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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

**Questionnaire with a view of the preparation of Opinion No. 7 on the management
of the means of the prosecution services**

Replies from Ukraine

Prepared answers to the questions are based on Constitution of Ukraine, Law "On Public Prosecution Service", Budget Code of Ukraine and other legislative acts of Ukraine.

It should be noted that currently there is the process of reforming the criminal justice system in Ukraine.

In this regard, the Action Plan for the duties and obligations of Ukraine resulting from its membership in the Council of Europe was approved by the decree of the President of Ukraine № 24 of January 12th, 2011.

The said document provides for alteration to the Law of Ukraine "On Prosecution" within a year after the adoption of new Criminal Procedural Code of Ukraine.

In February 2012 the draft of the Criminal Procedural Code of Ukraine was adopted by Verkhovna Rada of Ukraine in the first reading as a basis.

The future adoption of the new Criminal Procedure Code of Ukraine is closely connected with the simultaneous reform of the public prosecution system and the development of the new Law of Ukraine "On Public Prosecution Service".

SECTION I: STATUS OF THE PUBLIC PROSECUTION BODIES WITHIN THE SYSTEM OF STATE ADMINISTRATION

1. Please, describe the status of the prosecutor and the prosecutor's office in your country. Is it an autonomous institution? If so, in what way such autonomy is being guaranteed?

According to its constitutional and legal status the public prosecution service of Ukraine does not belong to any of the power branches. Public prosecution service shall exercise its powers independently of any state authority (legislative, executive and judicial). The public prosecution service functions are regulated by the individual chapter of the Constitution of Ukraine (Chapter VII «Public Prosecution Service»), it means that performance of prosecution functions is an independent state activity.

In carrying out its powers public prosecution service interacts with all branches of state power system and plays an important role in ensuring the balance between them.

Article 123 of the Constitution of Ukraine stipulates that the organization system and activities of the Public Procuracy Authorities of Ukraine are determined according to the law.

Article 6 of the Law of Ukraine "On Public Prosecution Service" provides that public prosecution bodies is the unified centralized system, headed by the Prosecutor General of Ukraine, where there is subordination of lower prosecutors to the parent ones.

Article 13 of the above-mentioned law specifies that the system of Public Prosecution bodies bases oneself upon the Prosecutor General's Office, The Office of the Prosecutor of the Autonomous Republic of Crimea, prosecutor's offices of the cities of Kyiv and Sevastopol (within the meaning as Regional prosecutor's offices), city, district, inter-district, and other equivalent prosecutor's offices and military prosecutors. The bodies of the military prosecution service include regional military prosecutors' offices and the Military Prosecution Service of the Naval Forces of Ukraine (empowered as regional prosecutor's office), the garrison military prosecutor's offices (as city prosecution service).

The Prosecutor General's Office of Ukraine is the highest link in the system headed by the Prosecutor General. According to the Article 14 of the Law of Ukraine "On Public Prosecution Service" the structure of the Prosecutor General's Office of Ukraine and the rules for its units shall be approved by the Prosecutor General of Ukraine.

The unity of the public prosecution bodies is realised due to the unified objectives, functions, principles of organization and operations, the powers to detect law violations and the means to respond to them. The unity of the public prosecution system means that it functions as an independent central state authority.

The legal status of the prosecutor is guaranteed by the aggregate of rights and obligations specified by the Constitution of Ukraine, Law of Ukraine "On Prosecution" and under procedural legislation of Ukraine (Administrative Code of Ukraine, the Criminal Procedural Code of Ukraine, Civil Procedural Code of Ukraine) due of its function.

In accordance with Article 121 of Chapter VII of the Constitution of Ukraine the prosecution service of Ukraine constitutes a unified system that is entrusted with the following powers and duties:

- 1) the maintenance of public prosecution at trial;
- 2) representation of the individual or the State interests in court in cases determined by law;
- 3) supervision over compliance with legislation by the bodies conducting detective and search activities, inquest and pre-trial investigation;
- 4) supervision over legality of court decisions in criminal cases, as well as other actions of legal coercion related to restriction of personal freedoms.

In accordance with Paragraph 9 of Chapter XV of the Constitution of Ukraine "Transitional Provisions" the public prosecution service continues to perform the functions of supervision over the observance and application with legislation and the function of preliminary investigation until the enactment of laws regulating the activities of public authorities empowered to control the observance of laws is realised and the pre-trial investigation system is formed and the laws that govern its activities are enacted.

Public prosecutors may not belong to any political parties or movements. Moreover, prosecutors shall not be allowed to act as the members of commissions, committees and other collective bodies formed by the Councils and their executive bodies.

2. Does Ministry of Justice or another agency supervise the activity of the prosecution? If so, in which way?

None of the bodies of state authority and administration is authorized to perform the functions of control over the activities of the public prosecution bodies of Ukraine with regard to their legal status.

3. Which body is responsible for the prosecutor's position?

Prosecutor General's Office of Ukraine directs the work of prosecutors and monitors their activities.

Furthermore, the Prosecutor General of Ukraine issues the orders compulsory for the prosecution bodies, approves regulations and instructions in accordance with the laws of Ukraine.

In order to focus the supervisory work of the public prosecution bodies there are boards of Prosecutors' offices that shall simultaneously act as the advisory bodies and consider the most important issues relating to the observance over legality, rule of law, the activities of the prosecution service, execution of the orders of the Prosecutor General of Ukraine.

4. Please indicate whether there is any interaction between public prosecution bodies and the Ministry of Justice or other public authority in respect of financial and human resources of information technologies. If so, please describe in what way this interaction operates.

Any interaction between Ukrainian public prosecution bodies and the Ministry of Justice based on the unified financial, human resources and information technology tools is not available.

However, under Article 9 of the Law of Ukraine "On Public Prosecution Service" Prosecutor General of Ukraine, his deputies have the right to participate in meetings of Verkhovna Rada of Ukraine and its bodies, the Cabinet of Ministers of Ukraine, boards of ministries and other central executive bodies.

Under Article 20 of the said Law the prosecutor or his deputy when detecting violations of the legislation within their jurisdiction have the right to lodge a protest against the Acts issued by the Prime Minister of Ukraine, Cabinet of Ministers of Ukraine, of the Autonomous Republic of Crimea, ministries and other central executive bodies as well as decision and actions of any officials. When lodging a protest, the prosecutor shall raise the question on cancellation of the act or bringing it into compliance with the law as well as ceasing the illegal actions by the official, restoration of the right violated.

Under Article 6 of the Law of Ukraine "On Public Prosecution Service" the principle of transparency in the activities of prosecutors has been enshrined, under which they operate openly, inform the state authorities, community of the state of lawfulness and measures taken for its strengthening.

5. Is public prosecution service independent of other institutions when using and managing its own budget?

Under Article 52 of the Law of Ukraine "On Public Prosecution Service" it is provided that the financing of the public prosecution bodies is conducted at the expense of the State Budget of Ukraine. Therefore, on issues of funding public prosecution service shall interact with the Cabinet of Ministers of Ukraine, which is the supreme body of the executive authority and in accordance with paragraph 6 of Article 116 of the Constitution of Ukraine ensures the execution of the State Budget approved by Verkhovna Rada of Ukraine.

SECTION II: Rules and How to finance the prosecution

6. Does the law governing the public prosecution body's activity include the regulations on financial management and commitments of the executive authority to provide the necessary infrastructure?

According to Article 52 of the Law of Ukraine "On Public Prosecution Service":

- Financing of the public prosecution bodies at the expense of the state budget of Ukraine;
- Cost Estimates for the maintenance of the public prosecution bodies shall be approved by the Prosecutor General of Ukraine and within the allocations given he has the right to make alterations to it;
- Local community councils and their executive bodies shall provide the relevant premises under a lease to the public prosecution authorities on their territory;
- Public prosecution bodies are provided with transportation and material-technical means at the cost of State Budget of Ukraine in a centralized manner, as determined by the President of Ukraine;
- Remuneration for prosecutors, investigators, officials and other employees of the military prosecutor's offices shall be provided by the Ministry of Defense of Ukraine;

- Provision of military prosecution service with premises, security means, transport, communications, and other necessary equipment as well as provision of the personnel of the military prosecution with uniform conducted by the Ministry of Defense of Ukraine.

Cabinet of Ministers of Ukraine by its Decree of March 9th, 2006 № 268 "On Ordering the Structure and Conditions of Remuneration for the Employees of Executive Agencies, Prosecutors, Courts and Other Bodies" approved the levels of salaries and rises in wages for prosecutors.

7. Please describe in what way and terms is the budget of the prosecution service being conducted (preparing of the draft, distribution of funds between budget lines).

According to Sub-clause 1 of Paragraph 2 of Article 22 of the Budget Code of Ukraine, Prosecutor General's Office of Ukraine in terms of the rights entrusted with acts as the main manager of budgetary allocations determined by the State Budget of Ukraine. Prosecutor General's Office of Ukraine determines the network of spending units lower, distribute and communicate to them in due course, budget allocations.

Prosecutor General's Office of Ukraine in accordance with paragraph 5 of Article 22 of the Budget Code of Ukraine is entrusted with the right to:

- 1) develop plans and activities for the planned and next scheduled two budget periods;
- 2) organize and provide on the basis of the activity plan and indicative budget figures making a draft of the budget and the budget request projected for the next scheduled two budget periods and to submit them to the Ministry of Finance;
- 3) receive allocations through his approval of the State Budget Law of Ukraine; to decide on the delegation of the powers on execution of budget program to the subordinate spending units, to distribute and provide them in due course with budgetary appropriations;
- 4) approve the estimates of costs for subordinate spending units;
- 5) develops and approves the passports of budgetary programs and makes reports on their performance, provides with analysis of the budget programs;
- 6) manage budgetary funds within his budget authorities established to him and efficient budget programs by providing with efficient, effective and special-purpose use of budgetary funds, organization and coordination of work of the subordinate spending units in the budget process;
- 7) exercise internal control over completeness of revenues, taking budgetary commitments by the subordinate spending units and their spending of the budget funds;
- 8) ensure the organizing and conducting the bookkeeping, making and submission of financial and budgetary reporting according to the procedure established by law;
- 9) provide access to information on the budget in accordance with the law.

8. Is there a special unit (department) within the public prosecution body, which is responsible for resource managing?

The Department of Finance and Accounting of the Prosecutor General's Office of Ukraine is an independent department within the organizational structure of the Prosecutor General's Office of Ukraine, which is entrusted to ensure the implementation of the functions of the principal manager on the issues of planning, financing and execution of the budgets established for the public prosecution bodies of Ukraine, reporting on the state budget implementation and supervision over the compliance with the budget legislation and monitoring over special-purposefulness and efficiency of the use of financial, material (intangible), IT and human resources, preservation of property of the public prosecution bodies in Ukraine.

9. Is there national and / or centralized information technology system on management, monitoring and evaluation of the budget of the public prosecution authorities? Does this system include a mechanism to increase the efficiency of resource management?

There is no available national or centralized information technology system on management, monitoring and evaluation of the budget of the public prosecution authorities in Ukraine.

Prosecutor General of Ukraine in accordance with:

- Article 20 of the Budget Code of Ukraine at all stages of the budgetary process within its authority shall assess the efficiency of budget programs, which includes measures for monitoring, analysis and control of special-purposeful and efficient use of public funds. Evaluating of the effectiveness of budgetary programs on the basis of analysis of the efficiency figures the budgetary programs, as well as other information included in the budget requests, the estimates of costs, budget program passports, reports of execution of budgets and execution reports under the passports of budgetary programs;
- Article 58 of the Budget Code of Ukraine and the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" provides submitting the cumulative quarterly and annual financial and budgetary reporting to the State Treasury of Ukraine, the Chamber of Accounts and the Ministry of Finance of Ukraine.

SECTION III: Resources of the Public Prosecution Service

10. Please indicate, the amount of budgetary appropriations for the public prosecution authority in 2008, 2009, 2010 and 2011 (in euros) with the distribution of costs between wages for employees and other types of expenses.

Analysis of budgetary appropriations for prosecution bodies in 2008-2011:

	Total		Among them the expenditures allocated for:			
			consumption		development	
	thous. (in UAH)	thous. (in euros)	thous. (in UAH)	thous. (in euros)	thous. (in UAH)	thous. (in euros)
2008	1 139 188, 9	153540,7	1 095 584, 9	147663,7	43 604, 0	5877,0
2009	966 985, 0	89078,2	946 963, 7	87233,9	20 021, 3	1844,3
2010	1 226 161, 7	107098,7	1 216 361, 7	106242,7	9 800, 0	856,0
2011	2 270 000, 0	214695,0	2 107 234, 9	199300,8	162 765, 1	15394,2

11. Which resources would you like to improve the access to within your competence, and in which way would you do that (e.g. by concluding partner agreements, conducting shared investigations, reallocating resources etc.)?

The promptness of financing of the expenses from the general fund of public money, in accordance with the approved fund allocation plan, as well as simplification of expenses deployment according to budget programs, and increase of development expenses by means of reducing the consumer spending, must be improved.

12. Did the economic crisis of 2009-2011 affect the current and future budgets of prosecution service?

Global economic crisis caused reduction of financing of the prosecution service of Ukraine.

13. Which tools are used to allocate resources which are required for appropriate operating of prosecution service?

In order to allocate financial resources, the prosecution service turns to relevant calculations and verification in terms of their deduction with the purpose of providing appropriate financial means and independent complying with official duties by prosecutors and investigators, as well as securing skilled personnel.

14. Is there any link among budgets allocated for prosecution service, judiciary and law enforcement authorities?

There is no link among budgets allocated for prosecution service, judiciary and law enforcement authorities.

15. *Do prosecution service resources depend on other institutions of judiciary (e.g. Council of Judges, National School for Secretaries)?*

Prosecution service resources do not depend on other institutions of judiciary.

16. *Is there any mechanism of prompt response within your competence which could allow a prompt deployment of means (financial or human resources, material support) among prosecution services according to the needs of the system?*

Deployment of financial resources is provided by the Prosecutor General's Office of Ukraine as a central administrator of budgetary funds, within established budgetary competence, and provides an effective, efficient and appropriate application of budgetary funds by subordinate budgetary administrators, in accordance with the provisions of Ukrainian legislation.

17. *Does the Prosecutor General's Office of Ukraine (or equivalent institution) have a specific budget to take provisional measures in situations when there are insufficient human resources within certain prosecution service?*

A specific budget for aforementioned measures is not provided in the Prosecutor General's Office of Ukraine.

CHAPTER IV: Budget for investigations

18. *Which steps are to be done in order to receive a direct access to resources which are necessary for investigations? Please, evaluate the lapse of time passing from the moment of submission of application for providing resources up to the date when they are received in fact.*

19. *Have you ever faced the risk when special investigation technologies (e.g. information capturing in communications channels, forensic genetic examination, computer search) could not be applied in time due to insufficient resources? Did insufficient resources affect criminal proceedings in the simple cases?*

20. *Is the management of resources that is conducted by prosecution services during their investigations inspected? Please, outline.*

21. *Which is the procedure of resources management when various institutions (e.g. police) are involved in the investigation process?*

Answers to the questions 18-21.

There is no special budget for investigations in the prosecution services provided by current legislation of Ukraine.

22. *Can prosecutors be qualified in certain types of crimes? If so, how did it affect the results of prosecution service activity?*

Paragraph 4.1 of the Order of Prosecutor General of Ukraine dated 19.09.2005 No.4 рн "On organization of procuracy supervision over law observance by agencies which conduct inquiry and pretrial investigation" provided introduction of investigators' specialties with the purpose of improving the efficiency of prosecution service investigative branch activity.

Application of such specialty promotes the promptness, comprehensiveness, amplitude and objectiveness of criminal cases investigation.

23. *Are there specific areas of investigation which have prioritized access to the financial and material resources? If so, how and who establishes such priority?*

Since there is no specific budget provided for investigations in Ukrainian prosecution services, there are no specific areas of investigation with prioritized access to the financial and material resources.

CHAPTER V: Description of the result-based management system

24. *Do you have the result-based management system? (Please, classify). If so, are there any problems with this system?*

With the purpose of raising the level of prosecution service activity organization, various forms of statistical reporting are applied. The procedure of their forming and the terms of submitting reports to the superior prosecutor's office are determined by relevant orders of Prosecutor General of Ukraine (or orders which are joint with other law enforcement authorities), as well as their approved specifications.

Reporting record shows actual (quantified) results of prosecutor's and investigator's work during respective reporting time period (month, quarter, year) which outline its effectiveness taking into account the legitimacy in the region.

With the purpose of prompt, proved and full reflection of results of prosecutors and investigators' work, Prosecutor General of Ukraine by his order dated 28.12.2011 No.123 provided a computer software network "Unified system of statistics and analysis of Ukrainian prosecution services work" which is used by Ukrainian prosecution services starting from the beginning of the current year.

25. *Which types of purposes are set before prosecution service, if such system exists? Does your system use indicative figures of achieved results?*

Paragraph 21 of the Order of Prosecutor General of Ukraine dated 26.12.2011 No.1 рн "On Ukrainian prosecution services work organization" provided that the following are admitted as the principal criteria of assessment of effectiveness of Ukrainian prosecution services activity: a compliance with Ukrainian Constitution and laws when accomplishing procuracy powers, a provision of appropriate organization of work, a completeness and a promptness of measures taken to eliminate violations of legitimacy, a real restoration of people's rights and freedoms and lawful interests of the state, a compensation for caused losses, and bringing of the accused to liability established by law. The assessment of effectiveness of prosecution services work based only on quantified figures is not admissible.

Prosecution services activity is assessed integrally in the platitude of professional solution to the issues that belong to the prosecutor's office competence together with statistical data which describe work quality and may be objectively put in comparison.

26. *Which authority (ies) has powers to establish such purposes?*

27. *Which role does prosecution service play in establishment of such purposes?*

Answers to the questions 26, 27.

Prosecutor General of Ukraine directs the work of prosecution service and controls their activity, as well as gives orders and instructions obligatory for prosecution services, and approves provisions and guidelines.

Branch-based orders specify tasks and priorities of prosecution activity according to current legislation.

With the purpose of directing prosecution services activity, the prosecution boards as advisory authority operate.

Decisions of the Prosecutor General's Office Board in required cases are implemented by orders of Prosecutor General of Ukraine.

28. *Are these targets coordinated among all authorities of criminal process? If such coordination exists, how does it influence the prosecution service activity?*

In accordance with Article 10 of Ukrainian Law "On Prosecution Service", Prosecutor General of Ukraine and his subordinate prosecutors coordinate the activity of all law enforcement authorities of Ukraine related to the fight against crime.

29. *Are there any instructions in your system relative to appropriate loading within prosecutor's offices? If so, is allocation of resources correlated with loading?*

The work of Ukrainian prosecution services is organized under territorial and functional (branch) principles.

Delimitation of powers among prosecution services of certain directions is determined by branch-based orders of Prosecutor General of Ukraine.

Determination of appropriate structure, staff number and appropriate distribution of duties between management and subordinate employers of prosecution service is the most important factor in organization and management.

Staff number of prosecutor service is developed by the Prosecutor General's Office of Ukraine, complying with efficient correlation of managing officials, prosecutors, investigators and public officials.

When distributing functional duties among employers, the academic background, practical experience, individual inclinations and skills of the employments are taken into account.

30. *Are the targets established on the basis of negotiation system?*

31. *Who is the participant of these negotiations?*

Answer to the question 30, 31.

The current legislation does not provide the building up of purposes for the prosecution service based on negotiation system.

At the same time, with the purpose of coordination of activity against crime, pursuant to Article 10 of Ukrainian Law "On Prosecution Service", the prosecution service is empowered to organize coordinating meetings, working groups, as well as to take part in organization of meetings of Presidential Coordinating Committee against Organized Crime of Ukraine.

The participants of aforementioned coordinating meetings may be authorities of the interior, Security Service authorities, Tax Police authorities, Customs Service authorities, Military Service of Law Order attached to the Armed Forces of Ukraine and other law enforcement authorities.

CHAPTER VI: Inspection of results and reporting

32. *Please, indicate whether specific national strategies are applied in your state towards resources allocated for judicial system, including prosecution service? If so, within which areas are these strategies developed? Please, comment on results of application of these strategies.*

In Ukraine, prosecution service is not a part of judiciary authorities, and accomplishes its powers independently from public authorities. The answer to this question is out of competence of prosecution service.

33. *Is achievement of purposes inspected annually? In which way is it carried out?*

The procedure of assessment of effectiveness of prosecution service work is set forth in the answers to the questions 24, 25.

34. *Were some reforms conducted during 5 last years, directed at increase of budget of justice?*

As it was mentioned before, prosecution service is not a part of judiciary, and in this context, the prosecution service budget is not connected with the budget of judiciary.

35. *Is prosecution service included in public strategies for enhancing effectiveness of public institutions (e.g. electronic management, external financial control)?*

Ukrainian prosecution service is not included in public strategies for enhancing the effectiveness of public institutions.

For example, the external financial control and the examination of financial and economic activity of public institutions, according to paragraph 4 of Article 26 of Budget Code of Ukraine, are conducted by the Audit Chamber – with regard to control over application of funds of the state budget of Ukraine, and by Main Department for Control and Audit of Ukraine – in accordance with its powers, established by law.

At the same time, Ukraine prosecution service supervises over observance and appropriate application of laws by all public authorities, that influences the legitimacy and functioning of public authorities.

36. *How would you define recommendations on internal control within prosecution service?*

Control over, as well as organizational and methodical management of activity of subordinate prosecutors' offices are entrusted on administrations of the Prosecutor General's Office of Ukraine and regional prosecutors' offices.

37. *Is there any assessment of the impact of prosecutors' activity on the society? If so, who conducts such assessment?*

According to Article 2 of Ukrainian Law "On Prosecution Service", Prosecutor General of Ukraine at least annually informs the Verkhovna Rada (the Parliament) of Ukraine on the state of legitimacy.

With the purpose of providing observance of publicity principle, prosecution services also inform the government and the public about the state of legitimacy and measures of its enhancement, following the rights of citizens and legal entities. Press publications promote forming the image of prosecution service in the society.