

Implementing legislation questionnaire for States Parties

UKRAINE

Question 1: Has your Government adopted any national legislation implementing the Rome Statute, or otherwise enacted legislation relating to the Rome Statute?

Answer: Yes.

In connection with the ratification by Ukraine of the Rome Statute of the International Criminal Court (hereinafter - the Rome Statute), the Law of Ukraine No. 4012-IX of 09.10.2024 supplemented the Criminal Code of Ukraine (hereinafter - the CC of Ukraine) with crimes against humanity, specified command responsibility as a separate type of involvement in a crime, aligned the crime of genocide with international law and made other changes that partially implement the provisions of the ROME STATUTE into national legislation.

In addition, the Law of Ukraine No. 2236-IX of 03.05.2022 supplemented the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine) with Section IX-2, which defines the specifics of cooperation with the International Criminal Court.

Part B

Question 5: In implementing the Statute, did your Government draft stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

Answer: The provisions of the Rome Statute are incorporated into pre-existing legislation (The Criminal and Criminal Procedural codes), not by adopting separate legal acts.

Question 6: Does the implementing legislation incorporate the substantive crimes by reference to the Statute or by incorporating the crimes into domestic law?

Answer: Law of Ukraine No. 4012-IX introduced into the Criminal Code of Ukraine new provisions on crimes against humanity and command responsibility, as reflected in Article 28 of the Rome Statute. At the same time, the existing provisions on war crimes, genocide, and the crime of aggression were revised to align their wording with the terminology and specific features of the Rome Statute.

Question 7: Does the implementing legislation incorporate the following aspects of cooperation with the Court and if so, how?

Sub-question "a" "Arrest and surrender".

Answer: Pursuant to Article 628 of the CPC of Ukraine, the detention on the territory of Ukraine of persons wanted by the International Criminal Court or in respect of whom the International Criminal Court has requested temporary arrest or arrest and surrender, as well as consideration of complaints about their detention, are carried out taking into account the specifics set out in Article 582 of this Code and Section IX-2 of the CPC of Ukraine.

Pursuant to Article 582(1) of the CPC of Ukraine, the detention of a person wanted by a foreign state in connection with a criminal offence on the territory of Ukraine is carried out by an authorised official.

The prosecutor within the territorial jurisdiction of which the detention was carried out is immediately informed of the detention. The notification to the prosecutor, which shall be accompanied by a copy of the detention report, shall contain detailed information on the grounds and motives for the detention.



ДОКУМЕНТ СЕД МЗС АСКОД

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Upon receipt of the notification, the prosecutor shall verify the legality of the detention of a person wanted by the competent authorities of foreign countries and immediately inform the relevant regional prosecutor's office.

Within sixty hours after the detention, the relevant regional prosecutor's office shall notify the relevant central authority of Ukraine, which shall inform the competent authority of the foreign state within three days.

The relevant regional prosecutor's office shall also notify the Ministry of Foreign Affairs of Ukraine of each case of detention of a foreign national who has committed a crime outside Ukraine.

In addition, Article 208 of the CPC of Ukraine sets out the cases when an authorised official may detain a person without a court order (e.g. during the crime, immediately after it or if there is a risk of escape). In this case, the detainee must be informed of his or her rights, a protocol must be drawn up, and special rules apply to certain categories of persons.

Thus, pursuant to Article 208(4)(3) of the CPC of Ukraine, the authorised official who detained a person wanted by the International Criminal Court or in respect of whom the International Criminal Court has requested temporary arrest or arrest and transfer shall also explain to the person his or her right to consent to the transfer to the International Criminal Court under a simplified procedure.

Sub-question "b" "Interim release and release of persons (acquittal, non-confirmation of charges, etc.)"

Answer: Pursuant to Article 632 of the CPC of Ukraine, a person who has been subjected to a preventive measure in the form of detention pursuant to a request of the International Criminal Court for temporary arrest or arrest and transfer, at any time before the actual transfer to the International Criminal Court, has the right to submit a written application to the investigating judge at the place of detention for temporary release and election of a preventive measure not related to detention. The investigating judge immediately sends a copy of such an application to the central authority of Ukraine to apply to the International Criminal Court for recommendations on the temporary release of the person. In the application to the International Criminal Court, the central authority of Ukraine may specify the period within which recommendations may be provided.

Within three days from the date of receipt of the recommendations of the International Criminal Court, the central authority of Ukraine shall send them to the investigating judge.

The application for temporary release of a person shall be considered by the investigating judge with the participation of the prosecutor, the person and his/her defence counsel within three days from the date of receipt of the recommendations of the International Criminal Court from the central body of Ukraine.

During the consideration, the investigating judge: 1) identifies the person who filed the application for temporary release; 2) explains to the person his/her rights under this Code and the Rome Statute of the International Criminal Court, as well as the legal consequences and conditions of temporary release; 3) examines the materials related to the application of a preventive measure in the form of detention; 4) examines and takes into account the recommendations of the International Criminal Court; 5) hears the opinion of the participants in the consideration.

When considering the application, the investigating judge does not investigate the guilt of the person and does not verify the legality of procedural decisions taken by the International Criminal Court in relation to the person.

Based on the results of the consideration of the application, the investigating judge issues a ruling on the temporary release of the person and the election of a preventive measure not related to detention, or on the refusal to temporarily release the person.

When determining the type of preventive measure, the investigating judge assesses all the circumstances, including: 1) the severity of the punishment that a person faces if found guilty of the crime specified in the request of the International Criminal Court for temporary arrest or arrest and surrender; 2) age and health of the person; 3) strength of social ties of the person in the place of his/her permanent residence, in particular, the presence of family and/or dependents; 4) whether the person has a permanent place of residence; 5) compliance by the person with the conditions of the preventive

measures applied, if they were applied to him/her earlier; 6) circumstances that may affect the decision on the temporary release of the person, taking into account the need to ensure the execution of the request for the transfer of the person to the International Criminal Court; 7) the timeframe for the execution of the request of the International Criminal Court for temporary arrest, arrest and transfer; 8) other extraordinary and exceptional circumstances that justify the temporary release of the person in accordance with the recommendations of the International Criminal Court.

The investigating judge in the ruling on the temporary release of a person and the election of a non-custodial measure of restraint shall oblige the person to appear at every request to the court or to the central body of Ukraine specified in the ruling, and shall also impose on the person the obligations specified in the recommendations of the International Criminal Court.

The decision to temporarily release a person and impose a non-custodial measure of restraint or to refuse to release him/her shall enter into force from the moment it is announced by the investigating judge and shall not be subject to appeal.

A copy of the decision shall be sent to the central authority of Ukraine no later than the next day after it is issued for the purpose of informing the International Criminal Court accordingly.

The temporary release of a person does not prevent the re-application of a preventive measure in the form of detention for the purpose of actual transfer to the International Criminal Court or at the request of the International Criminal Court.

Pursuant to Article 629(10) of the Criminal Procedure Code of Ukraine, if the term of the preventive measure in the form of detention at the request of the International Criminal Court for temporary arrest has expired and the request of the International Criminal Court for arrest and transfer has not been received, the person shall be immediately released from custody.

Sub-question "c" "Cooperation with OTP investigations"

Answer: Pursuant to Article 617(2) of the Criminal Procedure Code of Ukraine, cooperation between Ukraine and the International Criminal Court is carried out in accordance with the procedure established by this Code and the Rome Statute of the International Criminal Court, taking into account the specifics provided for in this section.

Thus, in accordance with Article 621(1)(6), (9) and (10) of the Criminal Procedure Code of Ukraine, the request for assistance from the International Criminal Court concerning the conduct of procedural actions is executed in the manner and within the time limits provided for in Article 558 of this Code, taking into account the specifics set out in Article 562 of this Code and the Rome Statute of the International Criminal Court.

If the execution of the International Criminal Court's request for assistance requires additional information, the central authority of Ukraine shall apply to the International Criminal Court for relevant consultations.

The central authority of Ukraine may postpone the execution of the International Criminal Court's request for assistance 1) for a period agreed with the International Criminal Court, if the immediate execution of such a request prevents the pre-trial investigation or trial in Ukraine of a case other than the one to which the request relates. The period for which the execution of the request is postponed may not exceed the period necessary to complete the relevant criminal proceedings in Ukraine; 2) for the period until the International Criminal Court makes a decision on jurisdiction or admissibility of the case, unless the International Criminal Court has allowed the Prosecutor of the International Criminal Court to start collecting evidence.

In case of postponement of execution of the request of the International Criminal Court on the grounds provided for in part three of this article, the central authority of Ukraine, at the request of the Prosecutor of the International Criminal Court, shall take measures to preserve evidence in the manner prescribed by this Code.

If the International Criminal Court's request for assistance cannot be fulfilled on the terms and conditions stipulated in the request, the central authority of Ukraine shall consult with the International Criminal Court on the possibility of fulfilling the request on other terms and conditions.

If the request for assistance from the International Criminal Court states that it must be executed immediately, the documents or evidence drawn up or received by the competent authorities of Ukraine

as a result of execution of such request shall be sent to the central authority of Ukraine no later than the next day after execution for transmission to the International Criminal Court.

If the request of the International Criminal Court for assistance involves conducting procedural actions in relation to a person, premises or property enjoying diplomatic immunity in Ukraine in accordance with an international treaty of Ukraine ratified by the Verkhovna Rada of Ukraine, the central authority of Ukraine shall immediately inform the International Criminal Court thereof and postpone the execution of the request until it receives information on the agreement reached between the International Criminal Court and the relevant foreign state.

The central authority of Ukraine, after consultation with the International Criminal Court, may refuse to execute the request for assistance of the International Criminal Court in full or in part if such execution may result in disclosure of information relating to the national security of Ukraine.

The central authority of Ukraine shall promptly inform the International Criminal Court of the decisions taken upon consideration of the request for assistance by the International Criminal Court. In case of refusal to execute the request, the central authority of Ukraine shall indicate the reasons for such refusal.

Pursuant to Article 624 of the Criminal Procedure Code of Ukraine, procedural actions on the territory of Ukraine on the basis of and pursuant to the request of the International Criminal Court may be carried out by the Prosecutor of the International Criminal Court or the employees of the International Criminal Court authorised by him/her and specified in the relevant request of the International Criminal Court, except for procedural actions that are carried out in Ukraine with the consent of the prosecutor or with the permission of the investigating judge or court.

In case the Prosecutor of the International Criminal Court authorises other employees of the International Criminal Court to carry out procedural actions in Ukraine, such actions may be carried out only with the consent of the Prosecutor General (Acting Prosecutor General).

At the request of the International Criminal Court, the central authority of Ukraine takes measures to facilitate the performance of the International Criminal Court's functions, including holding meetings, in Ukraine.

In addition, the Resolution of the Cabinet of Ministers of Ukraine of 13.08.2025 No. 857-r approved the draft Agreement between the Cabinet of Ministers of Ukraine and the Office of the Prosecutor of the International Criminal Court on the secondment of personnel to the Office of the International Criminal Court in Ukraine.

Sub-question "d" "Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes"

Answer: Pursuant to Article 636(3-5) of the Criminal Procedure Code of Ukraine, the central body of Ukraine sends the decision of the International Criminal Court on fine and/or confiscation to the court at the place of residence of the person, the place of serving the person's sentence or the location of the property for enforcement within thirty days in accordance with the procedure set out in Article 535 of this Code.

The execution of the decision of the International Criminal Court on a fine and/or confiscation shall be carried out without prejudice to the rights of bona fide third parties.

The property or proceeds from the sale of real estate or, where appropriate, from the sale of other property obtained as a result of the execution of the decision referred to in part four of this Article shall be transferred to the International Criminal Court.

Sub-question "e" "Enforcement of sentences"

Answer: Pursuant to Article 618(1) of the Criminal Procedure Code of Ukraine, the Prosecutor General's Office shall ensure cooperation with the International Criminal Court during the investigation and trial, and the Ministry of Justice of Ukraine shall ensure the execution of sentences or other decisions of the International Criminal Court made as a result of the trial.

Pursuant to Article 618(3) of the Criminal Procedure Code of Ukraine, the Ministry of Justice of Ukraine 1) organises the execution of sentences and other decisions of the International Criminal

Court on the territory of Ukraine; 2) informs the International Criminal Court of the readiness to accept convicted persons to serve their sentence of imprisonment and agrees with the International Criminal Court the terms of such acceptance; 3) organises the reception and transfer of persons convicted by the International Criminal Court to serve their sentence; 4) organises the translation of documents received from the International Criminal Court, if they are not in the state language.

The central authorities of Ukraine interact with the International Criminal Court directly or through diplomatic channels. In urgent cases, the central authority of Ukraine accepts the request of the International Criminal Court if it is sent in any way that can ensure the transmission of a written communication (Article 618(4), (5) of the CPC of Ukraine).

Sub-question "f" "Witness protection"

Answer: Pursuant to Article 621(8) of the Criminal Procedure Code of Ukraine, the central authority of Ukraine, pursuant to the request for assistance from the International Criminal Court, shall take measures to ensure the safety of victims, witnesses and their family members in accordance with the legislation of Ukraine.

Pursuant to Article 2(2) of the Law of Ukraine "On Ensuring the Security of Persons Involved in Criminal Proceedings", security measures may be applied to the persons specified in the request of the International Criminal Court.

Article 7 of the Law of Ukraine "On Ensuring the Security of Persons Participating in Criminal Proceedings" provides for the following security measures: a) personal protection, protection of housing and property; b) issuance of special personal protective equipment and danger warning; c) use of technical means of control and tapping of telephone and other communications, visual surveillance; d) replacement of documents and change of appearance; e) change of place of work or study; f) relocation to another place of residence; g) placement in a pre-school educational institution. Taking into account the nature and degree of danger to the life, health, home and property of persons taken under protection, other security measures may be taken.

Sub-question "g" "Other forms of cooperation (see in particular Article 93 of the Rome Statute)"

Answer: Pursuant to Article 617(2) of the CPC of Ukraine, cooperation between Ukraine and the International Criminal Court is carried out in accordance with the procedure established by this Code and the Rome Statute of the International Criminal Court, taking into account the specifics provided for in Section IX-2 of the Criminal Procedure Code of Ukraine.

Pursuant to Article 621 of the Criminal Procedure Code of Ukraine, a request for assistance from the International Criminal Court relating to the conduct of procedural actions shall be executed in the manner and within the time limits provided for in Article 558 of this Code, taking into account the specifics set out in Article 562 of this Code and the Rome Statute of the International Criminal Court.

Pursuant to Article 558 of the Criminal Procedure Code of Ukraine, the central body of Ukraine for international legal assistance or the body authorised to conduct relations in accordance with part three of Article 545 of this Code, upon consideration of the request of the competent authority of a foreign state for international legal assistance, shall decide on 1) entrusting its execution to the pre-trial investigation body, prosecutor's office or court with simultaneous taking measures to ensure confidentiality conditions; 2) possibility of executing the request with application of the legislation of a foreign state; 3) postponement of execution if it may interfere with criminal proceedings in Ukraine, or agrees with the competent authority of a foreign state on the possibility of executing the request under certain conditions; 4) refusal to execute the request on the grounds provided for in Article 557 of this Code; 5) possibility of executing the request on the grounds provided for in Article 557 of this Code.

The request of the competent authority of a foreign state for international legal assistance shall be executed within one month from the date of its receipt by the direct executor. If it is necessary to perform complex and large-scale procedural actions, including those that require the approval of the

prosecutor or can be performed only on the basis of a decision of the investigating judge, the term of execution may be extended by the central body of Ukraine or the body authorised to conduct relations with the competent authorities of a foreign state in accordance with part three of Article 545 of this Code.

The documents drawn up by the pre-trial investigation authority, investigator, prosecutor or judge to ensure the execution of the request for international legal assistance shall be signed by the said officials and sealed by the relevant authority. Documents received from other agencies, institutions or enterprises (regardless of their form of ownership) as a result of the execution of a request must be signed by their heads and sealed with the seal of the relevant agency, institution or enterprise. The pre-trial investigation body or investigator shall submit the materials of the request to the prosecutor supervising the observance of laws during the pre-trial investigation to verify the completeness and legality of the investigative (detective) and other procedural actions.

Documents received in the course of fulfilling a request for international legal assistance are sent to the competent authority of a foreign state in accordance with the procedure established by the relevant international treaty ratified by the Verkhovna Rada of Ukraine.

In the absence of an international treaty between Ukraine and the relevant foreign state, the execution of a request for international legal aid shall be carried out in compliance with the requirements of this Article, and the received documents shall be sent by the central body of Ukraine for international legal aid by diplomatic means.

When submitting materials to the competent authority of a foreign state, the central authority of Ukraine for international legal aid or the authority authorised to conduct relations with the competent authorities of a foreign state in accordance with part three of Article 545 of this Code may establish restrictions on the use of such materials in accordance with the legislation and international treaty ratified by the Verkhovna Rada of Ukraine.

In case of impossibility to fulfil a request for international legal assistance, as well as in case of refusal to provide international legal assistance on the grounds provided for in Article 557 of this Code, the central body of Ukraine for international legal assistance or the body authorised to conduct relations in accordance with part three of Article 545 of this Code shall return such a request to the competent authority of the foreign state, stating the reasons.

Pursuant to Article 562 of the Criminal Procedure Code of Ukraine, if a procedural action is required to comply with a request from a competent authority of a foreign state, which can be performed in Ukraine only with the permission of a prosecutor or court, such action shall be performed only upon receipt of the relevant permission in accordance with the procedure provided for by this Code, even if the legislation of the requesting party does not provide for this. The basis for deciding on the issue of granting such permission shall be the materials of the application of the competent authority of a foreign state.

If, when applying for assistance in a foreign country, it is necessary to perform a procedural action for which a prosecutor's or court's permission is required in Ukraine, such procedural action requires the relevant permission of the prosecutor or court in accordance with the procedure established by this Code only if it is provided for by an international agreement or is a prerequisite for the provision of this type of assistance under the legislation of the requested party. In this case, the validity of such a permit is not limited, and a duly certified copy of the permit is attached to the request materials.

Pursuant to Article 621(10) of the Criminal Procedure Code of Ukraine, the central authority of Ukraine shall immediately inform the International Criminal Court of the decisions taken upon consideration of the request for assistance from the International Criminal Court. In case of refusal to execute the request, the central authority of Ukraine shall indicate the reasons for such refusal.

Question 8: Does the implementing legislation designate a channel of communication with the Court?

Answer: Pursuant to Article 618(4) and (5) of the Criminal Procedure Code of Ukraine, the central authorities of Ukraine interact with the International Criminal Court directly or through diplomatic channels. In urgent cases, the central authority of Ukraine accepts the request of the

International Criminal Court if it is sent by any means capable of ensuring the transmission of a written communication.

Pursuant to Article 622(1) of the Criminal Procedure Code of Ukraine, the request of the International Criminal Court for cooperation and any documents attached to such a request are not subject to disclosure. Disclosure of the fact of filing a request and the information contained in the request is made only when and to the extent necessary to fulfil the request for cooperation of the International Criminal Court.

In addition, Law of Ukraine No. 3909-IX contains an official statement: “Ukraine declares that requests for cooperation from the International Criminal Court may be sent both through diplomatic channels and directly to the Office of the Prosecutor General (for matters relating to investigation and trial) or to the Ministry of Justice of Ukraine (for matters relating to the enforcement of judgments and other decisions of the International Criminal Court adopted as a result of the proceedings).”

Question 9: Does the implementing legislation create a central national authority or designate a national focal point for cooperation with the Court?

Answer: Article 618 of the Criminal Procedure Code of Ukraine clearly designates two central authorities responsible for cooperation with the ICC, depending on the stage and nature of the proceedings:

- The Office of the Prosecutor General of Ukraine is responsible for cooperation during the investigation and trial phases.
- The Ministry of Justice of Ukraine is responsible for cooperation during the enforcement of ICC judgments or other decisions.

Accordingly, Ukraine applies a model, whereby all requests for cooperation are processed through one of the two central authorities, depending on subject-matter jurisdiction. This ensures a structured and coordinated approach to cooperation.

Additionally, pursuant to Cabinet of Ministers Resolution No. 187 of 21 February 2025, the Ministry of Foreign Affairs of Ukraine is responsible for interaction with the Assembly of States Parties to the Rome Statute, in coordination with the Ministry of Justice and the Office of the Prosecutor General (on a consent basis).

Question 10: Does the implementing legislation provide for the privileges and immunities of the Court? (See in particular Article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)

Answer: Ukraine acceded to the Agreement on the Privileges and Immunities of the Court, concluded on September 10, 2002, in accordance with the Law of Ukraine No. 254-V of October 18, 2006, "On Ukraine's Accession to the Agreement on the Privileges and Immunities of the International Criminal Court."

According to part 1 of Article 4 of the Agreement between the Cabinet of Ministers of Ukraine and the International Criminal Court on the Establishment of the Office of the International Criminal Court in Ukraine of 23.03.2023, the International Criminal Court enjoys in the territory of Ukraine such privileges, immunities and benefits as are necessary for the achievement of its objectives in accordance with Articles 3-10 of the Agreement on the Privileges and Immunities of the International Criminal Court, which Ukraine acceded to on 29.01.2007.

Question 11: What obstacles, if any, did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?

Answer: During the ratification of the Rome Statute, the Government of Ukraine encountered a notable obstacle: the principle of complementarity of the ICC required constitutional changes, because under the original Constitution the jurisdiction of international courts was constrained.

To overcome this obstacle, in 2016 the Verkhovna Rada adopted a constitutional amendment concerning Article 124 of the Constitution of Ukraine. It inserted wording under which Ukraine may recognise the jurisdiction of the International Criminal Court subject to the conditions determined by the Rome Statute.

This amendment entered into force on 30 June 2019, at which point all remaining constitutional barriers to ratification of the Rome Statute were removed.

Question 12: Did your Government benefit from any form of assistance in the process of implementing the Statute?

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Question 13: Has your government initiated or considered additional steps for the implementation of the Statute in national legislation?

Answer: Despite the addition of a number of provisions to the Criminal Code of Ukraine aimed at harmonising national legislation with the Rome Statute, the issue of other changes to legislation aimed at improving the prosecution of international crimes remains relevant.

For this purpose, by Order of the Acting Prosecutor General No. 12 of 14.01.2025, the Prosecutor General's Office established an interagency working group on harmonisation of legislation in the context of law enforcement practice in connection with Ukraine's ratification of the Rome Statute of the International Criminal Court (hereinafter - the interagency working group), which includes representatives of law enforcement agencies, the judiciary, parliament, academics, experts from national and international governmental and non-governmental organisations.

The interagency working group is currently developing amendments to the legislation, in particular by harmonising Article 437 of the Criminal Code of Ukraine (crime of aggression) and Article 438 of the Criminal Code of Ukraine (war crimes) with the provisions of the Rome Statute.

In particular, such amendments provide for the specification of the forms of aggression and the persons who are the subjects of this crime, and war crimes should be enshrined in the form of a list of specific acts, as reflected in Article 8 of the Rome Statute.

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