



**UNODC**

United Nations Office on Drugs and Crime

## ***Country Review Report of Ukraine***

***Review by Slovenia and Poland of the implementation by Ukraine of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015***

## ***Introduction***

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## ***Process***

The following review of the implementation by Ukraine of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Ukraine, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Poland and Slovenia, by means of telephone conferences, e-mail exchanges, trilateral meetings or other means of active dialogue in accordance with the terms of reference of the Review Mechanism, and involving the following experts from the reviewing States:

### ***Poland***

- Ms. Agnieszka STAWIARZ, Prosecutor, Division for Cooperation with the United Nations and OECD, Judicial Assistance and European Law Department, Ministry of Justice; and
- Mr. Stefan Rudecki, Deputy Director, Regional Operations Department, Central Anti-Corruption Bureau.

### ***Slovenia***

- Ms. Vita HABJAN, Commission for the Prevention of Corruption.

### ***Secretariat***

- Mr. Dimosthenis Chrysikos, Crime Prevention and Criminal Justice Officer, UNODC/CEB/CSS;
- Ms. Thi Thuy Van Dinh, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, Conference Support Section, (DTA/CEB/CSS); and
- Mr. Vladimir Kozin, Crime Prevention and Criminal Justice Officer, UNODC/CEB/CSS

A country visit, agreed to by Ukraine, was conducted from 27 to 29 February 2012.

During the country visit, the members of the review team had meetings with officials from the following national institutions and agencies in Ukraine involved in the implementation at the domestic level of anti-corruption measures and policies: Ministry of Justice, General Prosecutor Office, Ministry of Internal Affairs, Security Service, State Tax Service, State Financial Monitoring Service and the High Specialized Court of Ukraine for Civil and Criminal Cases.

## ***Executive summary***

### ***1. Introduction***

#### ***1.1. Legal system of Ukraine: incorporation of the Convention in the domestic legal system***

*Ukraine signed the United Nations Convention against Corruption on 11 December 2003 and ratified it in 2006. The ratification law entered into force in July 2009. Ukraine deposited its instrument of ratification with the Secretary-General on 2 December 2009. According to article 9 of the Constitution, the UNCAC became, upon ratification, an integral part of national legislation with overriding legal effect against any other contrary provision of domestic laws.*

#### ***1.2. Overview of the anti-corruption legal and institutional framework of Ukraine***

*The national legal framework against corruption encompasses different pieces of legislation, including the Constitution, the Criminal Code (CC) and the Criminal Procedure Act (CPC). The CC came into force on 1 September 2001. The corruption-related provisions were subject to legal amendments, introduced by Law No. 3207-VI “On amendments to several legislative acts concerning liability for corruption offences”, as well as Law No. 3206-VI “On the Principles of Preventing and Combating Corruption”. Both laws came into force on 1*

July 2011. Other specific laws include, inter alia, the Law on Prevention and Counteraction to Money Laundering (in force since August 2010) and the Law on Special Investigative Techniques.

A new CPC was adopted by the Parliament on 13 April 2012 and enters into force on 19 November 2012. A Law on confiscation aiming at streamlining the domestic confiscation regime has not yet been enacted.

The national legislation also provided for administrative liability for certain corruption-related acts. Law No. 3207-VI introduced a specific chapter on “administrative corruption offences”, into the Code of Administrative Offences (CAO). The experts took into account the parallel existence of both criminal and administrative corruption offences and raised concerns about potential overlapping and expansion of administrative offences at the expense of criminal. As an example, article 1723 of Law No. 3207-VI on active bribery may overlap with article 369 CC and further create confusion as to the high threshold of illegal benefit set forth therein. In response, the national authorities highlighted the secondary nature of administrative offences (article 9 of CAO) and referred to policy used to relieve criminal courts from backlog of criminal cases.

In general, the review team welcomed the national efforts to strengthen criminal legislation against corruption and urged the Ukrainian authorities to continue such efforts with a view to further improving the anti-corruption framework in the country. Noting, though, that in recent legislative initiatives, either completed or still under discussion, there seemed to be a lack of linkages with, and cross-references to, other pieces of legislation in force, the review team emphasized the need to ensure that all legislative changes and updates are decided and implemented in a manner that guarantees complementarity, coherence, robustness and consistency of the anti-corruption legislation as the most effective deterrent against corruption. The review team expressed concerns that swift legislative changes might hinder sustainable development of the anti-corruption legislation as well as contribute to lack of legal certainty.

The notes under certain provisions of the CC constitute an integral “commentary” accompanying the text of the provisions. The resolutions of the Plenary Session of the Supreme Court of Ukraine intend to provide guidance and interpretation on the application of legal concepts contained in the legislation, as well as to resolve ambiguities and ensure consistency of judicial practice.

*The institutional framework domestically in place to address corruption refers to the competences and functions of, as well as coordination between, various authorities, including the prosecution services, the organized crime task force of the Ministry of Interior, the special anti-corruption and organized crime task force of the Security Service, as well as the State Financial Monitoring Service — the national FIU — in the field of money-laundering.*

*A new National Strategy against Corruption for the period 2011-2015 was adopted in 2011 aiming at streamlining state anti-corruption policies and introducing measures to decrease the corruption level in the country.*

## **2. Implementation of chapters III and IV**

### **2.1. Criminalization and law enforcement (chapter III)**

#### **2.1.1. Main findings and observations**

The active and passive bribery of public officials are criminalized through articles 369 and 368 CC respectively. Article 369 CC refers to the “offering or giving a bribe”. The national authorities confirmed during the country visit that the “promise of a bribe” was lacking as a constituent element of the offence of active bribery, but they referred, instead, to the application of the general provisions of the CC on preparation or attempt to cover related instances.

The bribery provisions of the CC employ the term “official”, which is defined in the note to article 364 CC (abuse of authority or office). This definition was substantially broadened through Law No. 3206-VI to include persons authorized to perform functions of state or local government, as well as persons who have been conferred the status of authorization to perform such functions. The latter category further includes officials of foreign States and officials of international organizations, thus ensuring that the bribery provisions are also applicable in relation to these officials.

The provisions on active and passive bribery do not specify whether the offence could be committed directly or indirectly. The general provisions of the CC on complicity are applicable in this regard.

The same provisions do not further expressly specify whether the advantage must be for the official him/herself or of a third person. The national authorities referred to relevant jurisprudence (Supreme Court Resolution No. 5) indicating that bribery also occurs in cases where the official receives an

advantage not for him/her personally but for the benefit of close persons (relatives, acquaintances, etc.).

The 2011 amendments of the domestic legislation introduced two articles in the CC criminalizing bribery of persons who are not public officials, namely article 368.3 on commercial bribery of officials of legal entities of private law; and article 368.4 on bribery of persons who provide public services, such as auditors, notaries, arbitrators, etc.

In assessing the provisions on the criminalization of bribery in the public and private sector, the review team noted an inconsistent use of terms to define the generic concept of “undue advantage”. Sections 368 and 369 CC on passive and active bribery in the public sector respectively employ the notion of a “bribe” which is not further defined by law. The national authorities referred to Resolution 5 of the Plenary Session of the Supreme Court as a guidance tool to avoid ambiguity in understanding the term “bribe”. Further, the 2011 legal amendments introduced the concept of “illegal benefit” into the CC provisions on private sector bribery and trading in influence. This concept is defined broadly in article 1 of Law No. 3206-VI to include “pecuniary funds or other assets, advantages, perks, services, or non-material assets which without lawful grounds are promised, offered, provided, or received without pay or at a price below the minimum market price”. It would therefore appear that, as far as the provisions on private sector bribery and trading in influence are concerned, the definition given is broad enough to cover any material and non-material advantages, whether such benefits have an identifiable market value or not. However, the review team, taking also into account the differing views expressed during the country visit among the national experts on the respective use of the terms “bribe” and “illegal benefit” in the domestic legal system, concluded that:

- The existing terminological discrepancies could not be attributed merely to linguistic variations; and
- For purposes of ensuring consistency, clarity and legal certainty, it would be beneficial to implement and interpret all corruption offences in a more uniform approach as to the terminological delineation of the concept of “undue advantage”.

Trading in influence, in both its active and passive forms, is criminalized under the new provisions of article 369.2 CC, introduced by the 2011 legal amendments. The constituent elements of bribery offences largely apply with regard to trading in influence as well. As in the provisions on bribery in the private sector, the concept of “illegal benefit” is used instead of “bribe”. Further, article 369.2 does not expressly

specify whether the advantage must be for the official him/herself or of a third person.

Money-laundering is established as criminal offence in article 209 CC. The new Law on Prevention and Counteraction to Money Laundering supplements article 209 and provides for a much wider definition of predicate offences. These are now defined as “socially dangerous unlawful actions” punishable by imprisonment in general (previously imprisonment for a term of three to six years) or fine.

The Ukrainian authorities referred convincingly to article 198 CC as the provision domesticating article 24 of the UNCAC on the criminalization of concealment.

Article 191 CC is the basic provision criminalizing embezzlement of property in both the public and private sectors. The Ukrainian authorities referred to article 190 of the Civil Code and the judicial practice of the Supreme Court for the definition of property, which was reported to be considered in a broad manner to entail property rights and liabilities as well. The review team reiterated its comments made in the bribery offences regarding the lack of reference to “third-party beneficiaries”.

The abuse of functions is criminalized through article 364 CC. Information was provided on pertinent judicial practice of the Supreme Court, interpreting the damage caused by such action as a requirement for triggering the application of article 364. The review team, bearing in mind the optional wording of article 19 of the UNCAC, welcomed the establishment and interpretation of the offence in the Ukrainian legal order. For purposes of assisting the national authorities in implementing broadly the domestic legislation, the review team recalled that the element of “damage” was not required by the Convention.

Illicit enrichment is criminalized through article 3682, which was introduced as a result of the legal amendments enacted by Law No. 3207-VI. The conduct of illicit enrichment is defined as the “obtainment by an officer of illegal benefit in substantial amount or transfer by the officer of such benefit to close relatives, in the absence of signs of bribery”. The offence is still a new crime and concrete jurisprudence is needed to further determine the increase of income “in the absence of signs of bribery”. The latter condition (“in the absence of signs of bribery”) seems to be an additional requirement in that the courts may go into the direction of first proving that no bribery act was committed and then apply the provision on illicit enrichment. The national authorities confirmed that the burden of proof to demonstrate that the enrichment is beyond the lawful income of the perpetrator remained on the prosecution. Taking into account the optional wording of article 20 of the

Convention, the review team welcomed the establishment of the offence of illicit enrichment in the domestic legal order. With the aim to assist the national authorities to fully benefit from their commendable initiative to criminalize this conduct, the reviewing experts also noted the significance of ensuring in future further clarity and consistency in applying article 3682 CC.

Ukraine reported a quite comprehensive nexus of provisions in the CC (articles 343-349 and 376-379) criminalizing various acts of witness intimidation and interference in the witness testimony and in the exercise of official duties of law enforcement and judicial authorities.

Despite the effort made with the adoption of Law No. 3206-VI, the Ukrainian authorities confirmed during the country visit that more needed to be done to clearly establish liability for legal entities. Therefore, this issue is included among the basic objectives of the National Strategy against Corruption for the period 2011-2015. The national authorities also recognized the need for amendments in the domestic legislation to ensure the recognition of administrative liability of legal persons for corruption-related offences, given that, at the time of the country visit, such liability was foreseen only with regard to money-laundering.

In assessing the sanctions applicable for corruption offences, the review team noted that the rather high sanctions were available for aggravated cases of such offences, but the minimum penalty of the basic forms of such offences as passive bribery in the public sector (“arrest” of six months), active bribery in the public sector (imprisonment of up to two years), or bribery in the private sector (imprisonment of up to two years) appeared to be comparatively lower. Moreover, the “offering” of a bribe in the public sector is subject to less severe sanctions than the “giving” and the aggravated circumstances are foreseen only for the “giving” of the bribe. The review team drew the attention of the national authorities to this disparity of sanctioning measures and invited them to consider ways and means to address such disparity in future reviews of criminal legislation.

According to the Constitution, the following categories of high-ranking officials benefit from immunity in criminal proceedings: the President, Members of the Parliament and judges. The President enjoys immunity during the term of office and may be removed from office by impeachment, which requires a three quarters’ majority decision of the Parliament. Members of the Parliament are not legally liable for the results of voting or for statements made in the Parliament. The judges cannot be detained or arrested without



the consent of the Parliament, but they can be convicted without its consent. The procedure for lifting the immunity of MPs or judges is established by the Regulations of Parliament. The role and functions of the Office of the Prosecutor General are set out in the Constitution. The Prosecutor General is appointed to office by the President with the consent of the Parliament, reports to both the President and the Parliament and is dismissed from office by the President. Specialized divisions are operating within the prosecution services to deal exclusively with corruption cases.

The initiation of criminal proceedings is based on the principle of mandatory prosecution. Article 4 CPC foresees a duty for the prosecutor to initiate criminal proceedings upon detection of offence indications. The new CPC prescribes the possibility of concluding a plea agreement between the prosecutor and the accused person, which can determine, inter alia, that person's obligations regarding cooperation in detecting the criminal offence perpetrated by another person.

Specifically with regard to persons who have participated in the commission of crimes and provide assistance to the law enforcement authorities, the prosecutor is entitled to release such persons from criminal responsibility if their assistance was provided prior to the commencement of the investigation.

The independence of judges is guaranteed by the Constitution and legislation and any effort to exercise influence upon them is prohibited. The Supreme Court is the highest appeal judicial body of general jurisdiction and it is charged with ensuring the uniform application of the law by all general courts. In this context, the Plenary of the Supreme Court gives opinions on certain legal issues to ensure the uniform application of the law by other courts.

The CPC (articles 52-1, 292 and 303), the specific Law on Ensuring Security of the Persons Participating in Criminal Proceedings, as well as the Law No. 3206-VI, constitute a comprehensive legal framework for the protection of witnesses. A wide definition of persons to be protected has been adopted to cover all "persons who participate in criminal proceedings".

A draft Law on Amendments to Criminal and Criminal-Procedural Codes on Improving the Procedures for Carrying out Confiscation was not enacted, although it had gained general approval by international experts in the past. The review team was not in a position to assess the adequacy of the provisions, as they were not yet part of the national legislation, but urged the national authorities to accelerate the process of putting in place a solid legal framework on confiscation

mechanisms, possibly through reconsideration of this matter in view of the provisions of the new CPC.

The Law on Prevention and Counteraction to Money Laundering was found to provide guarantees that bank secrecy does not hamper domestic criminal investigations of corruption-related offences.

In general, the statute of limitations periods prescribed for different crimes according to their gravity were deemed long enough to preserve the interests of the administration of justice. The review team noted the comparatively lower statute of limitations period for minor offences carrying imprisonment (three years), but also received explanations regarding the suspension of such statute of limitations period where the offender evades the administration of justice. The reviewing experts further invited the national authorities, if deemed necessary, to consider extending the limitation period for those crimes as well in future reviews of criminal legislation.

Jurisdiction principles are established in articles 6-8 CC and apply to all corruption-related offences. Jurisdiction based on territoriality and active personality is expressly foreseen (articles 6 and 7 CC). Pursuant to section 8 CC, foreign citizens and stateless persons not residing permanently in Ukraine who commit a criminal act outside the territory of Ukraine are subject to criminal liability if criminal liability is provided for by international treaties, including the UNCAC; or if such persons have committed grave or particularly grave offences punishable under the CC against the rights and freedoms of Ukrainian citizens or the interests of Ukraine. Such grave offences are defined by section 12 CC as offences punishable by up to 10 years of imprisonment, and therefore only aggravated forms of corruption offences seem to be covered by the second part of section 8 CC. In relation to those aggravated corruption offences, the first part of section 8 CC allowed for the direct applicability of article 42 of the UNCAC. However, no jurisprudence on the direct application of international treaties domestically was submitted to support this argument.

The Ukrainian authorities confirmed that the Law No. 3206-VI contained a specific section on the “Elimination of Consequences of Corruptive Offences” and stressed their need for assistance to ensure its effective implementation through a summary or compilation of good practices or lessons learned on the annulment of public contracts as a consequence of acts of corruption.

The domestic legislation requires law enforcement authorities to coordinate and inform each other when detecting corruption offences or obtaining information that such offences have been

committed. Better coordination is also pursued through meetings of an Investigation and Operational Body, which functions as a “quick response” group involving prosecutors, investigators, as well as officials from the Ministry of Interior and other agencies. The review team was also informed of the work of the Department of Financial Investigation of the State Financial Monitoring Service to detect and analyse suspicious financial transactions, as well as its cooperation with the Office of the Prosecutor General, the Security Service and the Office of Tax Inspection.

The review team encouraged the national authorities to continue their ongoing good efforts to facilitate the best possible coordination among agencies with a law enforcement mandate in the fight against corruption.

### ***2.1.2. Successes and good practices***

The review team identified the following measures, initiatives or practices that have the potential, as good practices, to significantly facilitate Ukraine’s efforts in the field of anti-corruption:

- The comprehensive nature of the domestic legislation on protection of witnesses and generally persons who participate in criminal proceedings, as well as family members and close relatives of such persons; and
- The solid legal framework to prevent and combat money-laundering, as it was further enhanced in 2010 by specific legislation in this field.

### ***2.1.3. Challenges and recommendations***

While noting Ukraine’s efforts to bring the national legal system in line with the UNCAC provisions on criminalization and law enforcement, the reviewers identified some grounds for further improvement and made the following recommendations for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- Construe the administrative offence of active bribery in a way that prevents overlapping with the corresponding provision of the CC, including through reducing the “monetary threshold” used to define the illegal benefit in the administrative offence;
- Continue efforts to provide for more certainty, clarity and uniformity on the definitions of “bribe” and “illegal benefit” contained in corruption offences and address issues of potential inconsistencies in the manner that such definitions are

interpreted domestically, both at the levels of legislation and application of criminal laws;

- Construe the bribery and embezzlement offences in the public sector, as well as the offence of trading in influence, in a way that unambiguously covers instances where the advantage is not intended for the official himself/herself, but for a third party (third-party beneficiary);

- Consider, in the context of future reviews of criminal legislation, ways and means to address existing disparities of sanctioning measures against basic forms of such crimes as bribery in the public and private sectors, as well as against certain conducts constituting bribery (offering a bribe, as opposed to giving a bribe);

- Ensure that the domestic legislation provides for liability of legal persons for offences established in accordance with the UNCAC, in line with article 26 of the UNCAC; and

- Continue and streamline efforts to put in place new legislation on confiscation of proceeds of crime or property.

## **2.2. *International cooperation (chapter IV)***

### **2.2.1. *Main findings and observations***

The extradition framework is regulated by both domestic legislation and pertinent international treaties. Ukraine is a party to the European Convention on Extradition (1957) and its two Additional Protocols, as well as the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal relations in Civil, Family and Criminal Matters (1993) and its Protocol. Ukraine has concluded bilateral treaties on extradition with several countries.

Substantive and procedural conditions for extradition are regulated by articles 450-470 CPC, as amended by the new CPC.

Ukraine makes extradition conditional on the existence of a treaty. It further considers the UNCAC as a legal basis for extradition and has notified the Secretary-General accordingly. Reciprocity can be a part of international cooperation arrangements on a case-by-case basis (the new CPC extends this possibility to extradition as well).

Article 451 CPC stipulates the general conditions for extradition which is possible for offences carrying a maximum penalty of at least one year of imprisonment or, where extradition is requested for the purpose of enforcement of a sentence, for offences for which a period of sentence of at least four months remains to be served.

Article 466 CPC lists the grounds for refusal of an extradition request, including, among others, nationality (the extradition of nationals is also prohibited by the Constitution — article 25) and lack of double criminality. The UNCAC offences are not considered as political ones, although the concept of “political offence” is not defined explicitly in the domestic legislation.

In case extradition is denied on the grounds of nationality, the Office of the Prosecutor’s General is obliged to assign, upon request of the requesting State, a pre-trial investigation authority to investigate the case in accordance with the domestic legislation. If extradition for purposes of enforcement of a sentence is denied on the grounds of nationality, the foreign sentence could be enforced in Ukraine by virtue of the European Convention on the Transfer of Sentenced Persons and the European Convention on the Validity of Foreign Criminal Judgments or bilateral treaties on these matters.

The competent authorities for extradition are respectively the Prosecutor General’s Office and the Ministry of Justice, unless otherwise provided in a treaty. The Prosecutor General’s Office is the competent authority for the extradition of suspected persons sought at the stage of pre-trial investigation proceedings. The Ministry of Justice is the competent authority for the extradition of convicted persons sought at the stage of trial proceedings or at the stage of the execution of the sentence imposed to them.

The usual length of extradition proceedings is 2-3 months. In exceptional circumstances, where the case is brought before the European Court of Human Rights, the extradition process may last much longer. Nevertheless the maximum time of extradition detention is 18 months and in practice there was no case in which this period was exhausted because of extradition proceedings pending. In general, the timeframe varies depending on the complexity of the case, the duration of appeal proceedings and the potentially parallel asylum proceedings.

The Ukrainian authorities confirmed that the new CPC included provisions to facilitate simplified extradition proceedings.

There is no database to enable the monitoring of duration of extradition proceedings and the content of the final decisions in extradition cases.

The effectiveness of certain aspects of Ukraine’s extradition policy have been assessed by the OECD Anti-Corruption Network for Eastern Europe and Central Asia in 2010.

The transfer of sentenced persons is regulated by the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol (1997). Bilateral agreements

have also been concluded. Amendments of the current legal framework are included in the new CPC.

The transfer of criminal proceedings is based on the European Convention on the Transfer of Criminal Proceedings (1972) and article 21 of the European Convention on Mutual Assistance in Criminal Matters (1959), as well as on bilateral treaties. The domestic procedure for transfer of criminal proceedings is prescribed in the CPC. A practical difficulty encountered in cases of taking over of evidence related to criminal proceedings is that of translation, which requires time and additional resources.

Multilateral and bilateral MLA treaties were reported to be primarily the legal basis for granting and requesting mutual legal assistance. Ukraine is a party to the European Convention on Mutual Assistance on Criminal Matters and its Additional Protocols, as well as the CIS Convention and its Protocol. In the absence of an applicable treaty, mutual legal assistance can be afforded on the basis of reciprocity.

At the domestic level, a law which was enacted in 2011 amended the CPC to make possible the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001). The law prescribes new conditions for the transfer of criminal proceedings and provides for such measures as the application of telephone- and videoconference during investigations and trial proceedings; and the formulation, operating procedures and action of joint investigative teams.

The Law No. 3206 “On Principles of Preventing and Counteracting Corruption in Ukraine” could be used as legal basis for exchange of information in the area of preventing and counteracting corruption.

The grounds for refusal of MLA requests are basically set forth in MLA treaties to which Ukraine is a party, as well as the 2011 law which amended the CPC. The lack of double criminality is not a ground for refusing the execution of MLA requests. MLA requests shall not be refused solely on the ground that they involve fiscal offences. Bank secrecy does not seem to present an obstacle for granting assistance.

Ukraine notified the Secretary-General that the designated central authorities to deal with MLA requests were the Ministry of Justice (concerning requests of courts) and the Prosecutor General’s Office (concerning requests of pre-trial investigation agencies).

Article 472 CPC specifies a maximum period of two months as the time frame for the execution of MLA requests varies. The new CPC provides for a shorter period of one month. In general, the time needed for executing MLA requests varies

depending on the nature of the request, the type of assistance and the complexity of the case. On average, it does take from two to four months to complete the process.

Law enforcement cooperation is facilitated through domestic provisions and bilateral agreements with other countries. One practical case was reported in which the UNCAC was used as legal basis for law enforcement cooperation.

The Ukrainian authorities confirmed a two-tier system of receipt of requests for law enforcement cooperation, namely at a centralized level, but also at a “decentralized” level to increase efficiency and more rapid responses.

Matters pertaining to special investigative techniques are regulated in domestic legislation, whereas special investigative techniques employed at the international level are used on a case-by-case basis.

### ***2.2.2. Successes and good practices***

The review team found that Ukraine had put in place a detailed framework of international cooperation. The recent amendments of the domestic legislation served the purpose of streamlining existing regulations, upgrading assistance mechanisms and rendering cooperation more efficient and flexible. The review team emphasized the need to ensure that all legislative changes and updates are decided and implemented on a “long-term perspective” as a condition for their sustainability and coherence.

The review team identified the following indications as examples of particular value for the country’s efforts to strengthen international cooperation and networking:

- The status as State party to numerous regional instruments on different forms of international cooperation per se, as well as regional and multilateral instruments containing provisions on international cooperation in criminal matters;
- The fact that the lack of double criminality is not a ground for refusing the execution of MLA requests; and
- The practice of “decentralizing” incoming requests for law enforcement cooperation to ensure better and more expeditious responsiveness.

### ***2.2.3. Challenges and recommendations***

The following is brought to the attention of the Ukrainian authorities for their consideration and with a view to further enhancing international cooperation mechanisms:

- Continue efforts to systematize and make best use of statistics, or, in their absence, examples of cases indicating the

length between the receipt and execution of extradition and MLA requests for the purpose of assessing the efficiency and effectiveness of extradition and MLA proceedings;

- Continue to make best efforts to ensure that extradition and MLA proceedings are carried out in the shortest possible period;
- Continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries, with the aim to enhance the effectiveness of different forms of international cooperation; and
- Consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms.

### **3. *Technical assistance needs***

The Ukrainian authorities indicated that they would benefit from the following forms of technical assistance:

- Summary/compilation of good practices/lessons learned on confiscation issues;
- Summary/compilation of good practices/lessons learned on the implementation of article 15, subparagraph (b), of the UNCAC on passive bribery of public officials;
- Summary/compilation of good practices/lessons learned on the implementation of article 18 of the UNCAC on trading in influence;
- Summary/compilation of good practices/lessons learned on the establishment of liability of legal persons;
- Summary/compilation of good practices/lessons learned on the annulment of public contracts as a consequence of acts of corruption, in line with article 34 of the UNCAC; and
- Trainings and workshops on issues pertaining to all above areas, as well as new and innovative types of mutual legal assistance under the CPC, including the application of telephone- and videoconference during investigations and joint investigations.

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## ***Implementation of the Convention***

Ukraine signed the Convention on 11 December 2003 and ratified it in 2006. The ratification law entered in force in July 2009. Ukraine deposited its instrument of ratification with the Secretary-General on 2 December 2009. According to article 9 of the Ukrainian Constitution,



the UNCAC became, upon ratification, an integral part of national legislation with overriding legal effect against any other contrary provision of domestic laws.

### *Overview of the anti-corruption legal and institutional framework of Ukraine*

The legal framework of Ukraine against corruption encompasses different pieces of legislation, including the Constitution, the Criminal Code and the Criminal Procedure Act. The Criminal Code of Ukraine (CC) came into force on 1 September 2001. The corruption-related provisions were subject to recent legal amendments, introduced by Law No. 3207-VI “On amendments to several legislative acts concerning liability for corruption offences”, as well as the Law No. 3206-VI “On the Principles of Preventing and Combating Corruption”. Both laws came into force on 1 July 2011. The legal framework of Ukraine against corruption also includes laws targeting specific areas, such as the Law on Prevention and Counteraction to Money Laundering (in force since August 2010), the Law on Special Investigative Techniques and the Law amending Certain Legislative Acts for the Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

A new CPC was adopted by the Parliament on 13 April 2012 and entered into force on 19 November 2012. A Law on confiscation aiming at streamlining the domestic confiscation regime has not yet been enacted.

The reviewing experts noted that the legislation of Ukraine also provided for administrative liability for certain corruption-related acts. Law No. 3207-VI introduced a specific chapter on “administrative corruption offences”, into the Code of Administrative Offences (CAO). The experts took into account the parallel existence of both criminal and administrative corruption offences and raised concerns about potential overlapping and expansion of administrative offences at the expense of criminal. As an example, article 172<sup>3</sup> of Law No. 3207-VI on active bribery may overlap with article 369 CC and further create confusion as to the high threshold of illegal benefit set forth therein. In response, the national authorities highlighted the secondary nature of administrative offences (article 9 of CAO) and referred to policy used to relieve criminal courts from backlog of criminal cases.

In general, the review team welcomed the national efforts to strengthen criminal legislation against corruption and urged the Ukrainian authorities to continue such efforts with a view to further improving the anti-corruption framework in the country. Noting, though, that in recent legislative initiatives, either completed or still under discussion, there seemed to be a lack of linkages with, and cross-references to, other pieces of legislation in force, the review team placed emphasis on the need to ensure that all legislative changes and updates are decided and implemented in a manner that ensures complementarity, coherence, robustness and consistency of the anti-corruption legislation as the most effective deterrent against corruption. A concern of the review team was expressed that swift legislative changes might hinder sustainable development of the anti-corruption legislation as well as contribute to lack of legal certainty.

In response to the queries of the review team on the exact nature and impact of notes under certain provisions of the CC, as well as the resolutions of the Plenary Session of the Supreme

Court of Ukraine, it was confirmed that, first, the notes constituted an integral “commentary” accompanying the text of the provisions; and, second, the resolutions intended to provide guidance and interpretation on the application of legal concepts contained in the legislation, as well as to resolve ambiguities and ensure consistency of judicial practice.

The institutional framework domestically in place to address corruption refers to the competences and functions of, as well as coordination between, various authorities, including the prosecution services, the organized crime task force of the Ministry of Interior, the special anti-corruption and organized crime task force of the Security Service, as well as the State Financial Monitoring Service – the national FIU- in the field of money laundering.

The national authorities informed the review team during the country visit that a new National Strategy against Corruption for the period 2011-2015 was adopted in 2011 aiming at streamlining state anti-corruption policies and introducing measures to decrease the corruption level in the country. Some of the main directions of the Strategy include the reform of the administration system and the lowering of bureaucratic administrative procedures; the strengthening of integrity in the public sector; the improvement of audit mechanisms; the enhancement of anti-corruption evaluation methodologies; the institutional reform of law enforcement authorities responsible for inquiry, pre-trial investigations and criminal action against corruption; the establishment of liability of legal persons for corruption acts; the streamlining of the domestic confiscation regime; the adoption of measures to address corruption in the private sector; and the improvement of international cooperation in the field of prevention of corruption.

### ***Implementation of selected articles***

#### ***Chapter III. Criminalization and law enforcement***

##### ***Article 15 Bribery of national public officials***

###### ***Subparagraph (a)***

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

###### ***(a) Summary of information relevant to reviewing the implementation of the article***

Article 369 of the Criminal Code of Ukraine (hereinafter – CC) establishes liability for giving bribe.

### *Section 369 CC: Offering or giving a bribe*

*(1) Offering a bribe is punishable by a fine of 100 to 250 times the tax-free minimum income<sup>9</sup> or by up to 2 years' restriction of liberty.*

*(2) Giving a bribe is punishable by a fine of 250 to 750 times the tax-free minimum income<sup>10</sup> or by 2 to 5 years' restriction of liberty.*

*(3) Giving a bribe, if repeated, is punishable by 3 to 6 years' imprisonment, with a fine of 500 to 1000 times the tax-free minimum income,<sup>11</sup> and with or without forfeiture of property.*

*(4) Giving a bribe to an official in a responsible position, or upon prior conspiracy by a group of persons, is punishable by 4 to 8 years' imprisonment, with or without forfeiture of property.*

*(5) Giving a bribe to an official in a particularly responsible position, or by an organized group or a participant in such a group is punishable by 5 to 10 years' imprisonment, with or without forfeiture of property.*

*(6) A person having offered or given a bribe shall be discharged from criminal liability, if s/he was subject to extortion of a bribe or if, after giving the bribe and prior to the instigation of criminal proceedings against the person, s/he voluntarily makes a statement concerning the acts in question to a body authorized by law to instigate criminal proceedings.*

*Note: In section 369 a repeated offence shall mean an offence committed by a person who has previously committed any of the criminal offences laid down in sections 368, 368.3, 368.4 or 369 of this Code.*

### ***The elements of the offence***

Article 369 CC uses the words “offering” and “giving”. The “offering” was introduced by the 2011 amendments and gives rise to lower sanctions than the “giving” of a bribe.

Liability for promising to give a bribe or accept promise/offer of bribe may ensue under condition only that a person has committed (attempted to commit) certain acts that may be considered as preparation or attempt to give or take bribe (for instance, the person looked for associates, discussed amount of bribe, place and time of receiving bribe etc.). In such a case, liability for the said acts as active and passive bribery may come as incomplete crime according to the provisions of articles 13 to 15 CC.

### *Section 14 CC: Preparation of a crime*

*(1) Preparation of a crime shall mean seeking or adapting means and tools, or looking for accomplices, or conspiring to commit an offence, removing of obstacles to an offence or otherwise intentional conditioning of an offence.*

*(2) Preparation to commit a minor criminal offence does not give rise to criminal liability.*

### *Section 15 CC: Criminal attempt*

*(1) A criminal attempt shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a criminal offence prescribed by the relevant section of the special part of this Code, where this criminal offence has not been concluded for reasons beyond that person's control.*

*(2) A criminal attempt shall be concluded where a person has completed all such actions as s/he deemed necessary for the conclusion of an offence, however, the offence was not completed for reasons beyond that person's control.*

*(3) A criminal attempt shall be not concluded where a person has not completed all such actions as s/he deemed necessary for the conclusion of an offence for reasons beyond that person's control.*

*Law No. 3206 on Preventing and Countering Corruption also sets forth principles regarding donations or gifts received by public officials as follows:*

*Article 8. Limitations on Acceptance of Gifts (Donations)*

*1. Persons stipulated by clause 1 and sub-clauses "a" and "b" of clause 2 in part one of Article 4 of this Law, shall be forbidden to receive, directly or through other persons, gifts (donations) from legal entities or physical persons:*

*1) As a reward for decisions, actions or lack of action in the interests of the donator, adopted or performed both directly by such persons and with their concurrence by other officials and bodies;*

*2) If the person who presents (makes) the gift (donation), is subordinated to such person.*

*2. Persons stipulated by clause 1 and sub-clauses "a" and "b" of clause 2 in part one of Article 4 of this Law, may accept gifts that fall within the generally accepted notions of hospitality, and donations, apart from cases stipulated by part one of this Article, if the value of such gifts (donations) does not exceed 50 percent of minimum wages as fixed on the date of the acceptance of the gift (donation), one time, and the aggregate value of such gifts (donations) received from one source within one year, does not exceed one minimum wages as fixed on January 01 of the current year.*

*Limitation on value of gifts (donations) stipulated by this part, shall not extend to gifts (donations) that:*

*1) Are presented (made) by close persons;*

*2) Are received as accessible to all discounts on goods, services, accessible to all winnings, prizes, premiums, and bonuses.*

*3. Gifts received by persons stipulated by clause 1 and sub-clauses "a" and "b" of clause 2 in part one of Article 4 of this Law as gifts for the State, the Autonomous Republic of Crimea, a territorial community, and state or municipal institutions or organizations, shall be respectively deemed state or municipal property and shall be transferred to the body, institution, or organization, according to the procedure established by the Cabinet of Ministers of Ukraine.*

***Perpetrator of the crime***

Article 369 CC employs the term “official”, which is defined in the note to article 364 CC (abuse of authority or office) as follows:

*Note to section 364 CC*

*1. In sections 364, 365, 368, 368.2 and 369 of this Code, officials shall mean persons who permanently, temporarily or by special authority perform the functions of representatives of State power or local-self government, and also persons who permanently or temporarily occupy, in organs of State power, organs of local self-government, State or communal enterprises, institutions or organizations, positions which are related to organizational, managerial, administrative or executive functions, or perform such functions on the basis of special authority mandated by a duly authorized organ of State power, organ of local self-government, or central organ of State administration with special status, by a duly authorized body or person of an enterprise, institution or organization, by a court or by law. For the purposes of sections 364, 365, 368, 368.2 and 369 of this Code, legal entities in which the share of the authorized capital owned by the State or community, respectively, exceeds 50% or is of a value which provides the State or local community with the right of decisive influence on the economic activity of such an enterprise, are deemed to be State or communal enterprises.*

*2. Officials shall also mean public officials of foreign States (persons who occupy positions in a legislative, executive or judicial organ of a foreign State, including members of jury panels, and other persons who perform functions of State on behalf of a foreign State, in particular for a State body or a State enterprise), and also foreign arbitrators, persons authorized to settle civil, commercial or labour disputes in foreign States in alternative ways, officials of international organizations (employees of an international organization or any other persons authorized by such an organization to act on its behalf), members of international parliamentary assemblies of which Ukraine is a participant, and judges and officials of international courts.*

The definition of a domestic official, according to the note, includes (1) persons who perform the functions of representatives of State power or local-self government; and (2) persons who occupy in organs of State power, organs of local self-government etc. positions related to organizational, managerial, administrative or executive functions or perform such functions on the basis of special authority. The authorities indicate that according to the explanations provided by Resolution No. 5 of the Supreme Court, (1) the first category of persons refers, in particular, to “employees of public organs and their establishments who are entitled, within their competence, to set demands and make decisions binding on natural and legal persons regardless of their departmental affiliation or subordination”; and (2) the terms “organizational, managerial, administrative or executive functions” employed in respect of the second category of persons imply a certain degree of responsibility which is entrusted, in particular, to heads of ministries and other central executive bodies, State or communal enterprises, institutions or organizations and to their deputies; to heads of departments and their deputies; to persons who manage areas of work such as supervisors, team leaders, etc.; to heads of planning, maintenance, supply and financial departments and services and their deputies; to departmental inspectors and controllers, etc.

The first category of persons is now defined more precisely by article 4, part 1, paragraph 1 of the 2011 Law No. 3206 on Preventing and Countering Corruption, which contains an extensive list of “persons authorized to perform functions of State or of organs of local self-government”, including both civil servants and other public officials regardless of any organizational, managerial, administrative or executive functions.

#### *Article 4. Subjects of Liability for Corruptive Offences*

##### *1. Subjects of liability for corruptive offences shall be:*

##### *1) Persons authorized to perform functions of state or local government:*

*a) The President of Ukraine; the Chairperson of the Supreme Rada of Ukraine; his/her First Deputy and Deputy; the Prime Minister of Ukraine; the First Vice-Premier of Ukraine; Vice-Premiers of Ukraine; ministers and other heads of central executive bodies who are members of the Cabinet of Ministers of Ukraine, and their deputies; the Head of the Security Service of Ukraine; the Prosecutor-General of Ukraine; the Chairperson of the National Bank of Ukraine; the Chairperson of the Chamber of Accounts; the Supreme Rada of Ukraine's Human Rights Commissioner; the Chairperson of the Supreme Soviet of the Autonomous Republic of Crimea; and the Chairperson of the Council of Ministers of the Autonomous Republic of Crimea;*

*b) The People's Deputies of Ukraine, deputies of the Supreme Soviet of the Autonomous Republic of Crimea, and deputies of local councils;*

*c) Public servants and officials of local government;*

*d) Military officers of the Armed Forces of Ukraine and of other military formations created pursuant to statutes;*

*e) Judges of the Constitutional Court of Ukraine; other professional judges; the Chairperson, members, and disciplinary inspectors of the Higher Qualifying Commission for Judges of Ukraine; officers of the Secretariat of said Commission; the Chairperson, the Deputy Chairperson, and secretaries of sections of the Higher Council of Justice, as well as other members of the Higher Council of Justice; people's assessors and jurors (in the time of performance of these functions);*

*f) Persons of rank-and-file and commanding personnel of the bodies of internal affairs, the State Criminal-Executive Service, the bodies and units of civil defense, the State Service of Special Communications and Protection of Information of Ukraine, and persons of the commanding personnel of Tax Militia;*

*g) Officials and officers of public prosecutor's offices, the Security Service of Ukraine, the Diplomatic Service, the Customs Service, and the State Tax Service;*

*k) Members of the Central Electoral Commission;*

*l) Officials and officers of other bodies of state authority;*

*2) Persons who for the purposes of this Law, have been conferred the status of persons authorized to perform functions of state and local government:*

*a) Officials of public law legal entities who are not stipulated by clause 1 in part one of this Article but receive salaries at the account of State or local budget;*

*b) Persons who are not public servants or officials of local government but render public services (auditors, notaries, and appraisers, as well as experts, arbitration managers, independent brokers, members of labour arbitration tribunals, arbitrators in the time of performance of these functions, other persons in cases established by law);*

*c) Officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states including jurors; other persons who perform the functions of the state on behalf of a foreign state, in particular, on behalf of a state agency or a state enterprise), as well as foreign arbitrators, persons who have powers to settle civil, commercial, or labour disputes in foreign states according to procedures that constitute alternatives to judicial procedure;*

*d) Officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies in which Ukraine takes part, and judges and officers of international courts;*

*3) Persons who permanently or temporarily hold positions involving the performance of organizational-dispositive or administrative-economic functions, or persons who are specially authorized to perform such duties in private law legal entities irrespective of organizational-legal form thereof, pursuant to law;*

*4) Officials of legal entities and physical persons, in cases where persons stipulated by clauses 1 and 2 in part one of this Article, or with participation of such persons, other persons received illegal benefit from them.*

The bribery provision of article 369 CC furthermore uses the concepts of “officials in a responsible position” and “officials in a particularly responsible position” to define aggravated cases of bribery. These categories of persons, which are sub-categories of the concept of “officials”, are defined in note no. 2 to section 368 CC.

### **“Undue advantage” / “Bribe”**

Article 369 CC employs the term “bribe”. There is no legal definition of this concept. The element “undue” is not explicitly transposed.

According to the provisions of article 1 of Law 3206, the concept of “undue advantage” includes pecuniary means or other property, advantages, benefits, intangible assets that are promised, offered, provided or received without legal grounds free of charge or at price lower than market minimum. The definition of undue advantage by its content matches the meaning attached to the term “bribe” that is not defined in the national laws.

Prior to enactment of Law No. 3206, subject of bribe in accordance with judicial practices was property by nature solely. In accordance with the explanations provided by Resolution No. 5 of the Plenary Session of the Supreme Court dated 26 April 2002 on “Judicial Practices on Bribe Cases”, bribery is an acquisitive crime and therefore limited to property (money, valuables and other things), the right to property (documents providing the right to obtain property, use it or to enforce the obligations, etc.) and actions of a proprietary nature (transfer of property benefits, their waiving, waiver of rights to property, free provision of services, resort or travel packages, construction or repair works, etc.). Only property (money, values, and other things), property rights (documents providing rights to receive the property, use it, or request meeting of obligations etc.) any actions of property nature (transfer of property advantages, renunciation of such rights, free provision of services, sanatorium and tourist vouchers, construction and repair works etc.) could be considered bribe.

Services, benefits and advantages that were not of property nature (praising letters of recommendation or publications in the press, providing prestigious job etc.) could not be recognized as bribe subject. But such actions were recognized as ones subject to criminal prosecution and were qualified, as mentioned above, as benefits of another (non- proprietary) interest while abusing power or office according to pertinent part of article 364 on “Abuse of power or office” CC.

By contrast, the 2011 legal amendments introduced the concept of “illegal benefit” into the administrative corruption offences (sections 172.2 CAO on “breach of legal restrictions concerning the use of official position” and 172.3 CAO on “offering or giving an illegal benefit”) and into the criminal provisions on private sector bribery (sections 368.3 and 368.4 CC) and trading in influence (section 369.2 CC). This concept is defined in the note to the new section 364.1 CC and includes both material and non-material advantages, which are considered “illegal” if the bribe-taker has no legal entitlement to receive them for free or under the minimum market price.

*Note to section 364.1 CC*

*1. For the purposes of sections 364.1, 365.2, 368.2, 368.3, 368.4 and 369.2 of this Code, illegal benefit shall mean money or other property, benefits, privileges, services, non-material assets which are, without any legal entitlement, promised, offered, given or taken for free or under the minimum market price.*

(...)

The above-mentioned administrative offences only capture illegal benefits whose value does not exceed the tax-free minimum income by more than 100 times (approximately 4,300 EUR). Following the 2011 amendments cases of active bribery lead to criminal liability only if the value of the bribe exceeds this threshold – whereas passive bribery always constitutes a crime.

***“Directly or indirectly”***

The provision on active bribery does not specify whether the offence could be committed directly or indirectly. According to Resolution No. 5 of the Supreme Court and court practice, bribery may also be committed indirectly through an intermediary. Reference should also be made to the general rules on complicity and to the fact that article 368, paragraph 3 and article 369, paragraphs 4 and 5 CC provide for aggravated sanctions for bribery committed upon prior conspiracy by a group of persons or – in the case of active bribery – by an organized group.

***Third party beneficiaries***



The provision on active bribery does not specify whether the advantage must be for the official him/herself (section 369 CC only specifies that the act or omission by the official may be for the benefit of the bribe-giver or of a third person). According to Supreme Court Resolution No. 5, bribery also occurs in cases where the official receives an advantage not for him/her personally but for the benefit of close persons (relatives, acquaintances, etc.).

### ***Effectiveness of implementation***

Statistics on the implementation of these measures are available. For the period 2007-2010 for instance, the prosecutor's office passed to the court approximately 921 cases related to infringements of active bribery. All the same, according to statistics of the State Court Administration for the period 2003-2010, 1244 persons were sentenced for committed crime prescribed by article 369 of the CCU (Giving a bribe).

The statistics on number of office crimes committed, investigated and prosecuted is compiled by the General Prosecutor's Office of Ukraine through receiving statistical reports on pre-trial investigation bodies work from regional prosecutor's offices. The statistics on number of convictions/acquittals is compiled by the State Court Administration on the basis of court decisions.

The issue of the effectiveness of fighting bribery including application of criminal proceedings is discussed during especially related collegiums and meetings of the General Prosecutor's Office which are held so often. For example, such collegiums were held on 22.12.2006 and 18.12.2008, meetings related to this issue also took place on 23.10.2008 and 04.06.2010. As the results of described discussions, the President of Ukraine developed the draft of law "On Principles of Preventing and Counteracting Corruption in Ukraine" which provides liability for receiving by the official undue advantage in the gross amount or transfer of that undue advantage to the close relatives and defines the notion "undue advantage".

The assessment of criminalization of corruption in Ukraine was held in July 2010 by experts of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia.

### ***(b) Observations on the implementation of the article***

The review team took note of article 369 CC criminalizing active bribery in the public sector. Article 369 CC refers to the "offering or giving a bribe". The national authorities confirmed during the country visit that the "promise of a bribe" was lacking as a constituent element of the offence of active bribery, but they referred, instead, to the application of the general provisions of the CC on preparation or attempt to cover related instances.

Article 369 CC employs the term "official", which is defined in the note to article 364 CC (abuse of authority or office). However, the reviewing experts noted that this definition was

substantially broadened after the legal amendments introduced by Law No. 3206-VI to include persons authorized to perform functions of state or local government, as well as persons who have been conferred the status of authorization to perform such functions. The latter category further includes officials of foreign States and officials of international organizations, thus ensuring that the bribery provisions mentioned above are also applicable in relation to the criminalization of bribery of foreign public officials and officials of public international organizations (see article 16 of the UNCAC).

The relevant provision on active bribery does not specify whether the offence could be committed directly or indirectly. The national authorities explained that the general provisions of the CC on complicity were applicable in this regard.

The same provision does not further expressly specify whether the advantage must be for the official him/herself or of a third person). The national authorities referred to relevant jurisprudence (Supreme Court Resolution No. 5) indicating that bribery also occurs in cases where the official receives an advantage not for him/her personally but for the benefit of close persons (relatives, acquaintances, etc.).

The 2011 amendments of the domestic legislation introduced two articles in the CC which criminalize bribery of persons who are not public officials, namely article 368.3 on commercial bribery of officials of legal entities of private law; and article 368.4 on bribery of persons who provide public services, such as auditors, notaries, arbitrators, etc.

In assessing the relevant provision of the CC on the criminalization of active bribery in the public sector, in conjunction with the corresponding provision of article 368 CC on passive bribery, as well as the provisions on bribery in the private sector, the review team noted an inconsistent use of terms to define the generic concept of “undue advantage”. Firstly, sections 368 and 369 CC on passive and active bribery in the public sector respectively employ the notion of a “bribe” which is not further defined by law. The national authorities referred to Resolution 5 of the Plenary Session of the Supreme Court of Ukraine as a guidance tool to avoid ambiguity in understanding the term “bribe”. Secondly, the 2011 legal amendments introduced the concept of “illegal benefit” into the CC provisions on private sector bribery and trading in influence. This concept is defined broadly in article 1 of Law No. 3206-VI to include “pecuniary funds or other assets, advantages, perks, services, or non-material assets which without lawful grounds are promised, offered, provided, or received without pay or at a price below the minimum market price”. It would therefore appear that, as far as the provisions on private sector bribery and trading in influence are concerned, the definition given is broad enough to cover any material and non-material advantages, whether such benefits have an identifiable market value or not. However, the review team, taking also into account the differing views expressed during the country visit among the national experts on the respective use of the terms “bribe” and “illegal benefit” in the domestic legal system, concluded that:

- the existing terminological discrepancies could not be attributed merely to linguistic variations; and

- for purposes of ensuring consistency, clarity and legal certainty, it would be beneficial to implement and interpret all corruption offences in a more uniform approach as to the terminological delineation of the concept of “undue advantage”.

In conclusion, the reviewing experts made the following recommendations to ensure further improvement of the implementation of article 369 CC:

- Construe the administrative offence of active bribery in a way that prevents overlapping with the corresponding provision of the CC, including through reducing the “monetary threshold” used to define the illegal benefit in the administrative offence (see above, page 26, under “Overview of the anti-corruption legal and institutional framework of Ukraine”);
- Continue efforts to provide for more certainty, clarity and uniformity on the definitions of “bribe” and “illegal benefit” contained in bribery offences and address issues of potential inconsistencies in the manner that such definitions are interpreted domestically, both at the levels of legislation and application of criminal laws; and
- Construe the active bribery offence in the public sector in a way that unambiguously covers instances where the advantage is not intended for the official himself/herself, but for a third party (third-party beneficiary).

## ***Article 15 Bribery of national public officials***

### ***Subparagraph (b)***

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine has stated adoption and implementation of the provision under review to be partly completed, having referred to article 368 (Receiving a bribe) CC.

#### ***Section 368 CC: Receiving a bribe***

*(1) Receiving a bribe of any kind by an official in return for performing or refraining from any action, using his/her authority or official position, in the interests of the person giving the bribe or in the interests of a third person, is punishable by a fine of 500 to 750 times the tax-free minimum income, or by correctional work for up to 1 year, or by up to 6 months' arrest, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years.*

*(2) Receiving a bribe of a significant sum is punishable by a fine of 750 to 1500 times the tax-free minimum income, or by 2 to 5 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years.*

*(3) Receiving a bribe either of a large sum, or by an official in a responsible position, or upon prior conspiracy by a group of persons, or if repeated, or if accompanied by extortion of a bribe, is punishable by 5 to 10 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, and with forfeiture of property.*

*(4) Receiving a bribe of a particularly large sum, or by an official in a particularly responsible position, is punishable by 8 to 12 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, and with forfeiture of property.*

*Note:*

*1. A bribe of a significant sum shall mean a bribe equal to or greater than 5 times the tax-free minimum income; of a large sum – a bribe equal to or greater than 200 times the tax-free minimum income; of a particularly large sum – a bribe equal to or greater than 500 times the tax-free minimum income.*

*2. Officials in a responsible position shall mean persons referred to in note no. 1 to section 364, whose positions pursuant to section 25 of the Law on Civil Service are included in the third, fourth, fifth and sixth categories, and also judges, prosecutors and investigators, heads and deputy heads of State government and administrative authorities, and of local self-government bodies and their structural subdivisions and units. Officials in a particularly responsible position shall mean persons referred to in section 9, paragraph 1 of the Law on Civil Service, and persons whose positions pursuant to section 25 of this law are included in the first and second categories.*

*3. In section 368 of this Code a repeated offence shall mean an offence committed by a person who has previously committed any of the offences laid down in sections 368, 368.3, 368.4 or 369 of this Code.*

*4. Extortion of a bribe shall mean a request for a bribe by an official accompanied by a threat to perform or refrain from actions, using his/her authority or official position, which may cause harm to the rights and lawful interests of the person giving the bribe, or the willful creation by an official of conditions in which a person is compelled to give a bribe in order to prevent harmful consequences with respect to his/her rights and lawful interests.*

***“Request or receipt, acceptance of an offer or promise”***

The passive bribery provision use the words “receiving a bribe”, see article 368 CC. The request for a bribe is mentioned only in the meaning of extortion (“accompanied by a threat to perform or refrain from actions...”), as an aggravating circumstance. As regards the simple “request” of a bribe and the “acceptance of an offer or promise”, the authorities affirm that such acts are punishable under articles 14 or 15 CC in conjunction with article 368 CC as preparation of or attempt at bribery. There is no case law/court decision confirming this affirmation. The authorities referred to Resolution No. 5 of the Supreme Court, according to which the unsuccessful endeavour by an official to extort a bribe may qualify as attempted bribery, depending on the merits of the case. It is to be noted that the preparation of a crime is

not incriminated in cases of minor criminal offences, which are defined as offences punishable by up to two years' imprisonment or a more lenient penalty.<sup>16</sup> Article 14 CC is therefore not applicable to bribery offences in the absence of aggravating circumstances under article 368, paragraph 1 CC. Moreover, pursuant to article 17 CC, the perpetrator of a prepared or attempted crime is not criminally liable if s/he voluntarily refuses to complete the crime. Under the provisions of article 68 CC, punishment for crime preparation or for criminal attempt may not exceed half of the maximum limit or two thirds of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively.

***“To act or refrain from acting in the exercise of his or her functions”***

The Ukrainian legislation expressly covers both positive acts and omissions by a public official “using his/her authority or official position, in the interests of the person giving the bribe or in the interests of a third person”. According to Supreme Court Resolution No. 5, the element “using his/her authority or official position” requires that the official makes use of his/her administrative- organizational or administrative-economic responsibilities either directly or indirectly through other officials (in case s/he is not authorized to perform the intended act him/herself). Regarding acts which lie outside the scope of competences of the official but which s/he nevertheless performs him/herself, in such cases the official would be liable for passive bribery and, if the act committed caused substantial damage to the rights and interests of citizens, the State or legal persons, for using excessive authority or official powers as well (article 365 CC). Finally, as concerns the element “in the interests of the person giving the bribe or in the interests of a third person”, the Supreme Court explains that the official act may be performed to the benefit of the bribe-giver or any other natural or legal person.

***Effectiveness of implementation***

In terms of concrete examples and statistics on criminalizing passive corruption, Ukraine cited two specific criminal cases passed to the court by the office of the public prosecutor of the region of Kyiv in 2010: the criminal case against deputy mayor of one of district centers who had solicited and took the bribe in size of 500 000 USD for the decision about land plot assignment and the criminal case against the unit supervisor of one ministry who took the bribe in size of 5000 USD for drawing the conclusion. For the period 2005-2010, generally, the prosecutor's office passed to the court nearly 4771 criminal cases of which 2712 concerned civil servants. According to the State Court Administration for the period of 2003-2010, some 4249 criminal cases were sentenced for committed crime pursuant to article 368 of the CCU (Taking a bribe).

***(b) Observations on the implementation of the article***

See the remarks and observations of the review team under article 15(a) of the UNCAC.

**(c) *Technical assistance needs for better implementation of the article***

Ukraine has indicated that the following form of technical assistance, if available, would be required for a better implementation of the provision under review:

- Trainings/workshops, as well as summary/compilation of good practices/lessons learned on the implementation of article 15, subparagraph (b), of the UNCAC on passive bribery of public officials.

***Article 16 Bribery of foreign public officials and officials of public international organizations***

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Bribery of foreign public officials is covered by sections 368 and 369 CC, as the definition of an “official” in its amended form expressly includes “officials of foreign States” i.e. “persons who occupy positions in a legislative, executive or judicial organ of a foreign State, including members of jury panels, and other persons who perform functions of State on behalf of a foreign State, in particular for a State body or a State enterprise” (see note no. 2 to section 364 CC). The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. There is no case law/court decision concerning bribery of foreign public officials.

***Article 364: Abuse of authority or office***

***Notes:***

*1. Officials shall mean persons who permanently or temporarily represent public authorities, and also permanently or temporarily occupy positions in businesses, institutions or organizations of any type of ownership, which are related to organizational, managerial,*

*administrative and executive functions, or are specifically authorized to perform such functions.*

*2. Officials shall also mean foreigners or stateless persons who perform the functions described in paragraph 1 of this Note.*

*3. For the purposes of Article 364, 365, and 367, significant damage with reference to any pecuniary losses shall mean any damage that equals or exceeds 100 tax-free minimum incomes.*

*4. For the purposes of articles 364 to 367, grave consequences with reference to any pecuniary losses shall mean any such consequences that equal or exceed 250 tax-free minimum incomes.*

*Law No. 3206 extended the scope of corruption regulations to foreign public officials and officials of international organizations.*

#### *Article 4*

*c) Officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states including jurors; other persons who perform the functions of the state on behalf of a foreign state, in particular, on behalf of a state agency or a state enterprise), as well as foreign arbitrators, persons who have powers to settle civil, commercial, or labour disputes in foreign states according to procedures that constitute alternatives to judicial procedure;*

*d) Officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies in which Ukraine takes part, and judges and officers of international courts.*

Concerning adoption and implementation of paragraph 2, Ukraine referred to explanations given to the subparagraph (b) of article 15 and to paragraph 1 of article 16.

#### **(b) Observations on the implementation of the article**

The review team noted that the Ukrainian authorities referred to the note on article 364 (Abuse of authority or office) as well as to explanations given to the subparagraph (a) of article 15, i.e. to article 369 CC. The review team also took into account that a definition of a term “officials of foreign states” and “officials of international organizations” had been provided (article 4 of the Law on the “Principles of Prevention and Counteraction of Corruption in Ukraine”).

The reviewing experts reiterated the remarks and observations made in relation to the implementation of article 15(a) of the UNCAC.

#### **(c) Technical assistance needs related to article 16**

Ukraine received in 2010 technical assistance from the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia with regard to the assessment of criminalization of corruption in Ukraine. The report was adopted in July 2010.

***Article 17 Embezzlement, misappropriation or other diversion of property by a public official***

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Article 191, para. 2 of CCU criminalizes misappropriation, embezzlement or conversion of property by malversation by official.

Article 190, para. 1 of the Civil Code of Ukraine separates thing, combination of things as well as property rights and liabilities are considered as property as special object.

And according to clause one of Para 2 of the Resolution of the Plenary Session of the Supreme Court of Ukraine No10 on November 6, 2009, "On Judicial Practice on the Cases of Crime against Property", property that is of value and alien to the guilty party: things (movable and immovable), pecuniary means, precious metals, securities etc. as well as rights for property and actions of property nature, power and thermal energy are subjects of crimes against property.

***Article 191. Misappropriation, embezzlement or conversion of property by malversation***

*1. Misappropriation or embezzlement of somebody else's property by a person to whom it was entrusted, -*

*shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or restraint of liberty for a term up to four years, or imprisonment for a term up to four years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*2. Misappropriation, embezzlement or conversion of property by malversation -shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*3. Any such actions as provided for by paragraph 1 or 2 of this Article, if repeated or committed by a group of person upon their prior conspiracy, -*

*shall be punishable by restraint of liberty for a term of three to five years, or imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*



*4. Any such actions as provided for by paragraphs 1, 2 or 3 of this Article, if committed in respect of a gross amount, - shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*5. Any such actions as provided for by paragraphs 1, 2, 3 or 4 of this Article, if committed in respect of an especially gross amount, or by an organized group, - shall be punishable by imprisonment for a term of seven to twelve years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property.*

According to clarification provided by the Plenary Session of the Supreme Court of Ukraine by provisions of Para 23 of the Resolution No. 10 of 6 November 2009, "On Judicial Practice on the Cases against Property", in Article 191 of CCU, liability for three forms of crime perpetration – misappropriation, embezzlement, and conversion of property by malversation. They are characterized by deliberate illicit and free conversion of alien property for own benefit or for the benefit of another person. Only that alien property that had been entrusted to the guilty person or had been in his/her lawful disposal, i.e. the property that had been with him/her on the legal basis and with regard of which the person exercised powers of disposal, management, delivery, using or storage etc. is subject of appropriation or embezzlement. While appropriation takes place these powers are used for conversion of the property for his/her benefit and while embezzlement if is for the benefit of other persons, in particular it can be alienation of property to other persons for consumption, as gift or goods, in exchange for other property etc.

Conversion of property by malversation is illicit conversion of alien property for own benefit or benefit of other persons when an official uses his/her position.

In all the cases when in the norms of CCU the term “person” (“the third party”) is used without concretization whether legal or physical person the content of the term covers both types of persons.

Taking into account provided counter reasons with regard of expert evaluation of its provisions they are in full compliance with the criteria set forth in the Article 17 of the Convention.

Statistics were provided on cases prosecuted between 2004 and 2010. During that period, the prosecutor’s office passed to the court nearly 16108 cases, of which 3081 related to civil servants. Moreover, according to statistics of the State Court Administration, 18239 persons were sentenced for the period between 2003 and 2010. The source of these data remains the same as above.

Besides the evaluation by the OECD Anti-Corruption Network for Eastern Europe and Central Asia, the summarizing of results of performances by law enforcement bodies, their activities in the field of detection of misappropriation, assessment of embezzlement or conversion of property by abuse of official post was held by the prosecutor’s office and

discussed during the especially devoted interdepartmental meeting organized on 26 June 2009 in the General Prosecutor's Office.

***(b) Observations on the implementation of the article***

Article 191 CC on "Misappropriation, embezzlement or conversion of property by malversation" was reported as the basic provision criminalizing embezzlement of property in both the public and private sectors. The reviewers noted the lack of clarity as to whether the term "property" also entailed rights, interests, securities or any other things of value. In response, the Ukrainian authorities referred to article 190 of the Civil Code, as well as the judicial practice of the Supreme Court, for the definition of property, which was reported to be considered in a broad manner to entail property rights and liabilities as well. The review team extended its comments made in the bribery offences regarding the lack of the "third-party beneficiary" to the description of the conduct prescribed in article 191 CC as well.

In view of the above, the reviewing experts made the following recommendation to ensure further improvement of the implementation of article 17 of the UNCAC:

- Construe the embezzlement offence in the public sector in a way that unambiguously covers instances where the advantage is not intended for the official himself/herself, but for a third party (third-party beneficiary).

***Article 18 Trading in influence***

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Active and passive trading in influence were criminalized by the 2011 legal amendments, under the new provisions of section 369.2 CC as follows:

### *Section 369.2 CC: Trading in influence*

*(1) Offering or giving an illegal benefit to a person who, in return for such a benefit, offers or promises (agrees) to influence a decision by a person authorized to perform functions of State, is punishable by a fine of 200 to 500 times the tax-free minimum income, or by 2 to 5 years' imprisonment.*

*(2) Receiving an illegal benefit in return for influencing a decision by a person authorized to perform functions of State, or offering to exercise influence in return for the provision of such a benefit, is punishable by a fine of 750 to 1500 times the tax-free minimum income, or by up to 5 years' imprisonment.*

*(3) Receiving an illegal benefit in return for influencing a decision by a person authorized to perform functions of State, if accompanied by extortion of such a benefit, is punishable by 3 to 8 years' imprisonment, with forfeiture of property.*

*Note: Persons authorized to perform functions of State shall mean persons specified in section 4, part 1, paragraphs 1-3 of the Law "On the Principles of Preventing and Combating Corruption".*

#### ***Elements of the offence***

***"Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]"***

This concept is implemented in article 369.2 CC by use of the words "offers or promises (agrees) to influence a decision". The authorities indicate that it is not relevant whether the influence was actually exerted or if it led to the intended result. The influence must be exerted (or promised to be exerted) on a "person authorized to perform functions of State" in the meaning of article 4, part 1, paragraphs 1-3 of the Law "On the Principles of Preventing and Combating Corruption".

#### ***Other constituent elements***

The constitutive elements of bribery offences largely apply with regard to active and passive trading in influence. As in the provisions on bribery in the private sector, the concept of "illegal benefit" is used instead of "bribe".

#### ***(b) Observations on the implementation of the article***

The review team noted that the offence of trading in influence, in both its active and passive forms, is criminalized under the new provisions of article 369.2 CC, introduced by the 2011 legal amendments.

The reviewing experts further observed that the element of supposed influence seemed not to be covered in article 369.2 CC. In response, the Ukrainian authorities clarified that the issue

of "supposed" influence falls within the concept of "deception" which is core element of the fraud offence. In this regard, the review team made the following analysis:

a) Active trading in influence:

Here the elements of the offence are those of promise, offering or giving of an undue advantage to a public official or other person. Since the conduct covers cases of merely offering the undue advantage, namely even in cases where this was not accepted, the link must be that the giver intended not only to offer the advantage, but also to influence the conduct of the recipient, regardless of whether or not this actually took place (Legislative Guide to UNCAC, p. 102, para. 286). In other words, the issue of the nature of the influence as "real" or "supposed" falls within the assessment of the "influence seeker" who may think that such is the influence of the "influence peddler". In any case, the crime of trading in influence is completed, in terms of legislative language, upon promise, offer or giving of the undue advantage. The element of supposed influence will be considered on a case-by-case basis and when assessing the behaviour of the "influence seeker".

a) Passive trading in influence:

Here the focus is on the solicitation or acceptance by the public official or any other person of an undue advantage so that he/she abuses his/her influence with a view to obtaining an undue advantage from the public administration or a public authority. Actually what is of interest here is the conduct of the "influence peddler" to trade his/her influence in exchange for an undue advantage from someone seeking this influence. In this context, we have two basic case scenarios:

The "influence peddler" **fraudulently** presents to the "influence seeker" that he/she is in position to exercise influence. If that fraudulent presentation had an impact on the "influence seeker" in terms of offering or giving the undue advantage, and conversely this led to its solicitation and acceptance, then this is a case of deception to which the Ukrainian authorities actually referred to.

The "influence peddler" **mistakenly** presents to the "influence seeker" that he/she is in position to exercise influence (he thinks that he can exercise influence but he is wrong). This will not affect the application of article 369.2 CC on trading in influence, because the crime is again considered to be completed upon solicitation or acceptance.

Furthermore, the review team noted that the constituent elements of bribery offences largely apply with regard to trading in influence as well. As in the provisions on bribery in the private sector, the concept of "illegal benefit" is used instead of "bribe". Further, article 369.2 does not expressly specify whether the advantage must be for the official him/herself or of a third person). The remarks made in relation to the implementation of article 15(a) of the Convention are also applicable here.

In view of the above, the reviewing experts made the following recommendation to ensure further improvement of the implementation of article 18 of the UNCAC:

- Continue efforts to provide for more certainty, clarity and uniformity on the definitions of “bribe” and “illegal benefit” and address issues of potential inconsistencies in the manner that such definitions are interpreted domestically, both at the levels of legislation and application of criminal laws; and
- Construe the active trading in influence offence in a way that unambiguously covers instances where the advantage is not intended for the official himself/herself, but for a third party (third-party beneficiary).

***(c) Technical assistance needs***

For a better implementation of the provision under review, Ukraine stated that it would need technical assistance, if available, in the following form:

- Trainings/workshops, as well as summary/compilation of good practices/lessons learned on the implementation of article 18 of the UNCAC on trading in influence

***Article 19 Abuse of Functions***

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Article 19 is transposed domestically through article 364 CC on the criminalization of abuse of authority or office.

***Article 364. Abuse of authority or office***

*1. Abuse of authority or office, that is a willful use of authority or official position contrary to the official interests by an official for mercenary motives or other personal benefit or benefit of any third persons, where it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, -*

*shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*2. The same act that caused any grave consequences, -*

*shall be punishable by imprisonment for a term of five to eight years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*3. Any such actions as provided for by paragraph 1 or 2 of this Article, of committed by a law enforcement officer, - shall be punishable by imprisonment for a term of five to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property.*

*Note:*

*1. Officials shall mean persons who permanently or temporary represent public authorities, and also permanently or temporary occupy positions in businesses, institutions or organizations of any type of ownership, which are related to organizational, managerial, administrative and executive functions, or are specifically authorized to perform such functions.*

*2. Officials shall also mean foreigners or stateless persons who perform the functions described in paragraph 1 of this Note.*

*3. For the purposes of Articles 364, 365 and 367, significant damage with reference to any pecuniary losses shall mean any damage that equals or exceeds 100 tax-free minimum incomes.*

*4. For the purposes of Articles 364 to 367, grave consequences with reference to any pecuniary losses shall mean any such consequences that equal or exceed 250 tax-free minimum incomes.*

The Plenary Session of the Supreme Court, in the paragraphs three to five of Item 6 of the Resolution No15 of 26 December 2003, "On Judicial Practices on Exceeding Powers or Office" provided clarification with regard to intangible material damage. According to the provisions of this Resolution, if the damage consists of consequences of intangible nature dangerous for the public the matter whether it was material shall be addressed with consideration of the actual circumstances of the case. In particular, infringement in the rights and freedoms of citizens protected by the Constitution of Ukraine and other laws (right for freedom and personal immunity and immunity of house, election, labor, housing rights etc.), derogation of authority and prestige of the government agency or bodies of local self-government, braking public security and public order, creating of the settings and conditions hampering performance of enterprises, institutions, and organization, cover-up of crimes may be recognized as material damage.

Article 364 CC covers abuse of functions in cases of both action or inaction of the involved official. This is also the case in provisions of the special part of CC, unless otherwise stipulated.

Cases of abuse of functions exist. For example, the prosecutor's office took to the court the criminal case against officials of one of village councils who, by abusing their office for benefit of third persons, illegally transferred to this persons' ownership land plot in area of 5,8 ha. This case caused damage to state in more than 5 million hrn. Additionally, some 2569 criminal cases against civil servants were passed to the court by the prosecutor's office for the period between 2003 and 2010. According to statistics of the State Court Administration for the same period, 6042 persons were sentenced for committed crimes pursuant to article 364 of the CCU on the abuse of authority or office (the source of this statistics remains unchanged).

Irrespective of the assessment by experts of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, the summarizing of results of performances in connection with criminalizing abuse of authority or office was held by the prosecutor's office in the first half of last year and discussed during the interdepartmental meeting of heads of law enforcement bodies held on 4 April 2010.

**(b) *Observations on the implementation of the article***

The review team noted that the abuse of functions is criminalized in article 364 CC on “abuse of authority or office”. Information was provided on pertinent judicial practice of the Supreme Court, interpreting the damage caused by such action as a requirement for triggering the application of article 364. The review team, bearing in mind the optional wording of article 19 of the UNCAC, welcomed the establishment and interpretation of the offence in the Ukrainian legal order. For purposes of assisting the national authorities in implementing broadly the domestic legislation, the review team recalled that the notion of “damage” was not required by the Convention.

***Article 20 Illicit Enrichment***

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Article 368<sup>2</sup> of CCU criminalizes unlawful enrichment. It was recently adopted by Law No. 3207 on Amending Certain Legislative Acts of Ukraine Pertaining to Liability for Corruptive Offences.

***Article 368<sup>2</sup>. Unlawful Enrichment***

*1. Obtainment by an officer of illegal benefit in substantial amount or transfer by the officer of such benefit to close relatives, in the absence of signs of bribery (unlawful enrichment) –*

*shall be punishable by fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens, or by restriction of freedom for a term of up to two years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.*

*2. Unlawful enrichment where the object of it was illegal benefit in large amount, –*

*shall be punishable by restriction of freedom for a term of two to five years, or by imprisonment for a term of three to five years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.*

*3. Unlawful enrichment where the object of it was illegal benefit in especially large amount, – shall be punishable by imprisonment for a term of five to ten years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with confiscation of property.*

*Note.*

*Deemed “illegal benefit in substantial amount” shall be pecuniary funds or other assets, advantages, perks, services, and non-material assets that are without lawful grounds promised, offered, provided, or received without payment or at a price below the minimum market price, in the amount that exceeds one hundred tax-exempt minimum incomes of citizens, in large amount, in the amount that exceeds two hundred tax-exempt minimum incomes of citizens, and in especially large amount, in the amount that exceeds five hundred tax-exempt minimum incomes of citizens.*

#### **(b) Observations on the implementation of the article**

The Ukrainian authorities reported that illicit enrichment was criminalized in article 368<sup>2</sup>, which was introduced in the CC as a result of the legal amendments enacted by Law No. 3207-VI. The conduct of illicit enrichment is defined as the “obtainment by an officer of illegal benefit in substantial amount or transfer by the officer of such benefit to close relatives, in the absence of signs of bribery”. The Ukrainian authorities stressed that this offence was still a new crime in the domestic legislation and therefore concrete jurisprudence was needed to further determine the increase of income “in the absence of signs of bribery”. The latter condition (“in the absence of signs of bribery”) seems to be an additional requirement in that the courts may go into the direction of first proving that no bribery act was committed and then apply the provision on illicit enrichment. As far as the burden of proof is concerned, the national authorities confirmed that it remained on the prosecution, which should demonstrate that the enrichment is beyond the lawful income of the perpetrator. Thus, it seems that a rebuttable presumption of guilt is established: once the case is made, the defendant can then offer a reasonable or credible explanation. Taking into account the optional wording of article 20 of the Convention, the review team welcomed the establishment of the offence of illicit enrichment in the domestic legal order. With the aim to assist the national authorities to fully benefit from their commendable initiative to criminalize this conduct, the reviewing experts also noted the significance of ensuring in future further clarity and consistency in applying the relevant provision of the CC.

#### **Article 21 Bribery in the private sector**



*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

***(a) Summary of information relevant to reviewing the implementation of the article***

The provision under review is implemented by Articles 368<sup>3</sup> and 368<sup>4</sup> CC, introduced by Law No. 3207.

*Article 368<sup>3</sup>. Commercial Subornation of an Officer of a Private Law Legal Entity Irrespective of Organizational-Legal Form*

- 1. Offer, provision, or transfer to an officer of a private law legal entity irrespective of organizational-legal form, of illegal benefit for the performance of actions or lack of action with the use of entrusted authority in the interests of those who provides or transfers such benefit, or in the interests of third parties – shall be punishable by fine in the amount of one hundred to two hundred and fifty tax-exempt minimum incomes of citizens, or by restriction of freedom for a term of up to two years.*
- 2. Same actions committed repeatedly or in previous collusion by a group of persons or by an organized group, – shall be punishable by fine in the amount of three hundred and fifty to seven hundred tax-exempt minimum incomes of citizens, or by restriction of freedom for a term of up to four years, or by imprisonment for a term of up to four years.*
- 3. Acceptance by an officer of a private law legal entity irrespective of organizational-legal form, of illegal benefit for the performance of actions or lack of action with the use of entrusted authority in the interests of those who provides or transfers such benefit, or in the interests of third parties – shall be punishable by fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens, or by restriction of freedom for a term of up to five years, or by imprisonment for a term of up to three years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years.*
- 4. Actions stipulated by part three of this Article, committed repeatedly or in previous collusion by a group of persons, or accompanied by demanding of illegal benefit, – shall be punishable by imprisonment for a term of three to seven years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with confiscation of property.*
- 5. A person who offered, provided, or transferred illegal benefit, shall be relieved of criminal liability if in respect to him/her the demanding of illegal benefit took place, or if after the offer, provision, or transfer of the illegal benefit, the person voluntarily reported on the*

*occurrence, prior to the institution of criminal case against this person, to a body vested by law with the right to institute criminal case.*

*Notes.*

*1. Deemed “repeated” in Articles 368<sup>3</sup> and 368<sup>4</sup> shall be a crime committed by a person who previously committed any of the crimes stipulated by this Article, as well as by Articles 368 and 369 of this Code.*

*2. Deemed “demanding” in accordance with part four of Articles 368<sup>3</sup> and 368<sup>4</sup> of this Code shall be the demand to provide or transfer illegal benefit accompanied with a threat to perform or not to perform actions with the use of official authority, addressed to the person who provides or transfers illegal benefit, or the deliberate creation by the person who performs managing functions in a private law legal entity, of conditions*

#### *Section 368.4 CC: Bribery of a person who provides public services*

*(1) Offering, giving or transferring an illegal benefit to an auditor, notary, appraiser or other person, who is not a civil servant or a local government official but undertakes professional activities related to the provision of public services, including those of an expert, insolvency practitioner, independent mediator, member of labour arbitration, or arbitrator (when performing these functions), in return for performing or refraining from any action, using his/her authority, in the interests of the person giving or transferring the benefit or in the interests of a third person, is punishable by a fine of 100 to 250 times the tax-free minimum income,<sup>25</sup> or by up to 2 years’ restriction of liberty.*

*(2) The same acts, if repeated, or if committed upon prior conspiracy by a group of persons or by an organized group, is punishable by a fine of 350 to 700 times the tax-free minimum income,<sup>26</sup> or by up to 5 years’ restriction of liberty, or by up to 3 years’ imprisonment.*

*(3) Receiving an illegal benefit by an auditor, notary, expert, appraiser, arbitrator or other person who undertakes professional activities related to the provision of public services, or by an independent mediator or member of labour arbitration, in return for performing or refraining from any action, using his/her authority, in the interests of the person giving or transferring the benefit, is punishable by a fine of 750 to 1500 times the tax-free minimum income,<sup>27</sup> or by 2 to 5 years’ imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 2 years.*

*(4) The acts prescribed in paragraph 3 of this section, if repeated, or if committed upon prior conspiracy by a group of persons, or if accompanied by extortion of an illegal benefit, are punishable by 4 to 8 years’ imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, and with forfeiture of property.*

*(5) A person having offered, given or transferred an illegal benefit shall be discharged from criminal liability, if s/he was subject to extortion of an illegal benefit or if, following the offer, giving or transfer of the illegal benefit and prior to the instigation of criminal proceedings against the person, s/he voluntarily makes a statement concerning the acts in question to a body authorized by law to instigate criminal proceedings.*

The concept “official” refers to the definition given in a Note to article 364 CC on term “officials”, which includes persons who permanently, temporarily or by special authority perform the functions of representatives of State power or local self-government, and also persons who permanently or temporarily occupy, in organs of State power, organs of local self-government, State or communal enterprises, institutions or organizations, positions which are related to organizational, managerial, administrative or executive functions, or perform such functions on the basis of special authority mandated by duly authorized organ of State power, organ of local self-government, or central organ of State administration with special status, by a duly authorized body or person of an enterprise, institution or organization, by a court or by law. Also, the concept refers to article 368<sup>4</sup> CC, where the provision refers to “an auditor, notary, appraiser or other person, who is not a civil servant or a local government official but undertakes professional activities related to the provision of public services, including those of an expert, insolvency practitioner, independent mediator, member of labour arbitration, or arbitrator (when performing these functions)”.

There is no actual necessity to criminalize promise of undue advantage that requires agreement between person giving undue advantage and its recipient (service person of a legal person of private law no matter the organizational legal form; a person providing public services) will be covered by provisions of part one of Articles 368<sup>3</sup> and 368<sup>4</sup> CC that establishes liability for, respectively, commercial subornation of service person of legal person of private law no matter organizational legal form and subornation of a person providing public services.

Liability for promise to provide undue advantage may ensue only under condition that a person has committed (attempted to commit) certain actions that can be considered as preparation or attempt to provide undue advantage (for instance, looked for associates, discussed the amount of undue advantage, place and time of acceptance of undue advantage etc.). In this case liability for the mentioned actions at active commercial subornation may ensue as for incomplete crime according to the provisions of articles 13 to 15 CC.

***(b) Observations on the implementation of the article***

The review team noted that the amendments in 2011 introduced two sections in the CCU which criminalize bribery of persons who are not public officials: 368<sup>3</sup> on commercial bribery of officials of legal entities of private law, and 368<sup>4</sup> on bribery of persons who provide public services, such as auditors, notaries, arbitrators, etc. Prior to this amendment, provisions on bribery in the public sector also applied to bribery in the private sector.

The reviewing experts highlighted that the elements described under bribery of domestic public officials largely apply mutatis mutandis to bribery in the private sector. As was mentioned above, sections 363.3 and 368.4 CC employ the concept of “illegal benefit” instead of “bribe”. Thus, the observations made above in relation to the implementation of article 15 of the UNCAC are of relevance.

Moreover, the element of “transferring an advantage” is prescribed in addition to the “offering” and “giving”. According to the authorities, the term “transferring” refers to acts involving intermediaries/third persons.

Both sections 363.3 and 368.4 CC refer to actions or omissions by the bribe-taker “using his/her authority, in the interests of the person giving or transferring the benefit or in the interests of a third person”. According to the authorities, they do not require that the offence be committed during “business activities” or with “breach of duties”. They added that in cases of illegal acts or omissions by the bribe-taker, other offences such as abuse of authority may be applied cumulatively.

The reviewing experts made the following recommendation to ensure further improvement of the implementation of article 21 of the UNCAC:

- Continue efforts to provide for more certainty, clarity and uniformity on the definitions of “bribe” and “illegal benefit” contained in bribery offences and address issues of potential inconsistencies in the manner that such definitions are interpreted domestically, both at the levels of legislation and application of criminal laws.

#### ***Article 21 Bribery in the private sector***

##### ***Subparagraph (b)***

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

##### ***(a) Summary of information relevant to reviewing the implementation of the article***

See above.

##### ***(b) Observations on the implementation of the article***

See above.

## ***Article 22 Embezzlement of property in the private sector***

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to explanation given to the aforementioned article 191 CC (Misappropriation or embezzlement or conversion of property by abuse of official post) to illustrate the implementation of the provision under review.

### ***(b) Observations on the implementation of the article***

Similarly to the review of implementation of article 17 of the UNCAC and in relation to article 191 CC on “Misappropriation, embezzlement or conversion of property by malversation”, the reviewing experts noted the lack of clarity as to whether the term “property” also entailed rights, interests, securities or any other things of value. In response, the Ukrainian authorities referred to article 190 of the Civil Code, as well as the judicial practice of the Supreme Court, for the definition of property, which was reported to be considered in a broad manner to entail property rights and liabilities as well.

## ***Article 23 Laundering of proceeds of crime***

### ***Subparagraph 1 (a)***

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

***(a) Summary of information relevant to reviewing the implementation of the article***

Part one of the Article 209 CC envisages liability for financial transaction with pecuniary means or other property obtained as a result of socially dangerous offence that preceded the legalization (laundering) of proceeds as well as actions aimed at concealment or disguising illicit origin of pecuniary means or other property or possession of that, right for such means or property, its origin, location, movement as well as acquisition, possession or using of the pecuniary means or other property obtained as a result of socially dangerous offence that preceded legalization (laundering) of proceeds.

Actions that are punishable according to the CC with imprisonment (except actions envisaged for by the Articles 207, 212, and 212<sup>1</sup> CC) or action committed outside of Ukraine if it is recognized as socially dangerous offence that preceded legalization (laundering) of proceeds according to criminal laws of the state where it had been committed and is a crime under Criminal Code of Ukraine and proceeds resulted from which are illicit are attributed to predicate crimes (Para. 1 of Notes to Article. 209 of CCU).

In this regard, the provisions of article 209 CC cover fully the definition of "conversion or transfer" of property.

According to part one of article 209<sup>1</sup> CC, intentional not reporting or reporting wrong information on financial transactions that, according to the laws are subject to financial monitoring, to the authorized central agency of the executive branch with special status on the matters of financial monitoring if these actions caused material damage to the protected by the laws rights, freedoms or interests of separate citizens, state or public interests or interests of legal persons are considered to be crime.

***Article 209. Legalizing (laundering) proceeds from crime***

*1. Conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a socially dangerous unlawful action which preceded legalization (laundering) of profits, as well as carrying out actions aimed at concealing or masking illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement, and acquiring, owing, or disposing of money or other property obtained as a result of committing a publicly dangerous unlawful action which preceded legalization (laundering) of profits, - shall be punishable by imprisonment for a term of three to six years, with deprivation of right to hold certain positions or engage in certain activities for a term up to two years, with forfeiture of money or other property obtained as proceeds from crime, and with confiscation of property.*

*2. Actions as referred to in paragraph 1 of the present Article, if committed repeatedly or by a group of individuals upon prior conspiracy, or if committed in large amounts, - shall be punishable by imprisonment for a term of seven to twelve years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or other property obtained as proceeds from crime, and with confiscation of property.*

3. Actions as referred to in paragraph 1 or 2 of the present Article, if committed by an organized group or if committed in large amounts, - shall be punishable by imprisonment for a term of eight to fifteen years, with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or other property obtained as proceeds from crime, and with confiscation of property.

#### *Notes*

1. Under this Article, it is understood that a socially dangerous unlawful action which preceded legalization (laundering) of profits is considered to be an action which is punishable, under the Criminal Code of Ukraine, with imprisonment (except actions punishable under Articles 207, 212 and 2121 of the Criminal Code of Ukraine), or which was committed outside Ukraine and is a socially dangerous unlawful action which preceded legalization (laundering) of profits under criminal statute of the State where it was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.

2. Legalizing (laundering) proceeds from crime is considered to be committed in a large amount if the value of money or other property involved in the crime concerned exceeds six thousand non-taxable minimum incomes of citizens.

3. Legalizing (laundering) proceeds from crime is considered to be committed in an especially large amount if the value of money or other property involved in the crime concerned exceeds eighteen thousand non-taxable minimum incomes of citizens.

At the same time, it is noteworthy that according to the Paras 4 and 17 of the Article 1 of the Law of Ukraine "On Prevention and Countering Legalization (Laundering) Illicit Proceeds or Financing Terrorism", any actions with assets done with help of the subject of primary financial monitoring are meant by financial transaction. Pecuniary means, property, property and non-property rights are considered as assets.

Besides, Article 368<sup>2</sup> of CCU envisages liability for illicit enrichment.

Ukraine provided statistics for the period between 2003 and 2010: according to the State Court Administration, 282 persons have already been sentenced pursuant to article 209 of the CCU (Legalizing (laundering) proceeds from crime).

The specific order of information collection is also provided by the Law of Ukraine "On Prevention and Counteraction of legalizing (laundering) Proceeds from Crime or of Terrorist Financing".

#### **(b) Observations on the implementation of the article**

Money-laundering is established as criminal offence in article 209 CC. The reviewing experts underscored that the basic objective elements of the conduct were described adequately in this provision and included the following: conducting financial transaction or concluding an agreement involving money or other property obtained as a result of committing a predicate

offence; concealing or “masking” the illegal origin of such money or other property or possession thereof, rights to such money or property, source of their origin, location, displacement; and acquiring, owing, or disposing of money or other property obtained as a result of committing a predicate offence. The review team also took into account the new Law on Prevention and Counteraction to Money Laundering, which supplements the provision of CC.

**(c) *Successes and good practices***

- The solid legal framework to prevent and combat money-laundering, as it was further enhanced in 2010 by specific legislation in this field.

***Article 23 Laundering of proceeds of crime***

***Subparagraph 1 (b) (i)***

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) *Summary of information relevant to reviewing the implementation of the article***

See above.

**(b) *Observations on the implementation of the article***

See above.

***Article 23 Laundering of proceeds of crime***

***Subparagraph 1 (b) (ii)***

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*



(b) *Subject to the basic concepts of its legal system:*

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Reference is made to articles 14 through 16 as well as 26, 27 and 29 CC for compliance with the provisions described above.

***Article 14. Preparation for crime***

- 1. The preparation for crime shall mean the looking out or adapting means and tools, or looking for accomplices to, or conspiring for, an offense, removing of obstacles to an offense, or otherwise intended conditioning of an offense.*
- 2. Preparation to commit a minor criminal offense does not give rise to criminal liability.*

***Article 15. Criminal attempt***

- 1. A criminal attempt shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a criminal offense prescribed by the relevant article of the Special Part of this Code, where this criminal offense has not been consummated for reasons beyond that person's control.*
- 2. A criminal attempt shall be consummated where a person has completed all such actions as he/she deemed necessary for the consummation of an offense, however, the offense was not completed for the reasons beyond that person's control.*
- 3. A criminal attempt shall be unconsummated where a person has not completed all such actions as he/she deemed necessary for the consummation of an offense for the reasons beyond that person's control.*

***Article 16. Criminal liability for an unconsummated criminal offense***

*The criminal liability for the preparation for crime and a criminal attempt shall rise under Article 14 or 15 and that article of the Special Part of this Code which prescribes liability for the consummated crime.*

***Article 26. The notion of complicity***

*Criminal complicity is the willful co-participation of several criminal offenders in an intended criminal offense.*

***Article 27. Types of accomplices***

- 1. Organizer, abettor and accessory, together with the principal offender, are deemed to be accomplices in a criminal offense.*
- 2. The principal (or co-principal) is the person who, in association with other criminal offenders, has committed a criminal offense under this Code, directly or through other*

persons, who cannot be criminally liable, in accordance with the law, for what they have committed.

3. The organizer is a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization.

4. The abettor is a person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise.

5. The accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.

6. The concealment of a criminal offender, tools or means of a criminal offense, traces of crime or criminally obtained things, or buying or selling such things shall not constitute complicity where they have not been promised in advance. Persons who have committed such acts shall be criminally liable only in cases prescribed by Articles 198 and 396 of this Code.

7. A promised failure to report a crime which is definitely known to be in preparation or in progress, prior to the consummation of such, shall not constitute complicity. Any such person shall be criminally liable only if the act so committed comprises the elements of any other criminal offense.

#### *Article 29. Criminal liability of accomplices*

1. The principal (or co-principals) shall be criminally liable under that article of the Special Part of this Code which creates the offense he has committed.

2. The organized, abettor and accessory shall be criminally liable under the respective paragraph of Article 27 and that article (or paragraph of the article) of the Special Part of this Code which creates an offense committed by the principal.

3. The features of character of a specific accomplice shall be criminated only upon such accomplice. Other circumstances that aggravate responsibility and are provided for by articles of the Special Part of this Code as the elements of a crime that affect the treatment of the principal's actions, shall be criminated only upon the accomplice who was conscious of such circumstances.

4. Where the principal commits an un consummated criminal offense, other accomplices shall be criminally liable for complicity in an un consummated crime.

5. Accessories shall not be criminally liable for the act committed by the principal, where that act was no part of their intent.

#### **(b) Observations on the implementation of the article**

The provisions referred to by the Ukrainian authorities allow for the conclusion that forms of participation in committing money-laundering offences, as well as the attempt to commit such offences, are covered by the general provisions of the CC on participation and attempt. Subparagraph 1 (b) (ii) of article 23 of UNCAC has been implemented.

## ***Article 23 Laundering of proceeds of crime***

### ***Subparagraph 2 (a) and (b)***

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine provided article 209 CC (including notes) for compliance with measures described above.

#### ***Article 209. Legalizing (laundering) proceeds from crime***

##### ***Notes***

*1. Under this Article, it is understood that a socially dangerous unlawful action which preceded legalization (laundering) of profits is considered to be an action which is punishable, under the Criminal Code of Ukraine, with imprisonment (except actions punishable under Articles 207, 212 and 2121 of the Criminal Code of Ukraine), or which was committed outside Ukraine and is a socially dangerous unlawful action which preceded legalization (laundering) of profits under criminal statute of the State where it was committed, and is a crime under the Criminal Code of Ukraine, and as result of which illegal proceeds were obtained.*

*2. Legalizing (laundering) proceeds from crime is considered to be committed in a large amount if the value of money or other property involved in the crime concerned exceeds six thousand non-taxable minimum incomes of citizens.*

*3. Legalizing (laundering) proceeds from crime is considered to be committed in an especially large amount if the value of money or other property involved in the crime concerned exceeds eighteen thousand non-taxable minimum incomes of citizens.*

The new Law on Prevention and Counteraction to Money Laundering expands the scope of predicate crimes to cover administrative offences as well.

### ***(b) Observations on the implementation of the article***

The relevant article of the CC referred to by the Ukrainian authorities stipulates that all unlawful actions which preceded legalization (laundering) of profits are considered

punishable. The review team noted that the term “socially dangerous unlawful action” is very broad and encompasses a broad range of predicate offences for purposes of money laundering. These predicate offences precede the laundering of profits and are punishable by imprisonment in general (previously imprisonment for a term of three to six years) or fine. They also include administrative offences according to the new Law on Prevention and Counteraction to Money Laundering. Thus, it can be concluded that subparagraph 2 (a) of article 23 of UNCAC is fully implemented.

### ***Article 23 Laundering of proceeds of crime***

#### ***Subparagraph 2 (c)***

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

See above.

#### ***(b) Observations on the implementation of the article***

The review team noted that, according to the note to paragraph 1 of article 209 CC, offences committed outside the territory of Ukraine are also considered as predicate offences for purposes of money laundering, subject to the double criminality requirement.

### ***Article 23 Laundering of proceeds of crime***

#### ***Subparagraph 2(d)***

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**(b) Observations on the implementation of the article**

The Ukrainian authorities provided comprehensive information to the members of the review team on the domestic legislation on money laundering during the review process. An official transmission of such legislation to the Secretariat will follow the review.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2(e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The fundamental principles of the Ukrainian legislation do not require that the money laundering offences do not apply to the persons who committed the predicate offence.

**(b) Observations on the implementation of the article**

The review team noted that the domestic legislation in Ukraine does not require that the money laundering offences do not apply to the persons who committed the predicate offence. Hence, cases of self-laundering are possible.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences,*

*the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Article 198 CC (Acquiring, receiving, storing or selling property obtained as proceeds from crime) illustrates adoption and implementation of the provision under review.

*Article 198: Acquiring, receiving, storing, or selling property obtained as proceeds from crime*

*Acquiring, receiving, storing, or selling property knowingly obtained as proceeds from crime, if it was not promised in advance, in the absence of signs of legalization (laundering) of proceeds from crime, -shall be punishable by arrest for a term up to six months, or restriction of freedom for a term up to three years or by imprisonment for the same term.*

This article 198 has one part only that envisages liability for not promised in advance acquisition or acceptance, storage or work off property known obtained by criminal means without signs of legalization (laundering) of illicit proceeds.

And reference to absence of “signs of legalization (laundering) of illicit proceeds” in the mentioned norm is needed for discrimination *corpus delicti* provided for in the mentioned article and *corpus delicti* provided for in the Article 209 "Legalization (laundering) of illicit proceeds ".

It should be emphasized that according to the provisions of article 27 CC, a person promised in advance to conceal, among others, items obtained illicitly, acquire them or work off such items is an accomplice. In this case the person is liable as associate in the crime.

**(b) Observations on the implementation of the article**

The Ukrainian authorities referred convincingly to article 198 CC on “Acquiring, receiving, storing or selling property obtained as proceeds from crime” as the provision domesticating article 24 of the UNCAC on the criminalization of concealment.

**Article 25 Obstruction of Justice**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the*

*production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine has provided Article 386 of the CCU for adoption and implementation of measures contained in subparagraph 25 (a).

*Article 386: Preclusion of appearance of a witness, victim or expert, or compulsion to testify or give an opinion.*

*Preclusion of appearance of a witness, victim or expert before a court, pre-trial investigation authorities, ad-hoc investigation commissions and ad-hoc special commissions of the Verkhovna Rada of Ukraine, or inquiry authorities, or compulsion of the above persons to testify or give an opinion, and also give any knowingly false testimony or opinion, by treats or murder, violence, destruction of property of these persons or their close relatives, or disclosure of defamatory information about them, or tampering with a witness, victim, or expert for the same purposes, and also any threats to commit any such actions as a revenge for any previously presented testimony or opinion, - shall be punishable by a fine of 50 to 300 tax-free minimum incomes, or correctional labour for a term up to two years, or to arrest for a term up to six months.*

Concerning subparagraph 25 (b), the Ukrainian authorities provided Articles 343-345, 347-349, and 376-379 of CCU.

*Article 343: Interference with activity of a law enforcement officer or catchpole*

*1. Any influence on a law enforcement officer or catchpole for the purpose of interfering with his official duty or obtaining any unlawful decision, - shall be punishable by a fine to 100 tax-free minimum incomes, or correctional labour for a term up to one year, arrest for a term up to three months.*

*2. The same actions that precluded the prevention of a criminal offense or apprehension of an offender or were committed by an official through abuse of office, - shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or arrest for a term up to six months, or imprisonment for a term up to four years.*

*Article 344. Interference with activity of a statesman*

*1. Any unlawful influence on the President of Ukraine, the Chairman of the Verkhovna Rada (Parliament) of Ukraine, a National Deputy (Member of Parliament) of Ukraine, the Prime*

*Minister of Ukraine, a member of Cabinet of Ministers of Ukraine, the Human Rights Commissioner of the Verkhovna Rada of Ukraine or his/her representative, the Head or a member of the Accounting Chamber, the Head or a member of the Central Election Committee, the Chairman of the National Bank of Ukraine, a member of the National Broadcast Council of Ukraine, the Head of the Antimonopoly Committee of Ukraine, the Head of the State Property Fund of Ukraine, the Head of the State Broadcast Committee of Ukraine for the purpose of preventing them from performance of their official duty or obtaining any unlawful decisions, - shall be punishable by a fine of 200 to 300 tax-free minimum incomes, or arrest for a term of three to six months, or restraint of liberty for a term up to two years, or imprisonment for the same term.*

*2. The same actions committed by an official through abuse of office, - shall be punishable by a fine of 300 to 500 tax-free minimum incomes, or restraint of liberty for a term up to three years, or imprisonment for the same term with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

#### *Article 345. Threats or violence against a law enforcement officer*

*1. Threats of murder, violence, destruction or impairment of property made in respect of a law enforcement officer, or his close relatives in connection with his official duties, - shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, or imprisonment for the same term.*

*2. Willful battery of, or infliction of minor or medium grave bodily injury on a law enforcement officer or his close relatives, in connection with his/her official duties, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term up to six years.*

*3. Willful infliction of grave bodily injury on a law enforcement officer or his close relatives, in connection with his/her official duties, - shall be punishable by imprisonment for a term of five to twelve years.*

*4. Any such actions as provided for by paragraph 1, 2 or 3 of this Article, if committed by an organized group, - shall be punishable by imprisonment for a term of seven to fourteen years.*

#### *Article 347. Willful destruction or impairment of property owned by a law enforcement officer*

*1. Willful destruction or impairment of the property owned by a law enforcement officer or his/her close relatives, in connection with his/her official duties, - shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or arrest for a term up to six months, or imprisonment for a term up to five years.*

*2. The same actions committed by setting a fire, explosion or any other generally dangerous method, or where they caused death of people or any other grave consequences, - shall be punishable by imprisonment for a term of six to fifteen years.*

#### *Article 348. Trespass against life of a law enforcement officer, a member of a community formation for the protection of public order, or a military servant*

*Murder or attempted murder of a law enforcement officer or his/her close relatives in connection with his/her official duties, and also of a member of a community formation for the*



*protection of public order, or a military servant in connection with their activities related to the protection of public order, - shall be punishable by imprisonment for a term of nine to fifteen years, or life imprisonment.*

*Article 349. Hostage taking of a representative of public authorities or a law enforcement officer*

*Taking or holding of a representative of public authorities, or a law enforcement officer, or their close relatives as hostages for the purpose of making a public or any other institution, business or organization, or any official to take or refrain from any actions as a condition for release of the hostage, - shall be punishable by imprisonment for a term of eight to fifteen years.*

*Article 376. Interference with activity of judicial authorities*

*1. Any interference with activity of a judge for the purpose of preventing him from performance of his official duties or obtaining an unlawful judgment, - shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months.*

*2. The same actions that precluded the prevention of a criminal offence or apprehension of the offender, or committed by a person through abuse of office, - shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or arrest for a term up to six months, or imprisonment for a term up to three years.*

*Article 377: Treats or violence against a judge, assessor or juror*

*1. Treats of murder, violence, destruction or impairment of property made in respect of a judge, assessor or juror, and also their close relatives, in connection with their activity related to the administration of justice,- shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, or imprisonment for the same term.*

*2. Willful battery of, or infliction of minor or medium grave bodily injury on a judge, assessor, juror or their close relatives, in connection with their activity related to the administration of justice,- shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term up six years.*

*3. Willful infliction of grave bodily injury on a judge, assessor, juror or their close relatives, in connection with their activity related to the administration of justice,- shall be punishable by imprisonment for a term of five to twelve years.*

*Article 378. Willful destruction or impairment of property owned by a judge, assessor or juror*<sup>136</sup>

*1. Willful destruction or impairment of property owned by a judge, assessor or juror or their close relatives, in connection with their activities related to the administration of justice, - shall be punishable by arrest for a term up to six months, or imprisonment for a term up to five years.*

2. *The same actions committed by setting fire, explosion, or any other generally dangerous method, or where they caused death of people or any other grave consequences, - shall be punishable by imprisonment for a term of six to fifteen years.*

*Article 379. Trespass against life of a judge, assessor or juror in connection with their activity related to the administration of justice.*

*Murder or attempted murder of a judge, assessor, juror or their close relatives, in connection with their activity related to the administration of justice, - shall be punishable by imprisonment for a term of eight to fifteen years, or life imprisonment.*

**(b) *Observations on the implementation of the article***

Ukraine reported a quite comprehensive nexus of provisions in the CC (articles 343-349 and 376-379) criminalizing various acts of witness intimidation and interference in the witness testimony, as well as interference in the exercise of official duties of law enforcement and judicial authorities. The review team was of the view that those provisions adequately meet the need to combat obstruction of justice.

***Article 26 Liability of legal persons***

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative*

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Law No. 3206 extended liability to legal persons.

***Article 4. Subjects of Liability for Corruptive Offences***

*1. Subjects of liability for corruptive offences shall be:*

*4) Officials of legal entities and physical persons, in cases where persons stipulated by clauses 1 and 2 in part one of this Article, or with participation of such persons, other persons received illegal benefit from them.*

***Article 21. Types of Liability for Corruptive Offences***

*1. For the commitment of corruptive offences the persons stipulated by part one of Article 4 of this Law, shall face criminal, administrative, civil, and disciplinary liability in accordance with the procedure established by law.*

*2. Information about persons brought to justice for the commitment of corruptive offences shall be within a period of three days from the date of coming into force of the relevant court judgment, of the institution of civil proceedings, or of the imposition of disciplinary penalty, entered in the Integrated State Register of persons who committed corruptive offences, to be made up and maintained by the Ministry of Justice of Ukraine. The Regulation on the Integrated State Register of persons who committed corruptive offences and the procedure for the making up and maintaining this Register shall be approved by the Ministry of Justice of Ukraine.*

***(b) Observations on the implementation of the article***

Despite the effort made with the adoption of Law No. 3206-VI to extend liability for corruption-related offences to legal persons as well, the Ukrainian authorities confirmed during the country visit that more needed to be done to clearly establish criminal liability for legal entities. Therefore, this issue is included among the basic objectives of the National Strategy against Corruption for the period 2011-2015. The national authorities also recognized the need for amendments in the domestic legislation to ensure the recognition of administrative liability of legal persons for corruption-related offences, given that, at the time of the country visit, such liability was foreseen only with regard to money-laundering (article 23 of the relevant law).

In view of the above, the reviewing experts made the following recommendation:

- Ensure that the domestic legislation provides for liability of legal persons for offences established in accordance with the UNCAC, in line with article 26 of the UNCAC.

***(e) Technical assistance needs***

The following form of technical assistance, if available, would be needed:

- Trainings/workshops, as well as summary/compilation of good practices/lessons learned on the establishment of liability of legal persons.

***Article 27 Participation and attempt***

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

2. *Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*
3. *Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Regarding paragraph 1, the Ukrainian authorities provided Articles 26, 27, and 29 CC for adoption and implementation of the provisions under review.

*Article 26: The notion of complicity*

*Criminal complicity is the wilful co-participation of several criminal offenders in an intended criminal offense.*

*Article 27: Types of accomplices*

1. *Organizer, abettor and accessory, together with the principal offender, are deemed to be accomplices in a criminal offense.*
2. *The principal (or co-principal) is the person who, in association with other criminal offenders, has committed a criminal offense under this Code, directly or through other persons, who cannot be criminally liable, in accordance with the law, for what they have committed.*
3. *The organizer is a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization .*
4. *The abettor is a person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise.*
5. *The accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools, or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.*
6. *The concealment of a criminal offender, tools or means of a criminal offense, traces of crime or criminally obtained things, buying or selling such things shall not constitute complicity where they have not been promised in advance. Persons who have committed such acts shall be criminally liable only in cases prescribed by Articles 198 and 396 of this Code.*
7. *A promised failure to report a crime which is definitely known to be in preparation or in progress, prior to the consummation of such, shall not constitute complicity. Any such person shall be criminally liable only if the act so committed comprises the elements of any other criminal offense.*

#### *Article 29: Criminal liability of accomplices*

- 1. The principal (or co-principals) shall be criminally liable under that article of the Special Part of this Code which creates the offense he has committed.*
- 2. The organized, abettor and accessory shall be criminally liable under the respective paragraph of Article 27 and that article ( or paragraph of the article) of the Special Part of this Code which creates an offense committed by the principal.*
- 3. The features of character of a specific accomplice shall be criminated only upon such accomplices. Other circumstances that aggravate responsibility and are provided for by articles of the Special Part of this Code as the elements of a crime that affect the treatment of the principal's actions, shall be criminated only upon the accomplice who was conscious of such circumstances.*
- 4. Where the principal commits an unconsummated criminal offense, other accomplices shall be criminally liable for complicity in an unconsummated criminal offense.*
- 5. Accessories shall not be criminally liable for the act committed by the principal, where that act was no part of their intent.*

Concerning paragraph 2, Ukraine cited Articles 15 and 16 CC.

#### *Article 15: Criminal attempt*

- 1. A criminal attempt shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a crime offense prescribed by the relevant article of the Special Part of this Code, where this criminal offense has not been consummated for the reasons beyond that person's control.*
- 2. A criminal attempt shall be consummated where a person has completed all such actions as he/she deemed necessary for the consummation of an offense, however, the offense was not completed for the reasons beyond that person's control.*
- 3. A criminal attempt shall be unconsummated where a person has not completed all such actions as he/she deemed necessary for the consummation of an offense for the reasons beyond that person's control.*

#### *Article 16: Criminal liability for an unconsummated criminal offense*

A criminal liability for the preparation for crime and a criminal attempt shall rise under Articles 14 or 15 and that article of the Special Part of this Code, which prescribes liability for the consummated crime.

Regarding paragraph 3, Ukraine provided Articles 14 and 16 of the CCU.

#### *Article 14: Preparation for crime*

- 1. The preparation for crime shall mean the looking out or adapting means and tools, or looking for accomplices at the commission of a criminal offence prescribed by the relevant article of the Special Part of this Code, where this criminal offence has not been consummated for reasons beyond that person's control.*
- 2. Preparation to commit a minor criminal offence does not give raise to criminal liability.*

*Article 16: Criminal liability for an unconsummated criminal offence*

*A criminal liability for the preparation for crime and a criminal attempt shall rise under Articles 14 or 15 and that article of the Special Part of this Code which prescribes liability for the consummated crime.*

**(b) Observations on the implementation of the article**

The review team was satisfied that the reported provisions were in compliance with the provision of the Convention under review.

*Article 28 Knowledge, intent and purpose as elements of an offence*

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

**(a) Summary of information relevant to reviewing the implementation of the article**

*Article 64: Circumstances to be proved in criminal proceedings*

*During pre-trial investigation, inquiry, and trial, should be proved in court:*

- 1) occurrence of crime (time, place, the way in which, and circumstances under which a crime has been committed;*
- 2) guilt of the accused in the commission of the crime and motives thereto;*
- 3) circumstances which affect the degree of severity of the crime, as well as circumstances which characterize the personality of the accused, commute or aggravate the punishment;*
- 4) nature and amount of damage caused by the crime, as well as the amount health institution spent on in-patient treatment of the victim.*

**(b) Observations on the implementation of the article**

The reviewing experts found that the Ukrainian legislation is in compliance with the article under review.

*Article 29 Statute of limitations*

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or*

*provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

*Article 49: Discharge from criminal liability due to limitation period*

*1. A person shall be discharged from criminal liability if the following periods have elapsed from the date of the criminal offense to the effective date of the judgment:*

- (1) two years where a minor offense has been committed and the prescribed punishment is less severe than the restraint of liberty; 14*
- (2) three years where a minor offense has been committed and the prescribed punishment is the restraint of liberty or imprisonment;*
- (3) seven years where an offense of medium gravity has been committed;*
- (4) fifteen years where a grave offense has been committed;*
- (5) twenty years where a special grave offense has been committed.*

*2. The statute of limitations shall be saved where a person who committed criminal offense evaded investigation or trial. In such cases, the running of the statute of limitations is resumed as of the date of the person's surrender or apprehension. In this case, the person shall be discharged from liability if twenty years elapsed after the commission of the offense.*

*3. The statute of limitations shall be forfeited where a person, before the terms specified in paragraph (1) and (2) of this Article have expired, commits another medium grave, grave or special grave offense. In this case, a limitation period starts on the date on which such new crime is committed. Each offense gives rise to its own period of limitation.*

*(4) Where a person has committed a special grave offense punishable by life imprisonment, the issue of limitation shall be decided by a court. Where a court rules out the possibility to apply the period of limitation, a sentence of life may not be imposed and is commuted to an imprisonment for a determinate term.*

*(5) The statute of limitation shall be applied where any crime against the peace and humanity, as provided for in Articles 437 through 439, and paragraph 1 of Article 442 of this Code.*

The effectiveness of these measures has been assessed.

**(b) Observations on the implementation of the article**

The reviewing experts took into account the reported article 49 CC on “Discharge from criminal liability due to limitation period” and were of the view that, in general, the statute of limitations periods prescribed for different crimes according to their gravity were long enough to preserve the interests of the administration of justice. The review team noted the comparatively lower statute of limitations period for minor offences carrying imprisonment (three years). In this regard, the review team took into account the explanations provided by the national authorities regarding the suspension of such statute of limitations period where the offender evades the administration of justice. They further invited the national authorities,

if deemed necessary, to consider extending the limitation period for those crimes as well in future reviews of criminal legislation.

## ***Article 30 Prosecution, adjudication and sanctions***

### ***Paragraph 1***

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

#### ***Criminal Code of Ukraine Chapter XVII. CRIMINAL OFFENSES IN OFFICE***

#### ***Article 364. Abuse of authority or office***

*1. Abuse of authority or office, that is a wilful use of authority or official position contrary to the official interests by an official for mercenary motives or other personal benefit or benefit of any third persons, where it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, - shall be punishable by correctional labour for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*2. The same act that caused any grave consequences, - shall be punishable by imprisonment for a term of three to six years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years. 3. Any such actions as provided for by paragraph 1 or 2 of this Article, of committed by a law enforcement officer, - shall be punishable by imprisonment for a term of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property.*

#### ***Notes:***

*1. Officials shall mean persons who permanently or temporary represent public authorities, and also permanently or temporary occupy positions in businesses, institutions or organizations of any type of ownership, which are related to organizational, managerial, administrative and executive functions, or are specifically authorized to perform such functions.*

*2. Officials shall also mean foreigners or stateless persons who perform the functions described in paragraph 1 of this Note.*

*3. For the purposes of Articles 364, 365 and 367, significant damage with reference to any pecuniary losses shall mean any damage that equals or exceeds 100 tax-free minimum incomes.*



4. For the purposes of Articles 364 to 367, grave consequences with reference to any pecuniary losses shall mean any such consequences that equal or exceed 250 tax-free minimum incomes.

#### *Article 365: Excess of authority or official powers*

1. Excess of authority or official powers, that is, a wilful commission of acts, by an official, which patently exceed the rights and powers in him/her, where it caused any substantial damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities,-

shall be punishable by correctional labour for a term up to two years, or restraint of liberty for a term up to five years, or imprisonment for a term of two to five years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. Excess of authority or official powers accompanied with violence, use of weapons, or actions that caused pains or were derogatory to the victim's personal dignity, but without elements of torture,-

shall be punishable by imprisonment for a term of three to eight years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for paragraph 1 or 2 of this Article, if they caused any grave consequences,-

shall be punishable by imprisonment for a term of seven to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

#### *Article 366: Forgery in office*

1. Forgery in office, that is putting any knowingly false information in any official documents, any other fabrication of documents, and also making and issuing any knowingly false document by an official,-

shall be punishable by a fine up to 50 tax-free minimum incomes, restraint of liberty for a term up to three years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. The same acts that caused any grave consequences,-

shall be punishable by imprisonment for a term of two to five years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

#### *Article 367: Neglect of official duties*

1. Neglect of official duties, that is the failure to perform or improper performance, by an official, of his/her official duties due to negligence, where it caused any significant damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities,-

shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years with the

*deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.*

*2. The same acts that caused any grave consequences, - shall be punishable by imprisonment for a term of two to five years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with or without a fine of 100 to 250 tax-free minimum incomes.*

#### *Article 370: Provocation of bribery*

*1. Provocation of bribery, that is, an intentional creation, by an official, of circumstances that cause the giving or taking of a bribe, for the purpose of uncovering those who gave or took the bribe, -*

*shall be punishable by restraint of liberty for a term up to five years, or imprisonment for a term of two to five years.*

*2. The same act committed by a law enforcement official, - shall be punishable for imprisonment for a term of three to seven years.*

*Law No. 3207 on Amending Certain Legislative Acts of Ukraine Pertaining to Liability for Corruptive Offences, recently adopted, contains the following provisions.*

*3) The heading of section XVII of the Special Part shall read:*

*"Section XVII*

*CrimeS IN THE REALM OF service activitiES and professional activitiES INVOLVING THE RENDERING OF Public serviceS";*

*4) Article 364 shall read:*

*"Article 364. Abuse of Power or of Official Status*

*1. Abuse of power or of official status, that is, a deliberate, motivated by lucrative self-interest, or other personal interest, or interests of third parties, use by an official of power or of official status contrary to the interests of service, where such abuse caused substantial damage to the protected by law rights, freedoms, and interests of individual citizens, or state or public interests, or interests of legal entities, –*

*Shall be punishable by corrective labor for a term of up to two years, or by imprisonment for a term of up to six months, or by restriction of freedom for a term of up to three years, concurrently with deprivation of the right to hold certain positions, or to engage in certain activities, for a term of up to three years and with fine in the amount of two hundred and fifty to seven hundred and fifty tax-exempt minimum incomes of citizens.*

*2. Same action where it caused grave consequences, – shall be punishable by imprisonment for a term of between three and six years concurrently with deprivation of the right to hold certain positions, or to engage in certain activities, for a term of up to three years and with fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens.*

*3. Actions stipulated by part one or two of this Article, if committed by an employee of a law-enforcement body, –*

*shall be punishable by imprisonment for a term of between five and ten years concurrently with deprivation of the right to hold certain positions, or to engage in certain activities, for a term of up to three years and with confiscation of property.*

*Notes. 1. Officers for the purpose of Articles 364, 365, 368, 368<sup>2</sup>, and 369 of this Code are the persons who permanently, temporarily, or by special authority perform the functions of representatives of state authorities or local governments, as well as hold, permanently or temporarily, in state authorities, local government bodies, at state or municipal enterprises, in institutions or organizations, such positions as involve the performance of organizational-dispositive or administrative-economic functions, or perform such functions by special authority granted to the person by a state authority, local government body, central state executive body with a special status, authorized body or authorized person of an enterprise, institution, organization, court, or by law.*

*For the purpose of Articles 364, 365, 368, 368<sup>2</sup>, and 369 of this Code, conferred the status of state and municipal enterprises are legal entities in whose statutory fund the state or municipal stake, respectively, exceeds 50 percent, or constitutes the value that assures to the state or to the territorial community the right of decisive influence on the economic activity of such enterprise.*

*2. Also deemed officers shall be officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states including jurors, other persons who perform state functions on behalf of foreign states, in particular, of state bodies or state enterprises), as well as foreign arbitrators, persons authorized to settle civil, commercial, or labor disputes in foreign states in a procedure that is alternative to judicial procedure, officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), members of international parliamentary assemblies in which Ukraine participates, and judges and officials of international courts.*

*3. Deemed substantial damage in Articles 364, 364<sup>1</sup>, 365, 365<sup>1</sup>, 365<sup>2</sup>, and 367, where such damage consists in causing material losses, shall be such damage that exceeds by one hundred and more times the tax-exempt minimum income of citizens.*

*4. Deemed grave consequences in Articles 364 through 367, where such consequences consist in causing material losses, shall be such consequences that exceed by fifty and more times the tax-exempt minimum income of citizens";*

*5) Add Article 364<sup>1</sup> of the following content:*

**"Article 364<sup>1</sup>. Abuse of Official Authority by an Officer of a Private Law Legal Entity Irrespective of Organizational-Legal Form**

*1. Abuse of official authority, that is, deliberate, with the purpose of gaining illegal benefits for him/herself or for other persons, use contrary to the interests of the private law legal entity concerned irrespective of the organizational-legal form thereof, by an officer of such legal entity of his/her authority, where such use caused substantial damage to the protected by law rights or interests of individual citizens, or state or community interests, or interests of legal entities, –*

*shall be punishable by fine in the amount of one hundred and fifty to four hundred tax-exempt minimum incomes of citizens, or by corrective labor for a term of up to one year, or by imprisonment for a term of up to three months, or by restriction of freedom for a term of up to two years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years.*

*2. Same action, if caused grave consequences, –*

*shall be punishable by fine in the amount of four hundred to nine hundred tax-exempt minimum incomes of citizens, or by detention for a term of up to six months, or by imprisonment for a term of three to six years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.*

*Note. In Articles 364<sup>1</sup>, 365<sup>2</sup>, 368<sup>2</sup>, 368<sup>3</sup>, 368<sup>4</sup>, and 369<sup>2</sup> of this Code “illegal benefit” means pecuniary funds or other assets, advantages, perks, services, or non-material assets that are without lawful grounds promised, offered, given, or received without payment or at a price below minimum market price”;*

6) Article 365 shall read:

**"Article 365. Exceeding of Power or of Service Authority**

*1. Exceeding of power or of service authority, that is, deliberate commitment by an officer of actions that clearly transgress the limits of accorded rights or powers, where such actions caused substantial damage to the protected by law rights or interests of individual citizens, or state or community interests, or interests of legal entities, –*

*shall be punishable by corrective labor for a term of up to two years, or by restriction of freedom for a term of up to five years, or by imprisonment for a term of two to five years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with fine in the amount of two hundred and fifty to five hundred tax-exempt minimum incomes of citizens.*

*2. Exceeding of power or of official authority, if accompanied by violence or threats to use violence, by use of weapons or special means, or actions that are painful and such that insult personal dignity of the injured person, in the absence of the signs of torture, – shall be punishable by imprisonment for a term of three to eight years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens.*

*3. Actions stipulated by part one or two of this Article, if caused grave consequences, – shall be punishable by imprisonment for a term of seven to ten years, concurrently with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with fine in the amount of seven hundred and fifty to one thousand five hundred tax-exempt minimum incomes of citizens".*

**(b) Observations on the implementation of the article**

In assessing the sanctions applicable for corruption offences (based on the articles of the CC cited by the Ukrainian authorities under this provision, but also the articles under other criminalization provisions of the Convention under review), the review team noted that the rather high sanctions were available for aggravated cases of such offences, but the minimum penalty of the basic forms of such offences as passive bribery in the public sector (“arrest” of six months), active bribery in the public sector (imprisonment of up to two years), or bribery in the private sector (imprisonment of up to two years) appeared to be comparatively lower. Moreover, the “offering” of a bribe in the public sector is subject to less severe sanctions than the “giving” and the aggravated circumstances are foreseen only for the “giving” of the bribe. The review team drew the attention of the national authorities to this disparity of sanctioning measures and invited them to consider ways and means to address such disparity in future reviews of criminal legislation.

In view of the above, the reviewing experts made the following recommendation to ensure further improvement of the implementation of article 30, paragraph 1, of the UNCAC:

- Consider, in the context of future reviews of criminal legislation, ways and means to address existing disparities of sanctioning measures against basic forms of such crimes as bribery in the public and private sectors, as well as against certain conducts constituting bribery (offering a bribe, as opposed to giving a bribe).

## ***Article 30 Prosecution, adjudication and sanctions***

### ***Paragraph 2***

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Reference was made to article 48 of the Law of Ukraine “On the Judiciary and Status of Judges”, as well as articles 218 through 221 of the Law of Ukraine “On Rules of Procedures of Verkhovna Rada of Ukraine”.

##### ***Article 48: Judicial Immunity***

- 1. Judges shall be immune. Without the consent of the Verkhovna Rada of Ukraine, no judge may be detained or arrested prior to guilty verdict by the court.*
- 2. A judge detained on suspicion of committing an offense entailing criminal or administrative liability must be released immediately after establishing his/her identity. No judge may be forcefully taken to police or any institution or body except for to court.*
- 3. Criminal case of a judge may be opened only by the Prosecutor General of Ukraine, or his/her deputy.*
- 4. A judge held criminally liable shall be removed from office by High Qualifications Commission of Judges of Ukraine based on reasoned Resolution of the General Prosecutor of Ukraine.*
- 5. Intrusion into the home or other estate or office of a judge, into his/her personal or official vehicle, conduct of examination, search, or seizure therein, interception of his/her telephone conversation, personal search of a judge, as well as search and seizure of his/her correspondence, belongings, or documents shall only take place on the basis of a court decision.*

6. *The territorial jurisdiction of a case in which a judge is accused of committing a crime shall be determined by a Chief Justice of the Supreme Court of Ukraine. The case may not be heard by a court in which the accused holds or held a judicial position.*
7. *Liability for court-induced damages shall be borne by the state on the basis and following the procedure established by law.*

*Law of Ukraine “On Rules of Procedures of Verkhovna rada of Ukraine”*

*Article 218: Movement of the application on bringing to the criminal liability, detention or arrest.*

1. *According to the part three of article 80 of Constitution of Ukraine Verkhovna Rada of Ukraine should approve a people’s deputy to be brought to the criminal liability, detention or arrest, and according to the part three of article 126, article 149 of Constitution of Ukraine Verkhovna Rada of Ukraine should approve detention or arrest of the judge of the Constitutional Court, judge of the Court of general jurisdiction.*
2. *Law enforcement bodies responsible for pre-trial investigation or court authorities should apply for the approval on bringing to the criminal liability, detention or arrest of people’s deputy or judge. The separate application should be made for each preventive measure to be applied. Application concerning the people’s deputy should be moved to the parliament by the Prosecutor General, and application regarding judge- by Head of Supreme Court.*
3. *Application for the approval on bringing to criminal liability, detention or arrest of people’s deputy, detention or arrest of judge should be motivated, contain those facts and evidences that prove the social danger of the deed committed which is defined by the Criminal Code. In the application on detention or arrest, reasons for detention or arrest should be indicated.*
4. *Head of Verkhovna Rada of Ukraine will return to Prosecutor General or Head of Supreme Court the application that does not fit demands of that article and inform about that Verkhovna Rada of Ukraine on the nearest plenary session.*

*Article 219: Written explanations of the people’s deputies*

1. *Head of Verkhovna Rada of Ukraine proposed to the people’s deputy regarding whom the application on bringing to the criminal liability, detention or arrest had been made during five days to give the written explanations on the case to parliamentary committee responsible for the keeping rules of proceedings and entrust that committee to draw conclusion on that application on approval of bringing to the criminal liability, detention or arrest of the people’s deputy according to the Law.*

*Article 220: Conclusion on application on approval of bringing to the criminal liability, detention or arrest by Verkhovna Rada of Ukraine.*

1. *Committee entrusted to draw conclusion on application on approval of bringing to the criminal liability, detention or arrest of the people’s deputy according to the Law, should determine the sufficiency, legality and reasonableness of application, legality of reception of evidence indicated in the application and looks for the complaints. Preparation of that conclusion should be completed urgently, but no longer than 20 days. The person indicated in*

*the application is invited to the Committee session. Absence of that person on the Committee session without reasonable excuse is not the reason not to consider the case and to draw a conclusion by the Committee.*

*2. Prosecutor General (Acting Prosecutor General) takes part in the Committee session if the application was moved by the General Prosecutor. Head of the Supreme Court (Acting Head of the Supreme Court) takes part in the Committee session if the application was moved by the Head of the Supreme Court.*

*3. If it is necessary, Committee could make a request for some additional documents or listen to the explanations of other persons according to the request made by the person regarding whom the application was moved.*

*4. In case of the sufficient evidences are not enough to substantiate the application Head of Verkhovna Rada of Ukraine has right to send it back respectively to Prosecutor General or Head of the Supreme Court together with well-founded conclusion and with the proposition to give additional grounds. In that case, the Committee stops the checks of information and informs Head of Verkhovna Rada of Ukraine who in his/her turn informs Verkhovna Rada of Ukraine.*

*5. Committee leaves application without consideration till the day of the reception of requested materials or substantiated answer.*

*Article 221: Consideration of the application on approval of bringing to the criminal liability, detention or arrest by Verkhovna Rada of Ukraine*

*1. Verkhovna Rada of Ukraine on its plenary session considers the application on approval of bringing to the criminal liability, detention or arrest of the people's deputy, detention or arrest of judge on the determined day but not later than seven days after the conclusion had been drawn by the Committee.*

*8. Decision about approval of bringing to the criminal liability, detention or arrest is taken by Verkhovna Rada of Ukraine by open ballot by a majority vote in the form of decree. That decision could not be revised except the new circumstances not known before will be discovered during the application consideration.*

*9. Head of Verkhovna Rada of Ukraine should inform Prosecutor General or Head of the Supreme Court respectively about the decision taken.*

***(b) Observations on the implementation of the article***

The review team noted that, according to the Constitution, the following categories of high-ranking officials benefit from immunity in criminal proceedings: the President (article 106), Members of the Parliament (article 80) and judges (article 126). The President enjoys immunity during the term of office. The President may be removed from office by impeachment, which requires a three quarters' majority decision of the Parliament. Members of the Parliament are not legally liable for the results of voting or for statements made in the Parliament. The judges cannot be detained or arrested without the consent of the Parliament. But this does not mean that a judge cannot be convicted without the consent of the Parliament. A judge detained on suspicion of committing an offence which entails criminal or administrative responsibility is released after his identity is established. The procedure for lifting the immunity of a MP or a judge is established by the Regulations of Parliament. A

request for lifting the immunity of an MP is submitted to the Special Committee on Parliamentary Ethics and supported by the Prosecutor General, whereas the corresponding request for a judge is introduced to the Committee on Legal Issues by the President of the Supreme Court. The decision to lift the immunities is taken by simple majority during an open name voting procedure.

In conclusion, no issues of non-compliance were found.

### ***Article 30 Prosecution, adjudication and sanctions***

#### ***Paragraph 3***

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to the Criminal Procedure Code in its Article 97 (Obligation to accept applications and reports of crimes and the way in which the same are considered), Article 114 (Investigator's powers), as well as Article 227 (Prosecutorial powers to supervise how the injury and pre-trial investigation comply with law).

*Article 97: Obligation to accept applications and reports of crimes and the way in which the same are considered.*

*Prosecutor, investigator, inquiry agency or judge are required to accept applications and reports of crimes which have been committed or are being prepared, including in cases which do not fall within their competence.*

*Prosecutor, investigator, inquiry agency or judge is required, within three days, to take one of the following decisions on the application or report of crime:*

*1) institute criminal proceedings;*

*2) deny instituting criminal proceedings;*

*At the same time, all possible measures are taken to prevent or suppress the crime. With appropriate grounds present, which confirm that a real threat exists to the life and health of the person who reported the crime, it is necessary to take required measures to have applicant's security ensured, as well as security of his/her family member and close relatives if attempts to exert influence on the applicant are made through threats or any other illegal actions.*

*If it is necessary to verify an application or report of crime before instituting criminal proceedings, such verification is made by the prosecutor, investigator or inquiry agency within ten days by way of taking explanations from particular citizens or officials or by directing to submit required documents.*



*An application or reports of crimes can be verified, prior to instituting criminal proceedings, through operational- detective operations. Specific operational- detective activities as specified in Ukrainian legislative acts are conducted upon court's authorization which is issued in response to the submission of the chief (his/her deputy) of the operational unit concerned, such submission being subject to the consent of the prosecutor. The judge passes a ruling on issuance of such authorization and such ruling may be challenged as prescribed in Articles 177, 178 and 190 of the present Code.*

#### *Article 114: Investigator's powers*

*When conducting pre-trial investigation, investigator takes all decisions related to investigation and investigative actions on his/her own except when law requires obtaining consent of the court (judge) or prosecutor, and is fully responsible for conducting them timely and within the scope of law.*

*Whenever investigator disagrees with prosecutor's instructions with regard to prosecuting an individual as an accused, determining the nature of crime and scope of charges, referring the case to court or dismissing the case, investigator shall have the power to submit the case to a higher prosecutor with his/her written comments. In such a case, the prosecutor either revokes instructions of the lower prosecutor or assigns investigation in this case to another investigator.*

*Within cases he/she investigates, investigator may give assignments and instructions to inquiry agencies with regard to conducting detective and investigative actions and request assistance of inquiry agencies in the conduct of particular investigative actions. Such investigator's assignments and instructions are binding upon inquiry agencies.*

*In cases where pre-trial investigation is mandatory, investigator may proceed to pre-trial investigation at any time without waiting till inquiry agencies conduct actions specified in Article 104 of the present Code.*

*Decisions the investigator makes under law in the criminal case he/she investigates are binding upon all enterprises, institutions, organizations, officials and citizens.*

*When conducting various investigative actions, investigator may use typewriting, audio recording, stenography, filming, and video recording.*

#### *Article 227: Prosecutorial powers to supervise how the inquiry and pre-trial investigation comply with law.*

*When observing how the inquiry and pre-trial investigation comply with law, the prosecutor within the scope of his/her competence:*

- 1) requires from inquiry and pre-trial investigation agencies, for verification, records of criminal cases, materials, and other information on crimes committed, progress of inquiry, pre-trial investigation and identification of persons who have committed crimes; at least once per month, verifies how legislative provisions relating to the receipt, registration, and disposition of statements and reports on crimes committed or prepared to be committed are complied with;*
- 2) revokes illegal and ill-grounded decisions of inquirers and investigators;*
- 3) gives written instructions concerning investigation of crimes; imposition, alteration or revocation of a measure of restraint, determination of the nature of crime, conduct of*

*separate investigating actions and search for people who have committed crimes, including extradition of a person;*

*4) directs the inquiry to execute decisions on apprehension, compulsory appearance under law, placement in custody, search, removal, retrieval of criminals, execution of other investigative actions, as well as instructs to take necessary measures to resolve crimes, identify offenders in cases proceeded by the prosecutor or prosecutor office's investigator;*

*4-1) directs the inquiry to execute retrieval of apprehension of persons who committed a crime inside of Ukraine criminals, some procedural actions to extradite a person on request of foreign competent body;*

*5) takes part in the inquiry and pre-trial investigation and, when necessary, conducts investigative actions or full investigation in any case personally;*

*6) authorizes search, suspension of the accused from office and other actions of investigator and inquiry agency in instances specified on the present Code;*

*7) extends time-limits for investigation in cases and according to procedure prescribed in the present Code;*

*7-1) gives consent to, or files with the court, the motion to impose a measure of restraint in the form of custody, as well as to extend custody period as prescribed in the present Code;*

*8) returns criminal cases to the pre-trial investigation together with his/her instructions as to the conduct of supplementary investigation;*

*9) in view of ensuring the most complete and objective investigation, withdraws any case from the inquiry agency and assigns the same to investigator, transfer the case from one pre-trial investigation agency to another one, from one investigator to an other;*

*10) suspends the inquirer or investigator from conducting inquiry or pre-trial investigation if they have broken law during investigation of the case;*

*11) initiates criminal proceedings or denies instituting the same; dismisses or suspends proceedings in criminal cases; gives consent to dismissing a criminal case by the investigator when the present Code so allows; approves indictments, refers criminal cases to court;*

*12) decides on admitting defence counsel in the case.*

The prosecutor also exercises other powers specified in the present Code. He gives instructions to inquiry and pre-trial investigation agencies under the present Code in connection with instituting proceedings in criminal cases and investigating them are binding upon such agencies. Challenging instructions given before a higher prosecutor do not preclude their execution except as provided for in Article 114, second paragraph of the present Code.

The provisions of paragraphs 5 of article 368<sup>3</sup> and article 368<sup>4</sup> of the CCU allow for exclusion from criminal liability for illegal benefit-giver in cases when illegal benefit was demanded by an official from the private sector or in cases when a person reported the notion of giving the illegal benefit before any criminal prosecution was initiated against him/her.

#### **(b) Observations on the implementation of the article**

The review team noted that the role and functions of the Office of the Prosecutor General are set out in the Constitution (articles 121-123). The Prosecutor General is appointed to office by the President with the consent of the Parliament, reports to both the President and the Parliament and is dismissed from office by the President. The organization and operation of the Office of the Prosecutor General are determined by the Law on the Public Prosecution

Office. Specialized divisions are operating within the prosecution services to deal exclusively with corruption cases.

The initiation of criminal proceedings is based on the principle of mandatory prosecution. Article 4 CPC foresees a duty for the prosecutor to initiate criminal proceedings upon detection of offence indications. On the other hand, article 99 CPC stipulates that criminal proceedings may not be initiated where grounds to do so are lacking. During the country visit, it was reported that the new CPC prescribed the possibility of concluding a plea agreement between the prosecutor and the accused person, which can determine, inter alia, that person's obligations regarding cooperation in detection of the criminal offence perpetrated by another person.

### ***Article 30 Prosecution, adjudication and sanctions***

#### ***Paragraph 4***

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Reference was made to the Criminal Procedure Code (CPC) and its articles 148 (Objective of, and grounds for, imposing a measure of restraint),<sup>149</sup> (Measures of restraint), 150 (Circumstances to be taken into account when imposing a measure of restraint) and 155 (Taking in custody).

#### ***Article 148: Objective of, and grounds for, imposing a measure of restraint***

*Measures of restraint are imposed on the suspect, accused, defendant, convict with a view to preventing his/her attempt to avoid inquiry, pre-trial investigation or trial, obstruct establishing the truth in a criminal case or continue criminal activity, as well as to ensuring execution of procedural decisions.*

*Measures of restraint are imposed if there are sufficient grounds to believe that the suspect, accused, defendant or convict can avoid investigation and trial or execution of procedural decisions, can obstruct establishing the truth in a criminal case or continue criminal activity.*

*If there are no sufficient grounds for imposing a measure of restraint, the suspect, accused, or defendant is asked to give a written obligation to appear upon the summons of the inquirer, investigator, prosecutor of court, as well as to inform on the place of his/her staying if the latter has been changed.*

*Whenever a measure of restraint is imposed on the suspect, charges should be brought against him/her within 10 days after such measure of restraint has been ordered. If charges are not brought within this time-limit, the measure of restraint should be revoked.*

#### *Article 149: measure of restraint*

*The following are measures of restraint:*

- 1) recognizance not to leave the jurisdiction;*
- 2) personal surety;*
- 3) guarantee of a civil society organization or labour collective;*
- 3-1-) bail;*
- 4) taking in custody;*
- 5) delivery under military command's supervision*

*Apprehension of a suspect is a temporary measure of restraint which is imposed on the grounds and according to procedures specified in Articles 106, 115, 165-2 of the present Code.*

#### *Article 150: Circumstances to be taken into account when imposing a measure of restraint.*

*When deciding on the imposition of a measure of restraint, in addition to circumstances referred to in Article 148 of the present Code, there should be taken into account severity of crime of which a person is suspected, charged, his/her age, state of health, family and property status, occupation, place of residence and other circumstances characteristic of him/her.*

#### *Article 155: Taking in custody*

*Taking in custody as a measure of restraint is imposed in cases related to crimes punishable with deprivation of liberty for more than three years. In exceptional cases, this measure of restraint may be ordered in cases related to crimes punishable with deprivation of liberty for less than three years.*

*Persons in whose respect taking in custody is imposed as a measure of restraint are kept in places of detention pending trial, i.e. pre-trial detention centers.*

*Places of detention pending trial for servicemen in whose respect taking in custody is imposed as a measure of restraint shall be military detention facilities of the Military Justice Service of the Armed Forces of Ukraine or pre-trial detention centers. Servicemen are kept in such centers or military detention facilities of the Military Justice Service of the Armed Forces of Ukraine upon investigator's decision. In some cases, servicemen may be kept in places for apprehended persons.*

*In places for apprehended persons, those taken in custody may be kept for not more than three days. If delivery of imprisoned persons in pre-trial detention center or military detention facilities of the Military Justice Service of the Armed Forces of Ukraine is impossible within this time limit because of the long distance or lack of appropriate roads, they may be kept in places for apprehended persons up to ten days.*

*If taking in custody as measure of restraint is imposed on the person who has committed a crime during serving his/her sentence in a penitentiary institution, such person may be kept in the disciplinary isolation ward or sweat cell of the penitentiary institution.*

*Procedure for preliminary imprisonment is prescribed by Law of Ukraine “On preliminary imprisonment” and the present Code.*

**(b) Observations on the implementation of the article**

The review team was of the opinion that the reported articles of the CPC were in compliance with the provision of the Convention under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukrainian authorities referred to the Articles 81 and 82 CC to substantiate the implementation of the provision under review.

**Article 81: Parole**

*1. Parole may be applied to persons who serve their sentences of correctional labour, or service restriction for military servants, or restraint of liberty, or custody of military servants in a penal battalion, or imprisonment. A person may also be fully or partially paroled from serving his/her additional punishment.*

*2. Parole may be applied, if a sentenced person displays decent behaviour and diligence in work as a proof of his/her reformation.*

*3. Parole may be applied after a sentenced person has actually served:*

*(1) not less than one-half of the term imposed by a court for a minor or medium grave offense, and also for a reckless grave offense;*

*(2) not less than two-thirds of the term imposed by a court for an intended grave offense or reckless special grave offense and also where that person had previously served a sentence of imprisonment imposed for an intended offense but committed another intended offense before the conviction was cancelled or revoked and had been sentenced for that offense to imprisonment;*

*(3) not less than three quarters of the term imposed by a court for an intended special grave offense, or of the term imposed on a person who had been previously paroled but committed another intended offense during the remaining part of the sentence;*

4. Where a paroled person commits another offense during the remaining part of the sentence, a court shall impose a punishment under the rules provided for by Articles 71 and 72 of this Code.

*Article 82: Commutation of the remaining part of the sentence*

1. A court may commute the remaining part of a sentence of restraint of liberty or imprisonment. In this case, a more lenient punishment shall be imposed within the terms provided for by the General Part of this Code with regard to a given type of punishment and may not exceed the remaining part of the original sentence.

2. Where the remaining part of a primary sentence is commuted, the sentenced person may also be discharged from the additional punishment of deprivation of the right to occupy certain positions or engage in certain activities.

3. Commutation of the remaining part of a sentence may be applied if the sentenced person displays signs of rehabilitation.

4. The remaining part of a sentence may be commuted after the sentenced person has actually served:

(1) not less than one-third of the term imposed by a court for a minor or medium grave offense, and also for a reckless grave offense;

(2) not less than one-half of the term imposed by a court for an intended grave offense or reckless special grave offense, and also where that person had previously served a sentence of imprisonment imposed for an intended offense but committed another intended offense before the criminal records were cancelled or revoked and had been sentenced for that offense to imprisonment;

(3) not less than two-thirds of the term imposed by a court for an intended special grave offense, or of the term imposed on a person who had been previously paroled but committed another intended offense before the expiry of the remaining part of his/her sentence;

5. Persons, whose sentence was commuted, may be paroled under rules provided for by Article 81 of this Code.

6. If a person commits another offense while serving a commuted sentence, a court shall add the remaining part of the commuted sentence to the punishment imposed for any new offense according to the rules provided for Articles 71 and 72 of this Code.

**(b) Observations on the implementation of the article**

No issues of non-compliance were found.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an

*offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Reference was made to article 147 CC and article 22 of the Law No. 3206 of Ukraine “On the Principles of Prevention and Counteracting Corruption in Ukraine”.

*Article 147: Suspension of the accused from office*

*Wherever an official is prosecuted for an office crime and when such person is prosecuted for another crime and if he/she can negatively affect the course of pre-trial investigation or judicial investigation, investigator is required to suspend him/her from office and take a motivated decision thereon.*

*Suspension from office is made upon prosecutor or his/her deputy’s sanction. A copy of the decision should be directed to the place of work (service) of the accused for execution.*

*The issue of suspension from office persons who are appointed by the President of Ukraine is decided by the President of Ukraine based on motivated decision of the Prosecutor General of Ukraine. Suspension from office of a judge connected with his or her prosecution for a crime is made by the Higher Qualifications Commission of Judges of Ukraine based on motivated decision of the Prosecutor General of Ukraine.*

*Suspension from office is revoked by the decision of the investigator (prosecutor) whenever there is no longer need in such a measure.*

Law No. 3206 contains the following provision.

**Article 22. Specifics of Dismissing Persons Who Committed Corruptive Offences**

*1. A person in respect to whom a ruling was made to make him/her answerable as a defendant accused of committing a crime in the sphere of official activities, shall be subject to suspension from the performance of his/her official duties under the procedure established by law, prior to the court hearing on the case, unless otherwise stipulated by the Constitution and laws of Ukraine.*

*A person in respect to whom a report has been drawn up on administrative corruptive offence, unless otherwise stipulated by the Constitution and laws of Ukraine, may be suspended from the performance of his/her official duties by decision of the head of the body (institution, enterprise, or organization), where the person works, until the termination of the court hearing on the case.*

*Should the proceedings in the case of administrative corruptive offence be closed in connection with the absence of the event or the body of an administrative offence, the average salary shall be indemnified to the person suspended from the performance of his/her official duties, for the period of enforced idleness caused by such suspension.*

*2. Early termination of powers of a person holding elected office; termination of powers of an official in office; dismissal effectuated by decision of the President of Ukraine, of the Supreme Rada of Ukraine, or of the Cabinet of Ministers of Ukraine; discharge of a military officer*

*from military service in connection with the bringing to justice for the commitment of corruptive offences, as well as the suspension of such person from the performance of official duties in cases stipulated by part one of this Article, shall be undertaken with due regard for the specifics established by the Constitution and Laws of Ukraine.*

*Other persons brought to criminal or administrative justice for corruptive offences featuring the breach of limitations stipulated by this Law, shall be subject to dismissal from the respective positions within a period of three days from the date of receipt by the state authority, the local government body, the enterprise, institution, or organization concerned of a copy of the relevant court judgment that has come into force, unless otherwise stipulated by law.*

*3. The head of the state authority, of the local government body, of the enterprise, institution, or organization concerned shall within a period of three days inform, in writing, of the dismissal of the person from office in connection with the bringing to justice for the commitment of corruptive offences featuring the breach of limitations stipulated by this Law, the court that issued a condemnatory judgment or a ruling on imposition of an administrative penalty for the corruptive offence, and the specially authorized central executive authority for matters of public service. The procedure for informing the specially authorized central executive authority for matters of public service about persons authorized to perform state or local government functions who have been dismissed in connection with the bringing to justice for the commitment of corruptive offences, shall be established by the Cabinet of Ministers of Ukraine.*

*4. With the purpose of finding out the causes and conditions that have facilitated the commitment of a corruptive offence or any failure to comply with the requirements of this Law, upon request of the specially authorized subject in the sphere of counteracting corruption, by decision of the head of the body employing the person who committed such offence, an official investigation shall be held in accordance with the procedure established by the Cabinet of Ministers of Ukraine.*

*5. Limitations concerning the prohibition to the person dismissed from office in connection with the bringing to justice for the commitment of corruptive offence, to engage in activities involving the performance of state or local government functions, or such that confer the similar status, shall be imposed exclusively by motivated court decision, unless otherwise stipulated by law.*

**(b) Observations on the implementation of the article**

No issues of non-compliance were found.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time*



*determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Reference was made to article 55 CC to substantiate the implementation of the provision under review.

*Article 55: Deprivation of the right to occupy certain positions or engage in certain activities*

*1. Deprivation of the right to occupy certain positions or engage in certain activities may be imposed as primary punishment for a term of two to five years or as additional punishment for a term of one to three years.*

*2. Deprivation of the right to occupy certain positions or engage in certain activities as additional punishment may also be imposed without reference to a sanction of an article (sanction of a part of an article) in the Special Part of this Code, if a court, having regard to the nature of the offense committed by a person in office or in connection with a certain activity, the character of the person convicted, and other circumstances of the case, decides that such person should be deprived of the right to occupy certain positions or engage in certain activities.*

*3. Where deprivation of the right to occupy certain positions or engage in certain activities is imposed as additional punishment together with the arrest, restraint of liberty, custody of military servants in a penal battalion, or imprisonment for a determinate term, it shall extend through all the term of the primary punishment, and also for a term specified in a judgement of court that came into effect. For this purpose, the term of additional punishment is calculated from the moment of completion of the primary punishment; and-for the purpose of punishment imposed in the form of deprivation of the right to occupy certain positions or engage in certain activities as additional to other primary punishments, and also for the purpose of Article 77 of this Code, is calculated from the moment that the judgment comes into effect.*

It should be mentioned that in this case general norms are applied for the private and public sectors and there no any exclusions from them. To support this statement, Ukraine refers to the provisions of Para 17 of Resolution of the Plenary Session of the Supreme Court of Ukraine No7 of October 24, 2003, "On Practice of Criminal Punishment Assignment". According to the Article 55 of CCU deprivation of right to hold certain positions or engage in certain activities is applied as additional punishment on in the cases when perpetration of a crime was connected with the position of the defendant or his/her specific activity. The punishment shall be assigned within limits set in the sanctions of article (sanctions of part of article) of CCU according to which a defendant had been found guilty, and if punishment is not envisaged in there then punishment is in the limits ser in the Article 55 of CCU. The fact that, by the time of sentence, the defendant did not hold the position the crime was associated with does not prevent to apply the punishment. The ruling on deprivation to hold specific positions or engage in specific activities must be clearly stated in the resolution part of

sentence for prevention of any doubts while implementing one. If in the sanctions of article (sanctions of part of article) of the Special part of CC nature of position and kind of activity are specified then ruling on assigning additional punishment provided in the resolution part of sentence must comply with the meaning of this sanction. If additional punishment in the form of deprivation of holding specific positions or engage in specific activities in the sanctions of article (sanctions of part of article) is compulsory then it applied to persons who hold positions or engaged in activities that the committed crime had been associated with. Additional punishment in the form of deprivation of holding specific positions or engage in specific activities is not applicable to other persons who were associates in the crimes not associated with their area of activities or position hold giving reasons for that in the sentence.

***(b) Observations on the implementation of the article***

No issues of non-compliance were found.

***Article 30 Prosecution, adjudication and sanctions***

***Paragraph 8***

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukrainian authorities referred to article 61 of the Constitution of Ukraine and also article 22 of Law 3206. According to article 61, no one may be brought to legal liability of the same type for the same offence twice. So, it is possible to bring a person for example to criminal and disciplinary liability for the same corruption offence.

***(b) Observations on the implementation of the article***

No issues of non-compliance were found.

***Article 30 Prosecution, adjudication and sanctions***

***Paragraph 9***

*9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

According to the Para 9 of the Article 30 of the Convention, nothing in this Convention touches the principle according to which determination of crimes that are recognized as crimes by this Convention and applicable legal objections or other legal principles determining legality of actions falls within the scope of domestic laws of each State Party and criminal prosecution and punishment for such crimes are carried out in accordance with this laws. With this regard it should be mentioned that perpetration by a person of a socially dangerous action containing corpus delicti provided for by CCU (Part. 1 Art. 2 of CCU) is basis for criminal prosecution. According to the Article 3 of CCU the legislation of Ukraine on criminal liability consists of CCU that is based on the Constitution of Ukraine and shared principles and norms of the International Law. The laws of Ukraine on criminal liability enacted after CCU took legal effect having taken legal effect will be included into CCU. Criminality of action as well as its punishability or other criminal legal consequences shall be defined by CCU only. It is prohibited to apply the laws on criminal liability by analogy. The laws of Ukraine on criminal liability must comply with provisions contained in International treaties in force that the Supreme Rada of Ukraine agreed that they are binding.

**(b) Observations on the implementation of the article**

No issues of non-compliance were found.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine indicated that it complies with the providing under review. The measures for reintegration into society of persons convicted of any offence including connected with corruption are provided by the Law of Ukraine "On Social Adaptation of Individuals, who Served a Sentence in the Form of Custodial Restraint or a Term in Prison". This Law determines conditions and procedure of providing social assistance to persons, who served a sentence in the form of custodial restraint or a term in prison. It also establishes participation of executive power bodies and local self-government, enterprises, institutions, organizations and associations of citizens in social adaptation of such people. Adaptation of individuals that had been deprived of freedom occurs, first of all, on the basis of norms set forth by the Law of Ukraine "On Social Adaptation of Individuals, who Are Serving or Served a Sentence in the Form of Custodial Restraint or a Term in Prison for Certain Period of Time.

**(b) Observations on the implementation of the article**

No issues of non-compliance were found.

**Article 31 Freezing, seizure and confiscation**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime*

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

*10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Ministry of Justice developed the Draft Law "On Amendments to Criminal and Criminal-Procedural Codes of Ukraine on Improving the Procedures for Carrying out of Confiscation" which was directed to the President of Ukraine. This bill is envisaged to set out that special confiscation shall be applicable in cases where money, valuables and other property were obtained in the result of crime committing or constitute the income from such property; were intended for financing and material support of crimes or reward for their committing; were the object of the crime except those which were the object of criminal actions; were used as means or instruments of crime committing. It is also envisaged to introduce the possibility of applying special confiscation of converted incomes gained in result of corruption offence (full or partial confiscation), as well as special confiscation of such property or other incomes where they were transferred to the third parties. Furthermore, it is proposed to establish the rule of equivalent confiscation - in case when the confiscation of property is impossible the confiscation of the sum of money which is equivalent to the value of this property shall be applied. The draft law also envisages the mechanism of sale of material evidences, perishable material evidences and material evidences which may lose their value or the storage of which require significant costs and which can not be returned to the owner or lawful holder. The main step is the direction of the mentioned draft to the Parliament and its final adoption by the Parliament. This draft received in 2010 a general approval of expert of the Group of States of Council of Europe Against Corruption (GRECO). The mentioned project proposes is to bring the national laws in compliance with the requirements of Article 31 of the Convention that have not been implemented. At present, the Ministry of Justice is about to complete the procedure of concurrence with stakeholders, after that, it will be submitted to the Cabinet of Ministers of Ukraine for further submission to the Supreme Rada of Ukraine. The text of the mentioned draft was provided to the reviewers for their consideration.

As regards subparagraph 1 (b), Ukraine indicated that it complies only partially, referring to Articles 78 through 81 as well as Article 126 of the Criminal Procedure Code.

#### *Article 78: Exhibits*

*Exhibits include objects which were instruments of crime, retained traces of crime or were a target for criminal actions, money, valuables, and other proceeds from crime, as well as all other objects which can help resolving a crime or identifying those guilty or denying charges or commuting liability.*

#### *Article 79: Retaining exhibits*

*Exhibits could be thoroughly inspected, to the extent possible, photographed, described in details in the record of inspection and attached to records of the case by a decision of the inquirer, investigator, prosecutor or court's ruling. Exhibits are retained with records of the case save bulky goods which are retained in the inquiry agency, pre-trial investigation agency and court or are transferred in custody of the appropriate enterprise, institution or organization.*

*When transferring a case from one pre-trial investigation agency to another one, when referring a case to the prosecutor or court, as well as when referring a case from one court to another, exhibits are transferred together with records of the case.*

*In some instances, exhibits, before the case is resolved in court, may be returned to their owners if it proves possible without compromising successful proceedings in the case.*

#### *Article 80: Retention periods for exhibits*

*Exhibits are retained till the judgement takes legal effect or till the expiration of time-limit for challenging the decision or ruling on case closure.*

*Documents-exhibits should be retained with records of the case all time. Copies of these documents can be issued to their owner, who may use them in accordance with legislation upon his or her requests in the order prescribed by article 186 of this Code.*

*If litigation with regard to ownership for the objects which are exhibits arises, such objects are retained till court's decision made on this litigation by way of civil proceedings takes legal effects.*

*Perishable exhibits, as well as exhibits which can not be returned to their owner are immediately transferred to state or cooperative organizations for sale. If thereafter there is a need to return such exhibits, organizations which have obtained them replace them with the same objects or repay their cost at state's prices effective at the time when such objects should be returned.*

#### *Article 81: Deciding the issue of exhibits*

*The issue of exhibits is decided by court's judgment, ruling or decision, or decision of the inquiry agency, investigator, and prosecutor to close the case and:*

- 1) instruments of crime belonging to the accused are confiscated;*
- 2) objects taken out of circulation are transferred to the appropriate institutions or destroyed;*
- 3) objects which have no value and cannot be used are destroyed or may be transferred to the persons concerned upon their request;*
- 4) money, valuables, and other proceeds from crime are assigned in public revenues;*

*Money, valuables, and other proceeds which were target of criminal acts are returned to their lawful owners, and when such owners are not established, this money, valuables and other proceeds are recycled into the public domain.*

#### *Article 126: The way in which a civil claim and forfeiture of asset are secured*

*Civil claim and potential confiscation of property are secured through attachment of deposits, valuables and other property of the accused or suspect or persons who are materially liable for his/her acts wherever such deposits, valuables and other asset are located, as well as through removal of attached property.*

*Deposits of the said persons may be attached only upon court's decision.*

*Attached property is subject to inventory and may be transferred in custody of enterprises, institutions, organizations or family members of the accused or other persons. Persons who took attached property in custody are warned about criminal liability for property conservation, such warning being made against signed acknowledgment.*

*Primary necessities which are used by the person subject to inventory and by his/her family members are not subject to inventory. List of such necessities is attached in the Annex to the Criminal Code of Ukraine.*

*With regard to attached property and its transfer in custody, an appropriate record is drawn up and signed by the person who conducted inventory, attesting witnesses and the person who assumed custody of the attached property. A list of property transferred in custody is attached to the record, such list being signed by the said persons.*

*In case of need, a specialist is invited to assess the value of property inventoried; such specialist signs the record and the list of assessed property.*

*Attachment is revoked by investigator's decision whenever there is no longer need in such a measure.*

Concerning paras. 2 and 3, Ukraine referred to Articles 29, 125, and 126 of the Criminal Procedure Code as well as Article 12 of the Law of Ukraine "On Organizational Legal Principles of Struggle against the Organized Crime".

*Article 29: Ensuring compensation for the damage caused by a crime, and execution of judgment in terms of asset forfeiture.*

*With sufficient information present that a crime has caused material damage or that a health care institution incurred expenses for in-patient treatment of the victim of crime, the inquiry agency, investigator, prosecutor and court are required to ensure security for the claim.*

*Prosecutor brings or maintains the civil suits which the victim brought to compensate for damages caused by the crime if it is required by the protection of state interests and interests of the persons who, because of the state of their health and for other valid reasons, are unable to protect their rights.*

*Article 29: Ensuring compensation for the damage caused by a crime, and execution of judgement in terms of confiscation of property.*

*With sufficient information present that a crime has caused material damage or that a health care institution incurred expenses for in-patient treatment of the victim of crime, the inquiry agency, investigator, prosecutor and court are required to ensure security for the claim.*

*Prosecutor brings or maintains the civil suits which the victim brought to compensate for damages caused by the crime if it is required by the protection of state interests and interests of the persons who, because of the state of their health and for other valid reasons, are unable to protect their rights.*

*Article 125: Obligation to secure civil claim and confiscation of property under law.*

*Upon civil plaintiff's petition or upon his-her own initiative, investigator is required to take measures to secure civil claim brought in a criminal case, as well as potential civil claim and draw up a decision thereon.*

*In cases related to crime punishable under law with confiscation of property, investigator is required to take measures to ensure enforcement of the judgment in terms of possible confiscation of property and draw up a decision thereon.*

*Article 126: The way in which a civil claim and confiscation of property are secured*

*Civil claim and confiscation of property are secured through attachment of deposits, valuables, and other property of the accused or suspect of persons who are materially liable for his/her acts whenever such deposits, valuables and other property are located, as well as through removal of attached asset. Deposit of the said persons may be attached only upon court's decision.*

*Attached property is subject to inventory and may be transferred in custody of enterprise, institution, organizations or family members of the accused or other persons. Persons who took attached property in custody are warned about criminal liability for property conservation, such warning being made against signed acknowledgment.*

*Primary necessities which are used by the person subject to inventory and by his/her family members are not subject to inventory. List of such necessities is attached in the Annex of the Criminal Code of Ukraine.*

*With regard to attached property and its transfer in custody, an appropriate record is drawn up and signed by the person who conducted inventory, attesting witnesses and the person who assumed custody of the attached property. A list of property transferred in custody is attached to the record, such list being signed by the said person.*

*In case of need, a specialist is invited to assess the value of the property inventoried; such specialist signs the record and the list of assessed property.*

*Attachment is revoked by investigator's decision whenever there is no longer need in such a measure.*

*Law of Ukraine "On Organizational Legal Principles of Struggle against the Organized Crime"*

*Article 12: Rights of special subdivisions on struggle against the organized crime in bodies of internal affairs and Security Service of Ukraine.*

*4. While struggling against the organized crime the staff of special subdivisions in militia and Security Service of Ukraine have following rights:*

*b) to seal records, cash, premises (except accommodations) or other repositories to guard it, to attach cash and other valuables of physical and legal persons, to remove objects and documents for term to 10 days upon decision and sanction of the relevant prosecutor who supervises over observance of laws by special subdivisions on struggle against the organized crime or in urgent cases with further information submitted to the prosecutor within the age if there is the danger of destruction, suppression or loss of objects or documents which may be used in detection and investigation of criminal activity.*

*Ukraine indicated that the effectiveness of measures adopted to enable identification, tracing, freezing or seizure of proceeds of crime was assessed.*

*Concerning paras. 4 through 6, Ukraine stated that it is not in compliance with the provisions contained therein.*

*Concerning paragraph 7, Ukraine referred to Article 178 of the Criminal Procedure Code.*

*Article 178: Grounds for removal and authorization thereof.*



*Removal is conducted when there is accurate information and that objects or documents of importance for the case remain with a certain person or in a certain place.*

*Removal is conducted upon motivated decision of the investigator.*

*Tangible mediums containing secret information and/or bank secrecy may be removed only upon motivated decision of judge and in a way agreed with head of institution concerned.*

*Compulsory removal under law from a home or any other possession of a person, removal of a document relating to final process, as well as removal of commercial or accounting source documents is conducted only upon judge's motivated decision which should be made in accordance with Article 177, fifth paragraph, of the present Code.*

Concerning paragraph 8, Ukraine stated being partially in compliance, referring to Article 62 of the Constitution of Ukraine as well as Article 43 of the Criminal Procedure Code.

#### *Constitution of Ukraine*

##### *Article 62*

*A person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved through legal procedure and established by a court verdict of guilty.*

*No one is obliged to prove his or her innocence of committing a crime.*

*An accusation shall not be based on illegally obtained evidence as well as on assumptions. All doubts in regard to the proof of guilt of a person are interpreted in his or her favour.*

*In the event that a court verdict is revoked as unjust, the State compensates the material and moral damages inflicted by the groundless conviction.*

#### *Criminal Procedure Code of Ukraine*

##### *Article 43: The accused and his/her rights*

*A person in whose respect a decision to prosecute has been made as prescribed in the present Code is the accused. After the case has been assigned to trial, the accused is considered to be defendant.*

*The accused has the right to: know what he/she is accused of; give testimonies related to the charges brought or refuse testifying or answering questions; have a defense counsel and meet him/her before the first examination; produce evidence, submit motions, review all records of the case after the completion of pre-trial investigation or inquiry; participate in the trial conducted by trial court, propose disqualifications, submit complaints against actions and decisions of the inquirer, investigator, prosecutor, judge and court and with appropriate ground present, have his/her security ensured. The defendant has the right to the last statement.*

According to the Para 8 of the Article 31 of the Convention the States Parties may consider possibility to establish requirements that an individual who committed a crime proved legal origin of such alleged proceeds of crime or other property subject to confiscation to the extent the requirement complies with basic principles of their domestic laws and nature of judicial or other proceeding. These provisions of the Convention are optional that is supported by the provisions of Para 427 of the Guideline. And it should emphasized that according to the part two of the Article 62 of the Constitution of Ukraine nobody is obliged to prove he/she is not guilty with regard of crime. Thus, burden of proof is always placed on the bodies that carry

out pre-trial investigation and on state prosecutor. At the same time, CC criminalizes actions associated with illicit enrichment prosecution of which envisages, within framework of criminal investigation, arrest and succeeding confiscation of civil servant's assets that exceed his/her lawful incomes and that he/she is not able to reasonably justify. Thus, according to the meaning of provisions of the Para 4 of part one of the Article 81 of Criminal Procedure Code of Ukraine (CPC) money, valuables and other things illicitly gained shall be transferred in the government revenue.

Concerning paragraph 9, Ukraine referred to the Criminal Procedure Code in its Article 59.

*Article 59: Forfeiture of property*

*1. The punishment of forfeiture consists in forceful seizure of all, or a part of, property of a convicted person without compensation in favour of the State. Where a part of property is to be forfeited, a court shall specify which part is to be forfeited or name the things to be forfeited.*

*2. Forfeiture of property shall be imposed for grave and special grave offenses and shall only be applied in cases specifically provided for in the Special Part of this Code.*

*3. The list of property exempt from forfeiture shall be determined by the Law of Ukraine.*

Concerning paragraph 10 of the present article, no information was provided in the self-assessment checklist.

Ukraine indicated that the effectiveness of these measures has been assessed.

**(b) Observations on the implementation of the article**

The review team took note of the existing provisions of CPC and other laws, as well as the acknowledgement by the Ukrainian authorities that new legislation on confiscation issues is necessary to be put in place to fill gaps and ensure compliance with the related provisions of the Convention.

The Ukrainian authorities brought to the attention of the reviewing experts a draft text of a Law on Amendments to Criminal and Criminal-Procedural Codes on Improving the Procedures for Carrying out Confiscation. It was confirmed during the country visit that this law was not enacted, although it had gained general approval by international experts in the past. The review team was not in a position to assess the adequacy of the provisions, as they were not yet part of the national legislation, but urged the national authorities to accelerate and streamline the process of putting in place a solid legal framework on confiscation mechanisms, possibly through reconsideration of this matter in view of the provisions of the new CPC.

**(c) Technical assistance needs**

The Ukrainian authorities indicated that they would benefit from the following forms of technical assistance:

- Trainings/workshops, as well as summary/compilation of good practices/lessons learned on confiscation issues.

### ***Article 32 Protection of witnesses, experts and victims***

- 1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*
- 2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*
  - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*
  - (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*
- 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article*
- 4. The provisions of this article shall also apply to victims insofar as they are witnesses.*
- 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine provided Article 52-1 of the Criminal Procedure Code to explain adoption and implementation of paragraph 1.

#### ***Article 52-1: Ensuring security of persons who participate in criminal proceedings***

*If a real threat to life, health, home or property is present, persons who participate in criminal proceedings are entitled to have their security ensured.*

*With appropriate grounds present, the following persons have the right to have their security ensured;*

- 1) person who reported the crime to a law enforcement authority or otherwise participated in detecting, preventing, suppressing, and resolving a crime or assisted therein.*
- 2) victim or his/her representative in the criminal case*
- 3) suspect, the accused, defense counsel and legal representatives*
- 4) civil plaintiff, civil defendant, and their representatives in the case related to compensation of damage caused as a result of crime;*
- 5) witnesses;*
- 6) expert, specialist, translator and attesting witnesses;*

7) family members and close relatives of the persons referred to in subparagraphs 1 to 6 of the present Article if there are attempts to exert influence on the participants to criminal proceedings through the use of threats or any other illegal actions.

The inquiry agency, investigator, prosecutor or court having received the application or communication that security of the person referred to in the second paragraph of the present Article is threatened, are required to verify such application (communication) and, within three days, and in urgent situations, immediately to take decisions to deny or enforce measures of security. Dependently on what decision has been taken, they pass a motivated decision or ruling and refer it to the authority in charge of enforcing measures of security. Such decision or ruling is binding upon the said authority.

The authority in charge of enforcing measures of security establishes the list of required measures and ways of enforcing the same being guided by specific circumstances and the need to eliminate the threat present. The person under protection is informed on measures of security chosen, modalities of their enforcement, and rules for the use of documents and property issued to ensure security.

If the application (communication) about a threat to the person referred to in the second paragraph of the present Article contains information on a crime, the inquiry agency, investigator, prosecutor, court or judge takes, as prescribed in Articles 94, 98 and 99 of the present Code, decision on instituting or denying instituting criminal proceedings or on referring the application (communication) to the competent authority.

The applicant is immediately informed on the decision taken.

The authority in charge of enforcing measures of security informs in writing the inquiry agency, investigator, prosecutor, court or judge who conducts proceedings in the case about measures taken and their results.

Concerning subparagraph 2(a), Ukraine referred to Article 7 of the Law of Ukraine “On Ensuring Security of the Persons who participate in Criminal Legal Proceedings”.

#### *Article 7: Security measures*

*There are the following security measures:*

- personal body-guard, guard of accommodation and property;
- issue of special individual protection means and means of informing about danger;
- use of technical means for control and bugging of telephone and other conversations,
- surveillance;
- change of documents and appearance;
- change of job or place of studies;
- resettlement to other place of residence;
- placement to pre-school educational establishment or to the establishment of bodies of - social protection of the population;
- ensuring confidentiality of information about the person;
- closed court proceeding;
- sending to the other military unit;
- transfer to a new place of service;
- transfer to another place of confinement;
- separate holding.

Concerning subparagraph 2 (b), Ukraine referred to Articles 174 and 303 of the Criminal Procedure Code for the implementation of the provision under review.

*Article 174: Presenting a person for identification*

*When it is necessary to present persons for identification by a witness, victim, accused or suspect, investigator first questions them about appearance and characteristic signs of such persons and about circumstances under which the identifying person saw the person concerned and then, draws up a record of interrogations. If a witness or victim identifies the person, the former is admonished of criminal liability for knowingly misleading testimonies while the witness is also warned about criminal liability for refusal to testify. The person to be identified is presented to the identifying person together with other individuals of the same sex and in number not less than three persons who don't have sharp differences in the appearance and outwear.*

*Prior to present the person for identification, such person is invited to take a place among other persons to be presented. The identifying person is asked to point at the person he/she should identify and explain by which signs he/she has identified him/her.*

*On exceptional basis, when it is necessary to ensure protection of the identifying person, identification may be conducted out of visual observation of the person to be identified, in accordance with provisions of the present Article. The person who was presented for identification should be necessarily informed on the result of identification.*

*In case of need, identification may be conducted by photos in accordance with provisions of the present Article. A person is presented for identification in the presence of two attesting witnesses at least. When identification is conducted according to the fourth paragraph of the present Article, attesting witnesses should make sure that identification out of visual observation of the person to be identified is really possible and they should attest such identification.*

*Article 303: Examining a witness*

*Each witness should be examined separately in the absence of witnesses who have not been examined.*

*Before examination each witness is asked questions in order to find out his/her relations with the defendant and the victim and is invited to tell everything he/she knows in the case.*

*After the witness has told everything he/she knows in the case, he/she is examined by the prosecutor, victim, civil plaintiff, civil defendant, defense counsel, defendant, judge, people's assessors and the employed by him or her defense counsel.*

*Whenever a witness has been cited in court session upon prosecutor's motion or petition of other participants to trial, the witness is asked questions first by the participant to trial upon whose petition the witness has been cited.*

*Throughout the entire examination of the witness by participants to trial, the court may ask the witness questions to clarify and supplement his/her answer..*

*To ensure security of the witness to be examined, the court (judge, upon its own initiative or upon motion of the prosecutor, defense counsel, petition of the witness himself/herself, or the employed by him or her defense counsel passes a motivated ruling to examine the witness concerned with the use of technical means from another premise, including outside court's*

*building, and to give participants to the process the right to listen his or her testimonies, ask questions and hear answers thereof.*

*If there is a risk that witness's voice can be identified, examination may be accompanied by acoustic noises.*

*If it appears impossible to examine the witness with the use of technical means, the court (judge) examines him/her in the absence of the defendant. Examined witness is removed from the courtroom.*

*After the defendant has returned in the courtroom, presiding judge makes him/her aware of testimonies which were given by the witness and gives him/her the possibility to provide explanation with regard to such testimonies.*

*Defendant and participants to trial may ask the witness questions.*

*The witness answers questions in the absence of defendant.*

*Examined witnesses stay in courtroom and may not leave without presiding judge's permission till the trial is completed.*

Regarding paragraph 3, its provision is not binding by nature because it actually recommends States Parties to consider possibilities to sign agreements and conventions on resettlement of witnesses and experts that may testify in the cases on crimes that are defined by this Convention. Para 451 of the Guideline tells that the norm is optional.

Concerning paragraph 4, Ukraine referred to Article 52-1 (Ensuring security of persons who participate in criminal proceedings) mentioned under the first paragraph of the present article.

As regards paragraph 5, Ukraine provided Article 308 (Examining a victim) of the Criminal Procedure Code).

*Article 308: Examining a victim*

*A victim is examined in accordance with rules governing examination of witnesses. The victim should be examined before examination of witnesses.*

**(b) *Observations on the implementation of the article***

*The review team noted that the CPC (articles 52-1, 292 and 303), the specific Law on Ensuring Security of the Persons Participating in Criminal Proceedings, as well as the Law No. 3206-VI, constituted a comprehensive legal framework for the protection of witnesses. In this context, a wide definition of persons to be protected has been adopted to cover all "persons who participate in criminal proceedings", including, inter alia, persons who report the crime to law enforcement authorities, family members and close relatives of such persons, victims, experts and specialists. Those persons are entitled to security measures, whereas certain evidentiary regulations are in place to permit them to give testimony in the court in a manner that ensures their safety.*

**(c) *Successes and good practices***

The comprehensive nature of the domestic legislation on protection of witnesses and generally persons who participate in criminal proceedings, as well as family members and close relatives of such persons.

### ***Article 33 Protection of reporting persons***

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine provided the aforementioned Article 52-1 (Ensuring security of persons who participate in criminal proceedings) of the Criminal Procedure Code to illustrate the implementation of the provision under review.

#### ***(b) Observations on the implementation of the article***

See above.

### ***Article 34 Consequences of acts of corruption***

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Law No. 3026 "On Principles of Preventing and Counteracting Corruption" of 07 April 2011, took legal effect on 01 July 2011 contains a section regarding the implementation of the provision under review.

#### ***Section V***

#### ***ELIMINATION OF CONSEQUENCES OF CORRUPTIVE OFFENCES***

***Article 23. Compensation of Losses and Damages Inflicted on the State by Commitment of a Corruptive Offence***

*1. Losses and damages inflicted on the State by commitment of a corruptive offence shall be subject to compensation in accordance with the procedure established by Law.*

**Article 24. Unlawful Normative-Legal Acts and Transactions**

- 1. Normative-legal acts and decisions issued (adopted) as a result of commitment of a corruptive offence, may be abrogated by a body or an official authorized to adopt or abrogate the respective acts or decisions, or be recognized as unlawful judicially upon application of the interested physical person, association of citizens, legal entity, public prosecutor, state authority, or local government body.*
- 2. A transaction entered into in consequence of a corruptive offence shall be deemed null and void.*

**Article 25. Restoration of Rights and Legitimate Interests and Compensation of Losses and Damages Inflicted on Physical Persons and Legal Entities in Consequence of the Commitment of a Corruptive Offence**

- 1. Physical persons and legal entities whose rights were infringed in consequence of the commitment of a corruptive offence and who suffered moral injury or property damages or losses, shall be entitled to the restoration of rights and compensation of losses or damages in accordance with the procedure established by law.*
- 2. Losses and damages inflicted on a physical person or legal entity in consequence of unlawful decisions, actions or lack of action on the part of a subject charged with taking measures aimed at preventing and counteracting corruption shall be reimbursed out of the State Budget of Ukraine in accordance with the procedure established by law. The State, the Autonomous Republic of Crimea, and the local government body that has reimbursed losses or damage inflicted by an unlawful decision, actions or lack of action on the part of a subject charged with taking measures aimed at preventing and counteracting corruption, shall have the right of counterclaim (regress) in respect of the person who inflicted the losses or damage, in the amount of the paid put compensation (apart from the compensation of payments related to labor relations and compensation of moral injury.)*

**Article 26. Confiscation of Unlawfully Acquired Property**

- 1. Funds and other property acquired in consequence of the commitment of a corruptive offence shall be subject to confiscation by court decision in a procedure established by law, and funds in the amount of the value, established by court, of the unlawfully received services or perks, shall be subject to exaction for benefit of the state.*

**(b) Observations on the implementation of the article**

Ukraine has adopted and implemented the measures described in this article.

**(c) Technical assistance needs**

Ukraine indicated that the following form of technical assistance, if available, would be appreciated:



- Trainings/workshops, as well as summary/compilation of good practices/lessons learned on the annulment of public contracts as a consequence of acts of corruption, in line with article 34 of the UNCAC.

Technical assistance has been provided by the Council of Europe and European Commission joint project “Support to good governance: Project against corruption in Ukraine”, which finished in the end of 2009.

### ***Article 35 Compensation for damage***

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to Article 28 of the Criminal Procedure Code to illustrate the implementation of the provision under review.

#### ***Article 28: Civil suit in criminal case***

*A person who sustained material damage from the crime may, during criminal proceedings, bring a civil suit against the accused or the persons who are materially responsible for acts committed by the accused. Such civil action is considered by court together with criminal case.*

*Closure of cases on the grounds referred to in Articles 7 and 7-1 of the present Code does not release the person concerned from the duty to compensate, as prescribed by law, for material damage he/she caused to public, civil society organizations or citizens.*

*Civil suit may be brought during both pre-trial investigation and inquiry, and trial but before the beginning of court’s examination. Denying the suit by way of civil proceedings deprives the plaintiff of the right to bring the same suit in criminal case.*

*The person who did not bring a civil suit in criminal case as well as the person on whose civil suit any action was taken may bring such suit by way of civil proceedings.*

*During consideration of a civil suit in criminal case or suit related to compensation for material damage caused by the person in whose respect the case was closed on the grounds referred to Articles 7 and 7-1 of the present Code, civil plaintiff and civil dependant are released from the payment of state dues.*

#### ***(b) Observations on the implementation of the article***

Ukraine has adopted and implemented the measures described in this article.

## ***Article 36 Specialized authorities***

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to Articles 121 and 122 of the Constitution of Ukraine, Chapter XV. Transitional Provisions, Articles 112 of the Criminal Procedure Code, Article 10 of the Law of Ukraine “On Procuratura”, Articles 9 and 10 of the Law On Organizational and Legal Principles of Fight against the Organized Crime.

Constitution of Ukraine

#### ***Article 121***

*The procuracy of Ukraine constitutes a unified system that is entrusted with:*

*prosecution in court on behalf of the State;  
representation of the interests of a citizen or of the State in court in cases determined by law;  
supervision of the observance of laws by bodies that use special investigative techniques, inquiry and pre-trial investigation;  
supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens.*

#### ***Article 122:***

*The procuracy of Ukraine is headed by the Procurator General of Ukraine, who is appointed to office with the consent of the Verkhovna Rada of Ukraine , and dismissed from office by the President of Ukraine. The Verkhovna Rada of Ukraine may express no confidence in the Procurator General of Ukraine that results in his or her resignation from office. The term of authority of the Procurator General of Ukraine is five years.*

*Chapter XV. Transitional provisions.*

*9. The procuracy continues to exercise, in accordance with the laws in force, the function of supervision over the observance and application of laws and the function of pre-trial investigation, until the laws regulating the activity of state bodies in regard to the control*

*over the observance of laws are put into force, and until the system of pre-trial investigation is formed and the laws regulating its operation are put into effect.*

### *Criminal Procedure Code of Ukraine*

#### *Article 112: Competence.*

*1. In cases related to crimes punishable under Articles 157, 158, 158-1, 159, 159-1, 160, 161, 162, 163, 166, 168, second paragraph Articles 170, 171, 172, 173, 175, 176, third paragraph, 177, Articles 182, 183, 184, second paragraph, Articles 209, 229, third paragraph, 233, 234, 235-235-5, 236, 237, 238, 244, 253, 271, 272, 273, 274, 275, 276, 281, 335, 336, 338, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 364, 365, 366, 367, 368, 388-1, 369, 369-1, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 392, 397, 398, 399, 400, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 438, 439, 441, 445 of the Criminal Code of Ukraine (2341-4), as well as in all cases related to crimes committed by officials who hold especially important offices under Article 9, first paragraph, of the Law of Ukraine “On Civil Service” (3723-12) and by persons who hold positions of the 1-3 category, by members of law enforcement authorities, pre-trial investigation is conducted by investigators of prosecutor’s offices. Investigators of prosecutor’s offices may investigate other crimes upon decision of the Prosecutor General of Ukraine, his/her deputies, regional prosecutor, and prosecutors assimilated to them.*

#### *Law of Ukraine “On Procuratura”*

#### *Article 10: Coordination of struggling against the organized crime.*

*The Prosecutor General of Ukraine and subordinate prosecutors coordinate conducting struggle against crime by militia, security service, tax militia, custom service, military police and other law enforcement bodies. For providing of mentioned coordination a prosecutor calls coordination meetings, forms working groups, demands statistics and other necessary information.*

#### *The Law on organizational and legal principles of fight against the organized crime*

#### *Article 9: The special organized crime task force of militia (Ministry of Interior)*

*1. The special organized crime task force of militia includes Organized Main Administration on the level of the Ministry of Interior of Ukraine, organized crime divisions in Autonomous Republic of Crimea, regions, cities of Kyiv and Sebastopol, which are subordinated to the Ministry of Interior of Ukraine and the head of Organized Crime Main Administration.*

*Heads of organized crime divisions in Autonomous Republic of Crimea, regions, cities of Kyiv and Sebastopol are also subordinated to heads of militia regional Headquarters and ex officio are their first deputies.*

*2. Organized Crime departments and units in cities (except Sebastopol) are formed if necessary and are subordinate to organized crime divisions in Autonomous Republic of Crimea, regions and Kyiv city.*

3. *Formation and liquidation of Organized Crime departments and units in cities is authorized by Cabinet of Ministers of Ukraine.*
4. *The Head of Organized Crime Main Administration of the Ministry of Interior of Ukraine is assigned to the position and dismissed by decision of Cabinet of Ministers of Ukraine and ex officio is the first deputy of the Minister of Interior of Ukraine.*
7. *The organized crime task force consists of information analysis units, special operations units, special techniques units, SWAT, internal investigations, financial and human resources units, other units necessary to ensure its activity.*
8. *Organized Crime Main Administration and other divisions are legal persons, have their own budgets, bank accounts (including deposit account), stamps with the state arms and the name of the division on it.*

*Article 10: The special anti-corruption and organized crime task force of Security Service of Ukraine*

1. *The special anti-corruption and organized crime task force of Security Service of Ukraine includes Anti-Corruption and organized Crime main Administration within the Central headquarters of Security Service of Ukraine and anti-corruption and organized crime departments in Autonomous Republic of Crimea, regions, cities of Kyiv and Sebastopol.*
2. *Anti-corruption and organized crime units or groups are formed if necessary and are subordinated to the anti-corruption and organized crime departments.*
3. *Formation and liquidation of organized Crime departments and units is authorized by the decision of the Head of Security Service of Ukraine.*
4. *The Head of Anti-Corruption and Organized Crime main Administration within the Central headquarters of Security Service of Ukraine is assigned to the position and dismissed by the decision of President of Ukraine and ex officio is the first deputy of the Head of Security Service of Ukraine.*

**(b) Observations on the implementation of the article**

The review team noted that the Ukrainian authorities have listed several provisions entailed in different laws (On militia, On the Security Service of Ukraine, On Organizational Legal Principles of Struggle against Organized Crime, On the Principles of Prevention and Counteraction of Corruption in Ukraine), defining authorities with an investigation and law enforcement mandate in corruption cases. These institutions (state bodies, local self-government bodies, legal entities and their units etc.) are obliged to take measures to deter an offence and to immediately inform law enforcement authorities when detecting corruption offence or obtaining information that such offence has been committed. Furthermore, the laws enable militia security service of Ukraine to obtain any information upon written request needed for criminal cases.

The review team found that article 36 of the Convention has been adequately implemented.. On the issue of coordination of the aforementioned authorities, see under article 38 of the UNCAC.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1.**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine referred to several provisions of the CC (article 369 para. 3, article 368<sup>3</sup>, para.5, article 369, para. 6) by which persons are encouraged to report and provide proof.

#### *Article 369: Giving a bribe*

*3. A person who gave a bribe should be discharged from criminal liability, if the bribe was requested from this person, or if, after giving a bribe and before any criminal prosecution was initiated against him/her, this person voluntarily reported the fact of bribery to the agency competent to undertake criminal prosecution.*

#### *Article 368<sup>3</sup> : Commercial bribe of the official of legal entity irrespectively from legal status*

*(5) A person having offered, given or transferred an illegal benefit shall be discharged from criminal liability, if s/he was subject to extortion of an illegal benefit or if, following the offer, giving or transfer of the illegal benefit and prior to the instigation of criminal proceedings against the person, s/he voluntarily makes a statement concerning the acts in question to a body authorized by law to instigate criminal proceedings.*

#### *Article 368.4 CC: Bribery of a person who provides public services*

*(5) A person having offered, given or transferred an illegal benefit shall be discharged from criminal liability, if s/he was subject to extortion of an illegal benefit or if, following the offer, giving or transfer of the illegal benefit and prior to the instigation of criminal proceedings against the person, s/he voluntarily makes a statement concerning the acts in question to a body authorized by law to instigate criminal proceedings.*

#### *Article 369. Proposal or giving bribe*

*6. The person which proposed, gave the undue advantage shall be discharged from criminal liability if the undue advantage was requested from this person or if, after giving the undue advantage and before any criminal prosecution was initiated against him/her, this person voluntarily reported the fact to the agency competent to undertake criminal prosecution.*

According to existing judicial practice, an individual if in relation to him/her exaction of bribe took place or if after giving bribe he/she voluntarily reported the fact before institution of criminal case to a body authorized by the law to institute criminal cases, may be not subject to criminal liability under conditions provided for in paragraph 21 of the Resolution of the Supreme Court of Ukraine „On Judicial Practices on Bribe Cases” No5 dated April 26, 2002.

Thus, according to the parts two and three of this paragraph of the Resolution, oral or written application to the bodies of interior, prosecutor’s office, other government agency authorized to establish criminal case made under any motivation but not associated with fact that authorities or authorized civil servants found out about this bribe is considered voluntary.

Having found out that the person who gave bribe had been released from liability unlawfully (in particular, that he/she was requested bribe or he/she reported the bribe because the crime had been known to the government bodies the court if the prosecutor submitted move must take measures to make that person liable.

***(b) Observations on the implementation of the article***

The Ukrainian authorities have listed several provisions of the CC (article 369, para. 3; article 368<sup>3</sup>, para. 5; 368<sup>4</sup>, para. 5; and article 369, para. 6) which intend to encourage persons involved in criminal offences to report and provide proof. All the mentioned provisions discharge the offender from criminal liability in cases:

- an undue advantage was requested by the offender, or
- if, after giving the undue advantage and before any criminal prosecution was initiated against him/her, this person voluntarily reported the fact to the agency competent to undertake criminal prosecution.

The review team acknowledged that these provisions reflect a legislative policy intended to encourage perpetrators of corruption crimes to report crimes and provide evidence to the law enforcement authorities. As such, these provisions were found to be in compliance with article 37, paragraph 1, of the UNCAC on the understanding that in practice the prosecutorial authorities are vested with the authority to judge on a case-by-case basis, thus being able to “weigh” in each case the level of cooperation of the perpetrator of the crime.

***Article 37 Cooperation with law enforcement authorities***

***Paragraph 2***

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Reference was made to the general principles of assigning punishment set forth in article 65 CC.

*Article 66: Circumstances mitigating a punishment*

*1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be mitigating:*

- (1) surrender, sincere repentance or actively assistance in detecting the offense;*
  - (2) voluntary compensation of losses or repairing of damages;*
  - (2<sup>1</sup>) proving medical or other assistance to the victim just after committing the offense;*
  - (3) the commission of an offense by a minor;*
  - (4) the commission of an offense by a pregnant woman;*
  - (5) the commission of an offense in consequence of a train of adverse personal, family or other circumstances;*
  - (6) the commission of an offense under influence of threats, coercion or financial, official or other dependence;*
  - (7) the commission of an offense under influence of strong excitement raised by improper or immoral actions of the victims;*
  - (8) the commission of an offense in excess of necessary defense;*
  - (9) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, where this has involved committing an offense in any such case as provided for by this Code;*
- 2. When imposing a punishment, a court may find circumstances, other than those specified in paragraph 1 of this Article, to be mitigating;*
- 3. If any of the mitigating circumstances is specified in an Article of the Special Part of this Code as an element of an offense that affects its treatment, a court shall not take it into consideration again as a mitigating circumstance when imposing a punishment.*

**(b) Observations on the implementation of the article**

In the self-assessment the Ukrainian authorities have provided article 66 (Circumstances mitigating punishment), where several grounds for mitigating punishment are listed. Also, paragraph 2 allows for a court to find further such circumstances. Following the first observations provided by experts, the Ukrainian authorities have provided additional information that is article 65 CC setting the general principles for imposing punishment.

Article 66 CC provides for several grounds, also surrender, active assistance in detecting the offense, voluntary compensation of losses etc., that give possibility to mitigate punishment..

The review team acknowledged that these provisions reflect a legislative policy intended to encourage perpetrators of corruption crimes to report crimes and provide evidence to the law enforcement authorities. As such, these provisions were found to be in compliance with article 37, paragraph 2, of the UNCAC on the understanding that in practice the judicial authorities

are vested with the authority to judge on a case-by-case basis, thus being able to “weigh” in each case the level of cooperation of the perpetrator of the crime.

### ***Article 37 Cooperation with law enforcement authorities***

#### ***Paragraph 3***

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

See above under paragraph 1 of article 37 of the Convention.

#### ***(b) Observations on the implementation of the article***

See above under paragraph 1 of article 37 of the Convention.

### ***Article 37 Cooperation with law enforcement authorities***

#### ***Paragraph 4***

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

The protection of individuals that participate in the criminal procedures is established by the Law of Ukraine "On Securing Safety of the Individuals Participating in Criminal Procedures".

Thus, according to the provisions of article 1 of this law, legal, organizational technical, and other measures aimed to protection of life, housing, health, and property of the individuals of these individuals from illegal encroachments in order to provide necessary conditions for due administration of justice is mean by securing safety of individuals participating in criminal procedures, i.e. detection, prevention, stopping, disclosure, and investigation of crimes as well as adjudication of criminal cases.

According to the Paras "b" and "e" of article 2 of the mentioned law, the following individuals enjoy rights to securing safety by means of application of safety measures at presence of



respective grounds: suspect, defendant, attorneys of defense and their legitimate representatives as well as family members and close relatives if by means of threat or other unlawful actions attempts are undertaken to impact the participants of criminal judicial procedure.

Article 7 of the law defines the following measures for securing safety: personal protection, protection of house and property; supplying with special means of personal protection and threat alarm; using technical means of control and wire tapping, surveillance; change of identification documents and change of appearance; change of employer and study place; moving to different place of residence; placement in preschool facility or facility of social protection of population; providing confidentiality of personal data; adjudication in camera. And taking into account nature and level of danger for life, health, house, and property of individuals under protection other measures of security may be undertaken.

Besides this we note that according to the provisions of article 52<sup>3</sup> of CPC not-disclosure of data on an individual under protection may be secured by limitation of information about him in the files of investigation (applications, explanations etc.) as well as in reports on investigation actions and court hearings. The investigation body, investigator, prosecutor, court (judge) while making decision on applying safety measures issues motivated ruling, decision on replacement name of the individual under protection with a nickname. After that in the procedural documents nickname only shall be mentioned, and real name (year, month, and place of birth, occupation or position, place of residence and other personal data containing information on the individual under protection) shall be mentioned in the decision on replacement of personal data. This decision shall not be attached to the files but shall be kept separately with the body carrying out criminal procedure. In the case of replacement of the protected person's name with nickname reports where real data is indicated shall be withdrawn from the files and copies of these documents where the real name is replaced with nickname shall be attached.

Data on safety measures and individuals under protection are classified information.

Part four of article 174 CPC envisages that in exceptional cases in order to ensure safety that identifies identification shall be carried out of sighting of who is identified.

According to the provisions of articles 303 and 308 CPC, in order to provide safety of a victim that is subject to interrogation, the court (judge) by his/her own initiative or under the prosecutor's, counsel's or the victim's move issues motivated ruling on carrying interrogation using technical means from another room, also outside the court premises and granting the procedure participants to listen his/her statement, ask questions, and listen answers to the questions.

In the case when there is danger of victim's voice identification interrogation may be accompanied with acoustic disturbance.

If there is no possibility to interrogate the victim using technical means the court (judge) interrogates him/her in absence of the defendant. Being interrogated, the victim shall be sent off the court room.

Moreover, according to the part two of the Article 290 of CPCU in exceptional cases court may release the victim who is under safety measures from the duty to appear in the court room when written confirmation of his/her statement made earlier is available.

***(b) Observations on the implementation of the article***

The review team took note of the reported provisions, as well as the fact that the specific Law on Ensuring Security of the Persons Participating in Criminal Proceedings provides for a broad definition of “persons who participate in criminal proceedings”, including, inter alia, persons who report the crime to law enforcement authorities. Those persons are entitled to security measures, whereas certain evidentiary regulations are in place to permit them to give testimony in the court in a manner that ensures their safety.

In conclusion, the reviewing experts were satisfied that article 37, paragraph 4, of the UNCAC was sufficiently transposed in the domestic legal order.

***Article 37 Cooperation with law enforcement authorities***

***Paragraph 5***

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

***(a) Summary of information relevant to reviewing the implementation of the article***

The requirement set forth in paragraph 5 of article 37 of the Convention is optional. The national authorities stand ready to consider implementation of this UNCAC provision.

***(b) Observations on the implementation of the article***

The Ukrainian authorities have stated that the provision is merely optional and that consideration will be given to entering into agreements or arrangements in this field.

***Article 38 Cooperation between national authorities***

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as*

*its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine provided Article 6 of the Law of Ukraine “On militia” and Article 8 of the Law of Ukraine “On Security Service of Ukraine” to illustrate the implementation of subparagraph (a).

*Law of Ukraine “On militia”*

*Article 6: The assistance of state bodies, public associations, officials and citizens in the fulfilment of militia tasks*

*1. State bodies, public associations, officials and citizens are obliged to assist to militia in protection of public order and combating crime.*

*Law of Ukraine “On the Security Service of Ukraine”*

*Article 8: Relations of the Security Service of Ukraine with state bodies, enterprises, institutions, organizations, officials, citizens and their associations.*

*The Security Service of Ukraine cooperates with state organs, enterprises, institutions, organizations and officials which assist in the fulfilment of its tasks.*

*Citizens of Ukraine and their associations, other persons can assist in lawful activities of the security Service of Ukraine on a voluntary basis.*

Concerning subparagraph (b), Ukraine referred to Article 11 of the Law of Ukraine “On militia”, Article 25 of the law of Ukraine “On the Security service of Ukraine”, Article 12 of the law of Ukraine “On Organizational Legal Principles of Struggles against the Organized Crime”.

*Law of Ukraine “On militia”*

*Article 11: Rights of militia*

*For execution of its tasks militia shall be entitled:*

*17) to freely obtain from companies, institutions and organizations regardless of form of property, and unions of citizens information under the written request (including one constituting commercial and banking secrecy), needed in criminal cases under the militia’s proceedings. Obtaining of information constituting banking secrecy from banks shall be*

*provided according to the procedure and in volumes established by the Law of Ukraine “On banks and banking”;*

*Law of Ukraine “On the Security Service of Ukraine”*

*Article 25: The rights of the Security Service of Ukraine*

*For performance of the assigned duties, the Security Service of Ukraine, its organs and employees are given the following rights;*

*3) to receive at the request of the head of the relevant organ of the Security Service of Ukraine from the ministries, state committees, other departments, enterprises, institutions, organizations, military units, citizens and their associations the data necessary for ensuring the state security of Ukraine, as well as to use for this purpose service documentation and reports. The procedure of receiving information from banks that contain bank secret is carried out in accordance with the procedure established by the Law of Ukraine “On banks and banking”.*

*Law of Ukraine “On Organizational Legal Principles of Struggle against the Organized Crime”*

*Article 12; Rights of special task force of militia and Security Service of Ukraine.*

*4. While conducting struggle against the organized crime, the staff of special subdivisions in bodies of internal affairs and Security Service of Ukraine have following rights:*

*b) to seal records, cash, premises (except living quarters) or other repositories, to guard it, to attach cash and other valuables of physical and legal persons, to remove objects and documents for term to ten days upon decision and sanction of the relevant prosecutor who supervises over the legality of activity by special task forces on struggle against the organized crime or in urgent cases with further information submitted to the prosecutor under the condition that there is the danger of destruction, suppression or loss of objects or documents which may be used in detection and investigation on criminal activity.*

The effectiveness of these measures was assessed by GRECO in 2007, but examples/cases of successful implementation have not been provided.

***(b) Observations on the implementation of the article***

The Ukrainian authorities referred to provisions of the domestic legislation obliging law enforcement authorities to coordinate and inform each other when detecting corruption offences or obtaining information that such offences have been committed. The purpose of better coordination is also pursued through meetings of an Investigation and Operational Body, which functions as a “quick response” group involving prosecutors, investigators, as well as officials from the Ministry of Interior and other agencies. Specifically with regard to the cooperation of law enforcement authorities with financial institutions in the field of money laundering, the review team was informed of the work of the Department of Financial

Investigation of the State Financial Monitoring Service to detect and analyze suspicious financial transactions, as well as its cooperation with the Office of the Prosecutor General, the Security Service and the Office of Tax Inspection. Statistical data were provided to the reviewing experts indicating that, according to the results of the analysis of information on financial transactions related to alleged embezzlement of public funds, 37 case referrals were prepared and submitted to the law enforcement agencies.

The review team took into account the information above and encouraged the national authorities to continue their ongoing good efforts to facilitate the best possible coordination among agencies with a law enforcement mandate in the fight against corruption.

### ***Article 39 Cooperation between national authorities and the private sector***

#### ***Paragraph 1.***

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Reference is made to articles 12 and 15 of the Law of Ukraine on “Prevention and Counteraction to the Legalization (Laundering) of the Proceeds from Crime” to illustrate compliance with article 39 (1) of the Convention.

#### ***Article 12: Submission of the information about financial transaction***

*1. The entity of the initial financial monitoring should submit the information about financial transaction, which according to article 15 of that law is compulsory, be monitored, in the term of three days on the moment of the registration of such a transaction.*

*2. The decision to submit or not the information to the Authorized Agency about financial transaction, which is the subject of the internal monitoring, should be taken by responsible employee of the entities of initial financial monitoring (branch or other separate division of the entity of the initial financial monitoring) according to the internal proceedings set by the rules of internal financial monitoring in line with the article 16 of that law. In case such a decision has been taken, the information should be passed to the Authorized Agency in the term of ten working days on the moment of its registration.*

*3. The registration procedure for financial transactions subject to compulsory financial monitoring or procedure of submission of information to the Authorized Agency about financial transactions subject to compulsory financial monitoring, other financial transactions which could be related with or intended for legalization (laundering) the proceeds or financing of terrorist activity, terrorist acts or terrorist organizations are set by:*

*- National Bank of Ukraine- for banks;*

*- Cabinet of Ministers of Ukraine- for other entities of initial financial monitoring.*

*4. Submission of the information by the entities of initial financial monitoring to the Authorized Agency shall not represent a violation of professional, bank, commercial or insurance secrecy.*

*5. The entity of initial financial monitoring, their officials or employees shall not be liable for submission of such information, if they acted pursuant to this law, even the harm had been done to interests of legal or physical persons, and for other actions taken in compliance with that Law.*

*6. It is prohibited for employees of the entities of initial financial monitoring who have submitted to the Authorized Agency information on any financial transaction subject to financial monitoring pursuant to this Law, to inform about it the persons engaged in financial transactions or any other third persons.*

*7. It is prohibited for employees of the entities of initial financial monitoring who have received the request of the Authorized Agency and/or given an answer to such a request, to inform about it the persons engaged in financial transactions mentioned in the request or in the answer, or any other third persons.*

*8. If the entities of initial financial monitoring engaged in financial transactions suspect or should have suspected that such financial transactions are related with or intended for financing of terrorist activity, terrorist acts or terrorist organizations, they shall immediately inform the Authorized Agency and the law-enforcement bodies defined by the laws about such financial transactions.*

*9. If executive bodies or other state authorities empowered to conduct their activity in the sphere of prevention and counteraction of legalization (laundering) the proceeds or financing of terrorist activity, terrorist acts or terrorist organizations suspect or should have suspected that such financial transactions are related with or intended for financing of terrorist activity, terrorist acts or terrorist organizations, they shall immediately inform the Authorized Agency. Cabinet of Ministers of Ukraine is responsible to set the procedure of submission of such information.*

*10. Executive bodies or other state authorities are obliged to submit to the Authorized Agency all information (documents) necessary to fulfil its duties according to the procedure set by Cabinet of Ministers of Ukraine. Officials of those state authorities are liable according to the law for non justified refusal to submit such information (document), or for untimely submission of such information (documents), or for submission of incomplete information (documents).*

*11. The specially empowered executive body in the customs sphere is obliged to submit information about all revealed facts of illegal trafficking of cash, circulating monetary documents, precious metal, precious stones, jewellery and also cultural values the price of which is equal or higher than determined by the part one of the article 15 of that law.*

*12. The information submitted under this Law shall be restricted. This information shall be exchanged, disclosed and protected in accordance with the laws by the Authorized Agency, entities of the initial financial monitoring, and the executive agencies and the National bank of Ukraine responsible for regulation and supervision of entities of initial financial control in accordance with the laws.*

*13. The Authorized Agency protects and secures the information received according to the provisions of that Law. The Authorized Agency shall not transfer to anybody the information that contains commercial or bank secret, which has been submitted by the entities of initial*

financial monitoring with the exception of cases provided by articles 18, 20 and 22 of this Law. The access to that information submitted under this Law shall be restricted. While receiving the request on such information, the Authorized Agency has right to leave it without consideration otherwise the request was sent as a part of previously verification of summarized materials.

In case the Authorized Agency has an additional information regarding the previously requested by law enforcement authority summarized materials, it could submit that law enforcement authority those additional summarized materials.

The employees of the Authorized Agency shall be liable according to the law for disclosure of the information got from the entities of initial financial monitoring according to the provisions of that law.

14. Submission of the information on financial transactions which could be related with or intended for legalization (laundering) the proceeds or financing of terrorist activity, terrorist acts or terrorist organizations by executive bodies or other state authorities to the Authorized Agency shall not represent a violation of bank or commercial secret.

Officials and other employees of those state authorities are not liable for submitting to the Authorized Agency information on financial transactions which could be related with or intended for legalization (laundering) the proceeds or financing of terrorist activity, terrorist acts or terrorist organizations.

15. Business entities, enterprises, institutions and organizations without reference to the form of ownership, that are not entities of initial financial monitoring according to the point 2 part one of the Article 20 of that Law on request of the Authorized Agency shall submit all the information related to the analysis of financial transactions subjected to the financial monitoring, certificates and copies of documents (including those which contain bank or commercial secret) required for fulfilment of its tasks in the sphere of counteraction to the legalization (laundering) of such proceeds and financing of terrorism.

The access to the information submitted under the part fifteen of that Article shall be restricted.

This information shall be exchanged, disclosed and protected in accordance with the laws.

The scope and the procedure of such information submission (except the information regarding particulars physical persons) are set by the Cabinet of Ministers of Ukraine.

Officials and other employees of those business entities, enterprises, institutions and organizations are not liable for submitting to the Authorized Agency information on financial transactions according to the provisions of that law.

Persons who will break the regulations of that Law will be liable according to laws.

16. Intelligence agencies are prohibited to pass to anybody the information received from the Authorized Agency as the summarized materials except law enforcement authorities entitled to take decision according to the provisions of Criminal law.

Intelligence agencies are obliged to inform the Authorized Agency about the measures taken on consideration of received summarized materials and additional summarized materials.

#### *Article 15: Financial transactions subject to compulsory financial monitoring*

A financial transaction shall be subject to compulsory financial monitoring if its amount equals or exceeds UAH 150, 000 (for businesses that conduct gambling- UAH 13,000) or equals or exceeds the sum in foreign currency equivalent to UAH 150, 000( for businesses

*that conduct gambling- UAH 13,000) if such financial transaction also has one or more indications specified in this Article:*

*1) transfer of funds to anonymous (numbered) accounts abroad and transfer of funds from anonymous (numbered) accounts from abroad, as well as transfer of funds to account opened with a financial institution in a country included into the list of offshore zones by the Cabinet of Ministers of Ukraine;*

*2) purchase (sale) of checks, traveller's check or other similar payment facilities for cash;*

*3) placement or transfer of funds, granting or receiving a credit (loan), performing other financial transactions when at least one of the parties is a physical or legal entity that is registered, located or resident in a country (territory) which do not execute or improperly execute the recommendations of international, intergovernmental organizations which carries out activity in the area of fight against legalization (laundering) of the proceeds from crime or financing of terrorism, or if one of the parties has an account with a bank registered in such country (territory). The list of such countries (territories) shall be fixed in accordance with the procedure established by the Cabinet of Ministers according to conclusions of international intergovernmental organizations engaged in counteraction to the legalization (laundering) of the proceeds from crime and financing of terrorism.*

*The said list shall be published;*

*4) placement of funds to an account in cash with their subsequent transfer to another person during the same or the next trading day;*

*5) placement of funds to the current account of legal entity or physical entity- businessman or writing off the funds from the current account of the legal entity or physical entity – businessman which period of activity does not exceed three months from the day of registration of such entity or placement of funds to the current account or writing off the cash from the current account of legal entity or physical entity-businessman provided the transactions on such account were not conducted from the date of its opening;*

*6) transfer of funds abroad by a person in cases when no foreign economic contract was concluded;*

*7) exchange of banknotes, particularly of foreign currency, for banknotes of another nominal value;*

*8) carrying out financial transactions with bearer securities not deposited in a depository establishments;*

*9) financial transactions with the bills of blank endorsement or endorsements to bearer;*

*10) calculation of the financial transaction in cash;*

*11) financial transactions for transactions, form of payment which is not defined;*

*12) receipt (payment, transfer) of insurance (reinsurance) payment (insurance payment, insurance premium);*

*13) insurance payment or insurance indemnification;*

*14) payment (transmission) of lottery, purchase of chips, tokens, contribute by other method of pay for the right to participate in gambling, payment (transmission) by the subject of menage, which conducts gambling;*

*15) payment for foreign economic contract which does not foresee the actual supply on the custom territory of Ukraine goods, works and services;*

*16) provision of credit to a person who is a member of the non-bank credit institution in the same day few times, on condition that the total amount of financial transactions equals the amount certain in part first of this article.*



*Information about financial transactions is given in accordance with points 10, 11, 16 of part first of this article to the specifically authorized organ by all subjects of the primary financial monitoring, except banks.*

***(b) Observations on the implementation of the article***

On transposition of paragraph 1 of article 38, the Ukrainian authorities have provided information by citing articles 12 (Submission of the information about financial transaction) and 15 (Financial transactions subject to compulsory financial monitoring) of the Law of Ukraine »On Prevention and Counteraction to the Legalization (Laundering) of the Proceeds from Crime«. The articles clarify which transactions have to be monitored and regularly reported, rules for reporting and the notion that such reporting shall not be considered as breach of professional, bank, commercial or insurance secrecy.

The Ukrainian authorities have also listed several provisions entailed in different laws, (On militia, On the Security Service of Ukraine, On the Principles of Prevention and Counteraction of Corruption in Ukraine), obliging either institutions (state bodies, public associations, enterprises, organizations etc.) as well as individuals (officials, citizens etc.) to assist in performance of official tasks of combating crime and to deter an offence and inform immediately responsible authorities. Nevertheless, provisions that would sanction actions contrary to these provisions have not been provided by the Ukrainian authorities.

Liability for concealment of grave crime and felony is foreseen in article 396 CC as well as liability for knowingly false witness's or victim's statement or known false expert opinion during inquiry, pretrial investigation of adjudication as well as for known false translation make by translator in the same cases is foreseen in article 384 CC.

It is to conclude that both mechanisms for monitoring and reporting financial transactions as well as criminal offences have been regulated. The implementation itself is not evident from the information provided and should be strengthened by setting implementation of mechanisms as an obligation.

Para. 1 of article 38 UNCAC has been fully transposed.

***Article 39 Cooperation between national authorities and the private sector***

***Paragraph 2***

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine highlighted that the mentioned article of the Convention is optional does not contain provisions that would point as a necessity to set sanctions for citizens refusing to cooperate with the national agencies of Ukraine.

In addition, article 396 CC envisages liability for concealment of grave crime and felony. Besides article 384 CC sets liability for knowingly false witness' or victim's statement or known false expert opinion during inquiry, pretrial investigation of adjudication as well as for known false translation made by translator in the same cases.

**(b) Observations on the implementation of the article**

With regard to obligation under paragraph 2 of article 39, the Ukrainian authorities have listed several provisions obliging either institutions (state bodies, public associations, enterprises, organizations etc.) as well as individuals (officials, citizens etc.) to assist in performance of official tasks of combating crime and to deter an offence and inform immediately responsible authorities.

Nevertheless, provisions that would sanction actions contrary to these provisions have not been provided by the Ukrainian authorities. As correctly noted by the Ukrainian authorities, the provision of article 39 is optional. But, as it seems that the Ukrainian authorities did take a few steps further towards the direction of setting an obligation for nationals and other persons residing in the territory of Ukraine to report the commission of an offence, the lack of sanctioning the opposite behavior is weakening the obligation itself.

This provision of the Convention is optional and has not been transposed by Ukraine.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Reference is made to article 178 CC, as well as article 62 of the Law of Ukraine "On Banks and Banking" to indicate that appropriate mechanisms to overcome obstacles related to the application of bank secrecy laws exist.

*Article 178: Grounds for removal and authorization thereof*

*Removal is conducted when there is accurate information that objects or documents of*

*importance for the case remain with a certain person or in a certain place.*

*Removal is conducted upon motivated decision of the investigator.*

*Tangible mediums containing secret information and/or bank secret may be removed only upon motivated decision of judge and in the way agreed with head of the institution concerned.*

*Compulsory removal under law from a home or any other possession of a person, removal of a document relating to final process, as well as removal of commercial or accounting source documents is conducted only upon judge's motivated decision which should be made in accordance with Article 177, fifth paragraph of the present Code.*

## *Law of Ukraine "On Banks and Banking"*

### *Article 62: Procedure for Disclosing Banking Secrets*

*Information on legal entities and individuals which constitute banking secrets, shall be disclosed by banks:*

- 1) in response to a letter of inquiry or by written permission of the owner of such information;*
- 2) in response to a written order of the court or by the court decision;*
- 3) to bodies of the Office of Public Prosecutor, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine and the Antimonopoly Committee of Ukraine- in response to their written order concerning operations on accounts of a particular legal entity or an individual entrepreneur for a specified period of time;*
- 4) to bodies of the State Tax Service of Ukraine- in response to their written order concerning operations on accounts of a particular legal entity or an individual entrepreneur for a specified period of time.*
- 5) to the specially authorized executive responsible for financial monitoring on its written request to provide additional information about the financial transaction that has become an object of financial monitoring.*
- 6) to state enforcement bodies in response to their written request to provide information on implementation of court decisions subject to compulsory performance in accordance with the Law of Ukraine "On enforcement proceedings" concerning the account status of the specific legal entity, a person or individual economic entity.*

*A request of a relevant state agency for obtaining information which contains banking secrets shall:*

- 1) be presented on a letterhead of the established form of the state body*
- 2) be signed by the manager (or deputy manager) of the state body and sealed with the official stamp;*
- 3) contain the reasons stipulated by this Law to obtain such information*
- 4) carry references to the provisions of the Law in accordance with which the state body has the right to obtain such information;*

*The bank shall issue statements of accounts (deposits) in the event of death of their owners to persons specified by their owner of the account (deposit) in his/her bequest the bank, to state notary offices or private notaries, and foreign consulate offices on inheritance issues on accounts (deposits) of deceased owners of accounts (deposits).*

*The bank is prohibited from providing information on clients of another bank, even if their names are mentioned in documents, agreements and operations of the client.*

*The bank shall have the right to provide the information, which constitutes the banking secrecy, to other banks and National Bank of Ukraine within the limits required to grant credits and bank guarantees.*

*The bank is entitled to disclose the information containing the banking secrecy to the person (including the person that is authorized to act on behalf of the state) in whose favour the bank assets and liabilities are to be alienated when taking the actions envisaged by the program of financial rehabilitation of the bank or during the liquidation procedure. The National Bank of Ukraine (provisional administrator) is entitled to furnish the Ministry of Finance with the information containing the banking secrecy about the banks in whose capitalization the state is to participate.*

*Restrictions with regard to obtaining the information containing bank secrets which are stipulated by this article, shall not apply to employees of the National Bank of Ukraine or persons authorized by them, who, within the powers provided by the Law of Ukraine “On the National Bank of Ukraine” exercise functions of banking supervision or foreign exchange control.*

*In accordance with an international treaty of Ukraine or under the principle of reciprocity, the National Bank of Ukraine shall have the right to provide information received from supervision activity to the banking supervision authority of another country and to receive such information from a banking supervision body of another country. The information provided (received) may be used exclusively for the purposes of banking supervision or prevention of legalization (laundering) of proceeds of crime or terrorist financing.*

*Provisions of this article shall not apply to disclosure of information about financial transactions to the specially authorized executive body responsible for financial monitoring in cases stipulated by law.*

*Persons found guilty of violating the procedure for disclosing and using banking secrets, shall bear responsibility in accordance with law of Ukraine.*

**(b) Observations on the implementation of the article**

The relevant provisions (article 6, paragraphs 9-11, and article 12, paragraph 4) of the Law on Prevention and Counteraction to Money Laundering were found by the review team to provide guarantees that bank secrecy does not hamper domestic criminal investigations of corruption-related offences.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Reference is made to article 9 CC to explain adoption and implementation of the provision described above.

*Article 9: Legal consequences of convictions outside Ukraine*

*1. A judgement passed by a foreign court may be taken into account where a citizen of Ukraine, a foreign national or a stateless person has been convicted of a criminal offense committed outside Ukraine and has committed another criminal offense on the territory of Ukraine.*

*2. Pursuant to the first paragraph of this Article, the repetition of criminal offenses, or a sentence not served or any other legal consequence of a judgment passed by a foreign court shall be taken into account in the classification of any new criminal offense, determination of punishments in the discharge from criminal liability or punishment.*

**(b) Observations on the implementation of the article**

The Ukrainian authorities referred to article 9 CC ( Legal consequences of conviction outside Ukraine), which allows to take into account a judgment passed by a foreign court convicting a foreign citizen, a stateless person or Ukrainian citizen of a criminal offence when he/she committed another criminal offence in the territory of Ukraine. Furthermore, other circumstances like repetition of a criminal offence, sentence not served or other legal consequences of a judgment passed by a foreign court shall be taken into account.

In conclusion, no issues of non-compliance with article 41 of the UNCAC were found by the review team.

**Article 42 Jurisdiction**

**Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine provided Article 6 of the CCU to illustrate adoption and implementation of the provision described above.

*Article 6: The operation of the law on criminal liability in regard to offenses committed on the territory of Ukraine*

- 1. Any person who has committed an offense on the territory of Ukraine shall be criminally liable under this Code.*
- 2. An offense is deemed to have been committed on the territory of Ukraine if it has been initiated, continued, completed or discontinued on the territory of Ukraine.*
- 3. An offense is deemed to have been committed on the territory of Ukraine if the principal to such offense, or at least one of the accomplices has acted on the territory of Ukraine*
- 4. Where a diplomatic agent of a foreign state or another citizen who, under the laws of Ukraine or international treaties the consent to the binding effect of which has been granted by the Verkhovna Rada of Ukraine is not criminally cognizable by a Ukrainian court commits an offense on the territory of Ukraine, the issue of his criminal liability shall be settled diplomatically.*

***(b) Observations on the implementation of the article***

Article 6 CC established obligation to apply the provisions of the CC to everybody committing (either initiating, continuing, completing or discontinuing an offence on the territory - para. 2 of the article or if the principal or merely one of accomplices has acted on the territory – para. 3 of the article) an offence on the territory of Ukraine, thus covering the obligation under paragraph (a).

Subpara. 1 (a) of the provision under review has been fully transposed.

***Article 42 Jurisdiction***

***Subparagraph 1 (b)***

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

***(a) Summary of information relevant to reviewing the implementation of the article***

According to its laws and International treaties certain objects under its jurisdiction outside of Ukraine are considered its territory:

- men-of-war (a man-of-war is a ship that belongs to the armed forces of a state, bear external signs indicating nationality of the ship, under command of an officer in service of the government of this state, and has a crew subject to regular military discipline) or boats under the flag of Ukraine no matter are they in the high seas, in territorial water of other states or in a foreign port;
- military air objects while they are in any place outside air space of Ukraine;

non-military ships and boats registered in ports in the territory of Ukraine and sail under the flag of Ukraine in the high seas (i.e. outside territorial and internal waters of the foreign states);

- non-military air objects registered in Ukraine that situate in the open air space (i.e. outside the territory of Ukraine or other foreign states).

A crime committed by an individual in the territory of the mentioned objects shall be grounds for criminal prosecution based on CC, not the criminal laws of another state no matter nationality of the individual and no matter whether he/she is member of the ship or aircraft crew etc. This is true in the case of collision or any other navigation incident with a ship in high seas entailing criminal liability of the captain or another crew member.

***(b) Observations on the implementation of the article***

The Ukrainian authorities refer to international treaties under which a national criminal law should be also applied to criminal offences committed on “men-of-war”, military air objects, non-military ships and boats registered in ports in the territory of Ukraine and sail under the flag of Ukraine in the high seas and non-military air objects registered in Ukraine that situate in the open air space. The review team welcomed this explanation, although it noted that no jurisprudence on the direct application of international treaties domestically was submitted to support this argument.

***Article 42 Jurisdiction***

***Subparagraph 2 (a) and (b)***

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

***(a) Summary of information relevant to reviewing the implementation of the article***

Reference is made to articles 7 and 8 CC.

*Article 7: The operation of the law on criminal liability in regard to offenses committed by citizens of Ukraine or stateless persons outside Ukraine*

*1. Citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed offenses outside Ukraine, shall be criminally liable under this Code, unless otherwise provided by the international treaties, the consent to the binding effect of which has been granted by the Verkhovna Rada of Ukraine.*

*2. Where the persons referred to in the first paragraph of this Article underwent criminal punishment for the committed criminal offenses outside Ukraine, they shall not be criminally liable for these criminal offenses in Ukraine.*

*Article 8: The operation of the law on criminal liability in regard to offenses committed by foreign nationals or stateless persons outside Ukraine*

*Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed offenses outside Ukraine shall be criminally liable in Ukraine under this Code as provided for by the international treaties, or if they have committed grave or especially grave offenses punishable under the present Code against rights and freedoms of Ukrainian citizens or interests of Ukraine.*

**(b) Observations on the implementation of the article**

The Ukrainian authorities have cited two articles of the CC, article 7 (The operation of the law on criminal liability in regard to offences committed by citizens of Ukraine or stateless persons outside Ukraine) and article 8 (The operation of the law on criminal liability in regard to offences committed by foreign nationals or stateless persons outside Ukraine).

The jurisdictional rule of active personality (jurisdiction over offences committed by nationals) is expressly foreseen article 7 CC).

Particularly with regard to article 8 CC, foreign citizens and stateless persons not residing permanently in Ukraine who commit a criminal act outside the territory of Ukraine are subject to criminal liability in either of the following two cases: if criminal liability is provided for by international treaties, including the UNCAC; and if such persons have committed grave or particularly grave offences punishable under the CC against the rights and freedoms of Ukrainian citizens or the interests of Ukraine. Such grave offences are defined by article 12 CC as offences punishable by up to 10 years of imprisonment, and therefore only aggravated forms of corruption offences seem to be covered by the second part of article 8 CC.

The review team took into account the explanations provided by the Ukrainian authorities that, in relation to those aggravated corruption offences, the first part of section 8 CC allowed for the direct applicability of article 42 of the UNCAC. However, no jurisprudence on the direct application of international treaties domestically was submitted to support this argument.

**Article 42 Jurisdiction**

**Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an*



*offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

***(a) Summary of information relevant to reviewing the implementation of the article***

According to part three of article 6 CC a crime shall be considered committed in the territory of Ukraine if its perpetrator or at least one of its associates acted in the territory of Ukraine.

According to parts one to five of article 27 CC, the organizer, abettor and accessory, together with the principal offender, are deemed to be accomplices in a criminal offense. The principal (or co-principal) is the person who, in association with other criminal offenders, has committed a criminal offense under this Code, directly or through other persons, who cannot be criminally liable, in accordance with the law, for what they have committed. The organizer is a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization. The abettor is a person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise. The accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.

Reference is also made to the provisions of the domestic legislation implementing article 23, paragraph 1(b)(ii) of the UNCAC, which are in full compliance with the Convention.

As it has been mentioned the provisions of domestic laws in the area of prevention and countering legalization (laundering) proceeds of crime or financing terrorists fully meet both the requirements of the Convention and those of new wording of the Forty Recommendations of the Group in Development of Financial Measures on Countering Money Laundering (FATF).

Thus, paragraph 2(c) of article 42, in conjunction with article 23, paragraph 1(b)(ii) of the UNCAC, has been fully implemented in the national laws.

***(b) Observations on the implementation of the article***

With regard to paragraph (c) the Ukrainian authorities have cited article 6 CC, which provides for criminal liability of a person who has been one of the accomplices if either a principal or an accomplice has acted on the territory of Ukraine. As a clear definition has been provided on who is deemed to be a principal, organizer, abettor and an accessory, it can be concluded that all forms from subparagraph (b) (ii) of paragraph 1 of article 23 have been covered.

Para. 2 (c) of article 42 UNCAC is fully transposed.

## ***Article 42 Jurisdiction***

### ***Subparagraph 2 (d)***

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Article 8 CC sets forth that foreign citizens and individuals without citizenship not residing permanently in Ukraine and that committed crimes outside are liable in Ukraine according to CCU only in cases provided for in International treaties or if they committed grave crimes of felonies provided for in CCU against rights and freedoms of the citizens of Ukraine or interests of Ukraine.

### ***(b) Observations on the implementation of the article***

The review team noted that, according to article 8 CC, foreign citizens and stateless persons not residing permanently in Ukraine who commit a criminal act outside the territory of Ukraine are subject to criminal liability in either of the following two cases: if criminal liability is provided for by international treaties, including the UNCAC; and if such persons have committed grave or particularly grave offences punishable under the CC against the rights and freedoms of Ukrainian citizens or the interests of Ukraine. Such grave offences are defined by article 12 CC as offences punishable by up to 10 years of imprisonment, and therefore only aggravated forms of corruption offences seem to be covered by the second part of article 8 CC.

The review team took into account the explanations provided by the Ukrainian authorities that, in relation to those aggravated corruption offences, the first part of section 8 CC allowed for the direct applicability of article 42 of the UNCAC. However, no jurisprudence on the direct application of international treaties domestically was submitted to support this argument.

## ***Article 42 Jurisdiction***

### ***Paragraphs 3 and 4***

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in*

*accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Reference is made to article 10 CC, as well as Article 6 of the European Convention on extradition (ratified by the Law of Ukraine) for adoption and implementation of paragraphs 3 and 4.

*Criminal Code of Ukraine*

*Article 10: Extradition of a person accused of a criminal offense and a person convicted of a criminal offense*

*1. Citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed criminal offenses outside Ukraine, shall not be extradited to a foreign state for criminal prosecution and committal for trial.*

*2. Foreign nationals, who have committed criminal offenses on the territory of Ukraine and were convicted of these offenses under this Code, may be transferred to serve their sentences for the committed offenses in the state, whose nationals they are, where such transfer is provided for by the international treaties of Ukraine*

*3. Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed crime outside Ukraine and stay on the territory of Ukraine, may be extradited to a foreign state for criminal prosecution and committal for trial, or transferred to serve their sentence, where such extradition or transfer is provided for by the international treaties of Ukraine.*

*European Convention on extradition (ratified by the Law of Ukraine on 16 January 1998 No. 43/98 VR)*

*Article : Extradition of nationals*

*1.a. A Contracting Party shall have the right to refuse extradition of its nationals*

*b. Each Contracting Party may, by a declaration made at the time of signature or deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.*

*c. Nationality shall be determined as at the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in subparagraph a of this article.*

*2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offense shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting party shall be informed of the result of its request.*

***(b) Observations on the implementation of the article***

The Ukrainian authorities referred to article 10 CC (Extradition of a person accused of a criminal offence and a person convicted of a criminal offence) as well as to the European Convention on extradition which was ratified by the Law of Ukraine on 16.1.1998, No. 43/98 VR.

The CC provides for prohibition of extradition of a Ukrainian citizen as well as providing grounds to either extradite a foreign national having committed and being convicted of an offence in Ukraine to serve sentence outside Ukraine or to extradite a foreign national or stateless person to a foreign country for a criminal prosecution and a trial as well as for serving the sentence for offences committed outside Ukraine, but being apprehended on the territory of Ukraine.

Article 42, paragraphs 3 and 4, of the UNCAC have been transposed adequately into national legislation of Ukraine.

***Article 42 Jurisdiction***

***Paragraph 5***

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

***(a) Summary of information relevant to reviewing the implementation of the article***

CPC provides for possibility of take over of prosecution which is understood, according to article 481 CPC, as a transfer of a criminal case with regard of an individual by the authorized agencies of one state to authorized agencies of another state to proceed with the case. Prosecution may be taken over before the sentence on criminal case is passed only.

A criminal prosecution may be taken over on the basis of an international treaty that the Supreme Rada Ukraine agreed that it shall be binding only under condition that all the determined conditions are met.

***(b) Observations on the implementation of the article***

The information provided by the Ukrainian on the take over of prosecution, in cooperation with other countries, presupposes the ability to engage in consultations with the authorities of

those countries and therefore is linked to the matter of implementation of article 42, paragraph 5, of the UNCAC, No issues of non-compliance were found.

#### ***Article 42 Jurisdiction***

##### ***Paragraph 6***

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

##### ***(a) Summary of information relevant to reviewing the implementation of the article***

Reference was made to article 8 CC, in addition to the aforementioned articles 6 and 7 CC.

##### ***(b) Observations on the implementation of the article***

No issues of non-compliance were found.

#### ***Chapter IV. International cooperation***

The review team found that Ukraine has, in general, put in place a detailed framework of international judicial and law enforcement cooperation. The reviewing experts were of the view that recent amendments of the domestic legislation served the purpose of streamlining existing regulations, upgrading assistance mechanisms and rendering cooperation more efficient and flexible. Similarly, the envisaged amendments in existing legislation, as contained in the new CPC, seemed to be placed along the same lines of efforts to improve and upgrade existing regulations, although it has been stressed that this draft might still undergo changes and therefore the reviewing experts were not in a position to reach safe conclusions in this regard. The review team placed emphasis on the need to ensure that all legislative changes and updates are decided and implemented on a “long-term perspective” as a condition for their sustainability and coherence.

#### ***Article 44 Extradition***

##### ***Paragraph 1***

*This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

##### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine is in compliance with the provision described above and article 451 of its Criminal Procedure Code (CPC) defines the general conditions for extradition. More specifically, Ukraine considers the Convention to be the legal basis for co-operation on extradition in relations with the States Parties to the Convention in the absence of a treaty on extradition between them.

##### ***Article 451: General conditions of extradition of a person***

*The request of extradition of a person shall be sent, provided that, according to the laws of Ukraine, at least one of the offenses, which constitute grounds for the request, imply penalty in form of deprivation of liberty for a maximum term of at least one year or that the person was sentenced to the deprivation of liberty and the unserved term is at least four months.*

*A request of a competent authority of a foreign state for the extradition may be considered only if the requirements stipulated by Para 1 of this Article are met.*

*Request for a temporary surrender and transit transportation shall be sent and considered according to the same procedure as the requests for extradition of a person.*

The effectiveness of the measures adopted to comply with the provision under review has not been assessed.

***(b) Observations on the implementation of the article***

The review team noted that the extradition framework in Ukraine is regulated by both domestic legislation (which stipulates the conditions and procedural requirements for extradition) and pertinent international treaties. Ukraine is a party to multilateral treaties on extradition such as the European Convention on Extradition (1957) and its two Additional Protocols, as well as the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal relations in Civil, Family and criminal Matters (1993) and its Protocol. Moreover, Ukraine has concluded bilateral treaties on extradition with several countries.

Substantive and procedural conditions for extradition are regulated by provisions of the CPC (articles 450-470). During the country visit, the Ukrainian authorities clarified that the new CPC (see above) would amend the legal framework of international cooperation in criminal matters with a view to upgrading its efficiency and flexibility.

Ukraine makes extradition conditional on the existence of a treaty. It further considers the UNCAC as a legal basis for extradition and has notified the Secretary-General accordingly. In response to a query raised by the review team whether reciprocity can be a part of international cooperation arrangements on a case-by-case basis, the Ukrainian authorities indicated that under the current legal framework such an option was available only for MLA proceedings and not for extradition, but the new CPC would provide for the possibility of granting an extradition request on the basis of reciprocity as well.

Article 451 CPC stipulates the general conditions for extradition which is possible for offences carrying a maximum penalty of at least one year of imprisonment or, where extradition is requested for the purpose of enforcement of a sentence, for offences for which a period of sentence of at least four months remains to be served.

***Article 44 Extradition***

***Paragraph 2***

*Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

***(a) Summary of information relevant to reviewing the implementation of the article***

The Ukrainian authorities referred to the aforementioned article 451 CPC in addition to article 466 of the same Code to explain the adoption and implementation of the provision described above.

*Article 466: Refusal to extradite a person.*

*Extradition of the person to a foreign state shall be refused if:*

- 1) the person which is requested to be extradited,, at the moment of taking a decision on extradition is a citizen of Ukraine or stateless person with permanent residence in Ukraine as provided by laws of Ukraine;*
- 2) the crime, which substantiates the request for extradition, is not punishable with deprivation of liberty according to law of Ukraine;*
- 3) statute of limitations provided by law of Ukraine for criminal prosecution of the person for the crime, which substantiates the request for extradition, have expired;*
- 4) Competent Authority of the foreign state has failed to produce under the request of the Central Authority, additional materials or data without which decision on request for extradition can not be taken;*
- 5) extradition of the person contradicts to the obligations of Ukraine under international treaties of Ukraine;*
- 6) there are any other grounds provided by the international treaty of Ukraine;*

*The person to whom statute of refugee is granted can not be extradited to a foreign state, where the person's health, life or freedom is threatened on the grounds of race, faith (religion), nationality, citizenship, belonging to a certain social group or political views, except on cases provided by an international treaty of Ukraine.*

*In case of refusal to extradite on the grounds of citizenship and possession of the status of refugee or on any other grounds which do not exclude proceedings, Office of the Prosecutor General of Ukraine, upon the request of the Competent Authority of foreign State shall assign a pre-trial investigation authority to investigate the criminal case with regard to this person according to the procedure established by this Code.*

Reference is made to article 10 CC which establishes mandatory jurisdiction on the existence of treaties (conventions) as a legal basis for extradition cooperation with the foreign states.

The effectiveness of the measures adopted to comply with the provision under review has not been assessed.

***(b) Observations on the implementation of the article***

Article 466 CPC lists the grounds for refusal of an extradition request, including nationality (the extradition of nationals is also prohibited by the Constitution in its article 25); lack of double criminality; discrimination clause; lapse of time; incomplete documentation to substantiate the request; contradiction to international obligations of the country; and any other grounds for refusal foreseen in international treaties concluded by Ukraine.

During the country visit, the Ukrainian authorities also provided information on practical cases of refusal of extradition requests.

See also above under paragraph 1 of article 44 of the UNCAC.



## **Article 44 Extradition**

### **Paragraph 3**

*If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with paragraph 3, referring to Article 2 of the European Convention on Extradition (1957).

*Article 2: Extraditable offences.*

*1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.*

*2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.*

#### **(b) Observations on the implementation of the article**

No issues of non-compliance were found by the review team.

## **Article 44 Extradition**

### **Paragraph 4**

*Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision described above, referring to explanation given under paragraph 1 of this article.

Ukraine presented two examples of two bilateral treaties successfully implementing similar provisions covered by the other UN Conventions: it reached an agreement with the Republic of India in 2002 and with Panama in 2003.

**(b) *Observation on the implementation of the article***

See above under paragraph 1 of article 44 of the UNCAC.

The Ukrainian authorities confirmed that they did not consider any of the offences established in accordance with the UNCAC as political offences, although the concept of “political offence” is not defined explicitly in the domestic legislation.

No issues of non-compliance were found by the review team.

***Article 44 Extradition***

***Paragraph 5***

*If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review. It declared that it considers the Convention the legal basis for extradition in relation to State Parties of the Convention in case of absence between them of an extradition treaty.

**(b) *Observation on the implementation of the article***

The review team was satisfied that the provision under review has been adequately implemented.

## **Article 44 Extradition**

### **Paragraph 6**

*A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine makes extradition conditional on the existence of a treaty. It informed the Secretary-General of the United Nations that it considers the Convention the legal basis for cooperation on extradition with other States Parties to the Convention.

#### **(b) Observation on the implementation of the article**

The review team was satisfied that the provision under review has been adequately implemented

## **Article 44 Extradition**

### **Paragraph 7**

*States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated that the provision under review does not apply to domestic legislation since it makes extradition conditional on the existence of a treaty.

#### **(b) Observations on the implementation of the article**

Ukraine is exempt from adoption and implementation of the provision under review. This provision mandates the States Parties that do not make extradition conditional on the

existence of a treaty and provides for extradition on the basis of their domestic law to recognize offences to which this article applies as extraditable offences. It is linked with paragraph 4 of the present article.

## ***Article 44 Extradition***

### ***Paragraph 8***

*Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Reference is made to article 10 CC and articles 451, 452, 466 and 470 CPC to illustrate compliance with the provision under review.

#### ***Criminal Code of Ukraine***

*Article 10: Extradition of a person accused of a crime and a person convicted of a crime*

*3. Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed crime outside Ukraine and stay on the territory of Ukraine, may be extradited to a foreign state for criminal prosecution and committal for trial, or transferred to serve their sentence, where such extradition or transfer is provided for by the international treaties of Ukraine.*

#### ***Criminal Procedure Code of Ukraine***

*Article 451: General conditions of extradition of a person*

*The request of extradition of a person shall be sent, provided that, according to the laws of Ukraine, at least one of the offenses, which constitute grounds for the request, imply penalty in form of deprivation of liberty for a maximum term of at least one year or that the person was sentenced to the deprivation of liberty and the unserved term is at least four months.*

*A request of a competent authority of a foreign state for the extradition may be considered only if the requirements stipulated by Para 1 of this Article are met.*

*Request for a temporary surrender and transit transportation shall be sent and considered according to the same procedure as the requests for extradition of a person.*

*Article 452: Central authorities for extradition of a person*

*The central authorities for extradition of a person are respectively Prosecutor General's Office of Ukraine and Ministry of Justice of Ukraine, unless an international treaty of Ukraine provides otherwise.*

*Prosecutor General's Office of Ukraine is the central authority for the extradition of persons (suspected) in cases at the stage of pre-trial investigation proceedings.*

*Ministry of Justice of Ukraine is the central authority for extradition of defendants (convicted persons) in cases at the stage of trial proceedings or at the stage of sentences execution.*

*According to this Code, the Central authorities for the extradition of a person shall:*

- 1) address to the competent authorities of foreign states with a request for extradition of a person, temporary surrender or transit transportation;*
- 2) consider requests of competent authorities of foreign states with regard to extradition, temporary surrender or transit transportation and take decisions concerning them;*
- 3) organize the conduction of extradition examination;*
- 4) organize the taking over and surrender of persons, concerning decision on extradition, temporary surrender or transit transportation was taken;*
- 5) exercise other powers established by this Section or an international treaty on extradition of persons;*

*Article 466: Refusal to extradite a person.*

*Extradition of the person to a foreign state shall be refused if:*

- 1) the person which is requested to be extradited, at the moment of taking a decision on extradition is a citizen of Ukraine or stateless person with permanent residence in Ukraine as provided by laws of Ukraine;*
- 2) the crime, which substantiates the request for extradition, is not punishable with deprivation of liberty according to law of Ukraine;*
- 3) statute of limitations provided by law of Ukraine for criminal prosecution of the person for the crime, which substantiates the request for extradition, have expired;*
- 4) Competent Authority of the foreign state has failed to produce under the request of the Central Authority, additional materials or data without which decision on request for extradition can not be taken;*
- 5) extradition of the person contradicts to the obligations of Ukraine under international treaties of Ukraine;*
- 6) there are any other grounds provided by the international treaty of Ukraine;*

*The person to whom statute of refugee is granted can not be extradited to a foreign state, where the person's health, life or freedom is threatened on the grounds of race, faith (religion), nationality, citizenship, belonging to a certain social group or political views, except on cases provided by an international treaty of Ukraine.*

*In case of refusal to extradite on the grounds of citizenship and possession of the status of refugee or on any other grounds which do not exclude proceedings, Office of the Prosecutor General of Ukraine, upon the request of the Competent Authority of foreign State shall assign a pre-trial investigation authority to investigate the criminal case with regard to this person according to the procedure established by this Code.*

*Article 470: Actual surrender of the person*

*With a view to actual surrender a person, with regard to whom the decision of extradition was taken, Central Authority, after entering into force a decision, shall issue respective instructions (send requests) to the Competent Authorities of Ukraine.*

*The person shall be surrendered within fifteen days from the date established for his/her surrender. This term may be extended by the Central Authority up to thirty days, after which the person shall be released from custody.*

*If the Competent Authority of the foreign state, by any reasons beyond its control, is unable to take over such person, Central Authority shall establish a new date of surrender within the term provided by Para 2 of this Article.*

*At the moment of actual surrender of the person, the Competent Authority of the foreign State shall be informed on terms of detaining this person in custody in Ukraine.*

The effectiveness of the measures adopted to comply with this provision was assessed in July 2010 by experts of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia.

**(b) Observations on the implementation of the article**

The review team was satisfied that the provision under review has been adequately implemented

**Article 44 Extradition**

**Paragraph 9**

*States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Reference is made to articles 462 through 466 CPC to illustrate compliance with the provision under review.

**Article 462: Provisional arrest**

*The detained person, who committed a crime outside Ukraine, shall be subject to provisional arrest for 40 days or for another term established by a respective international treaty of Ukraine until receiving of the request on this person's extradition.*

*In case if the maximal term of the provisional arrest provided for by Para 1 of this Article is expired, and the request for extradition of this person is not received, the detained person shall be released immediately from a custody.*

*The inquiry authority, which detained the person, with the consent of prosecutor, shall file to a court that has the jurisdiction over detention place a submission on application of the provisional arrest. Prosecutor also has a right to file the same submission.*

*The following documents shall be attached to the submission:*

*1) report on the person's detention;*

*2) documents containing the information concerning commission by this person of an offence on the territory of a foreign state and on application to this person a measure of restraint by a competent authority of the foreign state;*

*3) documents confirming the identity of the detained person;*

*The submission shall be considered within seventy two hours from the moment of the person's detention.*

*When considering the submission, the judge shall identify the detained person, propose this person to make a statement, check the presence of the documents stipulated by Subpara 2 of Para 3 of this Article, listen the opinions of the prosecutor and of the other participants and shall adopt the resolution:*

*1) apply the provisional arrest;*

*2) refuse to apply the provisional arrest if such measure is ungrounded.*

*The court resolution may be appealed to a court of appeals within three days after its adopting by the prosecutor, by the person subjected to the provisional arrest, his/her defense attorney or legal representative. Filing the appeal against the court resolution shall not prevent such resolution to become valid and to be executed. The order of the court of appeals shall not be subject to any further appeals or to any cassation by a prosecutor.*

*The release of the person from the provisional arrest due to delay in receipt of the request on extradition by the central authority shall not prevent application of extradition arrest to this person in case of receiving such request later*

*In case of receipt of the request on extradition of the person before expiration of the term of provisional arrest ordered by the court, the court resolution on provisional arrest shall cease from the moment when the court adopts the resolution on application of extradition arrest to this person.*

#### *Article 463: Extradition arrest*

*After receiving a request of the competent authority of a foreign state for extradition of a person, the prosecutor, upon assignments (request) of the central authority, shall file a submission for extradition arrest of the person to the court that has the jurisdiction over the place where the person is held in custody.*

*Together with such submission, the following documents shall be submitted for court's consideration:*

*1) a copy of the request of the competent authority of a foreign State for extradition of the person certified by the central authority;*

*2) documents concerning the person's citizenship;*

*3) available materials for extradition examination*

*Materials, which are submitted to the court, shall be translated into the national language or other language as provided by an international treaty of Ukraine.*

*Upon receipt of the submission, the judge shall identify the person, propose the person to make a statement, check the request on extradition and the available materials of the*

*extradition examination, listen the opinions of the prosecutor and of the other participants and shall adopt the resolution to:*

*1) apply the extradition arrest;*

*2) refuse to apply the extradition arrest if such measure is ungrounded.*

*When considering the submission, the judge shall not examine the issue of guiltiness nor shall the judge check the lawfulness of procedural decisions made by the competent authorities of the foreign state with regard to the person, which is requested to be extradited.*

*Within three days after its adoption, the resolution may be appealed at court of appeals by the prosecutor, by the person subjected to the provisional arrest, his/her defense attorney or legal representative. Filing the appeal against the court order shall not prevent the order to become valid and to be executed. The order of the court of appeals shall not be subject to any further appeals or to any cassation by a prosecutor.*

*The extradition arrest shall be applied until solving the issue of the person's extradition and the person's actual surrender, but it can not last for more than eighteen months.*

*Within this term, a judge who has jurisdiction over the place where the person is held in custody, upon request of the prosecutor, shall, not less than once in two months, check the existence of the grounds for the person's further detention or release.*

*Upon the complain of the person, which is under the extradition arrest or his/her defense attorney or legal representative, the judge who has jurisdiction over the place where the person is held in custody, shall, not more than once a month, check the existence of the grounds for the release of such person.*

*In case if the maximum term of the extradition arrest provided by Para 7 of this Article has expired while the issue of extradition of the person and of the person's actual surrender has not been resolved by the central authority, such person shall be released immediately.*

*Release of the person from the extradition arrest by the court shall not prevent its repeated application with the purpose of the actual surrender of such person to the foreign state in order to execute the decision on extradition, unless otherwise provided by the international treaty of Ukraine.*

*In case of release of the person from custody by the court, the regional prosecutor or his/her deputy, with the consent of the respective central authority, shall order the application of other necessary measures in order to prevent the person's escape to secure the person's extradition in the future.*

*Such measures shall be sufficient to ensure the possibility of execution of the decision on extradition of the person and may, in particular, include bail, restrictions on the person's movement and control over the place of the person's residence. The bail and restrictions on movement shall be applied according to the procedure stipulated by Articles 98-1, 151 and 154-1 of this Code with taking into account the peculiarities of this Section.*

*The Regional prosecutor or his/her deputy shall notify the person, which is subject to the order, the person's defense attorney or legal representative about rendering such order.*

*Regional Prosecutor or his/her attorney may assign the inquiry authority to execute the order.*

#### *Article 464: Termination of the provisional or extradition arrest*

*The provisional or extradition arrest shall be terminated if:*

*1) the Central Authority has not received the request on the person's extradition within the term provided by the international treaty of Ukraine;*



- 2) the extradition examination revealed the circumstances under which the person's extradition is not granted
- 3) the Competent Authority of the foreign State refused to request the extradition of the person;
- 4) the Central Authority took a decision to refuse to extradite the person.

The person shall be released from a custody by Regional prosecutor or his/her deputy upon the assignments(request) of the Central Authority and in case provided by Subpara 2 of Para 1 of this Article- with a consent of the respective Central Authority. Copy of the order on release from custody shall be sent to the chief of the pre-trial detention facility and to the court, which ordered the application of the provisional or extradition arrest.

#### *Article 465: Conduction of the extradition examination*

Extradition examination of circumstances, which may prevent the extradition of the person, shall be conducted by the Central Authority or, by its assignment (request) by Regional Prosecutor's Office.

Extradition examination shall be conducted within thirty days. This term may be extended by the respective Central Authority.

Materials of the extradition examination together with the conclusion on such examination shall be sent to the respective Central Authority.

#### *Article 466: Refusal to extradite a person.*

Extradition of the person to a foreign state shall be refused if:

- 1) the person which is requested to be extradited, at the moment of taking a decision on extradition is a citizen of Ukraine or stateless person with permanent residence in Ukraine as provided by laws of Ukraine;
- 2) the crime, which substantiates the request for extradition, is not punishable with deprivation of liberty according to law of Ukraine;
- 3) statute of limitations provided by law of Ukraine for criminal prosecution of the person for the crime, which substantiates the request for extradition, have expired;
- 4) Competent Authority of the foreign State has failed to produce under the request of the Central Authority, additional materials or data without which decision on request for extradition can not be taken;
- 5) extradition of the person contradicts to the obligations of Ukraine under international treaties of Ukraine;
- 6) there are any other grounds provided by the international treaty of Ukraine;

The person to whom statute of refugee is granted can not be extradited to a foreign State, where the person's health, life or freedom is threatened on the grounds of race, faith (religion), nationality, citizenship, belonging to a certain social group or political views, except on cases provided by an international treaty of Ukraine.

In case of refusal to extradite on the grounds of citizenship and possession of the status of refugee or on any other grounds which do not exclude proceedings, Office of the Prosecutor General of Ukraine, upon the request of the Competent Authority of foreign State shall assign a pre-trial investigation authority to investigate the criminal case with regard to this person according to the procedure established by this Code.

***(b) Observations on the implementation of the article***

The review team took into account the information provided by the Ukrainian authorities.

The extradition process involves competences of the executive branch in terms of verification of an extradition request and the judicial branch, which is responsible for assessing whether extradition can be granted. Appeal proceedings against the extradition decision of the court are available and where legal issues pertaining to possible violations of the applicable international treaty emerge, then the case can be brought before the Court of Cassation upon request of the Office of the Prosecutor's General.

The competent authorities for extradition are respectively the Prosecutor General's Office and the Ministry of Justice, unless an international treaty to which Ukraine is a party provides otherwise. The Prosecutor General's Office is the competent authority for the extradition of suspected persons sought at the stage of pre-trial investigation proceedings. The Ministry of Justice is the competent authority for extradition of convicted persons sought at the stage of trial proceedings or at the stage of the execution of the sentence imposed to them.

It was reported that the usual length of extradition proceedings was 2-3 months. In exceptional circumstances, where the case is brought before the European Court of Human Rights, the extradition process may last much longer. In general, the timeframe needed to grant an extradition request varies depending on the complexity of the case, the duration of appeal proceedings and the potentially parallel asylum proceedings.

The Ukrainian authorities confirmed that no simplified extradition process was prescribed in the current legislation, but the new CPC would include provisions to facilitate it.

It was further reported that there was no database which would enable the monitoring of extradition cases based on statistical data regarding, for example, the duration of extradition proceedings and the content of the final decisions in extradition cases.

The effectiveness of certain aspects of Ukraine's extradition policy has been assessed, as reported accordingly, by the OECD Anti-Corruption Network for Eastern Europe and Central Asia in 2010 (second round of monitoring).

No issues of non-compliance with the provision under review were found by the review team.

The reviewing experts encouraged the Ukrainian authorities to continue to make best efforts to ensure that extradition proceedings are carried out in the shortest possible period.

They also encouraged the Ukrainian authorities to continue efforts to systematize and make best use of statistics, or, in their absence, examples of cases indicating the length between the receipt and execution of extradition requests for the purpose of assessing the efficiency and effectiveness of extradition proceedings.

## **Article 44 Extradition**

### **Paragraph 10**

*Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review, referring to the aforementioned articles 462 through 464, as well as articles 98-1, 151 and 154-1 of the Criminal Procedure Code of Ukraine.

Ukraine provided examples of the successful implementation of these measures outlining that each year, the Prosecutor General of Ukraine considers the requests of competent agencies 220-250 foreign countries for extradition. In most cases provisional arrest was applied.

Ukraine noted that assessment is carried out repeatedly and periodically (every six months). Assessment was held in July 2010 by experts of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for eastern Europe and Central Asia.

#### **(b) Observations on the implementation of the article**

Ukraine implemented this provision even though it is optional.

## **Article 44 Extradition**

### **Paragraph 11**

*A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to Article 466 of the Code of Criminal Procedure according to which in case of refusal to extradite on the grounds of nationality or refugee status or on any other grounds, Office of the Prosecutor General of Ukraine upon the request of the Competent Authority of foreign state shall designate the competent authority to conduct an investigation in the case with regard to the person.

**(b) *Observations on the implementation of the article***

Ukraine has implemented the provision under review in domestic law. In case extradition is denied on the grounds of nationality, the Office of the Prosecutor's General is obliged to assign, upon request of the requesting State, a pre-trial investigation authority to investigate the case in accordance with the domestic legislation.

***Article 44 Extradition***

***Paragraph 12***

*Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Ukraine stated that according to article 25 of its Constitution, Ukrainian citizens shall not be extradited to a foreign state. This constitutional provision has no exceptions and conditions. According to article 466 of the Criminal Procedure Code of Ukraine, hence, extradition of the person to a foreign state shall be refused if the person who is requested to be extradited, at the moment of taking a decision on extradition, is a citizen of Ukraine.

**(b) *Observations on the implementation of the article***

The provision under review has not been implemented by Ukraine since it does not apply to Ukraine. Extradition of nationals is legally inadmissible under the domestic law of the country under review.

## **Article 44 Extradition**

### **Paragraph 13**

*If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine indicated that it complies with the provision under review, referring to “cases provided for by Paragraph 2 of Article 8 of the European Convention on the Transfer of Proceedings in Criminal Affairs, 1972, and by Article 2 of the 1997 Additional Protocol to the European Convention on the Transfer of Sentenced Persons of 1983”.

#### **(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the provision under review was adequately implemented.

## **Article 44 Extradition**

### **Paragraph 14**

*Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review, referring to explanations given to paragraph 8 of the present article.

#### **(b) Observations on the implementation of the article**

According to explanation contained in the aforementioned paragraph 8, no specific information or regulation indicate that the person undergoing the extradition proceedings is entitled to a fair trial, legal aid, assistance of the interpreter, etc.

Ukraine explained that guarantees to the person in the extradition process are specified in the Criminal Procedure of Ukraine, which contains the specific provisions concerning participation of attorney, interpreter in extradition proceedings, possibility to appeal the court decision on detaining, provisional and extradition arrest as well as the decision on extradition. Additionally, article 29 CPC stipulates that everyone arrested or detained shall be informed without delay of the reasons for his arrest or detention and apprised of his rights. And from the moment of detention shall be given the opportunity to personally defend himself or to have the legal assistance of a defender. Everyone detained has the right to challenge his detention in court at any time. Also, article 55 of the Constitution of Ukraine states that everyone is guaranteed the right to claim in court the decisions, actions or omissions of bodies of state powers, officials and officers.

In conclusion, no issues of non-compliance were found by the review team.

## ***Article 44 Extradition***

### ***Paragraph 15***

*Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

In accordance with Article 466 of the Criminal Procedural Code of Ukraine, obligations of Ukraine under Article 3 of the European Convention on Extradition (1957) as well as similar provisions in bilateral international treaties of Ukraine on extradition, the person can not be extradited to a foreign country where his/her health, life or freedom would be threatened on the grounds of race, faith (religion), nationality, citizenship, belonging to a certain social group or political views.

The assessment of effectiveness of these measures was carried out in July 2010 by experts of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia.

#### ***(b) Observations on the implementation of the article***

The reviewing experts noted that the provision under review has been adequately implemented.

## ***Article 44 Extradition***

### ***Paragraph 16***

*States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine referred to explanation given to the aforementioned article 466 of its Criminal Procedure Code to illustrate adoption and implementation of the provision under review.

#### ***(b) Observations on the implementation of the article***

The review team noted that article 466 CPC does not include the fiscal nature of the offence in question as a ground for refusal of an extradition request. Hence, no issues of non-compliance were found.

## ***Article 44 Extradition***

### ***Paragraph 17***

*Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision described above. For illustration, the Ukrainian authorities quoted article 466 CPC, as well as article 13 of the European Convention on Extradition as follows:

“If the request on extradition and documents sent by the requesting Party is found to be insufficient to allow the requested Party to make a decision, the requested Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof. Such rule is contained in Article 13 of the European Convention on Extradition (1957), as well as in most bilateral international treaties of Ukraine on extradition. Furthermore, in accordance with Article 466 of the Criminal-Procedural Code of Ukraine, extradition of the person to a foreign state shall be refused if the Competent Authority of the foreign state has failed to produce under the request of the Central Authority additional materials or data, without which decision on request for extradition can not be taken”.

The Ministry of Justice of Ukraine periodically consults with competent agencies of other states to the application of force for Ukraine's international treaties on extradition. Between 2008-2010, consultations were conducted with the Central Authority of the Czech Republic and the Republic of Hungary.

***(b) Observations on the implementation of the article***

The review team found that the provision under review has been adequately implemented by Ukraine.

***Article 44 Extradition***

***Paragraph 18***

*States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine is State Party to many multilateral and bilateral treaties concerning extradition. It ratified the European Convention on extradition (1957) and Protocols thereto, bilateral treaty with Azerbaijan, Poland, Lithuania, Moldova, Estonia, Georgia, Latvia (which are also Parties to the European Convention on Extradition 1957), as well as Mongolia, Vietnam, Iran, North Korea, India, Brazil, Egypt, China.

Also Ukraine is a Party to:  
the Council of Europe Convention on Extradition of 1957 and its two additional Protocols;  
the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal relations in Civil, Family and criminal Matters, 1993, with the Protocol.

The effectiveness of these measures has not been assessed and no statistic/examples of successful implementation in domestic legislation have been provided.

***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been adequately implemented.

The review team identified as a good practice the fact that Ukraine is a State party to numerous regional instruments on extradition per se, as well as regional and multilateral instruments containing provisions on extradition.

The reviewing experts encouraged the Ukrainian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries, with the aim to enhance the effectiveness of extradition mechanisms.



Ukraine has fully implemented the provision under review.

#### ***Article 45 Transfer of sentenced persons***

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

##### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision described above. For the time being, 13 bilateral treaties on transfer of sentenced person have been concluded with: Georgia, Azerbaijan, Uzbekistan, Kazakhstan, Turkmenistan, Tajikistan, Armenia, China, Iran, North Korea, Libya, Belarus, Brazil. In addition, Ukraine is a State Party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol .

Ukraine has not assessed the effectiveness of these measures and did not attach statistic/examples of successful implementation.

##### ***(b) Observations on the implementation of the article***

With regard to the transfer of sentenced persons, the review team noted that the Ukrainian authorities made reference to multilateral instruments to which the country is a party such as the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol (1997). Bilateral agreements in this field have been concluded with a series of countries (Armenia, Azerbaijan, Belarus, Brazil, China, Georgia, Iran, Kazakhstan, Libya, North Korea, Tajikistan, Turkmenistan and Uzbekistan). At the domestic level, a legal instrument providing “joint orders/instructions” with a view to regulating issues of transfer of sentenced persons was enacted in 1998, whereas the Supreme Court has issued a resolution summarizing the practice in this field and providing relevant guidance. Amendments of the current legal framework on the transfer of sentenced persons are included in the new CPC. From a statistical point of view, it was reported during the country visit that 180 requests were received in 2010 and 168 in 2011, while approximately 80 per cent of such requests were granted.

The reviewing experts were satisfied that the provision under review has been adequately implemented.

The review team identified as a good practice the fact that Ukraine is a State party to instruments on the transfer of sentenced persons.

The reviewing experts encouraged the Ukrainian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign

countries, with the aim to enhance the effectiveness of transfer of sentenced persons mechanisms.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 1***

*States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision described above, referring to article 10 CC. Though the CPC does not contain provisions on international legal cooperation in criminal matters, cooperation is realized directly on the basis of relevant international treaties of Ukraine on mutual assistance in criminal matters.

#### ***(b) Observations on the implementation of the article***

Multilateral and bilateral MLA treaties were reported to be primarily the legal basis for granting and requesting mutual legal assistance. Ukraine is a State party to multilateral international treaties in the field of cooperation in criminal matters, such as the European Convention on Mutual Assistance on Criminal Matters (1959) and its Additional Protocols, as well as the CIS Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases (1993) and its Protocol. Bilateral MLA treaties have been concluded with Brazil, Canada, China, Egypt, Estonia, Georgia, India, Iran, Ireland, Latvia, Lithuania, Moldova, Mongolia, North Korea, Poland, United Kingdom, United States of America and Vietnam. Besides, there is a succession of Ukraine in respect of bilateral treaties of the former USSR on legal assistance and legal relations on criminal cases with such States as Algeria, Finland, Iraq, Yemen and Tunisia. In the absence of an applicable treaty, mutual legal assistance can be afforded on the basis of reciprocity.

At the domestic level, a law which was enacted in 2011 amended the CPC to make possible the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001). The law prescribes new conditions for the transfer of criminal proceedings and provides for such measures as the application of telephone- and videoconference during investigations; and the formulation, operating procedures and action of joint investigative teams.

In addition, the Law No. 3206 “On Principles of Preventing and Counteracting Corruption in Ukraine” contains provisions that could be used as legal basis for exchange of information in the area of preventing and counteracting corruption.

The reviewing experts were satisfied with the implementation by Ukraine of the provision under review.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 2***

*Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

International treaties of Ukraine on legal Assistance in Criminal Matters are the legal basis for granting and requesting of mutual legal assistance in corruption crimes. Typically, mutual legal assistance is provided for under the relevant international treaty. In the meantime, it is possible to grant mutual assistance in criminal matters on the principle of reciprocity.

In addition, article 29 of Law No. 3206 of Ukraine “On Principles of Preventing and Counteracting Corruption in Ukraine” provides sufficient legal basis in the field of information exchange, allowing Ukraine to undertake actions in the framework of the International information sharing in the area of preventing and counteracting corruption.

#### ***(b) Observations on the implementation of the article***

The review team noted that multilateral and bilateral MLA treaties were reported by the Ukrainian authorities to be primarily the legal basis for granting and requesting mutual legal assistance. In the absence of an applicable treaty, mutual legal assistance can be afforded on the basis of reciprocity.

During the country visit, it was indicated that, at the domestic level, a law which was enacted in 2011 amended the CPC to make possible the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001). The law prescribes new conditions for the transfer of criminal proceedings and provides for such measures as the application of telephone- and videoconference during investigations; and the formulation, operating procedures and action of joint investigative teams.

In addition, the Law No. 3206 “On Principles of Preventing and Counteracting Corruption in Ukraine” contains provisions that could be used as legal basis for exchange of information in the area of preventing and counteracting corruption.

In conclusion, the reviewing experts were satisfied that the provision under review has been adequately implemented.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 3***

*Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Concerning subparagraphs 3 (a) through (d), Ukraine stated being in compliance with their provisions . It drew attention to the fact that such legal assistance is granted under a number of bilateral treaties on mutual legal assistance. Ukraine has concluded bilateral treaties on mutual legal assistance with 20 States: China, Poland, Lithuania, Moldova, Estonia, Georgia, Latvia, Mongolia, Canada, Great Britain and Southern Ireland, the USA, Vietnam, Brazil, India, Hong Kong, the North Korea, Iran, Egypt and others. Besides, there is a succession of Ukraine in respect of bilateral treaties of the former USSR on legal assistance and legal relations on criminal cases with such states as Finland, Algeria, Yemen, Tunisia and Iraq.

Also, Ukraine is the State Party to multilateral international treaties in field of cooperation in criminal matters, participants of which are 47 member States of the Council of Europe and more than 60 member states of the United Nations. Among them, for example, the European Convention on mutual assistance on criminal matters of 1959 and the Additional Protocol to

it; the CIS Convention on legal assistance and legal relations on civil, family and criminal cases of 1993 and the Protocol to it”.

Concerning subparagraph 3 (f), Ukraine stated being in compliance with its provision. However, when performing requests of foreign competent authorities on obtaining secret bank information, it is necessary to take into account that such information is available upon written request or a court order or by written request of the Prosecutors’ Office, the Security Service, Ministry of Interior of Ukraine in accordance with Articles 14-1, 66 CPC of Ukraine and Para two and three of Article 62 of the Law of Ukraine “On Banks and banking activity”.

With regard to the implementation of subparagraphs 3 (e), (g) through (k), Ukraine stated being in compliance with their provisions.

It has not been indicated if the effectiveness of these measures has been assessed. Furthermore, no statistic/examples of successful implementation have been provided.

***(b) Observations on the implementation of the article***

As mentioned above, multilateral and bilateral MLA treaties were reported to be primarily the legal basis for granting and requesting mutual legal assistance. Ukraine is a State party to multilateral international treaties in the field of cooperation in criminal matters, such as the European Convention on Mutual Assistance on Criminal Matters (1959) and its Additional Protocols, as well as the CIS Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases (1993) and its Protocol. Bilateral MLA treaties have been concluded with a series of countries.

No issues of non-compliance were found by the review team.

***Article 46 Mutual legal assistance***

***Paragraphs 4 and 5***

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case,*

*advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Reference is made to article 29 of the Law of Ukraine “On Principles of Prevention and Counteracting Corruption in Ukraine”. A request of a competent body of the Requesting State on legal assistance is an obligatory condition for granting legal assistance. At the same time, the Requesting State can receive the information necessary for drawing up an official request on MLA in criminal matters in working order.

***(b) Observations on the implementation of the article***

Paragraphs 4 and 5 of the present article were found to be implemented on the basis of the aforementioned article 29 of Law No. 3206.

***Article 46 Mutual legal assistance***

***Paragraph 6***

*6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision but did not give further information.

***(b) Observations on the implementation of the article***

The review team took note of this interpretative clause of the UNCAC and, in view of information provided by the Ukrainian authorities under other provisions of article 46 of the Convention, it concluded that no issues of non-compliance exist.

***Article 46 Mutual legal assistance***

***Paragraph 7***

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply*

*unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision but did not give further information.

**(b) Observations on the implementation of the article**

The review team took note of this interpretative clause of the UNCAC and, in view of information provided by the Ukrainian authorities under other provisions of article 46 of the Convention, it concluded that no issues of non-compliance exist.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provisions described above. However, while executing requests of foreign competent authorities that are related to discovery of information that constitutes bank secrecy, it is necessary to be aware of the fact that such information can be disclosed only basing on the court order (Article 14-1 and 66 of the Criminal Procedural Code of Ukraine) or a written request emanating from the Prosecutor's Office, the Security Service of Ukraine, or the Ministry of Internal Affairs of Ukraine under Paras 2 and 3 of Article 62 of the law of Ukraine on "Banks and banking".

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied that, according to information provided by the Ukrainian authorities, bank secrecy does not seem to be an obstacle for granting MLA requests, bearing also in mind that it is not included among the grounds for refusal of such requests, as prescribed in the domestic legislation.

**Article 46 Mutual legal assistance**

**Paragraph 9**

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision.

**(b) Observations on the implementation of the article**

During the country visit it was stressed that the lack of double criminality is not a ground for refusing the execution of MLA requests. This was identified by the review team as a **good practice**.

**Article 46 Mutual legal assistance**

**Paragraph 10**

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine referred to article 457 CPC to illustrate the adoption and implementation of paragraphs 10 (a) and (b).

**Article 457: Temporary extradition**



*If it is necessary to prevent the expiration of statute of limitation for criminal prosecution or loss of evidences in criminal case, the investigator or the court, in having the proceedings in process, prepares the documents for temporary extradition. These documents as well as a request on temporary extradition drawn up on their basis are sent to the competent authority of a foreign State in the manner prescribed by Article 435 of the Criminal Procedural Code.*

*If the request for a temporary extradition is granted by the competent authority of a foreign State, such person shall be returned to the respective foreign State in the agreed term.*

*If necessary, a pre-trial investigation body or court, having the proceedings in process, prepares documents for extension of the term of temporary extradition and send them to the relevant Central authority not later than twenty days prior to the expiration of a term of temporary extradition.*

**(b) Observations on the implementation of the article**

The reviewing experts observed that the provision under review seem to be implemented. The information provided, in this regard, was related to the specific cases of persons in custody pending extradition proceedings. In general and for other categories of detainees, Ukraine reported its readiness to provide legal assistance on specific issues involving persons temporarily arrested or condemned, at least in the fields described in the European Convention on Mutual Assistance in criminal matters, ratified by Ukraine.

In conclusion, no issues of non-compliance were found by the review team.

**Article 46 Mutual legal assistance**

**Paragraph 11**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review.

**(b) Observations on the implementation of the article**

No issues of non-compliance were found by the review team.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Ukrainian authorities referred to Articles 11 and 12 of the European Convention on Mutual Assistance in Criminal Matters, ratified by Ukraine and entered into force on 09/06/1998.

**Article 11:**

*1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.*

*Transfer may be refused:*

- a. if the person in custody does not consent;*
- b. if his presence is necessary at criminal proceedings pending in the territory of the requested Party;*
- c. if transfer is liable to prolong his detention or*
- d. if there are other overriding grounds for not transferring him to the territory of the requesting party*

*2. subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.*

*A Contracting Party may refuse to grant transit to its own nationals.*

*3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transit is requested applies for his release.*

#### **Article 12.**

*1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.*

*2. a person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.*

*3. The immunity provided for in this Article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity to leaving, has nevertheless remained in the territory, or having left it, has returned.*

#### **(b) Observations on the implementation of the article**

No issues of non-compliance were found by the review team.

#### **Article 46 Mutual legal assistance**

##### **Paragraph 13**

*Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances,*

*where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review, indicating the existence of two central authorities as described above: the Ministry of Justice of Ukraine (concerning requests of courts) and the Prosecutors Office of Ukraine (concerning requests of pre-trial investigation agencies).

Ukraine notified the Secretary-General accordingly and further declared that requests of legal assistance and the documents accompanying such request shall be sent to Ukraine together with the certified translation into Ukrainian, Russian, English or French, if they are not in one of these languages.

**(b) Observations on the implementation of the article**

The review team noted that the designated central authorities in Ukraine to deal with MLA requests are the Ministry of Justice (concerning requests of courts) and the Prosecutor General's Office (concerning requests of pre-trial investigation agencies).

The reviewing experts were satisfied that the provision under review has been adequately implemented. They encouraged the Ukrainian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review. When ratifying the Convention, Ukraine made a statement according to which requests of legal assistance and the

documents accompanying such request shall be sent to Ukraine together with the certified translation into Ukrainian, Russian, English or French, if they are not in one of these languages.

***(b) Observations on the implementation of the article***

The provision under review has been implemented by Ukraine.

***Article 46 Mutual legal assistance***

***Paragraph 15***

*A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review.

***(b) Observations on the implementation of the article***

Paragraph 15 has been implemented by Ukraine.

***Article 46 Mutual legal assistance***

***Paragraph 16***

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provisions described above.

**(b) Observations on the implementation of the article**

The provisions under review has been implemented by Ukraine.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review.

**(b) Observations on the implementation of the article**

The provision under review has been implemented by Ukraine.

**Article 46 Mutual legal assistance**

**Paragraph 18**

*Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine declared that it does not make use of video conference during hearings of individuals.

**(b) Observations on the implementation of the article**

The provision under review has not been adopted and implemented in the domestic legal system, although Ukraine is a party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

**(c) Technical assistance needs**

The Ukrainian authorities indicated that they would benefit from the following forms of technical assistance:

- Trainings and workshops on new and innovative types of mutual legal assistance under the CPC, including the application of telephone- and videoconference during investigations and joint investigations.

**Article 46 Mutual legal assistance**

**Paragraphs 19 and 20**

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provisions described by virtue of the relevant provisions of treaties or conventions on mutual assistance on criminal matters to which Ukraine is a party.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the provision under review has been implemented by Ukraine.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 21***

*21. Mutual legal assistance may be refused:*

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

The grounds for refusal of MLA requests are basically those set forth in the multilateral and bilateral MLA treaties to which Ukraine is a party. Moreover, the 2011 law which amended the CPC provides for the following grounds for refusal: inconsistency with the national public order; violation of sovereignty, national security and civil order, and contradiction to obligations undertaken according to international treaties.

#### ***(b) Observations on the implementation of the article***

The reviewers were satisfied that the provision under review has been implemented adequately.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 22***

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provisions under review. Ukraine ratified and applies the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters of 1959, which removes the possibility stipulated in the Convention to refuse assistance solely



on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been implemented adequately.

***Article 46 Mutual legal assistance***

***Paragraph 23***

*23. Reasons shall be given for any refusal of mutual legal assistance.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been implemented adequately.

***Article 46 Mutual legal assistance***

***Paragraph 24***

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

***(b) Observations on the implementation of the article***

During the country visit, it was clarified that article 472 CPC specifies a maximum period of two months as the timeframe for the execution of MLA requests varies. It was reported that the new draft CPC would provide for a shorter period of one month. In general, the time needed for executing MLA requests varies depending on the nature of the request, the type of assistance and the complexity of the case. On average, it does take from two to four months to complete the process.

The reviewing experts were satisfied that the provision under review has been implemented adequately.

The reviewing experts encouraged the Ukrainian authorities to continue to make best efforts to ensure that MLA proceedings are carried out in the shortest possible period.

They also encouraged the Ukrainian authorities to continue efforts to systematize and make best use of statistics, or, in their absence, examples of cases indicating the length between the receipt and execution of MLA requests for the purpose of assessing the efficiency and effectiveness of MLA proceedings.

***Article 46 Mutual legal assistance***

***Paragraph 25***

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been implemented adequately.

***Article 46 Mutual legal assistance***

***Paragraph 26***

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the provision under review has been implemented adequately.

**Article 46 Mutual legal assistance**

**Paragraph 27**

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

**(a) Summary of information relevant to reviewing the implementation of the article**

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the provision under review has been implemented adequately.

## ***Article 46 Mutual legal assistance***

### ***Paragraph 28***

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision under review taking into account the implementation of relevant provisions of international treaties or conventions to which Ukraine is a party.

#### ***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been implemented adequately.

## ***Article 46 Mutual legal assistance***

### ***Subparagraph 29***

*The requested State Party:*

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Referring to explanations given under paragraph 3 (f) and paragraph 8 of article 46 of the UNCAC, it was reiterated that the requested State shall provide the requesting State on the request of its competent authorities with the documents or information within the frameworks criminal proceedings taking into account particularities of receiving the information on bank secrecy.

***(b) Observations on the implementation of the article***

No issues of non-compliance were found by the review team.

***Article 46 Mutual legal assistance***

***Paragraph 30***

*States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provision described above. It referred to number of bilateral treaties on mutual legal assistance in criminal matters to which Ukraine is a party (see above under paragraph 1 of article 46 of the UNCAC).

***(b) Observations on the implementation of the article***

The reviewing experts were satisfied that the provision under review has been adequately implemented.

The review team identified as a **good practice** the fact that Ukraine is a State party to numerous regional instruments on mutual legal assistance per se, as well as regional and multilateral instruments containing MLA provisions.

The reviewing experts encouraged the Ukrainian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries, with the aim to enhance the effectiveness of MLA mechanisms.

***Article 47 Transfer of criminal proceedings***

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The transfer of criminal proceedings to another State is possible under conditions and in order, provided for by the European Convention on the Transfer of Proceedings in Criminal Matters of 1972 and international treaties to which Ukraine is a party.

**(b) Observations on the implementation of the article**

Ukraine indicated that the transfer of criminal proceedings was based on the European Convention on the Transfer of Criminal Proceedings (1972) and article 21 of the European Convention on Mutual Assistance in Criminal Matters (1959), as well as on bilateral treaties, such as those with Germany and Poland.

During the country visit, it was reported that a practical difficulty encountered in cases of taking over of evidence related to criminal proceedings is that of translation, which requires time and additional resources.

The reviewing experts welcomed as a good practice the fact that Ukraine is a party to regional instruments either on transfer of criminal proceedings per se or with provisions on this form of international cooperation in criminal matters.

The review team encouraged the Ukrainian authorities to continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries, with the aim to enhance the effectiveness of this form of international cooperation.

**Article 48 Law enforcement cooperation**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

- (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*
- (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*
- (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*
- (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Ukraine stated being in compliance with the provisions described above, referring to article 8 of the Law of Ukraine “On militia” as well as article 16 of the Law of Ukraine “On the Security Service of Ukraine”.

*Law of Ukraine “On militia”*

*Article 8: Coordination in the sphere of militia activity between the Ministry of Internal Affairs of Ukraine and relevant bodies of foreign states or international police organizations.*

*Coordination in the sphere of militia activity between the Ministry of Internal Affairs of Ukraine and relevant bodies of foreign states or international police organizations is conducted according to Ukrainian legislation, international treaties, and also statutes and rules of international police organizations, the part of which is Ukraine.*

*Law of Ukraine “On the Security Service of Ukraine”*

*Article 16: Interaction between the Security Service of Ukraine and security services of foreign states.*

*For the accomplishment of the assigned tasks, the Security Service of Ukraine can come into contact with the Security Services of foreign States and cooperate with them on the basis of the norms of international law, agreements and treaties.*

Some examples of successful implementation have been provided. With regard to subparagraph 1 (a) for instance, Ukraine stated, article 1 of the treaty between the Cabinet of Ministers of Ukraine and the Government of the Republic of Bulgaria on cooperation in fighting against crime, signed on 04 September 2001 ( confirmed by Ukraine on 03 May 2007), provides that mutual cooperation includes exchange of information on systems operational and criminalistic data bases and possibilities of their application; exchange of information about criminal groups which operate in Ukraine's or Bulgaria's territory.

As example of successful implementation of subparagraph 1 (b) (i), the Ukrainian authorities quoted: "According to article 2 of the Treaty between the Governments of Ukraine and the Republic of Uzbekistan on cooperation in fighting against crime, which was signed on 20 June 1995 parties of the treaty cooperate in issue of preventing, detecting, deterring and investigation of crimes. Article 3 of this Treaty provides an exchange of information about committed crimes or about preparing crimes, and also about concerned persons, legal entities or organizations."

Example of the successful implementation of subparagraph 1 (b) (ii) includes: "The Treaty between Governments of Ukraine and the United Kingdom of Great Britain and Northern Ireland on attachment and forfeiture of the proceeds and instruments, connected with crime activity, except illegal circulation of drugs, which was signed on 18 April 1996 (ratified on 01 November 1996). Party of the treaty agreed to cooperate in issues of an exchange of information and evidences to ascertain proceeds from crime or instruments of crime which may be attached or forfeited".

Example relating to subparagraph 1 (b) (iii): according to the Treaty between Ukraine and the Kingdom of Spain on coordination in fighting against crime, which was signed on 07 November 2001 and came into force on 28 January 2003, the cooperation between parties includes search for objects, property, or other things obtained from crime or used in the commission of offence on the territory of one of parties.

For subparagraph 1 (c), the example is as follows: the Treaty between the Ministries of Internal Affairs of Ukraine and the Republic of Poland on cooperation in fighting against crime provides an exchange of materials, scientific or legal information, and also of results of experts examination.

Example of subparagraph 1 (d): the treaty between Ministries of Internal Affairs of Ukraine and Georgia on cooperation in fighting against crime which was signed on 21.10. 1992 provides the possibility of exchange of information received as a result of special investigation techniques, inquiry or criminalist information about committed or preparing offences, concerned persons and also archival information.



As example of subparagraph 1 (f): According to Article 2 of the Treaty between the Governments of Ukraine and the Republic of Uzbekistan on cooperation in fighting against crime, which was signed on 20.06.1995, parties of the treaty cooperate in issues of preventing, detecting, deterring and investigation of crimes. Article 3 of this Treaty provides an exchange of information about committed crimes or about prepared crimes, and also about concerned persons, legal entities or organizations. This treaty also provides an exchange of laws and legal acts, assistance in getting study and methodical literature.

The last example is related to the implementation of paragraph 3: According to the Executive Protocol between the Ministry of Internal Affairs of Ukraine and the Chief Police Commandant of the Republic of Poland on fulfilment of the Treaty between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on cooperation in fighting against organized crime (signed on 01 March 2007), parties cooperate in issues of preventing, detecting, deterring and investigation of crime connected with using of information technology.

**(b) Observations on the implementation of the article**

The review team noted that law enforcement cooperation is facilitated through domestic provisions (article 8 of the “Law on Militia” and article 16 of the Law on Security Service), as well as the conclusion of bilateral agreements with a number of countries, such as Bulgaria, Georgia, Poland, Spain, United Kingdom and Uzbekistan. Examples of forms of cooperation provided for by those bilateral agreements were reported.

During the country visit, one practical case was also reported in which the UNCAC was used as legal basis for law enforcement cooperation.

The Ukrainian authorities confirmed a two-tier system of receipt of requests for law enforcement cooperation, namely at a centralized level, but also at a “decentralized” level to increase efficiency and more rapid responses. This was identified as a **good practice** by the reviewing experts.

According to statistics provided, in 2010 there were 1273 incoming and outgoing requests at a centralized level, whereas this number increased to 1350 in 2011.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) *Summary of information relevant to reviewing the implementation of the article***

Ukraine indicated that the aforementioned explanations on law enforcement cooperation are also applicable in relation to the implementation of the provision under review.

The effectiveness of this measure has not been assessed. Nevertheless, example of successful implementation exist: according to the Executive Protocol between the Ministry of Internal Affairs of Ukraine and the Chief Police Commandant of the Republic of Poland on fulfilment of the Treaty between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on cooperation in fighting against organized crime (signed on 01.03.2007) parties for investigation of certain special cases will support joint actions between appointed competent subdivisions through mutual urgent assignment of specialists.

**(b) *Observations on the implementation of the article***

The reviewing experts noted that joint investigations are regulated by the 2011 law amending CPC. Agreements in this field are also conducted on a case-by-case basis. An example mentioned was the agreement with Poland on the support of joint actions for the investigation of certain cases of organized crime.

In conclusion, the reviewing experts were satisfied that the provision under review has been adequately implemented.

***Article 50 Special investigative techniques***

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial*

*arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Concerning para. 1, Ukraine stated being in compliance with its provision, referring to article 8 of the Law of Ukraine “On Special Investigative Techniques”.

*Article 8: Rights of subdivisions which use special investigative techniques.*

*Special subdivisions to execute tasks of special investigative techniques under circumstances prescribed by article 6 of this law have following rights:*

*2) to conduct controlled buy and delivery of commodity, things and matter including banned for trafficking, from persons and legal entities irrespectively from ownership for detecting and fixing an offence. The order of controlled buy and delivery is provided by legal acts of the Ministry of Internal Affairs, tax militia, the Security Service of Ukraine that agreed with the Prosecutor’s General Office and registered in the Ministry of Justice of Ukraine;*

*9) to conduct an interception of communications and wiretapping;*

*11) to conduct visual surveillance in public places with photographing, camera recording, with using scope, radio and other technical equipment.*

Concerning para. 2, Ukraine referred to the aforementioned article 8 of the Law of Ukraine “On militia” as well as article 16 of the law of Ukraine “On the Security Service” to illustrate the adoption and implementation of related provision. Additionally, Ukraine cited articles 5<sup>1</sup> and 8 of the Law of Ukraine “On Special Investigative Techniques”.

*Article 5<sup>1</sup> : International cooperation in the sphere of special investigative techniques.*

*Cooperation in the sphere of special investigative techniques between ministries, other central executive bodies, state bodies, which includes tasks forces, prescribed in the article 5 of this law, law enforcement bodies and special services of other states, which includes relevant task forces, and also with international law enforcement organizations is conducted according to Ukrainian legislation, international treaties of Ukraine and also statutes and rules of international law enforcement organizations, the part of which is Ukraine.*

*Article 8: Rights of task forces which used special investigative techniques.*

*Special task forces to execute tasks of special investigative techniques under circumstances prescribed by article 6 of this law have following rights:*

*2) to conduct controlled buy and delivery of commodity, things and matter including banned for trafficking, from persons and legal entities irrespectively from ownership for detecting and fixing an offence. The order of controlled buy and delivery is provided by legal acts of the*

*Ministry of Internal affairs, tax militia, the Security Service of Ukraine that agreed with the Prosecutor's General Office and registered in the Ministry of Justice of Ukraine;*

*9) to conduct an interception of communications and wiretapping;*

*11) to conduct visual surveillance in public places with photographing, camera recording, with using scope, radio and other technical equipment.*

As example of successful implementation in domestic legislation, Ukraine declared: "According to article 2 of the treaty between the Ministries of Internal Affairs of Ukraine and the Republic of Latvia on cooperation in fighting against organized crime, which was signed on 31.10.2003 (entered into force on 01.10.2010) one of forms of this cooperation must be planning and conducting joint coordinated measures directed to preventing, detecting and suppressing, and resolving of organized crimes, including conducting of controlled delivery".

Concerning paragraph 3, Ukraine referred to the aforementioned article 8 of the Law of Ukraine "On militia" as well as article 16 of the law of Ukraine "On the Security Service".

With regard to paragraph 4, Ukraine referred to explanations given under paragraphs 1 and 2 of the article under review.

***(b) Observations on the implementation of the article***

Matters pertaining to special investigative techniques are regulated in domestic legislation (articles 5 and 8 of the Law on Special Investigative Techniques; article 8 of the "Law on Militia" and article 16 of the Law on Security Service), whereas special investigative techniques employed at the international level are used on a case-by-case basis.

A specific example of a bilateral agreement with Latvia on planning and conducting joint coordinated measures against organized crime, including controlled delivery, was reported. During the country visit, practical examples of successful cooperation with the authorities of Germany and Poland were also mentioned.

In conclusion, the reviewing experts were satisfied that the article of the Convention under review has been adequately implemented.