

THE CRIMINAL JUSTICE SYSTEM OF UKRAINE

*Svitlana Oliynyk**

I. POLITICAL SYSTEM OF UKRAINE

Ukraine is a sovereign, independent, democratic, social, legal state. As well Ukraine is a unitary democratic presidential-parliamentary republic and has a multiparty political system. The basic institutions of government are the President and the legislative, executive and judicial branches. The legislative branch consists of the Parliament, which is called the *Verkhovna Rada*. The executive branch consists of the Cabinet of Ministers, which is responsible to the President and under control of and accountable to the *Verkhovna Rada* of Ukraine. The judicial branch is represented by the general and special courts of different instances.

II. CRIMINAL JUSTICE SYSTEM OF UKRAINE

A. The Tasks of Criminal Justice of Ukraine

The main tasks of criminal justice are to protect the rights and legal interests of individuals and legal persons who take part therein as well as a speedy and full detection of crimes, identification of those guilty and ensuring correct application of law so that anyone who has committed a crime is prosecuted while everyone innocent is not punished.

B. The Main Principles of Criminal Justice of Ukraine

The main principals of criminal justice are guaranteed by the Constitution of Ukraine:

- Legality
- Equality of all participants of a trial under the law and before the court
- Ensuring that the guilt is proved
- Adversarial procedure and freedom of the parties in presenting their evidence to the court and in proving the cogency of the evidence before the court
- Prosecution by the prosecutor in court on behalf of the State
- Ensuring the right of an accused person to a defence
- Openness of trial and its complete recording by technical means
- Ensuring appeal and cassation against a court decision save as in cases established by law
- The mandatory nature of court decisions

C. Criminal Justice Reform in Ukraine, Legal Aspects

According to the obligations and commitments of Ukraine, which have been taken joining the Council of Europe in 1995, the criminal justice system is at the stage of active reformation. In this field a range of new laws were adopted in Ukraine, for example:

*Deputy Head of the Division for International Relations, European Integration and Protocol of the Main Department for International Legal Cooperation and European Integration, Prosecutor General's Office of Ukraine.

155TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

- The Law of Ukraine “On the Judicial System and the Status of Judges”, July 7, 2010 with amendments from June 9, 2013. This Law defines the legal principles of the judiciary and the administration of justice in Ukraine.
- The Law of Ukraine “On the Advocacy and the Bar Activity”, July 5, 2012. This Law defines the legal principles of organization and implementation of advocacy and bar activity in Ukraine.
- The Criminal Procedure Code of Ukraine, came into force since November 20, 2012. The criminal procedure of Ukraine is absolutely reformed and answers the international standards.
- The Law of Ukraine “On Amendments of Some Legislative Acts of Ukraine on Issues of Development of the Activity of the Public Prosecution”, 2012. In view of this, the Law of Ukraine “On Public Prosecution” was amended.

These are some of the latest laws which brought transformations into the criminal justice system of Ukraine.

D. Judicial System of Ukraine

The judicial system of Ukraine comprises courts of general jurisdiction and the court of constitutional jurisdiction.

1. Courts of General Jurisdiction

(a) Local courts

Local courts are the courts of the first instance:

- Local courts - hear civil, criminal, administrative cases
- Local commercial courts - hear cases arising from the commercial relations
- Local administrative courts - hear cases of the administrative jurisdiction

(b) Appellate courts

Appellate courts are the courts of appeals:

- Appellate courts of *oblasts* (regions), cities Kyiv and Sevastopol, the Appellate Court of the Autonomous Republic of Crimea
- Appellate commercial courts - are formed in the appellate districts
- Appellate administrative courts - are formed in the appellate districts

(c) Higher Specialized Courts

Higher courts are specialized courts of cassation:

- The Highest Specialized Court of Ukraine for Civil and Criminal Cases
- The Supreme Commercial Court of Ukraine
- Higher Administrative Court of Ukraine

(d) The Supreme Court of Ukraine

The Supreme Court of Ukraine is the highest judicial body of general jurisdiction:

- The Judicial Chamber on Administrative Cases
- The Judicial Chamber on Commercial Cases

- The Judicial Chamber on Criminal Cases
- The Judicial Chamber on Civil Cases

2. The Court of Constitutional Jurisdiction

The Constitutional Court of Ukraine is the sole body of constitutional jurisdiction in Ukraine, whose purpose is to guarantee the supremacy of the Constitution of Ukraine as the Basic Law of the State. This Court resolves issues of conformity of laws and other legal acts with the Constitution of Ukraine and provides the official interpretation of the Constitution of Ukraine and laws of Ukraine.

E. The Public Prosecution of Ukraine

The public prosecution of Ukraine constitutes a single system and headed by the Prosecutor General of Ukraine. The main task of the prosecution in Ukraine is to support the rule of law, protect human beings and citizens and the State from illegal encroachments. The functions of the public prosecution in Ukraine are:

- 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 over the observance of laws by bodies that conduct operative-investigative activities, inquiry and pre-trial investigations
- Supervision over the observance of laws in the course of execution of court decisions in criminal cases and application of other measures of coercion in relation to the restraint of personal freedoms of citizens
- Supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers

The Prosecutor General of Ukraine and subordinated prosecutors coordinate combating crime and corruption with the law-enforcement bodies, security agencies, the tax police, the customs service, the military law-enforcement service of the Armed Forces of Ukraine and other law-enforcement agencies.

In order to ensure coordination of the above-mentioned bodies the prosecutor shall convoke coordinating meetings, organize task forces, request the statistical and other relevant information, and participate in meetings of the Coordinating Committee for Combating Organized Crime and Corruption attached to the President of Ukraine.

Also it is necessary to explain the role of the public prosecution in the field of fighting against organized crime and ensuring the rule of law at the international level. According to the legislation and international agreements of Ukraine, approved by the Parliament of Ukraine, the Prosecutor General's Office is the central authority of Ukraine for mutual legal assistance and extradition in criminal matters (in the pre-trial investigation phase). The Ministry of Justice of Ukraine is determined as a central authority of Ukraine in the trial phase.

III. CRIMINAL PROCEDURE OF UKRAINE

A. Investigation

1. Agencies Responsible for Criminal Investigation

Investigative jurisdiction (competence) is covered by Article 216 of the Criminal Procedure Code of Ukraine. The investigators of internal affairs, of bodies of security, of bodies supervising compliance with the tax legislation conduct pre-trial investigations, as well as investigators from units of the State Bureau of Investigations of Ukraine, shall engage in pre-trial investigation of the crimes committed by officials holding a particularly responsible status pursuant to Part One of Article 9 of the Law of Ukraine "On Civil Service" and the persons whose positions refer to categories 1-3, judges and law

enforcement personnel.

At the same time, according to the Transitional Provisions of the Criminal Procedure Code of Ukraine before the day of entry into force of provisions of the above-mentioned Article 216 of the Criminal Procedure Code of Ukraine concerning investigative competence of the State Bureau of Investigations of Ukraine, powers of pre-trial investigation of the criminal offences such as military crimes and official crimes, specified in the Criminal Code of Ukraine, shall be exercised by investigators of prosecutor's offices, which enjoy the powers of the investigators.

2. Whether Public Prosecutors can Command the Above-Mentioned Investigative Agencies Directly in Criminal Investigations

According to Article 36 of the Criminal Procedure Code of Ukraine, a public prosecutor in the course of performing his duties is independent in his procedural activities, and any interference therein by persons who have no legitimate authority, shall be forbidden. Public prosecutors, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to:

- Start pre-trial investigation if grounds specified in the Criminal Procedure Code are present
- Have full access to materials, documents, and other details related to pre-trial investigation
- Assign a pre-trial investigation agency to conduct pre-trial investigation
- Assign an investigator of the pre-trial investigation agency to conduct within a time limit set by the public prosecutor, investigatory (detective) actions, covert investigatory (detective) actions or other procedural actions, or give instructions in respect of conducting such actions, or participate in them, and where necessary, conduct investigatory (search) and procedural actions in accordance with the procedure set by the Criminal Procedure Code
- Assign the conduct of investigatory (search) actions, covert investigatory (search) actions to the relevant operational units
- Institute audits and examinations in accordance with the procedure established by law
- Overturn illegitimate and ungrounded rulings of investigators
- Initiate with the head of the pre-trial investigative agency the issue of suspending the investigator from pre-trial investigation and the appointment of another investigator if grounds specified in the Criminal Procedure Code are present for his disqualification or in case of inefficient pre-trial investigation
- Take procedural decisions in cases specified by the Criminal Procedure Code, including with regard to termination of criminal proceedings and to extending the time limits for the pre-trial investigation if grounds as prescribed in the Criminal Procedure Code are present
- Support or refuse to support the motions of investigators addressed to investigating judges on the conduct of investigatory (search) actions, covert investigatory (search) actions, other procedural actions in cases specified by the Criminal Procedure Code or individually submit such motions to the investigating judge
- Notify the individual of suspicion
- Enter civil action for the Government and those individuals who are unable to defend their rights pursuant to the Criminal Procedure Code and the law due to their physical or economic circumstances, being underage or elderly age, incompetence or limited legal capacity
- Approve or refuse to approve the indictment, submissions on the application of measures of

medical or educational nature, modify an indictment drawn up by the investigator or submission above, draw up indictments or motions concerned

- Refer to court an indictment, request to enforce measures of a medical nature, request to enforce compulsory medical or educational measures, or request to discharge an individual from criminal liability
- Prosecute on behalf of the State in court, resign from supporting public prosecution, alter the accusation or lay additional accusations according to the procedure specified by the Criminal Procedure Code
- Coordinate requests for international legal assistance or referral of criminal proceedings made by pre-trial investigation authority, or independently file such motion in accordance with the procedure as set in the Criminal Procedure Code of Ukraine
- Commission a pre-trial investigation authority to respond to a request (commission) for international legal assistance or criminal referral made by a competent authority of a foreign state, verify the completeness or legitimacy of procedural actions and also the completeness, comprehensiveness and objectiveness of investigation under the referred criminal proceeding
- Verify the documents concerning surrendering a person (extradition) provided by a pre-trial investigation authority prior to referring them to a higher level prosecutor, and return these documents to an appropriate authority with written comments, if these documents are unjustified or fail to meet the requirements of international treaties to which the *Verkhovna Rada* (Parliament) of Ukraine consented to be bound or laws of Ukraine
- Commission pre-trial investigation authorities with search and apprehension of those individuals who committed a criminal offence outside Ukraine, and carry out specific procedural actions to surrender (extradite) a person at the request made by a competent authority of a foreign state
- Appeal court decisions in a procedure established by the Criminal Procedure Code
- Exercise other powers envisaged in the Criminal Procedure Code

3. Whether Public Prosecutors Have the Power to Conduct Their Own Investigations (or Whether There is an Examining Judge who Oversees the Investigation), and If So, Does the Public Prosecutor or the Examining Judge Interview the Suspects and Key Witnesses Directly?

Firstly, please pay attention to the above-mentioned provisions concerning the investigative jurisdiction (competence) covered by Article 216 of the Criminal Procedure Code of Ukraine. Also according to Article 36 of the Criminal Procedure Court of Ukraine, a public prosecutor, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to assign an investigator of the pre-trial investigation agency to conduct within a time limit set by the public prosecutor, investigatory (detective) actions, covert investigatory (detective) actions or other procedural actions, or give instructions in respect of conducting such actions, or participate in them, and where necessary, conduct investigatory (search) and procedural actions in accordance with the procedure set by the Criminal Procedure Code. This means that the public prosecutors have right to interview the suspects and key witnesses directly. As well, public prosecutors have the right to interview these persons when supporting criminal charges in court, and judges — during court hearings respectively.

4. The Outline of the Investigative Procedure from the Beginning of Investigation to the Indictment of the Suspect (Especially the Arrest Procedure and Pre-Indictment Detention Procedure, Including Maximum Period to Detain the Suspect)

(a) Start of the pre-trial investigation

Pre-trial investigation shall start from the moment the information concerned has been entered in the Integrated Register of Pre-Trial Investigations. By rule, investigators and public prosecutors shall

155TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

be required immediately but in any case no later than within 24 hours after submission of a report containing information on a criminal offence that has been committed or after they have learned from any source about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Integrated Register of Pre-Trial Investigations, and to initiate investigation. The investigator engaged in pre-trial investigation is appointed by the supervisor of a pre-trial investigation chief.

Conducting pre-trial investigation before entering the information in the Register or without such entering shall not be permitted and shall entail liability established by law. Inspection of the place of crime may be carried out before entering the information in the Integrated Register of Pre-Trial Investigations, which shall be done immediately after completion of the inspection. If signs of a criminal offence are found on a ship or river craft outside Ukraine's borders, pre-trial investigation shall begin immediately; information on that shall be entered in the Integrated Register of Pre-Trial Investigations at the first opportunity.

(b) Written notice of suspicion

Written notice of suspicion shall be served the day on which it has been drawn up by the investigator or public prosecutor, and if it appears impossible to serve it, in the way prescribed by the Criminal Procedure Code of Ukraine for serving notifications, written notice of suspicion shall be served on the apprehended person within 24 hours after he has been apprehended. In case a person has not been served the notice of suspicion after 24 hours elapsed after the moment of his apprehension, such person is subject to immediate release. Date and time of serving the notice of suspicion, legal qualification of criminal offence of the commission of which the person is suspected, with indication of Article (Article part) of Ukraine's law on criminal liability, shall be immediately entered by the investigator or public prosecutor into the Integrated Register of Pre-Trial Investigations.

(c) Time limits for pre-trial investigation

Pre-trial investigation is required to be completed:

- Within one month from the date the person concerned is notified of suspicion in committing a criminal misdemeanour
- Within two months from the date the person concerned is notified of suspicion in committing a crime

The total duration of pre-trial investigation may not exceed:

- Two months from the date the person concerned is notified of suspicion in committing a criminal misdemeanour
- Six months from the date the person concerned is notified of suspicion in committing a crime of small or medium gravity
- Twelve months from the date the person concerned is notified of suspicion in committing a grave crime or a crime of special gravity

The period between the day of adoption of a ruling to terminate criminal proceedings and the day of revoking thereof by the investigating judge or of adoption of a ruling to resume criminal proceedings, shall not be included in the time limits specified above.

(d) Measures of restraint

The following are measures of restraint:

- Personal commitment
- Personal warranty

- Bail
- House arrest
- Custody

The investigating judge or court shall deny enforcement of a measure of restraint unless an investigator or public prosecutor proves that circumstances established in the course of considering the motion on enforcement of measures of restraint are sufficient for belief that none of the less strict measures of restraint specified above, can prevent the risk or risks proved in the course of consideration. At that, the least strict measure of restraint is personal commitment, and the most strict, custody.

Measures of restraint shall be enforced: during pre-trial investigation, by investigating judge upon motion of investigator approved by public prosecutor, or upon motion of public prosecutor; and during trial, by the court upon motion of public prosecutor.

(e) Circumstances taken into account in choosing a measure of restraint

To decide on the issue of choosing a measure of restraint, the investigating judge or court, drawing upon materials submitted by parties to criminal proceedings, is required to assess the totality of circumstances including:

- Importance of available evidence concerning the commission of criminal offence by the suspect or accused
- Severity of punishment which can be imposed on the person concerned if the suspect or accused is found guilty of the commission of the criminal offence he is suspected or charged of
- Age and state of health of the suspect or accused
- Firmness of social relations the suspect or accused has in the place of his permanent residence, including whether he has a family and dependants
- Whether the suspect or accused has the place of permanent employment or study
- Reputation of the suspect or accused
- Property status of the suspect or accused
- Previous convictions of the suspect or accused
- Compliance by the suspect or accused with terms of previously enforced measures of restraint, if any
- Existence of the notice that the person concerned is suspected of having committed another criminal offence
- The amount of property damage, in causing which a person is suspected or accused, or the amount of proceeds, resulting from committing a criminal offence a person is suspected or accused, and also, the validity of available evidence justifying the appropriate circumstances

(f) Keeping a suspect in custody

Custody is an exceptional measure of restraint that shall not apply except as follows:

- A person suspected of or charged with an offence the primary punishment for which by law is a fine in the amount exceeding 3,000 times the minimum citizen's income, except where the public prosecutor has proven that the suspect or accused person failed to fulfil the obligations imposed upon him when an earlier measure of restraint or failed to comply as prescribed with

155TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

the requirements concerning depositions of bail and submission of documentary proof of such deposition

- A person with a prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years, except where the public prosecutor has proven that such person, when at large, was fleeing pre-trial investigation or trial, obstructed criminal proceedings or has been notified of suspicion in the commission of another offence
- A person without prior convictions who is suspected of or charged with an offence that according to law is punishable by imprisonment of up to 5 years, except where the public prosecutor has proven that such person, when at large, was fleeing pre-trial investigation or trial, obstructed criminal proceedings or has been notified of suspicion in the commission of another offence
- A person without prior convictions who is suspected of or charged with an offence punishable by imprisonment of more than 5 years
- A person with a prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years
- A person wanted by competent authorities of a foreign state for commission of a criminal offence in connection with which the issue of extradition to such foreign state for the purpose of instituting criminal proceedings against him or execution of the sentence may be decided, in the manner and on the grounds provided for by the Criminal Procedure Code or an international treaty of Ukraine to which the *Verkhovna Rada* (Parliament) of Ukraine consented to be bound

The investigating judge or court, when making a ruling on application of custody as a measure of restraint, shall be required to determine an amount of bail sufficient for ensuring that the suspect or the accused should comply with the duties provided for by the Criminal Procedure Code of Ukraine. The investigating judge or court, when rendering a decision on application of custody as a measure of restraint, may put aside a decision on the amount of bail in criminal proceedings:

- In the matter of a violent offence or one involving threat of violence
- In the matter of an offence causing death of an individual
- In regard of the person who has violated the terms of bail selected earlier as a measure of restraint, within the same set of proceedings

(g) Term of validity of the ruling to commit to custody, extend custody

The term of validity of the investigating judge's or court's ruling to commit to custody or to extend custody may not exceed sixty days. Duration of custody shall be calculated from the date of having been committed to custody, and if commission to custody was preceded by apprehension of the suspect, accused, from the date of apprehension. Time of custody shall include the time spent by the person concerned in a medical institution while undergoing in-patient psychiatric examination. In case of repeated commission to custody of a person in the course of the same criminal proceedings, time of custody shall be calculated with account of the time of the previous term under custody.

Time of keeping a person in custody may be extended by the investigating judge within the time limits of pre-trial investigation according to the procedure laid down in the Criminal Procedure Code of Ukraine. Total duration of custody of the suspect, accused in the course of pre-trial investigation shall not exceed:

- Six months in criminal proceedings in respect of crimes of small or medium gravity
- Twelve months in criminal proceedings in respect of grave or especially grave crimes

During investigation, investigative and covert investigative (detective) actions are conducted by the investigators.

(h) Forms in which pre-trial investigation should be completed

A person shall have the right to have charges brought against him be reviewed by a court as early as possible, or to dismissal of such charges through closure of the proceedings. After a person has been notified of being a suspect, the public prosecutor is required within the shortest possible time to do one of the following:

- Close criminal proceedings
- Submit to court a motion on releasing the person from criminal liability
- Submit to court an indictment, motion to impose compulsory medical or educational measures

The public prosecutor shall enter information on completion of pre-trial investigation in the Integrated Register of Pre-Trial Investigations.

5. Whether Investigators' Interviews of Suspects are Recorded on Video, and If So, Whether that Video is Able to Be Used as Evidence to Prove the Defendant's Guilt

Article 224 of the Criminal Procedure Code of Ukraine states that photographing, audio and/or video recording may be made during interviewing. According to Article 104 of the Criminal Procedure Code of Ukraine, if during pre-trial investigation a procedural action may be recorded with technical means, the appropriate entry should be made in the record.

If interrogation is recorded with technical means, the text of testimony may not be entered in the relevant record on the condition that none of the participants in this procedure insists upon this. In such cases, entry should be made in the record that the testimony has been recorded on a medium that is attached to the record. So the answer to this question — video is able to be used as evidence to prove the defendant's guilt.

6. Whether the Suspect's Attorney can Attend the Interview Conducted by Investigative Organizations

According to Article 46 of the Criminal Procedure Code of Ukraine, defence counsel has a right to participate in interviews and other proceedings conducted with the participation of the suspect, accused person, to confidentially meet the suspect prior to the first interview, without authorization of the investigator, public prosecutor, court, and, after the first interview, to have such consultations without any limitation with regard to the number and length of consultations. Such consultation may take place under visual control of the competent official but in the environment, which precludes wiretapping or eavesdropping.

7. Whether the Investigators Prepare Reports about the Contents of the Suspect's Oral Statement after Conducting Interviews, and If So, Whether Investigators Provide the Suspect with an Opportunity to Confirm and Correct Mistakes in Such Documents

During criminal proceedings procedural actions, including suspect's oral statements, are recorded in a record (protocol). If the interviewee so desires, he may provide his testimony written by his own hand. Based on such written testimony, he may be asked additional questions.

Also it is necessary to mention that according to Article 224 of the Criminal Procedure Code of Ukraine interviewing may not last more than two hours without breaks, and in the aggregate more than eight hours per day. Before being interviewed, the person of the individual concerned is established; his rights and the way in which interviewing is conducted are explained. If the suspect refuses to answer questions, the interviewer is required to stop immediately. The interviewee may use his own documents and notes during interviewing if his testimony involves any calculations other information difficult to keep in memory.

A person is allowed not to answer questions with regard to circumstances in whose respect there is a direct prohibition in law (secrecy of confession, medical secrets, defence counsel's professional

155TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

secrets, secrecy of deliberation room, etc.), or which may become grounds for suspicion, accusation of commission by himself, his close relatives or family members of criminal offence, as well as with regard to officials who conduct covert investigative (detective) actions and persons who confidentially cooperate with pre-trial investigation agencies.

8. Searches, Seizures and Other Investigations That Require Warrants

Procedural acts which need an investigating judge's ruling taken on the grounds provided in public prosecutor's or investigator's requests are:

(a) Investigative (detective, search) actions

- Search of home or any other possession of a person
- Inspection of home or any other possession of a person
- Investigative experiment

(b) Covert investigative (detective) actions

Interference in private communication:

- Audio, video monitoring of an individual
- Arrest of correspondence
- Collecting information from telecommunication networks
- Inspecting publicly inaccessible places, home or any other possession of a person
- Establishing the location of a radio electronic device
- Covertly obtaining samples, which are necessary for comparative analysis

(c) Other procedural actions

- Measures to ensure criminal proceedings (summons by investigator, public prosecutor, court summons and compelled appearance; imposition of pecuniary penalty; temporary restriction on a special right; suspension from position; provisional access to objects and documents; provisional seizure of property; attachment of property)
- Measures of restraint (personal commitment; personal warranty; bail; house arrest; custody)
- Entering home or any other possession of a person

B. Trial

1. Procedures at Trial (Step-by-Step from Indictment to Sentencing)

Court proceedings:

- Preparatory court session
- Court hearing
- Taking court decision
- Announcement of court decision
- Criminal proceedings in the court of appellate instance

- Criminal proceedings in court of cassation
- Revision of judgements by the Supreme Court of Ukraine
- Criminal proceedings upon discovery of new circumstances

2. Whether there is the System of Plea-Bargaining, Immunity of Witnesses, Etc.

A special chapter of the Criminal Procedure Code of Ukraine is devoted to the criminal proceedings based on agreements. The following types of agreements may be concluded in criminal proceedings:

- reconciliation agreement between the victim and the suspect or the accused
- plea agreement between the public prosecutor and the suspect or the accused about pleading guilty

(a) Initiation and conclusion of agreement

The reconciliation agreement may be concluded on the initiative of the victim, the suspect or the accused. Arrangements in respect of the reconciliation agreement may be made independently by the victim and the suspect or the accused, the defence counsel and a representative or with the assistance of another person as agreed between the parties to criminal proceedings (except for the investigator, public prosecutor or judge).

The plea agreement may be concluded upon initiative of the public prosecutor or the suspect or the accused. The reconciliation agreement between the victim and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanours and crimes of minor or medium gravity, and in criminal proceedings in the form of private prosecution.

The plea agreement between the public prosecutor and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanours, as well as crimes of minor or medium gravity, grave crimes, perpetration of which caused damage only to state or public interests. Conclusion of the plea agreement in criminal proceedings with the participation of the victim shall not be allowed.

Conclusion of a reconciliation agreement or a plea agreement may be initiated at any time between the moment of notifying the person of the suspicion and retirement of judges into the deliberation room to pass the sentence/judgement. In case of failure to reach an agreement, the fact of initiating conclusion of the agreement and the statements which were made to arrive at an agreement may not be considered as refusal from prosecution or pleading guilty.

The investigator and the public prosecutor shall be required to inform the suspect and the victim about their right to reconciliation, explain to them the mechanism of its realization, and not to impede conclusion of the reconciliation agreement. In case criminal proceedings are conducted in relation to several persons who are suspected or accused of committing one or several criminal offences, and not all suspects or the accused agreed to conclude the agreement, such agreement may be concluded with one of the (several) suspects or the accused. Criminal proceedings in relation to the person (persons) with whom agreement was reached shall be subject to disjoining in separate proceedings. In case several victims, who suffered from one (the same) criminal offence, participate in the criminal proceedings, the agreement may only be concluded and approved with all victims. In case several victims, who suffered from different criminal offences, participate in the criminal proceedings, and not all of them agreed to conclude the agreement, such agreement may be concluded with one (several) victims. Criminal proceedings in relation to the person (persons) with whom agreement was reached shall be subject to disjoining in separate proceedings.

(b) Circumstances to be considered by the public prosecutor when concluding a plea agreement

When making a decision on the conclusion of a plea agreement, the public prosecutor shall be required to take into consideration the following circumstances:

- Degree and nature of cooperation on the part of the suspect or the accused in conducting

criminal proceedings regarding him or other persons

- Nature and severity of the charges brought (suspicion)
- Availability of public interest in ensuring a faster pre-trial investigation and trial, and detection of more criminal offences
- Availability of public interest in prevention, detection and termination of more criminal offences or other more serious criminal offences

(c) Content of a reconciliation agreement

A reconciliation agreement shall indicate its parties, statement of the suspicion or charges and their legal determination with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, the circumstances essential for the criminal proceedings concerned, the amount of damage caused by criminal offence, the time period for its compensation or the list of actions other than compensation, which the suspect or the accused is required to take in favour of the victim, the time period for completion of such actions, agreed punishment and consent of the parties to the imposition of that punishment or to the imposition of a punishment and relief from serving the punishment on parole, the implications of conclusion and approval of the agreement and implications of non-execution of the agreement. The agreement shall indicate the date of its conclusion and shall be signed by the parties.

(d) Content of a plea agreement

A plea agreement shall indicate its parties, statement of the suspicion or charges and their legal determination with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, the circumstances essential for the criminal proceedings concerned, unconditional admission by the suspect or the accused of his guilt in committing criminal offence, the duties (obligations) of the suspect or the accused regarding cooperation in detection of the criminal offence perpetrated by other person (provided the corresponding arrangements took place), agreed punishment and agreement of the suspect or the accused to imposition of such punishment (sentencing) or to imposition of a punishment (sentencing) and relief from serving the punishment on parole, the implications of conclusion and approval of the agreement and implications of non-execution of the agreement. The agreement shall indicate the date of its conclusion and shall be signed by the parties.

(e) Implications of conclusion and approval of an agreement

Conclusion and approval of a reconciliation agreement shall have the following implications:

(i) For the suspect or the accused — restriction of his right to appeal against a sentence and waiver from the rights — keep silence; be represented by the defence counsel, including getting legal assistance free of charge in accordance with the procedure and in the cases stipulated by law, or conduct his own defence; examine, during trial, witnesses for the prosecution, file motions to summon witnesses, and produce evidence in his favour

(ii) For the victim — restriction of his right to appeal against a sentence and deprivation of the right to demand, at a later date, making the person criminally liable for the corresponding criminal offence and to change his claims for compensation for the inflicted damage

(f) Judgement based on an agreement

If the court makes sure that the agreement may be approved, it shall pass the judgement by which it approves the agreement and imposes the punishment agreed between the parties. The reasoning part of the judgement based on the agreement must contain: statement of the charges with the reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, which concerns the criminal offence in perpetration of which the person was accused; information about the concluded agreement, its details, content and the imposed punishment; reasons from which the court proceeded when deciding on compliance of the agreement with the Criminal Procedure Code and the law and passing the judgement, and the legal provisions the court was guided by.

The operative part of the judgement based on the agreement must contain the decision on approval of the agreement with indication of its detail, decision on the guilt of the person with reference to the article (paragraph of the article) of the Law of Ukraine on criminal liability, decision on imposition of the punitive measures agreed between the parties for each of the charges and the final punishment, as well as other data/information. Judgement based on the agreement may be appealed against in accordance with the procedure stipulated in the Criminal Procedure Code of Ukraine.

(g) Implications of non-execution of the agreement

In case of non-execution of the reconciliation agreement or plea agreement, the victim or the public prosecutor, respectively, shall have the right to address the court, which approved such agreement, with the motion to revoke the judgement (sentence). The motion for revocation of the judgement, by which the agreement was approved, may be filed within the statutory period of limitations established for making the person criminally liable for perpetration of the corresponding criminal offence.

The motion for revocation of the judgement, by which the agreement was approved, shall be examined in court session with participation of the parties to the agreement and with notification of other participants in the court proceedings. Absence of other participants in court proceedings shall not preclude such examination.

The court, by its ruling, shall revoke the judgement by which the agreement was approved, provided the person who filed the corresponding motion proves that the convict failed to fulfil the terms and conditions of the agreement. The revocation of the judgement shall entail fixing a trial in accordance with the regular procedure, or returning the materials of proceedings for the completion of the pre-trial investigation in accordance with the regular procedure if the agreement was initiated at the stage of the pre-trial investigation.

The ruling on revocation of the judgement by which the agreement was approved, or on the refusal to do so may be appealed against in accordance with the appeal procedure. Deliberate non-execution of the agreement shall be the reason for making the person criminally liable under the law.

3. Whether All Evidence Collected and Documents Prepared by Investigators Are All Referred to the Judge after Indictment (or Does the Prosecutor Choose and Submit the Best Evidence Appropriate to Prove Defendant's Guilt to the Court)

All evidence and documents collected by the investigator are referred to the court, and public prosecutors do not choose some evidence among all. At the same time, evidence must be adequate and admissible. In criminal proceedings, evidence is factual knowledge, which has been obtained in a procedure prescribed in the Criminal Procedure Code on grounds of which the investigator, public prosecutor, investigating judge and court establish the presence or absence of facts and circumstances which are important for the criminal proceedings and are subject to be proved.

Evidence is adequate if it directly or indirectly confirms the presence or absence of circumstances to be proved in criminal proceedings and other circumstances which are important for the criminal proceedings, as well as credibility or non-credibility, possibility or impossibility of using other evidence. Evidence is found admissible if obtained through a procedure prescribed in the Criminal Procedure Code. Inadmissible evidence may not be used in adopting a court judgement.

4. Whether Prosecutors Prepare Their Witnesses Before Trial, for Example, Meeting with Witnesses and Testing Their Statements through Questions and Answers

The public prosecutors do not prepare witnesses before the trial.

5. How Confession of the Suspect is Regarded at Trial If the Defendant Withdraws the Confession

The confession of the suspect is considered by the court as circumstances mitigating punishment and not as circumstances aggravating punishment. It is a right of the person to admit or to deny his/her guilt.

6. Whether There Are Any Cases in which Evidence Collected through Investigation Is Not Permitted to Be Submitted to Court

Evidence collected through investigation is submitted to the court, but such evidence must be adequate and admissible. Evidence obtained through significant violation of human rights is inadmissible, and fundamental freedoms are guaranteed by the Constitution of Ukraine and international treaties consented to by the *Verkhovna Rada* (Parliament) of Ukraine. Any other evidence resulting from the information obtained through significant violation of human rights and fundamental freedoms is therefore inadmissible.

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

- Conducting procedural actions which require previous permission of the court without such permission or with disrespect of its essential conditions
- Obtaining evidence by subjecting a person to torture and inhuman or degrading treatment or threats to apply such treatment
- Violating the right of a person to defence
- Obtaining testimony or explanations from a person who has not been advised of his right to refuse to give evidence or answer questions, or where these were obtained in violation of this right
- Violating the right to cross-examination
- Obtaining testimony from a witness who subsequently will be found a suspect or accused in these criminal proceedings

This evidence shall be found inadmissible during any trial except a trial when the issue of liability for the said significant violation of human rights and fundamental freedoms as result a of which such evidence was obtained. The court shall decide on admissibility of evidence during its evaluation while retired for rendering a court decision. Where evidence has been found manifestly inadmissible during trial the court shall declare such evidence inadmissible, which shall entail the impossibility of its examination or termination of its examination if such was commenced.

The parties to the criminal proceedings and the victim may move during trial for evidence to be declared inadmissible or raise objection against declaring evidence inadmissible. A decision made by a national court or an international tribunal which has taken legal effect and which holds that a violation of human rights and fundamental freedoms set in the Constitution of Ukraine and international treaties has been committed shall have prejudicial significance for the court which decides on evidence admissibility.

7. Whether Your Country Has Adopted a Hearsay-Rule (Excluding Out-of-Court Statements from Evidence That May Be Related to the Defendant's Innocence or Guilt) in the Code of Criminal Procedure

Hearsay testimony is any be a statement made orally, in writing or in any other form with regard to a certain fact, such statement being based on explanations of another person. The court shall have the right to recognize as admissible evidence hearsay testimony irrespective of the possibility to examine the person who provided the initial explanations, in exceptional cases if such are admissible evidence in accordance with other rules of evidence admissibility.

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

- Importance of explanations and testimony, should they be reliable, for ascertaining a circumstance, and their significance for the understanding of other knowledge

- Circumstances under which initial explanations are given which give rise to confidence in their reliability
- Cogency of knowledge with regard to the fact that initial explanations have been given
- Difficulties for the party against which hearsay explanations and testimony were given in disproving such statements
- Relationship between hearsay testimony and the interests of the person who has given the hearsay testimony
- Possibility to examine the person who has given initial explanations, or reasons for the impossibility of such examination

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

- Does not appear in court because of death or serious physical or mental disease
- Waives testifying in court under Article 63 of the Constitution of Ukraine or disobeys the court's request to give testimony
- Does not appear before court and his location has not been established through conducting required search measures
- Stays abroad and waives testifying

Article 63 of the Constitution of Ukraine states that "A person shall not bear responsibility for refusing to testify or to provide explanations about himself/herself, members of his/her family, or close relatives, the circle of whom is determined by law. A suspect, an accused, or a defendant shall have the right to a defence. A convicted person shall enjoy all human and civil rights, with the exception of restrictions determined by law and established by a court verdict."

The court may admit hearsay evidence if the parties agree to recognize such as evidence. The court may admit hearsay evidence if the suspect accused has created or facilitated the creation of circumstances under which the person concerned may not be examined. Hearsay testimony may not be evidence of the fact or circumstance asserted unless it is supported by other evidence found admissible.

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

8. Whether There Are Any Methods/Measures Stipulated by the Code of Criminal Procedure to Protect Victims and Witnesses at Trial, for Example, Testimony via Video Link or Screening Crime Victims from the Defendant

Court proceedings may be conducted through video conference with transmission from another premise, including such as is located beyond the bounds of the court premises, (distant court proceedings) where:

- It is impossible for a participant of criminal proceedings to participate directly in the court proceedings for reason of health or for other valid reasons
- It is necessary to ensure the persons' security
- A minor or underage person is to be interrogated as a witness or victim
- Such measures are necessary to ensure speedy court proceedings

155TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

- There exist other grounds recognized sufficient by the court

The court shall rule to conduct distant court proceedings *proprio motu* or on a motion of a party or other participants in criminal proceedings. Should a party to criminal proceedings or victim object against conducting distant court proceedings, the court may decide to hold said proceedings only by its reasoned ruling, having substantiated thereby the decision so taken. The court may not rule to conduct distant court proceedings with the defendant being outside of the courtroom if the latter object to it.

The use in distant court proceedings of technical means and technologies shall be required to ensure adequate quality of image and sound, respect for the principles of publicity and openness of court proceedings, as well as information security. The participants in criminal proceedings shall be ensured the possibility to hear and observe the course of court proceedings, to put questions and get answers, to realize other procedural rights granted them, and to perform procedural duties specified by the Criminal Procedure Code.

If a person who is to participate distantly in court proceedings stays on any premises located in the territory within this court's jurisdiction or in the territory of the city where the court is located, the secretary of court session of this court shall be required to hand over to such person a leaflet on his procedural rights, check his ID, and stay at his side until the end of the court session.

The course and results of procedural actions conducted through video conference, shall be fixed with video recording technical means. A protected person may be interrogated through video conference with such changes of appearance and voice as shall make his identification impossible. Distant court proceedings may be conducted in the first instance, appellate and cassation courts, the Supreme Court of Ukraine proceeding in any matters within their competence.