

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Ukraine

by

Sergey S. Chapkey
National Institute of Justice

Vladimir Tochilovsky
International Tribunal for the Former Yougoslavia

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GENERAL OVERVIEW

1. Political System.

The Ukraine was declared independent by the Supreme Soviet of Ukraine in August of 1991. The Ukraine has a unitary type of government. The criminal justice system includes centralized executive agencies such as the Procuratura, the Ministry of Internal Affairs, and the National Security Service, as well as courts of general jurisdiction and military courts.

2. Legal System.

The Ukraine has a unified judicial system. Its criminal justice system is based on both the inquisitory and adversary justice principles. While preliminary investigations follow an inquisitory scheme, the adversarial principle dominates when the case goes to trial. The primary criminal justice legislation being adhered to as of December 31, 1993 are the Criminal Code, the Code of Criminal Procedure, and the Law on Judiciary.

3. History of Criminal Justice System.

Immediately following the October Revolution of 1917, the Soviet Government issued a decree abolishing the old judiciary of Tsarist Russia. The decree created new local courts which were

given broad discretion to hear criminal cases on the basis of "revolutionary legal consciousness". Other institutions were created as well, such as court investigators, the procuratura (federal and district attorneys), and public and private attorneys.

The Decree of Court #2 of March 7, 1918 proposed the establishment of a new judicial system which included local people's courts, district people's courts, regional people's courts, and Supreme Judicial Control. The Decree stated that the trial courts were to implement old legislation only in cases when it was not revoked by the new authorities and did not contradict the legal consciousness of the working classes.

For purposes of criminal investigation, three member investigatory committees were created. The committees were elected by local Soviets. Boards of public defenders were created as affiliations of local Soviets to participate in trial and provide legal defense. Public defenders were appointed by and could be forced to resign by appropriate local Soviets.

During the early 1920s, judicial reform took place in the Ukraine and other Soviet republics. The Soviet Procuratura and the Public Defenders Boards were created, the Criminal Code and the Code of Criminal Procedures were adopted.

The Soviet Union was created in December of 1922, which incorporated the Ukraine. Under the first Soviet Constitution of 1924, the Union issued the Fundamentals of Criminal Legislation, as well as the Fundamentals of the Judiciary of the USSR. The republics adopted Criminal Codes and Statutes on the Judiciary and the system of federal and republican legislation was established.

In the 1930s, unitarianist ideas started to prevail over the concept of republican sovereignty. The federal government was increasingly dominant and began to issue All-Union laws which had not been established by the Fundamentals. In 1934, the Judicial Supervisory Board was created in the Supreme Court of the USSR. The board had a right to cancel any judgment made by republican courts.

In August 1991, the Supreme Soviet of Ukraine declared the independence of Ukraine. It was decided that, before the appropriate legislation would be issued by Ukraine, the legislation issued by the USSR could be implemented on the territory of the Republic in cases not yet regulated by Ukrainian legislation, under the condition that it did not contradict the existing legislation of the Ukraine.

CRIME

1. Classification of Crimes.

* Legal classification. Information no available.

* Age of criminal responsibility. The age of criminal responsibility is 16, under provisions of the Criminal Code (Clause 10). However, persons who have committed any of the serious offenses listed in the Clause 10 (e.g. murder, rape, assault, robbery) can be held criminally responsible from the age of 14.

* Drug offenses. Information not available.

2. Crime Statistics.

* Murder. In 1990, 2,823 homicides were recorded, for a rate of 5.5 per 100,000 population. Attempts are included.

* Rape. In 1990, 2,661 rapes were recorded. Attempts are included.

The Criminal Code of Ukraine describes rape as sexual intercourse combined with use of force, threat or with use of helpless state of the victim (Criminal Code, Clause 117).

* Theft. In 1990, 182,423 cases of embezzlement were recorded, of which 53,423 were thefts of public property and 129,000 were thefts of individual private property (including 41,691 burglaries).

Ukrainian law describes embezzlement as the intentional illegal use of the public or private property in someone's favor out of greedy motives. The criminal liability for embezzlement of public property and embezzlement of private property from citizens is stipulated in the Criminal Code of Ukraine (Chapter 2 and Chapter 5, respectively). The law distinguishes between different methods of embezzlement, such as those committed by means of theft, robbery, robbery under the threat of deadly force, fraud, or extortion.

* Drug offenses. Information not available.

* Crime regions. Information not available.

VICTIMS

1. Groups Most Victimized By Crime.

Information not available.

2. Victims' Assistance Agencies.

No public or private organization exists to provide help to victims of crime.

3. Role of Victim in Prosecution and Sentencing.

The victim has rights which provide him/her with an opportunity to actively participate in the investigation. The legal rights of the victim include the right to testify; to present evidence; to issue a complaint; to make motions; to be apprised of the evidence immediately after the preliminary investigation has been conducted; to participate in the trial; to ask that an investigator, the judge, or the public prosecutor be removed for cause; and to bring complaints against the investigator, the judge, and the public prosecutor. The victim also has a right to appeal and participate in the appellate process.

The victim is allowed to participate in the debate during the trial when the public prosecutor does not participate. In cases with so called "private prosecution" the victim may provide prosecution, personally or through his/her representative.

4. Victims' Rights Legislation.

The legal status of the victim is described in the Code of Criminal Procedure of Ukraine. Under Clause 49, the victim is an individual who suffers either direct material or moral loss or damage from a crime. The victim is eligible to participate in the investigation or trial.

The victim's report of the crime can serve as the basis for initiating criminal proceedings by the investigator, the procurator (public prosecutor) or the judge. However, the criminal investigation of a non-aggravated rape cannot be initiated without the victim's consent. Cases which involve minor injuries, beating, insult and non-aggravated defamation also cannot be initiated against the victim's will. By law, there is no preliminary investigation of these cases. Rather, the victim goes directly to trial and participates in the offender's prosecution.

POLICE

1. Administration.

Under the Law on Militia, the major militia's tasks are to a) provide personal security for citizens; b) protect their rights and freedoms; c) prevent and combat crime; d) maintain public order; e) reveal and detect crime; f) arrest

offenders; g) maintain safety on the roads; h) protect public and private property; and i) execute criminal sentences and administrative penalties (Clause 2).

The militia is a single system which is incorporated into the structure of the Ministry of Internal Affairs. The militia is subordinate to the Ministry and is also accountable to appropriate local Soviets. The heads of regional city militia departments are appointed, after obtaining consent of the local Soviet, by: heads of regional militia departments by the Minister of Internal Affairs; heads of city and district militia departments - by heads of regional militia departments (Clause 7).

The militia consists of several subdivisions: a) criminal division (detectives); b) public safety; c) transportation militia; d) traffic patrol; e) safeguards; and f) special forces (Clause 7). The Law of Ukraine on Combatting Organized Crime has provided for the creation of special divisions, such as regional agencies, to combat organized crime. (Clause 9).

2. Resources.

* Expenditures. Information not available.

* Number of police. Information not available.

3. Technology.

* Availability of police automobiles. Information not available.

* Electronic equipment. Information not available.

* Weapons. Militia officers are allowed to use rubber sticks, tear gas, and firearms.

4. Training and Qualifications.

Information not available.

5. Discretion.

* Use of force. According to the Law on Militia, the militia has a right to use physical force, special means, and firearms. The use of force is forbidden against women with obvious signs of pregnancy, elderly people, persons with obvious disabilities, or minors. An exception can be made in cases where a group of these persons is committing an assault which threatens lives and health of people, militia officers, or cases of armed assault or resistance. (Clause 12).

Firearms may be used in the following cases:

a) to protect citizens from life-threatening assaults; b) to release hostages; c) to resist an armed attack on a militia man or members of his family or other attack if there is a threat to their lives or health; d) to resist attacks on safeguarded objects, convoys, private residences, offices of state and public organizations, as well as to release them from illegal seizure; e) to detain a person who committed a serious crime and is trying to escape; f) to detain a person who demonstrates an armed resistance or is trying to escape from custody; g) against an armed person who threatens to use weapons and other objects which threaten lives and health of a militia man; h) to stop a vehicle in cases where the driver creates a life threatening situation to a militia officer.

* Stop/apprehend a suspect. The militia has a right to detain and put in custody a suspect if a) this person was caught in the process of committing a crime or immediately after committing a crime; b) eyewitnesses target this person as the person who committed the crime; c) evidence of the crime is found on the suspect, his clothes, or in his home (Code of Criminal Procedure of Ukraine, Clause 106).

If any other data exist which provide a reasonable cause to suspect a person of committing a crime, this person may be detained only if the person is trying to run away, or the person doesn't have a permanent home, or when the person cannot present any proof of identification.

* Decision to arrest. The Law forbids obtaining testimonies from the convicted or other participants by means of force, threats and other illegal means (Clause 22). Enforcement to testify during the examination by illegal means causes criminal liability for the investigator.

* Searches and seizures. The militia may conduct a search only under the specific order of investigative personnel. A sufficient ground for the investigator or militia to conduct a search is if there is probable cause to believe that tools of crime, illegally obtained property and values, and other objects and documents which could be used as evidence, are hidden in a certain place or with a certain person. A search may be conducted only on the ground of statement of the investigator approved by district attorney or his deputy. In cases which cannot tolerate a delay, a search may be conducted without approval on behalf of district attorney, although the latter has to be notified about the search and its results

within 24 hours.

* Confessions. Information not available.

6. Accountability.

Control over militia is performed by the Cabinet of Ministers of Ukraine, Minister of Internal Affairs and within their discretion Soviets of People's Deputies. Oversight over compliance with laws in militia is performed by the procuratura.

All the above bodies review citizens' complaints against militia. According to the Civil Procedure Code of Ukraine, a citizen has a right to file a complaint against any government official, including militia officer if he considers that these actions violate his civil rights.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of Accused.

* Rights of the accused at trial. The substantive and procedural rights of the accused are stipulated in the Code of Criminal Procedure of Ukraine. During the preliminary investigation the accused has the right: a) to know the charge against him/her and testify on his/her behalf; b) to present evidence; c) to make motions concerning witness examinations and cross-examination; d) to present forensic research; e) to obtain and examine evidence and present other questions which have a meaning for finding the truth in the trial; f) to request that the investigator, the prosecutor, the forensic expert, or the interpreter be removed from the case; g) to get familiar with the case materials that have been collected after the end of the preliminary investigation; h) to have legal counsel; and i) to file complaints concerning actions of the investigator and the district attorney (Clause 142).

At trial, the accused has the right: a) to make a motion on decline; b) to have legal counsel or act as his own defense lawyer; c) to make motions and express an opinion on motions of other participants of the trial; d) to ask the court to include case documents, summon witnesses, employ forensic research and obtain other evidence; e) to provide his explanations at any moment of judicial investigation; f) to ask questions of other suspects, witnesses, forensic experts, and the victim(s); g) to participate in overview of the crime scene and documents; h) to participate in

the court's debates if he/she is not legally represented.

The accused also has the right to appeal the court's verdict, and to participate in the appellate process.

* Assistance to the accused. The counselor may be contracted or assigned to represent a defendant at trial. Usually, the defense counselor is chosen by the accused or the accused's relatives. If the defendant does not have the money to pay a counselor, the investigator, procurator, judge, or chair of a law firm may partially or completely release the defendant from payment obligations for legal assistance.

In situations where the case legally requires a counselor to participate in a trial, but the defendant or his relatives have not contracted for one, the investigator or the court could assign one through a law firm. The cost for this defense counselor is born by the state, although the accused might be required to reimburse the state at a later time.

Legal counsel is also required in cases involving minors and persons who because of their physical or mental disabilities cannot exercise their right for defense; persons accused of capital crimes; or when the procurator participates at trial. (Clause 45).

Defense counselors include admitted attorneys, representatives of trade unions and other non-profit organizations for cases with participation of their members, persons chosen by the judge, or persons whom the defendant and/or nearest relatives trust to defend his interests. There is no legal limit as to how many counselors can simultaneously be involved in the accused's defense.

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. The investigator, including the investigator in the militia, conducts the examination and prosecution proceedings which lead to conviction. Conviction and examination of the accused is conducted by the investigator (including investigators in militia). Suspects are not criminally liability for refusing to testify.

Criminal cases heard in the court of first instance can be heard by a panel of three judges, two judges and three people's representatives, or by a single judge, depending on the crime's classification. Certain categories of criminal cases can be heard by the panel of two judges or with the consent of the defendant, by a single judge.

By law (Clause III) the majority of criminal cases must proceed through the stages of preliminary investigation. Exceptions may be made for cases involving private prosecution and cases which require special pre-judicial preparation.

There are four stages to the preliminary investigation which occurs before the trial: 1) initiation of the criminal case and collecting sufficient evidence to accuse a person of the crime; 2) presenting the accusation, examination of the accused, arrest or other measure of prevention; 3) collecting and testing other evidence which may prove or deny the charge, including aggravating or mitigating circumstances; and 4) action related to completing the investigation, composing the indictment and forwarding the case to trial.

A criminal case may be initiated by the procurator, the investigator, an interrogatory body, a judge and the court. The investigation is conducted by investigators who are at service of the procuratura, bodies of internal affairs, and national security. These investigators are outside the judiciary.

After sufficient evidence is collected to accuse a suspect of committing a crime, the investigator makes a statement formally charging the suspect of the crime. The statement describes the circumstances of the crime and the definition and category of the offense, with a reference to a Criminal Code clause. The investigator presents this statement to the suspect and explains his/her rights regarding the preliminary investigation.

The investigator's arrest statement must be supported by the procurator. As a rule, incarceration during the preliminary investigation cannot last longer than two months. This term can be extended up to six months by an overseeing procurator. In certain cases, the Attorney General of Ukraine can extend the term to 18 months (Clause 156).

The defendant and defense counsel can appeal the procurator's post-arrest decisions (e.g. pre-trial incarceration) to the court. (Clause 236-3). The judge has the power to cancel the sanction of the procurator.

* Official who conducts prosecution. Preliminary investigations are conducted by investigators. There are investigators in the procuratura, in internal affairs and in national security. The procurator oversees all investigatory bodies to ensure their compliance with law. The procurators also maintain public prosecution in trial. The procuratura composes a single centralized system, which is independent from the judiciary. The Procurator General is accountable to the Supreme

Soviet (The Parliament) of Ukraine, not to the Ministry of Justice.

* Alternatives to going to trial. One way to complete a preliminary investigation without directing the case to trial is to drop the case. If the investigator finds the defendant guilty of committing the crime, the procurator, or the investigator with the consent of the procurator, has a right to drop the case: a) if it is assumed that "as a result of the changed situation the action committed by the person discontinued to be dangerous for the society"; b) by imposing administrative penalties instead of criminal punishment; c) by transferring the case for the consideration of the community court; d) by transferring the case for the consideration of the committee on juvenile delinquency; d) by placing the person on bail with a non-profit organization or a labor collective. (Code of Criminal Procedure, Clauses 7, 8, 9 and 10).

The consent of the convicted person must be obtained in order to drop the case on the grounds stated above. The investigator or the procurator must also consider the victim's opinion, although they are not obligated to act accordingly. Persons who may be affected by the statement of the investigator or procurator to drop the case can make an appeal to the court. After consideration, the judge may cancel the statement suggesting the case be dropped, and start the investigation again. (Clause 236-5, 236-6).

* Proportion of prosecuted cases going to trial. Information not available.

* Pre-trial incarceration conditions. After presenting the statement of charges to the accused, the investigator determines whether or not to detain the accused before trial. According to Clause 148 of the Code of Criminal Procedure, "...if there are sufficient grounds to suspect that the accused being free will escape from investigation and trial or will thwart finding the truth, or will continue his criminal activity, and to make sure that the proper execution of the sentence", the investigator or the procurator can take one of the following measures: 1) issue an obligation not to escape; 2) bail; 3) bail of a public organization or labor collective; 4) arrest; 5) place under the oversight of the commander of a military unit (for the military). (Clause 149).

* Bail procedure. Information not available.

* Proportion of pre-trial offenders incarcerated.

Information not available.

JUDICIAL SYSTEM

1. Administration.

The Ukraine has a judicial system which consists of the Supreme Court, regional courts and district (city) courts.

2. Special Courts.

Information not available.

3. Judges.

* Number of judges. Information not available.

* Appointments and qualifications. Under the Ukrainian Law on the Status of Judges, district and city court judges are elected by an appropriate Soviet of People's Deputies. Judges of the Supreme Court of Ukraine, the Supreme Court of the Crimean Republic, and Regional and military district court judges are elected by the Supreme Soviet (Parliament) of Ukraine.

Judges of the courts of general jurisdiction and military courts are elected for ten years. Judges which pass the election for the first time are elected for five years. To become a judge, a person must have a law degree and experience in the legal profession or in the judiciary. Candidates for judgeships are selected on the basis of qualification exams by a committee consisting of judges.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? The court determines the sentence.

* Is there a special sentencing hearing? No. The court states the defendant's guilt while delivering the sentence. The court delivers the sentence of a case after the trial and all accompanying statements by the prosecution and defense have been made. While stating the sentence, the court has to take into account aggravating and mitigating circumstances.

* Which persons have input into the sentencing process? The sentence, or verdict, is determined in a conference room in which only the judges

hearing the case may attend. A sentence can be nullified if it is shown that the secrecy of the judges' conference is violated. All sentencing decisions are made by a majority of votes. In order to insure that the opinion of the jurors is independent from the judges and to prevent them from being influenced by the authority of a professional judge, the presiding judge is the last person to vote. The verdict is then signed by each judge, after which they all gather in the courtroom where one of the judges announces the verdict publicly.

2. Types of Penalties.

* Range of penalties. The Criminal Code of Ukraine lists the kinds of criminal punishment available. Punishments can be categorized into basic and supplementary, depending on their method and the manner in which they are assigned. For example, basic punishments are those which are assigned as self-sufficient and cannot be assigned as a supplement to other punishments. Basic punishments include: incarceration (imprisonment), correctional works without incarceration, deprivation of the right to occupy certain positions or to perform certain activities, fines, and public censure (Clause 23 Criminal Code).

Supplementary punishments are those which can be assigned only as a supplement to a basic punishment. They include: confiscation; the removal of military or special rank; or removal of parental rights (Clause 23).

* Death penalty. The death penalty exists for aggravated homicide, rape of a minor, treason, espionage, and some military offenses. Execution is by firing squad. Persons cannot be sentenced to death if they are under 18 years old or pregnant. Persons fitting these descriptions at the moment of committing the crime or at the time of sentencing, or at the moment the sentence is to be executed cannot be given the death penalty.

During peace-time, the death penalty can also be applied for the following crimes: assassination of a government official (Clause 58), or a foreign official (Clause 59); sabotage (Clause 60); aggravated murder (Clause 93); attempted murder of a militia officer or a citizen patrolman, or a military man in regard with their law enforcement activity (Clause 190-1); and disobedience of a military man which caused a murder of the superior (Clause 234).

1. Description.

* Number of prisons and type. Information not available.

* Number of prison beds. Information not available.

* Average daily population/number of prisoners. Information not available.

* Number of annual admissions. Information not available.

* Actual or estimated proportions of inmates incarcerated. Information not available.

2. Administration.

* Administration. Application of sentences is regulated by the Correctional Code of Ukraine.

* Prison guards. Information not available.

* Training and qualifications. Information not available.

* Expenditure on the prison system. Information not available.

3. Prison Conditions.

* Remissions. Under the Criminal Code (Clauses 52, 52-1, 53), there is a possibility for a pre-term release from prison (parole) and for the substitution of incarceration with a more lenient punishment. These measures are determined and imposed by the court.

Parole or substituting part of the sentence with a more lenient punishment can occur only after a half, two-thirds, or three-quarters of the sentence has been served (depending on the seriousness of the crime). Persons can be placed on parole if they exhibit good behavior and honest work. Parole can be revoked if the person commits a new crime while they are at liberty.

* Work/Education. Inmates are required to work by law. Those who serve their sentence in special regime correctional colonies must be employed in heavy jobs (Clause 49, Correctional Code).

* Amenities/Privileges. Inmates are not allowed to have cash. However, they have bank accounts which they can use to buy food and goods of the first need. Inmates have a right to be visited by relatives and friends, send and receive mail,

including parcels and packages, and money orders. The correspondence of inmates is subject to censorship, and parcels and packages may be searched (Clause 28).

EXTRADITION AND TREATIES

* Extradition. The extradition of criminals to a foreign government is possible under a bilateral agreement with an appropriate state. Foreign citizens wanted by their government for a crime committed in their own country, can be extradited by the authority of the Attorney General of Ukraine. A Ukrainian citizen can be extradited to a foreign government to be prosecuted for a crime committed on the territory of that state only on the basis of a decree of the President of Ukraine. As of December 31, 1993, the Attorney General of Ukraine has treaties on mutual legal assistance with several different countries, including the United States, Australia, and Poland.

* Exchange of prisoners. Information not available.

* Specified conditions. Information not available.

Vladimir Tochilovsky
Senior Investigator
International Tribunal for Former Yugoslavia
384 Weissenbruch Straat
The Hague
The Netherlands
Tel: 3170-344-5390
e-mail: tochil@bart.nl

Sergey S. Chapkey
Visiting Fellow
National Institute of Justice
633 Indiana Avenue, N.W.
Suite 1386
Washington, D.C. 20531
Tel: 202-514-6208
Fax: 202-307-6394
e-mail: chapkey@justice.usdoj.gov

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