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GROUP

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## Taking of evidences under the Hague Convention 1970

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## General provisions

- Ukraine is a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970 (*hereinafter cited as "Convention"*).

- Taking of evidences under the Convention on the territory of Ukraine is regulated by the legal acts listed below:

- Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970;
- Law of Ukraine "On Ukraine's accession to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters" of 19 October 2000;
- Order of the Ministry of Justice of Ukraine "On the Adoption of Instruction for the Procedure of Implementation of the International Agreements on Legal Assistance in Civil Matters Regarding Service of Documents, Obtaining Evidences and Recognition and Enforcement of Judgments" of 27 June 2008.

- On 19 October 2000, Ukraine has ratified the Convention with the following reservations:

- The Ministry of Justice of Ukraine is a central Authority of Ukraine under the meaning of Article 2 of the Convention;
- The Letter of Request shall be made in Ukrainian or the Letter of Request shall be translated into Ukrainian and notary certified (*Article 4 of the Convention*);
- The Representatives of the foreign judicial authority of the requesting State will be able to participate in the process of execution of the Letter of Request if the Ministry of Justice of Ukraine gives permission for their participation (*Article 8 of the Convention*);
- Ukraine will not execute the Letter of Request issued for the purpose of obtaining pretrial discovery of documents as known in Common Law countries (*Article 23 of the Convention*);
- Ukraine has declared that it is opposed to the service under paragraph 2 of Article 4 of the Convention on its territory<sup>1</sup>;
- Ukraine has declared that it is opposed to the service under Chapter 2 of the Convention on its territory save for the service under Article 15, Article 20, Article 21 and Article 22 of the Convention.

<sup>1</sup> Paragraph 2 of Article 4 of the Convention:

"...Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33..."



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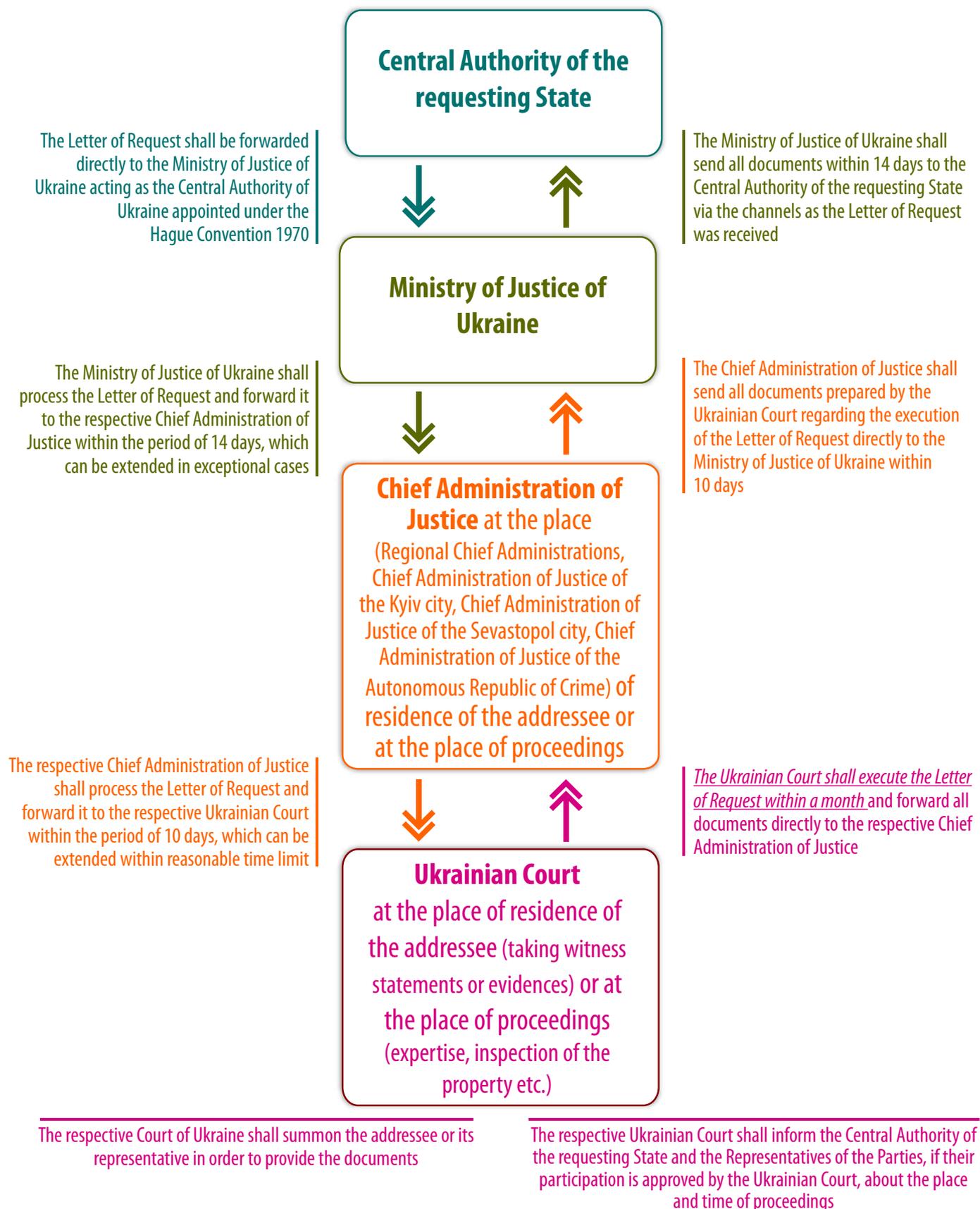


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## The diagram of Taking of Evidence under Convention in Ukraine





*Yuridicheskaya Praktika*, most recognized independent Ukrainian legal newspaper, ranked AstapovLawyers among **TOP-10** Ukrainian law firms in 2009.



In 2010 AstapovLawyers was chosen as the winner of the **Corporate INTL Magazine** Global Award "Dispute Resolution Advisory Firm of the Year in Ukraine".

### WHO'S WHO LEGAL

An independent legal research publication **Who's Who Legal CIS 2010** named Managing Partner, Mr. Andrey Astapov, as "internationally recognized and outstanding" arbitration expert for his skills and experience in a range of fora worldwide.



AstapovLawyers as well as Mr. Andrey Astapov were named as **TOP-3** among law firms and leading individuals in International Arbitration Practice by **Handbook for Foreign Clients 2010** - a distinctive publication on Ukrainian legal market published by Yuridicheskaya Praktika Publishing House.



In 2008 Mr. Oleh Beketov was recognized among **TOP-50** leading lawyers in Ukraine according to the rating research prepared by **Yuridicheskaya Gazeta** - one of the leading legal publications in Ukraine.

## Practical issues of taking evidences under the Hague Convention 1970 in Ukraine:

### Available proceedings:

- Taking of witness statements;
- Obtaining of evidences (it shall be specified in the Letter of Request (hereinafter cited as "LR") whether the original documents are required);
- Inspection of the documents or property;
- Expert examination.

### Grounds for refusal in execution of the LR:

A LR shall be executed "expeditiously" and may be refused only in specific cases where:

- Ukraine believes that execution of the LR will violate its sovereignty and security as well as fundamental principles of Ukrainian legislation;
- execution of the LR is not within the competence of a Ukrainian court.

### Procedural issues:

- The LR, duly translated into Ukrainian and certified by notary, shall be sent to the Ministry of Justice of Ukraine.
- The LR shall contain the reference to the Convention.
- If application of foreign law (judicial law) is requested by the Central Authority (hereinafter cited as "CA") of the requesting State, the LR shall (i) be accompanied by description and, (ii) the rules of execution of relevant procedural measures or, (iii) by the text of the relevant foreign law.
- The Ministry of Justice of Ukraine (hereinafter cited as "MJU") shall establish the time schedule and means for execution of the LR only if the applicant requests them (it shall be specified in the LR).
- If there are circumstances, which make the execution of the LR impossible, the Ukrainian Court shall forward the LR to the MJU in order to inform the MJU about these circumstances and reasons for non-execution. Further, the MJU shall negotiate with the CA of the requesting State acceptable conditions for execution of the LR. According to the results of such consultations the MJU shall forward the LR to the Ukrainian Court for execution or forward it to the CA of the requesting State without execution.
- In case there is not enough information or documents necessary for execution of the LR the Ukrainian Court shall inform the MJU about it and request it to provide additional information or documents. If requested information or documents are not provided, the Ukrainian Court shall execute the LR only to the possible extent.
- If the LR is executed in Ukraine shortly before court session in the requested state, then information about such execution can be forwarded to CA of the requesting State via facsimile or e-mail directly to the MJU with further notification to CA of the requesting State.

### Participation of foreign counsel in proceeding of taking of evidence under Convention in Ukraine:

- The Representatives of the Parties may participate in process of execution of the LR in case: i) proper petition was submitted (it is specified in the LR), and ii) the respective Ukrainian Court has given its consent for participation of such Representatives.
- The respective Ukrainian Court shall inform the CA of the requesting State (or other person named in the LR) about its decision on the Representatives' participation and their scope of authority for the period of execution of the LR (the necessary scope of authority shall be prescribed by the LR).
- The respective Ukrainian Court shall set up date and time of execution of LR and directly inform about it the CA of the requesting State or the Representatives if the LR provides for it.
- It is for the Ukrainian Court to rule upon the issue of participation of the Representatives of the Parties and their scope of authority in the proceeding of the LR execution.
- Absence of the Representatives on due time does not interfere with the execution of the LR unless otherwise is prescribed by the Ukrainian Court.

### Compensation of extra expenses:

- The Ukrainian Court shall inform the foreign competent CA about the amount of considerable or extraordinary charges, which are necessary for execution of the LR, and shall give its preliminary calculations. The execution of the LR shall be continued after arrangement of the payment or discussion of other terms of execution.
- The CA of the foreign state shall cover travel, food and accommodation expenses, income compensation for witnesses, injured person, person or expert summoned by the competent CA of the foreign state unless otherwise is provided by the Convention. Expert has the right to remuneration for expert examination provided.

### Special measures:

- The Ukrainian Court may apply the compulsory measures as prescribed by the laws of Ukraine to a witness indicated in the LR. In case the witness has not appeared before the court on due time without valid excuse, the Ukrainian Court may request the Law enforcement agencies (Police) to bring such a witness for examination to the court.



#### ***About AstapovLawyers***

*AstapovLawyers International Law Group is one of the most dynamic full service Law Firms in Ukraine, consistently named among the leaders of the market for quality and reliability of service as well as for the depth of expertise by major International and Local Legal Directories. The Firm employs over 50 carefully selected and well-motivated professionals who are responsive, solution-oriented, creative and committed.*

*Being also a leading dispute resolution practice in Ukraine, Russia and Central Asia, we are able to deliver comprehensive and effective solutions in all kinds of commercial disputes. Our Firm is a recognized leader among the competitors in the Commonwealth of Independent States (CIS) in the field of litigation both in terms of the number of successfully resolved disputes and their complexity. We are also proud to be leading arbitration experts and devoted promoters of other ADR forms, such as mediation and conciliation.*

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