

SUPPORT TO CRIMINAL JUSTICE REFORM IN UKRAINE



Main conclusions on the revised version of the Draft Law on the Public Prosecutor's Office of Ukraine, as adopted on 4 June 2014 by the Committee on the Legislative Support to the Law Enforcement

The preparation of the Draft Law on the Public Prosecutor's Office (PPO) of Ukraine for the adoption in the second reading by the Verkhova Rada of Ukraine is to be welcomed. The Draft Law, which builds upon the Draft Law adopted in the first reading in November 2013, is an important step forward and a clear improvement in comparison with the law in force, as it excludes the general oversight from among the functions of the PPO and limits the function of representation of the interests of citizens or the state in courts to specific categories of cases, provides for enhanced principles of operation of the PPO, introduces arrangements to secure the self-governance within the prosecution system, establishes specific criteria and the basis for a transparent process of appointment of public prosecutors, sets out the grounds and improved procedures of disciplinary actions against public prosecutors.

The latest revision of the Draft Law incorporates most of the key Council of Europe recommendations as set out in the Joint Opinion on the Public Prosecutor's Office of Ukraine (JO) produced by the Council of Europe Directorate for Human Rights and the Venice Commission in 2013 and thus mitigates the concerns related to the function of the representation of interests of citizens or the state in the courts, in particular through reducing its scope and removing wide powers reminiscent of those exercised under the general supervision function. Moreover, in line with the JO recommendations, enhanced guarantees are provided for securing the independence of individual public prosecutors. The role of the Qualification and Disciplinary Commission in the appointment and dismissal of the Prosecutor General is introduced, however the non-binding nature of the advice of this body should be made explicit in the draft.

The ultimate resolution of some of the remaining issues of concern should be done through prompt amendments to the Constitution of Ukraine, which would give full effect to the Council of Europe recommendations, such as the limitation of the functions of the Public Prosecutor's Office to the criminal justice area, elimination of the role of the High Council of Justice with regard to disciplinary proceedings against public prosecutors, provision of additional guarantees for the independence

of the Prosecutor General, including his/her tenure, appointment and dismissal procedures. However, the process of preparation and adoption of the constitutional amendments should not preclude the adoption of the new Law on the Public Prosecutor's Office, since transitional provisions can provide temporary solutions pending adoption of the Constitutional amendments.

In the latest revision of the Draft Law some entirely new elements have been introduced, compared to the draft adopted in the first reading. These additional elements do not seem to have been introduced in response to specific recommendations of the Council of Europe. They include the establishment of a special prosecutor's office within the system of the PPO and a mechanism of integrity checks of the public prosecutors. These steps do not pose conceptual objections, but require additional consideration and articulation, as well as stronger guarantees to ensure the independence and proper functioning of the proposed mechanisms in line with the ECHR standards. A more comprehensive approach is required with regard to the wording of the provisions on the provocation of bribery, to ensure that they do not contradict the right to a fair trial. Furthermore, some of the suggested novelties, such as the establishment of the State Administration of Justice and of the State School of Justice should be settled in the broader context of the justice sector reforms, to ensure coherence between different aspects thereof. For these reasons it would be advisable to reword these elements now if this can be done rapidly so as not to delay adoption of the Law, or, alternatively, to address these issues at a later stage, after the adoption of the Law.

It is important not to delay the adoption of the law and the reform of the prosecution service. The prompt adoption of the Law on the Public Prosecutor's Office of Ukraine is a precondition for the commencement of the long-awaited meaningful reform of the public prosecution system in Ukraine, which will pave the way for the transformation of the current prosecutor's service into a modern institution compliant with European standards.