

Question No. 1

In line with obligations taken by Ukraine pursuant to the International Convention for the Protection of All Persons from Enforced Disappearances the Parliament (Verkhovna Rada) of Ukraine adopted the Law of Ukraine No. 2505-VIII “On the Legal Status of Disappeared Persons” (entered into force on August 2, 2018). The Law defines the legal status of disappeared persons, provides legal regulation of relations related to the establishment and registration, the search and social protection of such persons and their relatives.

This Law has also amended the Criminal Code of Ukraine by new Article 146-1 (Enforced disappearances). According to Article 146-1, the arrest, detention, abduction or deprivation of liberty of a person in any other form committed by a representative of the state, including of a foreign one, with the subsequent refusal to recognize the fact of such arrest, detention, abduction or deprivation of liberty of a person in any other form or withholding data on the fate of such person or his/her whereabouts shall be punishable by imprisonment from three to five years.

Part 2 of that Article envisages that issuance of an order or resolution to commit actions described in part 1 of the Article, or failure of a commander, who became aware of committing actions by his/her subordinates described in part 1 of the Article, to take measures to stop such actions and non-notification of competent authorities of the crime shall be punished to deprivation of liberty from 5 to 7 years.

At the same time, in the interlinear note to Article 146-1 of the Criminal Code of Ukraine, the following notion is explained as follows: “representatives of a foreign state in this article shall be deemed persons acting as civil servants of a foreign state or serving with the military, police, state security agencies, intelligence bodies or persons who hold positions in specified or any other state bodies or bodies of local self-government of a foreign state formed in accordance with its legislation or acting on the order of such persons, and also the representatives of illegal armed groups, armed gangs and groups of contractors set up, subordinated, managed and funded by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, composed of its state bodies and structures, which are functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of the Russian Federation of self-proclaimed bodies that usurped the exercise of power functions in temporarily occupied territories of Ukraine”.

Since the amendments to the Criminal Code have been in force 20 criminal proceedings of cases of enforced disappearances have been initiated.

Question No. 3

In accordance with Article 49 of the CC, a person shall be discharged from criminal accountability if the following periods have elapsed from the date of the criminal offense to the effective date of the judgment:

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

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

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

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

The statute of limitation shall not apply to crimes committed against the fundamentals of the national security of Ukraine (Articles 109 - 114¹ of the CC), against the peace and humanity (Articles 437 – 439, 442 (1) of the CC).

Question No. 5

According to Article 216 of the CPC (Investigative Jurisdiction) investigative bodies of National Police conduct a pre-trial investigation of criminal offenses established by the law of Ukraine on criminal liability, except those that are assigned to the investigation of other bodies of pre-trial investigation.

So, bodies of pre-trial investigation of the National Police are in charge of investigating the cases of enforced disappearances.

Since 2014 under instructions of the Head of National Police the working groups composed of police officers from criminal agency, criminal investigation department and units of forensic analysis have been established at the General Directorates of the National Police in the regions. The task of such working groups is to accept applications on disappearance of persons and kidnapping in the conflict affected area as well as in the zone of anti-terror operation and the Joint Forces Operation.

Question No. 8

According to Article 38 (2) of the Criminal Procedural Code (the CPC) a pre-trial investigation shall be conducted by the investigators of the pre-trial investigation agency, individually or by investigation group.

As prescribed by the provisions of Article 55 of the CPC a victim in criminal proceedings may be a natural person, who has sustained moral, physical or material damage as a result of a criminal offence, as well as a legal person, that has sustained a material damage.

The rights and duties of a victim shall accrue at the time of filing an application where it is indicated that a criminal offence has been committed against him/her or an application for entering into proceedings as a victim.

A victim shall be given a reminder card advising on his procedural rights and duties by the person who accepted the application that a criminal offence has been committed.

If a criminal offence caused death of a person, or if this person's condition prevents the person from filing an appropriate application, provisions of the Article shall apply to close relatives or family members of such deceased person. One person from among close relatives or family members who has filed an application to be engaged in proceedings as a victim shall be recognized as a victim, and upon a relevant application several persons may be recognized as victims.

When the person, whose condition prevented him or her from filing an appropriate application, recovers to be able to exercise the procedural rights, he/she may file an application requesting to be engaged in the proceedings as a victim.

According to Article 56 (Rights of a victim) of the CPC relatives of a disappeared person shall be recognized as victims in the criminal proceedings. Pursuant to Article 221 of the CPC upon application of the defense or victim, criminal investigators shall on a mandatory basis provide materials of pre-trial investigations for examination.

Pursuant to Article 56 (2) of the CPC during pre-trial proceedings, the victim shall have the right to *inter alia* produce evidence which support his application; take part in investigatory (search) and other procedural actions in the course of which ask questions, submit his comments and objections with regard to the conduct of procedural action, such comments and objections being put on the record of the procedural action concerned, as well as review the records of the investigatory (search) and other procedural actions conducted with his participation; after the completion of pre-trial investigation, obtain copies of materials which directly relate to criminal offence which has been committed against him.

If citizens file applications to National Police on information about process of pre-trial investigations in criminal proceedings initiated due to facts of missing persons or kidnapping, about measures taken to ascertain whereabouts of a victim and a person who committed a crime, such applications are considered according to the requirements of the Laws of Ukraine on Citizen Appeal, On access to public information and Article 222 of the Criminal Procedural Code and Law of Ukraine On Operational Investigative Activity.

Question No. 10

As envisaged in Article 74 of the CC discharge of a convicted person from punishment or from further serving of punishment, substitution of an imposed punishment by a milder punishment or mitigation of punishment, except for discharge from punishment or mitigation of punishment on the grounds of the Law of Ukraine on Amnesty or an act of pardon, may only be exercised by court in cases prescribed by the CC.

According to Article 152 of the Criminal Enforcement Code (hereafter – CEC) one of a ground for release from serving a sentence is an act of clemency.

According to the paragraph 27 of Article 106 (1) of the Constitution of Ukraine the President of Ukraine is entitled to grant a clemency.

President`s Decree No. 223/2015 of 21.04.2015 has approved the Regulation on the Procedure of Clemency Granting. According to the paragraph 3 of that Regulation the following individuals are entitled to request on clemency: a prisoner sentenced by the Ukrainian court who serves his/her punishment in Ukraine; a prisoner sentenced by the foreign court and transferred to Ukraine to proceed serving a punishment in Ukraine without a precondition of non-application of a clemency; a prisoner sentenced in Ukraine and transferred to the foreign country to serve a punishment if such a country agreed to recognize and enforce a decision on clemency granted in Ukraine.

According to provisions of paragraph 5 of that Regulation prisoners sentenced for grave or special grave offence or prisoners who have two or more convictions for committing intent crime or served a small length of the punishment shall be granted clemency only in exceptional cases when extraordinary circumstances exist.

Pursuant to paragraph 9 of that Regulation while a request on clemency is considering the following criteria must be taken into account:

- gravity of a crime;
- a term of served punishment;
- a character of prisoner, his/her behavior, sincere repentance, compensation of damages caused, family and other circumstances;
- opinions of prison administration or other agency enforcing a punishment, children care service, local authorities, NGOs and other stakeholders about the relevance of a clemency.

Question No. 11

In accordance with Article 66 (1) of the CC for the purposes of imposing a punishment, such circumstances shall be deemed to be mitigating as inter alia surrender, sincere repentance or actively assistance in detecting the offense; voluntary compensation of losses or repairing of damages; providing medical aid of other aid to the victim right after committing the offense.

Besides, according to Article 66 (2) of the CC when imposing a punishment, a court may find circumstances, other than those specified in part 1 of this Article, to be mitigating.

At the same time Article 69 (1) of the CC prescribes that in presence of several circumstances mitigating the punishment and significantly decreasing the degree of gravity of the offense committed, having regard to the character of an offender, a court may, by providing the reasons for its judgment, impose a primary punishment lower than the lowest threshold prescribed by a sanction of an article (a sanction of a paragraph of an article) in the Special Part of the CC (except for the conviction for corruption crimes), or change to another, milder type of primary punishment, which is not prescribed by a sanction of the article (a sanction of a paragraph of an article) concerned with this offense.

Question No. 12

According to Article 216 (1) of the CPC a pre-trial investigation of enforced disappearances (Article 146-1 of the CC) shall be conducted by the National Police investigation units.

Further, pursuant to Article 30 (1, 2) of the CPC only court shall administer justice in criminal proceedings in accordance with rules prescribed in the CPC. Refusal to administer justice shall not be permitted.

Question No. 13

According to Article 92 (1) of the CPC the burden of proving circumstances referred to in Article 91 of the CC, except for cases set forth in part 2 of this Article, shall be placed upon investigator, public prosecutor and, in cases specified by the present Code, on the victim.

The burden of proof that evidence, knowledge on the amount of procedural expenses and on circumstances that characterize the accused, is adequate and admissible is placed upon the presenting party (part 2 of Article 92).

Question No. 14

According to Article 7 of the CC citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed offenses outside Ukraine, shall be criminally liable under this Code, unless otherwise provided by the international treaties of Ukraine, the consent to the binding effect of which has been granted by the Parliament of Ukraine. Where the persons referred to in the paragraph 1 of this Article underwent criminal punishment for the committed criminal offenses outside Ukraine, they shall not be criminally liable for these criminal offenses in Ukraine.

Question No. 15

In accordance with Article 2 of the CPC the objectives of criminal procedure are the protection of individuals, society and the state from criminal offence, the protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence were prosecuted in proportion to his guilt, no one innocent were accused or convicted, and no one were subjected to ungrounded procedural compulsion and that an appropriate legal procedure applied to each party to criminal proceedings.

Question No. 17

In accordance with the Article 36 of the CPC public prosecutor, exercising his/her powers in accordance with the requirements of this Code, is independent in his/her procedural activity, any interference of persons who have no legal authority shall be prohibited. Public authorities, local governments, enterprises, institutions and organizations, public officials and other individuals shall be obliged to comply with the lawful requirements and procedural decisions of a prosecutor.

Article 40 envisages that investigator shall be responsible for legitimacy and timeliness of conducted procedural actions. Moreover, investigator shall be obliged to execute instructions provided in writing by a prosecutor. Failure of an investigator to comply with the lawful instructions of a prosecutor, provided in the manner prescribed by the CPC, shall entail the liability provided for by law. The part 5 of this Article states that investigator, exercising his/her powers in accordance with the requirements of the CPC, is independent in his/her procedural activities, any interference of persons who have no legal authority shall be prohibited. Public authorities, local self-government bodies, enterprises, institutions and organizations, public officials and other individuals shall be obliged to comply with the lawful requirements and procedural decisions of an investigator.