any individual, except as otherwise provided under the second paragraph below.

A special procedure for criminal proceedings involving specially designated categories of persons shall be established by article 37 of this Code.

2. Criminal proceedings in respect of the individual who enjoys diplomatic immunity may be conducted in accordance with the present Code only upon consent of such individual or of the competent authority of the State (international organization) such individual represents, in accordance with the procedure established by Ukrainian law and international treaties of Ukraine.

### **Chapter 2. Principles of Criminal Proceedings**

#### **Article 7. General principles of criminal proceedings**

1. The matter and manner of criminal proceedings must conform to the general principles of criminal proceedings such as, but not limited to:

- 1) the rule of law;
  - 2) legitimacy;
  - 3) equality before law and court;
  - 4) respect for human dignity;
  - 5) ensuring the right to liberty and security of person;
  - 6) inviolability of home or any other possession of a person;
  - 7) confidentiality of communication;
  - 8) non-interference in private life;
  - 9) security of the ownership right;
  - 10) presumption of innocence and conclusive proof of guilt;
  - 11) freedom from self-incrimination and the right to not testify against one's close relatives and family members;
  - 12) prohibition of double jeopardy
  - 13) ensuring the right to defense;
  - 14) access to justice and the binding nature of court rulings;
  - 15) adversarial nature of parties, freedom to present their evidence to the court and prove the preponderance of this evidence before the court;
  - 16) directness of examination of testimonies, objects and documents;
  - 17) ensuring the right to challenge procedural decision, actions or inactivity;
  - 18) publicity of criminal proceedings;
  - 19) optionality of criminal proceedings
  - 20) publicity and openness of judicial proceedings and their full recording using technical means;
  - 21) reasonable time for criminal proceedings;
  - 22) language of the criminal proceedings.
2. The list of principles of criminal proceedings set forth in this Chapter is not exhaustive.

#### **Article 8. Rule of law**

1. Criminal proceedings shall be conducted in accordance with the principle of the rule of law, under which a human being, his rights and freedoms are the highest values which define content and areas of State activities.

2. The principle of the rule of law in criminal proceedings shall be applied with due consideration of the practices of the European Court of Human Rights.

#### **Article 9. Legality**

1. During criminal proceedings, a court, investigating judge, public prosecutor, chief of pre-trial investigation agency, investigator, other officials of state authorities shall be required to steadfastly comply with the requirements of the Constitution of Ukraine, this Code, and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, and requirements of other laws.

2. Prosecutor, chief of pre-trial investigation agency, investigator shall be required to examine comprehensively, fully and impartially the circumstances of criminal proceedings; find circumstances both of incriminating and exculpatory nature in respect of the suspect, the accused, as well as the circumstances mitigating and aggravating their punishment; make adequate legal evaluation thereof and ensure the adoption of lawful and impartial procedural decisions.

3. Laws and other legal regulatory acts of Ukraine, in so far as they relate to criminal proceedings, must be in line with this Code. No law contradicting this Code may be applied in the conduct of criminal proceedings.

4. Wherever provisions of this Code contradict an international treaty the Verkhovna Rada of Ukraine has given its consent to be bound by, provisions of the relevant international treaty of Ukraine shall apply.

5. The criminal procedural legislation of Ukraine shall be applied in the light of the case law of the European Court for Human Rights.

6. Whenever provisions of the present Code do not regulate the matters of criminal proceedings or regulate such vaguely, the general principles of criminal proceedings as specified in paragraph one of Article 7 of this Code shall apply.

#### **Article 10. Equality before the law and the court**

1. Nobody may be given privilege or restricted in procedural rights as set forth in the present Code on the grounds of race, skin color, political, religious, or any other beliefs, sex, ethnic or social origin, property status, place of residence, nationality, education, occupation, as well as linguistic or any other grounds whatsoever.

2. In the course of criminal proceedings, in cases and according to the procedure stipulated by the present Code, certain categories of individuals (underage individuals, foreigners, mentally and physically disabled people, etc) shall have additional rights and guarantees.

#### **Article 11. Respect for human dignity**

1. In the course of criminal proceedings, respect for human dignity, rights, and freedoms of every person must be ensured.

2. In the course of criminal proceedings, it shall be prohibited to subject an individual to torture or to inhuman or degrading treatment or punishment, or to threaten or use such treatment, or to keep an individual in humiliating conditions, or to force to actions which humiliate dignity.

3. Everyone shall have the right to protect, by all means which are not prohibited by law, their dignity, rights, freedoms, and interests, which have been violated in the course of criminal proceedings.

#### **Article 12. Right to liberty and personal inviolability**

1. In the course of criminal proceedings, no one shall be kept into custody, be detained or otherwise restrained in their right to freedom of movement upon criminal suspicion or charge other than on grounds and according to the procedure specified in this Code.

2. Everyone who has been taken into custody or apprehended upon suspicion or charge of having committed a criminal offence or otherwise deprived of liberty shall as soon as practicable be brought before an investigating judge to decide on the lawfulness and reasonableness of their detention, other deprivation of liberty and continued custody. The detained person shall be promptly released from custody if within 72 hours from the moment of his detention he is not served a reasoned court decision on keeping in custody.

3. A person's detention, taking into custody or other restraint in his right to freedom of movement, as well as his location, must be immediately brought to notice, as provided herein, of his close relatives, family members or other persons of such person's own choosing.

4. Anyone kept in custody or otherwise deprived of liberty in excess of the time prescribed by this Code must be promptly released.

5. Where performed without grounds or in contravention of the procedure set forth in this Code, a person's detention, taking into custody or other restraint of his right to freedom of movement during the criminal proceedings shall entail a liability as provided by law.

**Article 13. Inviolability of home or other possession of a person**

1. Entering a home or any other possession of an individual, conducting inspection or search therein shall not be allowed other than upon a reasoned court decision, except as otherwise provided in this Code.

**Article 14. Confidentiality of communication**

1. In the course of criminal proceedings, everyone shall be guaranteed confidentiality of correspondence, telephone conversations, cable, and other correspondence and other forms of communication.

2. Interference in the confidentiality of communication shall be possible only upon court's ruling in cases prescribed in the present Code, in view of preventing the commission of a crime of grave or especially grave severity, finding out its circumstances, and identifying the individual who committed the crime, if achieving this objective is impossible otherwise.

3. Information, which has been obtained as a result of interference in the confidentiality of communication, may not be used otherwise than for the purpose of criminal proceedings.

**Article 15. Non-interference in private life**

1. In the course of criminal proceedings, everyone shall be guaranteed non-interference in private (personal and family) life.

2. No one may collect, store, use and impart information on private life of an individual without their consent, except for cases prescribed in the present Code.

3. Information on private life of an individual obtained in accordance with the procedure established by the present Code may not be used otherwise than for the purpose of achieving the objectives of criminal proceedings.

4. Everyone who has been granted access to information on private life shall be required to prevent disclosure of such information.

**Article 16. Security of the ownership right**

1. In the course of criminal proceedings, deprivation or restriction of the right to ownership shall be made only upon a motivated court's decision adopted as prescribed in the present Code.

2. Temporary arrest of property without court decision shall be tolerated on grounds and according to<sup>9</sup> the procedure prescribed in the present Code.

**Article 17. Presumption of innocence and conclusive proof of guilt**

1. An individual shall be considered innocent of the commission of a criminal offence and may not be imposed a criminal penalty unless their guilt is proved in accordance with the procedure prescribed in the present Code and is established in the court judgment of conviction which has taken legal effect.

2. No one shall be required to prove their innocence of having committed a criminal offence and shall be acquitted unless the prosecution proves their guilt beyond any reasonable doubt.

3. Suspicion, charges may not be based on evidence obtained illegally.

4. Any doubt as to the proof of the guilt of an individual shall be interpreted in this person's favor.

5. A person whose criminal guilt has not been found in a valid judgement of conviction shall be treated as an innocent one.

**Article 18. Freedom from self-incrimination; Right to not testify against close relatives and family members**

1. No one shall be compelled to admit their guilt of a criminal offence or to give explanations, testimonies, which may serve a ground for suspecting them or charging with a commission of a criminal offence.

2. Everyone shall have the right to keep silence about suspicion, a charge against him or waive answering questions at any time, and, also, to be promptly informed of such right.

3. No person may be compelled to give any explanations or testimonies, which may serve a ground for suspecting his close relatives or family members of, or charging them with, commission of a criminal offence.

**Article 19. Prohibition of double jeopardy**

1. No one may be charged with, or punished twice for, a criminal offence, for which he was acquitted or convicted by a valid judgment.

2. Criminal proceedings shall be subject to immediate termination when it becomes known of a valid judgment delivered on the same charge.

**Article 20. Right to defense**

1. A suspect, an accused, acquitted or a convicted person shall have the right to defense consisting in the opportunity to give oral or written explanations in respect of the suspicion or accusation, collect and produce evidence, attend the criminal proceedings personally, as well as benefit from legal assistance of a defense counsel, as well as exercise other procedural rights as set forth in this Code.

2. Investigator, public prosecutor, investigating judge, and court shall be required to advise the suspect, the accused of their rights and ensure their right to a competent legal assistance by a defense counsel whom they select or appoint on their own.

3. Legal assistance to a suspect, an accused shall be provided at no cost at the expense of the state in cases specified by the present Code and/or the law, which regulates provision of legal assistance at no cost.

4. Participation of a defense counsel of the suspect, the accused in criminal proceedings shall not affect their procedural rights.

**Article 21. Access to justice and the binding nature of court rulings**

1. Everyone shall be guaranteed the right to a fair trial and resolution of the case within reasonable time limits by independent and impartial court established on the basis of law.

2. Court's judgment or ruling that took legal effect as prescribed by the present Code shall be binding and subject to unconditional execution in the entire territory of Ukraine.

3. Everyone has the right to participate in any judicial hearings of the matter related to their rights and duties in accordance with the procedure set forth in the present Code.

4. Unless otherwise prescribed by in the present Code, conducting criminal proceedings may not be an obstacle to a person's access to any other legal remedies to protect their rights in

case where in the course of the criminal proceedings their rights enshrined in the Constitution of Ukraine and international treaties of Ukraine are being infringed.

**Article 22. Adversariality of parties and their freedom to present their evidence to the court and to convincingly prove this evidence**

1. Criminal proceedings shall be conducted on the basis of adversarial approach envisaging independent assertion by the side of accusation and the side of legal protection of their legal positions, rights, freedoms and legitimate interests by means set forth the present Code.

2. Parties to criminal proceedings shall have equal rights with regard to collecting and producing items, documents, other evidence, motions, complaints, as well as to enjoy other procedural rights provided by the present Code.

3. In the course of criminal proceedings, functions of public prosecution, defense, and trial may not be imposed on the one and the same agency or official.

4. Public prosecutor shall notify an individual of a suspicion of his/ her having committed a criminal offence, shall submit an indictment, and prosecute on behalf of the state in court. In cases specified in the present Code, notification of an individual of a suspicion of his having committed a criminal offence may be made by an investigator upon the approval of the public prosecutor, and the accusation may be supported by the victim or by a representative acting on his behalf.

5. The suspect or defendant, their defense counsel or legal representative shall be in charge of defense.

6. The court while maintaining the objectivity and impartiality shall ensure the necessary conditions for the realization by the parties of their procedural rights and the performance of their procedural duties.

**Article 23. Direct examination of testimonies, objects and documents**

1. The court shall examine evidence directly. The court takes testimonies of the participants in criminal proceedings orally.

2. Except as otherwise provided in this Code, information contained in testimonies, objects and documents that have not been directly examined by court may not be admitted as evidence. The court may admit in evidence testimonies which are not given directly in court only where it is provided for by this Code.

3. The prosecution shall be required to ensure the presence of witnesses for the prosecution during trial so that the defense can enjoy their right to examine them before independent and impartial court.

**Article 24. Ensuring the right to challenge procedural decisions, actions, or omission**

1. Everyone shall be guaranteed the right to challenge decisions, actions, or omission of a court, investigator, and public prosecutor as prescribed in the present Code.

2. Everyone shall be guaranteed the right to have court's decision, which affects their rights, freedoms, or interests be reviewed by a higher court as prescribed in the present Code, irrespective of whether such individual did or did not take part in the court hearing.

**Article 25. Publicity**

1. Public prosecutor, investigator shall be required, within the scope of their respective competencies, to initiate pre-trial investigation in every instance when elements of a criminal

offence have been directly revealed (save for the cases where criminal proceedings may be instituted upon a victim's request) or based on the report (**information**) on a criminal offence and take all statutory measures to establish the occurrence of crime and perpetrator thereof.

#### **Article 26. Optionality**

1. Parties to criminal proceedings shall be free to use their rights within the limits and in the way specified by the present Code.

2. Refusal of public prosecutor from public prosecution shall be the ground for closing criminal proceedings except cases specified in the present Code.

3. In criminal proceedings, investigating judge, court shall address only those matters that the parties have submitted for their consideration and that fall within their competence under the present Code.

4. Criminal proceedings in the form of public-private prosecution shall be initiated only upon request of the individual concerned. Dropping charges by the victim, his representative in cases specified in the present Code is the unconditional ground for closing criminal proceedings.

#### **Article 27. Publicity and openness of court proceedings and complete recording using technical means**

1. Participants in criminal proceedings, as well as non-participants as to whom the court has decided on their rights, freedoms, interests, or duties, may not be restricted in the right to obtain both written and oral information in court with regard to the outcome of a trial, as well as in their right to familiarize themselves with procedural decisions and to obtain copies thereof. No one may be restricted in his right to obtain information in court on the date, time, and place of his trial and on the decisions taken therein, except as otherwise provided for by law.

2. In courts of all instances, criminal proceedings are conducted openly. Investigating judge, court may take a decision to conduct criminal proceedings in camera throughout the entire judicial proceedings or any part thereof in the following cases:

- 1) when an underage person is the defendant;
- 2) trial in respect of criminal offence against sexual freedom or security of person;
- 3) with a view to preventing disclosure of information on private and family life of an individual or circumstances which degrade human dignity;
- 4) when conducting proceedings in the open court session can lead to disclosure of a secret protected by law;

- 5) when conducting proceedings in the open court session can lead to disclosure of a secret protected by law.

3. Personal notes, letters, the content of personal telephone conversations, cable and other statements may be read in open court session unless investigating judge, court takes a decision to examine such in camera based on provisions of clause 3 in part two of this Article.

4. The court conducts criminal proceedings in camera with full respect of rules set forth in the present Code. Only parties and other participants to criminal proceedings can attend closed court sessions.

5. During trial, full recording of the court session with audio recording device is secured. Official recording of a court session is considered to be the only technical recording made by court as prescribed in the present Code.

6. Each individual present at court session may keep verbatim records, make written notes, and use portable audio recording devices. Photographing, filming, video recording in courtroom,

as well as radio and TV broadcasting of trial and audio recording with stationary equipment in the courtroom is allowed upon permission of the court and consent of participants to criminal proceedings the possibility of such action without prejudice to the court examination.

7. Court decision made in open court session is pronounced publicly. Whenever trial was conducted in camera, the court decision is pronounced publicly omitting the information which was examined in camera if it continues to be subject to protection from disclosure at the time of pronouncement.

### **Article 28. Reasonable time**

1. In the course of criminal proceedings, each procedural action or procedural decision must be performed or adopted within reasonable time. Considered reasonable shall be such time that is objectively necessary for the performance of procedural actions and the adoption of procedural decisions. Reasonable time may not exceed the times prescribed by the present Code for individual procedural actions or for adoption of individual procedural decisions.

2. Conducting pre-trial investigation within a reasonable time is ensured by public prosecutor and investigating judge (as regards the times for examining matters assigned to their competence), while trial within a reasonable time is ensured by court.

3. The following shall be the criteria for determining the reasonable time for criminal proceedings:

1) complicated nature of criminal proceedings, which is determined taking into account the number of suspects, accused and criminal offences subject to this proceeding, the scope and specifics of the procedural actions required for pre-trial investigation to be completed, etc.;

2) attitude of participants to criminal proceedings;

3) the way in which investigator, public prosecutor, and court exercise their powers.

4. Criminal proceedings in respect of the individual kept in custody as well as in respect of an underage shall be conducted without any delay and considered in court as a matter of priority.

5. Everyone shall have the right for a charge to be subject of a trial within the shortest possible time or criminal proceedings concerned closed.

6. The suspect, accused and victim shall have the right to address a motion to the public prosecutor, investigating judge or court setting forth circumstances calling for the necessity to conduct criminal proceedings (or individual procedural actions) in shorter time than specified by the present Code.

### **Article 29. Language of criminal proceedings**

1. Criminal proceedings shall be conducted in state language. Accusation, investigating judge and court draw up procedural documents in state language.

2. A person shall be notified of being suspected of having committed a criminal offence in state language or any other language he knows sufficiently to understand the substance of the suspicion of having committed a criminal offence.

3. Investigator, court, public prosecutor ensure participants to criminal proceedings, who do not know or do not know well enough the state language the right to provide explanations and testimony, lodge motions and file complaints, as well as to speak before court in their native language or any other language they have knowledge of and be assisted by an interpreter/translator if necessary as prescribed in the present Code.

4. Court decisions by which the court concludes a trial of a case on its merits are provided to the parties to criminal proceedings or the person in whose respect the issue of imposing compulsory educational or medical measures has been decided as well as the representative of the legal person in whose respect the proceedings are taken as translated into their native language or any other language of which they have command. Translation of any other procedural documents of criminal proceedings, copies of which are to be provided in accordance with this Code, is performed only on request of the said persons. Translation of court decisions and other procedural documents of court proceedings is certified by the signature of the translator.

### **Chapter 3. Court, Parties, and Other Participants in Criminal Proceedings**

#### **§ 1. Court and jurisdiction**

##### **Article 30. Administration of justice by court**

1. Only court shall administer justice in criminal proceedings in accordance with rules prescribed in the present Code.

2. Refusal to administer justice shall not be permitted.

##### **Article 31. Composition of court**

1. In the court of the first instance, criminal proceedings shall be conducted by a professional judge alone, with the exception of cases provided for in parts two, three and nine of this Article.

2. Criminal proceedings in a court of the first instance in respect of crimes for the commission of which punishment is envisaged of imprisonment for a term of over ten years shall be conducted by a panel of three professional judges.

3. Criminal proceedings in a court of the first instance in respect of crimes for the commission of which punishment is envisaged of life imprisonment shall be conducted by a panel of three professional judges, and upon the motion of the accused, by jury consisting of two professional judges and three jurors. Criminal proceedings in respect of several accused shall be conducted in respect of all accused if at least one of them requested such trial.

4. Criminal proceedings by way of appeal shall be conducted by a panel comprising three professional judges at least, apart from the cases specified in part nine of this article, and the number of judges must be odd.

5. Criminal proceedings by way of cassation shall be conducted by a panel comprising three professional judges at least, apart from the cases specified in part nine of this article and the number of judges must be odd.

6. Criminal proceedings in the Supreme Court of Ukraine shall be conducted by a panel composed as is provided under the first and second paragraphs of Article 453 hereof.

7. Review of court decisions upon newly discovered circumstances shall be conducted by the same numerical composition of the court which made such decisions (by a single judge or a panel).

8. The judge or the composition of the panel of judges to conduct specific criminal proceedings shall be determined in accordance with the procedure specified in part three of Article 35 of the present Code.

9. Criminal proceedings against the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, first deputies and deputies of ministers, National Deputies of Ukraine, Commissioner of the Verkhovna Rada of Ukraine for human rights, the Director of the National Anti-Corruption Bureau of Ukraine, the Prosecutor General of Ukraine, his first Deputy or Deputy, chairperson, deputy chairperson and judges of the Constitutional Court of Ukraine, chairperson, first deputy chairperson, deputy chairperson and judge of the Supreme Court of Ukraine, chairpersons, deputies chairperson and judges of the Higher Specialized Courts of Ukraine, Chairman of the National Bank of Ukraine, his first deputy or deputy, officials, who cover positions refer to category one of civil servants and also criminal proceedings in accusation of having committed a criminal offense under the competence of the National Anti-Corruption Bureau of Ukraine

, shall be held:

*{Subparagraph 1 of Paragraph 9 of Article 31 as amended by Law [№ 1698-VII of 14.10.2014](#)}*

1) by court of first instance: by a panel of three professional judges having a judicial background of at least five years, and where the offenses punishable by life imprisonment are prosecuted the accused may claim a jury trial consisting of two professional judges having a judicial background of at least five years and three jurors;

2) in appeals procedure: by a panel of five professional judges having a judicial background of at least seven years;

3) in cassation procedure: by a panel of seven professional judges having a judicial background of at least ten years.

Where the panel of judges as set forth in this paragraph to carry out the criminal proceedings according to the rules of jurisdiction cannot possibly be formed, the criminal proceeding shall be carried out by the court located in the nearest proximity where such composition of the court can possibly be formed.

10. Criminal procedure concerning the indictment of a juvenile, motions to drop criminal prosecution, compulsory medical or educational measures, their extension, adjustment or termination, and also appellate or cassation procedures to review prior decisions taken on the above mentioned issues shall be solely held by the judge authorized to hold criminal proceedings involving juveniles pursuant to the Law of Ukraine “On judiciary and the status of judges”.

Where such criminal proceeding is to be held by a panel of judges, only a judge authorized in accordance with the Law of Ukraine “On judiciary and the status of judges” may preside at the trial involving juveniles.

### **Article 32. Territorial jurisdiction**

1. Criminal proceedings shall be conducted by the court within whose territorial jurisdiction the criminal offense has been committed. Where several criminal offenses have been committed, criminal proceedings shall be conducted by the court within whose territorial jurisdiction the more grave offense has been committed, and where the offenses were of equal gravity, by the court within whose territorial jurisdiction the most recent criminal offense has been committed. Where the place of commission of a criminal offense is not possible to

establish, the criminal proceedings shall be conducted by the court within whose territorial jurisdiction pre-trial investigation has been completed.

2. Criminal proceedings on criminal charges against a judge may not be conducted by the court where the accused is holding or held the office of a judge. Where the rule of the first paragraph above required that criminal proceedings against a judge should be conducted by the court where the accused is holding or held the office of a judge, such criminal proceedings shall be conducted by the court of another political unit (Autonomous Republic of Crimea, oblast, the city of Kyiv or Sevastopol) which is territorially the closest to the court where the accused is holding or held the office of a judge.

3. If criminal offence, pre-trial investigation of which was conducted by the territorial branches of the National Anti-Corruption Bureau of Ukraine, has been committed within territorial jurisdiction of local court, where appropriate territorial branch of the National Anti-Corruption Bureau of Ukraine is located, then criminal proceedings shall be conducted by the court, that is territorially the closest to the court where appropriate territorial branch of the National Anti-Corruption Bureau of Ukraine is located, of another political unit (Autonomous Republic of Crimea, oblast, the city of Kyiv or Sevastopol).

*{Paragraph 3 is added to Article 32 by Law [№ 1698-VII of 14.10.2014](#)}*

### **Article 33. Instance jurisdiction**

1. Criminal proceedings in the first instance shall be conducted by local (rural district, city, urban district, and city-district courts.

2. Criminal proceedings in appeal instance are conducted by the Appeals Court of the Autonomous Republic of Crimea, appeals courts of oblasts, cities of Kyiv and Sevastopol.

3. Criminal proceedings in cassation instance are conducted by the Higher Specialized Court of Ukraine for examination of civil and criminal cases.

4. Court judgments are reviewed by the Supreme Court of Ukraine for the matters of different application by the cassation instance court of the same norms of criminal law in respect of similar socially dangerous actions entailing the adoption of judgments of different content and the establishment by an international court the jurisdiction of which is recognized by Ukraine, of a breach by Ukraine of its international obligations in the resolution of a case by court.

5. Criminal proceedings on newly found circumstances are conducted by the court which rendered the decision, which is being the subject of a review.

### **Article 34. Referral of criminal proceedings from one court to another**

1. Criminal proceedings are referred to another court if:

1) it was determined prior to the start of court trial that criminal proceedings were submitted to the court in violation of the rules on territorial jurisdiction;

2) after sustaining of motions of recusal (self-recusal) or in other cases, it is impossible to form a new composition of the court for trial;

3) the accused or the victim is employed or was employed in the court under whose jurisdiction the conduct of the criminal proceedings falls;

4) the court which conducted the trial has been liquidated.

As an exception, before the trial commences, criminal proceedings may be transferred for consideration to another court at the place of residence of the accused, majority of victims or witnesses with a view to ensuring prompt and effective proceedings as well as in case it is not

possible for the corresponding court to administer justice.(including man-made emergencies or natural disasters, epidemics, epizootics, regime of martial law, a state of emergency, the counterterrorist operation).

*{Subparagraph 6 of the first paragraph of Article 34 as amended by Law № 1689-VII of 07.10.2014}*

2. The issue of referral of criminal proceedings from one court to another within jurisdiction of one and the same court of appeals instance is considered by a motivated ruling of the panel of judges of that court of appeals instance upon the request of the local court or at the motion of the parties or the victim no later than five days after the submission of such request or motion.

3. The issue of referral of criminal proceedings from one court to another within jurisdictions of different appeals courts, as well as of referral of proceedings from one court of appeals instance to another is considered by a motivated ruling of the panel of judges of the Higher Specialized Court of Ukraine for consideration of civil and criminal cases upon the request of the court of appeals instance or at the motion of the parties or the victim no later than five days after the submission of such request or motion.

4. The participants in the court proceedings are notified of the time and place of consideration of such request (motion) for transfer of criminal proceedings from court to another, their failure to appear shall be without prejudice to consideration of the matter.

5. Disputes between courts with regard to jurisdiction matters are not permitted.

6. The court, which has taken charge of criminal proceedings from another court, shall start trial from the stage of private session whatever stage, at which another court faced circumstances referred to in paragraph 1 of the present Article.

### **Article 35. Court's Automated Workflow System**

1. An automated workflow system shall function in court to ensure:

1) unprejudiced and impartial distribution of the materials of criminal proceedings between judges while observing the sequence of work and number of proceedings for each judge;

2) selection of jurors for the trial from the persons entered in the array of jurors;

3) providing natural and legal persons with the information about the status of consideration of the criminal proceedings materials in accordance with the procedure stipulated in the present Code;

4) centralized storage of the texts of sentences/verdicts, rulings and other procedural documents;

5) preparation of statistical data;

6) registration of incoming and outgoing mail and the stages of its movement;

7) issuance of sentences, court rulings and court orders based on the data contained in the system;

8) transfer of materials to the electronic archive.

2. Materials of criminal proceedings, complaints, applications, motions and other procedural documents stipulated in the law, which are filed with the court and which may be subjects to judicial hearing shall be subject to compulsory registration, in the order of their submission, in the court's automated workflow system. Such materials shall be registered by the respective court personnel on the date of their receipt. The following information shall be entered into the court's automated workflow system: the date of receipt of materials, complaint, application or any other procedural document, the last name of the person indicated in the

submitted documents and their essence, the last name (name) of the person (body) who (which) lodged the documents, the last name of the court official who did the registration, the information about the movement of the court documents, the information on the judge who carried out the judicial proceedings, and other data envisaged by the Regulations of the Court's Automated Workflow System that are approved by the Judicial Council of Ukraine with the concurrence of the State Judicial Administration of Ukraine.

3. Appointment of a judge (reserve judge, investigating judge) or a panel of judges for a specific court hearing shall be supported by the court's automated workflow system in the course of registration of respective materials, complaint, motion, application or any other procedural document, based on the principles of credibility which take into account the number of proceedings administered by judges, prohibition to participate in verification of sentences and rulings for the judge who took part in delivering the sentence or ruling the question of verification of which is raised, judges being on vacations, on sick leave or away on assignment/mission trip, and expiration of their term of office. Upon assignment of a judge (reserve judge, investigating judge) for a specific court hearing, it is prohibited to introduce changes in the registration data regarding these proceedings, as well as to remove such data from the court's automated workflow system save for the cases stipulated by the law.

4. Access to the court's automated workflow system shall be given to the judges and personnel of the respective court in accordance with their functional duties.

5. Unauthorized interference in the operation of the court's automated workflow system shall entail liability stipulated by the law.

6. The procedure of functioning of the court's automated workflow system, including issuance of sentences, court rulings and court orders, transfer of files/records of the proceedings to the electronic archive, storage of the texts of sentences/verdicts, rulings and other procedural documents, providing natural and legal persons with the relevant information, and preparation of statistical data shall be specified by the Regulations of the Court's Automated Workflow System.

## **§ 2. Prosecution**

### **Article 36. Public prosecutor**

1. Public prosecutor in the course of performing his duties in compliance with the requirements of the present Code, is independent in his procedural activities, and any interference therein on the part of persons who have no legitimate authority, shall be forbidden. State authorities, local government authorities, enterprises, institutions and organizations, officials and other natural persons shall be required to execute legitimate demands and procedural decisions of a public prosecutor.

2. Public prosecutor, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to:

- 1) start pre-trial investigation if grounds specified in the present Code are present;
- 2) have full access to materials, documents, and other details related to pre-trial investigation;
- 3) assign pre-trial investigation agency to conduct pre-trial investigation;
- 4) assign investigator, pre-trial investigation agency to conduct within a time limit set by the public prosecutor, investigatory (detective) actions, covert investigatory (detective) actions or

other procedural actions, or give instructions in respect of conducting such actions, or participate in them, and where necessary, conduct investigatory (search) and procedural actions in accordance with the procedure set forth by this Code;

5) assign the conduct of investigatory (search) actions, covert investigatory (search) actions to the relevant operational units;

6) institute audits and examinations in accordance with the procedure established by law;

7) overturn illegitimate and ungrounded rulings of investigators;

8) initiate with the head of the pre-trial investigative agency the issue of suspending the investigator from pre-trial investigation and the appointment of another investigator if grounds specified in the present Code are present for his disqualification or in case of inefficient pre-trial investigation;

9) take procedural decisions in cases specified by the present Code, including with regard to termination of criminal proceedings and to extending the time limits for the pre-trial investigation if grounds as prescribed in the present Code are present;

10) support or refuse to support the motions of investigator addressed to investigating judge on the conduct of investigatory (search) actions, covert investigatory (search) actions, other procedural actions in cases specified by the present Code or individually submit such motions to the investigating judge;

11) notify the individual of suspicion;

12) enter civil action for the Government and those individuals who are unable to defend their rights pursuant to this Code and the law due to their physical or economic circumstances, being underage or elderly age, incompetence or limited legal capacity;

13) approve or refuse to approve the indictment, submissions on the application of measures of medical or educational nature, modify an indictment drawn up by the investigator or submission above, draw up himself indictments or motions concerned;

14) refer to court an indictment, request to enforce measures of medical nature, request to enforce compulsory medical or educational measures, or request to discharge an individual from criminal liability;

15) prosecute on behalf of the State in court, resign from supporting public prosecution, alter the accusation or lay additional accusation according to the procedure specified by the present Code;

16) coordinate requests for international legal assistance or referral of criminal proceedings made by pre-trial investigation authority, or independently file such motion in accordance with the procedure as set forth in this Code;

17) Commission a pre-trial investigation authority to respond to a request (commission) for international legal assistance or criminal referral made by a competent authority of a foreign state, verify the completeness or legitimacy of procedural actions and also the completeness, comprehensiveness and objectiveness of investigation under the referred criminal proceeding;

18) verify the documents concerning surrendering a person (extradition) provided by a pre-trial investigation authority prior to referring them to a higher level prosecutor, and return these documents to an appropriate authority with written comments, if these documents are unjustified or fail to meet the requirements of international treaties to which the Verkhovna Rada of Ukraine consented to be bound or laws of Ukraine;

19) Commission pre-trial investigation authorities with search and apprehension of those individuals who committed a criminal offense outside Ukraine, and carry out specific procedural

actions to surrender (extradite) a person at the request made by a competent authority of a foreign state;

20) appeal court decisions in a procedure established by the present Code;

21) exercise other powers envisaged in the present Code.

3. Participation of a public prosecutor in court shall be mandatory, except as provided otherwise by this Code.

4. The right to file an appellate or cassation complaint, a motion on review of a court decision by the Supreme Court of Ukraine or upon discovery of new circumstances, irrespective of their participation in trial, shall be also vested in officials of the higher level of public prosecution: the Prosecutor-General of Ukraine, public prosecutors of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, and public prosecutors given same status, their deputies.

Prosecutor-General of Ukraine, public prosecutors of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, and public prosecutors given same status, their deputies shall have the right to supplement, change or revoke an appellate or cassation complaint, or a motion on review of court decision upon discovery of new circumstances, filed by them or a subordinate public prosecutor.

Officials of higher prosecutor's offices may take part in court proceedings to review court judgments in accordance with the appellate or cassation procedure, in the Supreme Court of Ukraine or on newly found circumstances.

5. In case of ineffective pre-trial investigation, the Prosecutor-General of Ukraine, his deputies, public prosecutors of the Autonomous Republic of Crimea, oblasts, the cities of Kyiv and Sevastopol, and public prosecutors given the same status, shall have the right, by their own motivated rulings, to assign the conduct of pre-trial investigation of any criminal offense to another agency of pre-trial investigation including a higher-level investigation division within the same authority. It is forbidden to assign the conduct of pre-trial investigation of criminal offense referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine to another agency of pre-trial investigation

*{ Paragraph 5 of Article 36 as amended by Law [№ 1698-VII of 14.10.2014](#) }*

6. Prosecutor General of Ukraine, his First Deputy and deputies, the prosecutors of the Autonomous Republic of Crimea, oblasts, the cities of Kyiv and Sevastopol, city and district prosecutors, prosecutors in boroughs of towns, inter-district and specialized prosecutors, their first deputies and deputies, when supervising over observance of laws during the pre-trial investigation may revoke illegitimate and unjustified orders issued by investigation officers and subordinated prosecutors within the time limits of pre-trial investigation as specified in article 219 of this Code. The prosecutor supervising over observance of laws during the respective pre-trial investigation shall be notified of such revocation.

Only the Prosecutor General of Ukraine or a person that performs His/Her duties may revoke such orders issued by investigation officers and prosecutors of the National Anti-Corruption Bureau of Ukraine. *{ Paragraph 6 of Article 36 as amended by Law # 721-VII of 16.01.2014 , by Law # 767-VII of 23.02.2014 and by Law [№ 1698-VII of 14.10.2014](#) }*

### **Article 37. Appointment and replacement of prosecutor**

1. The prosecutor to perform the duties of prosecutor in a specific criminal proceeding shall be appointed by chief of an appropriate prosecutor authority upon the commencement of pre-trial investigation. If necessary, the chief of prosecutor authority may appoint a team of prosecutors to

perform the duties of prosecutors in a specific criminal proceeding and also, the team leader to govern other prosecutors.

2. The prosecutor will perform the duties of prosecutor in a specific criminal proceeding from its commencement to the very completion. Another prosecutor may perform the duties of prosecutor in this same criminal proceeding solely in the cases stipulated for in Parts Four and Five of Article 36, Part Three of Article 313, Part Two of Article 341 of this Code and Part Three of this Article.

3. If the prosecutor who performs duties of prosecutor in appropriate criminal proceedings is unable to perform due to a motion on his challenge, serious disease, dismissal from prosecutor office or another valid reason making his participation in the criminal proceedings impossible, the powers of prosecutor shall be vested in another prosecutor by the chief of an appropriate prosecutor authority. In exceptional cases the chief of an appropriate prosecutor authority may vest these powers in another prosecutor from this prosecutor authority due to ineffective supervision by this prosecutor over the compliance of pre-trial investigation.

### **Article 38. Pre-trial investigation agency**

1. Pre-trial investigation agencies (inquiry and pre-trial investigation agencies) shall be investigation units of–

- 1) the bodies of internal affairs;
- 2) the security agencies;
- 3) the agencies supervising compliance with the tax legislation;
- 4) the National Anti-Corruption Bureau of Ukraine .

*{Subparagraph 4 of Paragraph 1 of Article 38 as amended by Law [№ 1698-VII of 14.10.2014](#)}*

- 5) units of the State Bureau of Investigation

*{Subparagraph 5 of Paragraph 1 is added to Article 38 by Law [№ 1698-VII of 14.10.2014](#)}*

2. Pre-trial investigation shall be conducted by investigators of pre-trial investigation agency, individually or by investigation group.

3. In pre-trial investigation of criminal misdemeanors, in cases specified by law, powers of pre-trial investigation agency may be discharged by employees of other units of bodies of internal affairs, security agencies, and agencies supervising compliance with the tax legislation.

4. Pre-trial investigation agency shall be required to take all legal measures to ensure the effective pre-trial investigation.

### **Article 39. Head of the pre-trial investigation agency**

1. Head of the pre-trial investigation agency shall organize pre-trial investigation.

2. Head of the pre-trial investigation agency shall have the right to:

1) appoint investigator (investigators) to conduct pre-trial investigation, and where pre-trial investigation is conducted by an investigation group, to appoint the senior member of the investigation group who leads the actions of other investigators;

2) suspend an investigator from the conduct of pre-trial investigation by a substantiated resolution, on the initiative of a public prosecutor, or at his discretion followed by notification of a public prosecutor, and appoint another investigator where there are grounds specified by the present Code for challenging the investigator concerned or in the case of ineffective pre-trial investigation;

3) review records of pre-trial proceedings, instruct the investigator in written form without

prejudice to decisions and instructions by the public prosecutor;

4) take measures to eliminate violations of legislation requirements on the part of investigators;

5) to approve the conduct of investigative (search) actions and to extend the time limit for their conduct, in cases specified by the present Code;

6) conduct investigatory (search) actions exercising investigator's powers;

7) exercise other powers specified by the present Code.

3. Head of the pre-trial investigation agency is required to follow assignments and instructions of the public prosecutor given in written form. Non-fulfillment by Head of the pre-trial investigation agency of legitimate instructions and assignments of the public prosecutor given in accordance with the procedure specified by the present Code shall entail liability established by law.

#### **Article 40. Investigator of the pre-trial investigation agency**

1. Investigator is responsible for the legality and timeliness of the conduct of procedural actions.

2. Investigator shall have the right to:

1) initiate pre-trial investigation if grounds specified in the present Code are present;

2) conduct investigatory (search) actions and covert investigatory (search) actions specified in the present Code;

3) assign the conduct of investigatory (search) actions and covert investigatory (search) actions to the relevant operation units;

4) appoint audits and examinations in accordance with the procedure established by law;

5) submit upon the approval of public prosecutor, proposals to investigative judge in respect of application of measures to ensure conducting criminal proceedings, investigatory (search) actions and covert investigatory (search) actions;

6) notify a person of a suspicion under accord of the public prosecutor;

7) draw up indictment based on the results of investigation, proposals in respect of application of compulsory educational measures, or in respect of application of compulsory medical or educational measures, and submit them to public prosecutor for approval;

8) make procedural decisions in cases specified by the present Code including in respect of termination of criminal proceedings if grounds specified in Article 280 of the present Code are present;

9) exercise other powers specified by the present Code.

3. In cases of refusal of public prosecutor to approve investigator's motion filed with investigating judge on application of measures to secure criminal proceedings, on the conduct of investigative (search) actions or covert investigative (search) actions, investigator may address the head of the agency of pre-trial investigation who, upon examining the motion concerned, if necessary, shall initiate consideration of issues raised therein, by superior public prosecutor who shall within three days approve the motion or refuse to approve it.

4. Investigator shall be required to follow instructions and orders given by the public prosecutor provided in written form. Non-fulfillment by investigator of legitimate directions and assignments of public prosecutor given in accordance with the procedure laid down in the present Code shall entail liability specified by law.

5. Investigator in the course of performing his duties in compliance with the requirements of the present Code, is independent in his procedural activities, and any interference therein on

the part of persons who have no legitimate authority, shall be forbidden. State authorities, local government authorities, enterprises, institutions and organizations, officials and other natural persons shall be required to execute legitimate demands and procedural decisions of investigator.

#### **Article 41. Operational units**

1. Operational units of the bodies of internal affairs, security agencies, those of the National Anti-Corruption Bureau of Ukraine, a Ukrainian State Bureau of Investigations, agencies supervising compliance with the tax and customs legislation, and those of the State Penitentiary Service of Ukraine, State Border Guard Service of Ukraine shall conduct investigative (search) actions and covert investigative (search) actions in criminal proceedings upon written assignment of the investigator, public prosecutor.

*{ Paragraph 1 of Article 41 as amended by Law [№ 1698-VII of 14.10.2014](#)}*

2. In the course of executing assignments of an investigator or a public prosecutor, an officer of the operational unit shall exercise the investigator's powers. Officers of operational units shall not have the right to perform procedural action in criminal proceedings *proprio motu*, file motions to a investigating judge or a public prosecutor.

3. Assignments of investigator, public prosecutor in respect of conducting investigative (detective) actions and covert investigative (detective) actions shall be binding on operational unit.

### **§ 3. Defense**

#### **Article 42. Suspect, accused**

1. Suspect shall be the person who has been notified of suspicion as prescribed in Articles 276 to 279 of this Code, or the person who has been apprehended on suspicion of having committed a criminal offence or the person in whose regard a notice of suspicion has been compiled but it has not been delivered because of failure to establish the whereabouts of the person, provided all means have been used as specified by this Code to deliver a notice of suspicion.

*{The first paragraph of Article 42 as amended by Law [№ 1689-VII of 07.10.2014](#)}*

2. Accused (defendant) shall be the person an indictment in whose respect has been referred to court as prescribed in Article 291 of the present Code.

3. The suspect, accused shall have the right to:

1) know of which criminal offence he has been suspected, accused;

2) be informed, expressly and promptly, of his rights as laid down in this Code and, where need be, have such rights explained;

3) have, on his first demand, a counsel and consultation with him prior to the first and each subsequent interview under conditions ensuring confidentiality of communication, and also upon the first interview to have such consultations with no limits as to their number or duration; the right to the presence of defense counsel during interviews and other procedural actions, refuse from services of counsel at any time in the course of criminal proceedings; have services of a counsel provided at the cost of the state in the cases stipulated for in this Code and/or the law

regulating provision of legal aid at no cost, including when no resources are available to pay for such counsel;

4) keep silence about suspicion, a charge against him or waive answering questions at any time;

5) give explanations, testimony with regard to the suspicion, and a charge against him or waive giving explanations, testimony at any time;

6) demand that validity of the detention be verified;

7) when apprehended or when a preventive measure such as putting into custody has been applied, to have his family members, close relatives or other persons promptly notified of his apprehension and whereabouts, in accordance with provisions of Article 213 of this Code;

8) collect and produce evidence to investigator, public prosecutor, investigating judge;

9) participate in procedural actions;

10) in the course of procedural actions, ask questions, submit his comments and objections in respect of the manner in which procedural action is conducted, which should be put on the record;

11) in keeping with the requirements of the present Code use technical means in the course of procedural action he participates in. Investigator, public prosecutor, investigating judge, court may disallow using technical means in the course of a specific procedural action or at a specific stage of criminal proceedings in order to prevent disclosure of privileged information protected by law or related to the intimate life of the person concerned, and a reasoned decision (ruling) should be taken (adopted) thereon;

12) submit motions to conduct procedural actions, ensure protection for himself, family members, close relatives, property and house, etc;

13) propose disqualifications;

14) review records of pre-trial proceedings in accordance with the procedure specified in Article 221 of this Code and request disclosure of records under Article 290 hereof;

15) obtain copies of procedural documents and written notices;

16) challenge decisions, actions, and inactivity by investigator, public prosecutor, investigating judge in accordance with the procedure specified by the present Code;

17) demand that damage caused by illegal decisions, actions or inactivity of the agency conducting operative-investigative actions and pre-trial investigation, public prosecutor's office or court, be indemnified, in accordance with the procedure set forth in law, as well as have his reputation restored if the suspicion or accusations have not been confirmed;

18) use his native language, obtain copies of procedural documents in same language or any other language of which he has command and, where need be, benefit from translation services at the State expense;

4. The accused shall also have the right to:

1) participate, during trial, in the examination of witnesses for the prosecution or request that they should be examined, as well as request that witnesses for the defense be summoned and examined at the same conditions as witnesses for the prosecution;

2) collect and produce evidence to court;

3) express in court session his point of view with regard to motions of other participants to trial;

4) speak in pleadings;

5) review journal of the court session and technical recording of the process which must be made available to him by authorized court employees, and submit comments thereon;

6) challenge in accordance with the procedure laid down in the present Code, court's decisions and initiate review thereof, and be aware of appeal and cassation complaints lodged against court's decisions, submissions on review thereof, and submit objections thereto.

5. The suspect, accused shall also have other procedural rights specified by the present Code.

6. The suspect, accused who is a national of another State and is kept in custody, shall have the right to meet a representative of the diplomatic or consular mission of his State, and the administration of the detention facility shall be obliged to provide such opportunity.

7. The suspect, accused shall have the duty to:

1) appear before investigator, prosecutor, investigating judge and the court upon summons and, if it is impossible to appear upon summons at the time fixed, to inform the court thereon in advance;

2) perform duties imposed by the decision to take measures to make criminal proceedings possible;

3) obey to legal demands and orders of investigator, public prosecutor, investigating judge, and court.

8. The suspect, accused shall be issued a pamphlet listing his procedural rights and duties as the same as same are brought to his notice by the notifying officer.

#### **Article 43. Acquitted, convicted**

1. In criminal proceedings, an acquitted individual shall be the defendant in whose respect the judgment of acquittal has taken legal effect.

2. The acquitted, convicted shall enjoy the rights of an accused person as set forth in Article 42 of the present Code to the extent to which his defence at the appropriate stage of court proceedings may require.

#### **Article 44. Legal representative of the suspect, accused**

1. Where the suspect, accused is an underage individual or a person recognized in accordance with the procedure established by law, as legally incapable or partially legally capable, his legal representative shall be committed to participate in a procedural action together with the individual concerned.

2. Committed as legal representatives may be parents (adopters), and in their absence, custodians or caregivers of the individual, other adult close relatives or family members, as well as representatives of custody or trusteeship agencies, institutions and organizations under whose tutorship or custody the underage, legally incapable or partially legally capable individual is.

3. Public prosecutor shall issue a ruling, and investigating judge or court shall adopt a determination on committing a legal representative, the copy of which shall be handed to the legal representative.

4. Where actions or interests of legal representative contradict the interests of the represented individual, such legal representative by decision of investigator, public prosecutor, investigating judge, court shall be replaced with another one chosen from among persons specified in part two of this Article.

5. Legal representative shall enjoy procedural rights of the person he represents, with the exception of such procedural rights that are realized directly by the suspect, accused and cannot be assigned to a representative.

#### **Article 45. Defense counsel**

1. Defense counsel is a lawyer who provides defense of the suspect, accused, convicted or acquitted person as well as of the person who is going to be subjected to compulsory medical or educational measures or against whom the issue of applying such measures was considered, and also of the person considered to be surrendered (extradited) to a foreign state.

2. A lawyer, whose information is not available in the Integrated Register of lawyers of Ukraine, or the Integrated Register of lawyers of Ukraine contains information concerning the termination or suspension of the right of lawyer to practice, may not engage in defense counseling.

#### **Article 46. General rules for defense counsel's participation in criminal proceedings**

1. A defense counsel has no right to take over defense of another person or provide such person with legal aid if such this contradicts interests of the person he provides or provided before with legal aid.

2. Failure of the defense counsel to appear and take part in a procedural action, if defense counsel was informed in advance thereon, and the suspect, the accused does not challenge the conduct of the procedural action in the presence of the defense counsel, may not be a ground for finding such action illegal, unless defense counsel's participation is mandatory.

Where the suspect, the accused challenges the conduct of the procedural action in the presence of the defense counsel, the conduct of the procedural action shall be postponed, or the defense counsel shall be engaged in the conduct thereof in accordance with the procedure specified in Article 53 of this Code.

3. In a trial, there shall be not more than five defense counsels appearing for the same defendant.

4. A defence counsel shall have all procedural rights of the suspect, accused whom he defends, with the exception of such procedural rights that are realized directly by the suspect, accused and cannot be assigned to the defense counsel, from the moment of submitting the documents specified in Article 50 of the present Code to investigator, prosecutor, investigating judge, and court.

5. Defense counsel have a right to participate in interviews and other proceedings conducted with the participation of the suspect, accused person, to confidentially meet the suspect prior to the first interview, without authorization of the investigator, public prosecutor, court, and, after the first interview, to have such consultations without any limitation with regard to the number and length of consultations. Such consultation may take place under visual control of the competent official but in the environment, which precludes wiretapping or listening-in.

6. Documents related to the defense counsel's performing his duties may not be inspected, seized, or disclosed by the investigator, public prosecutor, investigating judge, court without defense counsel's consent.

7. State authorities and local self-government authorities and their officials must obey the legitimate demands of defense counsel.

#### **Article 47. Duties of the defense counsel**

1. Defense counsel is obliged to use legal remedies determined in the present Code and other laws of Ukraine, in order to ensure that the rights, freedoms and legitimate interests of the

suspect, defendant are respected, and establish circumstances that dispel the suspicion or charges, mitigate criminal punishment, or exclude criminal liability of the suspect, the accused.

2. Defense counsel is obliged to appear to participate in procedural actions conducted with the involvement of the suspect, accused. If defense counsel is unable to appear on time fixed, he is obliged to inform in advance the investigator, public prosecutor and the court of such non-appearance and the reasons, and when he is appointed by a body (institution) authorized to provide legal aid at no cost, he/she shall also notify this body (institution).

3. Without consent of the suspect, accused, the defense counsel may not disclose information of which he took knowledge in connection with participation in criminal proceedings and which constitutes privileged information or any other secret protected by law.

4. After having been admitted to the case, defense counsel may refuse performing his/ her duties only in the following cases:

1) if there are circumstances that, under the present Code, exclude his participation in the case;

2) disagreement with the suspect, the accused concerning the defense method he has chosen, except for cases when participation of the defense counsel is mandatory;

3) if the suspect, the accused intentionally fails to follow the agreement he concluded with the defense counsel, such failure consisting, in particular, in systematic disregard of lawful advices of the defense counsel, provisions of the present Code, etc;

4) where he justifies his refusal by the lack of appropriate skills in rendering legal aid in a specific proceeding, which is particularly complex.

#### **Article 48. Committing a defense counsel**

1. The suspect, accused, their legal representatives, as well as other persons upon request or consent of the suspect, accused may commit a defense counsel to participate in criminal proceedings at any time. Investigator, public prosecutor, court are required to provide the apprehended person or the person who is kept in custody assistance in establishing liaison with a defense counsel or with persons able to commit a defense counsel, and to make possible using communications means to commit a defense counsel. The investigator, prosecutor and the court shall be obliged to refrain from recommending any specific defence counsel for retaining.

2. Defense counsel is engaged by the investigator, prosecutor, investigating judge or court to carry out specific defense in the cases and in accordance with the procedure as prescribed in Articles 49 and 53 of the present Code.

#### **Article 49. Committing a defense counsel by investigator, public prosecutor, investigating judge or court for defense by appointment**

1. Investigator, public prosecutor, investigator judge or court shall be required to ensure participation of a defense counsel in criminal proceedings in the following cases:

1) when under Article 52 of the present Code the participation of a defense counsel is mandatory, and the suspect, accused has not committed a defense counsel;

2) when the suspect, accused filed a plea on committing a defense counsel but for reasons of lack of funds or for other objective reasons, is unable to commit one on his own;

3) when investigator, public prosecutor, investigating judge or court decide that circumstances of the criminal proceedings concerned require the participation of a defense counsel, and the suspect, accused has not committed one.

Defense counsel shall be engaged by investigator, prosecutor, investigating judge or court in other cases pursuant to the law regulating legal aid at no cost.

2. In cases specified in part one of this Article, investigator, public prosecutor issues a decision, and the investigating judge and the court adopt a ruling, assigning an appropriate body (institution) authorized by the law to provide legal aid at no cost to appoint a defense attorney to act as defense counsel by appointment, and to ensure his appearance at a time and place stated in the decision (ruling), for participation in criminal proceedings.

3. A decision (ruling) on assignment to appoint a defense attorney shall be immediately sent to a body (institution) authorized by the law to provide legal aid at no cost and shall be subject to immediate execution. Failure to comply, improper or delayed compliance with the decision (ruling) instructing to appoint a defence counsel shall entail a legal liability as established by law.

#### **Article 50. Confirmation of defense counsel's authority**

1. Defense counsel's authority to participate in criminal proceedings shall be confirmed by:

- 1) the certificate of the right to engage in legal practice in Ukraine;
- 2) an order, agreement with defense counsel or a power of attorney issued by a body (institution) authorized by the law to provide legal aid at no cost.

2. Any additional requirements except to the counsel to present his\her ID, or conditions for confirming a defence counsel's credentials or his commitment to participate in criminal proceedings shall not be allowed.

#### **Article 51. Agreement with defense counsel**

1. An agreement with the defense counsel may be concluded by the person stipulated for in Part One Article 45 of this Code, and also other persons acting in its interests, at his/her motion or subsequent consent.

#### **Article 52. Mandatory participation of a defense counsel**

1. Participation of a defense counsel shall be mandatory in criminal proceedings in respect of crimes of especially grave severity. In such cases, participation of a defense counsel is ensured from the time when a person achieves the status of a suspect.

2. In such cases, participation of a defense counsel is ensured:

1) in respect of a person who has not attained 18 years and who is suspected or charged of the commission of a criminal offence – upon establishing that the person concerned is an underage or when in any doubt as to his majority;

2) in respect of a person subject to compulsory educational measures - upon establishing that the person concerned is an underage or when in any doubt as to his majority;

3) in respect of persons who as a result of having mental or physical disabilities (dumbness, deafness, blindness, etc.) are unable to fully enjoy their rights – upon establishing the presence of such disabilities;

4) in respect of persons who have no knowledge of the language in which criminal proceedings are conducted – upon establishing this fact;

5) in respect of a person subject to compulsory medical measures or where application of such was considered, – upon establishing that the person concerned is insane or other information giving ground to doubts about the person's criminal capacity;

6) in connection with the discharge of a deceased person – when the right to the discharge of the deceased person has arisen.

8) in respect of persons who are under special pre-trial investigation or special judicial proceedings - from the moment of making the corresponding procedural decision.

{Subparagraph 8 of the second paragraph of Article 52 is added by Law № 1689-VII of 07.10.2014}

#### **Article 53. Engagement of defense counsel in a particular procedural action**

1. The investigator, public prosecutor, investigating judge or court shall engage a defense counsel in an individual procedural action in accordance with the procedure set forth in Article 49 hereof exceptionally in urgent cases, where the procedural action is required immediately, and the defense counsel who was informed in advance cannot appear to participate in such procedural action or send a replacement, or where the suspect or accused person is willing to have a defense counsel engaged, but either there was not enough time to engage defense counsel or the appearance of selected counsel chosen is not possible.

2. The suspect and accused shall also have the right to commit a defense counsel to participate in an individual procedural action. Where there is no need to conduct any urgent procedural actions with the participation of a defence counsel and when the arrival of the defence counsel chosen by the suspect or accused is not possible within twenty-four hours, the investigator, public prosecutor, investigating judge and court may request that such suspect or accused have another defence counsel committed.

3. During the conduct of a particular procedural action, defense counsel shall have the same rights and duties as the defense counsel who conducts the defense throughout criminal proceedings.

4. Both before a procedural action and thereafter, the defense counsel shall have the right to meet the suspect, accused in order to prepare for the conduct of the procedural action or to discuss its results.

5. Conducting the defense during a particular procedural action shall not impose on the defense counsel the obligation to continue the defense throughout the entire criminal proceedings or at any stage thereof.

#### **Article 54. Waiver or replacement of a defense counsel**

1. The suspect, the accused has the right to waive or replace the defense counsel.

2. Waiver or replacement of defense counsel shall take place solely in the presence of defense counsel after an opportunity for confidential communication has been given. Such waiver or replacement shall be reflected in the record of procedural action.

3. Waiver of defense counsel shall not accepted when participation of the defense counsel is mandatory. If the suspect or accused refuses to be represented by a specific defense counsel and does not employ any other counsel, a defense counsel shall be committed in accordance with the procedure set forth in Article 49 hereof for appointment of a defence counsel.

### **§ 4. Victim and his representative**

### **Article 55. Victim**

1. A victim in criminal proceedings may be a natural person, who has sustained moral, physical or material damage as a result of a criminal offence, as well as a legal person, that has sustained a material damage.

2. The rights and duties of a victim shall accrue at the time of filing an application that a criminal offence has been committed against him or an application for bring into proceedings as a victim.

A victim shall be delivered a leaflet advising on his procedural rights and duties by the person who accepted the application that a criminal offence has been committed.

3. A victim shall also be the person, who has not filed the application but who suffered damage as a result of criminal offence and who consequently, after criminal proceedings have been instituted, lodged the application for being involved in criminal proceedings as victim.

4. A person, who sustained moral damage as a representative of a legal entity or certain part of the society, may not be a victim.

5. Where there is an obvious and sufficient cause to believe that the application, information on a crime or an application for being involved in criminal proceedings as victim is lodged by a person who has not sustained the damage specified in part one of this Article, investigator or public prosecutor shall adopt a motivated ruling refusing to recognize the person to be a victim, which may be appealed to the investigating judge.

6. If a criminal offence caused death of a person, or if this person's condition prevents the person from filing an appropriate application, provisions of parts one to three of the present Article shall apply to close relatives or family members of such deceased person. One person from among close relatives or family members who has filed an application to be engaged in proceedings as a victim shall be recognized to be a victim, and upon a relevant application several persons may be recognized to be victims.

When the person, whose condition prevented him or her from filing an appropriate application, recovers to be able to exercise the procedural rights, he/she may file an application requesting to be engaged in the proceedings as a victim.

7. If a person did not file an application that a criminal offence has been committed against him or an application for bringing into proceedings as a victim, the investigator, public prosecutor and court may recognize such person a victim subject to his written consent. Absent such consent, a person may in case of need be brought into proceedings as a witness.

Provisions of this part shall not extend to proceedings that may be commenced only on grounds of a victim's application (criminal proceedings in the form of private accusation).

### **Article 56. Rights of the victim**

1. Throughout the entire criminal proceedings, a victim shall have the right to:

- 1) be advised in his rights and duties as set forth in the present Code;
- 2) know the substance of suspicion and charges, be informed on imposition, change or revocation of measures taken in respect of the suspect, accused to make criminal proceedings possible and pre-trial investigation terminated;
- 3) produce evidence to investigator, public prosecutor, investigating judge, court;
- 4) propose disqualifications and submissions;
- 5) in the presence of legitimate grounds, to ensuring of security in respect of himself/herself, his close relatives or family members, property and home;
- 6) give explanations, testimonies or refuse to do so;

7) challenge decisions, acts, and omission by the investigator, public prosecutor, investigating judge, court in accordance with the procedure laid down by the present Code;

8) have an authorized representative and at any time during criminal proceedings waive his services;

9) give explanations, testimonies in native language or any other language in which he is fluent, benefit from free translator's services at the State's expense if he has no knowledge of the State language or the language in which the criminal proceedings is conducted;

10) compensation of the damage caused by criminal offence, as prescribed by law;

11) examine parties' materials directly related to the criminal offence committed in their respect, according to the procedure established by this in Code, including their disclosure under Article 290 hereof, as well as examine the materials of criminal proceedings directly related to the criminal offence committed in their respect, in case the proceedings has been closed;

12) in compliance with the requirements of the present Code, use technical means during the conduct of procedural actions he takes part in. Investigator, public prosecutor, investigating judge, court may prohibit to victim the use of technical means during the conduct of a specific procedural action or at a certain stage of criminal proceedings, in order to prevent disclosure of data containing a secret protected by law or related to intimate sides of human life, as prescribed (ruled) by a motivated decision (ruling);

13) obtain copies of procedural documents and receive written notifications in cases specified by the present Code;

14) enjoy other rights provided for by this Code.

2. During pre-trial proceedings, the victim shall have the right to:

1) have his application that a criminal offence has been committed against him and to be recognized as victim accepted and registered promptly;

2) obtain from the competent body where he has lodged the application, a document confirming the filing and registering of the application;

3) produce evidence which support his application;

4) take part in investigatory (search) and other procedural actions in the course of which ask questions, submit his comments and objections with regard to the conduct of procedural action, such comments and objections being put on the record of the procedural action concerned, as well as review the records of the investigatory (search) and other procedural actions conducted with his participation;

5) after the completion of pre-trial investigation, obtain copies of materials which directly relate to criminal offence which has been committed against him.

3. During trial in any court instance, the victim shall have the right to:

1) be timely informed on the time and place of trial;

2) participate in trial conducted by court of any instance;

3) participate in direct examination of evidence;

4) prosecute in court if the public prosecutor waives prosecuting on behalf of the State;

5) express his opinion when the issue of imposing a punishment on the defendant as well as express his opinion when the issue of applying compulsory medical or educational measures, is being disposed;

6) review the decision made by the court, journal of court session and technical recording of criminal proceedings in court;

7) challenge court's decision as prescribed in the present Code.

4. At all stages of criminal proceedings, the victim shall have the right to reconcile with the suspect, accused and enter into a conciliation agreement. Conciliation constitutes the ground for closing criminal proceedings in cases specified in law of Ukraine on criminal responsibility and the present Code.

**Article 57. Victim's duties**

1. The victim shall be required to:

- 1) appear upon summons of investigator, public prosecutor, investigating judge, court and, if it proves to be impossible to appear in time, to inform thereon in advance, as well as on reasons for such impossibility;
- 2) not to obstruct establishing circumstances of the commission of criminal offence;
- 3) not to disclose information that came to his knowledge in connection with his participation in criminal proceedings and that constitutes privileged information, without authorization of the investigator, public prosecutor, court.

**Article 58. Authorised representative of victim**

1 The victim in criminal proceedings may be represented by an authorized representative: a person who has the right to be a defense counsel in criminal proceedings.

2. Legal person which is the victim may be represented by its head, other person authorized by law or founding documents, an employee of the legal person by proxy, as well as a person who has the right to be defense counsel in criminal proceedings.

3. Authority of the victim's representative to participate in criminal proceedings shall be certified:

- 1) by documents specified in Article 50 of the present Code, if the victim's representative is a person who has the right to act as defense counsel in criminal proceedings;
- 2) by a copy of the legal person's foundation documents, if the victim's representative is the head of the legal person or other person authorized by law or foundation documents;
- 3) by a power of attorney, if the victim's representative is an employee of the legal person which is the victim.

4. A representative shall enjoy procedural rights of the victim whose interests he represents, except for such a procedural right the realization of which is performed by victim in the person and may not be assigned to a representative.

**Article 59. Victim's legal representative**

1. If the victim is a natural person who has not attained the full age or who according to the law lacking legal capacity participates in a procedural action, his legal representative shall be involved in such procedural action.

2. Matters of participation of victim's legal representative in criminal proceedings shall be regulated by provisions of Article 44 of the present Code.

**§ 5. Other participants in criminal proceedings**

**Article 60. Applicant**

1. Applicant shall be a natural or legal person that filed an application or report on criminal offence with a state agency authorized to commence pre-trial investigation, and is not the victim.

2. Applicant shall have the right to:
  - 1) obtain, from the agency with which he has filed the application on criminal offence, a document confirming the filing and registering of the application;
  - 2) produce objects and documents which support his application;
  - 3) obtain information on completion of pre-trial investigation.

#### **Article 61. Civil plaintiff**

1. A civil plaintiff shall be a natural person to whom a criminal offence or any other socially dangerous act has caused property and/or moral damage, and, also, a legal person to whom a criminal offence or any other socially dangerous act has caused property damage and who enters a civil lawsuit in accordance with the rules of this Code.

2. The rights and duties of a civil plaintiff shall accrue at the time when a statement of claim is filed at the pre-trial investigation body or court.

3. A civil plaintiff shall have the rights and duties of a victim, as provided for by this Code, to the extent that they relate to a civil action, as well as the right to sustain or abandon the civil action before the court retires to consider the judgement. The civil plaintiff shall be served notice of the rulings issued in the criminal proceedings in relation to the civil action and receive copies thereof, where and as provided in this Code, with a view to informing the victim and forwarding him the copies of such rulings.

#### **Article 62. Civil defendant**

1. Civil defendant in criminal proceedings shall be a natural or legal person civilly liable *ex lege* for the harm caused through the criminal acts (omission) committed by the suspect or the accused or through a socially dangerous act committed by a mentally incompetent person against whom a claim is made in accordance with the procedure established by this Code.

2. The rights and duties of a civil defendant shall accrue at the time when a statement of claim is filed at the pre-trial investigation body or court.

3. A civil defendant shall have the rights and duties of a suspect or accused person, as provided for by this Code, to the extent that they relate to a civil action, as well as the right to admit the claim in part or in full or resist it. The civil defendant shall be served notice of the rulings issued in the criminal proceedings in relation to the civil action and receive copies thereof, where and as provided herein, with a view to informing the suspect or accused person and forwarding him the copies of such rulings.

#### **Article 63. Representative of civil plaintiff and of civil defendant**

1. A representative of a civil plaintiff or civil defendant in criminal proceedings may be—  
- a person who is entitled to be a defence counsel in criminal proceedings;  
- where the civil plaintiff or civil defendant is a legal person, the head or another person authorised by law or the constituent documents or an employee of the legal person acting by proxy.

The authority of a civil plaintiff's or civil defendant's representative to participate in the criminal proceedings shall be certified by—

1) the documents provided under Article 50 of this Code, where the representative of a civil plaintiff or a civil defendant is a person competent to act as a defence counsel in criminal proceedings;

2) a copy of the constituent documents of the legal person, where the representative of a civil plaintiff or a civil defendant is head or another person authorised by law or the constituent documents;

3) a letter of proxy, where the representative of a civil plaintiff or a civil defendant is an employee of the legal person who acts as the civil plaintiff or civil defendant.

3. A representative shall enjoy the procedural rights of a civil plaintiff and civil defendant whose interests he represents.

#### **Article 64. Legal representative of a civil plaintiff**

1. Where the civil plaintiff is an underage person or a person legally declared incompetent or of diminished capacity, his procedural rights shall be enjoyed by his legal representative.

2. Participation of a civil plaintiff's legal representative in criminal proceedings shall be governed by Article 44 of this Code.

Article 641. Representative of a legal person in whose respect proceedings are taken

1. a legal person in whose respect proceedings are taken may be represented by—  
a person entitled to act as defense counsel in criminal proceedings;

its chief executive or another person authorized by law or the constituent documents;

an employee of the legal person.

2. Authority of the representative of a legal person in whose respect proceedings are taken to participate in the proceedings is proven by—

1) documents provided for by Article 50 of this Code where the representative is a person entitled to act as defense counsel in criminal proceedings;

2) a copy of the constituent documents of the legal person where the representative is its chief executive or another person authorized by law or the constituent documents;

3) a power of attorney where the representative is an employee of the legal person.

3. During criminal proceedings a representative of the legal person has the right—

1) to know in relation to which criminal violation proceedings are carried out against the legal person and to make statements in that regard;

2) to have the benefit of legal assistance;

3) to gather and produce evidence to the investigating officer, prosecutor, investigating judge and court;

4) to be engaged in procedural actions;

5) at the time of procedural actions to ask questions, make comments and objections as to the order of conduct of the recorded actions and also to peruse the reports of the investigative (search) and other procedural actions performed with his engagement;

6) to use, subject to requirements of this Code, technical means in the course of procedural actions in which he is engaged. The investigating officer, prosecutor, investigating judge or court may by a reasoned ruling (resolution) prohibit the use of technical means at the time of a specific procedural action or stage of proceedings for the purpose of non-disclosure of any information containing a legally protected secret or relating to a person's intimacies;

7) to make petitions for procedural actions or application of security measures in respect of his person, family or relatives, property, home etc.;

8) to challenge;

9) to obtain copies of service documents and written notices;

- 10) to appeal decisions, acts or omission of the investigating officer, prosecutor, investigating judge and court as provided for by this Code;
  - 11) to use his native language, obtain copies of service documents in his native language or a language of which he has command and, where necessary, enjoy assistance of an interpreter.
4. During pre-trial investigation, a representative of the legal person has the right to—
    - 1) take part in investigatory (search) and other procedural actions in the course of which ask questions, submit his comments and objections with regard to the conduct of procedural action, such comments and objections being put on the record of the procedural action concerned, as well as review the records of the investigatory (search) and other procedural actions conducted with his participation;
    - 2) review records of pre-trial proceedings in accordance with the procedure specified in Article 221 of this Code and request disclosure of records under Article 290 hereof;
  5. During court proceedings, a representative of a legal person has the right to—
    - 1) be timely informed on the time and place of trial;
    - 2) participate in trial;
    - 3) speak in pleadings;
    - 4) review journal of the court session and technical recording of the process which must be made available to him by authorized court employees, and submit comments thereon;
    - 5) challenge in accordance with the procedure laid down in the present Code, court's decisions and initiate review thereof, and be aware of appeal and cassation complaints lodged against court's decisions, submissions on review thereof, and submit objections thereto;
  6. A representative of a legal person shall be under the obligation to—
    - 1) appear upon summons of investigator, public prosecutor, investigating judge, court and, if it proves to be impossible to appear in time, to inform thereon in advance, as well as on reasons for such impossibility;
    - 2) not to obstruct establishing circumstances of the commission of criminal offence;
    - 3) not to disclose information that came to his knowledge in connection with his participation in criminal proceedings and that constitutes privileged information, without authorization of the investigator, public prosecutor, court.

*{Article 64<sup>1</sup> inserted in the Code by Law 314-VII of 23.05.2013}*

#### **Article 65. Witness**

1. Witness shall be a natural person who knows or may know circumstances to be proved in the course of criminal proceedings and is summoned to give evidence.

2. The following persons may not be interrogated as witnesses:

- 1) a defense counsel, a representative of a victim, civil plaintiff, civil defendant and legal person in whose respect proceedings are taken, a legal representative of a victim, civil plaintiff in criminal proceedings – in regard of circumstances which they became aware of as a result of their fulfilling functions of representative or defense counsel;
- 2) defense attorneys, about information which constitutes counsel's secret;
- 3) notaries, about information which constitutes notarial secret;
- 4) medical practitioners other persons who in connection with the performance of professional or official duties, became aware of disease, medical checkup, examination and results thereof, intimate and family sides of a person's life – about information which constitutes doctor's secret;
- 5) clergymen, about what a believer confessed to them;

6) journalists, about confidential information of professional nature provided on condition of non-disclosure of its author or source;

7) professional judges, people's assessors, and jurors – about discussion in the deliberation room of issues which arose during adoption of court decision, except proceedings in the case related to the adoption by a judge (judges) of a knowingly wrongful judgment, ruling;

8) individuals who participated in concluding and fulfilling a conciliation agreement in criminal proceedings, about circumstances which they became aware of as a result of participation in concluding and fulfilling a conciliation agreement.

9) persons to whom security measures have been applied, about their *bona fide* personal data;

10) persons who are aware of *bona fide* information about individuals in respect of whom security measures have been applied, about such information.

3. In respect of privileged information, persons referred to in paragraphs 1 to 5 of part two of this Article, may be released from the duty to keep professional secrets by the person who entrusted them such information and within the scope defined by such person. Such release shall be done in written form and signed by the person who entrusted such information.

4. Persons who enjoy diplomatic immunity, may not be interrogated as witnesses, – without their own consent, as well as members of diplomatic missions – without consent of the diplomatic representative.

Investigator, public prosecutor, Investigating judge, court, prior to interview persons referred to in this part, shall be required to advise them of the right to waive testifying.

#### **Article 66. Rights and duties of a witness**

1. A witness shall have the right to:

1) know why and in which criminal proceedings he is interrogated;

2) benefit from legal assistance to be provided by the lawyer, whose powers are supported by provisions of Article 50 of this Code, when giving evidence;

3) waive giving testimonies in respect of himself, his close relatives and family members, which may serve a ground for suspecting his close relatives or family members of, or charging them with, commission of a criminal offence, as well as any testimonies relating to information which is not subject to disclosure under provisions of Article 65 of this Code;

4) testify in his native language or any other language in which he is fluent and to benefit from assistance of a translator;

5) use notes and documents when giving evidence in cases where evidence relates to any calculations and other details, which are difficult to keep in memory;

6) get recovery of expenses in relation to his being summoned to give evidence;

7) familiarize himself/herself with the records of interrogation and file a request that it is adjusted, amended and comments are incorporated, as well as make such amendments and incorporate comments with his/her own hand;

8) request that protection be ensured as prescribed by law;

9) challenge the translator.

2. A witness shall be required to:

1) appear upon summons before investigator, public prosecutor, investigating judge or court;

2) give truthful testimonies during pre-trial investigation and court trial;

3) not to disclose any details directly related to the substance of criminal proceedings and procedural actions that are or were conducted during such proceedings which came to his knowledge in connection with his fulfilling his duties, without authorization of the investigator, public prosecutor, court.

3. A person who is involved in the conduct of procedural actions during pre-trial investigation as identifying witness or who became eyewitness of such actions shall be required, at the request of the investigator, public prosecutor, not to disclose information related to the procedural action conducted.

#### **Article 67. Liability of witness**

1. A witness shall be held liable to criminal proceedings for knowingly misleading testimony provided to investigator, public prosecutor, investigating judge or court and for refusing to testify before investigator, public prosecutor, investigating judge or court, except cases specified in the present Code.

2. In case of willful non-appearance before investigator, public prosecutor, investigating judge or court, the witness shall be held liable as prescribed by law.

#### **Article 68. Translator**

1. In case when it is necessary to translate explanations, testimonies or documents in the course of criminal proceedings, parties to criminal proceedings or investigating judge or court commit appropriate translator (translator into sign language).

2. A translator shall have the right to:

1) ask questions with a view to provide an accurate translation;

2) review records of procedural actions in which he participated and submit comments thereto;

3) review records of procedural actions in which he participated and submit comments thereto;

4) request that his protection be ensured as prescribed by law.

3. Translator shall be required to:

1) appear when summoned before the investigator, prosecutor, investigating judge or court;

2) recuse himself/herself if circumstances provided for in the present Code are present;

3) provide full and accurate translation and attest the accuracy of the translation with his signature;

4) not disclose without authorization of the investigator, public prosecutor, court, any information directly relating to the substance of criminal proceedings and procedural actions that are or were conducted during such proceedings which came to his knowledge in connection with his fulfilling his duties.

4. Before conducting procedural action, the party, which committed the translator, or investigating judge or court shall verify the ID and competence of the translator, find out about his relations with the suspect, accused, victim, witness and advise of his rights and duties.

5. For knowingly incorrect translation or for refusing to perform his duties without valid reasons, the translator shall be liable under law.

#### **Article 69. Expert**

1. An expert in criminal proceedings shall be an individual who has scientific, technical or any other special expertise, has the right under the Law of Ukraine "On Forensic Examination",

to conduct expert examination and who is assigned to examine objects, events and processes that contain information on circumstances under which a criminal offence was committed, and to provide an opinion on issues arising in the course of criminal proceedings and relating to the sphere of his knowledge.

2. Persons who are dependant, officially or otherwise, on parties in criminal proceedings, on the victim, may not be experts.

3. An expert shall have the right to:

1) review records of criminal proceedings, which relate to the subject of expert examination;

2) request the provision of additional materials and samples and the conduct of other actions which relate to the conduct of expert examination;

3) be present during the conduct of procedural actions related to the objects of examination;

4) include in the expert report information, which was revealed in the course of expert examination and which are important to criminal proceedings and in respect of which questions were not put to him;

5) put questions to persons who participate in criminal proceedings, which relate to the objects of examination;

6) receive remuneration for the job done and be compensated expenses incurred in connection with expert examination and summons to give explanations and testimonies, where the conduct of the expert examination is not the official duty of the person committed as an expert;

7) request that protection be ensured as prescribed by law;

8) take advantage of other rights laid down in the Law of Ukraine "On Forensic Examination".

4. An expert may not, on his own initiative, collect materials, which are necessary for expert examination. The expert may waive providing an opinion, whenever materials submitted to him are insufficient to fulfill his duties. Waiver should be reasoned.

5. An expert shall be required to:

1) conduct full examination in person and prepare well-grounded and objective written opinion in respect of questions that were put before him and, if necessary, provide explanations thereon;

2) appear before the investigator, prosecutor or court and answer questions during examination;

3) ensure preservation of the object subject to expert examination. Whenever expert examination requires full or partial destruction of the object of expert examination or any change of its properties, the expert shall obtain an appropriate authorization of the person who committed the expert;

4) not to disclose, without authorization of the party which employed him or the court, information which came to his knowledge in connection with his fulfilling his duties, or communicate the course and results of expert examination to anybody except the person who committed him or the court;

5) recuse himself if circumstances provided for in the present Code are present.

5. Expert should immediately inform the person that committed him, or the court that commissioned his opinion, on impossibility to conduct expert examination because of the lack of required knowledge or without involvement of other experts.

6. If there is a doubt about the content and scope of the assignment, the expert shall immediately request that the person who commissioned an examination or the court that commissioned its performance should clarify these or shall inform on the impossibility to conduct expert examination based on questions put to him or without involvement of other experts.

#### **Article 70. Liability of expert**

1. For knowingly misleading opinion, for waiver to perform his duties in court without legitimate reasons, and for failure to perform other duties, the expert shall be liable under law.

#### **Article 71. Specialist**

1. Specialist in criminal proceedings shall be a person who has special knowledge and skills necessary to use technical or other devices and who is able to consult during pre-trial investigation and trial on issues which require special knowledge and skills.

2. Specialist may be committed - by parties during pre-trial investigation and by court during trial - to directly provide technical assistance (photographing, drawing schemes, plans, drawings, taking samples for expert examination, etc.).

3. Parties to criminal proceedings may apply during trial for committing a specialist or for using his explanations and assistance.

4. The specialist shall have the right to:

1) upon permission of the party to criminal proceedings that committed him or court, put questions to participants to an investigating action;

2) use technical means, devices, and special equipment;

3) draw attention of the party to criminal proceedings that committed him or court to particular circumstances or properties of objects and documents;

4) review records of the investigation actions he participated in, and submit comments thereon;

5) receive remuneration for the job done and compensation for expenses incurred in connection with participation in criminal proceedings;

6) request that protective measures be taken as prescribed by law.

5. The specialist shall be required to:

1) appear when summoned by the investigator, prosecutor or court and have with him technical equipment, devices, and appliances;

2) follow instructions of the party to criminal proceedings that committed him or court, and give explanations on the questions asked;

3) not to disclose, without authorization of the party which employed him or the court, information which came to his knowledge in connection with his fulfilling his duties;

2) recuse himself if grounds specified in the present Code are present.

#### **Article 72. Liability of specialist**

1. If a specialist does not appear before court without valid reasons or fails to notify the reasons for his non-appearance, all costs related to the adjournment of court session shall be imposed by court on the specialist concerned.

#### **Article 73. Secretary of court session**

1. Secretary of court session:

- 1) carries out judicial summons and notifications;
- 2) checks the presence of, and finds out reasons for non-appearance, of individuals who were summoned and reports thereon to presiding judge;
- 3) ensures control of the full fixation of court session with technical means;
- 4) maintains journal of court session;
- 5) draws up materials of criminal proceedings in court;
- 6) executes other assignments of the presiding judge.

#### **Article 74. Bailiff**

1. Presiding judge may involve bailiff to participate in criminal proceedings.
2. Bailiff:
  - 1) ensures appropriate conditions in courtroom and invites participants to criminal proceedings therein;
  - 2) announces entrance of the court in the courtroom and exit of the court from it;
  - 3) controls that those present in courtroom maintain order;
  - 4) takes from participants to criminal proceedings and transmits documents and materials to court during trial;
  - 5) executes instructions of the presiding judge in respect to administering oaths to a witness or expert;
  - 6) executes other instructions of the presiding judge related to ensuring conditions necessary for the conduct of criminal proceedings.
3. Demands of the bailiff related to his duties under the present Article are binding on all persons present in the courtroom.
4. If bailiff is absent in court session, the secretary of court session carries out his functions.

### **§ 6. Recusals**

#### **Article 75. Grounds precluding participation of the investigating judge, judge or juror in criminal proceedings**

1. An investigating judge, judge or juror may not participate in criminal proceedings:
  - 1) if he is an applicant, victim, civil plaintiff, civil defendant, close relative or family member of investigator, prosecutor, suspect, accused, victim, civil plaintiff or civil defendant;
  - 2) if he participated in these proceedings as witness, expert, specialist, translator, investigator, public prosecutor, defense counsel or representative, investigating judge;
  - 3) if he personally, his close relatives or family members are interested in results of the proceedings;
  - 4) upon the presence of other circumstances which cast doubt on judge's objectivity;
  - 5) where the procedure for the designation of the investigating judge or judge for hearing the case as established by part three of Article 35 of the present Code has been infringed.
2. Court's composition which conducts trial shall not include individuals who are related to each other.

#### **Article 76. Inadmissibility for a judge to re-participate in criminal proceedings**

1. Judge who participated in criminal proceedings during pre-trial investigation may not participate in these proceedings in the court of the first instance, appellate and cassation courts, in review of judgments by the Supreme Court of Ukraine or newly discovered circumstances.

2. Judge who participated in criminal proceedings in the court of the first instance may not participate in these proceedings in appellate and cassation courts, review of judgments of the Supreme Court of Ukraine, as well as in new proceedings after the sentence or ruling of the court of the first instance has been quashed.

3. Judge who participated in criminal proceedings in the court of appeals may not participate in these proceedings in the court of the first instance and cassation court, in review of judgments by the Supreme Court of Ukraine or newly discovered circumstances, as well as in new proceedings after the sentence or ruling of the court of appeals has been quashed.

4. Judge who participated in criminal proceedings in the court of cassation may not participate in these proceedings in the court of the first instance and appellate court, in review of judgments by the Supreme Court of Ukraine or newly discovered circumstances, as well as in new proceedings after the sentence or ruling of the court of cassation has been quashed.

5. Judge who participated in criminal proceedings in review of judgments by the Supreme Court of Ukraine or newly discovered circumstances may not participate in these proceedings in the court of the first instance appellate and cassation courts and review of judgments on newly discovered circumstances.

#### **Article 77. Grounds for challenging public prosecutor, investigator**

1. Public prosecutor, investigator may not participate in criminal proceedings:

1) if he is an applicant, victim, civil plaintiff, civil defendant, close relative or family member of a party, applicant, suspect, civil plaintiff or civil defendant;

2) if he participated in these proceedings as investigating judge, judge, defense counsel or representative, witness, expert, specialist, and translator;

3) if he in person, his close relatives or family members are interested in the results of the criminal proceedings, or if there exist other circumstances giving grounds for doubts about his impartiality.

2. Previous participation of the public prosecutor in the same proceedings in the court of the first instance, appellate and cassation courts, in proceedings to review judgments of the Supreme Court of Ukraine, as public prosecutor shall not constitute grounds for challenging him.

#### **Article 78. Grounds for challenging a defense counsel, representative**

1. A person who participated in the same proceedings as investigating judge, judge, juror, public prosecutor, investigator, victim, civil plaintiff, civil defendant, expert, specialist, and translator may not be a defense counsel, representative.

2. A person may not participate in the same proceedings as a **representative** or defense counsel also in the following cases:

1) if he/she, in the same proceedings or earlier, provided legal assistance to the individual whose interests are contrary to the interests of the individual who requested legal assistance;

2) termination or suspension of the right of lawyer to practice (termination or revocation of the certificate to practice the law) as prescribed by the law;

3) if he is a close relative or a family member of an investigator, prosecutor, or anyone in court composition.

**Article 79. Grounds for challenging a specialist, translator, expert, secretary of court session**

1 A specialist, translator, expert, secretary of court session may not participate in criminal proceedings and shall be challenged upon grounds specified in part one of Article 77 of the present Code, with the reservation that their previous participation in the same criminal proceedings as specialist, translator, expert and secretary of court session may not be grounds for challenging.

2. A specialist, expert, in addition, may not participate in criminal proceedings if he inspected, checked, etc. materials used in these proceedings.

**Article 80. Proposal for challenge**

1. If grounds specified in Articles 75 to 79 of the present Code are present, investigating judge, judge, juror, public prosecutor, investigator, defense counsel, representative, expert, specialist, translator, court session secretary shall be required to recuse themselves.

2. Upon the same grounds, they may be challenged by individuals who participate in criminal proceedings.

3. Proposals for challenge may be made both during pre-trial investigation and trial.

4. Proposals for challenge during pre-trial investigation are submitted as soon as a cause for such challenge are found. Proposals for challenge during judicial proceedings are submitted before the beginning of trial. Proposals for challenge are allowed after the beginning of trial only if the grounds for challenge became known after the beginning of trial.

5. A challenge shall be reasoned.

**Article 81. Procedure for deciding on a challenge**

1. Where an investigating judge or sole judge conducting court proceedings is challenged, the motion shall be considered by another judge of the court who is assigned under the rules of the third paragraph of Article 35 hereof. Where one or more or all judges of a panel conducting court proceedings are challenged, the motion shall be considered by the same composition of the court.

2. All other challenges filed during pre-trial investigation shall be considered by the investigating judge or, if filed during court proceedings, the court proceeding in the case.

3. While considering a challenge, the court shall hear the individual who has been challenged if the latter wishes to provide explanations, as well as opinion of individuals who participate in criminal proceedings.

The matter of challenging shall be decided by reasoned ruling of the investigating judge, judge or court in the retiring room. A challenge considered by a panel of judges jointly shall be decided by simple majority.

4. Where a repeat challenge has any signs of abuse of the right to challenge in view of delaying criminal proceedings, the court which considers the case may take no action on such challenge.

### **Article 82. Implications of challenging an investigating judge, judge**

1. Where a motion for challenge (self-disqualification) of an investigating judge is granted the criminal proceedings shall be transferred to another investigating judge

2. If the matter of challenging the judge, who hears the case alone, has been sustained, the case shall be tried in the same court by another judge.

3. If the matter of challenging one of the judges or the entire composition of court has been sustained, where the case is tried by a panel of judges, the case shall be heard in the same court by the panel of judges of the same number without the disqualified judge who shall be replaced by another judge, or by another composition of judges.

4. The investigating judge, judge (judges) to whom criminal proceedings (case) are transferred shall be determined in a procedure established by paragraph three of Article 35 of this Code.

5. If after sustaining proposed challenges (self-disqualifications) it is impossible to create a new court's composition, there shall be taken a decision to refer criminal proceedings to another court, as prescribed in this present Code.

### **Article 83. Implications of challenging investigator, public prosecutor, defense counsel, representative, expert, specialist, translator**

1. If proposal for challenging investigator, public prosecutor, defense counsel, representative, expert, specialist or translator is sustained, other participants to criminal proceedings shall be promptly appointed, respectively: other investigator, by head of the pre-trial investigation agency; or other public prosecutor, by head of the public prosecutor's office.

2. If proposal for challenging expert, specialist or translator is sustained, other participants to criminal proceedings shall be involved within time-limit fixed by the investigating judge or the court.

3. If proposal for challenging defense counsel, representative is sustained, the investigating judge or the court shall advise the suspect, accused, victim, civil plaintiff and civil defendant of their right to commit another defense counsel, representative and give him for this, during pre-trial proceedings, at least 24 hours and during trial at least 72 hours. If the suspect, accused in criminal proceedings, when involvement of a defense counsel is mandatory, does not commit another defense counsel within these time-limits, the investigator, prosecutor, investigating judge, the court shall appoint a defense counsel on their own pursuant to Article 49 of this Code.

## **Chapter 4. Evidence and Proving**

### **§ 1. Notion of evidence, adequacy and admissibility when founding a knowledge evidence**

#### **Article 84. Evidence**

1. In criminal proceedings, evidence is factual knowledge, which has been obtained in a procedure prescribed in the present Code on grounds of which investigator, public prosecutor, investigating judge and court establish the presence or absence of facts and circumstances which are important for the criminal proceedings and are subject to be proved.

2. Procedural sources of evidence are testimonies, objects, documents, expert findings.

**Article 85. Adequacy of evidence**

1. Evidence is adequate if it directly or indirectly confirms the presence or absence of circumstances to be proved in criminal proceedings and other circumstances which are important for the criminal proceedings, as well as credibility or non-credibility, possibility or impossibility of using other evidence.

**Article 86. Admissibility of evidence**

1. Evidence is found admissible if obtained through a procedure prescribed in the present Code.

2. Inadmissible evidence may not be used in adopting a court judgment.

**Article 87. Inadmissibility of evidence obtained through significant violation of human rights and fundamental freedoms**

1. Inadmissible shall be evidence obtained through significant violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, as well as any other evidence resulting from the information obtained through significant violation of human rights and fundamental freedoms.

2. the court shall be required to find significant violations of human rights and fundamental freedoms, in particular the following acts:

1) conducting procedural actions which require previous permission of the court without such permission or with disrespect of its essential conditions;

2) obtaining evidence subjecting a person to torture and inhuman or degrading treatment or threats to apply such treatment;

3) violating the right of a person to defense;

4) obtaining testimony or explanations from a person who has not been advised of his right to refuse to give evidence or answer questions, or where these were obtained in violation of this right;

5) violating the right to cross-examination

6) obtaining testimonies from a witness who subsequently will be found a suspect or accused in these criminal proceedings.

3. Evidence referred to in this Article shall be found by court inadmissible during any trial except trial when the issue of liability for the said significant violation of human rights and fundamental freedoms as result of which such evidence was obtained is disposed.

**Article 88. Inadmissibility of evidence and information related to the suspect's, defendant's personality**

1. Evidence relating to previous convictions of the suspect, the accused or his committing other offences, such knowledge not being the subject-matter of the trial concerned, as well as knowledge relating to the character or particular traits of the suspect, the accused shall be inadmissible in support of the guilt of the accused in the commission of criminal offence.

2. Evidence and knowledge as referred to in part one of this Article may be found admissible if:

1) the parties agree that this evidence is found admissible;

2) such evidence is presented to prove that the suspect, the accused: acted with a certain intention and motive or had the possibility, training, expertise which are required to commit the criminal act concerned or could not be mistaken in respect of circumstances under which he has committed the criminal act concerned;

3) the knowledge is presented by the suspect, the accused himself/herself;

4) the suspect, the accused used such evidence to discredit the witness.

3. Evidence of a certain habit or ordinary business practice of the suspect, the accused shall be admissible to prove that a certain criminal offence by the suspect, the accused was commensurate with such habit of the suspect, the accused.

#### **Article 89. Declaration of inadmissibility of evidence**

1. The court shall decide on admissibility of evidence during their evaluation while retired for rendering a court decision.

2. Where evidence has been found manifestly inadmissible during trial the court shall declare such evidence inadmissible, which shall entail impossibility of its examination or termination of its examination if such was commenced.

3. The parties to the criminal proceedings, the victim and the representative of a legal person in whose respect proceedings are taken may move during trial for evidence to be declared inadmissible or raise objection against declaring evidence inadmissible

*{Paragraph 3 of Article 89 as amended by Law # 314-VII of 23.05.2013}.*

#### **Article 90. Importance of decisions made by other courts for evidence admissibility**

1. Decision made by a national court or an international tribunal which has taken legal effect and which holds that a violation of human rights and fundamental freedoms set forth in the Constitution of Ukraine and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, has been committed shall have prejudicial significance for the court which decides on evidence admissibility.

## **§ 2. Proving**

#### **Article 91. Circumstances to be proved in criminal proceedings**

1. The following shall be proved in criminal proceedings:

1) occurrence of criminal offence (when, where, how a criminal offence has been committed and under what circumstances);

2) degree of guilt of the accused in the commission of criminal offence, form of guilt, motive and purpose of the criminal offense;

3) type and amount of damage caused by criminal offence, as well as amount of procedural expenses;

4) circumstances which aggravate, mitigate the committed criminal offense, characterize the person of the accused, toughen or mitigate punishment, preclude criminal liability or shall be grounds for terminating the criminal proceedings;

5) circumstances that shall be grounds for relief from criminal liability or punishment.

6) the circumstances confirming that cash, valuables and other property subject to special confiscation have been gained as a result of commission of a criminal violation and/or are proceeds from such property or that they were designed (used) to induce a person to commission of a criminal violation, finance and/or provide logistical support to a criminal violation or remunerate its commission, or are an object of a criminal violation related inter alia to their illicit circulation or seeking, manufacturing, adjusting or use as means or instruments of criminal violation;

*{Paragraph 1 of Article 91 as supplemented by subparagraph 6) by Law # 222-VII of 18.04.2013}*

7) the circumstances that are grounds for application of criminal law measures to legal persons.

*{Paragraph 1 of Article 91 as supplemented by subparagraph 7) by Law # 314-VII of 23.05.2013}*

2. Proving consists in collecting, examining and evaluating evidence in order to establish circumstances that are important for criminal proceedings.

#### **Article 92. Burden of Proof**

1. The burden of proving circumstances referred to in Article 91 of the present Code, except for cases set forth in part two of this Article, shall be placed upon investigator, public prosecutor and, in cases specified by the present Code, on the victim.

2. The burden of proof that evidence, knowledge on the amount of procedural expenses and on circumstances that characterize the accused, is adequate and admissible is placed upon the presenting party.

#### **Article 93. Collection of evidence**

Collection of evidence is carried out by parties to criminal proceedings, victim and representative of a legal person in whose respect proceedings are taken in accordance with the procedure laid down in by the present Code.

*{Paragraph 1 of Article 93 as amended by Law # 314-VII of 23.05.2013}*

2. Accusation party carries out collection of evidence by way of conducting investigative (search) actions and covert investigative (search) actions, by demanding and obtaining from state authorities, local government bodies, enterprises, institutions and organizations, officials and natural persons, of objects, documents, information, expert opinions, audit and inspection reports, by conducting other procedural actions specified by the present Code.

3. The defense, victim, and representative of the legal person in whose respect proceedings are taken carries out collection of evidence by way of demanding and obtaining from state authorities, bodies of local government, enterprises, institutions, organisations, officials and natural persons objects, copies of documents, information, expert reports, audit and inspection reports; by initiating the conduct of investigative (search) activities, covert (search) activities and other procedural actions, as well as by way of carrying out other activities capable of ensuring the production of relevant and admissible evidence in court.

*{Subparagraph 1 of the third paragraph of Article 93 as amended by Law # 314-VII of 23.05.2013}*

Investigative (search) activities are initiated by the defence, victim or representative of the legal person in whose respect proceedings are taken by way of filing appropriate request with the investigator, public prosecutor, which are considered under the rules of Article 220 of this Code. A decision of the investigator, public prosecutor to dismiss a request for the conduct of investigative (search) activities, covert (search) activities may be appealed to the investigating judge.

*{Subparagraph 2 of the third paragraph of Article 93 as amended by Law # 314-VII of 25.03.2013}*

4. The evidence may be obtained inside a foreign state within the framework of international cooperation in the course of criminal proceedings.

#### **Article 94. Evaluation of evidence**

1. Investigator, public prosecutor, investigating judge, court evaluates evidence based on his own moral certainty grounded in comprehensive, complete, and impartial examination of all circumstances in criminal proceedings being guided by law, evaluates any evidence from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation, in order to take a proper procedural decision.

2. No evidence shall have any predetermined probative value.

### **§ 3. Testimonies**

#### **Article 95. Testimonies**

1. Testimonies refer to oral or written reports given in the course of interrogation by the suspect, accused, witness, victim, and expert on circumstances they know and which are of importance for the criminal proceedings concerned.

2. The suspect, the accused and the victim shall have the right to give testimony during pre-trial investigation and court hearing.

3. Witness, expert, shall be required to give testimony to investigator, prosecutor, investigating judge and the court in accordance with the procedure established by the present Code.

4. The court may base its findings only on testimonies taken directly during court session or those obtained under the rules of Article 225 of this Code. The court may not base court decision on testimonies given to investigator, public prosecutor, or refer to such.

5. A person shall give evidence only in respect of circumstances which the person concerned perceived personally except cases described in the present Code pro.

6. A finding or opinion of the person giving evidence may be found by court an evidence only if such finding or opinion are useful for a clear understanding of his testimonies (a part thereof), and is based on special expertise within the meaning of Article 101 of this Code.

7. If a person giving evidence expresses a thought or opinion which are based on special knowledge as understood by Article 101 of this Code, and the court does not recognize this as an inadmissible evidence pursuant to Part Two of Article 89 of this Code, another party may question this party following the rules applicable to questioning of an expert.

8. The parties to the criminal proceedings, victim and representative of the legal person in whose respect proceedings are taken have the right to obtain from participants in criminal proceedings and other persons, subject to their consent, explanations that are not proving evidence.

*{Paragraph 8 of Article 95 as amended by Law # 314-VII of 25.03.2013}*

#### **Article 96. Ascertain reliability of a witness's testimonies**

1. Parties to criminal proceedings may ask a witness questions in respect of his ability to perceive circumstances he testifies about, as well as with regard to other circumstances which can be important for assessing reliability of the witness's testimonies.

2. In order to prove unreliability of witness's testimonies, a party may produce testimonies, documents as confirmation of witness's reputation, in particular, with regard to his conviction for knowingly misleading testimonies, deceit, fraud or any other acts, which confirm dishonesty of the witness.

3. A witness shall be required to answer questions aimed at ascertaining reliability of his testimonies.

4. A witness may be examined with regard to previous explanations which contradict his testimonies.

#### **Article 97. Hearsay testimonies**

1. Hearsay testimony shall be a statement made orally, in writing or in any other form with regard to a certain fact, such statement being based on explanations of another person.

2. The court shall have the right to recognize as admissible evidence hearsay testimony irrespective of the possibility to examine the person who provided the initial explanations, in exceptional cases if such are admissible evidence in accordance with other rules of evidence admissibility.

When taking such decision, the court is required to take into account the following:

1) importance of explanations, testimonies, should they be reliable, for ascertaining a circumstance, and their significance for the understanding of other knowledge;

2) other evidence in respect of issues referred to in paragraph 1 of this part which have been produced or can be produced;

3) circumstances under which initial explanations are given which give rise to confidence in their reliability;

4) cogency of knowledge with regard to the fact that initial explanations have been given;

5) difficulties for the party against which hearsay explanations, testimonies were given in disproving such explanations, testimonies;

6) relationship between hearsay testimonies and interests of the person who has given these hearsay testimonies;

7) possibility to examine the person who has given initial explanations, or reasons for the impossibility of such examination.

3. The court may find examination of a person to be impossible only if such person:

1) does not appear in court session because of the death or serious physical or mental disease;

2) waives testifying in court session under Article 63 of the Constitution of Ukraine or disobeying court's request to give testimonies;

3) does not appear before court and his location has not been established through conducting required search measures;

4) stays abroad and waives testifying.

4. The court may admit hearsay evidence if the parties agree to recognize such as evidence.

5. The court may admit hearsay evidence if the suspect accused has created or facilitated the creation of circumstances under which the person concerned may not be examined.

6. Hearsay testimonies may not be evidence of the fact or circumstance to prove which they were given unless they are supported by other evidence found admissible in accordance with rules other than those contained in part two of this Article.

7. In no event shall the hearsay testimony given by an investigator, public prosecutor, officer of an operational unit or another person with regard to any explanations given by an investigator, public prosecutor or an officer of an operational unit during the criminal proceedings that they were conducting be admissible.

#### **§ 4. Physical evidence and documents**

##### **Article 98. Exhibits (Physical evidence)**

1. Physical evidence means tangible objects that have been used as an instrument of a criminal violation, retain traces of such or contain other information, which may be used as evidence of the fact or circumstance to be established during criminal proceedings, including the items that have been an object of criminally unlawful actions, money, valuables or other articles obtained in a criminally unlawful manner or gained by the legal person as a result of criminal violation.

*{Paragraph 1 of Article 98 as amended by Law # 314-VII of 23.05.2013}*

2. Documents are physical evidence if they contain signs specified in the first paragraph of this Article.

##### **Article 99. Documents**

1. A document shall mean a material object, which was created specifically for conservation of information, such object containing fixed by means of written signs, sound, image etc. the knowledge that can be used as evidence of the fact or circumstance which is established during criminal proceedings.

2. Documents, on condition of containing the knowledge specified in the first paragraph of this Article, may be:

1) materials of photography, sound recording, video recording and other data media (including electronic);

2) materials obtained through the taking during criminal proceedings of measures stipulated by valid international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by;

3) drawn up in accordance with the procedure established by the present Code, records of procedural actions and annexes thereto, as well as data media on which procedural actions have been fixed by technical means;

4) reports on results of audits and examination reports.

Materials recording factual data as to wrongful acts of individuals or groups of persons shall be documents, and may be used as evidence, for the purpose of criminal proceedings if they

have been collected by operational units in compliance with the requirements of the Law of Ukraine *On Operative and Detective Activity* and this Article.

3. A party to criminal proceedings, victim, and representative of the legal person in whose respect proceedings are taken shall be required to provide the court with the original copy of a document. An original copy of the document is the document itself whereas the original of an electronic document, its representation, which is given the same weight as the document itself.

*{Paragraph 3 of Article 99 as amended by Law # 314-VII of 23.05.2013}*

4. A duplicate of the document (a document produced in the same way as its original) may be found by court to be the original of the document.

5. In order to confirm contents of the document, the court may found also other knowledge admissible if:

1) the original of the document concerned has been lost or destroyed, except when it has been lost or destroyed because of mala fide of the victim or the party which produces evidence;

2) the original of the document concerned cannot be obtained through accessible legal procedures;

3) the original of the document concerned is in possession of one of the parties of criminal proceedings while the latter does not provide it upon request of the other party.

6. A party to criminal proceedings, victim, and representative of the legal person in whose respect proceedings are taken may provide excerpts, compilations, summaries of the documents that are inconvenient to be examined in whole in court, and upon demand of the court, shall be required to produce the entire documents.

*{Paragraph 6 of Article 99 as amended by Law # 314-VII of 23.05.2013}*

7. A party shall be required to give other party the possibility to review or copy originals of documents whose contents was proved as prescribed in the present Article.

#### **Article 100. Custody of physical evidence and documents and deciding on special confiscation**

*{Article heading as amended by Law # 222-VII of 18.04.2013}*

1. Physical evidence transferred to, or seized by, a party to criminal proceedings shall be returned to its holder as soon as possible, except as provided for in Articles 160-166, 170-174 of this Code.

2. Physical evidence or a document released voluntary or pursuant to a court decision shall be kept by the party to criminal proceedings to which it has been so released. The party to criminal proceedings to which physical evidence or a document has been provided is required to preserve it in the state acceptable for the use in criminal proceedings. Physical evidence that has been obtained or seized by investigator, public prosecutor shall be examined, photographed and described in detail in the report of examination. Prosecution shall preserve physical evidence according to the procedure established by the Cabinet of Ministers of Ukraine.

3. A document shall be kept throughout all criminal proceedings. Upon request of the owner of a document, investigator, public prosecutor, court may issue a copy of this document, and if necessary, the original, attaching to the criminal proceedings certified copies thereof in their stead.

4. If the party to criminal proceedings loses or destroys any physical evidence released thereto, such party is required to provide a similar object or compensate its cost to the holder. If the party to criminal proceedings loses or destroys a document released thereto, it is required to

compensate the holder expenses related to the loss or destruction of a document and production of its duplicate.

5. Physical evidence and documents furnished to the court shall be kept at the court, except as provided otherwise by the sixth paragraph below and except for such bulky physical evidence or otherwise requiring special storage conditions, which may be kept in a different storage location.

6. Physical evidence, unless it contains signs of a criminal offence, in the form of items or large lots of goods, where storing it, in view of its bulkiness or for other reasons, is impossible without excessive difficulty or where the cost of storing it in special conditions is commensurate with their value, as well as physical evidence in the form of perishable goods or products shall be:

1) returned, or transferred for safekeeping, to its holder (lawful holder) where this does not prejudice the criminal proceedings;

*{Subparagraph 1 of the sixth paragraph of Article 100 as amended by Law # 222-VII of 18.04.2013}*

2) put to sale, subject to written consent of their owner or, failing such, decision of the investigating judge or court, if this does not prejudice the criminal proceedings;

3) destroyed, subject to written consent of its owner or, failing such, decision of the investigating judge or court, if such perishable goods or products have become unmarketable;

4) transferred for reprocessing or destruction by decision of the investigating judge or court if they belong to items or goods retired from circulation or if they long term storage is hazardous for the life or health of public or the environment;

In the cases provided for by this paragraph physical evidence shall be recorded by photography or videotaping and described in detail. Where necessary, a sample of physical evidence may be preserved in the amount sufficient for expert examination or other purposes of criminal proceedings.

7. In the cases provided for by subparagraphs 2–4 of the sixth paragraph above the investigator with consent off a public prosecutor, or a public prosecutor, shall file an appropriate motion with an investigating judge of the local court within whose jurisdiction the pre-trial investigation is carried out or with the court during trial, which shall be subject to consideration under Articles 171-173 of this Code.

8. Sale, reprocessing or destruction of physical evidence in the cases provided hereunder shall follow the procedure established by the Cabinet of Ministers of Ukraine.

9. The court shall decide on special confiscation and future of physical evidence and documents which have been produced before the court at making a decision ending criminal proceedings. Such evidence and documents are to be preserved until the judgment has taken legal effect. Where criminal proceedings are terminated by an investigator or prosecutor, the issue of special confiscation and future of the physical evidence and documents is decided by a court ruling on consideration of the respective motion under the rules of Articles 171-174 of this Code. In which case—:

1) the money, valuables, and other property that has been sought out, fabricated, adjusted or used as a means or instrument of criminal violation and/or retained traces thereof is confiscated, save for where the owner (lawful holder) did not know and could not have known of their unlawful application. In such cases the money, valuables, and other property are returned to the owner (lawful holder);

the money, valuables and other property that has been intended (used) to induce a person to commission of a criminal violation, to finance and/or provide material support to, or a remuneration for, criminal violation, is confiscated;

any property that has been an object of criminal violation related to illicit circulation and/or removed from circulation is transferred to appropriate institutions or destroyed;

any property devoid of any value and unusable is destroyed, and where need be, transferred to criminological collections of expert institutions or to the parties concerned, on their request;

5) the money, valuables and other property that has been an object of criminal violation or another socially dangerous act is confiscated, except for such as is returned to the owner (lawful holder), and where such has not been identified, reverted to the revenue of the state in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

6) the money, valuables and other property gained by a natural or legal person as a result of a criminal violation and/or are the proceeds thereof, as well as any property that these have been converted in full or in part, is reverted to the revenue of the state;

*{Subparagraph 6 of the ninth paragraph of Article 100 as amended by Law # 314-VII of 23.05.2013}*

the documents that are physical evidence are kept in the materials of criminal proceedings throughout the entire period of their storing time.

*{Paragraph 9 of Article 100 as amended by Law # 314-VII of 23.05.2013}*

10. When deciding on special confiscation the first issue to be decided on is returning money, valuables and other property to the owner (lawful holder) and/or compensation of damage inflicted through the criminal violation. Special confiscation is applied only after the prosecution proves it to the satisfaction of the court that the owner (lawful holder) of the money, valuables and other property had knowledge of their unlawful origin and/or use. Where a guilty person has no other property on which recourse can be taken than the property liable for special confiscation, the damage inflicted upon the victim and civil plaintiff is paid from the proceeds of the forfeit sold, the remainder lapsing to the State.

*{A new paragraph is added to Article 100 by Law # 222-VII of 18.04.2013}*

11. Where the owner (lawful holder) of the money, valuables and other property specified in the first subparagraph of Paragraph 9 of this Article has been identified after special confiscation and had and could have no knowledge of their unlawful use, he may request recovery of his property or the funds from the State budget as obtained from selling such property

*{A new paragraph is added to Article 100 by Law # 222-VII of 18.04.2013}*

1012. Any dispute as to the ownership of objects subject to return shall be resolved in civil procedure. In such case, the object concerned shall be preserved until court decision has taken legal effect.

## **§ 5. Expert's findings**

### **Article 101. Concept of Expert's Findings**

1. Expert's finding is a detailed description of the examination carried out by the expert, as well as the findings of such an examination and grounded responses to the questions posed by the person who invited the expert or the investigating judge or court requesting his opinion.

2. Each party to criminal proceedings may produce to court expert's findings, which are based on expert's scientific, technical, or other special knowledge.

3. The findings should be based on the knowledge the expert concerned perceived personally or learned thereabout during examination of the materials produced for expert examination. Expert provides findings on his own behalf and is personally liable for its reliability.

4. Questions put to the expert and his finding in response may not go beyond the limits of the expert's special expertise.

5. Expert's findings may not be based on the evidence which the court found to be inadmissible.

6. Expert who provides findings in respect of mental state of the suspect, accused has no right to state in his findings whether the accused had the mental state, which constitutes an element of criminal offence or a ground, which excludes liability for criminal offence.

7. Expert's findings shall be provided in written form but each of the parties has the right to invite the expert for examination during trial to give explanations or to supplement his finding.

8. If several experts are invited to conduct examination, the experts may draw up one findings or separate findings.

9. Expert's findings shall be transmitted to the party upon whose motion expert examination has been carried out.

10. Expert's findings shall not be binding for the person or organ conducting proceedings, but any disagreement with expert's findings must be reasoned in the relevant decision, ruling or judgment.

#### **Article 102. Contents of expert's findings**

1. Expert's findings shall state:

1) when, where, who (name, certificate of qualification of the court expert, length of expert experience, scientific degree, academic degree, position of the expert) and based on which ground conducted the examination;

2) place and time of examination;

3) who was present during examination;

4) list of questions which were put to the expert;

5) description of materials the expert received and what materials were used by expert;

6) detailed description of research made, including methods which were applied during examination, obtained results and expert evaluation thereof;

7) well-grounded answers to each question asked.

2. Expert's findings shall necessarily state that he was warned about liability for knowingly misleading findings and for refusal to fulfill his expert duties without valid reasons.

3. If the examination reveals knowledge, which is important for criminal proceedings and in whose respect questions were not put, the expert concerned shall have the right to state them in his findings. Findings are signed by the expert.

### **Chapter 5. Recording Criminal Proceedings. Procedural Decisions**

#### **Article 103. Forms in which criminal proceedings should be recorded**

1. Procedural actions during criminal proceedings may be recorded:

- 1) on a record;
- 2) on a medium on which criminal proceedings are recorded with the use of technical means;
- 3) in a journal of court session.

#### **Article 104. Record**

1. In cases specified in the present Code, the course and results of a procedural action shall be entered in the record.

2. If during pre-trial investigation, procedural action may be recorded with technical means, the appropriate entry should be made in the record.

If interrogation is recorded with technical means, the text of testimony may not be entered in the relevant record on condition that none of the participants in this procedure insists upon this. In such case, entry should be made in the record that the testimony has been recorded on a medium that is attached to the record.

3. The record shall consist of:

1) introduction which contains information on:

place, time and name of the procedural action;

individual who conducts procedural action (first name, last name, patronymic, position held);

all those present during the conduct of procedural action (first name, last name, patronymic, age and place of residence);

information that participants to procedural action were advised in advance on the use of technical means for recording; characteristics of such technical means and mediums, which were used in the course of procedural action, conditions and procedure for the use thereof;

2) descriptive part which contains information on:

sequence of actions;

knowledge obtained as a result of procedural action, important for the particular criminal proceedings, including discovered and/or provided objects and documents;

3) final part which contains information on:

objects and documents seized and the way in which they have been identified;

the way in which participants acquainted with the record;

comments on, and amendments to, written record on the part of participants to procedural action.

4. Before signing the record of procedural action, participants shall be given the possibility to review its text.

5. Comments and amendments shall be placed in the record before signatures. The record is signed by all participants to the conducted procedural action. If a person, because of his physical disabilities or any other reasons, cannot personally sign the record, such person review the record in the presence of his defense counsel (legal representative) who attests with his signature contents of the records the fact that disabled person cannot sign the record personally.

6. If a person who participated in the conduct of procedural action refused to sign the record, this is mentioned in the record, and such person shall be given the right to explain in written reasons therefore, these explanations being entered in the record. The fact of refusal to sign the record and of the provision of written explanations with regard to reasons for the refusal shall be attested by signature of his defense counsel (legal representative), and where such is not available, this shall be signed by attesting witnesses.

#### **Article 105. Annexes to records**

1. The person who conducted procedural action shall attach annexes to the record.
2. The following may be annexes to the record:
  - 1) specially prepared copies, samples of sites, objects and documents;
  - 2) written explanations of specialists who participated in the conduct of procedural action concerned;
  - 3) verbatim record, audio, video recording of the procedural action concerned;
  - 4) photos, schemes, moulds, computer data media, and other materials which explain contents of the record.
3. Annexes to the record shall be duly prepared, packed to ensure their reliable preservation, as well as should be attested by signatures of the investigator, public prosecutor, specialist, other individuals who participated in preparation and/or seizure of such annexes.

#### **Article 106. Drawing up a record and annex thereto**

1. At the stage of pre-trial investigation, a record shall be drawn up by the investigator or public prosecutor who conducts the procedural action concerned, during the conduct of the procedural action or immediately thereafter.
2. Investigating (search) action shall also include proper packaging of objects and documents, as well as other actions of importance for verifying results of procedural action.

#### **Article 107. Use of technical means for recording criminal proceedings**

1. Decision on recording procedural action with the use of technical means during pre-trial proceedings including examination of matters by investigating judge, shall be taken by the person who conducts the procedural action concerned. Upon motion of the participants to procedural action, the use of technical means for recording is compulsory.
2. Participants to a procedural action shall be advised in advance that technical means to record the procedural action are used.
3. Records of criminal proceedings shall contain originals of mediums on which the procedural action concerned was fixed, with reserve copies kept separately.
4. Recording criminal proceedings in court during court session with technical means shall be compulsory. Where all the persons participating in court proceedings fail to arrive to a court session or where a court, pursuant to provisions of this Code, proceeds in the absence of such persons, the criminal proceedings in court are not recorded with the use of technical means.
5. Participants in court proceedings may obtain a copy of recording of the court session made with the use of technical means.
6. Failure to use technical means for the purpose of recording criminal proceedings where their use is mandatory shall render the proceeding and any findings made as result of it invalid unless the parties do not object to recognizing such proceeding and findings made as a result of it valid.

#### **Article 108. Journal of court session**

1. During court session, a journal of court session shall be executed which contains the following:
  - 1) name and composition of the court (investigating judge);

- 2) identifying details of criminal proceedings and information on participants to criminal proceedings;
  - 3) date and time when court session started and ended;
  - 4) time, number and name of procedural action which is conducted during court session, as well as objects, documents, investigating (detective) action records and annexes thereto, which have been transferred to court in the course of procedural action.
  - 5) court rulings adopted by court (investigating judge) without retiring in deliberation room;
  - 6) other information as specified by the present Code.
2. A journal of court session shall be executed and signed by the court session secretary.

#### **Article 109. Register of pre-trial investigator proceedings records**

1. Register of pre-trial proceedings records shall be prepared by investigator or public prosecutor and sent to court together with the indictment.
2. Register of pre-trial proceedings records shall contain:
  - 1) number and name of procedural action which was conducted during pre-trial investigation, as well as time when it was conducted;
  - 2) requisites of procedural decisions taken during pre-trial investigation;
  - 3) type of the measure to ensure criminal proceedings, date and period of its application.

#### **Article 110. Procedural decisions**

1. Procedural decisions shall be all of decisions taken by pre-trial investigation agencies, public prosecutor, investigating judge and court.
2. Court's decision shall be delivered in the form of ruling or judgment, which should meet requirements of Articles 369, 371 to 374 of this Code.
3. Investigator, prosecutor's decisions shall take the form of orders. Orders shall be issued in the cases as specified in this Code and also, whenever an investigator finds this necessary.
4. An indictment shall be a procedural decision whereby public prosecutor brings charges of the commission of criminal offence and pre-trial proceedings is terminated. The indictment should meet requirements of Article 291 of this Code.
5. Decision of the investigator, public prosecutor shall consist of:
  - 1) introductory part which contains information on:  
place and time of adoption of the decision;  
first name, last name, patronymic, position of the person who adopted the decision;
  - 2) statement of reasons which contains information on:  
Contents of circumstances which give ground for taking decision;  
Motives for the decision, their substantiation and reference to the appropriate provision of the present Code;
  - 3) operative part which contains information on:  
contents of the procedural decision taken;  
place and time (deadline) for its execution;  
person who has to execute the decision;  
a possibility and a procedure to challenge the order.

6. The order of investigator, prosecutor shall be issued on an official letterhead, signed by the official who has taken the appropriate procedural decision.

7. Decision issued by the investigator, public prosecutor made within their competence in accordance with law shall be binding upon the natural and legal persons whose rights, freedoms or interests it relates to.

## **Chapter 6. Notifications**

### **Article 111. Concept of notification in criminal proceedings**

1. Notification in criminal proceedings is a procedural action through which investigator, public prosecutor, investigating judge or court notifies a certain participant to criminal proceedings date, time and place of conducting the procedural action concerned, or on procedural decision taken, or on conducted procedural action.

2. Notification of participants in criminal proceedings in respect of conducting procedural actions shall be made in case where the participation of such persons is not mandatory.

3. Notification in criminal proceedings shall be made in cases specified by the present Code, in accordance with the procedure established in Chapter 11 of the present Code, with the exception of provisions regarding the content of the notice and consequences of non-appearance of a person.

### **Article 112. Contents of a notice**

1. Notice shall contain:

1) name and position of investigator, public prosecutor, investigating judge, appellation of court that makes the notification;

2) of the authority, which sends the notification, number of telephone and other means of communication;

3) name (appellation) of the person being notified and his address;

4) appellation (number) of criminal proceedings in the framework of which the notification is made;

5) current procedural status of the person being notified;

6) date, time and place of procedural action in relation to which notification is sent to the person;

7) substance of the procedural action (actions) that will be conducted, or the procedural action that was conducted, or procedural decision that was taken, of which the person is being notified;

8) indication that participation in procedural action is not mandatory and that it will be conducted without participation of the person being notified, in case of his non-appearance;

9) signature of investigator, public prosecutor, investigating judge, judge who makes the summons.

## **Chapter 7. Procedural Time Limits**

### **Article 113. Concept of procedural time limits**

1. Procedural time limits mean the periods of time established by the law or a prosecutor, investigating judge or court pursuant to that law, within which participants to criminal proceedings are required (may) take procedural decisions or conduct procedural actions.

2. Any procedural action or the totality of actions in the course of criminal proceedings shall be conducted without any unjustified delay and in any case not later than the deadline established in relevant provisions of the present Code.

Article 114. Establishment of procedural time-limits by prosecutor, investigating judge or court.

1. To ensure that parties to criminal proceedings meet the requirements of reasonable time limits an investigating judge or court may establish procedural deadlines within the limits stipulated for in this Code taking into account the circumstances of an appropriate criminal proceeding.<sup>2</sup> Any deadlines established by the prosecutor, investigating judge or court may not exceed the time limits stipulated for in this Code and must be sufficient to allow adequate time to complete appropriate procedural actions or take procedural decisions and to not hinder exercise of the right to defense.

3. Court cases over disputes arising from the fact of occupation or violations related to the occupation fall under a separate category of cases that are considered under the relevant procedural rules, taking into consideration the special features established by the Law of Ukraine On the rights and freedoms of citizens and legal regime in the temporary occupied territory of Ukraine.

A case is recognised as being related to occupation by a reasoned decision of the judge.

Where a foreign element is involved in a case, letters rogatory, summonses and other court documents are served at least 15 days prior to the beginning of the procedural action.

Where a party to criminal proceedings or a civil plaintiff in a case related to occupation is a foreign government, including its bodies, institutions and organisations, or a foreign legal person as provided by the second paragraph of Article 96-4 of the Criminal Code of Ukraine, the communications are maintained through the embassy of permanent representation.

{Paragraph 3 is added to Article 114 by Law # 1207-VII of 15.04.2014}

### **Article 115. Calculation of time limits**

1. Time limits established in the present Code are calculated in hours, days and months. The deadlines may be determined through indicating an event.

2. When a time limit is calculated in hours, it ends in the corresponding minute of the last hour.

3. When a time limit is calculated in days, it ends at midnight of the last day of the time limit.

4. When a time limit is calculated in months, it ends on the corresponding day of the last month. If the end of the time limit calculated in months falls on the month which does not have the corresponding day, the time limit ends on the last day of this month.

5. When a time limit is calculated in days and months, the day from which time limit starts running is not taken into account, with the exception of time limits for keeping in custody and for the conduct of in-patient psychiatric expert examination which includes non-working time, and are calculated from the date of actual apprehension, taking into custody, or placing in the medical institution concerned.

6. If the action concerned must be conducted in court or in pre-trial investigation agencies, the time limit ends at specified time of working day end in such institutions.

7. When a procedural time limit is calculated, free days and holidays are included, and when time limit is calculated in hours, non-working hours are included, too. If the end of the time limit that is calculated in days or months, falls on the non-working day, the last day of the time limit is considered to be the following working day, with the exception of calculating time limits for keeping in custody and for the stay in a medical institution during the conduct of in-patient psychiatric expert examination.

#### **Article 116. Respecting time limits**

1. Procedural actions shall be conducted within time limits prescribed in the present Code. A time limit is not considered missed, if a complaint or any other document was delivered to the post office or handed to the person authorized to accept it, before its expiry, and, for individuals who are kept in custody or stay in medical or psychiatric institution, special educational institution, when a complaint or any other document was submitted to an official of the respective institution before its expiry.

#### **Article 117. Renewal of procedural time limit**

1. A time limit missed for a valid reason shall be renewed upon motion of the interested individual by investigating judge's, court's ruling.

2. Investigating judge's, court's ruling on the renewal or refusal to renew procedural time limit may be appealed against as prescribed in the present Code.

3. Submission of motion by the interested individual for renewal of the missed time limit does not stop execution of the decision challenged with the missed time limit.

### **Chapter 8. Procedural Expenses**

#### **Article 118. Types of procedural expenses**

1. Procedural expenses include:

- 1) expenses for legal aid;
- 2) expenses related to the travel to place where pre-trial investigation or trial is conducted;
- 3) expenses related to the involvement of victims, witnesses, specialists, translators, and experts;
- 4) expenses related to storing and forwarding of objects and documents.

#### **Article 119. Reduction of procedural expenses amount or exemptions from it, deferral and spreading payment of procedural expenses over a period of time**

1. Court, taking account of the property status of the individual (accused, victim), *proprio motu* or upon motion of the individual, may by its ruling reduce the amount of procedural

expenses to be paid or exempt from the payment of such expenses in full or partly, or defer and spread payment of procedural expenses over a specified period of time.

2. When the payment of procedural expenses has been differed or spread over a period of time before court decision was delivered, expenses are divided according to the court's decision.

3. If the amount of procedural expenses to be paid was reduced or exempted from payment fully or partially, the relevant expenses shall be compensated at the expense of the State Budget of Ukraine as established by the Cabinet of Ministers of Ukraine.

#### **Article 120. Expenses for legal aid**

1. Expenses related to defense counsel's fees shall be borne by the suspect, the accused, except as provided otherwise under the third paragraph below.

2. Expenses related to the fees of the representatives of a victim, civil plaintiff, civil defendant and representative of a legal person in whose respect proceedings are taken who provide legal aid under contract are borne by such victim, civil plaintiff, civil defendant and legal person in whose respect proceedings are taken, respectively.

*{Paragraph 2 of Article 220 as amended by Law # 314-VII of 23.05.2013}*

3. The assistance provided by defense counsel engaged through an appointment in the cases stipulated for in this Code and/or the law regulating the legal aid at no cost shall be provided at the expense of the State Budget of Ukraine and free of charge to the suspect and the accused. The maximum amount of compensation of expenses for legal aid is established by law.

#### **Article 121. Expenses related to travel to the place of pre-trial investigation or trial**

1. Expenses related to travel to the place of pre-trial investigation or trial are expenses of the suspect, the accused in whose respect the preventive measure in the form of custody was not imposed, expenses of his defense counsel, representative of a victim related to the travel to another locality, hiring housing, payment of per diem (in case of travel to another locality), as well as compensation for the lost earnings or break in traditional occupation.

Compensation for lost earnings is calculated in proportion to the average monthly earnings, while compensation for the break in traditional occupation is calculated in proportion to the minimum wage.

2. Expenses related to the arrival to the place of pre-trial investigation or trial of the suspect, the accused, are borne on his own.

3. Expenses of the defense counsel related to the arrival to the place of pre-trial investigation or trial are borne by the suspect, the accused.

4. Expenses related to representative's arrival to the place of pre-trial investigation or trial, are borne by the person being represented.

5. The maximum amount for compensation, based on court's decision, of expenses related to the arrival to the place of pre-trial investigation or trial is determined by the Cabinet of Minister of Ukraine.

#### **Article 122. Expenses related to the involvement of victims, witnesses, specialists, translators, and experts**

1. Expenses related to the involvement of witnesses, specialists, translators and experts shall be borne by the party to criminal proceedings which filed a motion to summon witnesses, invite a specialist, translator or expert, except as otherwise provided in this Code.

legal person in whose respect proceedings are taken.

*{Paragraph 2 of Article 122 as amended by Law # 314-VII of 23.05.2013}*

3. Victims, civil plaintiffs, witnesses are reimbursed for their travel, hiring housing, and per diem (in case of travel to another locality), as well as compensation for the lost earnings or break in traditional occupation.

Compensation for lost earnings is calculated in proportion to the average monthly earnings, while compensation for the break in traditional occupation is calculated in proportion to the minimum wage.

4. Experts, specialists, translators are paid their travel cost and per diem if they travel to another locality. Experts, specialists, translators shall be paid a remuneration for the job done, unless it was done as their official duty.

5. The maximum amount of compensation of expenses related to the involvement of witnesses, specialists, and experts shall be established by the Cabinet of Ministers of Ukraine.

#### **Article 123. Expenses related to storage and forwarding of objects and documents**

1. Expenses related to the storage and forwarding of objects and documents are borne by the State Budget of Ukraine as established by the Cabinet of Ministers of Ukraine.

2. The maximum amount for expenses related to the storage and forwarding of objects and documents is determined by the Cabinet of Ministers of Ukraine.

#### **Article 124. Allocation of procedural expenses**

1. In case of conviction, the court shall collect from the defendant in favor of the victim all the documented procedural expenses the latter has incurred. If the defendant does not have funds sufficient to reimburse the said expenses, such shall be compensated to the victim at the expense of the State Budget of Ukraine, where and as provided for by law for the purpose for the compensation of damage caused to the victim as a result of criminal offence.

2. In case of conviction, the court awards in favor of the State the expenses on committing an expert which are supported with documents, and the court fees, from the accused.

4. If appellate or cassation court, or the Supreme Court of Ukraine, without making decision to hold a new trial, changes a court decision or renders a new one, it shall change the allocation of procedural expenses accordingly.

#### **Article 125. Determining the amount of procedural expenses**

1. The court, upon motions of individuals, may determine the amount of procedural expenses to be reimbursed to them.

#### **Article 126. Decision in respect of procedural expenses**

1. The court decides the issue of judicial expenses in the sentence or by ruling.

2. Parties to criminal proceedings, witnesses, experts, specialists, translators may appeal against court's decision in respect of procedural expenses if it concerns their interests.

### **Chapter 9. Repair (Compensation) of Damage in Criminal Proceedings**

### **Article 127. Repair (compensation) of damage to the victim**

1. The suspect, accused, as well as upon his consent, any other physical or legal person, shall have the right at any stage of criminal proceedings, to repair the damage caused to the victim, the territorial community, the state as a result of criminal offence.

2. The damage caused by criminal offence or other socially dangerous act may be recovered by a court decision made as a result of hearing a civil action in criminal proceedings.

3. Damage caused to the victim by criminal offence shall be repaired to him from the State Budget of Ukraine as prescribed by law.

### **Article 128. Civil action in criminal proceedings**

1. The person to whom pecuniary and/or non-pecuniary damage has been caused by a criminal offence or another socially dangerous shall have the right enter a civil action, in the course of criminal proceedings before the trial has commenced against the suspect, accused or to a natural or legal person civilly liable by law for the damage caused by the acts of the suspect, accused or insane person who has committed a socially dangerous act.

2. A civil action in the interests of underage persons or persons lawfully declared incompetent or of diminished capacity may be entered by their legal representatives.

3. Civil action in the interests of the State shall be filed by a public prosecutor. Civil action may also be initiated by prosecutor in the cases stipulated for by the law and also in the interests of those citizens who cannot defend their rights on their own due to their physical or economic situation, being underage or elderly aged, incompetence or limited legal capacity.

4. The matter and manner of a statement of claim shall conform to the requirements provided for actions entered in civil procedure.

5. A civil action in criminal proceedings shall be entertained by the court according to the rules established by this Code. Where the procedural relations that have arisen from the civil action are not regulated by this Code, the rules of the Civil Procedural Code of Ukraine shall apply, provided that these do not contravene the principles of criminal proceedings.

6. If an action has been dismissed in civil, economic or administrative proceedings, the civil plaintiff shall have no right to enter the same action in criminal proceedings.

7. The person who does not enter a civil action in criminal proceedings, as well as the person whose civil action has been left undecided may enter same in civil proceedings.

### **Article 129. Deciding on a civil action in criminal proceedings**

1. While rendering a judgment of conviction, a ruling of compulsory medical or educational measures, the court depending on the proof of foundation and amount of claim shall sustain the civil action in full or in part or dismiss it.

2. Where no criminal event is found the court shall dismiss the action.

3. Where the defendant is acquitted for absence of elements of crime or his non-involvement, as well as in other cases provided for by the first paragraph of Article 326 hereof, the court shall leave the action undecided.

### **Article 130. Repair (compensation) of damage caused by illegal decisions, actions or omission**

1. Damage caused by illegal decisions, actions or omission of the agency carrying out operative-detective activities, pre-trial investigation, public prosecutor's office or court shall be

repaired by the state from the State Budget of Ukraine in cases and according to the procedure prescribed by law.

## **Section II. Measures to Ensure Criminal Proceedings**

### **Chapter 10. Measures to Ensure Criminal Proceedings and Grounds for Application of Such Measures**

#### **Article 131. Types of measures to ensure criminal proceedings**

1. Measures to ensure criminal proceedings are applied to ensure efficiency of these proceedings.

2. The following shall be measures to ensure criminal proceedings:

- 1) summons by investigator, public prosecutor, court summons and compelled appearance;
- 2) imposition of pecuniary penalty;
- 3) temporary restriction on a special right;
- 4) suspension from position;
- 5) provisional access to objects and documents;
- 6) provisional seizure of property;
- 7) attachment of property;
- 8) attachment of property;
- 9) preventive measures.

#### **Article 132. General rules for application of measures to ensure criminal proceedings**

1. Measures to ensure criminal proceedings are applied based on the ruling of investigating judge or court unless the present Code provides otherwise.

2. Application of measures to ensure criminal proceedings shall be based on the ruling of investigating judge and submitted to local court within the territorial jurisdiction of which the pre-trial investigation agency is located.

3. Enforcement of measures to ensure criminal proceedings should be denied unless investigator, public prosecutor proves that:

1) there is a reasonable suspicion of the commission of criminal offence of such severity which may be grounds for application of measures to ensure criminal proceedings;

2) needs of pre-trial investigation justify such degree of interference in rights and freedoms of a person that is stipulated in the motion of investigator, public prosecutor;

3) the task can be fulfilled and in order to accomplish this task the investigator, public prosecutor makes a motion.

4. In order to evaluate needs of pre-trial investigation, investigating judge or court are required to take into account the possibility to obtain, without applying a measure to ensure criminal proceedings, objects and documents which can be used during trial for establishing circumstances in criminal proceedings.

5. During consideration of the enforcement of measures to ensure criminal proceedings, parties to criminal proceedings should present to investigating judge or court evidence on circumstances to which they refer.

6. Attached to the motion of investigator, public prosecutor on application, altering or cancellation of measures to ensure criminal proceedings shall be an extract from the Integrated Register of pre-trial investigations concerning the criminal proceedings in the framework of which the motion is filed.

## **Chapter 11. Summons by Investigator, Public Prosecutor, Court Summons and Compelled Appearance**

### **Article 133. Summons by investigator, public prosecutor**

1. Investigator, public prosecutor during pre-trial investigation shall have the right to summon the suspect, witness, victim or other participant in criminal proceedings in cases specified by the present Code, for interrogation or participation in other procedural action.

2. Investigator, public prosecutor during pre-trial investigation shall have the right to summon a person if there are sufficient grounds for a belief that such person can give testimonies that are important for criminal proceedings, or his participation in a procedural action is mandatory.

### **Article 134. Court summons**

1. Investigating judge during pre-trial investigation or court during trial may, on own initiative or upon motion of investigator, public prosecutor, the suspect, the accused, his defense counsel, victim, his representative, cite a certain person if the investigating judge or the court deems there are sufficient grounds for a belief that such person can give testimonies that are important for criminal proceedings, or his participation in a procedural action is mandatory.

2. Court shall summon participants in criminal proceedings whose participation in trial is mandatory.

### **Article 135. Procedure for making summons in criminal proceedings**

1. A person is summoned to investigator, public prosecutor, investigating judge, court by serving court summons on the person concerned, sending it by mail, electronic mail or facsimile communication, by telephone or cable.

2. If the individual concerned is temporarily out of his home, ruling on court summons shall be served against signature on his adult family member or to another individual who resides together with the addressee, to the residential management organization at the place of residence, or to the administration at the place of employment.

3. A person under custody shall be summoned through the administration of the place of confinement.

4. Ruling on court summons of an underage person is served, as a rule, on his father, mother, adopter, or legal representative. Different procedure for serving a summons shall be admissible only in case where this is justified by circumstances of criminal proceedings.

5. Ruling on court summons of an individual under special ability is served on his caretaker.

6. Ruling on court summons shall be served on a person by an employee of the post office, employee of a law enforcement agency, investigator, public prosecutor, as well as by secretary of court session if such service is made on the court premises.

7. Ruling on court summons of the individual living abroad shall be made in accordance with international treaty of legal assistance the Verkhovna Rada of Ukraine has given its consent to be bound by, and in its absence, through diplomatic (consular) mission.

*{Paragraph 8 of Article 135 as amended by Law # 725-VII of 16.01.2014 lapses on the strength of Law # 732-VII of 28.01.2014, as amended by Law # 767-VII of 23.02.2014}*

### **Article 136. Confirmation of receipt by a person of a ruling on court summons or of learning its content in other way**

1. A valid confirmation of receipt by a person of a ruling on court summons or of learning its content in other way shall be the person's hand receipt of the summons including on the post-office notice, a video recording of the serving of the ruling on court summons on the person, any other data confirming the fact of such serving of the ruling on court summons on the person or of learning its content.

2. If a person notified in advance investigator, public prosecutor, investigating judge, court on his email address, a ruling on court summons dispatched to such address shall be deemed received if the person confirmed receipt by an appropriate e-mail.

### **Article 137. Contents of court summons**

1. Text of court summons shall state:

1) name and position of investigator, public prosecutor, investigating judge, judge; name of the court which issues summons;

2) name and address of a court or other institution to which summons is made, number of telephone or other communication means;

3) name (appellation) of the person who is summoned and his address;

4) name (number) of the criminal proceedings in the framework of which summons is issued;

5) current procedural status of the summoned person;

6) hour, date, month, year and place for appearance of the person summoned;

7) procedural action (actions) for participation in which the person is summoned;

8) consequences of failure to appear, with citing of the text of the relevant provisions of law, including the possibility of applying compelled appearance and conducting special pre-trial investigation or special judicial proceedings;

*{Subparagraph 8 of the first paragraph of Article 137 as amended by Law [№ 1689-VII of 07.10.2014](#)}*

9) valid reasons specified by the present Code for which a person may not appear in response to the summons, and the requirement to notify in advance of the inability to appear;

10) signature of the investigator, public prosecutor, investigating judge, judge who issued court summons.

### **Article 138. Valid reasons for non-compliance with court summons**

1. Valid reasons for non-compliance with court summons are the following:

- 1) apprehension, custody, or service of punishment;
- 2) restriction of the freedom of movement under law or based on court's decision;
- 3) force-majeure circumstances (epidemics, military hostilities, floods or any other similar disasters);
- 4) absence of the summoned person in the place of residence during prolonged time due to official mission, travel, etc.;
- 5) serious disease or sojourn in a medical establishment in connection with treatment or pregnancy, on condition of impossibility to temporarily leave the establishment;
- 6) death of close relatives, family members, or any other close persons, or a serious threat to their life;
- 7) untimely receipt of the summons;
- 8) other circumstances objectively preventing appearance of a person on summons.

### **Article 139. Consequences of non-appearance on summons**

1. If the suspect, accused, witness, victim, civil plaintiff, representative of a legal person in whose respect proceedings are taken, who has been summoned according to the procedure set forth in the present Code (in particular, presence of confirmation of receipt of the court summons or of learning its content in other way), did not appear without valid reason or did not inform on reasons for his non-appearance, he shall be subject to imposition of pecuniary penalty in the amount of:

*{The first sentence of Paragraph 1 of Article 139 as amended by Law # 314-VII of 23.05.2013}*

- 0.25 to 0.5 times minimum wages in case of non-compliance with court summons of investigator, public prosecutor;

- 0.5 to 2 times minimum wages in case of non-compliance with court summons of investigating judge, court.

2. In a case specified in part one of this Article, compelled appearance may be enforced against the suspect, accused, and witness.

3. For persistent non-compliance with summons, a victim shall be liable as established by law.

*{Paragraph 4 of Article 139 is removed by Law # 767-VII of 23.02.2014}*

5. Non-compliance with summons of an investigator, public prosecutor or investigative judge, the court (failure to appear on summons without valid reason for more than two times) by the suspect, accused who are announced in interstate or international wanted list shall serve as the ground for conducting special pre-trial investigation or special judicial proceedings.

*{A new paragraph is added to Article 139 by Law № 1689-VII of 07.10.2014; Paragraph 5 of Article 139 as amended by Law № 119-VIII of 15.01.2015 }*

### **Article 140. Compelled appearance**

1. Compelled appearance consists in compulsory forwarding of the person against whom it is enforced, by executor of the ruling on enforcement of compelled appearance, to the place of summons, at the time specified in the ruling.

2. A decision to enforce compelled appearance shall be taken: during pre-trial investigation, by investigating judge upon motion of investigator, public prosecutor or *proprio*

*motu*; and during trial, by court upon motion of a party in criminal proceedings, victim, or of the court's own initiative. A decision to enforce compelled appearance shall be taken in the form of ruling.

3. Compelled appearance may be enforced against a suspect, accused or a witness. Compelled appearance of a witness may not be enforced against an underage person, a pregnant woman, disabled persons of the 1<sup>st</sup> and 2<sup>nd</sup> degree, a person who is raising children under the age of 6 or disabled children alone, as well as individuals who may not be examined as witnesses under the present Code. Compelled appearance of an officer from the personnel of an intelligence agency of Ukraine in the performance of his duties shall be enforced only in presence of that agency's official representatives.

#### **Article 141. Motion on enforcement of compelled appearance**

1. The following shall be specified in a motion on enforcement of compelled appearance during pre-trial investigation:

- 1) name and registration number of criminal proceedings concerned;
- 2) procedural status of the person against whom the enforcement of compelled appearance is requested, his first name, last name, patronymic and place of residence;
- 3) procedural action in which the person against whom the enforcement of compelled appearance is requested, must participate;
- 4) provision of this Code that established the person's duty to appear on summons, and circumstances of the person's non-compliance;
- 5) information corroborating the facts of summons having been made to the person according to the procedure prescribed by the present Code, and of the ruling on court summons having been received by the person or the content of it having been learned by him in other way;
- 6) first name, last name, patronymic and official position of investigator, public prosecutor;
- 7) date and place of filing the motion.

Attached to the motion shall be copies of materials by which investigator, public prosecutor justifies his arguments.

#### **Article 142. Consideration of the motion for court summons**

1. During pre-trial investigation, investigator's, public prosecutor's motion on enforcement of compelled appearance shall be considered by investigating judge alone on the day it reached the court. Where necessary, investigating judge may hear arguments of the person who filed the motion.

2. During trial, a motion on enforcement of compelled appearance shall be considered immediately after it is initiated.

3. Investigating judge or court upon establishing that a person prescribed to appear on summons of investigator, public prosecutor, investigating judge, court, was actually summoned according to the procedure established by the present Code (in particular, in presence of confirmation of receipt by the person of the ruling on court summons or of learning its content in other way), and did not appear without valid reasons, or did not inform of reasons for non-appearance, shall adopt a ruling on enforcement of compelled appearance against such person.

4. A copy of the ruling on enforcement of compelled appearance certified with the court's stamp, shall be sent immediately to the agency charged with enforcing compelled appearance.

#### **Article 143. Enforcement of compelled appearance**

1. Enforcement of compelled appearance may be assigned to the appropriate units of internal affairs bodies, bodies of security, agencies supervising compliance with the tax legislation, units of the National Anti-Corruption Bureau of Ukraine or units of the State Bureau of Investigations.

*{ Paragraph 1 of Article 143 as amended by Law [№ 1698-VII of 14.10.2014](#)}*

2. Executor of the ruling shall read out the ruling compelling appearance to the individual in whose respect compelled appearance is enforced.

3. A person who is subject to compelled appearance by decision of an investigating judge or court shall be required to appear where and when he is directed in the ruling on enforcement of compelled appearance (writ of attachment).

If a person subject to compelled appearance fails to comply with the lawful requirements as respects enforcement of the ruling on compelled appearance he may be subject to measures of physical coercion capable of ensuring his escorting to the place indicated in the summons. Application of physical coercion is subject to notice of the intent to apply such. Where physical coercion cannot be avoided, they may not exceed the measure necessary for enforcement of the ruling on compelled appearance and shall be limited to the least possible impact on the person. It shall be prohibited to apply measures of physical coercion capable of causing harm to the person's health as well as to compel the person to remain in the conditions of restrained freedom of movement longer than it is required for his prompt reconduction to the place indicated in the summons. Excess of powers when applying measures of physical coercion shall entail a liability by law.

4. If enforcement of compelled appearance appears to be impossible, the executor of the ruling on compelled appearance shall return the process to the court with written explanations of the reasons of non-execution.

## **Chapter 12. Imposition of Pecuniary Penalty**

### **Article 144. General Provisions Related to Imposition of Pecuniary Penalty**

1. Pecuniary penalty may be imposed on participants in the criminal proceedings for failure to fulfill their procedural duties in the cases and amounts stipulated in the present Code.

2. Pecuniary penalty shall be imposed: in the course of pre-trial investigation – upon the ruling of the investigating judge based on the motion made by the investigator or the public prosecutor or on his own initiative, or in the course of the judicial proceedings – upon the court's ruling based on the public prosecutor's motion or on its own initiative.

### **Article 145. Motion for Imposition of Pecuniary Penalty**

1. The motion for imposition of pecuniary penalty on a person in the course of the pre-trial investigation shall contain the following information:

- 1) name of criminal proceedings and registration number thereof;
- 2) procedural status of the person for whom the motion for imposition of pecuniary penalty was made, his last name, first name, patronymic and place of residence;
- 3) duty imposed on this person by this Code or by ruling of the investigating judge;
- 4) circumstances under which this person failed to fulfill his duty;
- 5) facts that corroborate the person's failure to fulfill his duty;

6) last name, first name, patronymic and position filled by the investigator or public prosecutor;

7) date and place of making the motion.

Copies of the materials used by the investigator or public prosecutor to support their arguments shall be attached to the motion.

#### **Article 146. Examining the Issue of Imposition of Pecuniary Penalty on a Person**

1. In the course of pre-trial investigation, the motion made by the investigator or public prosecutor for imposition of pecuniary penalty on a person shall be examined by the investigating judge no later than three days after the date of submission of the motion to the court.

The official who entered the motion and the person on whom pecuniary penalty may be imposed shall be notified of the time and place of consideration of the motion; however their default in appearance shall not impede examining this issue.

2. In the course of judicial proceedings the issue of imposition of pecuniary penalty on a person shall be considered immediately after its initiation.

3. The investigating judge or the court upon establishing that the given person failed to fulfill his procedural duty without valid reasons shall impose pecuniary penalty on this person. A copy of the corresponding ruling shall be sent to the person on whom pecuniary penalty was imposed no later than the next working day after taking the decision.

#### **Article 147. Revocation of Ruling on Imposition of Pecuniary Penalty**

1. The person on whom pecuniary penalty was imposed and who was absent during consideration of this issue by the investigating judge or the court shall have the right to lodge a motion for revocation of the ruling on imposition of pecuniary penalty on him. This motion shall be filed with the investigating judge or with the court who/which passed the ruling on imposition of pecuniary penalty.

2. The investigating judge or the court having recognized the validity of the person's arguments may revoke the ruling on imposition of pecuniary penalty at their own discretion, or schedule a court session for examining the motion for revocation of the ruling on imposition of pecuniary penalty. The person who filed this motion, as well as the investigator or public prosecutor whose motion became the grounds for imposition of pecuniary penalty shall be notified of the place and time of consideration of the motion; however their default in appearance shall not impede such consideration.

3. The investigating judge or the court shall revoke the ruling on imposition of pecuniary penalty on a person based on the results of consideration of this motion during the court session, provided it is established that the penalty had been imposed unfoundedly, or shall reject satisfaction of the motion.

4. The judgment made by the investigating judge or the court, based on the results of consideration of the motion to reject the ruling on imposition of pecuniary penalty, shall be final and without appeal.

### **Chapter 13. Temporary Restriction of the Enjoyment of a Special Right**

**Article 148. General provisions relating to temporary restriction of the enjoyment of a special right and temporary seizure of documents confirming the special right**

1. Where there is a good reason to believe that it is necessary to restrict a suspect in his enjoyment of a special right for the purpose of stopping a criminal offence or preventing commission of another offence, stopping or preventing a suspect's wrong-doing intended to obstruct criminal proceedings, or securing compensation of damage caused by a criminal offence, the investigator, public prosecutor, other competent person has the right to temporarily seize documents confirming special right from the person lawfully apprehended by them, as prescribed in Article 208 of this Code.

Documents confirming the following special rights may be temporarily seized:

- 1) right to operate a vehicle or a ship;
- 2) right to hunt;
- 3) right to conduct entrepreneurial activity.

2. Temporary restriction of the enjoyment of special right may be imposed by decision of investigating judge and during pre-trial investigation for a period not exceeding two months.

**Article 149. Implications of temporary seizure of documents confirming special right**

1. A person who has carried out lawful apprehension as prescribed in Article 208 of the present Code, is obliged, concurrently with bringing the apprehended person to the authorized official (a person vested by law with the right to carry out temporary seizure of documents confirming special right) to hand over to this official the temporarily seized documents which confirm special right, if any have been seized. The fact that documents confirming special right and have been seized were handed over is certified by a record which shall be drawn as prescribed in the present Cod.

2. Investigator, public prosecutor, other authorized official, during lawful apprehension and temporary seizure of documents confirming special right or immediately thereafter, is obliged to draw up an appropriate record as prescribed in this Code.

3. Having drawn up the record of temporary seizure of documents confirming special right, investigator, public prosecutor, and other authorized official is obliged to transfer temporarily seized documents for storage in the order established by the Cabinet of Ministers of Ukraine.

**Article 150. Motion for temporary restriction of a special right**

1. During pre-trial investigation, public prosecutor, investigator upon approval of public prosecutor may request that investigating judge temporarily restrict a special right. In case of temporary seizure of documents granting a special right, public prosecutor, investigator upon approval of public prosecutor shall be required to lodge with the investigating judge appropriate motion not later than two days after temporary seizure has been made. Missing this time limit entails necessity to return temporarily seized documents.

2. The motion shall state:

- 1) brief description of circumstances of the criminal offense in connection with which the motion is filed;
- 2) legal qualification of the criminal offense under Ukrainian law on criminal liability;
- 3) description of circumstances laying grounds for suspecting the person of committing criminal offense, and reference to circumstances;
- 4) reasons for temporarily restriction of a special right;
- 5) type of special right to be temporarily restricted;

- 6) time limit for the temporary restriction of a special right;
- 7) list of witnesses whom public prosecutor, investigator finds it necessary to examine during consideration of his motion.

The motion shall be also attached with:

- 1) copies of materials with which public prosecutor, investigator substantiates the arguments of his motion;
- 2) documents, which confirm that the suspect was provided copies of the motion and materials which substantiate it.

### **Article 151. Consideration of the motion for temporary restriction of the enjoyment of special right**

1. Investigating judge considers motion for temporary restriction of the enjoyment of special right not later than three days after such motion has been filed, with participation of public prosecutor and/or investigator and the suspect, his defense counsel.

2. Motion for temporary restriction of the enjoyment of special right, if documents confirming special right have not been temporarily seized, may be considered only in presence of the suspect, his defense counsel.

3. Having established that motion for temporary restriction of the enjoyment of special right does not comply with Article 150 of the present Code, investigating judge returns it to public prosecutor and adopt a ruling thereon.

4. When considering motion for temporary restriction of the enjoyment of special right, investigating judge may, upon motion of the parties to criminal proceedings or *proprio motu*, hear any witness or examine any materials of importance for deciding on the issue of temporary restriction of the enjoyment of special right.

### **Article 152. Deciding on the issue of temporary restriction of a special right**

1. Investigating judge dismisses the motion for temporary restriction of a special right unless investigator, public prosecutor proves the presence of sufficient grounds to believe that probability that such a measure is necessary to stop criminal offence or prevent the commission of another offence, to stop or prevent unlawful behavior of the suspect in respect of obstructing criminal proceedings, and to ensure compensation of damage caused by criminal offence.

2. When disposing the issue of temporary restriction of a special right, investigating judge shall take into account the following circumstances:

- 1) legal ground for temporary restriction of a special right;
- 2) sufficiency of evidence which indicates that the person has committed criminal offence;
- 3) implications of temporary restriction of a special right for other persons.

3. After having considered the motion, investigating judge shall pass a ruling which should state:

1) motives for granting or denying the motion on application of temporary restriction of a special right;

2) list of documents, which grant special right and which shall be returned or seized for the time of temporary restriction of the special right;

3) period of temporary restriction of special right, which shall not be longer than two months;

4) the way in which the ruling shall be enforced.

4. A copy of the ruling shall be sent to the person who filed the motion concerned, the suspect, and other interested persons not later than the next day, which follows the day of ruling and shall be immediately executed in accordance with the procedure established for execution of judicial decisions.

**Article 153. Extending the term of temporary restriction of a special right**

1. Public prosecutor may file a motion seeking extension of the term of temporary restriction of a special right, such motion to be considered as prescribed in Article 151 of the present Code.

2. Investigating judge, court shall deny extending the period of temporary restriction of a special right unless public prosecutor proves that:

1) circumstances which laid ground for temporary restriction of a special right continue to exist;

2) prosecution was unable to otherwise ensure achievement of goals for the sake of which the special right has been temporarily restricted, during the time the previous ruling was effective.

**Chapter 14. Suspension from Office**

**Article 154. General Provisions Related to Suspension from Office**

1. Suspension from office may be applied to a person who is suspected of or charged with committing a medium-gravity, grave or especially grave crime or, irrespective of the gravity, to a person who is an officer of a law enforcement body.

2. Suspension from office shall be effected on the grounds of the decision passed by the investigating judge in the course of pre-trial investigation or by the court in the course of judicial proceedings for a term not exceeding two months. The term of suspension from office may be extended in accordance with the requirements stipulated in Article 158 of this Code.

3. The matter of suspension from office of the persons appointed by the President of Ukraine shall be decided by the President of Ukraine on the grounds of the public prosecutor's motion in accordance with the procedure set forth by law. Suspension of a judge from his office shall be carried out by the Higher Qualification Commission of Judges of Ukraine on the grounds of a reasoned motion of the Prosecutor General of Ukraine in accordance with the procedure set forth by law. Suspension of a Director of the National Anti-Corruption Bureau of Ukraine from his office shall be carried out by the investigative judge on the grounds of a reasoned motion of the Prosecutor General of Ukraine in accordance with the procedure set forth by law. { Paragraph 3 of Article 154 as amended by Law [№ 1698-VII of 14.10.2014](#) }

**Article 155. Motion for Suspension from Office**

1. The public prosecutor or the investigator with the concurrence of the public prosecutor shall have the right to approach the investigating judge in the course of pre-trial investigation or the court in the course of judicial proceedings with a motion for suspension of a person from his office. The public prosecutor shall have the right to file the motion for suspension of a person from his office with the public authorities mentioned in the third paragraph of Article 154 of this Code.

2. The motion shall contain:

- 1) short description of the circumstances of a criminal offence in connection with which the motion is made;
- 2) legal determination of the criminal offence with the indication of the corresponding Article (paragraph of the Article) of the Law of Ukraine on criminal liability;
- 3) statement of the circumstances which give grounds to suspect the person of having committed criminal offence, and reference to the circumstances;
- 4) office held by this person;
- 5) statement of the circumstances which give grounds to believe that holding the office by the suspect or the accused contributed to perpetration of criminal offence;
- 6) statement of the circumstances which give grounds to believe that the suspect or the accused, if holding the office, will destroy or forge objects and documents of essential importance for the pre-trial investigation, or exert illegal influence on witnesses and other participants in criminal proceedings, or otherwise illegally obstruct criminal proceedings;
- 7) list of witnesses whom the investigator or the public prosecutor considers necessary to examine during consideration of the motion.

Besides, the following documents shall be attached to the motion:

- 1) copies of the materials used by the investigator or public prosecutor to support their arguments for the motion;
- 2) documents which prove that the suspect or the accused was provided with the copies of the motion and the materials which substantiate the motion.

#### **Article 156. Consideration of the Motion for Suspension from Office**

1. The motion for suspension of a person from his office shall be considered by the by the investigating judge or the court no later than three days after the date of submission of the motion to the court, with the participation of the investigator and/or public prosecutor, as well as and the suspect or the accused and his defense counsel.

2. Having established that the filed motion does not comply with the requirements of Article 152 of the present Code, the investigating judge or the court shall return it to the public prosecutor and adopt a ruling thereon.

3. When considering the motion, the investigating judge or the court shall have the right, upon motion of the parties to criminal proceedings or on his/their own initiative (*proprio motu*), hear any witness or examine any materials of importance for deciding on the issue of suspension from office.

#### **Article 157. Deciding the Issue of Suspension from Office**

1. The investigating judge or the court shall dismiss the motion for suspension from office in case the investigator or the public prosecutor fails to prove existence of reasonable grounds to believe that this measure is necessary to stop criminal offence, stop or prevent unlawful behavior of the suspect or the accused, who, if holding the office, may destroy or forge objects and documents of essential importance for the pre-trial investigation, or exert illegal influence on witnesses and other participants in criminal proceedings, or otherwise illegally obstruct criminal proceedings.

2. When deciding the issue of suspension from office the investigating judge or the court shall be required to take into account the following circumstances:

- 1) legal grounds for suspension from office;

- 2) sufficiency of evidences that indicate perpetration of criminal offence by this person;
- 3) implications of suspension from office for other persons.
3. Based on the outcome of consideration of the motion the investigating judge or the court shall pass a ruling that states the following:
  - 1) reasons for granting or rejection of the motion for suspension from office;
  - 2) list of the documents which prove holding of this office by the person and which are subject to be returned to the person or to be removed for the period of this person's suspension from office;
  - 3) period of suspension from office, which shall not exceed two months;
  - 4) procedure of enforcement of the ruling.
4. A copy of the ruling shall be sent to the person who filed the corresponding motion, the suspect or the accused, other persons concerned, not later than the day following the day of passing the ruling, and shall be executed without delay in accordance with the procedure established for execution of judicial decisions.

#### **Article 158. Extending the Period of Suspension from Office and Its Termination**

1. The public prosecutor shall have the right to file a motion seeking extension of the period of suspension from office, and such motion shall be considered in accordance with the procedure prescribed by Article 156 of the present Code.
2. The investigating judge or the court shall deny extending the period of suspension from office unless the public prosecutor proves that:
  - 1) the circumstances which became the reasons for suspension from office continue to exist;
  - 2) the prosecution was unable to otherwise ensure achievement of the goals, for the sake of which suspension from office was enforced, during the time the previous ruling was effective.
3. Suspension from office may be revoked by the decision of the investigating judge in the course of the pre-trial investigation or by the court's ruling in the course of judicial proceedings, based on the motion filed by the public prosecutor or the suspect or the accused who was suspended from office, in case further enforcement of this measure is no longer required. Consideration of the motion for revocation of suspension from office shall follow the rules laid down for consideration of motion for enforcement of this measure.

### **Chapter 15. Provisional Access to Objects and Documents**

#### **Article 159. General provisions for provisional access to objects and documents**

1. Provisional access to objects and documents consists in providing a party in criminal proceedings by the person who owns such objects and documents, with the opportunity to examine such objects and documents, make copies thereof and, upon adoption of the appropriate ruling by investigating judge, court, seize them (execute seizure).
2. Provisional access to objects and documents shall be executed based on a ruling of investigating judge, court.

#### **Article 160. Motion to grant provisional access to objects and documents**

1. Parties to criminal proceedings may apply to investigating judge during pre-trial investigation or to court during trial, for granting provisional access to objects and documents of

criminal proceedings, except those specified in Article 161 of the present Code. Investigator may submit such motion upon approval of public prosecutor.

2. A motion shall contain:

1) brief description of circumstances of the criminal offense in connection with which the motion is filed;

2) legal qualification of the criminal offense under Ukrainian law on criminal liability indicating the article (paragraphs of article);

3) objects and documents the provisional access to which is planned to be granted;

4) grounds to believe that the objects and documents are or can be in possession of the physical or legal person concerned;

5) significance of the objects and documents for establishing circumstances in the criminal proceedings concerned;

6) possibility to use as evidence the information contained in the objects and documents, and impossibility to otherwise prove circumstances which are supposed to be proved with the use of such objects and documents, in case the motion to grant provisional access pertains to objects and documents containing secrets protected by law;

7) substantiation of the necessity to seize the objects and documents, if such an issue is raised by a party to criminal proceedings.

#### **Article 161. Objects and documents to which access is prohibited**

1. Objects and documents to which access is prohibited shall include:

1) correspondence or any other form of communication between defense counsel and his client or any person, who represents his client, in connection with the provision of legal assistance;

2) objects which are attached to such correspondence or any other form of communication.

#### **Article 162. Objects and documents containing secrets protected by law**

1. Secrets protected by law and contained in objects and documents are:

1) information in possession of a mass medium or a journalist and which was provided to them on condition that its authorship or source of information would not be disclosed;

2) information, which may constitute medical secret;

3) information which may constitute secrecy of notary's activity;

4) confidential information, including commercial secrets;

5) information which may constitute bank secrecy;

6) personal correspondence of a person and other notes of personal nature;

7) information held by telecommunication operators and providers on communications, subscriber, rendering of telecommunication services including on receipt of services, their duration, content, routes of transmission etc.;

8) personal data of an individual, which are in his personal possession or in personal database, which the possessor of personal data has;

9) State secret.

#### **Article 163. Consideration of the motion for provisional access to objects and documents**

1. After having received motion for provisional access to objects and documents, investigating judge, court shall summon the person who possesses such objects and documents, with the exception of the case specified in part two of this Article.

2. If the party to criminal proceedings that filed the motion proves the presence of sufficient grounds to believe that a real threat exists of altering or destruction of the objects and documents concerned, the motion may be considered by investigating judge, court without summoning the person who possesses them.

3. In the ruling to summon the person who possesses such objects and documents, investigating judge shall state that objects and documents should be preserved in the condition in which they are at the moment of receiving court summons.

4. Investigating judge, court shall consider the motion with participation of the party to criminal proceedings which filed the motion, and the person who possesses the objects and documents, except as provide otherwise by the second paragraph of this article. Non-compliance with court summons of a person who possesses the objects and documents, without valid reasons, or his failure to inform of the reasons for non-appearance, shall not be obstacle for considering the motion.

5. Investigating judge, court shall issue the ruling to grant provisional access to objects and documents if the party to criminal proceedings proves in its motion the existence of sufficient grounds to believe that the objects or documents:

- 1) are or can be in possession of a physical or legal person;
- 2) per se or in combination with other objects and documents of the criminal proceedings concerned, are significant for establishing important circumstances in the criminal proceedings;
- 3) are not or do not include such objects and documents as contain secrets protected by law.

6. Investigating judge, court issue the ruling to grant provisional access to objects and documents containing secrets protected by law, if a party to criminal proceedings, in addition to circumstances specified in part five of this Article, proves the possibility to use as evidence the information contained in such objects and documents, and impossibility by other means to prove the circumstances which are intended to be proved with the help of such objects and documents.

The access of a person to objects and documents containing secrets protected by law shall be granted according to the procedure laid down by law. Access to objects and documents containing information that is a State secret, may not be granted to a person who has no security clearance as required by law.

7. Investigating judge, court in a ruling on the provisional access to objects and documents may order that possibility be provided for seizure of objects and documents, if a party to criminal proceedings proves the existence of sufficient grounds to believe that without such seizure, a real threat exists of altering or destruction of the objects and documents, or that such seizure is necessary for attaining the goal of obtaining the access to the objects and documents.

#### **Article 164. Ruling on the provisional access to objects and documents**

1. Investigating judge's, court's ruling on the provisional access to privileged objects and documents shall include:

- 1) last name, first name, and patronymic of the person who is granted provisional access to objects and documents;
- 2) date of ruling;
- 3) statutory provision under which the ruling has been passed;
- 4) last name, first name, and patronymic of the physical person or name of the legal

person that shall grant provisional access to objects and documents;

5) name, description, other information which make it possible to identify objects and documents, to which access should be granted;

6) order to grant (ensure) provisional access to objects and documents to the person specified in the ruling, and to provide him the opportunity to seize the objects and documents concerned if a respective decision has been adopted by investigating judge, court;

7) period of validity of the ruling, which may not exceed one month of the date of its issuance;

8) statutory provisions, which establish implications of a failure to comply with the ruling of the investigating judge or court.

#### **Article 165. Execution of the investigating judge's or court's ruling on the provisional access to objects and documents**

1. The person named in investigating judge's, court's ruling on provisional access to objects and documents as the possessor of objects and documents shall be required to give provisional access to objects and documents specified in the ruling to the person indicated in the investigating judge's, court's ruling.

2. The person indicated in the investigating judge's, court's ruling shall be required to produce the original, and hand over a copy, of the investigating judge's, court's ruling on provisional access to objects and documents to the person named in the ruling as the possessor of the objects and documents.

3. The person who produces investigating judge's, court's ruling on provisional access to objects and documents shall be required to leave the list of objects and documents, which have been seized based on investigating judge's, court's ruling, with the possessor of objects and documents.

4. Upon demand of possessor, The person who produces the ruling on provisional access to objects and documents, shall be required to leave copies of seized documents. Copies of seized documents shall be made using copying equipment, electronic means of the possessor (upon his consent) or copying equipment, electronic means of the person who produces the ruling on provisional access to objects and documents.

#### **Article 166. Implications of failure to execute court's ruling on provisional access to objects and documents**

1. In case of failure to execute court's ruling on provisional access to objects and documents, investigating judge, court upon motion of the party to criminal proceedings, which has been granted access to objects and documents based on the ruling, may pass a ruling authorizing search in accordance with provisions of the present Code, with the purpose of finding and seizing the objects and documents concerned.

2. In case the authorization of search was given upon motion of defense party, investigating judge, court shall assign the conduct of search to the investigator, public prosecutor or body of internal affairs at the venue of the conduct of the action. Search shall be conducted with participation of the person upon whose motion it was authorized, pursuant to provisions of the present Code.

## **Chapter 16. Provisional Seizure of Property**

### **Article 167. Grounds for provisional seizure of property**

Provisional seizure of property means actual deprivation of the suspect of the possibility to possess, use, and dispose of certain property till the issue of attachment or return of property is decided.

*{Paragraph 1 of Article 167 as amended by Law # 222-VII of 18.04.2013}*

2. The property in the form of objects, documents, money, etc. may be provisionally seized if there is sufficient grounds for the belief that such property:

1) has been found, fabricated, adapted, or used as means or instruments of the commission of criminal offence and/or preserved signs of it;

has been intended (used) to induce a person him to the commission of a criminal violation, financing and/or providing material support to or as a reward for its commission;

*{Subparagraph 2 of the second paragraph of Article 167 as amended by Law # 222-VII of 18.04.2013}*

3) has been an object of a criminal violation related inter alia to its illegal circulation;

*{Subparagraph 3 of the second paragraph of Article 167 as amended by Law # 222-VII of 18.04.2013}*

has been gained as a result of commission of a criminal violation and/or is proceeds of such as well as any property to which they have been converted in full or in part.

*{Subparagraph 4 of the second paragraph of Article 167 as amended by Law # 222-VII of 18.04.2013}*

### **Article 168. Procedure for provisional seizure of property**

1. Everyone who has lawfully apprehended a person as prescribed in Articles 207 and 208 of the present Code may provisionally seize property. Everyone who has conducted lawful apprehension is obliged to concurrently with bringing the apprehended person to the investigator, public prosecutor, any other authorized official to hand over provisionally seized property to the latter. A record is drawn up to attest the fact that provisionally seized property has been handed over.

2. Property may also be provisionally seized during search, examination.

3. During apprehension or search and provisional seizure of property or immediately thereafter, the investigator, public prosecutor, other authorized official is obliged to draw up an appropriate record.

4. After provisional seizure of property, the authorized official is obliged to ensure preservation of such property in the procedure established by the Cabinet of Ministers of Ukraine

### **Article 169. Terminating provisional seizure of property**

1. Provisionally seized property shall be returned to the person from whom it has been seized:

1) upon public prosecutor's resolution, if he finds that the seizure was ill-grounded;

2) upon ruling of investigating judge or court, if it dismisses public prosecutor's motion to attach the property;

3) in cases set forth in paragraph five of Article 171 and paragraph six of Article 170 of this Code.

4) in cases where arrest is cancelled

*{Subparagraph 4 is added to the first paragraph 1 of Article 169 is added by Law # 222-VII of 18.04.2013}*

## **Chapter 17. Attachment of Property**

### **Article 170. Grounds for attachment of property**

1. Attachment of property means temporary deprivation of the suspect, accused or persons who are civilly liable by law for the damage caused through actions of the suspect, accused person or an insane person who has committed a socially dangerous act, as well as a legal person in whose respect proceedings are taken where such person may suffer forfeiture as a criminal measure, of the possibility to dispose of certain property by a ruling of the investigating judge or court, until revocation of such attachment of property, according to the procedure established by this Code. Pursuant to the requirements of this Code, attachment of property may also envisage the prohibition for person whose property has been attached or another person holding property, to dispose in any way of such property and to use it.

*{Paragraph 1 of Article 170 as amended by Law # 314-VII of 23.05.2013}*

2. Investigating judge or court during trial orders to attach the property if there are sufficient grounds to believe that they meet the criteria specified in paragraph two of Article 167 of this Code. Furthermore, where a civil action is granted, the court on a motion of the public prosecutor or civil plaintiff may decide on attachment of property for the purpose of securing the civil claim pending validity date of the decision, unless such measures have not been taken before.

In urgent circumstances in view of preservation of exhibits or in view of possible subsequent confiscation or special confiscation of funds and other assets, in criminal proceedings related to criminal offences referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine, seizure of property or of funds on accounts of individuals and entities in financial institutions may be imposed under the written decision of the Director of the National Anti-Corruption Bureau of Ukraine upon approval of the public prosecutor. Such measures shall be enforced for the period of up to 72 hours. The Director of the National Anti-Corruption Bureau of Ukraine shall file a motion for attachment of property to the investigating judge, court within 24 hours after the decision was taken.

*{Subparagraph 2 of Paragraph 2 is added to Article 170 by Law [№ 1698-VII of 14.10.2014](#)}*

*{Paragraph 2 of Article 170 as amended by Law # 314-VII of 23.05.2013}*

3. Attachment may be ordered against movable and immovable property, intellectual property rights, money in any currency in a cash or non-cash form, securities, corporate rights owned by the suspect, accused or other persons who are civilly liable by law for the damage caused through actions of the suspect, accused person or an insane person who has committed a socially dangerous act and stay with him or with other physical or legal persons, as well as owned by the legal person in whose respect proceedings are taken to secure possible confiscation of property or civil action.

*{Paragraph 3 of Article 170 as amended by Law # 314-VII of 23.05.2013}*

4. Ban on use of property as well as ban of disposal of such property may be applied only in cases where non-application thereof may entail disappearance, loss of or damage to the property concerned, or other consequences that may obstruct criminal proceedings.

5. Ban on use of living quarters where any persons reside on legitimate grounds shall not be tolerated.

**Article 171. Motion for attachment of property**

1. Public prosecutor, investigator upon approval of the public prosecutor and, with a view to securing a civil action, also a civil plaintiff may file a motion for the attachment of property with investigating judge, court.

2. Investigator's, public prosecutor's motion for the attachment of property shall include:

- 1) grounds for the attachment of property;
- 2) list and types of property to be attached;
- 3) documents confirming the title to the property that must be attached.

The motion shall also be attached originals or copies of documents and other materials with which investigator, public prosecutor substantiates his arguments.

A motion of a civil plaintiff, investigator, public prosecutor for attachment of property of the suspect, accused, legal person in whose respect proceedings are taken or another person, to secure the civil action shall include:

*{The first sentence of Paragraph 3 of Article 171 as amended by Law # 314-VII of 23.05.2013}*

- 1) the scope of damage inflicted by criminal offense;
- 2) evidence that confirms the fact of inflicting damage and the amount of such damage.

4. The value of property to be attached to secure a civil action shall be commensurate with the amount of damage caused by criminal offence.

5. Investigator, public prosecutor shall submit motion for the attachment of provisionally seized property not later than the next day after the seizure of property, otherwise the property has to be immediately returned to the person from whom it has been seized.

**Article 172. Consideration of a motion for attachment of property**

1. Motion for attachment of property is considered by the investigating judge or court not later than two days after it has been lodged, with participation of the investigator and/or public prosecutor, civil plaintiff, if he has filed the motion, suspect, accused, other holder of property, and also of the defense counsel, legal representative and representative of the legal person in whose respect proceedings are taken, if any. Failure to appear by these persons at the court session does not preclude consideration of the motion.

*{Paragraph 1 of Article 172 as amended by Law # 314-VII of 23.05.2013}*

2. A motion of investigator, public prosecutor, civil plaintiff for the attachment of property which has not been provisionally seized may be considered without notifying the suspect, accused, other holder of property, their defense counsel or legal representative and the representative of the legal person in whose respect proceedings are taken where this is necessary to ensure attachment of property.

*{Paragraph 2 of Article 172 as amended by Law # 314-VII of 23.05.2013}*

3. Having established that motion for attachment of property has been filed disregarding the requirements of Article 171 of the present Code, the investigating judge, the court returns the motion to the public prosecutor or civil plaintiff for correction of deficiencies within 72 hours, and adopts an appropriate ruling thereon. In this case the property provisionally seized from a person is subject to immediate recovery on expiration of the period determined by the judge or,

where a motion is filed within the period determined by the judge after the deficiencies have been rectified, upon consideration of the motion and its dismissal.

*{Paragraph 3 of Article 172 as amended by Law # 314-VII of 23.05.2013}*

4. During consideration of the motion for attachment of property, investigating judge may, upon motion of participants to consideration or *proprio motu*, hear any witness or examine any materials which are important for deciding the issue of property attachment.

### **Article 173. Disposing the issue of property attachment**

1. Investigating judge, court shall dismiss motion for the attachment of property unless the person who filed it proves that such attachment is necessary.

2. When disposing the issue of property attachment, investigating judge, court shall take into consideration the following:

- 1) statutory ground for the attachment of property;
- 2) sufficiency of evidence which indicates that the person concerned has committed criminal offence;
- 3) amount of likely confiscation of property, likely amount of damage caused by criminal offence, and civil action;
- 4) implications of property attachment for others.

5) Reasonableness and commensurability of restricting the right of ownership with the objective of the criminal proceedings.

3. Dismissing or partially granting motion for the attachment of property shall entail the return of all or a part of temporarily seized property, respectively, to the person concerned.

4. If attachment of property is granted, investigating judge, court shall be required to use the least burdensome way of property attachment. Investigating judge, court is obliged to order such way of property attachment that will not stop or unduly impede legal business activities of the person concerned nor will have other implications substantially affecting interests of others.

5. If attachment of property is granted, investigating judge, court shall pass a ruling which includes:

- 1) list of property to be attached;
- 2) grounds for property attachment;
- 3) list of provisionally seized property to be returned to the person concerned;
- 4) ban on disposing of or using the property if such ban is stipulated, and specification of such property;
- 5) manner in which ruling should be enforced.

6. Investigating judge, court shall pass the ruling to attach provisionally seized property within 72 hours after the motion has been received, otherwise such property has to be returned to the person from whom it has been seized.

A copy of the ruling is sent to the investigator, public prosecutor, the suspect, accused, representative of the legal person in whose respect proceedings are taken and to other interested persons not later than the next day after it has been passed.

*{Paragraph 7 of Article 173 as amended by Law # 314-VII of 23.05.2013}*

### **Article 174. Revocation of property attachment**

1. The suspect, accused, their defense counsel, legal representative, other owner or possessor of property and representative of the legal person in whose respect proceedings are taken, who were absent during consideration of the issue of property attachment may file a

motion to revoke property attachment fully or in part. Such motion is considered in the course of pre-trial investigation by investigating judge, and during trial, by court.

*{The first sentence of Paragraph 1 of Article 174 as amended by Law # 314-VII of 23.05.2013}*

Property attachment may also be revoked fully or in part by an investigating judge's ruling in the course of pre-trial investigation or by court during trial, upon motion of the suspect, accused, their defense counsel, legal representative, other owner or possessor of property or representative of the legal person in whose respect proceedings are taken if they prove that there is no need for continued application of this measure, or that the attachment was ungrounded.

*{The first sentence of Paragraph 1 of Article 174 as amended by Law # 314-VII of 23.05.2013}*

2. Investigating judge, court shall consider the motion to revoke property attachment within three days after such motion has been received by court. The person who filed the motion and the person upon whose motion the property has been attached shall be notified of the time and place of the consideration of the motion.

The public prosecutor while revoking property attachment adopts a ruling on terminating the criminal proceedings and revokes attachment of property unless such is subject to special confiscation.

*{Paragraph 3 of Article 174 as amended by Law # 222-VII of 18.04.2013}*

4. The court concurrently with adopting a judgment in the end of trial, dispose the issue of revoking property attachment. The court shall revoke property attachment in particular, in cases of acquittal of the accused, termination of criminal proceedings by court unless the property is subject to special confiscation, non-imposition of a court punishment in the form of confiscation of property and/or non-application of special confiscation, leaving the civil action undecided or dismissal of the civil claim.

*{Paragraph 4 of Article 174 as amended by Law # 222-VII of 18.04.2013}*

#### **Article 175. Execution of the ruling on the attachment of property**

1. Ruling on the attachment of property shall be immediately executed by investigator, public prosecutor.

## **Chapter 18. Measures of Restraint, Apprehension of a Person**

### **§ 1. Measures of restraint, apprehension of a person based on investigating judge's, court's decision**

#### **Article 176. General Provisions relating to Measures of Restraint**

1. The following are measures of restraint:

- 1) personal commitment;
- 2) personal warranty;
- 3) bail;
- 4) house arrest;
- 5) custody.

2. Provisional measure of restraint is apprehension of a person which is enforced on grounds and according to the procedure laid down in the present Code.

3. Investigating judge, court shall deny enforcement of a measure of restraint unless investigator, public prosecutor proves that circumstances established in the course of considering the motion on enforcement of measures of restraint are sufficient for belief that none of the less strict measures of restraint specified in part one of this Article, can prevent the risk or risks proved in the course of consideration. At that, the least strict measure of restraint is personal commitment, and the most strict, custody.

4. Measures of restraint shall be enforced: during pre-trial investigation, by investigating judge upon motion of investigator approved by public prosecutor, or upon motion of public prosecutor; and during trial, by court upon motion of public prosecutor.

5. The measures of restraint in the form of personal commitment, personal warranty, house arrest and bail may not be applied to persons suspected or accused of having committed the crimes specified by Articles 109-114-1, 258-258-5, 260, and 261 of the Criminal Code of Ukraine.

*{A new paragraph is added to Article 176 by Law № 1689-VII of 07.10.2014}*

#### **Article 177. Purpose and grounds for enforcement of measures of restraint**

1. The purpose of a measure of restraint is to ensure the compliance of the suspect or accused, with procedural obligations imposed on him, as well as to prevent attempts to:

- 1) hide from pre-trial investigation agency and/or the court;
- 2) destroy, conceal or spoil any of objects or documents that have essential importance for establishing circumstances of criminal offence;
- 3) exert unlawful influence on the victim, witness, another suspect, accused, expert or specialist in the same proceedings;
- 4) obstruct criminal proceedings in other way;
- 5) commit similar or the same criminal offence, or continue the criminal offence of which he is suspected, charged.

2. Grounds for enforcement of a measure of restraint shall be the existence of reasonable suspicion of having committed a criminal offence, as well as the existence of risks that provide sufficient grounds to investigating judge, court to believe that the suspect, the accused or the **convicted** person can commit actions specified in part one of this Article. The investigator, public prosecutor may not initiate application of a measure of restraint without grounds provided hereunder.

#### **Article 178. Circumstances taken into account in choosing a measure of restraint**

1. To decide on the issue of choosing a measure of restraint, in addition to the existence of risks specified in Article 177 of the present Code, investigating judge, court, drawing upon materials submitted by parties to criminal proceedings, is required to assess the totality of circumstances including:

- 1) importance of available evidence concerning the commission of criminal offence by the suspect, accused;
- 2) severity of punishment which can be imposed on the person concerned if the suspect, accused is found guilty of the commission of the criminal offence he is suspected, charged of;
- 3) age and state of health of the suspect, accused;
- 4) firmness of social relations the suspect, accused has in the place of his permanent residence, including whether he has a family and dependants;
- 5) whether the suspect, accused has the place of permanent employment or study;

- 6) reputation of the suspect, accused;
- 7) property status of the suspect, accused;
- 8) previous convictions of the suspect, accused;
- 9) compliance by the suspect, accused with terms of previously enforced measures of restraint, if any;
- 10) existence of the notice that the person concerned is suspected of having committed another criminal offence
- 11) the amount of property damage, in causing which a person is suspected or accused, or the amount of proceeds, resulting from committing a criminal offense a person is suspected or accused, and also, the validity of available evidence justifying the appropriate circumstances.

#### **Article 179. Personal commitment**

1. Personal commitment consists in submission on the suspect, accused of an obligation to perform duties imposed on him by investigating judge, court as specified in Article 194 of the present Code.
2. The suspect, accused is notified, in written form against his signature, of duties imposed on him, and advised that in case of non-observance, he may be applied a more strict measure, and he may be imposed a pecuniary penalty in the amount of 0.25 to 2 times minimum wages.
3. Control over the observance of personal commitment shall be carried out by investigator, and if the case is in the course of court proceedings, by public prosecutor.

#### **Article 180. Personal warranty**

1. Personal warranty consists in the giving by persons whom investigating judge, court regard as worthy of confidence, of a written obligation that they warrant the observance by the suspect, accused with duties imposed on him in accordance with Article 194 of this Code, and undertake, if necessity should arise, to bring him to the agency of pre-trial investigation or to court at first request.
2. Number of warrantors shall be determined by the investigating judge, court which chooses the measure of restraint concerned. Presence of a single warrantor may be recognized as sufficient only if he is a person worthy of special confidence.
3. Warrantors are advised of what criminal offense the person concerned is suspected or accused, of the statutory punishment for the commission thereof, of warrantor's duties and of the implications of non-fulfillment, of the right to waive assumed obligations and the procedure for the realization of this right.
4. Warrantor may waive assumed obligations before the emergence of grounds for his liability. In such case, he shall ensure the appearance of the suspect, accused at the agency of pre-trial investigation or court for disposal of the issue of replacing his measure of restraint for another one.
5. In case of non-fulfillment by warrantor of assumed obligations, he shall be imposed pecuniary penalty in the amount:
  - 1) in proceedings on a criminal offense punishable by imprisonment for a term of no more than three years, or by other, less severe punishment, of two to five times minimum wages;
  - 2) in proceedings on a crime punishable by imprisonment for a term of three to five years, of 5 to 10 times minimum wages;

3) in proceedings on a crime punishable by imprisonment for a term of five to ten years, of 10 to 20 times minimum wages;

4) in proceedings on a crime punishable by imprisonment for a term of over ten years, of 20 to 50 times minimum wages.

6. Control over the fulfillment of personal warranty obligations shall be carried out by investigator, and if the case is in the course of court proceedings, by public prosecutor.

#### **Article 181. House arrest**

1. House arrest consists in prohibition to the suspect, accused to leave his home, on the 24-hour basis or during a certain period of day.

2. House arrest may be applied to a person who is suspected or accused of committing a crime punishable by imprisonment.

3. A ruling on application of the measure of restraint in the form of house arrest shall be transferred for execution to the body of internal affairs at the suspect's, defendant's place of residence.

4. The body of internal affairs concerned shall be required to immediately put on record the person subjected to the measure of restraint in the form of house arrest, and inform of that the investigator, or court if the measure of restraint has been applied in the course of court proceedings.

5. Officers of the body of internal affairs may, with the purpose of exercising control over the behavior of the suspected, accused that is under house arrest, come to the person's home, demand oral or written explanations regarding issues related to the carrying out of duties imposed on his/her, and use electronic means of control.

6. The term of validity of the order issued by an investigating judge concerning the period of keeping a person under a house arrest may not exceed two months. If necessary, the period of house arrest may be extended upon request of public prosecutor within the framework of pre-trial investigation subject to the procedure laid down in Article 199 of this Code. The aggregate duration of house arrest during pre-trial investigation may not exceed six months. Upon termination of this period, the ruling concerning application of the measure of restraint in the form of house arrest shall be valid no longer, and the measure of restraint shall be deemed revoked.

#### **Article 182. Bail**

1. Bail consists in paying in of funds, in the legal tender of Ukraine, to a special account determined according to the procedure approved by the Cabinet of Ministers of Ukraine, with the purpose of ensuring the observance by the suspect, accused of obligations imposed on him, on condition of reverting the paid-in funds to the State's revenue in case of non-observance of such duties. Where so warranted by the third or fourth paragraph of Article 183 of this Code, the investigating judge or court may by their ruling decide whether bail should be applied to a person to whom custodial restraint is already applied.

2. Bail may be paid both by the suspect, accused himself and by any other physical or legal person (bail bondsman). No legal person in the state or municipal ownership, or one financed out of a local budget, State budget or that of the Autonomous Republic of Crimea, or in the charter capital of which there is a stake that belongs to the State or to an enterprise in public or communal ownership shall be a bail bondsman.

3. When bail is applied as a measure of restraint, the suspect, accused shall be informed of his duties and implications of non-fulfillment, and the bail bondsman, of the criminal offence that the person concerned is suspected or accused, the statutory punishment for the commission thereof, the duties of ensuring proper behavior of the suspect, accused and his appearance upon summons, as well as implications of non-fulfillment of such duties.

Where a bail is posted pursuant to a ruling of the investigating judge or court issued in respect of a person to whom a custodial restraint is already applied, the above information shall be provided by an authorized officer of the place of confinement.

4. The amount of bail shall be determined by investigating judge, court with due account of circumstances of the criminal offense, of the property and family status of the suspect, accused, other data on the person and risks as specified in Article 177 of the present Code. Bail amount shall be required to sufficiently guarantee the fulfillment by the suspect, accused of obligations imposed upon him, and may not be deliberately crippling for him.

5. The amount of bail shall be determined within the following limits:

1) 1-20 times the minimum wage –in respect of a person suspected or charged with the commission of a minor or medium-gravity offence;

2) 20-80 times the minimum wage –in respect of a person suspected or charged with the commission of a grave offence;

3) 80-300 times the minimum wage –in respect of a person suspected or charged with the commission of an especially grave offence.

In exceptional cases, where the investigating judge or the court finds that the bail in the amount specified will not suffice to ensure fulfillment of the obligations imposed on a person suspected of or charged with the commission of a grave or especially grave offence, the bail may be established in the amount exceeding 80 or 300 times the minimum wage accordingly.

6. A suspect or accused person who is not in custody shall by no later than 5 days of determination of bail be required to deposit the funds into the relevant account or ensure that this amount is deposited by a bail bondsman and submit documental proof thereof to the investigator, prosecutor or the court. The subject action may take place later than five days from the time when decision to apply restrictive measure in the form of bail was rendered, unless during this time it is decided to apply a different restrictive measure. As of the moment of determination of bail as a measure of restraint in regard of a person who is not in custody, inter alia until the money is actually deposited in an appropriate account, and also after the suspect or accused is released following the depositing of bail in the amount established by investigating judge, court in its order to apply such restrictive measure as putting into custody, the suspect, accused person, bail bondsman shall be required to fulfill obligations imposed upon them in relation to bail as a measure of restraint.

7. Where so provided for by the third or fourth paragraphs of Article 183 of this Code, the suspect, accused person or bail bondsman may at any time exercise their right to post bail in the amount determined in the ruling on application of a custodial measure of restraint.

8. In case of non-fulfillment of his duties by the bail bondsman as well as in the case that the suspect or accused person, upon proper notice, fail to appear on summons before the investigator, public prosecutor, investigating judge, court without a valid excuse, or failed to inform of the reasons for non-appearance, or violated any other duties imposed upon him in connection with the measure of restraint, the bail shall be reverted into the State's revenue, be credited to the special fund of the State Budget of Ukraine, and used in compliance with the procedure established by law for use of court fees.

9. The issue of reverting bail into the State's revenue shall be disposed by investigating judge, court upon motion of the public prosecutor or at the court's discretion in a court session attended by suspect, accused person, bail bondsman, in compliance with the procedure established for consideration of motions on choosing a measure of restraint. Non-appearance in court session of the above persons, granted they have been duly notified of the place and time of consideration of the issue, shall not preclude the holding of the court session.

10. Where bail is reverted into the revenue of the State, the investigating judge, court shall decide the issue of applying to the suspect or accused person another measure of restraint in form of bail in a higher amount or another measure of restraint, taking into account provisions of the seventh paragraph of Article 194 of this Code.

11. Bail which has not been forfeited to the State shall be returned to the suspect, accused person or bail bondsman after such measure of restraint expires. The bail paid in by the suspect, accused may be, in full or in part, reverted by court to the execution of sentence in respect of penalty involving property. The bail paid in by a bail bondsman may be reverted by court to the execution of sentence in respect of penalty involving property, only upon his consent.

### **Article 183. Keeping in custody**

1. Keeping in custody is an exceptional measure of restraint enforced exclusively if public prosecutor proves that none of the less strict measures of restraint can prevent risks specified in Article 177 of the present Code except for the cases specified by Part Five of Article 176 of this Code.

*{The first paragraph of Article 183 as amended by Law № 1689-VII of 07.10.2014}*

2. Custody as measure of restraint shall not apply except as follows–

1) a person suspected of or charged with an offence the primary punishment for which by law is a fine in the amount exceeding 3000 times the minimum citizen's income, exceptionally where the public prosecutor, in addition to the grounds provided for by Article 177 of this Code, has proven that the suspect, accused person failed to fulfill the obligations imposed upon him when an earlier measure of restraint or failed to comply as prescribed with the requirements concerning depositions of bail and submission of documentary proof of such deposition;

2) a person with prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years, exceptionally where the public prosecutor, in addition to the grounds provided for by Article 177 of this Code, has proven that such person, when at large, was fleeing pre-trial investigation or trial, obstructed criminal proceedings or has been notified of suspicion in the commission of another offence;

3) a person without prior convictions who is suspected of or charged with an offence that according to law is punishable by imprisonment of up to 5 years, exceptionally where the public prosecutor, in addition to the grounds provided for by Article 177 of this Code, has proven that such person, when at large, was fleeing pre-trial investigation or trial, obstructed criminal proceedings or has been notified of suspicion in the commission of another offence;

4) a person without prior convictions who is suspected of or charged with an offence punishable by imprisonment of more than 5 years;

5) a person with prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years;

6) a person wanted by competent authorities of a foreign state for commission of a criminal offence in connection with which the issue of extradition to such foreign state for the purpose of instituting criminal proceedings against him or execution of the sentence may be decided, in the

manner and on the grounds provided for by Section IX of this Code or an international treaty of Ukraine to which the Verkhovna Rada of Ukraine consented to be bound.

3. The investigating judge, court when making a ruling on application of custody as a measure of restraint shall be required to determine an amount of bail sufficient for ensuring that the suspect or the accused should comply with the duties provided for by this Code, except as provide otherwise under the fourth paragraph of this Article.

The investigating judge, court shall indicate in their ruling what duties as provided for by Article 194 of this Code are imposed on the suspect, accused person if bail is posted, implications of failure to fulfill such duties, justify the amount of bail selected, as well as feasibility of its application in the case that such decision is made in criminal proceedings as provided under the fourth paragraph of this Article.

4. The investigating judge, court when rendering a decision on application of custody as a measure of restraint taking into account the grounds and circumstances stipulated for in Articles 177 and 178 of this Code may put aside a decision on the amount of bail in criminal proceedings–

- 1) in the matter of a violent offence or one involving threat of violence;
- 2) in the matter of an offence causing death of an individual;
- 3) in regard of the person who has violated the terms of a bail selected earlier as a measure of restraint, within the same set of proceedings.

#### **Article 184. A motion of public prosecutor or investigator for measures of restraint**

1. Investigator's, public prosecutor's motion to enforce a measure of restraint shall be filed with the local court in the bounds of the territorial jurisdiction of which the pre-trial investigation is conducted, and shall contain:

- 1) brief description of factual circumstances of criminal offence which a person is suspected or accused of;
- 2) legal determination of this criminal offence with indication of the Article (paragraph of Article) of the Ukraine's law on criminal liability;
- 3) description of circumstances which give grounds for suspecting, charging the individual concerned in the commission of criminal offence, and reference to materials which support such facts;
- 4) reference to one or several risks specified in Article 177 of the present Code;
- 5) description of circumstances which gave ground to investigator, public prosecutor to conclude that a risk or several risks as stated in his motion are real, and reference to materials which support such facts;
- 6) substantiation of impossibility to prevent the risk or risks referred to in the motion through the application of less strict measures of restraint.
- 7) substantiation of the necessity to impose specific duties as provided for by the fifth paragraph of Article 194 of this Code on the suspect or accused.

2. Copy of the motion and materials in substantiation of the necessity to enforce the measure of restraint shall be handed over to the suspect, accused no later than three hours before the consideration of the motion begins.

3. The motion shall be attached with:

- 1) copies of materials which investigator, public prosecutor uses to substantiate his arguments;

2) list of witnesses whom investigator, public prosecutor finds necessary to question during consideration of the measure of restraint;

3) confirmation that the suspect, accused has been handed over copies of the motion and materials used to substantiate the necessity to enforce the measure of restraint.

4. Enforcement of a measure of restraint to each individual shall require a separate motion.

**Article 185. Revoking, changing or supplementing the motion to enforce a measure of restraint**

1. If, after filing the motion to enforce a measure of restraint, public prosecutor learns about circumstances which exclude the reasonable suspicion that a person has committed criminal offence, he/ she is required to withdraw the motion to enforce a measure of restraint and recall the permission for apprehension if such permission has been granted.

2. If, after filing the motion to enforce a measure of restraint, public prosecutor learns about some other circumstances which can affect court's decision to enforce a measure of restraint, he/ she is required to supplement or change the motion or replace it with a new one..

**Article 186. Time limits for consideration of the motion to enforce a measure of restraint**

1. Investigating judge, court considers the motion to enforce or change a measure of restraint without any delay and in any case within 72 hours after the suspect, accused has actually been apprehended, or after the filing of the motion if the suspect, accused is at large, or after the suspect, accused, his defense counsel has filed an appropriate plea with the court.

**Article 187. Ensuring appearance of a person for consideration of the motion to enforce a measure of restraint**

1. Investigating judge, court, after having received the motion to enforce a measure of restraint against the suspect, accused who is at large, fixes the date of trial and summons the person concerned.

2. Whenever investigator, public prosecutor together with the motion to enforce a measure of restraint, files the application for permission to apprehend the suspect, accused in view of his compelled appearance, investigating judge, court makes decision in accordance with Article 189 of this Code.

3. If the suspect, accused does not appear upon summons and the investigating judge, court, at the time of beginning the court's consideration, has no information about valid reasons, which impede his timely appearance, investigating judge, court may issue a ruling on compelled appearance of the suspect, accused, if he fails to appear when the motion in respect of choosing the measure of restraint in the form of bail, house arrest or custody was considered, or on permission to apprehend him for the purpose of compelled appearance, if the ruling on compelled appearance was not delivered.

**Article 188. Ruling to grant permission for apprehension with a view to compelled appearance**

1. Public prosecutor, investigator upon approval of public prosecutor shall have the right to file a motion on permission for apprehension with a view to compelled appearance for participation in consideration of a motion on enforcement of a measure of restraint in the form of custody.

2. The motion may be filed:

1) concurrently with filing a motion on enforcement of a measure of restraint in the form of custody or on a change of a measure of restraint to custody;

2) after filing a motion on enforcement of a measure of restraint and prior to the appearance of the suspect, accused in court on grounds of court summons;

3) Following the non-appearance of the suspect, accused on court summons for participation in consideration of a motion on enforcement of a measure of restraint in the form of custody and the investigating judge's, court's lack information as of the beginning of court session about valid reasons that impede his timely appearance.

3. Public prosecutor shall attach to the motion such documents as confirm the existence of circumstances specified in subparagraphs 1, 2 of the fourth paragraph of Article 189 of this Code.

**Article 189. Consideration of the application for permission to apprehend in view of compelled appearance**

1. Investigating judge, court may not refuse considering the application for permission to apprehend the suspect, accused with a view of his compelled appearance even if grounds are present for apprehension without court's ruling on the apprehension with a view to compelled appearance.

2. Application for permission to apprehend the suspect, accused with a view to his compelled appearance is considered by investigating judge, court immediately after the receipt of such application.

3. The application is considered in camera with participation of public prosecutor.

4. Investigating judge, court shall not grant a sanction to detain a suspect or accused person with a view to compel their appearance unless the public prosecutor proves that the circumstances set forth in the motion to enforce the measure of restraint give grounds for taking the suspect or accused person in custody, as well as that there are sufficient grounds to believe that—

1) the suspect or the accused is hiding from agencies of pre-trial investigation or court

2) having received information that the investigator, public prosecutor has applied to court for enforcing a measure of restraint, the suspect, accused, before the start of consideration of the motion on enforcement of a measure of restraint, will take actions which serve as a ground for the enforcement of the measure of restraint and which are specified in Article 177 of the present Code.

*{Paragraph 4 of Article 189 as amended by Law # 5706-VI of 05.07.2012}*

**Article 190. Ruling to grant permission for apprehension with a view to compelled appearance**

1. Ruling to grant permission for apprehension with a view to compelled appearance shall contain:

1) name of the court, last name and initials of investigating judge, judge (judges);

2) first name, last name, patronymic of the suspect, accused concerning whose apprehension the ruling is adopted, known at the moment of adoption of the ruling and if first name, last name, patronymic are unknown, detailed description of such person;

3) brief description of factual circumstances of criminal offence in the commission of which the person concerned is suspected, accused and its legal determination under criminal law of Ukraine;

4) reference to circumstances which give grounds for:

reasonable suspicion that the person concerned has committed criminal offence;

conclusion that risk referred to in the motion to enforce a measure of restraint does exist;

conclusion that circumstances for making a decision allowing apprehension, referred to in subparagraphs 1 or 2 of the fourth paragraph of Article 189 of this Code, do exist;

5) date of its adoption;

6) the date on which the ruling becomes legally ineffective;

7) signature of investigating judge, judge (judges) who passed the ruling.

2. Ruling granting permission for apprehension with a view to compelled appearance shall state first name, last name, patronymic, address and telephone number of public prosecutor or investigator upon whose motion the ruling has been adopted.

3. A ruling which grants permission for apprehension in view of compelled appearance becomes legally ineffective upon:

1) compelled appearance of the suspect, accused before court;

2) expiration of the time of validity of the ruling as indicated in the ruling, or expiration of six months after the ruling with no time of validity indicated, has been passed;

3) withdrawal of the ruling by public prosecutor.

4. Investigating judge, court, upon public prosecutor's motion, may decide on the issue of repeated apprehension of a person with a view to compelled appearance as prescribed in the present Code. Repeated filing with the court of a motion requesting permission for apprehension of one and the same person in the same criminal proceedings after the adoption by investigating judge, court of a ruling denying such motion, is only possible where new circumstances emerge confirming the necessity of keeping the person concerned in custody.

5. The ruling denying apprehension may be appealed as prescribed in the present Code. A ruling on permission of apprehension may not be appealed against.

### **Article 191. Actions by officials after the apprehension based on investigating judge's, court's ruling to grant permission for apprehension**

1. The individual apprehended based on investigating judge's, court's ruling, within 36 hours after the apprehension shall be released or brought to the investigating judge, court which issued the ruling allowing apprehension in view of compelled appearance.

2. If apprehension was made in a vehicle, the place of apprehension is considered to be the territory of the district where apprehension took place.

3. If apprehension was made in a public transportation means, whose unscheduled stop is impossible without additional complications, the territory of the district where the closest next stop of the public transportation means is located is considered to be the place of apprehension.

4. If apprehension was made in an air or sea transportation means during trip outside the limits of the state border of Ukraine, the port within state border of Ukraine from which this trip begun is considered to be the place of apprehension.

5. Official who apprehended a person based on investigating judge's, court's ruling to grant permission for apprehension, shall be obliged to immediately hand over to the person a copy of the ruling concerned.

6. Authorized official (a person vested by law with the right to make apprehension) who apprehended a person based on investigating judge's, court's ruling to grant permission for apprehension or in whose custody the person that was allowed to be apprehended is kept, shall immediately inform thereon the investigator, public prosecutor named in the ruling.

7. If after apprehension of the suspect, accused it emerges that he was apprehended on grounds of a ruling to permit the apprehension which was withdrawn by public prosecutor, the suspect, accused must be immediately released by the authorized official in whose custody he is kept, unless there exist other legitimate grounds for his continued custody.

8. The official shall arrest the officer from the personnel of an intelligence agency in the performance of his duties and conduct the related personal search and examination of his personal effects only in presence of official representatives of that agency.

### **Article 192. Lodging motion to enforce a measure of restraint after apprehension of a person without ruling granting permission for apprehension**

1. Public prosecutor, investigator upon approval of public prosecutor has the right to lodge a motion to enforce a measure of restraint to the individual who was apprehended without ruling granting permission for apprehension, on the suspicion in the commission of criminal offence, with the local court within whose territorial jurisdiction the pre-trial investigation agency is located, and if this proves impossible within a period specified in the second paragraph of Article 211 of the present Code, with the local court within whose territorial jurisdiction the person was apprehended.

2. A motion for application of a measure of restraint to a person apprehended without a ruling granting leave of detention on suspicions of a criminal offence shall comply with the requirements of Article 184 of this Code. The motion shall be attached with the record of apprehension of the suspect.

### **Article 193. Procedure for consideration of the motion to enforce a measure of restraint**

1. Motion to enforce a measure of restraint is considered with participation of public prosecutor, suspect, accused, his defense counsel, except cases stipulated for in Part Six of this Article.

2. Investigating judge, court before whom the suspect, accused appeared or was brought for participation in the consideration of the motion to enforce a measure of restraint, is required to advise the suspect, accused of his rights:

- 1) be represented by a defense counsel;
- 2) know merits of and grounds for the suspicion or charges;
- 3) know the grounds for his/ her apprehension;
- 4) waive giving explanations, testimonies in respect of the suspicion or charges;
- 5) provide explanations in respect of any circumstances of his apprehension and custody;
- 6) examine objects, documents, explanations, testimonies that the public prosecutor invokes and produce objects, documents, explanations, testimonies of other persons to deny arguments of the public prosecutor;
- 7) make pleas to summon and examine witnesses whose testimonies can be important for deciding issues considered.

3. Investigating judge, court is required to take all necessary measures to provide a defense counsel to the suspect, accused if the latter filed a plea on engaging a defense counsel, if

participation of defense counsel is mandatory, or if investigating judge, court finds that circumstances of the proceeding require participation of a defense counsel.

4. Upon request of the parties or *proprio motu*, investigating judge, court may hear any witness or examine any materials of importance for deciding on the enforcement of a measure of restraint.

5. Any assertions or statements the suspect, accused made during consideration of the motion to enforce a measure of restraint may not be used for proving his guilt of the commission of criminal offence he is suspected or charged of, or of any other offence.

6. An investigating judge or a court may consider a motion for selection of such measure of restraint as putting into custody in absence of a suspect or accused solely in the case where prosecutor apart from the circumstances stipulated for in Article 177 of this Code will prove that the suspect has been announced into international search. In such cases upon apprehension of the person and no later than 48 hours upon his (her) delivery to the venue of criminal proceeding, the investigating judge or a court will, in the presence of a suspect or accused, decide whether to apply custody or a softer measure of restraint and will render a ruling thereupon.

#### **Article 194. Enforcing a measure of restraint**

1. When considering the motion to enforce a measure of restraint, investigating judge, court is required to find out whether evidence produced by parties to criminal proceedings does prove circumstances which point to:

1) the existence of reasonable suspicion that the suspect, accused has committed criminal offence;

2) the existence of sufficient grounds for belief in the existence of at least one of the risks as referred to in Article 177 of the present Code, and as stated by the investigator, public prosecutor;

3) insufficiency of enforcing less strict measures of restraint for preventing the risk or risks specified in the motion.

2. Investigating judge, court is required to pass a ruling denying enforcement of a measure of restraint unless, during consideration of the motion, public prosecutor proves circumstances referred to in paragraphs 1, 2, 3 of part one of this Article.

3. Investigating judge, court may impose on the suspect, accused the obligation to appear upon each request before court or in any other public authority as specified by investigating judge, court if public prosecutor proves circumstances referred to in subparagraph 1 of the first paragraph of this Article, but fails to prove circumstances referred to in paragraphs 2 and 3 of part one of this Article.

4. If in the course of consideration of the motion on choosing a measure of restraint, public prosecutor proves circumstances referred to in subparagraphs 1 and 2 of the first paragraph of this Article but fails to prove circumstances referred to in subparagraph 3 of the first paragraph of this Article, the investigating judge, court may enforce a less strict measure of restraint than the one indicated in the motion as well as imposed upon the suspect or accused any of the duties as provided for by the fifth paragraph of this Article, the necessity of which is established on the basis of the motion submitted by the public prosecutor.

5. If in the course of consideration of a motion on choosing a measure of restraint not involving custody, the public prosecutor proves the presence of all circumstances referred to in the first paragraph of this Article, the investigating judge, court shall apply appropriate measure of restraint, impose on the suspect, accused the obligation to appear upon each request before

court or any other specified public authority and also perform one or more of the obligations the necessity imposing which has been proven by the public prosecutor, namely:

- 1) appear before the official specified with periodicity established;
- 2) not to leave the locality where he is registered, resides or stays, without permission of the investigator, public prosecutor or court;
- 3) inform the investigator, public prosecutor or court on the change of place of residence and/or employment;
- 4) abstain from communicating with any individual specified by investigating judge, court or communicate with such person on conditions imposed by investigating judge, court;
- 5) do not visit places specified by investigating judge or court;
- 6) undergo treatment from narcotic or alcohol addiction;
- 7) make efforts to find a job or to enter an educational institution;
- 8) surrender his internal ID, foreign travel passport(s) or other documents authorizing leaving and coming to Ukraine;
- 9) carry an electronic monitor.

6. The duties as provided for by the fifth paragraph of this Article may be imposed upon the suspect, or accused person, for no longer than 2 months, extendable, if necessary, on a motion of the public prosecutor under Article 199 of this Code. On expiry of the term, including its extension, for which specific duties were imposed on the suspect or accused person, the ruling on application of the measure of restraint shall lapse in this relation, the duties cancelled.

7. Where a person is suspected of or charged with an offence for the primary punishment is a fine in excess of 3000 times the minimum citizen's income, the only applicable measure of restraint shall be bail or custody, in the cases and in accordance with the procedure provided for by this Chapter.

#### **Article 195. Application of electronic control means**

1. Application of electronic control means consists in fastening on the body of the suspect, accused of a device that allows monitoring and recording his /her whereabouts. Such a device should be secure against unauthorized removal, damaging or other interference in its functioning with the purpose of eluding control, and send signals alerting to the person's attempts to act in this way.

2. Electronic control means may be applied—

1) by the investigator based on investigating judge's, court's ruling to choose in respect of the suspect, accused a measure of restraint not involving keeping in custody, which imposes on the suspect, accused the appropriate duty;

2) by officers of an internal affairs body, based on investigating judge's, court's ruling to choose in respect of the suspect, accused the measure of restraint in the form of house arrest.

3. Electronic control means shall be applied in accordance with the procedure established by the Ministry of Internal Affairs of Ukraine.

4. Application of electronic control means which significantly disrupt the normal tenor of the concerned person's life, cause significant discomfort when worn, or may threaten life and health of the person, shall be inadmissible.

5. Investigator, officer of an internal affairs body, shall be required before applying electronic control means, to explain to the suspect, accused the rules of using the device, safety of handling and implications of removal thereof or illegal interference in its operation with the purpose of eluding control.

6. Refusal to wear electronic control means, deliberate removal, damaging or other interference in its operation with the purpose of eluding control, as well as attempts to act in this way shall be deemed non-fulfillment of duties imposed by court on the suspect, accused when choosing a measure of restraint not involving keeping in custody, or in the form of house arrest.

#### **Article 196. Ruling to enforce measures of restraint**

1. The investigating judge, court shall include in the ruling to enforce a measure of restraint the information about:

1) criminal offence (its substance and legal determination, with indication of the Article (paragraph of the Article) of the law of Ukraine on criminal liability) of which the person is suspected, accused;

2) circumstances which show existence of risks referred to in Article 177 of the present Code;

3) circumstances which show that less severe measures of restraint are insufficient for preventing the risks specified in Article 177 of the present Code;

4) reference to evidence which supports such circumstances;

5) measure of restraint that is enforced.

2. A ruling to apply a non-custodial measure shall indicate specific duties, as provided for by the fifth of Article 194 of this Code, imposed on a suspect, accused person and, where so provided for by this Code, the time for which they are imposed.

3. A ruling to apply a restraint in the form of house arrest shall state exact address of the dwelling which the suspect, accused is forbidden to leave.

4. Investigating judge, court shall be required to determine in the ruling on choosing a measure of restraint in the form of custody or house arrest, the date of its expiration within time limits established in the present Code.

5. A copy of the ruling concerning the applicable measure of restraint shall be handed over to the suspect or accused immediately upon its pronouncement.

#### **Article 197. Term of validity of the ruling to commit to custody, extend custody**

1. Term of validity of the investigating judge's, court's ruling to commit to custody or to extend custody may not exceed sixty days.

2. Duration of custody shall be calculated from the date of having been committed to custody, and if commission to custody was preceded by apprehension of the suspect, accused, from the date of apprehension. Time of custody shall include the time spent by the person concerned in a medical institution while undergoing in-patient psychiatric examination. In case of repeated commission to custody of a person in the course of the same criminal proceedings, time of custody shall be calculated with account of the time of the previous term under custody.

3. Time of keeping under custody may be extended by investigating judge within the time limits of pre-trial investigation according to the procedure laid down in the present Code. Total duration of keeping under custody of the suspect, accused in the course of pre-trial investigation shall not exceed:

1) six months in criminal proceedings in respect of crimes of small or medium gravity;

2) twelve months in criminal proceedings in respect of grave or especially grave crimes.

#### **Article 198. Importance of findings, which are contained in a ruling to enforce measures of restraint**

1. Findings investigating judge, court arrives at after consideration of the motion to enforce a measure of restraint, with regard to any circumstances relating to the substance of the suspicion, charges shall have no prejudicial significance for court during trial or for investigator or public prosecutor in this or any other criminal proceedings.

**Article 199. Procedure concerning the extension of custody**

1. Motion to extend custody may be filed by public prosecutor, investigator upon approval of public prosecutor not later than five days before expiry of the previous ruling to commit to custody.

2. Motion to extend custody is filed with the local court in whose territorial jurisdiction pre-trial investigation is conducted.

3. Motion to extend custody period, in addition to information referred to in Article 184 of this Code, and shall contain:

1) description of circumstances which show that the stated risk has not decreased or that new risks have emerged, which justify committing to custody;

2) description of circumstances which obstruct completion of the pre-trial investigation before expiry of the previous ruling to commit to custody.

4. Investigating judge shall be obliged to consider the motion to extend custody period before the expiry of the previous ruling to commit to custody, according to the rules established for consideration of a motion to enforce a measure of restraint.

5. Investigating judge shall be obliged to deny the extension of custody period unless public prosecutor, investigator proves that circumstances specified in subparagraphs 1 and 2 of the third paragraph of this Article, justify continued keeping under custody of the suspect, accused.

**Article 200. Investigator's, public prosecutor's motion to change a measure of restraint**

1. Public prosecutor, investigator upon approval of public prosecutor may apply, as prescribed under Article 184 of this Code, to the investigating judge, court for changing a measure of restraint, including for revocation, alteration or imposition of additional duties as provided for by the fifth paragraph of Article 194 of this Code, or for modifying the manner of their performance.

2. A motion to change a measure of restraint shall necessarily state circumstances which:

1) occurred after the previous decision to enforce the measure of restraint;

2) existed during the adoption of the previous decision to enforce the measure of restraint but which public prosecutor was at that time unaware of and could not be aware of.

3. Copies of the motion and materials by which the necessity to change the measure of restraint was substantiated, shall be handed over to the suspect, accused no later than three hours before the beginning of consideration of the motion.

4. A motion shall be attached with:

1) copies of materials with which investigator, public prosecutor substantiates arguments contained in the motion;

2) list of witnesses whom investigator, public prosecutor finds necessary to question during consideration of the motion, specifying information they shall provide and substantiating the importance of this information for disposing the issue;

3) confirmation that a copy of the motion and copies of materials which substantiate the motion were sent to the suspect, accused.

5. Public prosecutor, investigator upon approval of public prosecutor may also file a motion seeking permission to apprehend the person, which shall be considered by investigating judge, court according to rules stipulated in Article 189 of the present Code.

#### **Article 201. Plea of the accused to change measure of restraint**

1. The suspect, accused against whom a measure of restraint has been enforced, his defense counsel may file a motion to change the measure of restraint including for cancellation or change of the additional duties provided for by the fifth paragraph of Article 194 of this Code and imposed upon him by the investigating judge or court or to change the manner of their performance, with the local court in whose territorial jurisdiction the pre-trial investigation is conducted.

2. Copies of the motion and materials with which the motion is substantiated, shall be handed over to public prosecutor no later than three hours before the beginning of consideration of the motion.

3. The motion shall be attached with:

1) copies of materials with which the suspect, accused substantiates arguments contained in the motion;

2) list of witnesses whom the suspect, accused finds necessary to question during consideration of the motion, specifying information they shall provide and substantiating the importance of this information for disposing the issue;

3) confirmation that a copy of the motion and copies of materials which substantiate the motion were sent to public prosecutor.

3. Investigating judge, court is required to consider such motion of the suspect, accused within three days after receiving the same, in accordance with rules laid down for consideration of the motion to enforce a measure of restraint.

4. Investigating judge, court may take no action on the motion to change the measure of restraint if such motion was filed earlier than thirty days after the previous ruling to enforce, change or refuse to change was passed, unless it specifies new circumstances which have not been considered by investigating judge, court.

#### **Article 202. Procedure for release of a person from custody**

1. Where the measure of restraint in the form of personal commitment is enforced, the suspect, accused who has been apprehended, shall be released immediately.

2. Where the measure of restraint in the form of personal warranty is enforced, the suspect, accused who has been apprehended, shall be released immediately after his/she has provided the determined warranty.

3. Where the measure of restraint in the form of house arrest is enforced, the suspect, accused who has been apprehended, shall be:

1) immediately brought to his place of residence and released, if under conditions of the chosen measure of restraint, he is forbidden to leave his dwelling round the clock;

2) immediately released and is obliged to promptly proceed to his place of residence, if under conditions of the chosen measure of restraint, he is forbidden to leave his dwelling at a certain time of day.

4. The suspect, accused shall be released after paying in bail set by investigating judge, court in the ruling on enforcement of the measure of restraint in the form of keeping in custody, unless the competent official in whose custody he is kept has any other court's decision which has taken legal effect and which directly prescribes keeping this suspect, accused in custody.

Upon receipt of a document certifying the payment of the bail and its verification, the competent official in whose custody the suspect, accused is kept, shall immediately order his release and inform of this in oral and written form, investigator, public prosecutor and investigating judge, and if bail was paid in during trial, public prosecutor and court. Verification of the document confirming payment of bail may not take more than one working day.

From the moment of release from custody in connection with payment of bail, the suspect, accused shall be deemed the one in whose respect measure of restraint is enforced in the form of bail.

5. If investigating judge, court issues a ruling to deny the extension of keeping in custody, to revoke the measure of restraint in the form of keeping in custody, or to replace it with another measure of restraint, to release the person from custody in a case specified in part three of Article 206 of the present Code, or in case of termination of the period of validity of the investigating judge's, court's ruling on keeping in custody, the suspect, accused shall be released immediately unless the competent official in whose custody he is kept has any other court's decision which has taken legal effect and which directly prescribes keeping this suspect, accused in custody.

#### **Article 203. Immediate termination of measures of restraint**

1. Ruling to enforce a measure of restraint terminates after expiry of the period of validity of the ruling to enforce the measure of restraint, after delivering judgment of acquittal, or after closing of criminal proceeding as prescribed in the present Code.

#### **Article 204. Prohibition to apprehend without permission of investigating judge or court**

1. If a measure of restraint other than custody was enforced against the suspect, accused, the latter may not be apprehended without investigating judge's or court's permission in connection with a suspicion or accusation of the same criminal offence.

#### **Article 205. Enforcement of a ruling to apply a measure of restraint**

1. The investigating judge's or the court's ruling to apply a measure of restraint shall be subject to immediate enforcement upon pronouncement.

#### **Article 206. General duties of a judge regarding the protection of human rights**

1. Each investigating judge whose territorial jurisdiction extends to a person committed to custody may issue a ruling by which to order any public authority or official to ensure respect for such person's right.

2. Whenever a investigating judge receives information from any sources whatsoever, which gives ground for a reasonable suspicion that within the court's territorial jurisdiction, there is a person who has been deprived of his liberty without valid court's decision, or has not been released from custody after the payment of bail in accordance with the procedure laid down in the present Code, such judge is required to issue a ruling by which to order any public authority or official in whose custody the person is kept, to immediately bring this person to the investigating judge in view of verifying grounds for deprivation of liberty.

3. Investigating judge shall have the duty to release the person deprived of liberty from custody unless the public authority or official that keeps such person in custody presents a valid court's decision, or proves the existence of any other legal grounds for deprivation of liberty.

4. If public prosecutor, investigator files a motion to apply a measure of restraint before such person has been brought to the investigating judge, the latter is required to ensure consideration of such motion as soon as possible.

5. Irrespectively of the investigator's, public prosecutor's motion, the investigating judge is required to release the person from custody unless the public authority or official that keeps such person in custody proves:

1) the existence of legal grounds for apprehension of the person concerned without investigating judge's or court's ruling;

2) that maximum custody period has not been exceeded;

3) that there have not been any delays in bringing the person before court.

6. Whenever, at any trial, a person states that he has been subjected to violence during apprehension or custody in the competent public authority concerned, state institution (public authority, state institution empowered to keep in custody), investigating judge is required to record such statement or accept a written statement from such person and:

1) ensure prompt forensic medical examination of this person,

2) assign investigation of the facts, provided in such a statement of this person to the appropriate investigative agency;

3) take necessary measures to ensure protection of the person concerned in accordance with law.

7. Investigating judge shall have the duty to act as prescribed in part six of this Article, whatever the person's statement is, if the appearance or state, or any other information known to the investigating judge gives grounds for the investigating judge to reasonably suspect that law requirements were infringed in time of apprehension or while kept in custody in the competent public authority, state institution.

8. Investigating judge may not take actions referred to in part six of this Article, if public prosecutor proves that such actions has been already or are being conducted.

9. Investigating judge is required to take necessary measures to ensure a defense counsel for the person deprived of liberty and adjourn any trial in which such person takes part for the time necessary to ensure a defense counsel for such person if the latter is willing to have a defense counsel or if the investigating judge decides that circumstances as established during criminal proceedings require participation of a defense counsel.

## **§ 2. Apprehension of a person without investigating judge's, court's ruling**

### **Article 207. Lawful apprehension**

1. Nobody may be apprehended without investigating judge's, court's ruling except as prescribed by this Code.

A special procedure for apprehension specially designated categories of persons shall be established by article 37 of this Code.

2. Everyone has the right to apprehend any person without court's ruling except persons specified in article 482 of this Code:

1) when someone commits or makes attempt to commit a criminal offence;

2) immediately after the commission of a criminal offence or during hot pursuit of the person who is suspected of having committed it.

3. Everyone, who is not a competent official (**person** empowered by the law to execute apprehension) and who has apprehended the individual concerned as prescribed in part two of this Article, shall have the duty to immediately bring him to a competent official or immediately inform the competent official of the apprehension and whereabouts of the individual suspected of the commission of criminal offence.

#### **Article 208. Lawful apprehension by a competent official**

1. A competent official has the right to apprehend without investigating judge's, court's ruling, an individual suspected of the commission of crime for which a punishment of imprisonment is stipulated, only in case:

1) this person was caught upon committing a criminal offence or making an attempt to commit it;

2) if immediately after the commission of crime, an eye-witness, including the victim, or totality of obvious signs on the body, cloth or the scene indicates that this individual has just committed the crime;

2. A competent official may, without a warrant of the investigating judge or court, apprehend a person suspected of a crime the primary punishment provided for which being a fine in excess of 3000 times the tax-exempt minimum citizen's income, only if the suspect has defaulted on the duties imposed upon him when a measure of restraint was decided or failed to comply as prescribed with the requirements concerning deposition of bail and submission of documentary proof of such deposition.

3. A competent official, investigator, public prosecutor may search the apprehended person in compliance with rules set forth in the seventh paragraph of Article 223 and in Article 236 of this Code.

4. A competent official who apprehended the person, shall be required to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected, as well as of the right to involve a defense counsel, receive medical assistance, give explanations, testimonies or keep silence regarding the ground for suspicion against him, inform promptly other persons of his apprehension and whereabouts in accordance with Article 213 of this Code, demand verification of the validity of apprehension, and of other procedural rights specified in this Code.

5. On apprehension of a person suspected of the commission of crime, a report shall be drawn up in which, in addition to information specified in Article 104 of this Code, the following shall be indicated: place, date and exact time (hours and minutes) of apprehension under Article 209 of this Code; grounds for apprehension; results of personal search; pleas, statements or complaints of the apprehended person, if any; comprehensive list of procedural rights and duties of the apprehended person. The report on apprehension shall be signed by the person who draw it up, and the apprehended person. A copy of the report shall be immediately handed over to the apprehended person against signature and also sent to prosecutor.

6. Apprehension of an officer from the personnel of an intelligence agency of Ukraine in the performance of his duties and related personal search and examination of his personal effects shall be used only in presence of official representatives of that agency.

### **Article 209. Moment of apprehension**

1. An individual is considered to be apprehended if he/she, with the use of force or through obedience to the order, has to stay next to the competent official or in premises prescribed by the competent official.

### **Article 210. Bringing to a pre-trial investigation agency**

1. The competent official is required to bring the apprehended individual to the nearest station of the pre-trial investigation agency, where a record shall be promptly made of the date, exact time (hours and minutes) of the bringing of the suspect and other information provided for by the legislation.

2. The competent official immediately informs, through technical means, appropriate officials of the pre-trial investigation agency's station on each apprehension.

3. If there are grounds for reasonable suspicion that bringing the apprehended individual lasted longer than it was necessary, investigator shall carry out verification to decide on liability of persons guilty thereof.

### **Article 211. Period of apprehension without investigating judge's, court's ruling**

1. Period of apprehension of a person without a ruling of investigating judge, court may not exceed seventy-two hours after the time of apprehension as determined under the requirements of Article 209 of this Code.

2. An individual apprehended without investigating judge's, court's ruling shall be released or brought to court for consideration of a motion to impose on him a measure of restraint no later than sixty hours after apprehension.

### **Article 212. Person responsible for keeping those apprehended**

1. One or more officials responsible for keeping those apprehended shall be designated in the pre-trial investigation agency's station.

2. Investigators may not be designated to be responsible for keeping those apprehended.

3. An official responsible for keeping those apprehended shall have the duty to:

1) register the apprehended person immediately;

2) advise the apprehended person of the grounds for apprehension, his rights and duties;

3) immediately release the apprehended person after grounds for apprehension seized to exist or time limit for apprehension as established in Article 211 of this Code has expired;

4) ensure appropriate treatment of the apprehended person and respect for his rights laid down in the Constitution of Ukraine, the present Code, and other laws of Ukraine;

5) ensure recording all actions which are conducted with the involvement of the apprehended person, including the time when such actions started and completed, as well as persons who conducted such actions or were present during the conduct of such actions;

6) ensure prompt provision of adequate medical assistance and fixation of any bodily injuries or deterioration of the apprehended person's state of health by medical personnel. If the detainee so wills, a specific person of his choosing who is certified to provide medical assistance may be allowed to be amongst providers of medical care to the detainee.

### **Article 213. Notification of other persons of the apprehension**

1. A competent official who detains a person shall be under the obligation to give the detainee an opportunity to immediately inform of his detention and his whereabouts his close relatives, family or other persons of his own choosing.

If the competent official who has carried out apprehension has grounds for a reasonable suspicion that notification of apprehension may jeopardize pre-trial investigation, he may make such informing himself without, however, breaching the requirement concerning its immediacy.

2. If the apprehended person is underage, the competent official who has carried out apprehension shall be required to immediately inform of this the apprehended person's parents or adopters, custodians, carers, the care agency.

3. If the apprehended person is a regular officer of a Ukraine's intelligence agency who was in the line of his official duties at the time of apprehension, the apprehending official shall be required to immediately inform of this the intelligence agency concerned.

4. An officer who carried out the apprehension should notify the body (institution) authorized by the law to provide legal aid at no cost immediately. In case the defense counsel appointed by the body (institution) authorized by the law to provide legal aid at no cost fails to arrive within the dates established by the law, the responsible officer will immediately advise the body (institution) authorized by the law to provide legal aid at no cost.

5. A competent official responsible for the keeping of detainees shall be required to verify compliance with the requirements of this Article and, in case of failure to perform notification of apprehension, to carry out himself the procedures provided herein.

## **Section III. Pre-trial investigation**

### **Chapter 19. General provisions in respect of pre-trial investigation**

#### **Article 214. Initiating pre-trial investigation**

1 Investigator, public prosecutor shall be required immediately but in any case no later than within **24 hours** after submission of a report, information on a criminal offense that has been committed or after he has learned on his own from any source, about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Integrated Register of Pre-Trial Investigations, and to initiate investigation. The investigator engaged in pre-trial investigation will be appointed by the supervisor of a pre-trial investigation chief.

2. Pre-trial investigation shall start from the moment the information concerned has been entered in the Integrated Register of Pre-Trial Investigations. Regulations of the Integrated Register of Pre-Trial Investigations, the procedure of its creation and maintaining shall be subject to approval of the Prosecutor General's Office of Ukraine with consent of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau, and the authority supervising compliance with the tax legislation.

*{Paragraph 2 of Article 214 as amended by Law № 1698-VII of 14.10.2014}*

3. Conducting pre-trial investigation before entering the information in the Register or without such entering shall not be permitted and shall entail liability established by law. Inspection of the place of crime may be carried out before entering the information in the Integrated Register of Pre-Trial Investigations which shall be done immediately after completion

of the inspection. If signs of a criminal offense are found on a sea ship or river craft outside Ukraine's bounds, pre-trial investigation shall begin immediately; information on that shall be entered in the Integrated Register of Pre-Trial Investigations at the first opportunity.

4. Investigator, public prosecutor, other official authorized to accept and register reports, information on criminal offenses, shall be required to accept and register such report or information. Refusal to accept and register a statement or information on a criminal offense shall be inadmissible.

5. The following information shall be entered in the Integrated Register of Pre-Trial Investigations:

1) date of arrival of the report or information on criminal offense or of finding from another source the circumstances that may indicate the commission of criminal offense;

2) last name, first name, patronymic (name) of the victim or applicant;

3) other source of learning about the circumstances that may indicate the commission of criminal offense;

4) brief description of the circumstances that may indicate the commission of criminal offense, provided by victim, applicant or learned from other source;

5) provisional legal qualification of the criminal offense with indication of Article (Article part) of the Ukrainian law on criminal liability;

6) last name, first name, patronymic and position of the official who entered the information in the Register as well as of the investigator, public prosecutor who entered the information in the Register and/or initiated pre-trial investigation;

7) other circumstances specified by regulation on the Integrated Register of Pre-Trial Investigations.

In the Integrated Register of Pre-Trial Investigations the date of entering the information shall be fixed automatically, and the criminal proceedings number shall be assigned.

6. Investigator shall immediately, in written form, inform public prosecutor about the initiation of pre-trial investigation, the grounds for initiating the pre-trial investigation, and other information specified in the fifth paragraph of this Article.

7. If information on criminal offense has been entered in the Integrated Register of Pre-Trial Investigations by public prosecutor, he shall be required immediately but in any case not later than next day, in compliance with investigative jurisdiction rules, to transfer materials in his possession to the agency of pre-trial investigation and assign the conduct of pre-trial investigation.

8. Information regarding the legal person in whose respect criminal measures may be applied are entered in the Integrated Register of Pre-Trial Investigations by the investigator or prosecutor immediately after the person has been notified of suspicion of any offence under Articles 109, 110, 113, 146, 147, 160, 209, 260, 262, 306, 368-1 §§1 and 2, 368-4 §§1 and 2, 369, 369-2, 436, 437, 438, 442, 444, 447 of the Criminal Code of Ukraine having been committed on behalf and in the interests of such legal person or any offence under Articles 258—258-5 of the Criminal Code of Ukraine, on behalf such legal person. Not later than the next working day the investigator or prosecutor shall notify the legal person of such entry in writing. Proceedings in respect of a legal person are conducted at the same time as the criminal proceedings in which the person has been notified of suspicion.

*{Paragraph 8 is added to Article 214 by Law #314-VII of 23.05.2013 as amended by Law #1207-VII of 15.04.2014}*

### **Article 215. Pre-trial investigation of crimes and criminal misdemeanors**

1. Pre-trial investigation of crimes is conducted in the form of pre-trial investigation while pre-trial investigation of criminal misdemeanors is conducted in the form of inquiry as prescribed in the present Code.

### **Article 216. Investigative jurisdiction (competence)**

1. Investigators of bodies of internal affairs shall conduct pre-trial investigation of criminal offenses as established in Ukraine's law on criminal liability, except those which are in competence of other pre-trial investigation agencies.

2. Investigators of bodies of security shall conduct pre-trial investigation of crimes specified in Articles 109, 110, 111, 112, 113, 114, 201, , 265-1, 305, 328, 329, 330, 332, 332-1, 333, 334, 359, 422, 436, 437, 438, 439, 440, 441, 442, 443, 444, 446, 447 of the Criminal Code of Ukraine;

*{The first sentence of Article 216 Para. 2 as amended by Law #1207-VII of 15.04.2014}*

If in the course of investigation of crimes specified in Articles 328, 329, 422 of the Criminal Code of Ukraine, crimes are established specified in Articles 364, 365, 366, 367, 425, 426 of the Criminal Code of Ukraine, committed by a person in respect of whom pre-trial investigation is conducted, or by other person, if they are related to crimes committed by a person in respect of whom pre-trial investigation is conducted, such crimes shall be investigated by investigators of bodies of security, except cases, when such crimes are referred according to this Article to investigative jurisdiction of investigators of the National Anti-Corruption Bureau of Ukraine*{The second sentence of Article 216 Para. 2 as amended by Law #746-VII of 21.02.2014; as amended by Law № 1698-VII of 14.10.2014}*

*{Paragraph 2 of Article 216 as amended by Law #721-VII of 16.01.2014 – lapsed in effect by Law #732-VII of 28.01.2014; as amended by Law @ 767-VII of 23.02.2014}*

3. Investigators of bodies supervising compliance with the tax legislation, shall conduct pre-trial investigation of crimes specified in Articles 204, , 212, 212-1, 216, 219 of the Criminal Code of Ukraine.

If in the course of investigation of above-indicated crimes, crimes are established specified in Articles 192, 200, 205, 222, 222-1, 358 of the Criminal Code of Ukraine, committed by a person in respect of whom pre-trial investigation is conducted, or by other person, if they are related to crimes committed by a person in respect of whom pre-trial investigation is conducted, such crimes shall be investigated by investigators of bodies supervising compliance with the tax legislation.

4. Investigators from units of the State Bureau of Investigations of Ukraine, except cases provided for by Paragraph 5 of this Article, shall engage in pre-trial investigation of the crimes committed by officials holding a particularly responsible status pursuant to Part One of Article 9 of the Law of Ukraine “On civil service” and the persons whose positions refer to categories 1-3, judges and law enforcement personnel.

Investigators from units of the State Bureau of Investigations of Ukraine shall also engage in pre-trial investigation of the crimes provided for by first sentence of Paragraph 5 of this Article if those were committed by officials of the National Anti-Corruption Bureau of Ukraine.

*{Paragraph 4 of Article 216 as amended by Law № 1698-VII of 14.10.2014}*

5. In criminal proceedings in respect of crimes specified in Articles 209-1, 384, 385, 386, 387, 388, 396 of the Criminal Code of Ukraine, pre-trial investigation shall be conducted by an

investigator of the body with investigative jurisdiction as respects the offence in connection with which the pre-trial investigation has been initiated.

If in the course of pre-trial investigation other crimes are established committed by a person in respect of whom pre-trial investigation is conducted, or by other person, if they are related to crimes committed by a person in respect of whom pre-trial investigation is conducted, and which do not fall within the investigative jurisdiction of the agency which conducts pre-trial investigation in the criminal proceedings, then should it be found impossible to disjoin such materials in a separate proceedings, the public prosecutor who supervises the pre-trial investigation, by his ruling shall determine the investigative jurisdiction of all these crimes

6. Pre-trial investigation in criminal proceedings relating to crimes specified by Articles 209, 258, 258-1, 258-2, 258-3, 258-4, 258-5, and 261 of the Criminal Code of Ukraine shall be conducted by an investigator of the agency which started the pre-trial investigation.

{A new paragraph is added to Article 216 by Law № 1689-VII of 07.10.2014}

### **Article 217. Joining and disjoining materials of pre-trial proceedings**

1. Whenever necessary, materials of pre-trial investigations in respect of several persons suspected of committing one criminal offense, or in respect of one person suspected of committing several criminal offenses, as well as materials of pre-trial investigations in which no suspect was identified but there are sufficient grounds to believe that the criminal offenses in respect of which such investigations are conducted, has been committed by one and the same person (persons), may be joined in one proceedings.

2. Materials of pre-trial investigations in respect of a criminal misdemeanor and in respect of a crime may not be joined in one proceeding.

3. Whenever necessary, materials of pre-trial investigations in respect of one or several criminal offences may be disjoined if one individual is suspected of committing one or several criminal offenses, or two or more individuals are suspected of committing one or more criminal offences.

4. Materials of pre-trial investigations may not be disjoined if it can have adverse effect on the completeness of pre-trial investigation and trial.

5. The prosecutor will decide whether to join or disjoin the materials of pre-trial investigation.

6. A decision whether to join or disjoin the materials of pre-trial proceedings may not be challenged.

### **Article 218. Place of pre-trial investigation**

1. Pre-trial investigation is conducted by an investigator of the pre-trial investigation agency in whose territorial jurisdiction criminal offence has been committed.

2. If investigator has learned, from a report or information or another source, about circumstances which can indicate the commission of criminal offence the investigation of which does not fall within his competence, he conducts investigation till public prosecutor determines other investigative jurisdiction.

3. Whenever place of commission of criminal offence is unknown or it has been committed outside the limits of Ukraine, appropriate public prosecutor determines place for the conduct of pre-trial investigation, taking into account the place where signs of criminal offence have been found, the suspect or most of witnesses stay, place where criminal offence has ended or implications occurred, etc.

4. At the outset of the investigation, investigator shall check whether other pre-trial investigations in respect of the same criminal offence have been initiated.

Whenever it is established that another investigator of the pre-trial investigation agency or investigator of another pre-trial investigation agency initiated criminal proceedings in respect of the same criminal offence, the investigator transfers materials and information in his possession to the investigator who conducts pre-trial investigation, informs the public prosecutor, victim or the applicant thereon, and enters the information concerned in the Integrated Register of Pre-Trial Investigations.

5. Disputes concerning the jurisdiction will be settled by chief of a higher-level prosecutor office.

Dispute concerning the jurisdiction in criminal proceedings that may belong to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine will be settled by the Prosecutor General of Ukraine of His/Her Deputy.

*{Second Sentence of Paragraph 5 is added to Article 218 by Law № 1698-VII of 14.10.2014}*6. Investigator, public prosecutor may conduct investigative (detective) actions and covert investigative (detective) actions in the territory under jurisdiction of another pre-trial investigation agency, or by his ruling assign the conduct to the pre-trial investigation agency whose duty it is.

#### **Article 219. Time limits for pre-trial investigation**

1. Pre-trial investigation is required to be completed:

1) within one month from the date the person concerned is notified of suspicion in committing a criminal misdemeanor;

2) within two month from the date the person concerned is notified of suspicion in committing a crime.

2. Time limits for pre-trial investigation may be extended in accordance with the procedure laid down in paragraph 4 of Chapter 24 of the present Code; at that, the total duration of pre-trial investigation may not exceed:

1) two months from the date the person concerned is notified of suspicion in committing a criminal misdemeanor;

2) six months from the date the person concerned is notified of suspicion in committing a crime of small or medium gravity;

3) twelve months from the date the person concerned is notified of suspicion in committing a grave crime or a crime of special gravity.

3. The period between the day of adoption of a ruling to terminate criminal proceedings and the day of revoking thereof by investigating judge or of adoption of a ruling to resume criminal proceedings, shall not be included in time limits specified in this Article.

#### **Article 220. Consideration of motions during pre-trial investigation**

1. Investigator, public prosecutor shall be required to consider a motion of defense, victim and his representative, legal representative or representative of the legal person in whose respect proceedings are taken, requesting the conduct of any procedural actions, within a period of no more than three days after filing and satisfy such if adequate grounds exist.

*{Paragraph 1 of Article 220 as amended by Law #314-VII of 23.05.2013}*

2. The person who filed a motion, shall be informed about the outcome of considering the motion. A motivated ruling shall be adopted on refusal, in full or in part, to satisfy the motion,

and a copy of it shall be handed over to the person who filed it, and if objective reasons exist making such delivery impossible, it shall be sent thereto.

**Article 221. Review of records of pre-trial investigation before its completion**

1. On a motion of the defence, victim or representative of the legal person in whose respect proceedings are taken, the investigator, public prosecutor shall be required to release all records of the pre-trial investigation for review, except for the record of security measures initiated in respect of persons participating in criminal justice, as well as the records reviewing which at such stage of criminal proceedings may be to the prejudice of the pre-trial investigation. No denial shall be allowed in making a generally accessible document the original of which is contained in pre-trial investigation files available.

*{Paragraph 1 of Article 221 as amended by Law #314-VII of 23.05.2013}*

2. A person reviewing the records of pre-trial investigation may take necessary notes and copies.

**Article 222. Inadmissibility of disclosing information of pre-trial investigation**

1. Information of pre-trial investigation may be disclosed only with permission of investigator or public prosecutor, and in the scope they deem possible.

2. Whenever necessary, investigator, public prosecutor shall advise persons who learned information of pre-trial investigation in connection with having participated therein, of their duty not to disclose such information without his permission. Unlawful disclosure of information of pre-trial investigation shall entail criminal liability established by law.

**Chapter 20. Investigative (Detective, Search) Actions**

**Article 223. Requirements in respect of investigative (detective) actions**

1. Investigative (detective) actions imply actions aimed at obtaining (collecting) information or verifying already obtained evidence in specific criminal proceedings.

2. Availability of sufficient information which shows that the objective of a specific investigative (detective) action can be achieved shall be grounds for the conduct of such action.

3. An investigator, prosecutor shall take appropriate measures to ensure attendance of investigative (detective) action of the persons whose lawful interests may be restricted or infringed. Before the beginning of each investigative (detective) action, participants to this action are advised of their rights and duties as set forth in the present Code, as well as of the liability established by law.

4. Conducting investigative (detective) actions in night-time (between 10 PM and 06 AM) is not permitted, except for urgent situations where delay in conducting investigative actions may result in the loss of traces of criminal offence or in the suspect's absconding.

5. If information, which may indicate that the individual concerned is not guilty of the commission of criminal offence, becomes available during the conduct of an investigative (detective) action, investigator, public prosecutor is required to conduct the investigative (detective) action in full, attach procedural documents, which were drawn up, to records of pre-trial proceedings, and submit such to court when submitting an indictment, a motion on enforcement of compulsory medical or educational measures, or a motion on discharge of the person from criminal liability.

6. A investigative (detective) action conducted on a motion of the defence, victim or representative of the legal person in whose respect proceedings are taken, shall be conducted in the presence of the initiating party and/or his defence counsel or representative, unless the special nature of the investigative action makes it impossible or such party has waived in writing his right to participate.

*{The first sentence of Paragraph 6 of Article 223 as amended by Law #314-VII of 23.05.2013}*

The initiators attending the conduct of such investigative (detective) action may ask questions, express their proposals, comments and challenges as to the procedure of conduct of an appropriate investigative (detective) action, that are recorded in a report.

7. Investigator, public prosecutor is required to invite at least two non-interested individuals (witnesses of investigative action) for presenting for identification a person, dead body, or an object, including in connection with exhumation, an investigative experiment, and examination of a person. Exceptions relate to cases when the conduct of an investigative (detective) action is subject to uninterrupted video recording. Witnesses of investigative action may be invited for participation in other procedural actions, if investigator, public prosecutor find it expedient.

Search or inspection of a home or any other possession of a person, search of a person shall be conducted with mandatory participation of at least two witnesses of investigative action irrespective of the use of technical devices for recording of the investigative (detective) action.

Victim, relatives of the suspect, accused and victim, officers of law enforcement agencies, as well as persons interested in the outcome of the criminal proceedings, may not be witnesses of investigative action.

The abovementioned individuals may be examined during trial as witnesses of the conduct of the investigative (detective) action concerned.

8. Investigative (detective) actions may not be conducted upon expiration of time limits of pre-trial investigation, except in the cases stipulated for in Part Three of this Code. Any investigative (detective) actions or covert investigative (detective) actions carried out after expiry of the period of the pre-trial investigation shall be void and the resulting evidence - inadmissible.

#### **Article 224. Interviewing**

1. Interviewing is conducted in the place of pre-trial investigation or in other place upon agreement with the individual to be interviewed. Each witness shall be interviewed separately and in absence of other witnesses.

2. Interviewing may not last more than two hours without breaks, and in the aggregate more than eight hours per day.

3. Before being interviewed, the person of the individual concerned is established, his rights and the way in which interviewing is conducted are explained. If a witness is interviewed, he shall be advised of criminal liability for refusal to give testimony and for giving deliberately false testimony, and a victim, for giving deliberately false testimonies. If necessary, a translator is invited to take part in the interviewing.

4. If the suspect waives answering questions, giving testimony, the interviewer is required to stop him immediately after such waiver.

5. Photographing, audio or/and video recording may be made during interviewing.

6. The interviewee may use his own documents and notes during interviewing if his testimony involves any calculations other information difficult to keep in memory.

7. If the interviewee so desires, he may provide his testimony written by his own hand. Based on such written testimony, he may be asked additional questions.

8. A person is allowed not to answer questions with regard to circumstances in whose respect there is a direct prohibition in law (secrecy of confession, medical secrets, defense counsel's professional secrets, secrecy of deliberation room etc.), or which may become grounds for suspicion, accusation of commission by himself, his close relatives or family members of criminal offense, as well as with regard to officials who conduct covert investigative (detective) actions and persons who confidentially cooperate with pre-trial investigation agencies.

9. Investigator, public prosecutor may simultaneously interview two or more persons who have already been interviewed, to clarify the reasons for discrepancies in their testimonies. At the start of such interview, it shall be established whether the summoned persons know each other, and what are the relations between them. Witnesses shall be advised on criminal liability for refusal to give testimony and for giving knowingly false testimony, and victims, for giving knowingly false testimony.

Summoned persons shall be in turn proposed to testify about those circumstances of criminal proceedings for the clarification of which the interview is being conducted, after which investigator, public prosecutor may ask questions. Persons taking part in the interview, their defense counsels or representative, may ask questions to each other pertaining to the subject of the interview.

Pronouncement of testimonies given by participants in the interview during previous interviews shall only be allowed after they have given testimony.

In criminal proceedings involving crimes against sexual freedom and sexual inviolability of a person, as well as crimes involving violence or threat of violence two or more persons that have already been interviewed where a minor or underage witness is involved may not be interviewed concurrently with the suspect to find out why their testimonies are divergent.

#### **Article 225. Interrogation of a witness, victim in the course of pre-trial investigation in court session**

1. On exceptional basis, when it is necessary to obtain testimonies from a witness or victim during pre-trial investigation if because of the existence of a threat to witness's or victim's life and health, his serious illness, the existence of other circumstances that may make interviewing them in court impossible or affect the completeness or reliability of testimony, a party to criminal proceedings may file a motion with the investigating judge requesting such witness or victim to be interrogated in court session, including simultaneous interrogation of two or more already interviewed persons. In such a case, the witness or victim concerned shall be interrogated in court session at the place of the court-house or where the ill witness, victim is, in the presence of parties to criminal proceedings with full respect for rules governing examination during trial.

Non-appearance of the party duly notified of the place and time of the court session, for participation in the interrogation of a person upon motion of the opposed party, shall not prevent the conduct of such interrogation in court session.

*{Paragraph 1 of Article 225 as amended by Law #314-VII of 23.05.2013}*

2. A court session in the field may be held to examine a seriously ill witness, victim during pre-trial investigation.

3. When issuing a judgment upon results of a trial, the court may disregard the evidence obtained in a procedure set forth in this Article, only upon giving motives of such decision.

4. During trial, the court may interrogate a witness, victim who was interviewed as required by rules in this Article, inter alia where such interview has been conducted in the absence of the defence or where there is a need to clarify testimonies or take testimonies regarding any circumstances that were not clarified as a result of interrogations in the course of pre-trial investigation.

5. With a view to verify the veracity of testimonies of a witness, victim, and establish discrepancy with the testimonies given under this Article, they may be read out during his interrogation during court trial.

#### **Article 226. Specificities of interrogating a child or an underage**

1. A child or an underage is interrogated in the presence of the legal representative, a pedagogue, or psychologist and a medical practitioner, if necessary.

2. Continued interrogation of a child or an underage may not last more than one hour without breaks, in the whole more than two hours per day.

3. Persons who have not attained sixteen years of age are advised of the duty to give true testimony without warning them about criminal liability for the refusal to give testimony and for knowingly misleading testimonies.

4. Prior to interrogation, persons referred to in part one of the present Article are advised of their duty to attend the interrogation, as well as their right to object to questions and to ask questions.

#### **Article 227. Participation of a legal representative, pedagogue, psychologist, or medical practitioner in investigative (detective) actions with involvement of a child or an underage**

1. Participation of the legal representative, a pedagogue, or psychologist and a medical practitioner, if necessary, should be ensured in investigative (detective) actions conducted with involvement of a child or an underage.

2. Prior to investigative (detective) action, a legal representative, pedagogue, psychologist, or medical practitioner are advised of their right to ask the child or an underage qualifying questions upon permission.

3. In exceptional cases where the participation of a legal representative may harm the interests of a child or underage witness, victim, investigator, public prosecutor may upon a motion of the child or underage or proprio motu, limit the participation of legal representative in certain specific investigative (detective) actions or debar him from participation in criminal proceedings, and instead invite another legal representative for this purpose.

#### **Article 228. Presentation of a person for identification**

1. Before presenting an individual for identification, investigator, public prosecutor in advance shall find out if the identifying person can identify this individual, ask him about outward appearance and characteristic signs of this individual, as well as about circumstances under which the identifying person saw this individual, and draw up a record thereon. If the person states that he is unable to list characteristic signs which can help him to identify the individual but is able to identify him by the totality of signs, the record shall state by the totality of which signs he can identify the individual concerned. It is forbidden to show in advance to the identifying person the individual subject to be presented for identification and provide other information on characteristic signs of this individual.

2. The individual to be identified shall be shown to the identifying person together with other individuals of the same sex, whose number should be not less than three and who should not have clear differences in the age, outward appearance, and garments. Prior to presenting an individual for identification, he is invited, in the absence of the identifying person, to take any place among other individuals who are presented.

3. The identifying person shall be invited to point at the individual he should identify and to explain by which signs he has identified the individual concerned.

4. To ensure protection for the identifying person, identification of an individual may be carried out under conditions when the individual to be identified does not see nor hear identifying person, i.e. out of visual and audio reach. Conditions for, and results of, such identification shall be stated in the record. The individual who has been presented for identification is informed on the results of identification.

5. When an individual is presented for identification by the person in whose respect protective measures have been taken under the present Code, details on the person protected shall not be entered in the record and shall be stored separately together with details.

6. If necessary, identification may be conducted by photos, video recording materials in accordance with provisions of parts one and two of this Article. Identification by photos, video recording materials shall preclude presentation of the individual to identification at a later time.

7. A photo of the individual to be identified shall be presented to identifying individual together with other photos whose number shall not be less than three. Photos presented for identification should not have sharp differences in the form and other particulars, which seriously affect visual perception of the image. Individuals shown on other photos should be of the same sex and should not be sharply different in the age, outward appearance and garments from the individual to be identified.

Materials of video recording containing image of the individual to be identified may be presented only on condition that there are at least four individuals who should be of the same sex and should not be sharply different in the age, outward appearance and garments from the individual to be identified.

8. When presenting an individual for identification, specialists may be invited to fix the process of identification with the use of technical means, as well as psychologists, pedagogues, and other specialists.

9. Under the rules of this Article, an individual may be presented for identification by voice or gait; at that, voice identification should be conducted out of visual contact between the identifying person and individuals presented for identification.

### **Article 229. Presentation of objects for identification**

1. Before presenting an object for identification, investigator, public prosecutor or defense counsel first shall ask the identifying person whether he is able to identify this object, interview him about characteristic signs of this object, as well as about circumstances under which he saw this object, and draws up a record thereon. If the person states that he is unable to list characteristic signs which can help him to identify the object but is able to identify it by totality of signs, the person who conducts procedural action enters this in the record. It is forbidden to show in advance to the identifying person the object to be presented for identification, and to provide other information on its characteristic signs.

2. The object to be identified shall be shown to the identifying person among other similar objects of the same type, quality and without clear differences in outward appearance, in the

number of not less than three. Identifying person is invited to point at the object which he is supposed to identify, and to explain by which signs he has identified the object.

3. If there are no other similar objects, the identifying person is invited to explain by which characteristic signs he has identified the object which has been presented alone.

#### **Article 230. Dead body identification**

1. A dead body shall be presented for identification in accordance with the requirements specified in the first and eighth paragraphs of Article 228 of this Code.

#### **Article 231. Record of identification**

1. A record of identification is drawn up as prescribed in the present Code, such record stating detailed characteristic signs by which the identifying person has identified an individual, object or dead body concerned, or states by totality of which signs the identifying person has identified the person, object or dead body concerned.

2. If identification is conducted in accordance with rules specified in paras. five and six of Article 228 of the present Code, the record, in addition to information required in the present Article, shall necessarily state that identification was made under conditions when the individual produced for identification has never seen nor heard the identifying person, as well as states all circumstances and conditions of the conduct of such identification. In such case, biographical details of the identifying person are not entered into the record nor enclosed to the records of pre-trial proceedings.

3. If investigative (detective) action was recorded with technical means, the photos, video recording of individuals, objects or dead body which have been produced for identification are attached to the report. Whenever the individual subject to identification had never seen nor heard of the identifying person, all photos, video recordings by which identifying person can be disclosed, are stored separately from pre-trial investigation files.

#### **Article 232. Conducting interrogation or identification in the mode of video conference during pre-trial investigation**

*{Heading of Article 232 as amended by Law #725-VII of 16.01.2014 lapsed in effect under Law #732-VII of 28.01.14; as amended by Law #767-VII of 23.02.2014}*

Interrogation of persons, identification of persons or objects during pre-trial investigation may be conducted in the mode of video conference involving transmission from other premises (distant pre-trial investigation) in the event that–

1) certain persons are not able to participate directly in pre-trial proceedings for health or other valid reasons;;

2) it is necessary to ensure safety of persons;;

3) a minor or underage witness or victim is interviewed;

4) such measures are necessary to ensure speedy pre-trial investigation;

5) there are other grounds deemed sufficient by the investigator, public prosecutor, investigating judge.

*{Paragraph 1 of Article 232 as amended by Law #725-VII of 16.01.2014 lapsed in effect under Law #732-VII of 28.01.14; as amended by Law #767-VII of 23.02.2014}*

2. A decision to conduct distant pre-trial investigation shall be made by the investigator, public prosecutor or, where an interrogation is conducted in the mode of video conference under Article 225 of this Code, by the investigating judge on his own initiative or on a motion of a

party to criminal proceedings or other participants of criminal proceedings. If a party to criminal proceedings or victim object to conducting distant pre-trial investigation, the investigator, public prosecutor, investigating judge, may decide to conduct one by his reasoned resolution (ruling), providing substantiation for such decision. A decision to conduct distant pre-trial investigation, if the suspect is to be in such other premises, may not be taken where the suspect objects to such;

3. Technical equipment and technologies used in distant pre-trial investigation shall ensure adequate quality of image and sound and informational security. Participants in investigative (detective) action concerned shall be ensured the possibility to distantly ask questions and obtain answers from the person participating in the investigative (detective) action and exercise other procedural rights granted to them and perform their procedural duties as provided for by this Code.

4. A person shall be interrogated in distant pre-trial proceedings in compliance with rules set out in Articles 225-227 of the present Code.

Persons or objects shall be identified in distant pre-trial proceedings in compliance with rules set out in Articles 228 and 229 of the present Code.

5. If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor– stays on the premises located in the territory under the jurisdiction of the body of pre-trial investigation or in the territory of the city where the it is located, an official of such body of pre-trial investigation shall be under the obligation to hand over a leaflet on his procedural rights to such the person, to check on his ID, and to stay near until the end of the investigative (detective) action.

6. If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor stays on premises located outside the territory under the jurisdiction of the body of pre-trial investigation or outside the territory of the city where it is located, the investigator, public prosecutor assigns by his resolution and within his competence body of security, body supervising compliance with the tax legislation, unit of the National Anti-Corruption Bureau of Ukraine or unit of the State Bureau of Investigations of Ukraine, in whose territorial jurisdiction such person stays, to carry out the actions specified in the fifth paragraph of this Article. A copy of this resolution may be sent by e-mail, fax or via other means of communication. The official of the requested body, in agreement with the investigator, public prosecutor, who gave the assignment, shall be required to organize the execution of such assignment as soon as possible.

*{Paragraph 6 of Article 232 as amended by Law № 1698-VII of 14.10.2014}*7. Pre-trial investigation conducted under the decision of the investigating judge shall be carried out in accordance with provisions of this Article and the fourth and fifth paragraphs of Article 336 of this Code.

8. If a person who is to be taking part in the pre-trial investigation distantly is held in custody in a remand prison or penal institution, actions provided for by the fifth paragraph of this Article shall be conducted by an official of such institution.

9. The course and results of investigative (detective) action as conducted in the videoconference mode are fixed with the use of video (audio) technical devices.

10. A person under protection may be interrogated in the videoconference mode with such changes in his outward appearance and voice which make impossible his identification.

11. In order to ensure promptness of criminal proceedings, the investigator, public prosecutor, may conduct the interrogation in the videoconference or telephone conference mode of a person who for reasons of staying in a location remote from the place where the pre-trial

investigation is conducted, illness, being busy or for other reasons, is not able to appear on time and without excessive difficulty before the investigator, public prosecutor.

Based on results of interrogation conducted in the videoconference or telephone conference mode, investigator, public prosecutor shall draw up a report in which indicates the date and time of interrogation, data on the interrogated person, identification features of the communication device used by the interrogated person, as well as circumstances which he communicated. If necessary, the interrogation shall be fixed by audio or video recording technical means.

Investigator, public prosecutor shall be required to take measures to establish the identity of the person who has been interrogated in the videoconference or telephone conference mode, and to indicate in the report in what way the interrogated person's identification was confirmed.

Whenever it is necessary to obtain testimonies from interrogated persons, investigator, and public prosecutor shall conduct their interrogation.

### **Article 233. Entering home or any other possession of a person**

1. Nobody is allowed to enter home or any other possession of a person for any purpose whatsoever otherwise than upon voluntary consent of the owner or based on a ruling of investigating judge, and except in cases specified in part three of this Article.

2. It is understood that "home" means any premise an individual owns permanently or temporarily whatever purpose it serves and whatever legal status it has, and adapted for permanent or temporary residence of physical persons, as well as all constituent parts of such premises. Premises specially intended for keeping of persons whose rights have been restricted by law, are not deemed dwellings. "Other possession of a person" refers to a vehicle, land parcel, garage, other structures or premises for household, service, business, production or other use etc., which a person owns.

3. The investigator, public prosecutor shall have the right, before the investigating judge's ruling, to enter home or any other possession of a person only in urgent circumstances related to saving human life and property or in a hot pursuit of persons suspected of committing a crime. In such a case, the public prosecutor or investigator, with approval of the public prosecutor, shall be required to file promptly after such actions a motion with the investigating judge for a search warrant. The investigating judge shall consider such motion under the rules of Article 234 of this Code, having verified *inter alia* whether there did exist grounds for entering home or other possession of the person without a ruling of the investigating judge. Where the public prosecutor refuses to approve the motion for search or the investigating judge dismisses the motion for search, evidence found as a result of such search shall be inadmissible and any information so obtained shall be subject to destruction as provided under Article 255 of this Code.

### **Article 234. Search**

1. A search is conducted with the purpose of finding and fixing information on circumstances of commission of criminal offense, finding tools of criminal offense or property obtained as a result of its commission, as well as of establishing the whereabouts of wanted persons.

2. A search shall be based on investigating judge's ruling.

3. Whenever it is necessary to conduct a search, investigator with approval of public prosecutor, or public prosecutor shall submit an appropriate request to investigating judge containing the following information:

1) designation and registration number of criminal proceedings;

- 2) brief description of circumstances of the criminal offense in connection with investigating which the request is submitted;
- 3) legal qualification of the criminal offense indicating Article (Article part) of the Ukrainian law on criminal liability;
- 4) grounds for search;
- 5) home or any other possession of a person or a part thereof or other possession of the person where the search should be conducted;
- 6) person who owns the home or other possession, and person in whose actual possession it actually is;
- 7) objects, documents or individuals to be found.

The request shall be required to be attached originals or copies of documents and other materials by which public prosecutor, investigator substantiates the arguments of the request, as well as an extract from the Integrated Register of Pre-Trial Investigations related to the criminal proceedings in the framework of which the request is submitted.

4. A request for search shall be considered in court on the day of receipt, with participation of investigator or public prosecutor.

5. Investigating judge shall reject a request for search unless public prosecutor, investigator proves the existence of sufficient grounds to believe that:

- 1) a criminal offense was committed;
- 2) objects and documents to be found are important for pre-trial investigation;
- 3) knowledge contained in objects and documents being searched may be found to be evidence during trial;
- 4) objects, documents or persons to be found are in the home or any other possession of a person indicated in the request.

#### **Article 235. Ruling to authorize a search of home or any other possession of a person**

1. Investigating judge's ruling authorizing search of home or other possession of a person on grounds provided in public prosecutor's, investigator's request, shall give the right to enter home or other possession of a person only once.

2. Investigating judge's ruling authorizing search of home or other possession of a person shall be required to comply with general requirements for court decisions laid down in the present Code as well as contain information on the following:

- 1) term of effect of the ruling which may not exceed one month after the day it was passed;
  - 2) public prosecutor, investigator who requests the search;
  - 3) legal provision based on which the ruling is passed;
  - 4) home or any other possession of a person or a part thereof, or other possession of the person where the search should be conducted;
  - 5) person who owns the home or other possession, and person in whose actual possession it actually is;
  - 6) objects, documents or individuals to be found.
3. Two copies of the ruling should be prepared and expressly marked as copies.

#### **Article 236. Execution of the ruling to authorize search of home or any other possession of a person**

1. Investigator or public prosecutor may execute the ruling to authorize a search of home or any other possession of a person. The victim, the suspect, defense counsel, representative, and

other participants to criminal proceedings may be invited to attend. Whenever investigator, public prosecutor needs assistance in issues requiring special knowledge, they may invite specialists to participate in the search. The investigator, public prosecutor shall take adequate measures to ensure that persons whose rights and legitimate interests may be abridged or violated are present during such search.

2. A search of home or other possession of a person based on investigating judge's ruling should be conducted in time when the least damage is caused to usual occupations of their owner unless the investigator, public prosecutor finds that meeting such requirement can seriously compromise the objective of the search.

3. Prior to the execution of investigating judge's ruling, the owner of home or any other possession or any other present individual in case of the absence of the owner, should be produced court's ruling and given a copy thereof. Investigator, public prosecutor may prohibit any person from leaving the searched place until the search is completed and from taking any action which impede conducting search. Failure to follow these requests entails liability established by law.

4. If no one is present in the home or other possession, the copy of ruling should be left visible in the home or other possession. In such a case, investigator, public prosecutor is required to ensure preservation of property contained in the home or any other possession and make it impossible for unauthorized individuals to have access thereto.

5. Search based on court's ruling should be conducted within the scope necessary to attain the objective of search. Upon decision of the investigator, public prosecutor, individuals present in the home or other possession may be searched if there are sufficient grounds to believe that they hide on their person objects or documents which are important for criminal proceedings. Such search should be conducted by individuals of the same sex.

6. During the search, investigator, public prosecutor shall have the right to open closed premises, depositories, objects if the person present during the search, refuses to open them, or if the search is conducted in the absence of persons specified in part three of this Article.

7. During the search, investigator, public prosecutor may conduct measurements, shoot pictures, make audio or video recording, draw plans and schemes, produce graphic images of the searched home or other possession of a person, or of particular objects, make prints and moulds, inspect and seize objects and documents which are important for criminal proceedings. Objects seized by law from circulation shall be subject to seizure irrespective of their relation to the criminal proceedings concerned. Seized objects and documents not included in the list of those directly allowed to be found in the ruling authorizing the search, and are not among objects withdrawn by law from circulation, shall be deemed provisionally seized property.

8. Persons who are present during the search have the right to make statements in the course of investigative (detective) action, such statements being entered in the record of search.

### **Article 237. Inspection**

1. Investigator, public prosecutor shall carry out visual inspection of the area, premises, items and documents to find and record the information relating to the commission of a criminal offence.

2. Inspection of home or any other possession of a person shall be done in accordance with rules of the present Code governing the search of home or any other possession of a person.

3. The victim, suspect, defense counsel, legal representative and other participants to criminal proceedings may be invited to take part in the inspection. In order to have assistance in

matters requiring special knowledge, investigator, public prosecutor may invite specialist to participate in the inspection.

4. Persons who are present during the inspection have the right to make statements in the course of investigative (detective) action, such statements being entered in the record of inspection.

5. During inspection, it shall be allowed to seize only objects and documents of importance for the pre-trial investigation, and objects withdrawn from circulation. All objects and documents which have been seized are subject to immediate inspection and sealing with signed acknowledgement by participants to the inspection. If it is impossible to inspect objects and documents on the premises or if their inspection is complicated, they shall be temporarily sealed and stored as they are until final inspection and sealing thereof is made.

6. Investigator, public prosecutor may prohibit any individual from leaving the inspected place till the completion of inspection and from committing any actions which impede inspection. Failure to comply with such requests entails liability under law.

7. During inspection, investigator, public prosecutor or upon their assignment, the invited specialist may carry out measurements, photographing, audio or video recording, draw up plans and schemes, prepare graphical images of the place or particular objects, produce prints and moulds, examine and seize objects and documents of importance for criminal proceedings. Objects seized from circulation by law shall be subject to seizure irrespective of their relation to criminal proceedings. Seized objects and documents which are not objects seized from circulation by law shall be deemed provisionally seized property.

#### **Article 238. Inspection of a dead body**

1. Inspection of a dead body shall be made by the investigator, public prosecutor with mandatory participation of forensic medical examiner or a doctor when timely invitation of a forensic medical examiner is impossible.

2. A dead body may be inspected concurrently with the inspection of the scene, home, or other possession of a person in accordance with rules of the present Code which govern inspection of home or other possession of a person.

3. After the inspection, the dead body shall necessarily be sent to forensic medical examination for establishing causes of death.

4. A dead body shall be returned only upon written permission of public prosecutor and only after forensic medical examination has been completed and causes of death established.

#### **Article 239. Inspection of a dead body in connection with exhumation**

1. Exhumation is made upon public prosecutor's ruling. Such ruling is executed by officials and officers of local authorities.

2. The dead body is taken out from the grave in the presence of forensic medical examiner and inspected in accordance with rules laid down in Article 238 of the present Code. After exhumation has been completed and necessary examinations made, the dead body is buried in the same place and the grave shall be restored to previous condition.

3. During exhumation, forensic medical examiner may take samples of tissue and organs or a part of the dead body which are necessary for expert examination.

4. If necessary, the dead body may be brought to an appropriate expert institution for examination.

5. During exhumation, objects of importance for establishing circumstances of criminal offence can be removed from the grave.

6. A record of investigative (detective) action conducted is drawn up. The record shall state everything which was found out, in the same sequence as it was really done, in the same appearance as was noted during the conduct of investigative (detective) action. If objects and samples are removed for examination, this shall be stated in the record. Measurements, photos, audio- or video recording, plans and schemes, graphic images, imprints, and moulds shall be attached to the record.

#### **Article 240. Investigative experiment**

1. In order to check and clarify details of importance for establishing circumstances of criminal offence, investigator, and public prosecutor may conduct an investigative experiment by way of reconstructing behavior, situation, circumstances of a certain event, and conducting required experiments or tests.

2. If necessary, investigative experiment may be conducted with participation of a specialist. During investigative experiment, measurements, photographing, audio or video recording may be made, plans and schemes drawn, graphic images, prints and moulds produced, which are attached to the record.

3. The suspect, victim, witness, defense counsel, representative may be involved in investigative experiment.

4. Investigative experiment shall be allowed provided that it does not endanger life and health of participants thereto or those around, nor degrade their honor and dignity or cause damage.

5. Investigative experiment in the home or other possession of a person shall be conducted only upon voluntary consent of the possessor, or based on a investigating judge ruling upon request of investigator approved by public prosecutor, or of public prosecutor, considered according to the procedure laid down in the present Code for consideration of requests on the conduct of a search in the home or other possession of a person.

6. Investigator, public prosecutor shall draw up a record of investigative experiment as prescribed in the present Code. In addition, the record shall describe in detail the conditions and results of investigative experiment.

#### **Article 241. Examination of an individual**

1. Investigator, public prosecutor shall examine the suspect, witness or victim to detect traces of criminal offence or special signs at their body unless forensic medical examination is required for this.

2. Examination shall be made upon ruling of public prosecutor and, if necessary, with participation of a forensic medical examiner or a doctor. Examination which is accompanied by denudation of the individual examined is conducted by an individual of the same sex, with exception for a doctor, and upon consent of the individual examined. Investigator, public prosecutor shall have no right to be present when an individual of other sex is being examined, if the examination involves the necessity to denude the individual examined.

3. Before examination, the individual subject to examination is produced the public prosecutor's decision. Thereafter, the individual concerned shall be invited to undergo voluntary examination, and if he refuses, forced examination is conducted.

4. When examining an individual, it shall be not permitted to humiliate honor and dignity or endanger his health. If necessary, presence or absence, on the body of the examined individual, of traces of criminal offence or special signs is fixed by way of photographing, video recording or other technical means. Images the demonstration of which can be deemed to be offending for the individual examined shall be stored in a sealed form and may be produced only to court during trial.

5. The record of examination shall be drawn up as prescribed in the present Code. A copy of the record of examination is handed over to the individual who has been forcibly examined.

#### **Article 242. Grounds for expert examination**

1. Expert examination shall be conducted by an expert upon request of a party to criminal proceedings, or on commission from the investigating judge or court, when special knowledge is necessary to find out circumstances of importance for criminal proceedings. It is not allowed to conduct expertise examination for addressing issues related to law.

2. Investigator or public prosecutor shall be required to commit an expertise to conduct examination in respect of:

- 1) establishing causes of death;
- 2) establishing gravity and nature of bodily injuries;
- 3) ascertaining mental state of the suspect upon availability of information which casts doubt on his sanity or limited capacity;
- 4) ascertaining the age of a person in so far as it is necessary to dispose the issue relating to his criminal liability whenever it is impossible to have such information otherwise;
- 5) ascertaining sexual maturity of a victim in criminal proceedings in offences provided for by Article 155 of the Criminal Code of Ukraine.
- 6) determining physical damage, non-pecuniary damage, and damage to the environment caused by the criminal violation

*{Subparagraph 6 is added to Paragraph 2 of Article 242 by Law # 1261-VII of 13.05.2014}*

3. Compulsory conduct of medical or psychiatric expertise examination shall be undertaken upon investigating judge's, court's ruling.

#### **Article 243. The way in which an expert is committed**

1. The prosecution shall involve an expert where there are grounds for conducting expert examination, including upon request of the defence or victim.

2. The defence may on their own involve experts to conduct expert examination on contractual basis, including mandatory expert examination, during criminal proceedings.

3. An expert may be involved by an investigating judge on a motion of the defence where and as provided for by Article 244 of this Code.

#### **Article 244. Consideration by investigating judge of a motion for involvement of expert**

1. Where the investigator, public prosecutor dismiss a motion of the defence for involvement of an expert, the person who has filed such motion may file such motion for involvement of an expert with the investigating judge.

2. The motion shall indicate—

1) a short description of the circumstances of the criminal case in relation with which the motion is filed;

2) the legal qualification of the criminal offence with a reference to the article (paragraph of an article) of the Law of Ukraine on criminal responsibility;

3) reference to the circumstances substantiating arguments of the motion;

4) reference to an expert or expert institution that should be assigned the expert examination;

5) the type of expert examination to be conducted and the list of question to be posed before the expert.

A motion shall be supported by–

1) copies of materials substantiating arguments of the motion;

2) copies of documents confirming the defence's inability to involve an expert.

3. A motion shall be considered by an investigating judge of the local court within whose jurisdiction pre-trial investigation is conducted, not later than 5 days after its receipt by the court.

The person who filed the motion shall notified of the place and time of its consideration; his failure to arrive not precluding such consideration, except when his participation is recognized mandatory by the investigating judge.

4. On finding that a motion has been filed in contravention of the requirements of the second paragraph of this Article, the investigating judge shall return it to the person who has filed it, of which a ruling is issued.

5. While hearing the motion, the investigating judge may, on request of any party to the hearing or on his own initiative, hear any witness or examine any materials relevant for deciding on the motion.

6. Based on the results of his hearing of a motion, the investigating judge may rule to assign the expert examination to the expert institution, expert or experts, if the person who has filed the motion shows to the satisfaction that–

1) although resolving of issues essential for the criminal proceedings requires for an expert to be involved, the prosecution has failed to involve one, or the questions posed before the expert involved by the defence would not enable a full and adequate opinion as to the issues whose clarification requires the expert examination, or there are reasonable grounds for believing that the expert involved by the defence will return or has returned an incomplete or incorrect opinion as a result of his lacking required expertise, being prejudiced or for other reasons;

2) he cannot involve an expert for lack of funds or other objective reasons.

7. A ruling of an investigating judge on assigning an expert examination shall include the questions posed before the expert by the person who has filed the relevant motion. The investigating judge shall have the right to not include the questions posed by the person who has filed the relevant motion into his ruling, having provided reasons for such decision, where the answers to such questions are not related to the criminal proceedings or are irrelevant for the trial.

8. Where necessary, the investigating judge may on request of the person who has filed the motion to involve an expert, while granting leave to involve such, decide on obtaining samples for examination in accordance with the rules of Article 245 of this Code.

9. The opinion of the expert involved by an investigating judge shall be made available to the person on whose motion the expert was involved.

#### **Article 245. Obtaining samples for expertise**

1. If samples are needed for expertise examination, such samples shall be taken by the party to criminal proceedings, which requested expert examination or on whose motion the examination was assigned by the investigating judge. Where an expert examination is commissioned by the court, the taking of samples for same shall be carried out by the court or, on its request, by a specialist involved for this purpose.

2. The way in which samples of objects and documents are taken shall be established in accordance with provisions governing provisional access to objects and documents (Articles 160-166 of the present Code).

3. Biological samples are taken from a person in accordance with rules prescribed in Article 241 of the present Code. Should the person refuse to voluntarily provide biological samples, investigating judge, court upon motion of a party to criminal proceedings, considered in accordance with the procedure established in Articles 160-166 of the present Code, shall have the right to give permission to investigator, public prosecutor (or to oblige them if the motion was filed by defense) to take biological samples in a compulsory manner.

## **Chapter 21. Covert Investigative (Detective) Actions**

### **§ 1. General provisions related to covert investigative (detective) actions**

#### **Article 246. Grounds for covert investigative (detective) actions**

1. Covert investigative (detective) actions are a type of investigative (detective) actions the information on the fact and methods in which they are conducted may not be disclosed, except as prescribed in the present Code.

2. Covert investigative (detective) actions are conducted if information on criminal offence and its perpetrator cannot be obtained otherwise. Covert investigative (detective) actions specified in Articles 260, 261, 262, 263, 264 (in part of actions based on the investigating judge's ruling) 267, 269, 270, 271, 272 and 274 of the present Code, as well as those the decision to conduct which are taken by investigating judge, shall be conducted exclusively in criminal proceedings in respect of grave crimes or crimes of special gravity.

3. Investigator, public prosecutor, and investigating judge in cases specified by the present Code, upon request of public prosecutor or upon request of investigator approved by public prosecutor, shall take decision on the conducting of covert investigative (detective) actions. Investigator shall be required to inform public prosecutor on the decision to conduct certain covert investigative (detective) actions and their results. Public prosecutor may prohibit or stop the conducting of covert investigative (detective) actions.

4. Only public prosecutor is vested the right to take decision to conduct such a covert investigative (detective) action as control over the commission of crime.

5. Decision to conduct a covert investigative (detective) action shall state the time limit for its conduct. Time limit for the conducting of a covert investigative (detective) action may be extended:

by public prosecutor, if the covert investigative (detective) action is conducted by his decision, up to eighteen months;

by head of pre-trial investigative agency, if the covert investigative (detective) action is conducted by his or investigator's decision, up to six months;

by the head of a stand-alone Directorate of the Ministry of Internal Affairs of Ukraine; by head of the Security Service of Ukraine's chief, separate office; by the head of a relevant unit of the National Anti-Corruption Bureau of Ukraine and the State Bureau of Investigations; by head of the Ministry of Internal Affairs of Ukraine's chief office, office and of the agency carrying out supervision over the compliance with tax legislation, an agency under the State Bureau of Investigations in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol; by head of the Security Service of Ukraine's regional body within their competence, if the covert investigative (detective) action is conducted by investigator's decision, up to twelve months;

*{The fourth sentence of Paragraph 5 of Article 246 as amended by Law № 1698-VII of 14.10.2014}* by the Minister of Internal Affairs of Ukraine, the Head of the Security Service of Ukraine, the Director of the National Anti-Corruption Bureau of Ukraine, the head of the central executive authority supporting the development and implementing tax and customs policy and chief of the State Bureau of Investigations, if the covert investigative (detective) action is conducted by investigator's decision, up to eighteen months; *{The fifth sentence of Paragraph 5 of Article 246 as amended by Law #406-VII of 04.07.2013 and by Law № 1698-VII of 14.10.2014}*

by investigating judge, if the covert investigative (detective) action is conducted by his decision, as prescribed by Article 249 of the present Code.

6. The right to conduct covert investigative (detective) actions is vested in the investigator who conducts pre-trial investigation of a crime, or on his assignment, in the competent operative units of bodies of internal affairs, bodies of security, of the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigations, bodies supervising compliance with the tax and customs legislation, bodies of the State Penitentiary Service of Ukraine, and bodies of the State Border Guard Service of Ukraine. Upon investigator's or public prosecutor's decision, other persons may also be engaged in the conducting of covert investigative (detective) actions. *{Paragraph 6 of Article 246 as amended by Law # 406-VII of 04.07.2013 and by Law № 1698-VII of 14.10.2014}*

#### **Article 247. Investigating judge who considers requests to conduct covert investigative (detective) actions**

1. Consideration of requests relegated in accordance with the provisions of this Chapter, to the authority of investigating judge, shall be carried out by the investigating judge of the Appeals Court of the Autonomous Republic of Crimea, appeals court of oblasts, cities of Kyiv and Sevastopol, within the territorial jurisdiction of which the pre-trial investigative agency concerned is located.

**здійснюється слідчим суддею Апеляційного суду Автономної Республіки Крим, апеляційного суду області, міст Києва та Севастополя,**

*{ Article 247 as amended by Law № 1698-VII of 14.10.2014}*

#### **Article 248. Examination of the request to obtain permission for the conducting of a covert investigative (detective) action**

1. Investigating judge is required to consider the request to obtain permission for the conducting of a covert investigative (detective) action within six hours after he has received such request. The request shall be considered with participation of the person who filed the request.

2. The request shall contain:

1) designation and registration number of the criminal proceedings concerned;

2) brief description of the circumstances of the crime within the framework of investigation of which the request is filed;

3) legal qualification of the crime with indication of Article (section of Article) of the Criminal Code of Ukraine;

4) information on the individual (individuals), place or object in whose respect it is necessary to conduct covert investigative (detective) action;

5) circumstances that provide grounds for suspecting the individual of committing the crime;

6) type of covert investigative (detective) action to be conducted, and substantiation of the time limits for the conducting thereof;

7) substantiation of impossibility to obtain otherwise knowledge on crime and the individual who committed it;

8) information, depending on the type of covert investigative (detective) action, on identification signs which will allow to uniquely identify the subscriber under surveillance, transport telecommunication network, and terminal equipment etc.;

9) substantiation of the possibility to obtain in the course of conducting of covert investigative (detective) action, of evidence which, alone or in concurrence with other evidence, may be significantly important for the clarification of the circumstances of crime or the identification of perpetrators thereof.

Investigator's, public prosecutor's request shall be attached an extract from the Integrated Register of Pre-Trial Investigations pertaining to the criminal proceedings within the framework of which the request is filed.

3. Investigating judge passes a ruling to allow conducting the requested covert investigative (detective) action if the public prosecutor proves that sufficient grounds exist that:

1) a crime of relevant severity has been committed;

2) in the course of covert investigative (detective) action, information is likely to be obtained, which alone or in totality with other evidence may be of essential importance for establishing circumstances of the crime or identification of perpetrators thereof.

4. Investigating judge's ruling to allow conducting a covert investigative (detective) action should meet general requirements for judicial decisions as prescribed in the present Code, as well as contain information on:

1) public prosecutor, investigator who applied for permission;

2) criminal offence which is subject of pre-trial investigation within which the ruling is passed;

3) person (persons) place or object targeted by the requested covert investigative (detective) action;

4) type of the covert investigative (detective) action and information depending on the type of investigative (detective) action, on identification signs which will allow to uniquely identify the subscriber under surveillance, transport telecommunication network, and terminal equipment etc.;

5) time in which the ruling is valid.

5. The ruling rendered by investigating judge to give no permission to conduct covert investigative (detective) action shall not impede filing a new motion to obtain such permit.

**Article 249. Time in which the investigating judge's ruling to allow conducting a covert investigative (detective) action is valid**

1. Time in which the investigating judge's ruling to allow conducting a covert investigative (detective) action may not be valid for more than two months.

2. If investigator, public prosecutor finds it necessary to extend conducting a covert investigative (detective) action, the investigator upon approval of public prosecutor, or public prosecutor may apply to the investigating judge for making a new ruling under Article 248 of the present Code.

3. In addition to information specified in Article 248 of the present Code, investigator, public prosecutor shall be required to provide additional information which provide grounds for extending the conducting of covert investigative (detective) action.

4. The aggregate duration of a covert investigative (detective) action in one criminal proceeding given permission of investigating judge, may not exceed the maximum duration of pre-trial investigation as set forth in Article 219 of this Code. In case where such investigative (detective) action is conducted to locate an individual hiding from the pre-trial investigation authority, investigating judge or the court or being searched, it may last until the wanted individual is located.

5. Public prosecutor shall be required to take decision to discontinue conducting of a covert investigative (detective) action if such action is no longer needed.

**Article 250. Conducting a covert investigative (detective) action before investigating judge adopts a ruling**

1. In the exceptional and urgent cases related to saving human life and preventing the commission of grave or especially grave crime as provided for by Sections I, II, VI, VII (arts. 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine, a covert investigative (detective) action may be initiated before investigating judge adopts a ruling in the cases anticipated for in this Code, upon decision of investigator approved by prosecutor, or upon decision of public prosecutor. In such a case, public prosecutor shall be required to immediately after the initiation of such covert investigative (detective) action, apply to investigating judge with an appropriate request.

2. Investigating judge considers this request in accordance with the requirements of Article 248 of the present Code.

3. Carrying out any activities related to conducting a covert investigative (detective) action should be immediately discontinued if the investigating judge passes a ruling denying permission to conduct the covert investigative (detective) action concerned. Information obtained as a result of conducting such covert investigative (detective) action is subject to destruction as prescribed in Article 255 of the present Code.

**Article 251. Requirements for investigator, public prosecutor's decision to conduct covert investigative (detective) actions**

1. Investigator, public prosecutor's decision to conduct covert investigative (detective) actions shall state:

1) designation and registration number of the criminal proceedings concerned;

2) legal qualification of the crime with indication of Article (Article part) of the Criminal Code of Ukraine;

- 3) information on the individual (individuals), place or object in whose respect it is necessary to conduct the covert investigative (detective) action;
- 4) beginning, duration, and objective of covert investigative (detective) action;
- 5) information on the individual (individuals) who will conduct covert investigative (detective) action;
- 6) substantiation of the decision taken including substantiation of impossibility to obtain otherwise knowledge on crime and the individual who committed it;
- 7) indication of the type of covert investigative (detective) action conducted.

#### **Article 252. Fixing the progress and results of covert investigative (detective) actions**

1. Fixing the progress and results of covert investigative (detective) actions shall comply with general rules governing fixation of criminal proceedings as set forth in the present Code. After the conduct of a covert investigative (detective) action, a record is drawn up, with attachments if necessary. Information about persons who conducted covert investigative (detective) actions, or were involved in the conduct thereof, where security measures are applied to them, may be indicated, provide that confidentiality of personal data relating to them is protected in accordance with the procedure established by law.

2. The conduct of covert investigative (detective) actions may be fixed with special technical and other means.

3. Records together with attachments on the conduct of investigative (detective) actions shall be transmitted to public prosecutor not later than within twenty four hours after termination of covert investigative (detective) actions concerned.

4. Public prosecutor takes measures to preserve objects and documents which were obtained during conducting covert investigative (detective) actions and which he intends to use in criminal proceedings.

#### **Article 253. Notifying individuals in whose respect covert investigative (detective) actions have been conducted**

1. Individuals whose constitutional rights were temporarily restricted during conducting covert investigative (detective) actions, as well as the suspect, his/ her defense counsel shall be informed about such restriction in written form by public prosecutor or, upon his instruction, by investigator.

2. Specific time of notification shall be chosen taking into account the presence or absence of possible risks for the attainment of the objective of pre-trial investigation, public security, life or health of individuals who are involved in the conduct of covert investigative (detective) actions. Appropriate notification of the fact and results of covert investigative (detective) actions shall be required to be made within twelve months since the date of termination of such actions, but not later than an indictment has been produced to court.

#### **Article 254. Measures to protect information obtained through covert investigative (detective) actions**

1. Information on the fact and methods of the conducting of covert investigative (detective) actions, executors thereof, as well as information obtained as a result of the conduct thereof, may not be disclosed by individuals who took knowledge of such information by way of reviewing the materials as prescribed in Article 290 of the present Code.

2. If records on the conduct of covert investigative (detective) actions contain information on private (personal or family) life of other persons, defense counsel and other individuals entitled to review such records are warned about criminal liability for disclosing information obtained in respect of other persons.

3. Making copies of records on the conduct of covert investigative (detective) actions and attachments thereto shall not be allowed.

**Article 255. Measures to protect information, which is not used in criminal proceedings**

1. Information, objects and documents obtained as a result of the conducting of covert investigative (detective) actions which, in public prosecutor's opinion, are not necessary for subsequent pre-trial investigation, shall be destroyed immediately based on public prosecutor's decision, except in cases specified in the third paragraph of this Article and Article 256 of the present Code.

2. The use of the materials referred to in part one of this Article for purposes not related to criminal proceedings, or reviewing such materials by participants to criminal proceedings is prohibited.

3. Where the holder of any objects or documents obtained as a result of covert investigative (detective) actions may be interested in recovering them, the public prosecutor shall be required to serve him a notice of such objects or documents being in the possession of the prosecutor and find out whether such person would want to recover them. When deciding on acceptability of actions provided under this paragraph as well as on the time of conducting such, the public prosecutor shall take heed of the need to secure the rights and legitimate interests of persons as well as the necessity to prevent any prejudice to the criminal proceedings.

4. Destruction of information, objects and documents shall be carried out under supervision of public prosecutor.

5. Destruction of information, objects and documents obtained as a result of covert investigative (detective) actions shall not exempt the public prosecutor from his duty of notification under Article 253 of this Code.

**Article 256. Using results of covert investigative (detective) actions as evidence**

1. Records of the conduct of covert investigative (detective) actions, audio or video recordings, photos, other results obtained through the use of technical means, objects and documents seized during such actions or copies thereof, may be used as evidence on the same grounds as the results of other investigative (detective) actions in the course of pre-trial investigation.

2. Persons who conducted covert investigative (detective) actions or were involved in the conduct thereof may be interrogated as witnesses. Interrogation of such persons may be carried out keeping secret the information on such persons and using in their respect adequate protective measures as specified by law.

3. Whenever results of covert investigative (detective) actions are used for proving, persons in respect of whose actions or contacts such investigative action was conducted, may be interrogated. Such persons shall be notified of the conduct of covert investigative (detective) actions only in their respect, within a time limit specified in Article 253 of the present Code, and the scope affecting their rights, freedoms, or interests.

**Article 257. Using results of covert investigative (detective) actions for other purposes or transmitting information**

1. If the conduct of a covert investigative (detective) action resulted in finding signs of a criminal offense which is not the subject of the criminal proceedings concerned, the obtained information may be used in another criminal proceedings only based on a ruling of the investigating judge made on a motion of the public prosecutor.

The investigating judge shall hear the motion under rules of Arts. 247 and 248 of this Code and dismiss any if the public prosecutor has failed to prove *inter alia* that the information has been obtained lawfully and that there are reasonable grounds for believing that it testifies to revealing signs of a criminal offence.

2. Information obtained as a result of covert investigative (detective) actions shall be transmitted only through public prosecutor.

**§ 2. Interference in private communication**

**Article 258. General provisions related to interference in private communication**

1. Nobody may be subjected to interference in private communication without investigating judge's ruling.

2. Public prosecutor, investigator upon approval of public prosecutor shall be required to apply to investigating judge for permission to interfere in private communication as prescribed in Articles 246, 248-250 of the present Code, if any investigative (detective) action implies such interference.

Whenever investigating judge passes the ruling to deny interference in private communication, public prosecutor, investigator may file a new request only with new information.

3. Communication is transmitting information in any way from one person to another directly or using any connection. Communication is considered to be private insofar as information is transmitted and stored under such physical or legal conditions where participants to the communication can expect that such information is protected from interference on the part of others.

4. Interference in private communication implies access to the contents of communication under conditions when participants to the communication can reasonably expect that their communication is private. The following shall be types of interference in private communication:

- 1) audio, video monitoring of an individual;
- 2) arrest, examination and seizure of correspondence;
- 3) collecting information from telecommunication networks;
- 4) collecting information from electronic information systems.

5. Interference in private communication of defense counsel, between clergyman and the suspect, accused, convict, acquitted shall be forbidden.

**Article 259. Preservation of information**

1. If public prosecutor intends to use as evidence, during trial, information or any fragment of information obtained as a result of interference in private communication, he shall be required to ensure preservation of all information or delegate preservation of all information to the investigator.

### **Article 260. Audio, video monitoring of an individual**

1. Audio, video monitoring of an individual is a variety of interference in private communication conducted without the individual's knowledge on grounds of a ruling of investigating judge if there are sufficient grounds for the belief that this individual's conversations or other sounds, movements, actions related to his activity or place of stay, etc., can contain information of importance for pre-trial investigation.

### **Article 261. Arrest of correspondence**

1. An individual's correspondence may be arrested without he being aware thereof in exceptional cases based on investigating judge's ruling.

2. Correspondence is arrested if, in the course of pre-trial investigation, there are sufficient grounds for the belief that mail and cable correspondence a certain individual sends to other individuals or is sent from other individuals to the individual concerned, can contain information on circumstances which have importance for pre-trial investigation or objects and documents which have essential importance for pre-trial investigation.

3. Arrest of correspondence entitles the investigator to inspect and seize arrested correspondence.

4. Correspondence referred to in the present Article shall include letters of all types, postal packets, parcels, postal containers, postal money orders, telegrams, and other material mediums for exchange of information among individuals.

5. After the time limit specified in court's ruling has expired, arrest of individual's correspondence is deemed to be revoked.

### **Article 262. Inspection and seizure of correspondence**

1. Seized correspondence shall be inspected in the postal office, which was assigned control and seizure of this correspondence, with participation of this office's representative and, in case of need, of a specialist. In the presence of the said individuals, investigator decides on the opening of correspondence and inspects seized correspondence.

2. Should objects (inclusive of substances), documents be found in the correspondence that are important for a certain pre-trial investigation, investigator within the scope prescribed in the investigating judge's ruling, shall conduct seizure of the correspondence concerned or limit himself to making copies or taking samples of relevant messages. Copies are made or samples taken in view of protecting confidentiality of correspondence arrest. If necessary, the person who inspects mail and cable correspondence, may take a decision to put special marks on the detected objects and documents, equip them with technical control devices, replace objects and substances which endanger surrounding people or are prohibited from being in free circulation, with their safe analogues.

3. If objects or documents of importance for pre-trial investigation are not found in the correspondence, investigator shall give instruction to deliver the correspondence inspected to the addressee.

4. A record shall be drawn up of each occurrence of inspection, seizure or arrest of correspondence as prescribed in the present Code. The record should necessarily state what kind of messages have been inspected, what has been seized from the messages, and what should be delivered to the addressee or temporarily kept, and from what messages copies or samples have been made, and the conduct of other actions as provided for in part two of this Article.

5. Managers and employees of postal offices shall be required to facilitate conducting this covert investigative (detective) action and not to disclose the fact of conducting this covert investigative (detective) action or the information obtained.

**Article 263. Collecting information from transport telecommunication networks**

1. Collecting information from transport telecommunication networks (networks which provide transmitting of any signs, signals, written texts, images and sounds or messages between telecommunication access networks connected) is a variety of interference in private communication conducted without the knowledge of individuals who use telecommunication facility for transmitting information based on the ruling rendered by the investigating judge, if there is possibility to substantiate the facts during its conducting, which have the importance for criminal proceedings.

2. Investigating judge's ruling to authorize interference in private communication in such a case should additionally state identification characteristics which will allow to uniquely identify the subscriber under surveillance, transport telecommunication network, and terminal equipment which can be used for interference in private communication.

3. Collecting information from transport telecommunication networks means the conducting using appropriate watch facility the surveillance, selection and recording information which is transmitted by an individual and have the importance for pre-trial investigation and also receiving, transformation and recording signals of different types which are transmitted by communication channels.

4. Collecting information from transport telecommunication networks is made by responsible units of the bodies of internal affairs and bodies of security. Managers and employees of telecommunication networks' operators shall be required to facilitate conducting the actions on collecting information from transport telecommunication networks, taking required measures in order not to disclose the fact of conducting such actions and the information obtained, and to preserve it unchanged.

**Article 264. Collecting information from electronic information systems**

1. Search, detection, and recording information stored in an electronic information system or any part thereof, access to the information system or any part thereof, as well as obtainment of such information without knowledge of its owner, possessor or keeper may be made based on the ruling rendered by the investigating judge, if there is information that such information system or any part thereof contains information of importance for a specific pre-trial investigation.

2. Obtainment of information from electronic information systems or parts thereof the access to which is not restricted by the system's owner, possessor or keeper, or is not related to circumventing a system of logical protection, shall not require permission of investigating judge.

3. Investigating judge's ruling to authorize interference in private communication in such a case should additionally state identification characteristics of the electronic information system which can be used for interference in private communication.

**Article 265. Recording and preserving information obtained from communication channels through the use of technological devices and as a result of collecting information from electronic information systems**

1. Contents of information which is transmitted by persons via the transport telecommunication networks shall be stated in the record of conducting of the said covert

investigative (detective) actions. If such information is found to contain knowledge of importance for a specific pre-trial investigation, the record should reproduce its respective part, and then public prosecutor shall take measures to preserve information obtained by monitoring.

2. Contents of information obtained as a result of monitoring an information system or any part thereof, shall be recorded on the appropriate medium by the individual who has been responsible for monitoring and who is required to ensure processing, preserving, and transmitting the information.

#### **Article 266. Examination of information obtained through the use of technological devices**

1. Information obtained through the use of technological devices shall be examined, if necessary, with participation of a specialist. Investigator analyzes contents of the information obtained and draws up a record thereof. In case of detection of information of importance for pre-trial investigation and trial, the record should reproduce the appropriate part of information and then public prosecutor takes measures to preserve information obtained.

2. Technological devices which have been used during the conduct of the said covert investigative (detective) actions, as well as original mediums for received information shall be preserved till the judgment takes legal effect.

3. Mediums and technological devices which helped obtain information may be the subject of examination by appropriate specialists or experts as prescribed in the present Code.

### **§ 3. Other types of covert investigative (detective) actions**

#### **Article 267. Inspecting publicly inaccessible places, home or any other possession of a person**

1. Investigator have the right to covertly penetrate into publicly inaccessible places, home or any other possession of a person, including with the use of technological devices, in order to:

- 1) find and fix traces of the commission of grave crime or crime of special gravity, objects and documents which are of importance for pre-trial investigation;
- 2) prepare copies or samples of the said objects and documents;
- 3) find and fix samples for examination in the course of pre-trial investigation of grave crime or crime of special gravity;
- 4) find wanted individuals;
- 5) install technological devices for audio, video monitoring of a person.

2. Publicly inaccessible place means the place which is non-enterable or in which it is impossible to legally stay without consent of the owner, tenant, or persons authorized by him.

3. Premises specially intended for the keeping of persons whose rights are restricted according to law (premises for compulsory keeping of persons in connection with serving of sentence, apprehension, and custody etc.) have the status of publicly accessible.

4. Examination by way of covert penetration into publicly inaccessible places, home or any other possession of a person with a purpose prescribed in part one of this Article, shall be conducted on grounds of investigating judge's ruling passed according to the procedure established by Articles 246, 248-249 of the present Code.

#### **Article 268. Establishing the location of a radio electronic device**

1. Establishing the location of a radio electronic device constitutes a covert investigative (detective) action that involves the use of technological devices to locate a radio electronic device, including a mobile communication terminal, and other radio-emission devices activated in the networks of mobile communication operators, without disclosure of the content of transmitted messages, if such action makes it possible to establish the circumstances that are important for criminal proceedings.

2. Establishing the location of a radio electronic device shall be performed on the grounds of the investigating judge's ruling passed in accordance with the procedure prescribed by Articles 246, 248-250 of the present Code.

3. In this case, the ruling of the investigating judge granting the permission to establish the location of a radio electronic device must additionally indicate identification characteristics which allow to uniquely identify the subscriber under surveillance, transport telecommunication network, and terminal equipment.

4. An operation to locate a radioelectronic device before an investigating judge renders a ruling may commence based on an order issued by an investigator, prosecutor solely in the case as specified by Part One Article 250 of this Code.

#### **Article 269. Surveillance of an individual, an object or a place**

1. To find, fix, and check during pre-trial investigation of a grave crime or of a crime of special gravity information on an individual and his behavior or his contacts, or a certain object or place, visual monitoring of the said subjects or visual monitoring using video recording, photography, special technological devices for surveillance may be made.

On results of surveillance, a record is drawn up to which photos and/or video recording should be attached.

2. Surveillance of an individual under the first paragraph of this Article shall be conducted on the basis of a ruling of the investigating judge, issued under the rules of Arts. 246, 248-250 of this Code.

3. Surveillance of an individual before the ruling of investigating judge is issued may be commenced on the basis of a resolution of an investigator, public prosecutor only as provided by the first paragraph of Article 250 of this Code.

#### **Article 270. Audio or video monitoring of a place**

1. Audio or video monitoring of a place may be made during pre-trial investigation of a grave crime or of a crime of special gravity and implies covertly fixing information with audio or video recording devices inside publicly accessible places, without their owner, possessor or individuals present therein being aware thereof, upon availability of information that conversations and behavior of individuals in this place as well as other events occurring therein can contain information of importance for criminal proceedings.

2. The location may be audio, video monitored pursuant to Part One of this Article based on the ruling of an investigating judge rendered in accordance with Article 246, 248-249 of this Code.

#### **Article 271. Control of the commission of a crime**

1. Control over the commission of a crime may be made where there are reasonable grounds for believing that a grave or especially grave offence is prepared or being committed and shall be conducted in the following forms:

- 1) controlled delivery;
- 2) controlled and operative purchase;
- 3) special investigative experiment;
- 4) simulation of the situation of crime.

2. Control of the commission of crime is not made if such actions do not allow to completely prevent:

- 1) threat to life or infliction of grave bodily injury to an individual (people);
- 2) dispersion of substances hazardous for the life of many people;
- 3) escape of persons who committed grave crimes or crimes of special gravity;
- 4) environmental or anthropogenic disaster.

3. When preparing and carrying out measures aimed at establishing control over the commission of crime, it is forbidden to provoke (incite) an individual to the commission of this crime in order to subsequently expose it, to assist the individual to commit a crime which he would not have committed if investigator had not encouraged thereto, or with the same purpose exert influence on his behavior through violence, threats or blackmailing. Objects and documents obtained in such a way may not be used in criminal proceeding.

4. On results of control over the commission of crime, a record shall be drawn up which is attached objects and documents obtained in the course of this covert investigative (detective) action. If control over the commission of crime ends with open recording an individual's act, the record thereon shall be drawn up in the presence of this individual.

5. Procedure and practice of conducting controlled delivery, controlled and operative purchase, special investigative experiment simulation of the situation of crime, shall be regulated by legislation.

6. Control over the commission of crime consisting in illegal transit via the Ukrainian territory, importing into Ukraine or taking out of Ukraine objects withdrawn from free circulation or other objects or documents, may be conducted according to the procedure laid down in current legislation, upon arrangements with the appropriate agencies of foreign states, or based on international treaties of Ukraine.

7. Public prosecutor in his decision to conduct control over the commission of crime, in addition to information referred to in Article 251 of the present Code, shall be required to:

- 1) state circumstances which show that the individual concerned was not incited to the commission of crime in the course of covert investigative (detective) action;
- 2) indicate the use of special simulation means.

8. If control over the commission of crime requires temporary restrictions on constitutional rights of the individual concerned, such restrictions shall be carried out within limits permitted by the Constitution of Ukraine and based on investigating judge's decision as prescribed in the present Code.

**Article 272. Carrying out special assignment to expose criminal activities of the organized group or criminal organization**

1. In the course of pre-trial investigation of a grave crime or of a crime of special gravity, information, objects and documents of importance for pre-trial investigation may be obtained by the individual who in accordance with law, carries out special assignment through taking part in an organized group or criminal organization, or by a participant in such group or organization who co-operates with pre-trial investigation agencies on confidential basis.

2. The said individuals carry out special assignment as covert investigative (detective) action based upon investigator's decision approved by the head of the pre-trial investigation agency, or on public prosecutor's ruling, with the true information about such individuals kept secret.

3. The ruling, in addition to information specified in Article 251 of the present Code, shall set forth the following:

- 1) substantiation of the limits of special assignment;
- 2) use of special bogus (simulation) means.

4. Special assignment may not be carried out for more than six months and, if needed, its time limit may be extended by investigator upon approval of the head of the pre-trial investigation agency or public prosecutor, for a period which shall not exceed the period of pre-trial investigation.

**Article 273. Means employed in the course of carrying out covert investigative (detective) actions**

1. When conducting covert investigative (detective) actions, upon decision of the head of the pre-trial investigation agency, public prosecutor, there may be used identified (marked) beforehand or bogus (simulation) means. For this purpose, it is permitted to prepare and use specially produced objects and documents, found and use specially created enterprises, institutions, organizations. Using marked beforehand or bogus (simulation) means for other purposes shall be forbidden.

2. Production, creation of bogus (simulation) means for the conduct of specific covert investigative actions shall be reflected in the appropriate record.

3. If it is necessary to disclose, prior to the completion of pre-trial investigation, true information on specially created economic entities or on the individual who acts without disclosing his true identity, the agency by which the individual who in this way conducts covert investigation (detective) action, is employed, and the head of the pre-trial investigation agency, public prosecutor who took the decision on the use of such means during covert investigative (detective) action, shall be informed thereon. The head of the pre-trial investigation agency, public prosecutor makes the decision on disclosure of true information on the said individual, circumstances under which objects or documents were produced or enterprises, institutions, organization were specially founded. If necessary, protective measures in respect to an individual the information on whom is subject to disclosure shall be taken as prescribed by law.

4. Bogus (simulation) means employed in the course of a covert investigative (detective) action shall be used in proving in the form of original means or tools of the commission of crime unless the court holds that provisions of the present Code have been broken during the conduct of the appropriate covert investigative (detective) action.

**Article 274. Covertly obtaining samples, which are necessary for comparative analysis**

1. Samples necessary for comparative analysis may be covertly obtained only in case their obtainment in accordance with Article 245 of the present Code is impossible without inflicting substantial damage to criminal proceedings.

2. Samples shall be covertly taken based on investigating judge's ruling passed on the motion of public prosecutor or on the motion of investigator approved by public prosecutor, as prescribed in Articles 246, 248, 249 of the present Code.

3. An investigator's or public prosecutor's motion requesting permission to covertly take samples which are necessary for comparative analysis and investigating judge's ruling shall also state information on specific samples to be obtained.

4. Repeated obtainment of samples shall be made openly in accordance with rules set forth in the present Code if there is no longer need to preserve the secrecy about the fact that previous samples obtained covertly were examined.

**Article 275. Use of confidential cooperation**

1. When conducting covert investigative (detective) actions, investigator may use information obtained as result of confidential cooperation with other persons, or involve such persons in carrying out covert investigative (detective) actions as prescribed in the present Code.

2. When conducting covert investigative (detective) actions, it is forbidden to involve in confidential cooperation defense attorneys, notaries, medical staff, clergymen, journalists, if such cooperation would require disclosing confidential professional information.

**Chapter 22. Notification of Suspicion**

**Article 276. Instances of notification of suspicion**

1. Notification of suspicion is necessarily made in compliance with the procedure provided for by Article 278 of this Code in the following cases:

1) apprehension of an individual at the scene of criminal offence or immediately after the commission of criminal offence;

2) enforcement of a measure of restraint against an individual as prescribed in the present Code;

3) availability of sufficient evidence to suspect a person of having committed a criminal offence.

A special procedure for notification of suspicion of a designated category of persons shall be established by article 37 of this Code.

2. In the instances referred to in the first paragraph of this Article, investigator, public prosecutor or other competent official (a person who is entitled to conduct apprehension under law) is required to immediately advise the suspect of his rights under Article 42 of this Code.

3. After these rights have been advised investigator, public prosecutor or other competent official, upon suspect's request, are required to explain each of the abovementioned rights in detail.

**Article 277. Contents of the written notice of suspicion**

1. Written notice of suspicion shall be drawn up by public prosecutor or by investigator upon approval of public prosecutor.

Written notice of suspicion shall contain the following information:

- 1) last name and position of the investigator, public prosecutor giving the notice;
- 2) personal details of the person (last name, name, patronymic, date and place of birth, place of residence, nationality) who is notified of suspicion;
- 3) designation (number) of criminal proceedings in the framework of which the notice is given;
- 4) contents of the suspicion;
- 5) legal qualification of criminal offense of the commission of which the person is suspected with indication of Article (Article part) of Ukraine's law on criminal liability;
- 6) brief description of actual circumstances of criminal offence of which the person is suspected, including time, place of the commission of criminal offence, as well as other essential circumstances which are known at the time of notifying of the suspicion;
- 7) suspect's rights;
- 8) signature of investigator, public prosecutor giving the notice.

#### **Article 278. Serving written notice of suspicion**

1. Written notice of suspicion shall be served the day on which it has been drawn up by investigator or public prosecutor, and if it appears impossible to serve it, in the way prescribed by the present Code for serving notifications.

2. Written notice of suspicion shall be served to apprehended person within 24 hours after he has been apprehended.

3. In case a person has not been served the notice of suspicion after 24 hours elapsed after the moment of his apprehension, such person is subject to immediate release.

4. Date and time of serving the notice of suspicion, legal qualification of criminal offense of the commission of which the person is suspected, with indication of Article (Article part) of Ukraine's law on criminal liability, shall be immediately entered by investigator, public prosecutor to the Integrated Register of Pre-Trial Investigations.

#### **Article 279. Changing notice of suspicion**

1. Should the grounds arise for notifying of a new suspicion or for changing previously notified suspicion, investigator, public prosecutor shall be required to carry out actions referred to in Article 278 of the present Code. If notice of suspicion was given by public prosecutor, only the public prosecutor shall have the right to notify of the new suspicion or to change previously notified suspicion.

### **Chapter 23. Suspension of pre-trial investigation**

#### **Article 280. Reasons for and procedure of suspension of pre-trial investigation**

1. The pre-trial investigation may be suspended after a person has been notified about suspicion in the following cases:

1) if the suspect falls seriously ill, which precludes him from participating in criminal proceedings, provided his illness is confirmed by the corresponding medical report;

2) if the suspect absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability, and his whereabouts are unknown;

2-1) the investigative judge rejected the motion for conducting special pre-trial

investigation;

{A new paragraph is added to the first paragraph of Article 280 by Law № 1689-VII of 07.10.2014}

3) if there is a necessity to carry out procedural actions within the framework of international cooperation.

2. Prior to suspension of the pre-trial investigation the investigator shall be required to carry out all investigative (detective) and other procedural actions, execution of which is necessary and possible, as well as all actions required to establish the whereabouts of the person if it is necessary to suspend the pre-trial investigation due to the circumstances described in paragraph 2, part one of this Article.

3. If two or several suspects participate in criminal proceedings, while the reasons for suspension of the pre-trial investigation do not apply to all of them, the public prosecutor shall have the right to separate the pre-trial investigation and suspend it in relation to certain suspects.

4. The pre-trial investigation shall be suspended by a reasoned decision of the public prosecutor or the investigator with the approval of the public prosecutor, the record of which fact shall be entered in the Integrated Register of Pre-Trial Investigations. A copy of such decision shall be sent to the defense counsel, the victim, and the representative of the legal person in whose respect proceedings are taken, who shall have the right to lodge an appeal against this decision with the investigating judge.

*{Paragraph 4 of Article 280 as amended by Law #314-VII of 23.05.2013}*

5. Upon suspension of the pre-trial investigation, no investigation (search) actions shall be allowed except for those aimed at establishing the whereabouts of the suspect.

#### **Article 281. Search for the suspect**

1. If, in the course of the pre-trial investigation, the whereabouts of the suspect are unknown, the investigator or the public prosecutor shall announce the search for him.

2. Announcement of the search shall either be the subject of a separate resolution if the pre-trial investigation is not suspended, or it shall be indicated in the decision on suspension of the pre-trial investigation, provided such decision is adopted, which fact shall be entered in the Integrated Register of Pre-Trial Investigations.

3. The search for the suspect may be entrusted to the operational units (task force).

#### **Article 282. Renewal of the pre-trial investigation**

1. The suspended pre-trial investigation shall be renewed by a decision of the investigator or public prosecutor where the reasons for its suspension no longer exist (the suspect has recovered from the illness, his whereabouts have been established, the procedural actions within the framework of international cooperation have been completed), as well as in case it is necessary to carry out investigative (detective) or any other procedural actions. A copy of the decision on renewal of the pre-trial investigation shall be sent to the defense counsel, the victim, and the representative of legal person in whose respect proceedings are taken.

*{Paragraph 1 of Article 282 as amended by Law 314-VII of 23.05.2013}*

2. The suspended pre-trial investigation shall also be renewed in case the investigating judge revokes the decision on suspension of the pre-trial investigation.

3. The record of renewal of the pre-trial investigation shall be entered by the investigator or public prosecutor in the Integrated Register of Pre-Trial Investigations.

## **Chapter 24. Completion of pre-trial investigation. Extension of time limits for pre-trial investigation**

### **§ 1. Forms in which pre-trial investigation should be completed**

#### **Article 283. General provisions related to the completion of pre-trial investigation**

1. A person shall have the right to have charges brought against him be reviewed by a court as early as possible, or to dismissal of such charges through closure of the proceedings.

2. After a person has been notified of being a suspect, public prosecutor is required within the shortest possible time to do one of the following:

- 1) close criminal proceedings;
- 2) submit to court a motion on releasing the person from criminal liability;
- 3) submit to court an indictment, motion to impose compulsory medical or educational measures.

3. Public prosecutor shall enter information on completion of pre-trial investigation in the Integrated Register of Pre-Trial Investigations.

**Article 284. Closing criminal proceedings and proceedings in respect of a legal person**  
{Heading of Article 284 as amended by Law 314-VII of 23.05.2013 in the light of amendments introduced by Law #1207-VII of 15.04.2014}

1. Criminal proceedings shall be closed if:
  - 1) absence of occurrence of criminal offence has been established;
  - 2) absence of elements of criminal offence in the act concerned has been established;
  - 3) no sufficient evidence has been obtained to prove the person's guilt in court, and options to obtain such evidence have been exhausted;
  - 4) a law took effect by which criminal liability for the action committed by the person concerned, has been abolished;
  - 5) the suspect, accused died, except when proceedings are necessary to vindicate the deceased;
  - 6) there is a judgment rendered based on the same charges which has taken legal effect or court's ruling to close criminal proceedings on the same accusation;
  - 7) victim, and in cases specified by the present Code, his representative, waived the accusation in criminal proceedings in the format of private accusation
  - 8) concerning a criminal offence where no consent of the state that has surrendered a person has been obtained.
2. Criminal proceedings are closed by court:
  - 1) in connection with the person's discharge;
  - 2) if public prosecutor drops public prosecution, except in cases specified by the present Code.
- 3) Proceedings in respect of a legal person are closed in the event that no grounds have been established to apply criminal measures to it, criminal proceedings against the authorized officer of the legal person terminated or ended in an acquittal.

The prosecutor makes a decision to close of proceedings and the court, a note in the judgment of acquittal or a ruling. A decision to close proceedings in respect of a legal person may be appealed as provided for by this Code.

*{The new paragraph is added to Article 284 by Law 314-VII of 23.05.2013 as amended by Law #1207-VII of 15.04.2014}*

34. Investigator, public prosecutor makes a decision to close criminal proceedings, which may be challenged as prescribed in the present Code.

Investigator renders a decision to close criminal proceedings based on grounds referred to in paragraphs 1, 2, 4 of part one of this Article, if no person has been notified of suspicion in these criminal proceedings.

Public prosecutor renders a decision to close criminal proceedings against the suspect based on grounds referred to in part one of this Article.

45. Decision made by public prosecutor to close criminal proceedings against the suspect does not preclude the continuation of pre-trial investigation in respect of the criminal offence concerned.

56. A copy of the investigator's decision to close criminal proceedings is forwarded to the applicant, victim, and public prosecutor. Prosecutor may within a period of twenty days from the date of receipt of the decision copy, overturn it on grounds of illegitimacy or groundlessness thereof. Investigator's decision to close criminal proceedings may also be overturned by public prosecutor upon complaint from applicant, victim, if such complaint was filed within a period of ten days from the date of receipt by applicant, victim of the decision copy.

A copy of the public prosecutor's decision to close criminal proceedings and/or proceedings in respect of a legal person is forwarded to the applicant, victim and his representative, the suspect, defense counsel and representative of legal person in whose respect proceedings are taken.

*{The second sentence of Paragraph 6 of Article 284 as amended by Law 314-VII of 23.05.2013 as amended by Law #1207-VII of 15.04.2014}*

6. Whenever circumstances referred to in paragraphs 1-2 of part one of this Article, are revealed during trial, the court shall have the duty to render a judgment of acquittal.

Whenever circumstances referred to in paragraphs 5, 6, 7, 8 of part one of this Article, are revealed during trial, as well as in cases specified in paragraph 2 of part two this Article, the court shall pass a ruling to close the criminal proceedings.

7. Closing criminal proceedings or passing a judgment on grounds specified in paragraph 1 of part two of this Article shall be inadmissible if the suspect, accused objects against this. In such case, criminal proceedings shall continue according to general procedure laid down in the present Code.

8. Court's ruling to close criminal proceedings may be challenged in appellate procedure.

## **§ 2. Relief of a person from criminal liability**

### **Article 285. General provisions of criminal proceedings when relieving a person from criminal liability**

1. A person shall be relieved from criminal liability in the cases stipulated by the Law of Ukraine on criminal liability.

2. A person who is suspected of or charged with perpetration of criminal offence, and in relation to whom provision is made for the possibility of relief from criminal liability in case this person performs the actions stipulated by the Law of Ukraine on criminal liability, shall be given the explanation of his right to such relief.

3. The suspected or the accused who may be relieved from criminal liability must be explained the essence of suspicion or charges, the reason for the relief from criminal liability, and the right to object against closing criminal proceedings for that reason. In case the suspect or the accused for whom provision is made for the relief from criminal liability objects against this, full-scale pre-trial investigation and judicial proceedings shall be conducted in accordance with the general procedure.

#### **Article 286. Procedure of the relief from criminal liability**

1. Relief from criminal liability for perpetration of criminal offence shall be provided by the court.

2. Upon establishing, at the stage of the pre-trial investigation, the reasons for the relief from criminal liability and obtaining the suspect's consent to such relief, the public prosecutor shall make a motion for the relief from criminal liability and submit it to the court without conducting the full-scale pre-trial investigation.

3. Prior to submission of the motion to the court the public prosecutor shall be required to make the victim acquainted with it and ask his opinion on the possibility of relieving the suspect from criminal liability.

4. If, in the course of conducting judicial proceedings on the proceedings that were submitted to the court with an indictment, a party to criminal proceedings addresses the court with the motion for the relief of the accused from criminal liability the court shall consider such motion without delay.

#### **Article 287. Public prosecutor's motion for the relief from criminal liability**

1. The public prosecutor's motion for the relief from criminal liability shall contain the following information:

- 1) name of criminal proceedings and registration number thereof;
- 2) biographical particulars of the suspect (last name, first name, patronymic, date and place of birth, place of residence, nationality);
- 3) last name, first name, patronymic, and position held by the public prosecutor;
- 4) description of the factual circumstances of criminal offence and its legal determination with the indication of the corresponding Article (part of the Article) of the Law of Ukraine on criminal liability, and statement of the suspicion;
- 5) amount of damage caused as a result of criminal offence and information about its compensation;
- 6) evidence that confirm the fact of perpetration of criminal offence by the given person;
- 7) circumstances testifying that the given person is subject to relief from criminal liability, and the corresponding legal grounds;
- 8) information about victim's being familiarized with the motion and his opinion on the possibility of relieving the suspect from criminal liability;
- 9) date and place of making the motion.

The consent of the person to the relief from criminal liability shall be attached to the public prosecutor's motion.

**Article 288. Examining the issue of relief from criminal liability**

1. The public prosecutor's motion shall be examined in the presence of the parties to criminal proceedings and the victim in accordance with the general procedure stipulated in the present Code, with the specifics described in this Article.

2. The court shall be required to inquire about the victim's opinion regarding the possibility of relieving the suspect or the accused from criminal liability.

3. The court, by its ruling, shall close criminal proceedings and relieve the suspect or the accused from criminal liability in case of establishing the reasons/grounds stipulated by the Law of Ukraine on criminal liability.

4. In case the court establishes invalidity of the motion for the relief of the given person from criminal liability, the court, by its ruling, shall deny satisfaction of the motion and return it to the public prosecutor for conducting criminal proceedings in accordance with the general procedure, or continue judicial proceedings in accordance with the general procedure if such motion was entered after submission of the indictment to the court.

5. The court's ruling to close criminal proceedings and relieve the given person from criminal liability may be appealed against in accordance with the appeal procedure.

**Article 289. Renewal of proceedings in case of refusal from release on probation**

1. If within a year from the date when a collective of a company, establishment or organization took the given person on probation he fails to justify this collective's confidence, evades actions/measures of educational nature, and/or disturbs public order, the general meeting of the respective collective may pass a decision to refuse from going bail for this person. The corresponding decision shall be submitted to the court which passed the ruling to relieve this person from criminal liability.

2. After receiving the collective's decision to refuse from going bail for the person, the court shall consider the issue of making this person criminally liable for the perpetrated criminal offence in accordance with the procedure prescribed by Article 288 of the present Code.

3. Having got the evidence that the given person violated the terms and conditions of his release on probation, the court, by its ruling, shall revoke the ruling to close criminal proceedings and relieve the person from criminal liability, and shall submit the materials of the proceedings for conducting the pre-trial investigation in accordance with the general procedure, or conduct judicial proceedings in accordance with the general procedure if the decision on the relief from criminal liability was passed after the indictment had been submitted to the court.

### **§ 3. Submitting an indictment to court, motion to enforce compulsory medical or educational measures**

#### **Article 290. Disclosing materials to the other party**

1. Prosecutor or investigator as directed by prosecutor upon recognizing that evidence collected in the course of pre-trial investigation is sufficient for drawing up of an indictment, a motion to enforce compulsory medical or educational measures, shall be required to notify the suspect, his defense counsel, legal representative and the defence counsel of the person subject to compulsory measures of medical or education nature on completion of pre-trial investigation and on granting access to materials of pre-trial investigation.

2. Prosecutor or investigator as directed by prosecutor is required to grant access to materials of pre-trial investigation he has in his possession, including such evidence which as such or in totality with other evidence may be used to prove the innocence or lesser degree of guilt of the accused or facilitate mitigation of punishment.

3. Prosecutor or investigator as directed by prosecutor is also required to grant access and possibility to copy or appropriately reproduce any exhibits or parts thereof, documents or copies thereof, as well as provide access to premises or places if they are in possession or under control of the State and if the public prosecutor intends to use information contained therein as evidence in court.

4. Providing access to materials implies the possibility to copy the materials or to reproduce the same.

5. In documents provided for review, information, which will not be disclosed during trial, may be removed. Removal shall be expressly marked. Upon motion of a party to criminal proceedings, the court may grant access to the removed information.

6. The defense, upon public prosecutor's request, is required to grant access and possibility to copy or appropriately reproduce any exhibits or parts thereof, documents or copies thereof, as well as provide access to home or any other possession if they are in possession or under control of the defense, if the latter intends to use the information contained therein as evidence in court.

The defense shall have the right to deny the public prosecutor access to any materials, which the public prosecutor may use to prove the guilt of the accused in commission of a criminal offence. A decision as to whether any specific materials should be deemed susceptible of being used by the public prosecutor to prove the guilt of the accused in commission of a criminal offence and, hence, a decision as to granting or not granting the public prosecutor access to such materials may be postponed until the defence has finished their examination of the materials of pre-trial investigation.

7. Prosecutor or investigator as directed by prosecutor informs the victim and representative of legal person in whose respect proceedings are taken on opening by parties to criminal proceedings of materials, after which the latter shall have the right to review such materials in accordance with the rules laid down in this Article.

*{Paragraph 7 of Article 290 as amended by Law 314-VII of 23.05.2013}*

8. The civil plaintiff, his representative and legal representative, civil defendant, and his representative shall be notified of the parties to criminal proceedings having opened the materials, after which these persons may examine them to the extent that they relate to the civil action, under the rules of this Article.

9. Parties to criminal proceedings shall be required to confirm, in writing, to the other party, and victim and the representative of legal person in whose respect proceedings are taken,

to public prosecutor, the fact of having been granted access to the materials, with indication of titles of such materials.

*{Paragraph 9 of Article 290 as amended by Laws 314-VII of 23.05.2013, #725-VII of 16.01.2014 lapses in effect under Law #732-VII of 28.01.2014; as amended by Law #767-VII of 23.02.2014}*

10. The parties to criminal proceedings, victim and representative of legal person in whose respect proceedings are taken shall be afforded time sufficient for examining the materials to which they have been granted access. In case of procrastination in reviewing the materials to which access has been granted, investigating judge upon a motion of a party to criminal proceedings, with due account of the scope, complexity of the materials and of conditions of access thereto, shall be required to set a time limit for reviewing the materials, upon expiry of which the party to criminal proceedings, victim or representative of legal person in whose respect proceedings are taken shall be deemed as such who realized their right of access to the materials. The motion shall be considered by an investigating judge of a local court at the venue of pre-trial investigation within no later than five days upon its delivery to the court, including notification of the parties to criminal proceedings. Failure of the persons who had been appropriately advised of the date and time of the court session shall not impede consideration of the motion.

*{Paragraph 10 of Article 290 as amended by Law 314-VII of 23.05.2013}*

11. Parties to criminal proceedings are required to disclose, one to another, additional materials obtained before or during trial.

12. If either of the parties to criminal proceedings does not disclose materials under the present Article, the court shall have no right to accept information contained therein as evidence.

#### **Article 291. Indictment and register of criminal proceedings records**

1. An indictment shall be drawn up by investigator, following which shall be approved by public prosecutor. Indictment may be drawn up by public prosecutor, in particular, if he does not agree with the indictment drawn up by investigator.

2. An indictment shall contain the following:

- 1) name of criminal proceedings and registration number thereof;
  - 2) biographical particulars of every accused (last name, first name, patronymic, date and place of birth, place of residence, nationality);
  - 3) biographical particulars of every victim (last name, first name, patronymic, date and place of birth, place of residence, nationality);
  - 4) last name, first name, patronymic and position of investigator, public prosecutor;
  - 5) description of actual circumstances of criminal offence, which the public prosecutor finds established, and legal qualification of criminal offence, with reference to provisions of law and Article (Article part) of Ukraine's law on criminal liability, and charges as such;
  - 6) circumstances that aggravate or mitigate the punishment;
  - 7) amount of damage caused as a result of criminal offence;
  - 7<sup>1</sup>) such grounds for application of criminal measures to the legal person as the public prosecutor deems to have been established;
- {Subparagraph 7<sup>1</sup> is added to Paragraph 2 of article 291 by Law 314-VII of 23.05.2013}*
- 8) amount of expenses on committing an expert (where expert examination was conducted during pre-trial investigation);
  - 9) date and place of drawing up and approval.

3. Indictment is signed by investigator and public prosecutor who approved it, or only by public prosecutor if he drew it up alone.

4. Attached to the indictment shall be—

1) the register of materials of pre-trial proceedings;

2) civil action, if any entered during pre-trial investigation;

3) the suspect's acknowledgement of his receipt of a copy of indictment, copy of the civil action, if any is entered during pre-trial investigation, and that of the register of materials of pre-trial proceedings **(except for the case specified by Part Two of Article 297-1 of this Code)**; .

*{Subparagraph 3 of Paragraph 4 of Article 291 as amended by Law #725-VII of 16.01.2014 lapses in effect under Law #732-VII 28.01.2014; as amended by Law 314-VII of 23.05.2013}*

4) acknowledgement or any other document confirming the civil defendant's receipt of a copy of the civil action, if any entered during pre-trial investigation against a person other than a suspect.

5) a note on the legal person in whose respect proceedings are taken, indicating the name of the legal person, its legal address, settlement account, identification code, date and place of state registration.

*{Subparagraph 5 is added to Paragraph 4 of Article 291 by Law 314-VII of 23.05.2013}*

Provision of other documents to court before commencement of the trial shall be forbidden.

#### **Article 292. Motion to impose compulsory medical or educational measures**

1. A motion to apply compulsory educational measures shall comply with the requirements of Article 291 of the present Code as well as contain information on the proposed educational measure.

2. A motion to apply compulsory medical measures shall comply with the requirements of Article 291 of the present Code as well as contain information on the proposed compulsory medical measure and a standpoint in respect of the possibility to ensure the person's participation in trial on the basis of his state of health.

#### **Article 293. Providing a copy of the indictment, of the motion to impose compulsory medical or educational measures and register of pre-trial proceedings records**

1. In parallel with referring to court the indictment, motion to impose compulsory medical or educational measures, public prosecutor shall be required to send, against acknowledgement of receipt, their copy and a copy of the register of pre-trial proceedings records to the suspect (except for the case specified by Part Two of Article 297-1 of this Code), his defense counsel, legal representative, and to the defence counsel of a person subject to compulsory medical or educational measures. Where proceedings are taken in respect of a legal person, a copy of the indictment and that of the register of pre-trial proceedings records are also provided to the representative of such legal person.

*{Paragraph 1 of Article 293 as amended by Laws 314-VII of 23.05.2013, #725 of 16.01.2014 lapses in effect under Law 732-VII of 28.01.2014; as amended by Law #767-VII of 23.02.2014}*

## **§ 4. Extending time limit for pre-trial investigation**

### **Article 294. General provisions for extending time limit for pre-trial investigation**

1. If for the reason of complicated nature of proceedings, it is impossible to complete pre-trial investigation of a criminal misdemeanor (inquiry) within a time limit specified in Article 219, paragraph 2, subparagraph 1 of the present Code, it may be extended by a district (city) public prosecutor or another public prosecutor granted the same status.

2. If it is impossible to complete pre-trial investigation of a crime (pre-trial investigation) within time limit specified in Article 219, paragraph 1, subparagraph 2 of this Code, it may be extended within the time limits specified in the second paragraph of Article 219, paragraph 2, subparagraphs 2 and 3 of this Code:

1) for up to three months, by a district (city) public prosecutor or another public prosecutor granted the same status;

2) for up to six months, by the public prosecutor of the Autonomous Republic of Crimea, public prosecutor of oblast, the cities of Kyiv and Sevastopol or a public prosecutors granted the same status, or their deputies;

3) for up to twelve month, by the Prosecutor-General of Ukraine or his deputies.

The time limits of pre-trial investigation of a crime, if it cannot be completed for the complex nature of proceedings, may be extended to 3 months, or to 6 months – in view of special complexity of proceedings, or to 12 months – in view of exceptional complexity of proceedings.

### **Article 295. Procedure for extending time limit for pre-trial investigation**

1. Extending of time limit for pre-trial investigation of a criminal offense shall be carried out upon request of investigator or public prosecutor who supervises the compliance with law in the course of pre-trial investigation concerned.

2. Request to extend time limit for pre-trial investigation shall state:

1) last name, first name, patronymic of the suspect;

2) designation (number) of the criminal proceedings;

3) substance of the suspicion, which has been notified, and legal qualification of criminal offense with indication of Article (Article part) of Ukraine's law on criminal liability, the person concerned is suspected of;

4) reference to information which supports the suspicion;

5) procedural actions which require more time;

6) importance of the results of such procedural actions for trial;

7) period of time needed for the conduct or completion of such procedural actions;

8) circumstances which prevented the conduct of such procedural actions earlier.

3. A copy of the request shall be forwarded by the investigator or public prosecutor who supervises the compliance with law in the course of pre-trial investigation concerned, to the suspect and his defense counsel no later than five days before submitting the request to the public prosecutor authorized to dispose the issue of extending time limit for pre-trial investigation.

The suspect, his defense counsel shall have the right before the request to extend time limit for pre-trial investigation is submitted, to submit to the investigator or public prosecutor who raises the issue, their written objections which are required to be attached to the request and submitted with it to the public prosecutor authorized to dispose the issue.

4. Public prosecutor authorized to dispose the issue of extending time limit for pre-trial investigation, shall be required to consider the request within three days after receipt, but in any case before the expiry of the time limit for pre-trial investigation.

5. Public prosecutor's decision to extend time limit for pre-trial investigation or to refuse to do so shall be adopted in the form of a decision.

#### **Article 296. Allowing the request for extending time limit for pre-trial investigation**

1. Public prosecutor shall allow the request and extend time limit for pre-trial investigation if ascertains that the additional time is necessary for obtaining evidence which may be used in trial or for the conduct or completion of expert examination, provided that such actions could not be conducted or completed before for objective reasons.

2. If the authorized public prosecutor allows the request of investigator, public prosecutor, he shall fix a new time limit for the pre-trial investigation. The authorized public prosecutor shall be required to fix the shortest possible time limit that would be sufficient for the needs of pre-trial investigation.

3. If necessary, public prosecutor may before the expiry of the extended time limit, submit again a request for extending time limit for pre-trial investigation in accordance with the procedure prescribed in this paragraph, within the limits specified in part two of Article 219 of the present Code.

#### **Article 297. Dismissal of the request to extend time limit for pre-trial investigation**

1. Public prosecutor shall dismiss the request and deny the extension of time limit for pre-trial investigation in case where investigator, public prosecutor who submitted the request, fails to prove the existence of grounds specified in part one of Article 292 of the present Code, as well as if circumstances examined in the course of disposing this issue, give evidence of absence of sufficient grounds to believe that the event of criminal offense that served as grounds for notice on suspicion, did not actually happen, and/or that the suspect is implicated in such event of criminal offense.

2. In case of denial to extend time limit for pre-trial investigation, the public prosecutor who supervises the compliance with law in the course of pre-trial investigation concerned, shall be required within five days to carry out one of the actions specified in part two of Article 283 of the present Code.

### **Chapter 24-1. Specifics of special pre-trial investigation of criminal offences**

#### **Article 297-1. General provisions related to special pre-trial investigation**

1. Special pre-trial investigation (in absentia) shall be conducted according to general rules of pre-trial investigation specified by this Code with a view of provisions of this Chapter.

2. Special pre-trial investigation shall be conducted following the investigative judge's resolution in criminal proceedings relating to crimes specified by Articles 109, 110, 110-2, 111, 112, 113, 114, 114<sup>1</sup>, 115, 116, 118, Parts Two-Five of Article 191 (in case of abuse of power by an official), Articles 209, 258, 258-1, 258-2, 258-3, 258-4, 258-5, 348, 364, 364-1, 365, 365-2, 368, 368-2, 368-3, 368-4, 369, 369-2, 370, 379, 400, 436, 436-1, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, and 447 of the Criminal Code of Ukraine in regard to the suspect (except for

minors) who absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability, and if he/she is announced in interstate or international wanted list .

*{Paragraph 2 of Article 297-1 as amended by Law № 119-VIII of 15.01.2015 }*

**Article 297-2.** Motion of an investigator, public prosecutor to conduct special pre-trial investigation

1. A public prosecutor or an investigator, with the consent of the public prosecutor, shall be entitled to apply to an investigative judge with the motion to conduct special pre-trial investigation.

2. The motion shall specify:

1) short description of the circumstances of a criminal offence in regard to which a motion is submitted;

2) legal qualification of a criminal offence including the Article (part of Article) of the law of Ukraine on criminal liability;

3) the circumstances which give the grounds to suspect a person of committing a criminal offence and references to the circumstances;

4) data on announcing person in interstate or international wanted list ;

*{Subparagraph 4 of Paragraph 2 of Article 297-2 as amended by Law № 119-VIII of 15.01.2015}*

5) statement of circumstances about the suspect absconding (hiding from the investigation and judicial bodies) with the view of avoiding criminal liability;

6) a list of witnesses who the investigator, public prosecutor believes should be interrogated during consideration of the motion.

**Article 297-3.** Consideration of the motion on conducting special pre-trial investigation

1. A motion to conduct special pre-trial investigation shall be considered by the investigative judge within ten days from the moment of its submission to the court with engagement of the person who submitted the motion and a defence counsel.

In case the suspect has failed to solicit a defence counsel on his own the investigative judge shall take all the actions to engage a defence counsel.

2. If the investigative judge establishes that the motion has been submitted without complying with the requirements of Article 297-2 of this Code he/she shall return it to the investigator, public prosecutor and issue the corresponding resolution.

3. While considering the motion the investigative judge shall be entitled, on the basis of a petition from any party of criminal proceedings or on own initiative, take testimony from any witness or examine any materials which are of relevance to address the issue on special pre-trial investigation.

**Article 297-4.** Making a decision to conduct special pre-trial investigation

1. The investigative judge shall reject the motion on conducting special pre-trial investigation if the public prosecutor and/or an investigator fails to prove that the suspect absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability, and is announced in interstate or international wanted list.

*{Paragraph 1 of Article 297-4 as amended by Law № 119-VIII of 15.01.2015}*

2. While deciding whether to conduct special pre-trial investigation the investigative judge

shall take into account the availability of sufficient evidence to suspect a person of having committed a criminal offence.

3. Following the results of the motion consideration the investigative judge shall issue a resolution specifying the reasons for sustaining or rejecting the motion to conduct special pre-trial investigation.

In case there are several suspects in the criminal proceedings the investigative judge shall issue a resolution only in regard to those suspects in regard to whom there are circumstances specified by Part Two of Article 297-1 of this Article.

Repeated submission of the motion to the investigative judge to conduct special pre-trial investigation in one criminal proceedings shall not be allowed except for cases when there are new circumstances proving that the suspect absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability, and is announced in interstate or international wanted list .

*{Subparagraph 3 of Paragraph 3 of Article 297-4 as amended by Law № 119-VIII of 15.01.2015}*

4. A copy of the resolution shall be sent to the public prosecutor, an investigator and a defence counsel.

5. If the grounds for issuing a resolution to conduct special pre-trial investigation by the investigative judge are not valid any more the pre-trial investigation shall be continued according to the rules specified by this Code.

6. The information about special pre-trial investigation shall be entered into the Unified Register of Pre-Trial Investigations.

**Article 297-5.** The procedures for delivering procedural documents to the suspect during special pre-trial investigation

1. In case of conducting special pre-trial investigation the summons shall be sent to the last-known address of residence or staying of the suspect and shall be published in national mass media and official websites of the agencies conducting pre-trial investigation. The suspect shall be deemed to have been properly informed about the summons content from the moment of its publishing in national mass media.

The print edition which will publish the summons over the coming year shall be defined on or before December 1 of the current year according to the procedures established by the Cabinet of Ministers of Ukraine.

2. The copies of procedural documents to be delivered to the suspect shall be sent to a defence counsel.

*{A new chapter is added to Criminal Procedure Code of Ukraine by Law № 1689-VII of 07.10.2014}*

## **Chapter 25. Specifics of pre-trial investigation of criminal misdemeanors**

### **Article 298. General provisions of pre-trial investigation of criminal misdemeanors**

1. Pre-trial investigation of criminal misdemeanors (inquiry) shall be conducted according to general rules of pre-trial investigation laid down in the present Code and taking into account provisions of the present Chapter.

**Article 299. Measures of restraint during pre-trial investigation of criminal misdemeanors**

1. Such measure of restraint as house arrest, release on bail, or keeping in custody, shall not be admissible in the course of pre-trial investigation of criminal misdemeanors.

**Article 300. Investigative (detective) actions during pre-trial investigation of criminal misdemeanors**

1. All investigative (detective) actions specified in the present Code, except for covert investigative (detective) actions, shall be allowed during pre-trial investigation of criminal misdemeanors.

**Article 301. Specific features of the completion of pre-trial investigation of criminal misdemeanors**

1. Pre-trial investigation of criminal misdemeanors shall be completed in accordance with general rules set forth in the present Code, taking into account specific features specified in present Article.

2. Investigator is required, within the shortest possible time, but not later than twenty-five days after the person concerned has been notified of being a suspect, to submit for approval of the public prosecutor one of the following procedural documents:

- 1) draft decision to close criminal proceedings;
- 2) draft motion to discharge the person concerned from criminal liability;
- 3) an indictment, motion to enforce compulsory medical or educational measures;
- 4) a request to extend time limit for pre-trial investigation on grounds specified by the present Code.

If necessary, public prosecutor may complete procedural documents referred to in part two of this Article, on his own.

3. Within thirty days after the person concerned has been notified of suspicion, public prosecutor is required to take one of the following actions:

- 1) take decision to close criminal proceedings;
- 2) submit to court a motion on releasing the person from criminal liability;
- 3) refer to court the indictment, motion to enforce compulsory medical or educational measures;
- 4) submit a request to extend time limit for pre-trial investigation on grounds specified by the present Code.

4. Investigator discloses materials of pre-trial proceedings to the other party as prescribed in the present Code.

**Article 302. Public prosecutor's motion to consider the indictment in simplified procedure**

1. Public prosecutor, upon having established in the course of pre-trial investigation that the suspect unconditionally has admitted his guilt, does not dispute circumstances established through pre-trial investigation, and agrees to the consideration of the indictment in his absence, and the victim and representative of legal person in whose respect proceedings are taken do not object against such consideration, may refer to court an indictment containing inter alia a motion on consideration thereof in simplified procedure, without conducting trial in court session.

*{Paragraph 1 of Article 302 as amended by Law 314-VII of 23.05.2013}*

2. Investigator, public prosecutor shall be required to advise the suspect, victim and representative of legal person in whose respect proceedings are taken of the content of circumstances established in pre-trial investigation, as well as that in case of giving their consent to consideration of the indictment in simplified procedure, they shall have no right to challenge the sentence in appeals procedure on grounds of trial in absence of participants in court proceedings, of non-examination of evidence in court session, or with the purpose of disputing the circumstances established in pre-trial investigation. In addition, investigator, public prosecutor shall be required to ascertain the voluntariness of the consent given by the suspect, victim, and representative of legal person in whose respect proceedings are taken to the consideration of the indictment in simplified procedure.

*{Paragraph 2 of Article 302 as amended by Law 314-VII of 23.05.2013}*

3. Attached to an indictment containing a motion on consideration thereof in simplified procedure, there shall be–

1) written statement of the suspect, drafted in the presence of the defence counsel, asserting the unconditional admission of his guilt, the recognition of circumstances established in pre-trial investigation, the awareness of the restriction of the right to appeal pursuant to par. 2 of this Article, and the consent to the consideration of the indictment in simplified procedure;

2) written statement of the victim and representative of legal person in whose respect proceedings are taken, asserting the recognition of circumstances established in pre-trial investigation, the awareness of the restriction of the right to appeal pursuant to par. 2 of this Article, and the consent to the consideration of the indictment in simplified procedure;

*{Subparagraph 2 of Paragraph 3 of Article 302 as amended by Law 314-VII of 23.05.2013}*

3) materials of pre-trial investigation including documents certifying unconditional admission by the suspect of his guilt.

## **Chapter 26. Challenging Decisions, Acts or Omissions during Pre-trial Proceedings**

### **§ 1. Challenging decisions, acts or omissions of the pre-trial investigation agencies or public prosecutor during pre-trial proceedings**

#### **Article 303. Decisions, acts or omissions of investigator or public prosecutor, which may be challenged during pre-trial proceedings and the right to challenge**

1. The following decisions, acts or omissions of the investigator or public prosecutor may be challenged during pre-trial proceedings:

1) Omission of the investigator, prosecutor consisting in failure to enter information on criminal offense in the Integrated Register of Pre-Trial Investigations after receipt of application or notice on criminal offense, to return temporarily seized property as prescribed by Article 169 of the present Code, as well as failure to carry out other procedural actions which he is required to carry out within a period of time specified by the present Code, – by an applicant, victim, his representative or legal representative, the suspect, his defense counsel or legal representative, representative of legal person in whose respect proceedings are taken, or the owner of temporarily seized property;

*{Subparagraph 1 of Paragraph 1 of Article 303 as amended by Law 314-VII of 23.05.2013}*  
}

2) decision of the investigator as well as public prosecutor to terminate pre-trial investigation – by victim, his representative or legal representative, the suspect, his defense counsel or legal representative and the representative of legal person in whose respect proceedings are taken;

*{Subparagraph 2 of Paragraph 1 of Article 303 as amended by Law 314-VII of 23.05.2013}*

3) investigator's decision to close criminal proceedings, – by the applicant, victim, his or her representative or legal representative, the suspect, his or her defense counsel or legal representative;

4) prosecutor's decision to close criminal proceedings, – by the applicant, victim, his representative or legal representative, the suspect, his defense counsel or legal representative or the representative of the legal person in whose respect proceedings are taken;

*{Subparagraph 4 of Paragraph 1 of Article 303 as amended by Law 314-VII of 23.05.2013}*

5) decision of the prosecutor as well as investigator to refuse recognition as a victim, by the person who was refused to be recognized as a victim;

6) decisions, acts or omissions of the investigator or public prosecutor in enforcing protective measures, by persons in respect to whom legal protective measures may be enforced.

7) decision of the investigator, prosecutor, to dismiss a motion for conducting investigative (detective) actions, covert investigative (detective) actions, – by the person whose motion has been dismissed, his or her representative, legal representative or defense counsel;

8) decision of the investigator, public prosecutor, to change the procedure of pre-trial investigation and continue to proceed under the rules of Chapter 39 of this Code, – by the suspect, his or her defense counsel or legal representative, victim, his or her representative or legal representative.

*{Subparagraph 9 of Paragraph 1 of Article 303 has been excluded by Law #767-VII of 23.02.2014}*

2. Complaints against other decisions, acts or omissions of the investigator or public prosecutor are not considered during pre-trial proceedings and may be subject to consideration during preparatory proceedings in court in accordance with Articles 314–316 of this Code.

3. Decisions, acts or omissions by an investigator or a public prosecutor as referred to in subparagraphs 5 and 6 of paragraph one of this Article, may be also challenged during preparatory court session.

#### **Article 304. Time limits for challenging decisions, acts or omissions of the investigator or public prosecutor, its returning or refusal to open proceedings**

1. Complaints against decisions, acts or omissions of the investigator or public prosecutor referred to in paragraph one of Article 303 of the present Code, may be lodged by a person within ten days after the decision was taken, act or omission committed. If a decision of the investigator or public prosecutor has been drawn up as a resolution, time limit for lodging of complaint shall be counted from the day the complainant has received its copy.

2. A complaint is returned if:

- 1) it has been lodged by a person who is not entitled thereto;
- 2) it is not subject to consideration by this court;

3) it has been lodged after expiry of time limit specified in paragraph one of this Article, and the complainant does not raise the issue of renewing the time limit, or investigating judge finds no grounds for renewing it upon the person's application.

4. A copy of the ruling to return the complaint shall be immediately forwarded to the complainant, together with the complaint and all materials attached thereto.

5. Investigating judge, court refuses to open proceedings only if the complaint is lodged against such decisions, acts or omissions of the investigator, public prosecutor that are not subject to challenging.

6. A copy of the ruling to refuse opening the proceedings shall be immediately forwarded to the complainant, together with the complaint and all materials attached thereto.

7. Ruling to return the complaint or refuse opening proceedings may be challenged under appeal procedure.

8. Returning the complaint does not preclude re-applying to investigating judge, court as prescribed in the present Code.

#### **Article 305. Legal consequences of challenging decisions, acts or omissions of the investigator or public prosecutor during pre-trial proceedings**

1. Challenging a decision, act or omission of the investigator or public prosecutor during pre-trial proceedings shall not preclude execution of the decision or act of the investigator or public prosecutor.

2. Investigator or public prosecutor may at their own discretion repeal a decision challenged, discontinue an act or omission specified in subparagraphs 1, 2, 5 and 6 of the first paragraph of Article 303 of this Code, which are complained against, and that shall entail the closure of proceedings on the complaint.

Prosecutor may autonomously cancel decision specified in subparagraph 3 of the first paragraph of Article 303 of this Code, which may be appealed according to the procedure specified in the sixth paragraph of Article 284 of this Code and which shall entail the closure of proceedings on the complaint.

*{The second sentence of Paragraph 2 of Article 305 as amended by Law 314-VII of 23.05.2013}*

#### **Article 306. Procedure for consideration of complaints regarding decisions, acts or omissions of the investigator or public prosecutor during pre-trial proceedings**

1. Complaint against decision, act or omission of the investigator or public prosecutor shall be considered by investigating judge of local court in accordance with rules governing trial laid down in Articles 313 through 380 of this Code, taking into account provisions of the present Chapter.

2. Complaint against decisions, act or omission during pre-trial proceedings shall be considered within 72 hours from the receipt of the complaint concerned, except complaints against decision to close criminal proceedings which shall be considered within five days from the receipt of the complaint concerned.

3. Consideration of complaints against decision, act or omission during pre-trial proceedings shall be considered with mandatory participation of the complainant or his defense counsel, representative and the investigator or public prosecutor whose decision, act or omission are challenged. Absence of the investigator or public prosecutor does not preclude consideration of the complaint.

**Article 307. Investigating judge's decision following consideration of the challenge regarding decisions, acts or omissions of the investigator or public prosecutor during pre-trial proceedings**

1. Based on results of consideration of the challenge regarding decisions, acts or omissions of the investigator or public prosecutor, a ruling is made in accordance with the rules laid down in the present Code.

2. Ruling of investigating judge upon results of consideration of the complaint against a decision, act or omission during pre-trial proceedings, may be related to:

- 1) repeal of the decision of the investigator or public prosecutor;
- 2) order to stop conducting act;
- 3) order to conduct a certain act;
- 4) refusal to grant the challenge.

3. Ruling of investigating judge based on results of consideration of complaint against a decision, act, or omission of the investigator or public prosecutor may not be challenged, except a ruling of refusal to grant the challenge lodged against decision to close criminal proceedings.

**Article 308. Complaining against failure to respect reasonable time**

1. A suspect, accused person, victim may lodge a complaint with a superior public prosecutor against the failure to respect reasonable time during pre-trial investigation by investigator, public prosecutor.

2. The superior public prosecutor shall be required to consider the complaint within three days of its lodging and, present grounds for sustaining it, issue the relevant public prosecutor binding instructions as to the time limits for conducting specific procedural actions or making procedural decisions. The person who has lodged the complaint shall be promptly notified of the results of its consideration.

2. Officials who are at fault for failure to respect reasonable time may be held liable at law.

**§ 2. Challenging rulings of the investigating judge passes during pre-trial proceedings**

**Article 309. Investigating judge's rulings subject to be challenged during pre-trial proceedings**

1. During pre-trial investigation, investigating judge's rulings may be challenged in appeals procedure related to:

- 1) refusal to grant permission to apprehension;
- 2) enforcing the measure of restraint in the form of keeping in custody or refusal to enforce such;
- 3) extending duration of keeping in custody or refusal to extend;
- 4) enforcing the measure of restraint in the form of house arrest or refusal to enforce such;
- 5) extending duration of house arrest or refusal to extend;
- 6) putting a person in children's placement centre or refusal to put;
- 7) extending duration of keeping in children's placement centre or refusal to extend;
- 8) sending a person to a medical institution for psychiatric expert examination or refusal to send;
- 9) attachment of property or refusal to attach it;

10) temporary access to objects and documents granting permission to seize objects and documents which certify the enjoyment of the right to carry out entrepreneurial activity, or other in the absence of which a physical person-entrepreneur or a legal person is deprived of possibility to carry out their activities;

11) removal from office or refusal to remove.

12) refusal to conduct special pre-trial investigation.

*{A new subparagraph is added to the first paragraph of Article 309 by Law № 1689-VII of 07.10.2014}*

2. During pre-trial investigation, there may also be challenged in appeals procedure rulings of investigating judge on refusing to grant a complaint against a resolution to close criminal proceedings, returning a complaint against a decision, act or omission of the investigator, public prosecutor, or refusing to open proceedings on such decision.

3. Complaints against other investigating judge's rulings shall be non-appealable, and may be subject to judicial hearing in the course of preparatory proceedings in court.

### **Article 310. Procedure for challenging of investigating judge's rulings**

1. Challenging of investigating judge's rulings shall be made in appeals procedure.

## **§ 3. Challenging of the public prosecutor's decisions, acts or omissions by the investigator**

### **Article 311. Decisions, acts or omissions of the public prosecutor, which may be challenged by investigator**

1. In the course of pre-trial proceedings, investigator who investigates a criminal offence has a right to challenge any decisions, acts or omissions of the public prosecutor taken or committed in the pre-trial proceedings concerned, unless the present Code provides otherwise.

### **Article 312. Procedure for challenging public prosecutor's decisions, acts or omissions**

1. Investigator shall submit complaint against decisions, acts or omissions of the public prosecutor in written form, within three days after challenged decisions, acts or omissions has been taken or committed.

2. Investigator's complaint shall be submitted to the prosecutor's office which is higher in relation to the prosecutor's office where the public prosecutor whose decisions, acts or omissions are challenged holds the office.

3. Challenging of public prosecutor's decisions acts or omissions by the investigator shall not preclude execution thereof.

### **Article 313. Procedure for disposing complaint against public prosecutor's decisions, acts or omissions**

1. The official of the higher prosecutor's office who received complaint against decisions, act or omission of a public prosecutor shall be required to review such complaint within three days after it has been received and send his decision to the investigator and the public prosecutor whose decisions, acts or omissions are challenged.

2. After consideration of the complaint, the following decisions may be taken:

- 1) the decision being challenged is maintained, acts or omissions are found to be legitimate;
- 2) to change the decision challenged partly;

3) the decision being challenged is repealed and a new decision is adopted, acts or omissions are found to be illegitimate and a request is made to take a new action.

3. If the decision challenged is repealed or acts or omissions are found to be illegitimate, the official concerned of the higher prosecutor's office may replace the public prosecutor concerned with another one selected from among members of the prosecutor's office of the same level in pre-trial proceedings where illegitimate decision, act or omission have been adopted or have taken place.

4. Decision made by the official concerned of the higher prosecutor's office shall be final and may not be challenged before court, other public authorities, functionaries or officials thereof.

## **Section IV. Court Proceedings in the First Instance**

### **Chapter 27. Preparatory Proceedings**

#### **Article 314. Preparatory court session**

1. Having received the indictment, motion to enforce compulsory medical or educational measures, or motion on discharge from criminal liability, the court shall within five days after the day of receipt thereof, assign the date of preparatory court session for which participants in court proceedings are summoned.

2. A preparatory court session is conducted with participation of public prosecutor, the accused, defense counsel, victim and his representative and legal representative, civil plaintiff, his representative and legal representative, civil defendant and his representative, and the representative of the legal person in whose respect proceedings are taken, as provided by the rules of trial in the present Code. Upon fulfilling the requirements specified in Articles 342 through 345 of the present Code, the presiding judge asks the opinions of the participants in court proceedings regarding the possibility of assigning trial.

*{Paragraph 2 of Article 314 as amended by Law 314-VII of 23.05.2013}*

3. In a preparatory court session, the court may take the following decisions:

1) approve agreement or refuse in its approving and return criminal proceedings to public prosecutor for continuation of pre-trial investigation in accordance with the procedure laid down in Articles 468 through 475 of the present Code;

2) close proceedings in case of establishing grounds specified in subparagraphs 4 through 8 of paragraph one or in paragraph two of Article 284 of the present Code;

3) return the indictment, motion to enforce compulsory medical or educational measures to the public prosecutor if they do not comply with the requirements of the present Code;

4) forward the indictment, motion to enforce compulsory medical or educational measures to an appropriate court for definition of jurisdiction, in case the criminal proceedings concerned is found to be not under the jurisdiction;

5) assign trial based on the indictment, motion to enforce compulsory medical or educational measures.

4. Ruling to return the indictment, motion to enforce compulsory medical or educational measures may be challenged in appeals procedure.

#### **Article 315. Disposing matters relating to preparation for trial**

1. If in the course of preparatory court session no grounds are found for adoption of decisions specified in subparagraphs 1 through 4 of paragraph three of Article 314 of the present Code, the court shall carry out preparation for trial.

2. As a matter of preparation for trial, the judge shall:

1) assign the date and place for trial;

2) find out whether or not the trial must be conducted in private court session;

3) dispose the issue of the composition of participants in trial;

4) consider motions of the participants in court proceedings on:

citing certain persons for examination in court;

demanding and obtaining certain objects or documents;

5) do whatever is necessary to prepare trial.

3. During preparatory court session, the court may, upon motions of participants in court proceedings, enforce, change or repeal measures to ensure criminal proceedings including the measure of restraint enforced in respect of the accused. When considering such motions, the court shall comply with provisions of Section II of the present Code. In absence of such motions from parties to criminal proceedings, the application of measures to ensure that the criminal proceedings decided on during pre-trial investigation shall be deemed to continue.

#### **Article 316. Completing of preparatory proceedings and assigning trial**

1. Upon completion of preparation for trial, the court passes the ruling to assign trial.

2. The trial must be assigned for a date within ten days after the passing of ruling to assign it.

#### **Article 317. Materials of criminal proceedings (criminal case) and the right to examine thereof**

1. Documents, other materials forwarded to the court during court proceedings by participants in it, court decisions and other documents and materials of importance for the criminal proceedings concerned, shall be attached to the indictment, a motion on application of compulsory medical or educational measures, a motion on discharge from criminal liability and shall be materials of criminal proceedings (criminal case).

2. After the case is assigned for trial, the presiding judge shall be required to provide the opportunity to the participants in court proceedings, if they file a motion thereon, to examine the materials of the criminal proceedings. During such examination, the participants in court proceedings may make necessary extracts and copies thereof.

3. Materials relating to the enforcement of protection measures in respect of persons, who participate in criminal proceedings, shall not be provided for examination.

### **Chapter 28. Trial**

#### **§ 1. General provisions governing trial**

### **Article 318. Time limits and general procedure for trial**

1. Trial shall be held and completed within a reasonable period of time.
2. Trial is held in court session with mandatory participation of parties to criminal proceedings, except in cases provided for in the present Code. Victim and other participants in criminal proceedings shall be summoned to appear in court session.
3. Court session is held in a specially equipped premise named the courtroom. Individual procedural actions, if necessary, may be conducted outside the courtroom.

### **Article 319. Invariability of the court composition**

1. Trial in criminal proceedings shall be conducted in one court's composition. Whenever a judge cannot participate in court session, he shall be replaced by another judge to be determined following the procedure established in Part Three of Article 35 of this Code. After replacement of a judge, trial re-starts, except in the cases specified in paragraph 2 of this Article and in Article 320 of this Code.
  2. The court may by its reasoned ruling decide that there is no need to re-start the trial and conduct anew all or some of the procedural action performed during trial before replacement of a judge, provided such decision will not prejudice the trial and that the following conditions are met:
    - 1) the parties to criminal proceedings, the victim, do not insist on a new conduct of procedural actions already performed by the court before replacement of a judge;
    - 2) the judge who replaces the resigning judge has familiarised himself with the course of court proceedings and materials of criminal proceedings available to the court, is in agreement with the procedural decisions taken by the court and deems inexpedient to conduct anew the procedural actions performed before replacement of a judge.
- In a case provided by this paragraph of the article evidence examined during trial before replacement of a judge shall retain their probative value and may be used in support of court decisions.

### **Article 320. Reserve judge**

1. In criminal proceedings requiring significant time, a reserve judge shall be appointed to be staying in the courtroom throughout the trial. The decision concerning a reserve judge shall be rendered concurrently with the appointment of preliminary court session by the court to be burdened with the trial of the case. An appropriate entry concerning the appointment of a reserve judge shall be made in the journal of court session.
2. If, in the course of court session, a judge is replaced by the reserve judge, the trial continues. In such a case, the new composition of the court shall complete trial.

### **Article 321. Judge presiding in court session**

1. Judge presiding in court session directs the course of court session ensures sequence and order of procedural actions, realization by participants to criminal proceedings of their procedural rights and fulfillment of their duties, aims trial at ensuring the ascertainment of all circumstances of criminal proceedings, removing from the trial everything which has no importance for criminal proceedings.
2. Judge presiding in court session takes necessary measures to ensure due order in court session.

### **Article 322. Continuity of trial**

1. Trial shall continue without breaks, except for time to rest.
2. Shall not be considered to be breach of the continuity of trial the instances of adjourning the court session in consequence of:
  - 1) non-appearance of a party or other participants in criminal proceedings;
  - 2) preparation and approval by the public prosecutor of procedural documents pertaining to dropping of public prosecution, changing of charges, or bringing of an additional charge;
  - 3) preparation by the accused of his defense against a changed or new charge;
  - 4) preparation of the victim for prosecution in court if public prosecutor refused to back the public prosecution;
  - 5) examination of objects in the place of their location, field inspection
  - 6) evaluation to take place in the cases and pursuant to the procedure as set forth in Article 332 of this Code;
  - 7) giving access to items or documents or commission to carry out investigative (detective) actions in the cases and pursuant to the procedure as set forth in Article 333 of this Code

### **Article 323. Implications of non-appearance of the accused**

1. If the accused against whom such measure of restraint as keeping in custody was not enforced, does not appear, upon summons, in court session without valid reasons, the court postpones the trial, fixes the date of new court session, and takes measures to ensure his appearance before court. The court may also pass the ruling on compelled appearance of the accused and/or the ruling on imposition of pecuniary penalty in accordance with the procedure laid down in Chapters 11 and 12 of the present Code.

*{Paragraph 2 of Article 323 has been excluded by Law #767 of 23.02.2014}*

3. The trial in criminal proceedings as to the crimes specified in Part Two of Article 297-1 of this Code may be held in absentia (without the accused (except for a minor) who absconds (hides from the investigation and judicial bodies) with the view of avoiding criminal liability (special judicial proceedings)) if the accused is announced in interstate or international wanted list.

*{Subparagraph 1 of the Paragraph 3 of Article 323 as amended by Law № 119-VIII of 15.01.2015 }*

In this case, the court shall issue a resolution to conduct special judicial proceedings in regard to the accused on the motion of the public prosecutor, which is to include materials proving that the accused was aware or must have been aware of the launch of criminal proceedings.

If there are several accused persons in the criminal proceedings the court shall issue a resolution relating only to the suspects in regard to whom there are circumstances for special judicial proceedings.

It shall be mandatory to engage a defence counsel to participate in special judicial proceedings.

In case of special judicial proceedings the summons shall be sent to the last-known address of residence of staying of the accused and the procedural documents subject to the delivery to the accused shall be sent to the defence counsel. Information about the documents and the summons shall be published in national mass media according to provisions of Article 297-5 of this Code. The accused shall be deemed to have been properly informed about the summons contents from the moment of its publishing in national mass media.

*{A new paragraph is added to Article 323 by Law № 1689-VII of 07.10.2014}*

4. In case the grounds for issuing a resolution to conduct special judicial proceedings are not valid any more next judicial proceedings shall start from the beginning according to general rules specified by this Code.

*{A new paragraph is added to Article 323 by Law № 1689-VII of 07.10.2014}*

#### **Article 324. Implications of the public prosecutor's and defense counsel's non-appearance**

1. If public prosecutor or defense counsel does not appear in court session upon notice in criminal proceedings in which the participation of the defense counsel is mandatory, the court postpones the trial, fixes date, time and place of a new court session, and takes measures to ensure their appearance in court. At the same time, if the reason for non-appearance is invalid, the court raises the issue of liability of the public prosecutor or defence counsel who failed to appear before the bodies which are authorised by law to initiate disciplinary proceedings against them.

2. If a public prosecutor is no longer able to participate in the trial, he is replaced with another one according to the procedure established in Article 37 of this Code.

3. If defense counsel is no longer able to participate in the trial, the judge presiding in court session proposes to the accused to within three days select another defense counsel. If in criminal proceedings where the participation of defense counsel is mandatory, the appearance at court session of the defense counsel selected by the accused, is not possible within three days, the court postpones the trial for a period necessary for the defense counsel to appear, or concurrently with postponing the trial, shall involve a defense counsel to provide defence by appointment.

4. The court shall be required to give public prosecutor and defense counsel who previously did not participate in the proceedings concerned, the time sufficient for reviewing materials of the criminal proceedings and preparing for participation in the court session.

#### **Article 325. Implications of the victim's non-appearance**

1. If the summoned victim duly notified on the date, time and place of the court session, does not appear in court, the court having heard the opinion of participants in court proceedings, decides to conduct the trial without victim or to postpone the trial, depending on to what extent it is possible to ascertain all circumstances during trial in his absence. The court may impose pecuniary penalty on the victim in cases and in accordance with the procedure provided for by Chapter 12 of this Code.

#### **Article 326. Implications of non-appearance of a civil plaintiff, civil defendant, their representatives and representative of the legal person in whose respect proceedings are taken**

*{Heading of Article 326 as amended by Law 314-VII of 23.05.2013}*

1. Where a civil plaintiff, his/her representative or legal representative fails to appear in court session, the case will be dismissed, except as provided otherwise by this Article.

A civil lawsuit may be entertained in absence of a civil plaintiff, his/her representative or legal representative provided that he/she has requested so or that the defendant or civil defendant admitted the claim.

2. If the civil defendant, other than the accused, or his representative fails to appear on summons, the court may hear the opinion of the participants in court proceedings and, depending on whether or not it is possible to establish the circumstances relevant for the civil action,

decides to hold the hearing without them or to postpone the hearing. The court may impose pecuniary penalty on the civil defendant under the rules of Chapter 12 of this Code.

3. If the representative of the legal person in whose respect proceedings are taken fails to appear on summons, the court may hear the opinion of the participants in court proceedings and, depending on whether or not it is possible to establish the circumstances relevant for the application of criminal measures to such legal person, decides to hold the hearing without him or to postpone the hearing. The court may impose a pecuniary penalty on the representative of a legal person in whose respect proceedings are taken under the rules of Chapter 12 of this Code.

*{Paragraph 3 is added to Article 326 by Law 314-VII of 23.05.2013}*

### **Article 327. Implications of the witness's, specialist's, interpreter's and expert's non-appearance**

1. If a witness, specialist, interpreter or expert does not appear in court session upon summons, the court, having heard the opinion of participants in court proceedings and after having interrogated other witnesses, fixes new court session and takes measures to ensure his appearance. The court also has the right to pass a ruling to compel the appearance of the witness and/or a ruling to impose on him a pecuniary penalty in the cases and in accordance with the procedure laid down in Chapters 11 and 12 of the present Code.

2. Appearance in court of the interpreter (except where he is committed by court), witness, specialist or expert shall be ensured by the party to criminal proceedings which has filed the motion on his summons. The court shall assist the parties to ensure the appearance of such persons by way of court summons.

### **Article 328. Right to be in the courtroom**

1. The number of those present in the courtroom may be restricted by the presiding judge only in case of the lack of seats in the courtroom.

2. Close relatives and members of family of the accused and victim as well as representatives of mass media shall enjoy the preferential right to be present at court session.

### **Article 329. Duties of those present in the courtroom**

1. Individuals present in the courtroom shall be required to stand up when the court enters and leaves the courtroom. Parties to criminal proceedings examine witnesses and file motions, objections standing and only after judge presiding in court session gives them the floor. Witnesses, experts, specialists testify standing in the place reserved for witnesses. Individuals present in the courtroom hear judgment standing upright. Derogation from these rules is possible upon presiding judge's permission.

2. Parties and participants in criminal proceedings, as well as other persons present in the courtroom, shall be required to keep order in court session and unconditionally obey appropriate instructions given by presiding judge.

3. Parties, participants in criminal proceedings shall address themselves to court "Your Honor" or "Respected court".

4. Materials, objects and documents shall be handed over to the presiding judge through bailiff.

### **Article 330. Measures to be taken in respect of violators of the order in the court**

1. If the accused breaks order in court session or disobeys instructions of the presiding judge in court session, the latter warns the accused that, if he continues in the same way, he will be moved away from the courtroom. If the accused repeats his behavior in court session, he may be moved away by ruling of the court from the courtroom, temporarily or for the whole duration of the trial. If such an accused is not represented by defense counsel, the court shall be required to involve a defense counsel for the provision of defence by appointment and adjourn the trial for a period necessary for him to prepare defense.

After the accused has been returned to the courtroom, he shall be given possibility to review evidence which was examined, as well as decisions taken in his absence, and to provide explanations thereon. If moved away for the whole duration of the trial, the accused shall have the court decision concluding proceedings in court, announced to him immediately upon taking.

2. If public prosecutor or defense counsel disregards instructions of the presiding judge, the latter warns them about the liability for the contempt of court. If they repeat such a breach of order in courtroom, they may be held liable under the law.

3. If other individuals present in the courtroom disregard instructions of the presiding judge, the latter warns them about liability for the contempt of court. If they repeat such a breach of order in courtroom, they may be by ruling of the court moved away from courtroom and held liable under the law.

4. Persons guilty of contempt of court shall be held liable under the law. The issue of prosecuting a person for the contempt of court shall be disposed by court immediately after commission of the breach, for the purpose of which a break is called in court session.

*{Paragraph 4 of Article 303 as amended by Law #721-VII of 16.01.2014 lapses in effect under Law # 732-VII of 28.01.2014; as amended by Law # 767-VII of 23.02.2014}*

### **Article 331. Imposing, revoking, or changing a preventive measure in court**

1. During trial, the court, upon motion of the prosecution or defense, has the right, by its ruling, to change, revoke or impose a measure of restraint in respect of the accused.

2. The court decides on the measure of restraint in accordance with the procedure established by Article 18 of the present Code.

3. Irrespective of the presence of motions, the court shall be required to dispose the issue of expedience to extend the period of keeping the accused in custody until the expiry of the two-month period after the receipt by the court of the indictment, a motion to enforce compulsory medical or educational measures, or after the day of enforcing in respect of the accused of the measure of restraint in the form of keeping in custody. Upon results of consideration of the issue, the court shall by its motivated ruling, repeal or change the measure of restraint in the form of keeping in custody, or extent its validity for a period that may not exceed two months. A copy of the ruling shall be handed over to the accused and the public prosecutor and shall be forwarded to the authorized person of the place of custody.

Before the expiry of the extended period of custody, the court shall be required to consider again the issue of expedience to extend the period of keeping the accused in custody, if the trial has not ended before the expiry thereof.

In jury court, issues specified in this paragraph shall be disposed by the presiding judge.

### **Article 332. Conducting expert examination upon court ruling**

1. During trial, the court upon a motion from parties to criminal proceedings or a victim in presence of grounds specified in Article 242 of this Code, shall have the right by its ruling to assign the conduct of expert examination to an expert institution, an expert or experts.

2. The court shall have the right by its ruling to assign the conduct of expert examination to an expert institution, an expert or experts irrespective of whether there is a motion on this, in the following cases:

1) if the court has been provided with a number of experts' opinions contradicting each other, and the interrogation of experts has not removed the discovered contradictions;

2) if during trial, grounds came to light specified in paragraph two of Article 509 of the present Code.

3. A court's ruling to assign the conduct of expert examination in cases specified in paragraph one of this Article, shall include the questions put to the expert by the participants in court proceedings, and the court. The court may refrain from including in the ruling the questions put by the participants in court proceedings, if answers to such are not related to the criminal proceedings concerned or are not important for the trial, providing substantiation of such decision in the ruling.

4. On issuing a ruling to assign expert examination the trial shall be continued, except for the cases when such continuation is not possible before an expert opinion is received.

### **Article 333. Application of measures to ensure criminal proceedings and conduct of investigative (detective) actions during court proceedings**

1. Measures to ensure criminal proceedings shall be applied during court proceedings in accordance with the provisions of Section II of this Code, subject to specific features established by this section.

2. While considering a motion to grant interim access to objects and documents, the court shall also consider the reasons for which such access was not exercised during the pre-trial investigation. Where the court decides in court proceedings to grant access to objects and documents, the court shall postpone the trial for a time sufficient for conducting such measure of ensuring criminal proceedings and making its result known to the participants in court proceedings. The person who obtained objects and documents as a result of granting interim access thereto shall be required to make them accessible as prescribed by Article 290 of this Code.

3. Where in the course of a trial there arises a need to establish or ascertain the circumstances essential for the court proceedings and such cannot be established or ascertained otherwise, the court on a motion of a party to criminal proceedings may direct a body of pre-trial investigation to conduct specific investigative (detective) actions. Where such decision is made, the court shall postpone the trial for a time sufficient for conducting such investigative (detective) action and making its result known to the participants in court proceedings.

4. While considering such motion the court shall take into account the significance of the circumstance, which the person who has filed the motion seeks to establish or ascertain, the feasibility of their establishment or ascertainment, by conducting the investigative (detective) actions as well as the reasons for which appropriate actions were not performed to the end of establishing or ascertaining same at the stage of pre-trial investigation. The court shall dismiss a public prosecutor's motion if he fails to demonstrate that the investigative (detective) actions which he requests to conduct could not have been conducted during the pre-trial investigation

insofar as the circumstances calling for their conduct were not and could have been known at the time.

5. In its ruling to conduct investigative (detective) actions the court shall indicate the circumstances whose establishment or ascertainment necessitates the investigative (detective) actions as well as specify the investigative (detective) actions shall be conducted and determine the time for its assignment to be executed. The investigative (detective) actions conducted in furtherance of a court's assignment shall be conducted in accordance with the procedure established by Chapters 20 and 21 of this Code.

6. The public prosecutor shall be required to provide access to the materials obtained as a result of the investigative (detective) actions conducted on the court's assignment to the participants in court proceedings under the rules of Article 290 of this Code and produce same to the court within the time specified.

#### **Article 334. Joining and disjoining of materials of criminal proceedings**

1. Materials of criminal proceedings may be joined in one proceeding or disjoined in separate proceedings by a ruling of the court hearing the proceedings, in accordance with the rules laid down in Article 217 of the present Code.

2. Whenever a local court receives for consideration materials of criminal proceedings in respect of a person who is already the subject of proceedings in this court, such criminal proceedings shall be forwarded to the court composition conducting the proceedings, for disposal of the issue of joining them.

#### **Article 335. Suspension of court proceedings**

1. In case where the accused has evaded from court or fallen ill with a mental or other grave prolonged disease that makes his participation in court proceedings impossible, the court shall suspend court proceedings in respect of this accused until his discovery or recovery, and shall continue court proceedings in respect of other accused persons, if it involves several persons. The search of the accused, who evades the court, shall be declared by ruling of the court the organization of the execution of which shall be assigned to investigator and/or public prosecutor.

*{Paragraph 1 of Article 335 as amended by Law 725-VII of 16.01.2014 lapses in effect under Law 732-VII of 28.01.2014; as amended by Law # 767-VII of 23.02.2014}*

#### **Article 336. Conducting of procedural actions during court proceedings through video conference**

1. Court proceedings may be conducted through video conference with transmission from another premise, including such as is located beyond the bounds of the court premises, (distant court proceedings) where—

1) it is impossible for a participant of criminal proceedings to participate directly in the court proceedings for reason of health or for other valid reasons;

2) it is necessary to ensure the persons' security;

3) a minor or underage person is to be interrogated as a witness or victim;

4) such measures are necessary to ensure speedy court proceedings;

5) there exist other grounds recognised sufficient by the court.

2. The court shall rule to conduct distant court proceedings *proprio motu* or on a motion of a party or other participants in criminal proceedings. Should a party to criminal proceedings or

victim object against conducting distant court proceedings, the court may decide to hold said proceedings only by its reasoned ruling, having substantiated thereby the decision so taken. The court may not rule to conduct distant court proceedings with the defendant being outside of the courtroom if the latter object to it.

3. The use in distant court proceedings of technical means and technologies shall be required to ensure adequate quality of image and sound, respect for the principles of publicity and openness of court proceedings, as well as information security. The participants in criminal proceedings shall be ensured the possibility to hear and observe the course of court proceedings, to put questions and get answers, to realize other procedural rights granted them, and to perform procedural duties specified by the present Code.

4. If a person who is to participate distantly in court proceedings stays on any premises located in the territory within this court's jurisdiction or in the territory of the city where the court is located, the bailiff or secretary of court session of this court shall be required to hand over to such person a leaflet on his procedural rights, check his ID, and stay at his side until the end of the court session.

5. If a person who is to participate distantly in court proceedings stays on any premises located outside of the territory within this court's jurisdiction and outside the territory of the city where the court is located, the court may by its ruling assign the court, within the territorial jurisdiction of which such person is, to conduct the actions specified in the fourth paragraph of this Article. A copy of this ruling may be sent by e-mail, fax or other means of communication. The court which was given the assignment, upon agreement with the court that issued the assignment, shall be required within a period of time fixed in the ruling, to organize the execution of such assignment.

6. If a person who is to participate distantly in court proceedings is held in a remand prison or penal institution the actions as provided for by the fourth paragraph of this Article shall be performed by an official of such institution.

7. The course and results of procedural actions conducted through video conference, shall be fixed with video recording technical means.

8. A protected person may be interrogated through video conference with such changes of appearance and voice as shall make his identification impossible.

9. Distant court proceedings under the rules of this Article may be conducted in the first instance, appellate and cassation courts, the Supreme Court of Ukraine proceeding in any matters within their competence.

## **§ 2. Scope of the trial**

### **Article 337. Determination of the scope of the trial**

1. The trial shall be conducted only with regard to the person to whom charges were brought and only within the scope of the charge brought in the indictment, **except as otherwise provided for in this Article.**

2. During trial, public prosecutor may change charges brought, bring additional charges, refuse to back public prosecution, and initiate proceedings in respect of a legal person.

*{Paragraph 2 of Article 337 as amended by Law 314-VII of 23.05.2013}*

3. In view of delivering a just judicial decision and protecting human rights and fundamental freedoms, the court may go beyond the scope of charges brought in the indictment,

only as regards changing legal qualification of the criminal offense concerned if such change alleviates the status of the person in respect of whom the criminal proceedings is conducted.

**Article 338. Changing a charge in court**

1. In order to change legal qualification and/or the scope of charges, public prosecutor may change charges if the trial ascertained new factual circumstances of the criminal offence of which a person is accused.

2. Having arrived at the conclusion that the charges brought should be changed, public prosecutor, after fulfilling the requirements of Article 341 of the present Code, draws up an indictment where he states changed charge and grounds for the decision taken. Copies of the indictment are handed over to the accused, his defense counsel, victim, his representative and legal representatives as well as the representative of the legal person in whose respect proceedings are taken. The indictment shall be attached to materials of criminal proceedings.

*{Paragraph 2 of Article 338 as amended by Law 314-VII of 23.05.2013}*

3. If the indictment with changed charges raises the issue of applying such Law of Ukraine on criminal liability as provides for liability for a less grave criminal offense, or of reducing the scope of charges, the presiding judge shall be required to advise the victim of his right to press charges in court in the previously announced scope.

4. The court shall be required to explain to the accused that he will be defended by the court according to a new charge in court session and thereafter to adjourn the trial for at least seven days, to grant the accused, his defense counsel the possibility to prepare the defense against the new charge. Upon request of the defence, this time limit can be shortened or extended. The trial continues after expiration of this time limit.

**Article 339. Bringing an additional charge and initiation of proceedings in respect of a legal person**

*{Heading of Article 339 as amended by Law 314-VII of 23.05.2013}*

1. If information is obtained that the accused has possibly committed another criminal offence in the respect of which charges were not brought and which is closely connected with the original one, where these may not be considered individually, as well as where grounds for applying criminal measures to a legal person have been established, the public prosecutor after fulfilling the requirements of Article 341 of the present Code, may lodge a motivated motion with court to consider an additional charge in the same proceedings with the original charge and/or initiate proceedings in respect of the legal person.

*{Paragraph 1 of Article 339 as amended by Law 314-VII of 23.05.2013}*

2. Whenever the court sustains such motion of the public prosecutor, the court is required to adjourn the trial for the time needed for the preparation of defense against a new charge or preparation of a representative of the legal person in whose respect proceedings are taken and for the public prosecutor to comply with provisions of Articles 276 through 278, 290 through 293 of the present Code, but not more than for fourteen days. The time of adjournment may be extended by the court on a motion of the defence or the representative of a legal person in whose respect proceedings are taken if the scope or complex nature of the additional charge require more time for the preparation of defence.

*{Paragraph 2 of Article 339 as amended by Law 314-VII of 23.05.2013}*

3. After expiry of the time limit specified by court, court proceedings shall begin with preparatory court session. New examination of evidence already examined by court prior to bringing additional charge shall be conducted only if the court finds this necessary.

Any evidence already examined by the court before proceedings in respect of the legal person were initiated is considered anew on a motion of the representative of the legal person in whose respect proceedings are taken where the court deems it necessary.

*{The second sentence is added to Paragraph 3 of Article 339 by Law 314-VII of 23.05.2013}*

#### **Article 340. Refusal to prosecute on behalf of the State in court**

1. If as a result of trial proceedings, public prosecutor comes to the belief that charges brought against the person are not substantiated, he after fulfilling the requirements of Article 341 of the present Code, shall be required to drop public prosecution and to set forth the reasons in his decision which is attached to materials of criminal proceedings. A copy of the decision shall be handed over to the accused, his defense counsel, victim, his representative and legal representatives and the representative of the legal person in whose respect proceedings are taken.

*{Paragraph 1 of Article 340 as amended by Law 314-VII of 23.05.2013}*

2. If public prosecutor refuses to prosecute on behalf of the State in court, presiding judge shall be required to advise the victim of his right to press charges in court.

3. Whenever the victim expresses his consent to pressing charges in court, presiding judge shall give the victim sufficient time to prepare for trial.

4. The victim who has agreed to press charges in court shall have all rights inherent in the prosecution during trial.

5. In a case specified in paragraph three of this Article, criminal proceedings on the respective accusation shall acquire the status of private accusation and shall be tried in accordance with the procedure established for private accusation.

6. Repeated non-appearance in court session of the victim summoned in compliance with the procedure laid down in the present Code (in particular, in presence of confirmation of receipt of the summons or of examining its content otherwise), without valid reasons or without notice on reasons of non-appearance after the onset of circumstances specified in paragraphs two and three of this Article, shall be deemed his refusal to support accusation and shall entail the closure of criminal proceedings on the accusation concerned.

#### **Article 341. Approving change of charges, bringing new charges, dropping public prosecution and initiating proceedings in respect of a legal person**

*{Heading of Article 341 as amended by Law 314-VII of 23.05.2013}*

1. If as a result of trial, public prosecutor arrives at a conclusion that it is necessary to drop public prosecution, change charges, or bring additional charge, he shall be required to conciliate the appropriate procedural documents with the head of the public prosecutor's office where he is employed. Upon public prosecutor's motion, the court postpones court session and gives public prosecutor time for drawing up and conciliating the appropriate procedural documents.

In case the head of the public prosecutor's office that arrived at one of such conclusions has participated in the court session, he shall be required to seek approval of the respective procedural documents with a higher public prosecutor.

*{Paragraph 1 of Article 341 as amended by Law # Law 314-VII of 23.05.2013}*

2. If the head of the public prosecutor's office, the higher public prosecutor refuses to approve the indictment with the changed charge, a motion to bring additional charge, or a decision to drop public prosecution or initiate proceedings in respect of a legal person, he shall remove from participation in trial the public prosecutor who raised the issue, and shall on his own participate in the trial as a public prosecutor, or assign such participation to another public prosecutor. In such case, the trial shall continue according to general procedure.

*{Paragraph 2 of Article 341 as amended by Law # Law 314-VII of 23.05.2013}*

### **§ 3. Procedure for trial**

#### **Article 342. Opening a court session**

1. Presiding judge opens court session at a time fixed for court trial and announces the trial in the criminal proceedings concerned.

2. Secretary of the court session reports to the court who out of participants to court proceedings, those summoned and notified to appear in court session arrived, establishes their identity, checks powers of defense counsels and representatives, finds out whether citations and notifications have been served to absentees, and informs on the reasons of their non-appearance if such reasons are known.

#### **Article 343. Advising of recording full trial with the use of technical means**

1. Secretary of the court session informs that the entire trial is recorded and on conditions for recording court session.

#### **Article 344. Announcing court's composition and advising of the right to disqualify**

1. After the actions specified in Articles 342 and 343 of the present Code have been completed, presiding judge announces composition of the court, name of the reserve judge, if such a judge is present, names of the public prosecutor, victim, civil plaintiff, the accused, defense counsel, civil defendant, representatives and legal representatives, translator, expert, specialist, secretary of court session, advises participants in court proceedings of the right to disqualify, and finds out whether they intend to disqualify anybody.

2. The court decides on a disqualification in accordance with Articles 75 through 81 of the present Code.

#### **Article 345. Advising of the rights and duties**

1. The bailiff hands over to participants who take part in trial the instruction on their rights and duties prescribed in the present Code.

2. After the accused and other persons who participate in the trial, examine the instruction, presiding judge finds out whether they understand their right and duties, and if necessary, provides explanations.

#### **Article 346. Prohibition for witnesses to be present in courtroom**

1. Prior to starting trial, presiding judge shall order witnesses out of the courtroom.

2. Bailiff takes measures to prevent communication between interrogated and not yet interrogated witnesses.

#### **Article 347. Beginning of the trial**

1. Having completed preparatory actions, presiding judge announces that trial begins.
2. Trial begins with public prosecutor reading operative part of indictment unless participants of the court proceedings lodged a motion to announce indictment in whole.
3. Where a civil action is entered in criminal proceedings, the civil plaintiff or his representative or legal representative, or, if they are absent, the presiding judge, reads a summary of the statement of claim, unless participants in court proceedings have not moved to have such claim read out in full.

#### **Article 348. Explaining the substance of charges to the accused**

1. After the indictment has been read, presiding judge identifies the accused ascertaining his last name, name, patronymic, place and date of birth, place of residence, occupation and family status, explains to the accused the substance of charges and asks him whether he/he pleads guilty and whether he wishes to testify.

If there are more than one accused, presiding judge carries out the actions described in respect of each of them.

2. Where a civil action is entered in criminal proceedings, the presiding judge shall ask the defendant, civil defendant whether they admit such.

#### **Article 349. Establishing the scope of evidence to be examined and procedure for its examination**

1. After actions referred to in Article 348 of the present Code have been completed, presiding judge finds out the opinion of the participants in court proceedings as to what kind of evidence shall be examined and the way in which they shall be examined.

The court examines the evidence produced by the prosecution first and then that presented by the defense counsel.

2. The scope of evidence to be examined and the way in which it shall be examined are set in court's ruling and, if necessary, can be changed.

#### **In the course of special pre-trial investigation all the evidence provided shall be investigated.**

3. The court has the right, if the participants in court proceedings do not object thereto, to find that examination of evidence in respect of indisputable circumstances is unnecessary. In so doing, the court ascertains whether said persons understand correctly the contents of such circumstances, whether there are no doubts regarding voluntary nature of their position, as well as explains to them that in such a case they will be deprived of the right to challenge these circumstances by way of appeal.

4. Examination of the accused shall be mandatory, except where he has refused to give testimony, and in **case specified by Part Two of Article 323 and** Article 381 of the present Code.

*{Paragraph 4 of Article 349 as amended by Law # 725-VII of 16.01.2014 lapses in effect under Law # 732-VII of 28.01.2014; as amended by Law # 767-VII of 23.02.2014}*

#### **Article 350. Considering by court of motions from participants in court proceedings**

1. Motions of the participants in court proceedings shall be considered by the court after having heard the opinions on them of the rest of participants in court proceedings, and a ruling

shall be passed on that. Refusal to grant a motion shall not preclude repeated filing of the same on different grounds.

#### **Article 351. Examination of the accused**

1. Examination of the accused begins with the presiding judge's proposal to testify about criminal proceedings, after which the accused is first examined by public prosecutor, then by defense counsel. Next, the accused may be asked questions by the victim, other defendants, civil plaintiff, civil defendant and the representative of the legal person in whose respect proceedings are taken, as well as by presiding judge and the judges. In addition, the presiding judge may during the entire examination of the accused, ask him questions in order to clarify and supplement his answers.

*{Paragraph 1 of Article 351 as amended by Law 314-VII of 23.05.2013}*

2. Whenever the accused expresses himself/herself unclearly or if it appears impossible to conclude from his words whether he recognizes circumstances or objects thereto, the court may direct him to give short answer "yes" or "no".

3. If a trial is held in relation to several defendants and if this serves the interests of criminal proceedings or the safety of the defendant, examination of one of the defendants may by a reasoned ruling of the court be carried out by videoconference transmission from different premises under the rules of Article 336 of this Code.

4. In court session, the accused has a right to use notes.

#### **Article 352. Examination of witness**

1. Before examination of a witness, presiding judge shall establish his identity and find out his relation to the accused and the victim. In addition, presiding judge finds out whether the witness received the instructions about the rights and duties of a witness, and whether he understands them, and if necessary, explains them to him, as well as finds out whether he does not refuse to give testimony on the grounds specified by this Code, and warns him about criminal liability for refusal to give testimony and for knowingly giving misleading testimony.

2. Whenever there are no obstacles to the examination of the witness, the judge presiding in court session administers him the following oath:

"I, (last name, name, patronymic), take my oath to tell the truth and nothing but the truth."

A dumb witness shall take the oath in written form, signing the text of the same content.

3. The court shall be required to control the progress of examination of witnesses, to avoid losing time in vain, to protect witnesses from abuse or prevent violations of the examination rules.

4. Each witness is examined separately. Witnesses who have not yet testified may not be present in courtroom during trial.

5. Upon the motion of a party to criminal proceedings or the witness himself, the witness concerned is examined in the absence of a certain already examined witness.

6. The witness for the prosecution is examined first by public prosecutor, and the witness for the defense is examined first by the defense counsel or, if the accused defends himself / herself, by the accused (direct examination). During direct examination, leading questions are not allowed i.e. questions which contain an answer, a part thereof or prompt thereto.

7. After direct examination, the opposite party to criminal proceedings is given the opportunity of cross examination of the witness. During cross examination, leading questions are allowed.

8. During examination of witness by parties to criminal proceedings, presiding judge, upon protest of a party, may dismiss questions which do not relate to the substance of the criminal proceedings.

9. In exceptional cases with a view to ensure security of a witness to be examined, the court, *proprio motu* or upon the motion of parties to criminal proceedings or of the witness himself, passes a reasoned ruling to examine the witness concerned with the use of technical means from another premise, including outside court's building, or in other way making his identification impossible, and ensures parties to criminal proceedings the possibility to ask questions and hear answers thereto. If there is a danger that witness's voice can be identified, examination may be accompanied by acoustic disturbance. Before such ruling is made the court shall be required to establish whether the parties to criminal proceedings have any objections to the examination of a witness in the conditions making his identification impossible and, if found founded, decline to have the witness examined under the rules of this paragraph.

10. Whenever the witness expresses himself/herself unclearly or if it appears impossible to conclude from his words whether he recognizes circumstances or objects thereto, the court may direct him to give short answer "yes" or "no".

11. After examination of a witness, the victim, civil plaintiff, civil defendant, their representatives and legal representatives, the representative of the legal person in whose respect proceedings are taken as well as the presiding judge and other judges may pose their questions to him.

*{Paragraph 11 of Article 352 as amended by Law 314-VII of 23.05.2013}*

12. When testifying, the witness has a right to use his notes if his testimonies relate to any calculations and other information which are hard to keep in mind.

13. The witness may be examined repeatedly in the same or next court session upon his own initiative, upon a motion of a party to criminal proceedings or upon court's initiative, particularly if, in the course of trial, it emerged that the witness can give testimonies regarding circumstances in respect of which he has not examined. During examination of other evidence, participants in court proceedings, expert and court may put questions to witnesses.

14. The court may order simultaneous examination of two or more already examined participants in criminal proceedings (witnesses, victims, the accused) to clarify reasons of differences in their testimonies, such examination to be conducted with the account of rules laid down in paragraph nine of Article 224 of the present Code.

15. Examined witness, upon court's request, may remain in courtroom.

### **Article 353. Examination of a victim**

1. Before examination of a victim, presiding judge shall establish his identity and find out victim's relation to the accused. In addition, presiding judge finds out whether the victim received the instructions about the rights and duties of a victim, and whether he understands them, and if necessary, explains them, as well as warns him about criminal liability for knowingly giving misleading testimonies.

2. Examination of a victim shall be conducted in compliance with the rules laid down in paragraphs two, three, and five through fourteen of Article 352 of the present Code.

#### **Article 354. Specific features of examining a minor or underage witness or victim**

1. Examination of a minor witness and, upon court's discretion, underage witness shall be conducted in the presence of a legal representative, pedagogue or psychologist and, if necessary, a medical practitioner.

2. Presiding judge advises witness who has not attained the age of 16, of the obligation to give true testimonies, without warning him about criminal liability for refusal to testify and for knowingly misleading testimonies, and does not put him on oath.

3. Before the beginning of examination, a legal representative, pedagogue, psychologist or medical practitioner shall be advised of their duty to be present during examination as well as of their right to object to questions and ask the witness questions. Presiding judge may dismiss the question asked.

4. Where it is necessary to ascertain facts objectively and/or to protect interests of a minor or an underage witness he may by a court ruling be examined outside the courtroom, in another room, using videoconference (distant court proceedings).

5. A minor or underage victim is examined in accordance with rules set forth in the present Article.

#### **Article 355. Presentation for identification**

1. An individual or an object may be presented to a witness, victim, and the accused for identification during trial.

2. Presentation for identification is made after the witness, during examination, indicates at signs by which he is able to identify an individual or an object.

3. When an individual or an object is presented to a person for identification, the latter shall state whether he identifies the individual or object concerned and by which signs exactly.

#### **Article 356. Examination of an expert in court**

1. Upon a motion of a party to criminal proceedings, victim or *proprio motu*, the court may summon an expert for examination to clarify his findings. Before examination, presiding judge establishes identity of the expert concerned and administers the following oath to him:

*"I, (last name, first name, patronymic), swear to faithfully fulfill expert's duties using all my professional abilities."*

Thereafter, presiding judge warns the expert about criminal liability for providing knowingly misleading findings.

2. Expert who conducted expert examination upon request of the prosecution is first examined by the prosecution, while expert who conducted expert examination upon request of the defense, by the defense. After that the victim, civil plaintiff, civil defendant, their representatives and legal representatives, the representative of the legal person in whose respect proceedings are taken as well as the presiding judge and other judges may pose their questions to the expert.

*{Paragraph 2 of Article 356 as amended by Law 314-VII of 23.05.2013}*

3. Expert may be asked questions regarding his possession of special knowledge and qualification in the field of examination (education, working experience, scientific degree etc.), relevant to the subject of his expert examination; methods used, and theoretical developments; sufficiency of information based on which findings were prepared; scientific basis and methods used to arrive at the conclusion; applicability and correctness of application of principles and methods to facts of the criminal proceedings; and other questions relating to the reliability of findings.

4. The court may order simultaneous examination of two or more experts to clarify reasons for differences in their findings pertaining to one and the same object or matter of research.

5. In order to prove or deny reliability of expert findings, each of the parties to criminal proceedings may produce information related to the level of knowledge, skills, qualification, education, and training of the expert concerned.

6. When answering questions, expert has the right to use his written and other materials which were used during expert examination.

#### **Article 357. Examination of exhibits**

1. Exhibits shall be inspected by court and produced for inspection to participants in court proceedings and, if necessary, to other participants in criminal proceedings. Individuals, to whom exhibits have been produced for inspection, may draw the court's attention to various circumstances related to the exhibits concerned and inspection thereof.

2. Examination of exhibits which cannot be brought to court session shall be conducted, if necessary, at the place of their location.

3. The participants in court proceedings may put questions to witnesses, experts, specialists regarding exhibits they have examined.

#### **Article 358. Examination of documents**

1. Records of investigative (detective) actions and other documents attached to records of criminal proceedings, if information which is stated or authenticated therein is important for establishing facts and circumstances of criminal proceedings, shall be announced in court session upon court's initiative or motion of participants in court proceedings and produced for inspection to the participants in court proceedings parties and, as the case may be, also to other participants in criminal proceedings.

2. Participants in court proceedings may put questions to witnesses, experts, specialists relating to documents.

3. If a document which has been attached to records of criminal proceedings or produced to court by a participant of criminal proceedings casts doubts with regard to its reliability, participants in court proceedings may ask the court to exclude it from evidence and to dispose the case based on other evidence, or request that an expert examination be conducted of such document.

#### **Article 359. Examination of audio and video recording**

1. Reproduction of audio recording and video replay are made in courtroom or in any other specially equipped premise, with entering in journal of court session of main technical specifications of the equipment and mediums and the time when audio reproduction (video replay) was conducted. Thereafter, the court hears arguments of the participant of court proceedings.

2. If necessary, reproduction of audio recording and video replay can be repeated in fully or in a certain part.

3. With the purpose of clarifying information contained in audio and video recordings, the court may invite a specialist.

4. The court considers statements about forgery of audio and video recordings according to the procedure prescribed for considering statements about forgery of documents.

### **Article 360. Consultations and explanations of a specialist**

1. When examining evidence, the court may avail itself of oral advices or written explanations given by a specialist based on his special knowledge.

2. The specialist may be asked questions about the substance of oral consultations or written explanations he has given. Individual upon whose motion the specialist was invited, asks questions first, then other participants in criminal proceedings ask questions. Judge presiding in court session may put questions to the specialist at any time during examination of evidence.

### **Article 361. Field inspection**

1. As an exception, having found it necessary to inspect a certain place, the court conducts field inspection as attended by participants in court proceedings and, when circumstances so require, with the participation of witnesses, specialists, and experts. A field inspection may not be conducted during trial by jury.

2. Field inspection is conducted according to the rules of inspection during pre-trial investigation, as provided by the present Code.

3. In the field, the participants in court proceedings attending such inspection may be asked questions related to the conduct of inspection.

4. During field inspection, participants in court proceedings may draw court's attention to what, in their opinion, can have probative value.

5. The conduct of field inspection and its results are reflected in the field inspection record and may be recorded with technical means.

### **Article 362. Court actions in case the accused is found incompetent in court session**

1. If, in the course of court proceedings, grounds are found for criminal proceedings to be held as to the application of compulsory medical measures, the court issues a ruling to change the procedure of trial and continue trial in accordance with the rules set forth in Chapter 39 of the present Code.

### **Article 363. End of ascertaining circumstances and their verification with evidence**

1. After having ascertained circumstances established in the course of criminal proceedings and having verified them with evidence, judge presiding in court session asks the participants in court proceedings whether they wish to submit supplementary arguments and what exactly.

2. Whenever motions are filed to submit supplementary arguments, the court considers such and in this connection, may put questions to parties or other participants in criminal proceedings.

3. In absence of such motions or after having disposed the motions filed, the court shall pass the ruling to end ascertaining circumstances and their verification with evidence and passes to pleadings.

### **Article 364. Pleadings**

1. In pleadings, there shall speak the public prosecutor, victim, his representative and legal representative, civil plaintiff, his representative and legal representative, civil defendant, his representative, the defendant, his legal representative and the defense counsel and the representative of legal person in whose respect proceedings are taken.

*{Paragraph 1 of Article 364 as amended by Law 314-VII of 23.05.2013}*

2. If several public prosecutors participated in trial, in pleadings, by their own discretion, one public prosecutor may speak, or each of them may substantiate his position in a certain part of charges.

3. If several defense counsels of the accused participated in trial, they fix the order of their taking floor in pleadings themselves. If they disagree on this point, the court shall fix the order of their taking floor in pleadings.

4. If several accused, defense counsels, representatives participated in trial, the court fixes the order of their taking floor in pleadings.

5. In pleadings, participants in court proceedings may invoke only such evidence as has been examined in court session. If during pleadings, a need should arise to present new evidence, the court shall resume the ascertaining of circumstances established in the course of criminal proceedings, and verification with evidence thereof, after which re-opens pleadings in respect of additionally examined circumstances.

6. The court shall not have the right to limit duration of pleadings by a certain time. Presiding judge may stop the speech of a participant in pleadings if the latter, upon having been reprimanded, again goes beyond the scope of the criminal proceedings at hand, or again allows himself/herself to utter insulting or indecent words, and may pass the floor to another participant in pleadings reprimand.

7. After speeches have been completed, participants in pleadings shall have the right to exchange rejoinders. The accused or his defense counsel shall have the privilege of the last rejoinder.

#### **Article 365. Last plea of the accused**

1. After pleadings have been announced closed, court gives the accused the possibility to make the last plea.

2. The court shall not have the right to limit duration of the last plea of the accused by a certain time.

3. The accused may not be asked questions during his last plea.

4. If in his last plea, the accused has informed of new circumstances of significant importance for criminal proceedings, the court *proprio motu* or upon a motion from participants of the court proceedings, shall resume the ascertainment of circumstances established during criminal proceedings and verification thereof with evidence, upon completion of which open pleadings in respect of additionally examined circumstances, and shall give the floor to the accused for his last plea.

#### **Article 366. Court's withdrawal for passing a judgment**

1. After the last plea of the accused, the court immediately retires in deliberation room to pass a judgment which the presiding judge announces to those present in courtroom.

#### **Article 367. Secrecy of the deliberation room**

1. During deliberations, no one may stay in deliberation room, except court composition that conducts trial.

2. The court may discontinue deliberations only for rest with the fall of night. In the course of such break, judges are not allowed to communicate with individuals who participated in criminal proceedings.

3. Judges shall have no right to disclose the course of deliberations and passing of the judgment in deliberation room.

4. The court's ruling shall be made in deliberation room in compliance with the rules laid down in this Article.

**Article 368. Issues to be disposed by court when passing a judgment**

1. When passing the judgment, the court shall be required to dispose the following issues:
  - 1) whether the action in which an individual is accused has really occurred;
  - 2) whether this action contains elements of criminal offence and under exactly which Article of the Law of Ukraine on criminal liability;
  - 3) whether the defendant is guilty for committing this criminal offense;
  - 4) whether the defendant should be punished for the criminal offence he has committed;
  - 5) whether circumstances which aggravate or mitigate the punishment of the defendant do exist and which exactly;
  - 6) what kind of punishment has to be imposed on the defendant and whether he shall serve it;
  - 7) whether the civil action entered shall be granted and, if so, in whose favour, in what amount and according to which procedure;
  - 7<sup>1</sup>) whether there are grounds to apply criminal measures to the legal person;  
*{Subparagraph 7<sup>1</sup>) has been added to Article 368 by Law 314-VII of 23.05.2013}*
  - 8) whether the defendant committed the criminal offense in a state of limited criminal capacity;
  - 9) whether grounds exist for imposing on the defendant who committed the criminal offense in a state of limited criminal capacity, compulsory medical measures specified in paragraph two of Article 94 of the Criminal Code of Ukraine;
  - 10) whether compulsory medical treatment shall be imposed on the defendant in cases prescribed by Article 96 of the Criminal Code of Ukraine;
  - 11) whether it is necessary to assign a public tutor to the underage defendant;
  - 12) what shall be done with attached property, objects and documents;
  - 13) who shall be charged procedural expenses and in what amount;
  - 14) what shall be done with measures to ensure criminal proceedings.
2. If an individual is accused for committing several criminal offences, the court shall decide on issues referred to in subparagraphs 1 through 8 of this Article, separately regarding each such offence.
3. If several individuals are accused, the court shall decide on issues referred to in the present Article, separately in respect of each of the defendants.
4. A compulsory medical measure referred to in subparagraph 9 of paragraph one of this Article, may be applied to a person who committed criminal offense in a state of limited criminal capacity, only if there exist a relevant psychiatric expert examination report and a conclusion of a medical treatment institution.
5. Compulsory medical treatment referred to in subparagraph 10 of paragraph one of this Article, may be applied only if there exist a relevant conclusion of a medical treatment institution.
6. Deciding on the rule of the Law of Ukraine on criminal liability to be applied to the socially dangerous acts the court shall be required to take account of the findings of the Supreme Court of Ukraine set down in its decisions in the cases set forth in Article 445, paragraph 2 and Article 456, paragraph 2 of this Code.

## **Chapter 29. Court Decisions**

### **Article 369. Types of court decisions**

1. Court decision in which the court decides on the substance of litigation is formulated in the form of a judgment.
2. Court decision in which the court decides other matters is formulated in the form of a ruling.

### **Article 370. Legality, validity and reasonableness of court decision**

1. Court decision shall be legal, valid and reasonable.
2. A decision is legal when it is made by a competent court in accordance with rules of substantive law and in observance of the requirements for criminal proceedings specified in the present Code.
3. A decision is valid when it is made by court based on objectively ascertained circumstances which are supported with evidence examined during trial and assessed by the court as prescribed in Article 94 of the present Code.
4. A decision is reasonable when it sets forth appropriate and sufficient motives and grounds for passing thereof.

### **Article 371. Procedure for adoption of court decisions and their form**

1. The court shall render judgment on behalf of Ukraine immediately after the trial.
2. Composition of court which conducted trial shall render judgment in deliberation room.
3. In cases specified in the present Code, ruling shall be passed in deliberation room by the composition of court which conducted the trial.
4. Rulings passed without retiring to deliberation room, shall be recorded in the journal of court session by secretary of court session.
5. Corrections in a court decision shall be certified by signatures of judges of the composition of court that adopted the decision.

### **Article 372. Contents of a ruling**

1. Ruling which is stated in a separate document shall comprise:
  - 1) introduction where the following shall be stated:
    - date and place of its passing;
    - name and composition of the court and the secretary of court session;
    - designation (number) of criminal proceedings;
    - last name, first name and patronymic of the suspect, the accused, year, month and date of his birth, place of birth and place of residence;
    - Law of Ukraine on criminal liability which provides for the criminal offense in the commission of which the person concerned is suspected or accused;
    - parties to criminal proceedings and other participants of the court proceedings;
  - 2) reasoning where the following shall be stated:
    - substance of the issue disposed by the ruling, and who initiated the consideration thereof;
    - circumstances established by court, with reference to evidence, as well as motives based on which some evidence were not taken into account;
    - motives underlying court's ruling and legal provision the court were guided by;
  - 3) operative part which shall state:

court's findings;

time and procedure in which the ruling takes legal effect and may be challenged.

2. The ruling passed by court without retiring into deliberation room shall contain findings of the court and motives based on which the court arrived at such findings.

### **Article 373. Types of judgments**

1. Judgment of acquittal shall be delivered unless it was proved that:

- 1) criminal offence was committed in which a person is accused;
- 2) criminal offence was committed by the defendant;
- 3) the act committed by the defendant contains elements of crime.

Judgment of acquittal shall also be delivered whenever the court establishes grounds for closing criminal proceedings as specified in Article 284, paragraph 1, subparagraphs 1 and 2 of this Code.

2. If the defendant is found guilty of the commission of criminal offence, the court shall deliver judgment of conviction and impose a punishment or exempt from punishment or serving of the sentence where warranted by the Law of Ukraine on criminal liability, or apply other measures prescribed in the Law of Ukraine on criminal liability.

3. Judgment of conviction may not be grounded on assumptions and shall be delivered only provided that the guilt of the commission of criminal offence was proved in the course of trial.

### **Article 374. Contents of a judgment**

1. A judgment shall be comprised of introduction, reasoning part and operative part.

2. Introduction shall state:

date and place of delivery;

name and composition of the court, and secretary of court session;

designation (number) of criminal proceedings;

last name, name and patronymic of the defendant, year, month and date of his birth, place of birth and place of residence; occupation, education, family status and other information on the defendant's person that is important for the case;

Law of Ukraine on criminal liability which provides for the criminal offense in the commission of which the person concerned is accused;

parties to criminal proceedings and other participants in court proceedings.

3. Reasoning part of a judgment shall state:

1) if a person has been acquitted, statement of charges brought against the person and found by court to not be proved, as well as grounds for acquittal of the defendant stating motives for repudiating evidence of accusation;

motives for taking other decisions in respect of issues disposed by court when rendering a judgment, and statutory provisions the court was guided by.

2) if a person has been found guilty:

statement of charges found by court to be proved, with indication of place, time, and the way of commission and implications of the criminal offense, form of guilt, and motives of the criminal offense;

Articles (paragraphs of Article) of Law of Ukraine on criminal liability which establishes liability for the criminal offense guilty of committing which the defendant is found;

evidence in support of circumstances established by court, as well as motives for not taking into account particular evidence;

motives for changing charges, grounds for finding a part of charges unsubstantiated, if such decisions have been taken by the court;

circumstances which aggravate or mitigate punishment;

motives for imposition of punishment; for releasing from service of punishment; for application of compulsory medical measures where a state of limited criminal capacity of the defendant has been established; for application of compulsory medical treatment as specified in Article 96 of the Criminal Code of Ukraine; motives of appointing a public tutor for the underage person;

grounds for granting, dismissing or leaving undecided the civil action;

motives for taking other decisions in respect of issues disposed by court when rendering a judgment, and statutory provisions the court was guided by.

4. Operative part of a judgment shall state:

1) if a person has been acquitted: last name, first name and patronymic of the defendant, decision on finding him innocent of charges brought against him and on his acquittal;

decision to close proceedings in respect of a legal person;

*{The new sentence is added to Subparagraph 1 of Paragraph 1 of Article 374 by Law Law 314-VII of 23.05.2013}*

decision to restore rights restricted during criminal proceedings;

decision regarding measures to ensure criminal proceedings including decision on a restraint measure prior to taking legal effect by the judgment;

decision regarding exhibits and documents;

decision regarding procedural expenses;

time limit and procedure for the judgment to take legal effect and to be appealed against;

procedure for obtaining copies of the judgment and other information;

2) if a person has been found guilty: last name, first name and patronymic of the defendant, decision on finding him guilty of charges brought against him and the relevant Article (paragraph of Article) of the Law of Ukraine on criminal liability;

punishment for each charge which the court found proved, and the final sentence imposed by court;

beginning of the term of serving the punishment;

decision to apply compulsory medical treatment or compulsory medical measures in respect of a defendant with limited criminal capacity, if any;

decision to appoint public tutor for the underage person;

decision to apply criminal measures to a legal person;

*The new sentence is added to Subparagraph 2 of Paragraph 1 of Article 374 by Law 314-VII of 23.05.2013*

decision as to the civil action;

decision on other executions on property and grounds for such;

decision regarding exhibits and documents and special confiscation;

*{The sentence of Subparagraph 2 of Paragraph 4 of Article 374 as amended by Law # 222-VII of 18.04.13}*

decision on reimbursement of procedural expenses;

decision regarding measures to ensure criminal proceedings;

decision on the credit of detention pending trial;

time limit and procedure for the judgment to take legal effect and to be appealed against;

procedure for obtaining copies of the judgment and other information.

Where several charges have been brought against a person and certain charges have not been proved, the operative part of a judgment shall state on which the defendant is acquitted and on which convicted.

If the defendant is found guilty but is released from serving punishment, the court shall state this in the operative part of the judgment.

Whenever the defendant is released from serving punishment with probation as provided for in Articles 75 through 79 and 104 of the Criminal Code of Ukraine, the operative part of the judgment shall specify the duration of the probation period, duties imposed on the convicted person, as well as the labor collective or person assigned, upon their consent or request, the duty to supervise him and to carry out educational work in his respect.

Whenever a milder punishment is imposed than specified by law, in stating the awarded sanction the court shall refer to Article 69 of the Criminal Code of Ukraine.

### **Article 375. Adoption of court decision and separate opinion of a judge**

1. Court decision is passed by a majority of judges comprising the court.

2. If the decision is passed in deliberation room, the issue at hand shall be decided on the basis of results of judges' deliberations by poll in which none of the judges may abstain. Presiding judge shall be the last to vote. If the decision is passed in deliberation room, it shall be signed by all judges.

3. Each judge of the panel of judges may state his own separate opinion in writing, which is not announced in court session but attached to the materials of proceedings, and is accessible for perusal.

### **Article 376. Pronouncement of court decision**

1. A court decision is pronounced publicly immediately after the court has left deliberation room. Judge presiding in court session explains contents of the decision, procedure and time limit for its challenge.

2. Where issuance of court decision in the form of ruling requires significant time, the court may confine itself to the issuance and pronouncement of a part of judicial disposition (operative part of decision) to be signed by all judges. The full text of the ruling should be issued no later than within five days upon pronouncement of judicial disposition (operative part of decision) and pronounced to parties to judicial proceedings. The time of pronouncement of full text of the ruling should be indicated in a previously issued judicial disposition (operative part of decision).

3. After the sentence has been pronounced, presiding judge shall advise the defendant, defense counsel, his legal representative, victim, his representative and the representative of the legal person in whose respect proceedings are taken of their right to file a plea for pardon, the right to review journal of court session and submit written comments thereto. The defendant committed to custody as a measure of restraint is advised of the right to submit motion to be brought to the court session of the court of appellate instance.

*{Paragraph 3 of Article 376 as amended by Law 314-VII of 23.05.2013}*

4. If the defendant or the representative of the legal person in whose respect proceedings are taken has no knowledge of the State language, then, after the judgment has been pronounced, translator shall explain to him the content of the operative part of judgment. A copy of the judgment in the defendant's language or in other language he knows, in translation certified by translator, shall be handed over to the defendant.

*{Paragraph 4 of Article 376 as amended by Law 314-VII of 23.05.2013}*

5. Rulings passed in court session, shall be pronounced immediately after passing.

6. Participants in court proceedings shall have the right to obtain in court a copy of the court's judgment or ruling. A copy of judgment shall be handed over to the defendant, the representative of the legal person in whose respect proceedings are taken and the prosecutor immediately after pronouncement thereof.

*{Paragraph 6 of Article 376 as amended by Law 314-VII of 23.05.2013}*

7. A copy of a court decision shall be sent to the participant of court proceedings who has been absent in court session, not later than on the day following the day when the decision was passed.

#### **Article 377. Releasing the accused from custody**

1. If the defendant has been kept in custody, the court shall release him from custody in the courtroom in case of acquittal, released from service of his punishment, or receives a sentence other than deprivation of freedom, as well as if he was sentenced without punishment.

2. If the defendant is sentenced to restriction of freedom, the court, taking into account his personality and circumstances established during criminal proceedings, may release the defendant from custody.

3. As an exception, where an accused person who is in custody has been sentenced to arrest or deprivation of liberty, the court may, taking into consideration the character and the facts established in criminal proceedings, change the measure of restraint pending validity of the sentence to a non custodial measure and release such defendant from custody.

#### **Article 378. Measures of caring for underage, disabled and preserving property of the accused**

1. If the defendant has underage children who have lost their caretaker, disabled parents, grandmother, grandfather, great-grandmother, great-grandfather who require material aid and have lost care, the court shall be required when passing the judgment, to take a separate ruling to raise, before the service in charge of children or appropriate custody and care authority, social protection authority the issue of necessity to find placement for these underage children and those unable to work, or to grant them custody or care.

2. If home and property of the defendant lost care, the court on the defendant's motion shall be required to take, through appropriate authorities, measures to preserve them.

3. The defendant shall be informed on the measures taken in accordance with the provisions of this Article.

#### **Article 379. Correcting slips and obvious arithmetic mistakes in a judgment**

1. The court, *proprio motu* or upon motion of a participant in criminal proceedings or of other individual concerned, may correct slips, obvious arithmetic mistakes committed in the judgment of this court, irrespective of whether the judgment has taken legal effect or not.

2. The court decides the issue of introducing corrections in court session. Participants in court proceedings are informed on the date, time, and place of the court session. Failure of individuals who have been duly informed, to appear in court session does not preclude consideration of the issue of introducing corrections.

3. Court's ruling on introducing corrections in the judgment or refusal to introduce such corrections may be challenged.

### **Article 380. Explaining a court decision**

1. If a court decision is hardly understandable, the court which has passed it, upon motion of a participant of court proceedings or the body enforcing court decision, shall by a ruling explain its own decision without changing its contents.

2. The court shall consider a motion to explain court decision within ten days and notify the person who has applied for an explanation of the court decision and the participants in court proceedings. Failure of individuals who have been duly informed, to appear in court session does not preclude consideration of the motion to explain court decision.

3. A copy of the ruling to explain court decision, not later than on the day following the day when the ruling was passed, shall be sent person who has applied for an explanation of the court decision and the participants in court proceedings. A copy of the ruling passed on the motion to explain court decision, not later than the next day after the ruling has been passed, is sent to participants to criminal proceedings, as well as to requestor who were not present in court session.

4. Court's ruling on explanation of the court decision or refusal to explain it may be appealed by the person who has applied for an explanation of the court decision and by any participant of court proceedings.

## **Chapter 30. Special procedure of criminal proceedings in the court of first instance**

### **§ 1. Simplified Procedure for Criminal Misdemeanors**

#### **Article 381. General Provisions of Simplified Procedure for Criminal misdemeanors**

1. Based on the motion entered by the public prosecutor or the investigator with the approval of the public prosecutor, the court shall have the right to consider the indictment in regard to perpetration of criminal misdemeanor without conducting judicial review (trial) in court session in the absence of the participants in court proceedings, provided the accused who was represented by a defence counsel has unconditionally pleaded guilty, does not challenge the circumstances established in the course of the pre-trial investigation, and gives his consent to consideration of the indictment *in absentia*, while the victim does not object against such consideration.

2. Simplified procedure concerning criminal misdemeanors shall be provided in accordance with the general rules of judicial proceedings stipulated by the present Code, taking into account the provisions of this subsection.

#### **Article 382. Consideration of the Indictment in Simplified Procedure**

1. Within five days from the date of receipt of the indictment with the motion to consider it in simplified procedure, the court shall study the indictment and the materials attached thereto and pass the sentence.

2. The court's sentence based on the results of the simplified procedure shall be passed in accordance with the procedure stipulated in the present Code and must meet the general requirements for the court's sentence. The court's sentence based on the results of the simplified procedure, instead of the evidence to confirm the circumstances established by the court, shall

indicate the circumstances which were established by the pre-trial investigation body and which are not challenged by the participants in court proceedings.

3. The court shall have the right to schedule the hearing in court session of the indictment which was submitted with the motion to consider it in simplified procedure, and to summon the participants in criminal proceedings to take part in this court's hearing, if the court deems it necessary.

4. A copy of the sentence based on the results of the court's hearing of the indictment, with the motion to consider it in simplified procedure, shall be sent to the participants in court proceedings no later than the day following the day of passing the sentence.

5. The sentence based on the results of the court's hearing of the indictment, with the motion to consider it in simplified procedure, may be appealed against in accordance with the appeal procedure, taking into account the specifics described in Article 394 of the present Code.

## **§ 2. Proceedings in Trial by Jury**

### **Article 383. Procedure of Criminal Proceedings in Trial by Jury**

1. Criminal proceedings shall be conducted by the jury in accordance with the general rules of the present Code taking into account the specifics established by this subsection.

2. The jury shall be empanelled at the local general court of original jurisdiction.

3. All matters related to the trial except the issue stipulated for in Part Three Article 331 of this Code shall be considered jointly by the judges and jurors.

### **Article 384. Explaining the Right to Trial by Jury**

1. The public prosecutor and the court shall be required to explain to the person accused of committing a crime punishable with life imprisonment the possibility and specifics of hearing his case in criminal proceedings in the trial by jury.

The public prosecutor's written explanations given to the accused regarding the possibility, specifics and legal implications of hearing his case in criminal proceedings in the trial by jury shall be attached to the indictment and the register of pre-trial investigation records, which are referred to the court.

2. The person accused of committing a crime punishable with life imprisonment, in the course of the preparatory court session shall have the right to make a motion for hearing his case in criminal proceedings in the trial by jury.

### **Article 385. Summoning the Jurors**

1. After scheduling the date of hearing the case in the trial of jury, the presiding judge shall give instructions to the clerk of the court session to summon seven jurors who shall be selected by the court's automated workflow system from the persons listed in the array of jurors.

2. The citizens who are listed in the array of jurors and can be summoned to the court in the capacity of jurors, shall be selected in compliance with the Law of Ukraine *On the Judiciary and the Status of Judges*.

3. Written summons must be served to a juror against receipt not later than five days before the date of the court session. The summons shall indicate the date, time and place of holding the court session, the rights and duties of a juror, the list of requirements for jurors, as well as the grounds for their dismissal from jury duty, order of their appearance in court, also the obligation

of a juror (or other person who received the summons to be handed over to a juror) to immediately notify the court about the reasons for his impossibility of appearance in the court.

4. On the basis of written summons, an employer shall be required to grant a juror a leave of absence for the period when he has to fulfill his duties related to administration of justice.

#### **Article 386. Rights and Duties of Jurors**

1. A juror shall have the right to:

1) participate in examination of all information and evidence in the course of a court session;

2) take notes during court session;

3) put, with the permission of the presiding judge, questions to the accused, the victim, witnesses, experts and other persons being examined;

4) ask the presiding judge to explain the provisions of law that are subject to application when deciding certain issues, legal terms and notions, content of the documents read out in the course of a court session, signs of the crime the perpetration of which the person is accused of.

2. A juror shall be required to:

1) honestly answer the questions asked by the presiding judge and participants in court proceedings regarding possible impediments stipulated by this Code or law that can prevent his participation in the trial, his relationships with the persons participating in the criminal proceedings subject to court's hearing, extent of his knowledge about the circumstances of the given criminal proceedings; also, on request of the presiding judge, give the required information about himself;

2) maintain order in court session and obey orders of the presiding judge;

3) not to leave the court session room during trial;

4) not to talk, without permission of the presiding judge, about the substance of the criminal proceedings and the procedural actions conducted during them with the persons who are not part of the court;

5) not to collect information related to the criminal proceedings outside court session;

6) not to disclose the information directly related to the substance of the criminal proceedings and the procedural actions conducted during them, which became known to the juror while performing his duties.

#### **Article 387. Selection of Jurors in the Court**

1. Jurors shall be selected upon opening of the court session.

2. The presiding judge shall inform the jurors about what kind of criminal proceedings will be conducted, explain to them their rights and duties, as well as the conditions of their participation in trial. Each juror shall have the right to declare impossibility of his participation in trial, indicating the reason for that, and recuse himself/herself as a juror.

3. The presiding judge shall find out whether there are any grounds stipulated by this Code or law that preclude inviting a citizen as a juror or which can be the reason for relieving certain jurors from their duties, also for relieving jurors from performing their duties following their oral or written requests.

In order to clarify the circumstances that can impede participation of a juror in trial, the public prosecutor, the victim and the accused, with the permission of the presiding judge, may put appropriate questions to jurors.

4. Each juror who appears in the court may be challenged by the participants in court proceedings on the grounds described in Articles 75 and 76 of the present Code.

5. All issues related to the dismissal of jurors from participation in trial, as well as the issues associated with self-recusations and recusations of jurors shall be decided by a ruling of the court composed of two professional judges, which shall be made after counsel on the spot without going to the deliberation room, unless the court deems such withdrawal necessary. Where the judges failed to arrive at a unanimous decision of the issues related to the dismissal of a juror from participation in a trial, or self-recusation or challenge of a juror, such juror shall be deemed dismissed or recused from participation in the trial.

6. Where the number of jurors, after the requirements of provided for by the paras. 1-6 of this Article are met, is more than is required for participation in trial, the jurors shall be selected by the automated court document flow system from among the jurors not dismissed or recused from participation in the trial.

7. In the event that, as a result of performing the actions described in paragraph 5 of this Article, the number of jurors is less than what is required for participation in trial, the clerk of the court session, on the instructions of the presiding judge, shall additionally summon candidates for jurors.

8. Upon selection of principal jurors, two reserve jurors shall be selected in accordance with the rules stated in this Article.

9. Last names of the principal and reserve jurors shall be entered in the court session register in the order of their selection.

10. In the course of court session, the reserve jurors shall always remain in the places specified for them, and before the verdict is passed they may be included in the panel of principal jurors if any of the principal jurors cannot continue to participate in trial. The jury trial shall make a ruling on replacing the dismissed principal jurors with the reserve ones.

#### **Article 388. Administering Oath to the Jury**

1. Upon completion of the selection of principal and reserve jurors they shall occupy the seats indicated by the presiding judge.

2. On the proposal of the presiding judge the jurors shall make the following oath: "I, (last name, first name, patronymic) swear that I will fulfil my duties honestly and impartially and will take into account only those evidence which were examined by court, in delivering a verdict I will be guided by law, my inner convictions and the conscience as it befits a free citizen and fair human being."

The text of the oath shall be read out by each juror, after which he shall confirm that his rights, duties and competence are understood.

#### **Article 389. Inadmissibility of Exerting Illegal Influence on a Juror**

1. Throughout the trial, the public prosecutor, the accused, the victim and other participants in criminal proceedings shall be prohibited to communicate with the jurors other than in accordance with the procedure stipulated by the present Code.

#### **Article 390. Removal of a Juror**

1. A juror may be removed and relieved from further participation in trial in the following cases:

1) in case a juror fails to perform his duties prescribed by paragraph 2, Article 386 of the present Code;

2) if there are solid grounds to believe that a juror, as a result of illegal influence, lost impartiality required for resolving the issues of criminal proceedings in compliance with law.

2. A juror may be removed and relieved from further participation in trial on the initiative of the presiding judge by a decision of the majority of jurors, which shall be passed in the deliberation room and affirmed by a reasoned ruling.

3. In case of removal of a juror a reserve juror shall be empanelled (included in the panel of jurors), after which the trial shall continue, or, in case there are no reserve jurors, a new juror shall be selected in accordance with the procedure stipulated in this subsection, after which judicial proceedings shall start from the beginning.

### **Article 391. Procedure of Deliberation and Voting in Trial by Jury**

1. The jury's deliberation shall be directed by the presiding judge who shall sequentially put questions to be discussed, which questions are listed in Article 368 of the present Code, and shall conduct open voting and counting of votes.

2. Decisions on all questions shall be made by simple majority of votes. The presiding judge shall be the last to vote.

3. No one of the jurors may abstain from voting, except for the case when decision is made on fixing a punishment and the judge or a juror voted for acquittal of the accused. In this case the vote of the juror who abstained shall be added to the votes for the decision that is most favorable for the accused. If there are differences of opinion which decision is most favorable for the accused, the issue shall be resolved by voting.

4. Each juror shall have the right to express in writing his dissenting opinion, which shall not be subject to announcement in the court session but shall be attached to the case materials and made open to inspection.

5. In case there are no professional judges in the bench that rendered a decision, the presiding judge must provide assistance to jurors with the drafting of court decision.

## **Section V. Criminal Proceedings Related to Reviewing Court's Decisions**

### **Chapter 31. Criminal Proceedings in the Court of Appellate Instance**

#### **Article 392. Court decisions which may be challenged in appellate procedure**

1. In appellate procedure, court decisions may be challenged which have been passed by courts of first instance and have not yet taken legal effect, to wit:

- 1) judgments, except as provided otherwise by Article 394 of this Code;
- 2) rulings to apply or refusal to apply compulsory medical or educational measures;
- 3) other rulings, in cases specified by the present Code.

2. Rulings passed in the course of court proceedings in a court of first instance before the passing of court decisions as provided for by the first paragraph above shall not be subject to a separate challenge, except in cases specified by the present Code. Objections against such rulings may be included in an appellate complaint against a court decision as provided for by the first paragraph above.

3. Investigating judge's rulings may also be challenged in appellate procedure, in cases specified by the present Code.

### **Article 393. Right to appeal**

1. Appellate complaint may be submitted by:

- 1) a defendant found guilty, his legal representative or defense counsel, as regards the defendant's interests;
- 2) a defendant in whose respect a judgment of acquittal has been passed, his legal representative or defense counsel, as regards the motives and grounds for acquittal;
- 3) the suspect, accused, his legal representative or defense counsel;
- 4) legal representative, defense counsel of an underage person or underage person himself/herself in whose respect the issue has been disposed of application of a compulsory educational measure, as regards the underage person's interests;
- 5) legal representative and defense counsel of a person in whose respect the issue has been disposed of application of compulsory medical measures;
- 6) public prosecutor;
- 7) victim or his legal representative or representative, as regards the victim's interests but within the limits of demands submitted by them in the court of first instance;
- 8) civil plaintiff, his representative or legal representative – to the extent related to the decision on the civil action;
- 9) civil defendant or his representative – to the extent related to the decision on the civil action;
- 9<sup>1</sup>) the representative of the legal person in whose respect proceedings are taken, to the extent relevant for the interests of the legal person;  
*{Subparagraph 7<sup>1</sup>} is added to Paragraph 1 of Article 393 by Law 314-VII of 23.05.2013 }*
- 10) other persons in cases specified by the present Code.

### **Article 394. Specific features of appellate challenge of certain court decisions**

1. A judgment by a court of first instance passed on the basis of results of simplified proceedings in accordance with the procedure laid down in Arts. 381 and 382 of the present Code, may not be challenged in appellate procedure on grounds of the conduct of proceedings in absence of participants in court proceedings, non-examination of evidence in court session or with the purpose to contest the circumstances established by pre-trial investigation.

2. A court decision of a court of first instance may not be may not be challenged in appellate procedure on grounds of denying such circumstances as have not been contested by anybody during trial and the examination of which was deemed inexpedient by court in accordance with the provisions of paragraph three of Article 349 of the present Code.

3. A court of first instance's judgment based on an agreement of conciliation between the victim and the suspect, accused may be challenged in appellate procedure by:

- 1) the accused, his defense counsel, legal representative exclusively on the following grounds: imposition by court of a more severe punishment than has been agreed upon between parties to the agreement; passing of judgment without his consent to the imposition of punishment; failure of the court to comply with the requirements established by paragraphs 5-7 of Article 474 of this Code, including the failure to advise him of the implications of concluding the agreement;

2) victim, his representative, legal representative, exclusively on the following grounds: imposition by court of a less severe punishment than has been agreed upon between parties to an agreement; passing of judgment without his consent to the imposition of punishment; failure to advise him of the implications of concluding the agreement; failure of the court to comply with the requirements established by paragraphs 6 or 7 of Article 474 of this Code

3) public prosecutor, exclusively on grounds of approval by court of an agreement in such criminal proceedings in which according to paragraph three of Article 469 of the present Code, an agreement might not be concluded.

4. A court of first instance's judgment based on an agreement between public prosecutor and the suspect, accused on a guilty plea, may be challenged in appellate procedure by:

1) the accused, his defense counsel, legal representative exclusively on the following grounds: imposition by court of a more severe punishment than has been agreed upon between parties to the agreement; passing of judgment without his consent to the imposition of punishment; failure of the court to comply with the requirements established by paragraphs 4, 6 and 7 of Article 474 of this Code, including its failure to advise him of the implications of concluding the agreement;

2) public prosecutor, exclusively on the following grounds: imposition by court of a less severe punishment than has been agreed upon between parties to an agreement; approval by court of an agreement in such criminal proceedings in which according to paragraph four of Article 469 of the present Code, an agreement might not be concluded.

#### **Article 395. Procedure and time limits for appeal**

1. Appellate complaint shall be filed:

1) against decisions of first instance court, through the court which passed the decision which is challenged;

2) against ruling of investigating judge, directly to the court of appellate instance.

2. Appellate complaint, unless otherwise provided by the present Code, may be filed:

1) against judgment or ruling to apply or refusal to apply compulsory medical or educational measures, – within thirty days from the date of pronouncement;

2) against other ruling of a court of first instance, within seven days from the date of pronouncement;

3) against ruling of investigating judge, within five days from the date of pronouncement.

3. For persons kept in custody, the time limit for filing appellate complaint shall be computed from the date on which this individual has received the copy of the court decision concerned.

If a ruling of court or investigating judge was passed without summoning the person who challenges it, as well as if a judgment was passed without summoning the person who challenges it, in a procedure laid down in Article 382 of the present Code, then the time limit for filing appellate complaint shall be computed from the date on which this individual has received the copy of the court decision concerned.

*{The third sentence is excluded from Paragraph 3 of Article 395 by Law #767-VII of 23.02.2014}*

4. During the period set for appellate challenge, no one may demand and obtain materials of criminal proceedings from court. During this period, the court shall be required to provide the participants in court proceedings, upon their request, the possibility to examine the materials of criminal proceedings.

### **Article 396. Requirements for appellate complaint**

1. Appellate complaint is filed in written form.
2. Appellate complaint shall state:
  - 1) designation of the court of appellate instance;
  - 2) last name, name, patronymic (appellation), place of residence (stay) of the appellant, as well as number of communication means, e-mail address, if any;
  - 3) court decision appealed against, and name of court which passed it;
  - 4) claims of the appellant and substantiation thereof stating why the court decision challenged is illegal or groundlessness;
  - 5) motion of the appellant to examine evidence;
  - 6) list of materials enclosed.
3. If the appellant is not willing to participate in the appeals trial, he shall state it in his appellate complaint.
4. If appellate complaint states circumstances which were not examined by the court of first instance or evidence which was not produced to the court of first instance, the appellate complaint shall indicate reasons for that.
5. Appellate complaint shall be signed by the appellant. If appellate complaint is filed by defense counsel, victim's representative, it shall be attached duly drawn up documents certifying his powers as required by the present Code.
6. Appellate complaint and materials attached thereto are filed in a number of copies necessary for dispatching to the parties to criminal proceedings and other participants of the court proceedings whose interests are affected in the appellate complaint. This duty shall not extend to a defendant who is held under house arrest or kept in custody.

### **Article 397. Actions by the trial court after the receipt of appellate complaints**

1. Court of the first instance within three days after expiry of the time limit for appellate complaint against a court decision shall send the appellate complaint received together with materials of criminal proceedings to the court of appellate instance.
2. Appellate complaints which were received after referring materials of criminal proceedings to the court of appellate instance not later than on the day following the day of filing.

### **Article 398. Admission of the appellate complaint by the court of appeal**

1. Appellate complaint which came to the court of appellate instance, shall not later than on the day following the day of receipt, is referred to the judge-rapporteur. Having received appellate complaint against judgment or ruling of the court of first instance, the judge-rapporteur, within three days, shall verify the extent to which it complies with Article 396 of the present Code and, in the absence of impediments, shall pass the ruling to open appeal proceedings.

### **Article 399. Taking no action on an appellate complaint, returning the complaint, or refusal to open proceedings**

1. Having established that the appellate complaint against judgment or ruling of the court of first instance has been filed in violation of requirements of Article 396 of the present Code, judge-rapporteur shall pass the ruling to take no action on the appellate complaint such ruling stating shortcomings of the complaint and fixing a time limit which is sufficient to eliminate

shortcomings and may not exceed fifteen days after the day of receipt of the ruling by the appellant. A copy of the ruling to take no action on the appellate complaint is immediately sent to the appellant.

2. If the appellant has eliminated shortcomings of the appellate complaint within time limit fixed by the judge-rapporteur, the complaint shall be deemed to be filed the day it was first submitted to the court of appellate instance. Within three days after elimination of shortcomings of the appellate complaint and, in the absence of impediments, judge-rapporteur shall pass the ruling to open appeals proceedings.

3. An appellate complaint shall be dismissed if:

1) the appellant has not eliminated shortcomings in the appellate complaint, on which no action has been taken, within a specified time limit;

2) the appellate complaint has been filed by an individual, who is not entitled to file an appellate complaint;

3) the appellate complaint may not be considered in this court of appellate instance;

4) the appellate complaint has been filed after expiry of the time limit fixed for appeals challenge and the person who has filed it does not raise the issue of renewing of this period or a court of appellate instance upon a motion of a person does not find any grounds for renewal.

4. Judge-rapporteur shall refuse to open proceedings only if the appellate complaint is filed against a court decision which is not subject to challenge in appeals procedure, or the court decision has been challenged exclusively on grounds it may not be challenged under provisions of Article 394 of the present Code.

5. A copy of the ruling to dismiss the appellate complaint, not to open proceedings shall be immediately sent to the appellant together with the appellate complaint and all materials attached thereto.

6. Ruling to dismiss the appellate complaint or not to open proceedings may be challenged by way of cassation.

7. Taking no action on the appellate complaint or dismissing the complaint shall not preclude re-filing the complaint with the court of appellate instance as prescribed in the present Code, within the time limit fixed for appeals challenge.

#### **Article 400. Implications of filing an appellate complaint**

1. Filing an appellate complaint against judgment or ruling of court shall deter the taking of legal effect by such decisions and execution thereof, except in cases specified by the present Code.

2. Filing an appellate complaint against ruling of investigating judge shall deter the taking of legal effect by such ruling but not the execution thereof, except in the cases as set forth in this Code.

3. If an appellate complaint is submitted by the accused in regard to whom the court has issued a judgement on the results of special judicial proceedings the court shall renew the time limit provided the accused has proved the availability of valid reasons specified by Article 138 of this Code. The court shall also send the appellate complaint together with the pre-trial investigation materials to the appellate court following the rules specified by Article 399 of this Code.

*{A new paragraph is added to Article 400 by Law № 1689-VII of 07.10.2014}*

#### **Article 401. Preparing for trial by way of appeal**

1. Judge-rapporteur within ten days after appeal proceedings have been opened on a complaint against a judgment or ruling of a court of first instance:

1) shall send copies of the ruling on the opening of appeals proceedings to participants in court proceedings together with copies of appellate complaints and information on their rights and duties, and fixes time limit for the submission of objections to the appellate complaint;

2) shall suggest that participants in court proceedings present new evidence they evoke or shall demand and obtain new evidence upon request of the appellant;

3) shall decide on other motions including the imposition, change or repeal of a measure of restraint;

4) shall decide on other matters as necessary for trial by way of appeal.

2. All court decisions of judge-rapporteur during preparations for appeals trial shall be drawn up in the form of ruling. Copies of the ruling shall be sent to participants in court proceedings.

3. After preparation to trial by way of appeal has been completed, judge-rapporteur shall pass a ruling on the termination of preparation, and assigns trial by way of appeal.

4. The defendant shall be summonsed to participate in the appeal proceedings if the appeal raises the issue of aggravating his situation, or if the court finds his participation necessary, or, where the defendant is in custody, also in the case that his motion for participation has been filed.

#### **Article 402. Objection to an appellate complaint**

1. Persons indicated in Article 393 of the present Code, may file with the court of appellate instance objections to the appellate complaint against judgment or ruling of the court of first instance, in written form, within the time limits fixed by the court of appellate instance.

2. Objection to the appellate complaint shall state:

1) name of the court of appellate instance;

2) last name, name, patronymic (appellation), place of residence (stay) of the objector, as well as number of communication means, e-mail address, if any;

3) challenged court decision and name of court which passed it;

4) number of criminal proceedings in the court of appellate instance, if it was communicated by the court of appellate instance;

5) substantiation of objections regarding the contents and claims of the appellate complaint;

6) if necessary, application of the objector;

7) list of materials attached.

3. Objections to the appellate complaint shall state whether the objector intends to participate in the appeals trial.

4. Objections to the appellate complaint shall be signed by the objector.

#### **Article 403. Withdrawal of appellate complaint, changing and supplementing of appellate complaint during appeal proceedings**

1. The appellant may withdraw his appellate complaint before the appeals trial has ended. Defense counsel of the suspect, accused, and victim's representative may withdraw their appellate complaint only upon consent of the suspect, accused or victim, respectively.

2. If the judgment or ruling of the first instance court was not challenged by other persons, or in the absence of objections from other persons who filed appellate complaint, against closure

of proceedings in connection with withdrawal of the appellate complaint, the court of appellate instance shall, by its ruling, close appeals proceedings.

3. The appellant may change his appellate complaint before appeals trial has started. In such a case, the court of appellate instance, upon motion of participants in the appeal trial, shall give them time which is necessary to review the changed appellate complaint and file objections thereto.

4. No changes to appellate complaint shall be allowed if such changes would entail deterioration of the accused person's status, beyond the time limits fixed for appeals challenge.

#### **Article 404. Scope of review by the court of appeals**

1. Court of appellate instance shall review decisions of the first instance court within the scope of the appellate complaint.

2. Court of appellate instance may go beyond the scope of the appellate demands if the status of the accused or the person in respect to whom the issue has been disposed of applying compulsory medical or educational measures, is not aggravated thereby. If consideration of appellate complaint gives grounds for adoption of a decision in favor of persons in whose interests no appellate complaints have been received, the court of appellate instances shall be required to adopt such decisions.

3. Upon motion of participants in court proceedings, the court of appellate instance shall be required to once again examine circumstances established during criminal proceedings, provided that such circumstances were examined by the court of first instance not to the full extent or with violations, and may examine evidence which was not examined by the court of first instance, only if a participant of court proceedings requested examining such evidence during trial in the court of first instance, or if such evidence came to light after the adoption of the court decision which is being challenged.

4. Court of appellate instance shall not have the right to consider the charge which was not brought in the court of first instance.

#### **Article 405. Trial on appeal**

1. Appeals trial is conducted in accordance with rules which governed the trial in the court of first instance, taking account of specificities set forth in this chapter.

2. After carrying out actions specified in Articles 342 through 345 of the present Code, taking action on motions, the judge-rapporteur narrates, in the necessary scope, the contents of the challenged court decision, arguments of participants in court proceedings as stated in their appellate complaints and objections, and finds out whether the appellants support their appellate complaints.

3. The appellant shall be the first to take the floor to produce arguments, as well as in pleadings. If appellate complaints were filed by both parties to criminal proceedings, the accused is the first to produce arguments. After that, the floor shall be given to other participants in court proceedings.

4. Failure to appear of the parties or other participants in the criminal proceedings who have been duly notified of the date, time and place of the appeals trial and have not informed of any good cause for their non-appearance, shall not preclude holding of appeals trial. If participation in court session of those participants in criminal proceedings who failed to appear is deemed mandatory by decision of the appellate court or by law, hearing on appeal shall be adjourned.

*{The second sentence of Paragraph 4 of Article 405 is excluded by Law # 767-VII of 23.02.2014}*

5. Before the court retires to the deliberation room to render judgment on the legality and validity of the court of first instance's judgment, the accused who took part in appeals trial, shall be given the floor for his last plea.

#### **Article 406. Written appeals proceedings**

1. Court of appellate instance may take a decision based on results of written proceedings if all the participants in court proceedings have applied for conducting proceedings in their absence.

2. Whenever during written proceedings, the court of appellate instance arrives at the conclusion that it is necessary to hold appeals trial, it shall assign such trial.

3. In case of written appellate proceedings, a copy of the court of appellate instance's decision shall be sent to participants in court proceedings within three days from the date it was signed.

#### **Article 407. Powers of the appellate court after an appellate complaint has been considered**

1. Upon results of appeals trial on a complaint against judgment or ruling of a court of first instance, the court of appellate instance may:

- 1) uphold the judgment or ruling challenged;
- 2) change the judgment or ruling;
- 3) set aside the judgment in full or in part and pass a new judgment;
- 4) set aside the ruling in full or in part and pass a new ruling;
- 5) set aside the judgment or ruling and close criminal proceedings;
- 6) set aside the judgment or ruling and assign a new trial in the court of first instance.

2. Based on results of appeals trial on a complaint against judgment of court on grounds of an agreement, the court of appellate instance, in addition to decisions specified in subparagraphs 1 through 5 of paragraph one of this Article, may set aside the judgment and forward the criminal proceedings:

1) to the court of first instance for the conduct of court proceedings in general procedure, if the agreement was concluded in the course of court proceedings;

2) to the agency of pre-trial investigation for the conduct of pre-trial investigation in general procedure, if the agreement was concluded in the course of pre-trial investigation.

3. Based on results of appeals trial on a complaint against a ruling of investigating judge, the court of appellate instance may:

- 1) uphold the ruling;
- 2) set aside the ruling and pass a new ruling.

#### **Article 408. Changing the judgment or ruling of appeals court**

1. Court of appellate instance shall change a judgment in the following cases:

1) mitigation of the imposed punishment if it finds that the punishment by its severity is inconsistent with the gravity of criminal offense and the personality of the accused;

2) where legal qualification of the criminal offense is changed, and an article (paragraph of article) of the Law of Ukraine on criminal liability for less grave criminal offense is applied;

3) reducing the amounts subject to exaction, or increasing such amounts if such increase shall not affect the scope of accusation and legal qualification of the criminal offense;

4) in other cases, where change of judgment will not aggravate the defendant's status.

2. Court of appellate instance shall change a court ruling to apply compulsory medical or educational measures in the following cases:

1) where legal qualification of the action in the Law of Ukraine on criminal liability is changed, and an article (paragraph of article ) of the Law of Ukraine on criminal liability for less grave criminal offense is applied;

2) mitigation of the type of the compulsory medical or educational measures.

#### **Article 409. Grounds for setting aside or changing decisions of appeals court**

1. The following shall be grounds for setting aside or changing court decisions in the consideration of a case in the court of appellate instance:

1) incomplete character of the trial

2) inconsistency of court's findings as stated in the decision with factual circumstances of criminal proceedings;

3) significant non-compliance with the requirements of criminal procedure;

4) wrong application of the Law of Ukraine on criminal liability.

2. Grounds for setting aside or changing a judgment of a court of first instance may also be the inconsistency of imposed punishment with the gravity of criminal offense and the personality of the accused.

3. Court of appellate instance shall not have the right to set aside a judgment of acquittal only for the reasons of substantial violation of the defendant's rights. Court of appellate instance shall not have the right to set aside a ruling not to apply compulsory medical or educational measures, based only on motives of substantial violation of rights of the person in respect of whom the issue of applying such measures was considered.

#### **Article 410**

1. A trial shall be deemed incomplete if circumstances which may have been material for rendering a lawful, reasoned and fair judgment were not investigated during such trial, in particular where—

1) the court dismissed motions of participants in court proceedings for examination of certain persons, examination of evidence or conduct of other procedural actions in order to ascertain or reject certain circumstances which may have been material for rendering a lawful, reasoned and fair judgment;

2) the necessity to examine a given reason arises from new facts found during consideration of the case by the appellate court.

#### **Article 411. Inconsistency of a court of first instance's findings with factual circumstances of criminal proceedings**

1. A court decision shall be deemed inconsistent with factual circumstances of criminal proceedings if:

1) the court's findings are not substantiated with evidence examined during trial;

2) the court paid no attention to evidence which could significantly affect the court's findings;

3) while contradictory evidence exist of significant importance for the court's findings, the court's decision did not state why the court paid attention to certain evidence and dismissed other evidence;

4) the court's findings as set forth in the court decision, contain significant contradictions.

2. A judgment and a ruling shall be subject to setting aside or changing on the above-specified grounds only where the inconsistency of a court of first instance's findings with factual circumstances of criminal proceedings has affected or could affect the disposal of the issue of guilt or innocence of the defendant, the correctness of application of the Law of Ukraine on criminal liability, the determination of the sanction or application of compulsory medical or educational measures.

#### **Article 412. Significant violations of the provisions of criminal procedural law**

1. Significant violations of the provisions of criminal-procedural law are such violations of the provisions of the present Code as prevented or could prevent the passing by court of a legitimate and justified court decision.

2. A court decision shall be in any case subject to setting aside if:

1) in the presence of grounds for closure of court proceedings on a criminal case, it was not closed;

2) the court decision was passed by the court in powerless composition;

3) the court proceedings were conducted in the absence of the accused, except in cases specified in Article 381 of the present Code, or in the absence of public prosecutor, except in cases when his participation was not mandatory;

*{Subparagraph 3 of Paragraph 2 of Article 412 as amended by Law #725-VII of 16.01.2014 lapses in effect under Law #732-VII of 28.01.2014; as amended by Law 3&67 of 23.02.2014}*

4) the court proceedings were conducted in the absence of the defense counsel when his participation was mandatory;

5) the court proceedings were conducted in the absence of the victim who was not duly informed on the date, time and place of court session;

6) rules of jurisdiction were breached;

7) materials of proceedings lack the journal of the court session, or the technical information medium on which court proceedings in the court of first instance were recorded.

#### **Article 413. Wrong application of the Law of Ukraine on criminal liability**

1. Wrong application of the Law of Ukraine on criminal liability entailing setting aside or changing a court decision, shall be:

1) non-application by court of a statute subject to be applied;

2) application of a statute not subject to be applied;

3) wrong interpretation of a statute at odds with the statute's exact content;

4) imposition of a punishment more severe than specified in the appropriate article (paragraph of article ) of the Law of Ukraine on criminal liability.

#### **Article 414. Inconsistency of imposed punishment with the degree of gravity of criminal offense and the personality of the accused**

1. Inconsistent with the degree of gravity of criminal offense and the personality of the accused shall be recognized such punishment that, while not going beyond the scope established

by the relevant article (paragraph of article) of the Law of Ukraine on criminal liability, in its type and size is clearly unfair because of its leniency or its severity.

#### **Article 415. Grounds for assigning a new trial in court of first instance**

1. The court of appellate instance shall set aside the judgment or ruling of the court and assigns a new trial in court of first instance if:

1) violations have been ascertained specified in subparagraphs 2, 3, 4, 5, 6, 7 of paragraph two of Article 412 of the present Code;

2) a judge whose qualification was challenged on grounds of circumstances which clearly cast doubts on his impartiality, participated in the adoption of court's decision, and the court of appellate instance held that the motion on his disqualification was justified;

3) court decision has been passed or signed by court composition other than the one which tried the case.

2. When assigning a new trial in the court of first instance, the court of appellate instance shall not have the right to decide in advance on the issue of whether charges were proved or not, whether evidence was reliable or not, whether one evidence prevails over another, whether the court of first instance was right to apply one or another of the statutes of Ukraine on criminal liability and punishment.

3. Findings and motives of setting aside court decisions, shall be binding on the court of first instance in the new trial.

#### **Article 416. Special features of the new trial by the court of first instance**

1. After the judgment or ruling to terminate criminal proceedings or to apply or refuse to apply compulsory medical or educational measures has been set aside by the court of appellate instance, the court of first instance shall conduct court proceedings as specified in Section IV of the present Code in a different composition of court.

2. In the new trial in the court of first instance, it shall be permitted to apply a statute pertaining to a more grave criminal offence and providing for more severe punishment only if the judgment was reversed based on the appellate complaint of public prosecutor or victim or his representative in connection with the necessity to apply the statute pertaining to a more grave criminal offence and providing for more severe punishment.

3. In the new trial in the court of first instance, the issue related to the imposition of compulsory medical or educational measures, legal qualification of the action committed as more grave, as specified by the Law of Ukraine on criminal liability, shall be permitted if appellate complaint on such grounds was submitted by public prosecutor, victim or his representative.

#### **Article 417. Closing of criminal proceedings in the court of appellate instance**

1. Having established the circumstances specified in Article 284 of the present Code, the court of appellate instance, shall set aside the judgment of conviction and close the criminal proceedings.

#### **Article 418. Court decisions of the court of appellate instance**

1. In case referred to in subparagraph 3 of paragraph one of Article 407 of the present Code, the court of appellate instance shall pass a judgment. Any other decision an appellate court takes in the form of ruling.

2. Court decisions of the court of appellate instance are taken, pronounced, distributed, explained or forwarded to participants in court proceedings as prescribed in Articles 368 through 380 of the present Code.

**Article 419. Contents of the ruling of the court of appellate instance**

1. The ruling of the court of appellate instance consists of:

1) introduction which states:

date when, and place where, it was passed;

name of the court of appellate instance, last names and initials of the judges and secretary of court session;

designation (number) of criminal proceedings;

last name, first name and patronymic of the suspect, the accused, year, month and day of his birth, place of birth and place of residence;

Law of Ukraine on criminal liability which provides for the criminal offense in the commission of which the person concerned is suspected or accused;

names (appellations) of participants in court proceedings;

2) reasoning part which states:

brief description of claims contained in the appellate complaint and of the court of first instance's decision;

summary of arguments of the appellant;

summary of positions of other participants in court proceedings;

circumstances established by the court of first instance;

circumstances established by the court of appellate instance circumstances with reference to evidence and motives why certain evidence was found to be inadmissible or irrelevant;

motives underlying the ruling of the court of appellate instance and legal provisions it was guided by;

3) operative part which states:

findings of the court of appellate instance in respect of the substance of claims contained in the appellate complaint;

decision regarding the measure of restraint;

allotment of procedural expenses;

date when, and the manner in which, the ruling takes legal effect and can be challenged.

2. If the appellate complaint is dismissed, the ruling of the court of appellate instance shall state grounds for finding the appellate complaint groundless.

3. Whenever the court decision is reversed or changed, the ruling shall indicate what Articles of the law have been breached and exactly what such infringements were, or the groundlessness of the judgment or ruling.

**Article 420. Judgment, ruling of the court of appeal to impose compulsory medical or educational measures**

1. Court of appellate instance sets aside the judgment of the court of first instance and passes its own judgment in the following cases:

1) necessity to apply a law on a more grave criminal offence or to increase the scope of charges;

2) necessity to apply a more severe punishment;

3) reversal of groundless judgment of acquittal of the court of first instance;

4) wrong discharge of the defendant from service of punishment.

2. A court of appellate instance's judgment shall be required to comply with general requirements for sentencing decisions. In addition, a court of appellate instance's judgment shall relate the content of the court of first instance's judgment, brief content of the claims of appellate complaint, motives for the adopted decision, and the decision on substance of the claims of appellate complaint.

3. A court of appellate instance overturns a ruling on application of compulsory measures of educational or medical nature and passes its own ruling in the following cases:

1) necessity to legally qualify an action provided for in the Law of Ukraine on criminal liability, as more grave;

2) application of more severe type of compulsory medical or educational measures;

3) reversal of groundless court ruling refusing to apply compulsory medical or educational measures and closure of criminal proceedings in respect of minor or underage person based on motives that they had not committed an action provided for in the Law of Ukraine on criminal liability.

#### **Article 421. Defendant's legal position may not be aggravated**

1. A judgment of conviction passed by a court of first instance, may be reversed if it is necessary to apply statutory provision, which establishes more grave criminal offence or more severe punishment, cancel wrong discharge of the defendant from service of punishment or increase the amounts subject to exaction, or in other cases where the defendant's position is aggravated, only if public prosecutor, victim or his representative filed the appellate complaint based on these grounds.

2. A judgment of acquittal passed by a court of first instance, may be reversed only if an appellate complaint was filed by a public prosecutor, victim or his representative, as well as based on appellate complaint of the accused, his defense counsel as regards the motives and grounds for acquittal.

3. A ruling of a court of first instance to apply compulsory medical or educational measures may be overturned in connection with the necessity to apply statutory provision of the Law of Ukraine on criminal liability which establishes more grave action and more severe compulsory medical or educational measures, only if an appellate complaint based on such grounds was filed by public prosecutor, victim or his representative.

4. A ruling in the first instance to refuse to apply compulsory medical or educational measures and terminate criminal proceedings in relation to an insane person or an underage person for the reason that they did not commit an act provided for by the Law of Ukraine on criminal liability may be reversed only if an appellate complaint based on such grounds was filed by public prosecutor, victim or his representative.

5. A ruling of a court of first instance may be overturned with the purpose to aggravate the position of the person in respect of whom it was passed, only if an appellate complaint based on such grounds was filed by public prosecutor, victim or his representative.

#### **Article 422. Procedure for examination of investigating judge's ruling**

1. Having received an appellate complaint against a investigating judge's ruling, judge-rapporteur shall immediately demand and obtain from the court of first instance the relevant materials, and not later than within a day shall notify the appellant, public prosecutor and other interested persons, of the time, date and place of appeals trial.

2. An appellate complaint against a investigating judge's ruling shall be considered not later than within three days after its receipt by the court of appellate instance.

#### **Article 423. Returning materials of criminal proceedings**

1. After appeals proceedings have ended, materials of criminal proceedings shall not later than within seven days, and in proceedings on appellate complaint against a investigating judge's ruling, not later than within three days, shall be forwarded to the court of first instance.

### **Chapter 32. Criminal Proceedings in Court of Cassation**

#### **Article 424. Court decisions which may be challenged in cassation procedure**

1. A court of first instance's judgments and rulings on application or refusal to apply compulsory medical or educational measures, after review thereof in appeals procedure, as well as court decisions of a court of appellate instance passed in respect of said court of first instance's decisions, may be challenged in cassation procedure.

2. A court of first instance's rulings, after review thereof in appeals procedure, as well as a court of appellate instance's rulings may be challenged in cassation procedure if they if they adversely affect further criminal proceedings, except in cases specified by the present Code. Objections to other rulings can be included in a cassation complaint against a court decision made following appeal proceedings.

3. A court of first instance's judgment based on an agreement, after review thereof in appeals procedure, as well as a court decision of a court of appellate instance based on results of review of appellate complaint against such judgment, shall not be subject to challenge in cassation procedure:

1) by a convicted person, his defence counsel or legal representative, exceptionally for the reasons of the court having set a more severe penalty than the one agreed upon by the parties to the agreement; affirming a conviction without the convicted person's consent to imposition of punishment; failure of the court to respect the requirements established by Article 474, paras. 4 through 7 of this Code, including failure to explain the consequences of making agreement to the convicted person;

2) by the victim, his representative or legal representative, exceptionally for the reasons of the court having set a less severe penalty than the one agreed upon by the parties to the agreement; affirming a conviction without the victim's consent to imposition of punishment; failure of the court to respect the requirements established by paras. 6 or 7 of Article 474 of this Code; failure to explain the consequences of making agreement to the victim;

3) by the public prosecutor exceptionally for the reasons of the court having set a less severe penalty than the one agreed upon by the parties to the agreement; affirming of an agreement by the court in the proceedings in which, according to the fourth paragraph of Article 469 of this Code, no agreement may be made.

4. Investigating judge's ruling, after review thereof in appeals procedure, as well as a court of appellate instance's ruling based on results of review of appellate complaint against such ruling, shall not be subject to challenge in cassation procedure.

#### **Article 425. Right to cassation**

1. A cassation complaint may be filed by:

- 1) convict, his legal representative or defense counsel, as regards the convict's interests;
- 2) acquitted defendant, his legal representative or defense counsel, as regards the motives and grounds for acquittal;
- 3) suspect, accused, his legal representative or defense counsel;
- 4) legal representative, defense counsel of an underage person, or the underage person himself/herself, in respect to whom the issue was disposed on application of compulsory educational measures, as regards the underage person's interests;
- 5) legal representative or defense counsel of a person in respect to whom the issue was disposed on application of compulsory medical measures;
- 6) public prosecutor;
- 7) victim or his legal representative or representative, as regards the victim's interests, but within the scope of claims submitted by them in the court of first instance.
- 8) civil plaintiff, his representative or legal representative, to the extent related to the disposition of the civil action;
- 9) civil defendant or his representative, to the extent related to the disposition of the civil action.
- 10) representative of the legal person in whose respect proceedings are taken, to the extent relevant for the interests of the legal person.

*{Subparagraph 10 is added to Paragraph 1 of Article 425 by Law 314-VII of 23.05.2013}*

2. Individuals who have the right to file cassation complaint shall be given the opportunity to review in court the materials of criminal proceedings concerned, to decide whether to file a cassation complaint.

#### **Article 426. Procedure and time limits for cassation**

1. Cassation complaint shall be filed directly with the court of cassation instance.
2. Cassation complaint against court decisions shall be filed within three months from the date on which decision of the court of appellate instance was pronounced, and by a convict kept in custody, within the same time limits from the date of service on him of a copy of the court decision.
3. During the period fixed for cassation challenge, materials of criminal proceedings shall not be demanded and obtained from the court which executes the court decision, except by the court of cassation instance.

#### **Article 427. Requirements for a cassation complaint**

1. Cassation complaint shall be filed in written form.
2. Cassation complaint shall state:
  - 1) name of the court of cassation instance;
  - 2) last name, first name, patronymic (name), mailing address of the individual who files cassation complaint, as well as number of communication means, e-mail address, if any;
  - 3) court decision which is challenged;
  - 4) arguments of the individual who files cassation complaint, in support of his claims, explaining what is the essence of illegality or groundlessness of the court decision concerned;
  - 5) claims of the individual who files cassation complaint, addressed to the court of cassation instance;
  - 6) list of materials attached.

3. If the individual is not willing to participate in the cassation trial, he shall state it in his cassation complaint.

4. Cassation complaint shall be signed by the individual who files it. If the cassation complaint is filed by victim's defense counsel, representative, it shall be attached duly drawn up documents certifying his powers as prescribed by the present Code.

5. Cassation complaint shall be attached copies of challenged court decisions.

6. Cassation complaint shall be attached its copies with attachments, in the number necessary for sending to the parties to criminal proceedings and participants in court proceedings. This requirement shall not extent to a convict held in custody.

#### **Article 428. Opening of cassation proceedings**

1. A court of cassation instance shall open cassation proceedings within five days from the date of receipt of the cassation complaint, if no grounds are found for taking no action on the cassation complaint, returning the cassation complaint, or refusal to open cassation proceedings. The issue of opening cassation proceedings shall be disposed by the court of cassation instance without summoning the parties to criminal proceedings.

2. Court of cassation instance shall pass a ruling to dismiss cassation proceedings if:

1) the cassation complaint is filed against a court decision which is not subject to challenging in cassation procedure;

2) it follows from the cassation complaint, attached thereto court decisions and other documents that there are no grounds for granting the complaint.

3. Court of cassation instance may refuse to open cassation proceedings on grounds specified in subparagraph 1 of paragraph two of this Article without verification of the compliance of the cassation complaint with the requirements of Article 420 of the present Code.

4. Court of cassation instance shall have no right to refuse to open cassation proceedings on grounds specified in subparagraph 2 of paragraph one of this Article, if by the challenged court decision, according to provisions of Article 430 of the present Code, the court of appellate instance aggravated the position of the suspect, accused, convict, acquitted.

5. Court of cassation instance shall pass a ruling to open or to refuse to open cassation proceedings.

6. A copy of the ruling to open cassation proceedings or to refuse to open cassation proceedings along with the cassation complaint and all materials attached thereto shall be immediately sent to the person who filed the cassation complaint.

#### **Article 429. Taking no action on a cassation complaint or returning the complaint**

1. Having established that cassation complaint has been filed in violation of requirements specified in Article 427 of the present Code, the court of cassation instance shall pass the ruling to take no action on the cassation complaint, such ruling stating shortcomings of the cassation complaint and fixing the time limit which is sufficient to eliminate shortcomings, which shall not exceed fifteen days after the date of receipt of the ruling by the person who filed the cassation complaint.

A copy of the ruling not to take action on the cassation complaint shall be immediately sent to the person who filed the cassation complaint.

2. If the person has eliminated shortcomings in the cassation complaint within time limit fixed by the court, the complaint shall be deemed to be filed the day it was first filed with the court of cassation instance. Within five days after shortcomings in the cassation complaint were

eliminated, or after expiry of the time limit fixed for eliminating the shortcomings in the cassation complaint, the court of cassation instance shall dispose the issue of opening cassation proceedings.

3. A cassation complaint shall be dismissed if:

1) the person failed to eliminate shortcomings in the cassation complaint on which no action has been taken within a specified time limit;

2) the cassation complaint has been filed by an individual who was not entitled to file the cassation complaint;

3) the cassation complaint has been filed after expiry of the time limit fixed for cassation challenge, and the person who filed it, has not raised the issue of renewing the time limit, or the court of cassation instance, upon the person's request, finds no grounds for renewing thereof.

A copy of the ruling to dismiss the cassation complaint shall be immediately sent to the person who filed it together with the cassation complaint and all materials attached thereto.

4. Taking no action on the cassation complaint or dismissing the complaint shall not preclude re-filing the complaint with the court of cassation instance as prescribed in the present Code, within time limits fixed for cassation challenge.

#### **Article 430. Preparation for cassation trial**

1. Judge-rapporteur within ten days after cassation proceedings have been opened without summoning parties to criminal proceedings:

1) sends copies of the ruling on the opening of cassation proceedings to participants in court proceedings together with copies of cassation complaints, information on their rights and duties, and fixes time limit for the submission of objections to the cassation complaint;

2) demands and obtains materials of criminal proceedings;

3) decides on filed applications;

4) decides on the suspension of execution of the challenged court decisions;

5) decides other matters as necessary for cassation trial.

2. All decisions made by judge-rapporteur at the stage of preparation to cassation trial shall be formulated in the form of ruling. Copies of rulings are sent to participants in court proceedings.

3. After carrying out preparatory actions and obtaining the materials of criminal proceedings, judge-rapporteur passes the ruling on the termination of preparation and assignment of cassation trial.

4. The convicted person shall be subject to mandatory summoning to participate in the cassation proceedings if the court finds his participation mandatory, and the convicted person who is held in custody, also in the case that his motion for participation has been filed.

#### **Article 431. Objection to a cassation complaint**

1. Individuals referred to in Article 425 of the present Code, may file with the court of cassation instance objections to the cassation complaint in written form within the deadline fixed by the court of cassation instance.

2. Objection to the cassation complaint shall contain:

1) name of the court of cassation instance;

2) last name, first name, patronymic (name), mailing address of the objector to the cassation complaint, as well as number of communication means, e-mail address, if any;

3) indication of the challenged court decision;

4) number of criminal proceedings in the court of cassation instance, if it was communicated by the court of cassation instance;

5) substantiation of objections regarding the contents and claims of the cassation complaint;

6) if necessary, application of the objector to the cassation complaint;

7) list of attached materials.

3. Objection to the cassation complaint shall state whether the objector intends to participate in the cassation trial.

4. Objection to the cassation complaint shall be signed by the objector.

### **Article 432. Withdrawal of cassation complaint, changing and supplementing of cassation complaint during cassation proceedings**

1. Waiver of cassation complaint, changing and supplementing of cassation complaint during cassation proceedings shall be carried out in accordance with provisions of Article 403 of the present Code.

### **Article 433. Scope of review by the court of cassation**

1. A court of cassation verifies whether a court of first instance and a first appeal instance applied the rules of substantive and procedural law and of legal assessment of circumstances correctly, and shall not have the right to examine evidence, ascertain and find proved the circumstances which were not established in the challenged court decision, and to resolve the issue of how reliable is one or other evidence.

2. A court of cassation reviews judgments of first and appellate instance courts within the scope of the cassation complaint. A court of cassation may go beyond the scope of cassation claims unless this may aggravate the position of the convict, the acquitted, or the person in respect of whom applying compulsory medical or educational measures was considered. If granting the complaint gives grounds for taking a decision in favour of other convicts who have not filed complaints, the court of cassation instance shall be required to take such decision.

### **Article 434. Cassation trial**

1. Cassation trial is conducted in accordance with rules of trial in a court of appellate instance, with due account for the specific features specified in this Article.

2. After carrying out actions provided for in Articles 342 through 345 of the present Code, and taking action on the motion of the participants in court proceedings, the judge-rapporteur narrates in the necessary scope the contents of the challenged decisions, the cassation complaint and objections thereto.

3. Parties to criminal proceedings and other participants in court proceedings produce their arguments. The first to produce arguments is the person who filed the cassation complaint. If both parties to criminal proceedings file cassation complaints, the defending parties to court proceedings shall be the first to produce their arguments. After them, other participants in court proceedings produce arguments. The court may limit the duration of producing arguments and fix an equal lapse of time for all the participants in court proceedings. This limitation shall be announced at the beginning of the court session.

4. Failure of the parties or other participants in court proceedings who have been duly informed of the date, time and place of the cassation trial and failed to inform of any valid reasons for their non-appearance shall not preclude trial. If participants in criminal proceedings

whose participation under this Code or decision of a court of cassation instance is mandatory, the cassation trial shall be postponed.

5. After the completion of cassation trial, judges shall retire to the deliberation room to pass a decision.

#### **Article 435. Written cassation proceedings**

1. The court of cassation instance may take a decision based on results of written proceedings if all participants in the court proceedings have applied for resolving the case in their absence.

2. In case of written cassation proceedings, a copy of the court of cassation instance's decision is sent to participants in the court proceedings within three days from the date of its signing.

#### **Article 436. Powers of the court of cassation after a cassation complaint has been considered**

1. Based on results of the court of cassation instance's review of a cassation complaint, the court may:

- 1) uphold the court decision;
- 2) reverse the court decision and assign a new trial in the court of first or appellate instance;
- 3) reverse the court decision and close criminal proceedings;
- 4) change the court decision.

#### **Article 437. Inadmissibility of impairment of a legal position of the acquitted and the accused**

1. Court of cassation instance shall not have the right to apply a statute which provides for criminal offence of a higher gravity or for more severe punishment.

2. A judgment of conviction passed by court of first or appellate instance, a ruling of court of appellate instance in respect of a court of first instance's judgment may be reversed, if it is necessary to apply a statute which provides for criminal offence of a higher gravity or more severe punishment, or in other way aggravate the convict's position, only where public prosecutor, victim or his/ her representative filed cassation complaint on such grounds.

3. The judgment of acquittal pronounced by court of first or appellate instance, court of appellate instance's ruling regarding the judgment of the court of first instance, may be reversed only based on a cassation complaint of public prosecutor, victim or his/ her representative, as well as based on cassation complaint of the acquitted regarding motives for his acquittal.

#### **Article 438. Grounds for reversing or changing decisions by court of cassation instance**

1. Grounds for reversing or changing court decisions in reviewing a case in a court of cassation instance shall be:

- 1) significant non-compliance with the requirements of criminal procedural law;
- 2) wrong application of the Law of Ukraine on criminal liability;
- 3) inconsistency of imposed punishment with the gravity of criminal offense and the convict's personality.

2. In deciding on the issue of the presence of grounds specified in paragraph one of this Article, court of cassation instance shall be governed by Articles 412 through 414 of the present Code.

3. Court of cassation shall not have the right to reverse a judgment of acquittal, a ruling to refuse to apply compulsory medical or educational measures, a ruling to close criminal proceedings only based on motives of significant infringement of rights of the accused or a person in whose respect the issue of applying compulsory medical or educational measures was decided.

**Article 439. New consideration of a case after reversal of a court of cassation instance's decision**

1. After a judgment or ruling of the court of cassation instance, the court of first or appellate instance shall conduct court proceedings in accordance with general requirements laid down in the present Code, in a different composition of court.

2. Instructions of the court which reviewed the case in cassation procedure shall be bounding on the court of first or appellate instance in the new proceedings.

3. In a new proceedings in the court of first or appellate instance, the application of more severe punishment or of a statute providing for more grave offense, shall only be admissible, on condition that the judgment was reversed in connection with the necessity to apply a statute providing for more grave offense or more severe punishment, upon a complaint of public prosecutor, victim or his representative, as well as if in the course of new trial it would be established that the accused committed a more grave criminal offense, or if the scope of charges increased.

**Article 440. Closing criminal proceedings in court of cassation instance**

1. Having ascertained circumstances specified in Article 284 of the present Code, the court of cassation instance shall reverse the judgment of conviction or the ruling and close criminal proceedings.

**Article 441. Court decisions of the court of cassation**

1. Court of cassation instance passes rulings on all procedural matters.

2. Court decisions of the court of cassation instance are taken, pronounced, distributed, explained or forwarded to participants in court proceedings as prescribed in Articles 368-380 of the present Code.

**Article 442. Contents of the ruling of the court of cassation**

1. A ruling of the court of cassation instance consists of:

1) an introduction which states:

date when, and place where, it was passed;

name of the court of cassation instance, last names and initials of the judges and secretary of court session;

designation (number) of criminal proceedings;

last name, first name and patronymic of the accused, convict, year, month and day of his birth, place of birth and place of residence;

Law of Ukraine on criminal liability which provides for the criminal offense in the commission of which the person is suspected (accused);

names (appellations) of participants in court proceedings;

2) reasoning part which states:  
brief description of claims contained in the cassation complaint and of the challenged court decisions;  
summary of arguments of the individual who filed the cassation complaint;  
summary of positions of other participants in court proceedings;  
circumstances ascertained by the courts of first and appellate instances;  
motives for the court of cassation instance's ruling, and statutory provision the court was governed by;

3) operative part which states:  
findings of the court of cassation instance in respect of the substance of claims contained in the cassation complaint;  
allotment of procedural expenses;  
date when, and the manner in which, the ruling takes legal effect and can be challenged.

2. If the cassation complaint is dismissed, the ruling states rules which overturn arguments contained in the cassation complaint.

3. Whenever court decisions are reversed or changed, the ruling shall state what Articles of the law have been infringed and what exactly such infringements were.

#### **Article 443. Returning records of criminal proceedings**

1. After cassation proceedings have ended, materials of criminal proceedings are forwarded to the court of first instance within seven days, unless otherwise provided in the decision taken by the court of cassation instance.

### **Chapter 33. Proceedings in the Supreme Court of Ukraine**

#### **Article 444. Revision of Judgments by the Supreme Court of Ukraine**

1. The Supreme Court of Ukraine shall revise judgments in criminal cases exclusively on the grounds and in accordance with the procedure stipulated by the present Code.

#### **Article 445. Grounds for Revision of Judgments by the Supreme Court of Ukraine**

1. The grounds for revision of valid judgments by the Supreme Court of Ukraine shall be the following:

1) different application by the court of cassation of the same legal provisions of the Law of Ukraine on criminal liability in relation to similar socially dangerous acts (except for the issues related to the award of punishment, release from punishment and relief from criminal liability), which entailed passing different in content judgments;

2) establishment by an international judicial agency, the jurisdiction of which is recognized by Ukraine, of Ukraine's violation of international commitments when passing court's judgment.

2. Revision of judgments on the grounds specified in paragraph 1, subparagraph 2 of this Article, for the purpose of application of a law on more serious criminal offence or escalation of accusation or otherwise aggravating the situation of the convict, as well as judgment of acquittal, ruling or order to close the case shall not be allowed.

**Article 446. Right to Lodge a Request for Revision of Judgments by the Supreme Court of Ukraine**

1. The persons specified in Article 425 of this Code shall have the right to lodge an application for revision of the judgment on the grounds specified in Article 445, paragraph 1, subparagraph 1 of this Code, after it was reviewed by way of cassation.

2. Application for revision of judgment on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code may be lodged by the person in favor of whom a decision was made by an international judicial agency the jurisdiction of which is recognized by Ukraine.

3. Application for revision of judgment in a criminal case passed by the Supreme Court of Ukraine may be filed on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code.

4. Application for revision of the rulings made by a court of cassation, which do not obstruct criminal proceedings, may not be lodged. Objections to such rulings may be included in the application for revision of the judgment passed following the cassation proceedings.

**Article 447. Term of Application for Revision of Judgments**

1. Application for revision of judgment on the grounds specified in Article 445, paragraph 1, subparagraph 1 of this Code shall be lodged within three months from the date of passing the judgment in relation to which the motion for revision was made, or from the date of passing the judgment to which reference is made in support of the ground described in subparagraph 1 of paragraph one of Article 445 of the present Code, if this judgment was passed later.

2. Application for revision of judgment on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code may be lodged within three month from the day when the person, in favor of whom a decision was made by an international judicial agency the jurisdiction of which is recognised by Ukraine, became aware of the final status of this judgment.

3. Revision of judgment of acquittal, ruling to close the case, or other court decisions, for the purpose of aggravating the convict's situation, on the grounds specified in Article 445, paragraph 1, subparagraph 1 of this Code , shall be allowed only within the statutory period of limitation for institution of criminal proceedings against the given person, but no later than one year after passing such judgment.

4. Serving the sentence or death of the convict shall not be an obstacle for revision of the case in the interests of his legal rehabilitation.

5. Where a period established by paragraphs 1-3 of this Article is missed for a reason recognised as valid, the court, on a motion of the person who has applied for review of a court decision may renew such period. An application for review shall be left undecided if the person who has filed it does not seek renewal of such period, and if a motion for renewal has been dismissed. The matter of renewal of the period for filing an application for review of a court decision or that of leaving such application for review undecided shall be decided by the court without summoning the participants in court proceedings, an appropriate ruling being issued as a result of such hearing.

**Article 448. Requirements for application for revision of judgments**

1. Application for revision of judgment by the Supreme Court of Ukraine shall be lodged in writing.

2. Application for revision of judgment shall indicate:

- 1) name of the court which the application is lodged with;
  - 2) the person who lodges the application, as well as his mail address, number of the communication facility, E-mail address, if any;
  - 3) specific judgments different in content, characterized with different application by the court of cassation of the same legal provisions of the Law of Ukraine on criminal liability in relation to similar socially dangerous acts, provided the application is lodged on the grounds specified in Article 445, paragraph 1, subparagraph 1 of this Code;
  - 4) justification of the need to revise judgments in connection with passing a decision passed by an international judicial agency the jurisdiction of which is recognized by Ukraine, provided the application is lodged on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code;
  - 5) claims of the person who lodges the application;
  - 6) a motion, if necessary;
  - 7) list of the attached materials.
3. Application shall be signed by the person who files it. An application shall be attached with a properly formalised document that confirm authority of the filing person in accordance with the requirements of the present Code.

#### **Article 449. Procedure of Lodging the Application for Revision of Judgments**

1. Application for revision of judgments shall be lodged with the Supreme Court of Ukraine via the Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases. The following documents shall be attached to the application:

- 1) copies of the application the number of which shall correspond to the number of participants in court proceedings (except for the case when the application is lodged by the person held in custody);
- 2) copies of the judgments for revision of which the application is lodged;
- 3) copies of judgments different in content, characterized with different application by the court of cassation of the same legal provisions of the Law of Ukraine on criminal liability in relation to similar socially dangerous acts, provided the application for revision of judgments is lodged on the grounds specified in Article 445, paragraph 1, subparagraph 1 of this Code;
- 4) a copy of the decision passed by an international judicial agency the jurisdiction of which is recognised by Ukraine or a motion for obtaining a copy thereof if it is not available to the person filing the application, provided the application is lodged on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code.

#### **Article 450. Verification of Compliance of the Application with the Requirements of the Present Code, Conducted by the Superior Specialized Court of Ukraine Dealing with Examination of Civil and Criminal Cases**

1. Application for revision of judgment, which was submitted to the Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases, shall be registered on the day of its receipt and shall be referred to the judge-rapporteur no later than the following day.

2. The judge-rapporteur within three days shall verify compliance of the application with the requirements of the present Code. In case the submitted application does not comply with the requirements set by Articles 448 and 449 of the present Code, the applicant shall be notified in writing of the shortcomings of the application and the period of time during which the applicant must remove them.

3. If the applicant removed shortcomings of the application within the given period, this application shall be considered as submitted on the day of its initial submission to the Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases.

4. The application shall be returned to the applicant in the following cases:

1) the applicant failed to remove its shortcomings within the given period;  
2) the application was submitted by a person who is not authorized to submit such application;

3) the application was submitted on behalf of a person who does not have the corresponding powers;

4) a ruling was passed, on the basis of similar reasons, by the Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases to deny admission of the case for processing, based on the outcome of its examination.

5. Returning the application for the reasons described in paragraph 4 of this Article, or other reasons different from those that were subject of examination, shall not exclude the possibility of another submission of the application, provided it is properly drawn up and processed.

#### **Article 451. Admission of a Case for Processing by the Superior Specialized Court of Ukraine Dealing with Examination of Civil and Criminal Cases**

1. Decision on admission of the case for processing shall be made by a panel of five judges of the Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases, which panel shall not include the judges who passed the ruling being appealed.

2. The Superior Specialized Court of Ukraine dealing with examination of civil and criminal cases shall pass a ruling on admission of the case for processing or on denial of such admission, within fifteen days after submission of the application. The ruling shall be passed in the deliberation room, with compliance with the requirements set by Articles 367 and 375 of the present Code, without summoning the participants in court proceedings. A ruling to admit a case for processing or on denial of such admission must be reasoned.

3. The ruling on admission of the case for processing together with the application for revision of judgment proper and the documents attached to it shall be submitted to the Supreme Court of Ukraine within five days since the day when the ruling was made. A copy of the ruling on admission of the case shall be sent together with a copy of the application to participants in court proceedings and, in case of denial of admission, to the person who has filed the application.

4. Where, having considered an application for admission of a case for processing on the grounds provided for by subparagraph 2 of the first paragraph of Article 445 of this Code, the Superior Specialized Court of Ukraine Dealing with Examination of Civil and Criminal Cases finds that Ukraine's violation of its international obligations was a consequence of a failure to respect rules of procedure, it shall rule to open proceedings in the case and decide on the necessity to obtain the case file. Such case shall be considered by a panel of 5 judges of the Superior Specialized Court of Ukraine Dealing with Examination of Civil and Criminal Cases in accordance with the rules established for review of cases on cassation.

#### **Article 452. Preparation for Revision of Judgment in the Supreme Court of Ukraine**

1. The ruling on admission of the case for processing together with the application for revision of judgment proper and the documents attached to it shall be registered on the day of its submission and shall be referred to the judge-rapporteur no later than the following day. The

judge-rapporteur within three days shall take a decision to open proceedings and shall send its copies to the participants in court proceedings.

2. The judge-rapporteur within fifteen days after the opening of proceedings shall complete preparation for the revision of judgment by the Supreme Court of Ukraine. To do that he shall:

1) make decision on evocation of the case materials and send them to the appropriate court;  
2) determine the procedure of examination of the case (in open court or in camera in the cases stipulated by the present Code);

3) decides on renewal of the period for filing an application for review of the court decision or on leaving the application undecided if the matter has not been considered at the Superior Specialized Court of Ukraine Dealing with Examination of Civil and Criminal Cases;

4) have the right to charge the appropriate experts of the research advisory board under the Supreme Court of Ukraine with preparation of scientific conclusion regarding the legal provisions of the Law of Ukraine on criminal liability, which were differently applied by the court of cassation in relation to similar socially dangerous acts;

5) have the right to specify the state authorities whose representatives, when in court session, may give explanations that can be useful for adjudicating in the case, and issue an order to summon them to appear in court;

6) perform other actions required for the removal of differences in application of the provisions of substantive law.

3. On the basis of the results of performing the preparatory actions, the judge-rapporteur shall prepare a report and pass decision on completion of preparation and scheduling the case for examination by the Supreme Court of Ukraine.

#### **Article 453. Procedure of Examining a Case by the Supreme Court of Ukraine**

1. In the Supreme Court of Ukraine, a case in the matter of reviewing a court decision on the ground provided for by subparagraph 1 of the first paragraph of Article 445 of this Code shall be considered in a session of the Criminal Chamber of the Supreme Court of Ukraine. The session shall be competent provided it is attended by at least two thirds of the justices of the composition of the Criminal Chamber of the Supreme Court of Ukraine.

2. A case for review of a judgment on the ground provided for by subparagraph 2 of the first paragraph of Article 445 of this Code shall be examined at the joint session of all Chambers of the Supreme Court of Ukraine. Such session shall be competent if attended by at least two thirds of the composition of the Supreme Court of Ukraine as defined by law.

3. Opening of the court session, explanation to its participants their rights and duties, announcement of the composition of court, and explanation of the right of challenge shall be provided in accordance with the provisions (rules) of § 3, Chapter 28 of the present Code.

4. Upon completion of the procedural actions described in paragraph 3 of this Article and consideration of the motions entered by the participants in court proceedings, the judge-rapporteur narrates the contents of the claims contained in the application submitted to the Supreme Court of Ukraine, as well as the results of the preparatory actions performed by him.

5. The person, who filed the application with the Supreme Court of Ukraine, if he appeared in the court session, shall have the right to give explanations of the claims stated in the application. In case, apart from the prosecution, such applications have been filed by other persons, the first to give explanations shall be the prosecution. For the purpose of clarification of the merits of the legal provision of the Law of Ukraine on criminal liability, which was

differently applied, explanations may be given by the representatives of the state authority bodies.

6. Failure of the participants in court proceedings, who have been duly informed of the date, time and place of hearing of the case, to appear in court session shall not preclude trial.

7. After the completion of hearing of the explanations given by the persons indicated in paragraph 5 of this Article, judges retire in the deliberation room to render judgment.

8. Debate of judges shall be conducted in compliance with the requirements set forth by Articles 367 and 375 of the present Code.

9. The period of examination of the application for revision of judgment by the Supreme Court of Ukraine may not exceed one month from the date the case was accepted by court.

#### **Article 454. Powers of the Supreme Court of Ukraine**

1. Based on the results of examination of a case, one of the following rulings shall be passed by a majority of votes of the panel of judges:

full or partial satisfaction of the application;  
dismissal of the application.

2. Judges who disagree with the ruling may express their dissenting opinion which shall be attached to the ruling.

3. The ruling of the Supreme Court of Ukraine shall be final and without appeal, except on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code.

#### **Article 455. Ruling of the Supreme Court of Ukraine to Satisfy the Application**

1. The Supreme Court of Ukraine shall satisfy the application if there is one of the grounds set forth in paragraph 1 of Article 445 of the present Code.

2. If the Supreme Court of Ukraine finds that the court decision in the case being reviewed on the ground provided by subparagraph 1 of the first paragraph of Article 445 of this Code is unlawful, it shall reverse it, fully or partially, or amend it, and pass a new judgment or refer the case for a trial *de novo* to the court of cassation. The reasoning part of the ruling shall specify why the judgment of the court of cassation on the matter shall be deemed wrong. The operative part of a new court judgment shall include an opinion on the proper application of the relevant provision of the Law of Ukraine on criminal responsibility for similar socially dangerous acts.

3. If the judgment is revised on the grounds specified in Article 445, paragraph 1, subparagraph 2 of this Code, the Supreme Court of Ukraine shall reverse the challenged judgment fully or in part and may pass a new court decision or send the case for a trial *de novo* to the court which passed the challenged judgment.

4. The ruling of the Supreme Court of Ukraine on satisfaction of the application must be reasoned.

#### **Article 456. Ruling of the Supreme Court of Ukraine to Dismiss the Application**

1. The Supreme Court of Ukraine shall dismiss the application if the circumstances that became the reason for revision of the case were not confirmed.

2. The ruling to dismiss the application must be reasoned (motivated). The reasoning part of the ruling to dismiss the application in view of the proper application by the court of cassation instance of the relevant provision of the Law of Ukraine on criminal responsibility; the operative part shall include an opinion on the proper application of the relevant provision of the Law of Ukraine on criminal responsibility for similar socially dangerous acts.

#### **Article 457. Notification of Passing the Ruling and Its Preparation**

1. The ruling of the Supreme Court of Ukraine must be prepared and sent to the participants in the court proceedings not later than five days since the day of completion of examining the case.

#### **Article 458. Binding Force of the Decisions Adopted by the Supreme Court of Ukraine**

1. The opinion of the Supreme Court of Ukraine stated in its resolutions in cases stipulated by article 455, paragraph 2 and article 456, paragraph 2 of this Code shall be binding upon all subjects of powers of government that apply the relevant provision of the law in their processes, as well as for all courts in Ukraine.

2. Failure to comply with the court decisions shall entail liability fixed by law.

3. Decisions passed by the Supreme Court on considering applications for review of court decisions on the grounds provided for Article 445 of this Code shall be published on the official web site of the Supreme Court of Ukraine not later than 10 days of their passing.

### **Chapter 34. Criminal Proceedings upon Discovery of New Circumstances**

#### **Article 459. Grounds for criminal proceedings upon discovery of new circumstances**

1. Court decisions which have taken legal effect may be reviewed upon discovery of new circumstances.

2. The following shall be recognized as new circumstances:

1) artificial manufacture or falsification of evidence, incorrect translation, finding and explanations of expert, deliberately untrue testimonies of a witness, victim, the suspect, accused on which the judgment was based;

2) abuses of investigator, public prosecutor, investigating judge or court in the course of criminal proceedings;

3) reversal of a court decision based on which the judgment or ruling to be reviewed were made;

4) if the Constitutional Court of Ukraine ruled the law, other legal act or certain provision thereof which was applied by court unconstitutional;

5) all other circumstances which were not known to the court at the time of trial when the court decision was passed and which, *per se* or together with previously discovered circumstances, prove incorrectness of the judgment or ruling subject to review.

3. Circumstances specified in subparagraphs 2, 3 of paragraph two of this Article shall be required to be established by a court judgment which has taken legal effect, and where it is not possible to pass a judgment, substantiated by materials of investigation.

4. It shall not be not permitted to review court decisions upon newly discovered circumstances in case of adoption of new laws, other legal acts which repeal laws and legal acts that were effective at the time of trial.

**Article 460. Right to lodge a request to review court decision upon discovery of new circumstances**

1. Participants in court proceedings may lodge a request to review upon discovery of new circumstances, a decision adopted by a court of any instance which has taken legal effect.

**Article 461. Time limit for lodging a request to review court decision upon discovery of new circumstances**

1. Request to review court decision upon discovery of new circumstances may be lodged within three month after the requester has learned or could have learnt of such circumstances.

2. Review upon discovery of new circumstances of a judgment of acquittal is allowed only within periods of limitation prescribed by law.

3. Upon discovery of circumstances which confirm that the individual concerned has committed a more grave criminal offence than the offence for which he was sentenced, the court decision may be reviewed upon discovery of new circumstances within periods of limitation prescribed for the criminal offence of a higher degree of gravity.

4. Upon discovery of circumstances which confirm that the convict is innocent or that he has committed a less serious criminal offence, review of court decision upon discovery of new circumstances is not limited by any periods.

**Article 462. Requirements for the request to review court decision upon discovery of new circumstances**

1. Request to review court decision upon discovery of new circumstances is lodged in written form.

2. Request to review court decision upon discovery of new circumstances shall state:

1) name of the court to which request is submitted;

2) last name, first name, patronymic (appellation), mailing address of the person requester, as well as number of communication means, e-mail address, if any;

3) court decision requested to be reviewed upon discovery of new circumstances;

4) circumstances which could have affected court decision but were not known and could not be known by the court and requester at the time of trial;

5) substantiation with reference to circumstances which confirm existence of newly discovered circumstances, and content of claims of the requester;

6) list of documents and other materials attached.

3. Request is signed by the requester. Whenever the request is filed by defense counsel, victim's representative, it shall be attached duly drawn up documents certifying his powers as required by the present Code.

4. Copies of the request in the number necessary for sending to parties in criminal proceedings and other participants in court proceedings shall be attached to the request. This requirement shall not extend to a person held in custody.

5. The requester may attach to his request documents or their copies which are of importance for the criminal proceedings and which were not known at the time when the court decision concerned was made.

**Article 463. The way in which a request to review court decision upon discovery of new circumstances shall be lodged**

1. Request to review court decision upon discovery of new circumstances is filed with the court of the instance which was the first to commit mistake as a result of not being aware of the existence of these circumstances.

2. Request to review court decision upon discovery of new circumstances in case the judge committed a crime as a result of which illegal or groundless decision was taken, filed with the of the instance of which he was a judge.

**Article 464. Opening proceedings upon discovery of new circumstances**

1. Request to review, upon discovery of new circumstances, a court decision, which has been filed with court, is transmitted to a judge of the court in the order of priority. The judge who was involved in making court decision to be reviewed may not participate in the review of court decision upon discovery of new circumstances.

2. Not later than on the day after the day when the request was received by court, the judge verifies the extent to which this request complies with Article 462 of the present Code, and decides on the opening criminal proceedings upon discovery of new circumstances.

3. To a request to review court decision upon discovery of new circumstances, which is not drawn up in accordance with the requirements of Article 462 of the present Code, shall be applied rules of paragraph three of Article 429 of the present Code. A copy of ruling shall be immediately sent to the requestor, together with the request to review court decision upon discovery of new circumstances and all materials attached thereto.

4. Having opened criminal proceedings upon discovery of new circumstances, the judge sends to the parties in court proceedings copies of the request concerned and assigns date, time and place of court session and informs specified persons thereon.

**Article 465. Withdrawing request to review court decision upon discovery of new circumstances and implications of such withdrawal**

1. The individual who lodged the request to review court decision upon discovery of new circumstances may withdraw his request before the beginning of trial. If the court admits withdrawal, it closes criminal proceedings upon discovery of new circumstances and passes the appropriate ruling.

2. An individual who withdrew his request to review court decision upon discovery of new circumstances shall not have the right to file with the court a new request on the same grounds.

**Article 466. The way in which court decision is reviewed upon discovery of new circumstances**

1. Request to review court decision upon discovery of new circumstances is considered by court within two months after it has been received, in accordance with rules laid down in the present Code for the conduct of criminal proceedings in the court of the instance which shall conduct the review.

2. Participants in court proceedings shall be informed of the date, time and place where the request will be reviewed. Failure of individuals who have been duly informed, to appear in court session does not preclude consideration of the request to review court decision.

3. The court, by its ruling, may suspend execution of the court decision which is being reviewed upon discovery of new circumstances, till the end of the trial.

4. The court may refrain from examining evidence regarding circumstances which were established in court decision being reviewed upon discovery of new circumstances, if such are not challenged.

**Article 467. Court decision on implications of criminal proceedings upon discovery of new circumstances**

1. The court may reverse the judgment or ruling and render a new judgment or make a ruling, or dismiss the request to review court decision upon discovery of new circumstances. When making a new judgment, the court exercises powers of a court of the relevant instance.

2. Court decision taken as a result of criminal proceedings upon discovery of new circumstances may be challenged as prescribed in the present Code for challenging court decisions made by court of the appropriate instance. When the new court decision takes legal effect, court decisions of other courts in these criminal proceedings shall lose legal effect.

**Section VI. Special Procedures for Criminal Proceedings**

**Chapter 35. Criminal Proceedings Based on Agreements**

**Article 468. Agreements in Criminal Proceedings**

1. The following types of agreements may be concluded in criminal proceedings:

- 1) reconciliation agreement between the victim and the suspect or the accused;
- 2) plea agreement between the public prosecutor and the suspect or the accused about pleading guilty.

**Article 469. Initiation and Conclusion of Agreement**

1. The reconciliation agreement may be concluded on the initiative of the victim, the suspect or the accused. Arrangements in respect of the reconciliation agreement may be made independently by the victim and the suspect or the accused, the defence counsel and a representative or with the assistance of another person as agreed between the parties to criminal proceedings (except for the investigator, public prosecutor or judge).

2. The plea agreement may be concluded upon initiative of the public prosecutor or the suspect or the accused.

3. The reconciliation agreement between the victim and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanors and crimes of minor or medium gravity, and in criminal proceedings in the form of private prosecution. A reconciliation agreement in a criminal proceedings in respect of the authorized officer of a legal person that has committed a criminal violation in relation to which proceedings are taken in respect of the legal person is inadmissible.

*{Paragraph 3 of Article 469 as amended by Law 314-VII of 23.05.2013}*

4. The plea agreement between the public prosecutor and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanors, as well as crimes of minor or medium gravity, grave crimes, perpetration of which caused damage only to state or public interests. Conclusion of the plea agreement in criminal proceedings against an authorized officer of a legal person that has committed a criminal violation in relation to which proceedings are

taken in respect of the legal person as well as in criminal proceedings with the participation of the victim shall not be allowed.

*{Paragraph 4 of Article 469 as amended by Law 314-VII of 23.05.2013}*

5. Conclusion of a reconciliation agreement or a plea agreement may be initiated at any time between the moment of notifying the person of the suspicion and retirement of judges into the deliberation room to pass the sentence/judgment.

6. In case of failure to reach an agreement, the fact of initiating conclusion of the agreement and the statements which were made to arrive at an agreement may not be considered as refusal from prosecution or pleading guilty.

7. The investigator and the public prosecutor shall be required to inform the suspect and the victim about their right to reconciliation, explain to them the mechanism of its realization, and not to impede conclusion of the reconciliation agreement.

8. In case criminal proceedings are conducted in relation to several persons who are suspected or accused of committing one or several criminal offences, and not all suspects or the accused agreed to conclude the agreement, such agreement may be concluded with one of the (several) suspects or the accused. Criminal proceedings in relation to the person (persons) with whom agreement was reached shall be subject to disjoining in separate proceedings.

In case several victims, who suffered from one (the same) criminal offence, participate in the criminal proceedings, the agreement may only be concluded and approved with all victims.

In case several victims, who suffered from different criminal offences, participate in the criminal proceedings, and not all of them agreed to conclude the agreement, such agreement may be concluded with one (several) victims. Criminal proceedings in relation to the person (persons) with whom agreement was reached shall be subject to disjoining in separate proceedings.

#### **Article 470. Circumstances to Be Considered by the Public Prosecutor When Concluding a Plea Agreement**

1. When taking decision on the conclusion of a plea agreement, the public prosecutor shall be required to take into consideration the following circumstances:

1) degree and nature of cooperation on the part of the suspect or the accused in conducting criminal proceedings regarding him or other persons;

2) nature and severity of the charges brought (suspicion);

3) availability of public interest in ensuring a faster pre-trial investigation and trial, and detection of more criminal offences;

4) availability of public interest in prevention, detection and termination of more criminal offences or other more serious criminal offences.

#### **Article 471. Content of a Reconciliation Agreement**

1. A reconciliation agreement shall indicate its parties, statement of the suspicion or charges and their legal determination with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, the circumstances essential for the criminal proceedings concerned, the amount of damage caused by criminal offence, the time period for its compensation or the list of actions other than compensation, which the suspect or the accused is required to take in favour of the victim, the time period for completion of such actions, agreed punishment and consent of the parties to the imposition of that punishment or to the imposition of a punishment and relief from serving the punishment on parole, the implications of conclusion

and approval of the agreement, set forth in Article 473 of the present Code, and implications of non-execution of the agreement.

The agreement shall indicate the date of its conclusion and shall be signed by the parties.

#### **Article 472. Content of a Plea Agreement**

1. A plea agreement shall indicate its parties, statement of the suspicion or charges and their legal determination with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, the circumstances essential for the criminal proceedings concerned, unconditional admission by the suspect or the accused of his guilt in committing criminal offence, the duties (obligations) of the suspect or the accused regarding cooperation in detection of the criminal offence perpetrated by other person (provided the corresponding arrangements took place), agreed punishment and agreement of the suspect or the accused to imposition of such punishment (sentencing) or to imposition of a punishment (sentencing) and relief from serving the punishment on parole, the implications of conclusion and approval of the agreement, set forth in Article 473 of the present Code, and implications of non-execution of the agreement.

The agreement shall indicate the date of its conclusion and shall be signed by the parties.

#### **Article 473. Implications of Conclusion and Approval of an Agreement**

1. Conclusion and approval of a reconciliation agreement shall have the following implications:

a) for the suspect or the accused – restriction of his right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the present Code, and waiver from the rights set forth in subparagraph 1 of paragraph 4 of Article 474 of the present Code;

б) for the victim – restriction of his right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the present Code, deprivation of the right to demand, at a later date, making the person criminally liable for the corresponding criminal offence and to change his claims for compensation for the inflicted damage.

2. The implications of conclusion and approval of a plea agreement for the public prosecutor, the suspect or the accused shall be restriction of their right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the present Code, and for the suspect or the accused also waiver of the rights set forth in subparagraph 1 of paragraph 4 of Article 474 of the present Code.

#### **Article 474. General Procedure for Trial Based on an Agreement**

1. If an agreement was reached at the stage of pre-trial investigation, the indictment together with the agreement signed by the parties to it shall be referred to court without delay. The public prosecutor shall have the right to postpone referral of the indictment together with the agreement signed by the parties to it to court until the receipt of the expert's findings or completion of other investigation actions required to collect and fix evidence which can be lost in the course of time or which will be impossible to conduct/perform later without significant detriment to their results in case the court refuses to approve the agreement.

2. The court shall examine the agreement during the preparatory court session with compulsory participation of the parties thereto and notification of other participants in court proceedings. Absence of other participants in court proceedings shall not preclude such examination.

3. If an agreement was reached during trial, the court shall immediately suspend the conduct of procedural actions and start examination of the agreement.

4. Prior to taking the decision on approval of the plea agreement, the court, during court session, must find out whether the accused understands clearly enough the following:

1) that he has the right to a fair trial during which the public prosecutor shall be required to prove beyond any reasonable doubt each circumstance in respect of the criminal offence of which he is accused, and that he has the following rights:

keep silence, and the fact of keeping silence will not have any probative value for court;

be represented by the defence counsel, including getting legal assistance free of charge in accordance with the procedure and in the cases stipulated by law, or conduct his own defense;

examine, during trial, witnesses for the prosecution, file motions to summon witnesses, and produce evidence in his favor;

2) implications of the conclusion and approval of agreements set forth in Article 473 of the present Code;

3) nature of each charge in relation to which the accused pleads guilty;

4) type of punishment and other measures/actions which will be enforced against him if the court approves the agreement.

5. Prior to taking the decision on approval of the reconciliation agreement, the court, during court session, must find out whether the accused understands clearly enough the following:

1) that he has the right to a fair trial during which the prosecution shall be required to prove beyond any reasonable doubt each circumstance in respect of the criminal offence of which he is accused, and that he has the following rights:

keep silence, and the fact of keeping silence will not have any probative value for court;

be represented by the defence counsel, including getting legal assistance free of charge in accordance with the procedure and in the cases stipulated by law, or conduct his own defense;

examine, during trial, witnesses for the prosecution, file motions to summon witnesses, and produce evidence in his favor;

2) implications of the conclusion and approval of agreements set forth in Article 473 of the present Code;

3) nature of each charge;

4) type of punishment and other measures/actions which will be enforced against him if the court approves the agreement.

Besides, prior to taking the decision on approval of the reconciliation agreement, the court, during court session, must find out whether the victim understands clearly enough the implications of approval of the agreement, set forth in Article 473 of the present Code.

6. The court shall be required to make sure, during court session that the agreement was concluded by the parties thereto voluntarily, i.e. without use of compulsion, threats or promises or any other circumstances other than those provided for in the agreement. In order to ascertain voluntariness of the agreement the court may, where necessary, request documents, including any complaints of the suspect or the accused, filed by them during criminal proceedings and decision taken as a result of their consideration, as well as summon and interview persons in court.

7. The court shall verify whether the agreement complies with the requirements of this Code and/or the law. The court shall deny approval of the agreement if:

1) the terms and conditions of the agreement contradict the requirements of this Code and/or the law, including wrong legal determination of the nature of criminal offence which is

more severe than the one in respect of which the possibility of conclusion of the agreement is provided for;

2) the terms and conditions of the agreement do not substantially correspond to the public interests;

3) the terms and conditions of the agreement violate the rights, freedoms or interests of the parties to the agreement or other persons;

4) there are solid grounds to believe that the agreement was not concluded voluntarily or the parties have not reconciled;

5) it is obvious that the accused cannot fulfill the obligations assumed under the agreement;

6) there are no factual evidence to establish guilt.

In such cases the pre-trial investigation or trial shall continue in accordance with the regular procedure.

8. Addressing the court for the approval of another agreement during the same criminal proceedings shall not be allowed.

#### **Article 475. Judgment Based on an Agreement**

1. If the court makes sure that the agreement may be approved, it shall pass the judgment by which it approves the agreement and imposes the punishment agreed between the parties.

2. Judgment based on the agreement shall meet general requirements for judgments of guilty with due regard for the specifics set forth in paragraph 3 of this Article.

3. The reasoning part of the judgment based on the agreement must contain: statement of the charges with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, which concerns the criminal offence in perpetration of which the person was accused; information about the concluded agreement, its details, content and the imposed punishment; reasons from which the court proceeded when deciding on compliance of the agreement with this Code and the law and passing the judgment, and the legal provisions the court was guided by.

The operative part of the judgment based on the agreement must contain the decision on approval of the agreement with indication of its detail, decision on the guilt of the person with reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, decision on imposition of the punitive measures agreed between the parties for each of the charges and the final punishment, as well as other data/information set forth in Article 374 of the present Code.

4. Judgment based on the agreement may be appealed against in accordance with the procedure stipulated in the present Code and based on the reasons/grounds set forth in Article 394 of the present Code.

#### **Article 476. Implications of Non-Execution of the Agreement**

1. In case of non-execution of the reconciliation agreement or plea agreement, the victim or the public prosecutor, respectively, shall have the right to address the court, which approved such agreement, with the motion to revoke the judgment (sentence). The motion for revocation of the judgment, by which the agreement was approved, may be filed within the statutory period of limitations established for making the person criminally liable for perpetration of the corresponding criminal offence.

2. The motion for revocation of the judgment, by which the agreement was approved, shall be examined in court session with participation of the parties to the agreement and with notification of other participants in the court proceedings. Absence of other participants in court proceedings shall not preclude such examination.

3. The court, by its ruling, shall revoke the judgment by which the agreement was approved, provided the person who filed the corresponding motion proves that the convict failed to fulfill the terms and conditions of the agreement. The revocation of the judgment shall entail fixing a trial in accordance with the regular procedure, or returning the materials of proceedings for the completion of the pre-trial investigation in accordance with the regular procedure if the agreement was initiated at the stage of the pre-trial investigation.

4. The ruling on revocation of the judgment by which the agreement was approved, or on the refusal to do so may be appealed against in accordance with the appeal procedure.

5. Deliberate non-execution of the agreement shall be the reason for making the person criminally liable under the law.

## **Chapter 36. Private Criminal Proceedings**

### **Article 477. Concept of private criminal proceedings**

1. Private criminal proceedings means proceedings which may be initiated by investigator, public prosecutor only based on the victim's application in respect of criminal offences established in:

1) paragraph 1 of Article 122 (intentional bodily injury of moderate severity, without aggravating circumstances), Article 125 (intentional bodily injuries of light severity), paragraph 1 of Article 126 (intentional infliction of a blow or beating or committing other violent acts without aggravating circumstances), paragraph 1 of Article 129 (threats of murder without aggravating circumstances), Article 132 (disclosing information on medical examination for AIDS or any other incurable infectious disease), paragraph 1 of Article 133 (infecting with venereal disease without aggravating circumstances), paragraph 1 of Article 135 (leaving in danger without aggravating circumstances), paragraph 1 of Article 136 (failure to provide assistance to the person being in the state which is harmful to his life, without aggravating circumstances), paragraph 1 of Article 139 (failure for a medical worker to provide assistance to the patient without aggravating circumstances), paragraph 1 of Article 142 (illegal experiments on a human being, without aggravating circumstances), Article 145 (illegally disclosing of a medical secret), paragraph 1 of Article 152 (rape without aggravating circumstances), Article 154 (forcing to sexual relations), paragraph 1 of Article 161 (violation of equality of citizens on the ground of their race, ethnic origin or religious beliefs, without aggravating circumstances), paragraph 1 of Article 162 (breaking inviolability of home without aggravating circumstances), paragraph 1 of Article 163 (breaking the secrecy of letters, telephone conversations, telegraph or any other correspondence transmitted through means of communication or computer, without aggravating circumstances), paragraph 1 of Article 164 (avoiding payment of alimony for children, without aggravating circumstances), paragraph 1 of Article 165 (avoiding payments for dependent parents, without aggravating circumstances), paragraph 1 of Article 168 (disclosing the secrecy of adoption, without aggravating circumstances), paragraph 1 of Article 176 (violation of intellectual property rights and related rights, without aggravating circumstances), paragraph 1 of Article 177 (violation of the right to invention, utility model, design, topography)

of integrated circuit, variety of plants, innovation), Article 180 (impeding worship), Article 182 (violation of privacy), paragraph 1 of Article 194 (intentionally destroying or damaging property, without aggravating circumstances), Article 195 (threat of destroying property), Article 197 (disrespecting duties with regard to protection of property), Article 203<sup>1</sup> (illegal trafficking in laser disks, templates, equipment and raw material for fabrication thereof), paragraph 1 of Article 206 (obstructing legal business activities, without aggravating circumstances), Article 219 (bankrupting in terms of actions which caused damage to lenders), Article 229 (illegally using a brand, trade mark, qualified indication of the origin of good), Article 231 (illegal collection, with a view to to use, or illegal use of information which constitutes commercial or bank secret), Article 232 (disclosing commercial or bank secret), Article 232<sup>1</sup> (illegal use of insider information in terms of actions which caused damage to rights, freedoms and interests of private citizens or interests of legal persons), Article 232<sup>2</sup> (concealing information on issuer's activities), paragraph 1 of Article 355 (forcing to fulfill or not to fulfill civil obligations, without aggravating circumstances), Article 356 (arbitrariness in terms of actions which have caused damage to rights and interests of citizens or interests of an owner), paragraph 1 of Article 361 (unauthorized interference in the operation of electronic computing machines (computers), automated systems, computer networks or electricity supply networks, without aggravating circumstances), paragraph 1 of Article 362 (unauthorized actions with information processed in electronic computing machines (computers), automated systems, computer networks or stored in mediums of such information, committed by the person who has access thereto, without aggravating circumstances), Article 364<sup>1</sup> (abuse of powers by an official of a private law legal person, irrespective of its organisation and legal form), Article 365<sup>1</sup> (excess of powers by an official of a private law legal person, irrespective of its organisation and legal form), Article 365<sup>2</sup> (abuse of powers by persons providing public services) of the Criminal Code of Ukraine;

*{Subparagraph 1 of Paragraph 1 of Article 477 as amended by Law #721-VII of 16.01.2014 lapses in effect under Law # 732-VII of 28.01.2014; as amended by Law #767-VII of 23.02.2014}*

2) paragraph 2 of Article 122 (intentional bodily injuries of moderate severity, with aggravating circumstances), paragraph 1 of Article 126 (beating and victimizing with aggravating circumstances, except when committed by a group of individuals), Article 128 (unintentional bodily injuries of grave and moderate severity), paragraph 1 of Article 130 (willfully exposing a person to the risk of infecting with AIDS or any other incurable infectious disease which is harmful to the life of human being), paragraph 1 of Article 146 (illegally depriving a person of freedom or kidnapping a person, without aggravating circumstances), paragraph 2 of Article 152 (repeatedly raping or raping an underage female or male), paragraph 1 and 2 of Article 153 (violent sexual intercourse in an unnatural way), paragraph 1 of Article 286 (disregard of road laws or vehicle operating rules by drivers, without aggravating circumstances), paragraph 1 of Article 296 (hooliganism, without aggravating circumstances), paragraph 2 of Article 361 (unauthorized interference in the operation of computing engines (computers), automated systems, computer networks or electricity supply networks, with aggravating circumstances), paragraph 2 of Article 362 (unauthorized actions with information processed in computing engines (computers), automated systems, computer networks or stored in mediums of such information, such actions being committed by the person who has access thereto) of the Criminal Code of Ukraine - if committed by spouse of the victim;

3) Article 185 (theft, except theft committed by an organized group), Article 186 (robbery, except robbery committed by an organized group), Article 189 (extortion, except when

committed by an organized group, as well as extortion associated with violence harmful to the life and health of human being), Article 190 (fraud, except fraud committed by an organized group), Article 191 (misappropriation of property or taking property in possession through abuse of official position, except when committed by an organized group), Article 192 (causing material damage through deceit or misuse of confidence), paragraph 1 or 2 of Article 289 (illegally taking over a vehicle, without especially aggravating circumstances), Article 357 (theft, misappropriation, extortion of documents, stamps, seals, taking over them through fraud or abuse of official position or damaging them) of the Criminal Code of Ukraine, if committed by spouse of the victim, his other close relative of family member, or if committed by a person who was employed by the victim and caused damage to the property of the victim exclusively.

**Article 478. Beginning private criminal proceedings**

1. The victim may file with investigator, public prosecutor, other officer of the agency authorized to commence pre-trial investigation, an application that a criminal offence has been committed, within the periods of limitation for prosecution for the commission of the criminal offence concerned.

**Article 479. Reparation of damage caused to the victim, in private criminal proceedings**

1. Damage caused to the victim in criminal proceedings in the form of private accusation, may be repaired on grounds of a reconciliation agreement or without such.

**Chapter 37. Criminal Proceedings with Regard to a Specific Category of Individuals**

**Article 480. Individuals subject to special procedure of criminal proceedings**

1. A special procedure for criminal proceedings shall apply with regard to:

- 1) people's deputy of Ukraine;
- 2) judge of the Constitutional Court of Ukraine, professional judge, as well as juror, and people's assessor at the time when they administer justice;
- 3) candidate for the office of the President of Ukraine;
- 4) Commissioner of the Verkhovna Rada of Ukraine for human rights;
- 5) Head of the Chamber of Accounts, his first deputy, deputy, Chief Comptroller and secretary of the Chamber of Accounts;
- 6) deputy of local council;
- 7) defense attorney;
- 8) Prosecutor-General of Ukraine, his deputy;
- 9) Director and officials of the National Anti-Corruption Bureau of Ukraine.

*{Subparagraph 9 is added to Article 480 by Law [№ 1698-VII of 14.10.2014](#)}*

**Article 481. Notification of suspicion**

1. A written notice of suspicion shall be sent:

- 1) to defense counsels, members of local councils, members of the Verkhovna Rada of the Autonomous Republic of Crimea, heads of villages or townships, or town mayors by the Prosecutor General of Ukraine, the Deputy Prosecutor General, public prosecutors of the

Autonomous Republic of Crimea, oblasts, the cities of Kyiv or Sevastopol, within their competence;

2) to members of the Parliament of Ukraine, candidates for the President of Ukraine, the Human Rights Commissioner of the Verkhovna Rada, the Chairman of the Accounting Chamber of Ukraine, the First Deputy Chairman, the Deputy Chairman, Inspector General, the Secretary of the Accounting Chamber, the Director of the National Anti-Corruption Bureau of Ukraine or deputies of the Prosecutor General of Ukraine, by the Prosecutor General of Ukraine (acting Prosecutor General of Ukraine);*{Subparagraph 2 of Paragraph 1 of Article 481 as amended by Law #1235-VII of 06.05.2014 and by Law № 1698-VII of 14.10.2014}*

3) to judges of the Constitutional Court of Ukraine, professional judges, and jurors and people's assessors during court proceedings, to officials of the National Anti-Corruption Bureau of Ukraine by the Prosecutor General of Ukraine or the Deputy Prosecutor General;

*{Subparagraph 3 of Paragraph 1 of Article 481 as amended by Law № 1698-VII of 14.10.2014}*4) to the Prosecutor General of Ukraine by the Deputy Prosecutor General.

#### **Article 482. Special procedure for conviction of a criminal offense, detention, and imposition of restraint measures**

1. A judge may not be detained or be subject to an imposed measure of restraint in the form of arrest or house arrest without consent by the Verkhovna Rada of Ukraine.

2. A member of parliament of Ukraine may not be convicted of a criminal offense, be arrested or be subjected to an imposed measure of restraint in the form of arrest or house arrest without consent by the Verkhovna Rada of Ukraine.

3. A personal search or arrest of a member of parliament of Ukraine, or inspection of his/her personal belongings and luggage, personal transport, living quarters or work place, as well as breach of privacy of letters, telephone conversations, and other correspondence, and imposing other measures including secret investigative activities which, according to the law, prejudice the rights and freedoms of a member of parliament of Ukraine, may be applied only if the Verkhovna Rada of Ukraine gives consent to criminal prosecution of that member of parliament unless there are other possible ways to obtain information.

4. The special procedure for conviction of a criminal offense of a member of parliament of Ukraine shall be established by the Constitution of Ukraine, the Law of Ukraine *On the Status of a Member of Parliament of Ukraine*, the Rules and Regulations of the Verkhovna Rada of Ukraine, and this Code.

#### **Article 483. Informing public and other authorities or officials**

1. On application of a measure of restraint, rendering of a judgment, the following entities shall be informed:

1) regarding defense attorneys: the relevant lawyers self-administration agencies;

2) regarding other categories of individuals referred to in Article 480 of the present Code: authorities and officials who elected or appointed them or are responsible for filling their offices.

## **Chapter 38. Criminal Proceedings in Respect of Underage Persons**

### **§ 1. General rules of criminal proceedings in respect of underage persons**

#### **Article 484. The way in which criminal proceedings in respect of underage persons should be conducted**

1. Procedure for criminal proceedings in respect of underage defendants shall be governed by general rules of the present Code, taking account of specifics referred to in the present Article.

2. Criminal proceedings against an underage person, particularly criminal proceedings against a group of persons of whom at least one is underage, shall be carried out by an investigator who is specifically authorized by the manager of a pre-trial investigation agency to conduct pre-trial investigations against underage persons. In the course of criminal proceedings against an underage person, including proceedings in the matter of application of compulsory educational measures, the investigator, public prosecutor, investigating judge, court and all other persons participating therein shall be required to perform procedural actions in a manner which intrudes the least on the underage person's usual way of life and otherwise corresponds to his age and psychological profile, explain the substance and meaning of the procedural actions and decisions, have him heard during adoption of procedural decisions, and take other measures intended to prevent negative impact on the underage person.

3. Provisions of the present paragraph shall apply to criminal proceedings related to criminal offences committed by persons who have not attained the age of eighteen.

#### **Article 485. Circumstances to be ascertained in criminal proceedings in respect of underage persons**

1. During pre-trial investigation and trial related to criminal offences committed by underage persons, in addition to circumstances specified in Article 91 of the present Code, also the following shall be ascertained:

1) full and comprehensive information on the personality of the underage person concerned: his age (date, month and year of birth), state of health and level of development, other social and psychological personal traits which should be taken into account when individualizing his liability or imposing a measure of restraint of educational nature. Where information is available on the underage person's mental deficiency not related to a mental disease, it should also be ascertained whether he was capable to be fully aware of the meaning of his actions, and to what he was capable to be in control of his actions;

2) the underage person's attitude towards his actions;

3) environment in which the underage lives and is brought up;

4) existence of adult instigators and other accomplices in criminal offence.

#### **Article 486. Comprehensive psychology-psychiatric and psychological examination of an underage suspect or defendant**

1. Comprehensive psychology-psychiatric and psychological examination is assigned if it is necessary to find out whether the underage suspect or defendant has a mental disease or his mental development is inhibited, and whether he is able to fully or partially realize the meaning of his actions and control of his actions in a specific situation.

2. Psychological examination may be assigned to establish the level of development, other social and psychological personal traits of the underage suspect or defendant which should be taken into account imposing a punishment or enforcing a measure of restraint of educational nature.

**Article 487. Ascertaining conditions in which an underage suspect or defendant lives and is brought up**

1. When ascertaining conditions in which an underage suspect or defendant lives and is brought up, the following shall be found out:

1) composition of family of the underage person, environment therein, relations between adult family members and between adults and children, parents' attitude to education of the underage person, forms of control over his behavior, moral and household conditions in the family;

2) environment prevailing in the school or other educational institution or place of employment of the underage person, his attitude towards studies or work, relations with tutors, teachers, his peers, nature and effectiveness of educational measures which have been previously applied to him;

3) contacts and behavior of the underage person outside home, educational institution and place of employment.

**Article 488. Participation of legal representative of an underage suspect or defendant**

1. Parents or any other legal representatives of the underage person participate in criminal proceedings involving an underage suspect or defendant.

2. Legal representatives are summoned to court session. Their failure to appear in court session shall not preclude trial, except in cases when court finds their participation indispensable. They stay in courtroom throughout the entire trial and, if necessary, may be examined as witnesses.

3. On exceptional basis, when legal representative's participation can jeopardize interests of the underage suspect or defendant, the court upon his plea, public prosecutor's motion or *proprio motu*, may, by its ruling, limit the participation of the legal representative concerned in certain procedural or judicial actions, or remove him from participation in criminal proceedings and invite another legal representative in his place.

**Article 489. Procedure for summoning an underage suspect or defendant**

1. An investigator, public prosecutor, investigating judge or court shall notify or summon the underage suspect or defendant through his parents or other legal representative. A different procedure shall be permitted only if it is required by circumstances established in the course of criminal proceedings.

**Article 490. Interviewing an underage suspect or defendant**

1. Interrogation of an underage suspect or defendant shall be conducted in compliance with rules laid down in the present Code, in the presence of defense counsel.

**Article 491. Participation of a legal representative, pedagogue, psychologist or a medical practitioner in interviewing an underage suspect or defendant**

1. If the underage person has not attained 16 years of age or if he has been found mentally underdeveloped, participation of a legal representative, pedagogue, psychologist and, if necessary, medical practitioner in interviewing shall be ensured upon decision of the investigator, public prosecutor, investigating judge, court or upon application of the defense counsel.

2. Before the interview, a legal representative, pedagogue, psychologist or medical practitioner shall be advised of their right to put questions to the underage suspect or defendant. An investigator or a public prosecutor may disallow the question asked however the question shall be placed on record.

**Article 492. Imposition of a measure of restraint on an underage suspect, defendant**

1. One of the measures of restraint specified in the present Code may be applied to an underage suspect, defendant, taking into account his age-related and psychological specifics, occupation, if grounds specified in the present Code, exist.

2. Apprehension and keeping in custody may be applied to an underage person only if he is suspected or accused of committing a grave or especially grave crime, provided no other measure of restraint may ensure prevention of risks specified in Article 177 of the present Code.

3. Parents or persons who substitute them, shall be immediately informed of apprehension or taking into in custody of the underage concerned.

**Article 493. Committing an underage suspect or defendant to supervision**

1. In addition to measures of restraint specified in Article 176 of the present Code, in respect of underage suspects or defendants, committing them may be applied to supervision of their parents, custodians, caretakers, and in respect of underage persons brought up in a children care institution, committing them to supervision of that institution's administration.

2. Commitment of an underage suspect or defendant to supervision of their parents, custodians, caretakers or administration of the children care institution implies that said individuals or a representative of the administration of the children care institution undertakes in written form to ensure appearance of the underage suspect or defendant before investigator, public prosecutor, investigating judge, court as well as his proper behavior.

3. Commitment to supervision of parents and other persons shall only be possible upon their consent to that and upon consent of the underage suspect or defendant. A person who undertook to conduct supervision, shall have the right to refuse further fulfilling of this obligation, upon giving a notice thereon in advance.

4. Prior to committing an underage suspect or defendant to supervision, the court shall be required to collect information on parents, custodians or caretakers, their relations with the underage, and ascertain their ability to duly supervise the underage.

5. When undertaking obligation of supervision, parents, custodians, caretakers or administration of children care institution shall be advised of the nature of suspicion or charges brought against the underage, and of their liability in case the undertaken obligation is disregarded. For a breach of the obligation concerned, parents, custodians or caretakers shall be subject to imposition of pecuniary penalty in the amount of 2 to 5 times minimum wages.

6. The issue of committing an underage suspect or defendant to supervision of parents, custodians, caretakers or administration of the children care institution shall be considered upon motion of public prosecutor in accordance with rules for choosing a measure of restraint, or upon motion of defense, in the course of deliberating on the issue of enforcing a measure of restraint.

**Article 494. Disjoining proceedings in respect of criminal offence committed by an underage**

1. If an underage person is suspected of having committed a criminal offence together with an adult, possibility of disjoining proceedings in respect of the underage shall be deliberated during pre-trial investigation.

**Article 495. Temporarily removing the underage defendant from the courtroom**

1. Having heard the opinion of public prosecutor, defense counsel and legal representative of the underage defendant, the court by its ruling may remove him from the courtroom for the time necessary to ascertain circumstances which can adversely affect the underage defendant concerned.

2. After the underage person returns to the courtroom, presiding judge shall let him know the results of examination of circumstances which was conducted in his absence, and gives him the possibility to put questions to individuals who were examined in his absence.

**Article 496. Participation in trial of representatives of children delinquency service and criminal militia for matters of children**

1. On time and place of trial involving underage defendant, the court shall inform the appropriate children delinquency prevention service and criminal militia department for matters of children. The court may also summon representatives of these institutions to attend court session.

2. Representatives of children delinquency prevention service and criminal militia department for matters of children may submit motions, ask questions to the underage defendant, his legal representative, victim, witnesses, expert and specialist, express their opinions about the most appropriate measures aimed at the underage defendant's reeducation.

**Article 497. Procedure for imposition of compulsory educational measures on underage accused**

1. If at the stage of pre-trial investigation, public prosecutor comes to a conclusion that the underage person who is accused of committing a criminal misdemeanor, a crime of moderate severity, or a reckless crime of moderate severity for the first time, may be corrected without imposition of criminal sanction, the public prosecutor shall draw up a motion to impose on the underage person compulsory educational measures, and sends the motion to court.

2. Based on the grounds referred to in paragraph one of the present Article, the motion to impose compulsory educational measures on the underage defendant may be drawn up and sent to court, provided the underage defendant and his legal representative do not object thereto.

3. If grounds specified in paragraph one of the present Article exist, the court, during trial, may take a decision to apply to the underage defendant compulsory educational measures provided for in the Law of Ukraine on criminal liability.

## **§ 2. Application of compulsory educational measures on underage persons who have not attained the age of criminal discretion**

### **Article 498. Grounds for application of compulsory educational measures**

1. Criminal proceedings in respect of application of compulsory educational measures specified by the Law of Ukraine on criminal liability, shall be conducted if a person who has attained the age of eleven but has not yet attained the age after which criminal liability may ensue, commits a socially dangerous act which contains elements of action punishable under the Law of Ukraine on criminal liability.

### **Article 499. Pre-trial investigation in criminal proceedings regarding imposition of compulsory educational measures**

1. Pre-trial investigation in criminal proceedings regarding imposition of compulsory educational measures is conducted as prescribed in the present Code. Such investigation shall be carried out by an investigator specifically authorized by the manager of a pre-trial investigation agency to conduct pre-trial investigations against underage persons.

2. Required procedural actions are conducted at the stage of pre-trial investigation to ascertain circumstances under which a socially dangerous act has been committed, and establish personality of the underage person.

3. Participation of a defense counsel in criminal proceedings shall be mandatory.

4. Where there are reasonable grounds for believing that the person specified in Article 498 of the present Code has committed a socially dangerous act which contains elements of action punishable under the Criminal Code of Ukraine by imprisonment for a term of over five years, he may be placed in a children's placement centre for the period of up to thirty days based on a ruling of investigating judge, court, adopted upon motion of public prosecutor in accordance with rules specified for selecting a measure of restraint in the form of keeping in custody.

Investigating judge, court shall be required to refuse to place a person in a children's placement centre unless the public prosecutor proves reasonable grounds for believing that this person has committed a socially dangerous action which contains elements of action punishable under the Criminal Code of Ukraine by imprisonment for a term of over five years, the existence of risks providing sufficient grounds to believe that the person concerned may commit actions specified in Article 177 of the present Code, and that none of less strict measures can prevent this.

The period of keeping the person in a children's placement centre may be extended by investigating judge's, court's ruling by up to thirty days. The issue of terminating or extending the period of keeping in children's placement centre shall be disposed in the procedure provided for terminating the measure of restraint in the form of keeping in custody, or extending the period of keeping in custody, respectively.

5. If there are no grounds for closing criminal proceedings, public prosecutor approves a motion drawn up by investigator, draws the motion himself/herself, on applying to the underage person of compulsory educational measures, and sends it to his court according to the procedure laid down in the present Code.

### **Article 500. Procedure for court consideration**

1. Trial is conducted in court session with participation of public prosecutor, legal representative, defense counsel and representatives of children delinquency prevention service

and criminal militia department for matters of children, if they appear or have been summoned to court session as prescribed by general rules of the present Code.

2. Trial ends in passing a ruling on application of compulsory educational measures or on refusal to apply such measures.

#### **Article 501. Court's rulings in criminal proceedings regarding the imposition of compulsory educational measure**

1. When passing a ruling in criminal proceedings in respect of the imposition of compulsory educational measures, the court finds out the following:

- 1) whether a socially dangerous action has really occurred;
- 2) whether such action was committed by the underage concerned in the age from eleven till the age of criminal responsibility for this act;
- 3) whether it is necessary to impose compulsory educational measure and, if so, which measure exactly.

2. If, during trial, one of the circumstances referred to in subparagraph 1 or 2 of paragraph one of this Article, the court shall be required to pass a ruling on the denial of imposition of compulsory educational measure and shall close criminal proceedings.

3. When the compulsory measure in the form of placement in special educational-correctional institution is imposed on the underage, the criminal militia department for matters of children shall be required to deliver the underage person to the special educational-correctional institution.

4. Ruling which was passed after consideration of the motion to impose compulsory educational measure may be challenged as prescribed in the present Code.

#### **Article 502. Early release from a compulsory educational measure**

1. The court in whose territorial jurisdiction operates the special educational-correctional institution may, by its ruling, release the underage concerned from the compulsory educational measure ahead of time as prescribed in the present Code.

2. Such court's ruling may be passed upon motion of the underage person, his defense counsel, legal representative, or public prosecutor, if the underage concerned, when being in special educational-correctional institution, displays behavior which confirms that the underage has been re-educated. Deliberating on the motion, the court shall hear the opinion of the board of the special educational-correctional institution where the underage person is kept, regarding the possibility of his early release from the compulsory educational measure.

### **Chapter 39. Criminal proceedings in the matter of application of compulsory medical measures**

#### **Article 503. Grounds for conducting criminal proceedings in respect of application of compulsory medical measures**

1. Criminal proceedings in the matter of imposition of compulsory medical measures provided for the by the law of Ukraine on criminal liability shall be conducted where there are reasonable grounds for believing that–

- 1) a person committed a socially dangerous act provided for the by the law of Ukraine on criminal liability in the state of insanity;

2) a person committed a criminal offence in the state of sanity but fell mentally ill before the passing of judgment.

2. Where grounds for conducting criminal proceedings in respect of the imposition of compulsory medical measures in the course of pre-trial investigation, the investigator, public prosecutor, shall issue a resolution to change the procedure of pre-trial investigation and shall continue it under the rules provided for by this Chapter.

3. Criminal law assessment of the socially dangerous act committed in a state of insanity shall be built only on the information that characterizes social danger of acts committed. At that, shall not be taken into account previous criminal history, the fact of commission of criminal offence in the past for which the individual concerned was released from liability or punishment, the fact that compulsory medical measures were imposed on this individual.

4. Compulsory medical measures shall be applied only to persons who are socially dangerous.

**Article 504. Procedure for pre-trial investigation in criminal proceedings in respect of application of compulsory medical measures and in respect of partially insane persons.**

1. Pre-trial investigation in criminal proceedings in respect of application of compulsory medical measures shall be conducted by an investigator in accordance with general rules laid down in the present Code, taking into account provisions of the present Chapter.

2. Pre-trial investigation in respect of persons suspected of commission of criminal offences in the state of partial insanity, shall be conducted by an investigator in accordance with general rules laid down in the present Code. Passing a judgment, the court may take into account the state of limited criminal capacity as grounds for application of compulsory medical measures.

**Article 505. Circumstances to be ascertained during pre-trial investigation in criminal proceedings in respect of application of compulsory medical measures**

1. During pre-trial investigation in criminal proceedings in respect of application of compulsory medical measures, the following shall be ascertained:

1) time, place, means, and other circumstances of the commission of a socially dangerous act or criminal offence;

2) commission of this socially dangerous act or criminal offence by the person concerned;

3) existence of this person's mental disorder in the past, degree and nature of mental disorder or mental disease at the time of commission of the socially dangerous act or criminal offense, or at the time of pre-trial investigation;

4) behavior of the person both before and after the commission of the socially dangerous act or criminal offence;

5) the danger which the person presents is in consequence of his mental state, for himself/herself and for other persons, as well as well as the likelihood of such person causing other serious damage;

6) nature and amount of damage caused by the socially dangerous act or criminal offence.

7) the circumstances proving that the money, valuables and other property subject to special confiscation have been gained as a result of a social dangerous act or criminal violation and/or are the proceeds of such property or have been intended (used) for a person to commit a socially dangerous act or criminal violation, financing and/or supporting materially a socially dangerous act or criminal violation, related inter alia to their illicit trafficking, or have been

sought, made, modified or used as a means or instrument of commission of a socially dangerous act or criminal violation.

*{Subparagraph 7 is added to Paragraph 1 of Article 505 by Law 1261-VII of 13.05.2014}*

**Article 506. Rights of the person who participates in criminal proceedings, in respect of imposing compulsory medical measures**

1. A person in whose respect it is provided to apply compulsory medical measures or the matter of applying was considered shall enjoy the rights of the suspect and the accused in the scope which is determined by the nature of mental disorder or mental disease as established in accordance with findings of forensic psychiatric examination, and shall realize such rights through a legal representative, defence counsel.

2. If the nature of mental disorder or mental disease of the person precludes the conduct of a procedural action with his participation or his participation in court session, public prosecutor, court in court session, public prosecutor, court may decide to conduct appropriate procedural actions without his participation.

**Article 507. Participation of a defense counsel**

1. Defense counsel's participation in criminal proceedings regarding imposition of compulsory medical measure, shall be mandatory.

**Article 508. Measures of restraint**

1. The court may apply to a person in whose respect it is provided to apply compulsory medical measures or the matter of applying was considered the following measure of restraint:

1) commitment for care to custodians, close relatives or family members, under mandatory medical supervision;

2) placement in a psychiatric institution under the regime which excludes their dangerous behavior.

2. The court imposes measures of restraint referred to in paragraph one of this Article, to the person as soon as the fact of mental disorder or mental disease has been established.

3. Specified measures of restraint shall be applied in accordance with general rules prescribed by the present Code.

**Article 509. Psychiatric examination**

1. The investigator, public prosecutor shall be required to involve an expert (experts) to carry out a psychiatric examination where in the course of criminal proceedings there are established circumstances giving grounds for believing that the person at the time of commission of a socially dangerous act was insane or partially insane or was sane at the time of commission of a criminal offence but fell ill thereafter with a mental disease which makes him unable to recognise or be in control of his actions, such circumstances being *inter alia*–

1) mental disorder or mental disease of the person as certified by a medical document;

2) inadequacy of the person's behavior at the time or after committing of the socially dangerous act (disturbance of consciousness, dysfunction of perception, thinking, will, emotions, intellect or memory, etc.).

2. Whenever prolonged observation and examination of the person is necessary, in-hospital psychiatric examination may be undertaken, for which purpose he is placed in an appropriate medical institution for the period which does not exceed two months. The issue of placing the

person in a medical institution for carrying out psychiatric expert examination shall be disposed at the time of pre-trial investigation by the investigating judge's ruling upon motion of a party to criminal proceedings, in a procedure laid down for submission and consideration of motions to enforce a measure of restraint, and during court proceedings, by a ruling of the court.

3. Investigating judge's ruling to place institution for carrying out psychiatric expert examination or to refuse to do so may be challenged in appeals procedure.

#### **Article 510. Joining and disjoining criminal proceedings**

1. Criminal proceedings conducted in accordance with general rules provided for in the present Code and criminal proceedings regarding application of a compulsory medical measure, may be joined in one or disjoined in separate proceedings if grounds specified in the present Code, are present.

#### **Article 511. Completion of pre-trial investigation in criminal proceedings regarding application of a compulsory medical measure**

1. Pre-trial investigation in criminal proceedings regarding application of compulsory medical measures shall end with closing proceedings or drawing up a motion to apply compulsory medical measures.

2. Public prosecutor takes a decision to close criminal proceedings which may be challenged in a procedure prescribed by the present Code. The decision to close criminal proceedings shall be sent to local public health authorities.

3. Public prosecutor shall approve a motion drawn up by investigator, or himself/herself draws up the motion to apply compulsory medical measures, and sends it to court in a procedure prescribed by the present Code.

#### **Article 512. Court trial**

1. Court trial is conducted in a court session by a sole judge, with the participation of a public prosecutor, a legal representative, and a defense counsel in accordance with the general rules of this Code. Participation of a person subject to the application of compulsory medical measures is not obligatory and may take place unless prevented by the nature of mental disorder or illness.

2. Following trial, the judge passes a ruling on application of compulsory medical measures or on refusal to do so.

3. If criminal proceedings conducted in accordance with regular procedure established in the present Code are joined with proceedings regarding imposition of compulsory medical measures, they are considered in court session within the framework of one proceeding as prescribed in the present Code. After the end of trial, the court retires in deliberation room to render a judgment in respect of the defendant and to pass a ruling to apply compulsory medical measures.

#### **Article 513. Court's ruling in criminal proceedings regarding application of compulsory medical measures**

1. When passing a ruling to apply compulsory medical measures, the court shall find out the following:

1) whether a socially dangerous action, criminal offence was committed;

2) whether such socially dangerous action, criminal offense was committed by the person concerned;

3) whether the person committed the socially dangerous action, criminal offense in a state of insanity;

4) whether after commission of criminal offense, the person fell ill with a mental disease which precludes imposition of punishment;

5) whether it is necessary to apply compulsory medical measures to the person, and if so, which ones exactly.

2. Having found as proved that the person concerned has committed the socially dangerous action in a state of insanity or after commission of criminal offense, fell ill with a mental disease which precludes imposition of punishment, the court shall pass a ruling to apply compulsory medical measures.

3. Having found that the socially dangerous action, criminal offense was not committed or was committed by another person, as well as that it was not proved that the person concerned has committed the socially dangerous action, criminal offense, the court shall pass a ruling to refuse to apply compulsory medical measures, and shall close the criminal proceedings.

4. If it is established that the socially dangerous action has been committed by the person in a state of insanity who at the moment of trial, has recovered or, as a result of changes in his state of health, applying compulsory medical measures is no longer needed, the court passes a ruling to close criminal proceedings regarding application of a compulsory medical measure.

5. The court may also close criminal proceedings regarding application of compulsory medical measures, if insanity of the person at the moment of commission of the socially dangerous action has not been established, as well as in case the person fell ill with mental disease after the commission of criminal offense. In such case, after the court closes criminal proceedings regarding application of compulsory medical measures, public prosecutor shall be required to commence criminal proceedings in general procedure.

#### **Article 514. Extension, change or termination of a compulsory medical measure**

1. Compulsory medical measure shall be extended, changed or terminated upon ruling of the court within whose territorial jurisdiction this measure has been imposed or medical treatment conducted.

2. Change or termination of application of a compulsory medical measure shall be effected if the person who committed a socially dangerous action in state of insanity, recovered, or if as a result of changes in his state of health, the need to apply the previously imposed measure of medical nature no longer exists.

3. Consideration of the issue of extending, changing or terminating the application of a compulsory medical measure shall be conducted upon request of a representative of the medical institution (a psychiatrist) where the person is held, in accordance with the procedure laid down in Article 95 of the Criminal Code of Ukraine and in Article 512 of the present Code. The request shall be attached an opinion of a panel of psychiatrists which substantiates the necessity to extend, change or terminate the application of such compulsory measures.

4. The extension of the application of compulsory medical measures imposed by a decision of a court in a foreign state to a person extradited to Ukraine under the procedure specified by articles 605 through 611 of this Code and the international treaties of Ukraine shall be decided based on the outcomes of court hearings.

### **Article 515. Reopening criminal proceedings**

1. If the person who after commission of criminal offense, fell ill with mental disease, or suffered a temporary mental disorder or other mental affection which deprived him of capacity to be aware of or to control his actions, the court, based on the opinion of the panel of psychiatrists, by its ruling, terminates the application of compulsory medical measures.

2. Passing the ruling on termination of the imposed compulsory medical measures shall constitute the ground for the conduct of pre-trial investigation or trial.

3. If this person is sentenced to imprisonment, restriction of liberty or commitment to a military disciplinary unit, the time he spent in medical institution is credited to the service of the sentenced pronounced.

4. If, at the time when the issue of reopening criminal proceedings was considered, period of limitation has expired or a new law is adopted which abolishes criminal liability for the committed criminal offense, criminal proceedings shall be closed unless the person in whose respect the issue is being considered objects thereto.

### **Article 516. Challenging court's ruling**

1. Court's ruling on application or refusal to apply compulsory medical measures, on extending, changing, termination of application of compulsory medical measures or on refusal to do so, may be challenged in accordance with the procedure established by the present Code.

In such a case, objections may be made to the court's ruling to close criminal proceedings regarding the application of compulsory medical measures which shall be stated in an appellate complaint filed following a trial in accordance with the general procedure established by this Code.

## **Chapter 40. Criminal Proceedings Containing State Secret**

### **Article 517. Protecting State secrets during criminal proceedings**

1. Pre-trial investigation and trial in criminal proceedings involving information that constitutes a state secret shall be conducted in accordance with rules governing secrecy order.

2. Procedural decisions shall not contain information that constitutes state secret.

3. Criminal proceedings involving information that constitutes state secret shall be accessible to persons with an appropriate security clearance for state secret and with access to specific classified information (category of classified information) and physical media on which it is stored. A suspect or a defendant may participate in criminal proceedings without having a formal access to state secret after being explained the requirements of article 28 of the Law of Ukraine *On State Secret* and warned of criminal responsibility for disclosure of information that constitutes state secret.

4. Access to materials containing information which constitutes State secret, shall be granted to defense counsels and legal representatives of the suspect, accused, victim and his representative, translator, expert, specialist, secretary in court session, bailiff, who have been granted access to State secrets and who require such access in the discharge of their rights and duties as laid down in the present Code, proceeding from circumstances established during criminal proceedings. Decisions to grant access to particular secret information and mediums thereof are made in the form of orders or written instructions by the head of pre-trial investigation agency, public prosecutor, court.

5. The victim and his representatives, translator, expert, specialist, secretary in court session, bailiff shall not be allowed to take notes from and copy materials containing State secrets.

Defense counsels and legal representatives of a suspect or defendant shall not be allowed to copy materials containing State secrets.

The suspect, accused person, his defense counsels and legal representatives may take notes from materials containing State secrets. The person who has taken such notes shall seal in a manner precluding access to their contents. The notes are kept in compliance with the rules of secrecy at the body of pre-trial investigation or court and released to the person who has taken such notes, on his demand, on the premises of the body of pre-trial investigation pending pre-trial investigation or those of the court, pending court proceedings. No other person, but the one who has taken such notes, shall be allowed to read them.

6. Physical mediums containing secret information which have not been attached to materials of pre-trial investigation shall be transferred according to the procedure established by law, for storage to the pre-trial investigation agency's unit in charge of secret documentation.

7. Conducting criminal proceedings which contain a State secret shall not be grounds for limiting the rights of its participants, except as provided for by law and where so warranted by the necessity to protect State secrecy.

#### **Article 518. Specific features of conducting expert examination in criminal proceedings containing State secret**

1. Expert examination regarding the legality of classifying information in the field of defense, economy, science and technology, foreign relations, state security and law enforcement, as State secret, changing the level of confidentiality of such information and declassifying it, preparing opinions on damage caused to Ukraine's national security in case of disclosure of secret information or loss of physical mediums containing such information shall be conducted by an official charged with functions of state expert on matters of secrecy as prescribed by the relevant statute in the field of state secrets. In such a case, rights and duties prescribed in the present Code for experts shall extend to the person concerned.

2. Whenever during expert examination, methods, technologies or information are used containing secrets protected by the State, descriptive part of findings of expert examination shall omit such information.

### **Chapter 41. Criminal Proceedings in the Territory of Diplomatic Missions, Consular Posts, Ships of Ukraine**

#### **Article 519. Officials authorized to conduct procedural actions**

1. Officials who are authorized to conduct procedural actions shall be:

1) head of the diplomatic mission or consular post of Ukraine, if a criminal offence has been committed in the territory of the diplomatic mission or consular post of Ukraine abroad;

2) captain of the Ukrainian ship, if a criminal offence has been committed on the air, sea, or river craft, which navigates outside the limits of Ukraine under the flag or with distinctive sign of Ukraine whenever the home port of such craft is located in Ukraine.

2. Head of the diplomatic mission or consular post of Ukraine, captain of the Ukrainian ship shall be required to appoint another official authorized to conduct procedural actions if he has been the victim as a result of the criminal offence concerned.

3. Officials, who conducted procedural actions, shall be involved as witnesses in criminal proceedings after its continuation in the territory of Ukraine. They shall have the duty to provide explanations to investigator, public prosecutor in respect of procedural actions conducted.

**Article 520. Procedural actions during criminal proceedings in the territory of diplomatic missions, consular posts, ships of Ukraine**

1. Officials referred to in part one of Article 519 of the present Code, shall be required to immediately conduct necessary procedural actions after they have become aware, from an application, report, on their own detection or from any other source, of circumstances which are likely to show that a criminal offence has been committed in the territory of diplomatic mission, consular post, Ukrainian ship.

2. Officials referred to in part one of Article 519 of the present Code, shall be authorized to:

1) take measures to ensure criminal proceedings in the form of temporary seizure of property, legal detention of the individual concerned as prescribed in the present Code;

2) conduct investigative (detective) actions in the form of search of the residence or any other possession of the individual concerned as well as personal search without court's ruling, of inspecting the scene of criminal offence as prescribed in the present Code.

Procedural activities carried out over the course of criminal proceedings in accordance with this article shall be documented in detail in relevant procedural records as well as recorded using the technical means for documenting criminal proceedings unless such documenting is impossible due to technical reasons.

**Article 521. Time limit for filing a request for the arrest of temporarily seized property**

1. Public prosecutor's request for arrest of temporarily seized property shall be filed not later than on the working day following the day after the person detained in the diplomatic mission, consular post, ship of Ukraine has been brought in the territory of Ukraine, otherwise such property should be immediately returned to the individual from whom it was seized.

**Article 522. Time limit of lawful detention of an individual**

1. Head of a diplomatic mission or consular post of Ukraine may detain an individual for a required period, but not in excess of 48 hours, and shall be required to ensure access of the person so detained to legal assistance.

Captain of a Ukrainian ship may detain an individual for a period which is required to bring such individual in the territory of Ukraine.

2. Officials referred to in part one of this Article, shall be required to ensure the delivery of the detained individual to a unit of the public authority in the territory of Ukraine charged with keeping detained individuals in custody, and to notify a pre-trial investigation agency in the place of conduction of the pre-trial investigation in Ukraine, of the fact of lawful detention.

**Article 523. Place of conduction of the pre-trial investigation of criminal offences committed in the territory of diplomatic missions, consular posts, ships of Ukraine**

1. Pre-trial investigation of a criminal offence committed in the territory of a diplomatic mission, consular post of Ukraine abroad shall be conducted by investigator of the pre-trial investigation agency whose jurisdiction extends to the territory where the central public authority in the sphere of foreign affairs of Ukraine is located.

2. Pre-trial investigation of a criminal offence committed on the air, sea, or river craft which navigates outside the limits of Ukraine under the flag or with distinctive sign of Ukraine, whenever the home port of such craft is located in Ukraine, shall be conducted by investigator of the pre-trial investigation agency whose jurisdiction extends to the territory where that home port is located.

*{Chapter IV is excluded by Law 767-}II of 23.02.2014}*

## **Section VII. Restoring Lost Records of Criminal Proceedings**

### **Article 524. Conditions for restoring lost records of criminal proceedings**

1. Subject to restoring shall be lost records in those criminal proceedings which ended with delivering a court judgment.

### **Article 525. Persons who may file with court an application for restoration of lost records of criminal proceedings**

1. Lost records of criminal proceedings may be restored upon application of a participant of court proceedings. Close relatives of the accused who died, may file the relevant application if it is necessary for the rehabilitation of the accused person.

### **Article 526. Jurisdiction of the application for restoration of lost records of criminal proceedings**

1. The application for restoration of lost records of criminal proceedings shall be filed with the court which delivered the judgment.

### **Article 527. Contents of the application for restoration of lost records of criminal proceedings**

1. In the application shall be stated which exactly records are requested to be restored; whether a judgment was delivered; the legal status of the applicant; who exactly and in what capacity participated in the trial; place of residence or whereabouts of these persons; what the applicant knows about circumstances under which the records of criminal proceedings were lost, on whereabouts of copies of the documents of criminal proceedings or information thereon; precisely what documents, in the applicant's opinion, it is necessary to restore; and for which purpose they need to be restored.

2. The application for restoration of lost records of criminal proceedings shall be accompanied with documents or copies thereof, even if they are not duly authenticated, which are in the applicant's possession.

### **Article 528. Effects of disregarding requirements for the application's contents, refusal to open proceedings or leaving the application without consideration**

1. If the application does not contain the purpose of restoring lost records of criminal proceedings or information necessary for their restoring, the court passes a ruling to leave the application without moving, and fixes the time limit for the rectification of such deficiencies.

2. Whenever the purpose of applying to court as stated by the applicant is not related with the protection of his rights and interests, the court, by it ruling, refuses to open proceedings on restoration of lost records of criminal proceedings or leaves the application without consideration if proceedings have already been opened.

#### **Article 529. Preparing application for consideration**

1. Having received the application for restoration of lost records of criminal proceedings, the judge takes measures to obtain from public prosecutor the information and copies of relevant procedural documents which relate to the records to be restored.

#### **Article 530. Trial**

1. During the trial, the court uses the remaining part of records of criminal proceedings, documents which had been issued to natural or legal persons before the records of criminal proceedings were lost, the copies of these documents, other certificates, papers and data relating to the proceedings concerned.

2. The court may examine as witnesses, persons who were present during the conduct of procedural actions, persons (their representatives) who participated in trial and, if necessary, persons who made part of the court which held trial, as well as persons who enforced the court's decision.

#### **Article 531. Court's decision**

1. Basing on collected and verified materials, the court passes a ruling to restore records of the lost criminal proceedings fully or in a part which, in court's opinion, is necessary to restore.

2. In the court's decision on restoration of records of the lost criminal proceedings shall be stated on the basis of which specific evidences, submitted to court and examined in court hearing with involvement of all participants in court proceedings, the court finds established the contents of the restored court decision; findings of court in respect of the extent to which examined evidence and conducted procedural actions were proved.

3. If collected materials are insufficient to accurately restore records of the lost criminal proceedings, the court, by its ruling, closes proceedings on application for restoration of records of the lost criminal proceedings, and advises the participants in court proceedings of their right to re-file the same application when necessary documents are available.

4. Retention periods for records of criminal proceedings do not affect on consideration of the application for their restoration.

### **Section VIII. Execution of Court Decisions**

#### **Article 532. Entry of a court decision into legal force**

1. A judgment or ruling of a court of first instance, ruling of investigating judge, unless this Code provides otherwise, enters into legal force after the expiry of time-limit for lodging an appeal complaint as specified by this Code, if such complaint has not been lodged.

2. If an appeal complaint has been lodged, court decision, if not reversed, enters into legal force after the court of appeal instance has delivered the judgment.

3. If time limit for appeal was extended, the court's judgment or ruling is regarded as not entered into legal force.

4. Court decisions of the court of appeal and cassation, decision of the Supreme Court of Ukraine enter into legal force upon their pronouncement.

5. Rulings by an investigating judge and a court which may not be appealed, enter into legal force upon their pronouncement.

#### **Article 533. Effects of entering of a court decision into legal force**

1. Court's judgment or ruling which has entered into legal force shall be binding on all participants of the criminal proceedings, as well as on all natural and legal persons, state authorities and local government authorities, their officials, and shall be subject to execution on all territory of Ukraine.

#### **Article 534. The order of execution of court decisions in criminal proceedings**

1. If necessary, the way, time limits, and procedure for execution can be specified in the court decision itself.

2. A court judgment that has entered into force or must be executed immediately shall be unconditionally executed.

3. A judgment of acquittal or court decision to release the accused from custody shall be executed in this respect immediately after their pronouncement in courtroom.

4. If the court of appeal instance has extended time-limit for appeal, the issue of suspending the execution of the judgment or ruling concerned shall be decided simultaneously. Execution of a judgment or ruling may be suspended also in other cases stipulated in this Code.

5. Procedural issues related to execution of court decisions in criminal proceedings shall be decided by the judge of the court of first instance alone, unless this Code provides otherwise.

#### **Article 535. Enforcement of court decision**

1. Court decision which has entered into legal force, unless this Code provides otherwise, is enforced within three days after it has entered into legal force or after materials of criminal proceedings have been returned to the court of first instance from the court of appeal or cassation, or from the Supreme Court of Ukraine.

2. The court sends the copy of the decision, together with its order to execute it, to the authority or institution which has been charged with execution of the court decision.

3. Whenever a court decision or a part thereof is subject to execution by the bodies of the State Executive Service, the court shall issue a warrant of execution which is referred for execution as provided for by the Law of Ukraine "On Execution Proceedings".

4. Authorities which execute a court decision shall inform the court which delivered the decision, on execution thereof.

5. Before a condemnatory judgment has entered into legal force, the accused in whose respect a measure of restraint in the form of detaining in custody was taken may not be transferred to a place of confinement in another area.

#### **Article 536. Deferral of execution of sentence**

1. Execution of a sentence to correctional works, arrest, restriction of freedom, keeping in military disciplinary unit of military servants, deprivation of freedom may be deferred in the following cases:

1) serious illness of the sentenced person, which prevents from serving the punishment – until his recovery;

2) pregnancy of sentenced woman or if the sentenced person has a minor child - for the period of pregnancy or until the child attains the age of three, unless the person was sentenced for the crime which was especially severe;

3) when immediate service of the sentence can entail exceptionally hard consequences for the sentenced person or his family because of special circumstances (fire, natural disaster, serious disease or death of the only family member who is able to work etc.) - for the time prescribed by court but not more than one year after the judgment has entered into legal force.

2. Deferral of execution of a sentence shall not be permitted in respect of persons sentenced (except as provided for in paragraph 2 of part one of this Article) for crimes of a high and especially high degree of severity, irrespective of the term of punishment.

### **Article 537. Issues to be decided by court during execution of sentence**

1. During the execution of sentences, the court specified by article 539, paragraph 2 of this Code may decide on the following issues:

- 1) on deferral of execution of sentence;
- 2) on granting parole;
- 3) on replacing unserved part of sentence with milder sentence;
- 4) on releasing from serving their sentence pregnant women and women having children up to three years old;
- 5) on sending women who have been released from serving their sentences because of pregnancy or having children up to three years old, to serve their sentences;
- 6) on releasing from serving the sentence due to illness;
- 7) on imposing compulsory medical treatment on the sentenced person and terminating thereof;
- 8) on sending a person released on probation, to serve the sentence imposed
- 9) on release from service of the sentence imposed with probation on expiry of the probation period;
- 10) on substituting punishment as provided for in paragraph five of Article 53, paragraph three of Article 57, paragraph one of Article 58, paragraph one of Article 62 of the Criminal Code of Ukraine;
- 11) on application of punishment in case of several sentences;
- 12) on temporarily leaving the sentenced person in the pre-trial detention centre, or transferring him from the correctional centre, disciplinary battalion or colony to pre-trial detention centre, for the conduction of appropriate procedural actions during the pre-trial investigation of criminal offences committed by another person or by this person, for which he has not been sentenced, or if the case is brought to court;
- 13) on release from punishment and mitigation of punishment in cases provided for in parts 2 and 3 of Article 74 of the Criminal Code of Ukraine;
- 14) other issues related to various kinds of doubts and contradictions emerging in the process of execution of sentences.

### **Article 538. Issues to be decided by court after execution of sentence**

1. After the sentence in the form of deprivation of liberty or restriction of liberty has been served, the court may consider clearance of record of conviction of the person, upon his motion.

### **Article 539. The order of solution by court of issues related to execution of sentence**

1. Issues which arise at the time and after execution of a sentence shall be decided by court upon motion (submission) of a public prosecutor, convicted person, his defense counsel, legal representative, penal institution or body as well as other persons, institutions or bodies where provided for by law.

A victim, civil plaintiff, civil defendant and other persons shall have the right to file motions with the court, seeking decisions concerning directly their rights, duties or legitimate interests.

2. A motion (request) for a decision on any issue related to execution of a sentence shall be filed with—

1) a local court within whose territorial jurisdiction the convict is serving his sentence, where it is necessary to decide on the matters provided for by subparagraphs 2–4, 6, and 7 (save for motion for termination of compulsory treatment, which shall be filed with the local court within whose territorial jurisdiction the institution or establishment where the convicted person is being treated is located) of the first paragraph of Article 537 of this Code;

2) a local court within whose territorial jurisdiction the sentence is executed, where it is necessary to decide on the matters provided for by subparagraphs 10 (concerning motions for commutation of punishment under paragraph 3 of Article 57, paragraph 1 of Article 58, paragraph 1 of Article 62 of the Criminal Code of Ukraine), 11, 13 of the first paragraph of Article 537 of this Code;

3) a local court within whose territorial jurisdiction the convicted person is residing, where it is necessary to decide on the matters provided for by subparagraphs 5, 8, 9 of the first paragraph of Article 537 of this Code;

4) the court which has affirmed the conviction, where it is necessary to decide on the matters provided for by subparagraphs 1, 10 (concerning motion for commutation of punishment under paragraph 5 of Article 53 of the Criminal Code of Ukraine), 12 (where the matter is to be decided in relation to a trial it shall be decided on by the trying court), 14 of the first paragraph of Article 537, Article 538 of this Code.

3. A motion (request) for deciding on a matter related to execution of a conviction shall be considered within 10 days of its filing by a sole judge, in accordance with the rules of trial as provided for by Arts. 318–380 of this Code, taking account of the provisions of this Section.

4. Summons to attend the court session shall be sent to the convicted person, his defence counsel, legal representative, and the public prosecutor. A notice of the time and venue of consideration of the motion (request) shall be served on the penal body or institution in charge of execution of punishment or monitoring the conduct of the convicted person; medical commission which issued the opinion related to application or termination of compulsory treatment of the convicted person if relevant issues are to be considered; supervision board, service for children's affairs if a motion coordinated with them is to be considered; the civil plaintiff and civil defendant if the matter concerns the execution of sentence related to the civil action, and other persons where necessary.

Failure of the persons who have been duly notified of the place and time of consideration of the motion (request) to appear shall not be to the prejudice of the hearing, unless their participation has been pronounced mandatory by the court or a person has notified a good cause for non-appearance.

5. Having considered a motion (request) the court delivers a ruling which may be appealed as prescribed in this Code. An appeal of the public prosecutor of a court's ruling on parole or commutation of a sentence shall stay its execution.

6. Where a court's ruling to dismiss a motion for parole or commutation of a sentence becomes valid, a repeat motion on the same matter filed by persons sentenced to imprisonment of not less than 5 years for grave and especially grave offences may be considered not earlier than one year or, in the case of persons convicted of other offences and underage persons, six months of the date of the ruling of dismissal.

Where a court's ruling to dismiss a motion for expungement becomes valid, a repeat motion on the same matter may be considered not earlier than one year of the date of the ruling of dismissal.

7. Where a motion for medical dispensation of a convicted person who fell ill with a mental disease during service of sentence is granted, the judge may apply compulsory medical measures under Arts. 92–95 of the Criminal Code of Ukraine.

#### **Article 540. Crediting time spent by a sentenced person in a medical institution to the service of sentence**

1. Time spent by a sentenced person in a medical institution during his serving the sentence in the form of deprivation of liberty, shall be credited to the service of sentence.

### **Section IX. International Cooperation In Criminal Proceedings**

#### **Chapter 42. General Principles of International Cooperation**

##### **Article 541. Definitions**

1. The terms, used in this Section of the Code, in the absence of specific remarks, shall mean:

1) international legal assistance - conducting procedural actions by competent authorities of one State, execution of which is required for pre-trial investigation, trial or enforcement of sentence delivered by a court of another State or an international judicial institution;

2) extradition - surrender of a person to a state the competent authorities of which search for this person for prosecuting or serving a sentence. Extradition includes: sending official request for establishing whereabouts of the person sought in the territory of the requested state and for surrender of such person; verification of circumstances which are likely to hinder the surrender; taking decision on the request; actual transfer of such person into jurisdiction of the requesting State;

3) takeover of criminal proceedings - conducting investigation by competent authorities of one state with the purpose of prosecuting a person for crimes committed in the territory of the other State, upon its request;

4) requesting Party - a state whose competent authority applies with a request, or an international judicial institution;

5) requested Party - the state to whose competent authority is sent the request;

6) designated (central) authority: an authority empowered to consider, on behalf of the state, the request of a competent authority of another State or international judicial institution, and take measures in order to execute the request, or to send to another state a request of a competent authority for providing international legal assistance;

7) competent authority - a body which conducts the proceedings and which applies with a request under this Section, or which ensures the execution of a request for providing international legal assistance;

8) extradition examination – activities of authorities designated by law aimed to establish and examine the circumstances that may prevent the surrender (extradition) of a person who has committed a crime as stipulated by the international treaties of Ukraine and other acts of legislation of Ukraine;

9) extradition arrest – application of a restraint measure in the form of detention of a person to ensure his/her surrender (extradition);

10) temporary arrest – detaining a person sought for committing a crime outside Ukraine for a time period established by this Code or an international treaty of Ukraine until a request for surrender (extradition) is received;

11) temporary extradition – a surrender of a person serving a punishment in the territory of one state to another state for a certain time period to participate in legal proceedings or be convicted of a criminal offense before the expiry of the period of limitations or the loss of evidence in a criminal case.

#### **Article 542. Scope of international cooperation in criminal proceedings**

1. International cooperation in criminal proceedings shall be the taking of measures necessary in order to provide international legal assistance through serving documents, conducting certain procedural actions, extradition of individuals who have committed criminal offences, provisional transfer of persons, taking over of criminal prosecution, transfer of sentenced persons, and enforcement of sentences. An international treaty of Ukraine may provide for other forms of cooperation in criminal proceedings than are specified in this Code.

#### **Article 543. Legislation which governs international cooperation in criminal proceedings**

1. This Code and effective international treaties of Ukraine shall specify the way in which the designated (central) authority of Ukraine shall forward requests to another state, consider requests for legal assistance from another state or an international judicial institution, and the way in which such requests should be executed.

#### **Article 544. Providing and receiving international legal assistance or other international cooperation without a treaty**

1. In the absence of an international treaty of Ukraine, international legal assistance or any other cooperation may be provided upon the request from another state, or requested on the basis of reciprocity.

2. Designated (central) authority of Ukraine, when forwarding a request to such state, shall guarantee, in written form, to the requested Party that in future, such State's request for international legal assistance of the same type shall be considered.

3. Under provisions of part one of this Article, the designated (central) authority of Ukraine shall consider request of a foreign State only if the requesting State has guaranteed, in written form, to receive and consider, in future, Ukraine's request on the basis of reciprocity.

4. Designated (central) authority of Ukraine, when requesting international legal assistance from such state and providing international legal assistance thereto, shall be guided by the this Code.

5. In the absence of an international treaty with the state concerned, the designated (central) authority of Ukraine shall forward request for international legal assistance to the Ministry of foreign affairs of Ukraine, for subsequent transmitting it to the competent authority of the requested state via diplomatic channels.

#### **Article 545. Central authority of Ukraine**

1. The Prosecutor-General's Office of Ukraine shall make requests for international legal assistance in criminal proceedings during a pre-trial investigation and consider similar requests from foreign competent authorities, except pre-trial investigation of criminal offences referred to investigative jurisdiction of Anti-Corruption Bureau of Ukraine that in such cases performs functions of central authority of Ukraine. *{Paragraph 1 of Article 545 as amended by Law № 1698-VII of 14.10.2014}*

2. The Ministry of Justice of Ukraine shall refer requests from courts for international legal assistance in criminal proceedings during a court trial and consider similar requests from courts in foreign states.

3. Where this Code or an effective international treaty of Ukraine prescribes a different procedure for relations, powers specified in paragraphs one and two of this Article shall extend to the body specified in those legislative acts.

#### **Article 546. Information that contains state secret**

1. If as a result of execution in Ukraine of the request for international legal assistance, information was obtained which, under law, is deemed state secret, such information may be transmitted to the requesting Party exceptionally through the designated (central) authority of Ukraine, where such information will not harm the interests of Ukraine or such other state which has provided it to Ukraine, only if the treaty on mutual protection of information was concluded with such Party, and in accordance with rules and requirements set forth in such a treaty.

#### **Article 547. Conducting procedural actions by diplomatic missions or consular posts**

1. Consular posts or diplomatic missions of other states in Ukraine may obtain, on voluntary basis, explanations, objects, documents from nationals of the State they represent, as well as serve documents to such persons.

#### **Article 548. Request for international cooperation**

1. A request (order, petition) for international cooperation shall be drawn up by an authority conducting criminal proceedings or an agency authorized by that authority in accordance with the requirements of this Code and the relevant international treaty of Ukraine, or in accordance with this Code if no such treaty applies.

2. A request and documents attached thereto shall be drawn up in writing, certified by an signature of the authorized person, and the seal of a relevant authority.

3. A request and documents attached thereto shall be accompanied by a translation certified in accordance with the established procedure in a language specified in the relevant international treaty of Ukraine or, in the absence of such treaty, in an official language of the requested Party, or any other language acceptable for that Party.

4. A request shall be sent abroad by mail or, in case of emergency, may be sent by e-mail, fax, or any other means of communication. In such a case, the original of the request shall be

sent by mail within three days after it has been sent by e-mail, fax or other means of communication.

5. An authorized (central) authority of Ukraine may accept for consideration a request submitted by the requesting Party via e-mail, fax or other means of communication. Such request shall be executed upon the confirmation of mailing or submitting its original. The materials of the executed request may be sent to a foreign competent authority only after the Ukrainian counterpart receives the original of a request.

#### **Article 549. Keeping and transfer of physical evidence and documents**

1. Physical evidence and documents transferred by the requested Party pursuant to the request (letters rogatory, motion) of a Ukrainian competent authority within the procedure of international cooperation shall be kept under the rules established herein for the keeping of physical evidence and documents and shall be returned back to the requested Party after completion of criminal proceedings, unless otherwise agreed.

2. When transferring physical evidence and documents to the competent authority of the requesting party pursuant to the request (letters rogatory, motion) within the procedure of international cooperation, the competent authority of Ukraine may waive the requirement in respect of their returning back after the completion of criminal proceedings in the requesting Party if there is no need in the territory of Ukraine to use them for pre-trial investigation and trial in another criminal proceedings, or there are no lawful claims from third persons with regard to the title to the property concerned, or if the litigation with regard thereto is pending in court.

#### **Article 550. Probative value of official documents**

1. Documents which are forwarded in connection with the request for international assistance if they are drawn up and certified in the appropriate form by an official of the competent authority of the requesting Party or requested Party and sealed with the official stamp of the competent authority concerned, shall be accepted in the territory of Ukraine without additional attestation (legalization) if the relevant international treaty of Ukraine so provides.

2. Information contained in materials obtained as a result of execution of actions, foreseen in the request for international assistance, by the authorities of foreign state in accordance with the procedure provided for in laws of the requested state, shall not require legalization and shall be admitted by court if in the course of their obtainment, principles of fair trial and human rights and fundamental freedoms were not violated.

3. According to the rules of this Code, the legal status of parties to criminal proceedings in a foreign state does not need to be additionally established.

### **Chapter 43. International Legal Assistance in the Conduct of Procedural Actions**

#### **Article 551. Request for international legal assistance**

1. Court, public prosecutor or investigator, with approval of the public prosecutor, shall send to the designated (central) authority of Ukraine a request for international legal assistance in criminal proceedings they conduct.

2. Designated (central) authority of Ukraine shall consider whether the request is well-grounded and complies with laws and international treaties of Ukraine.

3. In case of taking decision to forward a request, designated (central) authority of Ukraine within ten days shall send the request to the designated (central) authority of the requested Party, directly or via diplomatic channels.

4. In case of refusal to forward the request, all materials, within ten days, shall be returned to the appropriate authority of Ukraine, together with statement of deficiencies to be eliminated or explanations of reasons why the request cannot be sent.

#### **Article 552. Contents and form of the request for international legal assistance**

1. Contents and form of the request for international legal assistance shall comply with the requirements of this Code or the international treaty of Ukraine which is applied in particular case. The request may be drawn up in the form of letter rogatory.

2. The request shall include:

1) names of the requesting authority and of the competent authority of the requested Party;  
2) reference to the relevant international treaty or to compliance with the principles of reciprocity;

3) name of criminal proceedings for which international legal assistance is requested;

4) brief description of the criminal offence which is the subject of criminal proceedings, and its legal assessment;

5) information on suspicion which was duly notified, charges brought with quoting full text of relevant Articles of the Criminal Code of Ukraine;

6) information about the person concerned, particularly his/her full name, place of residence or stay, nationality and occupation, other information that may help to fulfill the request, as well as the person's relation to the subject of criminal proceedings;

7) a concise list of requested procedural actions and proof of their relation to the subject of criminal proceedings;

8) information on persons whose presence during procedural actions shall be required, and rationale for that requirement;

9) other information which may facilitate execution of the request or which is provided for in the international treaty, or is required by the competent authority of the requested Party.

3. A certified extract from relevant articles of this Code shall be attached to the request for interrogation of a person as witness, victim, expert, to advise the person concerned on his/her procedural rights and duties. The list of questions to be put to the person or information to be obtained from the person shall also be attached to the request.

4. Information on evidence in the case which substantiates the need in appropriate actions shall be attached to the request for the conduct of search, crime scene inspection, seizure, arrest or confiscation of property or other procedural actions that require authorization from court under this Code.

5. Information referred to in paragraphs 4, 5, 8 of part two of this Article, shall not be required to be attached to a request for serving on a person documents or summons to court.

6. During a pre-trial investigation, a request for international legal assistance shall be approved in writing by the prosecutor monitoring compliance with the law during a pre-trial investigation.

#### **Article 553. Effects of execution of the request in a foreign state**

1. Evidence and information obtained from the requested Party as a result of execution of the request for international legal assistance, may be used only in criminal proceedings to which the request was related, unless otherwise agreed with the requested Party.

2. Information contained in materials obtained as a result of execution of a request for international legal assistance, may not be found by court admissible if the request of the competent authority of Ukraine was transferred to the requested Party in violation of the procedure established in this Code or the relevant international treaty of Ukraine.

#### **Article 554. Consideration of a request for international legal assistance from a foreign competent authority**

1. After receiving a request for international legal assistance from a requesting Party, an authorized (central) authority of Ukraine shall assess its relevance and compliance with the laws or international treaties of Ukraine.

2. If a decision is made to grant the request, an authorized (central) authority of Ukraine shall refer the request to the competent authority of Ukraine for execution.

3. The Prosecutor General's Office of Ukraine may, within the scope of its powers, issue orders to ensure proper, full, and timely execution of a request. Such orders shall be binding upon the competent authority of Ukraine concerned.

4. The following issues related to the request (order) for international legal assistance shall be decided exclusively by a central authority of Ukraine for international legal assistance:

1) the presence of a representative of a foreign competent authority during the international legal assistance procedure. If a request (order) for international legal assistance provides that a representative shall be present and was submitted in accordance with article 545, paragraph 3 of this Law, a copy of a request shall be immediately sent to an authorized (central) authority to decide on the issue;

2) providing guarantees to competent authorities of a foreign state regarding the execution of a request (order) as stipulated by article 544, paragraph 2 of this Code, and obtaining similar guarantees from other states;

3) temporary extradition of a person serving punishment to participate in an investigation (search) and other procedural activities.

#### **Article 555. Notifying of the results of the request consideration**

1. If the request is granted, the designated (central) authority of Ukraine shall be required to ensure that materials collected as a result of request execution, are transferred to the designated (central) authority of the requesting Party.

2. If request is rejected, the designated (central) authority of Ukraine shall notify the requesting Party of the reasons for rejection, as well as of conditions under which the request for international legal assistance may be re-considered, and shall return the request.

3. If there are grounds for rejecting the request or for its delay, the designated (central) authority of Ukraine may agree with the requesting Party the procedure for executing the request under certain limitations. If the requesting Party accepts such conditions, the request is executed after the requesting Party has fulfilled these conditions.

#### **Article 556. Confidentiality**

1. Upon request of the requesting Party, the designated (central) authority of Ukraine may take additional measures to ensure confidentiality of the fact of receipt of a request for

international legal assistance, of its contents and of information obtained as a result of the execution of the request.

2. If necessary, conditions and time limits for the retention of confidential information obtained as a result of the execution of the request shall be agreed.

#### **Article 557. Refusal to execute request for international legal assistance**

1. Request of the requesting Party for legal assistance may be rejected in cases specified in the international treaty of Ukraine.

2. In the absence of a relevant international treaty of Ukraine, the execution of the request may be refused-if:

1) execution of the request will contradict the constitutional principles or may harm sovereignty, security, public order or any other essential interest of Ukraine;

2) the request concerns a criminal offence for which in respect of the same person, a Ukrainian court rendered a decision which has entered into legal force;

3) the requesting Party does not provide reciprocity in this sphere;

4) the request relates to the action which is not a criminal offence under Ukraine's law on criminal liability;

5) there are sufficient grounds to believe that the request aims at prosecuting, convicting or punishing a person on the ground of his race, color, political, religious and other beliefs, sex, ethnic or social origin, property status, place of residence, language, and other grounds;

6) the request pertains to a criminal offence which is the subject of pre-trial investigation or trial in Ukraine.

#### **Article 558. Procedure for the execution of a request (order) for international legal assistance in the territory of Ukraine**

1. Based on the review of a request from a foreign competent authority for international legal assistance, a **central** authority of Ukraine for international legal assistance or an authority authorized to conduct relations in accordance with article 545, paragraph 3 of this Code shall decide on the following:

1) commissioning a pre-trial investigation agency, a prosecution office, or a court to execute a request while at the same time taking measures to ensure compliance with confidentiality requirements;

2) the possibility of executing a request by applying the laws of a foreign state;

3) postponing the execution if it may harm the legal proceedings in the territory of Ukraine, or negotiating the possibility of executing a request on certain terms with a competent foreign authority;

4) refusal to execute a request on the grounds stipulated by article 557 of this Code;

5) the feasibility of executing a request if the costs of the execution clearly exceed the damage inflicted by criminal offense, or if it is clearly inadequate considering the seriousness of criminal offense unless it is contrary to the international treaty of Ukraine;

6) taking other actions specified in the international treaty to which the Verkhovna Rada of Ukraine consented to be bound.

2. A request from a foreign competent authority for international legal assistance shall be executed within one month of the date of its receipt by the actual executor. If taking complex and large-scale procedural actions is required, particularly those subject to approval by the prosecutor or those that may be conducted only on the grounds of the ruling by an investigating judge, the

time period for its execution may be extended by a central authority of Ukraine or an authority authorized to conduct relations with competent foreign authorities in accordance with article 545, paragraph 3 of this Code.

3. The documents drawn up by a pre-trial investigation agency, an investigator, a public prosecutor, or a judge to execute a request for international legal assistance shall be signed by the officials concerned and sealed by the relevant authority. The documents obtained from other departments, institutions or enterprises regardless of their ownership structure following the execution of a request shall be signed by their managers and sealed by the relevant department, institution or enterprise. A pre-trial investigation agency or an investigator shall refer the materials of the executed request to a public prosecutor monitoring compliance with the law during a pre-trial investigation for the verification of the integrity and legitimacy of investigative (search) and other procedural activities that have been performed.

4. The documents obtained over the course of the execution of a request for international legal assistance shall be sent to a competent foreign authority in accordance with the procedure established by the relevant international treaty to which the Verkhovna Rada of Ukraine consented to be bound.

5. In the absence of an applicable international agreement between Ukraine and the corresponding foreign state, a request for international legal assistance shall be executed in compliance with this article, and all obtained documents shall be sent by a central authority of Ukraine for international legal cooperation through diplomatic channels.

6. When sending materials to a competent foreign authority, a central authority of Ukraine for international legal cooperation or an authority authorized to conduct relations with competent foreign authorities in accordance with article 545, paragraph 3 of this Code, may, in accordance with the law or an international treaty to which the Verkhovna Rada of Ukraine consented to be bound, impose limitations on the use of such materials.

7. If a request for international legal assistance cannot be executed, as well as in case of refusal to provide international legal assistance on the grounds specified by article 557 of this Code, a central authority of Ukraine for international legal cooperation or an authority authorized to conduct out relations in accordance with article 545, paragraph 3 of this Code shall return such a request to a competent foreign authority along with a statement of grounds for refusal.

#### **Article 559. Postponing the provision of international legal assistance**

1. Provision of international legal assistance may be fully or partly postponed if execution of the request would obstruct pre-trial investigation or trial which is pending in Ukraine.

#### **Article 560. Completing the procedure for the provision of international legal assistance**

1. Authority, which has been assigned execution of the request, after required procedural actions have been conducted, shall send all obtained materials to the designated (central) authority of Ukraine. If the request is executed incorrectly or incompletely, the designated (central) authority may request that additional measures be taken to execute the request.

2. Documents obtained as a result of the request execution, shall be sealed with official stamp of the competent authority which has conducted procedural actions, and sent to the designated (central) authority of Ukraine for transfer to the requesting Party without translation, unless the international treaty provides otherwise.

3. The designated (central) authority of Ukraine shall send materials obtained during request execution, to the designated (central) authority of the requesting Party within ten calendar days after it has received them from the competent authority of Ukraine concerned.

**Article 561. Procedural actions, which may be conducted within the framework of international legal assistance**

1. Any procedural actions as provided for in this Code or international treaty may be conducted in the territory of Ukraine to execute a request for international legal assistance.

**Article 562. Procedural actions that require special permission**

1. If the execution of a request from a competent foreign authority requires carrying out a procedural action which in Ukraine may be carried out only upon a permission from a public prosecutor or a court, that action may be carried out only provided that appropriate permission has been obtained in accordance with the procedure specified in this Code even if the laws of the requesting Party do not provide for such procedure. Granting the permission shall be decided upon the materials of a request from a competent foreign authority.

2. If the execution of a request from a competent foreign authority requires carrying out a procedural action which in Ukraine may be carried out only upon a permission from a public prosecutor or a court, that procedural action may be requested only after a public prosecutor or a court grant the appropriate permission in accordance with the procedure established by this Code. Additionally, a properly certified copy of the permission shall be attached to the materials of a request.

**Article 563. Presence of representatives of competent authorities of the requesting state**

1. A representative of a foreign competent authority permitted to be present in accordance with the requirements of this Code may not exercise discretion in carrying out any procedural actions in the territory of Ukraine. When present during the execution of procedural actions, such representatives shall follow the laws of Ukraine.

2. Persons referred to in paragraph one of this Article, may watch the execution of procedural actions and make comments and suggestions regarding the execution of procedural actions concerned, ask questions if allowed by an investigator, a public prosecutor, or a court, as well as take notes, particularly using the technical means.

**Article 564. Service of documents**

1. Upon a request from a foreign competent authority for international legal assistance, the documents and statements attached to the request shall be served to the person specified in the request in accordance with the procedure established by this article.

2. With a view to the execution of a request from a foreign competent authority for international legal assistance, an investigator, a public prosecutor or a court may summon a person to serve documents to that person. If a person fails to appear without valid excuse, the enforcement procedure specified by this Code may be applied.

3. A pre-trial investigation agency, an investigator, a public prosecutor or a court shall draw up a protocol on the delivery of documents to the person indicating the place and date of delivery. The protocol shall be signed by the person on whom the documents are being served, and that person's statements and comments shall be attached. In cases stipulated by the

international treaty to which the Verkhovna Rada of Ukraine consented to be bound, a special confirmation shall be drawn up and signed by the person on whom the documents are being served and the person serving them.

4. If a person refuses to accept the documents to be served, a corresponding entry is made in a protocol. In that case the documents to be served shall be deemed to have been served, and a corresponding entry is made in a protocol.

5. If the documents to be served do not include a Ukrainian translation and are drawn up in a language that is unknown to the person specified in a request, that person may refuse to accept the documents. In that case the documents shall be deemed to not have been served.

6. A protocol of service of documents along with other documents attached to a request shall be sent to a foreign competent authority in accordance with the procedure specified by article 558 of this Code.

#### **Article 565. Temporary surrender**

1. If, for the purpose of conducting criminal proceedings, it is required that a person who is detained or serves a punishment in the form of imprisonment in the territory of a foreign state and is not convicted of a criminal offense in those particular criminal proceedings is present to give testimony or participate in other procedural activities, a pre-trial investigation agency, a public prosecutor, a judge, or a court of Ukraine carrying out the criminal proceedings shall draw up a request for temporary surrender of that person to Ukraine.

2. A request for temporary surrender shall be drawn up and submitted in accordance with the procedure specified in articles 548, 551, and 552 of this Code.

3. If a foreign competent authority grants the request for temporary surrender of a person, that person shall be retaken after the completion of procedural activities in which he/she was to participate, in due time as agreed by the foreign state.

4. If necessary, a pre-trial investigation agency, a public prosecutor, a judge, or a court of Ukraine carrying out the criminal proceedings shall draw up the documents for the extension of the time period of temporary surrender and submit them to a central authority for international legal assistance no later than twenty days before the expiry of that time period.

5. A decision by a foreign competent authority to detain a person or impose a punishment in the form of imprisonment shall serve as the grounds for detention of a person temporarily surrendered to Ukraine during that person's time in Ukraine.

6. A person serving punishment in the territory of Ukraine may be temporarily surrendered to a foreign state at the request of a foreign competent authority subject to the requirements specified in paragraphs 1 and 3 of this article.

7. A person may be temporarily surrendered only provided that the written consent is given by that person.

#### **Article 566. Summoning a person staying outside Ukraine**

1. A person staying outside Ukraine may be summoned upon a request (order) for international legal assistance to participate in investigative and other procedural activities in the territory of Ukraine. A summoned person, unless he/she is a suspect or a defendant, shall be notified of the costs of appearing on summons and the reimbursement procedure. A request (order) for international legal assistance in summoning a person staying outside Ukraine shall be sent to a foreign competent authority no later than sixty days before the person's report date or

within a different time period specified by the international treaty to which the Verkhovna Rada of Ukraine consented to be bound.

2. A summoned person may not be convicted of a criminal offense; arrested; be subjected to an imposed restraint measure in the form of detention; be subjected to other measures in support of criminal proceedings or restriction of personal freedom either for any criminal offense that is the subject of criminal proceedings or any other criminal offense committed before crossing the state border of Ukraine when entering Ukraine. A sentence passed on the person before that person has crossed the state border of Ukraine may not be executed. A suspect, defendant or convict may be arrested or subjected to a restraint measure or execution of a sentence only for an offense specified in the summons.

3. All guarantees specified in this article shall be void if, being in a position to leave the territory of Ukraine, a summoned person fails to do so within fifteen days from the moment of receipt of a written notification from a pre-trial investigation agency, a public prosecutor's office or a court that his/her participation in any investigative or other procedural activities is no longer required, or within a different time period specified in the international treaty to which the Verkhovna Rada of Ukraine consented to be bound.

#### **Article 567. Examination upon a request from a foreign competent authority by means of a video or telephone conference**

1. An examination upon a request from a foreign competent authority shall be conducted in the presence of an investigating judge and at the location of a person by means of a video or telephone conference in the following cases:

- 1) impossibility for certain persons to appear before the foreign competent authority;
- 2) to ensure the for persons' safety;
- 3) for other reasons specified by investigating judge (court).

2. Examination through video or telephone conference shall be conducted as prescribed in the procedural law of the requesting Party as long as such procedure is not contrary to principles of Ukrainian procedural law and generally recognized standards of ensuring human rights and fundamental freedoms.

3. The competent authority of the requesting Party shall be required to ensure participation of a translator in the video or telephone conference.

4. If during examination, investigating judge should notice that the examiner violates the procedure established in part two of this Article, he shall inform participants to the procedural action thereon and stop the examination in order to take measures to eliminate such violation. Examination shall continue only after required changes in the procedure have been agreed with the competent authority of the requesting Party.

5. Record of examination and mediums containing video or audio information shall be forwarded to the competent authority of the requesting Party.

6. Rules laid down in this Article, shall apply to examinations conducted through video or telephone conference upon requests of the competent authority of Ukraine.

#### **Article 568. Search, arrest and confiscation of assets**

1. Upon request for international legal assistance, appropriate authorities of Ukraine shall conduct procedural actions as provided for in this Code, to detect and arrest assets, money and valuables obtained as proceeds from crime, as well as assets that belongs to suspects, accused or sentenced persons.

2. When arresting assets referred to in part one of this Article, measures shall be taken necessary to its preservation until court takes a decision in respect of such assets, and the requesting Party shall be informed thereon.

3. Upon request of the requesting Party, the detected assets:

1) may be surrendered to the competent authority of the requesting Party as evidence in criminal proceedings, in compliance with the requirements of Article 562 of this Code, or for being returned to the owner thereof;

2) may be confiscated basing on a sentence or any other decision made by the court of the requesting Party which has entered into legal force.

4. The assets referred to in paragraph 1 of part three of this Article, shall not be surrendered to the requesting Party, or surrender thereof may be postponed or provisional, if such assets are necessary for the purposes of civil or criminal trial in Ukraine or may not be taken abroad for other reasons specified by law.

5. Assets confiscated under paragraph 2 of part three of this Article, shall be turned into revenue of the State Budget of Ukraine, except as provided for in part six of this Article.

6. Upon a petition from a central authority of Ukraine, a court may rule to transfer the assets confiscated under paragraph 3, subparagraph 2 of this Article, as well as its monetary equivalent:

1) to the requesting Party that ruled to seize the assets as a compensation for damage inflicted on the victims of the offense;

2) in accordance with the international treaties of Ukraine on the distribution of seized assets or their monetary equivalent.

7. Surrender of the arrested and confiscated assets may be postponed if it is necessary for pre-trial investigation and trial in Ukraine or litigation in respect of rights of other persons.

#### **Article 569. Controlled delivery**

1. Investigator of the pre-trial investigation agency of Ukraine, if he has detected contraband delivery when conducting procedural actions, including actions upon request for international legal assistance, may refrain from removing it from the place of storage or transportation but instead, upon agreement with the appropriate authorities of the state of destination, let it pass freely across the customs border of Ukraine, with the purpose of detecting, uncovering and documenting criminal activities of international criminal organizations.

2. Upon detection of contraband delivery, a report shall be drawn up as prescribed in this Code, which shall be sent to the competent authority of the state into the territory of which the controlled delivery passed, and whenever such materials are received from appropriate authorities of another state, they shall be attached to materials of pre-trial proceedings.

#### **Article 570. Pursuit in border areas**

1. When competent authorities of Ukraine prosecute, in border areas, a person who has committed illegal transfer across the State Border of Ukraine, his illegal activities in the territory of Ukraine shall be investigated as prescribed in this Code.

2. Materials of criminal proceedings documenting illegal activities of such person in the territory of Ukraine, in accordance with the provisions of international treaties on prosecution in border areas, shall be transferred to appropriate authorities of the State where this person has been prosecuted, and whenever such materials are received from the appropriate authorities of another state, they shall be attached to materials of the pre-trial investigation concerned.

**Article 571. Establishment and activities of joint investigative groups**

1. Joint investigative groups may be set up to conduct pre-trial investigation of circumstances of criminal offences committed in the territories of several states, or where the interests of such states were affected.

2. The Prosecutor-General's Office of Ukraine shall consider and decide the issue related to setting up joint investigative groups, upon request of Ukrainian pre-trial investigation agency's investigator, public prosecutor, and foreign competent authorities.

3. Members of a joint investigative group shall directly interact, agree between them the basic vectors of the pre-trial investigation, the conduct of procedural actions, and exchange information obtained. Activities of a joint investigative group shall be coordinated by the initiator of its establishment or by one of its members.

4. Investigative (searching) and other procedural actions shall be carried out by members of the joint investigative group from the state where such actions are conducted.

**Article 572. Appeal of decisions, actions or inaction by public authorities, their officials or officers; reparation of inflicted damages and expenses related to the provision of international legal assistance in the territory of Ukraine**

1. Persons who believe that decisions, actions, or inaction by public authorities of Ukraine or their officials or officers, in connection with the execution of a request for international legal assistance, have compromised those persons' rights, freedoms or interests, shall have the right to appeal against such decisions, actions and inaction in court.

2. If unlawful actions or inaction by public authorities of Ukraine or their officials or officers, as well as the representatives of the requesting Party who were present during the execution of the request, have inflicted damages on natural or legal persons, those persons may claim reparation of damages at the expense of the State.

3. Appeals of decisions, actions or inaction by public authorities of Ukraine or their officials or officers, and reparation of inflicted damages shall be decided in accordance with the procedure established by the laws of Ukraine.

4. Expenses related to the provision of international legal assistance in the territory of Ukraine shall be paid using the state budget funds appropriated for maintenance of pre-trial investigation agencies, public prosecutor's offices, courts, and other institutions of Ukraine responsible for the execution of requests for international legal assistance in the territory of Ukraine.

5. Unless otherwise provided by the international treaties of Ukraine to which the Verkhovna Rada of Ukraine consented to be bound, the following expenses related to the execution of a request for international legal assistance shall be paid by a foreign competent authority:

- 1) summoning parties to criminal proceedings, witnesses and experts to the territory of a foreign state, particularly in cases of temporary extradition;
- 2) conducting expert examinations;
- 3) ensuring security of parties to criminal proceedings.

**Chapter 44. Surrender of Persons Who Have Committed Criminal Offense (Extradition)**

### **Article 573. Submitting a request for extradition**

1. A request for extradition may be submitted only provided that at least one of the offenses for which an extradition is requested may be punished with at least one year imprisonment or a person was sentenced to serve the punishment in the form of imprisonment and the unserved portion of sentence is at least four months.

2. A request from a foreign competent authority for extradition may be considered only provided that all of the requirements specified in paragraph 1 of this article are met.

3. Requests for temporary extradition and transit shall be submitted and considered in accordance with the same procedures that apply to requests for extradition. When considering requests from foreign competent authorities for transit, extradition examination shall apply only to circumstances specified in article 589, paragraphs 1 and 2 of this Code.

4. A central authority of Ukraine may refuse to send the request to a foreign state if circumstances referred to in the present Code or the international treaty of Ukraine and which may preclude extradition, do exist. It may also refuse to grant permission to the competent authority of Ukraine to apply to a foreign state, if the extradition would be obviously unjustified based on the correlation between the severity of the criminal offence committed by the person, and the potential expenses required for the extradition.

### **Article 574. Central authority of Ukraine for extradition**

1. Unless otherwise specified by the international treaty of Ukraine, central authorities of Ukraine for extradition shall respectively be the Prosecutor General's Office and the Ministry of Justice of Ukraine.

2. The Prosecutor General's Office shall be the central authority responsible for extradition of suspects or the accused in criminal proceedings during the pre-trial investigation.

3. The Ministry of Justice of Ukraine shall be the central authority responsible for extradition of defendants or the convicted in criminal proceedings during the court trial or the execution of a sentence.

4. In accordance with this Code, central authorities of Ukraine for extradition shall:

1) make requests to foreign competent authorities for extradition, temporary extradition or transit of a person;

2) consider and decide on requests from foreign competent authorities for extradition, temporary extradition or transit of a person;

3) arrange extradition examinations;

4) arrange intake and referral of persons to be extradited, temporarily extradited or transited;

5) exercise other powers established by this article or an international agreement on extradition.

### **Article 575. Procedure for preparation of documents and submission of requests**

1. A request for extradition shall be drawn up by an investigator, a public prosecutor monitoring compliance with the law during a pre-trial investigation, or a court that is reviewing the case or has passed a sentence, in compliance with the requirements established by this Code and the relevant international treaty of Ukraine.

2. A request shall be drawn up in writing and contain information about a person whose extradition is requested, and the circumstances and the assessment of the offense committed by that person. The following documents shall be attached:

- 1) a certified copy of a ruling by a judge or a court to detain a person if extradition is requested to convict a person for criminal offense;
  - 2) a copy of court judgment along with a confirmation of its entry into force if extradition is requested to execute a sentence;
  - 3) an information indicating a likelihood of criminal offense by a person or a certificate of evidence proving a sought person guilty of offense;
  - 4) an extract from an article of the law of Ukraine on criminal responsibility that applies to a criminal offense;
  - 5) the findings of competent authorities of Ukraine regarding the nationality of a person whose extradition is requested, drawn up in compliance with the law of Ukraine on nationality;
  - 6) a certificate of a portion of unserved punishment if a person whose extradition is requested has already served a portion of punishment imposed by court;
  - 7) the information on the expiry of periods of limitations;
  - 8) other information specified by the international treaty of Ukraine if the latter also applies in the territory of the foreign state where a sought person has been located.
3. A request and documents specified in paragraph 2 of this article shall be signed by an investigator, a public prosecutor or a judge; sealed by a relevant authority; and translated into a language specified by the international treaty of Ukraine.
4. A request for extradition shall be submitted to the relevant central authority of Ukraine via public prosecutor's offices in the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, or public prosecutor's offices charged with similar powers within a 10 day period from the date of seizure of a person in the territory of a foreign state. Within the specified time period, the manager of a relevant pre-trial investigation agency within the structure of a central law enforcement authority, a security authority, an authority monitoring compliance with tax laws, or an authority under the State Bureau of Investigations of Ukraine shall submit a request for extradition directly to the Prosecutor General's Office of Ukraine.
5. Where there are grounds specified by the international treaty of Ukraine, a central authority of Ukraine may submit a request to a foreign competent authority for extradition of a person to Ukraine. A request for extradition shall be submitted by the manager of a central authority of Ukraine or a duly authorized person within five days from the date of receipt of a petition.

#### **Article 576. Limits of criminal responsibility of an extradited person**

1. A person who has been extradited to Ukraine may be held criminally liable or a sentence can be enforced against this person only in respect to a criminal offence for which the surrender (extradition) was requested for.
2. Limitations, expressed by the competent authority of a foreign state when taking the decision to surrender a person to Ukraine, are mandatory for taking respective procedural decisions.
3. Should the reservation of the competent authority of a foreign state in respect of restrictions for extradition be related to enforcing a sentence, the court which has delivered the sentence shall dispose the issue of the enforcement of the judgment only for those criminal offences for which extradition was granted.
4. Should the person commit another crime, not specified in the request for extradition, before the surrender (extradition), the person can be held criminally liable or a sentence for this crime can be enforced only after obtaining the consent of the competent authority of the foreign state that extradited the person.

5. A request for such consent shall be prepared and sent according to the procedures set forth for requests for extradition.

6. Should the person be held criminally liable for a crime committed after the extradition, such consent is not necessary.

**Article 577. Credit for time in custody**

1. The time that the extradited person has spent in custody on the territory of the requested state while the decision on extradition was being made as well as the time of transporting such person under guard shall be credited to the total term of serving the sentence imposed by Ukrainian court.

**Article 578. Informing on the results of criminal proceedings against the extradited person**

1. Public prosecutor shall send to the central authority of Ukraine a notice on the results of criminal proceedings against the extradited person, for further informing thereof the central authority of the requested state.

**Article 579. Provisional(temporary) extradition**

1. Should it be necessary to prevent expiry of the period of limitations for prosecution or loss of evidence in criminal proceedings, a request for provisional extradition may be made as provided by Article 575 of this Code.

2. Where a provisional extradition request is granted, the person concerned shall be returned to the respective foreign state by the time agreed upon.

3. Where necessary, the competent authority of Ukraine conducting criminal proceedings shall prepare documents on extension of provisional extradition, which shall be sent to the respective central authority not later than twenty days before expiry of the time of provisional extradition.

**Article 580. Peculiarities of custody**

1. The decision of the competent authority of a foreign state to take a person into custody or to issue a custodial sentence against this person serve as the basis for keeping persons in custody on the territory of Ukraine. This relates to persons that:

- 1) are transited through the territory of Ukraine;
- 2) are provisionally extradited to Ukraine.

2. The time spent in custody on the territory of Ukraine based on the decision of a competent authority of a foreign state during provisional extradition shall not be credited to the total term of serving the sentence imposed by Ukrainian court.

**Article 581. Rights of the person whose extradition is requested**

1. A person in whose respect the issue of extradition to a foreign state is considered shall have the following rights:

- 1) to know in connection with what criminal offence the request for extradition has been made;
- 2) to have a defense counsel and meet him under conditions which ensure confidentiality of consultation; to have the defense counsel present during interviews, interrogation;

3) if detained, to notify close relatives, family members, or other persons about his detention and whereabouts;

4) to participate in consideration by court of issues related to his being kept in custody and the extradition request;

5) to familiarize with the request for extradition or obtain a copy thereof;

6) to appeal the decision on keeping him in custody and on satisfying the request for extradition;

7) to express his opinion about the request for extradition in court session;

8) to make a request that a simplified procedure of extradition be applied.

2. A person in whose respect the issue of extradition is being considered and who has no knowledge of the State language shall be ensured the right to make statements, file pleas, familiarize with materials of criminal proceedings, speak in court in the language the person knows, take advantage of translation services, as well as receive the court's decision and decision of the central authority of Ukraine translated into the language the person used during trial.

3. If the person in whose respect the issue of extradition is being considered is a foreigner and is kept in custody, he shall have the right to meet representatives of the diplomatic mission or a consular post of his state.

#### **Article 582. Peculiarities of detaining a person who has committed a criminal offense out of borders of Ukraine**

1. The detention on the territory of Ukraine of a person wanted by a foreign state in relation to committing a criminal offense shall be made by an authorized officer.

2. A public prosecutor on whose territorial jurisdiction the detention has been made shall be informed immediately. The notice to the public prosecutor, with an attached protocol of detention, shall contain detailed information on the grounds and motives for detention.

3. On receiving the notice, the public prosecutor shall investigate the legality of detaining a person wanted by competent authorities of foreign states and immediately inform public prosecutor's office of the Autonomous Republic of Crimea, oblast, the cities of Kyiv or Sevastopol.

4. Within sixty hours after detention, public prosecutor's office of the Autonomous Republic of Crimea, oblast, the cities of Kyiv or Sevastopol shall inform a respective **central** authority of Ukraine, which shall inform the competent authority of a foreign state within three days.

5. Public prosecutor's office of the Autonomous Republic of Crimea, oblast, the cities of Kyiv or Sevastopol shall also inform the Ministry of Foreign Affairs of Ukraine on every case of detention of a foreigner who has committed a crime out of borders of Ukraine.

6. A detained person shall be released immediately if:

1) within sixty hours after detention the person was not taken to an investigating judge for entertaining a request for choosing a preventive measure against this person in the form of a provisional or extradition arrest;

2) circumstances have been established under which the extradition is not performed.

7. The procedure of detention of such persons and the treatment of their complaints to being detained shall be exercised according to Articles 206 and 208 of this Code taking into account the peculiarities established by this Chapter.

#### **Article 583. Provisional arrest**

1. A person that has committed a crime out of borders of Ukraine shall be held under provisional arrest for the term of up to 40 days or another period of time as stipulated in the respective international treaty of Ukraine before the receipt of the request for extradition.

2. If the maximum term of provisional arrest as stipulated in p.1 of this Article comes to an end before the request for extradition is received, the person shall be released immediately.

3. A public prosecutor shall file a request on imposing a provisional arrest to the investigating judge on whose territorial jurisdiction the detention has taken place.

4. The following documents shall be attached to the request:

1) protocol of detention of the person;

2) documents that contain information on committing a crime by this person on the territory of a foreign state and on the selection of a preventive measure against this person by a competent authority of a foreign state;

3) documents that confirm the identity of the person.

5. The request shall be handled by an investigating judge within the shortest possible time, but not later than within seventy-two hours after the detention of the person.

6. When handling the request, the investigating judge shall establish the identity of the detained person; offer him to make a statement; check the availability of the documents envisaged by clause 2 part 4 of this Article; listen to the opinion of a public prosecutor, other participants, and pass a ruling on:

1) exercising a provisional arrest;

2) refusal to exercise a provisional arrest if there are no grounds for it.

7. The person against whom provisional arrest is exercised, his defense council or a legal representative, and a public prosecutor may appeal against the ruling of the investigating judge.

8. Release of a person from provisional arrest due to the request of extradition arriving late to the central authority of Ukraine shall not prevent from exercising an extradition arrest against this person should such a request be received at a later date.

9. If the request for extradition is received before the end of the term of provisional arrest, the ruling of the investigating judge on exercising provisional arrest shall lose legal effect at the moment when the investigating judge passes a ruling on exercising an extradition arrest against this person.

#### **Article 584. Enforcing a preventive measure as detention in custody in order to secure the extradition of a person (extradition arrest)**

1. After a request for extradition from a competent authority of a foreign state is received, a public prosecutor, according to instructions or request of a central authority of Ukraine, shall make a request to the investigating judge of the jurisdiction where the person is being kept in custody on enforcing an extradition arrest against this person.

2. The following shall be submitted to the investigating judge together with the request:

1) a copy of a request for extradition from a competent authority of a foreign state, attested by a central Ukrainian authority;

2) a document on the citizenship of the person;

3) available materials of extradition examination.

3. The materials submitted to the investigating judge shall be translated into the State language or into another language envisaged by the international treaty of Ukraine.

4. When examining the issue of enforcing extradition arrest, the investigating judge

shall be guided by the provisions of this Code and the international treaty of Ukraine in respect of which the Verkhovna Rada of Ukraine has given its consent to be bound by.

5. Should a person against whom the issue of enforcing extradition request is being examined not speak the State language, he shall be provided with an interpreter/translator.

6. The terms of detention and the procedures for extending these terms shall be established by this Code.

7. When handling the request, the investigating judge shall establish the identity of the person; offer him to make a statement; check the request for extradition and the available materials of the extradition examination; listen to the opinion of a public prosecutor, other participants, and pass a ruling on:

1) exercising an extradition arrest;

2) refusal to exercise an extradition arrest if there are no grounds for it.

8. When handling the request, the investigating judge shall not investigate the issue of guilt nor examine the legality of procedural decisions taken by competent authorities of a foreign state in connection with the case of the person that the request for extradition has been received for.

9. The person against whom extradition arrest is exercised, his defense council or a legal representative, and a public prosecutor may appeal against the ruling of the investigating judge.

10. Extradition arrest shall be exercised until the issue of extradition is settled and the transfer of the person actually takes place; however, it shall not last longer than twelve months.

11. Within this term the investigating judge of the court on whose territorial jurisdiction the person is kept in custody shall examine, upon request of a public prosecutor, the basis for further confinement of the person under custody or for his release at least once every two months.

12. Based on the complaint of the person against whom extradition arrest is exercised, his defense council or a legal representative, the investigating judge of the court on whose territorial jurisdiction the person is kept in custody shall examine the availability of grounds for releasing the person, but not more often than once a month.

13. The release of the person from extradition arrest by the investigating judge shall not prevent its repeated application in order to transfer the person to a foreign state in fulfillment of the request for extradition, unless otherwise provided by the international treaty of Ukraine.

14. The central authority of Ukraine shall immediately inform in writing the Office of the United Nations High Commissioner for Refugees on each case of exercising a provisional or extradition arrest against persons described in part two of Article 589 of this Code.

#### **Article 585. Enforcing a preventive measure not connected with detention in custody in order to secure the extradition of a person based on a request for extradition from a foreign state**

1. If existing circumstances guarantee the prevention of an escape of a person and ensure his extradition, the investigating judge may apply to such a person a preventive measure other than keeping in custody (extradition arrest).

2. When deciding on the possibility to apply a measure of restraint other than keeping in custody, the investigating judge shall be required to take into account the following:

1) information the person's evading from justice in the requesting party and on how he complied with the terms on which he was released from custody during this or other criminal

proceedings;

2) severity of punishment threatening the person if convicted, based on the circumstances established in respect of the incriminated criminal offence, provisions of Ukraine's law on criminal liability and case law;

3) age and state of health of the wanted person;

4) strength of the person's social ties, including whether he has a family and dependents.

3. If the person in whose respect request for extradition is being considered disregards the terms of the measure of restraint applied, the investigating judge, upon public prosecutor's motion, may pass a ruling to enforce the preventive measure in the form of custody, to ensure extradition of the person.

#### **Article 586. Termination of provisional arrest or preventive measure**

1. Provisional arrest or preventive measure can be terminated if:

1) the central authority of Ukraine does not receive a request for extradition of this person within the period of time set forth in the international treaty of Ukraine;

2) the extradition examination reveals circumstances under which extradition is not performed;

3) competent authority of a foreign state refuses to request the extradition of a person;

4) the central authority of Ukraine passes a decision on refusing the extradition of a person.

2. Public prosecutor or his deputy of the Autonomous Republic of Crimea, oblast, the cities of Kyiv or Sevastopol shall terminate the provisional arrest or preventive measure upon request of a central authority of Ukraine, and in a situation provided for by clause 2 part one of this Article – upon coordinated approval with a respective central authority of Ukraine. A copy of the ruling on terminating provisional arrest or preventive measure shall be sent to the authorized officer of the place of detention, to the investigating judge who passed the ruling on imposing provisional arrest or preventive measure, and to the person in relation to whom a preventive measure not connected with detention was enforced.

#### **Article 587. Carrying out extradition examination**

1. Extradition examination of the circumstances that may hinder the extradition of a person shall be carried out by a central authority of Ukraine or, upon its instruction or request, by the public prosecutor's office of the Autonomous Republic of Crimea, oblast, the cities of Kyiv or Sevastopol.

2. Extradition examination shall be carried out within sixty days. This term can be extended by a respective central authority of Ukraine.

3. The materials of the extradition examination, together with the conclusions based on this examination, shall be sent to a respective central authority of Ukraine.

#### **Article 588. Summary extradition of persons from Ukraine**

1. Every person in whose respect a request for extradition is received shall be notified of his right to make a request, under this Article, for application of summary extradition and be explained the procedure for filing such request.

2. Summary extradition of a person from Ukraine may apply only where there is his written declaration of consent to extradition, executed in the presence of the defence and

approved by the investigating judge. Where such declaration has been made, extradition may proceed without a full examination of eventual obstacles to extradition.

3. The public prosecutor shall file a request with the investigating judge seeking attestation of the person's consent to extradition. The investigating judge shall consider the request in the presence of the person who is subject to extradition, his defence counsel, and the public prosecutor. The investigating judge shall be obliged to ascertain whether the person who is subject to extradition consents voluntarily to be extradited and is aware of all consequences of extradition, and then decide by his ruling to approve the person's consent to summary extradition or to refuse to accept such.

4. Where a person has made a declaration of consent to be extradited to the requesting party and the investigating judge has issued a ruling to attest it, the public prosecutor shall refer it for consideration to the **central** authority of Ukraine, which shall consider such within three days and decide on possible application of the summary extradition procedure.

5. Where a person in whose respect a request for extradition does not give consent to his extradition, the request for extradition shall be subject to ordinary consideration.

6. Once a person's consent to summary extradition has been attested by the investigating judge, such consent may not be withdrawn.

#### **Article 589. Refusal of extradition**

1. Extradition of a person to a foreign state shall be refused where:

1) the person in whose respect a request for extradition has been received is, under the laws of Ukraine in effect at the time of the decision on extradition, is a citizen of Ukraine;

2) the offence for which extradition is requested is not punishable by deprivation of liberty by the Ukrainian law;

3) the period of criminal prosecution or execution of a sentence established by the Ukrainian law for the offence for which extradition is requested has expired;

4) the competent authority of the foreign state has failed to provide, upon request of the **central** authority of Ukraine, the additional materials or information without which a decision on a request for extradition may not be made;

5) the person's extradition contradicts Ukraine's obligations under international treaties of Ukraine;

6) there are other grounds provided for by an international treaty of Ukraine.

2. A person who has been recognised a refugee or a person requiring subsidiary protection, or who has been granted temporary protection in Ukraine may not be extradited to the state from which he has been recognised to have taken refuge or to a foreign state where his health, life or liberty may be in jeopardy on the grounds of race, denomination (religion), ethnicity, citizenship (nationality), affiliation with a particular social group or political conviction, except as otherwise provided by an international treaty of Ukraine.

3. Where extradition is refused on the grounds of citizenship and status of a refugee or other grounds not precluding criminal proceedings, the Prosecutor General's Office of Ukraine, upon request of the competent authority of the foreign state, shall instruct to carry out pre-trial investigation in respect of such person as prescribed by this Code.

#### **Article 590. Decision on a request for a person's surrender (extradition)**

1. Upon consideration of the findings of the extradition examination the central authority of Ukraine shall decide to surrender (extradite), or refuse surrender (extradition) of, the

person to the foreign state. Such decision is to be made by the head of the central authority of Ukraine or a person he has authorised to do so.

2. The central authority of Ukraine shall inform of its decision the competent authority of the foreign state and, also, the person in whose respect such has been made.

3. Where a decision is made to surrender (extradite) a copy thereof is served upon the above person. If the above decision is not appealed to the court within ten days, the person is surrendered to the competent authorities of the foreign state as a matter of fact.

4. A decision to grant a request for extradition of a person may not be passed if such person has filed an application for the status of a refugee or person requiring subsidiary protection, or has exercised the right under the effective legislation to appeal decision as to the said statuses, until final determination of the application under the rules established by the legislation of Ukraine. Information as to whether a person has filed said applications or appealed said decision shall not be divulged to the requesting foreign State.

#### **Article 591. Appeal of a decision to surrender (extradite) a person**

1. A decision to surrender (extradite) a person may be appealed by the person in whose respect it has been made, his defence counsel or legal representative, to the investigating judge within whose jurisdiction the above person is held in custody. Where a non-custodial restraint has been chosen, an appeal of a decision to surrender (extradite) such person may be lodged to the investigating judge within whose jurisdiction the relevant central authority of Ukraine is located.

2. Where an appeal of the decision to extradite is lodged by a person in custody, the authorised official of the place of detention shall forward without delay the appeal to the investigating judge and notify thereof the prosecutor's office of the Autonomous Republic of Crimea, oblast, the city of Kyiv or Sevastopol.

3. The investigating judge shall hear the appeal within five days of its receipt by the court. The hearing is held with the participation of the public prosecutor who has performed extradition examination, the person regarding whom the decision to extradite has been taken, his defence counsel or legal representative if the latter takes part in the proceedings.

4. When hearing the appeal, the investigating judge shall not examine the issue of guilt or review lawfulness of the procedural decisions taken by the competent authorities of the foreign state in the case of the person requested for surrender (extradition).

5. Based on the findings of such hearing, the investigating judge shall rule to:

1) dismiss the appeal;

2) grant appeal and revoke the decision to surrender (extradite).

6. The investigating judge's ruling may be appealed by the public prosecutor, the person in whose respect the decision has been made, his defence counsel or legal representative. Filing an appeal against such ruling of an investigating judge shall suspend its effect and arrest its execution.

7. A decision of an appellate court may be appealed on cassation only by a public prosecutor on the grounds of the wrong application of international treaties of Ukraine by the court where reversal of the decision to surrender (extradite) obstructs further proceedings in respect of a person requested for extradition by a foreign state.

#### **Article 592. Stay of extradition**

1. After a decision to surrender (extradite) a person has been made, the central authority of Ukraine may stay surrender of the person to the foreign state as a matter of fact where:

1) the person in whose respect a decision to surrender (extradite) has been made is prosecuted or serves a punishment of deprivation or restraint of liberty in Ukraine for commission of another offence on the territory of Ukraine, – until completion of the pre-trial investigation or court proceedings, service of sentence or release from punishment on any lawful grounds;

2) the person requested for surrender (extradition) is seriously ill and may be not for reasons of health be surrender without harm to his health, – until recovery.

2. After a decision to stay extradition the prosecutor's office of the Autonomous Republic of Crimea, oblast, city of Kyiv or Sevastopol shall, upon instruction (request) of the central authority of Ukraine, oversee the person's service of the sentence or monitor his convalescence.

3. Absent any grounds for stay of surrender as a matter of fact, as provided under paragraph two above, the prosecutor's office of the Autonomous Republic of Crimea, oblast, city of Kyiv or Sevastopol shall enforce extradition arrest as provided for by this Code.

4. Where any circumstance precluding extradition arise during such stay, the central authority of Ukraine may revise its decision to surrender (extradite).

#### **Article 593. Surrender of a person as a matter of fact**

1. In order to surrender as a matter of fact a person in whose respect a decision to surrender (extradite) has been made, the central authority of Ukraine shall give appropriate instructions (make requests before) competent authorities of Ukraine after such decision has come into effect.

2. Extradition of a person must be carried out within fifteen days of the date determined for his extradition. The above term may be extended by the central authority of Ukraine for up to thirty days, after which the person shall be subject to release from custody.

3. Where the competent authority of a foreign state cannot for reasons beyond its control accept such person, the central authority of Ukraine shall within the time provided under the second paragraph above determine a new date for surrender.

4. At the time of surrender of a person as a matter of fact the competent authority of the foreign state shall be informed of the duration of such person's detention in Ukraine.

5. A person extradited to Ukraine by decision of the competent authority of a foreign state shall be delivered to the penal institution by the competent authority of Ukraine as instructed (requested) by the **central** authority of Ukraine.

#### **Article 594. Expenses related to deciding on the extradition of a person to a foreign state**

1. Expenses incurred in the territory of Ukraine in connection with deciding on extradition of a person, as well as expenses incurred in connection with transit of a person extradited to Ukraine via the territory of another state, shall be deemed procedural expenses under this Code.

### **Chapter 45. Takeover of Criminal Proceedings**

**Article 595. Procedure and conditions for takeover of criminal proceedings from foreign states**

1. A request of competent authorities of foreign states for taking over of criminal proceedings by Ukraine shall be considered by the Central authority of Ukraine for international legal assistance or the authority authorised to maintain relations under paragraph 3 of Article 545 of this Code, within twenty days of its receipt.

2. Criminal proceedings, in which judicial authorities of a foreign state have not rendered a sentence, may be taken over by Ukraine under the following conditions:

1) the person who is prosecuted is a national of Ukraine and stays in its territory;

2) the person who is prosecuted is a foreigner or stateless person and stays in the territory of Ukraine, and his extradition under this Code or the appropriate international treaty of Ukraine is impossible, or his extradition was refused;

3) the requesting state has given guarantees that, if a sentence is passed in Ukraine in respect of the prosecuted person, the latter will not be prosecuted on behalf of the state in the requesting state for the same criminal offence;

4) the action to which request is related, is a criminal offence under Ukraine's law on criminal liability.

3. If criminal proceedings are taken over, the Prosecutor-General's Office of Ukraine shall assign as prescribed in this Code, the conduct of pre-trial investigation to an appropriate public prosecutor, and shall inform the requesting state thereon.

4. If taking over criminal proceedings is refused, the Prosecutor-General's Office of Ukraine shall return materials to the appropriate foreign authorities, with reasons for the refusal.

**Article 596. Impossibility to take over criminal proceedings**

1. Criminal proceedings may not be taken over if:

1) provisions of part two of Article 595 of this Code or of the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by, are not complied with;

2) a judgment of acquittal was delivered in Ukraine in respect of the same person and in connection with the same criminal offence;

3) a condemnatory sentence was delivered in Ukraine in respect of the same person and in connection with the same criminal offence, the punishment of which already served or being served;

4) a decision to close criminal proceedings or to release from serving punishment in connection with pardon or amnesty, was taken in respect of the same person and in connection with the same criminal offence;

5) proceedings in respect of the criminal offence concerned may not be conducted because of expiry of the period of limitation.

**Article 597. Keeping a person in custody before the receipt of the request to take over criminal proceedings**

1. Upon request of another state's competent authority, the person in whose respect a request to take over criminal proceedings will be sent may be kept in custody in the territory of Ukraine for a period not exceeding forty days.

2. Keeping in custody shall be applied in a procedure and according to rules stipulated in Article 583 of this Code.

3. If after the expiry of the time limit referred to in part one of this Article, the request to take over criminal proceedings is not submitted, the person concerned shall be released from custody.

**Article 598. The procedure of criminal proceedings which have been taken over from another state**

1. Criminal proceedings which have been taken over from a foreign competent authority, shall begin with the stage of pre-trial investigation, and shall be conducted as prescribed in this Code.

2. Information contained in materials obtained by appropriate competent authorities of another state in its territory and in accordance with laws of the latter before criminal proceedings have been taken over, may be found admissible during trial in Ukraine unless this breaches the principles of judicial proceedings laid down in the Constitution of Ukraine and this Code, and unless such materials has been obtained with violations of human rights and fundamental freedoms. Information recognized by court admissible does not require any legalization.

3. After criminal proceedings have been taken over, investigator, public prosecutor may conduct any procedural actions specified in this Code.

4. If sufficient grounds for notifying of suspicion are present, a notice of suspicion should be served in accordance with Ukraine's law on criminal liability and as prescribed in this Code.

5. Punishment imposed by court shall not be more severe than punishment provided for by law of the requesting state for the same criminal offence.

6. A copy of the final procedural decision which has entered into legal force shall be sent to the competent authority of the requesting state.

**Article 599. Procedure and conditions for takeover of criminal proceedings by a competent authority of a foreign state**

1. The designated (central) authority of Ukraine shall consider a request of investigator as approved by the public prosecutor, that of a public prosecutor or court, to transfer criminal proceedings to a competent authority of another state, within twenty days after such request has been received.

2. Unfinished criminal proceedings may be transferred to another state on condition that extradition of the person subject to prosecution is impossible, or if extradition of such person to Ukraine was refused.

3. Investigator, public prosecutor or court, upon request of the competent (central) authority of Ukraine, resumes criminal proceedings, extends, if allowed by this Code, time limits for investigation or keeping in custody, taking into account the time needed for the competent authority of the foreign state to take over criminal proceedings.

**Article 600. Contents and form of the request to transfer criminal proceedings to another state**

1. Contents and form of the requests to transfer criminal proceedings to another state shall comply with provisions of this Code and the relevant international treaties of Ukraine.

2. A request to transfer criminal proceedings to another state shall contain the following:

1) name of the authority which conducts criminal proceedings;

2) reference to the appropriate international treaty on provision of legal assistance;

3) name of the criminal proceedings to be transferred;

4) description of the criminal offence which is the subject of criminal proceedings and legal qualification of such criminal offence;

5) last name, first name and patronymic of the individual in whose respect criminal proceedings are conducted, date and place of his birth, place of residence or whereabouts, and other information thereon.

3. The following documents shall be attached to the request:

1) records of criminal proceedings;

2) text of the Article of Ukraine's law on criminal liability under which the criminal offence is qualified and criminal proceedings are conducted;

3) information on the person's nationality.

4. Available physical evidence are transferred with the request and the documents specified in part three of this Article.

5. Copies of materials shall be retained in the agency which conducted criminal proceedings in Ukraine.

#### **Article 601. Consequences of the transfer of criminal proceedings to the competent authority of another state**

1. From the moment the competent authority of another state has taken over criminal proceedings, the appropriate Ukrainian authorities shall not have the right to conduct any procedural action with regard to the person, in connection with the criminal offence the criminal proceedings in which respect has been taken over, other than on the grounds of a request for international legal assistance from the state which has taken over criminal proceedings.

2. Where criminal proceedings transferred from Ukraine are closed by the competent authority of a foreign state at the stage of pre-trial investigation, it shall preclude resumption of proceedings in Ukraine and further investigation under the rules of this Code unless otherwise provided for by an international treaty to which the Verkhovna Rada of Ukraine consented to be bound.

### **Chapter 46. Recognition and Execution of Judgments of Courts of Foreign States and Transfer of Sentenced Persons**

#### **Article 602. Grounds and procedure for enforcement of judgments of courts of foreign states**

1. A sentence delivered by a court of a foreign state may be recognised and enforced in the territory of Ukraine in cases and in the scope prescribed in the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by.

2. In absence of an international treaty, provisions of this Chapter may be applied in deciding on an issue of the transfer of a sentenced person for further serving of punishment.

3. Request on execution of foreign state's court sentence, except a request to transfer a sentenced, person, shall be considered by the Ministry of Justice of Ukraine within thirty days after receipt of the request. If the request and additional materials has been received in a foreign language, this time limit shall be extended to three months.

4. When considering a request for the enforcement of a sentence delivered by a foreign court in accordance with part three of this Article, the Ministry of Justice of Ukraine shall determine whether grounds for granting request for the enforcement of a sentence exist under the appropriate international treaty of Ukraine. For this purpose, the Ministry of Justice of Ukraine

may demand and obtain the necessary materials and information in Ukraine or from the competent authority of the foreign state concerned.

5. Having established that the request for recognition and enforcement is consistent with the provisions of the international treaty of Ukraine, the Ministry of Justice of Ukraine shall forward request for recognition and enforcement of the sentence of the court of foreign State to a court of first instance and transfer the obtained materials thereto.

6. If the request is refused, the Ministry of justice of Ukraine shall inform the requesting foreign authority thereon, with explanation of reasons for refusal.

7. Sentences delivered *in absentia*, i.e. without participation of the person concerned in criminal proceedings, by courts of foreign states, except when the sentenced person was served a copy of the sentence and given the possibility to challenge the sentence, shall not be enforced in Ukraine. A request for execution of a sentence imposed by a foreign court may be refused if such execution contradicts any obligations of Ukraine under her international treaties.

8. The issue of recognition and enforcement of a sentence delivered by a court of foreign State in part of a civil claim shall be disposed as prescribed in the Code of Civil Procedure of Ukraine.

9. In cases provided for by the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by, if a sentence of foreign court decreed a punishment in the form of imprisonment, the Ministry of Justice of Ukraine shall send a certified copy of the request as specified in this Article, to a public prosecutor to request an investigating judge to impose a restraint measure until the execution of the sentence of a foreign court is decided.

### **Article 603. Consideration be court of the issue of enforcement of a sentence of foreign state's court**

1. The Ministry of Justice of Ukraine's application for execution of a sentence of foreign state's court shall be considered within one month of the day of its receipt by a court of first instance within whose territorial jurisdiction has the place of residence, or the last known place of residence of the convicted person, or in the place where the property of such person is located or, where none of the above is present, the location of the Ministry of Justice of Ukraine.

2. The person in whose respect the sentence was delivered shall be informed on the date of court hearing, if such person stays in the territory of Ukraine. Such person may have the benefit of a counsel. The hearing shall be held with the participation of a public prosecutor.

3. When considering the application of the Ministry of Justice of Ukraine for enforcement of a sentence of foreign state's court, the court shall verify whether requirements of the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by, were complied with. At that, the court shall not verify the factual circumstances established in the sentence of foreign state's court, and shall not decide on the issue of the person's guilt.

4. Based on results of the trial, the court shall deliver a ruling to:

1) enforce the sentence of the foreign state's court in full or in part. At that, the court shall determine what part of the punishment may be enforced in Ukraine, guided by provisions of the Criminal Code of Ukraine that establish criminal liability for the crime in connection with which the sentence was delivered, and shall decide on the issue of applying a measure of restraint until the ruling enters into legal force;

2) refuse the enforcement of the judgment sentence of the foreign state's court.

5. If an additional verification is necessary, the court may deliver a ruling to postpone the trial and to obtain supplementary materials.

6. The period spent by the person in custody in Ukraine in connection with the consideration of the request to enforce a sentence of the foreign state's court, shall be credited to the total term of punishment as determined in accordance with paragraph 1 of part four of this Article.

7. When taking a decision to enforce the foreign sentence, the court may simultaneously take a decision on measure of restraint as to the person concerned.

8. A copy of the ruling shall be sent by court to the Ministry of Justice of Ukraine and served on the person convicted by the sentence of foreign state's court.

9. A court decision on enforcement of a sentence of foreign state's court may be appealed in an appellate procedure by the requesting body, the person in whose respect the relevant issue has been decided, or by the public prosecutor.

#### **Article 604. Enforcement of the sentence of foreign state's court**

1. A ruling to enforce a sentence of a foreign state's court shall be enforced as prescribed by this Code.

2. The Ministry of Justice of Ukraine shall inform the requesting Party in the results of enforcement of the sentence of the foreign state's court.

#### **Article 605. Grounds for considering the issue of the transferring and taking over of sentenced persons for serving their sentences**

1. Request of the designated authority of the foreign state, application of the sentenced person, his legal representative or close relatives or family members, as well as other circumstances specified by Ukrainian law or international treaty of Ukraine to which the Verkhovna Rada of Ukraine consented to be bound, may be a ground for considering the issue of adopting a decision to transfer the sentenced person concerned.

2. The provisions of Articles 605–612 of this Code may apply in deciding the issue of transferring a person who is subject to compulsory medical measure by court decision.

#### **Article 606. Conditions for transfer of sentenced persons and taking over thereof for serving their sentences**

1. A person sentenced by a court of Ukraine, may be transferred to another state for serving the sentence imposed, while a national of Ukraine sentenced by foreign court, may be taken over for serving the sentence imposed, only provided that:

- 1) the person concerned is a national of the Administering State;
- 2) the sentence has entered into legal force;
- 3) at the time of receipt of the request for transfer, the sentenced person has at least six months of the punishment left to serve, or if the person concerned was sentenced to imprisonment for uncertain term;
- 4) the sentenced person or, accounting for his age or physical or mental state, his legal representative gives consent to the transfer;
- 5) the criminal offence, as a result of commission of which the sentence was delivered, is crime under law of the administering state, or would have been a crime if committed in its territory, the commission of which is punishable by imprisonment;

6) material damage caused by the criminal offence, has been repaired, as well as procedural expenses, if any;

7) the sentencing state and the administering state agree to the transfer of the sentenced person.

2. Before deciding on the issue of transferring a sentenced person for serving the sentence imposed on him, from Ukraine to a foreign state, the latter shall be required to provide guarantees that the sentenced person will not be subjected to torture or another inhuman or degrading treatment or punishment.

3. Consent of the sentenced person or of his legal representative shall be required to be given in written form, with full understanding of all legal consequences of such consent. The sentenced person or his legal representative shall have the right to obtain legal assistance in the form of legal advice with regard to the consequences of their consent. Consent of the sentenced person shall not be required if, at time the issue is disposed under the provisions of this Chapter, he stays in the territory of the state of his nationality.

4. Whenever even a single condition out of those specified in paragraphs 1 through 3 of this Article is not met, the Ministry of Justice of Ukraine may refuse to transfer or admit the sentenced person, unless this Code or the relevant international treaty of Ukraine provide otherwise.

5. If in deciding on the issue of transferring a national of a foreign state sentenced in Ukraine, it was established that the laws of the administering state are in compliance with the conditions of paragraph 5 of part one of this Article, but the maximum envisaged term of punishment in the form of imprisonment for this type of action is shorter than the term of punishment imposed in the sentence, the transfer of the sentenced person shall be possible only after actual serving by the sentenced of a part of sentence determined in accordance with part three of Article 81 of the Criminal Code of Ukraine. Same rule may be applied if the legislation of the administering state is not in compliance with the conditions of paragraph 5 of part one of this Article as regards the type of punishment.

6. If a decision is adopted to refuse the transfer of a sentenced person for further serving of punishment, grounded reasons for such decision shall be stated.

7. A sentenced person who consented to the transfer to the foreign state for further service of punishment may refuse to be transferred at any time before he has crossed Ukrainian border, as prescribed in Article 607 of this Code. Having received information on such refusal, the Ministry of Justice of Ukraine shall immediately discontinue the consideration of the issue of the transfer or, as the case may be, take measures to discontinue the transfer.

8. In cases provided for in paragraphs 4 and 7 of this Article, a new consideration of the issue of transferring a sentenced person shall not be possible before the lapse of three years after the refusal to transfer, or the sentenced person's refusal to be transferred.

#### **Article 607. Procedure and time limits for deciding the issue of the transfer of persons sentenced by Ukrainian courts, for serving their sentences in foreign states**

1. The issue of the transfer of persons sentenced by Ukrainian courts to imprisonment, for serving the sentence in the state of their nationality, shall be decided on by the Ministry of Justice of Ukraine.

2. Whenever the sentenced person is a national of a foreign state that is a party to the international treaty on the transfer of persons sentenced to imprisonment, for serving the sentence in the state of his/her nationality, the authority in charge of execution of sentences, shall

advise the sentenced person of his right to apply to the Ministry of Justice of Ukraine or the competent authority of the state of his nationality, with a request to be transferred to this state for serving the sentence there, on the grounds and according to the procedure prescribed in this Code. Provisions of this part do not preclude sentenced nationals of other states from applying for the transfer to the state of their nationality to continue serving their sentence.

3. Having studied and examined materials, the Ministry of Justice of Ukraine, if such materials are duly drawn up and if grounds specified by this Code or by the relevant international treaty exist, shall take a decision to transfer the person sentenced by Ukrainian court to imprisonment, for him to continue serving the sentence in the state of his nationality, and shall send information thereon to the appropriate foreign authority and to the person upon whose initiative the issue of such transfer of the sentenced person was considered.

4. Upon receiving from the competent authority of the foreign state of information on the consent to admit the sentenced person for serving his punishment, the Ministry of Justice of Ukraine shall send to the Ministry of Internal Affairs of Ukraine, the assignment to make arrangements regarding the place, time, and procedure for the transfer, and to organize the transfer of the person concerned from the relevant institution of the Ukrainian penitentiary system to the foreign state.

5. Transfer of a sentenced national of a foreign state for further serving of punishment as prescribed in this Article, shall not deprive him of the right to raise the issue of his release on parole, commutation of the remaining part of the sentence to a less severe one, within time limits specified in the Criminal Code of Ukraine, as well as of pardon, in a procedure established by Ukrainian law. Any documents or information required for consideration of the issue in Ukraine shall be required to be demanded and obtained from the competent authorities of the administering state through the Ministry of Justice of Ukraine.

6. The Ministry of Justice of Ukraine shall inform the sentencing court of the decision to transfer the sentenced person, as well as shall ensure that the court is informed on how the sentence has been executed in the foreign state concerned.

7. Whenever an amnesty is declared in Ukraine, the court which received information on the decision to transfer a sentenced person as provided for in this Article, shall consider the issue of applying amnesty to such sentenced person. If necessary, the court may apply to the Ministry of Justice of Ukraine seeking to receive from the competent authorities of the administering state, the information necessary for the consideration of the issue of applying amnesty.

8. The authority which has adopted the decision as prescribed in parts five and seven of this Article, based on results of consideration of parole, commutation of the remaining part of the sentence to a less severe one, pardon or amnesty issues, shall forward a copy of the relevant decision to the Ministry of Justice of Ukraine, for providing the appropriate information to the administering state.

#### **Article 608. Notifying on alteration or reversal of a sentence imposed by Ukrainian court on a national of foreign state**

1. If the sentence imposed by Ukrainian court of in respect of a sentenced person who has been transferred to serve his sentence to another state, is altered or reversed, as well as if an act of amnesty or pardon issued in Ukraine applies to such person, the Ministry of Justice of Ukraine shall send to the designated (central) authority of the foreign state concerned, a copy of the court ruling on alteration or reversal of the sentence, or a copy of the decision taken by appropriate Ukrainian authorities to apply amnesty or pardon to the sentenced person.

2. If the sentence has been reversed and a new trial fixed, other documents required for this, shall be also sent.

**Article 609. Procedure for consideration of request (petition) for the transfer of a Ukrainian national sentenced by a foreign court, for serving the sentences in Ukraine**

1. A request of a competent authority of a foreign state to transfer a Ukrainian national sentenced by a court of that state to imprisonment, for serving their sentences in Ukraine, as well as a request for the transfer of such convict or his/her legal representative or relative shall be considered by the Ministry of Justice of Ukraine within a reasonable time period.

2. After filing with the Ministry of Justice of Ukraine of petition or request on a taking over of a Ukrainian national sentenced by a court of foreign state to imprisonment, for continued service of punishment in Ukraine, and ascertaining of this person's nationality, the Ministry of Justice of Ukraine shall request from the relevant authority of the foreign state the documents needed for disposing the issue on its merits.

3. After necessary documents have been obtained the Ministry of Justice of Ukraine considers them within one month and if the decision made to take over of a Ukrainian national who has been sentenced by a foreign court to imprisonment, for him to continue serving his sentence in Ukraine, the Ministry of Justice of Ukraine shall apply to a court to bring a sentence of foreign state's court into accordance with the Ukrainian law. If the request and additional materials has been received in a foreign language, the time limit shall be extended to three months.

4. In case of the Ministry of Justice of Ukraine's refusal to grant the request (petition) for transfer of the sentenced person to Ukraine, the appropriate information shall be sent to the sentencing state, as well as to the person upon whose initiative the issue of transferring the sentenced person was considered, with explanation of reasons for such refusal.

5. If the request for transfer is granted, the Ministry of Justice of Ukraine shall send to the sentencing state the information thereon, together with a copy of the court ruling passed as a result of consideration of the request under part three of this Article.

**Article 610. Consideration of the issue of bringing a sentence of a foreign state's court in line with the laws of Ukraine**

1. The Ministry of Justice of Ukraine's application to bring a sentence of foreign state's court in line with Ukrainian law, as prescribed by part three of Article 609 of this Code, shall be considered by a court of first instance in the place of residence of the sentenced person in Ukraine or in the place where the Ministry of Justice of Ukraine is located, within one month after such application has been received. The hearing shall be held with the participation of a public prosecutor.

2. Together with the application, the Ministry of Justice of Ukraine shall submit to court the following documents:

1) a copy of the sentence together with a document which confirms that the sentence has entered into legal force;

2) text of articles of criminal law of the foreign state on which the sentence was based;

3) a document confirming the length of the served part of the sentence, including information on any preliminary detention, release from punishment, and any other circumstances relevant to the enforcement of the sentence;

4) sentenced person's statement of consent to the transfer in Ukraine to serve his sentence and, in cases provided for in the international treaty of Ukraine to which the Verkhovna Rada of Ukraine has given its consent to be bound by, the statement of the sentenced person's relevant representative;

5) information on the state of health and behavior of the sentenced person.

3. When considering the application of the Ministry of Justice of Ukraine, the court shall determine articles (parts of articles) of the law of Ukraine on criminal liability which establish liability for the criminal offence committed by the sentenced Ukrainian national, and the length of the term of imprisonment imposed based on the sentence of the foreign court.

4. When deciding on the length of a prison sentence to be served based on the foreign state's court sentence, the court shall be consistent with the term of punishment imposed in such sentence, except in the following cases:

1) If, under the Ukraine's law on criminal liability, the maximum length of imprisonment for the criminal offence is shorter than that imposed in the sentence of a foreign state's court, the court shall impose the maximum term of imprisonment prescribed in the Ukraine's law on criminal liability;

2) If the length of sentence imposed in the sentence of a foreign state's court is shorter than the minimum length established in the Criminal Code of Ukraine for the same criminal offence, the court shall impose the length of the punishment imposed by the foreign state's court sentence.

5. In accordance with the application of the Ministry of Justice of Ukraine, the court may also consider the issue of enforcing execution the additional punishment imposed by the sentence of a foreign state's court. Unexecuted additional punishment imposed by the sentence of a foreign state's court shall be enforced if Ukrainian law establishes such punishment for the commission of the given criminal offence. It shall be executed within the scope and according to the procedure prescribed by Ukrainian law.

6. When considering the issue of enforcing the sentence, the court may in the meantime decide on the issue of executing the sentence of the foreign state's court in terms of civil claim and in terms of procedural expenses, if an appropriate request exists.

7. The ruling passed under this Article may be appealed in an appellate procedure by the requesting body, the person in whose respect a decision has been made on bringing the foreign sentence in line with the legislation of Ukraine, or the public prosecutor.

8. A copy of the ruling shall be forwarded to the Ministry of Justice of Ukraine and to the central executive authority in the sphere of execution of sentences in Ukraine.

#### **Article 611. Arranging execution of sentence in respect of a transferred sentenced person**

1. After the request to transfer a sentenced person to Ukraine has been granted and the consent of the foreign state's competent authority to such transfer received, the Ministry of Justice of Ukraine shall send to the competent authority an assignment to agree on the place, time, and procedure for the transfer and to arrange the transfer of the person concerned to an institution of the Ukrainian penitentiary system.

2. The sentence in respect of a transferred person sentenced by a foreign state's court shall be executed in Ukraine in accordance with laws of Ukraine governing execution of criminal sentences. Legal consequences for the convict transferred to Ukraine for serving his sentence,

shall be the same as for persons sentenced in Ukraine for the commission of similar criminal offence.

3. A person transferred to Ukraine for continued serving of punishment, may be subject to parole, amnesty or pardon in accordance with the procedure established by the legislation.

4. The Ministry of Justice of Ukraine shall inform the designated (central) authority of the sentencing state on the progress or results of execution of the sentence in the following cases:

- 1) the sentence has been served in full in accordance with Ukrainian law;
- 2) death of the sentenced person;
- 3) escape of the sentenced person.

#### **Article 612. Notification of alteration or reversal of the sentence imposed by a foreign state's court**

1. Any issues related to reviewing the sentence imposed by a foreign state's court, shall be disposed by a court of the sentencing state.

2. If a court of a foreign state alters the sentence imposed, the issue of executing such decision shall be considered as prescribed in this Code.

3. If a court of a foreign state reverses the sentence imposed and closes criminal proceedings or if an act of pardon, amnesty is applied to the sentenced person or if his sentence imposed by a foreign court is commuted, the Ministry of Justice of Ukraine shall inform the central executive authority in the sphere of execution of sentences in Ukraine on the necessity to release the person concerned.

4. If the sentence has been reversed by a court of the foreign state and a new pre-trial investigation or a new trial assigned, the issue of continuing criminal proceedings shall be decided by the Prosecutor-General's Office of Ukraine as prescribed in this Code.

#### **Article 613. Expenses related to the transfer of a sentenced person**

1. Expenses related to the transfer of a foreigner convicted in Ukraine, to the state of his nationality for continued serving of his sentence, except expenses incurred in the territory of Ukraine, shall be borne by the state of which the sentenced person is a national.

2. Expenses related to the transfer of an Ukrainian national who has been convicted in a foreign state, shall be borne by the authority which ensures his transportation, at the expense of the State Budget of Ukraine.

#### **Article 614. Recognition and enforcement of sentences imposed by international judicial institutions**

1. Recognition and enforcement on the territory of Ukraine sentences, imposed by international judicial institutions, as well as admission of persons, sentenced by such courts to imprisonment shall be admitted in accordance with the rules laid down in the present Code based on the international treaty of Ukraine, to which the Verkhovna Rada of Ukraine consented to be bound.

### **Section IX<sup>1</sup>**

#### **SPECIAL RULES OF PRE-TRIAL INVESTIGATION DURING MARTIAL LAW, EMERGENCY OR IN THE AREA OF AN ONGOING COUNTER-TERRORIST OPERATION**

**Article 615.** Special rules of pre-trial investigation during martial law, emergency or in the area of an ongoing counter-terrorist operation

1. Within the territory (administrative area) where martial law or an emergency is in effect or a counter-terrorist operation, conducted, where an investigating judge is not able to exercise his powers within the time provided for by Articles 163, 164, 234, 247, and 248 of this Code as well as the powers as to imposing the measure of restraint in the form of 30 days of custody on persons who are suspected of having committed any of the offences under Articles 109—114<sup>1</sup>, 258—258<sup>5</sup>, 260—263<sup>1</sup>, 294, 348, 349, 377-379, and 437-444 of the Criminal Code of Ukraine, such powers are exercised by a respective public prosecutor.

*{Section IX<sup>1</sup> is added to the Law by Law #1631-VII of 12.08.14}*

## **Section X. Final Provisions**

1. This Code shall enter into force after six months from the date of its promulgation except for:

provisions that refer to criminal proceedings concerning criminal offences, which shall enter into force simultaneously with the entry into force of the Law of Ukraine on criminal misdemeanors”;

Part 1 (as far as provisions regarding powers for pre-trial investigation of crimes contemplated by Articles 402 - 421 and 423 – 435 of the Criminal Code of Ukraine are concerned) and Part Four Article 216 of this Code, which shall enter into force from the day the State Bureau of Investigations of Ukraine begins its operations, but not later than within five years after this Code has entered into force;

Part Five Art. 216 of this Code, which shall enter into force upon the first day when the activity of the National Anti-Corruption Bureau begins, but no later than three years after entry into force of this Code.

*{The fourth sentence of Subparagraph 1 in Section X – Final Provision as amended by Law № 1698-VII of 14.10.2014}*

Part Four Art. 213 of this Code, which shall enter into force upon entry into force of the legal provisions regulating provision of the free legal aid, which contemplate provision of the respective type of the free legal aid;

*{The fifth sentence of Subparagraph 1 in Section X – Final Provision as amended by Law @406-VII of 04.07.2013}*

Part 2 of Article 45 of this Code, which shall enter into force one year after the Register of Advocates and Advocate Associations has been created;

Part 5 of Article 181 (as far as the possibility to use the electronic monitoring devices is concerned), Para 9 of Part 5 of Article 194, Article 195, which shall enter into force from the day of entry into force of the Regulations on procedure of use thereof approved by the Ministry of Internal Affairs of Ukraine;

Subpara 2 of Subpara 3.4, subparas 1, 2, 3, 12, 13, 14 of Subpara 3.11 of Para 3 of Section X “Final Provisions”, which shall enter into force from the date of promulgation of this Code.

*Part One Art 41 and Part Six Art/ 246 of this Code (as far as inclusion of the bodies of State Customs Service of Ukraine in the operations units is concerned), Subpara 3.12 Para 3 of Section X “Final Provisions” (as far as conducting of detective and search operations by the bodies of State Customs Service is concerned), which shall enter into force in one year after this Code has entered into force;*

Subpara 2 and 3 (as far as exclusion of the words “Prosecutor Office Investigators” is concerned), 4, 10, 11, 12, 13, 14, 15, 16, 17 of Subpara 3.13 of Para 3 Section X “Final

Provisions”, which shall enter into force from the day when the State Bureau of Investigations of Ukraine starts its activities, but not later than five years after this Code has entered into force;

Subpara 3.8 of Para 3 Section X “Final Provisions” (as far as introduction of changes into Articles 351, 352 of Customs Code of Ukraine is concerned), Subpara 3.13 of Para 3 of Section X “Final Provisions” (as far as exclusion of provisions regarding Military Prosecutor’s Office is concerned), Subpara 3.14 Para 3 of Section X “Final Provisions (as far as establishment of procedure of engagement of special Militia Force and special means during the investigative activities is concerned), which shall enter into force from the day of publication of this Code;

Paras 18, 19, 20, 21, 22, 23, 24, 25 and 26 of Section XI “Transitional Provisions”, which shall enter into force from the day of publication of this Code.

2. From the day of entry into force of this Code, the following shall become invalid:

(1) The Code of Criminal Procedure of Ukraine (*Vidomosti Verkhovnoyi Rady URSR [The Official Bulletin of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic (UkrSSR)]* 1961, No.2, p. (15) as amended and supplemented;

(2) Law of the Ukrainian SSR “On Approval of the Code of Criminal Procedure of the Ukrainian SSR (*Vidomosti Verkhovnoyi Rady URSR [The Official Bulletin of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic (UkrSSR)]*, No. 2, p. 15).

3. The following legislative acts of Ukraine shall be amended:

For convenience, the amendments to the legislative acts are given in the Comparative Table

## **Section XI. Transitional Provisions**

1. Before the day of entry into force of provisions of Part 1 (as far as powers of pre-trial investigation of the crimes contemplated by articles 402 - 421, 423 – 435 of the Criminal Code of Ukraine are concerned) and Part Four of Article 216 of this Code, powers of pre-trial investigation of the criminal offences specified in such provisions shall be exercised by investigators of prosecutor’s offices, which enjoy the powers of the investigators as established by this Code.

After the day of entry into force of provisions of Part One (as far as provisions regarding powers of pre-trial investigation of crimes contemplated by Articles 402 - 421, 423 – 435 of the Criminal Code of Ukraine) and Part Four of Article 216 of this Code, materials of criminal proceedings, the pre-trial investigation of which is conducted by public prosecutors’ offices, shall be transferred by investigators of public prosecutors’ offices to appropriate pre-trial investigation bodies with consideration of the investigative jurisdiction determined by this Code.

Before the day of entry into force of Paragraph 5 of Article 216 of this Code powers of pre-trial investigation of the criminal offences specified in it shall be exercised by investigators of prosecutor’s offices, which enjoy the powers of the investigators as established by this Code.

*{the third sentence is added to Subparagraph 1 in Section XI – Transitional provisions by Law № 1698-VII of 14.10.2014}* After the day of entry into force of Part Five of Article 216 of this Code, materials of criminal proceedings, the pre-trial investigation of which is conducted by public prosecutors’ offices, shall be transferred by investigators of public prosecutors’ offices to the National Anti-Corruption Bureau of Ukraine.

*{the fourth sentence is added to Subparagraph 1 in Section XI – Transitional provisions by Law № 1698-VII of 14.10.2014}*

2. Before the day of entry into force of the legal provisions regulating provision of the free legal aid, which contemplate activities of the bodies (institutions) empowered by the law to provide free legal aid, functions of such bodies (institutions) shall be performed by the bar associations or by the lawyers' self-governance bodies.

3. Statements and notifications about crimes submitted to the bodies of inquiry, investigators, prosecutors before this Code has entered into force, and on which a decision on initiation or refusal to initiate a criminal proceedings has not been made, shall be transferred to the pre-trial investigation bodies according to this Code, in order to start pre-trial investigation under the procedure established by this Code.

4. Detective and search cases that, on the day when this Code enters into force, are undergoing proceedings by the units, which conduct detective and search operations, shall be continued. If appropriate grounds exist, such detective and search cases shall be transferred to the pre-trial investigation bodies in order to start pre-trial investigation under the procedure established by this Code with consideration of the investigative jurisdiction of these cases.

5. Criminal cases that, on the day when this Code enters into force, are undergoing proceedings by the bodies of inquiry shall be transferred, within ten days from the day when this Code enters into force, to appropriate pre-trial investigation bodies with consideration of the investigative jurisdiction of these cases for purposes of the pre-trial investigation.

6. Criminal cases that, on the day when this Code enters into force, are undergoing proceedings by the pre-trial investigation bodies shall remain under proceedings of these bodies until the investigation is completed regardless of change of their investigative jurisdiction according to this Code.

7. Detective and search operations, investigative and procedural actions initiated before this Code has entered into force, shall be completed under the procedure, which was valid before this Code has entered into force. After this Code has entered into force, the detective and search operations, investigative and procedural actions shall be exercised according to the Law of Ukraine "On Detective and Search Operations" and the provisions of this Code.

8. Admissibility of the evidence obtained before this Code has entered into force shall be determined under the procedure, which was valid before this Code has entered into force.

9. Measures of restraint, arrest of assets, and removal from office applied during the inquiry and pre-trial investigation before this Code has entered into force shall remain valid until they are changed, cancelled or terminated under the procedure, which was valid before this Code has entered into force.

10. Criminal cases, which, as of the effective date of this Code, have not been referred to the court with an indictment, determination on application of coercive measures of medical or educational nature, determination to refer the case to the court for deciding of the matter of release of the person from criminal liability, shall be investigated, referred to court and tried at the first, appellate and cassation instances and the Supreme Court of Ukraine in accordance with provisions of this Code.

11. Criminal cases, which, as of the effective date of this Code, have been referred by the prosecutors to the court with an indictment, a determination on application of coercive measures of medical or educational nature, a determination on referral of the case to a court in order to decide the issue of release of the persons from the criminal liability, shall be considered by the courts of first instance, appeal and cassation and by the Supreme Court of Ukraine under the procedure, which was valid before this Code has entered into force.

12. Investigation of criminal cases provided for by Para. 11 of this section in the event if such cases are remanded by the court to the prosecutor for additional investigation shall be conducted under the procedure established by this Code.

13. Judgments, which were delivered by the courts of first instance and did not enter into legal force as of the day when this Code entered into force, may be appealed in course of the appeal proceedings within the time limits, which were valid before this Code has entered into force.

14. Non-appealed judgments, which were delivered by the courts of first instance and did not enter into legal force as of the day when this Code entered into force, shall enter into legal force under the procedure, which was valid before this Code has entered into force.

15. Appellate and cassation complaints, applications for review of the judgments by the Supreme Court of Ukraine, which were considered before this Code has entered into force, or those, which refer to the cases, where the judicial consideration was not completed by the day when this Code has entered into force shall be submitted and considered under the procedure, which was valid before this Code has entered into force.

16. Applications for review of the judgments on the basis of newly discovered circumstances submitted to the respective prosecutors before this Code has entered into force shall be considered and submitted by them to a court under the procedure, which valid before this Code has entered into force.

Applications for review of the judgments on the basis of newly discovered circumstances submitted to a court before this Code has entered into force, as well as applications submitted by prosecutors according to Subpara 1 of this Para after this Code has entered into force shall be considered by the respective courts under the procedure, which was valid before this Code has entered into force.

17. Persons who, as of the day when this Code enters into force, participate in criminal proceedings as defenders and do not have the status of advocate, shall continue to execute powers of defenders in such criminal proceedings during the pre-trial investigation as well as during the court proceedings at the courts of first instance, appellate courts, courts of cassation and the Supreme Court of Ukraine.

18. Not later than three months from the day of promulgation of this Code, the local common courts shall hold meetings of their judges in order to elect investigating judges under the procedure established by the Law of Ukraine "On the Judicial System and Status of Judges".

In case if an investigating judge has not been elected within the above term, powers of the investigating judge specified in this Code shall be executed by the oldest judge of this court until the day when such investigating judge has been elected.

18. Not later than within three months after publication of this Code, the local common courts, courts of appeal of the Oblasts, of the cities of Kyiv and Sevastopol, Court of Appeal of Autonomous Republic of Crimea and the High Specialized Court of Ukraine for consideration of civil and criminal cases shall hold the meetings of their judges in order to elect the judges empowered to conduct criminal proceedings with regard to the persons under the age specified by the Law of Ukraine "On Judicial System and Status of Judges".

In the event if the judge empowered to conduct criminal proceedings with regard to the persons under the age has not been elected within the aforementioned term, such powers shall be exercised by the judge having seniority of work with judiciary and experience of consideration of criminal cases.

20. Not later than three months after publication of this Code, the leaders of the pre-trial investigation bodies shall define the investigators, who have special powers to conduct pre-trial investigations with regard to the persons under the age.

21. The Cabinet of Ministers of Ukraine–

1) within three months from the date of promulgation of this Code, shall:

bring its regulatory and legal acts in compliance with this Code;

ensure that ministries and other central executive authorities of Ukraine bring their regulatory and legal acts in compliance with this Code;

ensure preparation and implementation of new training programs for learning of the new law of criminal procedure at the universities;

2) within one month from the date of promulgation of this Code, shall submit for review by Verkhovna Rada of Ukraine proposals concerning bringing of the legislative acts in line with this Code, including the purpose of securing the funding for:

equipping of pre-trial investigation bodies with electronic monitoring devices;

creation and keeping of the Unified Register of Pre-trial Investigations;

equipping of the pre-trial investigation bodies with means of recording of criminal proceedings and technical means for distant proceedings using videoconference modality;

replacement of the metal screens cages in the common court rooms, which separate defendants from the panel of judges and the public with glass or organic glass screens;

furnishing courtrooms with the required quantities of the equipment intended for recording of criminal proceedings and technical means for the conduct of distant proceedings in the videoconference mode: at least two courtrooms in every local court, at least four courtrooms in each appellate court, at least five courtrooms in the High Specialized Court of Ukraine for Civil and Criminal Matters and the Supreme Court of Ukraine, respectively.

furnishing pre-trial detention facilities and penal institutions with technical means for distant proceedings in the videoconference mode in the quantity sufficient to equip at least two rooms in each of such institutions;

increasing the number of judges and staff of local common courts in view of the need to ensure functions of the investigating judge.

3) Before 1 January 2013:

Ensure removal of the property (both real estate and mobile items), which is used for accommodation and support to activities of the military prosecutors' offices from the operational control of the Ministry of Defense of Ukraine and transfer thereof at no charge under control of Prosecutor General's Office of Ukraine;

Ensure transfer of the budget appropriations for maintenance of the Military Prosecutor's Offices in 2012 from the Ministry of Defense of Ukraine to the Prosecutor General Office of Ukraine according to the procedure established by the Budget Code of Ukraine;

4) Starting from 2013, the budget appropriations, which used to be allocated for the Ministry of Defense of Ukraine for maintenance of the Military Prosecutor's Offices, shall be allocated to the Prosecutor General Office of Ukraine.

22. Recommend to the Prosecutor General's Office of Ukraine to provide for the following within three months from the promulgation of this Code:

1) create the Unified Register of Pre-Trial Investigations, develop and adopt the regulation on procedure of keeping thereof in coordination with the Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and the body exercising control over the compliance with tax legislation;

2) bring its regulatory and legal acts in compliance with this Code.

23. Recommend to the Ministry of Internal Affairs of Ukraine, within three months from the promulgation of this Code, to develop and to approve the regulation on procedure of use of electronic monitoring equipment according to the requirements of this Code.

24. Recommend to Security Service of Ukraine, within three months from the promulgation of this Code, to bring its regulatory and legal acts in compliance with this Code.

25. Cabinet of Ministers of Ukraine, with participation of the Prosecutor General Office of Ukraine, High Qualification Commission of Judges of Ukraine and the Bar self-governance bodies shall prepare and ensure execution of the programs of retraining of the officers of criminal justice system and of the advocates on the matters of application of new provisions of the Law of Criminal Procedure.

26. Recommend to the State Court Administration of Ukraine:

1) Within one month from the day of promulgation of this Code, to ensure that its respective territorial departments submit to the respective local councils proposals concerning preparation and approval by such councils of the lists of jurors according to the law of Ukraine "On Judicial System and Status of Judges";

2) within three months from promulgation of this Code, to bring its legal and regulatory acts in compliance with this Code.