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Compliance with commitments and obligations: the situation in Ukraine

Report of the Secretariat's Information and Assistance Mission to Kyiv
on 16-19 March 2004

Summary & main recommendations

The political situation in Ukraine is dominated by the prospect of the forthcoming presidential elections which could lead to a substantial alteration of the political landscape. Various constitutional reform proposals could radically change the institutional balance between the executive, legislative and judicial branches of power.

Pluralist Democracy: *The Venice Commission's Opinions should be fully taken into account in any proposals for constitutional reform, in particular if they affect the respective powers of State institutions. Presidential elections to be held next Autumn should scrupulously respect democratic principles and allow for free and fair elections. The independence and impartiality of the Central Electoral Commission (and local commissions) and unhindered media coverage of the elections are crucial factors in this respect.*

Rule of Law: *Of major concern is the situation relating to the long overdue reform of the Office of the Prosecutor General. Serious concern also continues to be expressed with regard to the separation of powers and independence of the judiciary, in particular. There is a need for more determined action to fight widely-spread corruption.*

Human Rights: *Undue state influence and interference - direct and indirect - with media freedoms still needs close scrutiny, and measures must be taken to bring to justice those who commit acts of violence against journalists and media professionals. Measures must also be taken to ensure that domestic court decisions are complied with.*

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ADDENDUM: Compliance with commitments & obligations: the situation in Ukraine. Principal Council of Europe texts & list of commitments [**issued as a separate document**]

I. INTRODUCTION

1. At their 864th meeting on 4th December 2003, the Ministers' Deputies

“4. in the context of monitoring of obligations and commitments by Ukraine and in order to prepare a full, substantial reply to Parliamentary Assembly Recommendation 1622 (2003), instructed the Secretariat to:

- (a) prepare an assessment of the results of co-operation to date, including progress achieved and shortcomings;*
- (b) work with the Ukrainian authorities to propose a new targeted programme, drawing on the lessons of previous programmes, emphasising desired objectives, benchmarks for progress, time-table to be respected and expected results;*
- (c) build on and finalise existing proposals for the new European Commission / Council of Europe Joint Initiative for Ukraine, through a new Secretariat information and assistance mission to Ukraine;*

5. adopted the interim reply to Parliamentary Assembly Recommendation 1622 (2003) on Honouring of obligations and commitments by Ukraine, as it appears in Appendix 3 to the present volume of Decisions¹.”

(see CM/Del/Dec (2003)864, item 2.1a; emphasis added).

2. As indicated, this decision was taken in the light of the Parliamentary Assembly's [Recommendation \(PACE\) 1622 \(2003\)](#)² and should also be seen as a follow-up to the Deputies' decision taken back in June 2001, when they had asked the Secretary General to send a Secretariat mission to Ukraine to assist the country in fulfilling its remaining commitments within the framework of the Committee of Ministers [1994 Declaration on compliance with commitments accepted by member states of the Council of Europe](#) (see CM/Del/Dec (2001)754, item 2.7, and [SG/Inf \(2001\)27](#)).

3. The Secretariat Delegation is grateful to the Ukrainian authorities for having organised the visit in accordance with its request (see programme of the visit in Appendix I). The Delegation met with representatives of relevant institutions from the executive and legislative branches of

¹ See also CM/AS(2003)Rec1622 final.

² In this connection, see paragraph 3 of PACE Recommendation 1622 (2003) which states:

“The Assembly recommends that the Committee of Ministers: i. encourage the Ukrainian authorities to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Ukrainian legislation and practice with the Organisation's principles and standards, especially with standards guaranteed by the European Convention on Human Rights, as well as full compliance with the decisions of the Strasbourg Court as regards the individual and general measures that may be required; ii. ensure in co-operation with the European Commission the final implementation of the Joint Programme of Co-operation to Promote and Strengthen Democratic Stability in Ukraine; iii. ask the competent Ukrainian authorities to provide national minorities with the necessary conditions to foster their specific culture, history, language and religion, in particular through access to education delivered in their mother tongue; iv. call on the Ukrainian authorities to fully implement the reform of the general prosecutor's office, in accordance with Council of Europe principles and standards, and to implement, in close co-operation with the relevant bodies of the Council of Europe, the joint plan of action pertaining to the reform of the Ukrainian prosecutor's office; v. ensure implementation of specific human rights training programmes for Ukrainian prosecutors and judges for the purpose of developing democratic practices amongst them; vi. intensify the co-operation programmes between the Council of Europe and Ukraine, notably for the implementation of the action plan for the media, with a view to assisting the Ukrainian authorities in their efforts to secure fundamental liberties and rights, particularly as regards freedom of expression and the media.” (PACE, Rec. 1622 (2003), 29.09.2003; <http://stars.coe.int>).

power, as well as from the highest judicial authorities. In addition, members of the Delegation met with a number of interested NGOs, as well as representatives of diplomatic missions in Kyiv through the good offices of the Ambassador of the Netherlands to the Ukraine, the country presently holding the Chairmanship of the Committee of Ministers.

4. The visit was concluded, on 19 March 2004, with the 3rd meeting of the Steering Committee of the Joint Programmes of co-operation between the European Commission, the Council of Europe and relevant Ukrainian partners. A report of the said meeting will be issued separately. [NB: the Joint Programmes Website <http://jp.coe.int> provides ongoing information on this subject.]

II. OVERVIEW OF THE SITUATION

5. The Secretariat Information and Assistance Mission found that the present political atmosphere in Ukraine was dominated by the presidential elections to be held this autumn. The elections are seen not so much as a change of President, but as a major upcoming reshuffle of the political elite of the country, with consequences to reach as far as the middle management level. Therefore, Council of Europe advice is assessed less from the standpoint of strengthening democratic institutions in Ukraine, but first and foremost through the prism of calculating its impact on the outcome of the elections.

6. In addition, while different interlocutors took different views of the internal situation, they all shared a feeling of anxiety caused by the rapid evolution of Ukraine's geopolitical environment. As one of them put it, "Ukraine is increasingly sandwiched between the bear and the elephant, between the liberal empire of President Putin and the democratic empire of the European Union".

7. Finally, a persistent subject raised by many interlocutors was the concern with the corporative, oligarchic elements in the Ukrainian governance and the lack of genuine democratic alternative at grassroots level. In this respect, converging and reliable information were brought to the attention of the Secretariat Delegation concerning "instructions" given by the Presidential Administration to all Heads of 'Oblasts' (Governors) in Ukraine. These instructions would aim at undermining the credibility of the opposition with a view to the forthcoming Presidential elections. Particular attention should be paid in the months to come to the respect of the principles of neutrality and non-interference by the State apparatus in order to guarantee an equitable election process.

A. Pluralist democracy

i. Constitutional issues

8. The Secretariat Information and Assistance Mission took place a few weeks after the January urgent debate in the PACE on the Political crisis in Ukraine. PACE [Resolution 1364\(2004\)](#) strongly criticised the proposed adoption of constitutional amendments aiming *inter alia* to change the procedure for the election of the President of Ukraine - voting by the Parliament, instead of direct election by universal suffrage. The firm PACE position was a strong argument in a heated national debate in Ukraine, which resulted in the cancellation of some of the contested constitutional amendments. This withdrawal of provisions during an extraordinary Parliament session concerns, notably, the planned changes in the modalities of election of the President and the proposal to limit the tenure of judges elected by the Verkhovna Rada to 10 years, instead of life-term appointment. In addition, it should be noted that the Constitutional Court decided that, contrary to the provisions of the present Constitution of Ukraine (which does not allow more than

two presidential terms), President Kuchma could stand for re-election for a third mandate, as his first election took place under the previous Constitution of Ukraine.

9. However, the Opinion of the European Commission for Democracy through Law ('Venice Commission') which was consulted on these constitutional amendments, was not followed *inter alia* on two important issues: the proposed system of tied, or imperative, parliamentary mandates (attribution of a seat to a party and not to an individual – arguably, to avoid a repetition of the hung parliaments experience) and the increased competences of the Prosecutor General, in particular as regards supervision of human rights issues (see paras. 24 & 50 below). These issues will have to be followed closely and additional expertise of the Council of Europe and the Venice Commission might be required.

10. With the perspective of the presidential elections going to be held in autumn, the internal political debate in Ukraine is becoming more tense and lively everyday. Political leaders are aligning themselves behind declared or potential presidential candidates. This political polarisation has two main consequences:

- on the one hand, there is now clearly in Ukraine a majority and an opposition (which is quite different from the situation prevailing after the last parliamentary elections). However, as President Kuchma is not standing for re-election, the position of leader of the presidential majority and candidate to the next elections is still open;
- on the other hand, any decision by the Government or Parliament is automatically influenced by electoral considerations and could result in a legislative paralysis until after the elections. This could influence negatively on the fulfilment of some Council of Europe commitments.

11. However, it should also be stressed that all political leaders recognise that European integration of Ukraine means first and foremost full participation in the Council of Europe and full adherence to its principles and standards. Fulfilment of all commitments accepted when joining the Organisation and strengthening democratic institutions and processes is the only way Ukraine can intensify its relations with other European institutions, such as the European Union. In this respect, the Ukrainian authorities attach high importance to the EC/CoE Joint Programmes which clearly testifies the common approach of the two institutions towards Ukraine. The successful meeting of the Steering Committee of the newly-concluded 4th Joint Programme, held on 19 March 2004, was additional evidence of this fact. This new Joint Programme builds on the results of the previous ones and will focus on the training of judges and prosecutors, the reform of the law-enforcement system and the media.

Specific recommendations:

Planned constitutional reforms should take full account of the Opinions of the Venice Commission, in particular as regards the mandatory character of seats of members of the Verkhovna Rada and the proposed enlarged competences of the General Prosecutor's Office. Furthermore, the Ukrainian authorities should be invited to request the opinion of the Venice Commission on any new proposed constitutional amendments, in particular when these could affect the balance of powers between the executive, legislative and judicial branches of power.

ii. Elections

12. The first round of the presidential elections has now been called for 31 October 2004, with a second round possibly to take place two weeks later. At this stage, all efforts should be focused on securing the best possible conditions for holding free and fair elections in accordance with Council of Europe principles and standards. In this respect, particular attention should be paid to three main questions:

- the role and composition of the Central Electoral Commission;
- the free and equitable access to media during the electoral campaign and
- a proper observation of the whole election process by national and international observers, including publication of results.

13. The Central Electoral Commission (CEC) of Ukraine is composed of 15 members, elected by Parliament, upon a proposal by the President, for a six-years' term. The current legislation foresees that no more than one-third of the CEC members should be renewed at a time. Therefore concerns were expressed regarding the recent nomination of 12 new members of the CEC. The CEC Chairman explained to the Secretariat Delegation that the mandates of the 12 members of the CEC had expired and had to be replaced. He specified that the nominations made by the President had been confirmed by the Verkhovna Rada. Two nominees failed to receive the required majority in Parliament and were replaced by other candidates. In the end, all nominees were supported by a constitutional majority which implies that they had the support of all political forces in Parliament. Nevertheless, the Secretariat Information and Assistance Mission was not convinced that there were sufficient safeguards built into the system to guarantee the impartiality of the electoral administration – in particular, as the CEC is responsible for the nomination of the members of the 225 District Electoral Commissions, whose members in turn nominate the Precinct Electoral Commissions.

14. At the moment of the visit, the Ukrainian Parliament was considering a draft law on legal protection and immunities of members of CEC.

15. Electoral disputes at precinct and district level are examined by the higher-level Electoral Commission. In accordance with Article 55 of the Constitution, CEC rulings concerning electoral disputes are, in the last instance, the competence of the Supreme Court of Ukraine.

16. Having in mind the present media landscape and overall situation of freedom of expression in Ukraine (see paras 47-60), the free and balanced access to the media will be of crucial importance to assess the fair and free character of the forthcoming elections. The Electoral Commissions (at district and central levels) give accreditation to journalists and media. In addition, a draft law is at present under discussion in the Verkhovna Rada according to which participation of candidates in TV debates would be compulsory. The Secretariat Delegation was informed of some initiatives to organise a monitoring of the media during the whole electoral process. These initiatives should receive all possible support and cover not only free and balanced access to state/public media, but also to private media which often belongs to financial/political lobbies. A positive measure was taken by President KUCHMA who signed an instruction introducing a moratorium on fiscal investigation on media during the whole electoral process; this instruction was subsequently endorsed by the Parliament. This positive measure could paradoxically confirm the assertions of those who think that the fiscal investigations were politically motivated.

17. Negative reports on the conditions in which some recent partial local elections have taken place call for particular attention and justify a sound observation of the whole electoral process by national and international observers. In this respect, all interlocutors of the Secretariat Delegation

have indicated their openness and willingness to receive as many international observers as possible. Observers from the PACE are expected and welcome. A particularly sensitive issue concerns the publication and tabulation of results in the various electoral precincts. The CEC indicated that all polling stations are connected by Internet links and that results will be tabulated at district level with publication of the results of each polling station.

18. The CEC expressed the concern that all electors were not very well informed of their rights and of voting procedures. The CEC intends to organise an awareness-raising/information campaign towards the electorate which could contribute to a better participation of citizens in the electoral process. Relevant expertise of the Council of Europe and particularly of the Venice Commission (and possibly, Integrated Project 1 ‘Making democratic institutions work’) could be mobilised for this purpose.

19. On 26 March 2004, pursuing the commitment undertaken when joining the Council of Europe (Opinion No. 190(1995) of 26 September 1995, §11 v.: “the following legislation, in conformity with Council of Europe standards, will be enacted within a year from accession: v.(...) a new law on elections and a law on political parties”), the Verkhovna Rada adopted a new Law on the Election of Peoples’ Deputies on a proportional basis, with a 3 per cent threshold for political parties and groups. The previous system of election of members of Parliament provided for the election of half of the 450 deputies under a proportional election system and the other half through a uninominal majority election system. This new legislation was adopted with a large majority (255 votes to 4) following an initiative of the Socialist and Communist Parties, whilst most opposition parties did not take part in the vote. The Venice Commission had given opinions on the various draft electoral laws discussed in the Parliament in November 2003 (see [CDL\(2003\)082](#) and [CDL\(2003\)083](#)); at this stage, it has not been possible to verify whether the text finally adopted by the Verkhovna Rada takes full account of the recommendations of the Venice Commission.

Specific recommendations:

As regards the preparation of the forthcoming presidential elections, particular attention should be paid to:

- *the impartial role of the Central Electoral Commission during the whole electoral process, including examination of electoral complaints;*
- *the neutrality and impartiality of State institutions which should refrain to any interference or ‘instructions’ and should secure the conditions of a fair competition;*
- *the free and equitable access to media by all political forces, during the electoral campaign;*
- *the observation of the whole electoral process by national and international observers (including from the Council of Europe), in particular the monitoring of the role of State apparatus and of access to the media.*

The Council of Europe and the Venice Commission could assist in the awareness-raising/information campaign initiated by the Central Electoral Commission.

Ukrainian authorities are invited to provide the Council of Europe/Venice Commission with the text of the recently-adopted law on elections of members of the Verkhovna Rada.

B. Rule of law

i. Overview

20. Although substantially delayed, in the context of commitments undertaken back in 1995, the overhaul of the legislative framework is now nearly complete (*cf.*, in this connection, Report of first Secretariat mission, [doc.SG/Inf\(2001\)27](#), paras. 34 – 66, and information provided in PACE reports referred to in the Addendum to the present document; see also Website of the Ministry of Justice <http://www.minjust.gov.ua/>, and numerous activities undertaken in the context of the Joint Programmes with Ukraine). Concern with respect to the independence of the judiciary, not to say the prevalence of corruption, still appears to be widespread. There is also an obvious need to effectively implement legislation and, more importantly still, to overcome the major structural problem of the non-implementation of domestic court decisions. The fact that the economic situation is difficult and that about 17% of judicial posts remain unfilled is in itself not a sufficient reason to explain the cumbersome manner in which reform is being undertaken. There is a widespread feeling that in certain cases the executive continues to interfere in the judicial process. Also, interlocutors of the Secretariat Delegation pointed out that disciplinary charges are rarely brought against judges when they apparently blatantly mis-apply the law and their decisions are quashed on appeal.

21. In so far as the general reform of the judicial system is concerned, note can be taken of rather slow progress made with respect to the draft text on the Law on the Judicial System of the Ukraine (already referred to in the last report, see [doc.SG/Inf\(2001\)27](#)). This work is undertaken within the framework of the Council of Europe/ European Commission Joint Programme, and will continue to be pursued in 2004. A meeting of experts was held in Kyiv in June 2003 and a follow-up meeting on judicial independence is scheduled in early April 2004. Also, an assessment report on the situation of enforcement of court decisions is now being finalised by Council of Europe experts and this will be followed-up by a meeting in early summer (see also, in this respect, para. 38 below).

22. The present situation in the judicial system is complicated somewhat by the Constitutional Court's quashing, on 16 September 2003, of the legal text that would have provided 'cassation proceedings' to courts of common jurisdiction; this proposal was deemed to be in contradiction with Articles 125 and 131 of the 1996 Constitution (see <http://www.ccu.gov.ua/pls/wccu/indx>). The specific provisions in the draft Law No. 4105 - proposing to limit judges' tenure to 10 years (found to be in conformity with the Constitution by the Constitutional Court on 11 December 2003) – will not now be retained by the Verkhovna Rada. Nor is the idea of amending the Constitution whereby nomination of candidates to the Constitutional Court would no longer be made by the Congress of Judges (see Article 148 of the Constitution and Venice Commission Opinion on this point, doc [CDL-AD \(2003\) 19](#)).

23. Without repeating what has been documented in other Council of Europe reports (see, e.g., the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe report of 1 July 2003, doc. 9852, <http://assembly.coe.int>), suffice is to note that whereas the Laws on the Judiciary (2002), and the new Criminal Code (2001) are now fully applicable, the Code of Criminal Procedure is still under discussion in the Verkhovna Rada. Similarly, even though the new Civil and Commercial Codes' implementation commenced as of 1 January 2004 (certain provisions of which have been critically analysed by Council of Europe experts), the Civil Procedure and the Administrative Procedure Codes are still pending in Parliament. It is understood that both are at a relatively advanced stage of consideration by the Verkhovna Rada.

24. Of major concern is the situation relating to the long overdue reform to the Office of the Prosecutor General. The Secretariat Delegation was informed, from a number of sources, that the substantial power of the prosecuting authorities is in need of curtailment. In this connection, the very recent request for a Council of Europe expert assessment of a new draft submitted by the Verkhovna Rada, in February 2004, calls for two comments. Firstly, how should 'progress' be measured? During discussions at the Prosecutor General's Office, the Secretariat Delegation was informed that the Prosecutor's role is to become 'supervisory' rather than 'investigative'; the same remarks were made to the Secretariat Delegation back in 2001 (see [doc. SG/Inf \(2001\) 27](#), para. 50). Secondly, it is understood that the new draft is tied closely to the apparent need to amend the Ukrainian Constitution of 1996 (Article 121), despite the clear Opinion of the Venice Commission that such an extension of the General Prosecutor's Office would be inappropriate (docs. CDL(2001)119, CDL(2001)120, CDL(2001)128, CDL(2001)134). As concerns specific cases referred to in discussions with the Deputy Head of the Prosecutor General's Office, see Appendix II and para. 50 below.

25. On the positive side, one can note the work being accomplished under the auspices of the State Department for the Execution of Punishments. Despite severe financial and logistical constraints, certain changes have been made while others are in the process of being implemented: the need to separate the Prison Administration from the police and military is fully recognised, the Correctional Labour Code has been amended and measures adopted to ensure *inter alia*, that conditions for those sentenced to life imprisonment are being substantially improved. It would also appear that, subsequent to adverse findings by the European Court of Human Rights (ECtHR), new procedures are being put into place to ensure effective investigation of allegations of ill-treatment. See, in this connection, the report of the Steering Group for Prison Reform in Ukraine (doc. SS/Ukraine(2003)1 rev., of 16 January 2004), and European Committee for the Prevention of Torture (CPT) reports (not all of which have yet been placed into the public domain). The authorities are urged to make public all reports issued by the CPT.

26. The situation concerning the status of the legal profession, which necessitates a professional and independent Bar Association, is still not clearly settled (see, concerning this matter, the Constitutional Court's decision of 16 November 2001 and the numerous efforts made to improve the situation, [doc. SG/Inf \(2001\) 27](#), paras. 52- 54, and expert assessments made under the auspices of the Council of Europe with respect to legislative initiatives). The Secretariat Delegation was informed during its visit that two texts are pending on this subject before the Verkhovna Rada; the extent to which previous Council of Europe expert recommendations have been taken into account in both projects is uncertain. Indeed, there appears to be a certain confusion between the need to provide a sound basis, in law, for an independent legal profession and the separate issue of providing appropriate legal aid to indigent persons (with the latter being studied separately under the auspices of the Ministry of Justice in the context of the CoE/Commission Joint Programmes).

27. The training of judges will now be centralised by the newly created Academy of Judges, working under the authority of the State Judicial Administration of Ukraine. The latter is subordinated to the Government, is not attached to the Ministry of Justice and is responsible for the upkeep of the country's court infrastructure. The Academy is now to centralise and undertake all initial training of judges. That should ensure that the work of the Centre for Judicial Studies, whose track record of continuing training of judges over the years is now well-established, does not lose its pertinence (see <http://judges.org.ua>, the Centre has now become a 'foundation'). In this connection, the Supreme Court and the State Judiciary Administration adopted an 'order', effective as of 1 January 2004, to the effect that the former is to be the only body authorised to organise and co-ordinate training of judges. This may lead - according to certain observers - to the curtailment of a number of excellent training programmes for judges which have been carried out

by NGO's with the assistance of international institutions, especially in the human rights field (see below, para. 41).

Specific recommendations:

The extremely large competences of the General Prosecutor's Office remain a major subject of concern for the functioning of the judicial system in Ukraine. The opinion of the Council of Europe/Venice Commission concerning the possible enlarged competences of the General Prosecutor (overview of human rights issues) should be taken fully in consideration if ever a new constitutional amendment is envisaged in this respect.

Full and transparent prosecutions should be undertaken for all criminal cases, in particular those affecting media professionals. Similarly, all acts of corruption within the judicial system should be properly prosecuted, as it is a condition for the credibility of the system. In this context, particular attention should be given to the proper status and conditions of judges (life-term appointments, salaries and physical protection, where necessary).

The recently-created State Court Administration should exercise its function in full independence and be free of any political interference. The welcome recent creation of the Academy of Judges should develop proper training courses taking into account the achievements and already existing training schemes in the field of human rights.

Council of Europe opinions and recommendations should be fully taken into consideration when adopting the different Codes, and information provided to the Council of Europe on follow-up given to these proposals in texts adopted. New draft and amendments of existing Codes and other laws affecting the judicial system should systematically be submitted to prior expertise by the Council of Europe.

The authorities are urged to make public all CPT reports.

The question of a professional and independent Bar Association still needs further attention; the Council of Europe could provide further expertise, if need be.

ii. Corruption and money laundering

28. In compliance with Assembly Opinion No. 190 (paragraph 12, sub-paragraph vi.), Ukraine undertook:

“to sign and ratify, and meanwhile to apply the basic principles of other Council of Europe conventions, notably those on extradition, on mutual assistance in criminal matters, on the transfer of sentenced persons, and on laundering, search, seizure and confiscation of proceeds from crime”.

29. It is generally accepted both within governmental and non-governmental circles, including most representatives of Ukrainian society, that corruption could jeopardise the further political, economic and social development of Ukraine.

30. The Secretariat Delegation was informed that there is no permanent structure for co-ordination between the bodies and institutions responsible for combating corruption in Ukraine: the Commission against Organised Crime and Corruption under the President of Ukraine cannot efficiently cope with these tasks during its sporadic meetings (see, in this connection,

31. The governmental structures in charge of combating corruption can hardly be praised for their achievements. The attention paid to this problem is more declarative than of a practical character. The General Prosecutor's Office, which is the main law-enforcement actor in the anti-corruption domain, has no separate specialised unit to fight this particular crime. Hence the urgent need for a more pro-active, concerted and permanent effort to fight corruption by all relevant agencies.

32. Ukraine signed the UN Convention against Corruption in December 2003. However, Ukraine is not yet a Party to the Group of States against Corruption (GRECO). The Criminal Law Convention on Corruption was signed in 2002. Interlocutors from the Ministry of Justice anticipate its ratification during 2004 – as soon as legal difficulties with the criminal responsibility of legal entities will be solved.

33. As regards the Civil Law Convention, signed by Ukraine in 2003, the Deputy Minister of Justice informed the Secretariat Delegation that a draft law should soon be transmitted to the Parliament of Ukraine authorising its ratification. Moreover, the new draft Law on Fight against Corruption is under preparation in the Ministry of Justice. Assurances were given that an "authoritative" draft will be duly submitted to the Council of Europe for expertise (which, it is assumed, will also take into account Council of Europe expert views already provided with respect to the previous draft Law against corruption analysed in 2003).

34. The fight against money laundering is one of the priorities of the Ukrainian authorities. The legislative framework is broadly in place, making the overall anti-money laundering regime work (through the provision of sufficient resources to all agencies) contingent on the political will of the authorities. That said, some positive results have been registered: for example, according to statistics provided by the General Prosecutor's Office, up to 60 court decisions were taken on money laundering cases during 2003.

35. Ukraine was within the MONEYVAL 'compliance enhancing procedures', as a result of the first evaluation report on Ukraine, before the necessary changes to the legislation had been introduced. The second report on MONEYVAL is under preparation, where the issue of effectiveness of the system will be examined. Until February 2004, Ukraine was also included in the OECD Financial Action Task Force (FATF) on Money Laundering blacklist. Additional information is available on http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Money_laundering/.

36. Several interlocutors emphasised the importance of the existing CoE/EC Joint Programme against Money Laundering in Ukraine (MOLI-UA) which aims to contribute to the establishment of a fully functioning anti-laundering system, preventing use of the financial system to launder proceeds of serious crime, and enabling the authorities to co-operate internationally in fighting crime in accordance with European and international standards. Hence, possibilities and resources of the MOLI-UA project should ensure appropriate implementation of the anti-money laundering legislative and regulatory framework.

Specific recommendations:

The Ukrainian authorities are invited to undertake more determined action in fighting corruption at all levels of society, including proper and permanent coordination of measures taken by the relevant anti-corruption agencies.

The new draft anti-corruption law should take into account the expert opinions provided on the previous draft law submitted to Council of Europe expertise in 2003.

Ratification of Council of Europe Anti-corruption Conventions (civil and criminal Conventions) and accession of Ukraine to GRECO are still expected.

Full use of the possibilities of co-operation offered in the framework of the European Commission/Council of Europe Joint Programme against money-laundering (MOLI-UA) should be made by the Ukrainian authorities.

C. Human Rights

i. Overview

37. The general legal framework, including the domestic application of the European Convention of Human Rights by virtue of Article 9 of the 1996 Constitution (and reference to the Strasbourg Court's case-law), would appear to be firmly in place (for details, consult <http://www.minjust.gov.ua/> and <http://unhcr.ch/>, in which can be found reports submitted to the major UN Human Rights control bodies, including the Human Rights Committee). The effort to publicise, and indeed educate the legal community (and beyond), by providing Ukrainian translations of human rights texts and translations of Strasbourg Court case-law and CPT reports must also be applauded: see <http://www.coe.kiev.ua;> <http://www.ulf.com.ua;> <http://www.eurocourt.org.ua>). However, much still needs to be done to ensure that institutions – including judicial organs – not only stay ‘within the letter of the law’, but also ‘within the spirit of the law’ (see, critical comments of such International NGOs as Amnesty international <http://www.amnesty.org;> Human Rights Watch www.hrw.org and the International Helsinki Federation for Human Rights www.ihf-hr.org, as well as information provided by Ukrainian institutions: <http://www.ishr.org;> <http://www.irex.kiev.ua/media> and <http://www.irf.kiev.ua>).

ii. ECHR, CPT and judicial training

38. More specifically, in so far as the ECHR is concerned, it is worth noting the significant amount of applications being processed in Strasbourg. Suffice to refer, in this connection, e.g., the recent set of 6 cases of *Poltoratskiy, Kuznetsov and others* (ECtHR judgments of 29 July 2003), as well as the following statistics: approximately 7,300 applications lodged before the ECtHR since September 1997; 4,441 decided cases, 9 applications admissible, nearly 180 applications communicated to the authorities for observations and over 2,300 applications pending for decision. The positive point, that the ECHR and the Strasbourg Court's case-law has now been cited in some 80 domestic court decisions, cannot detract from the difficult situation confronting the Ukrainian authorities. The non-execution of domestic court decisions is a matter, according to a number of interlocutors questioned, which is likely to cause difficulties to the Ukrainian authorities in Strasbourg; in this respect violations of the ECHR are likely to be found by the ECtHR (see also, in this connection, paras. 20 and 21, above). In this connection, two important matters merit highlighting. First, the Supreme Court is soon to issue specific “instructions” to all Ukrainian courts indicating the importance to take particular account – in their work – of the importance of the ECHR and the Strasbourg Court's case-law (see <http://www.scourt.gov.ua/>). Secondly, the draft text of the “Ukrainian Law on the Execution of Judgments of the European Court of Human Rights”, analysed by Council of Europe experts in 2003, is now in the process of being re-drafted within the Ministry of Justice. It will relate to both “execution” and

“implementation” of the Strasbourg Court’s case-law, and will be ready for submission to the Verkhovna Rada by July 2004.

39. Many informed observers underlined the very positive role played by the present incumbent of the Office of the Parliamentary Commissioner (Ombudsman) for Human Rights of Ukraine, Ms N. Karpachova (<http://www.ombudsman.kiev.ua>), an institution created in December 1997. As the Ombudsman indicated to the Secretariat Delegation, she is particularly concerned about, *inter alia*, allegations of ill-treatment of persons in detention (including the need to cater for seriously ill detainees), and allegations of corruption. The Ombudsman’s Annual Report to be submitted to the Verkhovna Rada in a few months will certainly refer to these issues, as well as a number of *ad hoc* initiatives taken by Ms. Karpachova. These initiatives include her participation - and that of her staff - in a growing number of court cases, as well as her campaign to convince the authorities to reduce the prison population.

40. The potentially key role that the Ombudsman can play in Ukrainian society (which also encompasses work on the verification of judges’ qualifications and the training of law-enforcement personnel) is in danger of being undermined due to lack of resources. This Institution’s effectiveness could probably be greater if its budget were allocated by the Verkhovna Rada rather than by the executive authorities, as is the case at present.

41. Systematic training of judges, as well as law-enforcement officials more generally, is an on-going intensive activity implemented within the Joint Programmes, co-financed by the European Commission (see report of the Steering Committee of the EC/CoE Joint Programme referred to above). Work undertaken with the Centre for Judicial Studies has been particularly fruitful (see also para. 27, above). Particular attention must also be placed, in this connection, to the need to train police officers, as well as staff of penitentiary institutions, in the light of comments provided to the authorities by the CPT (<http://cpt.coe.int>).

Specific recommendations:

All necessary support - in particular financial- should be given to the activities of the Office of Parliamentary Commissioner (Ombudsman) for Human Rights of Ukraine; its findings and conclusions should be properly followed-up by the relevant institutions.

Based on the successful initial human rights training programme provided by the Centre for Judicial Studies in the context of the European Commission/Council of Europe Joint Programme, there is a need for further in-depth training to all actors in the ‘chain of justice’ (judges, prosecutors, prison administration staff, lawyers, etc.).

iii. Social and labour rights

42. The social and economic conditions of between 10,000 and 20,000 homeless persons, including children, have been brought to the attention of the Secretariat Delegation by civil society representatives (see <http://www.igfm.org.ua>). Also, although gender discrimination is prohibited by the Constitution and the Labour Code, women’s’ rights are often not effectively protected in the labour market (see <http://www.hrw.org/reports/2003/ukraine0803/>, Human Rights Watch report on women in the labour market in Ukraine, August 2003). In this connection, mention can also be made of the fact that although the Council of Europe’s Secretariat had not received specific information about the state of domestic procedure necessary for the ratification of the European Social Charter, indications were provided to the Delegation that a draft law to this effect is presently before the Cabinet of Ministers and that it will soon be transmitted to Parliament.

Specific recommendations:

Bearing in mind the very difficult economic and social conditions in Ukraine, more focus should be given to social issues in the various co-operation programmes, including those with the Council of Europe.

Information on the situation with respect to ratification of the European Social Charter is still expected from the Ukrainian authorities.

iv. Freedom of religion

42. In so far as freedom of thought, conscience and religion are concerned, it would appear that not much progress has been made on the legislative front since the last report was issued in 2001 (SG/Inf (2001) 27, paras.105-107). The Secretariat Delegation was informed that at present there are two draft texts pending on this subject before the Verkhovna Rada.

43. The non-discriminatory registration of the statutes of religious organisations is one of the specific commitments of Ukraine to the Council of Europe. However, according to certain sources, registration of religious communities continues to cause problems (see Non-Discrimination Review under the Stability Pact for South-Eastern Europe Final Report on Ukraine (SP/NDR(2003)025), December 2003; see also US Department of State, Country Reports on Human Rights Practices: Ukraine, 2003, 25 February 2004, and comments by the Ukrainian Committee “Helsinki-90” with respect to non-traditional religions/beliefs <http://www.helsinki.90.ru>).

Specific recommendation:

The issue of registration of statutes of religious organisations deserves to be given attention so as to avoid risks of possible discrimination.

v. Minorities and non-discrimination

44. A positive step forward concerning the protection of national minorities’ languages can be observed with the adoption of the Law on the Ratification of the European Charter for Regional or Minority Languages by the Verkhovna Rada on 15 May 2003, and its signature by the President on 6 June 2003. However, the instrument of ratification has not, as of yet, been deposited. Full respect of the enforcement of the law and implementation of its provisions may need to be further ensured. The recently adopted Law “On Advertising” which prohibits advertisements in any language except Ukrainian may well not be in conformity with the European Charter for Regional or Minority Languages (and possibly even a violation of the Constitution). See also, in this connection, the decision of the Constitutional Court of 14 December 1999 on the official interpretation of Article 10 of the Constitution.

45. Note can also be taken of the fact that a Law “amending the Law on national minorities in Ukraine” is in preparation. Council of Europe assistance (see [CDL-AD \(2004\)13](#)) is being provided in respect of two draft laws which are to be discussed in Uzhorod and in Kharkiv, in May and in June 2004, respectively. The Delegation has also noted reports about recent tension in Crimea between Crimean Tatars and others (Cossacks, in particular). Also, Protocol No. 12 to the ECHR – signed on 4 November 2000 – has not yet been ratified.

46. Finally, incidents of violence, discrimination and ill-treatment of Roma, including by law-enforcement officials, have been recorded (see Non-Discrimination Review under the Stability

Pact for South-Eastern Europe Final Report on Ukraine (SP/NDR(2003)025), December 2003; see also US Department of State, Country Reports on Human Rights Practices: Ukraine, 2003, 25 February 2004). In this connection, the representative of the State Committee of Ukraine on Nationalities and Migration readily confirmed to the Secretariat Delegation that when implementing the Council of Europe/European Commission Joint Programme, particular attention will be given to the situation of the Roma population in Ukraine.

Specific recommendations:

Deposit of the instruments of ratification of the European Charter for Regional or Minority Languages is still expected. Protocol No.12 to the ECHR should likewise now be ratified. Also, particular attention should be given to the difficult situation of Roma.

vi. Freedom of expression and freedom of the media

47. Freedom of expression and media freedom in Ukraine, which have already been the subject of expert reports and comments by the Ukrainian authorities (see CM/Monitor(2002)24 and CM/Monitor(2003)3), remain a matter of major concern. This assessment - which is shared by several people with whom discussions were held during the visit - is based on the fact that, only recently, several media outlets and journalists have been confronted with sometimes very serious problems of interference in their activities and even attacks. The cases mentioned during the visit include, in particular, the closure of the *Radio-Roks* radio station in February 2004 and, more recently, that of *Radio Kontinent* at the beginning of March 2004. Other cases mentioned during the visit involved the difficulties facing the *Kanal 5* television station in Kyiv, which is apparently under threat of closure, the ending of broadcasts by *M-Studio* in Mukachevo and the ordering of the official newspaper of Parliament, the Voice of Ukraine (*Golos Ukrainy*), to pay substantial damages. As far as physical attacks on journalists are concerned, the unfortunately already long list has grown still longer. The most recent case concerns the attack on Mr Oleg Eltsov, editor-in-chief of the on-line newspaper *Ukraïna Kryminalna* on 12 January 2004, to which some people in Ukraine add the death, which they regard as suspicious, of Mr Chechyk, director of *Radio Yuta* in Poltava, in a car accident at the beginning of March 2004. However, there still exists controversy as to the cause(s) of Mr Chechyk's death.

48. The situation is all the more worrying in that several of the persons with whom discussions were held during the visit believe that it could still further deteriorate in the run-up to the presidential elections scheduled for 31 October 2004. In a context where they are economically weak, there is a risk of the media being even more at the mercy of political interests that could be tempted to exploit them for electoral advantage (similar concerns have also been voiced by the NGO Freedom House (see "Under Assault: Ukraine's News Media and the 2004 Presidential Elections"). In this respect, the Secretariat Delegation has received testimonies which confirm the practice of the so-called "temniki" emanating from the Presidential Administration and aimed at influencing public opinion by interfering with the content of the media. The continuation of this practice, which violates the fundamental democratic principle of respect for the editorial independence of the media, is obviously a matter of very serious concern. Moreover, the Delegation took note of the existence of "instructions" (?) from the Presidential Administration to the heads of Oblasts (Governors) in Ukraine to minimise the social and political impact of the forums of democratic forces (see para.7, above).

49. With this in mind, the recent signing by the President of the Republic of an instruction asking the relevant authorities to place a moratorium on tax investigations being conducted against the media until the presidential election is held is worth mentioning. This instruction was subsequently endorsed by the Verkhovna Rada. However, it remains to be seen whether, in the

coming weeks and months, the media will really be able to report freely, fairly and impartially on the election campaign. The importance of this question was underlined in the course of several meetings, in particular with the chairpersons of the Central Electoral Commission and the State Committee for Radio and Television. The assurances given by the latter that he would do everything in his power to ensure that these principles are complied with, especially in the public media, deserve to be mentioned.

50. The question of the physical attacks on journalists was raised at a meeting with the Deputy Head of the Prosecutor General of Ukraine. What is essential is to track down and prosecute the perpetrators of such attacks. Clarification was sought from the Prosecutor General's Office on the progress of the investigations into the deaths of several journalists in Ukraine in recent years. In this connection, it was noted that the investigations concerning the deaths of Mr Gongadze and of Mr Alexandrov were still under way, but that, unfortunately, no substantial progress had yet been made in identifying those guilty of his murder (see, in Appendix II, information recently provided to the Delegation by the First Deputy Prosecutor General). Hence the urgent need for the authorities to take all measures to prosecute and bring to justice all those who threaten or commit acts of violence against journalists and other media professionals.

51. With regard to the legislative framework, the meetings held by the Secretariat Delegation, in particular in Parliament and at the State Committee for Radio and Television, suggest that the question of bringing Ukrainian legislation on freedom of expression and media freedom into line with Council of Europe standards is more topical than ever. Legislative amendments passed by Parliament in April 2003 with a view to improving protection of freedom of expression and information, in particular by making it impossible for public authorities to seek the payment of damages in the event of their reputations being undermined, seem to be more in line with the requirements of these standards, in particular in the light of the case-law of the European Court of Human Rights on Article 10 (freedom of expression and information) of the European Convention on Human Rights. (An overview of Council of Europe standards concerning freedom of expression and information is set out in doc. [Monitor/Inf\(2003\)3](#)). However, it would seem that the relevant amendments may be challenged, following a recent parliamentary motion to review these provisions. Given the importance of the legal provisions on defamation and criticism of the authorities in relation to the exercise of freedom of expression and information on a daily basis, particular attention will have to be paid to this question in the months ahead.

52. It is to be welcomed that the draft laws on broadcasting and on the Ukrainian National Council for Radio and Television Broadcasting currently being given a second reading in Parliament have been revised in line with the recommendations made by the Council of Europe experts in autumn 2003. It remains to be seen whether the texts which will ultimately be passed by Parliament will take full account of those recommendations.

53. One particular issue about which some interlocutors expressed concern is a draft law on communications surveillance which has been tabled in Parliament and which, according to them, would require the operators of communication services to install equipment that would enable the security services to monitor communications on the operators' networks. This development, if confirmed, would be all the more worrying since a Law on secrecy criticised by a number of international organisations and NGOs has recently been adopted which would restrict access of journalists to information. This new Law allows for the detention and arrest of journalists suspected of revealing State secrets and for the right for the authorities to obtain information regarding journalists' sources (see [OSCE www.osce.org](#); Reporters sans Frontières [www.rsf.org](#); Article 19 [www.article19.org](#); International Press Institute <http://www.freemedia.at/>; Center for Journalism in Extreme Situations, [www.cjes.ru/](#)). This issue also needs to be followed very closely, given the problems that the draft Law on communication could pose in connection with

the guarantees set out in Articles 8 and 10 of the European Convention on Human Rights regarding the right to respect for private life and correspondence and the right to freedom of expression and information. It should be noted here that the Chairperson of the Parliamentary Committee on Freedom of Expression and Information indicated that his Committee had proposed that the draft law be rejected on these grounds.

54. Obstacles created to journalists' access to information, through physical interdictions to attend meetings or to reach restricted areas have also been observed (see Center for Journalism in Extreme Situations www.cjes.ru/). Moreover, the practice of using "not-for-printing" and "not-for-distribution" stamps in the executive bodies' documents if not justified by an overriding interest, may well be contrary to Ukrainian legislation and to international standards of freedom of information (see Article 19, www.article19.org).

55. Some of the new provisions of the new Civil Code that came into force at the beginning of 2004 (text not available) also seem to pose problems with regard to freedom of expression and information, according to information gathered by the Secretariat Delegation. This concerns in particular Article 277, which stipulates that "negative information shall be deemed to be false" and Article 302, which provides that "information communicated by state organs is truthful". These provisions could lead journalists to engage in self-censorship in order to avoid prosecution under them. This is another cause for concern, even though Ukrainian courts have not yet ruled on the provisions, given the recent entry into force of the new Civil Code.

56. One final subject that deserves attention in the coming months is the plan, by the State Committee for Radio and Television, to codify the various Ukrainian laws that concern freedom of expression and information. According to the Committee, the purpose of the Code will be to put in place a comprehensive, coherent and modern legal framework that meets European standards on freedom of expression and information. The Council of Europe should provide its expertise during the drafting of the Code.

57. Finally, with regard to Ukraine's possible accession to the European Convention on Transfrontier Television, no progress has unfortunately been made. According to the information provided to the Secretariat Delegation, the ratification draft law has still not been tabled by the Government in Parliament. The authorities are urged to accelerate ratification of this important text which guarantees the free circulation of television services in Europe.

Specific recommendations:

The Ukrainian authorities should implement the Council of Europe's recommendations aimed at aligning the Ukrainian laws concerning the media with the relevant Council of Europe standards. They should ensure that any draft law dealing with freedom of expression and information strictly respects the standards, as set out in particular in Article 10 of the European Convention on Human Rights.

The Ukrainian authorities should take all measures within their area of competence in order to ensure free and fair access to the media, and in particular to the public media, by all candidates to the forthcoming Presidential elections. They should refrain from any interference or instructions influencing the free exercise of their functions by media professionals.

The Ukrainian authorities should take all measures within their area of competence in order to prosecute and bring to justice those who commit acts of violence against journalists and other media professionals or threaten them.

The Ukrainian authorities should accelerate the procedure for the ratification of the European Convention on Transfrontier Television, so that Ukraine rapidly adheres to the common pan-European framework set out by this instrument for the free circulation of television services in Europe.

D. Other relevant matters

58. Meetings held with a number of interlocutors yet again confirmed, to the Secretariat Delegation, the key role civil society must play to ensure full respect for democratic principles, rule of law and respect for human rights. In this connection, the Secretariat Delegation takes this opportunity to remind the Ukrainian authorities about an initiative that was mooted at the end of the last such visit, back in August 2001: pursuance of the idea that Ukraine signs and ratifies the Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), in force since 1 January 1991.

Specific recommendation:

The Ukrainian authorities are invited to examine the possibility to sign and ratify the Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations [ETS N°124].

59. Finally, mention should be made of the project on the European Dimension in History Teaching, and in particular the recent Symposium on “1945” which took place in Yalta, 2-4 October 2003. This Symposium confirms excellent co-operation the Council of Europe has with the Ministry of Education and Science of Ukraine within the context of different programmes on history teaching implemented successfully since 1996.

APPENDIX I**PROGRAMME OF VISIT OF SECRETARIAT INFORMATION
AND ASSISTANCE MISSION TO KYIV
(16 – 19 March 2004)****Tuesday, 16 March 2004**

- 2.00 pm Arrival to Kyiv
- 4.30-5.45 pm Meeting with Mr. V. Shapoval, Deputy Head of the Constitutional Court of Ukraine
- 6.00-7.00 pm Meeting with Ambassadors and diplomatic representatives organised by the Netherlands Ambassador, on behalf of the Chair of the Committee of Ministers.

Wednesday, 17 March 2004

- 9.00-10.00 am Meeting with Mr. A.Martyniuk, First Deputy Chairman of the Verkhovna Rada (Parliament) of Ukraine and members of the Ukrainian Parliamentary Delegation to the PACE
- 10.30-11.30 am Meeting with Mr. V. Marmasov, Deputy Minister of Justice of Ukraine
- 12.00-1.30 pm Parallel meetings with:
- Mr. V. L'ovochkin, Head of the State Department on the Execution of Punishment
- Mr. J. Kondratjev, Rector of the National Academy of Internal Affairs of Ukraine and Mr. Kaliuk, Head of the International Co-operation Department of the Ministry of Interior of Ukraine
- 2.30-3.30 pm Meeting with Mr. P. Pylipchuk, Deputy President of the Supreme Court of Ukraine
- 4.00-5.45 pm Meeting with Mr. V. Kudriavtsev, First Deputy Prosecutor General of Ukraine
- 6.00-8.00 pm Meeting with Mr. V. Karaban, Head of the State Court Administration and Ms. I. Voitiuk, Rector of the Academy of Judges

Thursday, 18 March 2004

- 9.00-9.45 am Meeting with Ms. H. Chraye, Acting Head of the EC Delegation to Ukraine and Moldova and Mr. F. Luciani, Head of Operations Section
- 10.00-11.00 am Meeting with Mr. V. Krizanivsky, Deputy Director of the Foreign Policy Directorate of the Presidential Administration of Ukraine

- 10.00-15.00 pm Parallel meetings with:
- the representatives of local NGOs: Mr. T. Shevchenko, Internews; Mr. I. Koliushko, Lawyer; Mr. D. Kotljar, International Renaissance and Mr. I. Lozovyi, Strengthening Democracy Institute
- ***
- 11.30-1 pm Meeting with Mr. I. Chizh, Head of the State Committee on TV and Radio Broadcasting
- 2.30-3.30 pm Meeting with Mr. S. Kivalov, Chairman of the Central Election Commission of Ukraine
- 3.30-4.30 pm Meeting with Mr. Tamenko and Mr. Y. Artemenko, Head and Deputy Head of the Committee of the Verkhovna Rada (Parliament) of Ukraine on Freedom of Expression and Information
- 3.45-5.00 pm Meeting with Mr. M. Puchtinsky, Head of the Foundation under the President of Ukraine for Local Self-Government
- 5.30-6.45 pm Meeting with Ms. N. Karpachova, Ombudsperson (Parliamentary Commissioner) for Human Rights of Ukraine

Friday, 19 March 2004

- 8.30-9.30 am Meeting with Mr. O. Chalyi, First Deputy Foreign Minister of Ukraine
- 9.30-1.30 pm 3rd Meeting of the Steering Committee of the Joint Programmes of co-operation between the European Commission & the Council of Europe to strengthen democratic stability in Ukraine

Parallel meetings with :

- 10.00-10.45 am Mr. M. Ehnberg, OSCE Elections Officer
- 9.30-1.00 pm Representatives of NGOs: Mr. J. Murashov, Ukrainian Committee Helsinki-90; Mr. A. Suhorukov, International Human Rights Society (Ukrainian Section); Ms. T. Kotjuzhins'ka , IREX

- 1.30-2.30 pm Buffet Lunch at the Ministry of Foreign Affairs of Ukraine
- 3.50 pm Departure from Kyiv

Composition of the Secretariat Delegation: Mr Jean-Louis Laurens, Director of Strategic Planning (DSP), Mr Andrew Drzemczewski, Head of the Monitoring Department, DSP, Mr Ivan Koedjikov, Head of Division II, Directorate of Political Advice and Co-operation, Directorate General of Political Affairs, Mr Christophe Poirel, Head of the Media Division, Directorate General of Human Rights (DG II), and Mr Mamuka Jgenti, Co-ordination Unit, DSP. The Delegation was accompanied, at certain meetings, by Mr. Olexander Pavlichenko, Director of the Council of Europe's Information Office in Ukraine (<http://www.coe.kiev.ua>).

APPENDIX II:**INFORMATION PROVIDED BY THE GENERAL PROSECUTOR'S OFFICE**

State emblem of Ukraine

PUBLIC PROSECUTION OF UKRAINE**GENERAL PROSECUTOR'S OFFICE OF UKRAINE**13/15, Riznitska st., Kyiv, 01011

19.03.2004 № 14/1-54 ВИХ-04

*Jean-Louis LAURENS
Director of Strategic Planning
of Council of Europe***Dear Mr. Laurens!**

In relation to your request made during the meeting at the General Prosecutor's Office of Ukraine on the 17th of March 2004, I inform you of the course and results of the investigation conducted by law enforcement agencies of Ukraine into a number of criminal matters on offenses against journalists.

Thus, the investigation into the criminal matter instituted by the fact of intentional murder of **G.Gongadze** proceeds. In this matter all available versions of circumstances of the above crime are under consideration now, including that of possible implication of law enforcement officers. In the course of inquiry a forensic phonoscopic examination was ordered, it will be carried out with participation of the European criminalistics institutes. In the criminal matter the execution of all necessary investigative and operational search actions, provided for by the legislation in force, continues for the purpose of clearance of crime, identification of guilty persons and a full, comprehensive and impartial investigation of this crime.

The General Prosecutor's Office of Ukraine continuously keeps informed the Parliamentary Assembly of the Council of Europe, Secretary General of this international organization Walter Schwimmer, Provisional Investigative Commission of the Supreme Council of Ukraine and the community of the course of inquest of this shocking crime, that testifies to the transparency of investigation into this matter.

The investigation into the criminal matter on assault upon Director General of the TV Company "TOP" **I.Alexandrov** is carried out by the Investigative Operational Group of the General Prosecutor's Office of Ukraine. As a result of taken measures, the orderer, organizers and executors of the crime are identified. The Pechersky District Court of Kyiv has chosen detention as a preventive measure for the accused persons. The delay in referring the case to the court is caused by that in the course of investigation the implication of this criminal group to other three intentional murders and other especially serious crimes was found out.

Furthermore, please be advised that the Public Prosecutor's Office of Melitopol is carrying out the examination of circumstances of death of **V. Karachevtsev**, chief editor of the local newspaper "Right of choice". According to preliminary data of the forensic medical examination, death of the victim was caused by apnea resulted from hanging. During the inspection on the spot, signs indicative of that his death resulted from criminal actions of the third persons were not found out. Moreover, in the course of check it was established that V. Karachentsev had been recorded in

the narcological dispensary with the diagnosis “alcohol addiction syndrome”. The conclusive decision on the death of V. Karachentsev will be taken after relevant expert analyses are completed.

The General Prosecutor’s Office of Ukraine in collaboration with other law enforcement agencies takes exhaustive measures oriented to a comprehensive, full and impartial examination of statements and reports of crimes committed against mass media representatives.

Sincerely yours,

1st Deputy Prosecutor General of Ukraine

signature **V. Kudriavtsev**

[Translator of the General Prosecutor’s Office of Ukraine

Kuprienko O.V.]