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Legal Monitoring in Ukraine

Preliminary Report on the trials against former Minister of Interior Yurij Lutsenko and former First Deputy Minister of Justice Yevhen Korniychuk

This report describes and assesses the facts and the legal situation around the investigation and detention of former Minister of Interior Yurij Lutsenko and former Deputy Minister of Justice Yevhen Korniychuk.

These two cases have been selected among the numerous cases pending against leading politicians from the former government. The ambition is through these cases to be able to describe relevant sides of the human rights status of the present legislation and legal system of Ukraine. Most of the observations will probably be valid for other similar cases too. The preliminary report does not have the ambition of being a fully fledged legal analysis; it is rather to be considered as a practitioner´s spot observations at this stage of the trials. It is the intention to follow up with reports on other aspects of these cases and of other cases as well.

It is not the purpose of the monitoring of the criminal cases to establish whether the defendants are guilty or innocent. Ukraine ranks very high on international lists of corruption and any honest attempt to fight it will be welcomed by the international community, even if it should be against politicians from the former regime. Smooth transfer of power from one government to the next is however so important an element in a functioning democracy and prosecution against so many members of a former government so seldomly seen, even in that part of the world, that the present government must understand and accept international skepticism as to its motives. Especially as the present government generally is considered to have a poor record in fighting corruption and could have an evident interest in removing prominent political opponents from future elections.

The report is produced for the Danish Helsinki Committee on Human Rights as part of its Legal Monitoring program by Mikael Lyngbo, who has many years of experience as a public prosecutor, chief of police and deputy chief of the Danish Security Service. He has also worked for the EU and other international organizations as Chief Advisor in Albania, Political Advisor in the Sudan, Rule of Law Expert in Iraq and Head of Evaluation Team in South Africa. It is based on observations during his presence in court and meetings with legal experts, Ukrainian officials, civil society organizations and political and diplomatic representatives.

Copenhagen, 28th of April 2011

The case against Yevhen Korniychuk

Yevhen Korniychuk is a lawyer by profession, specializing in international finance and business law. He was elected to Parliament and became in 2006 chairman of the Ukrainian Social Democratic Party, following his father in law Vasyl Onopenko, a judge by profession who was elected president of the Ukrainian Supreme Court. From 2007 -2010 he was First Deputy Minister of Justice in the Yulia Timoshenko government.

He is charged with violation of art. 365, paragraph 3, of the Ukrainian Criminal Code (excess of authority or official powers that caused grave consequences) for in his capacity of First Deputy Minister of Justice having issued a legal opinion or law interpretation about the possible use of a single-source public procurement procedure. It concerned the procurement by the National Joint Venture Company "Naftogaz" of legal assistance to be provided by the legal firm Magisters, at which Mr. Korniychuk used to be a senior partner, however at that time had no longer financial or business contact. The formal permission to use this procedure was given by the Ministry of Economy and the contract was signed by Naftogaz. He is also charged with having violated Article 366, paragraph 2 (forgery in office that caused grave consequences) as the mentioned document was not properly filed in the Ministry of Justice. His actions are claimed to have brought losses to the state as other legal firms could have supplied the legal assistance at a lower cost.

The facts on which the present charges are based were also investigated in 2009, although at that time Mr. Korniychuk was not charged. The Supreme Court decided in a finding in 2010 that there were no sufficient grounds to believe a violation of the Criminal Code had been committed.

On 22.12.2010 Mr. Korniychuk was informed about the opening of an investigation against him. The very same day, few hours after his wife had given birth, he was arrested by a team of masked police officers. His arrest was upheld on 24.12.2010 and on 30.12.2010 he was detained for 2 months. This decision was upheld by the Court of Appeal on 13.1.2011. On 15.2.2011 the detention was extended for 2 further months.

An investigation was also opened against the daughter of the Supreme Court President who was charged with the failure to repay on time a private loan regulated under civil law. As part of that investigation the home of Supreme Court President Onopenko was searched.

On 14.2.2011 Supreme Court President Mr. Onopenko met with the President of Ukraine Mr. Yanukovych. During that meeting the judicial reform and the work of the Supreme Court were discussed as well as the pending cases against the family. Next day Mr. Korniychuk was released from detention and the charges against Mr. Onopenko's daughter were dropped.

The trial against Mr. Korniychuk started in court on 18.3.2011 and is still pending.

The case against Yurij Lutsenko

Yurij Lutsenko belonged to the Socialist Party during 1991-2006, when he established the People´s Self-Defense Party. He was Minister of Interior in 2005-2006 and again in 2007-2010. He is now Deputy Editor-in-Chief of the newspaper "Silski Visti".

During Mr. Lutsenko's work in the ministry at that time opposition politicians, among others the present Vice Prime Minister Borys Kolesnikov and the late ex-governor of Kharkiv Oblast Yevhen Kushnariov, were investigated and detained, and the office of the oligarch and member of the parliament from the Party of Regions Rinat Akhmetov was searched.

Investigation against Mr. Lutsenko was opened on 2.11.2010. On 5 November 2010 he accepted a decision by the investigator of a preventive measure in the form of prohibition against leaving his registered residence.

The charges were changed on 13.12.2010 and the pre-trial investigation declared finished on the same day, resulting in 47 volumes of case-file. The final charges concerned violation of Art. 191, para. 5, (misappropriation of state property in especially gross amount through abuse of office by an organized group) and Art. 365, para. 3 (excess of official powers that caused grave consequences), for the following alleged actions:

1. unlawful promotion of Mr. Lutsenko's driver to the rank of police officer, leading to losses caused to the state because of increased salary and payment of other benefits.
2. allowing expenses for the organization of the annual Militsia´s Day festivities in 2009 in violation of a resolution of the government to halt such expenses.
3. having exceeded his power as Minister in connection with the police monitoring of a driver of the former head of the Security Service, who was suspected of complicity in the poisoning of former Preisdent of Ukraine Mr. Yushchenko.

On 24.12.2010 the investigation was reopened.

Lutsenko was arrested on 26 December 2010 for having violated Article 135 of the Criminal Procedure Code of Ukraine by having avoided to acquaint himself with the materials of the case at the time dictated by the investigator. On several days Mr. Lutsenko had failed to appear citing his attorney´s involvement in another criminal case, and on the days where he actually did turn up, he was found to have deliberately drawn out this process. Additionally he had allegedly disclosed via the mass media information gathered by pre-trial investigation in his criminal case.

On 21.4.2011 the Kyiv City Court of Appeal extended the detention of Mr. Lutsenko for another month till 27th of May. Few days before the court hearing Mr. Lutsenko finished reviewing the case-file. The prosecution, however, requested further extension due to the fact that legal representatives of Mr. Lutsenko failed to finalize their familiarizing with the case-file against Mr. Lutsenko.

Observations, discussions and conclusions:

1. The defendants Lutsenko and Korniychuk both accepted travel restrictions when the investigations were opened. This seems generally to be standard procedure in Ukraine when an investigation has been initiated. When travel restrictions are applied you are not allowed to leave your residence without the permission of the prosecutor. The fact that the restrictions formally are being accepted by the defendant obviously cannot hide the fact that it is in reality a coercive measure imposed by the authorities, because the alternative is the defendant being detained. These restrictions in the two cases can hardly be in line with the 4th Protocol to the European Convention on Human Rights, since none of the reasons mentioned in paragraph 3 of its Article 2 seem to have been present at the time they were introduced, as indeed does not even appear to be invoked by the investigator. Restrictions in movement of a defendant may not be imposed by the authorities merely because it is convenient for the investigator to have the accused in the vicinity.

2. According to the Ukrainian Criminal Procedure Code, any preventive measures, including custody, are applied when there are grounds to believe that a person will try to abscond or avoid carrying out procedural decisions, impede the course of justice or continue their criminal activities, as well as to ensure the enforcement of procedural decisions.

   The law itself is not that different from the legislation of other countries. What is different is however the widespread use of pre-trial detention, as also seen by the detention of Mr. Lutsenko and Mr. Korniychuk, neither of whom would probably have been detained in countries with another legal tradition. A total figure of about 40.000 detained at any time has been mentioned.

   The European Court of Human Rights dealt in its judgment of 10.2.2011 in the case of *Kharchenko vs. Ukraine* with the excessive use of detention in Ukraine.

   The problems of the use of detention in general and in these two cases seem to have been more generally recognized also by authorities in Ukraine. The Monitor learned that the Ombudsman personally has intervened in both cases and informed the courts and the President of Ukraine that the use of detention in general and in these individual cases in her opinion was a violation of their human rights. In most countries such an intervention in a pending case from an ombudsman to the President on activities of the judiciary would probably lead to raised eyebrows; it is mentioned here only to demonstrate the point on violation of human rights.

   A pending amendment to Art. 155 of the Criminal Procedure Code will allow detention only in cases of crimes with a minimum penalty of 5 years against 3 years now. That amendment will in itself not change the tradition of widespread use of pre-trial detention.

3. In neither of the monitored cases have individual reasons to support the need of pre-trial detention been given by the court. In the Lutsenko case the court only refers that*: "the case materials have data that indicate a possibility by Yurij Lutsenko personally and*

through others in the future to hamper the exercise of procedural decision in the case and the effect on witnesses". This clearly is not an individual justification for the legality of the use of detention with regard to the specific facts of the case, as required by the European Court on Human Rights.

4. In the Lutsenko case the investigator gave him and his lawyer a "schedule" dictating which pages of the files they were to read every day in preparation of his defense, and only gave them access to the files they were instructed to review on that very day. The investigator did not take into consideration whether the defense lawyer had other obligations, which could keep him from preparing this case within the dictated time frame. The defense did not get his own copy of the files, and in neither the Lutsenko nor the Korniychuk cases were the defense allowed by the investigator to photograph or photocopy the files or parts thereof. The defense lawyer during his preparations and during the trial will only have his personal handwritten notes to support his memory.

   As seen from point 3 above, the court even justified the detention of Lutsenko by the fact that he and his defense lawyer were too slow in reading through the files, thus delaying the trial and not respecting a procedural decision of the investigator.

   It is unheard of and must be a violation of the European Convention Article 6, paragraph 3.b) that it is up to the decision of the investigator how and when the defendant and his lawyer are to prepare themselves for the upcoming trial. That can not be a procedural decision in the hands of the investigator or the prosecutor, but a right of the defendant and his lawyer.

   It does not allow fair working conditions or equality of arms that the defense lawyer does not have his own copy of the file and access to all of the files simultaneously.

5. The defense in the Korniychuk case has argued that the charges against him have already been dismissed by the Supreme Court in a ruling of 15.7.2010.

   It is a fact that the Supreme Court has upheld decisions by the City Court and the Court of Appeal that there were insufficient reasons to open an investigation for violation of Art. 366 of the CPC by persons serving in the Ukrainian Ministry of Justice having falsified an expert legal opinion, which led Naftogaz to sign a contract with the law firm Magisters, which caused a loss to the state and Naftogaz. The Supreme Court added that it found no support to the claim of the investigator that Magisters had not produced legal assistance for the money they have received; thus the state and Naftogaz have not suffered losses.

   Mr. Korniychuk was however not charged during that investigation. It is indeed an important principle of the Rule of Law that a final decision by a court cannot be called into question. The authorities are not entitled to seek review only because they do not agree with the decision. In the case *Sergey Zolotukhin vs. Russia* the ECHR stated that prosecution or trial for a second offence is not permitted if it is based on identical facts or facts which are substantially the same.

The wording of the 7th Protocol to the ECHR Article 4, paragraph 2, is that "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State". This might indicate that Res Judicata is applied only when an individual has already been acquitted for the offence.

6. During the court session in the Lutsenko case on 25.2.2011 the chairman of the Court of Appeal informed the audience that he had received a written note from Mr. Lutsenko through his lawyer requesting that Mr. Lutsenko be present in the court room. The judge however turned this request down as the note was not "certified by the prison director". The court therefore had not requested Mr. Lutsenko to be brought from the Detention Center to the court building and the court session took place without defendant.

   The court can have had no doubt that Mr. Lutsenko wanted to be present nor that the note, which it had received from the defendant's lawyer, was written by Mr. Lutsenko.

   The decision indicates a biased attitude in the judiciary against granting the accused person his legal rights and letting him benefit from the assumption of innocence. That also seems to indicate a lack of understanding of or respect for one of the basic principles of human rights: Justice must not only be done but must also be seen to be done.

7. In the Lutsenko case the defense lawyer complained about having only received from the court a notice of the session, in which the question of extension of the detention was to be dealt with, 15 minutes before the meeting. With such a short notice he was unable to meet. The prosecutor claimed that the defense lawyer had been informed 1 hour before the meeting and that he himself had not known of the session earlier. In any case this is not a fair way for the court to inform the parties to the trial about a session, for which they need to prepare themselves and where it is essential that the persons with specific knowledge of the case can meet.

8. According to the ECHR Article 6, paragraph 2, anyone who is charged with a violation of the law must be considered innocent until his guilt has been proven. However apparently only 0.2 % of the accused persons are acquitted by the courts of Ukraine. That might have been explained by an extremely cautious prosecution, granting the accused all the benefit of the doubt, but it is certainly more likely the result of a judiciary much too willing to follow the claims of the prosecution and too afraid to confront it. The success rate of the investigation is a worrying 90 %, which is far above what you see and can expect in countries with a tradition of respect for the rights of the accused.

   Several interlocutors mentioned a legal possibility and wide spread practice of the courts sending cases back to prosecution for further investigation or adaption and even correction of the indictment, or of giving a low sentence in cases where the evidence does not sufficiently support the indictment. That of course is unacceptable and violates ECHR principles of equality of arms and right not to be tried twice for the same offence.

9. An indictment is the central document in criminal proceedings. It is supposed to describe the criminal act and identify time and place, the subject of the criminal act and the method as well as to mention the articles which have been violated. It is the basis for the evidence presented to the court by the prosecutor and the defense of the defense lawyer.

   An indictment in the Ukrainian criminal justice system certainly does all this and much, much more. It is a broad narrative of the entire result of the investigation, a mixture of indictment and evidence, including resume of the statement of witnesses, and prosecutor´s actions. But it does not clearly separate the criminal actions from other actions and it influences the court with information and evidence not necessarily to be presented during the trial. The indictment in the Korniychuk case is 45 pages! It must be almost impossible for the defense to defend his client when the criminal acts are not clearly identified. This fact might also contribute to the very high rate of convictions, mentioned in point 8.

10. The Monitor was impressed by the widespread opinion that the Ukrainian courts cannot be considered independent at least in cases related to politics. The judiciary certainly has a problem with its credibility in the public. As the decisive factor of such situation the composition of the Higher Council of Justice was pointed at with its heavy bias in favour of the representation from the President of Ukraine or his affiliated party and the membership of the Prosecutor General and his 2 deputies, the Head of the Security Service etc. after the Judicial Reform in the summer of 2010. The judicial reform has in other ways improved the conditions of the legal system, but the Higher Council of Justice has obtained an unacceptable decisive influence on the appointment of, the disciplinary measures against and the dismissal of judges. The judicial reform law was criticized by the Council of Europe's Venice Commission.

11. According to a public statement by the Deputy Prosecutor General the prosecution last year initiated 600 disciplinary cases against judges and information indicates that at least 38 judges have been dismissed against an average of 6½ the former years. This is a strong indication that the independence of judges is under strong pressure and that the prosecution has a dominating influence on the future of judges. Prosecutors should not be responsible for disciplining judges; that disturbs the point of balance between prosecution and judiciary.

12. It has also been mentioned that judges are not appointed for an unlimited time until they have served for five years. Their first appointment is made by the President of Ukraine upon proposal of the Higher Council of Justice. After that period their permanent appointment is to be approved by the Parliament where one party and its allies hold a solid majority. That gives judges little room for political independence especially during those initial 5 years in the office.

13. One can therefore wonder that the judge appointed to a spectacular and political trial as that of Mr. Korniychuk is but 25 years old and has only been appointed to the 5 years´ initial "test period" a few months ago. Her qualifications aside (and the Monitor has no

objections to that) she must be in an extremely vulnerable position in such an exposed case, taking into consideration that the Parliament in 5 years will decide her future as a permanent judge.

14. The Monitor has been surprised to see a statement by the newly appointed Prosecutor General Viktor Pshonka that he considers himself to be a member of the team of the President and will fulfill his orders. One would rather expect him to express his loyalty to the law and his independence from the political life.

15. This corresponds to many statements about a history of political influence on the prosecution and the courts. Reportedly one of the main reasons for launching the case against Mr. Lutsenko is to pay back for his actions as Minister of Interior against some of the persons who have now come to power. On the case of Mr. Korniychuk case see point 16.

    In the pending case against former Prime Minister Mrs. Yulia Timoshenko, , President Yanukovych expressed his opinion in the media as to the use of travel restrictions against her, and the Monitor experienced personally the judges verbally being threatened by parliamentarians from Lutsenko´s party present in the court room and being dissatisfied with the decision. The fact that the Ombudsman turns to the President also seems to indicate that she expects him to be able to influence the procedure of and the outcome of the trial.

16. Additionally there seems to be a practice of exercising pressure on the defendant in order to obtain confessions, cooperation, avoid complaints, etc. through threats to him and his family, business associates, etc.

    The Supreme Court President has himself described the case against Mr. Korniychuk as an attempt to put pressure on himself and there can hardly be any other explanation to the investigation in a purely civil case against his daughter and the search of his house. The political level in fact seems to have done little to hide that fact, probably expecting the signal to reach other potential opponents as well. The suspicion is further confirmed by the surprising sequence of events: Mr. Onopenko's meeting with the President, the release of Mr. Korniychuk and the cancellation of the investigation against the daughter.

17. It has also been mentioned by several persons that there is a tradition of leaving political investigations open and unconcluded for long periods, sometimes years. This practice can keep the defendants well occupied with meetings with the investigator, keeping them from other activities, and also serves as a Damocles sword to the defendants, knowing that the investigator or the prosecutor at any time can forward cases against them with grave consequences.

If the purpose of the investigation is to promote a political aim not protected by the law by prosecuting somebody for acts for which others are not being prosecuted, and thus not treat

everybody equally according to the law, the justice is selective and therefore unfair. The charges raised against the former ministers seem to the experienced eye somewhat far-fetched and one would rather expect them to result in a political than a criminal responsibility, if any at all. This monitoring can not and can not be expected to answer with certainty the question of whether these cases are the result of selective justice. If so it however tells about the legal system and tradition of a country, not about the guilt or innocence of an individual. Selective justice and abuse of criminal justice system is a violation of Article 6 on Fair Trial of the European Convention on Human Rights and falls short of the country's international obligations to ensure respect for the rule of law principles.

Ukraine has been monitored by the Council of Europe as to the implementation of the commitments and obligations undertaken when joining that organization. The President of Ukraine issued on 10.1.2011 a decree according to which Ukraine is to fulfill its obligations towards CoE and established a mechanism to oversee it. This process should not be solely focused on the legislative reform. The main problems have been in the culture, tradition and implementation, on top of the outdated and deficient legislation itself (*e.g.* Ukrainian Criminal Procedure Code dates back to 1961 and its reform is long overdue).

Based on the above observations of the monitoring of the cases against Mr. Korniychuk and Mr. Lutsenko it can be concluded that it would be unwise to stop that monitoring now.

Ukrainian Criminal Code (extracts)

Article 191. Misappropriation, embezzlement or conversion or property by malversation

1. Misappropriation or embezzlement of somebody else's property by a person to whom it was entrusted shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to four years, or imprisonment for a term up to four years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. Misappropriation, embezzlement or conversion of property by malversation shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, if repeated or committed by a group of person upon their prior conspiracy, shall be punishable by restraint of liberty for a term of three to five years, or imprisonment for a term of three to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

4. Any such actions as provided for by paragraphs 1, 2 or 3 of this Article, if committed in respect of a gross amount, shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

5. Any such actions as provided for by paragraphs 1, 2, 3 or 4 of this Article, if committed in respect of an especially gross amount, or by an organized group, shall be punishable by imprisonment for a term of seven to twelve 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.

Article 364. Abuse of authority or office

1. Abuse of authority or office, that is a willful use of authority or official position contrary to the official interests by an official for mercenary motives or other personal benefit or benefit of any third persons, where it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, shall be punishable by correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. The same act that caused any grave consequences, shall be punishable by imprisonment for a term of five to eight years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, of committed by a law enforcement officer, shall be punishable by imprisonment for a term of five to twelve 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.

Article 365. Excess of authority or official powers

1. Excess of authority or official powers, that is a willful commission of acts, by an official, which patently exceed the rights and powers vested in him/her, where it caused any substantial damage to the legally protected rights and interest of individual citizens, or state and public interests, or interests of legal entities, shall be punishable by the correctional labor for a term up to two years, or restraint of liberty for a term up to five years, 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. Excess of authority or official powers accompanied with violence, use of weapons, or actions that caused pain or were derogatory to the victim's personal dignity, if there are no signs of torture shall be punishable by imprisonment for a term of three to eight years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

3. Any such actions as provided for by paragraph 1 or 2 of this Article, if they caused any grave consequences, shall be punishable by imprisonment for a term of seven 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.

Article 366. Forgery in office

1. Forgery in office, that is putting any knowingly false information in any official documents, any other fabrication of documents, and also making and issuing knowingly false documents by an official, -

shall punishable by a fine up to 50 tax-free minimum incomes, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.
2. The same act that caused any grave consequences, shall be punishable by the 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.

The Ukrainian Criminal Procedure Code (explanations and extracts)

According to Ukraine's Criminal Procedure Code, the investigator may detain a suspect for three days without a warrant, after which an arrest order must be issued. Ukraine's courts may extend detention without an arrest warrant for an additional 10 days and thereafter grant extensions in increments of two months for a maximum of 18 months.

Article 135. Appearance of the accused is compulsory
The accused is required to appear upon investigator's summon in the time fixed.
In case of non-appearance without valid reasons, the accused is subject to compulsory appearance under law.
Valid reasons for non-appearance of the accused are untimely receipt of the notice paper, illness and other circumstances which do make it impossible for him to appear before investigator in the time fixed.

Article 148. Objective of, and grounds for, imposing a measure of restraint
Measures of restraint are imposed on the suspect, accused, defendant, convict with a view to preventing his/her attempts to avoid inquiry, pre-trial investigation, or trial, obstruct establishing the truth in a criminal case, or continue criminal activity, as well as to ensuring execution of procedural decisions.
Measures of restraint are imposed if there are sufficient grounds to believe that the suspect, accused, defendant, convict can avoid investigation and trial or execution of procedural decisions, can obstruct establishing the truth in a criminal case or continue criminal activity.
If there are no sufficient grounds for imposing a measure of restraint, the suspect, accused, or defendant is asked to give a written obligation to appear upon the summons of the inquirer, investigator, prosecutor or court, as well as to inform on the place of his/her staying if the latter has been changed.
Whenever a measure of restraint is impose on the suspect, charges should be brought against him/her within 10 days after such measure of restraint has been ordered. If charges are not brought within this time-limit, the measure of restraint should be revoked.

Article 149. Measures of restraint
The following are measures of restraint:
1) *recognizance not to leave the jurisdiction;*
2) *personal surety;*
3) *guarantee of a civil society organization or labor collective;*
3-1) *bail;*
4) *taking in custody;*
5) *delivery under military command's supervision.*

Article 150. Circumstances to be taken into account when imposing a measure of restraint
When deciding on the imposition of a measure of restraint, in addition to circumstances referred to in Article 148 of the present Code, there should be taken into account the severity of crime of which a person is suspected, charged, his/her age, state of health, family and property status, occupation, place of residence, and other circumstances characteristic of him/her.

Article 151. Recognizance not to leave the jurisdiction
Recognizance not to leave the jurisdiction consists in that a suspect or accused gives a written obligation not to leave his/her registered place of residence or stay or temporary place of residence without permission of the investigator.

If a suspect or accused ignores his/her recognizance not to leave the jurisdiction, the latter may be replaced with more severe measure of restraint; the suspect or accused should be told this when giving obligation not to leave the jurisdiction.

Article 155. Taking in custody

Taking in custody as a measure of restraint is imposed in cases related to crimes punishable with deprivation of liberty for more than three years. In exceptional cases, this measure of restraint may by ordered in cases related to crimes punishable with deprivation of liberty for less than three years.

Article 218. Informing the accused on the completion of investigation and presenting him/her records of the case

Having found collected proofs sufficient as to indictment and having complied with Article 217 of the present Code, investigator is required to announce to the accused that investigation in his/her case has been completed and that he/she has the right to review all records [materials] of the case personally and with assistance of a defense counsel and may file petition to supplement records of pre-trial investigation. Investigator shall have the duty to advise the accused of his/her right to file a petition for his/her case to be heard in trial court by a single judge or collegially by a panel of three persons in cases provided for by law.

If the accused was not interested in reviewing records of the case together with defense counsel, all records of the case are presented to the accused for review. When reviewing records of the case, the accused may take notes from records of the case and file petitions. Whenever several persons are prosecuted in the case, investigator produces all records of the case to each of them.

The fact that completion of the investigation has been announced to the accused and that records of the case have been produced for his/her review is reflected in the appropriate record.

If a defense counsel is involved in the case, investigator gives him/her the possibility to review all records of the case either and draws up an appropriate record thereon. In such a case, producing records of the case should be postponed till defense counsel's appearance but not more than for three days. If defense counsel employed by the accused is unable to appear within this time-limit, investigator takes measures referred to in Article 47, fourth and sixth paragraphs, of the present Code.

Records of pre-trial investigation which are produced for review should be filed and numbered. During production for review of pre-trial investigation records the investigator, upon demand of the accused, is obliged to provide him/her with a verified copy of the description of the pre-trial investigation records; relevant note is made in the record of announcing to the accused about completion of the investigation and production of the records for review. Records relating to protective measures in respect of participants to criminal proceedings are not presented for review and are kept separately from records of the criminal case.

The accused and his/her defense counsel may not be limited in time they need to review all records of the case.