Fighting Corruption in Transition Economies

Ukraine

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УКРАИНА

FOREWORD

The fight against corruption has only recently been placed on the international policy agenda, despite its long-known effects on democratic institutions and economic and social development. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption. The main contribution by the OECD has been in the area of fighting corruption in international business transactions. The 1997 *Convention on Combating Bribery of Foreign Public Official in International Business Transactions,* together with the 1996 *Recommendations* and 1997 *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* were adopted by all OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery.

The *OECD Guidelines for Multinational Enterprises* and *Principles of Corporate Governance* are non-binding tools that help level the competitive playing field for companies and ensure the integrity of business operations. The OECD also addresses the demand side of bribery through its work on public governance, which includes *Recommendations on Improving Ethical Conduct in the Public Service, Guidelines for Managing Conflict of Interest in Public Service* and *Best Practices for Budget Transparency*. The *Support for Improved Governance and Management Programme (SIGMA)* helps the EU candidate and new member countries to reform their public administration, and to strengthen their public procurement and financial control systems. The OECD also fights corruption in aid-funded procurement and has endorsed the *Recommendations on Anti-Corruption Proposals for Bilateral Aid Procurement*.

The OECD supports several regional initiatives to promote anti-corruption actions in non-member countries. The Anti-Corruption Network for Transition Economies — one such initiative — assists the countries of Central, Eastern and South Eastern Europe, Caucasus and Central Asia in their fight against corruption by providing a regional forum for exchanging experience and elaborating best practices. Ministers launched the Istanbul Anti-Corruption

Action Plan in 2003 to provide targeted support to Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine. Implementation of this Action Plan includes reviewing the legal and institutional framework for fighting corruption, identifying its achievements and weaknesses, and proposing further actions.

The review was based on the OECD methodology for self-assessment and peer review. Self-assessment reports were prepared by the governments of Istanbul Action Plan countries. International teams of experts reviewed the reports and provided their assessment and recommendations. The recommendations were endorsed at review meetings, which brought together national governments of Istanbul Action Plan countries, other transition economies and OECD countries, international organisations, international financial institutions, as well as civil society and business associations involved in fighting corruption in the region. The recommendations contain country specific actions in areas such as strengthening anti-corruption policy and institutions, reforming anti-corruption legislation according to international standards, and implementing preventive measures by ensuring an ethical civil service and effective financial control.

This report presents the first systematic international anti-corruption review of Ukraine. The results, presented in this publication, provide an important guide for this country in its anti-corruption efforts. The recommendations provide a benchmark for regular monitoring of Ukraine's progress. This report also serves as a reference for other partners involved in fighting corruption not only in transition economies, but also in other regions of the world.

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS

The review of the legal and institutional framework for fighting corruption in Ukraine was carried out within the framework of the Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Russian Federation, Tajikistan, and Ukraine.

Olga Savran, OECD Anti-Corruption Division, provided the general management for the Istanbul Action Plan, including the review process. Goran Klemencic, legal advisor to the Istanbul Action Plan, took the lead in designing the review framework, co-ordinated the expert review teams, and managed the review meeting. Nicola Bonucci, Acting Head of the OECD Anti-Corruption Division, chaired the review meeting and ensured effective discussions which resulted in the endorsement of recommendations by consensus of all the parties.

Mykhailo Manin, First Deputy Minister of Interior Affairs, led the Ukrainian delegation at the review meeting. The delegation included Lubov Butenko, Main Department for Fighting Organised Crime, Ministry of Interior Affairs; Valeriy Kirsanov, Department for Justice and Law Enforcement Institutions, Cabinet of Minister; Volodymyr Pakhil, Department of New Challenges and Threats, Ministry of Foreign Affairs; Oleksandr Dykarev, Department for International Relations and Legislation, State Department of Financial Monitoring and Yevhen Andrianov, Embassy of Ukraine in France.

The team of review experts who examined the self-assessment report for Ukraine and developed the draft assessment and recommendations included Benjamin Allen, UNDP; Josip Kregar, Stability Pact Anti-corruption Croatia Initiative, Zagreb University, Croatia; Elnur Musayev, General Prosecution, Azerbaijan; Leslie A. Pal, Carleton University, Canada; Daniel Thelesklaf, TVT Compliance Ltd, Switzerland.

The review meeting, which examined the self-assessment report and endorsed the recommendations, brought together representatives from all Istanbul Action Plan countries, as well as selected OECD countries and transition economies (Austria, Canada, Italy, Germany, Japan, Mexico, Moldova, Switzerland and Turkey), international organisations (Council of Europe/GRECO, UNDP, EBRD and OSCE), civil society and business associations (ABA CEELI, Transparency International, Open Society Institute and BIAC).

Marie-Christine Charlemagne, OECD Anti-Corruption Division, provided effective assistance to the review process.

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INTRODUCTION

Istanbul Anti-Corruption Action Plan

The Istanbul Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed at the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in September 2003 in Istanbul. ACN Secretariat, based at the OECD Anti-Corruption Division, provides secretarial support for the Istanbul Action Plan. An Advisory Group was established to assist the Secretariat to develop, implement and assess the Work Programme of the Istanbul Action Plan; the Group brings together national coordinators from the Istanbul Action Plan countries, OECD members and donor agencies, international organisations, civil society and business groups.

The implementation of the Action Plan foresees several phases: review of legal and institutional framework for fighting corruption and endorsement of recommendations; implementation of the recommendations though national actions and international support; and review of progress in implementing the recommendations. The first phase – country review of legal and institutional frameworks for fighting corruption – has been conducted in 2004.

Country Reviews

The methodology of the review was based on the OECD practice of mutual examination, and took account of the experience of other organisations, such as the Council of Europe and its GRECO review programme. The Istanbul Action Plan review included the following elements: self-assessment carried out by the governments of examined countries; expert analysis of the self-assessment report by a team of peer reviewers; discussion of the assessment and recommendations developed by the experts during Istanbul Action Plan review meetings; and endorsement of country recommendations based on consensus.

To help the governments to carry out the self-assessment, the Secretariat developed Guidelines for Status Reports. The Guidelines included a series of questions with comments, covering the following areas: national anti-corruption

strategy; promotion of accountability and transparency (ethics in the public service; public procurement; financial control; tax and customs systems; money laundering; corporate accounting and auditing; access to information; private sector and civil society involvement; political party financing); criminalisation of corruption (definition and elements of offences including active and passive bribery and other corruption related offices; sanctions; statute of limitations; definition of a public official; defences and immunities; jurisdiction; confiscation of proceeds; corruption in private sector and liability of legal persons); specialised service; investigation and law enforcement (distribution of powers between law enforcement agencies; mandatory and discretionary prosecution; investigative capacities; organised crime and corruption); international aspects and mutual legal assistance.

The self-assessment reports were developed by the governments of the Istanbul Action Plan countries, based on the inputs of their national institutions, involved in the prevention and combating corruption. The reports were supported by extracts from various legal acts. These reports provided the main basis for country examinations. Additional publicly available sources of information were used as well, such as reports developed by other international organisations. Reports specially prepared for this review by the civil society groups provided an important input.

Teams of review expert teams were established for each country. The experts were nominated by the governments of Istanbul Action Plan countries (excluding the examined country), other transition and OECD countries, international organisations and civil society groups participating in the Action Plan. The expert teams studied the reports and other available information, and developed draft assessments and recommendations for each country. The draft assessment and recommendations were presented at review meetings, which brought together some 80 participants, representing all the main stakeholders. The review meetings provided an opportunity for the national delegations to present their self-assessment report, the review team presented draft assessment and recommendations, and all the participants debated final recommendations. The recommendations were endorsed by consensus.

Assessments and Recommendations

The recommendations include general assessment and recommendations, followed by concrete recommendations in three broad areas: national anti-corruption policy and institutions; legislation and criminalisation of corruption and transparency of the civil service. The assessment and recommendations vary among the countries reflecting different national situations. While it is

impossible to summarise the findings for all the countries, a number of common issues emerged during the review.

Anti-Corruption Policies and Institutions

Many countries have declared the fight against corruption a key priority in the broader framework of economic and social reforms. At the time of the reviews, Georgia and Ukraine were entering the stage of updating their existing anti-corruption strategies; Armenia has adopted its anti-corruption strategy; Azerbaijan and Tajikistan were in the process of elaborating and adopting such policy instruments. While recognising these achievements, the recommendations stress the need to improve the analytical basis for such programmes, including the need to study the patterns and trends of corruption in each country, to identify sectors and institutions where the risk of corruption is particularly high. The recommendations call for reinforcement of implementation measures, and a balanced approach of repressive and preventive measures. They further underline the importance of a participatory process for the elaboration and monitoring of anti-corruption programmes and strategies, which should involve all branches of public authorities, civil society and private sector. Finally, the recommendations stress the importance of effective monitoring and reporting mechanisms to support the implementation of anti-corruption policies.

Armenia, Georgia and Ukraine have established anti-corruption councils or committees responsible for the elaboration and/or monitoring of the implementation of anti-corruption strategies. The recommendations call to strengthen these bodies by ensuring their independence and high moral of their members, promoting public involvement in their work and providing adequate resources for their effective operations. Establishing a national multi-stakeholder anti-corruption council was recommended for Tajikistan. In addition to these policy bodies, it was recommended for all countries to establish specialised anti-corruption law-enforcement agencies, responsible for detection, investigation and prosecution, as well as for the coordination among other law-enforcement agencies involved in the fight against corruption.

The recommendations for all countries stress the importance of awareness raising among the general public and public officials, and training at all levels, including corruption-specific training for policy, prosecutors, judges and other law enforcement officials.

Legislation and Criminalisation of Corruption

The assessment of national anti-corruption legislation confirmed that all reviewed countries have developed core legislation criminalising corruption and corruption related crimes, but national anti-corruption legal standards fall short of international anti-corruption standards, such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The recommendations in the field of anti-corruption legislation require from all countries of the Action Plan to reform national legislation and to bring in line with the international anti-corruption standards, including the following recommendations:

- Criminalise offer and promise of bribe, non-material benefits and trading in influence, and bribery though a third person; clarify provisions about gifts to officials;
- Ensure adequate sanctions for corruption and corruption related offences, strengthen sanctions for active bribery;
- Ensure effective responsibility of legal persons for corruption;
- Ensure mandatory confiscation of proceeds, value based confiscation, and confiscation from third persons; consider introducing legal provisions for checking and seizure of unexplained wealth;
- Ensure sufficient statute of limitation for corruption and corruption related offences;
- Ensure that definition of a public official is broad enough to include all levels of power, state representatives on boards of companies, foreign and international officials;
- Reduce scope of immunities and categories of officials who benefit from them, clarify criteria for lifting immunities;
- Ensure effective international mutual legal assistance;
- Ratify the Council of Europe and the UN Conventions against corruption.

The recommendations call the countries to harmonise their anti-corruption legislation in order to ensure that the provisions of Laws on the Fight against Corruption, which were recently adopted in many countries, are adequately reflected in the Criminal Code and other relevant legislation, and that

disciplinary, administrative and criminal corruption offences do not contradict each other, and do not leave legal gaps.

The reviews stressed that more information was needed to assess actual interpretation and implementation of the legal texts. The recommendations call the countries to evaluate continuously the application of their national anti-corruption legislation, and to develop it further based on the analysis of its effectiveness.

Transparency of Civil Service

During the review of corruption prevention measure in civil service, countries have reported about their efforts in developing regulatory frameworks in such areas as merit-based civil service and management of conflict of interest; transparency and fairness in public procurement and taxation; financial control and anti-money-laundering; political party finance; and public access to information. The recommendations propose further reforms in these areas, including the following:

- Introduce unified merit-based system for appointments and promotion in the civil service, which would, to the extend practicable, limit discretional decisions;
- Elaborate and disseminate comprehensive practical guides for public officials on corruption, conflict of interest, ethical standards, sanctions and reporting of corruption; provide training on anti-corruption to officials; introduce codes of conduct for civil servants, particularly in the agencies where the risk of corruption is high; consider the introduction of an ethics supervision body/commissioner;
- Ensure effective implementation of Conflict of Interest legislation, including strengthening of monitoring of its implementation, empowering relevant institutions to verify the accuracy of submitted declaration of assets, sanctions for failure to comply with requirements; Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government;
- Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers"; improve the system of internal investigations in cases of suspected or reported corruption offences;

- Introduce measures to limit discretion in public procurement; introduce eligibility criteria to exclude from bidding companies, which had been convicted for corruption; promote electronic contracting; enhance transparency of procedures and publishing public procurement information;
- Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials;
- Pursue the implementation of the FATF recommendations; adopt and enact anti-money laundering legislation; establish and strengthen Financial Intelligence Units; build expertise necessary for financial investigations in corruption-related cases, ensure coordination and exchange of information with financial control/audit institutions;
- Consider establishing an office of an Information commissioner to receive appeals under the Law on Access to information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.

Implementation of Recommendations

While these recommendations are not legally binding, they represent the commitment of the participating states, and are expected be implemented as such by their governments. Implementation of these recommendations will not only support the objectives of the Istanbul Anti-Corruption Action Plan, but will also help the countries to meet their legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption.

Besides, the results of the reviews provide a framework for launching the second phase of the Istanbul Action Plan, which will focus at the regular monitoring of national actions to implement the recommendations and at thematic reviews on selected priority issues; they will also provide a benchmark for review of implementation of recommendations, planned under the third phase of the Action Plan.

Following the introduction, the book presents the recommendations. Next section contains the full text of the national self-assessment report. Selected legal acts, statistical data sheets and the Istanbul Action Plan are presented in Annexes. This publication was compiled by the OECD Secretariat; it is available in English and Russian languages. For more information, please refer to the web site of the Anti-Corruption Network for Transition Economies/OECD www.anticorruptionnet.org.

SUMMARY OF ASSESSMENT AND RECOMMENDATIONS

Endorsed on 21 January 2004

National Anti-Corruption Policy and Institutions

General Assessment

The development of a legal framework to address corruption began in 1995, was continued throughout 1997, and since 1998 is governed by a seven-year Presidential strategy – the 'Anti-Corruption Concept for 1998-2005'. The legal framework for fighting against corruption builds on a significant number of laws and regulations; the effectiveness and interrelation of these legal acts is often difficult to assess, in part due to their overwhelming quantity.

The anti-corruption strategy is overseen by the Coordinating Committee against Corruption, which reports to the President. There is also a committee of the Supreme Rada (the Parliament) that deals with organized crime and corruption. Each of the line ministries charged with responsibilities in anti-corruption policies has specialized units to that effect: at the Ukrainian Interior Ministry – the Anti-Corruption Division of the Ukrainian Interior Ministry Main Department Against Organized Crime; at the Ukrainian Security Service – the Chief Department Against Corruption and Organized Crime, "K"; at the Ukrainian State Tax Administration – the Anti-Corruption and Security Department of the Tax Police. The Civil Service also has responsibilities to prevent corruption among civil servants. Ukraine has recently established a specialised unit within the Prosecution service to deal explicitly with corruption and organised crime.

While Ukraine has a rich array of legal instruments and broad strategic documents, efficient coordination, implementation and enforcement remain insufficient. Currently, the adoption and enforcement of corruption provisions needs to be channelled to a greater extent towards prevention.

General Recommendations

In the near future, Ukraine should analyse and take stock of progress made in implementing the national anti-corruption policies currently embodied in numerous legal and policy documents. Such a critical and transparent analysis would help to identify clear priorities, focus at implementation and build broad public support for anti-corruption measures.

In the framework of this exercise, it is recommended that Ukraine analyses and introduces improvements in its current institutional set up in order to streamline and strengthen policy formulation and to coordinate capacities of an independent anti-corruption body responsible for strategic, analytical, preventive and coordinative tasks of the fight against corruption. Ukraine needs to concentrate repressive measures against corruption by enhancing inter-agency cooperation between investigation and law-enforcement agencies.

Strengthening and building up of exemplary professional and corruption-free agencies, and conducting vigorous investigation and prosecutions in selected corruption-prone institutions are necessary to demonstrate the possibility of a positive example and to make a wider positive impact in the society.

It is difficult to tackle corruption in all public agencies at the same time. It is therefore necessary to identify a limited number of public institutions or sectors where corruption is most widespread and particularly harmful. The regulatory and institutional settings and operational practices of such agencies or sectors will need to be reviewed and reformed in order to minimize factors which favour corruption (*e.g.* by limiting discretion allowed by the gaps in regulations, strengthening internal control, introducing preventive actions, recruiting new officials through transparent procedures, etc.).

Specific Recommendations

1. On the basis of the analysis of the implementation of "the Anti-corruption Concept for 1998-2005" update the national anti-corruption strategy, which will take into account the extent of corruption in the society and its patterns in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems. The strategy should focus at the implementation of priority pilot projects with preventive and repressive aspects in selected public institutions with a high risk of corruption, including the elaboration of anti-corruption action plans. The strategy should envisage effective monitoring and reporting mechanisms.

2. On a conceptual level, more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative or organisational gaps that create corruption-prone environments. Preventive actions should not only focus on codes of ethics and similar preventive devices, but also reforming regulatory frameworks to reduce discretionary powers of civil servants, "open government" measures such as increased transparency of decision-making procedures, access to information and public participation.

3. Strengthen the Anti-corruption Coordination Committee by ensuring high moral and ethical standards of its members, who should include representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (*e.g.* NGOs, academia, respected professionals, etc.). Strengthen the independent status of the Committee, ensure a more appropriate frequency of the Committee's meetings (currently it meets twice a year), strengthen its staff to carry out analytical tasks, and ensure sufficient resources. Upgrade statistical monitoring and reporting of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions – by introducing strict reporting mechanisms on the basis of a harmonised methodology to the Committee. Encourage stronger links, cooperation and exchange of information between the Committee and the Parliamentary Committee.

4. Concentrate law enforcement capacities in the specific area in the fight against corruption, which are currently fragmented, and develop operational specialised anti-corruption prosecution units, consider establishing a national Specialised Anti-corruption Unit, specialised and empowered to detect, investigate and prosecute corruption offences. Such a Unit could be an integrated, but structurally independent, or separate unit of an existing law-enforcement agency and/or the Prosecution Service. Apart from working on actual important corruption cases, one of the main tasks of such a Unit would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.). Ensure that sub-national (oblast and local) levels of law enforcement agencies are properly integrated.

Legislation and Criminalisation of Corruption

General Assessment and Recommendations

Ukraine has criminalised active (Article 369) and passive (Article 369) corruption in the public sector in its Criminal Code. Additionally, the Law on the Fight against Corruption provides for a broad administrative liability of civil servants.

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that there is room for improvements, which would bring the above mentioned criminal offences in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), and which would in particular ensure the complementarities and harmonisation of relevant offences between the administrative liability under the Law on the Fight against Corruption and the Criminal Code.

Specific Recommendations

5. Harmonise and clarify the relationship between violations of the Criminal Code and the Law on the Fight against Corruption.
6. Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards. In particular, clarify elements of bribery through a third person; delineation of offences between an offer/solicitation and extortion, criminalise trading in influence. Consider increasing the punishments for active and passive bribery as well as the statute of limitations for corrupt offences.
7. Harmonise the concept of an "official" from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.
8. Ensure the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.

9. Introduce a proposal to amend the Criminal Code ensuring that the 'confiscation of proceeds' measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

10. Introduce a proposal to criminalise non-reporting of instances of possible corruption of public officials, if as a result of the investigation it can be shown that corruption in fact existed, and that those who failed to report it can be shown to have been fully aware of it.

11. Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent the investigation and prosecution of acts of bribery. Specify procedures for the lifting of immunity for criminal proceedings and consider abolishing the requirement of authorisation on lifting the immunity in cases when a person is caught in flagrante delicto.

12. Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Ukraine should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

13. Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.

Transparency of the Civil Service

General Note

The information which was provided under this heading was originally not sufficient to support a comprehensive assessment. Therefore, only a number of specific recommendations on selected sections can be made. It is recommended to Ukraine to further develop and elaborate these sections for the second review meeting, aiming at the publication of the report that would contain the full information.

Specific Recommendations

14. Support further actions by the Main Civil Service Department to conduct general training on anti-corruption for public officials; in particular, develop and implement specific anti-corruption and ethics trainings, in particular for those public officials who work in corruption-risk areas. The in-service training should focus on operational and procedural issues, rather than on academic degrees, i.e. everyday job-related duties, including ethical standards.

15. Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government (executive, legislative and judicial), as well as the legislation on conflicts of interest which would include members of the Parliament and would be open for public. Ensure that enforcement of these rules is entrusted to an independent agency, possibly subordinated to the Anti-corruption Committee. In parallel, review and specify the provisions of the "Law on the Fight against Corruption" regarding the acceptance of gifts.

16. Update and disseminate a Code of Conduct or other similar rules for public officials. Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.

17. Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers" and launch a public (or internal) campaign to raise the awareness of these measures among civil servants.

18. Improve the system of internal investigations in cases of suspected or reported corruption offences. A separate, independent investigatory and reporting entity should be established, possibly within the general civil service, to receive and investigate complaints on corruption. Disciplinary proceedings should be conducted in line with international standards and afford the accused the possibility to defend him/herself; sanctions coming from a process that is perceived as fair and not politically motivated will be more effective in deterring corruption.

19. Analyse and introduce improvements in the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the

eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices in Ukraine or abroad to support such limiting eligibility criteria.

20. Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials. Ensure that the powers which are required for effective tax and customs administration are well balanced with respect for citizens' rights and are not abused.

21. Enhance cooperation with civil society in addressing the corruption phenomena, including working more closely with university programs and a wide range of NGOs and the business community on anti-corruption and ethics, both to enhance monitoring in civil society, and to encourage training and research resources in the field.

22. In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the "Law on Information", conduct investigations, and make reports and recommendations. Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions. Consider revising libel and defamation laws to grant greater scope for journalistic reporting.

23. In the sphere of money laundering, pursue the implementation of the FATF recommendations and MONEYVAL.

24. Ensure that competent authorities conducting investigation and prosecution of corruption offences have relevant financial expertise at their disposal (either by employing financial and auditing experts or by ensuring full cooperation of relevant experts in other state institutions).

SELF-ASSESSMENT REPORT

National Anti-Corruption Plan (Strategy) Against Corruption

The struggle against corruption in Ukraine is based on strict legal regulation of activities of government agencies and services authorized to carry out the functions of the state and guarantee the observance of rights and interests of natural persons and legal entities.

The notion of corruption as a legal category was first defined in Ukraine in the Ukrainian Law on Struggle against Corruption of 5 October 1995. This Law determines the legal and organizational basis for preventing corruption.

In order to enhance law and order in the country and raise the efficiency of measures against corruption and organized crime, the 1997 Ukrainian Presidential Decree has approved the National Program against Corruption including a number of organizational, legal, preventive, informational and analytic measures necessary to fight this phenomenon. To ensure a systematic approach to corruption prevention and resistance, in 1998 the Ukrainian President approved the Anti-Corruption Concept for 1998-2005.

To coordinate the efforts of various institutions (law-enforcement, controlling, representative, executive agencies, bodies of local self-government and the public) in fighting corruption and establishing control over its manifestations, centralized guidance and implementation of a single government anti-corruption policy, a Coordinating Committee against Corruption and Organized Crime was set up under the Ukrainian President.

The composition of the Coordinating Committee and its Statute are approved by Decree of the Ukrainian President. Specifically, the Coordinating Committee includes the heads of supreme government authorities: Chairman of the Ukrainian Security Service and his deputy, Interior Minister and his first deputy, Chairman of the National Bank Board, Chairman of the State Committee for Protection of the State Border, Chairman of the Ukrainian State Customs Committee, and Chief of the Main State Customs Service Department. The Coordinating Committee can also include the heads of other ministries and agencies participating in the fight against organized crime.

The competence of the Coordinating Committee includes:

- coordination and support of activity of the bodies participating in the fight against organized crime;
- elaboration of the strategy and tactical recommendations for the fight against organized crime;
- organisation of cooperation in the fight against organized crime with relevant authorities of other countries and international organizations.

The main objectives of the Coordinating Committee include:

- ensuring the pursuance of a single state policy in fighting corruption and organized crime;
- coordinating the activity of law-enforcement bodies and other authorities participating in the fight against organized crime, ensuring their close interaction in resisting corruption;
- working out measures to prevent the establishment of corrupt links between criminal elements and public servants and other officials and their involvement in unlawful activities;
- comprehensive evaluation of the crime situation in the country, detecting tendencies towards its aggravation, identifying the strategies and priority areas of fighting organized crime, working out measures for its prevention and neutralization, strengthening law and order in the country;
- informing the population of the measures aimed at fighting corruption and organized crime.

The Coordinating Committee interacts with committees of the Ukrainian Supreme Council, the Supreme Council Human Rights Plenipotentiary, the Presidential Administration, the Supreme Court, the Economic Court, and other bodies interested in tackling the issues of strengthening law and order in the country; gathers and analyses information on the fight against crime, including its organized forms and corruption.

The Coordinating Committee has a right, for purposes of discharging its functions, to hear the information of chief executives of ministries, other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, chairmen of regional, Kiev and Sevastopol municipal government administrations, responsible for fighting corruption and organized crime; to give instructions and recommendations for elimination of causes and circumstances

encouraging criminal manifestations, obligatory for consideration by central and local executive authorities, officials, heads of enterprises, institutions and organizations of all forms of ownership; to set up working groups for elaborating proposals on matters within their competence, attract specialists from ministries, other central executive authorities, research institutions and educational establishments; to receive, free of charge, from bodies of government authority, enterprises, institutions, and organizations of all forms of ownership the necessary information and documents on issues under consideration, examine documents, other materials, organization of work of bodies participating in the fight against organized crime and corruption; to participate in consideration of issues connected with the fight against corruption and organized crime by bodies of executive authority; to instruct law-enforcement and controlling bodies of commissions set up by the Committee for carrying out inspections of observance of legal requirements, financial and credit discipline, procedures and completeness of payment of taxes and other compulsory budgetary dues by relevant authorities, enterprises, institutions, organizations of all forms of ownership; to raise the issues of imposing liability on officials for inadequate fulfilment of their functions of preventing corruption and organized crime at enterprises, institutions and organizations in the established manner; to establish a printed medium in the established manner.

The present composition of the Coordinating Committee against Corruption and Organized Crime under the Ukrainian President was approved by Ukrainian Presidential Decree No.362 of 24 March 2004. It includes the Interior Minister, Chairman of the Chief Supervisory and Auditory Department, First Vice-Secretary of the National Security and Defence Council, Chief of Tax Police – First Deputy Chairman of the State Tax Administration, Chairman of the State Tax Service, Chairman of the State Judicial Administration, Deputy Head of the Ukrainian Presidential Administration – Head of the Main Department for Judicial Reform, representatives of military formations and law-enforcement bodies, rector of the National Academy of the Interior – Director of the Interdepartmental Scientific Research Centre for Problems of Fighting Organized Crime, Chairman of the State Tax Administration, the Justice Minister, Chairman of the State Department for Execution of Sentences, First Deputy Interior Minister – Chief of the Main Department against Organized Crime, Deputy Chairman of the Ukrainian Security Service – Head of the Chief Department against Corruption and Organized Crime, Chairman of the Security Service, President of the Law Sciences Academy – rector of the National Law Academy named after Yaroslav the Wise, Chairman of the National Bank, Chairman of the State Committee for Technical Regulation and Consumer Policy, Ukrainian people's deputy.

A relevant committee of the Supreme Council of Ukraine was assigned to provide the legal framework for fighting organized crime and corruption. The Supreme Council Committee against Organized Crime and Corruption includes six subcommittees in charge of fighting organized crime and corruption in bodies of government authority, management, and local self-administration, law-enforcement and judicial bodies, in the sphere of economy and privatisation, foreign economic activity and monetary circulation, combating terrorism and international organized crime, control over expenditures and interaction with the Chamber of Auditors.

In accordance with Article 23 of the Ukrainian Law "On Organizational-Legal Basis for Fighting Organized Crime," this Committee shall supervise the observance of laws on fighting organized crime by special units responsible for fighting organized crime, and the expenditure of funds allocated for these purposes.

The authority of the Supreme Council Committee against Organized Crime and Corruption includes:

- supervising the observance of the law on fighting corruption and organized crime, controlling the activity of special units of the Ukrainian Interior Ministry and Security Service responsible for fighting organized crime;
- elaborating draft laws aimed at fighting corruption and organized crime;
- studying the law compliance practice of bodies engaged in the struggle against corruption and organized crime for purposes of developing the law and practice of fighting corruption and organized crime, working out proposals on interpreting legal provisions;
- in cases envisaged by the Law of Ukraine "On Organizational-Legal Basis for Fighting Organized Crime," issuing consent to set up and liquidate special units for fighting corruption and organized crime, appointing and dismissing the heads of these special units, public prosecutors in charge of supervising legal compliance by special units against organized crime.

In addition, the Committee has a right:

- to supervise the observance of laws on combating corruption and organized crime, as well as assign other bodies and officials to hold relevant inspections;

- to make presentations to bring officials to responsibility in accordance with Ukrainian Law;
- to submit proposals on detected crimes, obligatory for consideration by the Ukrainian Prosecutor General, to initiate criminal proceedings, set up operative investigation groups consisting of employees of public prosecution offices, the interior bodies and the Ukrainian Security Service, appoint public prosecutors in charge of criminal investigations;
- in the event of refusal of the Ukrainian Prosecutor General from initiating criminal proceedings, to raise the issue at a Supreme Council session of setting up an independent investigative group and appointing an independent public prosecutor in charge of the criminal investigation;
- to control the lawfulness and relevance of using participants of criminal groups, special technical devices, and applying other covert measures in fighting organized crime. The Committee shall hear reports by the Prosecutor General, the Interior Minister, and Chairman of the Ukrainian Security Service on this issue once every six month.

Bodies responsible for fighting corruption are defined by the Ukrainian Law "On Struggle against Corruption." They include divisions of the Ukrainian Ministry of the Interior, the Tax Police, the Ukrainian Security Service, the Ukrainian Prosecutor's Office, the Military Law-Enforcement Service and the Ukrainian Armed Forces, as well as other agencies and divisions set up to combat corruption in keeping with effective law.

The following units were created for carrying out practical anti-corruption measures: at the Ukrainian Interior Ministry – the Anti-Corruption Division of the Ukrainian Interior Ministry Main Department Against Organized Crime, at the Ukrainian Security Service – Chief Department Against Corruption and Organized Crime, "K," at the Ukrainian State Tax Administration – the Anti-Corruption and Security Department of the Tax Police.

The aforementioned institutions conduct their activity in accordance with the Ukrainian Constitution, the Laws of Ukraine "On Organizational-Legal Basis for Fighting Organized Crime," "On Operative Investigative Activity," "On Struggle Against Corruption," "On Civil Service," "On State Secret," acts of the Ukrainian President and Cabinet of Ministers, departmental regulatory and legal acts.

Special attention is given to the organizational and practical enforcement of regulatory and legal anti-corruption acts in the country. With this end in view, the Coordinating Committee against Corruption and Organized Crime holds extended sessions with the participation of the Ukrainian President twice a year, as well as conferences with heads of governmental, law-enforcement, and regulatory authorities, where the results of anti-corruption activities are given a detailed analysis and relevant tasks are set for the future.

National measures aiming at preventing and fighting corruption are carried out comprehensively, in accordance with the Anti-Corruption Concept for 1998-2005 approved by Ukrainian Presidential Decree No.367 of 24 April 1998, Ukrainian Presidential Decrees: No.1242 of 16 November 2000 "On Additional Measures for Intensifying the Struggle Against Corruption, Other Illegal Actions in the Socioeconomic Sphere, and Ensuring Sensible Expenditure of Budget Funds"; No.1376 of 25 December 2000 "On the Comprehensive Crime Prevention Program for 2001-2005"; No.84/2003 of 06 February 2003 "On Urgent Additional Measures for Intensifying the Fight Against Organized Crime and Corruption," and No.73/2003 of 04 February 2003 "On Measures to Enhance Control over the Declaration of Incomes by Persons Authorized to Carry Out the Functions of the State."

The priority measures for launching a frontal offensive against organized crime and corruption are outlined both by the Anti-Corruption Concept for 1998-2005 approved by Ukrainian Presidential Decree No.367/98 of 24 April 1998, and the Comprehensive Crime Prevention Program for 2001-2005 approved by the Ukrainian Presidential Decree No.1376/2000 of 25 December 2000.

In order to step up the struggle against organized crime and corruption, which continue to inflict serious damage on the cause of protecting citizens' rights and freedoms, hamper economic development and the emergence of a market economy, and undermine Ukraine's international prestige, and in order to streamline the activity of law-enforcement and other agencies with the European standards, the Ukrainian President has issued Decree No.84 of 6 February 2003 "On Urgent Additional Measures of Intensifying the Struggle Against Organized Crime and Corruption."

In pursuance of the aforementioned Ukrainian Presidential Decrees, the Government approves annual anti-corruption plans, in particular, the Action Plan against Corruption for 2002 approved by Decree of the Ukrainian Cabinet of Ministers N°346 of 18 March 2002, the Plan of Measures for Stepping up Struggle against Organized Crime approved by Instruction of the Ukrainian Cabinet of Ministers N°270 of 15 May 2003.

Note. In the period of 2000-2003, Ukrainian law-enforcement bodies have completed proceedings on 4,626 criminal cases involving elements of corruption, 4 491, or 97% of which have been referred to court with accusatory conclusions. During the past years the number of such criminal cases has been declining. Specifically, 1 208 criminal cases were referred to court in 2001, 1 117 in 2002, and 1 000 in 2003. During the past four years, the Ukrainian law-enforcement bodies have completed proceedings on 3 978 criminal cases of bribery. In particular, 1 030 criminal cases were referred to court in 2002, and 994 criminal cases in 2003.

The prevention of manifestations of corruption in civil service is also subject to special control. The body responsible for civil service management in Ukraine is the Main Civil Service Department, which has the status of a central executive authority, subordinate and accountable to the President of Ukraine.

According to the Statute of the Main Civil Service Department of Ukraine, approved by Ukrainian Presidential Decree No.1272 of 2 October 1999, the Main Civil Service Department carries out measures aimed at ensuring the observance of the law on civil service and prevention of corruption among civil servants.

Within the framework of measures envisaged by the Comprehensive Crime Prevention Program for 2001-2005 and in accordance with the Ukrainian Cabinet of Ministers Decree No.1785 of 27 September 1999 "On the Executive Authorities' Reports on Implementation of the Ukrainian Law "On Struggle Against Corruption," the Main Civil Service Department of Ukraine carries out a systematic analysis of the status of observance of the Ukrainian Law "On Struggle Against Corruption" by bodies of central and local executive authority, above all its provisions dealing with obligatory reaction of heads of these bodies to every fact of violation of the Law by civil servants. The Main Civil Service Department also provides methodological support to the executive authorities on these issues.

Summarized information and proposals concerning the improvement of work in this area are being forwarded to the Ukrainian Cabinet of Ministers, the Ukrainian Presidential Administration, the Ukrainian Prosecutor General's Office, and the Coordinating Committee against Corruption and Organized Crime under the Ukrainian President. Measures are being implemented to prevent the admission of persons guilty of corruption to civil service, for which purpose a database has been created of civil servants and local self-government officials guilty of violating the Ukrainian Law "On Struggle against Corruption."

On assignment of the Ukrainian Presidential Administration, the Ukrainian Cabinet of Ministers, and in keeping with the Main Civil Service Department working plan aimed at the exposure of corruption among civil servants and ensuring the rule of law, the Main Civil Service Department carries out comprehensive and thematic inspections of the central and local executive authorities.

Promotion of Accountability and Transparency

The main laws on civil service are the Ukrainian Law "On Civil Service" and the Ukrainian Law "On Struggle against Corruption."

According to the Ukrainian Law "On Civil Service," state policy in the sphere of civil service shall be determined by the Supreme Council of Ukraine.

The main aspects of state policy in the sphere of civil service include the identifying of the principal goals, objectives, and principles of functioning of the institution of civil service, ensuring effective performance of all government agencies in accordance with their competence.

To ensure efficient performance of this system, above all, the formation of professional personnel, selection and placement of civil service staff, the Ukrainian Law "On Civil Service" sets forth the main requirements to candidates for civil service positions, regulates the process of civil service, stipulates restrictions connected with civil service and responsibility for violating the law on civil service.

Article 38 of the Ukrainian Constitution guarantees to citizens of Ukraine equal access to civil service and service in bodies of local self-government. Civil service vacancies shall be announced in mass media not later than one month prior to the competition for the position.

The admission to civil service positions shall be based on competition, unless stipulated otherwise by Ukrainian laws.

The holding of competitions is regulated by the Statute of the Order of Holding Competitions for Civil Service Vacancies, approved by the Ukrainian Cabinet of Ministers Decree No.169 of 15 February 2002.

The decision to hold a competition and its terms shall be taken by the manager of the body where the vacancy is announced. By his (her) order a competition commission shall be set up, which is usually headed by deputy manager of the body. Information on the vacancy and terms of the competition

shall be announced in the press and circulated by other mass media not later than one month prior to the competition and brought to the notice of the employees of the body where the vacancy is announced.

The law envisages a special order of enrolment for civil service. Seeking to improve the enrolment procedure and the passing of civil service, prevent corruption and other offence, Ukrainian Presidential Decree No.1098 of 19 November 2001 has introduced a system of compulsory verification of information submitted by candidates to civil service positions, appointed by the President of Ukraine or the Ukrainian Cabinet of Ministers.

The information is subject to verification on written consent of a candidate for the vacancy. In the absence of such consent the verification shall not be conducted and that particular candidate for the position shall not be considered.

The verification procedures shall be conducted on instruction of the Head of the Ukrainian Presidential Administration or Minister of the Ukrainian Cabinet of Ministers by the Main Civil Service Department with the participation of the State Tax Administration, the Interior Ministry, and Security Service of Ukraine.

The inspection shall cover the data presented by candidates to civil service positions during the consideration of their appointment or promotion; the observance by candidates to civil service positions of requirements of the law on civil service and the fight against corruption, the non-fulfilment of which prevents appointment and staying in civil service positions; data indicated in declarations of incomes, financial and property status of candidates to civil service positions and their family members.

The Ukrainian Main Civil Service Department shall inform the official who issued the inspection order of the results of the inspection.

The procedure for hiring and firing the heads and deputy heads of central executive bodies, central bodies of state management, state enterprises and their associations, as well as chairmen of local administrations is approved by the resolution No.1658 Cabinet of Ministers of Ukraine of 13 December 2001. The procedure is applied when considering hiring or firing ministers, their first deputies and deputies, heads and deputy heads of other central bodies of executive power, state authorities, managers and deputy managers of state enterprises and their associations in case when the law stipulates that these persons should be hired or fired by the Cabinet of Minster of Ukraine, as well as the chairmen of local administrations.

The matter of appointment to certain positions and dismissal from them shall be considered on the basis of a duly prepared representation, personal files, and the results of interviews, taking into consideration the information of compulsory special verification (if such is stipulated by law) of the information submitted by candidates to civil service positions.

Documents for consideration of hiring or firing ministers, heads of other central bodies of executive authorities, managers of enterprises are prepared on the request of the Cabinet of Ministers by the Personnel Department together with the corresponding department of the Secretariat of the Cabinet of Ministers; similar documents for chairman of regional administrations, as well as for the administration of the cities of Kiev and Sebastopol are prepared on the request of the Prime-Minister of Ukraine by the Personnel Department together with the Department of Territorial Development of the Secretariat of the Cabinet of Ministers of Ukraine.

On the basis of the decision of the President of Ukraine or of the Cabinet of Ministers of Ukraine, a resolution should be prepared in the place of employment about the hiring or firing of the person stating the starting date of the employment at the post or the date of its termination.

Ethics in the Public Service

The ethic norms of conduct of Ukrainian civil servants are fixed in the law. Civil service ethics is viewed as a system of principles and norms of official conduct and activity of civil servants based on honesty, incorruptibility, and loyalty to the state and law. Article 5 of the Ukrainian Law "On Civil Service," entitled "Ethics of Civil Servant's Conduct," stipulates: "A civil servant shall: discharge his/her official functions in good faith; respectfully treat citizens, senior executives, and colleagues, maintain a high culture of personal communication; prevent actions and deeds that could damage the interests of civil service or negatively tell on the reputation of a civil servant."

A civil servant shall take and sign an Oath, and an entry to this effect shall be made in the civil servant's employment file.

An important step towards the implementation of these objectives was the adoption of the General Rules of Civil Servants' Conduct and assuming control over their observance, approved by the Coordinating Council for Civil Service under the Ukrainian President and enforced by The Main Civil Service Department Order No.58 of 23.10.2000 and registered with the Justice Ministry on 07.11.2000 (No.783/5004).

The General Rules of Civil Servants' Conduct include provisions on their application sphere, general provisions, general duties of a civil servant, the conflict of interests and non-admission of corruption, as well as the responsibility for failure to abide by these rules.

In keeping with Article 19 of the Ukrainian Law "On Civil Service," the Ukrainian Cabinet of Ministers issued Decree No.804 of 1 Decembern1994, introducing the Statute of Internship at Government Agencies. Internship shall be conducted at a relevant government agency for purposes of acquiring practical experience, testing professional skills and business qualities of candidates for civil service positions, during the period up to two months.

Interns shall be enrolled, and the period and terms of internship shall be stipulated by an order of the head of the government agency where the internship is to be organized. In the course of internship, the intern shall adhere to the official daily routine of the host government agency.

The intern shall attend his (her) duties full-time, while retaining his (her) job and salary at the main workplace, considering further change in the size of minimal salary in accordance with effective law.

During the internship, a civil servant shall be assigned to the intern to supervise the latter's performance. The contents of internship shall be determined by an individual plan approved by head of the structural division of the government authority where the internship takes place.

During the internship, the intern shall fulfil an individual internship plan. Upon the termination of the internship period, the intern shall file a report to the management of the government agency, supplemented with the conclusions of the head of the structural division as to the prospects of his (her) employment as a civil servant, and a brief written report at his (her) main job. The government agency shall issue a certificate upon the results of the internship for presentation at the intern's main job.

A person (not a civil servant) expressing the willingness to work at a government agency upon successful internship at the said agency shall participate in a competition for a vacancy in accordance with the Statute of the order of holding competitions for vacancies at executive authorities. Such person shall be granted a preference over the other candidates who have not undergone internship.

A civil servant who has successfully completed internship may be appointed to a position on decision of the head of the relevant government agency without competition, or be entered into the files of personnel reserve.

The law also envisages the possibility of appointing civil servants without competition. The Ukrainian Cabinet of Ministers Decree No.423 of 17 June 1995 "On Some Issues of Applying Articles 4, 15, and 27 of the Ukrainian Law "On Civil Service" stipulates that a civil servant who was entered into the personnel reserve files or has undergone internship may be promoted, and a civil servant who has resigned from civil service may be employed upon decision of the head of the relevant government agency without competition.

Article 11 of the Ukrainian Law "On Civil Service" defines the terms of acceptance to civil service positions and the passage of service. The main rights of civil servants stipulated by the Law include the right to career development in accordance with their qualifications and skills, fulfilment of their official duties in good faith, participation in competitions for higher positions. The Law has a section entitled "Executive Career." It includes Articles 24-29, devoted to the progress of the service, classification of positions, ranks of civil servants, career development, civil service personnel reserve, training and advanced training of civil servants.

Article 27 of the Law stipulates that civil servants' career development consists in the promotion to higher positions on a competition basis or via another procedure envisaged by Ukrainian law and rulings of the Ukrainian Cabinet of Ministers, or by conferring a higher rank to an individual civil servant. It is stipulated that special ranks shall be conferred individually in accordance with the occupied position, level of professional qualification, and performance results. Persons newly appointed to civil service positions are usually conferred the lowest rank envisioned for the corresponding category of positions.

A civil servant shall not be conferred the next rank if disciplinary penalties have been applied to him (her) during the previous year, if an official investigation is underway with respect to him (her) or if he (she) is persecuted. The postponement in conferring the next rank for a period up to one year may be applied as a disciplinary measure.

A civil servant may be conferred the next rank within the frames of the relevant category of positions ahead of schedule for fulfilling particularly important assignments.

According to the State Committee for Statistics, the overall number of civil servants on 1 January 2004 was 240 528 people.

The average salary of civil servants in the following bodies of executive authority is (UAH / month):

- ministries – 933.6;
- state committees – 891.1;
- special status central executive authorities – 1070.9;
- local public administrations – 597.6.

At the same time, the average monthly salary of workers employed in economic sectors in January-December 2003 was 498.25, including 591.15 in industry, 1069.71 in finance, 1173.78 in financial mediation, 908.52 in tax management and control, 623.48 in justice, 606.61 in the maintenance of public order and safety.

The average salary of public servants in individual government agencies, such as the central staff of the National Bank of Ukraine, is 2650 UAH. At the same time, the average salary of public servants at territorial offices of the central executive authorities is 514 UAH.

We consider it noteworthy that the Public Service System Reform Strategy in Ukraine envisages consolidating the structure of salaries, reducing the number of its components, and eliminating interdepartmental and local differences in labour remuneration. The terms of labour remuneration should be comparable to the results of activity of a public servant and the level of his (her) responsibility.

Ukrainian Presidential Decree No.4 of 05 January 2004 "On Measures for Implementing the Public Service System Reform Strategy in Ukraine in 2004" envisages the introduction of improvements to the labour remuneration system of public servants and local self-government officials before May 2004 by liquidating interdepartmental and local differences in salaries and strengthening the stimulating role of official wages.

The main stage in improving the labour remuneration system of public servants may consist in revising the structure of their salaries for the purpose of increasing the share of official salary in their wages and strengthening the stimulating role of official salaries in labour remuneration in bodies of government authority and local self-government.

In pursuance of the Ukrainian Presidential Decree, the Ministry of Labour and Social Policy has elaborated a draft resolution of the Ukrainian Cabinet of Ministers "On Improvement of the Structure and Terms of Labour Remuneration of Employees of Bodies of Executive Authority, Local Self-Government, and their Executive Bodies, Public Prosecution Offices, Courts, and Other Institutions," which is currently being considered by the Finance Ministry and will be submitted to the Government in the established manner.

Training and advanced training of civil servants is regulated by Article 29 of the Ukrainian Law "On Civil Service." Civil servants have the opportunity to receive training and advanced training at relevant educational institutions (departments) and through self-education.

Civil servants shall upgrade their skills constantly, including by means of training at relevant educational institutions, generally not less frequently then once every five years. The results of training and advanced training constitute one of the reasons for career development.

The educational and scientific course "Public Administration and Legal Support of the Main Headquarters of the Ukrainian Ministry of the Interior" has been developed for purposes of promoting professional education. The Ukrainian Civil Service Academy has been established under the Ukrainian President, as well as its affiliates. The leading higher educational institutions of Ukraine are being attracted to participation in professional training of civil servants. The mechanism for certification and licensing of educational institutions in the sphere of "Public Administration and Legal Support of the Main Headquarters of the Ukrainian Ministry of the Interior" is in place, and a network of advanced training institutions for civil servants is being developed to prepare top-qualification scientific and academic personnel at postgraduate courses, doctor's degree courses, defending theses before specialized scientific councils with the major in "Civil Service."

Decree of the Ukrainian President No.1212 of 9 November 2000 has endorsed the Comprehensive Program of Training Civil Servants, which sets the principal tasks of improvement of professional training of officials of government agencies and bodies of local self-government with account taken of the prospects for socioeconomic and political development of the country, introduction of administrative procedures of enforcement of the Ukrainian Constitution and laws, educational and qualification characteristics of training and professional qualification characteristics of civil service positions, and other regulatory and legal acts.

Professional training of executive personnel to fill senior positions is carried out by the Ukrainian Civil Service Academy under the Ukrainian President, its affiliates, and other higher educational institutions, primarily national ones, and also by defending scientific theses in the subjects of public administration and civil service.

The training of senior executives and specialists in other categories of civil service positions specializing in government management is carried out by higher educational institutions of the 4th accreditation level.

The main forms of advanced training of civil servants that are to guarantee its consistency include the following:

- programs of regular and short-term thematic workshops conducted in accordance with the needs for raising the efficiency of discharging official duties and the results of annual attestation of civil servants' professional performance;
- internship programs of civil servants at bodies of government authority and local self-government, and abroad;
- annual self-education programs and participation in scientific research of public administration matters.

Regular and short-term thematic workshops are being organized by bodies of government authority and local self-government with the participation of educational institutions licensed or accredited to conduct educational activity in the sphere of public administration.

Annual plans for improvement of regulatory and legal acts regulating the national system of training, advanced training and retraining of civil servants are being drawn up and agreed with the Coordinating Council for Civil Service under the Ukrainian President, streamlined with the action plan aimed at enforcement of the Ukrainian Civil Service Reform Strategy approved by Decree of the Ukrainian President No.599 of 11 February 2000.

The need for strengthening and consistently improving the personnel potential within the system of law-enforcement bodies calls for a relevant system of training, retraining, and advanced training of the staff, taking into account the characteristic features and specifics of their activity.

The system of training, retraining, and advanced training of the staff of the Ukrainian State Tax Administration includes the following educational institutions: the National Academy of the Ukrainian State Tax Administration

and its subordinate postgraduate institutions, the Centre for Retraining and Advanced Training of Senior Executives of the Ukrainian State Tax Service, the Training Workshop of the Ukrainian State Tax Administration.

To train and retrain personnel for bodies of the Ukrainian Security Service, a departmental educational institution was set up and is currently operating – the National Academy of the Ukrainian Security Service.

Personnel training and retraining within the system of the Ukrainian Interior Ministry is carried out by the National Academy of the Interior.

Since the responsibility for preventing corruption must not rest solely on the justice system, the tackling of the problem of resisting this phenomenon requires the participation of a wide circle of representatives of other government agencies.

Starting October 2001, the Main Civil Service Department, on Government assignment and on agreement with the Ukrainian National Academy of the Interior (on the basis of its Institute of Management) has launched preparatory and experimental work on introducing systematic anti-corruption training of civil servants of central and local executive authorities, and bodies of local self-government authorized to organize struggle against corruption.

In the event of non-fulfilment or unduly fulfilment by civil servants of their official duties, violating the rules of conduct, official investigations shall be launched in keeping with the Order of Conducting Official Investigations of Civil Servants approved by Decree of the Ukrainian Cabinet of Ministers No.950 of 13 July 2000.

Grounds for conducting official investigations of civil servants include:

- non-fulfilment or unduly fulfilment of their official duties, abuse of authority entailing human casualties or considerable material or moral damage to a citizen, the state, an enterprise, institution, organization, of citizens' association;
- non-observance of the law on civil service, corruption control, and violating the ethics of conduct;
- demand by a civil servant to relieve him (her) of groundless – in his (her) opinion – accusations or suspicions (Article 11 of the Ukrainian Law "On Civil Service").

Official investigation shall not be conducted on the basis of anonymous reports, applications and complaints.

A decision to conduct an official investigation shall be adopted by Ukrainian senior executives, the First Vice-Premier of Ukraine, the head of the government agency (official) who had appointed the civil servant with respect to whom an official investigation may be conducted, the head of the agency where the civil servant is employed.

Scholars, employees of government agencies and bodies of local self-government, enterprises, institutions, and organizations (upon coordination with their superiors), can be drawn in the investigation, when necessary.

During an official investigation, the civil servant may be suspended from fulfilling his (her) official duties, or remain in position. A decision with regard to suspension shall be taken on the presentation of chairman of the official investigation commission or head of the government agency where the civil servant is employed.

The civil servant shall retain his (her) salary for the period of suspension.

The head of the government agency (official) who had taken the decision to conduct an official investigation shall adopt a relevant decision upon the results of the investigation within the period of ten days, which shall be brought to the civil servant's notice.

On the basis of materials of the official investigation, the civil servant may be called to responsibility in accordance with effective law.

The act of official investigation supplemented with the relevant documents shall be retained by the government agency conducting the investigation.

During 2003, the Main Civil Service Department conducted 22 official investigations:

- on assignment of the Ukrainian Cabinet of Ministers – 21;
- on assignment of Deputy Head of the Ukrainian Supreme Council – 1.

There is a persistent tendency towards greater complexity of official investigations requiring the involvement of specialists from different sectors. Employees of the central executive authorities and law-enforcement bodies are attracted to participate in official investigations.

Most official investigations (15, or 68.2% of the total) concerned inadequate fulfilment of instructions of the Ukrainian President and Cabinet of Ministers. The investigated violations were mostly in the economic sphere, and the principal manifestation of violations by public servants consists of poor enforcement discipline, and the adoption of unjustified decisions that could inflict damage on the country.

In 2003, the Main Civil Service Department jointly with employees of the Interior Ministry, the State Tax Administration, and the Security Service have conducted regular comprehensive and control inspections of observance of the Laws of Ukraine "On Civil Service" and "On Struggle against Corruption" by bodies of executive authority.

To verify the facts disclosed in appeals of Ukrainian people's deputies, individuals and legal entities, on assignment of the Ukrainian Presidential Administration, the Cabinet of Ministers of Ukraine, on requests of Ukrainian Prosecutor General's Office, the Coordinating Committee against Corruption and Organized Crime under the Ukrainian President, the Main Civil Service Department jointly with the Interior Ministry, the Main Controlling and Auditing Department, the State Tax Administration, and the Security Service, have conducted 34 target inspections.

In pursuance of instructions of the Ukrainian Cabinet of Ministers concerning the work of central executive authorities with regard to adequate (duly) organization and personnel support of documents elaboration, resulting in claims against Ukraine on the part of foreign judicial authorities, the Main Civil Service Department has conducted four inspections of central executive authorities. The materials of inspections with relevant proposals have been presented to the Justice Ministry.

According to law, the decision to terminate civil service may be contested in court (Article 32 of the Ukrainian Law "On Civil Service").

Effective law envisages a procedure for contesting illegitimate actions of civil servants. The order of citizens' appeal to government agencies with complaints against unlawful actions by civil servants are regulated by the Ukrainian Law of 13 May 1999 "On Citizens' Appeals."

Citizens' appeals shall be considered and examined, and a relevant decision adopted, within the period not more than one month of the date of their filing, and those requiring additional investigation – immediately, but not later than fifteen days after the date of their filing.

Articles 13 – 15 of the Ukrainian Law "On Struggle against Corruption" stipulate the order of cancellation of illegal actions adopted as a consequence of corruptive actions, restoration of rights and compensation for losses inflicted on natural persons and legal entities.

Restrictions concerning the acceptance of presents by government officials or the granting of any other benefits to them are envisaged by Article 1 of the Ukrainian Law "On Struggle against Corruption." According to this Article, illegal acceptance by persons authorized to discharge the functions of the state of material remuneration, services, benefits, or other advantages in connection with the fulfilment of such functions, including the acceptance or receipt of objects (services) by their purchasing at a price (tariffs) significantly lower than their actual cost (corresponding to reality), as well as the taking by a person authorized to discharge the functions of the state of credits or loans, the purchase of securities, real estate or other property using concessions or benefits not envisaged by effective law, constitute acts of corruption.

Presents (remuneration) accepted by the aforementioned persons under such circumstances, including those received without their knowing, as well as the cost of illegally received services are subject to collection (recovery) in favour of the state.

The commitment by a person authorized to discharge the functions of the state of any of the acts of corruption stipulated by Article 1 of the Ukrainian Law "On Struggle Against Corruption," if it does not constitute a crime, entails administrative responsibility in the form of fine in the amount of 25 to 50 minimal tax-free salaries and dismissal from the position or another form of suspension from executing the functions of the state. Such persons shall be banned from occupying positions at government agencies and their managerial staff for three years from the date of their dismissal.

Effective law does not envisage sanctions for non-reporting possible violations of social and legal duties with respect to fighting corruption.

At the same time, in accordance with Article 10 of the Ukrainian Law "On Struggle Against Corruption," senior officials of ministries, other central executive authorities, state-owned enterprises, their structural units, shall bear administrative responsibility for failure to apply anti-corruption measures and shall, in the event of uncovering or obtaining information on an act of corruption committed by a subordinate or the violation of special restrictions set by Article 5 of the Ukrainian Law "On Struggle Against Corruption," adopt measures within the frames of their competence to terminate such actions and

immediately notify thereof any government agency engaged in fighting corruption.

The law also envisages the protection of persons who have reported an offence, as well as persons administering justice.

Articles 52-1, 52-3, and 52-3 of the Ukrainian Code of Criminal Proceedings define the rights and responsibilities of persons reporting a crime to a law-enforcement body or participating in another form in uncovering, preventing, terminating, and solving a crime, as well as criminal responsibility of officials for the violation of the system of personal protection stipulated by articles 381 and 382 of the Ukrainian Criminal Code.

Employees of agencies responsible for fighting corruption shall be protected by law. Protection of life, health, honour, dignity, property of these officials and members of their families against criminal encroachments and other illegal actions shall be exercised in accordance with the Ukrainian Law "On State Protection of Workers of Courts and Law-Enforcement Bodies."

Public Procurement and Public Subsidies, Licences or Other Public Advantages

One of the priority tasks of the Government is the enforcement of measures for developing a single system of government procurement in Ukraine based on transparent procurement procedures, promoting the development of a competitive environment of the national economy, enabling to achieve a most effective use of public funds and their saving, and fulfilling a number of conditions connected with the streamlining of the Ukrainian law in this sphere with international law, above all with the laws of the EU and rules of the World Trade Organization.

A major step towards providing a legal framework of the system of government procurement was the adoption in 2000 of the Law of Ukraine "On Procurement of Goods, Jobs, and Services at Public Expense" (hereinafter – the Law) elaborated on the basis of provisions of a model UNCITRAL Law on government procurement, the Uruguay WTO Agreement on Government Procurement and relevant EU Directives.

In order to further streamline the Ukrainian law with the laws of the European Union and improve the existing practice of government procurement, the Ministry of Economy and European Integration (an authorized agency for coordinating government procurement) has prepared the Draft Law of Ukraine "On Introduction of Amendments to the Law of Ukraine "On Procurement of

Goods, Jobs, and Services at Public Expense." Considering the importance and acuteness of the sphere of public procurement from the point of view of efficiency of the public sector, a broad spectrum of interested parties was attracted to development of this Law, above all the administrators of public funds at the central and local levels – the principals, the Association of Ukrainian Cities, entrepreneurs, etc. The Law received favourable reviews of international experts, in particular, specialists of the World Bank, TACIS, and the Swedish International Development Agency SIDA.

The said Draft Law was adopted by the Supreme Council of Ukraine on 16 January 2003, officially published on 19 February 2003, and gained legal force as of 20 April 2003.

To ensure duly enforcement of this Law with account for amendments introduced in the period of 2000-2003, the Ukrainian Cabinet of Ministries and the Ministry of Economy have adopted over 20 regulations.

The Law contains an accurate description of standard tender procedures and terms of their application, and is valid for the procurement of goods, jobs and services of all categories, except cases where the subjects of procurement are:

- water, heat or power supply;
- sewage and servicing of water drainage systems;
- postal services;
- telecommunication services (except mobile communications);
- telecommunication services of transmission of radio and television signals;
- railway transportation services.

The Law introduced a marginal value (the equivalent of 2 000 euros for goods and services and 100 000 euros for jobs), starting with which procurement shall be conducted through tender procedures established by this Law.

The Law gives an accurate description of tender procedures and terms of their application. In keeping with this Law, the national system of government procurement is based on decentralization, according to which procurement is conducted directly by the administrator of public funds (government authorities, including local self-administrations and their subordinate institutions, social insurance funds, the Pension Fund of Ukraine, the National Bank of Ukraine, as

well as enterprises and organizations funded from the national and local budgets) in charge of concluding the procurement contract. As the said funds are public (taxpayers' money), it is important to employ the commonly accepted (this is also reflected in international practice) procedure of government procurement through open tenders for the purpose of ensuring effective disbursement of these funds, development of the competitive environment, and raising trust toward the government across the entire Ukraine. This is precisely the procedure introduced by the Law.

The concept of tenders inherent in the Law consists in step-by-step iterations (actions) of the procurement process, culminating in conclusion of the procurement contract. The tender procedures generally include such elements as the invitation to participate in the tender, development of a detailed tender documentation with unbiased and explicit specification, objective evaluation based on existing criteria and inadmissibility of negotiations between the customer and suppliers for nominating the winning bidder.

Article 5 of the Law introduces the principle of non-discrimination – the main principle underlying the law on competitive selection of executors (suppliers) in the process of government procurement, regardless of their national status. The Law stipulates that no supplier shall be excluded from the government procurement procedures on the basis of its national identity. This principle meets the main principles of the World Trade Organization, in particular, the WTO Agreement on Government Procurements. Transparent and fair tender procedures offer the possibility for choosing the most economically expedient proposal. This Article constitutes an inalienable part of international law on government procurement. Considering the need to streamline the national law with international standards, the name of Article 5 and its edition have been adjusted to meet the principles of international law.

According to the Law, procurement shall be conducted through the following procedures:

Open Tender

This is the main procurement procedure that begins with a public invitation to participate in the tender for choosing a supplier in the form of an announcement published in the special bulletin of the Ministry of Economy, *the Government Procurement Herald*. Following the publication of the tender announcement, all interested bidders are welcome to make their bids. The evaluation of the bidders (qualifications) and their offers and nomination of the winner are carried out without negotiations exclusively on demand of the tender documentation.

Limited Tendering

Invitations to participate in the tender are issued personally to a limited number of bidders. After that, the limited tendering procedure is totally identical to the procedure of open tender. Limited tendering may be preceded by qualification procedures. The evaluation of the bids and nomination of the winner are carried out without negotiations exclusively on demand of the tender documentation. This procedure may be applied only in two cases (goods, jobs or services may be offered by a limited number of bidders due to their complicated or specific nature or the procurement of goods, jobs or services constitutes state secret due to their specific purpose) and upon coordination with an authorized agency.

Two-tier Tendering

The principal publishes an announcement in *the Government Procurement Herald*, inviting the interested bidders to make preliminary bids without specifying the prices. It is allowed to conduct discussions of technological solutions, methods of project implementation, contractual terms, etc. After the confirmation of professional and technological competence of the bidders and formulation of the final documents (specifications), the principal issues invitations to the bidders whose preliminary offers have not been dismissed. The evaluation of the bids and the final nomination of the winner are carried out without negotiations exclusively on demand of the tender documentation.

Request for Proposals (quotas)

A less formal procedure in keeping with the principal issues is an invitation in the form of a letter to at least three bidders, requesting them to make their bids. The lowest bid is accepted as the winner.

Single Tendering

On exceptional cases stipulated by Article 33 of the Law (similar to international law) and upon coordination with an authorized agency in the duly established manner the principal may conclude a procurement contract after negotiating with a single executor. Exceptional cases of applying the single tendering procedure include:

- the purchase of objects d'art or purchase involving the protection of copyrights;

- lack of competition (including for technical reasons) in providing goods, jobs or services that can be supplied (performed) by one sole participant to which there is no alternative;
- the need for additional supplies by the initial supplier for purposes of partial replacement or extension of supplies, if the change of supplier may result in the purchase of goods or services that do not meet the compatibility requirements with the goods and services already supplied;
- the need to conduct additional construction jobs not included in the initial project, which have become necessary for purposes of fulfilling the project due to unforeseen circumstances, on condition that the contract with the executor of these jobs shall be concluded if such jobs are technologically or economically connected with the main contract. Moreover, the total cost of the contract on additional jobs shall not exceed 50% of the value of the main contract;
- purchase of goods, jobs or services constituting state secret due to their special purpose;
- purchase from the winner of an architectural competition;
- urgent necessity to make a purchase in connection with emergency economic or social circumstances, which the customer could not foresee, including the purchases connected with the liquidation of the aftermaths of emergencies.

Another important aspect of the Law is the legalizing of the mechanism of pre-trial consideration of executors' complaints against possible violations of the government procurement procedures. These issues are covered by section VII of the Law, Appealing Against the Employment of Procurement Procedures.

The procedures for filing and considering complaints are regulated by Articles 36 and 37 of the Law of Ukraine "On Procurement of Goods, Jobs, and Services at Public Expense" and Decree of the Ministry of Economy No.264 of 4 December 2000 "On Approval of the Procedure for Considering Complaints of Government Procurement Participants Concerning the Organization and Implementation of Procedures of Procurement of Goods, Jobs, and Services at Public Expense" (registered with the Justice Ministry on 18 December 2000, No.919/5140).

Under these legal acts, any participant considering that he has experienced or may experience damage due to the violation by the principal of procurement

procedures established hereby, has a right to appeal against the principal's actions. However, appeals shall not be considered with respect to:

- the choice of the procurement procedure;
- the employment of Article 6 of the Law by the principal;
- the principal's decision to dismiss all bids.

Depending on the significance of the subject of the complaint, the Ukrainian Ministry of Economy shall: investigate the circumstances and grounds for filing the complaint on the basis of the information presented by the applicant and work out the necessary conclusion, which serves as the grounds for the Ministry to issue a decision concerning the complaint; investigate the complaint by a relevant standing commission, whose conclusion shall also be approved by a ministerial decision with respect to the complaint (if the complaint concerns a procurement procedure the value of which equals or exceeds the sum equivalent to 200 000 euros [1 000 000 euros for jobs]).

The decision of the Ministry with respect to the complaint shall be issued to the participant (participants) and the principal within five working days after it has been adopted, published in *the Government Procurement Herald* and placed on the Ministry of Economy website (www.me.gov.ua).

If the facts of the violations have been confirmed during the consideration of complaints, a decision shall be issued to cancel the tender; therefore the principals should be interested in observing the law on government procurements. If the complaint is recognized unsatisfactory because the principal had concluded the procurement contract before the moment when the complaint was filed, but the fact of the violations is confirmed, the materials may be referred to relevant controlling authorities, and in some cases – to law-enforcement agencies. In addition, a filed complaint serves as one of the reasons for organizing the audit (control) both by the authorized agency and by controlling authorities. If any of the parties disagrees with the decision of the authorized agency, they shall have the right to contest this decision in court.

Note. Starting from the moment of entry into force of the Ukrainian Law "On Procurement of Goods, Jobs, and Services at Public Expense," the number of claims addressed by participants to the Ministry of Economy has a constant tendency towards an increase. In the course of 2001, 55 claims were received, 135 in 2002, and over nine months in 2003, the Ministry of Economy received about 180 claims (characteristically, the share of claims filed in the first half of the year is larger, as most auctions are conducted at that time). The number of satisfied claims has increased

accordingly. For example, ten claims were filed and considered in September 2003, four of which were satisfied, and the materials on three others were referred to law-enforcement bodies for adopting relevant decisions.

Decree of the Ukrainian Cabinet of Ministers No.1469 of 27 September 2000 "On Organizational Measures for the Functioning of the Government Procurement System" has assigned the functions of a specially authorized agency in charge of coordinating government procurements (functions stipulated by Article 3 of the Law) to the Ukrainian Ministry of Economy and European Integration Matters, within the structure of which these functions are performed by the Department for Coordinating Government Procurement and Government Contract.

The most important among the said functions include:

- the elaboration of laws and regulations on the functioning of the system of government procurement and providing explanations on their enforcement;
- coordinating the application of closed procurement procedures (limited tendering and single tendering);
- considering bidders' complaints filed before the moment of concluding the procurement contract;
- control of the observance of the law on procurement and providing materials to law-enforcement agencies on facts of violation of the rules of procurement, entailing administrative or criminal responsibility;
- issuing the specialized bulletin, *the Government Procurement Herald*;
- international cooperation in the sphere of procurement.

In addition, in keeping with orders of the Ministry of Economy No.264 of 4 December 2000, No.268 of 7 December 2000, No.238 of 6 August 2002, and No.189 of 17 July 2003, certain functions of coordinating procurements of goods, jobs and services at the expense of local budgets were delegated to the Ministry of Economy of the Autonomous Republic of Crimea, the main departments of economy of regional and municipal Kiev and Stavropol government administrations.

An important element in the process of enforcing competition procedures of procurement is the system of control, specifically, the inclusion of the issue of observance of the law on government procurement before the inspections are

carried out by controlling agencies. Besides the Ministry of Economy, matters of control of government procurement are handled, within their competence, by the Government Supervisory and Auditory Service (correct target disbursement of public funds), the Auditors Chamber of the Supreme Council of Ukraine (effective disbursement of public funds), the Antimonopoly Committee of Ukraine (observance of the competition law during the holding of government procurement tenders).

Order of the Ministry of Economy and European Integration Matters N°238 of 6 August 2002 "On Organization of Control over the Observance of Effective Law during Procurement of Goods, Jobs, and Services at Public Expense" defines the order of such control and interaction between the Ministry of Economy and law-enforcement agencies.

In addition, Article 7 of the Law of Ukraine "On Procurement of Goods, Jobs, and Services at Public Expense" stipulates that the principal shall dismiss a tender bid if he had indisputable evidence that the bidder offered, gave or agreed to give, directly or through a mediator, to any official or former official of the customer, another government agency, remuneration in any form (offer of a job, valuable property, service, etc.) with a view to influence the decision concerning the nomination of the winner of the procurement tender or the employment by the customer of a particular procurement procedure.

On Granting Preferences to Domestic Consumers

Article 5 of the Law introduces the principle of non-discrimination – the basic principle underlying the law on competition-based selection of executors (suppliers) in the process of government procurement, regardless of their national status. The Law stipulates that a supplier shall not be excluded from the government procurement procedures on the basis of national origin. This principle meets the main principles of the World Trade Organization, specifically, the WTO Agreement on government procurement. Transparent and fair tender procedures ensure the possibility of choice of the most economically beneficial offer. This Article is considered an inseparable part of international law on government procurement. Considering the need to harmonise the national legislation with international standards, the name of Article 5 and its wording have been streamlined with the generally accepted principles of international law.

At the same time, Article 6 of the Law establishes a regime of support of domestic manufacturers during a tender by granting them price preferences (applied until the maximum cost set at 200 000 euros (goods), 300 000 euros (services), and 4 million euros (jobs) as compared to foreign suppliers. This regime is admitted by WTO rules (except GPA).

In addition, the customers are granted the right to demand that foreign participants should provide services or fulfil jobs using a certain part of Ukrainian primary commodities, materials and labour force.

Article 6 also envisages the granting of price preferences to the offers of enterprises of public organizations of disabled people and the penitentiary system.

On Ensuring Transparency of the Government Procurement Process

An important institutional component of the government procurement system is information support of society, above all customers and potential participants in procurement procedures.

According to the Law of Ukraine "On Procurement of Goods, Jobs, and Services at Public Expense," the procurement announcement shall be published, first and foremost, in the special bulletin, *the Government Procurement Herald*, issued by an authorized body – the Ministry of Economy and European Integration Matters.

To ensure transparency of government procurements, free access of all interested entrepreneurial entities to participate in the auctions for procurement of goods, jobs and services for public needs, the Ministry of Economy, acting in accordance with the Law of Ukraine "On Printed Mass Media (Press) in Ukraine," has registered in November 1998 a printed mass medium – the bulletin *Government Procurement Herald.*

Announcements on auctions and their results shall be published free of charge in *the Government Procurement Herald* for customers engaged in procurement at public expense.

Besides that, information on tenders for government procurement shall also be placed on the Ministry of Economy website (www.me.gov.ua) and the Government web-portal (www.kmu.gov.ua), as well as the customers' own websites.

Note. In 2000, 24 issues of the information-analytical bulletin, the Government Procurement Herald, published 1682 auction announcements, including information on 1382 open tenders, which equals 82.2% of the overall number of announcements; in 2001, 5 205 announcements were published, in 2002 – 7 161, and in 2003 – about 9 000 announcements. These data show that open tendering is the main auction procedure, ensuring maximal procurement transparency and constant increase of competitiveness of the government procurement market.

The *Government Procurement Herald* is published three times a month. The dates of publication of the bulletin are announced in its previous issues. Besides announcements of concrete auctions, a general procurement plan of the main administrators of public funds is published annually at the beginning of the year (and also placed on the Ministry of Economy website).

The publication of announcements of planned procurement and its results in the *Government Procurement Herald* is obligatory in open tendering and two-tier tendering procedures, as well as in pre-qualification. Moreover, the customer can also publish additional announcements in other editions (local media, specialized editions, etc.). The forms of such announcements are approved by Order of the Ministry of Economy N°130 of 20 May 2003.

If an announcement is placed in the international information medium (obligatory if the cost of the purchase exceeds 200 000 euros (goods), 300 000 euros (services) or 4 million euros (jobs), the customer may act in the following manner:

- place announcements on its own website (or the website of its superior organization);
- file a relevant appeal to the Ukrainian Chamber of Commerce and Industry, responsible for coordinating international trade and economic relations;
- provide an English-language version of the announcement to the Ministry of Economy for placement on the Ministry's website.

The absence of announcement on the auction or its results in the *Government Procurement Herald* shall invalidate the procurement procedure. The fact of publishing an announcement in the *Government Procurement Herald* shall be obligatorily registered in the report on results of the procurement procedure, according to the form approved by Order of the Ministry of Economy No.129 of 20 May 2003.

In order to enforce transparent procedures of licensing certain forms of activity, the Supreme Council of Ukraine has adopted the Law of Ukraine on Licensing Certain Kinds of Business Activity No.1775-III of 1 June 2000.

This Law stipulates the forms of activity subject to licensing, and the licensing procedures, introduces government control over licensing, the responsibility of economic entities and licensing authorities for violating the law on licensing. This Law is applicable to all economic entities. The licensing of banking, financial services, foreign economic activity, voice transmission

channels, power engineering and nuclear energy utilization, education, production and sale of grain alcohol, cognac, fruit spirit, alcoholic beverages, and tobacco shall be carried out in accordance with the laws regulating these spheres.

The forms of business activity, except cases stipulated by part two hereof, not included in the list of business activities stipulated by Article 9 of this Law not subject to licensing.

The main principles of government policy in the sphere of licensing (introduced by Article 3 of the Law) include, in particular, ensuring equal rights and lawful interests of all economic entities promoting the development of business in Ukraine.

The Law has for the first time introduced the institution of expert council for appeals at the Ukrainian State Committee for Regulatory Policy and Business, the competence of which includes: preliminary evaluation of proposals of the executive authorities and local self-administrations, associations of citizens and entrepreneurs from the point of view of expediency of introducing or cancelling the licensing of certain forms of business activity; consideration of appeals, claims and complaints of economic entities against the decisions of the licensing authorities containing the elements of violations of the law on licensing; status analysis and development of recommendations on improvement of licensing, review of draft laws and regulations of the executive authorities in the sphere of licensing.

Article 19 of the Law stipulates that a specially authorized licensing authority shall keep a Single State Register containing the data of license registers and identification codes of the licensing authorities.

Information placed in the Single State Register and license registers shall be public.

In keeping with this Law, the Ukrainian State Committee for Business, jointly with the licensing authorities appointed by the Ukrainian Cabinet of Ministers, has worked out 47 License Requirements of conducting certain types of business activity (qualification, organizational, technological, and other requirements for conducting certain types of business activity) and 22 Procedures for control of their observance.

On the Licensing of Foreign Economic Transactions

The legal frameworks of foreign economic transactions are set by the Law of Ukraine "On Foreign economic Activity," specifically, Article 16 of this Law.

The provisions of this Article envisage the cases when the licensing of export (import) of goods can be applied, and the licensing procedures.

The list of concrete products the export (import) of which is covered by the licensing regime shall be approved by the Ukrainian Cabinet of Ministers. The decision on export (import) licensing in the event of antidumping, compensation or special investigations shall be adopted by the Interdepartmental Commission for International Trade.

The list of products whose export and import is subject to licensing and which have quotas established in 2004 has been approved by Decree of the Ukrainian Cabinet of Ministers No.1996 of 24 December 2003.

Licenses to foreign economic transactions shall be issued by the central executive authority in charge of economic policy matters (the Ministry of Economy and European Integration Matters).

The procedures for considering applications for the issuance of permits in the sphere of non-tariff regulation of foreign economic activity have been approved by Order of the Ministry of Economy and European Integration Matters No.342 of 28 November 2003.

Financial control / State audit

According to the Budget Code of Ukraine, the audit of financial and business activity of budget-funded institutions and organizations shall be exercised by bodies of the Government Supervisory and Auditory Service (GSAS).

GSAS exercises independent financial control on behalf of executive authorities, external with respect to the main administrators of budgetary funds.

GSAS incorporates the Main Supervisory and Auditory Department (GlavKRU), the supervisory and auditory departments of the Autonomous Republic of Crimea, 24 regions, the cities of Kiev and Sevastopol, cities, and districts (supervisory and auditory departments, hereinafter SAD).

GlavKRU is the central body of executive authority ensuring duly implementation of government policy in the sphere of public financial control over legal use of funds of budgets at all levels and extra-budgetary funds by enterprises, institutions, and organizations, regardless of their form of ownership and departmental jurisdiction and subordination, and the integrity of public and communal property, accounting records and financial reporting.

At the same time, bodes of the Government Supervisory and Auditory Service may exercise supervisory measures in spheres not referred to the areas of their financial control in accordance with the law, on assignment of the Supreme Council of Ukraine, the Ukrainian President, Government, and law-enforcement bodes.

The laws and regulations on activity of the Ukrainian Government Supervisory and Auditory Service bodies include the Law of Ukraine "On Government Supervisory and Auditory Service in Ukraine," Ukrainian Presidential Decrees No.1031 of 27 August 2000 "On Measures to Enhance the Efficiency of Supervisory and Auditory Activity" and No.1265 of 28 November 2000 "On the Statute of the Main Supervisory and Auditory Department of Ukraine," and others.

GlavKRU is headed by the chairman appointed to this position and dismissed by the Ukrainian President in the manner prescribed by law.

The GlavKRU Chairman shall bear personal responsibility to the Ukrainian President and the Cabinet of Ministers for fulfilment of tasks assigned to GlavKRU and its statutory functions; exercise the management of GlavKRU activity, distribute the functions between his deputies, determine the measure of responsibility of deputy chairmen and heads of GlavKRU structural units, appoint and dismissed in the duly established manner the heads of supervisory and auditory departments of the Autonomous Republic of Crimea, regions, the cities of Kiev and Sevastopol, regions, cities and districts, granting these departments the status of legal entities.

The Ukrainian Law "On Government Supervisory and Auditory Service in Ukraine" and GlavKRU Statute defines the main objectives, rights and responsibilities of the Government Supervisory and Auditory Service (GSAS).

GlavKRU discharges its functions both directly and through its duly established branches – regional supervisory and auditory departments.

GlavKRU Order No.111 of 9 January 2001 has approved the Statute of Supervisory and Auditory Departments of the Autonomous Republic of Crimea,

regions, cities of Kiev and Sevastopol. The Order was registered by the Justice Ministry on 18 January 2001, No.37/5228.

According to the Budget Code, besides audit and inspection of financial and business activity of enterprises, institutions and organizations receiving budgetary funding, credits and loans with budgetary guarantees, GSAS bodies shall conduct the audit of efficiency of implementation of government programmes financed from the budget.

The organization and conducting of such audits is regulated by Procedures for planning supervisory and auditory jobs by bodies of the Government Supervisory and Auditory Service approved by Decree of the Cabinet of Ministers No.955 of 8 August 2001 (with amendments introduced by Decree of the Cabinet of Ministers No.1650 of 15 October 2003).

With this end in view, the department of organization and conducting audit research has been created within the GlavKRU system. The audit of implementation of such programmes is envisaged by GSAS working plans approved by the Ukrainian Cabinet of Ministers in the duly established manner.

The draft law on the introduction of amendments to the Ukrainian Law "On Government Supervisory and Auditory Service in Ukraine," presented to the Supreme Council for its second reading, stipulates the functions and authorities of the GSAS divisions to conduct audits.

Special attention in mapping out GSAS control areas should be paid to spheres of considerable economic and social significance receiving substantial amounts of financing, other public resources directed towards fulfilment of budget-funded programmes, the maintenance of government agencies, etc.

Substantial financial transactions, unusual by nature, are also subject to financial monitoring. For this purpose, GlavKRU has worked out recommendations for detecting and informing of such transactions. To coordinate this line of activity within the GSAS bodies, a relevant sector has been created within the GlavKRU system to analyse and summarise such information. Analytical information on these issues shall be presented to the Financial Monitoring Department.

In addition, according to the Law "On Government Supervisory and Auditory Service in Ukraine," information on detected abuse and violation of effective law shall be handed over to law-enforcement bodies for taking relevant measures.

GlavKRU, in pursuance of its constituent objectives, shall interact with other central and local executive authorities, bodies of local self-government, law-enforcement, supervisory bodies, public organizations, as well as relevant authorities of other countries, in particular, when necessary, issue joint acts with the other central and local executive authorities, conduct joint audits with participation of specialists from other central bodies of executive authority, etc. For instance, in 2003 GlavKRU has submitted over 130 proposals on improvement of laws and regulations in the sphere of financial and business activities within their jurisdiction. Over half of these initiatives were taken into account. Similar work is underway in the regions.

GSAS is responsible for conducting internal (governmental) financial control among central and local executive authorities subordinate to the Government.

Organization of Internal Audit in Ministries and Other Central Executive Authorities

Ministries and other central executive authorities have within their system internal financial control units responsible for conducting internal audit.

Regulating internal financial control within the system of ministries and other central executive authorities is one of GlavKRU priority lines of activity in the sphere of government financial control; the Cabinet of Ministers is regularly informed of results of this job.

GlavKRU orders issued in 2002 have introduced into the practice of supervisory and auditory activity of ministries and other central executive authorities the Standards of Government Financial Control_over the use of budgetary funds, public and communal property, and procedures for coordination, appointment, and dismissal of the heads of supervisory and auditory departments.

In pursuance of Decree of the Cabinet of Ministers No.685 of 22 May 2002 "On Internal Financial Control of Ministries and Other Central Executive Authorities," which approved the Procedures for implementing this form of control by bodies of executive authority, relevant departments have been set up at all central bodies of executive authority, except the Main Supervisory and Auditory Department, the State Committee for Religion, the State Committee for Archives, and the State Committee for Nationalities and Migration, whose jurisdiction includes no subordinate enterprises, institutions, and organizations.

The above decree defines the mechanism of exercising internal financial control by supervisory and auditory departments of relevant central executive authorities over the activity of enterprises, institutions, and organizations within their sphere of jurisdiction; organizing their work; rights; sphere of activity and their jurisdiction.

Exercising control over the use of funds of the Ukrainian State Budget has been assigned to the independent government agency created in 1996 – the Ukrainian Chamber of Auditors.

The Chamber of Auditors is a constitutional body of government financial control, whose organizational and financial independence is guaranteed by Ukrainian law. Ukrainian Law "On the Chamber of Auditors" No.315 of 11 July 1996 determines the legal frameworks of its activity, status, functions, authorities, and their implementation procedures.

According to Article 6 of this Law, the Chamber of Auditors shall supervise the execution of the state budget and the use of funds of extra-budgetary and target foundations, including the financing of national programmes; control the formation and cancellation of the national debt, decision-making on rendering Ukrainian loans and economic assistance to other countries; discharge expert-analytical and consultative functions.

To ensure information support of the monitoring of processes underway in the economy as a whole and in its individual segments, Goskomstat gathers and summarizes economic entities' financial reporting data.

The Ukrainian Law "On Accounting and Financial Reporting" stipulates that financial reporting shall be presented to state reporting bodies by all legal entities (except banks and budget-funded institutions) created in accordance with Ukrainian law, regardless of their form of incorporation and ownership, which shall keep accounts and present financial reporting in keeping with law. The procedures for presenting financial reporting are established by Decree of the Cabinet of Ministers No.419 of 28.02.2000.

Financial reporting is prepared by entrepreneurial entities in accordance with the Statute (Standards) of Accounting, legislative acts on accounting, official methodological recommendations and comments thereon by the Ukrainian Finance Ministry.

The reliability of primary and statistical information is checked by state statistic bodies in accordance with Article 13 of the Law of Ukraine "On State Statistics." Bodies of state statistics have the right to:

- examine the status of primary accounting and statistic reporting, check the reliability of primary and statistic data presented by the respondents;
- demand from the respondents to introduce amendments to their forms of state statistic reports if unreliable information and other distortions of primary and statistic data is detected;
- submit proposals to law-enforcement bodies on bringing to account officials and individual entrepreneurs guilty of violation of the Law of Ukraine "On State Statistics" in the manner prescribed by effective law;
- consider cases of administrative offences and impose fines as prescribed by effective law.

The procedures for checking the reliability of primary and statistic data, examining the status of primary accounting and statistic reporting by bodies of state statistics are approved by Goskomstat Order No.186 of 19 June 2003.

Rules and Procedures of Auditors' Activity

To create a system of independent financial control and protection of proprietary interests, Ukrainian Law "On Auditing" No.3125-XII of 22 February 1993 has been adopted in 1993, which set the legal frameworks of auditing. According to this Law, audit is the review of public book reporting, accounts, primary documents, and other information on financial and business activity of economic entities in order to establish its reliability, completeness, and compliance with effective law.

Audit is conducted by independent persons (auditors), accounting firms authorized to conduct audit reviews and render other audit services.

A citizen of Ukraine who has a qualification certificate to engage in audit activity on the territory of Ukraine may be an auditor. The auditor shall conduct his activity on the basis of a license to engage in audit activity, issued by the Ukrainian Chamber of Auditors. A person with a criminal record for mercenary offences cannot be an auditor.

The Chamber of Auditors shall be set up and function as an independent body based on principles of self-governance. It shall be formed by delegating five representatives of the professional public organization of auditors of Ukraine, one representative each from the Finance Ministry, the Main State Tax

Administration, the National Bank, the Ministry of Statistics, the Justice Ministry, and other specialists.

In keeping with Article 17 of this Law, a professional public organization of auditors of Ukraine – the Ukrainian Auditors' Union – has been set up in Ukraine.

According to the Ukrainian Law "On Auditing," the auditor (accounting firm) shall bear civil and other liability for inadequate fulfilment of his (its) responsibilities as prescribed by agreement in accordance with effective law. The amount of civil liability of auditors (accounting firms) shall not exceed the amount of actual loss inflicted to the customer through their fault. All property-related disputes between the auditor (accounting firm) and the customer shall be settled in the established manner with observance of requirements of this Law. Moreover, the Ukrainian Chamber of Auditors may impose sanctions on an auditor for inadequate performance of his professional duties in the form of warning, certificate suspension for a term up to one year or cancelling the certificate.

In keeping with the said Law, auditors and accounting firms shall notify proprietors, their authorized persons, and customers of the flaws in accounting and reporting revealed by the audit; keep secret the information received during the audit and the rendering of other audit services; not disclose data constituting commercial secret, and not use them in their interests or the interests of third parties; bear liability to the customer for the violation of contractual terms in keeping with effective laws of Ukraine; restrict their activity to the rendering of auditory services and fulfilment of other jobs directly connected with the rendering of auditory services in the form of consultations, inspections or reviews.

Tax and Custom Systems

Ukrainian Presidential Decree No.817 of 23 July 1998 "On Some Measures of Deregulating Entrepreneurial Activity" establishes the order of regular and extraordinary inspections of financial and business activity and identifies the controlling authorities.

According to this Decree, the controlling authorities shall be:

- bodies of the state tax service – on payment of taxes and levies (dues) to the budget and state target funds;

- customs authorities – on payment of customs tariffs, excise tax and value added tax collected during the import (consignment) of products to the customs territory of Ukraine;
- bodies of the state treasury, government supervisory and auditory service, and the state tax service within the frames of their competence – on budgetary loans, credits, secured budgetary funds, proper use of grants, subsidies, other budgetary allocations, and extra-budgetary funds.

The explicit list of controlling authorities authorized to conduct inspections of financial and business activity of entrepreneurial entities, outlining the frames of their competence contributed to a considerable reduction of the number of inspections.

In pursuance of provisions of this Decree, the Ukrainian State Tax Administration has been preparing inspection schedules for conducting regular onsite inspections, coordinated with the other controlling authorities, for five years now. Written notifications indicating the date of a planned documental inspection shall be sent to an entrepreneurial entity not later than ten days prior to the start of the inspection.

Onsite inspections shall be planned in accordance with requirements of Decree of the Cabinet of Ministers No.112 of 29 January 1999 "On the Order of Coordinating Regular Onsite Inspections of Financial and Business Activity of Entrepreneurial Entities by Controlling Authorities."

Inspections shall be conducted comprehensively and cover all issues in order to reduce interference in financial and business activity of entrepreneurial entities.

Extraordinary onsite inspections shall cover economic entities whose audit is not envisioned by the National Plan, in case of presence of at east one circumstance stipulated by paragraph 3 of Ukrainian Presidential Decree No.817 of 23 July 1998.

Extraordinary inspections shall be conducted if there is information on possible tax evasion by an entrepreneurial entity, detected as a result of analysis of tax declarations and reporting, export and import database, current information on detected shadow activities concealed from accounting and reporting, activity of fictitious firms, economic entities, not accountable under items "a" – "f" of paragraph 3 of the aforementioned Decree.

The activity of tax authorities in Ukraine is regulated by the Ukrainian Law "On State Tax Administration in Ukraine," which stipulates their rights, functions, and interaction with other executive authorities.

In keeping with this Law, bodies of the state tax service shall be empowered with the following rights:

To carry out audits of financial documents, account books, reports, balance sheets, declarations, inventory and cash books, data of electronic cash registers and computer systems used for cash settlements with the customers, and other documents, regardless of the form of the information (including the computer format), connected with calculation and payment of taxes and other dues of enterprises, institutions and organizations, irrespective of their forms of ownership, and individual persons, including individual entrepreneurs, inspection of registration certificates of economic entities, special permits (licenses, patents, etc.) to carry out entrepreneurial activity, and to demand from officials and private citizens written explanations, certificates and other information on issues arising in the process of the inspection; to inspect officials' and private citizens' IDs in the process of holding tax audits; summon officials and private citizens for explanations concerning the sources of incomes, calculation and payment of taxes and other dues, and to conduct verification inspections of the reliability of information received for entering in the State Register of Individual Payers of Taxes and Other Dues.

The frequency of such inspections and examinations of production, storage, trade, and other premises shall be determined in accordance with effective Ukrainian law.

A state tax service agency may summon individuals, including individual entrepreneurs, for verifying the correctness of calculation and timeliness of payment of taxes and other dues. Written notices of such summons shall be sent to citizens by registered mail, indicating the reasons for the summons, the date and hour of the scheduled appointment.

To receive free of charge from enterprises, institutions, organizations, including the National Bank of Ukraine and its branches, commercial banks and other financial and credit institutions (in the order stipulated by effective law on disclosure of banking secret), from individual entrepreneurs, copies of documents on their financial and business activity, incomes gained, expenses of enterprises, institutions, and organizations, regardless of their form of ownership, and from citizens – information on current and deposit accounts, on the presence and turnover of funds on those accounts, including non-receipt of hard currency revenues from economic entities in due time, and other information connected with the computation and payment of taxes and other

dues in the order stipulated by law, to enter any information systems, specifically, computer systems, for identifying the object of taxation.

To receive, free of charge, the data necessary for forming an information fund of the State Register of Individual Payers of Taxes and Other Dues from enterprises, institutions, organizations, regardless of their form of ownership, including the National Bank of Ukraine and its branches, commercial banks, and individual entrepreneurs – on total incomes paid to natural persons and amounts of deducted taxes and other dues; from bodies authorized to carry out state registration and issue special permits (licenses, patents, etc.) to exercise certain types of entrepreneurial activity – on the issuance of such permits to economic entities; from bodies of the interior – on citizens arriving for residence at a certain populated locality or departing from it; from civilian status registry offices – on deceased citizens;

To receive, free of charge, from customs authorities – monthly reports on the import of goods to the customs territory of Ukraine and deduction of customs tariffs and other levies, and information on export-import transactions carried out by residents and non-residents, in the manner agreed with the State Tax Administration of Ukraine; and from statistic agencies – data necessary for conducting analyses of financial and business activity of enterprises, institutions, and organizations of all forms of ownership.

To examine any production, storage, trade, and other premises of enterprises, institutions, and organizations, regardless of their forms of ownership, and citizens' homes if they are used as the legal address of an economic entity or for gaining profit. In case of refusal of managers of enterprises, institutions, and organizations, and citizens to admit state tax service officials for inspecting the aforementioned premises and equipment, or failure to present documents on the revenues and expenses made, the state tax service agencies shall be empowered to determine the taxable income (profit) of such enterprises, institutions, organizations, and citizens on the basis of documents certifying the incomes (profits) gained by them, and with respect to individual citizens – considering the level of taxation of citizens engaged in similar activities.

To demand from the heads and other executives of enterprises, institutions, and organizations, and citizens whose activities are being inspected, to eliminate the uncovered violations of the tax law and the law on entrepreneurial activity, to monitor their implementation, and to terminate the actions preventing state tax administration officials from discharging their duties.

To seize (leaving back copies) enterprises', institutions', and organizations' documents attesting to concealment (understatement) of taxable objects, non-payment of taxes and other dues, and to revoke registration certificates or special permits (licenses, patents, etc.) from individual entrepreneurs who violate the order of engaging in entrepreneurial activity, with subsequent handing of materials on the violation over to the authorities that had issued those documents.

To apply financial sanctions to enterprises, institutions, organizations, and citizens in the manner and in amounts established by law; to impose sanctions on legal persons and individual entrepreneurs who have failed to report within a period determined by law about the opening or closing of bank accounts, as well as on banking institutions that have failed to submit notices to the relevant state tax service agencies within a period determined by law on the closure of taxpayers' accounts or the launching of expenditure transactions at the taxpayer's expense to receive a documentarily certified notice of the relevant state tax service agency that the account has been registered with the state tax service, in the form of penalty in the amount of twenty minimal tax-free salaries.

To recover in favour of budgets and public target funds the sums of arrears, penalties and fines in the manner stipulated by law.

To grant deferral and easy terms of tax payment, solve matters of tax compromise, and take decisions on writing off uncollectible debts in the manner envisaged by law.

To levy penalty on bank offices and other financial and credit institutions for untimely fulfilment of orders of the state tax service agencies on direct debiting of taxes and other dues, as well as the orders of enterprises, institutions, organizations, and citizens on the payment of taxes and other dues for each day of the delay (including the payment day) in amounts established by law.

To impose administrative fines:

- on leaders and other senior executives of enterprises, institutions, and organizations guilty of keeping no tax accounting or keeping it in violation of the established procedure, non-presenting or untimely presenting of audit reports required by law and payment orders for the transfer of due taxes and levies – in the amount from five to ten tax-free minimal salaries, and for repeated actions by a person already

penalized for similar offence during the past year – in the amount from ten to fifteen tax-free minimal salaries;

- on heads and other senior executives of enterprises, institutions, and organizations, including the branches of the National Bank of Ukraine, commercial banks and other financial and credit institutions, failing to meet the demands of the state tax administration officials, stipulated in paragraphs 2-5 herein – in the amount from ten to twenty tax-free minimal salaries;
- on executives of enterprises, institutions, and organizations, as well as individual entrepreneurs, which paid out incomes, guilty of non-deduction, non-transfer in favour of the budget of natural persons' income tax, transfer of taxes at the expense of enterprises, institutions, and organizations (except cases when this practice is permitted by law), of a failure to notify, or untimely notification of the state tax inspection agencies in the established manner of citizens' incomes – in the amount of three tax-free minimal salaries, and for repeated actions by a person already penalized for similar offence during the past year – in the amount of five tax-free minimal salaries;
- on citizens guilty of non-filing or untimely filing of declarations of incomes, or declaring distorted data, of keeping no account, or unduly account, of incomes and expenses for which a compulsory accounting form has been established – in the amount from one to five tax-free minimal salaries;
- on individual entrepreneurs guilty of resisting the officers of the state tax service, specifically, preventing their access to premises used for purposes of conducting entrepreneurial activity and gaining profit – in the amount from ten to twenty tax-free minimal salaries;
- on individual entrepreneurs conducting entrepreneurial activity without state registration or a special permit (license), if this permit is required by law – in the amount from three to eight tax-free minimal salaries;
- on citizens engaged in the sale of products without purchasing non-recurrent patents or with violation of their term of validity, or engaged in the sale of undeclared products – in the amount from one to ten tax-free minimal salaries, and for repeated actions by a person already penalized for similar offence during the past year – in the amount in the amount from ten to twenty minimal salaries.

To unrestrictedly use for purposes of discharging their official duties communication means belonging to enterprises, institutions, and organizations, irrespective of their forms of ownership.

In the event of uncovering abuse in the process of exercising control over hard currency revenues, settlements with the customers with the use of inventory and cash books, and over the observance of the norms of cash limits in cash registers and its use for conducting settlements for goods, jobs and services, issue orders to government supervisory and auditory bodies to conduct audits.

- To demand from the heads of enterprises, institutions, and organizations being audited to make inventories of fixed assets, stock in trade, funds and accounts; in the event of attachment – to seal cash registers, cash offices, storage premises, and archives.
- To present information from the State Register of Individual Payers of Taxes and Other Dues to other government agencies in accordance with effective law.
- To provide material and moral incentives to citizens assisting the struggle against violation of the tax law.
- To file appeals (claims) to court or arbitration court in cases envisaged by law for the cancellation of state registration of an economic entity.

The rights stipulated by paragraphs 1-4, 12, and 14 herein shall be granted to officers of the state tax service, and the rights stipulated by paragraphs 5, 7-11, 13, 15-17 herein – to chairpersons of the state tax administration and heads of the state tax inspection offices and their deputies.

The order of information exchange between law-enforcement bodies on issues related to fighting crime, identifying and exposing violations of the law is regulated by the Instruction on the Order of Information Exchange between the State Customs Service, the State Tax Administration, the Interior Ministry, and the State Committee for Protection of the Ukrainian National Border, approved by joint decree of these institutions No.152/11/231/141-DSK of 7 March 2003.

Ukrainian State Tax Service Agencies coordinate their activity with financial institutions, bodies of the Ukrainian State Treasury, the Security Service, the interior agencies, the public prosecutor's office, statistics authorities, state customs, and supervisory and auditory services, other regulatory authorities, bank institutions, as well as tax services of other countries.

In the process of discharging the functions envisaged by Article 8 of the aforementioned law, state tax service agencies undertake:

- in the event of uncovering indications of organized criminal activity or actions creating conditions for such activity, to submit all available materials on these matters to special agencies for fighting organized crime;
- to present to relevant law-enforcement agencies the materials on violations entailing criminal responsibility, if their investigation does not fall under the jurisdiction of the tax police.

Grounds for launching internal investigations, rights and duties of civil servants of customs bodies during such investigations, as well as procedures for the investigations are set out by the Procedures for internal investigations in customs bodies, approved by the decree of the State Customs Service of Ukraine of 29 July 2002 N°408.

According to Article 97 of the Criminal Code of Ukraine, materials of internal investigations (inspections), which contain information about elements of offence, are transmitted by the customs bodies to the law-enforcement bodies for their decision according to their competences.

When identifying the bodies to which such information or materials of internal investigation (inspection) should be transmitted, the customs bodies are guided by Article 112 Criminal Code of Ukraine and by Article 4 of the Law of Ukraine on "Fighting Corruption".

Exchange of information with the customs bodies of other countries on issues related to customs investigations of cases of violations of customs rules are carried our in the framework of interstate agreements.

Preventing Corruption among Officers of the State Tax Service

The order of citizens' appeals to government agencies with complaints against unlawful actions of civil servants is regulated by the Ukrainian Law of 13 May 1999 "On Citizens' Appeals."

The procedure for working with citizens' complaints at bodies of the Ukrainian State Tax Administration (STA) is regulated by order of the Ukrainian STA Chairman No.369 of 28 July 2003 "On Organization of Work with Citizens' Appeals at Ukrainian State Tax Service Agencies." The order of considering citizens' complaints against the actions of STA officials is regulated by order of the Ukrainian STA Chairman No. 467 of 1 October 2003 "On

Approval of the Order of Considering Citizens' Complaints against the Actions of Workers of the State Tax Service Agencies at Ukrainian STA Structural Divisions."

Citizens' complaints and appeals concerning the evidence of acts of corruption on the part of STA officials shall be considered by the Ukrainian STA Anti-Corruption and Security Department and its regional branches.

The facts of corruption on the part of tax officials presented in citizens' appeals are subject to official audits and investigations. If the facts disclosed in the appeals and complaints are confirmed, the materials of official investigations and audits shall be referred to the public prosecutor's office for legal review, in keeping with Article 97 of the Ukrainian Code of Criminal Proceedings.

In accordance with Article 97 of the Ukrainian Code of Criminal Proceedings, if appeals and reports of crimes are received, the materials shall be referred to the public prosecutor's office, in keeping with effective law.

In pursuance of Ukrainian Presidential Decree No.760 of 22 August 1996 "On Establishment of the Ukrainian State Tax Administration and Local Tax Administrations," the Prime Minister of Ukraine has approved (on 12 November 1996) the creation of a new entity – Ukraine's STA. A new anticorruption department, directly subordinate to Chairman of the Ukrainian STA, has been formed among other tax service departments.

An order of Ukraine's STA Chairman has approved the Statute of organization of work of anticorruption and security units within the state tax service bodies, and set up regional anticorruption and security departments within the STA system in the Autonomous Republic of Crimea, regions, and the cities of Kiev and Sevastopol.

One of the main tasks of the Anticorruption Department and its regional branches is the prevention of corruptive measures and other office abuses by officers of the tax service.

On 5 February 1998, the Supreme Council of Ukraine has introduced relevant amendments to the Ukrainian Code of Criminal Proceedings and the Ukrainian Laws "On Operative Investigative Activity" and "On Struggle Against Corruption." Since that time, anticorruption units of the Anticorruption and Security Department of the State Tax Service were granted the right to conduct operative investigation.

The legal framework for the activity of anticorruption and security units is formed by the Ukrainian Constitution, Ukrainian Laws "On the State Tax Service of Ukraine," "On Militia," "On Operative Investigative Activity," "On the Struggle against Corruption," the Ukrainian Criminal Code and Code of Criminal Proceedings, other laws and regulations.

The officers of the Ukrainian Anticorruption and Security Department and its regional branches have higher and considerable experience of operative investigative activity in law-enforcement bodies (as a rule, not less than three years).

To raise the professional level of officers, training of officers of the regional anticorruption and security units of the State Tax Service is underway at the advanced training courses of the National Academy of State Tax Service of Ukraine in accordance with the plan approved by Order of the Ukrainian STA No.427 of 6 February 2003.

In 2003, 271 administrative reports have been filed against officials of the State Tax Service bodies concerning the detected violations of the Law Ukraine "On Struggle against Corruption," on 203 of which courts have issued decisions to impose civil liability on this category of persons.

Moreover, an Inspection and Control Department has been set up at Ukrainian STA, which consists of the sector for inspection and citizens' appeals, the internal control sector, and the financial control sector. Similar units have also been set up at the STA of the Autonomous Republic of Crimea, regions, and the cities of Kiev and Sevastopol.

The assignments and functions of this department and its regional branches include the organization and holding of official investigations of activities of officers of the state customs service, including in the event of their non-compliance with anticorruption law.

On the whole, the department conducted 333 inspections in 2003, upon the results of which 348 employees were brought to disciplinary responsibility, 28 of which were dismissed from their positions or discharged from bodies of the tax service.

In 2000, the courts have imposed civil responsibility on 138 employees of the State Tax Service bodies for violations of the Ukrainian Law "On Struggle against Corruption," among which:

- 45 were brought to civil responsibility in the form of fine (UAH 425-500) and discharged from civil service on the basis of Article 7 of the Ukrainian Law "On Struggle against Corruption" for illegal receipt of material values, services, and benefits;
- 92 were brought to civil responsibility in the form of fine (UAH 250-300) on the basis of paragraph 1 Article 8 of the Ukrainian Law "On Struggle against Corruption" for violating special restrictions set by Article 5 of this Law;
- 1 was brought to civil responsibility in the form of fine (UAH 250) on the basis of paragraph 2 Article 8 of the Ukrainian Law "On Struggle against Corruption" for repeated violation of special restrictions envisaged by Article 5 of this Law in the course of one year.

Law-enforcement bodies have initiated 89 criminal cases concerning the elements of official offences by the employees of STA bodies, including (articles of the Ukrainian Criminal Code in the 1992 edition):

- 41 – based on Article 165 (power or office abuse);
- 15 – based on Article 172 (official forgery);
- 6 – based on Article 168 (bribe-taking);
- 4 – based on Article 166 (exceeding powers or authority).

Fifteen employees of the state tax service have been convicted for official crimes. The average term of imprisonment according to court sentences totalled two years and nine months.

In 2001, the courts have imposed civil responsibility for violations of the Ukrainian Law "On Struggle against Corruption" 134 employees of the state tax service bodies, among which:

- 19 were brought to civil responsibility in the form of fine (UAH 425-500) and discharged from civil service on the basis of Article 7 of the Ukrainian Law "On Struggle against Corruption" for illegal receipt of material values, services, and benefits;
- 115 were brought to civil responsibility in the form of fine (UAH 250-300) on the basis of paragraph 1 Article 8 of the Ukrainian Law "On Struggle against Corruption" for violating special restrictions set by Article 5 of this Law.

In 2001, law-enforcement bodies have initiated 107 criminal cases concerning the elements of official offences by the employees of STA bodies, including (articles of the Ukrainian Criminal Code in the 1992 edition):

37 – based on Article 165 *(power or office abuse);*

14 – based on Article 166 *(exceeding powers or authority);*

11 – based on Article 172 *(official forgery);*

9 – based on Article 168 *(bribe-taking).*

Thirteen employees of the state tax service have been convicted for official crimes. The average term of imprisonment according to court sentences totalled 2 years and 3 months.

In 2002, the courts have imposed civil responsibility for violations of the Ukrainian Law "On Struggle against Corruption" 176 employees of the state tax service bodies, among which:

- 17 were brought to civil responsibility in the form of fine (UAH 425-500) and discharged from civil service on the basis of Article 7 of the Ukrainian Law "On Struggle against Corruption" for illegal receipt of material values, services, and benefits;
- 158 were brought to civil responsibility in the form of fine (UAH 250-300) on the basis of paragraph 1 Article 8 of the Ukrainian Law "On Struggle against Corruption" for violating special restrictions set by Article 5 of this Law;
- 1 was brought to civil responsibility in the form of fine (UAH 500) on the basis of Article 10 of the Ukrainian Law "On Struggle against Corruption" for failure to apply anticorruption sanctions.

Law-enforcement bodies have initiated 117 criminal cases concerning the elements of official offences by the employees of STA bodies, including (articles of the Ukrainian Criminal Code in the 2001edition):

- 54 – based on Article 364 (power or office abuse);
- 24 – based on Article 368 (bribe-taking);
- 10 – based on Article 365 (exceeding powers or authority);
- 8 – based on Article 366 *(*official forgery*).*

Twenty-three employees of the state tax service have been convicted for official crimes. The average term of imprisonment according to court sentences totalled two years and four months.

In 2003, the courts have imposed civil responsibility for violations of the Ukrainian Law "On Struggle against Corruption" 203 employees of the state tax service bodies, among which:

- 19 were brought to civil responsibility in the form of fine (UAH 425-500) and discharged from civil service on the basis of Article 7 of the Ukrainian Law "On Struggle against Corruption" for illegal receipt of material values, services, and benefits;
- 181 were brought to civil responsibility in the form of fine (UAH 250-300) on the basis of paragraph 1 Article 8 of the Ukrainian Law "On Struggle against Corruption" for violating special restrictions set by Article 5 of this Law;
- 3 were brought to civil responsibility in the form of fine (UAH 525) and discharged from civil service on the basis of Article 9 of the Ukrainian Law "On Struggle against Corruption" for violating financial control regulations.

Law-enforcement bodies have initiated 112 criminal cases concerning the elements of official offences by the employees of STA bodies, including (articles of the Ukrainian Criminal Code in the 2001edition):

- 40 – based on Article 364 (power or office abuse);
- 22 – based on Article 368 (bribe-taking);
- 8 – based on Article 365 (exceeding powers or authority);
- 7 – based on Article 366 (official forgery).

Seventeen employees of the state tax service have been convicted for official crimes. The average term of imprisonment on the basis of court sentences totalled 3 years and 5 months.

The mechanism of conducting internal audits and supervision by the customs authorities is defined by the Instruction on the order of holding comprehensive and target inspections of the customs authorities concerning operative official functions, approved by order of the Ukrainian State Customs Service No.525 of 06.08.2003.

The inspections shall ensure the detection and termination of activity that threatens the economic security of the state and promote the observance of the Ukrainian customs law.

Comprehensive inspections of operative activity of a customs authority are conducted on the basis of the Annual Plan of comprehensive inspections of operative activities of customs authorities submitted for endorsement by Chairman of the Ukrainian State Customs Service not later than 20 December of the year proceeding the plan year.

The organization and holding of thematic inspections of operative activity of the customs authorities is carried out by an authorized division of the Ukrainian State Customs Service, departments and other structural units of the Ukrainian State Customs Service, with attracting, where necessary, the workers of other customs authorities.

The practice of counter-inspections is employed in the process of inspections.

Experts from relevant ministries and other executive authorities, public administration bodies, other institutions and organizations, specialists in relevant areas may be attracted to participate in the said inspections on contractual basis.

In order to prevent violations by officials authorized to conduct inspections of the law and the rights of officers of the customs authority being inspected, departments of the Ukrainian State Customs Service and the senior executives of the customs authorities shall ensure:

- the familiarization of officials conducting the inspection with regulatory and legal acts envisaging the responsibility for illegitimate actions or inaction;
- non-admission of conducting inspections by officials who have close family ties with the employees of the customs authority subject to inspection, or who used to occupy senior executive positions at that authority.

In the event of uncovering significant violations of Ukrainian law on customs, evidence of corruption or other corruption-related offence by workers of the customs authorities, the materials of the inspections shall be handed over to law-enforcement bodies.

To ensure legality in the work of the Ukrainian customs service, a number of organizational and administrative measures have been adopted in 2003 to improve the results of activities aimed at detection, termination and prevention of facts of corruption, other relevant official crimes among the personnel of customs bodies, and not admit persons with poor moral and professional qualities to service in the customs bodies. In particular, the Plan of Measures of the State Customs Service on implementation of Ukrainian Presidential Decree No.84 of 6 February 2003 "On Urgent Additional Measures for Intensifying the Struggle against Organized Crime and Corruption," has been elaborated and circulated among the customs authorities for implementation, as well as the Plan of Measures of the State Customs Service aimed at preventing crime by customs officials, approved by Order of the Ukrainian State Customs Service No.420 of 27 June 2003.

For timely prevention of offences connected with the support of contraband of goods by officers of the customs bodies, Order of the Ukrainian State Customs Service No.559 of 19 August 2003 has approved the Procedure for Mutual Informing by units responsible for fighting contraband and violations of customs rules, the customs guards, and Ukraine's State Customs Service's internal security on facts and indications of involvement of customs officers in illegal transit of goods and other objects through the customs border of Ukraine.

To authorize individual units of the customs bodies to fight corruption and file reports on committed acts of corruption or other corruption-related crimes, raise the efficiency of administrative mechanisms for reacting to acts of corruption and other corruption-related offences, the Ukrainian State Customs Service has prepared the Draft Law of Ukraine "On Introduction of Amendments to the Ukrainian Law "On Struggle against Corruption."

To step up the struggle against contraband and violations of customs rules, authorizing individual units of the customs bodies to conduct operative investigation and pre-trial investigation in criminal cases of contraband, the Ukrainian State Customs Service has elaborated draft laws "On Introduction of Amendments to the Ukrainian Code of Criminal Proceedings," "On Introduction of Amendments to the Law of Ukraine "On Operative Investigative Activity." The adoption of these draft laws will enable the customs bodies as the agencies of inquiry in cases of contraband to implement in full measure the requirements of Article 103 of the Ukrainian Code of Criminal Proceedings, stipulating that the customs authorities shall conduct operative investigations for purposes of detecting elements of crime and persons guilty of committing it.

In keeping with Ukrainian Presidential Decree No.316 of 23 March 1998 "On Introduction of Amendments and Additions to Ukrainian Presidential Decree No.1145 of 29 November 1996 "On the State Customs Service of Ukraine," in order to step up the struggle against corruption, bribery, office abuse among customs officers and ensure security in the Ukrainian State Customs Service, relevant units (internal security) have been set up within the system of customs authorities, with a staff of 183 people.

The activity of internal security units of the customs authorities is coordinated by the Internal Security Department of the Ukrainian State Customs Service, with a staff of 15 people.

The Procedures for conducting official investigations in the customs authorities, approved by Order of the Ukrainian State Customs Service No.408 of 29 July 2002, identify the grounds for conducting official investigations, the rights and duties of customs officials, and the investigation procedures.

Upon the results of 327 official investigations conducted in 2003, 84 officials were discharged from the customs authorities due to negative motivation, and disciplinary measures were imposed on 677 people.

Money Laundering

Article 209 of the Ukrainian Criminal Code envisages responsibility for the legalization (laundering) of crime proceeds.

An action entails criminal responsibility if it is defined as a financial transaction or agreement involving funds or other property obtained as a consequence of committing a socially hazardous illegal action preceding the legalization (laundering) of profits, as well as actions aimed at concealment or cover-up of the illegal origin of such funds or other property or its ownership, the rights to such funds or property, their source, location, transference, as well as the acquisition, ownership or use of the funds or other property gained as a result of committing a socially hazardous illegal action preceding the legalization (laundering) of profits.

In accordance with Article 1 (part 2) of the Ukrainian Law "On Prevention and Resistance to Legalization (Laundering) of Crime Proceeds," a socially hazardous illegal action preceding the legalization (laundering) of profits is an action entailing punishment under the Ukrainian Criminal Code in the form of imprisonment for a term of three years and longer (with the exception of actions envisaged by articles 207 and 212 of the Ukrainian Criminal Code) or recognized as a crime under criminal law of another state, and for which the

Ukrainian Criminal Code envisages responsibility and the consequences of which include the gaining of crime proceeds.

If crimes committees during the execution of official duties, including bribery, have led to gaining illegal profits and considering that these criminal actions entail criminal responsibility under the Ukrainian Criminal Code in the form of deprivation of freedom for a term of three years and more, such crimes shall be considered predicate, if they precede the legalization (laundering) of crime proceeds.

On 10 December 2001, the President of Ukraine has adopted Decree No.1199 "On Measures for Prevention and Resistance to Legalization (Laundering) of Crime Proceeds."

Pursuant to the Presidential Decree, the Ukrainian Cabinet of Ministers issued decrees setting up the Government Financial Monitoring Department within the Ukrainian Finance Ministry (Decree No.35 of 10 January 2002) and approving the Statute of the State Financial Monitoring Department (Decree No.194 of 18 February 2002).

According to the Statute and Article 13 of the Ukrainian Law "On Prevention and Resistance to Legalization (Laundering) of Crime Proceeds," the State Financial Monitoring Department (*Gosfinmonitoring*) shall implement the following duties:

- ensure the gathering, processing and analysis of information on financial transactions subject to obligatory monitoring;
- participate in the implementation of government policy in the sphere of prevention and resistance to legalizing (laundering) proceeds and terrorism financing;
- in cases where there are sufficient grounds to believe that a financial transaction may involve the legalization (laundering) of proceeds or terrorism financing, provide law-enforcement bodies with relevant summarized materials, in accordance with their competence;
- create and ensure the functioning of a single government information system in the sphere of prevention and resistance to legalizing (laundering) proceeds and terrorism financing;
- organize cooperation, interaction and information exchange with government authorities, competent agencies of foreign countries and international organizations in the said area;

- ensure duly representation of Ukraine in international organizations in the sphere of prevention and resistance to legalizing (laundering) proceeds and terrorism financing.

Gosfinmonitoring structural units include the Department for Interaction with Financial Monitoring Subjects, the Analytic Department, the Department for International and Regulatory Legal Work, and the Department of Information Technologies. Gosfinmonitoring is financed from the Ukrainian budget. Gosfinmonitoring has 60 qualified employees on its payroll. It should be mentioned that on the whole Gosfinmonitoring is equipped with the necessary technological resources for fulfilling its mission.

It should also be mentioned that in keeping with the Ukrainian Law "On Prevention and Resistance to Legalization (Laundering) of Crime Proceeds," the financial monitoring system in Ukraine consists of two levels – the primary level and government financial monitoring.

The subjects of primary financial monitoring include:

- banks, insurance, and other financial institutions;
- payment organizations, members of payment systems, enquire and clearance institutions;
- commodity, stock, and other exchanges;
- professional securities market actors;
- general investment institutions;
- gambling institutions, pawnshops, legal entities conducting all sorts of lotteries;
- enterprises and organizations administering investment funds or nongovernmental pension funds;
- communication enterprises and associations, other non-credit organizations engaged in the transfer of funds;
- other legal entities carrying out financial transactions in accordance with law.

The subjects of government financial monitoring include:

- central bodies of executive authority and the National Bank of Ukraine, which, according to the, fulfil supervisory and regulatory

functions with respect to activity of legal entities engaged in financial transactions;

- a specially authorized body of executive authority for financial monitoring – a government administration body functioning within the system of the Ukrainian Finance Ministry (the State Financial Monitoring Department).
- In keeping with the aforementioned Law, the State Financial Monitoring Department cooperates with law-enforcement bodies in the following principal areas:
  - providing law-enforcement bodies with summarized materials whenever there are sufficient grounds to assume that a financial transaction may involve money laundering or terrorism financing;
  - receiving in the manner established by law information from law-enforcement bodies on the pace of processing the data and adoption of relevant measures on the basis of the summarized materials provided by Gosfinmonitoring.

In order to determine the order of providing the Ukrainian Ministry of the Interior with summarized materials concerning suspicious financial transactions by Gosfinmonitoring and receiving information on the pace of their processing, on 30 July 2003 Gosfinmonitoring and the Ukrainian Interior Ministry have signed a joint order "On Approval of the Order of Providing Summarized Materials by Gosfinmonitoring to the Ukrainian Interior Ministry on Financial Transactions Which May Involve Legalization (Laundering) of Crime Proceeds, and Receiving Information on the Pace of their Processing" (No.83/787).

On 12 August 2003, Gosfinmonitoring and the Ukrainian State Tax Administration have signed a common order "On Approval of the Order of Providing Summarized Materials by Gosfinmonitoring to the Ukrainian State Tax Administration on Financial Transactions Which May Involve Legalization (Laundering) of Crime Proceeds, and Receiving Information on the Pace of their Processing" (No.34/387).

On 20 August 2003, Gosfinmonitoring and the Ukrainian Prosecutor General's Office have signed a joint order "On Approval of the Order of Providing Summarized Materials by Gosfinmonitoring to the Ukrainian Prosecutor General's Office on Financial Transactions Which May Involve Legalization (Laundering) of Crime Proceeds, and Receiving Information on the Pace of their Processing" (No.98/40).

A draft similar order with the Ukrainian Security Service is currently being approved by the latter.

Materials provided by Gosfinmonitoring to law-enforcement bodies should contain information on motivated suspicion that a financial transaction is aimed at legalizing (laundering) crime proceeds, including profits gained as a consequence of official crimes.

Access to Information

The right to information is one of the basics of any democratic state. It is guaranteed by the UN Universal Declaration of Human Rights of 10 December 1948 and the UN International Pact on Civil and Political Rights of 16 December 1966.

Protection of sovereignty and territorial integrity of Ukraine, ensuring it's economic and information safety constitute the priority functions of the state and the cause of the entire Ukrainian people (Article 17 of the Constitution of Ukraine).

Economic and information safety are the main components of the Ukrainian national security, which implies the protection status of vital interests of a person, society, and the state against actual and potential internal and external hazards in government-political, economic, social, ecological, and information spheres.

This is the duty of all government agencies, bodies of local self-government, enterprises, institutions, and organizations, all citizens of Ukraine and their associations.

A number of effective laws of Ukraine are aimed at regulating information relations in the country. The basic laws in this sphere include the Ukrainian Laws "On State Statistics," "On Citizens' Appeals," and "On the Order of Covering the Activity of Ukrainian Government Agencies and Bodies of Local Self-Government by Mass Media." In order to create additional conditions for the implementation of citizens' constitutional rights to information, the Ukrainian President issued Decree No.683 of 1 August 2002 "On Additional Measures for Ensuring Openness in the Activity of Government Agencies."

In keeping with the said regulatory and legal acts, the following principles of information relations are established:

- a guaranteed right to information;

- openness, accessibility, and free information exchange;
- information objectivity and reliability;
- completeness and accuracy of information;
- legality of obtaining, usage, dissemination, and storage of information (Article 5 of the Ukrainian Law "On Information").

Articles 32 and 34 of the Constitution of Ukraine stipulate citizens' right to receive information from bodies of state authority and local self-government about themselves, as well as freely gather, store, use, and disseminate information, which does not constitute state or other secret stipulated by law.

By guaranteeing non-interference in an individual's personal and family life, the state ensures the possibility for any person to control information about him (herself) and his (her) family.

Article 9 of the Ukrainian Law "On Information" guarantees each citizen free access to information concerning his (her) person. In addition, Ukrainian citizens are granted a practical opportunity to exercise their right to submit proposals to government agencies on improvement of their activity, expose the flaws in their work, and complain against the actions of officials.

The procedure for citizens' appeals to government agencies with complaints against unlawful actions of civil servants is regulated by the Ukrainian Law "On Citizens' Appeals" of 13 June 1999. According to the procedure envisaged by this Law, citizens and persons who are not Ukrainian nationals have a right to file written or oral applications, statements, comments, proposals or complaints to government agencies, bodies of local self-government, other organizations of all forms of ownership, as well as officials whose competence includes the solving of issues touched upon in the appeals. Duly drawn up and submitted appeals are subject to obligatory acceptance and consideration. Anonymous and repeated appeals shall not be considered.

Most government agencies and bodies of local self-government have special departments responsible for consideration and acceptance of citizens' appeals and maintaining so-called "hot lines" with officials of the relevant authorities (public receptions, citizens' receptions, etc.).

The Ukrainian Law "On Information" of 2 October 1992 fixes the right of the citizens of Ukraine to information and lays legal grounds for information activity. Relying on the Declaration of State Sovereignty of Ukraine and its Independence Act, the Law proclaims information sovereignty of Ukraine and

determines the legal forms of international cooperation in the sphere of information.

Goals and objectives of the Law: The Law introduces the general legal foundations of receiving, usage, dissemination, and storage of information, fixes a person's right to information in all spheres of public and social life of Ukraine, as well as a system of information and its sources, defines the status of participants in information relations, regulates access to information and ensures its safety, protects the person and society against untruthful information.

The main principles of information relations include: guaranteed rights to information, information openness and accessibility, free information exchange; information objectivity and reliability; information completeness and accuracy; legality of receiving, usage, dissemination, and storage of information.

Government information policy is a complex of the main directions and methods of government activities aimed at receiving, usage, dissemination, and storage of information.

The main directions and methods of government information policy are:

- ensuring citizens' access to information;
- creating national information systems and networks;
- strengthening logistical, financial, organizational, legal, and scientific foundations of information activity;
- ensuring effective use of information;
- encouraging permanent updating, replenishment and storage of national information resources;
- creating a general information protection system;
- promoting international cooperation in the sphere of information and guaranteeing information sovereignty of Ukraine.

Government policy in the sphere of information is developed and implemented by government agencies of general competence, as well as relevant special agencies.

The subjects of information relations are: the citizens of Ukraine; legal entities; the state. The subjects of information relations as per this Law may also include other countries and legal entities, international organizations and persons without citizenship.

The object of information relations is documented or publicly disclosed information on events and phenomena in politics, economy, culture, public health, as well as in the social, ecological, international and other spheres.

The right to information: all citizens of Ukraine, legal entities and government agencies have a right to information, which envisages the possibility of free receiving, usage, dissemination, and storage of data necessary for exercising their rights, freedoms and lawful interests, fulfilling their tasks and functions.

The implementation of citizens', legal entities', and the state's right to information shall not violate public, political, economic, social, spiritual, ecological and other rights, freedoms, and lawful interests of other citizens, rights and interests of other persons.

Every person is guaranteed free access to information granted to him (her) personally, except in cases stipulated by Ukrainian laws.

The right to information is secured: by the duty of government agencies and bodies of local and regional self-government to inform of their activity and decisions made; creation of special information services or systems within government agencies ensuring duly access to information; free access of the subjects of information relations to statistic data, archives, library and museum funds; this access is restricted only by specifics of the assets and special conditions of their storage established by law; creation of a mechanism of implementation of the right to information; exercising government control over the observance of the law on information; imposing responsibility for the violation of the law on information.

Information activity is a system of activities aimed at satisfying information needs of citizens, legal entities or the state. In order to satisfy these needs, government agencies and bodies of local and regional self-government set up information services, systems, networks, databases and databanks. The order of creation, structure, rights and duties are determined by the Ukrainian Cabinet of Ministers or other government agencies, as well as bodies of local or regional self-government.

The main types of information include: statistic information; administrative information (data); mass information; information on the activity of government agencies and bodies of local and regional self-government; legal information; information about a person; reference and encyclopaedic information; sociological information.

Citizens have the right: to be aware during the period of information gathering, which data about them and with what purposes are being gathered, who, how, and to what end uses them; to access information about themselves, question its reliability, completeness, appropriateness, etc.

Government agencies and organizations, bodies of local and regional self-government whose information systems contain information on citizens, shall present it unrestrictedly and free of charge on demand of the persons it concerns, except cases stipulated by law, and take measures to prevent unauthorized access. In the event of violation of these requirements, the Law guarantees protection of citizens against the damage inflicted on them by the use of such information.

Restriction of access to information. In keeping with Article 9 of the Law of Ukraine "On Information," all citizens of Ukraine, legal entities and government agencies have a right to information, which means the possibility of free receipt, use, dissemination, and storage of data needed for exercising their rights, freedoms, and lawful interests.

The regime of access to information depends on the types of information. Specifically, Article 30 of this Law identifies restricted access information and its disclosure procedures. There are special procedures for disclosure of information containing state or other secret stipulated by law, the disclosure of which may inflict damage on an individual, society, and the state.

Outsiders' access to information on another person gathered by government agencies, organizations and officials in keeping with effective law is prohibited. Information on citizens shall not be stored longer than necessary for a legally established purpose. The required data on citizens that may be legally obtained shall be minimal and shall be used only for the legally established purpose. Refusal to provide access to such information, its concealment, illegal gathering, usage, storage or dissemination may be contested in court.

The Ukrainian Law "On the Order of Covering the Activity of Ukrainian Government Agencies and Bodies of Local Self-Government by Mass Media" of 23 September 1997 determines the order of comprehensive and objective coverage of the activity of government agencies and bodies of local self-government by mass media and protecting them against monopolistic influence of bodies of one or another branch of government authority and bodies of local self-government and constitutes an integral part of the Ukrainian legislation on information.

General Principles of Covering the Activity of Government Agencies and Bodies of Local Self-Government by Mass Media

In keeping with Ukrainian law, Ukrainian mass media are entitled to cover all aspects of activity of government agencies and bodies of local self-government. Government agencies and bodies of local self-government shall provide mass media with complete information on their activity via relevant information services of government agencies and bodies of local self-government, provide journalists' free access to it, except in cases regulated by the Ukrainian Law "On State Secret," not pressure them in any way and not interfere in their professional process. Mass media are entitled to conduct their own examination and analysis of the activity of government agencies and bodies of local self-government, their officials, evaluate and comment on it.

Distortion of the contents of official information with comments by mass media or journalists shall not be admitted.

The right to cover and comment on the activity on government agencies and bodies of local self-government, events in Ukrainian public life is guaranteed by the Constitution, the said Law, and other laws of Ukraine.

Article 45-1 of the Ukrainian Law "On Information" bans preventing lawful professional activity of journalists or persecution for criticism. Persecution of a journalist by officials or groups of officials for fulfilling professional duties or for criticism shall entail criminal responsibility under Article 71 of the Ukrainian Criminal Code.

Information Services of Government Agencies and Bodies of Local Self-Government

Information on the activity of government agencies and bodies of local self-government may be obtained by mass media directly from those agencies or through their information services, or be gathered by workers of mass media.

Information services (information departments, information-analytical departments, press services, press centres, public relations departments and centres, press bureaus, press secretaries and press representatives with relevant staffs) of government agencies and bodies of local self-government gather, analyze, process and operatively present information on the activity of these agencies in full volume to mass media, except in cases stipulated by the Ukrainian Law "On State Secret."

The Ukrainian Law "On Printed Mass Media (the Press) in Ukraine" of 16 November 1992 constitutes the legal framework for activity of printed mass media (the press) in Ukraine, provides state guarantees of their freedom proclaimed by the Constitution of Ukraine, the Ukrainian Law "On Information" and other acts of effective legislation and international legal acts recognized by Ukraine. Freedom of speech and free expression of one's views and convictions in the printed form are guaranteed by the Ukrainian Constitution, in accordance with which the Law establishes the right of every citizen to freely and independently seek, receive, register, store, use, and disseminate any information via printed mass media.

Printed mass media are free. The creation or financing of government agencies, institutions, organizations or positions for purposes of mass media censorship is prohibited.

The state guarantees economic independence and ensures economic support to the activity of printed mass media, prevents the abuse of monopolistic position on the market by publishers and distributors of printed produce. Measures aimed at ensuring economic support of the activity of printed mass media and the state executive authorities rendering such support shall be determined by the Ukrainian Cabinet of Ministers.

The Ukrainian Law "On Television and Radio Broadcasting" of 21 December 1993 regulates the activity of television and radio broadcasting organizations on the territory of Ukraine, determines the legal, economic, social, organizational terms of their functioning, aimed at the exercising of the freedom of speech, citizens' right to receive complete, reliable, and operative information, and to open and free discussion of public issues.

A specially authorized central executive authority in charge of implementing state information policy is the Ukrainian State Committee for Television and Radio Broadcasting, whose activity is guided and coordinated by the Ukrainian Cabinet of Ministers.

Note. There are 24 regional public radio and television companies, the public TV and radio company "Crimea," and regional television and radio companies in the cities of Kiev and Sevastopol within the system of Ukraine's Goskomteleradio.

The private sector share in the television and radio information environment of Ukraine accounts for 96 percent, while 4% belongs to public broadcasters.

Interference by government agencies, bodies of local and regional self-government, their officials, citizens' associations, and individual citizens in creative activity of television and radio broadcasting organizations, as well as censorship as a form of control over the ideological content of the programs are prohibited; only the contents of information protected by law shall be supervised.

The said Law also defines the rights and duties of television and radio broadcasting organizations and creative workers of television and radio broadcasting organizations.

A creative worker of a television and radio broadcasting organization is entitled, specifically, to gather and receive unrestricted information required for preparing programs; make business trips to bodies of authority, enterprises, institutions and organizations on assignment of television and radio broadcasting organizations and be received by their officials; to be admitted, upon the presentation of a certificate of a television and radio broadcasting organization worker, to areas of natural distress and catastrophes, to places of accidents, mass unrest, meetings, demonstrations, rallies, and other mass events, on territories where a state of emergency has been declared.

According to Article 42 of the Law, an interviewed person or a person providing information to a television and radio broadcasting organization shall be entitled to demand in writing a preview or pre-auditioning of the prepared material before its broadcasting, and in case of refusal to withdraw the ready material from the program. Disputes connected with the violation of these regulations shall be settled in court.

Ukrainian Presidential Decree No.230 of 3 April 2001 "On the Information Policy Council under the President of Ukraine" has set up the Information Policy Council under the Ukrainian President as a consultative and advisory institution. The Council is headed by the President of Ukraine. In addition, the same Decree has approved the personal composition of the said Council and the Statute of the Information Policy Council under the Ukrainian President.

The main tasks of the Council include: analysis of the situation in the information environment of Ukraine; preliminary consideration of draft regulatory and legal acts in the information sphere; analysis of the status of observance of the laws of Ukraine, acts of the Ukrainian President and the Cabinet of Ministers on information policy matters; development of proposals and recommendations for government agencies on matters related to their activity for purposes of ensuring citizens' right to information and the freedom

of mass media, as well as improvement of relationships between government authorities and mass media.

In order to ensure protection of the government information resources in data transmission networks and conduct a single government policy of information protection, Ukrainian Presidential Decree No.582 of 10 April 2000 "On Measures for Protection of Information Resources of the State" has formed the Special Telecommunication Systems and Information Protection Department within the Ukrainian Security Service as a public administration authority, whose duties include the implementation of governmental policy in the sphere of protection of information resources in data transmission networks, cryptographic and technical protection of information.

In addition, in keeping with Presidential Decree No.683 of 1 August 2002, government agencies and bodies of local self-government shall constantly update their websites to thus create an opportunity for promptly providing answers to the most frequently asked questions and other information, broad discussion of acute social problems and learning the public opinion on the ways of their resolution.

An electronic information system. Electronic Government is currently being developed. This system will be introduced for the purposes of ensuring citizens' right to access to information of the government executive authorities, reducing the number of barriers and restrictions generated by the imperfection of the information interaction system during the provision of managerial services to the population by the executive authorities and accelerating access to these resources, and organizing reliable information exchange between bodies of executive authority.

The website "The Government and the Public" will be introduced at the governmental portal within the frames of the said information system. The purpose of this website is to ensure the openness of activity of the executive authorities and organize efficient dialogue with the public.

Private Sector Initiatives and Civil Society Involvement

The order of formation, activity, and registration of public associations is determined by the Ukrainian Law "On Associations of Citizens" and the Provision on the order of legalizing public associations approved by Decree of the Ukrainian Cabinet of Ministers No.140 of 26 February 1993.

According to this Provision, the legalization of Ukrainian national public associations and international public organizations shall be carried out by the

Ukrainian Justice Ministry, and their local branches and local public associations – by the Main Justice Department of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol municipal, district (in the cities of Kiev and Sevastopol) justice departments, executive committees of village, township, and municipal Councils of People's Deputies.

To register a public association, it is necessary to file an application to the registering authority, signed by not less than three founders of the public association or their authorized representatives.

The following documents shall be attached to the application:

- charter (provision) in two copies;
- minutes of the constituent congress (conference) or general meeting that has adopted the charter (provision);
- information on the heads of the central statutory bodies (indicating the full name, birth date, permanent place of residence, positions (occupation), place of work);
- data on existence of local organizations confirmed by minutes of conferences (meetings);
- a document confirming the payment of registration fee;
- information on the founders of the public association or unions of public associations (for citizens – with the indication of their full name, birth date, permanent place of residence; for unions of public associations – names of associations, location of the top statutory bodies, as well as copies of their legalization documents).

An international public organization shall file additional documents confirming the spreading of its activity on the territory of at least one country (power of attorney, obligation, minutes, legalization documents, etc.).

In accordance with Ukrainian Cabinet of Ministers Decree No.143 of 26 February 1993 "On Collection Procedures and Size of Fee for Registration of Public Associations," the following amount of registration fee for registering public associations shall be set:

- Ukrainian national associations – twenty tax-free minimal salaries;
- international organizations – five tax-free minimal salaries and US$ 500 (in case of availability of a license issued by the National Bank of Ukraine), or the equivalent of this sum in Ukrainian national currency

according to the National Bank exchange rate at the moment of payment;

- local public associations, as well as local organizations of Ukrainian and international public associations:
- inter-regional, regional, Kiev and Sevastopol municipal – ten tax-free minimal salaries;
- inter-district, district, municipal, village, township – five tax-free minimal salaries.

The registration fee for registering public organizations of invalids and persons affected by the Chernobyl nuclear accident shall be reduced by 50%.

Youth and children's organizations shall be exempt from payment for state registration and for the registration of their logotypes in accordance with Article 9 of the Law of Ukraine "On Youth and Children's Public Organizations."

As of 2004, the Ukrainian Justice Ministry has registered:

- 1 827 public organizations with an international and Ukrainian national status;
- 96 political parties.

In addition, the Ukrainian Justice Ministry has registered:

- 33 human rights organizations, in particular:
- the public organization "Lawyers' Guild of Ukraine" (certificate N°6 of 14 November 1990). The main objective of its activity is pooling the efforts of Ukrainian lawyers in promoting the formation of a democratic, law-governed state, raising the level of legal assistance rendered to citizens, enterprises, institutions, improving legislative regulation of lawyers' activity;
- five public organizations, the activity of which is aimed at promoting the struggle against corruption and organized crime, in particular:
- the Ukrainian national public organization "Anticorruption Forum" (certificate No.1728 of 20 December 2001). The main goal of its activity is promoting the creation of a multidimensional system for protection, prevention, and total eradication of corruptive phenomena in Ukraine and protection of common interests of its members;

- the Ukrainian National Committee for Support to Law-Enforcement Bodies and Government Agencies in Fighting Corruption and Organized Crime (certificate No.1700 of 23 January 2001). The main goal of its activity is rendering assistance to law-enforcement bodies and government authorities in the struggle against corruption and organized crime, as well as the satisfaction and protection of lawful social, economic, creative, age-related, ethnic-cultural, sportive, and other common interests of its members and other legal entities;
- the Ukrainian national youth organization "Youth Against Corruption" (certificate No.1657 of 25 July 2001). The main purpose of its activity is the satisfaction and protection of lawful social, spiritual and other common interests of their members, promoting the elevation of the level of legal education and social activeness of young citizens for effective resistance to the spread of corruption;
- thirteen public organizations uniting journalists and thirty public organizations of mass media workers. One of them is the National Union of Journalists of Ukraine.

The All-Ukrainian Public Organization "Anticorruption Forum" (hereinafter – the Forum) occupies a prominent place among them. It is a nationwide voluntary formation uniting citizens on the basis of common interests, active legal conscience, patriotism, and principle-oriented social position, in protecting democratic rights and freedoms.

The organization discharges its functions and responsibilities on the basis of the Ukrainian Constitution, the Law of Ukraine "On Associations of Citizens," relevant decrees of the Ukrainian President, other special legal acts, and guided by its charter and commonly accepted international norms, principles and standards.

The main objective of the Forum's activity is promoting the creation of a multi-dimensional system for revealing, preventing, and completely eradicating corruption in Ukraine, protecting common interests of the citizens against illegal encroachments on their lawful rights.

The Forum was set up by decision of the Constituent Congress in December 2001 (registration certificate of the Ukrainian Justice Ministry No.1728 of 20 December 2001, according to which the organization received the status of a legal entity) with support and approval of Ukrainian President Leonid Kuchma, and during the period of its existence has demonstrated by deed that corruption can be resisted if the state chooses to rely on healthy forces of the nation.

The organization implements its activity locally through its regional departments, branches, and area offices headed by the leaders of enterprises, public organizations, former officers of law-enforcement bodies, renowned public figures, etc.

The work of the Forum is regularly planned; the plans are forwarded to regional subdivisions for enforcement and maximum streamlining of activities.

The concept, structure and statutory provisions of the Forum's printed organ were determined, and starting May 2002 monthly publication of the electronic version of the newspaper *Rupor Naroda* was launched. At the moment, 14 issues have been published. The question of publishing a genuine printed organ is currently being considered. Workers of the Forum General Direction accredited as journalists at a number of public relations centres of government agencies, regularly participating in events where issues of law-enforcement activity are being raised.

The Forum began its relationship with the population and the public from an address to mass media, calling upon them to publish the materials on anti-corruption subjects, which was done by most regional and central periodicals. This caused a stream of popular response to the Forum. The Forum has established and continues to maintain steady contacts with the editorial boards of the newspapers *Golos Ukrainy*, *Pravitelstvenny Kurier*, *Selskie Vesti*, *Vecherny Kiev*, *Segodnia*, *Komsomolskaya Pravda v Ukraine*, *Zerkalo Nedeli*, *Stolitsa*, *Donetsky Kryazh*, and some other mass media.

The Forum has also set a confidential hotline where workers of the General Direction are on duty every day. It contributes to the strengthening of ties with the population, the public, and interested institutions. During the past year, over 80 reports of acts of corruption and other offences were received through this communication channel.

It is necessary to mention the high level of efficiency of the Forum's work with letters. In the recent past the workers of the Forum helped initiate a number of criminal cases against officials of different ranks who were infringing citizens' interests. Workers of the Forum participated in court hearings as representatives. As a result of legal proceedings, illegally discharged workers were restored at their jobs and received relevant compensation for moral and material damage, and the rights of mother of child were maintained in court.

One of the activities of the Forum's is daily personal reception of citizens by the organization's leadership, rendering consultations, reaction to appeals and preparation of relevant proposals, information, applications, etc., for

submitting them to government agencies whose competence covers the solution of issues raised by the population. Over 70 applications were filed in 2002 already (in 2003 the number reached almost 100), presenting the evidence of extortion, bribery, embezzlement and squandering of public and collective property, illegitimate actions of workers of law-enforcement bodies and the judicial system.

Following the legal analysis of the situation and independent journalistic investigations, applications were filed to the Prosecutor General's Office, the Interior Ministry, the Ukrainian Security Service and other competent authorities, requesting that relevant measures be applied to terminate the violations.

The Forum focuses on support of business relations with nongovernmental organizations (partners) working against corruption. It is the Program of Partnership for a Transparent Society, Transparency International (Ukrainian branch), the Project "For Good Faith," etc.

On 15-16 May 2002, a workshop entitled "Anti-Corruption Investigations and Corruption Prevention Strategy" was held in Kiev within the framework of cooperation between OSCE and the Ukrainian Prosecutor General's Office with the participation of a Forum representative.

The All-Ukrainian practical conference "Transparency and Corruption within the System of Higher Education" was held in Lvov on 21-22 November 2002 within the framework of the program "Partnership for a Transparent Society."

One of the major events of 2002 and the beginning of 2003 was the Pan-Ukrainian action under the motto "People Offer a Remedy against Corruption." This action included Ukrainian-wide monitoring on the basis of the surveys conducted by the Socis-Gallup Center on request of the Forum, reviews of citizens' appeals, statistic information of government agencies and other data. The action ended with a pan-Ukrainian Scientific and Practical Conference, which stirred much public resonance. An appeal was adopted upon the conference results, a news conference was held, and a number of proposals were submitted to the Ukrainian government authorities. A brochure was prepared and disseminated, which is in fact a visual guide on anti-corruption activity.

Active preparation is currently underway to carry out similar actions on matters of corruption in local bodies of government executive authorities and in the agrarian sector of the economy. The Forum plans to conduct a permanent

public expertise of the most urgent problems of the state connected with corruption.

Recently the Forum has established contacts with the Coordinating Committee against Corruption and Organized Crime under the Ukrainian President in information exchange on corruption in government agencies and measures to oppose those manifestations of corruption.

The organization constantly focuses on initiatives concerning the raising of efficiency of the domestic anti-corruption law.

The Anti-Corruption Forum is one of the most organized and active public associations in Ukraine, persistently enforcing internationally accepted rules and standards of fighting such public evil as corruption.

Political Party Financing

Article 36 of the Ukrainian Constitution stipulates that the citizens of Ukraine have a right to freedom of association in political parties and public organizations for exercising and protecting their rights and freedoms and satisfying political, economic, social, cultural and other interests, except restrictions set by law in the interests of national security and public order, public health or protection of citizens' rights and freedoms.

Political parties of Ukraine contribute to the formation and expression of political will of citizens, and participate in elections. Only Ukrainian citizens can be members of political parties. Restrictions on membership in political parties shall be established only by the Constitution and laws of Ukraine.

Citizens have a right to participate in trade unions for purposes of protection of their labour and socio-economic rights and interests. Trade unions are public organizations uniting citizens connected by common interests due to their professional activity. Trade unions are created without preliminary permit on the basis of free choice of their members. All trade unions enjoy equal rights. Restrictions on the membership in trade unions shall be established only by the Constitution and laws of Ukraine.

No one shall be forced to join any public association or restricted in the rights in connection with membership or non-membership in a political party or public organization.

The Ukrainian Law "On Political Parties in Ukraine" of 5 April 2001 guarantees citizens' right to freedom of association in political parties for

exercising and protecting their rights and freedoms and satisfying political, economic, social, cultural and other interests, guaranteed by the Ukrainian Constitution. Restrictions on this right may be imposed in accordance with the Ukrainian Constitution in the interests of national security and public order, public health or protection of rights and freedoms of other people, as well as in other cases stipulated by the Constitution of Ukraine.

No one shall be forced to join a political party or restricted in the right to free withdrawal from a political party.

Membership or non-membership in a political party shall not constitute grounds for restricting rights and freedoms or granting any sort of benefits and advantages.

Restrictions on membership in political parties shall be imposed exclusively by the Constitution and laws of Ukraine.

A political party is a voluntary association of citizens – adherents of a certain nationwide program of social development, registered in accordance with law, pursuing the goal of promoting the formation and expression of citizens' political will, participating in elections and other political events.

Only a citizen of Ukraine, who in accordance with the Constitution of Ukraine has a voting right, may be a member of a political party.

A citizen of Ukraine may be a member of only one political party at the same time.

The following citizens may not be members of political parties:

- judges;
- workers of the public prosecutor's office;
- workers of the interior agencies;
- employees of the Ukrainian Security Service;
- military servicemen.

During the stay of members of political parties in the aforementioned positions or in service, their party membership shall be suspended.

The procedure for joining a political party, suspension and termination of membership is regulated by the party's charter.

Membership in a political party is fixed. An obligatory condition for fixing party membership is an application filed by a citizen of Ukraine with the charter body of a political party expressing his (her) willingness to become a member of this party.

The form of fixing membership in a political party shall be defined by the charter of the political party.

The creation and activity of structural units of political parties in bodies of executive and judicial authority and executive bodies of local self-government, military units, as well as state-owned enterprises, educational institutions and other government institutions and organizations is prohibited.

Political parties have a right:

- to freely conduct their activity within the frameworks envisaged by the Constitution of Ukraine, the said Law and other laws of Ukraine;
- to participate in elections of the Ukrainian President, the Supreme Council of Ukraine, other bodies of government authority, bodies of local self-government or their officials in the manner stipulated by relevant laws of Ukraine;
- to use governmental mass media and found their own mass media, as stipulated by relevant laws of Ukraine;
- maintain international relations with political parties, public organizations or other countries, international and intergovernmental organizations, found international associations in keeping with requirements of the said Law;
- render ideological, organizational and economic support to youth, women's and other associations of citizens and assist in their creation.

Political parties are granted freedom of oppositional activity, including:

- the possibility to publicly advocate and maintain its positions concerning the issues relating to governmental and social life;
- to participate in discussions, make public and justify the critical evaluation of actions and decisions of the authorities, using governmental and nongovernmental mass media, in the manner stipulated by law;

- to introduce proposals to the Ukrainian government agencies and bodies of local self-government, which shall obligatorily be considered by the said bodies in the established order;

The state guarantees to political parties the right to use funds and other property for purposes of implementing their statutory objectives. Political parties are non-profit organizations.

Political parties are entitled, for purposes of implementing their statutory objectives, to own movable and immovable property, funds, equipment, transport, other assets the purchase of which is not prohibited by Ukrainian laws. Political parties may rent the necessary movable and immovable property.

In keeping with requirements of paragraph 8 of Article 8 (Part 1) of the Law of Ukraine "On Political Parties in Ukraine," the charter of a political party shall contain data on the sources of material, including financial, incomes and the political party's expenditure procedures. Article 15 of this Law prohibits political party financing by government agencies and bodies of local self-government, except cases stipulated by law; state-owned and communal enterprises, institutions, and organizations, as well as enterprises, institutions and organizations, the property of which involves shares (states, stocks) constituting public or communal property, or owned by non-residents; foreign countries and their citizens, enterprises, institutions, and organizations; charity and religious associations and organizations; anonymous persons or persons using an assumed name; political parties not included in political parties' election bloc.

Information on the receipt of funds, prohibited by the said Law, on accounts of a political party shall be submitted by relevant banking institutions to the Ukrainian Justice Ministry.

The funds handed over to political parties in violation of requirements of the said Law shall be transferred by political parties to the Ukrainian State Budget or collected in favour of the state by a court order.

Government control over the activity of political parties shall be exercised by:

- the Ukrainian Justice Ministry – over the observance of the Ukrainian Constitution and laws by a political party, as well as its charter;
- the Central Commission for Elections and district election commissions – over the observance of the order of participating in the election process by a political party.

Political parties shall present the necessary documents and explanations on demand of the controlling authorities. Decisions of controlling bodies may be contested in the legally established manner.

Election campaigns are financed from the State Budget of Ukraine and own election funds of election participants.

According to Article 35 of Ukrainian Law "On Ukrainian Presidential Elections" No.474-XIV of 5 March 1999, the election fund of a Ukrainian presidential candidate shall be formed from the candidate's own funds, the funds of political parties, charity donations of citizens of Ukraine, legal entities registered in Ukraine, except enterprises, government agencies, bodies of local self-government, as well as foreigners and persons without citizenship, foreign legal entities, enterprises with foreign investment, charity organizations and religious associations, organizations and institutions indebted to the budget.

In the event of a delay in the allocation of budgetary means for financing elections, the National Bank of Ukraine, on request of the Central Commission for Elections, shall provide the Commission within a three-day period with interest-free credits within the limits envisaged by the Ukrainian State Budget for election purposes, in amounts requested by the Central Commission for Elections. The Ukrainian Finance Ministry shall act as the credit guarantor.

The credits shall be returned to the National Bank of Ukraine in the order established by the Ukrainian Cabinet of Ministers at the expense of the Ukrainian State Budget not later than three months after their issuance.

According to Article 32 of the Ukrainian Law "On Elections of Ukrainian People's Deputies" No.2766-III of 18 October 2001, elections of Ukrainian people's deputies shall be financed by the Ukrainian State Budget, election funds of parties (blocs), and the funds of candidates to deputies.

Part one of Article 32 of the Ukrainian Law "On Elections of Ukrainian People's Deputies" stipulates that expenses on the preparation and holding of elections of deputies shall be covered exclusively from the Ukrainian State Budget and election funds of political parties, election blocs of political parties, whose representatives are registered as candidates to Ukrainian people's deputies with multi-mandate nationwide constituencies, and candidates to Ukrainian people's deputies registered with single-mandate constituencies.

Part three of Article 33 of the Ukrainian Law "On Elections of Ukrainian People's Deputies" stipulates that expenses on the preparation and holding of elections of Ukrainian people's deputies, including the printing of information

posters of political parties, election blocs of political parties, whose representatives are registered as candidates to Ukrainian people's deputies with multi-mandate nationwide constituencies, candidates to Ukrainian people's deputies registered with single-mandate constituencies, publication in mass media of election programmes of political parties, election blocs of political parties, candidates to people's deputies of Ukraine registered with single-mandate constituencies, radio and television broadcasting time, shall be carried by the Central Commission for Elections and district election commissions in accordance with the balance of expenses approved by the Central Commission for Elections within the limits of funds allocated by the Ukrainian State Budget for the preparation and holding of elections of Ukrainian people's deputies.

According to part two of Article 32 of the Ukrainian Law "On Elections of Ukrainian People's Deputies," political parties, election blocs of political parties, whose representatives are registered as candidates to Ukrainian people's deputies with multi-mandate nationwide constituencies, and candidates to Ukrainian people's deputies registered with single-mandate constituencies shall establish election funds to finance their election campaigns.

Therefore, a political party, an election bloc of political parties, a candidate to Ukrainian people's deputies shall have an opportunity to finance their election campaign from their own election fund in addition to the State Budget of Ukraine.

Article 36 of the Ukrainian Law "On Elections of Ukrainian People's Deputies" stipulates that the election fund of a political party, an election bloc of political parties shall be formed at the expense of funds of the party (parties included in the election bloc of political parties), as well as voluntary contributions of natural persons.

The election fund of a candidate to Ukrainian people's deputies registered with a single-mandate constituency shall be formed from his (her) own resources and voluntary donations by natural persons.

The maximum sum of expenses of the election fund of a party or an election bloc of political parties shall not exceed 150 thousand tax-free minimal salaries, and the election fund of a candidate to Ukrainian people's deputies registered with a single-mandate constituency – 10 thousand tax-free minimal salaries.

A voluntary contribution (contributions) by a natural person towards the election fund of one political party, one election bloc of political parties, one

candidate to Ukrainian people's deputies registered with a single-mandate constituency shall not exceed one thousand tax-free minimal salaries.

A voluntary contribution (contributions) shall not be made by foreign citizens and persons without citizenship, natural persons – individual entrepreneurs indebted to the budget of any level on the date of remittance of the contribution to the election fund, and anonymous donors.

The Ukrainian Law "On Amendment of Some Legal Acts of Ukraine in Connection with the Introduction of Public Financing of Political Parties in Ukraine" that enters into force as of 1 January 2005 envisages the following amendments to the Laws of Ukraine "On Political Parties in Ukraine" and "On Elections of Ukrainian People's Deputies."

Part one of Article 17-1 of the Ukrainian Law "On Political Parties in Ukraine" stipulates that the Ukrainian State Budget shall finance statutory activity of political parties not connected with their participation in elections to government authorities, bodies of local self-government, and shall compensate political parties' expenses, including expenses of political parties included in election blocs, related to the financing of their election campaign during regular or extraordinary elections of Ukrainian people's deputies.

According to Article 17-2 of the Ukrainian Law "On Political Parties in Ukraine," the annual volume of financing of statutory activity of political parties (parties included in election blocs of political parties) from the Ukrainian State Budget shall equal 0.01% of the minimal salary set on 1 January of the year preceding the year of allocation of funds, multiplied by the number of citizens entered in electoral lists during the last regular elections of Ukrainian people's deputies.

Article 17-3 of the Ukrainian Law "On Political Parties in Ukraine" stipulates that a political party shall have a right to government financing of its statutory activity, if this party's candidate to Ukrainian people's deputies received four or more percent of votes of electors who participated in the last regular elections of Ukrainian people's deputies, on grounds and in the manner prescribed by this Law.

If a political party was a member of an election bloc of political parties during the last regular elections of Ukrainian people's deputies, and the electoral list of this bloc received four or more percent of votes of electors who participated in the ballot, such political party shall enjoy the right to government financing of its statutory activity on grounds and in the manner prescribed by this Law.

In keeping with Article 17-4 of the Ukrainian Law "On Political Parties in Ukraine," a political party shall enjoy the right to compensation of expenses on the financing of its election campaign if the electoral list of candidates to people's deputies of Ukraine of this party received four percent or more votes of electors who participated in the ballot during the last regular elections of Ukrainian people's deputies, on grounds and in the manner prescribed by the Ukrainian Law "On Elections of Ukrainian People's Deputies."

If a political party was a member of an election bloc of political parties during the last regular elections of Ukrainian people's deputies, and the electoral list of this bloc received four percent or more votes of electors who participated in the ballot, such political party shall enjoy the right to compensation of expenses on grounds and in the manner prescribed by the Ukrainian Law "On Elections of Ukrainian People's Deputies."

Article 17-5 of the Ukrainian Law "On Election of Ukrainian People's Deputies" stipulates that the funds allocated from the State Budget of Ukraine for the financing of statutory activity of political parties shall be distributed by the Ukrainian Justice Ministry among political parties, including members of election blocs of political parties, in cases stipulated by Articles 17-3 and 17-4 of this Law, in proportion to the number of electors' votes cast for the lists of candidates to Ukrainian people's deputies representing such political parties and election blocs of political parties in accordance with the information on official election results presented to the Ukrainian Justice Ministry by the Central Commission for Elections.

In accordance with Article 78-1 of the Ukrainian Law "On Election of Ukrainian People's Deputies," political parties and election blocs of political parties whose electoral lists received four percent or more votes of electors who participated in the ballot, such political party shall enjoy the right to compensation of expenses on their election campaign in the amount of actual expenses, but within the limits of the maximal sum of expenses of the election fund of a political party or an election bloc of political parties set by this Law.

Funds allocated for the compensation of expenses of election blocs of political parties on the financing of their election campaign shall be distributed by the Central Commission for Elections among political parties included in the election bloc of political parties in proportion to the contributions of these political parties to the election fund of the bloc of political parties.

Basing on the financial report on receipt and utilization of resources of the election fund of a political party or an election bloc of political parties presented in the manner prescribed by part four of Article 35 of this Law not later than ten

days after the date of official publication of the results of elections, the Central Commission for Elections shall adopt a decision to compensate the expenses of a political party, an election bloc of political parties connected with the financing of its election campaign, or refuse the granting of such compensation.

Compensation of expenses of a political party or an election bloc of political parties connected with the financing of its election campaign shall be denied if during the verification of data presented in the financial report on receipt and utilization of resources of the election fund of a political party or an election bloc of political parties, the Central Commission for Elections detects the evidence of violation of requirements to the order of forming the election funds of political parties and election blocs of political parties by a political party or an election bloc of political parties, or the use of resources of the election fund of a political party or an election bloc of political parties for purposes not connected with the election campaign.

The decision of the Central Commission for Elections to compensate the expenses of a political party or an election bloc of political parties connected with the financing of their election campaign, or to refuse to grant such compensation shall be communicated to the political party (the election bloc of political parties) it concerns not later than five days from the date of its issuance.

The decision of the Central Commission for Elections to refuse from compensating the expenses of a political party or an election bloc of political parties connected with the financing of their election campaign may be appealed in court.

The funds for compensating the expenses of a political party or an election bloc of political parties connected with the financing of their election campaign shall be allocated in accordance with the law on the State Budget of Ukraine for the year following the year of elections of Ukrainian people's deputies. The main administrator of the funds for compensating the expenses of a political party or an election bloc of political parties connected with the financing of their election campaign is the Central Commission for Elections.

Elections of deputies of local councils, heads of village, township, and municipal leaders are regulated by the Ukrainian Law "On Elections of Deputies of Local Councils, Village, Township, and Municipal Leaders" of 14 January 1998.

Article 51 of the said Law stipulates that regular and extraordinary local elections and elections to the Supreme Council of Ukraine shall be held at the

expense of the Ukrainian State Budget. Relevant expenses are envisaged as an independent item of the State Budget. In all other cases envisaged by this Law elections shall be held at the expense of the relevant local budgets.

The financing of preparation and holding of local elections at the expense of the Ukrainian State Budget is carried out by the Central Commission for Elections, which is the main administrator of these funds. The election commissions financing shall be carried out in the manner determined by the Central Commission for Elections jointly with the Ukrainian Finance Ministry.

In keeping with Articles 52 and 53 of the Law, candidates shall have a right to form their own election fund to cover the expenses on the election campaign.

Candidates shall form their personal election funds at their own expense. These funds may include donations made by citizens of Ukraine, as well as legal entities, except those stipulated by paragraph 4 of this Article.

The amount of a candidate's personal fund shall not exceed the size of 50 tax-free minimal salaries.

Donations to a candidate's personal election fund shall not be made by local bodies of executive authority, bodies of local self-government, state-owned enterprises, organizations, and institutions, legal entities with the participation of foreign capital, foreign government agencies, international organizations and associations, as well as anonymous persons or persons using an assumed name.

Relevant accounts of personal elections funds shall be opened at offices of the National Bank of Ukraine marked as "personal election fund" on candidates' applications after their registration by relevant election commissions.

The administrators of personal election funds are either the candidates themselves or the candidates' authorized representatives, acting on the formers' instruction. An administrator of an election fund shall be issued a check-book for the entire sum of the election fund.

Control over the formation and disbursement of personal election funds shall be carried out by a relevant territorial commission for elections, tax authorities, and banking institutions where a relevant account has been opened.

Personal election funds shall be used exclusively for purposes of a candidate's election campaign. The use of election funds for any other purposes is prohibited.

Money donated towards a personal election fund by individuals and legal entities that have no right to make such donations in keeping with Article 52 (part 4) of the said Law, or if the donor's address is not indicated, shall be transferred to the corresponding local budget on decision of the territorial election commission.

Money from personal election funds that has not been disbursed for purposes of the election campaign shall be transferred to the corresponding local budget on decision of the territorial election commission.

Criminalisation of Corruption

It is necessary to mention the specifics and difficulty encountered during the preparation of this section. Firstly, the question of the essence and forms of offence involving corruption is interpreted by the Ukrainian law and the laws of other countries quite equivocally. This is connected with different views on the concept of corruption, the variety of its manifestations, the lack of distinct and explicit criteria for qualifying some or other violation as corruption. Secondly, the national anticorruption law envisages administrative responsibility for committing corruptive actions and other corruption-related offences. The Ukrainian Criminal Code does not define the notions of "corruption" and "corruptive offence."

Depending on the social danger and form of responsibility envisaged by law, the legal nature of corruptive offence may be criminal, administrative, civilian or disciplinary.

Article 11 of the Ukrainian Criminal Code defines the notion of crime, specifically, as a socially dangerous guilty action (action or inaction) committed by the subject of a crime. An action or inaction shall not be qualified as a crime if, although it may formally contain the indications of any action envisaged by this Code, it does not pose social danger due to its insignificance, *i.e.* it has not and could not inflict considerable damage on an individual, a legal entity, society, or the state.

According to national anti-corruption law, acts of corruption and other offences involving corruption entail administrative responsibility.

In keeping with Article 1 of the Ukrainian Law "On Struggle against Corruption" of 5 October 1995, the Law defines corruption as "the activity of persons authorized to perform the functions of the state, directed at illegal use of their authority to gain material benefits, services, privileges and other advantages."

The following acts are corruptive:

- illegal acceptance by a person authorized to perform the functions of the state of material benefits, services, privileges or other advantages in connection with discharging such functions, including the acceptance or receipt of objects (services) by means of their purchase at a price (tariff) considerably lower than their actual cost (corresponding to reality);
- receipt by a person authorized to discharge the functions of the state of credits or loans, the purchase of securities, real estate or other property using concessions or benefits not envisaged by effective law.

A present (remuneration) accepted by the aforementioned persons under such circumstances, envisaged by paragraph "a" of part two herein, including those received without their knowledge, as well as the cost of illegally received services, are subject to collection (recovery) in favour of the state.

The activity of persons authorized to fulfil the functions of the state shall also include the activity of officials of local self-government bodies, aimed at discharging the functions of local self-government.

Article 7 of the Ukrainian Law "On Struggle against Corruption" establishes the responsibility for committing acts of corruption. For instance, the committing of any acts of corruption stipulated by Article 1 of the said Law by a person authorized to fulfil the functions of the state, if it does not constitute a crime, entails administrative responsibility in the form of fine in the amount from 25 to 50 tax-free minimal salaries, as well as dismissal from duties or another form of suspension form fulfilling the functions of the state. Such persons shall be prohibited from occupying positions in government agencies and their staff during three years from the moment of their dismissal.

Acts of corruption, stipulated by the said Law, committed by a Ukrainian people's deputy, a deputy of the Supreme Council of the Autonomous Republic of Crimea, a deputy or chairperson of a local council of people's deputies entails administrative responsibility in the form of fine in the amount from 25 to 50 tax-free minimal salaries, as well as early termination of a deputy's term of office or dismissal from an elective position. The decision to issue consent to

impose administrative responsibility for committing acts of corruption and early termination of a deputy's term of office or dismissal from an elective position shall be taken by a relevant Council at its plenary meeting. The order of imposing responsibility on a people's deputy of Ukraine in such cases shall be regulated by the Ukrainian Law "On the Status of a Ukrainian People's Deputy." Such persons shall be banned from running for deputies or elective positions at government agencies during five years from the date of termination of the deputy's term of office or dismissal from position, and the right to occupy positions at government agencies and their staff during three years from the date of termination of the deputy's term of office or discharge from office.

In addition, this Law envisages administrative responsibility: for the violation of special restrictions imposed on persons discharging the functions of the state; for the violation of financial control requirements; for non-employment of anti-corruption measures; for intentional non-fulfilment of one's duties to fight corruption, as well as grounds and procedures for administrative proceedings on cases involving acts of corruption or other offence connected with corruption.

According to a general definition used in the UN and Council of Europe documents, that "corruption is the abuse of government authority for purposes of gaining benefits in personal interests or the interests of third parties or groups," its characteristic elements can be outlined: inflicting immediate damage to the prestige or other legally protected interests of state authority (civil service); illegal nature of the benefits gained by a civil servant (material and immaterial benefits); using a civil servant's position against the interests of civil service; a civil servant's intent to commit actions (inaction) objectively damaging legally protected interests of the state and service; selfish ends or another sort of interest of a civil servant.

Active and Passive Bribery

Definition and Elements of the Offences

Section XVII of the Ukrainian Criminal Code envisages responsibility for crimes committed in the sphere of official duty, specifically:

- for taking any form of bribe by an official for fulfilment or non-fulfilment of certain actions in the interests of the bribe-giver or in the interests of a third party, using the authority or the official status granted to that official (Article 368 of the Criminal Code);
- for bribe-giving (parts 1 and 2, Article 369 of the Criminal Code). At the same time, it should be mentioned that the bribe-giver shall

be released from criminal responsibility, if there has been a fact of extortion or if after giving the bribe this person has voluntarily reported the crime to a body authorized to initiate a criminal case before a criminal case has been initiated against him/her (part 3, Article 369 of the Criminal Code);

- for provoking bribery, *i.e.* intentional creation of a situation and circumstances by an official, bringing about bribe-giving or bribe-taking, for the purpose of subsequent exposure of the persons giving or taking the bribe.

Article 368. Bribe-Taking

1. Bribe-taking in any form by an official for fulfilment or non-fulfilment of any action using his (her) authority of official position in the interests of the bribe-giver or a third party shall be penalized with fine in the amount from seven hundred and fifty to one thousand five hundred tax-free minimal wages or imprisonment for a term from 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.

2. Taking a major bribe, or bribe-taking by a high-ranking official, or bribe-taking on preliminary collusion by a group of persons, or repeatedly, or involving bribe extortion shall be penalized with imprisonment for a term from five to ten years with deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years with confiscation of property.

3. Taking a particularly huge bribe, or bribe-taking by an official occupying a particularly important position shall be penalized with imprisonment for a term from eight to twelve years and deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years with confiscation of property.

Note:

1. A major bribe shall be defined as a sum two hundred and more times exceeding tax-free minimal wages, and a particularly huge bribe shall be defined as a sum five hundred and more times exceeding tax-free minimal wage.
2. High-ranking officials shall be recognized as persons stipulated by Note 1 to Article 364, whose official positions are referred to the third, fourth, fifth, and sixth categories by Article 25 of the Ukrainian Law "On Civil Service," as well as judges, public prosecutors and investigators, senior executives, and their deputies,

of government authority and administration bodies, bodies of local self-government, their structural divisions and units. Officials occupying particularly important positions shall be recognized as persons indicated in Article 9 (paragraph 1) of the Ukrainian Law "On Civil Service" and persons whose positions are referred to the first and second categories by Article 25 of the said Law.

3. Repeated crime shall be recognized by articles 368 and 369 of this Code as a crime committed by a person guilty of previously committing a crime stipulated by these articles.

4. Extortion of bribe shall be recognized as bribe extortion by an official threatening to commit or not commit actions, using official power or authority, that may inflict damage on the rights or lawful interests of the bribe-giver, or intentional creation of circumstances by an official, for which a person is forced give a bribe in order to prevent harmful consequences with respect to this person's rights and lawful interests.

Article 369. Bribe-Giving

1. Bribe-giving shall be penalized with a fine in the amount from two hundred to five hundred tax-free minimal wages or restriction of freedom for a term from two to five years.

2. Repeated bribe-giving shall be penalized with imprisonment for a term from three to eight years, with or without property confiscation.

3. A bribe-giver shall be exempt from criminal responsibility if he (she) had been a victim of bribe extortion or voluntarily reported the fact of bribery after committing it to an authority empowered to initiate criminal proceedings before a criminal case was initiated against him (her).

Article 370. Provoking Bribery

1. Provoking bribery, or intentional creation by an official of circumstances and conditions causing bribe-giving or bribe-taking for purposes of further exposure of the bribe-taker or the bribe-giver shall be penalized with restriction of freedom for a term up to five years or imprisonment for a term from two to five years.

2. The same action committed by an officer of law-enforcement bodies – shall be penalized with imprisonment for a term from three to seven years.

Definitions and Elements of the Offence of "Bribery"

Bribery is a generic notion that includes: (a) bribe-taking; (b) bribe-giving.

Bribe-taking is the acceptance by an official of tangible assets, material benefits from another person, as well as the use of property-related services for an action the former should have committed (could have committed) or has committed in favour of the bribe-giver or third parties, including persons in no way related to the bribe-giver (Article368 of the Ukrainian Criminal Code).

The objective aspect of the crime, stipulated by Article 368, consists in bribe-taking in any form.

A bribe constitutes an illegal material compensation; therefore the subject of the bribe is characterized exclusively with material attributes. It may be represented by any property (money, tangible assets), proprietary rights (documents granting the right to property, the right to use property, etc.) or property-related actions (providing places in tourist groups or sanatoriums, fulfilling construction or repair jobs).

The rendering of intangible services to an official (*e.g.* favourable characteristics, intimate relations, "protection" of such person against criticism, etc.) shall not be recognized as bribery. Intangible services may be interpreted as another form of personal interest of an official abusing power or office and, in the presence of other necessary elements, can be qualified under Article 364 of the Criminal Code of Ukraine.

At the same time, legal practice qualifies as bribery the acceptance by an official of illegal remuneration from his (her) subordinates or persons accountable to him (her) for lobbying or deciding in their favour the issues within his (her) competence.

There are two most widely spread methods of bribe-giving and bring-taking are the conventional and veiled forms. The conventional form consists in direct handing of the bribe over to an official (directly by the bribe-giver or through an intermediary). The 1960 Ukrainian Criminal Code contained a separate Article on mediation in bribery. The effective Criminal Code of Ukraine has no Article with such title, but this does not mean decriminalisation of mediation. Presently, the actions of an intermediary are to be qualified as complicity under paragraph 2 of Article 368 or Article 369 of the Criminal Code of Ukraine, depending on the person the intermediary was closer connected to and in whose interests he was acting. The issues of qualifying the actions of an accomplice shall be solved with account taken of the directivity of

his intent, i.e. in whose interests and on whose initiative he was acting. A person offering a bribe to a government official through an intermediary may act as an instigator or organizer of such crime (articles 27, 29 of the Criminal Code of Ukraine).

The issues of qualifying the actions of a person handing a bribe over to a third party (a partner, a political party, etc.) should be considered on the basis of the actual circumstances of the case. If the point at issue is the handing of the bribe over to a "partner" or the official for satisfying his (her) personal needs and he (she) is aware that it is done in his (her) favour, the actions of the person handing valuables over to the "partner" of such official shall be qualified under Article 369 of the Criminal Code of Ukraine. In cases when the point at issue is the use of a "partner" as an intermediary for handing over a bribe to an official, the issue of qualifying the offence shall be decided depending on the intent of the accomplice.

The veiled form of bribery consists in the camouflaging of the fact of bribery as a legitimate agreement or contract and constitutes a formally legal transaction: various types of payments, bonuses, credits, purchase and sales contracts, etc. Compensation of this sort shall be qualified as bribery in cases when the transfer and receipt operation is illegal (the payment of funds was unjustified, valuables or property were sold at a price significantly lower than the actual price, the payment of services was non-equivalent, etc.).

The bribe is often handed over to the official's relatives or next of kin. Under such circumstances, if it has been established that the official gave his (her) consent to this or was informed on the handing of tangible assets over to the said persons, the official shall be recognized as a bribe-taker.

The acceptance by an official of presents and other offerings not connected with fulfilment of certain official actions, but for purposes of toadying and maintaining "good" relations, shall not be recognized as criminal offence.

To qualify the actions of an official under Article 368 of the Criminal Code of Ukraine, it makes no difference whether the official took a bribe for lawful or unlawful actions, *i.e.* an official can take a bribe both for lawful and unlawful actions. The responsibility of an official for bribe-taking shall be imposed on condition that this official took a bribe for fulfilling or not fulfilling such actions that he (she) could or should have fulfilled with the use of his (her) power, his (her) organizational or administrative functions, or such that he (she) was not authorized to fulfil, but had the opportunity due to his (her) official position to influence the fulfilment of such actions by other officials (item 2 of the resolution of the Ukrainian Supreme Court Plenum No.5 of 26 April 2002).

If bribe-taking by an official involves the commitment of an unlawful action constituting the body of an independent crime, responsibility shall be imposed not only for bribe-taking, but also for the other crime, according to the cumulative crime principle.

Bribe-taking shall be recognized as committed as of the moment of acceptance by an official of at least part of tangible assets or material benefits, regardless of whether any actions were taken in the interests of the bribe-giver. Cases when an official refuses to fulfil earlier agreed actions after accepting material remuneration, or had no intention of fulfilling them from the very beginning, shall be qualified as bribe-taking.

The interests of a bribe-giver should be interpreted not only as his (her) personal interests, but also the interests of his (her) next of kin, as well as falsely interpreted interests of the enterprise, institution or organization he (she) is connected to due to his (her) official functions.

The new edition of the Article also envisages the interests of third parties completely unrelated to the bribe-giver.

The subjective aspect of a crime is characterized with the guilt in the form of direct intent. The specifics of the subjective aspect of this crime consist in close connection between the intent of the bribe-taker and the intent of the bribe-giver. The content of the former's intent should also cover the realization of the fact that the bribe-giver is aware of the significance of the happening and acknowledges the fact of illegal receipt of compensation by the official. Only an official can be the subject of a crime.

Illegal receipt of any form of substantial tangible assets or property-related benefits through extortion by an employee of a government agency or organization, who is not an official, for fulfilment or non-fulfilment of certain actions using his (her) official position at an enterprise, institution or organization, shall be qualified under Article 354 of the Criminal Code of Ukraine. This Article interprets substantial illegal remuneration as the remuneration exceeding tax-free minimal salary two and more times.

A necessary element of the objective aspect of a crime envisaged by Article 354 of the Criminal Code of Ukraine is extortion of illegal remuneration by an employee of a public enterprise, institution or organization. The receipt of illegal remuneration in the absence of the elements of extortion does not constitute the body of this crime.

Unlike crimes qualified under Article 368 of the Criminal Code of Ukraine (bribe-taking), the acceptance of illegal remuneration envisaged by Article 354 of the Ukrainian Criminal Code involves:

- an employee of a public enterprise, institution or organization, who is not an official, stipulated in the note to Article 364 of the Ukrainian Criminal Code, as the subject of the crime;
- receipt of illegal remuneration only through extortion (in the event of bribe-taking, the fact of extortion is only a qualifying element);
- considerable amount of illegal remuneration (the main body of the bribe-taking offence does not envisage such element).

Bribe-taking on preliminary collusion by a group of persons envisages the committing of such crime with the participation of two and more persons who had agreed in advance to commit it. Collusion in committing this offence means the agreement on joint use of official position with other officials to receive one or more bribes.

Repeated bribe-taking envisages the committing of this crime by a person who had earlier committed one of the crimes stipulated by Articles 368 or 369 of the Criminal Code of Ukraine, if the period of limitations for imposing criminal responsibility has not expired.

Simultaneous receipt of a bribe by an official from several persons shall be qualified as a repeated offence if the bribe is given for committing actions in the interests if each bribe-giver and the official is aware of accepting a bribe from several persons. At the same time, the actions of a bribe-taker receiving a certain agreed sum of bribe from one and the same person in several instalments for fulfilling or not fulfilling actions ensuring a result desirable to the bribe-giver shall not be qualified as repeated offence.

According to paragraph 4 Article 81 of the Ukrainian Code of Criminal Proceedings, the bribe matter shall be confiscated in favour of the state.

Responsibility of bribery initiators. Bribe extortion constitutes the demand of a bribe by an official under threat of committing or not committing actions with the use of his (her) official position, which may inflict damage on the rights and lawful interests of the bribe-giver, or intentional creation of conditions by an official, in which a person was forced to give a bribe to prevent harmful implications with respect to his (her) rights and lawful interests.

Bribe-taking through extortion has a number of specific elements characteristic only of this form of committing the crime stipulated by Article 368 of the Criminal Code of Ukraine.

Firstly, the initiator of the crime in such cases is the person taking the bribe. Secondly, bribe-taking through extortion directly influences the responsibility of the bribe-giver who, in accordance with paragraph 3 Article 369 of the Criminal Code of Ukraine, shall be exempt from criminal responsibility.

However, the establishment of the fact of demanding a bribe by an official shall not constitute sufficient grounds for qualifying bribe-taking based on the elements of extortion. According to the law, this element can be incriminated only if the guilty party threatened to commit or not to commit actions that could damage the rights and lawful interests of the bribe-giver in order to receive a bribe, or intentionally creates conditions in which a person is forced to give a bribe to prevent harmful implications for his (her) rights or lawful interests.

In cases when despite all actions aimed at a person to force him (her) to give a bribe, this person for some or other reason has not done it, the actions of the official demanding the bribe shall be qualified, depending on concrete circumstances, as preparation for bribe-taking through extortion or encroachment on committing this crime.

Sanctions

A sanction is part of a legal regulation stipulating the measures of forced influence that shall be applied to the violators of this regulation.

For accepting a bribe

- an official accepting a bribe in any form for fulfilment or non-fulfilment of any action using his (her) authority of official position in the interests of the briber or a third party (Article 368 (part 1) of the Criminal Code) shall be subject to criminal responsibility in the form of fine in the amount from 750 to 1 500 tax-free minimal salaries or deprivation of freedom for the period from two to five years and deprivation of the right to occupy certain positions or engage in certain forms of activity for a period up to three years:
- an official accepting a major bribe, or a high-ranking official accepting a bribe, or accepting a bribe on preliminary collusion by a group of persons, or repeatedly, or involving bribe extortion

(Article 368 (part 2) of the Criminal Code) shall be subject to criminal responsibility in the form of deprivation of freedom for the period from five to ten years and deprivation of the right to occupy certain positions or engage in certain forms of activity for a period up to three years and confiscation of property;

- an official accepting a particularly huge bribe, or an official occupying a particularly important position accepting a bribe (Article 368 (part 3) of the Criminal Code) shall be subject to criminal responsibility in the form of deprivation of freedom for the period from eight to twelve years and deprivation of the right to occupy certain positions or engage in certain forms of activity for a period up to three years and confiscation of property.

A major bribe shall be considered a sum two hundred and more times exceeding the tax-free minimal salary, and a particularly huge bribe shall be a sum five hundred and more times exceeding the tax-free minimal salary.

High-ranking officials are the persons whose positions are referred to the third, fourth, fifth, and sixth categories by Article 25 of the Ukrainian Law "On Civil Service," as well as judges, public prosecutors and investigators, senior executives, and their deputies, of government authority and administration bodies, bodies of local self-government, their structural divisions and units, permanently or temporarily discharging the functions of representatives of authority, and occupy, permanently or temporarily, positions at enterprises, institutions, and organizations, regardless of their form of ownership, involving the fulfilment of managerial or administrative functions, or discharge such functions by special authority. Foreigners or persons without citizenship carrying out the said functions shall also be recognized as officials.

Officials occupying particularly important positions are persons indicated in Article 9 (part 1) of the Ukrainian Law "On Civil Service" and persons whose positions are referred to the first and second categories by Article 25 of the said Law.

Bribe-giving (Article 369 (part 1) of the Criminal Code) entails criminal responsibility in the form of a fine in the amount from 200 to 500 tax-free minimal salaries or restriction of freedom for the period from two to five years.

Repeated bribe-giving (Article 369 (part 2) of the Criminal Code) entails criminal responsibility in the form of deprivation of freedom for the period from three to eight years with or without property confiscation.

The provoking of a bribe (Article 370 (part 1) of the Criminal Code) entails criminal responsibility in the form of restriction of freedom for the period up to five years or the deprivation of freedom for the period from two to five years.

The provoking of a bribe by an official of law-enforcement bodies (Article 370 (part 2) of the Criminal Code) entails criminal responsibility in the form of deprivation of freedom for the period from three to seven years.

The acceptance of illegal remuneration by an employee of a public enterprise, institution or organization (Article 354 of the Ukrainian Criminal Code) entails criminal responsibility in the form of fine in the amount up to seventy tax-free minimal salaries, or corrective labour for a term up to two years, or restriction of freedom for a term up to three years, or imprisonment for a term up to three years.

Note. The tax-free minimal salary equals UAH 17 (Decree of the Ukrainian President No.519 of 13.09.1994, Decree of the Ukrainian President No.762 of 25 August 1996).

Statute of Limitations

In accordance with Article 12 of the Ukrainian Criminal Code, crimes are classified depending on their gravity as mild offence, moderately grave, grave, and particularly grave crimes.

Mild offence is an offence entailing punishment in the form of deprivation of freedom for a period not more than two years or another, milder penalty.

A moderately grave crime is a crime entailing punishment in the form of deprivation of freedom for a period not more than five years.

A grave crime is a crime entailing punishment in the form of deprivation of freedom for a period not more than ten years.

A particularly grave crime is a crime entailing punishment in the form of deprivation of freedom for a period more than ten years or a life sentence. According to the above classification, criminal actions can be classified depending on their level of gravity:

- for bribe-taking – as a moderately grave crime, grave, or particularly grave crime;
- for bribe-giving – as mild offence or a grave crime;
- for provoking a bribe – as a moderately grave, or grave crime.

In keeping with Article 65 (part 1, paragraph 3) of the Ukrainian Criminal Code, the court shall mete out a penalty considering the gravity of the crime, the guilty party, and the circumstances mitigating or aggravating the punishment.

Proceeding from this classification, the minimal statute of limitations for crimes qualified as corruption-related generally is not less than five years.

Other Corruption-Related Offences

The Ukrainian Criminal Code defines other forms of offence, besides official crimes, that can be qualified as corruption (connected with corruption).

Article 158	Illegal Use of Ballot Sheets, Forgery of Election Documents or Incorrect Vote Count or Improper Announcement of Election Results
Article 159	Violation of the Secret of the Vote
Article 191	Embezzlement, Defalcation or Misappropriation of Property through Office Abuse
Article 206	Hindering Legal Business Activity
Article 208	Illegal Opening of Hard Currency Accounts or their Usage Outside Ukraine
Article 209-1	Intentional Violation of the Law on Prevention and Resistance to Legalization (Laundering) of Crime Proceeds
Article 210	Violation of the Legislation on the Budgetary System of Ukraine
Article 211	Issuance of Regulatory and Legal Acts or Instructions Altering Budgetary Incomes and Expenditures In Spite of the Order Established by Law
Article 232	Disclosure of Commercial Secret
Article 233	Illegal Privatisation of Public and Communal Property
Article 343	Interference in the Activities of an Employee of a Law-Enforcement Body
Article 344	Interference in the Activities of a Government Official
Article 351	Preventing the Activity of a People's Deputy of Ukraine and a Deputy of the Local Council
Article 354	Acceptance of Illegal Remuneration by an Employee of a State-Owned Enterprise, Institution or Organization
Article 372	Deliberate Imposing of Criminal Responsibility on an Innocent Person
Article 373	Forcing to Testify
Article 375	Ruling of a Judge (Judges) with an Admittedly Erroneous Sentence, Decision, Determination, or Ruling
Article 376 (part 2)	Interference in the Activity of Judicial Authorities;
Article 381	Disclosure of Information on Security Measures with Respect to a Person Guaranteed Protection
Article 382	Non-Fulfilment of a Judicial Decision
Article 396	Concealment of Crime

Scholars and specialists are presently studying the possibilities for distinguishing between corruptive offences, introducing relevant amendments to the criminal law and establishing criminal responsibility for committing acts of corruption. With this end in view, a working group has been set up under the auspices of the Ukrainian Justice Ministry, which has conducted a preliminary analysis of anticorruption law of other countries and is working on proposals to the government.

Concept and Definition of a "Public Official"

The Ukrainian Law "On Civil Service" defines the notions of "civil service" and "civil servant" and regulates social relations covering the activity of the state with respect to creating legal, organizational, economic, and social conditions for exercising the Ukrainian citizens' right to civil service.

In accordance with Article 1 of the Ukrainian Law "On Civil Service," "civil service in Ukraine is the professional activity of persons occupying positions at government agencies and their staff, directed at practical implementation of tasks and functions of the state, and receiving salary from public funds.

These persons are civil servants and have relevant official authorities."

Article 2 of this Law defines the notions of "position" and "official." "A position is a primary structural unit of a government agency and its staff, defined by their structure and personnel arrangements, authorized to carry out a range of official duties by relevant regulatory acts.

In keeping with this Law, officials are the heads and deputy heads of government agencies and their staff, other civil servants authorized to fulfil managerial and consultative functions by laws or other regulatory acts.

Civil servants shall be penalized for committing acts of corruption in accordance with effective law of Ukraine. The Ukrainian Law "On Struggle against Corruption" defines the subjects of corruptive actions and other felonies involving corruption. According to Article 2 of the Ukrainian Law "On Struggle Against Corruption," "corruptive actions and other offence connected with corruption shall entail responsibility under this Law with respect to the following persons authorized to discharge the functions of the state:

- civil servants;
- people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea;
- officials of local self-government bodies."

In accordance with paragraph 1 of the Note to Article 364 of the Ukrainian Criminal Code, officials are persons permanently or temporarily discharging the functions of representatives of authority, and occupy, permanently or temporarily, positions at enterprises, institutions, and organizations, regardless of their form of ownership, involving the fulfilment of managerial or administrative functions, or discharge such functions by special authority.

In keeping with paragraphs 1 and 2 of the Note to Article 364 of the Ukrainian Criminal Code**,** officials are:

- persons permanently or temporarily discharging the functions of representatives of authority, and occupy, permanently or temporarily, positions at enterprises, institutions, and organizations, regardless of their form of ownership, involving the fulfilment of managerial or administrative functions, or discharge such functions by special authority;
- foreigners or persons without citizenship carrying out the functions stipulated by paragraph 1 of the said Note shall also be recognized as officials.

Foreigners or persons without citizenship exercising the functions stipulated in item 1 of this note of this article shall also be recognized as officials.

Paragraph 4 of Article 368, "Bribe-Taking," envisages he responsibility of civil servants occupying particularly important positions. According to note 2 to this article, persons stipulated by paragraph 1, Article 9 of the Law of Ukraine "On Civil Service" are referred to such persons. Article 9 of this Law defines the specifics of regal regulation of the status of civil servants of government agencies and their senior staff serving the state and government agencies, and elected officials of a national level. In particular, they include the Ukrainian Prime Minister and members of the Cabinet of Ministers of Ukraine (ministers). The legal status of the Cabinet of Ministers of Ukraine is regulated by Article 114 of the Ukrainian Constitution, and its composition is approved by the Ukrainian Presidential Decree.

Defences and Exceptions

Paragraph 3 of Article 369 of the Criminal Code of Ukraine contains a provision that should encourage the detection of facts of bribery and proving the guilt of bribers. It stipulates that a bribe-giver shall be exempt from criminal responsibility if he (she) had been a victim of bribe extortion or voluntarily reported the fact of bribery after committing it to an authority empowered to initiate criminal proceedings before a criminal case was initiated against him (her).

Paragraph 3 of Article 369 of the Ukrainian Criminal Code envisages two independent grounds for relieving a bribe-taker from criminal responsibility: if he (she) had been a victim of bribe extortion; or if he (she) voluntarily reported the fact of bribery after committing it before a criminal case was initiated against him (her).

A voluntary report of the fact of bribery is a verbal or written statement filed to the interior bodies, public prosecution offices, the court, another government agency for any motives, but not because the fact of the bribe has become known to law-enforcement bodies.

The release of a bribe-giver from criminal responsibility on the basis of paragraph 3, Article 369 of the Ukrainian Criminal Code does not rule out the recognition of his (her) actions as containing elements of a crime. In this connection, this person shall not be recognized as the victims and shall not claim the compensation of the bribe matter.

If such person appeals to competent authorities in connection with bribe extortion before taking any action to expose the extortionist, the body of the crime shall be missing. In such cases, the person shall be exempt from responsibility on the basis of item 2, paragraph 1 of Article 6 of the Ukrainian Code of Criminal Proceedings rather than paragraph 3, Article 369 of the Criminal Code of Ukraine. Money and other valuables used by this person as bribe to expose the extortionist shall be returned to their legal owner on the basis of item 5, paragraph 1 of Article 81 of the Ukrainian Code of Criminal Proceedings.

In accordance with paragraph 2, Article 22 of the Ukrainian Code of Criminal Proceedings, the court, the public prosecutor, the investigator, or the inquiry authority shall not shift the burden of proof on the accused.

At the same time, Article 370 of the Criminal Code of Ukraine envisages responsibility for provoking bribery, *i.e.* intentional creation of circumstances and conditions by an official leading to the offer or taking of a bribe for purposes of exposure of the bribe-taker or the bribe-giver. Provocation of bribery can be in two forms: provoking bribe-taking and bribe-giving. Both the first and the second type of provocation are committed only with direct intent, as the guilty party pursues the goal of further exposure of the bribe-taker or the bribe-giver. If an official organized the giving or taking of a bribe for the same purpose or committed other actions for instigation purposes with respect to the bribe-giver or the bribe-taker, or encouraged it, such actions shall be qualified under relevant paragraphs of Articles 27 and 369 or Articles 27 and 368 of the Ukrainian Criminal Code.

Moreover, Article 49 of the Criminal Code of Ukraine stipulates that a person shall be exempt from criminal responsibility if the following time periods have passed from the date of the crime until the date of entry of the sentence into legal force:

- two years – for mild offence entailing milder punishment than deprivation of freedom;
- three years – for mild offence entailing punishment in the form of restriction or deprivation of freedom;
- five years – for a moderately grave crime;
- ten years – for a grave crime;
- fifteen years – for a particularly grave crime.

The limitation period shall be interrupted if by the time of expiration of the periods indicated in parts one and two herein the person has committed a new moderately grave, grave, or particularly grave crime. The calculation of the limitation period in this case shall commence from the date of the new crime. The limitation periods in this case shall be calculated separately for each crime.

The limitation period shall also be interrupted, if the person suspected of a criminal offence, has fled to avoid criminal prosecution or court actions. In such case the limitation period shall be restored from the date when the person is reappeared with admission or arrested. The person is released from the criminal liability when, from the time of committing the criminal offence, a period of fifteen years has passed.

The issue of applying a statute of limitation to a person who has committed a particularly grave crime which, according to law, may entail a life sentence, shall be decided by court. If the court does not find it possible to apply a statute of limitation, a lifelong sentence shall not be meted out and shall be replaced with deprivation of freedom for a particular term.

A limitation period shall not be applied to crimes against peace and safety of humanity, envisaged by Articles 437 – 439 and 442 (part 1) of the Code.

Effective law of Ukraine does not envisage special defences or exceptions in persecution for corruption-related crimes, therefore a person persecuted for committing corruption-related offences may use the defences envisaged by the Criminal Code of Ukraine and the Ukrainian Code of Criminal Proceedings for other crimes.

These general defences can use such arguments as "voluntary refusal from committing a crime," "full or partial criminal insanity," "acute necessity," "fulfilment of an order or an instruction," "risk-related deed," "physical or psychic coercion," "release from criminal responsibility in connection with active penitence, bailment, change of circumstances, expiration of the period of limitation," etc.

The Ukrainian law on criminal proceedings does not make a distinction between criminal cases of bribe-giving to national or foreign officials and on bribe-taking by them. In both cases such actions shall be qualified under Article 368 (bribe-taking) and 369 (bribe-giving) of the Criminal Code, and pre-trail procedures are regulated by the general provisions of the Ukrainian Code of Criminal Proceedings.

Responsibility of National and Foreign Officials in Cases of Bribery

According to the national criminal law of Ukraine, foreigners or persons without citizenship are subject to criminal responsibility for committing crime stipulated by the Criminal Code of Ukraine, both on the territory of Ukraine and outside its borders. There is no differentiation in cases of bribery of national or foreign officials.

The jurisdiction of criminal offences is determined by Articles 6 – 9 of the Ukrainian Criminal Code.

All persons who have committed crimes on the territory of Ukraine shall be called to criminal responsibility under this Code. A crime shall be recognized as committed on the territory of Ukraine if it was started, continued, completed or terminated on the territory of Ukraine, if its perpetrator or at least one of the accomplices was acting on the territory of Ukraine (Article 6).

Citizens of Ukraine and persons without citizenship permanently residing in Ukraine who have committed crimes outside it borders are subject to criminal responsibility under the Ukrainian Criminal Code unless stipulated otherwise by Ukraine's international agreements the obligatory observance of which is confirmed by the Supreme Council of Ukraine (Article 7).

Foreigners or persons without citizenship not residing permanently in Ukraine who have committed crimes outside it borders are subject to criminal responsibility in Ukraine under the Ukrainian Criminal Code in cases envisaged by international agreements or if they have committed particularly grave crimes against the rights and freedoms of citizens of Ukraine or the interests of Ukraine, envisaged by this Code (Article 8).

Immunities

Personal Immunity of the President of Ukraine

Article 105 of the Ukrainian Constitution stipulates that the President of Ukraine shall enjoy the right to personal immunity during his term in office. In accordance with Article 111 of the Constitution, the Ukrainian President can be removed from post by the Supreme Council of Ukraine following an impeachment procedure in the event of committing state treason or another crime. The issue of removing the President of Ukraine from his post through an impeachment procedure shall be initiated by a majority of the constitutional composition of the Supreme Council of Ukraine. The Supreme Council of Ukraine shall set up a special ad hoc commission to conduct an investigation, including a special prosecutor and special investigators. The conclusions and recommendations of the ad hoc investigation commission shall be considered at a session of the Supreme Council of Ukraine. If there are sufficient grounds, the Supreme Council of Ukraine shall take a decision to press charges against the Ukrainian President by not less than two thirds of the vote of its constitutional composition.

The decision to remove the President of Ukraine from his post through an impeachment procedure shall be taken by the Supreme Council of Ukraine by not less than three quarters of the vote of its constitutional composition after the examination of the case by the Ukrainian Constitutional Court and receiving its conclusion concerning the observance of the constitutional procedure of investigation and examination of a case of impeachment and receiving a conclusion from the Supreme Court of Ukraine to the effect that the actions of which the Ukrainian President is accused contain indications of state treason or another crime.

Personal Immunity of a Ukrainian People's Deputy

The immunity of a Ukrainian people's deputy is guaranteed by Article 80 of the Ukrainian Constitution and Article 27 of the Ukrainian Law "On the Status of the Ukrainian People's Deputy" of 17 November 1992, according to which a people's deputy shall be granted personal immunity for his (her) entire term in office. A people's deputy shall not be called to criminal responsibility, detained or arrested without the consent of the Supreme Council of Ukraine. Search, arrest of a people's deputy, or inspection of his (her) personal belongings and baggage, transport vehicles, living and working premises, as well as the breech of the secrecy of correspondence, telephone conversations, telegraph and other communications, and other measures restricting the rights and freedoms of a people's deputy according to law, shall be admitted only if

the Supreme Council of Ukraine has issued its consent to call the deputy to criminal responsibility, if there are no other ways of obtaining the necessary information.

The specific procedures for calling a people's deputy to responsibility shall be determined by the Constitution of Ukraine, the Ukrainian Law "On the Status of the Ukrainian People's Deputy" and the Law on the Regulations of the Supreme Council of Ukraine.

Personal Immunity of a Judge

Article 126 of the Ukrainian Constitution stipulates that independence and immunity of judges shall be guaranteed by the Constitution and laws of Ukraine. A judge shall not be detained or arrested without the consent of the Supreme Council of Ukraine before a guilty verdict is issued by court (relevant provisions of the Constitution in the 1977 edition also prohibited the initiation of criminal proceedings versus a judge without the consent of the national legislative authority until 28 June 1996).

In accordance with Article 13 of the Ukrainian Law "On the Status of a Judge," judges shall be granted immunity. The immunity of a judge includes his (her) home, office, vehicles and communication means, correspondence, personal property and documents. A judge shall not be detained or arrested without the consent of the Supreme Council of Ukraine before a guilty verdict is issued by court. A judge shall not be detained on suspicion of committing a crime, conveyed or summoned by force to any government agency in connection with proceedings on cases of administrative offence. A judge detained on suspicion of committing a crime or administrative offence entailing judicial penalty, shall be immediately released from custody after his (her) identity is established.

At the same time, the court can issue a motivated decision to penetrate a judge's living or office premises, personal or official transport, conduct an inspection, search or confiscation there, tap his (her) telephone, conduct personal search of the judge, as well as inspection and confiscation of his (her) correspondence, personal effects and documents.

An investigator or public prosecutor may initiate a criminal case versus a judge without any accordance with other authorities or officials.

A criminal case versus a judge of any common law court and a judge of the Constitutional Court of Ukraine shall be considered in the first instance by the court of appeals.

It is noteworthy that according to Article 38 of the Ukrainian Law "On the Status of Judges," the powers of a judge may be suspended in connection with his (her) accusation of a crime, consideration of a disciplinary case in connection with the violation of requirements set to a judge (a judge cannot be a member of political parties and trade unions, participate in any political activity, hold a representative mandate, occupy any other paid positions, fulfil any other paid job, except scientific, educational and creative activities). Starting from the moment of notification of termination of a judge's powers, the judge shall be suspended from discharging his (her) official functions.

A disciplinary misdemeanour, namely, violation of the law in the process of consideration of legal cases, non-fulfilment of a judge's duties stipulated by Article 6 of this Law, may entail disciplinary responsibility of the judge in accordance with the rules and procedures stipulated by chapter 14 of the Ukrainian Law "On the Legal System of Ukraine," as well as the Ukrainian Law "On the Supreme Council of Justice." One of the disciplinary sanctions against a judge may be his (her) discharge from position by the authority that had appointed (elected) the judge to this position.

As an accusatory sentence versus a judge enters into legal force, as well as in the event of violation of a judge's oath, the judge shall be discharged from position by the authority that had elected (the Ukrainian Supreme Council) or appointed (the President of Ukraine) him/her to this position.

Personal immunity of judges if envisaged by Articles 11, 12, 13 of Ukrainian Law "On the Status of Judges" No.2862-XII of 15 December 1992.

The Criminal Code of Ukraine contains Chapter 28 "Crimes against Justice" envisaging criminal responsibility for interference in the activity of judicial or investigative bodies, as well as the responsibility of judges, investigators, public prosecutors, and workers of inquiry bodies for disclosure of materials of pre-trial investigation.

Any interference in a judge's activity for purposes of hindering the discharge of his/her official duties or achieve the issuance of an unlawful decision (Article 376 of the Criminal Code of Ukraine), threat or violence with respect to a judge, lay judge or juror (Article 377 of the Criminal Code of Ukraine), intentional destruction or damage of property of a judge, lay judge or juror (Article 378 of the Criminal Code of Ukraine), encroachment on the life of a judge, lay judge or juror in connection with their justice administration activity (Article 379 of the Criminal Code of Ukraine), shall be recognized as crimes.

If the chairman of a relevant court issues a decision to apply special security measures on a judge's consent, the penetration in a judge's housing or official premises, personal of official transport shall be allowed.

Personal Immunity of Public Prosecutors

Article 7 of Ukrainian Law "On the Public Prosecutor's Office" No.1789-XII of 5 November 1999 guarantees the independence of the public prosecutor's office in the process of discharging its functions. In particular, any interference by government authorities, bodies of local self-government, officials, mass media, public political organizations and their representatives in the activity of the public prosecutor's office in the process of investigating actions containing elements of a crime shall be prohibited.

Any form of influence on a worker of the public prosecutor's office for purposes of hindering the discharge of his (her) official duties or adoption of an unlawful decision shall entail responsibility stipulated by law.

Persons granted personal immunity shall not be detained or arrested without the sanction of the Ukrainian Supreme Council.

Jurisdiction

The investigative jurisdiction of crimes is determined by articles 6 – 9 of the Ukrainian Criminal Code.

Persons who have committed crimes on the territory of Ukraine shall be called to criminal responsibility under this Code. A crime shall be recognized as committed on the territory of Ukraine if it was started, continued, completed or terminated on the territory of Ukraine, if its perpetrator or at least one of the accomplices was acting on the territory of Ukraine.

The issue of criminal responsibility of diplomatic representatives of foreign countries and other citizens immune to criminal responsibility under the laws of Ukraine and international agreements the obligatory observance of which is confirmed by the Supreme Council of Ukraine, in the event of their committing criminal offence on the territory of Ukraine, shall be dealt with through diplomatic procedures.

Article 10 of the Ukrainian Criminal Code regulates the extradition of a person accused of committing a crime, and a person sentenced for committing a crime.

Today, the issue of transfer of criminal cases is regulated only by the 1972 European Convention on the Transfer of Proceedings in Criminal Matters (on application concerning the violation of criminal proceedings submitted by one member country, any other member country shall have the authority to persecute any crime in court in keeping with its own law), and some bilateral agreements.

Therefore, the possibility for regulating this issue exists only with the countries – signatories to the relevant international agreements.

Corruption in the Private Sector

Effective law of Ukraine lacks an explicit definition of a corruptive crime and provisions stipulating criminal responsibility for committing only these particular crimes. Criminal responsibility for committing corruptive actions by physical persons – individual entrepreneurs and persons occupying positions at private enterprises, institutions, and organizations is not envisaged either.

Therefore in order to decide whether to qualify some or other offence as corruption, the general definition of corruption is used in practice, formulated in Article 1 of the Ukrainian Law "On Struggle Against Corruption," which stipulates:

"Corruption for purposes of this Law shall be recognized as the activity of persons authorized to fulfil governmental functions, aimed at illegal use of his/her powers for gaining material benefits, services, concessions or other advantages."

Proceeding from this definition, bribery in the Ukrainian private sector cannot be regarded as corruption, and officials of both private entities and bodies of government authority and administration authorized to fulfil governmental functions giving or taking a bribe shall bear responsibility under the same articles of the Criminal Code of Ukraine: Article 368 (bribe-taking) and Article 369 (bribe0giving).

In keeping with note 1 to Article 364 of the Criminal Code of Ukraine, officials are persons permanently or temporarily discharging the functions of representatives of the authority, as well as persons permanently or temporarily occupying positions at enterprises, institutions or organizations, regardless of their form of ownership, connected with fulfilment of organizational or administrative duties, or implementing such duties on special assignment.

The subjects of the crime of bribe-taking or provocation of bribery can also be persons occupying positions at private enterprises, institutions or organizations, and in some cases physical persons – individual entrepreneurs. The subject of bribe-giving can be any person who has attained the age of majority.

At the same time, officials authorized to fulfil governmental functions may bear enhanced criminal responsibility for bribe-taking in comparison with officials employed in the private sector, as they may occupy a responsible or particularly important position.

Confiscation of Proceeds from Corruption

In keeping with Article 51 of the Ukrainian Criminal Code, persons recognized guilty of crime shall be penalized by court with the following forms of punishment:

- deprivation of the right to occupy certain positions or engage in certain forms of activity;
- office restrictions for military servicemen;
- property confiscation;
- deprivation of freedom for a certain term.

As far as confiscation of corruption-related proceeds is concerned, it should be mentioned that effective Ukrainian law on criminal proceedings stipulates that in criminal cases such proceeds may be recognized as material evidence. In particular, under Article 78 of the Ukrainian Code of Criminal Proceedings, material evidence includes, among other things, money, valuables, and other objects gained by criminal methods. In keeping with Article 81 of the Ukrainian Code of Criminal Proceedings, the issue of material evidence shall be decided by a sentence, decisions or warrant of the court, or decision of the inquiry authority, the investigator, or the public prosecutor to close the case, in which case, according to paragraph 1 (item 4) of Article 81 of the Ukrainian Code of Criminal Proceedings, valuables and other objects gained by criminal methods shall be collected in favour of the state.

According to Article 59 of the Criminal Code of Ukraine, punishment in the form of property confiscation consists in forced confiscation of all or part of the property of the accused in favour of the state. Confiscation of property is a measure that may be imposed for grave and particularly grave mercenary crimes only in cases stipulated by the Special Part of this Code. The list of property not subject to confiscation shall be established by Ukrainian law.

Moreover, in accordance with paragraph 2 of this Article, property confiscation shall be imposed for grave mercenary crimes only in cases stipulated by the Special Part of the Ukrainian Criminal Code.

Although the national law does not envisage criminal responsibility for committing acts of corruption, the Ukrainian Criminal Code recognizes as criminal socially dangerous actions entailing punishment in the form of property confiscation: Article 191 "Embezzlement, Defalcation or Misappropriation of Property through Office Abuse"; Article 209 "Legalization (Laundering) of Crime Proceeds"; Article 262 "Embezzlement, Misappropriation, Extortion of Firearms, Ammunitions, Explosives of Radioactive Materials or their Acquisition through Fraud or Office Abuse"; Article 308 "Embezzlement, Misappropriation, Extortion of Narcotic Substances, Psychotropic Substances or their Analogues or their Acquisition through Fraud of Office Abuse"; Article 312 "Embezzlement, Misappropriation, Extortion of Precursors or their Acquisition through Fraud or Office Abuse"; Article 313 "Embezzlement, Misappropriation, Extortion of Equipment for the Manufacturing of Narcotic Substances, Psychotropic Substances or their Analogues or their Acquisition through Fraud of Office Abuse or Other Illegal Actions Involving Such Equipment"; Article 364 "Power or Office Abuse"; Article 368 "Bribe-Taking"; Article 369 "Bribe-Giving."

The above articles envisage sanctions for committing relevant crimes in the form of imprisonment and property confiscation or imprisonment and confiscation of funds and other property gained by criminal methods.

The Ukrainian Law "On Struggle against Corruption" determines the grounds and procedures for compensating the damage inflicted by corruptive actions and other corruption-related offences.

Article 1 of the Ukrainian Law "On Struggle against Corruption" stipulates that a present (remuneration) accepted by a person authorized to discharge governmental functions in connection with the fulfilment of such functions, other material assets, services, benefits, or other advantages, including the acceptance or receipt of objects by their purchasing at a price considerably lower than their actual cost, as well as the present received without knowledge, shall be collected (returned) in favour of the state.

According to Article 13 of this Law, the damage inflicted on the state, an enterprise, institution or organization by illegal use of premises, transport and communication facilities, other public property or monetary assets, shall be returned by the guilty parties authorized to fulfil governmental functions according to general procedures and terms of material responsibility of workers

and servicemen. In case of refusal to voluntarily return the funds, credits, loans, securities, real estate, and other property illegally gained by a person authorized to fulfil governmental functions, or their cost equivalent, the said property shall be collected (confiscated) in favour of the state through court proceedings on the application of the public prosecutor. The receipt of subsidies, subventions, grants, credits, and benefits as a result of actions stipulated by item "a" paragraph 1 of Article 5 of this Law entails the recognition of concluded transactions as illegal with the implications envisaged by the Ukrainian Civil Code.

Paragraph 1, Article 13 of the Ukrainian Law "On Struggle against Corruption" stipulates only the procedures for compensating the damage inflicted on the state represented by a certain government agency (enterprise, institution, organization) by illegal use of public property or monetary assets in the process of committing a corruptive action or another corruption-related offence.

Paragraph 2, Article 13 of this Law envisages the methods of eliminating the consequences of a corruptive action stipulated by item "b" paragraph 2 of Article 1 of the Law. There are two such methods:

- voluntary return of credits, grants (loans), securities, real estate and other property illegally gained by a person authorized to fulfil governmental functions, or their cost equivalent;
- collection (confiscation) of this property in favour of the state through court proceedings on appeal of the public prosecutor.

If the court has issued a decision on the compensation of material damage by a person brought to administrative responsibility for a corruptive offence, according to Articles 329 and 30 of the Ukrainian Code of Administrative Offences, such damage shall be compensated by the violator not later than 15 days from the date of serving him (her) a copy of the decision on imposing administrative liability, and in the event of appeal against such decision – not later than 15 days from the date of notification of dismissal of the appeal. In the event of non-fulfilment of the decision on the case of administrative offence to compensate material damage within the specified deadlines, it shall be referred for collection of the damage through enforcement procedures envisaged by the Ukrainian Code of Civil Proceedings.

According to Article 125 of the Ukrainian Code of Criminal Proceedings, an investigator shall take measures for enforcement of the civil claim filed in a criminal case on appeal of the civil plaintiff or on his/her own initiating, issuing a relevant decision. In cases of criminal offences entailing property

confiscation, the investigator shall take the necessary measures for enforcement of the sentence with respect to possible confiscation of property, issuing a relevant decision.

The enforcement of a civil claim and possible property confiscation shall be exercised in the form of arresting deposits, valuables, and other property of the accused or the suspect, or persons bearing legal material responsibility for actions, regardless of where these deposits, valuables and other property may be, as well as in the form of confiscation of the arrested property. Arrested property shall be is subject to inventory and can be handed in custody of representatives of enterprises, institutions, organizations, or family members of the defendant or other persons. Persons receiving property in custody shall be warned against a signature of the criminal responsibility for failure to ensure its safekeeping.

Ukrainian law envisages the possibility of confiscation of property acquired by a third party or close relatives, if it was acquired for purposes of avoiding confiscation and with existence of evidence to this effect.

As already mentioned herein, a corruptive offence is an administrative-disciplinary offence, which encroaches on the established order of fulfilling governmental functions by persons authorized to fulfil them, and hence, on governmental order; property relations; rights of legal and physical persons; established administrative procedures; exercising legislative authority, local self-government and justice, and at the same time – the order of discharging these persons' official (service) duties.

The Ukrainian Law "On Prevention and Resistance to Legalization (Laundering) of Crime Proceeds," specifically its Articles 17 and 18, shall be qualified as part of the legal frameworks regulating the confiscation of profits from corruptive acts (crime proceeds shall be confiscated in favour of the state).

The Ukrainian Law "On Ratification of the Convention on Laundering, Search, Seizure, and Confiscation of Crime Proceeds" of 1990 envisages the granting of assistance in the identification and tracking of funds, profits, and other property subject to confiscation. In addition, it envisages preliminary measures such as the freezing or arrest, for the purpose of preventing any form of usage, transfer, or disposal of property, which may later be the subject of appeal for confiscation.

In accordance with Article 12 (Part 4) of the Ukrainian Law "On the Organizational and Legal Basis of the Struggle Against Organized Crime," in the process of fighting organized crime and on sanction of a relevant public

prosecutor in charge of supervising the observance of laws by special units for fighting organized crime, and in urgent cases with subsequent notification of the prosecutor within one day in the event of danger of destruction, concealment, or loss of objects of documents that may be used in investigation and exposure of criminal activities, archives, cash offices, premises (except housing) and other storage facilities shall be sealed and guarded for a period up to ten days, monetary funds and other assets of individuals and legal entities arrested, and objects and documents confiscated.

Liability of Legal Persons

The notion of "legal person" and responsibility of legal persons is defined by the Civil Code of Ukraine, envisaging their civil responsibility (section 2, chapter 7, Civil Code of Ukraine, No.435-IV of 16 January 2003).

Article 96 of the Civil Code of Ukraine stipulates that a legal person shall be personally accountable for its obligations. A legal person shall be liable for its obligations will all its property. A participant (founder) of a legal person shall not be liable for the obligations of the legal person, and the legal person shall not be liable for the obligations of the participant (founder), except in cases envisaged by the constituent documents and the law. Persons creating a legal person shall bear joint responsibility for the obligations arising before its state registration.

A legal person shall be liable for the obligations of its participants (founders) connected with its creation only in case of subsequent approval of their actions by relevant bodes of the legal person.

In keeping with the Ukrainian criminal and administrative law, only natural persons can be the subjects of criminal and administrative responsibility. Such restrictions concerning the range of persons are connected, first and foremost, with the specifics of the Ukrainian legal system's responsibility institution.

Article 11 of the Ukrainian Criminal Code stipulates that a crime is a socially dangerous action (action or inaction) committed by the subject of the crime.

The subject of a crime is a cognizable natural person who has committed crime in the age entailing criminal responsibility under this Code (Article 18 of the Criminal Code).

The same approach is applied by the administrative law, specifically, the Ukrainian Code of Administrative Offence. Article 9 of this Code defines an administrative offence (misconduct) as an illegal, guilty (intentional or careless) action or inaction encroaching public order, property, citizens' rights and freedom, the existing governance order, entailing administrative responsibility in accordance with law.

Civil law fixes civilian legal responsibility of legal persons.

Sanctions applicable to legal entities include compensation for losses and fines. In addition, according to the provision of the Ukrainian Economic Code, the following administrative-economic sanctions shall be applied to economic entities for violating the rules of exercising their business activities.

Ukrainian law envisages equal terms of protection of property rights of citizens, organizations, and other owners. Such protection is granted through court procedures.

Specialised Services

Anti-corruption agencies are defined in the Ukrainian Law "Of Struggle against Corruption." They include divisions of the Ukrainian Ministry of the Interior, the Tax Police, and the Ukrainian Security Service, the Ukrainian Prosecutor's Office, other agencies and units created for fighting against corruption in keeping with effective law.

Special units for fighting organized crime within the bodies of the interior include the Ukrainian Interior Ministry Main Department Against Organized Crime, the department, units and divisions for the struggle against organized crime of the Interior Ministry of the Autonomous Republic of Crimea, the Main Interior Department of the City of Kiev, main departments and departments of internal affairs of regions, the city of Sevastopol and other cities, relevant special agencies in the transport sector, subordinate, accordingly, to the Minister of the Interior of the Autonomous Republic of Crimea, main interior department and department chiefs.

Units and departments for fighting organized crime in the cities (except Sevastopol) are created when necessary and are subordinate to departments for the struggle against organized crime of the Interior Ministry of the Autonomous Republic of Crimea, main interior departments and departments of the regions.

The system of special units for the struggle against organized crime includes information and analytical departments, operative investigative and

operative technical services, quick reaction forces, internal security, personnel, and other services.

Considering the tendencies in development and spread of organized crime and corruption depending on the crime situation in the country, a permanent search for optimal ways of improving it is underway, and the structure of special forces is being adapted to the needs of the national policy in the sphere of fighting crime, including organized crime.

Following the adoption in 1993 of the Law of Ukraine "On Organizational-Legal Basis for Fighting Organized Crime," special units have been created within the system of the Ukrainian Interior Ministry and the Ukrainian Security Service, whose functions include the struggle against manifestations of corruption. In particular departments for fighting corruption and crime on an inter-regional level have been set up within the system of the Main Department for Combating Organized Crime of the Ukrainian Interior Ministry in 1994, which were deployed in a number of regions of the country. After the adoption of the Ukrainian Law "On Struggle against Corruption," such departments were set up at each regional department for fighting organized crime; their tasks were extended to include the struggle against corruption and bribery in ministries and agencies.

Today, Ukraine's Chief Department Against Organized Crime has within its system an anti-corruption department, as well as anti-corruption departments and units in regions, the cities of Kiev and Sevastopol, and at transport.

In addition to these departments, the struggle against corruption within the Ukrainian Interior Ministry system is conducted by officers of the Public Service Department for Fighting Economic Crime, the Internal Security and Investigations Department (with respect to corruptive actions committed by militia officers), bodies of inquiry and pre-trial investigation in the event of their detection of facts of corruptive offences or receiving information to this effect from other Interior Ministry units.

Special units have been set up and function within the Ukrainian Security Service for fighting corruption and organized crime – the Chief Department Against Corruption and Organized Crime of the Central Department of the Ukrainian Security Service and departments for fighting corruption and organized crime of the Security Service of the Autonomous Republic of Crimea, regions and the cities of Kiev and Sevastopol. The aforementioned units have been set up on the basis of the Ukrainian Law "On Organizational-Legal Basis for Fighting Organized Crime," which regulates their activity.

Units and departments for fighting organized crime in the cities (except Kiev and Sevastopol) are created when necessary and are subordinate to departments for the struggle against corruption and organized crime. Departments, divisions or groups for fighting against corruption and organized crime in cities are created and liquidated on decision of Chairperson of the Ukrainian Security Service on representation of the Chief Department Against Corruption and Organized Crime, coordinated with the Committee of the Supreme Council of Ukraine for Issues of Struggle Against Organized Crime and Corruption.

Starting 1996, anti-corruption units have launched their activities within the state tax service system. The Anti-Corruption and Security Department has been set up at the central staff of the Ukrainian State Tax Administration for fighting corruption and ensuring safety within the bodies of the Ukrainian state tax service system, which is subordinate directly to Chairman of the Ukrainian State Tax Administration.

Regional anti-corruption and security units have also been set up locally, at the regional agencies of the State Tax Administration of Ukraine. This structural organization of the service was approved by order of the Ukrainian State Tax Administration Chairman, which has also approved the Statute of Organization of Work of Anti-Corruption and Security Divisions at Bodies of the State Tax Service.

On 5 February 1998, the Supreme Council of Ukraine has introduced relevant amendments to the Ukrainian Code of Criminal Proceedings, the Ukrainian laws "On Operative and Investigative Activity" and "On Struggle against Corruption." From that moment on, anti-corruption units have become legal subjects of operative and investigative activity.

The Anti-Corruption and Security Department within the state tax service consists of the Anti-Corruption and Security Department in bodies of the Ukrainian STA State Tax Service and 27 regional anti-corruption and security departments at STA of the Autonomous Republic of Crimea, regions, the cities of Kiev and Sevastopol. There are a total of 318 people on their staff.

If necessary, anti-corruption and security departments involve specialists from other departments of the state tax service in implementing their tasks, among other things, to conduct expert evaluations on financial issues.

The order of interaction between prosecution authorities, bodies of the interior, and the Ukrainian Security Service in matters of fighting organized crime is regulated by the Ukrainian Law "On the Organizational and Legal

Basis of Struggle Against Organized Crime" (No.3341-XII of 30 June 1993) and general regulatory acts.

The duty of ensuring cooperation between prosecution authorities, bodies of the interior and the Ukrainian Security Service in the Autonomous Republic of Crimea, in regions and cities is assigned to the prosecutors supervising the observance of law by special units of the interior bodies and the Ukrainian Security Service for fighting organized crime, to heads of the special units and senior officials of the territorial prosecutor's offices, bodies of the interior and the Ukrainian Security Service.

Operative information exchange between special units for fighting organized crime of the interior bodies and the Ukrainian Security Service concerning joint measures take place written instruction of the heads of these special units. The presenting of operative information by special units for fighting organized crime to territorial and other bodies of the interior and the Ukrainian Security Service shall be admitted only with consent and written instruction of the head of a relevant special unit.

In the sphere of combating organized crime, the Chief Department Against Corruption and Organized Crime of the Ukrainian Security Service also cooperates with the National Bank of Ukraine, the Ukrainian Finance Ministry, the Ukrainian Ministry for Foreign Economic Relations, the Ukrainian State Customs Committee, the Ukrainian State Property Management Fund, the Ukrainian Antimonopoly Committee, the State Committee for Protection of the Ukrainian State Border, and other ministries and agencies.

The financing and logistic support of the struggle against organized crime is a priority covered by the State Budget. The amounts of resources, including hard currency, necessary for these purposes are determined annually by the Supreme Council of Ukraine during the approval of the budget in accordance with the national program of struggle against crime. The structure, staff numbers, and labour remuneration fund of workers of special units of the Ukrainian Security Service are approved by their heads within the limits of allocations coordinated with the Supreme Council of Ukraine for matters of struggle against organized crime and corruption.

Specialized professional training of officers of the special units is carried out at the National Academy of the Ukrainian Security Service, the Ukrainian National Academy of the Interior, as well as other educational institutions at all levels of accreditation, and at advanced training courses.

Note. The following data attest to the participation of law-enforcement bodies in detecting corruption-related crimes. In the period of 2000-2003, a total of 4491 criminal cases were referred to courts, including 4 400 criminal cases by public prosecution bodies, 47 criminal cases by the interior bodies, and 43 criminal cases by bodies of the Security Service. Such state of affairs is connected, above all, with the fact that pre-trial investigation of corruptive offences is generally the jurisdiction of the public prosecution offices.

Special Investigation Departments or Public Prosecutors Whose Main Function Consists in Investigating Corruption-Related Cases

The Ukrainian law on criminal proceedings does not envisage special rules of investigation or criminal persecution for corruptive offence as there is no legislation on such offences.

Law-enforcement bodies investigate and solve the crimes that can be qualified as corruption on the basis of general regulations. The investigation of these crimes generally constitutes the jurisdiction of investigators of the prosecutor's offices.

This is why anti-corruption units were not created within the system of pre-trial investigation of the interior bodies and there were only isolated facts of investigation of such offences by investigators of the interior bodies. As a rule, the investigation of such cases was assigned to investigators who have experience of investigating economic crimes.

Ukrainian law envisages the possibility of setting up interdepartmental groups for investigating individual cases. In particular, Article 119 of the Ukrainian Code of Criminal Proceedings stipulates that a criminal investigation may be assigned to several investigators, one of which shall be appointed senior.

At the same time, there is a practice of setting up interdepartmental and interregional operative investigative groups for investigating the most complicated and large criminal cases, including crimes that can be qualified as acts of corruption. Such groups are being set up on ruling of the relevant prosecutor.

To supervise the observance of the law by special units for fighting organized crime, investigating relevant criminal cases, and supporting public prosecution in such cases in court under Article 26 of the Ukrainian Law "On Organizational and Legal Basis of the Struggle against Organized Crime,"

relevant supervisory departments have been set up at the Ukrainian Prosecutor General's Office.

In addition, Ukrainian Prosecutor General's Decree No.4/3 of 28 October 2002 "On Organization of Prosecutor's Supervision of Observance of Laws on the Struggle against Corruption" has assigned to public prosecutors the duty of personal participation in legal consideration of administrative materials on corruption.

Investigation and Enforcement

Distribution of Powers

The grounds for and procedures of administrative proceedings on cases involving corruptive actions or other violations connected with corruption are defined by Article 12 of the Ukrainian Law "On Struggle Against Corruption," which stipulates that the order of administrative proceedings on cases involving corruptive actions or other violations connected with corruption, as well as the enforcement of decisions on the imposition of administrative penalties shall be regulated by the Ukrainian Code of Administrative Offence, with the exception of cases stipulated by this Law.

Criminal proceedings on the territory of Ukraine shall be conducted in accordance with the Ukrainian Code of Criminal Proceedings, regardless of the place of commitment of the crime.

The bodies which, in keeping with this Code, shall initiate criminal proceedings in each case of uncovering elements of crime and take all the legally envisaged measures to establish the fact of the crime and persons guilty of committing it, include the court, the prosecutor, the investigators, and the agency of inquiry.

The agencies of inquiry are: militia, tax police, security bodies, military unit commanders, heads of military institutions, customs authorities, heads of corrective labour institutions, investigative isolation ward, medical labour and corrective labour preventive wards, bodies of the state fire safety inspection, bodies of the state border protection, captains of sea vessels in voyage.

The agencies of inquiry are responsible for adopting the necessary operative investigation measures for purposes of uncovering the elements of crime and the persons guilty of committing them.

If there are indications of a crime, which is not grave, the agency of inquiry shall initiate criminal proceedings and conduct investigative actions to identify the person guilty of committing it, guided by the rules of the law on criminal proceedings.

To detect and investigate corruption-related crimes, bodies and units enjoy the rights and carry out measures envisaged by the legislation of Ukraine, specifically, Article 8 of the Ukrainian Law "On Operative Investigative Activity" (No.2135-XII of 18 February 1992) and articles 13, 14, and 15 of the Law of Ukraine "On Organizational and Legal Basis of the Struggle against Organized Crime" (No.3341-XII of 30 June 1993).

Inquiry in cases of crimes, which are not grave or particularly grave, shall be conducted within a period not exceeding ten days from the moment of identifying the person guilty of committing it. If such person is not identified, the inquiry shall be suspended.

In cases of grave and particularly grave crimes inquiry shall be conducted within a period not exceeding ten days of the moment of initiating proceedings. In the event of appointing a measure of restrains with respect of the suspect, the inquiry shall be conducted within a period not exceeding five days of the moment of appointing the measure of restraint.

Inquiry in the case shall terminate with the issuance of an order to refer the case for a pre-trial investigation, which shall be approved by the prosecutor.

Pre-trial investigation agencies include: investigators of the prosecutor's office, interior bodies, tax police and security bodies.

Distribution of Authorities

Article 12 of the Ukrainian Code of Criminal Proceedings regulates the types of crime subject to the jurisdiction of investigators of the prosecutor's office, bodies of the interior, the Ukrainian Security Service, tax police, or alternative jurisdiction.

It is stipulated, in particular, that the pre-trial investigation of all cases of crimes committed by officials occupying particularly important positions (as per the Ukrainian Law "On civil Service") and persons whose positions are referred to categories 1 – 3, as well as workers of law-enforcement bodies, shall be conducted by investigators of the prosecutor's office. In cases stipulated by law criminal cases of crimes committed by such persons and workers of law-

enforcement bodies shall also be investigated by investigators of the Ukrainian Security Service.

Disputed matters of investigative jurisdiction of criminal cases shall be settled by the prosecutor's office.

The grounds for initiating a criminal case are defined by Article 94 of the Ukrainian Code of Arbitration Proceedings. They include:

- an application or notice filed by enterprises, institutions, organizations, officials, representatives of the authorities, the public or individual citizens;
- report from representatives of the authorities, the public or individual citizens who have detained a suspect at the scene of the crime or red-handed;
- giving in;
- information in the press;
- uncovering the elements of a crime by an agency of inquiry, investigator, or the prosecutor.

A case shall be initiated only if there is sufficient evidence of a crime.

The prosecutor, investigator, agency of inquiry or judge are obliged to accept the applications and reports about committed or planned crimes, including on cases beyond their jurisdiction. They shall initiate criminal proceedings, refuse from initiating a case on the application or report of a crime or refer the application of report according to investigative jurisdiction within a term not later than three days.

If the application or report of a crime requires pre-trial verification, such verification shall be conducted by the prosecutor, the investigator or the agency of inquiry within a term not longer than ten days.

Applications of reports of crimes are verified before initiating criminal proceedings by conducting operative investigative activities.

In the event of complaints against a decision of the prosecutor, investigator or agency of inquiry to refuse from initiating criminal proceedings, it shall be considered by a judge who either cancels the decision to refuse from initiating a case and refers the materials for additional inspection or dismisses the complaint.

In the event of existence of legally envisaged grounds and motives, a prosecutor, investigator, agency of inquiry or judge shall issue a determination to initiate criminal proceedings, indicating the grounds and motives for its initiation, the Article of the criminal law on the indications of which the case is initiated, as well as its further reference.

Following the initiation of a criminal case: (1) the prosecutor shall refer the case for pre-trial investigation or inquiry; (2) the investigator shall commence pre-trial investigation, and the agency of inquiry shall commence an inquiry; (3) the court shall appoint a hearing of a criminal case on which no pre-trial investigation or inquiry is conducted.

The lawfulness of initiating a criminal case shall be supervised by public prosecutor. The investigator and the agency of inquiry shall present him with a copy of the determination to initiate proceedings or refuse from initiating a case within twenty-four hours.

If a case has been initiated without legal grounds, the prosecutor shall terminate it, and if investigation of the case has not been conducted, the prosecutor shall cancel the determination on initiating proceedings.

In the course of pre-trial investigation, the investigator shall personally make all decisions to conduct investigative activities, except cases when the law envisages the issuance of consent of the court (judge) or the prosecutor, and shall be fully responsible for their legal and timely performance.

In the event of disagreement of the investigator with the prosecutor's decisions concerning the calling of an accused person to account, the qualification of a crime, the volume of accusations, referring a case to court or closing a case, the investigator shall be entitled to send the case up with written presentation of his (her) objections. In this case, the superior prosecutor shall either cancel the decisions of the subordinate prosecutor or assign the case to another investigator.

An investigator of cases under proceeding has a right to issue orders and instructions to agencies of inquiry to conduct search and investigative jobs and demand assistance of agencies of inquiry in conducting specific investigative actions. These orders and instructions of the investigator shall be obligatory for bodies of inquiry.

In cases where pre-trial investigation is obligatory the investigator shall have the right to launch pre-trial investigation at any moment.

The investigator's decisions issued in accordance with the law on the criminal case under proceeding shall be obligatory for all enterprises, institutions, organizations, officials, and citizens.

The head of the investigation unit shall supervise the timeliness of investigators' activities aimed at solving and preventing crime, adopt measures for a most thorough, comprehensive, and unbiased pre-trial investigation of criminal cases. He (she) shall have the right to inspect criminal cases, issue instructions to the investigator in charge of the pre-trial investigation concerning the calling of an accused person to account, the qualification and volumes of accusation, conducting certain investigative actions, referring a case from one investigator to another, assign the investigation of a case to several investigators, and participate in pre-trial investigation and personally conduct pre-trial investigation, using the authority of an investigator.

His (her) instructions in a criminal case shall be issued to a prosecutor in writing and shall be obligatory. The contesting of these instructions shall not suspend their implementation.

The observance of laws by agencies conducting operative investigative activities, inquiry and pre-trial investigation shall be supervised by the Ukrainian Prosecutor General and subordinate public prosecutors. The prosecutor shall take timely legally established actions aimed at eliminating any breech of the law on all stages of criminal proceedings, no matter whom they may be coming from. The prosecutor shall exercise his (her) responsibilities in the sphere of criminal proceedings independently from the other authorities and officials, guided only by law and instructions of the Ukrainian Prosecutor General. The prosecutor's decisions issued on the basis with law shall be obligatory for all enterprises, institutions, organizations, officials, and citizens.

Pre-trial investigation shall be conducted within a two-month period. In cases envisaged by law this term may be extended by relevant prosecutors to three and six months. Further extension of the investigation period is only possible in exceptional cases by the Ukrainian Prosecutor General or his (her) deputies.

Pre-trial investigation of a criminal case shall be terminated if:

- the location of the accused is unknown;
- if a mental or other grave disease of the accused prevents the completion of the investigation of the case;
- if the person who has committed the crime is not identified.

The following measures of restraint shall be applied to suspects, the accused, defendants, and convicts: recognizance not to leave, personal parole, parole of a public organization or work collective, bail, detention, military unit command superintendence.

The measure of restraint in the form of detention shall be applied only with a motivated ruling of the judge or the court. Other preventive measures shall be applied on decision of the agency of inquiry, the investigator, prosecutor, judge, or by a court order.

The term of detention shall not exceed two months. In cases envisaged by the Ukrainian Code of Criminal Proceedings this term may be extended by the judge who had chosen this particular measure of restraint for up to four months, by a judge of the court of appeals – to nine months, and a judge of the Supreme Court of Ukraine – to 18 months.

Pre-trial investigation shall end with the issuance of an accusation, a decision to close the case or a determination to refer the case to court for deciding the issue of applying forced measures of medical nature.

A decision of the inquiring agency, the investigator or the prosecutor to terminate criminal proceedings may be contested in court by a person whose interests it affects.

Having considered the complaint, the judge shall dismiss it or cancel the determination to close the case and refer it to the public prosecutor for resuming the investigation.

The prosecutor shall supervise the observance of law by agencies of inquiry and pre-trial investigation.

Pre-trial examination of a case shall be conducted by the judge personally with obligatory participation of the public prosecutor.

As a result of pre-trial examination of the case, the judge shall rule to adopt one of the following decisions: (1) to appoint a court hearing of the case; (2) to suspend proceedings on the case; (3) to return the case to the prosecutor; (4) to refer the case according to its investigative jurisdiction; (5) to terminate proceedings on the case; (6) to refer the case for additional investigation.

The prosecutor's participation in court hearings is obligatory. The prosecutor shall represent official prosecution in court, present evidence, participate in the examination of the evidence, present appeals and state its

opinion concerning the appeals of other participants in the hearings, and state its opinion concerning the application of criminal law and the measure of punishment with respect to the defendant.

As a result of court hearings, the court shall issue a verdict of guilty or not guilty. The verdict of the court of the first instance may be contested in a court of appeals or the cassation court.

Mandatory and Discretionary Investigation

In accordance with Article 4 of the Ukrainian Code of Criminal Proceedings, the public prosecutor, investigator, and inquiring authority shall initiate criminal proceedings within the frames of their competence in every case of uncovering indications of a crime and take all legally envisaged measures for establishing the fact of the crime and identifying persons guilty of committing the crime, and their punishment.

The grounds for and order of terminating criminal proceedings is defined by the Ukrainian Criminal Code and the Code of Criminal Proceedings.

A criminal case shall be terminated on non-exonerative grounds only by a court order and with the prosecutor's consent.

In the event of terminating proceedings on exonerative grounds (for absence of a criminal act or a crime in the act), the decision taken shall be obligatorily conveyed to the victim and the prosecutor, along with the presentation of the relevant documents on the case, who shall be granted respective rights to contest or cancel it.

In addition, decisions to terminate criminal proceedings on exonerative grounds shall obligatorily be verified in the process of departmental and procedural control. If it is established that a criminal case was terminated illegally or without grounds, the investigation may be resumed both on decision of the prosecutor and the judge, and by order of the investigation department head.

In accordance with Article 49 of the Ukrainian Code of Criminal Proceedings, a victim of a crime, including corruption, shall be entitled to file complaints against the actions of persons conducting the inquiry, the investigator, prosecutor, and the court, and contest a verdict or ruling of the court.

In accordance with Article 112 of the Ukrainian Code of Criminal Proceedings, pre-trial investigation of criminal cases that can be qualified as corruption is generally conducted by investigators of the public prosecution bodies.

However, in order to step up the investigation of criminal cases of this category, the Supreme Council of Ukraine has adopted the Ukrainian Law "On Introduction of Amendments to the Ukrainian Code of Criminal Proceedings" of 11 July 2003, according to which pre-trial investigation of criminal cases that can be qualified as corruption may be conducted by investigators of the Ukrainian Security Service if such crimes are detected in the process of investigation of cases of disclosure of state secret, loss of documents containing state secret, communication or gathering of data containing confidential information or constituting state property.

The same Law stipulates that investigation of the aforementioned criminal cases may also be conducted by investigative bodies of the interior, specifically – in cases of property appropriation by officials by office abuse (except cases against civil servants occupying the position of the 1 – 3 category by the Ukrainian Law "On Civil Service"), and on cases of other corruptive offence if they have been uncovered in the course of investigation of a criminal case of embezzlement.

Investigators of the tax police may also conduct an investigation of criminal cases of this category in the event of uncovering the said crimes during the investigation of crimes within their jurisdiction (tax evasion, etc.).

Effective law on criminal proceedings does not envisage specifics in investigating corruptive crimes, therefore pre-trial investigation of such cases shall be conducted on general terms.

Investigative Capacities

In connection with particular danger of corruptive offence for the state, their detection and documenting is assigned to all law-enforcement bodies (the Ukrainian Security Service, the Interior Ministry, the Public Prosecutor's Office, and the Tax Police).

Ukrainian law allows conducting overt and covert search with the use of operative and technological devices that can be qualified as special investigative methods, for purposes of detecting and registering factual data on illegal actions of individuals and groups, the responsibility for which is envisaged by the Ukrainian Criminal Code.

Bodies authorized to conduct operative investigation within the frames of their powers and in keeping with the Law of Ukraine "On Operative Investigative Activity," which constitutes the legal framework of operative investigative activity, conduct the necessary operative investigations for preventing, timely detecting, terminating and exposing crimes.

Operative units of law-enforcement bodies have a right to make controlling and operative purchases, supplies of objects and substances, including those prohibited for circulation, to natural and legal persons, regardless of their form of ownership, for purposes of detecting and registering the facts of illegal actions.

They are authorized to secretly detect and register the evidence of grave crimes, receive investigative information, including by access of operative officers to premises, territory and transport facilities, and infiltrating criminal groups by undercover operative officers or persons cooperating with operative units.

They are allowed, in the manner prescribed by law, to acquire information from communication channels, use other technical means of obtaining information, control telegraph and postal correspondence by selection on the basis of certain indications, conduct visual monitoring in public places with the use of photo, cine, and video recording, optic and radio devices, other technical appliances. The units are empowered to have undercover regular and free-lance workers, establish confidential cooperation with persons on voluntary terms, and receive information on committed or preparing crimes from legal and natural persons free of charge or for remuneration.

In the process of inquiry both on corruptive and other crimes, special units for fighting corruption and organized crime in keeping with the Ukrainian Law "On the Organizational and Legal Basis of the Struggle Against Organized Crime," shall have a right to issue written demands of information and documents on transactions, accounts, contributions, external and internal agreements of individuals and legal entities from banks and other financial institutions (Article 12, part 2 (d) of the Law). They shall also have a right to arrest monetary funds, seal premises, confiscate documents, etc. on the basis of a public prosecutor's warrant (Article 12, part 2 (d) of the Law).

In the process of conducting pre-trial investigation of a corruptive or any other criminal case, in order to ensure a thorough, comprehensive and unbiased criminal investigation, the investigator shall have the right to receive reference information concerning transactions and accounts of legal entities, natural persons and other organizations on the basis of Article 66 of the Ukrainian Code

of Criminal Proceedings and Article 62 of the Ukrainian Law "On Banks and Banking." A request for such reference materials shall be signed by the head of a relevant unit.

The disclosure of the contents of banking, financial or commercial files on the initiative of law-enforcement bodies is possible both on the stage of pre-investigative verification and in the process of investigation of criminal cases.

The issue of bank secret is regulated by Chapter 10 of the Ukrainian Law "On Banks and Banking" of 7 December 2000.

According to Article 60 of this Law, banking secret is defined as information concerning the activity and financial condition of a client, which has become known to the bank in the process of servicing of this client and maintaining relationships with it or third parties or in the process of rendering banking services, and the disclosure of which may inflict material or moral damage on the client.

In keeping with the order of disclosing information constituting banking secret, determined by Article 62 of the aforementioned Law, information on legal entities and natural persons containing banking secret shall be disclosed by banks:

- on written request or upon written permit of the owner of such information;
- upon written demand of the court or by a court order;
- to bodies of the Ukrainian Public Prosecutor's Office, the Ukrainian Security Service, the Ukrainian Ministry of the Interior – on their written demand concerning the transactions with accounts of a concrete legal entity or individual entrepreneur for a concrete time interval;
- to bodies of the Ukrainian State Tax Administration upon their written request on matters of taxation or currency control with respect to transactions with accounts of a concrete legal entity or individual entrepreneur for a concrete time interval;
- to a specially authorized body of executive power on maters of financial monitoring upon its written demand with respect to financial transactions subject to monitoring under the law on prevention and resistance to legalization (laundering) of crime proceeds;

- to bodies of state executive authority on their written request on matters of enforcement of court decisions with respect to the status of accounts of a concrete legal entity of individual entrepreneur.

The investigator shall also have the right to confiscate documents containing banking and even state secret on a warrant issued by the public prosecutor. The confiscation of all other documents relevant to the case shall be made upon motivated order of the investigator (Articles 178, 183, 188 of the Ukrainian Code of Criminal Proceedings). When necessary, the investigator may also search premises or any other site, and conduct personal search. The search of premises and other sites, except housing and other property of a person, shall be conducted on the investigator's order with the prosecutor's sanction.

Persons participating in criminal proceedings include, among others, officers of law-enforcement bodies, judges, witnesses, and other persons in any way connected with the investigation of the case.

The protection of sensitive "objects" within the frames of investigation and examination of cases of both corruptive and other crime in Ukraine is exercised on the basis of Ukrainian laws "On Protection of Persons Participating in Criminal Proceedings," "On Government Protection of Workers of Courts and Law-Enforcement Bodies" and the relevant provisions of the Ukrainian Code of Criminal Proceedings.

The Ukrainian Law "On Government Protection of Workers of Courts and Law-Enforcement Bodies" stipulates the reasons, grounds, and measures ensuring protection of workers of law-enforcement bodies, courts, the Ukrainian Antimonopoly Committee and their close relatives.

In accordance with Article 2 of the Ukrainian Law "On Protection of Persons Participating in Criminal Proceedings," witnesses, as well as other participants in criminal proceedings (victims, civil claimants, etc.) shall have a right to protection. Measures for protection of witnesses and other persons shall be taken on the basis of evidence of a real danger to their health, integrity of their home and property.

Security measures envisaged by the Ukrainian Law "On Protection of Persons Participating in Criminal Proceedings" and relevant provisions of the Ukrainian law on criminal proceedings can also be applied to suspects, accused persons or defendants.

Effective law of Ukraine envisages the following "privileges" to suspects who agree to cooperate during pre-trial investigation and consideration of the case in court.

Article 14 of the Ukrainian Law "On the Organizational and Legal Basis of the Struggle Against Organized Crime" stipulates full or partial release from criminal responsibility and punishment of a member of an organized criminal group who in the process of operative investigative activity, pre-trial investigation or court hearings of the case renders support in exposing organized criminal groups and their crimes, calling the guilty persons to account, compensation for damage inflicted on natural persons and legal entities, as well as the state.

In addition, in keeping with Article 255 (part 2) of the Ukrainian Criminal Code, a person shall be relieved from criminal responsibility (with the exception of organizers or leaders of criminal organizations) if he (she) has voluntarily informed about the creation of the criminal organization or participation in it and rendered active support to the investigation.

Article 369 (part 3) of the Ukrainian Criminal Code also envisages the release of a person from criminal responsibility for offering a bribe if there has been extortion with his (her) respect, or he (she) has voluntarily reported after the offering of the bribe about what happened to bodies legally authorized to initiate criminal proceedings before such proceedings have been initiated.

According to Article 66 (part 1(1) of the Ukrainian Criminal Code, earnest repentance or active support to the investigation shall be a mitigating factor taken into consideration during the determination of punishment.

Measures envisaged by Articles 51-1 "Protection of Persons Participating in Criminal Proceedings," 52-2 "Rights and Duties of Persons to whom Security Measures are Applied," 52-5 "Appealing against Decisions on Refusal to Apply Security Measurers or their Cancellation," 69-1 "Witness' Rights" of the Ukrainian Code of Criminal Proceedings shall be applied in practice, when necessary.

The inadmissibility of disclosure of the data of pre-trial investigation (confidentiality) in Ukraine is stipulated by Article 121 of the Ukrainian Code of Administrative Proceedings, according to which data of pre-trial investigation may be disclosed with a permit of the investigator or the prosecutor in the volumes they find it possible. When necessary, the investigator may warn the persons participating in criminal proceedings of the duty not to disclose the data of the pre-trial investigation, as well as the criminal

responsibility for disclosing the data of pre-trial investigation in accordance with Article 387 of the Ukrainian Criminal Code.

Organised Crime and Corruption

Crime and corruption are inseparably connected with each other, nourish and support each other. Corruption together with economic crime is becoming an increasingly powerful means of redistribution of property, including criminal proceeds. At a certain stage in its development it acquires the forms of organized crime, and corrupt organized criminal formations are being created. The development of highly organized criminal forms is proceeding against the background of development of more complicated hierarchic structures and merger of governmental and criminal entities. One of the main conditions of viability of highly organized forms of crime is the establishment of corrupt relationships.

One of the main areas of struggle against organized crime determined by the Ukrainian Law "On Organizational and Legal Basis for Fighting Organized Crime" is the prevention of corrupt relationships with civil servants and officials, their involvement in criminal activities.

In keeping with Article 28 (part 4) of the Ukrainian Criminal Code, a crime shall be considered committed by a criminal organization if it has been committed by a stable hierarchic association of several persons (three and more) the members of structure units of which were organizing on preliminary collusion to engage in common activity for the purpose of committing grave or particularly grave crimes by participants in this organization, or for guidance, coordination of criminal activities of other persons, and ensuring the functioning of both this criminal organization and other criminal groups.

The legal basis for the organization of struggle against organized crime is defined by the Ukrainian Criminal Code fixing the qualifying elements – commitment of crime by an organized group or a criminal organization:

- resisting organized crime in the sphere of business (Articles 199, part 3; 206, part 3; 210, part 2);
- resisting organized crime in the sphere of service (Articles 364; 365; 366; 368; 369; 370);
- resisting crime commitment against property by members of organized groups and criminal organizations (Articles 185, part 5; 186, part 5; 188, part 3; 189, part 3; 190, part 4; 191, part 5);

- resisting the legalization (laundering) of crime money and other property (Articles 209; 205; 207; 208; 212; 222; part 2);
- resisting international and foreign economic organized crime (Articles 311; 332; 149, part 3; 201; 208; 209).

Note. A total of 655 organized groups and criminal organizations have been detected in the country in 2003, including 459 groups of general criminal nature, and 196 economic criminal groups. As a result of adopted measures, the activity of 23 criminal groups was terminated, 27 organized groups with corrupt relationships were detected. A total of 118 persons were brought to criminal responsibility on results of investigated criminal cases versus organized groups with corrupt relationships, including 8 persons in bodies of authority and administration.

International Cooperation in Fighting Crime, Including Organized Crime and Corruption

The Ukrainian Interior Ministry pays special attention to developing cooperation with law-enforcement bodies of other countries on the basis of bilateral agreements. During the years of independence, the Ukrainian Interior Ministry has developed a broad legal framework and presently is a party or participant to 162 international agreements and protocols with over 40 countries in the sphere of legal assistance in criminal cases, fighting corruption, international cooperation, and other issues connected with the activity of the interior bodies.

In pursuance of the national policy of deepening international cooperation in fighting organized crime, the Chief Department for Fighting Organized Crime of the Ukrainian Interior Ministry cooperated, within the frames of its competence, with the North Atlantic Treaty Organization (NATO), the European Union (EU), the West European Union (WEU), the Central European Initiative (CEI), the South-East European Initiative (SEEI – as an observer), the Euro-Atlantic Partnership Council (EAPC), the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CE), the Black Sea Economic Cooperation (BSEC), GUUAM, etc.

The Ukrainian Interior Ministry participates in the work of relevant commissions and committees, and in the implementation of joint projects (UN, EU, Council of Europe, etc.):

- the OCTOPUS programme; the TACIS programme;

- the joint programme of reforming law-enforcement bodies "Ukraine-5";
- the project of a group of countries against corruption, GRECO;
- the Pompidou Group project – the struggle against drug circulation;
- the BUMAD programme – the programme of assistance in preventing drug trafficking and abuse in Belarus, Ukraine, and Moldova.

Close cooperation is established with international law-enforcement organizations – the Interpol, the Egmont Group of Financial Intelligence units, the Financial Action Task Force on Money Laundering (FATF), the Regional Centre for Combating Transborder Crime, the Southeast European Cooperation Initiative (Bucharest, Rumania).

Work is underway within the frames of cooperation with Interpol General Secretariat on the projects "Millennium "(East-European crime) and "Bridge" (illegal migration) launched by the unit for fighting organized crime and analytical investigation department in the initiative if Interpol member countries.

Cooperation is established with European public organizations" Europe-2000, the Hanns Seidel Stiftung, the Marshall Centre, the International Organization for Migration (IOM), and others.

The institution of the Interior Ministry representatives at Ukrainian embassies in the State of Israel, the Federal Republic of Germany, the Russian Federation, the Republic of Poland, Turkey, Hungary, and Rumania. Effective cooperation is also maintained with communication officers working in Ukraine at the embassies of the State of Israel, the Federal Republic of Germany, Slovakia, the United States, and Hungary.

In addition, cooperation is also maintained with law-enforcement bodies of foreign countries on the basis of direct ties with units for fighting organized crime in Austria, Bulgaria, Great Britain, Greece, Italy, Spain, Macedonia, the Netherlands, Germany, Norway, Poland, Rumania, Slovakia, Turkey, France, Hungary, the Czech Republic, Switzerland, the Benelux, CIS, and Baltic countries.

With the help of close international connections, in 2003 the units of the Interior Ministry have terminated the activity of 32 organized international criminal groups, including 12 operating in the sphere of foreign economic activity, and 19 groups formed on ethnic basis.

Within the frames of international cooperation in the sphere of struggle against crime, Ukraine has signed cooperation agreements with all special services of CIS member states, as well as nine law-enforcement agencies of Asian and East European nations. In the process of implementing the current intergovernmental and interdepartmental agreements, working meetings are held with representatives of the US FBI, the State Security Department of the Lithuanian Republic, UK SIS, RF FSB, KGB of the Republic of Belarus, Portugal SIC, Information Protection Department of Rumania, FGR BKA, the State Security Service of the Republic OF Serbia, France's DST, and others, to discuss issues of implementing common measures to struggle against corruption, the international drug business, smuggling, illegal migration and man trafficking.

International Aspects

According to the Ukrainian Law "On Ukrainian Legal Succession" of 1991 and the 1978 Vienna Convention on Succession of States in Respect of Treaties, bilateral international agreements shall be applied on the territory of Ukraine in the sphere of legal assistance of the former Soviet Union with Bulgaria, Cyprus, Finland, Greece, Hungary, Italy, Rumania, Vietnam, Yemen, and Yugoslavia. There are no objections today concerning the application of similar treaties with Albania, Algeria, DPRK, Iraq, and Tunisia.

At the same time, Ukraine does not apply the provisions envisaging differences in legalization of documents in agreements with Cyprus, Finland, Greece, Italy, Iraq, Tunisia, Vietnam, and Yemen.

Ukraine's succession to the following international agreements was confirmed by exchange of notes:

- the agreement between the USSR and the Hungarian People's Republic on legal assistance in civil, family and criminal cases (1958);
- the agreement between the USSR and Austria on civil proceedings (1970);
- the agreement between the USSR and Finland on legal protection and legal assistance in civil, family and criminal cases (1978);
- the agreement between the USSR and Algeria on mutual legal assistance (1982);
- the agreement between the USSR and the Republic of Cyprus on legal assistance in civil and criminal cases (1984).

The issue of granting legal assistance between CIS member states is regulated by the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed on 22 January 1993 in Minsk (enforced by the Republic of Belarus on 19 May 1994; the Republic of Uzbekistan on 19 May 1994; the Republic of Kazakhstan on 19 May 1994; the Russian Federation on 10 December 1994; the Republic of Tajikistan on 20 December 1994; the Republic of Armenia on 21 December 1994; Ukraine on 14 April 1995; the Kyrgyz Republic on 17 December 1996; the Republic of Moldova on 26 March 1996; the Republic of Azerbaijan on 11 July 1996; Georgia on 11 July1996; Turkmenistan on 19 February 1998.

Ukraine has ratified the Protocol to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 22 January 1993, which gained legal force on 17 September 1999.

Presently, a new edition of the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases has been prepared and signed in the city of Kishinev on 7 October 2002.

In addition, Ukraine is a successor to the 1954 Hague Convention on Civil Procedure.

Today the parties to this convention include: Argentina, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Egypt, Finland, Macedonia, France, Germany, Hungary, Israel, Italy, Japan, Kyrgyzstan, Latvia, Lebanon, Luxembourg, Moldova, Morocco, the Netherlands, Nigeria, Norway, Poland, Portugal, Rumania, Russia, Slovakia, Slovenia, Spain, Surinam, Sweden, Switzerland, Turkey, Ukraine, Uzbekistan, and the Vatican.

During 2000-2003, the Supreme Council of Ukraine has approved the Ukrainian laws on joining international legal documents: “On Ukraine’s Joining the Convention on Taking the Evidence Abroad on Civil and Commercial Matters” (1970), “On Ukraine’s Joining the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters” and “On Ukraine’s Joining the Convention that evokes the Requirement of Legalization of Foreign Official Documents” (1961).

Bilateral international agreements on legal assistance have gained legal force on the territory of Ukraine with Canada, the Chinese People’s Republic, the Czech Republic, Estonia, Georgia, Hungary, India, Latvia, Lithuania, Macedonia, Moldova, Mongolia, Poland, Turkey, the United Kingdom, the United States, and Vietnam. Bilateral agreements were signed by Ukraine with

Brazil, Cuba, the Democratic People's Republic of Korea, Greece, Hong Kong, and Rumania, but have not gained legal force yet.

Ukraine has also signed bilateral international agreements, which entered into force, on the transfer or sentenced persons and extradition with Azerbaijan, China, Georgia, Kazakhstan, and Uzbekistan.

On a multilateral level Ukraine has joined the following conventions of the Council of Europe on matters of criminal procedures: the 1983 Convention on the Transfer of Sentenced Persons, the Protocol to the 1983 Convention on the Transfer of Sentenced Persons, the 1972 European Convention on the Transfer of Proceedings in Criminal Matters, the 1964 European Convention on the Supervision of Conditionally Sentenced Conditionally Released Offenders.

In addition, Ukraine has also signed the following European conventions and protocols to them: the 1990 Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, the 1957 Convention on Extradition and two protocols to it; the 1959 European Convention on Mutual Assistance in Criminal Matters and two protocols to it; the European Convention on Fighting Terrorism, the European Convention on the International Validity of Criminal Judgments (1970).

In accordance with the 1959 European Convention on Mutual Assistance in Criminal Matters, both parties oblige to render each other the maximum possible assistance in criminal persecution of offenders, the punishment of which at the moment of request for assistance falls under the jurisdiction of judicial authorities of the requesting Party, in particular: in order to ensure the testimony or the transfer of objects constituting material evidence, materials of a legal case or documents. This Convention shall not be applied to arrest, enforcement of sentences or crimes regulated by military law, which do not constitute offence in accordance with criminal law, i.e., there are no restrictions regarding the rendering of legal assistance in cases of corruption.

In the event of non-criminal proceedings with respect to legal entities, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall be applied.

The procedure for extradition of a person accused of a crime and a sentenced person is regulated in national legislation by Article 10 of the Criminal Code of Ukraine.

Citizens of Ukraine and persons without citizenship permanently residing in Ukraine, who have committed crimes outside the Ukrainian borders, shall not

be extradited to a foreign state to be called to criminal responsibility and brought to trial. Foreigners who have committed offence on the territory of Ukraine and condemned for it on the basis of this Code, may be extradited for serving penalty for the committed crime to the country whose citizens they are, if such extradition is envisaged by Ukraine's international treaties. Citizens of Ukraine and persons without citizenship who do not permanently reside in Ukraine, who have committed crimes outside Ukraine but are present on its territory, can be extradited to a foreign state to be called to criminal responsibility and brought to trial and sentenced, if such extradition and transfer are envisaged by Ukraine's international treaties.

There are no special restrictions concerning the extradition for corruptive offence, therefore general rules are applied.

Ukraine has no special legal provisions setting the order of mutual legal assistance if there is no international treaty. However, such provisions are included in the draft Code of Criminal Proceedings, considered by the Supreme Council of Ukraine. At the same time, in the absence of a treaty Ukraine may apply such principle of international law as the principle of reciprocity in implementing procedural actions, which do not contradict Ukrainian national law.

Therefore, Ukraine is a party to many bilateral international agreements on the legal frameworks of criminal and civil cases, including the treaties on the extradition of criminals and the extradition of persons sentenced to imprisonment, for serving the sentence. A particularly huge amount of work is conducted on the implementation of the said bilateral and multilateral international agreements, specifically, with Russia, Poland, Hungary, Germany, the Czech Republic, Azerbaijan, Georgia, Uzbekistan, and Moldova.

Starting 1998, the Ukrainian Justice Ministry has considered the following applications:

	1998	1999	2000	2001	2002	2003
On the extradition of criminals	2	7	60	248	221	351
On the extradition of convicts	39	105	86	110	62	51
on assistance in criminal cases	70	173	289	152	386	586
on relegation of criminal cases		2	5	32	20	9
on search and confiscation of property			8	0	0	2

Annex 1

STATISTIC INFORMATION FOR 2001-2003* ON CONSIDERATION OF CASES OF ADMINISTRATIVE OFFENCES IN COMPLIANCE WITH THE LAW OF UKRAINE "ON STRUGGLE AGAINST CORRUPTION"

№	Category	2001	2002	2003
1.	Total number of cases referred to court during the year	8692	6983	5686
2.	Cases considered resulting in the issuance of decisions	7934	6466	5070
3.	Number of persons against which proceedings have been closed	4835	3385	2048
	including: with their reference to the prosecutor, a pre-trial investigation authority or body of inquiry in connection with the expiration of the term of imposing liability	183 694	39 543	58 243
4.	Number of persons subjected to civil responsibility – fine	3123	3093	3033
5.	Sum of fine imposed (thou. UAH)	939	877	866
	Article 7 of the Law (responsibility for corruptive actions)			
	Cases filed to court	2468	1746	1443
	Cases considered resulting in the issuance of decisions	2221	1610	1304
	Number of persons subjected to fines by court decisions	873	760	776
	Number of persons against whom cases have been closed	1359	850	532
	Article 8 of the Law (responsibility for the violation of special requirements to persons authorized to fulfil governmental functions)			
	Cases filed to court	5276	4705	3977
	Cases considered resulting in the issuance of decisions	4818	4341	3539
	Number of persons subjected to fines by court decisions	2080	2171	2159
	Number of persons against whom cases have been closed	2751	2182	1387

№	Category	2001	2002	2003
	Article 9 of the Law (responsibility for the violation of financial control requirements)			
	Cases filed to court	891	509	257
	Cases considered resulting in the issuance of decisions	840	497	219
	Number of persons subjected to fines by court decisions	160	152	95
	Number of persons against whom cases have been closed	680	345	124
	Article 10 of the Law (responsibility of senior officials for non-adoption of anti-corruption measures)			
	Cases filed to court	30	21	9
	Cases considered resulting in the issuance of decisions	30	16	8
	Number of persons subjected to fines by court decisions	8	8	3
	Number of persons against whom cases have been closed	22	8	5
	Article 11 of the Law (responsibility for intentional non-fulfilment of their duties to fight corruption)			
	Cases filed to court	27	2	0
	Cases considered resulting in the issuance of decisions	25	2	0
	Number of persons subjected to fines by court decisions	2	2	0
	Number of persons against whom cases have been closed	23	0	0
	Subjects of corruptive actions (number of persons brought to account)			
	Public servants	1826	1769	1746
	Village, township, municipal headmen and chairmen of district and regional council	705	840	779
	Workers of the Ukrainian Interior Ministry	192	103	78
	Deputies of village, township, municipal, district and regional councils	33	23	22
	Workers of the Ukrainian Security Service	8	4	1
	Military personnel	268	306	335
	Workers of other law-enforcement bodies	91	48	73

** The Ukrainian State Judicial Administration does not have statistic data for 2000, as the Ukrainian Justice Ministry did not present reports for this period.*

Annex 2

CERTIFICATE ON DYNAMICS OF CRIMINAL PROCEEDINGS IN CASES INITIATED BY LAW-ENFORCEMENT BODIES OF UKRAINE ON THE ELEMENTS OF CORRUPTION

Over the Period from 2000 To 2003

Characteristics		line	2000	2001	2002	2003
а		б	1	2	4	6
Criminal cases initiated		1	**Data not covered by reporting**			
including by bodies of	public prosecution	2				
	the Interior Ministry	3				
	the tax police	4				
	Ukrainian Security Service	5				
CASES COMPLETED (WITHOUT RETRIAL)		6	1225	1236	1129	1036
including by bodies of	public prosecution	7	1183	1193	1125	1027
	the Interior Ministry	8	25	21	1	3
	the tax police	9	0	1	0	0
	Ukrainian Security Service	10	17	21	3	6

from total cases completed (from line 6)	Cases referred to court with a bill of indictment		11	1166	1208	1117	1000
	including by bodies of	public prosecution	12	1131	1165	1113	991
		the Interior Ministry	13	22	21	1	3
		the tax police	14	0	1	0	0
		Ukrainian Security Service	15	13	21	3	6
	Cases referred to court with a bill of indictment for releasing a person fro criminal responsibility		16	*Not envisaged by the Ukrainian Code of Criminal Proceedings before 2001*			29
	including by bodies of	public prosecution	17				29
		the Interior Ministry	18				0
		the tax police	19				0
		Ukrainian Security Service	20				0
	CASES TERMINATED		21	59	28	12	7
	including by bodies of	public prosecution	22	52	28	12	7
		the Interior Ministry	23	3	0	0	0
		the tax police	24	0	0	0	0
		Ukrainian Security Service	25	4	0	0	0

Annex 3

CERTIFICATE ON DYNAMICS OF CRIMINAL PROCEEDINGS IN CORRUPTION-RELATED CASES INITIATED BY LAW-ENFORCEMENT BODIES OF UKRAINE

(Art.368-369 of the Ukrainian Criminal Code)
Over the Period from 2000 to 2003

Characteristics		line	2000	2001	2002	2003
a		б	1	2	4	6
Criminal cases initiated		1	1910	1833	1718	1878
including by bodies of	public prosecution	2	938	974	1099	1271
	the Interior Ministry	3	972	859	619	607
	the tax police	4	*The data are not covered by reporting*			
	Ukrainian Security Service	5				
CASES COMPLETED (WITHOUT RETRIAL)		6	840	997	1114	1084
including by bodies of	public prosecution	7	833	997	1114	1084
	the Interior Ministry	8	7	*The data are not covered by reporting*		
	the tax police	9	0			
	Ukrainian Security Service	10	0			

from total cases completed (from line 6):	Cases referred to court with a bill of indictment		11	800	970	1057	1024
	including by bodies of	public prosecution	12	798	970	1057	1024
		the Interior Ministry	13	2	*The data are not covered by reporting*		
		the tax police	14	0			
		Ukrainian Security Service	15	0			
	Cases referred to court with a bill of indictment for releasing a person fro criminal responsibility		16		14	19	25
	including by bodies of	public prosecution	17		14	19	25
		the Interior Ministry	18	*The data are not covered by reporting*			
		the tax police	19				
		Ukrainian Security Service	20				
	CASES TERMINATED		21	62	32	38	35
	including by bodies of	public prosecution	22	57	32	38	35
		the Interior Ministry	23	5	*The data are not covered by reporting*		
		the tax police	24	0			
		Ukrainian Security Service	25	0			

Annex 4

VIOLATIONS OF THE CRIMINAL LAW OF UKRAINE

	2000		2001		2002		2003	
	crimes registered	persons guilty of crime detected	crimes registered	persons guilty of crime detected	crimes registered	persons guilty of crime detected	crimes registered	persons guilty of crime
Power or office abuse	6725	3316	7947	3891	7285	3209	6827	2980
Bribe-taking	1527		1542	769	2172	915	2337	825
Bribe-giving	654	999	732	378	638	352	643	326
Provocation of bribery	3		1	2	2	-	-	1

Annex 5

DATA ON THE NUMBER OF PERSONS CONVICTED FOR CRIMES IN PUBLIC OFFICE (Sentences Entered into Legal Force in 2001 - 2003)*

ARTICLE OF THE CRIMINAL CODE**	*Number of persons convicted on sentences entered into legal force*		
	2001	*2002*	*2003*
2001			
Power or office abuse (Art. 364)	327	1039	1168
Exceeding powers or authority (Art. 365)	51	222	314
Official forgery (Art. 366)	326	760	658
Neglect of official duty (Art. 367)	222	775	877
Bribe-taking (Art. 368)	125	411	380
Bribe-giving (Art. 369)	49	157	154
Provocation of bribery (Art. 370)	1	0	0
in 1960			
Power or office abuse (Art. 165)	1237	67	18
Exceeding powers or authority (Art. 166)	245	63	35
Neglect of official duty (Art. 167)	1311	170	51
Bribe-taking (Art. 168)	259	16	1
Mediation in bribery (Art. 169)	5	0	0
Bribe-giving (Art. 170)	103	4	0
Provocation of bribery (Art. 171)	0	0	0
Official forgery (Art. 172)	653	83	8
Total convictions for official crimes	4914	3767	3664
including			
Employees	3691***	3299	3147
Workers	334***	122	111

* *The Ukrainian State Judicial Administration does not have statistic data for 2000, as the Ukrainian Justice Ministry did not present reports for this period.*

** *If the court issues a sentence (decision, determination) on the basis of several articles of the Ukrainian Criminal Code, the case shall be referred to the articles of the Ukrainian Criminal Code envisaging the greatest sanction (order of the Ukrainian State Judicial Administration No.179 of 19 May 2003 "On Approval of the Form of Statistic Card of a Defendant (Accused) and Instructions for its Filling."*

*** Excluding military tribunal, as this characteristic was not covered by statistics.

Annex 6

DATA ON CRIMES IN PUBLIC OFFICE, NUMBER OF PERSONS CONVICTED, ACQUITTED, CASES CLOSED, PERSONS INDISPOSED SUBJECTED TO FORCED MEDICAL TREATMENT, AND FORMS OF CRIMINAL PUNISHMENT (on court decisions entered into legal forced in 2001-2003)*

			Number of persons convicted on sentences entered into legal force		
			2001	2002	2003
Number of persons against which cases have been closed			2551	2107	2843
including: persons indisposed subjected to forced medical treatment			5	2	6
acquitted			34	47	49
convicted**			4902	3767	3664
including	to prison terms		269	147	160
	including for a term	up to 2 years inclusive	81	44	44
		from 2 to 5 years inclusive	154	81	92
		5 years and more	34	21	24
	corrective labour		127	102	57
	fine		309	502	473
	deprivation of the right to occupy certain positions or engage in certain activities		18	8	7
	exempt from punishment on probation, amnesty, and for other grounds		4120	2905	2926

* *The Ukrainian State Judicial Administration does not have statistic data for 2000, as the Ukrainian Justice Ministry did not present reports for this period.*

** Punishment on the basis of Art.69, 70, 71 of the Ukrainian Criminal Code of 2001.

Annex 7

LAW OF UKRAINE ON FIGHT WITH CORRUPTION

(Changed and amended according to Law of Ukraine
#171/97 of April 3, 1997
#85/98 of February 5, 1998
#460-XIV of March 2, 1999
#622-XIV of May 5, 1999)

This Law determines the legal and institutional arrangements for avoidance of corruption and for its detection and prevention, as well as for ascertaining the lawful rights and interests of the wronged individuals and legal entities, and for the remedy of harmful consequences of corruption.

The corruption control activities will be based on clear legal provisions for activities of the state administration bodies, services and persons authorized to act on behalf of the government, and on the guarantees for the lawful rights and interests of individuals and legal entities.

Section 1. GENERAL PROVISIONS

Article 1. Determination of Corruption and Corruptive Actions

Corruption, as referred to in the present Law, means the criminal actions of persons authorized to act on behalf of the government, that are intended for use of the powers they are invested with for acquiring material values, services, privileges or other benefits.

The following actions are recognised as the corruptive ones:

(a) illegal acquisition by a person authorized to act on behalf of the government, in connection with exercising the authority, of material values, services, privileges or other benefits, including the receiving or accepting things (services) by means of their purchase at a price (or tariff) that is clearly lower than their actual values (in effect);

(b) receiving by a person authorized to act on behalf of the government, of credits or loans, or purchasing securities, immovables or other property, with making use of preferences or privileges beyond the ones determined by the legislation in effect.

A gift (or a reward) accepted by the above-mentioned persons in the circumstances foreseen in item (a) of the second paragraph of this Article, including the one acquired without their consent, as well as values of the illegally provided services, are subject to alienation (withholding) to the budget of the government.

Article 2. Subject of corruptive actions and other infringements of law, connected with corruption

The following persons authorized to act on behalf of the government, will bear amenability in accordance with the present Law, for corruptive actions and other infringements of law, connected with corruption:

(a) civil service officers;
(b) people's deputies of Ukraine, people's deputies of the Autonomous Republic of Crimea, deputies and heads of rural, city, district, oblast Councils.
(Section (b), Article 2 in the wording of Law of Ukraine #171/97 of March 4, 1997)

Article 3. Limits for the Law Application

The subjects specified in Article 2 to the present Law will bear administrative and disciplinary responsibility in accordance with the present Law, for corruptive actions and other infringements of law, connected with corruption. All matters pertinent to criminal, civil, or material liability for corruptive actions and other infringements of law, connected with corruption, shall be settled in accordance with the legislation in effect.

Military servicemen and other persons subject to responsibility for administrative infringements of law in accordance with the disciplinary statutes, if they have committed corruptive actions or other infringements of law, connected with corruption, shall be taken legal steps against as stipulated by the present Law.

Article 4. Bodies Empowered to Control Corruption

Relevant divisions of the following bodies are empowered to control corruption:

(a) Ministry of Home Affairs of Ukraine,
(a1) Tax Militia
(Section (a1) added to Article 4 according to Law of Ukraine #85/98 of February 5, 1998)
(b) State Security Service of Ukraine,
(c) offices of Public Prosecutor of Ukraine,
and other bodies and divisions created with the purpose of corruption control, in accordance with the legislation in effect.

Section II. CORRUPTION PREVENTION

Article 5. Special restrictions applied to the civil officers and other persons authorized to act on behalf of the government, intended for corruption prevention

An officer on the civil service or another person authorized to act on behalf of the government, has no right:

(a) to make favour to individuals and legal entities through using his occupational powers, in their business activities, or through provision of subsidies, donations, credits or privileges with an intent of illegal acquisition of material values, services, privileges, or other benefits;

(b) to be involved in business activities directly or through mediators, or substitutes, or to act in as an agent to third parties in affairs of the state body he is engaged in, as well as to work on a part-time basis (save for research, pedagogic and creative activities, as well as medical practice);

(c) to enter independently (except in cases when a civil servant is entitled to manage shares belonging to the state and represents its interests on the company board (supervisory board) or auditing committee of a given business partnership, or through his representatives or substitutes, to management boards or other executive bodies of enterprises, or credit/financial institutions, or economic associations and organizations, or unions, or corporations, or partnerships that are involved in business activities;
(Item (c), Section 1, Article 5 changed and amended according to Law of Ukraine #622-XIV of May 5, 1999).

(d) to refuse providing to individuals and legal entities an information thereof to be provided as prescribed by legal regulations, or to intentionally hamper the information provision, or to provide it in a deficient or incorrect form.

Restrictions provided in items (b) and (c) hereinbefore shall not apply to deputies of rural, city, district, oblast Councils who combine a deputy's office with other professional activities.
(Paragraph 2 added to Article 5 according to Law of Ukraine #171/97 of March 4, 1997)
A civil service officer that holds an official position also has no right:

(a) to make favour to individuals and legal entities through using his occupational powers, in their foreign economic activities, or credit/banking activities, or in other undertakings, with an intent of illegal acquisition of material values, services, privileges, or other benefits;

(b) to illegally interfere, through using his occupational powers, in activities of other civil bodies or civil officers with an intent of causing impediments in exercising their powers;

(c) to act as an agent to the third party in affairs of the civil body under his control;

(d) to provide illegal preferences to individuals or legal entities in the course of preparation and approval of regulatory enactments or decisions.

Candidates to the positions within the civil service or to other responsibilities on behalf of the government will be informed on the restrictions applied to the positions/responsibilities.

Article 6. Financial Control

Income declarations of the people authorized to act on behalf of the government will be issued in accordance with the terms and conditions specified in Article 13 of the Law of Ukraine "On the Civil Service".

Once a foreign currency account is opened in the foreign bank by a civil officer or other person authorized to act on behalf of the government, the person shall within ten days inform the Tax Inspection on the fact, with the number of account and location of the foreign bank being indicated in the information.

Data on incomes, securities, real and valuable movable property, valuables and bank accounts of the civil officers listed in section 1 of Article 9 of the Law of Ukraine "On the Civil Service", as well as the same data for their families are to be published each year in the official editions of the civil bodies of Ukraine. Prior to elections or appointment of a candidate to the relevant positions, the data must be submitted to the body or the officer in charge of the elections or appointment to these positions.
(Paragraph 3, Article 6 changed and amended according to Law of Ukraine #171/97 of March 4, 1997)

Section III. AMENABILITY FOR CORRUPTIVE ACTIONS AND OTHER INFRINGEMENTS OF LAW, CONNECTED WITH CORRUPTION

Article 7. Amenability for Corruptive Actions

Any corruptive actions thereof specified in Article 1 of the present Law, committed by a person authorized to act on behalf of the government, unless the actions are recognised a subject to criminal amenability, shall entail an administrative responsibility in the form of penalty of twenty five to fifty non-taxed minimum incomes, followed by the dismissal from the occupation, or by another form of release from the official duties. It is prohibited for such persons to hold any positions in the civil bodies and services during three years after the dismissal.

Commitment of any criminal actions thereof specified by the present Law, by a people's deputy of Ukraine, or by a deputy of the Supreme Council of the Autonomous Republic of Crimea, or by a deputy or head of the local Council of the People's Deputies, shall entail an administrative responsibility in the form of penalty of twenty five to fifty non-taxed minimum incomes, followed by the termination of his deputy authority, or

removal from his elected office. Decisions on approval of taking legal steps against these people in the form of administrative amenability for corruptive actions, or/and on termination of the deputy authority or removal from the elected office, will be arrived at by the relevant Council at a regular session. A procedure for taking legal steps against the people's deputy of Ukraine in this case shall be determined based on the Law of Ukraine "On the Status of a People's Deputy of Ukraine". It is prohibited for these people to take part in elections to deputies, or to elected positions in the civil bodies during five years after their deputy offices are terminated, or they are released from the positions, as well as to hold positions in civil bodies and services during three years after their deputy offices are terminated, or they are released from the positions.
(Paragraph 2, Article 7 changed and amended according to Law of Ukraine #171/97 of March 4, 1997)

Note. In the context of the present Law, the "another form of release from the official duties" means the termination of the deputy office or the removal from the elected position, as well as the release from the military service of a military officer (save for the military servicemen at active service).

Article 8. Amenability for Infringement of Special Restrictions Applied to Persons Authorized to Act on Behalf of the Government

Infringement by a person authorized to act on behalf of the government, of any of the restrictions referred to in Article 5 of the present Law, unless they are considered a subject to criminal amenability, shall entail an administrative responsibility in the form of penalty of fifteen to twenty five non-taxed minimum incomes.

Repeat infringement within one year of any of the restrictions mentioned in Article 5 of the present Law shall entail an administrative responsibility in the form of penalty of twenty five to fifty non-taxed minimum incomes, followed by the dismissal from the occupation, or by another form of release from the official duties.

Article 9. Responsibility for Infringement of Requirements of the Financial Control Bodies

Infringement by a person authorized to act on behalf of the government, of any of the requirements to income declaration (non-submission or submission of incorrect or deficient information on incomes and financial liabilities) will entail an administrative responsibility in the form of penalty of fifteen to twenty five non-taxed minimum incomes, followed by dismissal from the occupation, or by another form of release from the official duties, as well as is recognised a reason for refusal of designation on an official position or of a right to take part in elections to deputies or to occupy other elected positions within the civil bodies.

Non-submission or undue submission by a civil officer or by another person authorized to act on behalf of the government, of a note on opening foreign currency account in the foreign bank, will entail an administrative responsibility in the form of penalty of fifteen

to twenty five non-taxed minimum incomes, followed by dismissal from the occupation, or by another form of release from the official duties.

Article 10. Amenability of Leading Officers for Inhibiting Measures to Prevent Corruption

In case of revealing or receiving an information on corruptive actions or infringements of special restrictions listed in Article 5 of the present Law, the leading officers of ministries and departments, state-owned enterprises, institutions and organizations and their structural units, must take steps within their scope of authority in order to prevent the actions and immediately inform one of the civil bodies specified in items (a) and (b) of Article 4 of the present Law.

Intentional inhibiting by the leading officers of measures stipulated in first paragraph of the present Article will entail an administrative responsibility in the form of penalty of twenty five to fifty non-taxed minimum incomes.

Repeat occurrence within one year of the same action as referred to in the second paragraph to the present Article will entail an administrative responsibility in the form of penalty of twenty five to fifty non-taxed minimum incomes, followed by the dismissal from the occupation, or by another form of release from the official duties.

Article 11. Responsibility for Intentional Non-Fulfilment of Official Duties to Control Corruption

Intentional non-issue or undue issue of a record of revealed corruptive action or another illegal action connected with corruption, provided that there are grounds for that, or intentional non-submission in court of the record of the revealed corruptive action or another illegal action connected with corruption, by a person in charge of this official duty, will entail an administrative responsibility in the form of penalty of fifty to one hundred non-taxed minimum incomes, followed by the dismissal from the occupation, or by another form of release from the official duties.

Article 12. Grounds and Terms of the Administrative Proceedings in Cases of Corruption Actions or Other Infringements of Law Connected with Corruption

Terms of the administrative proceedings in cases of corruption actions or other infringements of law connected with corruption, as well as fulfilment of regulations on application of the administrative penalties is specified in the Administrative Infringements Code of Ukraine, save for the provisions to the present Law.

A record of revealed corruptive action or another illegal action connected with corruption will be made by the bodies specified in items (a) and (b) of Article 4 of the present Law; in case when the fact of corruptive action or another illegal action connected with corruption - unless it is recognised a subject to criminal amenability - is revealed by the prosecutor's inspection or by the preliminary investigation, the record may be made additionally by the prosecutor or investigator.

Grounds for issuing the record are provided by sufficient data pointing to the fact that features of corruption or another illegal action connected with corruption are recognised in the actions of the person under consideration.

In case of refusal of initiating criminal proceedings due to the reasons foreseen by the legislation in effect, provided that features of corruption or another illegal action connected with corruption are recognised in the actions of the person under consideration, the investigating body must forward within three days the materials of the inspection or the preliminary investigation pertinent to the corruptive action or another illegal action connected with corruption, to the body specified in items (a) and (b) of the first paragraph of Article 4 to the present Law.

Record of the corruptive action or another illegal action connected with corruption, together with the materials of the inspection, must within three days after it is issued be forwarded to the district (city) court of the same location as the body that issued the record. Administrative proceedings in cases of corruption actions or other illegal actions connected with corruption shall take place in the district (city) court within five days after the record is received.

Court decision on administrative withholding in the form of penalty for corruption action or another illegal action connected with corruption, must within three days be forwarded to the relevant civil or elected body for taking steps for dismissal of the person from the occupation, or for another form of release from the official duties, in accordance with the legislation in effect.

Section IV. MEASURES TO REMEDY CONSEQUENCES OF CORRUPTION AND OTHER INFRINGEMENTS OF LAW, CONNECTED WITH CORRUPTION

Article 13. Remuneration of Losses

Losses incurred by the government, enterprise, institution or organization due to illegal use of premises, transport vehicles, communication facilities and/or other state-owned property or assets, are subject to remuneration by the guilty persons authorized to act on behalf of the government, on usually applied terms and conditions of material responsibility of employees and military servicemen.

Unless the person authorized to act on behalf of the government voluntary agrees to repay the illegally received credits, loans, securities, immovables and other property, these items or their values are subject to alienation (withholding) to the state budget in due course of law, upon a claim of public prosecutor.

Acquisition of subsidies, donations, credits and privileges through the actions specified in item (a) of the first paragraph of Article 5 to the present Law, will result in declaring the operation invalid, followed by the steps determined by the Civil Code of Ukraine.

Article 14. Cancellation of the Illegal Regulatory Provisions and Decisions Approved due to Corruptive Actions

The regulatory provisions and decisions approved due to corruptive actions are subject to cancellation by the body or the officer empowered to approve or cancel the relevant provisions and decisions, or the latter are recognised illegal in due course of law.

Article 15. Redemption of Rights and Compensation of Losses of Individuals and Legal Entities

The individuals and legal entities which rights were infringed due to corruption, or who suffered moral or material losses, are entitled to redemption of their rights and recovery of losses, in accordance with the legally specified procedures.

Section V. CONTROL AND SUPERVISION OF OBSERVATION OF THE LAWS ON CORRUPTION CONTROL

Article 16. Control of the Laws Observation in the Field of Corruption Control

Control of fulfilment of laws in the field of corruption control will be directly exercised by the Supreme Council of Ukraine, as well as by the Supreme Council's Committee for Legal Support of Law Enforcement Activities and Fight with Organised Crime and Corruption.

(Article 16 changed and amended according to Law of Ukraine #460-XIV of March 2, 1999)

Article 17. Prosecutor's Supervision

Supervision of fulfilment of laws in the field of corruption control will be exercised by the General Prosecutor of Ukraine and by the prosecutor's offices authorised by the latter.

Leonid KUCHMA,
President of Ukraine
October 5, 1996
#356/95

Annex 8

CRIMINAL CODE OF UKRAINE

(This Code enters into force on 1 September 2001)

Extract

Chapter XVII. CRIMINAL OFFENSES IN OFFICE

Article 368. Taking a bribe

1. Taking a bribe of any kind, by an official, in return for taking or refraining from any action for the benefit of the person that gave the bribe or for the benefit of any third person by means of authority or official powers entrusted in this official, –

> shall be punishable by a fine of 750 to 1,500 tax-free minimum incomes, 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. Taking a bribe of gross amount by an official who occupies a responsible position, or by a group of persons upon their prior conspiracy, or if repeated, or accompanied with requests of a bribe, –

> 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.

3. Receiving a bribe in especially great amount by an authorized person in responsible position, or by a group of persons upon proceeding conspiracy, or if repeated, or accompanied by the extortion of a bribe,

> is punishable by the imprisonment for a term of ten to fifteen years with the forfeiture of property and with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Note:

1. A bribe of gross amount shall mean a bribe that equals or exceeds of 200 tax-free minimum incomes, and a bribe of especially gross amount shall mean a bribe that equals or exceeds 500 tax-free minimum incomes.

2. Officials who occupy responsible positions shall mean persons referred to in paragraph 1 of the Note to Article 364, whose positions pursuant to Article 25 of the Law of Ukraine "On Civil Service" are referred to the third, forth, fifth and sixth categories, and also judges, prosecutors and investigators, heads and deputy heads of government and public agencies, local government organs, their divisions and units. Officials who occupy especially responsible positions shall mean persons referred to in paragraph 1 of Article 9 of the Law of Ukraine "On Civil Service" and persons whose positions are referred to the first and second categories pursuant to Article 25 of this Law.

3. For the purposes of Articles 368 and 369 of this Code, a repeated offence shall mean an offence committed by a person who had previously committed any of the criminal offences created by these articles.

4. Request of a bribe shall mean a demand of a bribe by an official accompanied with a threat to take or refrain from any actions through abuse of authority or official position, which may cause any harm to the rights and legal interests of the person who gives the bribe, or wilful creation of conditions, by an official, in which a person is compelled to give a bribe to prevent any harmful consequences to his/her rights and legal interests.

Article 369. Giving a bribe

1. Giving a bribe, –

> shall be punishable by a fine of 200 to 500 tax-free minimum incomes or restraint of liberty for a term of two to five years.

2. Repeated giving of a bribe, –

> shall be punishable by the imprisonment for a term of three to eight years with or without the forfeiture of property.

3. A person who gave a bribe shall be discharged from criminal liability, if the bribe was requested from this person, or if, after giving the bribe and before any criminal prosecution was initiated against him/her, this person voluntarily reported the fact of bribing to the agency competent to undertake criminal prosecution.

Article 370. Provocation of bribery

1. Provocation of bribery, that is an intentional creation, by an official, of circumstances and conditions 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 by imprisonment for a term of three to seven years.

Chapter V. CRIMINAL OFFENSES AGAINST ELECTORAL, LABOR AND OTHER PERSONAL RIGHTS AND FREEDOMS OF THE HUMAN BEING AND THE CITIZEN

Article 157. Preclusion of the right to vote

1. Preclusion of a citizen from free exercise of the right to elect and be elected to the office of the President of Ukraine, a National Deputy (Member of Parliament) of Ukraine, a deputy of the Supreme Council of the Autonomous Republic of Crimea, a deputy of a local council, or a chairman village, town or city head (mayor), and to campaign during elections, by means of violence, deception, threats, bribery or in any other way, –

shall be punished by restraint of liberty for a term of three to five years, or imprisonment for a term of two to four years.

2. The same actions committed by a group of persons upon their prior conspiracy, or by a member of election committee or any other official through abuse of authority or office

shall be punishable by imprisonment for a term of three to five years.

3 Any such acts as provided for by paragraph 1 or 2 of this Article, where they affected the voting or election outcome, –

shall be punishable by imprisonment for a term of seven to twelve years.

Article 160. Violation of referendum law

1. Preclusion of a citizen from free exercise of the right to take or not take part in a referendum, or campaign before the referendum, by means of violence, deception, threats, bribery or in any other way, –

shall be punished by a fine of 50 tax-free minimum incomes, or correctional labour for a term up to two years, or imprisonment for a term up to three years.

2. The same actions committed by a member of an referendum committee or any other officer, or by a group of persons upon their prior conspiracy, –

> shall be punishable by a fine of 50 tax-free minimum incomes, or correctional labour for a term up to two years, or imprisonment for a term up to five years.

3. Fabrication of referendum documents, distortion of records, wilful miscount of votes, or violation of the secrecy of ballot committed by a member of a referendum commission or any other officer, –

> shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or imprisonment for a term of one to five years.

Annex 9

ANTI-CORRUPTION ACTION PLAN FOR ARMENIA, AZERBAIJAN, GEORGIA, THE RUSSIAN FEDERATION, TAJIKISTAN AND UKRAINE[1]

PREAMBLE[2]

We, the Heads of Governmental Delegations from Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine at the 5th Annual meeting of the Anti-Corruption Network for Transition Economies on the 10th of September, 2003, in Istanbul, Turkey:

BUILDING on the guidance of the Anti-Corruption Network for Transition Economies expressed at its 4th Annual meeting in Istanbul in March 2002 to develop a special sub-regional Anti-Corruption Action Plan for those transition economies not yet engaged in targeted sub-regional initiatives;

CONVINCED that corruption is a widespread phenomenon and is inimical to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption requires strong action by governments as well as the effective involvement of all elements of society including business and the general public;

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1 The Action Plan is open for endorsement by other transition economies not engaged in targeted sub-regional initiatives; Kazakhstan and the Kyrgyz Republic joined the Action Plan at a later stage.

2 The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles towards policy reform which participating countries politically commit to implement on a voluntary basis and which can provide a basis for donor assistance.

RECOGNISING the value of co-operation and action-oriented knowledge sharing both among the countries participating in this Action Plan and with other countries active within the framework of the Anti-Corruption Network and other regional and international anti-corruption initiatives;

RECALLING that national anti-corruption measures can benefit from existing regional and international instruments and good practices such as those developed by the countries in the region, the Council of Europe (CoE), the European Union (EU), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations (UN);

WELCOMING the pledge made by donor countries and international organisations to support the countries of the region in their fight against corruption through technical cooperation programmes;

ENDORSE this Anti-Corruption Action Plan as a framework for developing effective and transparent systems for public service, promoting integrity in business operations and supporting active public involvement in reform; and commit to take all necessary means to ensure its implementation.

PILLARS OF ACTION

PILLAR 1.
Developing Effective and Transparent Systems for Public Service

Integrity in the Public Service

- Establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of civil service, safeguard equitable and adequate compensation and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;
- Adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and
- Establish systems which provide for appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal

assets and liabilities; and systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety and professional status.

Accountability and Transparency

- Safeguard accountability of public service through, *inter alia*, appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on decision making and performance;
- Ensure transparent procedures for public procurement, privatisation, state projects, state licences, state commissions, national bank loans and other government guaranteed loans, budget allocations and tax breaks. These procedures should promote fair competition and deter corrupt activity, and establish adequate simplified regulatory environments by abolishing overlapping, ambiguous or excessive regulations that burden business;
- Promote systems for access to information that include such issues as political party finance, and electoral campaign funding and expenditure.

PILLAR 2.
Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take concrete and meaningful steps to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat bribery of public officials, including anti-money laundering legislation that provides for substantial criminal penalties for the laundering of the proceeds of corruption;
- Ensuring the existence and enforcement of universally applicable rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities. This includes the strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons who bring violations to the

attention of authorities and by conducting thorough examinations of all revelations of corruption; and

- Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by providing (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching for and identifying forfeitable assets as well as prompt international seizure and repatriation of such assets.

Corporate Responsibility and Accountability

- Promoting corporate responsibility and accountability so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are fully applied to help prevent and detect bribery of public officials in business. This includes the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery in the books, records, accounts and financial statements of companies;
- Ensuring the existence and the effective enforcement of legislation to eliminate tax deductibility of bribes and to assist tax inspectors to detect bribe payments; and
- Denying public licenses, government procurement contracts or access to public sector contracts for enterprises that engage in bribery or fail to comply with open tender procedures.

PILLAR 3.
Supporting Active Public Involvement in Reform

Public Discussion and Participation

Encourage public discussion of the issue of corruption and participation of citizens in preventing corruption by:

- Initiating public awareness campaigns and education campaigns at different levels about the negative effects of corruption and joint efforts to prevent it with civil society groups such as NGOs, labour unions, the media, and other organisations; and the private sector represented by chambers of commerce, professional associations, private companies, financial institutions, etc.;

- Involving NGOs in monitoring of public sector programmes and activities, and taking measures to ensure that such organisations are equipped with the necessary methods and skills to help prevent corruption;
- Broadening co-operation in anti-corruption work among government structures, NGOs, the private sector, professional bodies, scientific-analytical centres and, in particular, independent centres;
- Passing legislation and regulations that guarantee NGOs the necessary rights to ensure their effective participation in anti-corruption work.

Access to Information

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption
- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

IMPLEMENTATION

In order to implement these pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms. Participating governments of the region will take measures to publicise the Action Plan throughout government agencies, NGOs engaged in the fight against corruption, and the media; and in the framework of the Advisory Group Meetings, to meet regularly and to assess progress in the implementation of the measures provided for in the Action Plan.

IMPLEMENTATION PLAN

Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, and Ukraine voluntarily agree to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in participating governments, it should remain flexible so that new ideas and priorities can be taken into account as necessary. This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by participating countries, regional institutions and international organisations.

Identifying Country Mechanisms

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific. To address these differences, each participating country will identify priority reform areas which would fall under the three pillars, and aim to implement necessary measures in a workable timeframe.

Mechanisms

Advisory Group: To facilitate the implementation of the Action Plan, each participating government will designate a national coordinator who will be their representative on a Advisory Group. The Advisory Group will also comprise experts on methodical and technical issues to be discussed during a particular Steering Group meeting as well as representatives of participating international organisations and civil society. The Advisory Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Funding: Funding for implementing the Action Plan will be solicited from international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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Fighting Corruption in Transition Economies

Ukraine

What progress have transition economies made in fighting corruption? This book presents the outcomes of a review of legal and institutional frameworks for fighting corruption in Ukraine, which was carried out in the framework of the Anti-Corruption Network for Transition Economies based at the OECD. The review examined national anti-corruption policy and institutions currently in place in Ukraine, national anti-corruption legislation, and preventive measures to ensure the integrity of civil service and effective financial control.

The review process was based on the OECD practice of mutual analysis and policy formulation. A self-assessment report was prepared by the government of Ukraine. An international group of peers carried out expert assessment and elaborated draft recommendations. A review meeting of national governments, international organisations, civil society and business associations discussed the report and its expert assessment, and endorsed the recommendations.

This publication contains the recommendations as well as the full text of the self-assessment report provided by the government of Ukraine. It will provide an important guide for the country in developing its national anti-corruption actions and will become a useful reference material for other countries reforming their anti-corruption policy, legislation and institutions.

For more information, please refer to the Web site of the Anti-Corruption Network for Transition Economies ***www.anticorruptionnet.org*** as well as the Web site of the OECD Anti-Corruption Division ***www.oecd.org/corruption***.

Other editions in this series cover assessments of anti-corruption efforts in Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation and Tajikistan.

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