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Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

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Meeting: 1377th meeting (June 2020) (DH)

Item reference: Action Report (03/04/2020)

Communication from Ukraine concerning the cases of TYMOSHENKO v. Ukraine (Application No. 49872/11) and LUTSENKO v. Ukraine (Application No. 6492/11)

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Communication de l'ukraine concernant les affaires TYMOSHENKO c. Ukraine (requête n° 49872/11) et LUTSENKO c. Ukraine (requête n° 6492/11) (**anglais uniquement**)

DGI

03 AVR. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



**МІНІСТЕРСТВО
ЮСТИЦІЇ
УКРАЇНИ**

вул. Архітектора Городецького, 13,
м. Київ, 01001, Україна
тел.: (044) 364-23-93
факс: (044) 271-17-83
E-mail: callcentre@minjust.gov.ua,
themis@minjust.gov.ua,
Web: <http://www.minjust.gov.ua>
код згідно з ЄДРПОУ 00015622

**MINISTRY
OF JUSTICE
OF UKRAINE**

13, Horodetskogo Arkhitekтора St., Kyiv,
01001, Ukraine
tel.: (044) 364-23-93
fax: (044) 271-17-83
E-mail: callcentre@minjust.gov.ua,
themis@minjust.gov.ua,
Web: <http://www.minjust.gov.ua>
код згідно з ЄДРПОУ 00015622

Mr Fredrik Sundberg

**Head of Department Ad Interim
Department for the execution of judgments
of the European Court of Human Rights
Directorate General 1 – Human Rights
and Rule of Law**

Council of Europe
F-67075 Strasbourg Cedex

*As to the execution of the Court's judgment
in the Lutsenko/Tymoshenko cases*

Dear Sir,

Herewith please find enclosed the Consolidated Action Report on measures to be taken for implementation of the European Court's judgments in the *Lutsenko/Tymoshenko* cases (applications nos. 6492/11 and 49872/11).

This information has been sent by e-mail.

Encl: on 26 pages.

Yours faithfully,

**Ivan Lishchyna
Deputy Minister – Agent before
the European Court of Human Rights**



UB
Міністерство юстиції України
№3368/5.2.1/25-20 від 03.04.2020
Ліщина І.Ю. (Заступник Міністра юстиції
України - Уповноважений у справах
Європейського суду з прав людини)
03.04.2020 18:45

Execution of Judgments of the European Court of Human Rights

DGI

03 AVR. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Consolidated Action Report on measures to be taken for implementation of the Court's judgments in the group of *Lutsenko/Tymoshenko* cases (applications nos. 6492/11 and 49872/11, judgments final on 19/11/2012 and on 30/07/13, respectively)

CASE SUMMARY

This group of cases concerns a number of violations related to the applicants' right to liberty and security (Articles 5§1 + 5§4 + 5§5) and of Article 18 taken in conjunction with Article 5 (prohibition on restrictions of rights for other purposes than those prescribed) in the context of criminal proceedings initiated against the applicants. Ms. Yulia Tymoshenko was arrested as part of a criminal proceeding on exceeding his official authority and abusing the powers during her tenure as Prime Minister of Ukraine. In *Tymoshenko case* applicant alleged about politically motivated detention, the absence of judicial review of the lawfulness of detention. The applicant, also, complained that her conditions of detention had been inhumane and lack of medical care. Also, Mr. Yuriy Lutsenko was detained on charges of abuse of power and office. In *Lutsenko case*, prosecuting authorities explicitly indicated the applicant's communication with the media as one of the grounds for his arrest and accused him of distorting public opinion about crimes committed by him, discrediting the prosecuting authorities and influencing the upcoming trial in order to avoid criminal liability. In the Court's opinion, such reasoning by the prosecuting authorities clearly demonstrates their attempt to punish the applicant for publicly disagreeing with accusations against him and for asserting his innocence, which he had the right to do.

In both cases, the Court found that the applicants' liberty was restricted for other reasons than those permissible under Article 5 (violation of Article 18 taken in conjunction with Article 5).

INDIVIDUAL MEASURES

Just satisfaction

In the Court's judgment in the *Lutsenko case* the Court awarded the applicant just satisfaction in amount of EUR 15 000 in respect of non-pecuniary damage. The awarded sum was paid to the applicant under payment order No. 127 of 17 January 2013.

Also, the Government would like to note that the applicant in *Tymoshenko case* did not submit any claims in respect of damage or cost and expenses due to this the Court did not award the just satisfaction.

Restitutio in integrum

Foremost, the Government would like to note that on 28 February 2014 the Parliament of Ukraine adopted the Law of Ukraine "On Rehabilitation of Persons for the Execution of Judgments of the European Court of Human Rights" (No. 839-VII) according to which persons who was convicted during the period from 1 February 2010 to 1 March 2014 should be rehabilitated. Also, Article 3 of this Law envisaged that those persons whose complaints against Ukraine by the European Court of Human Rights have found violations of Article 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms should be rehabilitated. Thus, both applicants were rehabilitated according to this Law and their rights were restored.

Also, the Government would like to note that on 7 April 2014 Mr Yuriy Lutsenko was pardoned by the Presidential Decree No. 197/2013 and released from the prison. On 20 March 2014 the Pecherskyi District Court of Kyiv delivered decision which erased the criminal conviction of Mr Yuriy Lutsenko.

As regards the individual situation of Ms Yulia Tymoshenko, the Government would like to note that on 21 February 2014 she was released from the prison and on 24 June 2014 the Supreme Court of Ukraine rehabilitated her.

Taking into account all the above the Government consider that no further individual measures are required in these cases.

GENERAL MEASURES

First of all, it should be noted that information regarding general measures in response to violations of Articles 5§1, 5§4 and 5§5 of the Convention concerning detention on remand are examined in the context of the *Ignatov* group of cases.

As regards the general measures required to respond to the violation of Article 18 taken in conjunction with Article 5 of the Convention the Government of Ukraine would like to reiterate that in § 296 of judgment in *Tymoshenko case* and § 104 of the judgment in *Lutsenko case* the Court noted that the circumstances of the cases suggest that soon after the change of power, applicants in *Tymoshenko* and *Lutsenko* cases, who were former members the Cabinet of Ministers of Ukraine and the leaders of opposition political parties, respectively, had been accused of abuse of power and prosecuted. This happened in the context, which the external observers described as the politically motivated prosecution of the opposition leaders. The case of former Minister of Internal Affairs, along with the case of the former Prime-Minister, attracted significant attention both nationally and internationally. In these circumstances, the applicants' submissions made at the initial stage as to the possible political pressure on them before the upcoming elections.

Therefore, the Court concluded that in their factual and legal submissions the applicants raised in substance the complaints that their arrest and detention had had ulterior motives.

In the *Tymoshenko case*, the applicant complained that her detention had hidden motives, in particular, that her arrest had been used by state authorities to remove her from political life and not allowing her to take part in parliamentary elections on 28 October 2012.

In § 299, the Court found that although the detention was formally arranged for the purpose of Article 5 § 1(c) of the Convention, there were doubts as to the factual rationale and reasons put forward by the authorities. Also, the Court in § 270 noted that it is not clear how detention may be regarded as a more appropriate preventive measure in the context of *Tymoshenko case*.

Moreover, in § 300 of judgment in *Tymoshenko case*, the Court stated that, using a similar approach to the interpretation of legal issues in the case as in *Lutsenko case*, and thus concluded that the relevant legal authorities acted not on the grounds of justice, but for other reasons and motives.

It is important to emphasise that the problems reflected in these cases are not systematic. This statement is primarily confirmed by the fact that both, Mrs Yulia Tymoshenko and Mr Yuriy Lutsenko, were released and rehabilitated entirely by domestic courts, due to the lack of a formal element of a crime and the absence of fault.

As of today, Mrs Yulia Tymoshenko is freely engaged in political activities and is a people's deputy of Ukraine. As for Yuriy Lutsenko, it is important to remind that on 12 May 2016 he was appointed as the Prosecutor General of Ukraine. Also, he has announced his intention to return to political activity in

the broadcast of national television. Thus, it can be concluded that politicians are not persecuted and not pressed by the use of investigative bodies.

Therefore, the Government consider that the information outlined below indicates the full execution of the Court's judgments in *Lutsenko/Tymoshenko* cases and request the Committee of Ministers to close the examination of these cases.

I. Constitutional amendments of 2016

On 2 June 2016 the Law of Ukraine "On Amendments of the Constitution of Ukraine Regarding the Judiciary" (entered into force on 30 September 2016) was adopted by the Parliament of Ukraine. Thus, provisions on the role and functions of the public prosecutor's office was integrated to the section "Justice" of the Constitution of Ukraine.

The amendments abolished general supervision of the public prosecutor's office and limited its functions to the following:

- organisation and procedural management of pre-trial investigations;
- support the public prosecution in the courts; and
- representation of the state's interest in the courts, according to the law.

These amendments aimed on decreasing the corruption and abuse of powers by officials during criminal investigations as well as bringing Ukrainian legislation and practice with respect to the protection of rights in criminal prosecutions in line with provisions of the Convention and the case-law of the Court.

Organisational independence of the public prosecutor's office lay in the fact that, however, the system of public prosecutor's offices are determined by law but the structure of these bodies are independent from the other state bodies. Organisational independence is also connected to the fact that the prosecutor's offices are not a part of the system of the other state bodies and are not a subject to hierarchical subordination to any other state authorities.

It is to be noted that on 14 October 2014 the Law of Ukraine "On Prosecutor's Office" was adopted.

The reform of the prosecutor's office was conducted in accordance with the Presidential Decree "On the Strategy for Reforming the Judiciary and Related Legal Institutions for 2015 - 2020" No. 276/2015 of 20 May 2015. The General Prosecutor's Office of Ukraine organised the implementation of the steps envisaged by the Action Plan for the implementation of the provisions of the relevant Strategy.

This Law had been developed in line with experience of the functioning of the prosecutor's offices in other European countries, the Council of Europe standards as well as the conclusions and recommendations provided by the Venice Commission regarding draft laws on reforming the prosecutor's office in Ukraine (CDL-AD (2006) 029 of October 17, 2006) year, CDL-AD (2009) 048 of October 27, 2009, CDL-AD (2012) 019 of October 15, 2012).

The Venice Commission noted that provisions of this Law are progressive compared to previous legislative changes, and provides a basis for the functioning of the public prosecutor's offices in accordance with European standards as well as effective basis for the reform of the public prosecutor's office in Ukraine (paragraphs 193, 196 of the Conclusion CDL-AD (2013) 025 of 14 October 2013).

The Venice Commission, also, presented its proposals for improving the provisions of the law, most of which were taken into account.

The Law enshrined provision of guarantees of independence to prosecutors, the creation of prosecutorial authorities which are independent of the management of the prosecutor's office, and reorganisation of the structure of the prosecutor's office (the creation of local prosecutors' offices to replace district offices).

II. Prevention of arbitrary, unjustified and politically motivated arrests and detentions

The Government would like to note that currently the Prosecutor's Office of Ukraine (the "POU") does not belong to any of branches of powers and identifies as a law enforcement agency. It is important to emphasise that according to the reform of the prosecutor's office in 2016, provisions governing the activities of the POU were included in section "Justice" of the Constitution of Ukraine ("Constitution"). Thus, Article 131¹ of the amended Constitution establishes the provision according to which the POU is recognised as the constitutional body and its functions are provided by the Constitution. On this basis, it can be concluded that the form of the existence of the POU implies that the system of bodies of the prosecutor's office is separate from other state bodies, and is independent from the influence of executive and legislative authorities.

It is also important to note that judges, in the same manner as prosecutors, are independent of any political influence in their activities. As the Government noted in their previous Action Plan of 28 February 2018 on measures to be taken for implementation of the Court's judgments in *Salov/Oleksandr Volkov* group of cases, the excluding of the Parliament of Ukraine from the mechanism of the appointment and dismissal of judges play a crucial role in the issues of political neutrality of judges. The establishment of the High Council of the Judiciary removes a political component from the judicial branch and makes the investigation and criminal process more effective.

The Constitution determines that the prosecutor's office carries out (Article 131¹):

- 1) Maintaining of public prosecution in court;
- 2) Organisation and procedural management of pre-trial investigation, supervision of covert investigative activities and investigations of law enforcement agencies;
- 3) Representation of the state interests in court in exceptional cases and in the manner prescribed by law.

The organisation and activities of the POU are determined by the Law of Ukraine "On Prosecutor's Office" (the "Law").

Article 131¹ of the Constitution and Article 40 of the Law stated that POU is headed by the Prosecutor General who is appointed and dismissed by the President of Ukraine with the consent of the Parliament of Ukraine. This method of appointment due to the doctrinal and practical point of view is understood as the best way for ensuring the greatest independence of the Prosecutor General from political influence. This statement is primarily confirmed by the fact that, in this case, the Prosecutor General is independent of the President of Ukraine and the Parliament of Ukraine, as, without the decision of one of the institutions, the other cannot remove the Prosecutor General from office and cannot exert pressure with the purpose of unlawful actions in different issues.

The method and forms of implementation of the tasks of prosecutors are specified in Articles 9, 36, 37, 92, 214, 216, 218, as well as in a number of other provisions of the Code of Criminal Procedure of Ukraine (the "CCP").

In particular, according to part 2 of Article 9 of the CCP, the prosecutor, the head of the pre-trial investigation authority, the investigator are obliged to conduct the investigations based on the criteria of comprehensiveness, fullness and impartiality.

The **principle of independence** and the prohibition of interference to the procedural activities by individuals who are not having the legal authority are enshrined in Article 36 of the CCP. Thus, the prosecutor, exercising his powers under the requirements of the CCP, is independent in his procedural activity. State authorities, local self-government bodies, enterprises, institutions and organisations, public servants

and other natural persons are required to comply with the lawful requirements and procedural decisions of the prosecutor.

Article 37 of the CCP envisages that the prosecutor who will exercise the prosecutor's powers in a particular criminal proceeding is appointed by the head of the relevant prosecuting authority after the pre-trial investigation has commenced. The prosecutor shall exercise the powers from its beginning to its completion.

These provisions are aimed on the legal stipulation of the principles of invariability of prosecutors and autonomy of the prosecutors.

Such a system granted full independence and political neutrality of the public prosecution service of Ukraine as well as ensure the effective investigations of the criminal proceedings and promotion of the rights of all concerned persons.

The Law established the principles of the activities of the POU in the same manner. Article 3 of the Law stipulates the provision according to which the activities of the POU are based on the *principles of the independence* of prosecutors. This independence is confirmed by the existence of guarantees against illegal political, material or other influence on the prosecutor's decision making in the performance of his official duties. Also, it should be mentioned that Article 3 of the Law proclaimed the inadmissibility of illegal interference of the prosecutor's office in the activities of legislative, executive and judicial authorities.

The independence of prosecutorial decisions is guaranteed in Ukraine at the legislative level.

Article 16 of the Law provides that the prosecutor's independence is ensured through:

A special procedure for his appointment to office, dismissal from office, and disciplinary responsibility. The procedure for exercising the powers of the prosecutor which determined by the procedural legislation and other laws.

Prohibition of illegal influence, any pressure, and interference in the prosecutor's exercising of powers. The personal security of the prosecutor, members of his family, property are ensured by special means of secure provided by law, as well as legal remedies.

In order to exercise of their functions, prosecutors are independent of any unlawful influence, pressure, and interference, and are guided in their activities only by the Constitution and laws of Ukraine (Part 2 of Article 16 of the Law).

The principle of political neutrality of the prosecutor's office is reflected in the Code of Professional Ethics and Behavior of Public Prosecutors (the "Code"), approved by the All-Ukrainian Conference of Public Prosecutors on 27 April 2017. Thus, Article 4 of the Code envisages that the professional activity of prosecutors is based on the principles of the rule of law and legality; the respect for the rights and freedoms of persons and Ukrainian citizens, prevention of discrimination; the independence; a political neutrality; a presumption of innocence; the professional honors and dignity, confidence building in the prosecutor's office; an integrity, exemplary behavior and discipline; the respect for the independence of judges.

As to Articles 7 and 8 of the Code, when performing his official duties, the prosecutor must be independent of any influence, pressure or interference with his/her professional activities, including public authorities and local self-government bodies, their officials and officers, active in a manner determined by law to resist attempts to avoid his independence. Prosecutors are obliged, while exercising their official duties, to adhere to political neutrality, to avoid demonstrations in any form of their own political beliefs or views, not to use their official powers in the interests of political parties or their authorities or individual politicians.

In order to perform his/her official duties, the prosecutor may, within the limits of his authority, cooperate with state authorities and local self-government, if this does not contradict the principle of his independence (Article 24 of the Code).

In addition, Articles 18 and 19 of the Law provide for, in particular, the requirements regarding the incompatibility of the position of the prosecutor with the political life in the country and the duty of the prosecutor to act only on the basis, within and in the manner prescribed by the Constitution and laws of Ukraine. That is, the current legislation provides that prosecutors are obliged to perform their official duties in a politically impartial and neutral manner, not to use them in the interests of political parties or individual politicians, public associations.

According to the Law, prosecutors are obliged to comply strictly with the requirements of the Code. These violations entail liability established by law. In the case of a regular (two or more times during one year) or a one-time gross violation of the rules of the prosecutor's ethics, the prosecutor may be brought to disciplinary responsibility (Article 33 of the Code).

In case of the threat of his independence, the prosecutor has the right to address to the Council of Prosecutors of Ukraine (the "CPU"). The CPU is obliged to examine and consider this appeal with prosecutor's participation immediately and to take the necessary measures to eliminate the threat within the limits of his powers (Part 6 of the Article 16 of the Law).

The Government of Ukraine would like to underline that the Qualification-Disciplinary Commission of Prosecutors (the "QDCP") and the CPU, the support and self-governance bodies of the country's Public Prosecution Service, play a crucial role on the national level in enhancing the independence, professionalism, integrity and effectiveness of the prosecution service, as well as ensuring a process of merit based recruitment and promotion of prosecutors, initial training, and disciplinary proceedings.

The CPU is the highest body of prosecutor's self-government in the period between All-Ukrainian Conference of Prosecutors. The CPU makes recommendations on appointment and dismissal of public prosecutors from administrative positions; oversee measures to ensure independence of Public Prosecutors and improve organisational support to prosecutors; consider applications of public prosecutors and other information regarding any threat to independence of public prosecutors and take follow-up actions (notifying respective authorities of the grounds to impose criminal, disciplinary or other liability; initiating consideration of protection measures for public prosecutors; publishing, on behalf of the prosecution service, of instances of violation of prosecutorial independence; notifying international organisations of the same, etc).

The CPU consists of thirteen persons, of whom:

- 1) two representatives (prosecutors) from the General Prosecutor's Office of Ukraine (GPU);
- 2) four representatives (prosecutors) from regional prosecutors;
- 3) five representatives (prosecutors) from local prosecutors;
- 4) two representatives (scientists) appointed by the Congress of representatives of legal higher educational institutions and scientific institutions.

The appointment of the members of the CPU from the GPU's representatives (prosecutors), regional and local prosecutor's offices is carried out by All-Ukrainian conference of prosecutors.

The CPU:

- makes recommendations on the appointment and dismissal of prosecutors from administrative positions;
- organises the implementation of measures to ensure the independence of prosecutors;
- provides legal and social protection for prosecutors;

- examines appeals by prosecutors and other reports on the threat of the independence of prosecutors.

The CPU carries out its work in the form of meetings, which are held at least once a quarter. Moreover, the CPU in the period between the meetings of All-Ukrainian Conference of the Prosecutors organises either the implementation of decisions, delivered by this conference, or solves the issues of convening and holding of All-Ukrainian Conference of Prosecutors. The powers and functioning of the CPU are determined by the Law and the Provision “On the Council of Prosecutors of Ukraine” approved by All-Ukrainian Conference of Prosecutors on 27 April 2017.

In accordance with Article 73 of the Law, the QDCP is a collegiate body that determines the level of professional training of persons who have declared their intention to occupy the prosecutor’s vacancy and solves issues of disciplinary liability, transfer and dismissal of prosecutors from office. The QDCP consists of five prosecutors which are appointed by All-Ukrainian Conference of Prosecutors, two persons (scholars) – by a congress of representatives of higher education institutions and scientific institutions, one person (advocate) – by a congress of lawyers of Ukraine, three persons – by the Ukrainian Parliament Commissioner for Human Rights, in agreement with the Parliament of Ukraine Committee, to which the issues about the organisation and activity of the prosecutor's office belongs (Article 74 of the Law). Thus, the issues of bringing the prosecutors to disciplinary responsibility and their compliance with ethical standards are solved by persons who represent different fields of law and are not subject to each other. The QDCP members work on a permanent basis and its sessions are held publicly, except in cases envisaged by its Statute. A closed session shall be held if consideration of a specific agenda item may lead to disclosure of personal data or sensitive information which is protected by law.

As of today the QDCP has already considered a large number of complaints about prosecutors, their activities and demonstrated the effectiveness of the established powers. In this regard please be advised with the QDCP decisions regarding the independence of prosecutors, for example:

In the QDCP Decision of 24 October 2018 No. 473dp-18, the prosecutor of the Dergachiv Local Prosecutor's Office of Kharkiv Region was brought to disciplinary responsibility and dismissed from the office. Disciplinary proceedings were initiated due to the fact that the prosecutor demanded an unlawful benefit and disclosed the information of pre-trial investigation. QDCP noted that according to Article 19 and 21 of the Code, the prosecutor has no right to enter into informal relationships in order to exercise his official duties; the prosecutor should avoid personal contacts, financial and business relations that could affect the impartiality and objectivity of the performance of professional duties. According to Article 2 of the Procedure for Organisation of Work On Internal Security In the Prosecutor's Offices of Ukraine, approved by the Order of the General Prosecutor's Office of Ukraine No. 111 on 13 April 2017, the performance of the prosecutor’s official duties and related acts in favour of his private interests or private interests of the third parties belong to actions that denigrate the title of prosecutor and may cause doubts in his objectivity, impartiality and independence. QDCP found that the prosecutor violated the above requirements, committed unlawful actions, including in favour of private interests of the third parties.¹

In accordance with the QDCP decision of 23 May 2018 No. 205dp-18, deputy head of the Lviv local prosecutor's office No. 2 was brought to disciplinary responsibility. A disciplinary penalty in the form of a one-year ban on transfer to a higher-level prosecutor's office and for appointment to a higher office was imposed. Disciplinary proceedings were initiated under complaint, raised by a specialist of the Sambir local prosecutor's office due to her illegal dismissal on the grounds of personal hostility.²

¹ http://www.kdkp.gov.ua/ua/commission_decision.html?_m=publications&_t=rec&id=1822

² http://www.kdkp.gov.ua/ua/commission_decision.html?_m=publications&_t=rec&id=1312

According to the abovementioned examples from the practice, it can be concluded that the QDCP is an effective body for ensuring the independence of prosecutors. It is also important to note that the QDCP considers disciplinary proceedings not only on the facts of violation of independence by the high-level prosecutor, but those which concerns violations committed by the prosecutor for his/her personal interest in order to obtain benefits in any form.

It is also important to note that, according to the Law, internal security departments carry out a secret verification of the faithfulness of prosecutors about which prosecutors are notified at the time of appointment. Internal security departments check the activities of the prosecutor and his/her independence during the exercise of his/her powers. In case of suspicion of unlawful actions of the prosecutor, an official investigation shall be appointed, and in case of confirmation by the prosecutor of a disciplinary offense, he/she shall be held liable following the requirements of laws.³

III. Internal Prosecutor's Hierarchy

As to the Law, the prosecutor supervises the observance of the laws by the bodies conducting the operational-investigative activity, inquiry, pre-trial investigation, taking into account provisions envisaged by the Law of Ukraine "On Operational-Investigative Activity" and the CCP (Article 25 "Publicity"). The written instructions of the prosecutor to the authorities conducting search operations, inquiries and pre-trial investigation, provided within the limits of power, are mandatory for these bodies and are subject to immediate enforcement. If the prosecutor issues unlawful orders or acts outside the scope of his/her powers, such a prosecutor will bear responsibility under the law.

The CCP determines that the prosecutor is authorised to support the state prosecution or refuse to hold it. Also, the CCP consolidates the principle of "invariability of the prosecutor" - the prosecutor exercises his/her powers in criminal proceedings from the beginning to the completion. The execution of the powers of the prosecutor in certain criminal proceeding by another prosecutor is possible only in cases established by law. These are disqualification motion, severe disease, and dismissal from prosecutor office or another valid reason making his participation in the criminal proceedings impossible. Only the presence of the above grounds gives the right to the head of the prosecutor's office to assign another prosecutor the powers in criminal proceeding.

The Law contains provisions that limit the internal influence on the prosecutor's decisions. As to Article 17 of the Law the principles of prosecutors' subordination and execution of orders/instructions by them:

- in order to exercise of their powers the prosecutors are independent, and are obliged to comply only with the directions of the highest level prosecutor under the requirements of this Article (Part 3 of Article 17 of the Law);

- the prosecutor is not obliged to execute orders and instructions of a higher level prosecutor, which raise doubts about his legality, if he has not received them in writing, as well as obviously criminal orders or instructions. The prosecutor has the right to appeal to the CPU with a statement about the threat of his independence (Part 5 of Article 17 of the Law).

A public prosecutor shall be entitled to apply to the CPU reporting on a threat to his/her independence due to an order or instruction issued by a higher public prosecutor.

The Government would like to note that measures are being taken to ensure the proper practical implementation of the principles of subordination of prosecutors and the execution of orders and instructions specified in Article 17 of the Law. The relevant provisions are enshrined in the internal legal acts.

³ <http://zakon.rada.gov.ua/laws/show/z0875-16>

In particular paragraph 3.4 of the Order of Prosecutors General “On basic principles of organisation of work of the prosecutor's offices in Ukraine” No. 15 of 19 January 2017 envisaged the prohibition of limitations or violation of procedural independence of the prosecutors during the exercising their powers and adoption of decisions on the procedure for its implementation, as well as stipulated provisions on providing the instructions in the manner prescribed by law.

The procedure of organisation of prosecutors' activity and investigative authorities of the prosecutor's office in criminal proceedings was approved by the Order of the Prosecutor General of Ukraine No. 51 of 28 March 2019. In accordance to this procedure the first deputy and deputy Prosecutor General, heads of regional and prosecutors' offices as well as heads of structural units are obliged to ensure the activity of a prosecutors who conduct procedural supervision in criminal proceedings on the basis of procedural independence and internal autonomy of prosecutors.

Issues of official subordination was regulated by the Regulation of the Prosecutor General's Office of Ukraine which was approved by Order of the Prosecutors General No 8 of 18 January 2019.

The relevant units of the Office of the Prosecutor General and other prosecutors' offices carry out permanent control over observance of the practice implementation of this requirements.

IV. Deprivation of liberty under the Article 5§1 ©

Article 12 of the CCP ensures the right to liberty and personal inviolability. According to the Part 1 Article 12 of the CCP, no one shall be kept into custody, be detained or otherwise restrained in their right to freedom of movement upon criminal suspicion or charge other than on grounds and according to the procedure specified in the CCP. The CCP envisages that every person whose liberty deprived should be sent as soon as possible to the investigating judge who will decide on the legality and validity of the detention. The detained person shall be promptly released from custody if within 72 hours from the moment of his/her detention the person is not served a reasoned court decision on keeping in custody.

Article 177 of the CCP establishes the purpose and grounds for imposing of a measure of restraint. Such grounds include a reasonable suspicion of having committed a criminal offence, as well as the existence of risks that provide sufficient grounds to the investigating judge or the court to consider that the suspect, the accused or the convict may:

- hide from pre-trial investigation agency and/or the court;
- destroy, conceal or spoil any of objects or documents that have essential importance for establishing circumstances of criminal offence;
- exert unlawful influence on the victim, witness, another suspect, accused, expert or specialist in the same proceedings;
- obstruct criminal proceedings in other way;
- commit similar or the same criminal offence, or continue the criminal offence of which he/she is suspected, charged.

The investigator, public prosecutor may not initiate application of a measure of restraint without grounds provided. The investigating judge is obliged to consider the issue of selection of preventive measures only after the prosecutor proves the existence of reasonable grounds of such detention. The CCP stated that upon request of the parties or *proprio motu*, investigating judge, the court may hear any witness or examine any materials of importance for deciding on the enforcement of a measure of restraint (Article 193).

An investigating judge or a court may consider a motion for selection of such measure of restraint as putting into custody in absence of a suspect solely only in the case when such a person is in the international wanted.

The total duration of keeping under the custody of the suspect or accused in the course of the pre-trial investigation shall not exceed:

- 1) six months in criminal proceedings in respect of crimes of small or medium gravity;
- 2) twelve months in criminal proceedings in respect of grave or especially grave crimes.

The CCP also provides rules for filing a well-grounded and proved request from detained person to change a preventive measure. In addition, the CCP states that investigating judge, the court is required to consider such request of the suspect, accused within three days after receiving the same, in accordance with rules laid down for consideration of the request to enforce a measure of restraint.

It is important to note that Article 204 of the CCP established a prohibition of detention without permission of investigating judge or court if it concerns the preventive measures to the person under suspicion in the same criminal offence. Also, the article defining the rights of the suspect and accused indicated that suspect/accused could demand that validity of the detention be verified (para.6 Part 1 Article 42 of the CCP).

Taking into account the wording of parts 3 and 5 of Article 206 of the CCP it should be noted that the burden of proof of existence of a legal basis for deprivation of liberty relies precisely on the investigator and prosecutor. Otherwise, the investigating judge is required to release the person.

Articles 303-308 of the CCP determine decisions, actions or inaction of the investigator or prosecutor, which may be appealed to the investigating judge during the pre-trial investigation, and also the procedure for appealing these decisions. Moreover, Articles 311-313 of the CCP establish the procedure for appealing against decisions of the investigator, actions or inaction of the prosecutor to the high-level prosecutor.

Please be advised with statistical information which is reflected in the Report on the work of the pre-trial investigation authorities during 2017.⁴

<i>Statistical Data regarding detention of persons and the selection of preventive measures</i>		
Detained persons in the order provided for in Article 207-208 of the CCP		723
Totally set at liberty persons		420
Among	persons were freed directly by the investigator (a prosecutor) without imposing a preventive measure in the form of detention on remand	86
	<u>for not confirming the suspicion of committing a crime</u>	2
	<u>in connection with the expiration of the detention period established by law</u>	3

⁴ https://www.gp.gov.ua/ua/stst2011.html?dir_id=112173&libid=100820&c=edit&_c=fo#

	in connection with the investigator's motion to choose less restrictive preventive measures	75
	because of the refusal of the court to choose a preventive measure – detention on remand	201
	the Court of Appeal dismissed the trial court's ruling on imposing detention on remand	10

From the table above, it is possible to conclude that 58 % of detainees are released from custody during pre-trial investigation, of which 28 % is due to the choosing a less restrictive preventive measure by the court.

Moreover, it is important to emphasise that according to Article 7 of the Law, the Specialised Anti-Corruption Prosecutor's Office (the "SACP") operates in the system of the POU.

According to Article 8-1 of the Law the SACP is an independent structural unit of the GPU, which is entrusted with:

- supervision over observance of laws while conducting operational-search activities by the National Anti-Corruption Bureau of Ukraine (the "NABU");
- the maintenance of state prosecution in relevant proceedings;
- representing of society and state interests in the court in cases provided for by law and related to corruption or corruption-related offences.

By law, appointment to administrative posts in the SACP is carried out by the Prosecutor General according to the result of an open competition. The competition is organised and conducted by a competition committee, which consists of four persons appointed by the CPU and seven persons appointed by the Parliament of Ukraine.

Creation of the SACP is important because prosecutors of this unit are independent from the GPU in performing of their duties. Thus, the investigation concerning politicians suspected of corruption is carried out exclusively by prosecutors of SACP and detectives of NABU. Such a system makes impossible an influence on prosecutors from other persons, including politicians and Prosecutor General.

V. Delineation of investigative competence

According to paragraph 9 of the Transitional Provisions of the Constitution of Ukraine the prosecutor's office shall continue to fulfil the function of pre-trial investigation before to the launching of authorities to which the respective functions will be delegated by law.

Further steps of the reform relating to process of functioning of the Prosecutor's Office of Ukraine took place in the second half of 2014 with the adoption of the updated Law of Ukraine "On the Prosecutor's Office", in accordance to which the function of general supervision was completely abolished.

Therefore, reforming of the functions of the prosecutor's offices depended not only from the adoption of the new Law of Ukraine "On Prosecutor's Office", but also from creation of the State Bureau of Investigations as the authority to which the function on investigation of crimes should depart.

More than 10 years ago the necessity of creation of the State Bureau of Investigations was discussed. On 15 February 2008 the National Security and Defense Council of Ukraine considered the issues related to the reform of the criminal justice system and law enforcement authorities as well as approved the Draft of the Concept of criminal justice reform of Ukraine and proposed to the President of Ukraine

to approve it. By the Decree of the President of Ukraine No. 311/2008 of 8 April 2008 this Concept was approved.

By the Resolution of the Cabinet of Ministers of Ukraine No. 1153-p of 27 August 2008 the Action Plan for the Implementation of the Concept of criminal justice reform of Ukraine was adopted. In light of the amendments introduced in October and November 2011, it envisaged, in particular, the adoption of a law on the establishment of a special investigative authorities aimed on conduction of pre-trial investigation for corruption offenses.

All of these documents aimed at implementing the provisions of Article 36 “Specialised Bodies” of the UN Convention against Corruption. According to this Article all State Parties shall ensure, in accordance with the fundamental principles of its legal system, the existence of an authority (or bodies or persons) aimed at counteracting of corruption.

Such authority (or bodies) shall be provided with the necessary autonomy with the compliance fundamental principles of the legal system of the State Party in order to enable them to carry out their functions effectively and without undue influence.

On 12 November 2015 the Law of Ukraine “On the State Bureau of Investigations” was adopted by the Parliament of Ukraine. In this respect on 29 February 2016 by the Resolution of Cabinet of Ministers the State Bureau of Investigation was developed. Also, on 22 November 2017 the President of Ukraine adopted the Decree on the appointment of a Head of the State Bureau of Investigations No. 386/2017.

Thus, due to Article 5 of the Law of Ukraine “On the State Bureau of Investigations” the main task of the State Bureau of Investigations are prevention, detection, termination, disclosure and investigation of the offenses committed by high-ranking officials and the crimes against the established order of military service.

Currently, due to Article 2 of the above Law the main functions of the public prosecutors service are supporting of the public prosecution in the courts, and representation of the citizens or state’s interest in the courts on criminal proceedings envisaged by the Law and Section 12 of Chapter III of the Code of Civil Procedure, supervision of the observance of law by the pre-trial investigation authorities or authorities involved to the pre-trial investigation, as well as supervision over the implementation of legislative acts within the execution of judicial decisions in criminal cases and over application of the other coercive measures related to the restriction of personal freedom of citizens.

Based on the above, the Government would like to underline that the functions of these state institutions are clearly regulated and do not have double system, as well as correlate and complement each other in the criminal justice system of Ukraine.

Also, it is important to recall that on 27 November 2018 the State Bureau of Investigations launched its operational activity.

VI. Ongoing Developments

1) Amendments to the legislation

It is important to note that the GPU constantly highlights the need to amend the legislation in accordance with the Constitution in connection with its amendments which were enacted on 2 June 2016. These amendments are proposed by the Draft Law of Ukraine “On Amendments to the Constitution of Ukraine (on Justice)” in relation to the implementation of the POU’s functions (registered as per No. 5177), and the Draft Law of Ukraine “On Amendments to the Constitution of Ukraine (on Justice)” in

part of the reform of the Prosecutor's Office of Ukraine in accordance with the European standards (alternative draft law, register No. 5177-1), registered in the Parliament of Ukraine on 23 September 2016, which, as of today, are under consideration in the profile Committee of the Parliament of Ukraine.

These draft laws were designed to implement the provisions of the Law of Ukraine “On Amendments to the Constitution of Ukraine (on Justice)”, which, *inter alia*, will amend the institutional approach to the activities of the POU, their legal status and procedure for exercise of their functions.

Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Relating to the Adoption of the Law of Ukraine ‘On Amendments to the Constitution of Ukraine (on Justice)’ (in part of ensuring the implementation of the POU’s functions of the)” (register No. 5177) introduces, *inter alia*, the following amendments to the CCP:

1) Definition of terms: “Maintenance of public prosecution”, “Organisation of pre-trial investigation”; “Procedural control over pre-trial investigation” and others in the implementation of the updated functions of the prosecutor's office (amendments to Article 3 of the CCP).

2) Specifying of the prosecutor’s powers in the criminal proceedings in accordance with the POU’s functions established by the Constitution (amendments to Article 36 and other articles of the CCP);

3) Eliminating of conflicts of law and improve the provisions of the CCP, in particular concerning:

- grounds for appealing a court judgment on the basis of agreements (amendments to Article 394);
- terms of application for revision of sentences by the Supreme Court (amendments to Article 447);
- resolving a dispute about the investigative jurisdiction (amendments to Article 218);
- carrying out an international cooperation by the NABU during criminal proceedings (amendments to Articles 545, 551).
- the possibility for the court to consider issues about the application (refusal of applying) of the incentives or sanctions to persons who serve the sentence, as well as changes in material conditions of detention, and other decisions taken by administration of the penitentiary institution (amendments to Article 537).

In addition amendments to the Law also include provisions for eliminating conflicts of law and improving certain law provisions that are problematic in practical implementation, namely:

1) Which bring the rules (amendments to Articles 8-1, 18, 30, 32, 43, 51, 54, 55, 64, supplements of Article 51-1) into line with anti-corruption legislation and determine legislative instruments for resolving conflicts of interest, and supplement the grounds for the disciplinary responsibility of prosecutors on following grounds:

- failure to notify or untimely notification about a real or potential conflict of interest in the manner prescribed by law;
- indication in the declaration of the person authorised to perform the functions of the state or local government, knowingly false information or deliberate failure to identify the information provided by law, in the absence of signs of a corruption crime or an administrative offence related to corruption;
- carrying out fraudulent that conduct by the prosecutor.

2) Which provide gradual increase of the level of prosecutors’ salary by 2020 to the level of judges’ salary (amendments to Article 81 of the Law) in accordance with implementation of constitutional amendments in the part of the inclusion of the POU in the section of justice and taking into account the provisions of the Law of Ukraine “On the Judiciary and Status of Judges” (in the wording of the Law of 2 June 2016).

An alternative draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Law of Ukraine ‘On Amendments to the Constitution of Ukraine (on

Justice)” (in the part of reforming the POU in accordance with European standards) is aimed at full, detailed and clear coordination of the provisions of the Constitution and other legislative acts in the implementation of the functions of the POU.

This draft law implements the concept of reforming the POU from a law enforcement agency to an institution in the system of justice.

Special investigative units of the POU in order to exercise of powers of pre-trial investigation should strictly adhere to the requirements of the CCP, in particular, para. 1 of the Transitional Provisions of this Code, according to which:

- On 20 November 2017 the mandates of the investigating authorities of the POU from the pre-trial investigation, which belong to the State Bureau of Investigations (“SBI”), are expired. At the same time, until 20 November 2019 the powers of the investigating authorities of the POU remained on the pre-trial investigation in criminal proceedings commenced before 20 November 2017, which belong to the SBI;
- on 20 November 2017, the term for ending of investigations concerning the offences, classified into the jurisdiction of the NABU, which was initiated by investigators of the POU, was expired;
- on 15 December 2017 the powers of the investigating agencies of the POU on ending of investigations concerning the offences, classified into the jurisdiction of the NABU (after their transfer to NABU for their pre-trial investigation for an indefinite period), was restored.

As regards adoption of these draft laws as a part of further alignment of the legislation with the 2016 Constitutional amendments the Government would like to note that on 3 October 2017 these draft laws were returned for the revision to the subject of legislative initiative.

Within the framework of the reform of Justice and Law Enforcement Agencies, the institute of criminal offences becomes important.

Therefore, a working group at the Parliament’s Committee on Legislative Support of Law Enforcement Activities was working on the development of systemic changes to the CCP based on the analysis of its enforcement within five years from the day of its entry into force. The working group includes representatives from the structural units of the GPU.

Taking into account the common position of the interested parties within the framework of this working group, a new Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Facilitation of Pre-trial Investigation of Certain Categories of Criminal Offences” was issued (registered as per No. 7279-d), which was adopted by the Parliament of Ukraine on 22 November 2018.

This Law is aimed on the development of the new structure of criminal offenses and establishment of an institution of “criminal misconduct” through amendments of the Criminal Code of Ukraine.

In accordance to this Law the Article 12 of the Criminal Code of Ukraine should be set out as follows:

“Article 12. Classification of criminal offences

Criminal offenses are divided into criminal misconduct and crimes.

Criminal misconduct in the meaning of this Code is action (act or omission), for the commitment of which are a maximum penalty of not more than three thousand minimum non-taxable income of citizens or another penalty not consisting in deprivation of liberty can be stipulate.”

At the same time, this Law envisaged the reform of the structures of criminal offences through formation of the system of corpus delicti which are defined as criminal misconduct having attributed to them all crimes which are defined as crimes of low gravity.

The introduction of criminal offences envisaged the simplification of the procedure of the pre-trial investigation of criminal misconduct and conducting such investigation in the form of legal inquiry. The

Government would like to note that after the entry into force of this Law (on 1 July 2020) about 126 corpus delicti will be identified as criminal misconduct.

The establishment of an institution of criminal misconduct and simplification of procedures for investigating it are aimed at decreasing the level of workload of investigators and will allow them to concentrate their activity on investigating of crimes.

Also, the Government of Ukraine would like to note that the reform of the POU is ongoing and will continue further. According to the Annual National Programme under the auspices of NATO-Ukraine Commission for 2018, the main aims of the reform are: balancing the structure of the prosecutor system; optimising the composition of its components in accordance with the assigned tasks; improvement of the personnel management policy, system of training of the qualified specialists; prevention of the external interference into the prosecutor's office activities.

2) Reform of the Public Prosecutor's Service, in 2019

As regards strategy for the reform of public prosecutors service

On 19 September 2019 the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Public Prosecutor's Office" No. 193-IX (hereinafter - the Law for the Reform) was adopted by the Parliament of Ukraine. In order to develop whole new state institution aiming at ensuring an effective protection of human rights and freedoms, public and state interests the Law for the Reform launch the systemic reform of the Public Prosecutor's Office, optimization of its structure and workforce restructuring.

The Government would like to note that the Law for the Reform introduces amendments to the Law of Ukraine "On Prosecutor's Office", as well as a number of other laws.

The central provisions of the Law for the Reform are the following:

- development of a new structure after the attestation of the prosecutors will be constructed in the form of: Office of the Prosecutor General, Regional Prosecutor's Offices, Circuit Prosecutor's Offices;
- granting the right to liquidate and reorganise Regional and Circuit Prosecutors' Offices to Prosecutor General;
- liquidation of military prosecutor's offices and granting the right of the Prosecutor General, as necessary, to create specialised prosecutor's offices in the form of subdivision of the Office of the Prosecutor General, Regional Prosecutor's Offices or Circuit Prosecutor's Offices;
- decreasing of the maximum quantity of staff at the public prosecution service of Ukraine;
- providing the Prosecutor General with the authority to approve: a strategy for the development of the public prosecutor's service; a system for assessing the quality of work of prosecutors; the procedure for assessing and regulating the workload on prosecutors; the procedure for reviewing allegations of maladministration by a prosecutor holding an administrative position, the duties assigned to the respective administrative position;
- providing opportunities for all candidates with higher legal education and professional experience in law to participate in the competition for positions in all public prosecutor's authorities;
- transformation of the National Academy of Prosecutor's Office of Ukraine into the Prosecutorial Training Centre of Ukraine;
- increase the level of prosecutor's basic official salary from 12 to 15 subsistence minimum for able-bodied;

- limitation for the maximum amount of the prosecutor's award assessed at no more than 30 percent of annual basic official salary;
- compulsory attestation of prosecutors for transferring to the newly formed public prosecutors authorities;
- attestation of prosecutors is conducted by staffing commissions which are authorised to evaluate the professional competence of prosecutors, their professional ethics and integrity;
- the authorities of the QDCP will be terminated until 1 September 2021;
- establishment of the Prosecutor's General authorities to approve the procedure for competition for the vacant position of the prosecutor, prescribes the procedure for filling of temporarily vacant positions of prosecutors in the prosecutor's office, appoints persons to administrative positions in the Office of the Prosecutor General and to the post of the head of the Regional Prosecutor's Offices (with the approval of the Commission for Selection of the Head Staff of the Public Prosecutor's Authorities), prescribes the procedure for consideration of disciplinary complaints and the imposition on the prosecutor of disciplinary action.

The Government would like to note that the reform of public prosecutors service has been divided on several steps (Table 1), in particular:

Resetting and optimisation of the organisational structure of the public prosecutor's authorities in line with strategic goals and social demands;

New criminal justice policies and standards for activities of prosecutors: The Office of the Prosecutor General will operate in accordance with the new criminal justice policy priorities; a new system of recommendations and standards for prosecutors' activities will exclude double standards in the practical application of criminal and criminal procedural law, which will enhance the efficiency of the investigation;

Public Prosecutor's Office for Society is reflected in the fact that the prosecutor's office will be social oriented and will use modern communication mechanisms in its activities. State authorities will work on a victim and witness protection program, creating a victim and witness co-ordinator service, and reforming of citizens' reception service;

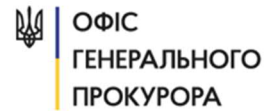
A new model of human and organizational development - human resources management will be based on best current practices in the professional development and motivation of prosecutors. The development of an updated selection procedure and standards for professional conduct will ensure the effective formation of staff with specialists and increase the level of its professional potential. A fair prosecutorial quality assessment system will provide the conditions for career management which will be based on personal achievement of prosecutor;

Prosecutorial Training Center of Ukraine: the National Academy of Prosecutor's Office of Ukraine will be transformed into a modern Prosecutorial Training Center the main task of which is to ensure the professional development of prosecutors. The coaching staff will be formed from prosecutors who will be guaranteed career growth, material motivation and personal development.

As regards developments of the human resources policy of the public prosecutors services, attestation of prosecutors and selection of prosecutors to the Office of the Prosecutor General the Government would like to recall that in accordance to the Law for the Reform the system of public prosecutors authorities was fundamentally revised as well as staffing policy in the prosecutor's offices, the system of training of personnel and improvement of their professional level at the Prosecutorial Training Center of Ukraine were significantly changed.

In particular, according to Section II “Final and Transitional Provisions” of the Law for the Reform, prosecutors who hold positions at the Prosecutor General's Office of Ukraine, regional prosecutors' offices, local prosecutor's offices, military prosecutor's offices can obtain the right on transferring to the Office of the Prosecutor General, Regional Prosecutor's Offices, Circuit Prosecutor's Offices only after successfully pass the attestation, the subject of which is aimed on the assessment of the professional competence, professional ethics and integrity of the prosecutors.

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Steps of the Reform

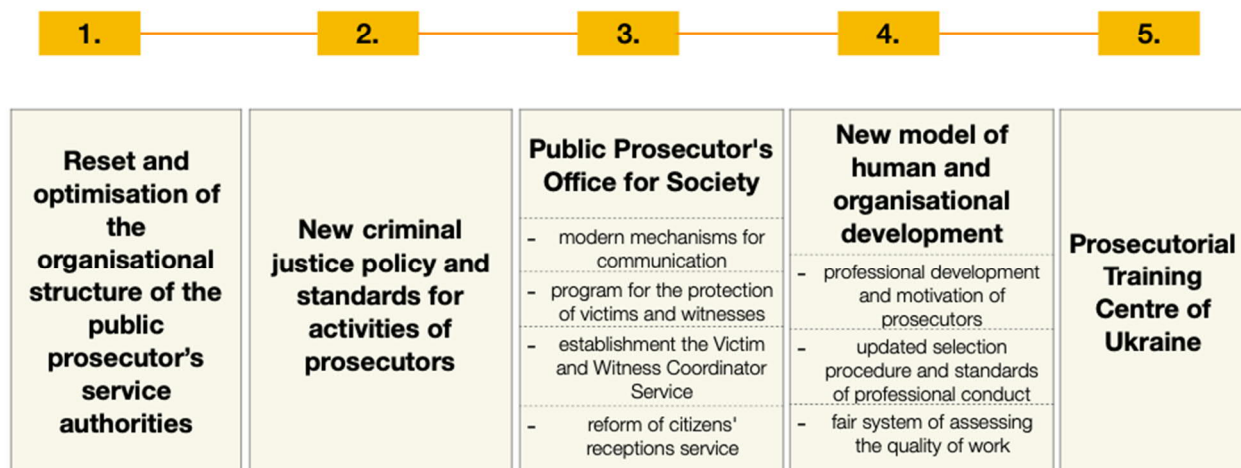


Table 1. Steps of the Reform⁵

In order to implement provisions of the Law for the Reform, the Procedure for attestation of prosecutors was approved by the Order of Prosecutor General No. 221 of 3 October 2019. In accordance to this procedure the attestation of prosecutors is conducted by the staffing committees transparently and publicly with obligatory presence of the prosecutor.

The attestation of prosecutors is divided on several steps, in particular:

- 1) the exam in the form of anonymous testing with the using of computer equipment in order to identify the level of knowledge and skills in the law;
- 2) the exam in the form of anonymous testing for general computer skills;
- 3) an interview in order to determine the prosecutor's compliance with the requirements of professional competence, professional ethics and integrity. As the part of this step the prosecutor should confirm the level of practical skills throughout performing a written practical assignment.

The attestation is conducted on the basis of a written statement of the prosecutor stating his intention to undergo the attestation, consent to the processing of personal data and the application of the conditions of the procedures for attestation.

⁵ <https://www.gp.gov.ua/ua/reform>

Also, the Government would like to note that in order to regulate the activity of the staffing committees the Procedure for functioning of staffing committees was approved by the Order of Prosecutor General No 223 of 17 October 2019.

The staffing committees established to fulfil the requirements of the Law for the Reform and the Order of Prosecutor General No 223 already provided the attestation of prosecutors of the Prosecutor General's Office of Ukraine.

The Government would like to inform the Committee with the results of the attestation of the Prosecutor General's Office of Ukraine. In this respect the Government would like to note that on the period of the launching of the attestation at Prosecutor General's Office of Ukraine the number of prosecutors was 1339 and 1083 prosecutors provided a statement on their intention to passed attestation. As a result of the attestation only 610 prosecutors successfully completed all three stages, in particular: 795 prosecutors passed the first stage; 769 prosecutors passed the second stage.

Also, it is important to underline that in accordance with the results of the activities of the Commission for Selection of the Head Staff of the Public Prosecutor's Authorities, established in accordance with point 6 of paragraph 22 of Section II "Final and Transitional Provisions" of the Law for the Reform approved the appointment of prosecutors who have successfully passed the attestation on administrative positions.

Furthermore, due to paragraph 20 Section II "Final and Transitional Provisions" of the Law for the Reform and Procedure for recruitment of staff on vacant position at the Office of the Prosecutor General (approved by the Order of Prosecutor General No. 11 of 10 January 2020) the competition started on 20 January 2020.

In this respect the Government would like to note that stages of this competition in general are similar to the attestation procedure with the exception of excluding from the list the exam in the form of anonymous testing for general computer skills.

According to the results of the testing for general knowledge and skills, 205 candidates were admitted to the interview.

Moreover, the Government would like to note that private and legal persons before the date of interview have the right to submit to the Office of the Prosecutor General any information that may indicate that the candidate does not meet the criteria of integrity. For this purpose, the interview schedule with the candidate's surname, first name and patronymic shall be published prior.

As a result of successfully passing of the competition the person can be obliged to get an internship at the prosecutor's office before his/her appointment on the position of prosecutor. In case of unsuccessful internship these persons cannot be appointed to the position of prosecutor. The procedure for internship at the prosecutor's offices shall be approved by the Prosecutor General.

As regards the Prosecutorial Training Center of Ukraine the Government would like to note that the Cabinet of Ministers of Ukraine adopted the Resolution "On Certain Issues of the Implementation of the Legislative Acts of Ukraine on Priority Measures for the Reform of the Public Prosecutor's Office" No. 175 of 3 March 2020, in accordance to which the National Academy of Prosecutor's Office of Ukraine was liquidated.

Also, the Government would like to underline that under paragraph 4 of Section II "Final and Transitional Provisions" of the Law for the Reform and the Order of Prosecutor General No. 351 of 23 December 2019, on 2 January 2020 the Office of the Prosecutor General started the work.

Moreover, by the separate Order of Prosecutor General No. 66 of 5 February 2020 the issue of launching the work of specialised prosecutors' offices in the military and defence sphere was regulated.

Furthermore, the Government would like to note that the issue of optimisation of organisational structure of the Office of Prosecutor General was regulated by the Order of Prosecutor General No. 99-III of 21 December 2019 by which the structure of the Office of the Prosecutor General was approved.

In particular, in order to provide the organisation and procedural management of pre-trial investigations, support the public prosecution in the courts, and representation of the state's interest in the courts for criminal proceedings on war crimes, torture and other serious violations of the rights of citizens committed by the officers of law enforcement authorities, particularly important criminal proceedings concerning on misappropriation of public funds, infringement of the rights of investors, credit and financial, and environmental spheres, money laundering, and crimes committed during the mass protests in 2013-2014.

Also, the Government would like to note that at the Office of the Prosecutor General there are a number of new divisions aimed on reforming the public prosecutor's service, development and implementation of the strategy for reform, formation of the system of individual assessment of the quality of work of prosecutors, procedures for assessment and regulating the workload of prosecutors, standards of their activity, and methodological recommendations as well as introduction of new methods of prosecuting.

As to Article 25 of the Law of Ukraine "On Prosecutor's Office" the Priorities of the activity of law enforcement authorities and prosecutors service in the sphere of criminal justice policy on 2020 was developed. The main strategic priorities were identified, in particular ensuring of investigation and prosecution of offenders for:

- the most serious corruption crimes;
- crimes committed by organised groups and criminal organisations;
- crimes in the credit and financial spheres;
- violation of provisions in environmental protection;
- war crimes and crimes against national security;
- drug-trafficking.

In order to prevent, counteract and providing effective investigate of such unlawful acts the prosecutor's offices in cooperation with all law enforcement authorities shall take appropriate measures.

As regards disciplinary liability mechanism

As to the suspension until 1 September 2021 of certain provisions of the Law, the procedure for consideration of disciplinary complaints about disciplinary misconduct by the prosecutor and disciplinary proceedings against prosecutors has changed.

Thus, in accordance with the Law for the Reform a function of the consideration of the complaints regarding prosecutors misconduct was granted to the staffing committees, and the activities of the QDCP was terminated.

The Government would like to note that by the Order of the Prosecutor General No. 266 of 4 November 2019 the Procedure for consideration by the staffing committee of complaints about disciplinary misconduct by the prosecutor, the implementation of disciplinary proceedings and the decision on the results of disciplinary proceedings was adopted.

According to this Procedure the disciplinary proceedings are divided into several stages, inter alia:

- the opening of disciplinary proceedings;
- conducting a disciplinary complaint review;
- reviewing of the report presence or absence of disciplinary misconduct and adoption of a decision.

Paragraph 8 of this Procedure envisaged that everyone who knows the facts that may be the basis for initiating disciplinary proceedings has the right to apply to the staffing committee with a disciplinary complaint against a prosecutor.

Moreover, the paragraph 10 stipulated that automated system for distributing disciplinary complaints was created in order to resolve the issue of the consideration of disciplinary proceedings.

On the day of the receipt of a disciplinary complaint the specialized unit of the Staffing Committee registers it and, through an automated system, appoints a member of the Staffing Commission who will be responsible to decide on the opening of disciplinary proceedings.

The decisions on the opening of disciplinary proceedings or refusing on the opening of disciplinary proceedings shall be taken by a member of the staffing committee within a period that not exceeding 5 days from the date of registration of the complaint by the specialized unit of the staffing committee. Such decision shall be made public within three days on the official website of the Prosecutor General's Office of Ukraine (the Office of the Prosecutor General) without information allowing directly or indirectly to identify the prosecutor for which the decision was taken, and shall be forwarded within the same period to the prosecutor and to the person who filed a disciplinary complaint, by electronic means or by registered mail with notification of service.

After the disciplinary proceedings have been opened, the member of the staffing committee shall carry out a review within the circumstances reported in the disciplinary complaint. In the case of other circumstances, which may be grounds for bringing a prosecutor to disciplinary responsibility, the information about this is included to the conclusion of the member of the staffing committee on the results of the examination.

Also, the Government would like to note that this Procedure envisaged provisions on removal of a prosecutor from a position during the period of disciplinary proceedings and a detailed procedure for disciplinary proceedings against a prosecutor.

According to Section VI of the Procedure the prosecutor may appeal against a decision taken on the basis of disciplinary proceedings to an administrative court or to the High Council of Justice within one month from the date of receiving of the decision.

In addition, the Government would like to underline that similar to the QDCP the activity of the Council of Prosecutors terminated until 1 September 2021.

As regards internal independence and individual autonomy of the prosecutors

As to part 3 Article 8 of the Law of Ukraine “On Prosecutor’s Office” the Inspectorate General shall be developed as a unit of the Office of the Prosecutor General. According to the Regulation on the Inspectorate General of the Office of the Prosecutor General, approved by the Order of the Prosecutor General No. 116 of 27 February 2020, the main tasks of the Inspectorate General are:

- receiving, registration, consideration of application and notifications on criminal offenses committed by prosecutors, appropriate submission of such information into the Unified Register of Pre-trial Investigations;
- supervision over observance of laws during the conduction of investigative activities on prosecutors and other employees of the public prosecutor offices (except for matters within the competence of the Specialized Anti-Corruption Prosecutor's Office);

- organisation and procedural management of pre-trial investigations, support the public prosecution in the courts, and representation of the state's interest in the courts for criminal proceedings on criminal offenses committed by prosecutors, as well as criminal proceedings in which the offender is not a prosecutor (on the instructions of the Prosecutor General);
- submission of proposals to the Prosecutor General, first deputy or deputy regarding instructions on the organisation and procedural management of pre-trial investigations, support the public prosecution in the courts, and representation of the state's interest in the courts on criminal proceedings on criminal offenses committed by prosecutors in consort with other persons, prosecutors of another units of the Office of the Prosecutor General;
- processing of reports submitted by the lower prosecutors' offices and pre-trial investigation authorities on the beginning of pre-trial investigation in criminal proceedings on criminal offenses committed by prosecutors, resolving of the issue of organisation and procedural management of pre-trial investigations, supporting of the public prosecution in the courts, and representation of the state's interest in the courts;
- ensuring of an appropriate, comprehensive and impartial investigation of criminal offenses, filling of the appeal on illegal domestic courts decisions at the stage of pre-trial investigation and trial of criminal proceedings;
- adoption of measures aimed at prevention and detection of violations by prosecutors of the Oath of the prosecutor, rules of public prosecutor's ethics, as well as committing of corruption or corruption-related offenses, other actions that discredit the position of prosecutor and may cause any doubt on his/her impartiality and independence;
- transmission to the competent authorities of the case files on the commitment by the prosecutors corruption-related offenses;
- ensuring the participation during internal investigations;
- conducting of secret inspections of prosecutors' integrity;
- providing the control over mass media reports about actions that discredit the position of prosecutor, violates the rules of prosecutorial ethics, verification of such information;
- ensuring the functioning of the "hot line" and "e-mail helpline", as well as the further processing of the messages received through these means of communication;
- conducting of the control over the organisation of internal security at the prosecutor's offices of Ukraine;
- ensuring of the information security;
- methodological and advisory assistance for prosecutors on compliance with anti-corruption legislation, rules on prosecutorial ethics, prevention and solution of conflicts of interest;
- performing other functions on prevention and detection of corruption at the public prosecutors service.

Furthermore, the Government would like to note that employees of the Inspectorate General are empowered to take part in the meetings of the body authorised on the conducting of disciplinary proceedings on complaints of the Inspectorate General.

Also, the Government would like to underline that due to paragraph 12 Section I of the Procedure on the consideration by the staffing committees of the complaints on the commitment of disciplinary misconduct by the prosecutors, conducting of the disciplinary proceeding and adoption the decision on the results of disciplinary proceeding (approved by the Order of the Prosecutor General No. 266 of 4 November 2019, with the amendments introduced by the Order of the Prosecutor General No. 26 of 15 January 2020, No. 54 of 29 January 2020 and No. 107 of 25 February 2020) a member of the staffing

committee may instruct the Inspectorate General to conduct an internal investigation within the limits of the circumstances reported in the disciplinary complaint.

According to paragraph 1 of Section III of this Procedure during the examination of a disciplinary complaint an employee of the Inspectorate General has the right to become acquainted with documents related to the subject of examination, to obtain copies of them, to interview prosecutors and other persons, to receive information from local self-government authorities, officials, management staff of enterprises, institutions, citizens, public associations.

Moreover, the Government would like to note that paragraph 11 of Section III of this Procedure determines that the consideration of the report on presence or absence of disciplinary misconduct of the prosecutor is conducted in the form of adversarial system.

As regards financial support of the prosecutors the Government would like to note that in order to regulate this issue the Cabinet of Ministers adopted Regulation on the conditions of remuneration of prosecutors No. 1155 of 11 December 2019 by which schemes of prosecutors' salaries and the rules on granting of bonuses were adopted.

Also, the Government would like to note that the Draft Law “On Amendments to the Law of Ukraine “On the Prosecutor's Office” on the improvement of the efficiency of the prosecution authorities” (No. 3062 of 13 February 2020) was developed. The draft law was aimed at increasing the efficiency of the public prosecutors service throughout providing additional incentives for the effective work of prosecutors and adoption of sufficient requirements for the professional experience of candidates for prosecutors.

As regards temporary provisions on dismissal of the Prosecutor General

As the Government previously noted that the Prosecutor General is appointed and dismissed from his/her positions by the President of Ukraine with the consent of the Parliament of Ukraine. This method can grant the independence and political neutrality of whole system of the public prosecutors services of Ukraine.

However, due to the introducing of the complex reform of the public prosecutions service of Ukraine subparagraph 9 of paragraph 22 of “Final and Transitional Provisions” of the Law for the Reform envisaged the temporary provisional (until 1 September 2021) the Prosecutor General can be dismissed from the position thorough the procedure initiated by the President of Ukraine by submitting to the Parliament of Ukraine a written submission on the consent to the dismissal of the Prosecutor General.

As regards the reform of prosecutors' offices in the military and defence sphere

According to the current wording of Article 7 of the Law the authorities of the military prosecutor's office is not included to the system of the public prosecutor's service of Ukraine. In accordance with Section II “Final and Transitional Provisions” of the Law for the Reform the General Prosecutor's Office, regional prosecutors' offices, local prosecutor's offices shall exercise their power before the date when newly developed authorities start their work. The date of starting of the work of these authorities shall be determined by the Order of the Prosecutor General.

During October-December 2019, according to the decision of the Prosecutor General and the Procedure for attestation of prosecutors, employees of the Prosecutor General's Office of Ukraine passed the attestation. At the same time prosecutors of the Main Military Prosecutor's Office take a course of the military medical commission.

Also, it is important to note that at the structure of the Office of the Prosecutor General a Specialised Prosecutor's Office for the supervision of criminal proceedings on war crimes and crimes in the sphere of defence industrial complex was developed. The staffing of this department was formed from the staffing of the Main Military Prosecutor's Office.

As a result of the beginning of the reform, the number of military prosecutors has already been reduced by about 20%.

As regards introducing of electronic criminal proceedings «e-Case»

The Office of the Prosecutor General performing the criminal process through developing and implementing electronic criminal proceedings system in Ukraine named «e-Case». Such innovations in criminal procedural law will have a significant impact on improving the efficiency of criminal proceedings, in particular regulating of procedures, improvement of interaction communication between prosecutors, investigators and other parties.

Currently, a software for the introducing of the electronic criminal proceedings is developed for the National Anti-Corruption Bureau of Ukraine, the Specialised Anti-Corruption Prosecutor's Office, the Higher Anti-Corruption Court of Ukraine, and in the near future can be introduced for all authorities involved to pre-trial investigation.

In this respect the Draft Law of Ukraine “On Amendments to the Code of Criminal Procedure of Ukraine on the Introduction of Electronic Criminal Proceedings” was drafted by the Office of the Prosecutor General. It is important to underline that this draft law had been approved by the members of the working group on criminal justice reform of the Legal Reform Commission under the President of Ukraine. Moreover, in order to submit this draft law as a matter of urgency the Office of the Prosecutor General was sent it to the Office of the President of Ukraine by letter No. 23-19v-20 on 18 February 2020.

3) Training and Cooperation with the Council of Europe

The GPU cooperates with the Council of Europe, primarily within the framework of the project “Continued Support of the Criminal Justice Reform in Ukraine” (the “Project”). With the help of the Project for the purpose of improving the qualifications of prosecutors in the field of observance of human rights, the GPU regularly adopts a number of educational and methodological measures.

In order to increase the level of awareness of prosecutors with the provisions of the Convention and in order to ensure the correct application of national legislation in the field of criminal justice, as well as human rights, the National Academy of Public Prosecutor's Office of Ukraine training and seminars on the topic “Applying the Practice of the ECtHR in Prosecutorial Activities” are held.

During the 2017-2018 years, more than 600 officers of the prosecutor's offices from all regions of Ukraine were trained. In the course of training, prosecutors were informed about the Court's conclusions in *Lutsenko* and *Tymoshenko* cases.

During the seminars, the topical issues were discussed, namely: an algorithm for search, analysis, and applying of the Court's practice, especially the implementation of an effective investigation of the facts of torture and violations of the right to life.

Particular attention of prosecutors was paid to implementation of the Convention and the relevant Court's practice in applying measures to ensure criminal proceedings and conducting covert investigation activities.

Upon an initiative of the National Academy of Prosecutor's Office of Ukraine and with the support of the Project, during January-March 2017, for the newly appointed prosecutors of local prosecutor's offices (about 445 officers) and heads of local prosecutor's offices, their deputies (about 40 officers) a series of two-day training were conducted. Discipline related to issues of application of the ECtHR's practice with the participation of experts from the Council of Europe, the European Union Advisory Mission in Ukraine, the United Nations Human Rights Monitoring Mission in Ukraine, and the Agent before the European Court of Human Rights.

During 2019 at the National Academy of Prosecutor's Office of Ukraine the training courses for candidates on the position of the prosecutors on the topics "Case-law of the European Court of Human Rights" and "Right to liberty and security (Article 5 of the Convention)" were held.

Within the framework of the specialised training of prosecutors in cooperation with the Council of Europe, European Union at the National Academy of Prosecutor's Office of Ukraine the course of the Human Rights Education for Legal Professionals (HELP) on the topic "Introduction to the European Convention on Human Rights" was introduced.

Also, in the period 2014-2018, the Project provided technical assistance in organising study visits to state authorities and educational institutions of other countries, in preparing expert opinions on draft laws and departmental regulations. Thus, the representatives of the Project participated in the preparation of proposals on amendments to the law on the activities of the POU in connection with the adoption and entry into force of the amendments to the Constitution, and provided for the experts' help.

At present, representatives of the Project are involved in the work of a number of working groups established by the GPU's orders to implement the measures prescribed by the Roadmap for the reform of the POU.

Representatives of the Council of Europe also provide with relevant expert support in the elaboration of draft regulations. In particular, on 22 June 2018 a draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Prosecutor's Office" (as part of the introduction of a system of evaluation of the quality of the prosecutor's work) was developed by the working group on the implementation of section 3 of the Roadmap for the conduct of its expert analysis.

As part of the Project the consultations on the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in Connection with the Adoption of the Law of Ukraine "On Amending the Constitution of Ukraine (as to Justice)" (with regard to the improvement of the performance of the QDCP) took place on 21 and 22 February 2018 in Kyiv, Ukraine.

During the consultations, the stakeholders demonstrated different points of view with regard to some issues of the draft law.

In particular, the following points were the matter for discussion: the QDCP's term of office; introduction of the positions of QDCP inspectors; the separate budget line for the QDCP from the state budget of Ukraine; the appropriateness and scope of the QDCP powers with regard to the National Academy of Public Prosecutor's Office of Ukraine; the approximation of the salary of the QDCP members with the Supreme Court's salary; the composition of the QDCP; the requirement of military prosecutors to undergo ordinary selection procedure applicable to local public prosecutors; the introduction of the position of a public prosecutor's assistant in local prosecutor's offices, as well as grounds for disciplinary liability and types of disciplinary sanctions.

On 31 January 2018 a roundtable discussion was held at the National Academy of Public Prosecutor's Office for the leaders of the local prosecutor's office on the topic "Mechanisms for the Implementation of Judgments and Application of the ECtHR's Practice".

On 13 February 2018 the officers of the GPU participated in a roundtable on the topic: "Managing of the prosecutors' promotion at work: improving the Ukrainian system in the light of European standards

and best practices” organised by the Council of Europe. The event was also attended by representatives of the prosecutor’s self-government bodies, the QDCP, the National Academy of Prosecutor’s Office of Ukraine, the High Qualifications Commission of Judges of Ukraine, international and national experts, representatives of international organisations. Among the 40 participants, representatives of the POU, agencies of the judicial sector, civil society, foreign prosecution offices, and international organisations also took part in this activity. They discussed of topics such as fair selection of personnel and merit-based promotion. The roundtable made part of the continuous endeavor of the Organisation to facilitate the development of the POU as the modern, effective and independent institution. Following this, more activities in the field of prosecutorial career management will be implemented. The planned areas of support include capacity building for the Council of Prosecutors and QDCP, improvement of the regulatory framework, and enhancement of initial and continuous training.

On 23 March 2018 at the GPU’s meeting of the working group on the implementation of the measures provided for in Section III “Qualification” of the Roadmap for the reform of the POU took place.

Participants in the event were representatives of the POU, heads of the three regional prosecutor’s offices, as well as members of the National Academy of Prosecutor’s Office of Ukraine. The Head of the Rule of Law component of the European Union Advisory Mission in Ukraine and the Head of the Council of Europe Project “Continued Support of the Criminal Justice Reform in Ukraine” participated at the meeting.

At the same time, during the discussion, attention was drawn to the development of a system for assessing the quality of the work of the prosecutor, in line with the recommendations of the Consultative Council of European Prosecutors and the Group of States against Corruption (GRECO) for the implementation of the Justice Sector Reform Strategy 2015-2020.

Moreover, on 15 May 2018 within the framework of cooperation with the Council of Europe, the head of the Secretariat of the Consultative Council of European Prosecutors and the Estonian State Attorney Laura Vaik held special lectures about the prosecutor’s office independence to candidates for positions of the prosecutor.

On 4 and 6 June 2018 training sessions were held at the National Academy of Prosecutor’s Office of Ukraine for deputy heads of local prosecutors, with the participation of the staff of the Department for the implementation of the case-law of European Court of Human Rights and the GPU’s cooperation with projects of the Council of Europe and the European Union.

During the events, participants discussed in detail the issue of improving the mechanism for implementing decisions and applying the Court’s practice in professional activities of the prosecutor. Also, prosecutors were able to share their thoughts, positive experiences and suggestions on resolving the problematic issues in their practice.

Furthermore, the Government would like to note that state authorities continue active cooperation with CoE projects, in particular with the CoE Project “Human Rights Compliant Criminal Justice System in Ukraine”. This Project is the part of the continuous endeavor by the Council of Europe to support Ukraine to fulfill its obligations as a member state of the Organisation.

On 12 December 2019 the First Steering Committee (the SC) meeting of the Council of Europe Project “Human Rights Compliant Criminal Justice System in Ukraine” was held with the participation of representatives of all concerned authorities, inter alia, the Office of the Prosecutor General, the Ministry of Justice of Ukraine.

Publication and dissemination

The summary of the Judgment in *Tymoshenko* case was published in the Government's Courier [*Uriadovyi Kurier*], No. 154 of 28 August 2013 and put on the Ministry of Justice of Ukraine official website. The judgment was also translated into Ukrainian and published in the official Government's print outlet – Official Herald of Ukraine [*Ofitsiynyi Visnyk Ukrainy*], No. 64 of 30 August 2013, and put on the Ministry of Justice of Ukraine official website. Furthermore, translation of the judgment was published on the Parliament of Ukraine website and on the legal portal Liga Zakon. Furthermore, summary of the Judgment in *Tymoshenko* case was published in Bulletin of Legislation and Legal Practice of Ukraine No. 2-3 (2014) and Judicial Practice No. 4 (2014).

The summary of the Court's Judgment in *Lutsenko* case was published in the Government's Courier [*Uriadovyi Kurier*], No. 231 of 14 December 2012 and put on the Ministry of Justice of Ukraine official website. The judgment was also translated into Ukrainian and published in the official Government's print outlet - Official Herald of Ukraine [*Ofitsiynyi Visnyk Ukrainy*], No. 1 on 19 February 2013, and put on the Ministry of Justice of Ukraine official website. Furthermore, translation of the judgments was published on the legal portal Liga Zakon.

Also, the Government would like to note that both judgments were included into submissions of the Government Agent of Ukraine to the Cabinet of Ministers of Ukraine.

Conclusions of the respondent State

The Government of Ukraine would like to make an emphasis on their commitment to the European values, principles and standards of the protection of human rights when executing the European Court's judgments.

The Government would like to note that the issues of independence and impartiality of prosecutors in the process of carrying out their procedural duties and reforming the prosecutor's office has long been resolved by state authorities. The constitutional amendments in 2016 and the reform of the prosecutor's office in 2014 partially addressed the problems identified by the Court in these cases. However, the new reform introduced significant changes which can guarantee the development of the state institution the activities and structures of which will meet the standards of the Council of Europe and will be based on the principles of independence, impartiality and political neutrality.

It should, also, be noted that the reform covers all levels of the prosecutor's service of Ukraine, which will lead to a complete restart and can increase the level of public confidence in this state institution.

The Government of Ukraine believe that the measures adopted have fully remedied the violations of the Convention found by the Court in *Lutsenko* and *Tymoshenko* cases, and that these measures will prevent new similar violations in future. In this respect the Government believes that Ukraine has thus complied with the obligations under Article 46 §1 of the Convention.

Therefore, the Government believe that they show due diligence in fulfilment of obligations arising from the above judgment and request the Committee to close the examination of these cases.