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**OPINION ON THE**

**CRIMINAL PROCEDURE CODE**

**OF UKRAINE**

**(adopted by the Parliament of Ukraine**  
**in the final reading on 13 April 2012)**



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# **ANALYSIS OF THE EXTENT TO WHICH THE CRIMINAL PROCEDURE CODE ADOPTED BY THE VERKHOVNA RADA OF UKRAINE AND SUBMITTED TO ITS PRESIDENT FOR ENACTMENT IMPLEMENTS RECOMMENDATIONS AND SUGGESTIONS MADE IN THE EXPERTISE AND SUBSEQUENTLY**

## **Introduction**

1. This analysis looks, article by article, at the extent to which the Criminal Procedure Code ('the Code') as adopted by the Verkhovna Rada of Ukraine has retained the amendments adopted pursuant to the recommendations made in the Opinion on the Draft Criminal Procedure Code of Ukraine of 2 November 2011<sup>1</sup> ('the expertise'<sup>2</sup>) and during the round table held in Kyiv on 12 December 2011, which were included in the draft submitted to the Verkhovna Rada of Ukraine. It also examines whether the adopted text also includes amendments that the Ukrainian authorities undertook would be made during the parliamentary process and whether any other of the many changes that have been made to the text by Verkhovna Rada of Ukraine give rise to new problems of compliance with European standards for criminal proceedings, and in particular the European Convention on Human Rights ('the European Convention'). The analysis will show that the text adopted by the Verkhovna Rada of Ukraine is an entirely positive improvement on the draft submitted to it, having given effect to the most relevant recommendations made in the course of the consultations of the Ukrainian authorities with the experts of the Council of Europe.
2. Apart from those amendments which have some substantive impact on such compliance, there are many changes that do not affect to the content of provisions but only aim to express them in a more precise way or to adopt a different linguistic style. Such changes will not be commented upon unless they are particularly noteworthy.
3. No comment is made on changes made either to the numbering of Articles or to cross-references made in the various Articles to other provisions in the Code (unless they appear to be in error) or to the adjustments of the text such as inclusion of a technical reference to the State Bureau of Investigations<sup>3</sup>, replacement of 'electronic message' by 'e-mail'.
4. All references to any additions, amendments, deletions or new provisions relate to changes that have been made to the draft submitted to the Verkhovna Rada of Ukraine.

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<sup>1</sup> DG-I (2011)16.

<sup>2</sup> This term also refers to comments made to the Ukrainian authorities on the draft submitted to the Verkhovna Rada of Ukraine before the parliamentary examination started.

<sup>3</sup> However, see below the overall comment concerning the introduction of this new investigative body' para. 102.

5. This analysis has been prepared using an English translation of the Code but the Ukrainian original has also been checked with a view to avoiding as much as possible any misunderstandings of the effect of particular provisions.

## **Article by Article Analysis**

### **Section I. General Provisions**

#### *Article 1*

6. The addition of 'and other laws of Ukraine' is entirely appropriate.

#### *Article 2*

7. The addition of the word 'trial' does not suppose any significant change. It could be considered unnecessary, as there is already a general reference to the 'criminal proceedings', which obviously include the trial. However, this minor amendment is not objectionable.

#### *Article 3*

8. Sub-paragraph 1 of paragraph 1 now includes in the definition of close relatives 'a person subjected to guardianship or caretaking', which is appropriate.
9. The change to sub-paragraph 7 of paragraph 1 is merely a matter of linguistic style.
10. The express reference in sub-paragraph 12 of paragraph 1 to the 'minor' when defining an underage person seems to be unproblematic.
11. The change from 'preliminary trial' to 'preliminary hearing' in sub-paragraph 24 of paragraph 1 is appropriate.

#### *Article 4*

12. The addition in paragraph 4 of the express stipulation that in international cooperation proceedings the rules of valid treaties will prevail and that the Ukrainian rules shall apply where no treaty is applicable is appropriate.

#### *Article 7*

13. Sub-paragraph 10 of paragraph 1 adds the principle of 'conclusive proof of guilt' to the principle of presumption of innocence. Although the need of conclusive guilt is enshrined in the concept of presumption of innocence and the principle of 'in dubio pro reo' is expressly mentioned in the Code in Article 18, this addition, even if not strictly necessary, does not do any harm.
14. The express reference made in sub-paragraph 14 of paragraph 1 to the 'binding nature of court rulings' is in conformity with general constitutional and procedural principles.
15. Sub-paragraph 15 of paragraph 1 provides some useful clarification of what is implied by the concept of adversariality. However, in the English version this concept is itself rendered as the 'adversarial nature of parties' when the correct formulation would be the 'adversarial nature of the *proceedings*'.



16. Sub-paragraph 20 of paragraph 1 makes express reference to the need of recording the proceedings by technical means. Such a requirement may be considered as a requisite for the validity of acts but it is questionable whether from a conceptual point of view this should be called a 'principle' of the proceedings. However, this is a mere question of legislative technique and legal style.

*Article 9*

17. The deletion of the reference to the court and the investigating judge from paragraph 2 is unproblematic.

*Article 12*

18. The change in the title is merely a matter of linguistic style.

*Article 17*

19. The change in the title emphasizes the need of conclusive evidence to proof the guilt, which is adequate, even not strictly needed as has already been pointed out with respect to sub-paragraph 10 of paragraph 1 of Article 7.

20. The requirement of proof beyond any reasonable doubt introduced in paragraph 2 is entirely appropriate.

21. The deletion of Ukraine of the possibility of basing the suspicion and the charges on 'assumptions' from paragraph 3 is perfectly correct.

22. The express mention made in paragraph 4 of the principle of 'in dubio pro reo' is entirely appropriate.

*Article 20*

23. The addition of the reference to the law on legal aid is correct. The other changes are matters of linguistic style.

*Article 21*

24. The reformulation of the title, mentioning expressly the 'binding nature of court rulings' is appropriate.

*Article 22*

25. The title should link the adversarial nature to the procedure and not to the parties who, by definition, are 'adversarial'; see the comment above on sub-paragraph 15 of paragraph 1 of Article 7<sup>4</sup>.

*Article 24*

26. The change is merely one of linguistic style.

*Article 27*

27. The title now clarifies that this provision deals with 'Publicity and openness of court proceedings and *complete recording using technical means*', which is unproblematic.

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<sup>4</sup> Para. 15.

28. The introduction into paragraph 1 of the right 'to familiarize with procedural decisions and obtain copies thereof' - which is appropriate to make sure that all the procedural decisions are notified in due time to the parties and that are entitled to make copies of them - something already provided for under Article 312(2) for the whole file but it does no harm that it is also expressly mentioned here.

*Article 28*

29. Sub-paragraph 1 of paragraph 3 now provides clarification as to what shall be considered a complex case and this is not problematic.

*Article 31*

30. Under paragraph 9 - a new provision - it is stipulated that officials holding the status of particular importance in accordance with part one of Article 9 of the Law of Ukraine 'On civil service' and the individuals, whose positions refer to category one will enjoy the right to be tried by courts made of a higher number of judges and these judges shall have at least some years of experience. This special rule might be justified by the role these officials play in the state structure but, in order not to break the principle of equality and avoid special privileges to certain citizens, the extension and justification of this special rule on jurisdiction should be considered. It is recalled that it was pointed out in the expertise that providing that the trial of crimes punishable by up to ten years' imprisonment by a court comprised of a single judge, was not the best solution to guarantee a just and correct judgment and that a panel of three would improve the guarantees of fair trial and protection of the defendant. This is the solution adopted now, but only for high rank officials. Further consideration of this provision's limited application would be appropriate.
31. The requirements introduced by paragraph 10 - also a new provision - regarding the trial of juveniles by a judge specially authorised for this purpose or, in the case of a panel trial, by a panel presided over by such a judge is entirely appropriate.

*Article 35*

32. Paragraph 3 now clarifies that, for the purpose of assignment to cases, the reference to a judge, also includes 'reserve judge and investigating judge'. While not strictly necessary, this amendment is not problematic. The same comment is applicable the clarification that 'hearing' means 'court hearing'.

*Article 36*

33. The clarification in sub-paragraph 2 of paragraph 2 that the access is to the 'pre-trial investigation' materials is unproblematic.
34. Sub-paragraph 12 of paragraph 2 extends the functions of the prosecutor acting on behalf of minors and other vulnerable persons in the protection of their rights with regard to the civil claim in criminal proceedings. Such a rule is to be welcome as long as it does not interfere with the right to access to justice and to be assisted by a lawyer of one's own choice.
35. The clarifications made in sub-paragraphs 14 and 15 of paragraph 2 do not affect the content and are appropriate.

36. The addition in sub-paragraphs 16-19 of paragraph 2 to the functions of the public prosecutor with regard to the international cooperation in criminal matters and the related proceedings are consistent with the new rules on surrender and extradition procedures.
37. Paragraph 6 is a new provision. It states the principle of hierarchy within the prosecution service and the possibility of the superior to correct 'illegitimate or unjustified' orders of the subordinate official. Such a rule should be more adequately placed in the Law of the Public Prosecution Office, as it deals with the principles or their activity. Furthermore, if it is considered relevant in the Code to underline the subordination principle within the prosecution office, some reference should also be made to the procedure for the subordinated to resist unlawful orders from the superior and to point out the illegitimate interference of those superiors.

*Article 37*

38. Paragraphs 1 and 2 are new. They define who appoints the public prosecutor to deal with a specific criminal proceeding and they also provide for the possibility to appoint a team of prosecutors, as well as stipulating that the appointed prosecutors shall deal with the case from the beginning until its completion. This rule, from a systematic point of view, should usually be better located in the Law on the Prosecution Service.

*Article 41*

39. The reformulation of paragraph 1 to name other agencies which can have investigative competencies in criminal proceedings does not seem to be problematic.

*Article 42*

40. The change to paragraph 1 is a matter of linguistic style.
41. The revision to sub-paragraph 3 of paragraph 3 addresses the concerns raised in the previous expertise regarding the need to ensure the right to free legal aid and free legal assistance to those parties who have no financial resources to hire a lawyer of their own choice. The effective protection of the fundamental right to legal assistance will depend on the rules contained in the law on legal aid and its implementation. Such an assessment falls out of the scope of the present review. However, the way in which this sub-paragraph has been rewritten is appropriate.
42. When stating the right of the suspect or defendant to communicate with a relative or person of his/her choice the new text in sub-paragraph 7 of paragraph 3 extends this right to any person affected by a preventive measure or remanded in custody and not only to the detained. This change is entirely appropriate.

*Article 45*

43. Paragraph 1 extends the definition of defence counsel to those providing the defence for 'the person considered to be surrendered (extradited) to a foreign state', which is entirely appropriate.
44. The second paragraph - requiring defence lawyers to register and prohibiting those who are suspended from acting as defence lawyers - is to be welcomed as a first step towards the regulation and proper control of lawyers by the bar association. It is appropriate that Section X provides that this part of the Code only enters into force

one year after the Register of Advocates and Advocates Associations has been created.

*Article 47*

45. Paragraph 2 has been amended to require a defence counsel who cannot appear on time for procedural actions conducted with the involvement of the suspect, accused to inform the institution of legal aid who appointed him/her. The addition appears to be correct, although it is not possible to confirm the consistency of this provision with the law on legal aid.
46. The revision to paragraph 4, allowing a lawyer to justify his refusal to perform his duties by the lack of appropriate skills in rendering legal aid in a specific proceeding, which is particularly complex, is much more appropriate than the previous formulation ('inadequate knowledge or incompetence'). It is entirely with the right to defence and the dignity of lawyers.

*Article 48*

47. The change to the text of paragraph 2 improves the internal consistency of the Code.

*Article 49*

48. The revision to paragraphs 1-3 make it clear that the appointment of a lawyer in the cases where the courts and prosecutors have to ensure that the suspect or defendant is assisted by lawyer will be done through the appropriate institution in charge of providing legal aid. This amendment follows the recommendation made in the expertise that it should be made clear that the appointment of a defence lawyer should never be made by officials or courts involved in the proceedings.

*Article 50*

49. There has been an appropriate clarification of the documents that may be requested of the lawyer representing a party in the criminal proceedings, with the result that there are no excessive requirements that could impair the right to legal assistance while ensuring that the person appearing as a lawyer is really qualified to act as such.

*Article 52*

50. This provision has not been changed and does not need to be changed. However in the expertise it was pointed out that this provision should be coordinated with the rules on free legal aid. If free legal aid is only granted for cases where the legal assistance is mandatory, this would amount to a deprivation of this right in the vast majority of criminal proceedings. It falls beyond the scope of this review to check to what extent the Law on free legal aid - which has been amended along with the Code but an English version of it was not available - limits the appointment of lawyer to the cases where the assistance of one is mandatory. But, if there were such a restriction, the right to legal assistance would not be adequately granted.

*Article 53*

51. The change in paragraph 1 is merely a matter of linguistic style.

*Article 54*

52. The possibility of a 'replacement' of the defence lawyer chosen or appointed has been added to that of the waiver of such a lawyer. It should be checked under which circumstances the law on legal aid allows for the replacement of the appointed lawyer.

*Article 55*

53. The amendment to paragraph 6 extends the possibility for relatives to act on behalf of a victim from situations of his or her death to ones where he or she is not able to file the appropriate application by him or herself.

*Article 61*

54. The deletion of what was paragraph 3 - which allowed the prosecutor to dismiss a claim by a civil party on the basis of no damage having been caused - satisfactorily addresses a recommendation in the expertise. The other changes to this provision are matters of linguistic style ('civil lawsuit' instead of 'civil action').

*Article 66*

55. Sub-paragraph 1 of paragraph 1 makes it clear that the legal assistance for a witness shall be provided by a registered lawyer. This clarification is entirely appropriate.
56. Sub-paragraph 7 of paragraph 1 is an addition to the list of rights of the witness, namely, 'to familiarize himself/herself with the records of interrogation and request that it is adjusted, amended and comments are incorporated, as well as make such amendments and incorporate comments with his/her own hand'. This addition improves the control that a witness has over the record of his or her testimony, which is positive.

*Articles 68, 69 and 71*

57. These provisions now grant the investigator and the prosecutor powers to summon the translator, the expert witness and the specialist. Such a possibility does not seem to be problematic and, indeed, it is actually consistent with the investigative powers they are accorded.

*Article 75*

58. The new text of this provision, which regulates the grounds to challenge judges and jurors, now makes an express reference to the 'investigating judge'. This is not necessary since an investigating judge is already included in the term 'judge' but the addition is not problematic.
59. Furthermore, the addition of being an 'applicant' has been added to the circumstances precluding someone from being a judge or juror in criminal proceedings which may not be necessary but is not inappropriate.

*Article 77*

60. The first paragraph has been amended to add of being an 'applicant' has been added to the circumstances precluding someone from being a prosecutor in criminal proceedings which may not be necessary but is not inappropriate.

*Article 78*

61. The reference to 'victim' has been deleted from the list of connections that bar someone acting as a defence lawyer in a case in sub-paragraph 3 of paragraph 2. This deletion gives effect to a recommendation in the expertise.

*Article 87*

62. The expression 'essential' violation has been replaced in this provision by 'significant' violation, which is more appropriate for the exclusionary rule of evidence.
63. The additional text in sub-paragraph 4 of paragraph 2 extends the scope of the protection against self-incrimination, excluding evidence obtained in violation of the right not to testify. This amendment gives effect to a recommendation in the expertise.

*Article 93*

64. The change introduced in paragraph 3 clarifies that the defendant has right to obtain *copies* of documents from authorities and not the documents themselves. This amendment seems to be appropriate but there is a need to ensure that such copies certified by the relevant authority shall have the same probative value as the original document.
65. Paragraph 4 is a new provision, which authorises the obtaining of evidence abroad through international cooperation. This addition is appropriate insofar as it means that the evidence must be obtained in accordance with the rules on international judicial cooperation.

*Article 95*

66. The reference to the victim in the list of those obliged to testify has been deleted from paragraph 3. This deletion is in conformity with the regulation on the rights of the victims contained in Article 56, which does not oblige the victim to give testimony. Thus, in avoiding this contradiction, the amendment is entirely appropriate.
67. The change made to paragraph 7 is merely linguistic.

*Article 97*

68. The extension in paragraph 7 of the scope of the ban on the use of hearsay evidence fulfils a recommendation in the expertise.

*Article 98*

69. When describing what is to be considered "physical evidence", the new text of paragraph 1 clarifies that this also includes 'the items that happened to be the object of criminal unlawful actions, money, valuables or other articles obtained in a criminal and unlawful manner'. This reference to the proceeds of the crime is appropriate.

*Article 100*

70. The reformulation of paragraph 4 to include an express reference to the destruction of a document is appropriate.
71. The changes in paragraph 5 and in sub-paragraph 5 of paragraph 9 are merely ones of linguistic style.

*Article 101*

72. The deletion of 'can be found by court to be admissible' from paragraph 5 is appropriate.

*Article 103*

73. The changes in sub-paragraph 2 of paragraph 1 are merely ones of linguistic style.

*Article 104*

74. The deletion of 'during pre-trial investigation' from paragraph 3 is appropriate.
75. The reformulation of paragraph 6 so as to provide for the possibility that, in the absence of the defence counsel, another person signs the record testifying that the person who participated in the procedural act refuses to sign does not seem, in principle, to be problematic.

*Article 110*

76. The clarification in paragraph 3 that 'orders shall be issued by the prosecutor and investigator when specified by the Code or when needed' is appropriate.
77. The deletion of the requirement of the order issued by prosecutor or investigator must be 'sealed by stamp' from paragraph 6 does not seem to be problematic.

*Article 113*

78. The changes in paragraph 1 are merely ones of linguistic style.

*Article 115*

79. The addition in paragraph 1 of 'The deadlines may be determined through indicating an event' does not appear to be problematic.

*Article 118*

80. The reformulation of sub-paragraph 4 of paragraph 1 is unproblematic.
81. Sub-paragraph 5 of paragraph 1 - which expressly mentioned court fees as expenses - has been deleted. It is not possible to assess the reason for this change but it does not seem to be of any significance.

*Article 120*

82. The addition in paragraph 1 of 'the suspect' beside 'the accused' is appropriate.
83. The addition to paragraph 3 makes an appropriate reference to the relevant provisions containing the rules on free legal aid.

*Article 121*

84. The addition in paragraphs 113 of 'the suspect' beside 'the accused' is appropriate.

*Article 128*

85. The reference in paragraph 1 to the legal as well as natural person civilly liable is entirely appropriate.

86. The addition of the second sentence in paragraph 3, allowing civil proceedings to be brought by a prosecutor, is entirely consistent with the amendment made to subparagraph 12 of paragraph 2 of Article 36.

## **Section II. Measures to Ensure Criminal Proceedings**

### *Article 177*

87. By including the word ‘convicted’ paragraph 2 somewhat inconsistently introduces a new subject, which is not mentioned in paragraph 1 of the same provision. It might lead to relevant difficulties in its application. The oversight is to be remedied in practice through trainings and explanatory publications by means of an explicit clarification of the related procedural situation of convicted persons and correlation with the rule specified in paragraph 2 of Article 43.

### *Article 178*

88. The newly introduced paragraph 11 is in line with the case law of the European Court of Human Rights, which suggests that ‘it does not seem unreasonable, in certain circumstances, to take into account also the amount of the loss imputed to’ those accused. Furthermore, it strives to take into account the concerns raised in the expertise as to grounds for imputing the damages to the accused concerned. In particular, it suggests that these grounds depend on validity of evidence supporting them.

### *Article 181*

89. The textual changes to paragraph 6 improve the clarity of the provision and are in line with the recommendations.

### *Article 182*

90. The changes to the last subparagraph of paragraph 5 depart from the criticised mandatory correlation of bail and loss imputed to the accused. In conjunction with the newly introduced paragraph 11 of Article 178 it makes the framework in issue more consistent with the European Convention and remedies the concerns raised in the expertise. The earlier version aimed at compensation rather than securing fulfilment of the obligations for which bail is meant to be used.

91. The new version of paragraph 6 partially addresses the recommendation to clarify the position of someone who cannot produce the sum required for bail within the 5 days, but is able to do so subsequently. At the same time it is not explicit with regard to the situations of someone who cannot produce the sum required for bail within the specified period but is able to do so after he or she has been taken into custody. However, this omission can be remedied in practice through trainings and explanatory publications by means of an explicit clarification of such possibility.

### *Article 183*

92. The new language of paragraph 2 – which suggests that remand in custody ‘shall not apply except’ in the outlined circumstances – meets the recommendation made in the expertise and reflects the rationale of the exceptional character of this measure of restraint. In addition, it alleviates the concerns about possible automatic application of the grounds specified in it.



93. The new formulation of paragraph 4 treats the grounds specified in it as legitimate considerations to take into account when deciding whether or not to grant bail and thus meets the recommendation made in the expertise. It has got rid of the rule of automatic refusal, which would be inconsistent with Article 5(3) of the European Convention. Moreover, although there have not been any changes introduced to paragraph 3, this amendment clarifies the essence of a duty to consider the possibility of bail specified in it. Now it is rightly suggested that bail is a mandatory substitute to remand in custody, unless paragraph 4 is applied.

*Article 187*

94. The addition to paragraph 3 expands the range of applicability of compelled appearance. An unjustified non-appearance for consideration of motions of choosing the measure of restraint in the form of bail, house arrest, custody or apprehension for the purposes of compelled appearance does merit the measure in issue. More importantly, it allows avoiding an automatic remand in custody in such circumstances.

*Article 193*

95. The addition to paragraph 1 and newly introduced paragraph 6 specify the rules on issuing an arrest warrant against wanted persons. They are not problematic.

*Article 193*

96. The inclusion of paragraph 5 – which establishes a duty to hand over to suspects and accused persons any rulings on enforcement of measures of restraint – implements the recommendation made in the expertise.

*Article 205*

97. The deletion of paragraph 2 – which used to reiterate the general norm on appealing the rulings in issue – could be considered as an attempt to simplify the text (avoid duplications). Appeals against the rulings on measures of restraint are delineated in chapter 26.

*Article 208*

98. The amendment to paragraph 5 that requires that a copy of the report is sent to the relevant prosecutor introduces additional safeguard and is to be welcome.

*Article 213*

99. The amendment to paragraph 1 specifying the immediacy of notification made by the detaining official strengthens the safeguard and is to be welcome.

100. The newly introduced paragraph 4, which regulates the notification of the body responsible for providing legal aid, advances the framework of access to a lawyer and also is to be welcome (in spite of its inclusion in the article providing for a different safeguard).

### **Section III. Pre-trial investigation**

#### *Article 214*

101. The textual changes to paragraph 1 appropriately clarify to the legal framework on registration of an offence and assignment of an investigator for dealing with it.

#### *Article 216*

102. The amendments to the provision significantly restrict an open-ended investigative jurisdiction of relevant bodies. The previous version of the article permitted considerable exceptions to the general criteria of its distribution. Moreover, the changes provide for another important novelty comprising an establishment of the State Bureau of Investigations, which will be a specialised body concerned with crimes attributed to high level officials and members of law enforcement bodies. It is envisaged to create institutionally separate body investigating the categories of crimes concerned, including law-enforcement (police) abuses and high corruption. Thus, the amendments implement conceptual recommendations and concerns (as to a system of investigation of relevant crimes) that had been constantly reiterated as from the initial stages of the series of consultations.

#### *Article 217*

103. The simplification of a reference to the prosecutor's powers with regard to joining procedures is not problematic.

#### *Article 218*

104. The new formulation of paragraph 5 charging the prosecutors with powers to decide on disputes concerning investigative jurisdiction is in line with the concept of their procedural leadership of investigations. In its turn, it corresponds to the concept of prosecution in criminal procedures, which is distinct from an immediate investigation and which the Ukrainian prosecution will be coherently stripped off.

#### *Article 220*

105. The amendment to paragraph 2 specifies the rule on serving the rulings in issue and is not problematic.

#### *Article 221*

106. The amendment to paragraph 1 limits the scope of documents subject to non-disclosure during investigations and is to be welcome.

#### *Article 223*

107. The amendments to paragraphs 3, 6 and 8 implement the recommendations in the expertise concerning the participation of persons whose legitimate interests could be affected by an investigative action and interrelation of the time-limits with investigative measures that might become necessary in the course of a trial. Moreover, they partially alleviate the corresponding concerns raised with regard to Articles 236, 237 and 240 in relation to participation of relevant persons in the investigative activities concerned.

*Article 224*

108. The amendments to paragraphs 1 and 9 explicitly proscribing collective interviews and confronting minors with adults are to be welcome.

*Articles 226 and 227*

109. The inclusion of medical practitioners in the list of persons attending interrogation of minors is not problematic.

*Article 231*

110. The reformulation of the text is appropriate.

*Article 232*

111. The changes made to paragraph 6 rightly specify the avenues for serving the person concerned with a copy of minutes of the investigative action.

*Article 233*

112. Paragraph 2 has not been changed and, therefore, remains partly problematic. The expertise suggested that it would be appropriate to add 'or occupies' to the word 'owns' in order to meet the requirements of Article 8 of the European Convention in full. However, this omission can be remedied in practice through trainings and explanatory publications by means of an explicit clarification of the matter.

*Article 246*

113. The amendments to paragraph 2 introduce further limitations as to use of covert investigative actions and are to be welcome.

*Article 248*

114. The changes to paragraphs 3 and 5 are not problematic.

*Article 249*

115. The amendment to paragraph 4 adjusts the timeframe regulations of covert investigative actions to the general rule introduced earlier in the code and specifies it in relation to wanted persons.

*Article 250*

116. The amended wording specifies the limits for carrying out covert investigative actions prior to receiving a warrant and is to be welcome.

*Article 254*

117. The amendment to paragraph 1 is consistent with the requirements of Article 8 of the European Convention.

*Article 254*

118. The change to paragraph 3 excluding a possibility of copying minutes of covert investigative actions will complicate technicalities of disclosure of materials to the parties. However, it does not involve any conceptual alterations since the principles of disclosure of materials remain the same.

*Article 258*

119. The deletion of the reference to exceptional interference in communication prior to receiving judicial warrant stresses the general principle and could be welcome.
120. Paragraph 2 is appropriately adjusted in line with the amendments introduced elsewhere in the text.

*Article 259*

121. The addition to the provision specifies the practicalities of its application and is not problematic.

*Article 260*

122. The deletion of paragraphs 2 and 3 that used to regulate the possibility to carry monitoring out prior to receiving a judicial warrant is compensated by the general rule reinforced in Article 250.

*Article 263*

123. The inclusion of stipulation of having a judicial warrant once more underlines the requirement and is to be welcome.
124. The deletion of paragraphs 5 and 6 that used to regulate the possibility to carry monitoring out prior to receiving a judicial warrant is compensated by the general rule reinforced in Article 250.

*Article 264*

125. The inclusion of stipulation of having a judicial warrant once more underlines the requirement and is to be welcome.

*Article 268*

126. The inclusion of paragraph 4 providing for establishing a location of an audio electronic device prior to receiving a judicial warrant is inconsistent with the legislative techniques applied for alteration of articles 260 and 263 and might create difficulties in their interpretation. However, there is no conceptual discrepancy in this respect and the inconsistency can be remedied through trainings and explanatory publications.

*Article 270*

127. The newly introduced paragraph 2 implements the recommendation made in the expertise<sup>5</sup>.

*Article 284*

128. The newly introduced sub-paragraph 8 of paragraph 1 concerns the specificity of international transfer of jurisdiction and is appropriate.
129. The extension of the term for overturning a decision to terminate criminal proceedings from 10 to 20 days is not problematic.

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<sup>5</sup> However, see the comments on inconsistent legislative techniques made with respect to Article 268, at para. 126.

*Article 290*

130. The option of disclosing materials through investigator acting on prosecutor's instruction concerns technicalities of this procedure and is not problematic.
131. The addition introduced to paragraph 10 expands on the timing and other relevant particularities of rendering a judicial decision on establishing a time line for examination of materials and is not problematic.

*Article 303*

132. The additions to the provision specifying the general rule that the decisions can be challenged by defence counsels or other relevant representatives is appropriate.

**Section IV. Court Proceedings in the First Instance**

*Article 315*

133. The introduction of the stipulation in paragraph 3 that, in the absence of motions, the measures to ensure criminal proceedings including measures of restraint adopted during the pre-trial stage shall continue is not problematic.

*Article 319*

134. The addition in paragraph 1 of a cross-reference to the relevant article regarding the appointment/replacement of judges in Article 35 is appropriate.

*Article 320*

135. Paragraph 1 has been amended so as to clarify when the reserve judge will be appointed for lengthy proceedings (namely, during the preliminary hearing). This addition seems unproblematic.

*Article 322*

136. The change from 'charges' to 'public prosecution' in sub-paragraph 2 of paragraph 2 does not appear to affect the content.
137. Sub-paragraphs 6 and 7 are new provisions but their content is unproblematic.

*Article 326*

138. The changes are merely ones of linguistic style.

*Article 336*

139. The revised formulation of paragraph 5 requires the court to send, by e-mail, fax or other means of communication, a copy of the ruling that assigns a cooperating court the assignment of conducting actions through videoconference.

*Article 337*

140. The addition made in paragraph 1 clarifies the provision and is appropriate.

*Article 340*

141. The change in this paragraph 1 - replacing 'drop charges' by 'drop public prosecution' is a matter of linguistic style and is unproblematic.

*Article 341*

142. The change in this provision - replacing 'drop charges' by 'drop public prosecution' is a matter of linguistic style and is unproblematic.

*Article 344*

143. The change in this paragraph 1 - replacing 'representative' by ' representative and legal representative' seems a matter of linguistic style and may be unnecessary but it is not inappropriate.

*Article 365*

144. The change made to this provision is a minor clarification, which does not affect its content.

*Article 368*

145. A cross- reference has been made in paragraph 6 to Article 456, which seems to be appropriate.

*Article 373*

146. The amendment to paragraph 2 makes it clear that, when ruling on the content of the sentence, the court can also decide upon the suspension of serving the sentence.

*Article 376*

147. Paragraph 2 is a new provision. It provides for the possibility of rendering the decision, without the whole reasoning and then completing the decision within the next five days. The provision is not inappropriate.

*Article 383*

148. Paragraph 3 has been reformulated to exclude jurors from deciding on preventive measures of restraint upon a defendant. This amendment seems to be appropriate.

*Article 391*

149. Paragraph 5 is a new provision. It provides that the presiding judge must provide assistance to jurors with the drafting of court decision 'in cases where there are no professional judges in the bench that rendered a decision'. This is apparently meant to apply when a decision is taken by a majority of jurors but neither of the professional judges vote for it. This provision is not problematic..

**Section V. Criminal Proceedings Related to Reviewing Court's Decisions**

*Article 400*

150. The additional text in paragraph 2 now specifies that there are some exceptions to the general rule about the effect of an appeal on the legal effect and execution of a ruling by an investigating judge. As with the first paragraph there is no reference to the particular provisions in the Code - something suggested as desirable in the original expertise - but the addition is not problematic in a substantive sense.

*Article 412*

151. The replacement in the first paragraph of the phrase 'legal, valid and fair' by 'legitimate and justified' in referring to a 'court decision' does not seem to change the substance of the provision which is concerned with defining 'significant violations of criminal procedural law' as ones that prevent a court decision that can be characterised by the phrases in question.

*Article 424*

152. It remains the case that the formulation used for the three additions introduced into the text of paragraph 1 (after 'cassation procedure' in the fourth line) - at least in their English translation - give the impression that cassation is limited to cases involving agreement by the parties. At the February meeting the assurance was given that this was not the case but the Ukrainian language version still ought to be checked to ensure that an inadvertent restriction on cassation has not been adopted.

*Article 433*

153. The prohibition in the second sentence of the second paragraph on going beyond the scope of the cassation complaint where this would aggravate the position of certain persons has been extended by adding 'the person in respect of whom applying compulsory medical or correctional measures was considered' to the list of such persons. This is entirely appropriate.

*Article 434*

154. The replacement of 'the acquitted, convict' by 'the defending parties' - a term not used elsewhere in the Code - may just be an attempt to improve the translation but the original Ukrainian text ought to be checked as it is not otherwise evident what is intended by the phrase since the provision is about both parties seeking cassation.

*Article 452*

155. The change to the formulation in sub-paragraphs 4 and 5 of paragraph 2 turns what was an obligation into a power. This change seems to recognise the need to take account of the differing circumstances of cases since there may not always be a need for experts or explanations from representatives of bodies of state authority. It is not, therefore, problematic.

*Article 453*

156. The change made to the ninth paragraph makes clearer how to determine end of the period of examination of the application for revision of judgment by the Supreme Court of Ukraine and is not problematic.

*Article 455*

157. The changes made to the second paragraph. One is to require that, where the Supreme Court renders a new judgment in place of one that has been revised, 'the reasoning part of the ruling shall specify why the judgment of the court of cassation on the matter shall be deemed wrong'. This is perfectly sensible and, while it might have been expected as a normal feature of any new judgment, underlining the need for it to occur is not inappropriate and indeed specifying it here lays the ground for the binding authority given to such a ruling by the revision to paragraph 1 of Article 458. The second change is to reinstate the possibility of referring the case for a trial *de novo* to the court of cassation. This is not inherently problematic but it does create the

possibility of the proceedings in a case becoming unduly long and this ought to be borne in mind when exercising the discretion to refer a case for a trial *de novo*.

*Article 456*

158. The addition to the second paragraph requires that the reasoning of the decision dismissing an application for revision should 'include an opinion on the proper application of the relevant provision of the Law of Ukraine on criminal responsibility for similar socially dangerous acts'. Again this addition lays the ground for the binding authority given to such a ruling by the revision to paragraph 1 of Article 458, notwithstanding that the dismissal of the application might be seen as upholding the assessment of the court of cassation on this point.

*Article 458*

159. The reformulation of the first paragraph narrows the binding authority of decisions of the Supreme Court in revision cases to the resolutions provided for in the revisions to Articles 455 and 456 already discussed. This ought to enhance legal certainty and is not inappropriate.

*Article 459*

160. The changes made to the second paragraph are just a reversal of position of sub-paragraphs 1 and 5, as well as a clarification that it is the court that must have been unaware of the circumstances (other than the ones listed elsewhere in the provision) that are said to be 'new' for the purpose of reviewing a court decision. The clarification is welcome and the change in order is appropriate as what is now sub-paragraph 5 is meant to be a clause embracing circumstances other than the ones specifically mentioned.

## **Section VI. Special Procedures for Criminal Proceedings**

*Article 471*

161. The addition to this provision allows for more lenient possibility in a reconciliation agreement of 'the imposition of a punishment and relief from serving the punishment on parole' instead of just imposing a punishment. This addition is clearly not objectionable.

*Article 472*

162. The addition to this provision allows for more lenient possibility in a plea agreement of 'the imposition of a punishment and relief from serving the punishment on parole' instead of just imposing a punishment. This addition is clearly not objectionable.

*Article 481*

163. The changes to this provision concern those to whom notification of suspicion is to be given. The changes are not, as such, problematic, but it should be noted that there is no reference in Article 480 to the following in the list of individuals subject to this special procedure of criminal proceedings: members of the Verkhovna Rada of the Autonomous Republic of Crimea; heads of villages or townships; town mayors; and an inspector general of the Accounting Chamber. Article 480 thus needs to be amended.



*Article 482*

164. The change to this provision involves extending the prohibition on any arrest or measures of restraint of a member of parliament without consent by the Verkhovna Rada of Ukraine to conviction of a criminal offence. In addition the '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'. Furthermore it is now specified that 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 Law of Ukraine *On the Rules and Regulations of the Verkhovna Rada of Ukraine*' and the Code.

165. The first and second additions are not, as such, problematic but their application could result in a denial of the right of access to court under Article 6 of the European Convention if the resulting immunity left persons affected by the conduct of the member of parliament concerned without any other remedy where the conduct had no connection with his or her parliamentary functions<sup>6</sup>.

166. It will be important to verify the extent to which the procedure for conviction of a criminal offence in relation to members of parliament is adequately regulated by the provisions referred to in the third addition as insufficient precision in this regard could result in the tribunal dealing with any prosecution of a member of parliament not being regarded as one that is established by law for the purpose of Article 6 of the European Convention<sup>7</sup>.

*Article 483*

167. The change to sub-paragraph 1 is appropriate because it makes clear that the body to be informed about an arrest or judgment involving a lawyer should be a self-regulatory one for the legal profession.

*Article 484*

168. The addition to the second paragraph requires criminal proceedings against underage persons to be carried out by investigators specially authorised for this purpose. This change has the potential to enhance the particular care needed when children are involved in the criminal process - a matter of concern in the expertise - and together with changes previously made to the Code is welcome. However, it is still the case that full compliance with European standards is only likely to be achieved with the adoption of the more comprehensive legislation that is envisaged for underage children and the criminal process.

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<sup>6</sup> See *Ernst and Others v. Belgium*, no. 33400/96, 15 July 2003 and *Cordova v. Italy (No. 2)*, no. 45649/99, 30 January 2003.

<sup>7</sup> See *Coëme v. Belgium*, no. 32492/96, 22 June 2000.

*Article 491*

169. The addition to the second paragraph is a specification that questions posed to underage persons by a pedagogue, psychologist, or legal representative can be disallowed by an investigator or a public prosecutor. The potential for this restriction to prejudice the fair trial of an underage person is only likely to become apparent when the circumstances of a particular case are examined. It is, therefore, appropriate to provide a disallowed question 'shall be placed on record'.

*Article 497*

170. The deletion of 'one of the' before 'compulsory measures of educational nature' from the third paragraph of the draft submitted to the Verkhovna Rada does not affect the substance of the court's power in this provision.

*Article 499*

171. The addition to the first paragraph requires pre-trial investigation in criminal proceedings regarding the imposition of compulsory measures of educational nature on underage persons to be carried out by investigators specially authorised for this purpose. This is similar to the addition made to Article 484 and the comment made in respect of that change is equally applicable to the present one<sup>8</sup>.

*Article 512*

172. The changes to what is now the first sentence of this paragraph just entail some reformulation of the text and have no substantive effect. However, a new and second sentence has been added which provides that the participation in a trial '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'. This addition - which makes presence of such a person a matter of discretion - will probably not conflict with the right of defence under Article 6(3)(c) of the European Convention as Article 507 provides that the participation of defence counsel is mandatory<sup>9</sup>. Nevertheless, the discretion should not be exercised in a way that prevents a person is effectively prevented from exercising his or her rights of defence, in particular as regards submission of his or her version of the facts.

*Article 514*

173. The insertion in the third paragraph of 'a psychiatrist' after 'representative of the medical institution' is appropriate as it confirms that the consideration of the issue of extending, changing or terminating the application of a compulsory measure of medical nature should be based on medical opinion, as required by Article 5(1)(e) of the European Convention.
174. The fourth paragraph is entirely new and concerns the application of a compulsory medical measure imposed by a court in a foreign state on a person extradited to Ukraine. The stipulation that this is a matter to be 'decided based on the outcomes of court hearings' is appropriate

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<sup>8</sup> See para. 177.

<sup>9</sup> Cf *Correia de Matos v. Portugal* (dec.), no. 48188/99, 15 November 2001.

*Article 517*

175. The first sentence of the third paragraph entails a slight reformulation of the text but makes no substantive change. The second sentence is entirely new but entirely appropriate since, in providing that 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', the provision is improved by removing any doubt that might have been created by the first sentence that suspects or defendants who do not have formal access to state secrets could be excluded from proceedings brought against them where such secrets are involved.

*Article 520*

176. The introduction at the end of the second paragraph of the requirement to document in detail in relevant procedural records such procedural activities as are carried out by heads of diplomatic missions and consular posts and by captains of Ukrainian ships as well as to record them 'using the technical means for documenting criminal proceedings unless such documenting is impossible due to technical reasons' addresses the concern expressed in the expertise that without such measures some evidence of significance for a particular case could be compromised by the passage of time. It is thus entirely welcome.

**Section VIII. Execution of Court Decisions**

*Article 534*

177. The recasting of the second paragraph clarifies what is intended as regards execution of court decisions that have entered into legal force or must be executed immediately but this recasting does not change its substantive effect.

*Article 536*

178. The change from 'has minor children' to 'has a minor child' in the second subparagraph of paragraph 1 regarding deferral of execution of sentence is appropriate as it makes it clear that having one such child is sufficient for such a deferral.

*Article 537*

179. The amendment made to the first paragraph is appropriate as it makes more precise the courts that will be responsible for the decisions which this provision authorises.

**Section IX. International Cooperation In Criminal Proceedings**

*Article 541*

180. Definitions for four concepts - extradition examination, extradition arrest, temporary arrest and temporary surrender - which are used in Section IX are introduced by the addition to this provision of paragraphs 8-11. The definitions are not in themselves problematic but an aspect of the substantive provision concerning temporary surrender is considered further below.

*Article 545*

181. The first two paragraphs involve some recasting of the provisions relating to the designated central authority for making requests for international legal assistance. The changes are improvements to the text in that it is made clear that this role is played by the Prosecutor-General's Office of Ukraine in respect of the pre-trial investigation stage and by the Ministry of Justice of Ukraine at the trial stage.

*Article 548*

182. The recasting of the five paragraphs of this provision improve their clarity and, with one exception, involve no substantive change. The exception concerns paragraph 5 as an entirely new sentence has been added to it, providing that in the case of requests for international cooperation sent via e-mail, fax or other means of communication '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. Such a condition is entirely appropriate.

*Article 550*

183. The addition of a third paragraph to this provision which concerns the probative value of official documents - according to which it is made clear that 'the legal status of parties to criminal proceedings in a foreign state does not need to be additionally established' - seems entirely logical given the stipulation in the first two paragraphs regarding the acceptance of documents and information from the authorities of foreign states. Whether or not the point made in paragraph 3 actually needed to be spelt out given the content of the first two paragraphs, the fact that it has been is not problematic.

*Article 552*

184. The recasting of sub-paragraphs 2,3 and 6-9 of paragraph 2 and of paragraph 3 improves their clarity and do not make any substantive change.
185. It is not clear that the change in sub-paragraph 4 of paragraph of 'legal qualification thereof' to 'its legal assessment' - if indeed it is more than a change in the translation - is really an improvement. However, the change is not problematic.
186. Paragraph 6 is entirely new. However, the addition of the stipulation that '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' is appropriate.

*Article 554*

187. The first three provisions have been recast but this improves their clarity and does not involve any substantive change.
188. Paragraph 4 is entirely new. It specifies certain issues relating to a request for international legal assistance that only the central authority can decide, namely, whether a representative of a foreign competent authority can be present during the international legal assistance procedure, the provision of guarantees to competent authorities of a foreign state regarding the execution of a request as stipulated by Article 544 (2) of the Code, the obtaining of similar guarantees from other states and the temporary extradition of a person serving punishment to participate in an

investigation (search) and other procedural activities. It is appropriate to make clear which is the body with authority to determine these issues.

*Article 558*

189. The first paragraph is new and provides for decision-making by the central authority or an authority authorized to conduct relations in accordance with article 545(3), following the review of a request from a foreign competent authority for international legal assistance, as regards (a) 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, (b) the possibility of executing a request by applying the laws of a foreign state, (c) 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, (d) refusal to execute a request on the grounds stipulated by Article 557, (e) 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 and (f) taking other actions specified in the international treaty ratified by the Verkhovna Rada of Ukraine. None of these additions to the Code are inappropriate.
190. Paragraph 2 is a recasting of the paragraph 1 introduced into the draft before submission to the Verkhovna Rada of Ukraine. The recasting involves a reduction of the period for execution from two months to one month - meeting the concern expressed in meetings with the Ukrainian authorities as to the need to avoid unnecessary delays - but also the addition of a new power to extend the deadline for execution where this requires the taking of complex and large-scale procedural actions (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). It will be important to ensure that any such extension does not result in a failure to act with the due diligence required when providing international legal assistance.
191. Paragraphs 3-6 are entirely new. They concern the preparation of documents drawn up to execute a request, the sending of these documents to a competent foreign authority, the need for execution to comply with Article 558 in the absence of any applicable international agreement between Ukraine and the corresponding foreign state, the sending of all obtained documents through diplomatic channels and the possibility - in accordance with the law or an international treaty ratified by the Verkhovna Rada of Ukraine - of imposing limitations on the use of any materials sent. All these additions are appropriate for regulating the handling of requests for international legal assistance.
192. Paragraph 7 involves a recasting of the former paragraph 4, relating to the procedure where requests cannot be executed or are refused. This recasting improves its clarity (as well as making the procedure following refusal the same where execution is not possible) and it is not problematic.
193. Paragraphs 2 and 3 of the draft submitted to the Verkhovna Rada of Ukraine - which dealt with applying the procedural rules of the requesting state so long as (a) they are not contrary to the general principles of justice of Ukraine, (b) they do not

violate human rights and fundamental freedoms or lead to such a violation - have not been retained. This does not seem to be problematic as the deletion means that the provisions of the Code should now be followed in all cases.

*Article 562*

194. The first sentence of the paragraph 1 is a recasting of the original provision that improves its clarity but that does not entail any substantive change. The second sentence is new. It provides that any grant of permission for a procedural action requiring the permission of a court or prosecutor is to be 'decided upon the materials of a request from a competent foreign authority', which is clearly appropriate.

195. The second paragraph is also new and provides that a that procedural action requiring permission may be requested only after a public prosecutor or a court has granted the appropriate permission', as well as requiring a certified copy of the permission to be attached to the materials of a request. This is also entirely appropriate.

*Article 563*

196. Paragraphs 1 and 2 are recast versions of paragraphs 2 and 3 of the provision that was submitted to Verkhovna Rada of Ukraine. The changes improve their clarity but do not affect their substance.

197. The original paragraph 1 has not been retained but the issue of giving permission for the representative of the competent authority of the requesting state to be present during the execution of a request for international legal assistance is now dealt with in Article 554 (4). The deletion is thus not problematic.

*Article 564*

198. This is an entirely new provision and deals with the service of documents pursuant to a request from a foreign competent authority for international legal assistance. It generally follows the arrangements for service in an entirely domestic proceedings but includes some additions to take account of the international dimension. The provision is appropriate for its object. Of particular note is paragraph 5 which rightly provides that a person may refuse to accept the documents to be served if they do not include a Ukrainian translation and are drawn up in a language that is unknown to the person specified in a request. In such a case the documents will be deemed not to have been served.

*Article 565*

199. This is an entirely new provision and allows for the temporary surrender of persons who are detained or serving a punishment in the form of imprisonment either from a foreign state to Ukraine or from Ukraine to a foreign state so that he or she can testify or participate in other procedural activities in criminal proceedings in the relevant country. The procedure governing such temporary surrender will be the provisions in the Code governing international legal assistance already considered.

200. It is important to note that paragraph 7 provides that 'a person may be temporarily surrendered only provided that the written consent is given by that person'. However, it would be appropriate also to provide specifically that the grounds for refusal of extradition in Article 589 are applicable to temporary surrender from

Ukraine to a foreign state as the grounds for refusal of international legal assistance in Article 557 (which would govern temporary extradition) do not include the need to comply with Ukraine's international obligations. There does not seem, therefore, to be sufficient protection against temporary surrender where there is a real risk of the person concerned being subjected to torture, or inhuman or degrading treatment. Furthermore this provision does not include any obligation to ensure that the grant of temporary surrender is not granted without there being sufficient guarantees that the person concerned will be returned to Ukraine by the foreign state. In addition there is no provision for setting a limit on the length of temporary surrender. It would be appropriate for this provision to be modified so as to take account of these concerns as otherwise a breach of Ukraine's obligations under the European Convention could ensue.

*Article 566*

201. This provision - which concerns the summoning of a person outside Ukraine - embodies some recasting and extension of Article 564. The changes improve the clarity of the provision and also deal with certain matters previously overlooked, namely, the interval between the request and the report date of the person concerned, the notification of the costs of appearing on summons and the reimbursement procedure and the possibility of a suspect, defendant or convict being arrested or subjected to a restraint measure or execution of a sentence for an offence specified in the summons. The revised provision is not problematic.

*Former Article 566 (revised draft)*

202. There is no equivalent to this provision which dealt with examination based on a request for international legal assistance. It may be that all such examinations are to be conducted by means of a video or telephone conference pursuant to the next provision discussed, although that does not seem to be effect from the wording used.
203. Moreover the following provision does not specify any grounds for refusal as found in the former Article 566 and it does not implement the recommendation in the expertise that a person summoned should be informed that he or she is entitled to the assistance of a lawyer before or during the examination so that he or she is in a position to know whether or not he or she should decline to testify for one of the permitted reasons. It may be that such concerns are met by the specification in Article 567(2) that the procedure to be followed must not be 'contrary to principles of Ukrainian procedural law and generally recognized standards of ensuring human rights and fundamental freedoms'. These are clearly matters on which clarification is needed.
204. Furthermore it should also be noted that there still has been no clarification as to who determines whether or not a refusal to testify is admissible and whether or not there is any appeal against a determination that a particular refusal is not admissible.

*Article 567*

205. There are two changes to this provision. The first is that the examination upon a request from a foreign competent authority 'shall' rather than 'may' 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 cases specified, which is appropriate.

206. Secondly paragraph 3 of the text submitted to the Verkhovna Rada of Ukraine - which provided for the central authority to assign the appropriate prosecutor to file applications for the conduct of such actions and for recording the examination on video or audio mediums - has not been retained. The power conferred by the deleted text would seem to be implicit in paragraph 3 of Article 554 and so its deletion does not seem to be problematic.

*Article 568*

207. The only change to this provision concerns paragraph 6 and involves the deletion of what was the second sub-paragraph, which allowed for surrender of assets 'in proportion accounting for the findings stated in the appropriate court decision of the requested Party, upon decision of the Cabinet of Ministers of Ukraine adopted in a procedure prescribed by law'. The deletion of this provision, which overlaps to an extent with the possibility of surrender envisaged in sub-paragraph 1 to reimburse damage caused to victims, does not seem problematic.

*Article 572*

208. Paragraphs 4 and 5 are entirely new and their insertion in this provision is reflected in the change made to its title. Both provisions concern expenses related to the provision of international legal assistance. Paragraph 4 provides that these expenses shall be paid using the state budget funds appropriated for maintenance of the responsible institutions but paragraph 5 provides that, unless otherwise provided by treaties, certain expenses shall be paid by a foreign competent authority. None of these additions are problematic.

*Article 573*

209. Paragraphs 1-3 are entirely new.

210. Paragraph 1 provides that a request for extradition may be submitted only in respect of offences punishable by at least a year's imprisonment or of the unserved portion of a sentence that is at least four months in length. Paragraph 2 makes these conditions equally applicable to requests for extradition by a foreign state. These restrictions - which in Article 584 of the draft submitted to the Verkhovna Rada of Ukraine were grounds for refusing extradition - are appropriate ones on the use of extradition.

211. Paragraph 3 makes the procedures for extradition applicable to the submission and consideration of requests for provisional or temporary extradition - which is different from temporary surrender in the provisions dealing with international legal assistance - and transit. The reference to Article 589 in this context indicates that the grounds for refusal of extradition also apply to provisional or temporary extradition and transit which meets a concern expressed when the concept of provisional or temporary extradition was introduced into the draft Code after the expertise.

212. Paragraph 4 is, with a minor textual adjustment, the text of paragraph 3 in the version of the draft submitted to the Verkhovna Rada of Ukraine.

213. The conditions on sending requests for extradition in the paragraphs 1 and 2 of the version of the draft submitted to the Verkhovna Rada of Ukraine - requiring the offence be within the jurisdiction of a Ukrainian court, a judgment of a Ukrainian



court that has not been enforced and the consideration of circumstances that may preclude extradition - do not seem to have been included elsewhere in the Code, although the second one is in substantially covered by the new paragraph 1. The deletion of the first and third conditions is regrettable as taking account of these matters at an early stage could prevent the initiation of an unjustified process. However, this deletion does not in itself create problems of compliance with the European Convention.

*Article 574*

214. The text of this provision has been recast with paragraphs 1-3 replacing what were paragraphs 1 and 2. However, it remains the case that the Prosecutor General's Office is the central authority responsible for the extradition of suspects or the accused in criminal proceedings during the pre-trial investigation and the Ministry of Justice has that role for those who have been convicted.

215. Paragraph 4 is new and provides that the central authorities shall (a) make requests to foreign competent authorities for extradition, temporary extradition or transit of a person, (b) consider and decide on requests from foreign competent authorities for extradition, temporary extradition or transit of a person, (c) arrange extradition examinations, (d) arrange intake and referral of persons to be extradited, temporarily extradited or transited and (e) exercise other powers established by this article or an international agreement on extradition. These responsibilities are unproblematic.

*Article 575*

216. This provision has been recast. As a result the role of preparing requests for extradition is clearly assigned to investigators, prosecutors and courts, with the decision to submit them to a foreign competent authority being taken by the central authority. As a result the inclusion in the request of guarantees to observe the scope of prosecution if extradition is granted has been dropped since that is a matter for the central authority. Apart from the deadline specified in paragraph 5 for the central authority to submit requests, the only other new element is that the request for extradition should include the findings of the 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. The revised provision is not problematic.

*Article 576*

217. This is a recast version of Article 579 in the draft submitted to the Verkhovna Rada of Ukraine, comprising a number of limits on the criminal responsibility of an extradited person, namely, an extradited person can only be held liable or have a sentence enforced against him or her in respect of the offence for which extradition was sought ('specialty'), the binding effect of any limitations, expressed by the competent authority of a foreign state when taking the decision to surrender a person to Ukraine and the need for that state's consent to any proceedings in respect of any offence not specified in the request where this committed before the person's surrender. These restrictions are in accordance with international standards applicable to extradition. The provision does not include the exception to specialty in the former provision in respect of persons not having left Ukraine within 15 days of the relevant

proceedings being closed or the sentence served. This is, of course, not problematic as it strengthens the guarantee.

*Article 577*

218. This provision - giving credit for time spent in custody while the decision on extradition was being made - was in paragraph 2 of Article 578 of the draft submitted to the Verkhovna Rada of Ukraine and is entirely appropriate.

*Article 578*

219. This provision - requiring the central authority to be notified of the results of proceedings against an extradited person - was in Article 580 of the draft submitted to the Verkhovna Rada of Ukraine and is entirely appropriate.

*Article 579*

220. This provision - allowing for provisional or temporary extradition to prevent expiry of the period of limitations for prosecution or loss of evidence in criminal proceedings - was in Article 581 of the draft submitted to the Verkhovna Rada of Ukraine and the concern previously expressed about the need for safeguards has, as has been seen, addressed in another provision<sup>10</sup>.

221. However, unlike in Article 590 of the draft submitted to the Verkhovna Rada of Ukraine, there is not only no limit specified on the length of provisional or temporary extradition (90 days) but there is also still a possibility of extending such extradition which runs counter to its rationale as being necessary for a limited period. There clearly remains a need to set some specific limit on the length of provisional or temporary extradition and to avoid unjustified extensions. Some revision to this provision is thus necessary.

222. Furthermore, also unlike in Article 590 of the draft submitted to the Verkhovna Rada of Ukraine, there is no stipulation in this provision that the foreign state must guarantee that extradited persons will be kept in custody and brought back to Ukraine. This also ought to be specified in the Code.

*Article 580*

223. This is a new provision.

224. Paragraph 1 provides that the basis for the keeping of persons in custody on Ukraine who transited through its territory or provisionally extradited there shall be the decision of the competent authority of a foreign state to take them into custody or to issue a custodial sentence against them. This is not, in principle, problematic since it is Ukrainian law that gives the foreign provision legal effect<sup>11</sup> but this does not exempt Ukraine from its obligation to ensure that someone is not being detained pursuant to a sentence obtained as a result of a flagrant denial of justice<sup>12</sup>. There is a need, therefore, to keep the actual use of this provision under review.

225. Paragraph 2 stipulates that any time spent in custody on the territory of Ukraine based on the decision of a competent authority of a foreign state during

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<sup>10</sup> See para. 211.

<sup>11</sup> *Cf. Soldatenko v. Ukraine*, no. 2440/07, 23 October 2008.

<sup>12</sup> See *Drozd and Janousek v. France and Spain*, no. 12747/87, 26 June 1992.

provisional extradition shall not be credited to the total term of serving the sentence imposed by Ukrainian court. Although there is no ruling on this point by the European Court of Human Rights, there is the potential for this to constitute 'arbitrariness' for the purpose of Article 5 of the European Convention, particularly as the reason for bringing the person to Ukraine is to prevent the expiry of a limitation period or loss of evidence and is thus little different from detention on remand<sup>13</sup>. However, no real problem of compliance with the European Convention is likely to arise if temporary extradition is only for a truly short duration.

*Article 581*

226. This provision was Article 585 in the draft submitted to the Verkhovna Rada of Ukraine and is entirely appropriate.

*Article 582*

227. This is a new provision and regulates the detention in Ukraine of persons wanted by a foreign state in relation to the commission of an offence, as well the supervisory role of the prosecutor. The obligation to release a detained person if, within 60 hours, he or she has not been brought before an investigating judge for entertaining a request for choosing a preventive measure in the form of provisional or extradition arrest or circumstances have been established under which the extradition is not performed. In addition it is specified that 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 Chapter 44. These provisions are appropriate for ensuring that the detention of persons wanted for extradition does not breach Article 5(1)(f) of the European Convention.

*Article 583*

228. This is a new provision, although its essence was to be found in Article 586 of the draft submitted to the Verkhovna Rada of Ukraine. It deals with provisional arrest ordered by an investigating judge before the receipt of the request for extradition. It allows for such arrest to last for up to 40 days or such term as is specified in the relevant extradition treaty. A prosecutor's request for provisional arrest must be handled within a maximum of 72 hours. The conditions governing the use of provisional arrest and the procedure to be followed (including provision for legal representation) should be sufficient to prevent any violation of Article 5(1)(f) of the European Convention. This provision does not, therefore, seem problematic.

*Article 584*

229. This provision, dealing with arrest after the extradition request has been received, also finds its origin in Article 586 of the draft submitted to the Verkhovna Rada of Ukraine. The greater elaboration of the procedure and the setting of a limit of 12 months on this form of arrest ought to prevent violations of Article 5(1)(f) from occurring. This provision also retains the obligation introduced into the draft submitted to the Verkhovna Rada of Ukraine for the central authority to inform immediately the Office of the United Nations High Commissioner for Refugees on each case of exercising a provisional or extradition arrest against anyone. This provision does not, therefore, seem problematic.

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<sup>13</sup> Cf. *Chraidi v. Germany*, no. 65655/01, 26 October 2006.

*Article 585*

230. This provision was previously Article 587 in the draft submitted to the Verkhovna Rada of Ukraine and is not problematic.

*Article 586*

231. This is a new provision, although its essence was to be found in Article 586 of the draft submitted to the Verkhovna Rada of Ukraine. It deals with the termination of provisional arrest or preventive measures and its content is appropriate.

*Article 587*

232. This is also a new provision, although its essence was to be found in Article 582 of the draft submitted to the Verkhovna Rada of Ukraine. However, unlike in the latter provision, the deadline for examination of the circumstances that may hinder the extradition of a person is 60 rather than 30 days. This is not inherently problematic but the longer period could contribute to an overall lack of diligence in the handling of an extradition request and thus lead to a violation of Article 5(1)(f) of the European Convention where the person concerned is detained.

*Article 588*

233. This is a slightly recast version of the provision in the draft submitted to the Verkhovna Rada of Ukraine which dealt with summary (now simplified) extradition but, as its essence remains the same, it does not give rise to any concerns.

*Article 589*

234. This provision is a significantly different one from that in Article 584 of the draft submitted to the Verkhovna Rada of Ukraine with respect to the grounds for refusal of extradition. Although it maintains the bar on extraditing Ukrainian citizens and goes further than the draft in barring it also where the offence concerned is not punishable by deprivation of liberty by the Ukrainian law (as opposed to imprisonment for one year or less)<sup>14</sup>, there is only a bar on extradition where that contradicts Ukraine's obligations under international treaties rather than an explicit prohibition on it where there are reasonable grounds for believing that, if extradited, the person concerned may be subject in the requesting state to torture or other cruel, inhuman or degrading treatment or punishment. Furthermore, while there is protection against extradition for persons who have been recognised as refugees or persons requiring subsidiary protection or who have been granted temporary protection in Ukraine, this would apply only where a prior decision on this status has been taken and there is no separate bar on extradition where the court determining the matter finds that the request for extradition was made for the purpose of prosecuting him or her on account of his or her race, religion, ethnic origin or political beliefs or it finds that his or her position may be prejudiced for any of these reasons.

235. The narrowing of the specific grounds for refusal of extradition is clearly a matter of concern. It is possible that the merits of the provision in the draft submitted to the Verkhovna Rada of Ukraine could be achieved through an appropriately rigorous application of the bar on extradition that contradicts Ukraine's obligations under international treaties but the prospect of this occurring is not encouraging given

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<sup>14</sup> But that criterion still applies to the admissibility of making a request for extradition; see para. 210.

the experience seen in the application by the courts of the European Convention. This is a matter where some amendment to the Code would be appropriate and, in the short term, clear and effective guidance to the courts and the central authorities as to the application of the treaty bar would be desirable.

*Articles 590 and 591*

236. These are new provisions. Unlike in the draft submitted to the Verkhovna Rada of Ukraine, the initial decision on extradition is not taken by a court but by the central authority. However, this decision is then, pursuant to Article 591, subject to appeal to the investigating judge within whose jurisdiction the above person is held in custody or, were a non-custodial restraint has been chosen, to the investigating judge within whose jurisdiction the relevant central authority of Ukraine is located. This arrangement is not inherently problematic and the procedural arrangements - including the provision for suspension of execution pending an appeal against the dismissal of the appeal by the investigating judge - generally seem appropriate. However, the stipulation that the investigating judge shall hear the appeal within five days of its receipt by the court may be too short given the nature of the issues that can be involved. It would be appropriate to seek clarification that this interval is only the formal start of the appeal and that some adjournment for preparation can still be obtained.

237. Despite the change in approach to decision-making, it is important to note that the Code has retained the provision in the draft submitted to the Verkhovna Rada of Ukraine which provided that 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 the final determination of the application. Also retained is the prohibition on divulging to the requesting foreign state any information as to whether a person has filed such applications or appealed the relevant decisions.

*Article 592*

238. This is a new provision but the essence of its content, which concerns stay of surrender, is to be found in Articles 590 and 591 of the draft submitted to the Verkhovna Rada of Ukraine and does not give rise to any concerns.

*Article 593*

239. This is also a new provision regulating the practical arrangements for surrender once a decision on extradition comes into effect and its content is appropriate.

*Article 595*

240. The change in the authority responsible for dealing with requests for the takeover of criminal proceedings from foreign states is in line with changes made to the handling of extradition requests and is not problematic.

*Article 601*

241. Paragraph 2 is an entirely new provision. Its stipulation that there can be no resumption of proceedings in Ukraine and further investigation of criminal proceedings that have been closed by the competent authority of a foreign state at the

stage of pre-trial investigation after having been transferred from Ukraine, unless otherwise provided for by an international treaty ratified by the Verkhovna Rada of Ukraine, is entirely appropriate.

*Article 602*

242. The addition of a second sentence to paragraph 7, providing that 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', meets a concern raised with the Ukrainian authorities in discussions about the expertise.

*Article 603*

243. The addition to paragraph 2 of the stipulation that, in proceedings to consider the enforcement of the sentence of a foreign court, the person concerned may have the benefit of a counsel and that the hearing shall be held with the participation of a public prosecutor is entirely appropriate.

244. It is also appropriate to specify in paragraph 9 who can appeal a court decision on enforcement of a sentence of a foreign court, namely, the requesting body, the person in whose respect the relevant issue has been decided and the public prosecutor.

*Article 605*

245. The specification in paragraph 1 that the international treaty referred to in the context of deciding to adopt a decision to transfer a sentence person should be one that has been ratified by the Verkhovna Rada of Ukraine is a useful clarification.

246. Paragraph 2 is a new provision. Its stipulation that the 'provisions of Articles 605–612 of this Code may apply in deciding the issue of transferring a person who is subject to compulsory measure of medical nature by court decision' is not inappropriate.

*Article 607*

247. The inclusion in paragraphs 5 and 8 of the possibility of a sentenced national of a foreign state who has being transferred to another state being still able to raise the issue of the commutation of the remaining part of the sentence to a less severe one in addition to that of release on parole and then making provision for forwarding the relevant decision on it to the administering state is entirely appropriate.

*Article 609*

248. The replacement in paragraphs 1 and 4 of 'proposal(s)' by 'request(s)/petition(s)' and in paragraph 4 of 'decision' by 'refusal' is not problematic.

*Article 610*

249. The addition in paragraph 1 that a hearing on an application to bring a sentence of a foreign state's court into line with Ukrainian law should be held with the participation of a public prosecutor is appropriate.

250. It is appropriate to specify in paragraph 7 who can appeal a court decision on bringing a sentence of a foreign state's court into line with Ukrainian law, namely, the requesting body, the person in whose respect a decision has been made and the public prosecutor.

*Article 611*

251. The replacement in paragraph 1 of 'Ministry of Internal Affairs' by 'competent authority' is not problematic.

*Article 613*

252. The deletion from paragraph 2 of the possibility of a Ukrainian national who has been convicted in a foreign state and has been transferred to Ukraine or of any other person acting in his or her interests having to pay the costs of the transfer from paragraph 2 of the draft submitted to the Verkhovna Rada is commendable.

**Section X. Final Provisions**

253. The stipulation that Parts 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 the Code 'shall enter into force from the day when activities of the State Bureau of Investigations of Ukraine start its operations, but not later than within five years after this Code has entered into force' fulfils an undertaking made during discussions on the expertise. This is also true of the similar delay made applicable to '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”’.
254. The stipulation that Part Four Art. 213 of this Code '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' is a new provision but not inappropriate. However, its implementation should clearly be monitored.
255. The stipulation that '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”’ and that '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)' shall enter into force from the date of promulgation of the Code rather than five years afterwards is welcome.
256. The stipulation that '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' is new but the limited delay in entry into force is not problematic.
257. The deletion from the draft submitted to the Verkhovna Rada of the reference to all specific amendments to the former Criminal Procedure Code in the provision declaring that code as amended and supplemented to be invalid is a welcome simplification of the text.

## Section XI. Transitional Provisions

258. The stipulation in paragraph 2 that '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' is not inappropriate but it should be checked whether those associations and bodies have so agreed to act and are in a position to do so.
259. The stipulation in paragraph 20 that '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' is new but is not problematic.
260. The stipulation in sub-paragraph 3 of paragraph 21 that the Cabinet of Ministers of Ukraine shall 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' is new but not inappropriate.
261. Similarly the stipulation in sub-paragraph 4 of paragraph 21 that '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' is new but not inappropriate.
262. The inclusion in paragraph 25 of a reference to 'Bar self-governance bodies' amongst the bodies with which the Cabinet of Ministers of Ukraine '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' meets a concern about the training of lawyers raised in discussions on the expertise with the Ukrainian authorities.
263. The stipulation in paragraph 25 that the Cabinet of Ministers of Ukraine shall 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' is new but not inappropriate.



## Annex

264. The compliance with European standards of all the legislation related to criminal justice requires that the amendments introduced by the provisions in the Annex also meet those standards. These provisions have been reviewed for the purpose of seeing whether any specific problem of compliance with European standards appeared to arise but no such problems were found. However, it was only possible to review the amendments and not the original legislation and so there has been no evaluation of the extent to which (if at all) that legislation may not comply with European standards.

## Conclusion

265. It is recalled that, prior to the latest round of amendments, the expertise had found what was then the draft Code to be a substantial document which embodied many positive developments and had given effect to a great deal of the requirements of European standards governing the criminal process. In particular the draft Code had already embodied a radical departure from the repetitive and cumbersome Soviet type three-step criminal procedure, introduced a truer adversarial system and included an elaborate set of elements supporting the presumption in favour of liberty, including the need to specify the circumstances suggestive of reasonable suspicion and the relevant prevailing risks that would justify a deprivation of liberty. In addition, it rightly specified the duty to substantiate why these considerations could not be addressed by alternative measures. At the same time, the draft Code already offered an improved legislative framework regulating interferences with private and family life and some other qualified rights, as well as a number of advanced provisions countering ill-treatment in the context of criminal procedure. Its provisions had already enhanced the judicial role and responsibility in securing rights during the criminal process. The present exercise was thus concerned with establishing whether the considerable efforts already made to produce a modern criminal procedure fully in accordance with the requirements of human rights had reached a satisfactory conclusion.

266. The analysis has demonstrated that the amendments introduced to the draft Code during its consideration and adoption by the Verkhovna Rada of Ukraine has considerably improved upon a draft that was already highly satisfactory. The amendments made have in fact mainly been ones that addressed the remaining recommendations made in the course of the expertise, reflecting the positive engagement throughout the drafting process of the Ukrainian authorities with the Council of Europe experts. Moreover there have not been any significant alterations introduced that could be regarded as deviating from or undermining European standards.

267. There are just a few provisions<sup>15</sup> that could be improved in the course of subsequent legislative fine-tuning that is inevitably required in order to ensure that such complex legal texts as the Code meet European standards.. In addition there are four provisions<sup>16</sup> for which clarification is needed, whether as to their text or the

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<sup>15</sup> Article 31 (para. 30); Article 565 (para. 200); Article 579 (paras. 221 and 222) and Article 589 (para. 235).

<sup>16</sup> Article 54 (para.52); the deletion of former Article 566 (paras. 202 and 203); Articles 590 and 591 (para. 236); and paragraph 2 of Section XI (para. 258).

effect of some related legislation. Furthermore, although there are three provisions<sup>17</sup> that might be regarded as giving rise to possible concerns, the relevant issues should be capable of being appropriately addressed through trainings and explanatory publications. In addition there is one provision<sup>18</sup> in which something of importance for a related provision has been omitted.

268. Of course, full compliance with European standards is only likely to be achieved with both the complementary legislation (whether envisaged by the Code itself or otherwise under consideration, notably in relation to proceedings that involve children) and the appropriate and effective training and awareness raising for all involved and touched by the criminal justice process, which includes the general public. There is, however, an appropriate commitment to meeting the challenge of implementation in the Code's Transitional Provisions

269. It would be unrealistic to expect any Code of Criminal Procedure to be perfect but the limited nature of the qualifications just made demonstrate that the adoption of the Code is a very considerable achievement. Thus the Code has substantially transformed the approach to be followed in the criminal process and, in particular, the roles of judges, lawyers and prosecutors. Furthermore it provides an appropriate framework to secure the rights of the accused without handicapping the ability to bring criminals to justice or neglecting the legitimate interests of victims of crime. The adoption of the Code can rightly be regarded as providing a sound foundation for a criminal justice system that is fair, just and effective.

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<sup>17</sup> Article 177 (para. 87); Article 233 (para. 112); and Article 268 (para. 126).

<sup>18</sup> Article 481 (para. 163).