



EU Justice, Freedom and Security Assessment Missions to Ukraine

Final Report



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The views expressed in this report are the views of the Mission team members and do not necessarily represent the opinion of the European Commission. Experts' recommendations do not prejudge any decision of Community financing

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List of Abbreviations

AP	Action Plan
AoJ	Academy of Judges
BCP	Border Crossing Point
BP	Border Post
CoE	Council of Europe
CMU	Cabinet of Ministers of Ukraine
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DCIRIP	Department for Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior
DMCP	Diplomatic Missions and Consular Posts
DCS	Department of Consular Service
EU MS	EU Member States
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
HRW	Human Rights Watch
IBM	Integrated Border Management
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
IOM	International Organization for Migration
ITT	Izolyator Tymchasovogo Trymannia (Temporary Detention Centre)
JHA	Justice and Home Affairs
JLS	Justice, Liberty and Security
MfA	Ministry of Foreign Affairs
MoI	Ministry of Interior
MTEI	Minimum Tax-Exempt Income
NAP	National Action Plan
OCG	Organised Crime Groups
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PRI	Penal Reform International
SBGS	State Border Guards Service
SBU	Sluzhba Bespeky Ukrayiny -Security Service Ukraine
SCA	State Court Administration of Ukraine
SCS	State Customs Service
SCNM	State Committee for Nationalities and Migration
SDEP	State Department for the Execution of Penalties
SCFM	State Committee for Financial Monitoring of Ukraine
THB	Trafficking in Human Beings
UAH	Hryvna (1 € are approximately 6 UAH)
UAIS	Unified Automated Information System
UNHCR	United Nations High Commissioner for Refugees

I. Introduction

Extending stability and prosperity to the neighbours of the enlarged Union is an essential objective of the European Neighbourhood Policy. The section on co-operation in Justice and Home Affairs of the EU-Ukraine Action Plan agreed under this policy confirms that co-operation in this area will continue to be based on the EU Action Plan on Justice and Home Affairs in Ukraine and its implementing Scoreboard.

In December 2001 the European Union and Ukraine agreed on the EU-Ukraine Action Plan on Justice and Home Affairs, which will enable Ukraine and the Union to work together to realise the values and principles of freedom, security and justice. The Action Plan defines the following areas of co-operation: migration and asylum, border management and visa, fight against organised crime and terrorism, co-operation of law enforcement agencies and strengthening the judiciary, rule of law and good governance. The 2001 Action Plan also foresees a joint revision of its operation by the end of 2005.

In order to assess the progress of the implementation of the Action Plan, a detailed Scoreboard has been jointly elaborated. The scoreboard monitors progress towards the objectives of the Action Plan and is regularly updated in co-operation with the Ukrainian authorities.

In addition to this regular review, the European Commission decided to dispatch a justice, freedom and security assessment mission to Ukraine with a mandate to provide a comprehensive and up-to-date overview of the situation in the Justice and Home Affairs area in Ukraine. The Mission's evaluation will serve as a basis for a possible revision of the EU Justice and Home Affairs Action plan with Ukraine.

Methodology

The EU Justice, Freedom and Security Assessment Mission, composed of seven experts from EU Member States (EU MS) administrations, was commissioned to analyse the current state of play concerning Justice, Freedom and Security issues in Ukraine and to assess the implementation of the EU-Ukraine JHA Action Plan; to identify areas where the actions set out in the Action Plan can be revised or where new actions could be added; to compare the present Ukraine institutional set up and standards with those of the EU and to identify areas of possible future co-operation and assistance.

The following Member States experts monitored the thematic areas of the EU-Ukraine JHA Action Plan:

Migration and Asylum	Bo Bruun	Denmark	Danish Immigration Service
Border Management	Tibor Gampe	Hungary	Hungarian Border Guards
Customs	Helmut Gram	Austria	Ministry of Finance
Visa	Rina Pavlin-Gnidovec	Slovenia	Ministry of Foreign Affairs
Fight against Organised Crime and Terrorism	Ian Bryant	United Kingdom	National Criminal Intelligence Service
Rule of Law	David Gladwell	United Kingdom	HM Courts Service

Detention Imprisonment	and Sonja Kurtén- Vartio, PhD	Finland	Swedish Polytechnic Vaasa
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Two rounds of missions were organised in December 2005 (12-16.12.05) and in February 2006 (13-17.02.06).

During the first Assessment Mission, the following representatives of the European Commission joined the EU Member States experts:

- Mr Carl-Henrik Hamrin, Directorate-General Justice, Freedom and Security, Unit A2- External Relations and Enlargement;
- Mr Laurent Hottiaux, Directorate-General Justice, Freedom and Security, Unit A2- External Relations and Enlargement;
- Mrs Miriam Brewka, Directorate General External Relations, Unit E2- Ukraine, Belarus and Moldova;
- Mrs Camilla Hagstroem, Europe Aid Co-operation, Unit E5- Security and Migration;
- Mr Martijn Pluim, Europe Aid Co-operation, Unit E5- Security and Migration.

During the second Assessment Mission, two representatives of the European Commission joined the EU Member States experts:

- Mr Carl-Henrik Hamrin, Directorate-General Justice, Freedom and Security, Unit A2- External Relations and Enlargement;
- Mrs Vesna Ljungquist, Directorate General External Relations, Unit D2- Sector Coordination.

Teams were composed according to the relevant area to be covered during the assessment, each team consisting of one EU MS expert and one or two representatives from the EC.

During their stay in Kiev, the teams carried out an intense programme of meetings as well as missions to Donetsk, Kharkiv, Odessa, Uzhgorod and field visits to the Ukrainian borders with Belarus, Poland and the Russian Federation.

The scope of the mission and time constraints made it necessary to prioritise the field visits, also taking into account the considerable travel distances.¹

Through numerous consultations with a variety of actors, including Ukrainian officials, representatives of international organisations and the civil society, the Mission sought information on the following JHA aspects:

- State of approximation of legislation to European standards set by international and/or regional conventions and protocols;
- Adequacy of institutional set-up for the implementation and enforcement of European standards;
- Adequacy of human resources responsible for the implementation and enforcement of legislation based on EU standards;
- Existence, adequacy and EU compatibility of information systems;

¹ For a complete list of field visits, please refer to Annex V.

- Level and capacity of inter-agency, regional and international co-operation.

The Mission also included two briefings by the Delegation of the European Commission to Ukraine and Belarus held on the first day of each mission, as well as two debriefing meetings with Representatives from EU MS Embassies in Kiev on the last day of each mission.

Both visits to Ukraine were prepared and organised in close co-operation with the Ukrainian authorities, the Ministry of Justice of Ukraine having endorsed the Assessment Mission's Terms of Reference on 28th October 2005. An interim report, drafted by the Mission's experts shortly after the first Assessment Mission, was shared with the Ukrainian authorities² with a view of receiving their comments and input to the final report. The interim report also served as a basis for discussion during the meetings of the 2nd Mission, thus allowing the experts and their Ukrainian counterparts to have an open and constructive dialogue on the areas to be assessed.

The Mission would like to take this opportunity to express gratitude to the Ministry of Justice of Ukraine for the invaluable support to the Mission and to thank all those who took the time to meet the Mission members and who contributed to the information in this report.

Executive Summary

The Ukrainian government's policy agenda is summarised in the "Government's Action Programme Towards the People" of February 2005. It is an ambitious reform plan that gives priority to the adaptation of Ukraine's policies and regulations to European Union standards, including in the area of Justice, Freedom and Security.

Based on the findings of the Mission's first visit to Ukraine and on available documentation, this report acknowledges progress achieved so far in the implementation of the existing EU-Ukraine JHA Action Plan, but also highlights challenges that still lie ahead.

As the report shows, Ukraine has developed policies and enacted legislation with a view to approximate EU principles and to comply with provisions of International and Regional Conventions and Protocols. However, an overly burdensome administrative system and an ill-defined division of responsibility between government agencies hamper effective implementation.

Against this background, the Mission makes recommendations, which are primarily, but not exclusively directed towards an improvement of the institutional set-up. Another priority identified in this report is the need to ensure continuity in the ongoing reform process.

The following section is a summary of the main findings and recommendations classified by topic.

Migration and Asylum

Since the independence of Ukraine and the possibilities for free travel, there has been a sharp increase in migratory movements of persons from abroad, coming to and crossing the territory

² Original version and a translated version in Ukrainian.

of Ukraine. Many of the migrants come from the CIS countries, Asia or Africa and a very large part have earlier crossed Russia en route to the EU.

Ukraine is facing an increasing flux of illegal migrants, which requires enhanced efforts and means in fighting illegal migration. According to estimates included in information received during the two missions, the Ukrainian authorities only apprehend a small part of all irregular migrants crossing the territory.

Ukraine has self-interest in a better handling of migration, should the country, for reasons such as the declining population in recent years, become in need of certain categories of immigrants.

However, an overall national strategy on handling immigration and asylum issues in a broad sense has not been elaborated.

There is a need for a functioning return policy based on the principles of transparency and which includes procedural safeguards. There have been indications that such a policy is seriously hampered by a lack of coordination among relevant actors and a general lack of a human rights culture.

Major concerns also remain regarding detention and accommodation standards for illegal migrants. A visit to the detention camp in Pavchino revealed serious human rights violations and there is an urgent need for the Ukrainian authorities to address this situation and to introduce accommodation conditions that are in compliance with the provisions of international human rights treaties, which Ukraine has adhered to.

Areas of concern are shortcomings related to many aspects of the functioning of the asylum system. It is therefore recommended that focus in the coming years shall be on adherence, within the Ukrainian asylum procedure, to fundamental international principles and on alignment to the basic elements of best practices of EU countries. This includes the right to seek asylum, respect of the non-refoulement principle, access to independent legal counselling, case handling in a transparent way, which includes that reasoned decisions are given and that the applicant has a right to see his or her file, and appeals procedures that are functioning properly.

Probably the most pressing issue in this area, in the view of the rapporteur, is a need for a revision of the institutional set-up of the authorities dealing with migration and asylum. It seems to be a precondition for possible solving of many other, more technical questions.

In the Mission's first preliminary report the rapporteur recommended that one single State service shall be established, dealing with legal immigration, handling of asylum cases, accommodation of asylum applicants and illegal migrants, handling of return, overall coordination in combating illegal immigration, research and analyses, overall responsibility for programmes for social integration as well as international co-operation in these areas.

During the second visit to Ukraine in February 2006, the Ukrainian authorities announced to the Mission that a decision to establish a Ukrainian Migration Service is expected in spring 2006.

This new institution will be established, combining the structures of the Department of Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior,

the State Committee for Nationalities and Migration and the departments of the Ministry of Labour and Social Policy dealing with labour migration. In an initial period of two years, the new institution will be subordinated to the Ministry of Interior.

This latest development is very encouraging, and the coming years shall focus on making the new institution function.

With a reference to the new institutional set-up proposed, it is recommended that the Ukrainian State authorities review the current legal and administrative framework regulating migration and asylum processes, while taking into account the European Union acquis and EU best practices. Based on that evaluation, the Ukrainian Migration Service shall propose, with the assistance of the EU, a strategy and an action plan on further development of the system for handling migration and asylum issues, including on approximation to the EU standards.

It is recommended that a monitoring of the implementation of existing and future readmission agreements, involving Ukraine, shall be carried out in co-operation between experts from Ukraine and EU countries.

Border Management

The competent service for the management of Ukraine's external border is the State Border Guards Service. It is an autonomous body, which as a result of a reform programme in 2003, began the transformation from Border Guard Troops into a law enforcement service, therefore its name was changed to the "State Border Guards Service". The Service gives a general impression of a militarily organised authority whose function is still devoted to border protection. Therefore, a key recommendation of this report is a gradual shift from a border *protection* system to an effective *border management* system. This will enhance the law enforcement aspects of the Service.

The State Border Guards Service has recently elaborated the "Concept and Program of the Development of the State Border Guards Service of Ukraine", which lays the foundation for the approximation of the Ukrainian border management system to EU standards. The strategic objective of this Program is to increase the professionalism in border management, including the creation of professional border guard units; improvement of the legal framework; transformation of the Marine Guard into a body with law enforcement tasks; organisational structure and human resources management; improving the technical capacity of the border guard units. It remains to be seen how the Program is going to be implemented.

Major problems in the area of Ukraine's border management can be identified in connection to the total length of the external borders and the incomplete territorial delimitation with the neighbouring CIS countries subsequent to the dissolution of the former Soviet Union. The former internal borders of the Soviet Union had the sole function of dividing administrative regions and had been equipped only with a minimum of infrastructure. Consequently, the permeability of these borders, which now divide independent States, remained after the dissolution of the Soviet Union and continues to entail significant obstacles for Ukraine in its ability to tackle cross-border crime and illegal migration.

Customs

The current Customs Code of Ukraine was passed on July 11, 2002 (reg. No. 92-VI) and went into effect on January 1st 2004. It is codifying uniform customs procedures for all goods, specifying elements of customs procedures and creating a mechanism for submitting a preliminary declaration for customs clearance for those who declare items on a regular basis.

According to observations made during the two missions to Ukraine, customs officers are well trained for their specialized tasks. However the customs control procedures are sometimes overly complicated and time-consuming.

The Mission was positively impressed by the co-operation between the individual administrations involved in clearance at the border as well as by the work at the operational level, however the personnel deployment appears very high compared to European standards. In particular, the time allotted to the clearance of goods could be shortened for the benefit of the clients if the staff was to be deployed in a more targeted manner.

Remaining matter of concern is the inadequate remuneration of customs officers as well as the practice of 24-hours shift, both of which provide for vulnerability of officials to corruption.

Indeed the Mission heard reports about the fact that customs officers ask for “tips” to speed up the control procedures. The bribes can amount to up to 5% of the value of goods. In order to fight possible internal corruption, an investigative unit should be created.

During a meeting with the State Customs Service (SCS) in the Kiev headquarters, concerns were expressed regarding the SCS’s lack of investigate competence, respectively the lack of legal means authorizing customs officers to carry out so-called searches to ascertain the actual usage of goods imported into Ukraine

The Mission was also informed by the SCS that the funds allotted to the Customs administration within the 2006 State budget were cut to one third of the funds applied for (300 mio UAH, i.e. to 100 mio UAH). With these funds the Customs administration does not see itself in a position to adapt the 217 BCPs to the technical standards required to facilitate faster and more targeted clearance procedures.

Visa

Ukraine regulates the visa policy by enacting decisions on the establishment or abolition of a visa regime (by Presidential Decree), as well as by concluding bilateral agreements regulating the visa regime with other countries. The visa obligation for foreigners represents a political, a security and a special immigration tool. The Ukrainian visa regime is currently only partly in line with the EU acquis.

Authorities dealing with visa issues are the Ministry of Foreign Affairs (MFA), the Ministry of Interior (MoI) and the State Border Guards Service (SBGS). The relevant legislation envisages the possibility of obtaining a visa only at Diplomatic Missions and Consular Posts of Ukraine (DMCP) abroad. An exception to this rule is the Department of the Consular Service (DCS) of the MFA, which issues diplomatic, service and mass media visas at their office in Kiev and at the airports in Kiev, Odessa, Donetsk and Simferopol as well as at the Odessa sea port, which may issue an “entry permit” for Ukraine.

There are different visa categories based on the validity of the visa, frequency of use and type of visa (purpose of visit). The present types of visa are not in line with the Schengen types of visa while they are listed according to purpose, which according to the Schengen acquis, is a matter of national concern. An airport transit visa that would be issued to nationals of certain third countries transiting an international area at an airport in Ukraine does not exist. A decision on issuing a visa is made for each individual separately by the consular official in charge.

There is no direct (“online”) connection between the authorities dealing with visa issues. Establishing a National Visa Register is therefore of utmost importance.

The safety features of visa stickers introduced in 1999 correspond to the “Schengen” type of visa sticker. Visa stickers are produced by Mint of the National Bank and financed by the Ministry of Finance by means of the consular fee.

There are two kinds of consular fees: the fee for the application form and the fee for processing documents and issuing a visa. Consular fees of Ukraine are much higher than the fees of EU Member States.

A pilot project of Ukraine issuing visa containing biometrical data (fingerprint and photo) is ongoing at its consular establishments in India, China and Vietnam. The project is financed solely by Ukraine, and due to the limited funds available, there is no road map regarding its further introduction to other DCMPs.

The State Border Guards Service at the border crossing points checks that conditions of entry are met. Introducing a passport reading device at all Border Crossing Points in Ukraine is planned but no time schedule has been made so far. The use of these devices for the registration of foreigners entering Ukraine would speed up the checking procedure at the Passport Control.

Ukrainian authorities are in the process of developing a new type of passport, where biometrical data of the holder will be incorporated either on the first page or on an added page. Due to the fact that relevant legislation has not yet been adopted, the scope of introducing biometrical data is still unknown.

Fight against Organised Crime

There are three Ministries and Agencies responsible for fighting organised crime in Ukraine: the Security Service of Ukraine, the Ministry of Interior and the State Border Guards Service. During the mission, there was evidence of close co-operation between Ministries and Agencies at both a national and regional level. Ukraine has shown that it has some effective strategies and polices for tackling organised crime. Their fight against organised crime would benefit from specialist training in some areas, but is mainly being undermined by corruption and the lack of a national IT system.

The Ukrainian government has been making serious attempts to bring its criminal legislation in line with EU countries. This commenced in January 2003 and accelerated after the ‘Orange Revolution’ in December 2004. Ukraine’s legislation on money laundering, financing of terrorism and recovering proceeds of crime is on a par with that of EU MS.

There is a strong consensus to drive corruption out of Ukrainian law enforcement. This is being pursued by the Minister of Interior, Yuri Lutsenko, and is proving effective, but there is still a great deal to do. Although a large number of senior officers have been removed from

their posts, corruption is still an issue, especially at lower levels. This is having an impact on the fight against organised crime.

The National Security Council of Ukraine has produced a new draft concept for tackling corruption entitled “Concept on Reducing Corruption in Ukraine: On the Road to Integrity”. This strategy is innovative and if properly implemented will have an impact on corruption in Ukraine.

The lack of an integrated national IT system for law enforcement is also impacting the effectiveness of the battle against organised crime and this needs to be addressed.

Fight against Terrorism

Ukraine does not have a domestic terrorist threat, but actively participates in the fight against international terrorism in support of overseas partners. The Ukrainian Penal Code clearly defines terrorism and its related activity. The Security Service of Ukraine has a clear responsibility for preventing and responding to terrorism. There was evidence of a well-defined strategy and close co-operation between all the relevant Ministries and Agencies.

The State Committee for Financial Monitoring of Ukraine supports the fight against terrorism as Ukraine’s EGMONT recognised Financial Intelligence Unit. They monitor for and detect suspicious financial activity, of which they then notify the SBU. Currently, legislation relating to the eight special FATF recommendations relating to the financing of terrorism is still awaiting enactment by the Verkhovna Rada.

Rule of Law, Judiciary and Good Governance

At present, Ukraine remains a very unstable legal environment. If assessments of direct judicial corruption vary, there is a general acknowledgement that the judicial appointments system is manipulated.

At the very least, the country seems to be troubled by a lack of transparency, exacerbated by procedures of Byzantine complexity, which, if not designed to mislead, obscure accountability.

As the Danish Institute for Human Rights expressed it, “Core justice reform issues have been neglected and the judicial branch remains the weakest branch of power”³.

However, it is not possible to view the institutions charged with custody of the rule of law separately from society at large. Whilst those institutions must give a lead, it cannot be their responsibility alone to create a State in which the rule of law is paramount. But, until that is achieved, the value of all other reforms, social or economic, must be in doubt. The rule of law is the keystone of a developed society.

Nonetheless, if the ambitions set out in the draft “Concept for the Improvement of the Judicial System and for Ensuring Fair Trial in line with European Standards”, approved by the National Commission at its plenary meeting on 14th February 2006, are realised, and its spirit respected, a very significant step forward will have been taken.

³ Desk study: ‘Justice Reform in Ukraine’, draft dated 31st January 2006

On the basis of what, given the time constraints, was inevitably a superficial study of a complex area, the principal concerns which arose were -

- The unwieldy nature of the legislative and budgetary processes and the unsatisfactory nature of some of the legislation produced (quality of drafting, consistency).
- The lack, thus far, of a strategic approach to reform.
- The inconsistent approaches of the courts.
- The opacity of the judicial appointments process, and the suggestion that it was being manipulated.
- A lack of transparency as to the appointment and dismissal of the Prosecutor General, and as to his rôle in respect of local prosecutors.
- The questionable degree of judicial independence from the executive.
- The suggestion that there is, at least, some level of financial corruption within the judiciary, particularly in the Commercial Court.
- The level of judicial salaries, doubtless a contributory factor in the above.
- The, at present, inadequate level of training especially for new judges.
- The dependence of the State Judicial Administration on the executive.
- The haphazard organisation of the legal profession.

Detention and Imprisonment

Ukraine is one of the countries in Europe with the highest incarceration rates. In December 2005, 170.923 persons were held in detention, which approximately corresponds to 380 prisoners per 100.000 inhabitants. The number of detained juveniles is also higher than the European average and many of them are too young to be kept in prison.

Overcrowded penal institutions create, *inter alia* a high risk for tuberculosis, HIV/AIDS and other serious health hazards. The most important challenge is therefore to reduce the number of detained persons and prisoners. The use of alternative sanctions and measures to incarceration needs to be promoted, particularly for minor crimes. In order to prevent recidivism, more efforts on vocational training and social rehabilitation need to be undertaken.

The lack of financial means creates a number of significant problems. Prison facilities are in dilapidated condition, the salaries of prison staff are low, appropriate health care cannot be provided, vocational training for prisoners is not available to the extent needed and there is a lack of all kinds of equipment, be it for medical care, training or administration. The detention conditions could be considerably improved by investment into infrastructure. It is therefore important that sufficient funds from the State budget are allocated for refurbishing colonies and prisons. This is a responsibility of the government and not of the local civil servants working in the colonies or prisons.

Another matter of concern that needs to be addressed is the fact that penal institutions face problems with attracting qualified prison staff, both because of the poor wages and the difficult working conditions.

Although the attitude of prison staff towards prisoners changed in recent years, a number of serious problems remain to be solved. For example, isolation for up to 3 months seems to be used as a method to solve conflicts within the prisons. Reasons for these drastic measures probably are the low number of staff compared to the high number of prisoners and a lack of

knowledge of methods for conflict solving. Isolating people in small cells for as long as 3 months is considered torture.

The Mission heard numerous allegations about torture and ill-treatment occurring during the investigations in order to obtain confessions. This is unacceptable. There is a need for more systematic monitoring in this field and Human Rights organisations could be given an important role in this regard.

Corruption within the prison service remains a problem, although there have been improvements, mostly due to the fact that more attention has recently been paid to this serious problem.

The State Department for the Execution of Penalties must be aware of its important role as an integral part of the judicial system. It is responsible for fulfilling legal provisions and must ensure the respect of international Human Rights Conventions to which Ukraine is a party. The current penal system lacks functioning control mechanisms. The SDEP cannot be the primary legal body to control its own actions. This would be resolved if Ukraine transferred the responsibility for the penal system to the Ministry of Justice, as it was expected when Ukraine became a member of the Council of Europe.

Co-operation with the Civil Society also needs to be promoted to ensure the transparency of the penal system. It is recommended that regular round table meetings gathering the above-mentioned actors be organised with a view to discussing the most urgent questions in the area of penitentiary reform. It is also recommended that these round tables seek advice from the existing Advising Councils.

II. Situation Analysis

1. Migration

Introductory Remarks

Estimates provided during the first mission have indicated figures of up to seven million Ukrainians having left the country over the period of the last 15 years in search of work abroad. This normally concerns young people, and many of them can be expected to stay abroad. This is one of the reasons for the declining of the Ukrainian population.

On the other hand, there is a sharp increase in migratory movements of persons from abroad coming to and crossing the territory of Ukraine reported over the same period. This concerns both legal and illegal migratory movements. More than 34 million people are registered as having crossed the State Border of Ukraine in 2004, which is an increase by 13% compared to the previous year. Of the illegal migrants the majority have crossed Russia en route towards the EU.

Smugglers and traffickers actively use the territory of Ukraine for smuggling illegal migrants from the countries of South-East Asia, the Middle East and Northern Africa to countries of Central and Western Europe. The illegal migrants following the Eastern route of illegal smuggling attempt to enter the territory of Ukraine and attempt crossing the borders of Slovakia, Poland or Hungary at a later stage.

The following factors contribute to the increasing volume of illegal migration:

- A global tendency to migrate due to economic differences, armed conflicts, etc.;
- A lack of coordination among Ukrainian law enforcement agencies in the area of migration management;
- An upsurge of illegal migration from the CIS countries.

The mechanism of trans-border movements of foreign nationals through the territory of Ukraine is as follows:

- Legal or illegal entry of foreign nationals to CIS countries and further illegal transit to Ukraine.
- Legal entry into the territory of Ukraine (with the purpose of study, tourism, business or other private affairs) followed by illegal crossing of the Western border to Slovakia, Poland or Hungary.

Means used by smugglers for the transit of illegal migrants through border control stations include: hiding in trucks among cargo, using falsified documents, using well-prepared hiding places as well as existing empty spaces in various vehicles and cargo containers. The majority however cross unnoticed via the green borders⁴.

In recent years, international criminal structures controlling and organizing illegal migration have undergone a process of restructuring and consolidation. The latter enables them to exercise a greater degree of control over international flows of illegal migration. In particular, they have been able to consolidate organised channels of illegal migration from China, India, Pakistan, Bangladesh, Vietnam, Afghanistan and Turkey.

The mission was provided with estimated figures of illegal migrants having been apprehended by the State Border Guards Service and Ministry of Interior units (militia/police). The total figure for 2002 is 5.561 persons (SBGS) for 2003 5.768 persons (SBGS), for 2004 25.539 persons (in total) and for 2005 32.726 persons (in total).

According to information material received from the International Organization for Migration (IOM), there are reasons to believe that many thousands of irregular migrants manage to pass through Ukraine annually and that maybe only 5-10% of all irregular migrants crossing the territory are apprehended by the Ukrainian authorities. At meetings during the second mission in February 2006, the State Border Guards Service disputed this estimate. There seems a need for a discussion of these estimates between IOM and the relevant Ukrainian authorities.

It is in Ukraine's interest to better handle this matter, should the country become in need of certain categories of immigrants. Only if the irregular movements of migrants come under better control will it be possible to have a policy of deliberately deciding which categories of immigrants the country may want.

In the estimate of the rapporteur, a proper functioning asylum system is essential if any appropriate handling of migration is to be established. One of the reasons for this is that illegal migrants, whether caught or as a deliberate step on a planned travel route, will often hand in an application for asylum in order to get a foothold, a "legal" period of stay, in

⁴ P. Futo, M. Jandl (eds.): 2004 Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe. A Survey and Analysis of Border Management and Border Apprehension Data from 22 States", ICMPD, Vienna 2005.

Ukraine. If the authorities are not able to process such cases quickly, economically, with the right outcome and are not able to return rejected asylum applicants, this will add to the administrative and financial burden - notably in a country with a geographical position where transitory movements of migrants can be expected to continue. Needless to say that a functioning asylum system is of course essential to comply with the principles and provisions of international human rights law.

1.1. Legal Framework and Policy

Very useful meetings were held with the Department of Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior (DCIRIP), both during the first and the second mission, as well as a visit to the Odessa oblast head office during the second mission.

The DCIRIP has a regional office in every oblast, and a substructure covering the smaller units of each oblast. This implies that for example in the Odessa oblast there are 39 local offices, and countrywide the DCIRIP has 700 local offices. This organisational structure must, in the opinion of the rapporteur, be seen as reminiscent of Soviet times, where the Ministry of Interior was present in every locality as part of the State control/ registration of citizens.

The DCIRIP is responsible for issues related to Ukrainian citizens (population register, issuing of passports) as well as for immigration (excl. asylum administration and integration measures, which is within the responsibility of the State Committee for Nationalities and Migration (SCNM)).

As regards foreign nationals, the DCIRIP has both administrative tasks (case handling, issuing of residence permits) and control functions in the territory (control in market places, hotels etc.).

The Aliens Law dates from June 2001, and includes a provision on an immigration quota, giving the highest possible number of foreign nationals or stateless persons who may be granted permission for immigration within a calendar year (established annually by decree of the Government of Ukraine).

The law has a number of provisions regulating which categories of foreigners may - within the annual quota - obtain a residence permit. This includes highly skilled specialists, investors, close relatives of Ukrainian citizens and refugees who have stayed for more than three years.

Notably, during the visit to the Odessa office, it was discussed how the Aliens Law is applied in practical terms at the local and regional level. In Odessa oblast, with approximately 2.600.000 inhabitants, 16.380 foreigners have legal residence, of which 3.600 are students and 600 are labour force immigrants. In all, 132 different nationalities are represented.

The annual immigration quota, which includes the spouses and children of immigrants in the maximum figures, is applied with flexibility, and does not, in practical terms, pose a problem.

The DCIRIP in Odessa expressed concern regarding the fact that foreign citizens can stay without registration for up to 90 days, can then leave the country, and maybe the day after

leaving, can re-enter for a new 90-day period. National IT-systems to keep register of such persons do not exist.

The Mission was informed that the detention of illegal immigrants since 1 September 2005 requires a court order.

The Mission was further informed that return of illegal migrants poses a problem, especially as regards Indian citizens, as it takes very long to get the necessary Indian documents.

Furthermore, the Mission was informed that the DCIRIP in Odessa co-operates at the local level with the Security Service of Ukraine (SBU), which has operational capacity, but is more focused on investigating people smuggling and other forms of organised activity. The Mission was informed that the SBU, until a year ago, still had its own detention facilities.

Finally, the Mission was informed by the DCIRIP in Odessa that the DCIRIP was concerned with the lack of control of the whereabouts of asylum applicants. They fall under the responsibility of the SCNM, but give false addresses and are not properly registered.

1.1.1. National Strategies and Implementation Plans

An overall national strategy, developed through inclusion of State as well as civil society representatives, on handling of immigration issues in a broad sense has not been elaborated. This is not unusual, as many other European countries are in a similar position. However, as Ukraine is at a stage where still a very low number of foreigners reside on its territory, it would be very much worthwhile for the State to initiate a national discussion on how these issues are to be handled.

1.1.2. Approximation of Ukrainian Legislation to EU Norms and Standards

Legal immigration

The Aliens Law is quite brief about the requirements for granting legal residence. For example, a list of types of documents needed for granting residence for specific purposes is included in the law. This list however seems, in the opinion of the rapporteur, open to very extensive interpretation.

Return and readmission agreements

It is primarily the task of the State Border Guards Service (SBGS) to carry out returns. At an initial meeting with the SBGS during the first mission, grave concern was expressed over the lack of means for better control of irregular movements of migrants through Ukraine. Usually Embassies are being asked to provide the necessary funds for the return of their nationals. It was reported that the co-operation with some of the Embassies is generally good (e.g. China), but that some Embassies are reluctant to co-operate regarding the return of the citizens of their country (e.g. India). The SBGS has stated that they have sufficient funds for the practical implementation of returns.

Coordination between the SBGS and other relevant agencies/ministries seems, in the estimate of the rapporteur, to be difficult.

Many of the interlocutors the Mission met during the first visit expressed a strong wish to conclude readmission agreements with the Russian Federation and Belarus.

During the second mission a meeting was held at the headquarters of the Ministry of Interior on the issue of readmission agreements. 12 readmission agreements have been signed and are in force: Agreements with Hungary, Poland, Slovakia, Moldova, Switzerland, Latvia, Lithuania, Uzbekistan, Turkmenistan, Bulgaria, Georgia and Turkey.

There are no central statistics regarding the application of these agreements.

During this meeting, the MoI informed that final negotiations with Russia had taken place in early February 2006, and that an agreement between Russia and Ukraine was expected to be signed in late March 2006. This readmission agreement would also include third country nationals, but only after a three-year period from entering into force. In the meantime, the readmission agreement would include, however, this category if both Ukraine and Russia have concluded a readmission agreement with the respective third country.

An identical model is being sought by Ukraine as regards a readmission agreement with Belarus.

Practical administration on the Ukrainian side would be the responsibility of the MoI and the SBGS, and would not empower the SBU.

1.2. Institutional Framework

1.2.1. Organisation and Structure

At present, six different State structures are dealing with migration and asylum issues:

- Ministry of Interior, Department of Citizenship, Immigration and Registration of Individual Persons
- Ministry of Interior, militia (police)
- State Committee for Nationalities and Migration
- Ministry of Labour and Social Policy
- State Border Guards Service
- Security Service of Ukraine.

This makes it even confusing to read the legal texts. The Aliens Law, for example, refers to "*the specially authorised central executive agency in charge of immigration and its subordinate bodies*" and the Refugee Law refers to "*the specially authorized central executive agency for migration*". One could get the idea that this is the same, which it is not.

The first reference is in regards to the Ministry of Interior Department of Citizenship, Immigration and Registration of Individual Persons (DCIRIP) and its 700 local branches.

The second refers to the State Committee for Nationalities and Migration (SCNM), a semi-independent structure, which has branch offices in the regions. The State Committee is, among other issues (for example in relation to the Ukrainian Diaspora), responsible for processing asylum cases.

Apart from these structures the State Border Guards Service (SBGS), the Security Service of Ukraine (SBU) and the local branches of these huge State institutions, as well as the Ministry of Interior militia (police) have functions in relation to handling these issues.

During the first mission, visits were made to two regional offices of the State Committee for Nationalities and Migration, one in Uzhgorod at the border with Slovakia and the other in Kiev. During the second mission, visits were made to the SCNM regional office in Odessa and to the Department of Citizenship, Immigration and Registration of Individual Persons head office in the Odessa oblast.

In the view of the rapporteur, as stated in the preliminary report based on the first mission, there is an urgent need for a revision of the institutional set-up of authorities dealing with immigration issues in a broad sense, including asylum. Against this background the first report made recommendations accordingly.

The rapporteur recommended the establishment of one single State service dealing with legal immigration, handling of asylum cases, accommodation of asylum applicants and illegal migrants (two different types of centres), handling of return, overall coordination in combating illegal immigration, research and analyses, overall responsibility for programmes for social integration as well as international co-operation in these areas. .

In order for this new structure to have a strong position in handling these issues, which also have implications on the image of Ukraine abroad, the rapporteur noted that it would be recommendable to have a new structure organised within a ministry with a powerful position in the State structure. The present State Committee for Nationalities and Migration (SCNM) has, in the estimation of the rapporteur, a rather weak position in the State administrative system. It would therefore be problematic to base a new structure on expanding the functions of the SCNM.

A new State structure for migration and asylum should, in the estimate of the rapporteur, have a central policymaking body, but the practical administration and case handling should take place at the level of local branch offices. The departments of the central office should ensure practice coordination, education programmes for staff, support to local management, etc.

An expert analysis could be made prior to a restructuring, but as this was considered an urgent need, a political decision might also be taken as early as possible at the level of the Government about a choice for an institutional model. Expert support should in any case be provided during a restructuring period, establishing a new institution.

In the view of the rapporteur, the establishment of an appropriate institutional framework is a precondition for the possible solving of many other, more technical questions in the handling of migration and asylum related matters.

During the second mission, information was provided at a meeting at the headquarters of the Ministry of Interior Department of Citizenship, Immigration and Registration of Individual Persons (DCIRIP) about an imminent decision in this respect. The Mission was informed, that a draft law containing institutional changes is currently under consideration by the Parliament and in the estimate of the ministry, a decision to establish a new institution, the Ukrainian Migration Service, would be made within approximately two months. Afterwards (in April 2006), the Mission has been informed, that this issue may not be solved that quickly, as it will

be related to the issue of a general reform of the institutional set-up of Law Enforcement Agencies⁵.

The combined structures of the Department of Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior, the State Committee for Nationalities and Migration and the respective part of the Ministry of Labour and Social Policy dealing with labour migration will be the basis for the new institution.

In an initial period, estimated at two years, the new institution would be established within the Ministry of Interior, having the Department of Citizenship, Immigration and Registration of Individual Persons as the founding element.

The new institution is intended to maintain the present functions of the DCIRIP in relation to Ukrainian citizens (population register, issuing of passports), and will thus not be an immigration authority, but a migration authority, dealing also with issues related to travel and eventual emigration of Ukrainian citizens.

The Mission was informed that the Ukrainian Migration Service would be given a more independent status, not directly subordinated to any ministry, after the first two-year period.

With this imminent decision, the coming years shall, in the estimate of the rapporteur, focus on making this new institution function. The Migration Service is supposed to include an appropriate departmental structure and structures at local and regional level and shall be made able to ensure adequate intra-agency co-operation.

1.2.2. Human Resources Management Capacity

The Mission was informed that the Department of Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior employ a total of 5000 persons. As mentioned above, this structure has 700 local offices. Very many of the DCIRIP tasks at the local level concern Ukrainian citizens.

The present structural model implies that for example in the Odessa oblast where there is a total of 128 DCIRIP staff and 39 local offices - as some staff is employed at the oblast head office - a local office will typically have a staff of two persons.

As mentioned earlier in the report, this organisational structure must, in the opinion of the rapporteur, be seen as reminiscent of Soviet times, where the Ministry of Interior was present in every locality as part of the State control/registration of citizens.

A local office with for example two staff, which has important functions in relation to local Ukrainian citizens, will obviously have little time to deal with foreigners' issues. It therefore seems inherent in this organisational structure that effective management of immigration is hampered.

Concerning recruitment, training and career development, it is estimated by the rapporteur that a traditional approach of a powerful Ministry of Interior is applied. The staff has a perspective of life-long employment and possibilities for participation in training of personal and professional skills.

⁵ See Chapter 6 of this report.

However, as indicated above, as a consequence of the organisational model at the local level, the individual staff member will normally only spend a very limited part of the work time on handling immigration issues. It must therefore also be considered difficult to obtain sufficient experience and to participate in ongoing relevant training in this area.

1.2.3. Infrastructure and Equipment

Based on the visit to the Odessa head office of the Department of Citizenship, Immigration and Registration of Individual Persons, the Mission was informed that local databases exist within the individual oblast structure, but that these databases are not connected nation-wide, and data is not, as a general practice, transmitted to the headquarters in Kiev.

Other authorities and other branches of the DCIRIP can request information on a specific individual person.

1.2.4. Procedures

According to Article 15 of the Aliens Law, “actions or failures to act of officers and officials, who fail to comply with established procedures and terms of processing application on issuance of immigration permits, decisions of the specially authorised central executive agency in charge of immigration and its subordinate bodies, may be appealed against in a court of law, according to established procedures”. These ample appeal possibilities include appeals against withdrawal of the right of residence.

The extent to which these legal safeguards have an effect in an individual case must be seen in the light of the general shortcomings of the judiciary⁶.

1.2.5. Detention and Accommodation Standards

Based on a visit to the Zakarpatska region during the first mission, the impression was gained that detention and accommodation standards for illegal migrants are very far from acceptable.

The Mission visited the Pavchino detention camp for illegal immigrants, close to the border with Slovakia. The conditions in this camp are extremely poor and do not comply with any human rights standards. As the State Border Guards Service runs the camp, the latter is obviously responsible for the conditions and for the treatment of the detainees.

The camp is situated in the middle of a forest about 2½ km from the nearest village. The place was a nuclear missiles site during the Cold War and there is a chemical factory neighbouring the camp.

The detained migrants are supposed to stay in the camp until their case is investigated.

⁶ See Chapter 8 of this report.

They are kept in prison-like conditions. The gate is closed and guarded, a wall with barbed wire surrounds the area, soldiers and dogs are guarding the camp and soldiers are watching the detainees from watchtowers.

At the time of the Mission's visit, 450 illegal immigrants were detained in the camp, most of them from India (231), but also from China and from various South-East Asian countries.

During the visit of the Mission to the camp, Border Guards tried to prevent members of the Mission from communicating with the detained persons.

The detainees reported that they were freezing all the time. There was no functioning heating in the buildings most of the time. Some had blankets wrapped around their bodies, looking both ill and depressed. Reportedly the heating was only put on when visitors from outside arrived. However heating would not help much because there was no glass in some of the windows of the accommodation building. The detainees said that they were not treated with respect and that they were facing difficulties to get in touch with their home countries or with the outside world. Not all of the detainees had shoes. They told the Mission that the food was poor and that they were hungry most of the time. There is not enough water so they could not wash themselves and their clothes, which caused serious health problems.

The health conditions are a matter of grave concern. Many were visibly ill and didn't get the appropriate medical treatment they would have needed.

The Austrian Caritas is providing some help in co-operation with a local NGO, NEEKA, but this help is obviously not sufficient.

The Mission's observations confirmed the findings published in a recent Human Right Watch report⁷ and in the CPT report on Ukraine published on 1 December 2004.⁸ It also shows that despite the formal request of the CPT to the Ukrainian authorities "*to allocate sufficient financial resources to the agencies responsible for foreign nationals detained under aliens legislation to meet the detained persons basic needs (i.e. sufficient food, adequate bedding and appropriate clothing) and to monitor closely the use made of these resources*" the situation in the Pavchino detention camp has not improved.⁹

On the other hand, the Mission visited on the same day a new accommodation facility for asylum seekers in the nearby town of Mukachevo. This building was fully renovated with funds from the EU, UNHCR and Italy, and has a very high standard. However, this centre stood empty! The explanation the Mission received was that different local authorities could not agree on the question of who owned the building.

It must, in this context, be added that there have recently been reports in the Ukrainian media about illegal migrants who in the Zakarpatsya region have been found frozen to death.

During the second mission, further discussions were held with the responsible Ukrainian authorities on the observations mentioned above.

⁷ "Ukraine. On the Margins: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the European Union.", 2005

⁸ "Report to the Ukrainian Government on the Visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December", Strasbourg 1 December 2004

⁹ibd, p.32

Conflicting information was provided to the Mission as regards to the question of judicial control of the lawfulness of the detention of migrants. The DCIRIP at the MoI headquarters informed that a court order was not needed, whereas the SBGS headquarters informed that any detention above ten days had to be approved in court.

According to special legal provisions, persons can be held in detention for a maximum of six months in the Pavchino camp. On the basis of the information given during the missions, it is not possible to tell with any certainty how the responsible authorities deal with detainees who must be released after six months.

During a meeting with IOM in Kiev, the Mission was informed about two planned new, closed accommodation facilities for migrants, situated in regions towards the borders to Poland and Belarus. The two centres will be established in renovated former military barracks. The opening is planned to take place in 2007.

In the opinion of the rapporteur, a decision should be made as soon as possible by the Government of Ukraine to close the Pavchino detention camp. Furthermore, the location of this camp near the border to Slovakia probably functions as an incentive for the detainees to try to cross the border illegally.

During the second mission, it was stated at a meeting at the headquarters of the SBGS in Kiev, that the conditions in the Ukrainian-Slovak border region had been put under close observation by the top management of the SBGS.

The SBGS management further informed the Mission that a number of new, small, regional SBGS detention facilities were being constructed.

At the latest meeting of the EU-Ukraine Sub-Committee on Justice, Freedom and Security in February 2006, Ukrainian authorities confirmed that a plan exists to close the Pavchino detention centre and to create other centres in Volyn and Chernygov.

In concluding, it has to be stated that the severely substandard conditions of the detention camps and the violation of the human rights of the persons detained in these places demonstrate that Ukraine cannot be considered a safe country for the purpose of returning foreign-national migrants and failed asylum seekers, until the reception facilities and the practice and procedures for the treatment of detained migrants have been brought to a decent level.

1.2.6. Effectiveness and Efficiency of Policy Implementation

It is, based on the information given during the two missions, the observation of the rapporteur that the problems caused by the present, inconsistent and confusing institutional set-up of authorities dealing with migration and asylum tend to overshadow the establishing of policies and adequate handling of the practical administration in this area.

It will, for example, in the present circumstances, probably be quite tempting for authorities to push the blame for the mishandling of practical issues to other institutions, instead of assuming responsibility and finding ways to solve the problems.

1.2.7. Inter-agency Co-operation

The comments on difficulties encountered with policy implementation also apply to the co-operation between the competent authorities.

1.2.8. International and Bilateral Co-operation

Limited information was provided during the two missions on Ukrainian participation in these types of co-operation. There seems a huge need for an increased effort in this respect.

This aspect however is, without any doubt, also affected by the need to establish an appropriate institutional set-up of authorities dealing with migration and asylum.

The Czech Republic and IOM have, in the course of 2005, implemented a project aiming at improving the migration and border management of Ukraine. Project activities have included study visits to the Czech Republic and several types of trainings and seminars conducted in Ukraine by Czech experts.

Ukraine has actively participated in regional consultative processes focusing on addressing various aspects of cross-border co-operation, including preventing irregular migration and promoting comprehensive systems for orderly migration, like the Söderköping process and the Budapest process.

Concerning the separate issue of readmission agreements, please refer to Chapter 1.1.2.

1.2.9. Co-operation with International Organisations

There seems to be a particularly good co-operation between the relevant Ukrainian State institutions and IOM.

In April 2005, IOM organised an exchange visit to Belgium for staff of Ukrainian State institutions dealing with irregular migration and border control. Slovakian and Hungarian counterparts also participated.

In the area of counter-trafficking there is an extensive co-operation between IOM and Ukrainian law enforcement agencies.

Agreements on co-operation between the Ministry of Interior of Ukraine, the State Border Guards Service and IOM to prevent illegal migration and human trafficking were signed in 2005. The agreements foresee voluntary repatriation of illegal migrants from Ukraine and voluntary repatriation of Ukrainian victims of human trafficking from abroad, collection and distribution of information on migration, joint conferences and seminars, training on prevention of human trafficking and illegal migration and establishment of migrants counselling centres.

2. Asylum

2.1. Legal Framework and Policy

The Refugee Law dates from June 2001 and replaced the first Refugee Law of 1993. The new law included many significant improvements compared to the previous law, but at the same time it introduced new strict restrictions mainly concerning application deadlines, which were amended in May 2005.

According to the law, only Geneva Convention status can be granted. There are at present no provisions on subsidiary, humanitarian protection or on temporary protection.

Neither the Aliens Law nor the Refugee Law foresee regulations on the legal status of rejected asylum applicants, who for objective, general reasons cannot return to their country of origin or former residence.

However, the Ministry of Justice, in close co-operation with UNHCR and the Council of Europe, has drafted a “Law on the Legal Status of Aliens” covering both migration and asylum, which also includes subsidiary forms of protection. An updated draft, based on recommendations made at a seminar “International and European norms and standards related to refugee protection and current legislative developments in Ukraine”, organised by the above-mentioned institutions, has been elaborated. The draft law has not yet been submitted to the Cabinet of Ministers and to the Parliament.

According to available statistics (UNHCR/SCNM) the total number of asylum applications was 1893 in 2000, 916 in 2001, 535 in 2002, 1367 in 2003, 1364 in 2004 and 1740 in 2005 (2005-figure from the SCNM).

According to the most recent figures (SCNM), 2346 recognized refugees are now residing in Ukraine.

2.1.1. National Strategies and Implementation Plans

An overall long-term strategy on asylum has not been elaborated. As mentioned above in Chapter 1, this is also the case as regards a national, comprehensive strategy for the handling of immigration in general, taken in a broad sense.

As also mentioned in Chapter 1, this is not unusual, as many other European countries are in a similar position. However, as Ukraine is at a stage where still a very low number of foreigners reside on its territory, it would be very much worthwhile for the State to initiate a national discussion on how the issues of migration, asylum and integration are to be handled.

In March 2004, an Action Plan for the Integration of Refugees was adopted. It encompasses education, training, acquisition of language skills and cultural integration and sets out measures to be taken by local authorities. Ukraine encourages refugees to obtain citizenship. In the period 2002-2004, 435 refugees have been granted citizenship.

During the second mission, the State Committee for Nationalities and Migration (SCNM) informed the Mission that from 8 April 2006, ten staff at the headquarters of SCNM will be assigned to functions in support of the handling of refugee issues, including integration. It

must be noted, however, that these ten staff will be re-deployed from their present tasks at the SCNM headquarters.

2.1.2. Approximation of Ukrainian Legislation to EU Norms and Standards

Within a TACIS-funded project “Assistance in legal and administrative reforms in Ukraine in the sphere of migration and protection of refugees according to the EU norms and standards”, involving Austria, Lithuania and Ukraine, carried out in the period October 2004-September 2005, an evaluation has been made of the extent to which the Ukrainian legislation in the areas of migration and asylum comply with the EU acquis. A guidebook including the results from this project has unfortunately only been published in Ukrainian.

The Mission has received a paper from the “Ludwig Boltzmann Institut” in Austria, which was a partner to this project, analyzing the Ukrainian legislation in relation to the norms and standards of the EU.

The paper includes a series of 26 concrete recommendations for legislative modifications. Among the most important are needs for a clearer underlining of the non-refoulement principle, introduction of subsidiary forms of protected status, ensuring suspensive effect in appeal cases, also for cases considered manifestly unfounded, as well as introduction of a practise for giving reasoned decisions.

It is the estimate of the rapporteur, as regards the protection of refugees and other persons in need of international protection, that the present legislation does not give sufficient possibilities for granting an appropriate legal status to other categories of applicants than the Convention refugees.

Below, in the report section on Procedures is provided estimates on the practical functioning of the asylum procedure as well as the rapporteur’s evaluations as regards compliance with EU norms and standards.

During the first mission, information was received indicating that the principle of non-refoulement is not respected. This issue is further dealt with below.

The Refugee Law includes generous provisions on granting residence permits to family members of recognized refugees.

Integration of recognized refugees falls under the overall responsibility of the State Committee for Nationalities and Migration. It is however difficult to imagine, based on the staff resources available, including at the local level, that a comprehensive effort can be made in practical terms in this respect.

Concerning legal provisions for voluntary return, it is primarily the responsibility of the State Border Guards Service to carry out returns. There is a need for improvement in many areas related to return, including considerations to transfer the responsibility from the SBGS to another State structure.

2.2. Institutional Framework

2.2.1. Organisation and Structure

As described above in the Chapter on migration, six different State structures are at present dealing with migration and asylum issues:

- Ministry of Interior, Department of Citizenship, Immigration and Registration of Individual Persons
- Ministry of Interior, militia (police)
- State Committee for Nationalities and Migration
- Ministry of Labour and Social Policy
- State Border Guards Service
- Security Service of Ukraine.

The Refugee Law of 2001 resolved the issue of the distribution of competence by defining the State Committee for Nationalities and Migration (SCNM) as the competent authority in the field of asylum and refugee protection. Still, it took the newly defined structures, the SCNM and the SCNM Regional Migration Services, some time to become fully operational. As a consequence, asylum procedures had to be suspended completely for about one year.

During the two missions, three meetings were held at the headquarters of the SCNM, and regional offices of the SCNM in Uzhgorod, Kiev and Odessa were visited.

Based on the impression gained both during the first and the second mission, the SCNM and its regional branches does not, in the estimate of the rapporteur, have a very strong position in the State administrative system, notably in comparison to the other main actors in the field, the Ministry of Interior and the State Border Guards Service.

For further information on the expected decision to establish a Ukrainian Migration Service, see above in Chapter 1.2.1.

2.2.2. Human Resources Management Capacity

The branch of the SCNM that deals with asylum and migration is quite a small organization, which according to information from the SCNM headquarters in Kiev to the Mission, has 70 staff at the headquarters and 150 staff in the regions.

The Mission was informed that the branch office in Uzhgorod handles approximately half of the total annual number of asylum applications. This did, in the estimate of the rapporteur, not correspond to the impression gained from visiting the branch office. There were no clients seen at the premises, and only a single caseworker was present.

During the visit to the branch office in Kiev eight to nine staff were present. Two clients were seen in the waiting room of the premises.

During the visit to the branch office in Odessa there were five staff present, and clients were waiting to be interviewed.

The SCNM staff has benefited from training organised by UNHCR, organised in different EU-funded projects, through bilateral support from other European countries and during study visits.

2.2.3. Infrastructure and Equipment

The branch offices of the SCNM are properly equipped with computers, but are not able to use a database to check whether an asylum applicant has previously applied for asylum. According to the SCNM there are plans for establishing such a system.

No database including country of origin-background information for use by the interviewing officers at the branch offices exists.

2.2.4. Procedures

At present, interviews with asylum applicants are carried out at the local level, but decisions in the individual cases are made at the headquarters in Kiev. This does, in the estimate of the rapporteur, not promote a sense of responsibility among the interviewing staff. An optimal model is for decisions to be made directly at the local level on the basis of a draft for a decision by the interviewing officer. The central office shall ensure practice coordination, education programmes for staff, support to local management, etc.

During the two missions the general impression was gained that very many aspects of the asylum system are not functioning properly.

A much-criticised legal provision setting strict time limitations for handing in an asylum application after arrival in Ukraine was lifted in May 2005. Still, the new wording “without delay” used instead of “during three working days” remains open to extensive interpretation. In 2003, 65 % of applications were not admitted to the asylum procedure, solely based on such procedural grounds. This figure has now been somewhat reduced.

Observers, including UNHCR, report a very strict application of Article 12 of the Refugee Law on manifestly unfounded claims.

Potential asylum seekers may be unable to lodge an asylum application without delay, as they are in detention and may not be given immediate access to asylum procedure or may lack basic information, lack access to legal assistance and experience fear and trauma associated with experiences made during the flight from their home country.

In addition the legislation includes overly complicated appeals regulations, making it possible to appeal to the courts at different stages of the procedure.

The extent to which these legal safeguards have an effect in an individual case must be seen in the light of the general shortcomings of the judiciary.¹⁰

¹⁰ Please also see Chapter 8 of this report.

Another problematic area has been raised by many observers and concerns access to interpreters in Ukraine. It is indicated that access to language interpretation is a problem at all stages, including at borders, during detention and during the asylum procedure. This has been confirmed during the missions by representatives of local NGOs and acknowledged by the SCNM.

There is also a reported lack of access for apprehended migrants to representatives from NGOs and to lawyers, which seriously affects a decent implementation of the asylum procedures. Whereas NGOs are promised at the central level to get the necessary support, border guards at the local level are often reluctant to grant access to NGOs and lawyers. This leads to situations where lawyers have to wait at the gate of a detention camp for two or three hours until the official fax permitting entrance has finally reached the recipients at the local level. As often the timeslot for visits exactly corresponds to this waiting time, the meetings between lawyers and apprehended migrants are de facto sabotaged.

The Mission was informed that asylum seekers are often not provided with IDs, reportedly because of a lack of ID -documents. There is also a practice of issuing different IDs, valid at different stages of the procedure. This leads to recurring arrests of the asylum seekers because of a lack of proper IDs, and subsequent releases (typically upon UNHCR's intervention). It is a practice that can promote corruption by charging a person a "fee" for solving his or her problem. The continuation of the practices as described demonstrates generally the low priority the issue has among the authorities.

During the second mission a meeting was held in Odessa with an NGO, an organisation of young lawyers, which is funded by UNHCR. The organisation has eight to nine lawyers, who work full time on support to asylum seekers and refugees. Because of the lack of transparency in the procedure, for example the lack of reasoned decisions and the lack of the right of an asylum seeker to see his or her file, this NGO carries out own status determination interviews with applicants.

In the estimate of the rapporteur, this can be seen as an example of establishing "a procedure outside the procedure" or a "parallel procedure", due to the lack of confidence in the functioning of the genuine procedure. It is not economical to have the asylum system function in this way, and efforts should instead be put into making the genuine procedure function properly.

During the second mission, information was received that a group of 10 Uzbek nationals were extradited by Ukraine to Uzbekistan at the request of the Uzbek authorities in the night between 14-15 February 2006. According to UNHCR and Amnesty International this action concerned persons who had applied for asylum in Ukraine. The Austrian Presidency of the EU has afterwards sought clarification from the Ukrainian authorities as to how this extradition was allowed to happen.

Several interlocutors have expressed particular concern about the fate of asylum seekers from Chechnya, who are forcibly returned to Russia, despite the risk of persecution they face there.

At a meeting with the SCNM during the second mission, the issue of asylum applicants from Chechnya was raised by the Mission. The SCNM informed that all asylum applicants, irrespective of nationality, have a right to stay during the procedure, including appeal. The Ukrainian authorities have granted asylum to a number of Chechens and according to the SCNM, the last time a positive decision was made was approximately at the end of 2004.

As regards return procedures, the Mission was informed that illegal migrants or rejected asylum seekers bribe officials who transfer them to Kiev in order to be released.

On the basis of the information obtained and impressions gained during the two missions, the rapporteur recommends that in the coming years focus must be placed upon adherence, within the Ukrainian asylum procedure, to fundamental international principles and the basic elements of best practices at the level of EU countries.

This includes (1) the right to seek asylum, (2) respect of the non-refoulement principle, (3) access to independent legal counselling, (4) access to decent accommodation facilities during the asylum procedure, (5) a simplified procedure for issuing identification documents to all applicants, which are valid during the procedure, (6) case handling in a transparent way, including providing reasoned decisions, also if an asylum claim is rejected as inadmissible or manifestly unfounded in the accelerated procedure (7) transparency also includes the right for the applicant to see his or her asylum file (excl. classified documents), (8) proper functioning appeals procedures, (9) simplified, uniform and transparent procedures for handling return of rejected asylum applicants and illegal migrants.

2.2.5. Reception Capacity and Standards

During the second mission, the SCNM accommodation facility for asylum applicants and refugees in Odessa was visited. The centre has a capacity of 250 persons, has been renovated with funds from the EU-project "Strengthening asylum activities in Ukraine and Moldova" (implemented by UNHCR) and has a very high standard. There are facilities for employment of women, for teaching children, recreational facilities and even a herbal tea salon.

This centre is presently the only functioning SCNM-centre in Ukraine for accommodation of asylum applicants.

The SCNM informed the Mission that the total capacity to accommodate asylum applicants is planned to be expanded to 600 places in all.

On the ground floor of the main building of the Odessa centre, integration activities for recognized refugees are carried out.

At the time of the visit, 55 asylum applicants and 21 refugees were accommodated. Asked by the Mission why no more than 55 asylum applicants were accommodated, the answer was given at the centre that only funds for accommodation of this number had been granted. When afterwards the SCNM in Kiev was asked the same question, the answer was given that all persons who applied for asylum could go to the Odessa centre, if they had no other possibility for accommodation.

When asked specifically about this issue by the Mission, the centre management in Odessa informed that they could only recollect one case where they had accommodated persons who had earlier been detained at the Pavchino camp.

It is, in the opinion of the rapporteur, very difficult to understand, that the accommodation system in the asylum procedure should function as described above - with on the one hand illegal migrants accommodated under conditions like those in the Pavchino camp, and on the

other hand, after applying for asylum, apparently none of these persons being transferred to the Odessa centre.

2.2.6. Effectiveness and Efficiency of Policy Implementation

As stated earlier in the Chapter on migration, it is, based on the information given during the two missions, the observation of the rapporteur, that the problems caused by the present, inconsistent and confusing institutional set-up of authorities dealing with migration and asylum tend to overshadow the establishing of policies and adequate handling of the practical administration in this area.

2.2.7. Inter-agency Co-operation

It seems to be inherent as a consequence of the present institutional division of tasks, that the SCNM is very much depending on information provided notably by the State Border Guards Service concerning issues related to the existence of asylum requests, practical solutions on accommodation, return after the asylum procedure, etc.

Furthermore, the comments on difficulties encountered with policy implementation also apply to the co-operation between the competent authorities.

2.2.8. International and Bilateral Co-operation and Co-operation with International Organisations

The information provided in the Chapters 1.2.8 and 1.2.9 is also of relevance as regards the area of asylum.

For information on participation of staff of the SCNM in training, organised as part of bilateral or international co-operation, see above in Chapter 2.2.2.

According to information the Mission has received, there is good co-operation between UNHCR and the relevant authorities on an operational level. However, it seems that there is room for improvement regarding support to UNHCR from the highest level.

3. Border Management

Introductory Remarks

The following information was gathered on the basis of written information provided by the State Border Guards Service (SBGS), meetings held at the headquarters in Kiev, with the Eastern Direction Border Guards and the Chernigiv Regional Unit and on the basis of the field visits that took place during the two missions to Ukraine. The field trips included a visit to the airport Borispol, to the Khmelnytsky Border Guard Academy and visits to the following border crossing points (BCP):

- In Kharkiv and Sumy Oblasts: one international BCP (Hoptivka) and two bilateral border crossing points for citizens of Ukraine and the Russian Federation (Pletenyovka and Chuhunovka).

- In Chernigiv Oblast: one international BCP (Novi Jarilovichi) and a green border post (BP) along the Belarusian border (Zadereyevka).

Given the obvious time constraints, the Mission had to prioritise its field visits, choosing border areas that are accessible in winter weather conditions and that are within a reasonable travelling distance from Kiev.

Upon request of the Mission to visit BCPs located in the above- mentioned Oblasts, including one green border unit, the BCPs to be visited were chosen by the SBGS. All the border related field visits were arranged and organised by the SBGS, which we would like to kindly acknowledge herewith.

3.1. Legal Framework and Policy

The status of the State Border Guards Service (SBGS) is defined by the Act on the SBGS of 2003. Since then, there have been more than 120 additional Decrees from the Cabinet of Ministers and 20 Presidential Decrees. The Service is under the control of the President and the Cabinet of Ministers and can also be subject of military, civilian and internal monitoring as well as monitoring by the Ministry of Interior. In addition, the SBGS and its activities are permanently in public view: The SBGS publishes news about the border guards activities on the Service's website and Ukrainian TV regularly broadcasts reports about border control. In addition, citizens can report complaints about border control procedures using the hotlines that are operated at some of the BCPs

The Law of Ukraine “On the State Border Guard Service of Ukraine”¹¹ has established the objectives, functions, principles, the general structure and the organisation of the State Border Guard Service of Ukraine. The Law has also defined the rights and responsibilities of the State Border Guards Service, which gives the SBGS the leading co-ordinating role in every border control related activity.

More specifically the main duties of the SBGS are defined as follows:

- Protection of the Ukrainian border;
- Border traffic control of persons, vehicles and transports;
- Protection and control of the exclusive Ukrainian maritime zone;
- Reconnaissance and intelligence activities in connection with the state border protection;
- Fight against illegal migration and organised crime;
- Guarding diplomatic establishments of Ukraine;
- Co-ordinating the activities of other services having control duties at the border.

According to the Law on Criminal Procedure dating back to 1960, the SBGS' investigative powers are limited to preliminary investigations for cross border related crimes since the general power of investigation lies within the State Security Service and the Ministry of

¹¹ Act on the SBGS of 2003.

Interior. A new law on Criminal Procedure is currently being elaborated but there are no changes expected relating to the division of investigative competences.

3.1.1. National Strategies and Implementation Plans

Since the SBGS in its current form has only existed since 2003, focus was mainly put on positioning and reform in the recent years. Reforming the SBGS from a military oriented structure to a law enforcement organisation, was thus the main goal for the previous strategy covering the period of 2000–2005. The Administration of the State Border Guards Service of Ukraine has recently elaborated the “Concept and Program of the Development of the State Border Guards Service of Ukraine”. On 6 April the Concept of the Development of the SBGS was approved by the Cabinet of Ministers. The Program of the Development is to be reviewed after the Concept has been adopted by the President of Ukraine.

The strategic objective of this Program is an increase in professionalism and an approximation to European Union standards as an introduction of a European approach concerning border management, including the creation of professional border guard units; improvement of the legal framework; transformation of the Marine guard into a body with law enforcement tasks; organisational structure and human resources management; improvement of the technical capacity of border guard posts.

More specifically, the implementation of the Concept is foreseen to take place in three phases:

Phase 1 (2006–2008) includes:

- The creation of a legal framework;
- The implementation of an organisational structure;
- The reform of the border management system (decreasing the levels from five to four);
- The establishment of new types of units;
- The establishment of new marine guard units;
- Acquisition of modern equipment for the marine guard and the aviation fleet;
- Acquisition of modern equipment for the personnel management.

Phase 2 (2009–2012) includes:

- The finalisation of the legal framework;
- The elaboration of a modern integrated border management system;
- The complete removal of conscripts from the border control by 2010;
- The employment of personnel on the basis of contracts;
- The establishment of a marine guard with appropriate competence and under appropriate jurisdiction;
- The procurement of new, Ukrainian made patrol ships for the marine guard.

The year 2012 is considered to be the deadline for the transformation of the former border guard troops into a modern, efficient law enforcement agency.

Phase 3 (2012–2015) includes:

- The establishment of a modern integrated system for guarding the state borders and the economic marine zone;

- The finalisation of the procurement of modern equipment for the marine guard and the aviation fleet.

During the drafting of the Program, consultations were held with the Ministry of Finance and the Ministry of Economy.

The expected budget for 2006 is 967, - mio. UAH, of which 40, - mio. UAH are supposed to be dedicated to the technical development of the Eastern border. According to the Concept, the budget is going to amount to 1.009,3, - mio. UAH in 2007, 1.087, - mio. UAH in 2008 and 1.157,7, - mio. UAH in 2009.

3.1.2. Approximation of Ukrainian Legislation to EU Norms and Standards

The general impression of the SBGS is that the reform process towards a law enforcement agency should be further accelerated in order to fulfil the requirements of a modern border management system devoid of its military characteristics and based on EU standards and EU MS best practices. As stated before, the Draft Program lays the foundation for the approximation of the Ukrainian border management system to EU standards. It remains to be seen how the Program is going to be implemented.

Ukraine is facing major problems in the border management area due to the total length of its external borders and the incomplete territorial delimitation with the neighbouring CIS countries subsequent to the dissolution of the former Soviet Union. The former internal borders of the Soviet Union had the sole function to divide administrative regions, and had been equipped with only a minimum of infrastructure. Consequently, the permeability of these borders, which now divide independent States, remained after the dissolution of the Soviet Union and continues to entail significant obstacles for Ukraine in its ability to tackle cross-border crime and illegal migration.

3.2 Institutional Framework

3.2.1. Organisation and Structure

The total length of Ukraine's border is 6,994 km. The land borders are 5,639 km long and are divided into three parts: western, northern and eastern land borders. The sea borders have a total length of 1,355 km. Ukraine has land borders with the Russian Federation (2,295 km), Belarus (1,084.2 km), Poland (542.4 km), the Slovak Republic (98.5 km), Hungary (136.7 km), Romania (613.8 km) and Moldova (1,222 km).¹² As of 1 May 2004 Ukraine's borders with Hungary, Slovakia and Poland became external borders of the enlarged European Union, the new geopolitical situation posing additional challenges for the migration management institutions of Ukraine.

The structure of the SBGS has five levels; under the Administration of the SBGS there are five regional administrations. Within the regional administrations there are regional border guard units under which the “commendaturas” comprise the fourth level. One commendatura can be responsible for several border crossing points and border posts, each of which includes a temporary detention centre.

¹² <http://www.pvu.gov.ua/zhdk.htm>

There are 210 border crossing points in Ukraine, including 137 international (51 car, 34 railway, 30 sea, 18 air, 2 ferry and 2 river), 34 interstate (31 car, 2 railway, 1 ferry), and 39 for local traffic (27 car, 2 railway, 3 pedestrian, 7 river). As regards the Eastern border, 56 border crossing points are in place.

According to the State Border Guards Service, more than 300 border posts protect Ukraine's land border. Every border unit covers 20 – 30 km, and has a staff of 30 – 50 persons (out of which 5 – 15 are border guard inspectors).

Along the Black Sea there are four sea guard units and one separate sea guard division. Several support units provide the necessary assistance for the best performance of duties.

There is a new, ongoing program for creating multifunctional types of border units, which are responsible for a range of activities including investigative work at the green border and at BCPs. The idea to combine the two basic local level structures into one is currently being tested in a pilot project introducing these new units at four BCPs along the Ukrainian-Hungarian border.

3.2.2. Human Resources Management Capacity

The SBGS staff is composed of conscripts, civil servants and short-term employees. The SBGS currently employs 300 women.

According to information provided by the SBGS, a draft on the development of the State Border Guard Service personnel management system for the period up to the year 2015, envisages the following actions:

- To reform the existing staffing system of the State Border Guards Service through the establishment of organisational and legal conditions, which will help to address the need for highly qualified personnel and allow for a smooth transition to the contractual service, while ensuring a rational utilization of the SBGS budget;
- To ensure the transition to a dynamic grading system of basic training and professional development of the personnel in educational institutions of the State Border Guards Service;
- To improve the social protection system for the personnel (while in service) of the State Border Guards Service and raise their salaries;
- To improve the legal framework to ensure the staffing and training system;
- To identify the areas of further co-operation with the law-enforcement agencies of European countries and the US to improve the personnel training of the State Border Guard Service.

Training

Training of the border guards is an important topic, which needs to be addressed, since it is still of a military nature. The main institution for training is the Khmelnytsky Border Guard Academy where officers graduate. It started its operation in 1993. In 1999, it received the name "National" and with the 2003 Act on the SBGS it acquired its current name. To date, approximately 6000 officers who are working at several levels within the administration or abroad have been trained in Khmelnytsky. The Academy is composed of the following three faculties:

1. Military sciences (2-2.5 years);
2. Law, guarding and protection of the state borders (4-5 years);
3. Philology and engineering mechanics (4-5 years).

The Academy is part of the State education system, therefore not only border guards but also civilians can apply for training courses. Before obtaining a possibility to enrol at the Academy, applicants must undergo several tests (mental and physical) and border guards are required to receive permission from their commander.

Apart from the regular academy training, special training courses for warrant officers, lasting from 4 to 6 months are conducted. Training facilities are excellent; students have access to all of the equipment, which is installed at BCPs and BPs. Most of the classrooms are equipped with special technical equipment, needed to teach the material. About 400 computers are at the students' disposal. The Academy has its own intranet network and there is a studying room equipped with 15 P-6 computers, – each of them with an Internet connection. With the help of this equipment, teachers can simulate any situation and test the skills of the students.

The Academy pays significant attention to language training. In addition to the official languages of the neighbouring countries, French and English are taught as well. The classrooms for language courses are equipped with the most sophisticated training tools, e.g. video recorder, camcorder, computers with Internet connection and satellite TV channels.

In addition to Khmelnytsky, there are three other regional training centres, two for teaching non-commissioned officers and conscripts (Cherkassy and Velykomostivsky) and one special naval school in Izmail.

3.2.3. Infrastructure and Equipment

IT and Databases

The SBGS has set up Video Conferencing between the Central Administration of the SBGS and the regional administrations, which makes it easier to communicate when unforeseeable situations occur. The system is planned to be extended to the lower levels – in mid 2006, 23 border guard units will have been connected. A Camcorder system, monitoring the area where the border check takes place, is operating at more than 10 BCPs. Depending on the financial means, the installation will be extended to other BCPs.

Document readers are placed in the booths, but a significant percentage of the passports are not read, usually for the following reasons:

- The Belarusian passport and the Russian internal passport (valid only within the CIS countries and in some of the countries that used to be part of the former Soviet Union) are not machine readable;
- The reader cannot properly read machine- readable passports of some countries, e.g. the Baltic States (a Hungarian passport was read on the second attempt).

An automated registration plate verifying system is only applied at ten BCPs, the installation is planned to be extended to more BCPs, providing the budget is sufficient.

At the BCPs the so-called GART local database is operating, which allows for the checking of persons and vehicles. The Administration of the SBGS permanently and directly updates the database. In total the BCPs have access to 20 different kinds of databases.

Each BCP assigns one officer on duty responsible for the consultation of the databases. Since this officer has access to more databases (e.g. registration of foreigners entering the country, data base of stolen cars) than the border guard who controls the passports, any suspicious case is thoroughly checked by him.

While the number of accessible databases is considerable, there is currently no link between the different databases of all the law enforcement agencies¹³. An online connection between the BCPs and the Ministry of Foreign Affairs or the visa issuing Diplomatic Missions and Consular Departments of Ukraine does not exist.¹⁴

Border Crossing Points

The visited BCPs and BPs have the staff needed for efficient border checks/surveillance and the combating of illegal activities. The infrastructure of the visited border crossing points was excellent. The buildings were in a good condition (built in the '90s) and even the bilateral BCPs had the necessary technical equipment. In addition to the regular telephone line, all visited local level units have a satellite-supported connection with the upper levels.

Border Units

The Zadereyevka BP has 37 km borderline of responsibility along the Belarusian border and 41 personnel, among which, 4 conscripts and 4 inspectors.

Patrols can be organised in 17 different ways, with the deployment of 1-7 staff. Within 24 hours, the BP can send 4-6 patrols to the territory. For mobilisation they possess 2 off-road cars and 5 motorcycles. Patrols are equipped with the necessary technical means (guns, handcuffs, gas spray, binoculars and mobile night vision set, signal gun). Radio connections provide a permanent connection between the patrol and the officer on duty and all other patrols deployed in the area of responsibility.

Mobile Units

Within the area of responsibility and in the vicinity of the border, mobile units can operate. They are equipped with the necessary technical means to conduct supplementary checks on persons and vehicles.

Temporary Detention Centres

The SBGS is aware and concerned about the appalling conditions for illegal migrants detained in the temporary detention centres at the borders¹⁵. According to the SBGS the number of illegal migrants, who can be detained for a period of 6 months according to the law, dramatically exceeds the holding capacities of the centres. A reported lack of funds and

¹³ Please also refer to Chapter 6.2.2. on plans to create a national law enforcement IT system.

¹⁴ Please also refer to Chapter 5.2.2. and recommendation N. 54

¹⁵ For more information regarding the Pavchino detention centre for illegal migrants, please refer to Chapter 1.2.5.

an ongoing debate regarding the competence over temporary detention centres for illegal migrants hamper a proper handling of the issue.

3.2.4. Procedures

There have been several changes since 2003 concerning the procedures applicable for border guards, one of them being that passengers can usually remain in their vehicle during the first line check. The other change concerns the passport controllers' activities that were, thus far, limited to checking the passports. Since 2003, they have also had the authority to interview the passengers regarding the aim(s) of their travel and to refuse entry in the case of unsatisfactory answers.

The so-called “one-stop principle” is being conducted at the visited bilateral BCPs and the Novi Jarilovichi international BCP, but not at the Hoptivka international BCP. However, in Hoptivka the border guard and the customs officer jointly decide on the thoroughness of the control – green-red channel system based on the following criteria:

- Operational information received from law enforcement agencies;
- The list of risk countries (elaborated by the MoI);
- On a random basis and basis of suspicion.

The staff showed excellent skills on handling unexpected situations such as attempts to drive through the BCP without control.

3.2.5. Inter-agency Co-operation

Due to the fact that the SBGS is the main co-ordinator at BCPs, it is authorized to draft legal acts that have a connection to border control procedures. At the central level, regular quarterly meetings are held between the law enforcement bodies and when necessary, they create ad hoc experts' committees. During the last year (under a governmental program), such a committee was set up to fight the smuggling of human beings.

At BCPs, officials of the SBGS and the State Customs Service are working together. The process towards the one-stop principle could strengthen their collaboration even more; however co-operation was reported to be good.

According to the “Law on Information” every law enforcement body has to provide the necessary information upon request and can request information from other bodies. Information- sharing can only be refused in cases defined by the law.

Phyto-sanitary and veterinary services are permanently present at all visited BCPs. The co-operation with the SBGS is easily achieved due to the close proximity of their working places. In addition, laws and by-laws regulate the common work.

The State Security Service and the Ministry of Interior (MoI) have special jurisdiction in connection with the fight against several crimes. The State Security Service is the leading agency service for cross-border crime. The MoI is the main body in the combat against smuggling of human beings and illegal migration.

3.2.6. International and Bilateral Co-operation and Agreements and Co-operation with International Organisations

It is self-evident that a thorough co-operation with neighbouring countries is crucial to stopping illegal activities, in particular illegal migration, smuggling and trafficking. In this regard, concerns were expressed by the SBGS regarding the illegal migrants transiting Ukraine from the Russian Federation to the European Union. According to the SBGS, 90% of the 10.000 persons that are apprehended while trying to cross the border illegally come from the Russian Federation.

The borderline along the Russian land border has been largely delimited, but has not yet been demarcated. There is no common approach in the case of the Azov Sea and the Kerch Strait. Ukraine wants to take into account the administrative borders of the former Soviet Union while this demarcation line is not acceptable for Russia¹⁶. The operational co-operation between Ukrainian and Russian border guards was however reported to be good with the exception of the co-operation in the readmission of illegal migrants.

President Yushchenko signed a decree in mid-December with a view to finalise negotiations on a border demarcation with the Russian Federation in 2006. The work of the experts' team is ongoing and the Mission was told that there are currently no obstacles to the negotiations.

The Co-operation with the Belarusian counterparts was reported to be good, the officers on duty at the neighbouring BCPs keep in touch on a daily basis, the commanders meet on a monthly, quarterly and half year basis or in case of need.

Concern was however expressed by the SBGS regarding the lack of sufficient attention the Russian and Belarusian authorities responsible for border control pay to the green border surveillance. Thus far, it seems that only Belarus has initiated an upgrade in the surveillance of its green border towards the end of 2005.

Ukraine's borders with the European Union Member States have been completely demarcated since these borderlines were inherited from the Soviet Union.

On the Western part of the Ukrainian border, the SBGS enjoys good co-operation with Poland, Hungary and Slovakia, with which Ukraine has signed an Action Plan on border management, including an exchange of operational information. Bilateral consultations will soon be launched. Co-operation with Romania is reportedly improving. It was reported that there is a daily exchange of information between Ukraine and the above-mentioned countries.

According to information provided by the SBGS the following agreements have been signed with neighbouring countries:

Slovak Republic:

- The 26 October 2005 Protocol between the Ukrainian State Border Guard Service Administration and the Slovak Republic's Bureau for Aliens and Border Police of the Presidium of Police Corps on the areas of operational co-operation;

¹⁶ <http://www.cdi.org/russia/johnson/7129-14.cfm> (2 May 2005)

Belarus:

- The Protocol on operational co-operation signed on 5 October 2005 between the Ukrainian State Border Guards Service Administration and the State Committee for Border Guard Troops of Belarus;
- The 18 October 2005 Protocol between the Cabinets of Ministers of Ukraine and Belarus on the amendments to the Agreement between the Cabinets of Ministers on the procedures for crossing the Ukrainian-Belarusian border by citizens living in the borderland areas of 12 December 1998.

Since the Parliament of Belarus has not yet ratified the relevant bilateral agreement signed in 2003, the Ukrainian-Belarusian border has not yet been demarcated.

Moldova:

- The 27 January 2005 Protocol between the Ukrainian State Border Guards Service Administration and the Department of Border Guard Troops of the Republic of Moldova on the activities of the border guard representatives;
- The 22 April 2005Protocol signed between the Ukrainian State Border Guard Service Administration and Border Guard Service of the Republic of Moldova on operational co-operation;

Thus far the Ukrainian-Moldova border has only been demarcated on its northern part, the demarcation work on the southern part is ongoing and the central (Transnistrian) part has not yet been demarcated. Currently negotiations on the demarcation process under the leadership of the two Ministers of Foreign Affairs and with the participation of EC Representatives are ongoing.

4. Customs

Introductory Remarks

The information described below was gathered through written information material provided by the State Customs Service (SCS), meetings with the SCS headquarters in Kiev and the customs offices at the Odessa airport and seaport. In addition the Mission's customs expert joined the visit to the airport Borispol and the field trips to the BCPs Hoptivka, Pletenyovka and Chuhunovka.

4.1. Legal Framework and Policy

The following acts provide the legal framework for customs related matters:

- The Law of Ukraine of April 5, 2001, #237-III "On the Customs Tariffs of Ukraine";
- The Law of Ukraine of February 5, 1992, #2097-XII "On the Common Customs Tariff";
- The Law of Ukraine of September 6, 2005, #2805-IV "On Disciplinary Statute of Customs Service of Ukraine";

- The Law of Ukraine of September 13, 2001, #2681-III "On the Order of Import (Sending) to Ukraine, Customs Clearance and Taxation of Personal Assets, Commodities and Transportation Means Importing (Sending) on the Customs Territory of Ukraine";
- The Law of Ukraine of July 15, 1994, #117/94-VR "On Ukraine's Participation in the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention, 1975)";
- The Law of Ukraine of December 15, 1999, #1301-XIV "On Ratification of the Agreement on Customs Co-operation and Mutual Assistance in Customs Matters";
- The Decree by President of Ukraine of November 29, 1996, #1145/96 "On State Customs Service of Ukraine";
- The Decree by President of Ukraine of August 24, 2000, #1022/2000 "Issues of State Customs Service of Ukraine".

The current Customs Code of Ukraine was passed on July 11, 2002 (reg. No. 92-VI) and went into effect on January 1st 2004. It is codifying uniform customs procedures for all goods, specifying elements of customs procedures and creating a mechanism for submitting a preliminary declaration for customs clearance for those who declare items on a regular basis. The Code widens the powers of the State Customs Service of Ukraine (SCS), granting its staff free access to the companies' premises where commodities subject to customs clearing are stored¹⁷.

On July 1st 2001 the law "On the Customs Tariff of Ukraine" took effect under which only the Parliament can introduce or change tariffs. The import tariff system of Ukraine has 21 sections, encompasses 97 groups of goods and lists over 10.000 import duty rates.

According to the Law of Ukraine "On Unified Customs Tariff which is charged at the Ukrainian state border checkpoints", unified customs duty is set for vehicles owned by Ukrainian and foreign citizens crossing the state border of Ukraine covering customs control over the transit of commodities and vehicles, and sanitary, veterinary, phytosanitary, radiation, and ecological control of the commodities and vehicles, which is effected at checkpoints according to the Ukrainian legislation; using Ukrainian roads; and transit of vehicles that exceed the limits set for the overall weight, axial load and (or) overall dimensions."

The main duties of the State customs authorities are defined as follows:

- Implementation and control of compliance with customs related legislation of Ukraine;
- Protection of Ukraine's economic interests;
- Ensuring the implementation of obligations foreseen by international agreements on customs practice to which Ukraine is a party;
- Protection of intellectual property rights of people involved in foreign economic activities and other legal entities and natural persons;
- Application, in accordance with the law, of the tariff and non-tariff regulatory measures upon movement of goods through the customs border of Ukraine;

¹⁷ U.S. Department of Commerce- BISNIS Representative in Ukraine, "Customs Clearance Process in Ukraine"
March 2004

- Implementation of customs control and customs clearance of goods and vehicles crossing the customs border of Ukraine;
- Control of the compliance with the rules of movement of currency values through the customs border of Ukraine;
- Implementation, in co-operation with other authorized State power bodies, of the measures aimed at securing the interests of goods consumers;
- Creation of favourable conditions for speeding up goods turnover and flow of passengers through customs border of Ukraine;
- Fight against contraband and violations of customs rules;
- Development of international co-operation in the area of customs practice;
- Compilation of customs statistics;
- Maintenance of the Ukrainian Classification of Commodities of Foreign Economic Activity;
- Verification of certificates of origin of goods from Ukraine.

During a meeting with the State Customs Service in the Kiev headquarters, concerns were expressed regarding the SCS's lack of investigate competence, respectively the lack of legal means authorizing customs officers to carry out so-called searches to ascertain the actual usage of goods imported into Ukraine (for particular purposes) and hence relieved from customs duty entirely or in part. According to the information received, the Ukrainian Customs can only investigate cases of violation of the customs regulations when the value of the goods does not exceed 130.000 UAH. During the initial ten days after discovery the Customs authorities are restricted to merely questioning and collecting information, before the case must be handed over to the "National Security Service" for further action. Violations involving sums beyond this amount are evidently considered as criminal offences, the persecution of which lies outside the competence of the Customs authority i.e. it has no law enforcement authority. Still, State Customs Service top management looks forward to possibly be granted by the Ukrainian Parliament with the "Enforcement Status", allowing it to perform investigations on customs frauds, in the course of 2006. Nevertheless, continued support towards this achievement is expected from the EU.

4.1.1. National Strategies and Implementation Plans

A new version of the draft Concept of Modernizing the Customs Service of Ukraine is being finalised. As a contribution to implementing state policy in the area of customs practice, a draft Strategy of Customs Service till 2015 is being elaborated. Its final version is expected in June 2006.

The Mission was informed that the funds allotted to the Customs administration within the 2006 State budget were cut to one third of the funds applied for, 300, - mio. UAH, i.e. to 100,- mio. UAH. With these funds the Customs administration does not see itself in a position to adapt the 217 BCPs to the technical standards required to facilitate faster and more targeted clearance procedures.

As one example, the Mission was informed that X-ray TV units for a non-destructive control of cargoes are lacking and that appropriate equipment with these devices would considerably speed up the control procedures at border crossing points.

4.2 Institutional Framework

4.2.1. Administrative structures at national, regional and sub-regional level

The Customs Service of Ukraine is composed of customs authorities and specialized customs institutions and organization. The customs authorities are represented by a specially authorized central body of executive power in the area of customs service (the State Customs Service of Ukraine), regional customhouses and customhouses.

The regional customhouses and customhouses are:

- Northern Regional customhouse
- Zhytomyrska customhouse
- Chernihivska customhouse
- Cherkaska customhouse
- Lvivska customhouse
- Volynska customhouse
- Rava-Ruska customhouse
- Rivnenska customhouse
- Yahodynyska customhouse
- Ivano-Frankivska customhouse
- Mostyska customhouse
- Yavorivska customhouse
- Uzhhorodska customhouse
- Vynohradivska customhouse
- Chopska customhouse
- Khmelnytska customhouse
- Vinnytska customhouse
- Ternopilska customhouse
- Vadul-Siretska customhouse
- Kelmenetska customhouse
- Dnistryanska customhouse
- Odeska customhouse
- Bilhorod-Dnistrovska customhouse
- Kotovska customhouse
- Izmailska customhouse
- Krymska customhouse
- Kerchenska customhouse
- Donetska customhouse
- Amvrosiyivska customhouse
- Mariupolska customhouse
- Starobilksa customhouse
- Kharkivska customhouse
- Glukhivska customhouse
- Magistralna customhouse
- Kupyanska customhouse
- Sumska customhouse
- Poltavska customhouse
- Dnipropetrovska customhouse
- Berdyanskya customhouse
- Zaporizhska customhouse

- Kryvorizhska customhouse
- Kirovohradska customhouse
- Kyiv Regional customhouse
- Boryspilska customhouse
- Sevastopolska customhouse
- Mykolaivska customhouse
- Khersonska customhouse
- Luhanska customhouse
- Energy Regional customhouse.

The work of the State Customs Service of Ukraine is guided and coordinated by the Cabinet of Ministers of Ukraine.

4.2.2. Human Resources Management Capacity

As of January 1st 2006, 18.210 persons are working for the SCS, including the 391 members of staff working at the headquarters in Kiev.

The SCS employs staff on a contractual basis as well as civil servants. According to the Constitution, the Cabinet of Ministers of Ukraine appoints and replaces the Head of the Customs Service of Ukraine and his or her Deputies following a proposal by the Prime Minister

Training

The higher education establishment of the State Customs Service of Ukraine is the Academy of the Customs Service of Ukraine. The Academy has four departments focusing on the following topics:

- Customs Control Organisation and Technologies;
- Economics;
- Jurisprudence;
- Post-Graduate Education.

Currently about 1.200 students are studying at the Academy on a full-time basis and about 500 on a part-time basis. The average length of study is five years.

The Kiev and Khmelnytsky training centres offer extended vocational training for employees of the SCS. According to information received, about 4.000 employees a year benefit from further theoretical training.

The major areas of training offered at the Kiev and Khmelnytsky Centres of Advanced Education and “Re-training” are:

- Introductory courses for newly recruited staff (duration of training – 6 weeks);
- Workshops to improve professional skills in different areas of customs related activities (duration of training – up to 2 weeks);
- Short- term workshops on issues of current relevance (duration – up to 3 days).

The State Customs Service also provides its employees with on-the-job training. The Mission was informed that 8 working hours per month are allotted to this kind of practical training and that every customs officer has to pass tests every six months. Ongoing training courses are offered on areas such as familiarization with new customs related legislation, new technologies and methods of customs control procedures. As an anti-corruption measure, special attention is also paid to teaching the Disciplinary Statute of the Customs Service of Ukraine and the Law of Ukraine "On the Fight against Corruption". In addition, the Mission was informed that cadets of the Customs Academy of Ukraine attend lectures on countering corruption¹⁸.

The SCS arranges joint trainings with other Ministries and State agencies, sometimes involving foreign experts in the framework of international technical assistance. The Mission was informed that Ukrainian customs officers dealing with combating corruption offer training courses at the National Academy of Home Affairs of the SBU.

The SCS also participates in international training programs. The Mission was informed that in 2005 117 customs officers participated in 8 international training seminars, and that 17 customs officials participated in foreign exchange education programs.

The general basis for the training curricula is the "Concept to Train, Re-Train, and Further Train Officials of the State Customs Service of Ukraine for 2005-2010", which defines the content, the organisation and the conditions for an efficient training.

4.2.3. Infrastructure and Equipment

The visited BCPs were well equipped, the customs officers having all auxiliary tools required that facilitate efficient customs inspections. However, during some of the meetings with customs officials, the Mission was informed about shortcomings in the technical equipment, which due to budget constraints, cannot be addressed¹⁹.

At the seaport of Odessa the Mission was informed that allegedly communication tools (internal and external) no longer meet the customs' requirements. 20 to 25 pieces of mobile voice communication equipment as well as a central transmitter are urgently required to avoid unnecessary delays in transmitting information, instructions, authority etc.

Customs at the seaport is equipped with three stationary and two mobile X-rays, but would require additional mobile units for the inspection hall, which could be used for the checking of goods in a more targeted way.

Vehicles to be able to cover the long distances between the individual port clearance areas (a total of 150 Hectares) faster would also be needed according to the information received.

IT

The Unified Automated Information System (UAIS) is subdivided into 5 systems:

- An automated subsystem of customs clearance;
- A customs administrative-legal subsystem;

¹⁸ Please also see Chapter 6.1.1. on law enforcement corruption

¹⁹ Please also see Chapter 4.1.1.

- A customs information security subsystem;
- A customs external information subsystem;
- A customs TV communication subsystem.

The UAIS is currently being used to issue freight customs declarations. The transfer of data however is ensured by the Information TV Communication Complex of the State Customs Service, which is a system of ground-based TV communication and satellite connection. This ensures automated formation and transmission of information about customs clearance of freights while they cross the customs border of Ukraine, as well as control over import and transportation of such freights to the destination customs. The Mission received information that the duration of the information transfer from the internal to the border-based customs does at present not exceed 4 hours.

The information resources of the UAIS, centrally presented, are available to all registered users in real time mode.

Within the framework of the UAIS, an on-going auditing of the users' work with the resources of software-information complexes of the central database is effected, i.e. there is an opportunity to get comprehensive information about the activities of a certain user during any period of time, and the ID data of the PC from which the UAIS was accessed.

4.2.4. Procedures

The customs practice includes: the procedures for the movement of goods and vehicles through the customs border of Ukraine; customs regulations connected with imposition and collection of taxes and fees; procedures for customs control and customs clearance; combating contraband and violations of customs rules; other measures aimed at the implementation of the state customs policy of Ukraine.

There are 210 approved customs clearance points across Ukraine - at all international ports, international (and several domestic) airports, and railway- and road border crossing points. Every checkpoint covers a particular geographical area.

Risk Analysis

A “Concept of creation, implementation, and development of the system of risk analysis and control, and the Provision on the system of risk analysis and selection while determining particular forms of customs control” (Order No. 435 of 27.05.05) has been approved by the SCS with the goal of speeding up customs formalities, simplifying customs procedures and increasing the efficiency of customs control.

The system of risk analysis and selection envisages the following groups of risk criteria that establish the rigor of the border-crossing procedures:

Group A – “risk” group goods:

- A1. Goods that are transferred in large quantities and provide for the largest amounts of customs dues.
- A2. Goods subject to high value-added import customs duties.
- A3. Goods subject to combined or specific import customs duties.

- A4. Goods that, according to the customs statistic of Ukraine, are imported in much smaller volume than the volume of their export, according to the customs statistic of the counteragent countries.
- A5. Goods subject to certification procedure, sanitary, veterinarian, radiation and other kinds of control or other constraints on international business operations with them.

Group B – “cover” group goods:

- B1. Goods subject to low customs duty, as well as goods subject to customs duty lower than the customs duty applied to the goods under the same goods position and / or those classified as such by their characteristics and appearance.
- B2. Goods exempt from duties and taxes according to the legislature of Ukraine.
- B3. Goods that, according to the customs statistics of Ukraine, are imported in much larger volume than the volume of their export, according to the customs statistics of the counteragent countries.

3.3. Group C – country of the goods' origin:

- C1. Goods that are declared as those originating from the countries with which Ukraine has concluded free trade agreements.
- C2. Goods, which are not supported with information about their manufacturing or the goods the production of which is not characteristic for a certain country.

3.4. Group D – control over customs clearance:

- D1. Goods that are declared in one declaration, but delivered in several vehicles, carriages or containers (with the exception of bulk cargo and goods transported by rail in open rolling stock).
- D2. Splitting a batch of goods – declaring one batch of goods in several declarations.
- D3. Goods that are assigned certain locations of crossing the customs border of Ukraine or the location of their customs clearance, according to legal normative acts.
- D4. Presentation of goods for customs clearance to a customs agency other than the destination customs agency, specified in the goods delivery control document or other relevant documents.
- D5. The net / gross weights discrepancy of the transported goods is different from the generally accepted one (for specific goods).
- D6. The load of the transportation vehicle differs from the established norms.
- D7. The weight of a unit of goods is not characteristic for these goods or identical and similar (analogous) goods.
- D8. One transportation vehicle and / or one packing place simultaneously transports the goods some of which belong to the “risk” group goods and the rest – to the “cover” group goods, while the latter group is larger.
- D9. One transportation vehicle simultaneously transports goods with different requirements about their transportation.
- D10. The documents presented by the customs applicant give incomplete or controversial information that causes doubts about its authenticity.
- D11. Absence of the border crossing point stamp in the presented transportation documents and other documents accompanying the goods.
- D12. Declaration of the goods classified as “risk” group goods or “cover” group goods by legal normative acts of the State Customs Service of Ukraine.

- D13. The number of the transportation vehicles, cleared by the staff of the border crossing point, customs post, customs that provide for customs control and customs clearance, exceeds the capacity of this post or customs.
- D14. The consignees or consigners have a record of administrative responsibility under Art. 329 – 354 of the Customs Code of Ukraine and were involved in cases of violating customs rules, the regulations on which have not been implemented.
- D15. The consignees or consigners do not have a record card of a participant of international business activities.

Group E – customs value of the goods:

- E1. The declared value of the goods differs significantly from the price of the identical or similar (analogous) goods when they are imported to the customs territory of Ukraine.
- E2. The declared invoice value of the goods, and so the customs value of the goods, is significantly overrated during their export outside the customs territory of Ukraine.

Group F – customs duties:

- F1. The taxes and duties subject to payment per unit of goods (weight, quantity, etc.) are lower than the established (calculated) amount for these goods.

Group G of risk criteria –international business agreements:

- G1. Goods cross the customs border of Ukraine under international business contracts other than purchase and sale contracts.
- G2. Goods are transported under international business contracts, which lack essential clauses (e.g., the subject of the contract is not specified, there is no list of the goods, their quantity, price per unit, etc.)
- G3. Parties to an international contract are interdependent.
- G4. One of the parties to an international contract is registered in an offshore zone.
- G5. One of the parties to an international contract has a special status, e.g. is a dealer, distributor, etc.
- G6. Parties to an international contract have characteristics of “fly-by-night companies”.
- G7. Parties to an international contract are individuals (organisations), whose founders, real owners, etc., are known to be involved in illegal activities, according to the information acquired from law enforcement, taxation or other competent agencies of Ukraine and other countries, or from international organisations.
- G8. Inconformity of the counteragent country and payment currency to those stipulated in the international contract; or payment for the goods that is effected under an international contract in the currency of Ukraine, securities or by means of clearing settlement.
- G9. An international contract stipulates that payment should be effected through banks located in offshore zones or those reputed as unreliable.
- G10. International contracts that do not indicate payment or those concerning reciprocation of goods, agreements on financial leasing (rent), goods delivery as a contribution to the statutory fund, etc.

4.2.5. Effectiveness and Efficiency of Border and Customs Control

Fight against Customs Violations

In order to counteract customs violations the State Customs Service of Ukraine has established an Anti-Smuggling Department and a Customs Guard Division. Customhouses (incl. regional) have established services and special customs guard units to fight smuggling.

A special operative detachment was established on the basis of the Pivnichna Regional customhouse, which has an activity zone covering the whole customs territory of Ukraine. In addition special customs service units, among which the Customs Guard, were established to fight violations of customs rules. This unit is also responsible for the security of territories, buildings, constructions and facilities of the customs authorities; protecting and escorting goods and vehicles, securing regime in the zones of customs control

On a more general line, the State Customs Service of Ukraine top management is aware that corruption inside the institution is a major problem, especially at the local level. Lack of cross-sector government policy for fighting corruption and the fact that the State Customs Service of Ukraine loses smuggling/corruption cases in the courts are mostly to be blamed in this respect. In particular, first priority in the Chairman (Mr. Yehorov) agenda is the fight against corruption, which led him to replace all Heads and Deputy Heads of Departments as well as 60% of customs Heads and Deputies upon his appointment.

4.2.6. Observations made during Field Visits

The following Chapter provides a description of the customs offices and checkpoints visited during the two missions to Ukraine:

Airport Borispyl

The field visit on December 13th did unfortunately not include the customs authorities; hence the subsequent information is exclusively based on unofficial talks with some customs officers on duty. Accordingly there are currently about 500 customs staff at the airport involved in the clearance passengers and goods. At the time of the visit a total of 13 customs officers were deployed in a 12-hour shift (four in clearance of goods, the others in clearance of passengers).

There were 5-6 customs officers at the exit counter, immediately ahead of the check-in for departure, dealing exclusively with the customs declaration forms. The obvious purpose of this cumbersome procedure is to be found in the Ukrainian legislation wherein certain sums of cash as well as certain items (antiques etc.) have to be declared in writing, also before departure.

On the upper level of the exit clearance area the security check were carried out by another two customs officers posted next to the two X-rays. These officers again conducted spot checks for goods not declared before departure in a so-called "Customs area". Thereby they made use of the two X-rays operated by the Airport security by occasionally checking the displayed contents of the luggage against the goods declared (by private passengers).

No actual information could be obtained on the procedure of goods clearance.

The bottom line is that airport customs officers are well trained for their specialized tasks; however the procedures applied at departure seem complicated and time-consuming.

Odessa Airport

The Customs office „Odessa Airport“ is a subdivision of the „Odessa customs“. The airport consists of a terminal where arrivals and departure for national and international flights as well as all airfreight goods are cleared.

The Customs office currently deploys 60 Customs officers. The airport office is open for travellers around the clock, for goods traffic Monday – Friday 9 am to 6 pm. The officers deployed in the clearance of passengers work 12-hour shifts, whereby one shift, depending on the workload, comprises of seven to ten officers. The officers deployed in the clearance of goods work normal hours.

In 2005, a total of 5.241 flights (arriving and departing) carried a total of 292.243 international passengers. 100 % of the luggage (234.000 items) was, according to the Head of the office, customs checked with X-ray equipment. The average cargo traffic during 2005 was 220 to 250 tons. An average of 20 to 25 clearances of goods was performed per working day.

In 2005, 162 cases of seizures (mostly gold and foreign currency) were registered in the passenger traffic, which amounted to a total sum of 1.549.000 UAH in fines. In the traffic of goods another 15 seizures were recorded (partly of non-declared goods) which increased the total sum of collected fines to 2.618.000 UAH.

During the Mission's visit evidence of the co-operation between all administrations involved in customs clearance was found. The veterinary authorities as well as the phyto-sanitary inspector and the personnel responsible for quality control are included in the clearance procedures when required. The departure area has two large X-rays belonging to the Customs, and one belonging to Airport security. All luggages are screened before the check-in and passport control. The clearance counters of the veterinary, phyto-sanitary and quality control units are also located in the departure hall. The Ukrainian customs rules and regulations are clearly posted on a notice board in Ukrainian and English.

Odessa Seaport

The Odessa seaport is divided into three areas: one cargo and container area, one so-called "Petrol Harbour" (with an independent structure and its staff being directly subordinated to the headquarters in Kiev) and one passenger terminal. The office is open 24 hours a day.

The seaport is currently served by about 140 Customs officers (except in the petrol harbour), of which about 100 officers are deployed in the clearance of goods, and about 40 in the clearance of travellers. The officers work 12-hour shifts. One shift in the clearance of goods - depending on season and time of day - comprises 30 to 35 officers, one shift for the clearance of travellers comprising three to five officers. The deployment of staff is based on experience and depends upon the season and times of day.

The Custom's annual turnover amounts to approx. 22,2,- mio. tons of goods, whereby 60% are exported. An average of 3500 ships is recorded each year, each passenger ship conveying up to 2200 persons to the Odessa harbour.

Upon arrival, specially trained customs officers subject the container ships to a risk analysis. The vehicles respectively containers for selection are separated from the normal traffic flow, and the driver/carrier is instructed to transport the goods to the clearance area (distanced 6 kms) which is part of the port. The entire stretch between the "trade sea port" and the clearance area is video monitored to immediately enable the detection of possible unlawful actions. Next to the Customs authorities, the clearance area also harbours Border Guards, veterinary, phyto-sanitary officers etc., who can be included in the clearance procedure if required. The scrutiny of documents and further customs checks, if needed, also take place in the clearance area.

At the time of the Mission's visit, a truck was just being checked which involved both checking of the documents and of the goods, the latter with customs search dogs. It was noted that in the so-called „inspection hall” a limited number of technical equipment (X-ray, endoscope, etc.) was available apart from a few tools.

The clearance process in the port did, according to the Expert's opinion, at first sight correspond to international standards.

BCP Hoptivka

According to unofficial information received, there are currently 84 Customs staff doing 24-hour shift duty at this international BCP to Russia. About 10 to 14 officers per shift are deployed in passenger traffic, and about 4 in goods traffic.

Taking into account the actual frequency as well as the infrastructural resources, the hours of duty as well as the number of deployed personnel appears too high.

The international BCP Hoptivka is open day and night and situated about 40 km east of Kharkiv on the Russian border. The clearance area is large (approx 850 m long, 350 m wide), and clearly labelled as "Customs area". The BCP has three entry- and exit-lanes each, out of which two are marked as green and one as red (to declare). The customs entry regulations applicable to individual traffic upon entry into Ukraine are listed on a large sign in three languages (Russian, Ukrainian and English).

The passport office and Customs office respectively inspection building are set apart by about 500 to 600 metres. There is a separate building accommodating the State Border Guards Service. In front of the Customs office, Border Guards and Customs officers jointly perform checks. The Customs also operate modern X-ray equipment with which trucks can be inspected. The inspection can be supervised on video in a separate room. Furthermore Customs officials use endoscopes, mirrors, search dogs and similar auxiliary tools to check persons (small, additional X-ray), vehicles and trucks according to international search standards.

The Customs building also accommodates the other organisations involved in border control: Ministry of Transport, phyto-sanitary and sanitary inspector, and veterinary surgeon. These officials are also available day and night and called to the clearance area by Customs if needed.

The "one stop"-principle is only implemented in front of the Customs office. Travellers also have to stop in front of the pass office - on the Russian side the border crossing procedure is being repeated. It would be recommendable to search for (infrastructural) solutions to implement clearance in accordance with the "one window"-principle.

BCP Pletenyovka

This bilateral BCP (opened officially in 1995) is open day and night and situated about 140 km east of Kharkiv at the Russian border. The immediate clearance area has eight lanes, four for entry and four for exit. The lanes are equipped with red and green lights. However, only two lanes lead to the Customs office itself. The customs entry regulations applicable to bilateral individual traffic upon entry into Ukraine are listed on an official sign in Russian and Ukrainian.

Currently 35 Customs staff work at this BCP. Six officers work in 24-hour shifts in passenger- and goods traffic.

As in all other BCPS inspected, the entire clearance area is safeguarded by a so-called "pre-check post" where the Border Guards first check the travelling documents. Only when this pre-check has been passed, travellers may drive on or walk (pedestrians) to the clearance area. The Customs office itself accommodates all other organisations involved in border control (phyto-sanitary, veterinary, and sanitary) in a hall with individual clearance counters (clearly numbered with 1 to 7). This service is also provided 24 hours.

A lifting ramp is fitted right in the clearance lane for heavy vehicles. This enables the Border Guards and Customs officers, who mostly act in co-operation, to perform comprehensive revision work in direct proximity to the office premises. The Customs officials have endoscopes, mirrors, search dogs and similar auxiliary tools that facilitate checking persons (small, additional X-ray), vehicles and trucks according to international search standards at their disposal.

Allegedly the Customs perform ten to twelve checks each working day. The resident Customs officials mostly detect minor offences like breaches of currency regulations and minor cases of smuggling. More intensive revisions of heavy trucks respectively freight are not carried out at the BCP itself, but the vehicles are escorted to a Customs office in Kupinsk, which is situated 120 km from the BCP Pletenyovka.

BCP Chuhunovka

This BCP can only be used by Russian or Ukrainian citizens and is open day and night. Next to three clearance lanes each there is a separate lane marked for pedestrians. The first lane is marked as a red lane; the second as a green lane; and the third lane is marked for heavy vehicles. The customs entry regulations are listed on an official sign in the Customs office. This bilateral BCP also has a "pre-check post" where the Border Guards first check the travel documents. Only after passing this pre-check, travellers may drive on or walk (pedestrians) to the clearance area, where the Border Guards and the Customs officers jointly perform checks.

Along the clearance area there are four containers, which accommodate the staff of other organisations: this staff is on duty 24 hours and requested to the clearance area by the Customs if needed.

During the heavily frequented summer months up to 800 people cross the bilateral BCP every day, in winter this number drops to about 200 on average. At the time of inspection there was almost no traffic.

A total of 14 Customs staff is deployed at the BCP Chuhurovka. The staff is divided into 24-hour shifts of three officers each. Customs clearance is only performed after prior notification and only for small quantities of goods: more comprehensive clearances are either done at the point of destination or on the carrier's premises.

At this BCP, the Customs officials have all auxiliary tools required that facilitate efficient customs inspection.

4.2.7. Inter-agency Co-operation

There are a number of legal regulations governing the co-operation at BCP between the Border Guards, Customs, veterinary, sanitary etc. Reference was made e.g. to § 1203 the "Regulation of Cabinet's Minister degree" as well as to various guidelines (e.g. "On the checkpoints via the state border of Ukraine", "the Law on the state border guard service, the Law on the customs service, etc.) from 2001.

During the Mission evidence of a close co-operation between all border related agencies was found.

4.2.8. International and bilateral co-operation and agreements and co-operation with international organisations

The international activity of the specially authorized central body of the executive power on customs practice is guided and coordinated by the President of Ukraine and the Cabinet of Ministers of Ukraine. Negotiations and consultations related to the drafting of inter-state, inter-governmental and inter-departmental agreements on matters related to customs practice may be conducted by the specially authorized central body of executive power on customs practice as entrusted by the President of Ukraine and the Cabinet of Ministers of Ukraine within the authority conferred under the law. The specially authorized central body of executive power on customs practice represents Ukraine to the World Customs Organization and other international customs organizations.

In accordance with international agreements, the customs authorities of Ukraine along with customs authorities of the neighbouring countries may undertake the following activities:

- Joint controls at crossing points at the customs border of Ukraine;
- Coordinated customs control procedures and customs clearance, mutual recognition of documents used by customs authorities in customs procedures;
- Joint activities aimed at prevention, identification and termination of contraband and violations of customs rules;
- Other joint ad hoc or permanent activities on matters, which are, according to this Code and other legislative acts of Ukraine, within the competence of the customs authorities.

As of January 1st 2006, joint controls are performed at five border crossing points along the Ukrainian-Moldovan State border: "Reni-Giurgiulesti", "Mamaliga-Criva", "Rososani-Briceni", "Larga-Kelmenti", "Zelena-Medvezha", and along the Ukrainian-Polish state border at the BCPs "Zosin-Uskilug" and "Smilnytsya-Krostschenko".

With a view to resolving the urgent issues related to the entry of goods and vehicles, identification and termination of contraband and violations of customs rules, the heads of the customhouses and their deputies are permitted to hold working meetings with representatives of customs authorities of the neighbouring countries.

At present Ukraine has concluded 40 bilateral intergovernmental agreements on co-operation and mutual assistance in the sphere of customs services and has signed over 70 interdepartmental agreements on co-operation between customs administrations in certain customs areas. Within the framework of such agreements, Ukrainian customs agencies co-operate and exchange information with 70 countries.

The State Customs Service wishes to improve the way it manages the international technical assistance it receives. For this purpose, it intends to set-up an international Technical Co-operation Management Unit. The EC Delegation in Kiev has expressed its readiness to support this process.

The Department for Prevention of Smuggling, a constituent agency of the Central Administration of the State Customs Service of Ukraine is authorized to exchange information on violations of customs regulations with customs services of foreign countries. The Mission was informed that in the course of the year 2005 the divisions for preventing smuggling and customs rules violations forwarded 3.152 requests to the law enforcement agencies of foreign countries to obtain administrative assistance for the establishment of the legality of international business operations and in cases related to violations of customs regulations.

The Mission was also informed that, as a result of this information exchange, foreign customs services detected 549 violations amounting to the sum of 167.4 mio. UAH and initiated proceedings in 81 criminal cases to the sum of 154.4 mio. UAH.

Data received as a result of the information exchange between the customs bodies of the EU member-states and Ukraine allegedly helped to reveal over 260 violations of customs legislature amounting to the sum of 44 mio. UAH and to start 43 criminal cases amounting to a sum of approximately 55 mio. UAH.

In 2005, the State Customs Service of Ukraine received 435 requests for rendering administrative assistance from EU member-states. Co-operation concerning information exchange within the framework of mutual administrative support with the customs bodies of the Netherlands, Spain, Austria, France, Denmark, Hungary, Poland, and Lithuania was reported to be most fruitful.

5. Visa

5.1 Legal Framework and Policy

The rules governing foreigners' entry to and exit from Ukraine are contained in the Law on the Legal Status of Foreigners of February 4, 1994, the Rules of foreigners' entry to Ukraine, their exit from Ukraine and transit through its territory (under the Decree N. 1074 by Ukraine's Cabinet of Ministers of December 29, 1995) and the Rules for obtaining visa

documents for entry to Ukraine (under the Decree N. 227 by Ukraine's Cabinet of Ministers of February 20, 1999).

The Ministry of Foreign Affairs (MFA) has elaborated a Concept of Migration and Visa Policy in Ukraine, where the approach of the Schengen group States (negative and positive list) is being introduced. Currently, the concept is being finalized and should be submitted to the Government within the next three months. On the basis of the Concept, further implementing acts shall be adopted.

Visa Free Regime

A Visa free regime in Ukraine is established either by Presidential Decrees or by bilateral international agreements.

Separate agreements on a visa-free regime were concluded with some of the CIS countries including the Russian Federation and Belarus, with the exception of Turkmenistan. In the case of the visa free agreement with the Russian Federation there are twelve different documents that can be used for crossing the Ukrainian – Russian border. According to the Ukrainian authorities, which are aware of the problem, the reduction of those documents to ICAO recognized travel documents is a big logistic issue due to the number of population in Ukraine (50 mio.) and the frequency of border crossings between the two States concerned (ten mio. per year).

A visa-free regime for citizens of the EU Member States, Switzerland, Liechtenstein, USA, Canada, Japan and the Principality of Andorra, the Holy See, the Republic of Iceland, the Principality of Monaco, the Kingdom of Norway and the Republic of San Marino entering Ukraine has been established by a number of Presidential decrees.

As of September 1, 2005 no visa is required for citizens of EU Member States, Switzerland and Liechtenstein who enter Ukraine or transit through its territory for a period of time of up to 90 days (Decree No. 1131/2005 "On the Establishment of a Visa-Free Regime for Citizens of EU Member States, Switzerland and Liechtenstein", July 26, 2005).

From January 1, 2006 no visa is required for citizens of the Principality of Andorra, the Holy See, the Republic of Iceland, the Principality of Monaco, the Kingdom of Norway and the Republic of San Marino who enter Ukraine or transit through its territory for the period of time of up to 90 days (Decree No. 1663/2005 "On the Establishment of Visa-Free Regime for Citizens of the Principality of Andorra, Vatican, the Republic of Iceland, the Principality of Monaco, the Kingdom of Norway and the Republic of San Marino ", November 26, 2005).

The Decree No. 1175/2005 of August 18, 2005, amending the Decree No. 1008/2005 of June 30, 2005 "On the Ukrainian Visa Requirements for Citizens of the United States of America" states that US citizens do not need a visa to enter Ukraine if the period of their stay does not exceed 90 days.

As of August 1, 2005 visa are no longer required for citizens of Japan who enter Ukraine or transit through its territory for a period of time of up to 90 days with a valid Japanese travel passport (Decree No. 1107/2005 "On the Establishment of a Visa-Free Regime for Citizens of Japan" on July 19, 2005).

According to the Decree No. 1134/2005 "On the Establishment of a Visa-Free Regime for Citizens of Canada" of July 26, 2005, visa are not required for citizens of Canada who enter Ukraine or transit through its territory for a period of time of up to 90 days with a valid Canadian travel document as of August 1, 2005.

A visa is required for citizens of all the above-mentioned countries entering Ukraine with the purpose of employment, permanent residency, family reunion, study and work at the diplomatic missions and consular posts of their country in Ukraine or if their stay in Ukraine exceeds 90 days.

5.1.1. National Strategies and Implementation Plans

Ukraine regulates the visa policy by enacting decisions on the establishment or abolition of a visa regime (Presidential Decree), as well as by concluding bilateral agreements regulating the visa regime with other countries. The visa obligation for foreigners represents a political, a security and a special immigration tool. In strict immigration terms, visa control is designed to ensure effective pre-clearance in the country of origin prior to the travelling of an alien to the destination country. Visa requirements are normally based on reciprocity.

At the moment Ukraine has a visa free regime with the following countries:

ANDORRA ARMENIA AUSTRIA AZERBAIJAN BELARUS BELGIUM CANADA CYPRUS CZECH REPUBLIC DENMARK EQUADOR	ESTONIA FINLAND FRANCE GEORGIA GERMANY GREECE HOLY SEA HUNGARY ICELAND IRELAND	ITALY JAPAN KANADA KAZAHSTAN KYRGYZSTAN LATVIA LIECHENSTEIN LITHUANIA LUXEMBOURG	MALTA MOLDOVA MONACO NORWAY POLAND PORTUGAL RUSSIA SAN MARINO SLOVENIA SPAIN SWEDEN	SWITZERLAND TAJIKISTAN THE NETHERLANDS UNITED KINGDOM USA UZBEKISTAN
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When concluding an agreement on visa abolition for holders of Diplomatic and Service Passports, Ukraine takes into account reciprocity, the potential migratory risk and the state of the country's economy.

Additionally to the general visa free regime (as described above) there is a visa free regime for holders of a diplomatic or service passport only of the following countries:

Country	Diplomatic Passport	Service Passport	Others
ARGENTINA	X	X	
BRAZIL	X	X	
CHILE	X	X	Official passports
CHINA	X	X	National foreign passport marked as "service";

CROATIA	X	X	
CUBA	X	X	
GUINEA	X	X	
IRAN	X	X	
ISRAEL	X		
LAOS	X	X	
MEXICO	X		
PDR KOREA	X	X	
SERBIA AND MONTENEGRO	X	X	
TURKEY	X	X	Special passports
VIETNAM	X	X	

Types of Visa

According to Ukrainian legislation a visa is understood as a mark in the travel document that confirms the right of a foreign or stateless person to enter Ukraine and transit its territory. A travel document is a document that confirms the foreigner's citizenship, identifies foreign or stateless persons and was issued by the competent agency of the foreign country or UN organisation, grants the right to go abroad and is recognised by Ukraine.

By the term "visa document", regularly used in Ukrainian legislation, an application form and visa sticker is understood.

There are different visa categories based on the validity of visa, frequency of use and type of visa (purpose of visit):

a) By validity:

- Long - term visa (from six months to five years)
- Short - term visa (up to six months)

b) By frequency of use:

- Single
- Double
- Multiple

c) By type of visa:

- "D"- Diplomatic Visa
- "C" ("S") - Service Visa
- "P" ("P") - Private visa
- "T" - Tourist visa (max validity of three months)
- "J" - Visa for rescue service workers
- "G" ("G")- Humanitarian visa
- "B" ("B") - Business visa
- "O" - Student visa

- “H” (“N”) Scholar visa
- “K” - Sport and Cultural visa
- “P” (“R”) - Visa for members of religious missions
- “M” - Visa for mass media staff
- “TP” (“TR”) - Transit visa
- “IM” - Immigration visa for work or permanent residence
- “ОІ “(“OI/OP”) - Visa for international transport service staff

Documents needed regardless of the type of visa applied for:

- A valid travel document;
- A recent photo;
- A completed application form;
- Document specifying the purpose of the trip of the applicant such as proof of sufficient financial means, medical insurance, return flight tickets etc. may also be required (additional interview can be done) and a document confirming that the person is not HIV positive if he or she will stay more than three months.

Additional documents depending on the visa type or the status of the applicant are required as follows:

DIPLOMATIC VISA - for machine reader the abbreviation is VD- is issued to persons who have a diplomatic passport and are part of the diplomatic staff of foreign Embassies and Consular establishments in Ukraine and the members of their families; to foreigners who enter Ukraine on a mission of diplomatic character; to diplomatic couriers; to members of governments, parliaments and international organisations or to prominent political figures whose entrance to Ukraine has a diplomatic character.

SERVICE VISA

Service visa are divided into the following three categories:

- **C-1²⁰**- for machine readers the abbreviation is VS- is issued to service staff of foreign diplomatic missions and consular offices in Ukraine and to members of their families; to members of Ukraine-based international organisations; to officials of foreign State authorities who enter Ukraine on business.
- **C-2** -for machine readers the abbreviation is VW – is issued to members of military formations and institutions who enter Ukraine for business purposes upon invitation of related State bodies.
- **C-3-** for machine readers the abbreviation is VC- is issued to representatives of industry, trade, financial and political circles that enter Ukraine for business purposes upon invitation of registered State institutions.

²⁰ Abbreviation that is written on the visa sticker. Abbreviations in Ukrainian language are stated above in the “types of visa” section.

VISA FOR MASS MEDIA STAFF - for machine readers the abbreviation is VM – is issued (upon order of the Ministry of Foreign Affairs) to employees and representatives of foreign mass media to perform their duties.

PRIVATE VISA

- **P-1** - for machine readers the abbreviation is VP- is issued to persons who enter Ukraine for private reasons or for health treatment. Additional documents needed for a visa P-1 are a standard invitation properly registered by the Ministry of Interior or an invitation from a medical establishment in Ukraine as well as other documents, which confirm the private character of the trip.
- **P-2** - for machine readers the abbreviation is VU - is issued to people of Ukrainian origin visiting Ukraine. Additional documents needed are an ID of the foreign Ukrainian, a personal application supported by the result of the interview conducted by the consular official of the Diplomatic Mission or Consular Post of Ukraine who is authorized to decide on issuing the visa, as well as documents which confirm the Ukrainian origin of the foreigner or the stateless person (applicant), or that the person was born in Ukraine. A spouse of a foreign Ukrainian or their children jointly travelling and staying in Ukraine have to submit an application and document confirming their family relation.

BUSINESS VISA - for machine readers the abbreviation is VB – is issued to individuals entering Ukraine as cofounders of joint ventures or representatives of companies, firms or associations to control the implementation of contracts or as consultants of foreign companies and to the personnel of foreign enterprises. A standard invitation, which has been properly registered by the bodies of the Ministry of Interior, is required.

TOURIST VISA - for machine readers the abbreviation is VT - is issued to people who enter Ukraine as tourists and can provide documents which confirm the tourist character of the trip.

SPORT AND CULTURAL VISA - for machine readers the abbreviation is VK- is issued to members of artistic groups, sports teams or organisation who enter Ukraine on a tour, for the purpose of cultural exchange or to participate in sports events

VISA FOR THE REPRESENTATIVES OF HUMANITARIAN MISSIONS - for machine readers the abbreviation is VG – is for those who come to Ukraine to provide humanitarian help or to undertake charity activities and can submit a confirmation of the Commission of the Cabinet of Ministers of Ukraine on questions relating to coordination, reception, transportation, protection and distribution of humanitarian aid from foreign States.

SCHOLAR VISA - for machine readers the abbreviation is VH - is issued to those persons entering Ukraine for a scholar exchange or expert experience or to participate in seminars, workshops or conferences and to do research.

VISA FOR THE RESCUE SERVICES WORKERS - for machine readers the abbreviation is VL – is issued to persons entering Ukraine to render assistance in emergency situations and can submit a relevant confirmation issued by the Ministry of Emergency Situations of Ukraine.

STUDENT VISA - for machine readers the abbreviation is VO – is issued to students who enter Ukraine for education e.g. school students, college students, postgraduate students and

exchange students and are provided with a standard invitation for studies issued by the Ministry of Education.

VISA FOR THE REPRESENTATIVES OF RELIGIOUS MISSIONS - for machine readers the abbreviation is VR - is issued to those who enter Ukraine for religious purposes or to work in religion related matters and have an invitation of a religious organisation certified by the State Religious Committee

TRANSIT VISA does not allow its holder to stay in Ukraine but only to travel through Ukraine to the country of destination and cannot exceed five days for one or several entries.

- **TR-1** - for machine readers the abbreviation is VF – for those who transit Ukraine on the way to a third country and have documents that confirm the transit character of the trip, visa to the third country, the ticket etc.
- **TR-2** - for machine readers the abbreviation is VX – for truck drivers and coach passengers that cross Ukraine in transit to a third country and have documents that confirm the transit character of the cargo transportation by motor transport and passenger bus transport through the territory of Ukraine.

IMMIGRATION VISA

- **IM-1** - for machine readers the abbreviation is VA – is issued to those who come to Ukraine with the purpose of getting employment and have a work permit issued by the Ministry of Labour.
- **IM-2** - for machine readers the abbreviation is VE- is meant for those who come to Ukraine for permanent residence and have the permission of a local government authority for permanent residence in Ukraine.
- **IM- 3** - for machine readers the abbreviation is VI- is issued for the purpose of reuniting a person with his/ her family upon permission from the Ministry of Foreign Affairs to issue a visa to a family member of a person granted refugee status in Ukraine.

VISA FOR INTERNATIONAL TRANSPORT SERVICE STAFF- for machine reader the abbreviation is VZ – is issued to those who perform transportation to Ukraine by truck, bus and crew members of commercial international airlines and international train crews and have a license for international transports issued by the corresponding agency of the host country.

5.1.2. Approximation of Ukrainian legislation to EU norms and standards

The current Ukrainian visa regime is partly in line with the EU acquis. Not in line with the acquis is the fact that citizens of the following countries are exempt from a visa obligation in Ukraine: **Armenia, Azerbaijan, Belarus, Ecuador, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Uzbekistan**. With the exception of Ecuador all the above-mentioned countries were part of the USSR, therefore the visa free regime can be a consequence of their common past. Regardless of the close ties between the populations of

both countries, the number of documents valid for crossing the border with the Russian Federation should be reduced or at least a time schedule to implement this measure should be determined.

The Holders of Diplomatic and Service Passports of **Vietnam** are enjoying a visa free regime

Not in line with the EU acquis either is a visa requirement for citizens of the following countries: **Argentina, Australia, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Chile, Costa Rica, Croatia, El Salvador, Guatemala, Honduras, Israel, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Romania, Singapore, South Korea, Uruguay, Venezuela.**

The present types of visa are not in line with the Schengen types of visa while they are listed according to purpose, which according to the Schengen acquis is of national concern. The Schengen acquis foresees two categories of visas – travel and transit.

An airport transit visa that would be issued to nationals of certain third countries transiting an international area of an airport in Ukraine does not exist.

5.2 Institutional Framework

5.2.1. Organisation and Structure

Authorities dealing with visa issues are the Ministry of Foreign Affairs (issuing visa at the Diplomatic Missions and Consular Posts of Ukraine abroad and extension of Diplomatic and Service visa), the Ministry of Interior (extension of other types of visa) and the State Border Guards Service (visa and travel document checks at the Border Crossing Points).

The relevant legislation envisages the possibility of obtaining visa only at Diplomatic Missions and Consular Posts of Ukraine abroad. Ukraine has 107 consular posts abroad. Among them, 75 consular departments are an integral part of the Ukrainian Embassies²¹, 24 are united under the General Consulate²², two compose the sections of the diplomatic

²¹ People's Democratic Republic of Algeria, Republic of Angola, Argentine Republic, Republic of Armenia, Australia, Republic of Austria, Republic of Azerbaijan, Republic of Belarus, Kingdom of Belgium, Federative Republic of Brazil, Republic of Bulgaria, Canada, People's Republic of China, Republic of Croatia, Republic of Cuba, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Arab Republic of Egypt, Republic of Estonia, Federal Republic of Ethiopia, Republic of Finland, French Republic, Georgia, Federal Republic of Germany, United Kingdom of Great Britain and Northern Ireland, Republic of Guinea, Hellenic Republic (Greece), Republic of Hungary, Republic of India, Republic of Indonesia, Islamic Republic of Iran, Republic of Iraq, Ireland, State of Israel, Republic of Italy, Japan, Hashemite Kingdom of Jordan, Republic of Kazakhstan, Republic of Kenya, Republic of Korea, State of Kuwait, Kyrgyz Republic, Republic of Latvia, Lebanon, Great Socialist People's Libyan Arab Jamahiriya, Republic of Lithuania, Republic of Macedonia, Malaysia, United Mexican States, Republic of Moldova, Kingdom of Morocco, Kingdom of the Netherlands, Federal Republic of Nigeria, Kingdom of Norway, Islamic Republic of Pakistan, Republic of Peru, Republic of Poland, Portuguese Republic, Romania, Russian Federation, Kingdom of Saudi Arabia, Serbia and Montenegro, Republic Singapore, Slovak Republic, Republic of Slovenia, Republic of South Africa, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, Syrian Arab Republic, Kingdom of Thailand, Republic of Tunisia, Republic of Turkey, Turkmenistan, United States of America, United Arab Emirates, Republic of Uzbekistan, Vatican (the Holy See), Socialist Republic of Vietnam.

²² Belarus - Brest, Bulgaria - Varna, Brazil - Curitiba, Rio de Janeiro, United Kingdom and Northern Ireland - Edinburgh, Greece - Thessalonica, Spain - Barcelona, Italy - Milan, Kazakhstan - Almaty, Canada - Toronto, China - Shanghai, Germany - Munich, Frankfurt am Main, Hamburg, Poland - Gdansk, Krakow, Lublin, Russian

representative bodies, one forms a consular agency, one more – consular post and the last four are grouped under the consulate title.

It is not possible to get a visa at the border. In case of seamen in transit, a decision of the Department of the Consular Service of the Ministry of Foreign Affairs would be taken on a case-by-case basis.

In exceptional cases however, the Unit of the Department of the Consular Service of the Ministry of Foreign Affairs may, upon approval of the Department of the Consular Service of the Ministry of Foreign Affairs, issue an “entry permit” at the Borispyl airport to enter Ukraine for a period of five days.

Permission for entering Ukraine for tourist purposes to citizens of Turkey²³ may, with the approval of the Department of the Consular Service of the Ministry of Foreign Affairs, also be issued by the Units of the Department of the Consular Service at the airports in Odessa, Donetsk and Simferopol and at the Odessa sea port for a period of up to 14 days.

5.2.2. Interagency Co-operation

The co-operation between the authorities dealing with visa issues is good. However, due to the absence of a centralized national visa register and an online connection between the relevant authorities, the operational co-operation is difficult and slow.

In case of need for additional and visa related information of the concerned units (DMCP, BCP) a request is first transferred to higher authorities, then forwarded to the highest unit of the authority and later on to the authorities concerned. Even in the headquarters of the relevant authorities, an online connection does not exist.

There is no database that all authorities concerned could use at the same time, so it is not possible for one authority to see the grounds for a decision taken by another authority without a time gap.

5.2.3. Procedures

The relevant legislation envisages the possibility of obtaining visa only at Diplomatic Missions and Consular Posts of Ukraine abroad.

The only exceptions to the rule are:

The Department of the Consular Service of the Ministry of Foreign Affairs which issues diplomatic visas for the accreditation period of a diplomat, service visas to employees of agencies dealing with foreign affairs holding a service passport, foreign mass media workers and their family members for the validity period of a service card at their office in Kiev.

Federation - St, Petersburg, Tumen, Roston on Don, Vladivstok, Romania - Suceava, Slovak Republic - Presov, USA - New York, Chicago, San Francisco, Turkey - Istanbul, Hungary - Nyiregyhaza.

²³ Prior to the abolition of visa to the Citizens of EU Member States, USA, Japan etc. this entry permit could be issued to the citizens of above mentioned states.

The Unit of the Department of the Consular Service of the Ministry of Foreign Affairs at Borispol airport, the airports in Odessa, Donetsk and Simferopol and at the Odessa sea port which may, upon receipt of a note of the DMCP of the foreigner's country of origin and with a written approval of the Department of the Consular Service of the Ministry of Foreign Affairs, issue an "entry permit" to enter Ukraine for the period of 5 (Turkey 14 days) at the Borispol airport to citizens of all countries and the permission for entering Ukraine for tourist purposes to citizens of Turkey²⁴ at the airports in Odessa, Donetsk and Simferopol and at the Odessa sea port for a period of up to 14 days .

A decision on issuing a visa is made for each individual separately by the consular official in charge at the DMCP. In the Department of the Consular Service of the Ministry of Foreign Affairs, the Head of Department or the acting Head takes the decision.

The validity of diplomatic and service visa issued to diplomats and employees of foreign DMCPs in Ukraine, international and other organisation accredited to Ukraine is extended by the Department of the Consular Service of the Ministry of Foreign Affairs.

The Ministry of Interior (Department for Citizenship, Passports and Migration of the Ministry of Interior) can consider extending the stay of a foreigner. The status of a foreigner's temporary stay cannot be changed under the following visa types:

- C-3 - service visa for representatives of industry, trade, financial and political circles who enter Ukraine for business purposes upon invitation of registered State institutions,
- B- business visa
- O – student visa,
- K – sport and cultural visa
- T – tourist visa,
- OP - Visa for international transport service staff
- Transit visa.

Duration of Visa

The diplomatic, the service visa type C-1 and the mass media visa are issued for the entire period of accreditation or as stated in the relevant bilateral agreement.

The service visa type C2 and C3, business visa, visa for rescue service workers, scholar visa, religious, humanitarian, sports and cultural visa and visa for international transport service staff are usually issued for a period of six months or for the period indicated in the documents but no longer than one year.

Student visa and immigration visa type IM-3 (permanent residence) are issued for the period indicated in the documents but no longer than one year.

Tourist visa and private visa type P1 are issued for the period indicated in the documents but no longer than six months.

Private visa type P2 (people of Ukrainian origin) can be issued for up to five years.

²⁴ Prior to the abolition of visa for citizens of EU Member States, USA, Japan etc. this entry permit could be issued to the citizens of the above- mentioned States.

A transit visa for one entry has the duration of one to five days, while transit visa for double or multiple entry are issued for the period indicated in the submitted documents but no longer than one year. The duration of each stay in transit should not exceed five days

Visa Procedures

If there is an application of an individual or a representative of a legal entity (private administrative agencies, travel agencies and tour operators and their retailers) at the DMCP or the Department of the Consular Service of the Ministry of Foreign Affairs, the consular officer in charge shall, in accordance with the instructions of the Ministry of Foreign Affairs, act as follows:

- Hand in an application form;
- Accept visa form and documents;
- Check that the travel document belongs to the applicant (if an individual) and that it is valid (matches the established pattern, is correctly filled in, look for signs of possible forgery);
- Check that the travel document is not on the list of lost, stolen or invalid documents, check that the applicant is not on the list of persons to whom entry to Ukraine is forbidden;
- Receive application form with photo (size 35x45 mm);
- Register it and review the request for issuing the visa;
- Ensure an automatic processing of the visa application;
- Make a decision on issuing the visa and make appropriate marks in the official column of the form (visa can be put in a submitted passport which expires at least one month after the visa expiration date), which contains 10 sections (sec. 1 (a) - approving or denying issuance of visa, sec.2 - place of issuing (DCMP), sec.3 - date of entry permit, sec 4 - exit date - last day the exit is permitted, sec 5 - type of visa regarding no of entries - single, double or multiple, sec 6 - attach sticker form the visa sticker to the form, sec 7 - write down the visa number. sec 8- write the visa type, sec 9 - write down the visa issuing date and sec 10 - signature of officer issuing a visa;
- Fill in a visa sticker (print it) and attaches it to the travel document;
- Return the documents including all other submitted documents except for the application form and the receipt of the consular fee.

In case a visa is denied, the fee for the application form is not reimbursed and the form is not returned.

The length of the procedure varies between DMCPs, from three to ten working days depending on the reciprocity, flow of applicants etc. The Department of the Consular Service of the Ministry of Foreign Affairs issues diplomatic and service visa to foreign DMCP personnel, mission staff, and workers of international organisation accredited in Ukraine within five working days.

In cases where the consular official is not convinced about the legal title (purpose of visit) of the person applying for a visa or if there are uncertainties, an interview with the applicant is conducted. There is also a possibility for consultations with the Department of the Consular Service of the Ministry of Foreign Affairs, which consequently delays the procedure. In the

case of applications by citizens of “high risk”²⁵ countries, visas are issued only by the DMCP in the relevant country or in case of absence of a DMCP, in any neighbouring country. As a rule, an interview with the applicant is conducted and additional documents about the trip can be required. A consultation with the Ministry is obligatory and its negative decision cannot be overruled. In case of a positive decision of the Department of the Consular Service of the Ministry of Foreign Affairs the final decision to issue/deny visa is up to the consular officer.

All Diplomatic Missions and Consular Posts are provided with a list of persons to whom the entry to Ukraine is forbidden, which is incorporated into the electronic system for issuing visas.

There is no direct (“online”) connection with the Border Crossing Points and the Border Guard Service dealing with the entrance of foreigners to Ukraine.

Visa Fees

There are two kinds of consular fees:

Fee for application form;
Fee for processing documents and issuing a visa.

Free visa are issued to holders of diplomatic and service passports as a general rule. In any other case, a decision of the Cabinet of Ministers is required.

There is a general form for calculating a consular fee, which is used by the consular officer at each DMCP, taking into account the economic situation of the host country, reciprocity etc. Visa fees for every DMCP must be approved by the Deputy of the Minister of Foreign Affairs prior to its introduction. A change of fee is limited to once a year.

Minimum tax-exempt income (MTEI) is the basis for calculating the fee to be paid for the application form (2 x MTEI), visa support (to speed up the procedure – 2 x MTEI) and for issuing entry permit (47 x MTEI).

Fees for processing documents and issuing a visa (minimum and maximum) are set in USD.

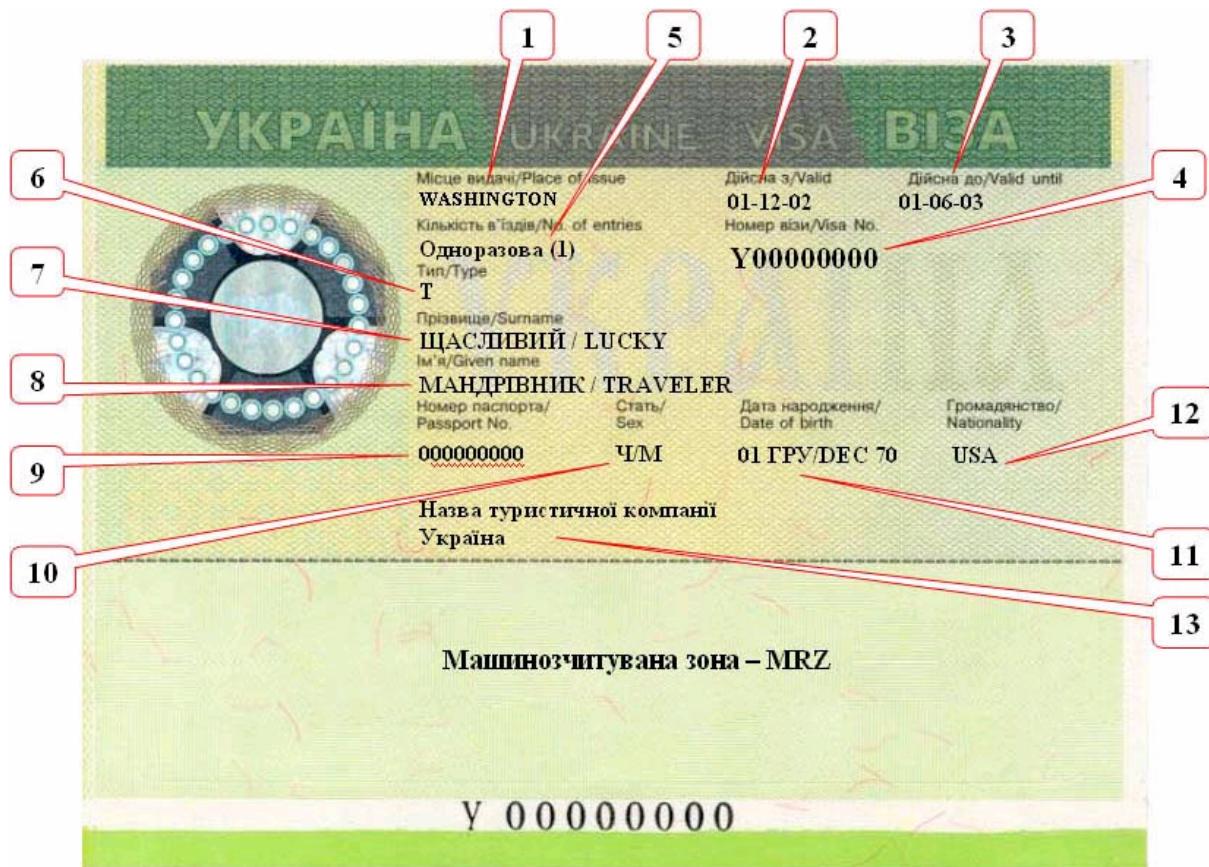
Automated processing of visa application	1-45
Issuing a service visa /C-3/	
- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Business visa	
- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Scholar visa	
- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Religious visa	

²⁵ List of these countries in ANNEX I.

- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Mass media visa	
- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Culture and sports visa	
- 1 entry	10-50
- 2 entry	20-70
- Multiple	70-100
Immigration visa type IM - 1	
1 entry	15-50
Student visa	15-20
Private visa typeP-1 (private matters and medical treatment)	
- 1 entry	15-50
- 2 entry	20-80
- Multiple	100-200
Tourist visa	
1 entry	10-40
2 entry	20-70
Private visa type P-2 (to ethnic Ukrainians with the exception of foreign Ukrainians and other persons who fall under the law on the legal status of the foreign Ukrainians, are entitled to a three multiple visa for visiting Ukraine on the basis of a foreign Ukrainian ID and a document confirming family relations with the foreign Ukrainian)	
- 1 entry	10-50
- 2 entry	20-80
- Multiple	100-200
Immigration visa type IM-2	
1 entry	10-40
Transport service staff visa	
- 1 entry	10-50
- 2 entry	20-80
- Multiple	100-200
Transit visa 1	
2 entry	10-30
Multiple	50-100
Transit visa 2	
Multiple for trucks and buses	50-100

Visa Sticker

The safety features of visa stickers generally correspond to international standards. The visa sticker introduced in 1999 is the “Schengen” type of visa sticker, which is in compliance with the ICAO recommendations and relevant Ukraine legislation.



The visa sticker contains the following data:

- 1) Name of the Diplomatic Mission or Consular post where the visa is issued.
- 2) Date as of when visa is valid. It reads Day-Month-Year.
- 3) Date until visa is valid. It reads Day-Month-Year.
- 4) Visa control number.
- 5) Number of entries.

Одноразова (1)²⁶ - single entry visa (one entry only).

Дворазова (2) - double entry visa (two entries only).

Багаторазова (M) - multiple entry visa (unrestricted within visa duration).

- 6) Type of visa

²⁶ Wording on the visa sticker is in Ukrainian language.

- 7) Passport holder's last name in Ukrainian and in English (as it appears on the passport).
- 8) Passport holder's first name in Ukrainian and in English (as it appears as on the passport).
- 9) Passport number.
- 10) Passport holder's gender.
- 11) Passport holder's date of birth.
- 12) Passport holder's nationality.
- 13) Host in Ukraine.

The visa sticker is, as is the visa application form, produced by Mint of the National Bank. Visa stickers are manufactured in accordance with the technical description approved by the Cabinet of Ministers, using a holographic protection element, manufactured by Leonard Kurtz GMBH, Germany. The Ministry of Finance, by means of the consular fee, finances work related to the production of visa stickers.

Under the UV light a hologram, three- colour lines (red-yellow-blue) and the shape of the country become visible. A control number corresponding to the sticker number is also incorporated into the sticker.

Blank visa documents (visa stickers and application forms) are delivered to the DMCPs by diplomatic mail and diplomatic courier upon request of the Department of the Consular Service of the Ministry of Foreign Affairs.

Data regarding the need for additional visa documents are to be submitted by the DMCP to the Department of the Consular Service of the Ministry of Foreign Affairs in advance. Upon receiving blank visa documents the DMCPs have to inform the Department of the Consular Service of the Ministry of Foreign Affairs within three days.

DCMPs have to submit a monthly report on visa issues (number issued, number annulled etc). Until an elaborated IT system is installed, the DMCPs have to submit information at the end of each week to the Department of the Consular Service of the Ministry of Foreign Affairs and the State Border Guards Service on visa issued to foreigners and stateless persons from countries with a high migration risk

A pilot project of Ukraine issuing visa containing biometrical data (fingerprint and photo) is currently ongoing at its consular establishments in India, China and Vietnam. The project is solely financed by Ukraine and due to the limited funds available, there is no road map regarding further introduction to other DCMPs. An additional problem is caused by the non-existence of passport readers at BCPs and the lack of online connections among the Ministry of Foreign Affairs, the DMCPs and the SBGS.

Refusal to examine an application or to issue a visa

Grounds for refusing to issue a visa are: threat to national security or public order, health threat, protection of rights and legitimate interests of Ukraine, its citizens and other persons living in Ukraine.

A visa is also denied if a person files a request for a visa and deliberately gives incorrect information or submits forged documents, does not pay the consular fees (application form and visa issuing fee) or if there is evidence of the applicant's violation of the Ukrainian law during a previous stay in Ukraine; if the travel document does not meet the established standards, if there is a lack of financial means to stay in Ukraine or absence of the document confirming that the person is not HIV positive, if the person's stay exceeds three months, the person's behaviour is inappropriate when applying or if the person displays disrespect to Ukraine.

Visa also can be denied if the previous denial was less than a year ago.

There is no obligation for the consular official to explain the reasons for a visa denial.

In case of a visa being denied, there is a possibility to appeal to the Head of the DMCP or to the Department of the Consular Service. It is assumed that this procedure is not used very often, since no detailed information on the procedure has been obtained.

Entry Conditions at the Border

The State Border Guards Service at the border crossing points checks that the conditions of entry have been met. A person entering Ukraine has to be in possession of a valid travel document, a visa if required, an invitation letter or other documents justifying her or his entry.

The registration of foreigners in Ukraine is no longer needed as of July 1, 2000. Each person entering Ukraine, with the exception of Diplomatic passport holders, only has to fill out the immigration registration form. The form contains the following data: name, surname, passport No., date of birth (DOB), resident address, nationality, purpose of visit, address in Ukraine and length of stay. One part of the form is handed over to the border guard official at the border and the data is entered into the State Border Guards Service registry. The other part is kept by the person entering Ukraine and will be handed over to the border guard officials upon exit from Ukraine. The data in the registry contains name and surname, passport No., citizenship, entry BCP, exit BCP, destination at airports.

When crossing the border, a foreigner is checked for: possession of a valid and recognized travel document, a valid visa if required, documents (if necessary) justifying the purpose and circumstances of his/her stay, as well as documents for travel insurance. Furthermore, it is checked whether the person was not (previously) expelled from Ukraine and whether there is a valid entry ban in effect, whether the person presents a threat to the public order, national security, public health etc. of Ukraine.

In case of doubt or in case citizens from "high migration risk" countries want to enter Ukraine, border guards officials conduct an interview with the person concerned on the basis of a standard questionnaire. A protocol is written on the interview and a decision on allowing/refusing entry is taken. The Ministry of Foreign Affairs is informed about the

refusal. There is no online connection with the Ministry of Foreign Affairs and subsequently with Diplomatic Missions and Consular posts issuing visa, therefore there is no possibility to double-check with the visa issuing Diplomatic Mission or Consular Post.

A border crossing hotline is intended to eliminate possible problems for foreign citizens entering Ukraine. The relevant information is available in Ukrainian, Russian and English.

Cancellation of a visa and shortening of the validity (length, entries) of visa

A visa can be cancelled during the border control check done by the Border Guards if a foreigner or a stateless person is on the list of those whose entry to Ukraine is forbidden under Ukrainian legislation, if this person violates the procedure for border crossing, customs regulation, sanitary norms or does not comply with the legitimate requirements of the officials who perform appropriate control at the BCP.

A visa can be cancelled during the stay in Ukraine if the fact is revealed that a person deliberately submitted incorrect information or forged documents to obtain a visa, if under Ukrainian legislation a person is defined as unwanted to stay in Ukraine, if a decision is passed to deport a foreigner or stateless person under Ukrainian legislation

Security Related Matters

Please note: due to the fact that the mission took place on the territory of Ukraine and did not include any visit to a Ukrainian DMCP abroad, the information below was provided by the Department of the Consular Service of the Ministry of Foreign Affairs

Security of the Building (Security Features and Security Checks)

According to the information provided by the Ministry of Foreign Affairs, most of the Ukrainian DMCPs are equipped according to general standards. Outside the building of the DCMPs there is a local police officer (if needed); inside the building, the security issues are within the competence of the member of the State Border Guards Service posted to the DMCP. There is a separate entrance for the consular section, with a metal detector and consular counters are fitted with safety glass screens.

All interviews with visa applicants are conducted in a special room. In the waiting room, the Border Guard determines the number of persons present but it does not exceed 5 persons at a time.

At the end of the opening hours, the waiting room is checked by a member of the State Border Guards Service for any objects that have been left behind.

Staff Security

Ukraine's practise is not to employ citizens of third countries at their DMCP. The main principle is to employ family members of the DMCP staff and to employ citizens of Ukraine living in the host country.

Document Security

Blank visa documents (visa stickers and application forms) are delivered to DMCPs by diplomatic mail, diplomatic courier upon request of the Department of the Consular Service of the Ministry of Foreign Affairs. Visa documents are to be stored in a safe, special place equipped with alarm and with a limited access of persons at the consular representation (Head of the visa section and his or her deputy). There is no elaborated IT system installed yet at the DMCPs of Ukraine, therefore the information on visa issued is transferred through an internal mail network.

In the Instructions of the Department of the Consular Service of the Ministry of Foreign Affairs it is stated that a visa sticker delivered by the Ministry of Foreign Affairs to the DMCPs abroad are documents of strict accountability. The forms of visa documents shall thus be stored in isolated facilities. The Head of the DCMP is responsible for receiving, keeping track, storing and issuing visa documents. The general Inspection of the Ministry of Foreign Affairs does periodical checks of the storage of visa documents, destruction of annulled visa documents etc.

5.2.4 Infrastructure

IT

All computers used at the DMCPs and their parts and maintenance are provided by the Ministry of Foreign Affairs. Passwords are changed regularly. For issuing visa, special computers are used which are connected neither to the internal network of the Ministry of Foreign Affairs nor to the Internet.

Capacity to deal with forged documents and relevant equipment

At Diplomatic Missions or Consular Posts

In 1999, the Ministry of Foreign Affairs issued an Instruction (manual), which is updated when needed, on the procedure to issue visa documents to foreigners and stateless persons to enter Ukraine, with a collection of travel documents to which a visa may be affixed. During regular consular consultations between consular workers of Ukraine, which are held by region, this issue is discussed.

All Ukrainian DMCPs are equipped with a ultra-violet light source (portable ultra-violet lamps); a magnification/lighting device and reference materials prepared by the Ministry of Foreign Affairs. There is no training prior to deployment to the DMCP; training is done on the job.

At Border Crossing Points

Border crossing points are equipped with ultraviolet lights and magnifying glasses. The Border Guards also have a list of persons to whom the entry to Ukraine is prohibited or who are wanted by relevant Ukrainian and international authorities (e.g. Interpol). The main international border crossing points are equipped with passport readers. At smaller crossing points, data is entered manually. Since certain border crossing points do not have a computer connection, data is sometimes transferred via satellite.

In case the Border Guards suspect that a document has been forged or falsified, the Border Guard specialists examine it. Until completion of the verification procedure for the document,

the bearer of the suspicious document is held in the border guard detention centre. If the person's identity cannot be determined after expiration of a period for which a person can be detained (six months), he or she is released.

5.2.5. Travel Documents of Ukraine

Diplomatic passports



Diplomatic Passport, type D - Passports issued after March 14, 1998 are valid for travel abroad till the date of expiry. The MFA of Ukraine issued the passport.



Diplomatic Passport, type DP - the MFA of Ukraine issues the passport since July 1, 1999.

In accordance with the "Regulations on Diplomatic and Service passports of Ukraine" (Presidential Decree No153/98) the Diplomatic Passport is issued by the Ministry of Foreign Affairs for a term up to five years on the basis of a written request by the Head of the relevant authority. The Ministry of Foreign Affairs or a DMCP of Ukraine abroad may extend the term of its validity for up to five years.

Persons entitled to Diplomatic Passports are:

For a period of holding corresponding office: the President of Ukraine, the Speaker of the Verkhovna Rada (parliament) of Ukraine, the First deputy Speaker and the Deputy Speaker of the Verkhovna Rada, the Prime Minister, the Minister of Foreign Affairs, permanent representatives of Ukraine to international organisation and spouses of the persons mentioned above.

For the term of exercising their authority: People's deputies of Ukraine – their passports are stored at the Ministry of Foreign Affairs and given to them for the term of stay abroad on a mission.

For the term of diplomatic service abroad: spouses, children and other family members of diplomats on diplomatic service abroad, if they live with the diplomat abroad, to the spouses of state officials on diplomatic service having the rank of Ambassador Extraordinary and Plenipotentiary, Envoy Extraordinary and Plenipotentiary 1st class and Envoy Extraordinary and Plenipotentiary 2nd class.

For the term of stay abroad on a mission: Members of the Cabinet of Ministers, Head of the Constitutional Court of Ukraine, Deputy Head of the Constitutional Court of Ukraine and other judges of the Constitutional Court of Ukraine, the Head of the Supreme Court of Ukraine, Heads of the Supreme Specialized Courts of Ukraine, the Prosecutor General, the Secretary of the National Defence and Security Council, the First Deputy Secretary and the Deputy Secretaries of National Defence and Security Council, the Head of the Security Service, the Head of the State Border Guards of Ukraine, the Head of the State Customs Service, the Chairman of the National Bank, the Head of the State Tax Administration, the Head of the Administration of the President, the State Secretary of the Cabinet of Ministers, the Head of the Council of Ministers of Autonomous Republic of Crimea, the Speaker of the Verkhovna Rada of the Autonomous Republic of Crimea, the Heads of oblast Kiev and Sevastopol State City Administrations, the Speakers of the oblast councils, Diplomats, Diplomatic couriers, Heads and members of State delegations and delegations of the Cabinet of Ministers at international conferences and negotiations according to acts of the President and the Cabinet of Ministers on establishment of such delegations, if the issuance of Diplomatic Passport to such a person is envisaged by these acts.

Diplomatic Passports are also issued to the President and his spouse when the presidential term expires or in case of pre-term abdication, except for the case of impeachment and to persons having the diplomatic rank of an Ambassador Extraordinary and Plenipotentiary, an Envoy Extraordinary and Plenipotentiary 1st class and an Envoy Extraordinary and Plenipotentiary 2nd class.

As an exception, diplomatic passports may be issued to any person upon written order of the Minister for Foreign Affairs subject to permission of the President.

The decision to issue a passport is made by the Head of the Department of the Consular Service of the Ministry of Foreign Affairs, except for the persons with regard to which there is a permission of the President – for such persons, the decision is made by the Minister for Foreign Affairs only. The decision is made by means of a holograph resolution upon written request by the relevant State authority

Persons to whom the Diplomatic Passports were issued must return them to the Ministry of Foreign Affairs within ten days starting from the day of return from a mission. Heads of relevant authorities on whose request passports were issued, bear personal responsibility for the timely return of the passports

Service passports



Service Passport, types S - Passports issued after March 14, 1998 are valid for travel abroad till the date of expiry. Passports issued before March 14, 1998 lost the validity to travel abroad from Ukraine, but retain the validity to enter Ukraine. The MFA of Ukraine till May 30, 1998 issued the passport.



Service Passport, type CP - Valid for travel abroad till the date of expiry.

The MFA of Ukraine issues the passport from June 7, 1999.

In accordance with the "Regulations on Diplomatic and Service passports of Ukraine" (Presidential Decree No153/98) the Service Passport is issued by the Ministry of Foreign Affairs for a term of up to 5 years on the basis of a written request of the Head of the relevant authority. The Ministry of Foreign Affairs or a DMCP of Ukraine abroad may extend the term of its validity for up to five years. State tax and consular duties are not to be levied for issuing a Service Passports.

People entitled to Service Passports are:

For a period of departure on assignment abroad to: State Officials of the 1st, 2nd and 3rd category, Deputy Heads of the Supreme Court and First Deputy and Deputy Prosecutors General, First Deputies and Deputy Heads, Judges of Higher Specialized Courts, First Deputy and Deputy Heads, Chiefs of Subdivision of National Bank and the Crimean Republican Department of National Bank, Administrative and Technical Staff of the Diplomatic Service and their spouses, minor children and other family members on a diplomatic service abroad if they live with the above-mentioned persons abroad, employees of Trade and Economic Missions under Diplomatic Missions, Servicemen of the Armed forces, Border troops, National Guards, Security Service and other military establishments, officials of bodies of Internal Affairs and bodies of the Prosecutor's Office, officials of the Tax Militia and State Customs Service, Heads and members of State delegation and delegations of the Cabinet of Ministers at international conferences and negotiations, if not provided by Diplomatic Passports, citizens of Ukraine who provide service for State or parliamentary delegations, delegations of the Cabinet of Ministers for international conferences and negotiations.

The decision to issue a passport to persons entitled to, is made by the Head of the Department of the Consular Service of the Ministry of Foreign Affairs. The decision is made by means of a holograph resolution upon written request by the relevant State authority.

Persons to whom the Service Passports were issued must return them to the Ministry Foreign Affairs within ten days from the day returning from mission. Heads of relevant authorities on whose request passports were issued bear personal responsibility for timely return of passports.

Storage of the Diplomatic and Service Passports

Blank Passports and issued passports are stored only at the Department of the Consular Service of the Ministry of Foreign Affairs (except for passports of the President of Ukraine, the Speaker of the Verkhovna Rada of Ukraine, the First deputy Speaker and the Deputy Speaker of the Verkhovna Rada, the Prime Minister, the Minister for Foreign Affairs, permanent representatives of Ukraine to international organisation and their spouses) in iron cabinets (safes) placed in separate isolated rooms equipped by reliable means of protection (alarm, camera surveillance) against unauthorized access.

At least twice a year an inspection is carried out by a commission, whose membership is approved by the Cabinet of the Ministers to exercise control over the state of records, storage and usage of blank passports and storage of issued passports.

In case a passport is lost in Ukraine, the relevant State authority, which requested the issue of the passport, must immediately, in writing, notify the Department of the Consular Services of the Ministry of Foreign Affairs, which on a same day will notify State Border Guards Service.

In case a passport is lost outside Ukraine, its holder must immediately notify the DMCP of Ukraine in the host country, which will on the same day notify in writing the Department of the Consular Services of the Ministry of Foreign Affairs and the State Border Guards Service.

Destruction of Diplomatic and Service Passports

Destruction is carried out in case of loss of grounds for use of the passport by a person, in case of expiration of passports when there are no grounds and possibilities to extend it, unsuitability of the passport for use or in case of the passport's holder's death.

Destruction is done by means of burning and takes place on a quarterly basis. A first page of the destroyed passport with indication of the perforated number of the document is separated from the passport and is glued to the information about the person to whom the passport was issued.

Ordinary passports



Passport of the Citizen of Ukraine for Travel Abroad - The passport is valid for travel abroad till the date of expiry. The passport is issued by the MFA of Ukraine, by a DMCP of Ukraine abroad or by the Ministry of Interior of Ukraine.

There are two types of this kind of passport in circulation at the moment. Passports issued before 2002 have picture of the holder glued or scanned to the first page and the holder's data is printed. Such passports are still issued in some regions of Ukraine (approx at 88% of all the offices) and at DMCPs.

Some passports²⁷ issued after 2002 already have a machine readable code (ICAO) and a digital photo of the holder, laminate (cold), hologram, broken elements, UV reaction, serial number in letterpress printing technology, perforated serial number, watermark ("Birds") and UV fluorescence.

These passports are done at a centralized office in Kiev on the basis of an application submitted to local centres (regional application centres). Currently 88 regional application centres of the needed 783 centres have been established. Every Application centre is equipped with a database, scanner, digital photograph and printer. The person is photographed, his/her

²⁷ According to the data obtained at the MoI approx. 500.000 such passports were issued since 2002, while the "old – 1999" passports are issued approx. 500.000 per year.

signature scanned and sent to the central base on the level of “rajon”, then to the central base of “oblast” and later to Kiev where the passport is made.

The government plans to establish the main regional application centres as soon as possible. The financial value of the project is estimated at 7 mio. Euro (there is a need for software and hardware). This project is important due to the first establishment of a centralized database of passport holders of Ukraine. Prior to that, there was no database at State level; the database on passport holders was limited to regions.

Documents needed to obtain a passport are the Passport of the Citizen of Ukraine (see below), the birth certificate and ID number. The fee for issuing a passport is 170 UAH. To speed up the procedure, which normally takes 30 days, the fee is doubled. (!)

The validity of such a passport is ten years. According to Ukrainian legislation, a person can, in exceptional cases, hold two passports for travel abroad at the same time.

Passport of the Citizen of Ukraine - Valid for travel to the Russian Federation and the Republic of Belarus. Organs of the Ministry of Interior of Ukraine issue the passport.



This document is obligatory for every citizen of Ukraine over 16 years of age. It contains personal data, including the marital status of a person and photographs of the holder from different periods of life (age of 18, 21, 35, over 40 etc.). It has unlimited validity and is used for official notes (for example when a person applies for a passport to travel abroad, an official note is made in this document).



Ukraine plans to change the Passport of the Citizens of Ukraine to a more “western” document – identification card (ID1 Pattern). The legislation, which will give a legal ground for such an action, is still pending (“Law on the document identifying person and confirming citizenship of Ukraine”) although the Government has already been provided with a proposal for issuing an identification document as a card.

Travel Document of a Child - Valid to travel abroad from Ukraine, to travel outside Ukraine, to enter Ukraine till the date of expiry (3 years). The Ministry of Interior of Ukraine issues the document to children till they reach the age of 18 years.

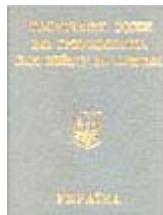


Foreign Passport of USSR - The passports lost validity to travel abroad from Ukraine as of January 1, 1998. It retains validity for travelling outside Ukraine and to enter Ukraine till the date of expiry, provided availability of stamps in the passport "Valid for departure to any country" and "This passport is the property of Ukraine" with due seals. The passport was issued by the former USSR Ministry of Interior till 1991, by the Ministry of Interior of Ukraine bodies, by

the MFA of Ukraine, by consular sections of Ukraine abroad from 1992 till 1997



Passport of the Citizen of USSR - Valid for travel to Russian Federation and to the Republic of Belarus. The passport was issued by the former USSR Ministry of Interior till 1991 and by the Ministry of Interior of Ukraine till 1994.



Stateless Person's Travel Document - Valid to travel abroad from Ukraine, to travel outside Ukraine, to enter Ukraine till the date of expiry. The Ministry of Interior of Ukraine issues the document.



Seaman's Identification Card - Valid to travel abroad from Ukraine, to travel outside Ukraine, to enter Ukraine till the date of expiry. The ID card is issued to the citizens of Ukraine as well as to seamen of other States who serve on board of a vessel registered on the territory of Ukraine. The ID card is issued by sea or river harbour masters.

Certificate for Returning to Ukraine - Valid for entry to Ukraine and for transit travel on the territory of other countries on the way to Ukraine. The certificate is issued to the citizens of Ukraine permanently residing in Ukraine in case of loss or damage of their travelling documents during their stay abroad. The certificate is issued by the consular sections of Ukraine abroad.

Crew Member Certificate - The certificate is valid to travel abroad from Ukraine and to enter Ukraine on an airplane on which the owner is employed. Individual entry-exit travel is allowed when the owner travels to the airport. The Ministry of Transport of Ukraine issues the certificate to citizens of Ukraine as well as to foreigners - crewmembers of the airplane registered in Ukraine.

Ukrainian authorities are in the process of developing a new type of passport, where biometrical data of the holder will be incorporated on either the first page or an additional page will be added. Due to the fact that the relevant legislation has not yet been adopted, the scope of biometrical data is still unknown. The following features are planned to be incorporated in the new Ukrainian passport:

- BOOK: Size 88x125 mm
- PAPER: non-fluorescent paper, multishade watermark, security thread, fibres.
- PRINTING: traditional security printing (offset, guilloche patterns, rainbow printing, intaglio printing, micro printing, latent image in intaglio, OVI)
- NUMBERING: laser perforated passport number

- DATA PAGE: polycarbonate, laser engraved data, OVD elements, Machine readable zone (MRZ), traditional security printing, micro lettering, implementation on contact less chip with biometrical data.²⁸

6. Fight against and Prevention of Organised Crime

6.1. Legal Framework and Policy

For a complete list of legislation introduced in Ukraine since 2003 in support of the fight against organised crime, please refer to ANNEX II.

6.1.1. National Strategies and Implementation Plans

Organised Crime

The national strategy for tackling organised crime in Ukraine is defined by the Ukrainian law "On Organisational and Legal Basis of the Fight against Organised Crime". Although a summary of this law was provided in English, the complete legislation was not provided. The rapporteur accepts that it would not have been possible for the Ukrainian authorities to provide an English translation of every piece of legislation and decree relevant to organised crime. Additionally, given the length of the Mission, it would not have been possible for the rapporteur to review all the material.

The key focus of the strategy on the fight against organised crime, in priority order, is preventing Organised Crime Groups (OCG) fraudulently obtaining funds from the State budget via corruption, abuse of the privatisation system by OCGs and then more traditional criminal activity (drug trafficking, people trafficking, vehicle crime and gun crime).

In accordance with the Law of Ukraine "On Organisational and Legal Grounds for Fight against Organised Crime", the state agencies involved in the fight against organised crime include the agencies within the Ministry of the Interior and within the Security Service of Ukraine (SBU), the Prosecutor's office of Ukraine, customs agencies, agencies within the State Border Guards Service of Ukraine, the State Tax Service, the State Auditing Service, agencies and institutions for the execution of penalties, the Intelligence of the Ministry of the Interior, and the Foreign Intelligence of Ukraine. However, there are two key agencies that have the main responsibility for and devote the most significant manpower to the fight against organised crime. These are:

- Security Service of Ukraine (SBU)
- Ministry of Interior (MoI)

Evidence of a co-ordinated approach between the Ministries and Agencies was seen in both Kiev and Odessa. It was clear that Ministries and Agencies were co-ordinating their activities at a Ministerial level in Kiev. Likewise, in the regions it was also apparent that the Ministry of Interior, Security Service and State Border Guard Service met regularly to discuss operational activity and strategies.

²⁸ Due to the fact that relevant legislation has not yet been adopted, the scope of biometrical data is still unknown.

However, whilst it was clear that this level of co-operation existed, it was apparent that no one Ministry or Agency had the responsibility for maintaining a record of which organised crime targets were currently under investigation by which organisation. This is important for two reasons: Firstly, it stops the unnecessary expenditure of State resources by running two parallel investigations into the same individual or organisation. However, more importantly where law enforcement agencies are routinely armed it reduces the risk of a “Blue on Blue” incident where armed surveillance officers from different Ministries or Agencies identify each other as a threat and open fire.

One organisation needs to be identified to maintain a database of major operations against organised crime, which every Ministry and Agency must register their operations with. This system is often referred to as a “Flagging System” and identifies the nature of the investigation and who should be contacted if another organisation has an interest in the target. There are obvious security concerns with such a database as it is a very powerful tool in the wrong hands. It would need to be staffed by trusted individuals who had gone through a process of security clearance.

In 2005 the bodies and subdivisions of the MoI stopped the activities of 551 organised criminal groups (OCG) (40 OCG with international connections) with 2,220 members, who committed 7.741 misdemeanours (in 2004-5582 misdemeanours). Out of the total number of OCGs, 378 OCGs committed 6.230 criminal offences (in 2004 -3,911 crimes). In particular the activity of 35 gangs and 19 criminal organisations has been stopped, 73 cases of murder were investigated, 5 of which were contract killings, 351 armed robbery cases, 100 robbery cases, 84 cases of blackmail, 2 cases of compulsion to fulfil civil law duties, 145 crimes connected with trafficking in persons, 84 crimes related to illegal arms circulation and 1024 offences related to illegal drug circulation. In the economic sector the activity of 173 OCGs, which had committed 1.511 offences, was stopped. Out of these OCGs, 7 had activities with the economic sector overseas, 50 in the banking and credit system, 10 in the privatisation sector, 29 in the sector of fuel and energy, 15 in the agricultural sector and 7 in the metallurgical industry. 104 mio. UAH of material damage was done to the Ukrainian economy. As a result of “Proceeds of Crime” legislation, 74 mio. UAH were returned to the Ukrainian State.

In relation to organised crime 332 cases were actually prosecuted in the Ukrainian courts. Of these in 315 cases a guilty verdict was returned, or 94.9% (compared to 94.1% in 2004).

In 2005, SBU agencies neutralised 45 organised criminal groups (OCGs). Evidence from the SBU was used to convict 987 persons. The activities of 13 criminal structures dealing in violence and profiteering with international and inter-regional connections were stopped. Eight contract assassinations were solved, 12 persons wanted internationally and on the inter-regional level were established. 40 criminal structures, which dealt in illegal migration, 53 – in human trafficking, and 5 – in unlawful child adoption were identified.

More than 515 million UAH were confiscated and returned to the state budget; the damage to the state to the sum over 2 billion UAH was prevented.

Corruption

There is a concerted effort to counter corruption in Ukrainian society. The Ministry of Interior and the Security Service are primarily responsible for targeting corruption, as well as the prosecutor's offices of Ukraine, the military law enforcement service within the armed forces of Ukraine and other agencies and divisions established to fight corruption under the current legislation. 26 OCGs with corrupt relations with public officials have been uncovered by the agencies of the Interior. In the area of public service, 405 crimes classified as part of organised criminal activity were detected, 84 of them were cases of abuse of authority or official position, 30 cases of exceeding authority or official position and 101 cases of bribery.

In 2005, 1,350 officials were brought to trial for violating the law of Ukraine "On the Fight against Corruption", among them 3 for 1st and 2nd category violations, 358 for categories 3 and 4 violations and 581 for violations of categories 5-7. Of these 13 were representatives of the regional State administrations, 81 were representatives of district State administrations, 378 representatives of local self-governments.

In addition, the Head of a regional council, the Head of a city council, the Head of the central executive body of the Autonomous Republic of Crimea and 17 members of parliament at the local level were accused of corruption.

To date no member of central government has been charged with corruption. However, it should be noted that elected members of the Verkhovna Rada have immunity from prosecution. The Ministry of Interior also detained and arrested a Ministry of Defence official who was soliciting a bribe of \$600.000 from contractors.

In 2005, the material provided by special units of the Security Service was used to instigate 1217 criminal procedures based on alleged crimes in public offices. The materials provided by SBU units were used to commit 1860 persons for administrative trial as the ones involved in corruption, including 37 state officials of categories 1-3.

The above reflects the approach taken by "The Concept of Combating Corruption for the Years 1998 -2005", which was introduced by Presidential Decree No. 367 in April 1998. This concept took an enforcement approach to countering corruption in Ukraine. However the National Security Council of Ukraine, with the support and assistance of the relevant Ministries and agencies, has produced a draft strategy to take over from this entitled "Concept on Reducing Corruption in Ukraine: On the Road to Integrity". This report is ground breaking for Ukraine because for the first time it recognises that you cannot reduce and eventually eliminate corruption by enforcement activity alone. It takes as its starting point that in addition to enforcement activity you must have integrity within the public offices and elected officials, the executive authorities and the judges and courts. This must be achieved by reforming the structures of these organisations and terms of employment of these individuals. It is also acknowledged that the current legislation on corruption needs clarifying and expanding. Finally, it acknowledges the role of civil society in making these reforms occur. The concept is a comprehensive document, which outlines the proposed strategy for tackling corruption in the Ukraine. The time constraints of the Mission do not permit a detailed analysis of the concept here.

This concept, if fully and properly implemented, would have an impact on the prevalence of corruption in Ukraine. Every assistance must be given to Ukraine by the EU MS to ensure that it can be fully implemented.

Law Enforcement Corruption

There is a concerted effort at a Ministerial level to drive corruption out of law enforcement in the Ukraine. Anecdotal evidence indicates that the Security Service is regarded as the least corrupt agency in Ukraine followed by the Ministry of Interior and then by the State Border Guards Service and the State Customs Service which are both regarded by Ukrainian citizens as being highly corrupt. However, there was a difficulty in identifying substantive evidence to support the anecdotal. The EUBAM Mission, which has been working with the Ukrainians since December 2005 on the Moldovan/Ukraine border may be in a better position to substantiate these claims or rebut them. Certainly in the case of the rapporteur for every piece of anecdotal evidence he received on corruption he met a professional law enforcement officer who was well motivated and seeking to fight corruption. This particularly applied to the SBGS.

The Minister of Interior Lutsenko is the driving force behind the modernisation of the Ministry of Interior and the expulsion of corruption. Since the “Orange Revolution” in December 2004, 300 criminal cases have been commenced against corrupt officers within the Ministry of Interior. As a result of the criminal cases and the modernising attitude of the Minister of Interior liaison officers from EU MS and the USA based in Ukraine have stated that they have seen an increase in the effectiveness of law enforcement agencies under the Minister's control.

The State Border Guards Service of Ukraine introduced a management program for preventing corruption and other violations in the agencies and departments involved in the protection of the state border for 2005-2006. A comprehensive plan has been prepared and approved to provide for its implementation. One of the priorities of the Program implementation pertains to the measures related to staffing. In order to prevent displays of corruption on the part of officials during this period, the following measures are to be applied:

- Scheduled and targeted personnel-related measures and their combination for the improvement of personnel situation in border divisions, including the rotation mechanism, suspension from some border protection functions, and dismissal from the State Border Guards Service;
- Establishing conditions to prevent the personnel from returning to the departments from which they had been previously removed;
- Information data base on the persons suspended from some border protection duties during the review of personnel-related issues;
- Improved work with young officers during their first year in service, including inducting into positions and follow-up of their development, and creating conditions to prevent them from being dragged into unlawful activities.

These measures in 2005 and during the first quarter of 2006 resulted in the following:

- 155 persons (38 officers and 117 warrant officers) were dismissed;
- 116 persons (62 officers and 54 warrant officers) were demoted;
- 178 persons (32 officers and 146 warrant officers) were suspended from border protecting duties;
- 966 persons (520 officers and 446 warrant officers) were moved to other regions.
- In the divisions on the Ukrainian-Slovakian border:
- 11 warrant officers were dismissed from the State Border Guards Service;

- 11 persons (9 officers and 2 warrant officers) were demoted;
- 56 persons (24 officers and 32 warrant officers) were moved to other regions.

However, despite these concerted efforts by the leadership of the State Border Guard Service public perceptions differ. The States Border Guards Service and Customs authorities are still regarded as very corrupt by Ukrainian citizens. The State Border Guards Service have brought to the rapporteur's attention the fact that only 66 complaints concerning the service were made to the office of the President of Ukraine out of a total of 67500. They argue that this demonstrates the high level of confidence that the public have in them. However, conversely it can be argued that the level of complaints is so low because the public have very little faith that any complaint they made would be investigated properly. It is clear that the State Border Guard Service need to improve the public perception of them. It is not disputed that the senior management of the service are working hard to counter corruption, but it is clear that there is still a great deal to do.

Evidence from Liaison Officers and NGOs indicates that Border Guards based on the Ukraine/Slovakia border are actually acting as "guides" to assist illegal immigrants in crossing the border. Likewise shortly after the "Orange Revolution" President Yushchenko ordered Ministry of Interior troops to key border check points and asked them just to watch customs officers working. Revenue receipts increased by 30% whilst troops were on the border. This corruption is predominately at lower levels and would appear to be driven by the very low rates of pay. A border Guard earns €120 per month.

Human Trafficking

Ukraine is one of the major countries of origin for persons trafficked to Western and Central Europe, Russia and the Middle East and a country of transit for Asian and Moldovan victims trafficked to Western destinations. While it is difficult to assess the real extent of the problem, there are indications about increasing numbers of persons becoming victims of trafficking²⁹.

Trafficking in Human Beings has been criminalized in Ukraine since 1998 when relevant provisions were introduced in the then Criminal Code. Anti-trafficking provisions have been further developed in the Criminal Code of 2001. Art. 149³⁰ imposes three to 15 years of imprisonment for trafficking. There has been an increase in recent years in the number of cases opened against traffickers, convictions numbers however remain low. In addition prison sentences are often short and suspects released on probation³¹.

The law permits the extradition of foreign nationals and persons without citizenship charged with trafficking in human beings when appropriate international agreements with the countries in question (both bilateral and multilateral) have been signed and under the terms of such agreements, when the crime was committed within the jurisdiction of another country.

In Ukraine two state agencies are assigned the responsibility for resolving requests of extradition: the office of the Prosecutor General deals with requests from agencies conducting pre-trial investigation, while the Ministry of Justice processes requests from the courts.

According to information received from the office of the Prosecutor General, agencies conducting pre-trial investigation bodies of Ukraine made seven requests about extradition of

²⁹ IOM, Capacity Building in Migration Management Programme Statistics - Updated 10 May 2005

³⁰ <http://www.lastrada.org.ua/readlaws.cgi?lng=en&Id=23>

³¹ UNICEF, OSCE, USAID & British Council, "Trafficking in Ukraine An Assessment of Current Responses", 2005

people with the aim of instituting criminal proceedings against them for trafficking in human beings in the period of January 2005 until March 2006 (four requests to the Russian Federation, and one request to the Czech Republic, Spain, and the United Arab Emirates each).

The office of the Prosecutor General informed the Mission that only two persons were actually extradited from Russia. Extradition of yet another person was refused due to his Russian citizenship, after which Ukraine has transferred the responsibility for criminal persecution of this person to the Russian Federation. According to the prosecutor's office, the four requests forwarded to Russia, the Czech Republic, Spain, and the United Arab Emirates have not been processed so far.

During 2005, the Office of the Prosecutor General received and processed two requests about extradition of persons to institute criminal proceedings against them in Israel (one person was extradited, the other one deported).

During 2005 and January – March 2006, the Office of the Prosecutor General of Ukraine also processed and satisfied five requests about transit traffic from Russian to Moldova of persons, who were made accountable on a criminal charge of trafficking in human beings.

On January 12th the Verkhovna Rada has adopted amendments to the Article 149, including internal trafficking into the definition of trafficking in human beings, thus bringing it in line with the provisions of the Palermo Protocol³².

Ukraine ratified the Convention on the Rights of the Child (CRC) in 1991 and introduced provisions to prevent the abduction of, the sale of or traffic in children for any purpose or in any form into Art. 149 CC as foreseen in Article 35 of the CRC.

While criminal acts against a minor constitute an aggravating circumstance for the purposes of criminal responsibility, there is no separate legal text devoted to the best interests of the child.

The Resolution No.766 adopted by the Cabinet of Ministers of Ukraine on 5th June 2002 stipulates the “[...] formation of the Interdepartmental Coordination Council for Anti-trafficking in Humans, and also to establish regional standing commissions on coordinating the efforts and exchanging the information on preventing trafficking in humans, and to organize their functioning.” The Inter-Agency Council on countering human trafficking is chaired by the Ministry for Family, Youth and Sports of Ukraine. The Head of the Council is the Vice-Prime Minister and the Council is composed of high-ranking officials (at the level of deputy Ministers).

Although it had initially been foreseen that the Council should meet every three months at least, it has only met three times since its creation. Since the practice revealed the lack of flexibility of a high level Council, an expert working group was established to enhance the interagency co-operation at an operational level. The working group is composed of representatives from the Ministry of Family, Youth and Sports, of the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Education and Sciences, the Ministry of Finances, the State Tourist Administration, the Ministry of Justice, the Ministry of Labour and Social Policy of Ukraine, the State Employment Service, the State Border Guards and the State Committee for Nationalities and Migration. The working group also includes representatives

³² Additional Protocol to the UN Transnational Organised Crime Convention, on the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children

of International Organisations (IOM, OSCE, ILO, UNICEF, USAID) and NGOs (Caritas Ukraine, La Strada Ukraine)

A first meeting of the working group took place in December 2004. Since then, it meets on a regular basis to discuss progress made in the area of the fight against trafficking in human beings and to develop recommendations with a view to submitting them to the Council. However the lack of a proper functioning of the latter seriously hampers the implementation of the recommendations.

The fact that the Ministry for Family, Youth and Sports does not have a separate specialized anti-trafficking Department that could fully dedicate its staff to the topic, is another obstacle to progress. Therefore the Ministry for Family, Youth and Sports, together with the OSCE and on the basis of recommendations made by the expert working group, has developed a concept for the creation of a National Bureau on Countering Human Trafficking that would directly be subordinated to the Cabinet of Ministers. A decision on the creation of the bureau is still pending, since some Ministries have concerns about the creation of another bureaucratic institution and its possible budgetary implications.

Currently a new draft National Action plan (NAP) drafted by the expert working group and based on the “Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response”³³ is under revision by the relevant government institutions. For the first time Trade Unions and employers’ organisations were involved in the drafting of the Action Plan. The new Action Plan is more comprehensive and ambitious than the two previous ones³⁴ and contains a provision to allocate funds from the State budget for its implementation. While this provision would be an important asset of the new Action Plan, it is also the reason for the resistance of the relevant Institutions to approve of the draft. It seems that the implementation of the new NAP will depend on external funding from donors, as it was already the case for the previous NAPs.

Drug Trafficking

In Ukraine a State strategy for the fight against trafficking in drugs exists which is defined by the laws of Ukraine “On the Measures against Illegal Circulation of Narcotics, Psychotropic Substances and Precursors and on their Abuse”; “On the Circulation of Narcotics, Psychotropic Substances, their Analogies and Precursors in Ukraine” and by the Programme on the Realisation of the State Policy in the area of the Fight against Illegal Circulation of Narcotics, Psychotropic Substances and Precursors for 2003-2010 (Decree of the Cabinet of Ministers of Ukraine, 04.07.2003, N. 877)³⁵. The bodies of the Interior (Ministry of Interior and Security Service of Ukraine) have seized 20.309 kg of narcotics and raw material, of these 13.828 kg of poppy straw; 155, 2 kg of opium; 6, 29 kg of marijuana and cannabis; 2,2kg of hashish; 10, 8 kg of medical narcotics (1, 7 kg of these of psychotropic action); 13,43 kg of psychotropic substances (or 67.150 doses); 0,5 kg of heroin; 0,7 kg of cocaine; 43 doses of LSD. 48 crimes according to the definitions of article 305 of the Criminal Code of Ukraine (smuggling of narcotics, psychotropic substances and precursors) were uncovered.

³³ International Centre for Migration Policy Development (ICMPD), “Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response”, Project funded by the EU, Vienna 2005

³⁴ The Program for Prevention of Trafficking in Women and Children for 1999- 2001 and the Comprehensive Anti-Trafficking Programme for 2002-2005.

³⁵ See comments in para. 1 of 6.1

These seizure figures are relatively low for a country the size of Ukraine, especially when you take into account that the bulk of the seizures are poppy straw. As has been previously mentioned more traditional forms of organised crime have a lower priority currently as the focus is on fiscal crime against the State, which is understandable given the current situation. As a result it would appear that the Ukrainian agencies and Ministries with a responsibility for drug trafficking are not fully aware of the extent of the problem. The State Customs Service of Ukraine, which has no investigatory powers, was the only Agency to acknowledge that Ukraine may be a transit route for heroin and cocaine. Intelligence from EU MS indicates that Turkish OCGs are trafficking heroin from Turkey via the Black Sea into Ukraine and onward into the EU. Ukraine needs to gain a greater understanding of the extent of drug smuggling and use within its territorial borders.

Smuggling of Stolen Vehicles and High Tech Goods

The Mission was informed that a national strategy for the fight and prevention of smuggling of stolen vehicles, high taxed goods, arms etc exists and is co-ordinated by a State Committee. The State Border Guard Service evidenced a very effective process for inhibiting the smuggling of stolen vehicles into and through Ukraine. The process involved the production, at point of entry, of original vehicle documents, recording vehicle registration number in passport and on computer and verifying it when the individual left the territory of Ukraine. However, this well designed process was being undermined by low-level corruption at the border. A Border Guard is paid approximately €120 per month.

Money Laundering/Financing of Terrorism

The State Committee for Financial Monitoring of Ukraine has an effective strategy for the prevention of money laundering. The intelligence arm of the committee is the Ukraine's EGMONT recognised Financial Intelligence Unit (FIU). Since its conception in 2002, this organisation has undergone a rapid evolution benchmarking itself against global standards for FIUs. It has grown from 40 staff to 338. Their staff is highly motivated and well trained, as the FIU has obtained permission to pay salaries exceeding those of the normal civil service. The State Committee for Financial Monitoring of Ukraine is well funded and supported by the Ukrainian Government. By 2007 Ukraine plans to introduce legislation corresponding to the EC Third Money Laundering Directive. This is an effort that should be supported by EU.

6.1.2. Approximation of Ukrainian Legislation to EU Norms and Standards

The Ukrainian government has been making serious attempts to bring its criminal legislation in line with EU countries. This commenced in January 2003 and accelerated after the "Orange Revolution" in December 2004. Ukraine's legislation on money laundering, financing of terrorism and recovering proceeds of crime is on a par with that of EU MS. A full list of orders, Decrees and Resolutions has been provided by the Ministry of Justice and is attached as an annex to this report.

Legislation for witness protection exists but the extent and its effectiveness is not known. Although a witness protection program is in operation within the Ukraine it is for budgetary reasons very limited and currently there are no Memoranda of Understanding in place that allow the Ukraine to place witnesses overseas. They would benefit from an exchange of "best practise" with EU MS on this subject. It is reported that law enforcement officials do not

provide sufficient protection to witnesses to encourage them to testify against traffickers, and traffickers are able to intimidate victims to withdraw or change their testimony. Furthermore, the Government is reportedly unable to assist trafficking victims effectively, primarily due to lack of funds. Assistance to victims is therefore mainly funded by international organisations.

Articles 305 – 320 of the Ukrainian penal Code deal with various aspects of drug trafficking. Article 305 is specific to the Security Service. This legislation would appear to be overly complex and consideration should be given to its consolidation and clarification.

Legislation prohibiting illegal migration and trafficking of human beings exists and is implemented. However, there was evidence to suggest that either there was no legislation for a cooling off period (to allow people being smuggled to give evidence) or if it existed it was not understood by the agencies that would implement it.

Fight and prevention of money laundering is governed by Article 209 & 209i of the Ukrainian penal code. A draft law is currently before parliament, which implements all 40 of the FATF recommendations. Once this draft law passes onto the statute books Ukraine will have effective legislation against money laundering on a par with EU MS. The legislation is understood and is being enforced.

6.2. Institutional Framework

6.2.1. Organisation and Structure

Security Service of Ukraine

The SBU has approx. 41.750 staff, including 34.610 of military personnel.

The SBU has the following divisions: counter-intelligence, protection of national statehood, counter-intelligence protection of the State economics, fight against corruption and organized crime, fight against terrorism and protection of parties to criminal proceedings and law enforcement personnel, pre-trial investigations, protection of State secret, operative and technical measures, operative documenting, special telecommunications systems and protection of information, and divisions for information and analysis, personnel, law, general service, finance and other divisions which provide for the SBU activities.

Ministry of Interior

The MoI currently consists of 311.000 staff. Its headquarter is based in Kiev with 27 territorial subdivisions. The Ministry structure consists of all the law enforcement departments you would expect to see in their equivalent in EU MS. They also have six institutes of Higher Education for training staff of the MoI. However, in contrast to EU MS the Ministry still has responsibility for internal troops, which are armed and organised on military lines.

State Border Guards Service

The structure of the SBGS has been discussed in detail in the Border management section of this report (Chapter 3), so will not be covered here.

State Committee for Financial Monitoring of Ukraine

The State Committee for Financial Monitoring is the Ukraine's EGMONT recognised FIU. It has a HQ in Kiev supported by Regional Offices. Currently the Unit has a staff of 338. 172 of these staff are based in the ten regional centres. Staff in the regions is paid the same as Kiev staff. The FIU has an effective training program for its staff. In 2006 they will complete their purpose-built training centre and begin offering training courses for colleagues in other agencies and ministries as well as banking and other financial services staff. They have a well-trained and highly motivated staff.

Current Law Enforcement Structure

As has been described previously in this report the current law enforcement structure in Ukraine involves four different Ministries and Agencies in the fight against organised crime. However, the National Security Council of Ukraine has proposed reforms of law enforcement within Ukraine. In summary these would create the following Services all under control of one Ministry:

- National Police Service (incorporating all uniformed police agencies including Tax Police);
- National Immigration Service (incorporating State Immigration Service, Passport Service & Counter Trafficking);
- National Investigation Service (incorporating criminal investigation assets of MoI, SBU and Prosecutors Office);
- Border Guards Service.

These proposals also involve the reform of the MoI troops. The current proposal by the National Security Council is that they are transformed into a National Guard similar to the US.

The overall thrust of these proposals would bring law enforcement in the Ukraine broadly in line with that of the EU MS. It would also make the fight against organised crime more co-ordinated and concerted.

However, caution should be exercised in two areas in implementing these reforms. With respect to the National Investigation Service, the SBU have a proven track record in fighting organised crime and have very experienced and professional officers. Care needs to be exercised to ensure these skills are not lost during the reforms. When creating the National Investigation Service no one-precursor agency should have the lead. All agencies should have equal input in its methods of operating and establishment. With regard to the Ministry of Interior troops there is no issue with creating an organisation based on the National Guard. However, operational control and budget should pass to the Ministry of Defence. This is in line with the European model. A modern democratic State should not have a separate paramilitary force to the Ministry of Defence. However, specific elements required acting as a rapid reaction force for terrorist incidents or to counter violent organised crime should remain under the Ministry of Interior's control.

Recent Reforms

All of the above Ministries and Agencies have been affected by a recent change in Ukrainian legislation. On the 1st January 2006 legislation came into effect, which would change the pension rights of individuals serving in law enforcement. The legislation had the effect of greatly reducing the future pension rights of officers aged 40 – 50 years. As a result the MoI alone had 13.000 officers aged 40-50 retire in January of this year in order for them to protect their pension. These were some of their most experienced officers and would have included future leaders. It is very damaging for any organisation to lose this much experience in one go. This legislation was no doubt necessary else the Verkhovna Rada would not have passed it. However, in the future consideration needs to be given to the implementation of legislation and its likely impact. A phased implementation should also be considered in future. Now consideration needs to be given to how the skills of these retired officers can be utilised and funded to train and mentor junior officers.

6.2.2. Infrastructure and Equipment

Organised Crime

There is currently no integrated national law enforcement IT system in the Ukraine, which maintains a record of previous convictions. The Ministry of Interior currently maintains this database and any other agency or Ministry, which requires access to this data must submit a written request. There is no central criminal intelligence database. However, the Decree of the President of Ukraine of 31.01.06, N.80/2006 “On the single computer information system for law enforcement relating to the fight against crime” (ordered by the Cabinet of Ministers from 03.02.2006, N. 4213/1/1-06) addresses this. An interdepartmental working group is currently being set up which is composed of the “apparatus” of the Council of National Security and Defence of Ukraine, the Security Service of Ukraine, the MoI, the SBGS, the State Customs Service, the State Tax Administration and the office of General Prosecutor. The aim of the working group is the creation of a single computer information system for law enforcement relating to the fight against crime.

The working group will create and evaluate a number of projects to create a single computer system and its elements. It will also decide on its financing.

All of the Ministries and agencies involved in the fight against organised crime have a very limited ability to conduct “under cover” operations. They can only do this in the most straight forward and safest of scenarios. They would again benefit from training and sharing “best practise” with other EU MS. The Metropolitan Police, London have a large undercover unit and are prepared to provide training. However to date the necessary funding has not been found.

Training

The SBU has a National Training Academy, which trains all of its officers. The training provided at the academy is on a modular basis, which allows the training to be tailored to the officers’ specialisation. The length of initial training varies between 1-2 years dependent on the specialisation of the officer. The training provided at the academy includes:

- Constitutional Law of Ukraine

- Protection of human rights in operational activity
- Awareness of legislation in neighbouring countries
- Foreign language training
- Operational & Technical Courses

The SBU regularly invites the General Prosecutor's office and Peoples Deputies to address the academy on legislative changes. In addition, lectures at the academy monitor new legislation and modify their lectures accordingly. There is an automatic process for updating all SBU officers via the SBU Intranet of legislative changes, which affect their operational activity.

The staff at the SBU National Academy also undertakes research in a variety of academic fields in support of their operational colleagues, specifically in the areas of psychology and technical research.

The MoI has 16 basic training establishments spread throughout Ukraine. In 2005, 9.400 recruits received basic training and 4.600 officers received refresher/retraining. In 1994 they created the first Police University at Kharkiv. They now have five such establishments, which are integrated into the national higher education system and can confer nationally recognised degrees. At the Lviv and Kiev Universities it is possible to take a Masters in scientific research. The MoI is currently introducing a Masters in Business Administration at its institutes.

Lecturers at all of the MoI training institutes have the opportunity to travel abroad to visit foreign law enforcement training institutes and to attend conferences on their area of specialisation. In addition lectures in law from other higher education institutes within Ukraine are regularly invited to give lectures on the recent changes in Ukrainian legislation.

The MoI has included training on EUCHR and corruption as elements on all its courses, ranging from basic training to Masters courses. They are also working with the Council of Europe on a practical project to monitor and improve the human rights of prisoners. This project was piloted in the Kharkiv region, is in its 2nd year and is due to be rolled out nationally.

Human Trafficking

An extensive network of shelters exists in Ukraine for supporting Ukrainian citizens who have been trafficked, freed and returned to the Ukraine. In the first nine months of 2005, 2.345 trafficking victims were returned to the Ukraine. The shelters are run by NGOs such as La Strada and Caritas and are mainly funded by International Organisations.

In total there are 30 NGOs operating in the Ukraine supporting victims of trafficking. The International Organization for Migration (IOM) has a large office in Ukraine and works very effectively with central and regional government, specifically in the areas of capacity building and raising awareness of trafficking.³⁶

In Odessa there was evidence of law enforcement agencies developing effective relationships with NGOs to assist in the fight against human trafficking.

³⁶ Please also see section on International and Bilateral Cooperation in this Chapter.

Money Laundering/ Financing of Terrorism

The State Committee for Financial Monitoring is developing an integrated IT system solely for its use (An integrated state IT system in the sphere of preventing and counteracting legalization (laundering) of the proceeds, criminally obtained, and financing terrorism). This system will mine the information held in relevant databases in other agencies and ministries and extract it into a central system at the FIU. Due to strict security requirements the flow of data will be one way. A pilot version of the system is currently in operation ahead of a full system launch in 2006. This new IT system was developed by the FIU on a budget of 20 mio. UAH. Consideration should be given to funding a more limited development of this system, so that the agencies involved in organised crime have the ability to share information and intelligence more easily. This would enhance the fight against organised crime.

6.2.3. Inter-agency Co-operation

There was evidence at a ministerial and regional level of functioning co-operation and co-ordination between the Security Service, State Border Guard Service and the Ministry of Interior who are responsible for fighting organised crime.

Evidence of a co-ordinated approach between Ministries and Agencies was seen in both Kiev and Odessa. The Ministry of Interior takes the lead on investigating and gathering intelligence on the trafficking of Ukrainian nationals. They also investigate and gather intelligence on Ukrainian OCGs trafficking and smuggling human beings. The Security Service takes the lead on investigating foreign OCGs who smuggle or traffic foreign nationals across the territory of Ukraine. The State Border Guard Service is responsible for securing the country's borders and detecting trafficking at border crossing points. The Ministry of Interior and Security Service are having an impact, but the effectiveness of the Border Guards is impeded by low-level corruption.

6.2.4. International Police Co-operation

Ukraine has a network of Crime Liaison Officers based in its Embassies around the world. Currently, there are eight Liaison Officers deployed in Belarus, Russia, Hungary, Slovakia, Poland, Israel, Germany and Turkey. They are currently negotiating on placing an officer in the USA.

Eleven EU MS have liaison officers posted in Kiev full time. These are the UK, Germany, Austria, France, Denmark, Poland, Slovakia, Czech Republic, Hungary, Portugal, Greece and Belgium. In addition to these there are also Liaison Officers from the USA, Canada, Japan and South Africa based in Kiev. All of these liaison officers work actively with the Ukrainian authorities with varying degrees of effectiveness.

The Ukraine has an active and well-staffed Interpol Bureau based at the Ministry of Interior headquarters. It is currently negotiating with EUROPOL on associate membership. The key to obtaining this is passing the data protection legislation, which is currently before the Verkhovna Rada in draft form.

6.2.5. International and Bilateral Co-operation

The European Commission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the International Organization for Migration (IOM) have been actively involved in providing technical assistance to support the Ukrainian government in the fight against trafficking in human beings.

In addition anti-trafficking activities are undertaken by a number of International Organisations such as the British Council, the International Labour Organization (ILO), the OSCE Project Coordinator in Ukraine, UNICEF and UNDP and also include bilateral projects.

Considering the many ongoing anti-trafficking activities in Ukraine, a need for co-ordinating projects becomes obvious. As described above, Ukraine has the relevant co-ordinating bodies in place and it is recommended that the International Community closely coordinate with these bodies when considering funding and/or implementing anti-trafficking activities in the country to ensure that the implementation of activities are defined under the National anti-trafficking Action Plan.

6.2.6. Identification of Needs

There is a need for Investigators to be trained in conducting criminal investigations overseas. Ukrainian investigators are very proficient. However, they have limited experience of conducting investigations overseas. They need to be aware of the means available to continue their enquiries and how best to do this. Evidence was seen on a number of occasions where investigations were stalled overseas because of a lack of knowledge.

There is also a requirement for training within the Ministry of Interior and Security Service in conducting under cover operations and some other specialised police techniques. This would assist them in their fight against organised crime.

There is a need to change the culture, increase the professionalism and broaden the outlook of senior and middle ranking officers. There are a large number of highly motivated officers trying to drive change through and assist in creating more professional law enforcement agencies. The vast majority of these officers were younger than their peers; many have served in other Ministries and/or had served abroad.

Ukraine has some effective policies and legislation, but this is being impaired by low level corruption at the point of contact with organised crime i.e. Border Guards on the border. This needs to be addressed in order to improve the effectiveness of the legislation and processes.

7. *Fight against and Prevention of Terrorism*

Introductory Remarks

It should be noted that the rapporteur for Prevention of Terrorism also had to assess the Fight and Prevention of Organised Crime. This meant that there was less time than would have been desirable to assess this area in more detail. However, this should in no way detract from the

very positive view the rapporteur had of the professional and coordinated approach Ukraine had to the prevention of terrorism.

7.1. Legal Framework and Policy

Article 258 "Act of Terrorism" of the Criminal Code establishes criminal liability for committing an act of terrorism, which is defined as the use of weapons, explosives, fire or any other actions that exposed human life or health to danger or caused significant pecuniary damage or any other grave circumstances, where such actions sought to violate public security, intimidate population, provoke an armed conflict, or international tension, or to exert influence on decisions made or actions taken or not taken by government agencies or local government authorities, officials and officers of such bodies, associations of citizens, legal entities, or to attract attention of the public to certain political, religious or any other convictions of the culprit (terrorist), and also a threat to commit any such acts for the same purposes.

At the same time, such concepts as "terrorism", "act of terror", "terrorist activity", "terrorist organization", etc., are defined in Art 1 of the Law "On Fight against Terrorism". The subjects that are directly involved in the fight against terrorism are also listed in the provisions of the Law (Art. 4).

Article 258 of the Ukrainian Penal Code clearly defines the Security Service of Ukraine as the lead agency in the fight against terrorism. In total 17 Ministries and Departments have a responsibility for Terrorism defined in various pieces of legislation. These range from the Security Service and Ministry of Interior to the Ministry of Emergencies. In most cases the responsibility is for providing emergency support following a terrorist incident. The aforementioned, Article 258, makes it clear that the Security Service have the lead on investigating and responding to suspected terrorist activity and that any other agencies has a legal obligation to pass any information they may discover to the Security Service.

Unlike the majority of EU MS there is no domestic terrorist threat in the Ukraine. Anti-terrorist activity in Ukraine focuses on supporting the international fight against terrorism.

7.1.1. Approximation of Ukrainian Legislation to EU Norms and Standards

Ukraine's legislation with respect to terrorism conforms to EU norms. They have adopted and ratified the majority of international instruments³⁷ with the following notable exceptions:

- Protocol amending the European Convention on the Suppression of Terrorism (15.05.2003);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (29.11.2005);
- Council of Europe Convention on the Prevention of Terrorism (16.05.2005).

Draft legislation is currently before the Verkhovna Rada to ratify these instruments. Consideration should be given to this legislation being adopted at the earliest opportunity. Otherwise Ukraine has all the legislation it requires in place to counteract terrorism.

³⁷ Please refer to Annex IV for a complete list of International Conventions Ukraine is a party to.

7.2. Institutional Framework

7.2.1. Organisation and Structure

The SBU has primary responsibility for preventing terrorism. They have a Kiev headquarter and offices in each of the regions. The SBU has a staff of 40.000, the majority being involved in countering organised crime. Under the Ukrainian Penal Code they have the lead responsibility for fighting organised crime. The SBU are responsible for staffing and running the Anti-Terrorist Centre, which is based at their headquarters in Kiev.

The Anti-Terrorist Centre is responsible for coordinating all activity in Ukraine against terrorism and activity in response to a terrorist incident. When operational anti-terrorist activity is underway the Anti-Terrorist Centre holds a daily coordination meeting with all the relevant Ministries and Agencies to ensure all the relevant officers are aware of the ongoing activity.

To illustrate how the Anti-Terrorist Centre operated, the SBU used the recent controversy surrounding cartoons of Mohammed published in a Danish newspaper. Prior to protests, which were due to take place outside the Danish Embassy in Kiev, the Anti-Terrorist Centre reviewed the current situation and preliminary intelligence, coordinated planning of the necessary security arrangements and drafted several different response plans for unforeseen scenarios at the Embassy protest. The Anti-Terrorist Centre then met on a daily basis in the days leading up to the protests to coordinate all activity.

The SBU have their ALPHA forces, which consist of specially selected and trained individuals who would respond to terrorist incidents. These would be complemented by Rapid Reaction Units from the MoI troops.

The organisations, structures and processes for fighting terrorism in Ukraine are in place and appear to be effective.

The State Committee for Financial Monitoring of Ukraine has responsibility for monitoring and detecting the movement of funds which maybe for the financing of terrorism. This organisation and its effectiveness have been reviewed more fully in Chapter 6 on the Fight and Prevention of Organised Crime, so the information will not be repeated here. The SCFM has a very good working relationship with the SBU and has passed a number of intelligence packages to them for investigation once suspicious activity has been detected and assessed. Currently the SCFM is waiting for the Verkhovna Rada to enact legislation, which is before it on the adoption of the eight special FATF recommendations that specifically target the financing of terrorism. This should be addressed as a matter of urgency.

7.2.2. Infrastructure and Equipment

The infrastructure, technology and equipment necessary to fight terrorism in Ukraine are in place. However, the lack of a central criminal intelligence database is an impediment to the fight against terrorism. This will be addressed by the Decree of President of Ukraine of 31.01.06, N.80/2006 “On the single computer information system for law enforcement relating to the fight against crime” (ordered by the Cabinet of Ministers from 03.02.2006 N. 4213/1/1-06). An interdepartmental working group is currently being set up which is composed of the “apparatus” of the Council of National Security and Defence of Ukraine, the

Security Service of Ukraine, the MoI, the SBGS, the State Customs Service, the State Tax Administration and the office of the General Prosecutor. The aim of the working group is the creation of a single computer information system for law enforcement relating to the fight against crime.

The SBU National Training Academy provides training on countering terrorism, international terrorism and negotiating skills. The latter training is also made available to the MoI. The Academy also ensures that the counter terrorist training it gives SBU and MoI officers conforms to the Ukrainian State Penal Code.

7.2.3. Inter-agency Co-operation

There was evidence that the key agencies and Ministries involved in the fight and prevention of terrorism cooperate on a national and regional level. The Anti-Terrorist Centre is a very good example of this.

7.2.4. International and Bilateral Co-operation

The SBU currently have bi-lateral agreements with 60 countries regarding the exchange of terrorist intelligence. Although they have no domestic terrorist threat they have conducted some form of operational activity against 300 targets at the behest of international partners. The SBU regularly exchange information with EU MS, participate in training and have visited their counterparts in other countries. Due to the necessary security surrounding this area of work it can be difficult to verify such claims. However, the rapporteur was able to verify that the SBU did have an exceedingly good relationship with the relevant agencies in at least one EU MS and regular exchanged intelligence with them. However, it was evident, with one notable exception when officers visited the UAE, that opportunities to train with international counterparts are not available.

8. Rule of Law, Judiciary and Good Governance

8.1. Legal Framework and Policy

8.1.1. National Legislation, Strategies and Implementation Plans

The legislative framework is something of a moving target: it is very hard to ascertain what the current legislative position, or indeed the current constitutional position, is. Moreover, the December 2004 constitutional amendments themselves were, not passed in a manner consistent with the Constitution itself, in that the Constitutional Court was not consulted. There are many amendments and legislative drafts at various stages of development. Further, individual laws are not always consistent one with another.

Draft legislation can be submitted to the Parliament by the President, the Cabinet of Ministers or MPs. Individual ministries have no power of legislative initiative. Therefore, all bills prepared by the ministries or other executive bodies have to go through the Cabinet. The President can define a draft law to be an urgent one, which means that the Parliament has to consider it at the first opportunity.

In practice, only 10-15% of government legislative drafts are passed, each individual Member of Parliament acting, in the words of one commentator, “like a little Napoleon”. Another said that members of parliament voted “unpredictably”, as dictated by “business interests”. Even once enacted implementation of legislation does not necessarily follow, sometimes through lack of money.

A further problem are the frequent changes in legislation, alternately characterised as “the complete instability of Ukrainian law”, and as “a political perpetuum mobile”: for example, the Commercial Code had changed three times within little over one year. Practitioners expressed the concern that the government had no strategy for developing the legal system: codes were introduced, and amended, seemingly at random; moreover they were not always consistent, and that had led to stasis. There was a High Administrative Court – but no regional courts.

A National Commission for the Strengthening of Democracy and the Rule of Law was established in August 2005, under the Chairmanship of Serhiy Holovaty, now the Minister of Justice. It is a permanent advisory body to the President and has 33 members, including retired members of the Constitutional Court, but no serving judges: “It is a political body”. Its remit is to assess the compliance of Ukrainian legislation with “European standards”, notably the Strasbourg *acquis*. It approved a “Concept for the Improvement of the Judicial System and for Ensuring Fair Trial in line with European Standards” on 22nd March: that is to be promulgated by the President. A Presidential decree was issued on an Action Plan for this Concept on 20th March.

The President has announced that a strategy will be published in March 2006; however, the Mission found no confidence that it would be realised. Moreover, the strategy was being developed by “theorists and academics”, and would take no account of practical issues. In fact the working group did include two former judges, but no lay representation, whether from business or other sectors.

The OSCE’s Project Co-ordinator in Ukraine checks preliminary drafts of legislation and submits its views to the parliamentary committee on European Integration³⁸.

An Institute of Legislation has been created within the Verkhovna Rada to improve the quality of legislation, much of which is presently drafted by non-legally qualified assistants to members of parliament.

The website of the “Yaroslav the Wise Institute of Legal Information” contains a database of summaries of Ukrainian legislation in English translation³⁹.

8.1.2. Approximation of Ukrainian Legislation to EU Norms and Standards

A commentary on the 1992 “Law on the Status of Judges” was prepared by the Council of Europe in 2003⁴⁰. New legislation remains outstanding.

The Mission was told by one judge that he and his colleagues were “capable” of independence, but in practice judges were not independent, at least during their preliminary

³⁸ <http://www.osce.org/ukraine/13180.html>

³⁹ <http://www.welcometo.kiev.ua/pls/ili/ili.home>

⁴⁰ PCRED/DGI/Exp (2003) 29

term of office, as a consequence of the involvement of politicians. A losing party would complain to his or her member of parliament, with the possible consequence that that judge's appointment might not be confirmed. Approval of lifetime tenure by the Verkhovna Rada is by a simple majority and, as candidates are largely unknown to the members anyone voicing an (adverse) opinion is likely to rule the day. Once their appointment for life was confirmed, however, the Mission was told that judges were independent.

One commentator indeed told the rapporteur that a lifetime appointment made some judges too independent, independent of the law. They felt themselves invulnerable. Moreover, the lack of public access to judgments encouraged a feeling that only the parties would ever be aware of the nature of a decision, perhaps giving judges a greater sense of freedom than was appropriate.

Not all opinions, however, even from the same individuals, pointed in the same direction. Whilst judges assured the Mission of their independence, they equally told of instances where the Ministry of the Interior or the Prokuratura, "on the instructions of someone higher", did exert pressure on a judge. Indeed one judge told the rapporteur, "I used to be a prosecutor – and was very good at getting a judge to do what I wanted". Or, where a judge was told that, "If you reach such-and-such a decision, it will not be implemented".

A particularly disturbing report was of "many and long" telephone calls being recorded, apparently revealed by the telephone company's log, between the SBU⁴¹ and a district court which has jurisdiction over many cases against State officials and others. If this is evidence at all, it is entirely circumstantial, but does raise worrying questions.

There was also an acknowledgment that the "Soviet perception" of the judiciary still lingered. The recent remarks by the Minister of Justice himself⁴² in respect of the case of Svyatoslav Piskun, a Prosecutor-General whose dismissal was challenged in the courts⁴³, were cited as an example of a culture prevalent within the executive. An extract from a petition by the Council of Judges of Ukraine to the President⁴⁴, merits quotation:

"The Minister of Justice of Ukraine, Mr. S.P. Holovaty, who represented the interests of the President of Ukraine in a particular case and participated in the legal proceedings; considered the decision of the court to be illegal and instead of making use of appeal procedures, provided by the applicable legislation, resorted in the media to unprecedented, incorrect and insulting statements and accusations concerning the judges, (which had the case under their consideration), the whole judicial corps of the State and the administration of the Supreme Court of Ukraine.

"The Minister of Justice publicly accused the judges, who had made the decision, of committing a crime, urged the institution of criminal proceedings against them. He made unfounded accusations of complete corruption against the whole judicial corps, expressed doubts in a rude form about the capability of the Court of Appeal and Cassation to consider the case in a proper fashion, and directed threats against them, allowed himself utterances exceeding the bounds of legal vocabulary, and made statements undermining the authority of the judicial branch of power. His unfounded conclusions that, "the mafia of judges, with the supreme judicial administration on top, have taken State power into their own hands", "rule over the country", and that there is no State, only the "arbitrary

⁴¹ <http://www.sbu.gov.ua/eng/>

⁴² He referred to a 'court mafia': <http://www.khpg.org/index.php?id=1133959735>

⁴³ <http://www.ukranews.com/cgi-bin/openarticle.pl?lang=eng&id=679058&lenta=po>

⁴⁴ Dated 2nd December 2005

rule of judges” in Ukraine, were repeatedly heard on the air. Moreover, the Minister convinced Ukrainian citizens of the complete corruption of the judicial system, uselessness of their hopes for judicial protection, irresponsibility of judges, called on them to mistrust judges, and questioned if there were sufficient reasons for the existence of the institutions of legal protection for judges.

“The judges of Ukraine perceived with indignation those repeated statements on the part of the Minister of Justice of Ukraine.

“The Council of Judges of Ukraine regards that the mentioned statements, insults and accusations of the Minister of Justice of Ukraine are not only an expression of disrespect towards the judges and an effort to discredit them, but are also intended to exert non-procedural pressure upon those judges, who in the future will consider the case by order of appeal, or, possibly also by that of cassation. By his actions, as the Council of Judges of Ukraine considers, he causes damage not only to the authority of the judicial branch of power, but also to the authority of the President of Ukraine, whose interests he represented at the hearing of the stated case in the court, to the authority of the Ministry of Justice, which he is the head of, as well as to the international image of Ukraine.

...

“The Council of Judges of Ukraine considers the emergent situation to be a threat to the basic principles of the democratic order, and the safeguarding of rights and freedoms of a person and a citizen, through a possible decline in the level of their protection by an independent and impartial court of law.”⁴⁵

Another recent example cited to the Mission of pressure from the executive was of remarks by the (then) Prime Minister Yulia Timoshenko in connection with the re-privatisation of the Nikopol Ferroalloy plant: Mrs Timoshenko had publicly predicted that the court would find in favour of the government. The rapporteur was told, however, by one senior judge that, despite that pressure, that case had been determined “solely by reference to legal principles, and not to political considerations”.

However, another senior judge said, “Our politicians believe that democracy implies close control over the implementation of the law”.

One person to whom the rapporteur spoke said that **corruption** within the judiciary had its origins in the transition from the Soviet period. Then there had been no (financial) corruption. The salaries had been low, but that was a mechanism of control: those who toed the line, who were loyal to the executive, were rewarded in other ways; those who weren’t, were cut loose. This led to cynicism about the organisation and power of society. The low salaries persisted: cynicism found another outlet. That individual’s view was that the problems within the judiciary were a reflection of civil society within Ukraine at large.

The Mission was told by one judge that, ‘There is corruption throughout our society: it is not restricted to the judiciary, indeed they’re probably less corrupt than most’.

Ukraine ratified the Council of Europe Civil Law Convention on Corruption in September 2005 and it entered into force on 1st January.

The Ministry of Justice has drawn up an anti-corruption strategy, ‘On the Road to Integrity’, which has been submitted to the Council of Europe for an expert opinion. A draft law against

⁴⁵ The rapporteur is grateful to Anna Gross of ICMPD for preparing this translation

corruption ‘should be enacted by March 2006’. The anti-corruption strategy includes the disciplinary procedure for judges.

Allegations of corruption are considered by the High Qualification Commission and the High Council of Justice. The recent experience in Odessa, however, has been that judges have been guilty of other crimes (assault, attempted rape) rather than corruption.

Nonetheless, it was suggested that discipline within the judiciary was enforced arbitrarily, and that at a political level was being used to intimidate those judges who stepped out of line: as on other occasions, the Piskun case was cited.

It was also suggested that court presidents institute disciplinary proceedings against judges they dislike: for example, they allocate them too much work; they consequently fail to comply with the time limits, which results in disciplinary proceedings.

There is no code of judicial ethics.

8.2. Institutional Framework

8.2.1. Organisation and Structure

At Annex III there is a diagram, prepared by the Centre for Political and Legal Reform, showing the hierarchy of the courts in Ukraine.

As a result of political wrangling there is effectively no ***Constitutional Court*** at present, only five judges remaining in office. Twelve judges are required for a quorum. The terms of office of the other ten expired in October: replacements had to be sworn in within a month, failing which the appointments lapsed⁴⁶.

In principle, the Court, which was created in 1996, has 18 judges, appointed by the President, the Verkhovna Rada and the Congress of Judges. Its decisions are collegial. It sits only in plenum. However, it was suggested that it would be more efficient were it to sit in two chambers of nine members, with the plenum being reserved for only the most important cases. Moreover, it was argued that the Court’s decisions should be final and not open to further dispute.

The Constitutional Court can be petitioned by the President, the Ombudsman, the Supreme Court, State officials or 45-members of parliament; and in limited circumstances by individuals. These were described by the President of the Court as “complicated requirements”: the conditions should be more straightforward, and the Court “should be closer to the citizen”.

A decision by the Constitutional Court that a legislative provision is incompatible with the constitution will, by § 152 of the constitution, have immediate effect. It will also be ‘prejudicial’, and could ground an action for damages. For that reason, “the Court must take into account the budgetary implications of its decisions”. Quite how that consideration is reflected is not clear.

⁴⁶ The Council of Europe Parliamentary Assembly’s Resolution 1466 (2005) called on the Ukrainian authorities ensure that the composition of the Constitutional Court of Ukraine is renewed without undue delay after the expiration of the term of office of its justices

The Court determines up to 23 references a year.

Some of the Constitutional Court's judgments were said to be 'questionable'.

Apparently, there is a tug-of-war between the Constitutional Court and the Supreme Court, underpinned by their separate treatment in §§ 11 and 8 respectively of the constitution. The Supreme Court argues that it should be "supreme": an argument, which would seem to pay little regard to their discrete functions.

The rapporteur's request to visit the Court's hearing room was declined as the Court was not in session.

A **Court of Cassation** was established in 2002 by the Judicial System Act, but was found to be unconstitutional by the Constitutional Court on 16th December 2003. By default, that function is now performed by the Supreme Court or by the High specialist courts. The Supreme Court, consequently, has a backlog of 60,000 cassation appeals.

The **Supreme Court** has 95 judges forming four Chambers (Administrative, Civil, Commercial and Criminal) and one Panel (for military law). The Supreme Court heard, for example, 540 commercial cases in 2005, by comparison with 41,000 cases heard in the regional appellate courts and 190,000 first instance trials. In the same period, the High Commercial Court heard 16,000 cases.

Whilst appeal from a first instance court to an appeal court is of right, appeal to the Supreme Court requires permission, granted by the Supreme Court where –

1. The lower court's decision is inconsistent with the constitution or with international agreements; and
2. Raises a point of law of general importance

In an attempt to ensure that only appropriate appeals reach the Supreme Court, the National Commission has recommended the creation of new High Civil and Criminal Courts, along with the abolition of the Appeal Court of Ukraine – created by the 2002 Judicial System Law but which, in the words of the Deputy Minister, 'never really existed anyway'.

Legislation has been enacted establishing a system of **Administrative Courts**, but as yet only the Supreme Administrative Court is in existence: 40 out of a proposed 65 judges have been appointed. The lower tier courts will follow. It was suggested by one commentator that, within the Administrative Law jurisdiction, "the understanding of the rule of law is still at a Soviet level".

The **Commercial Court** succeeded the Soviet courts of *arbitrage*. In some cases its jurisdiction overlaps that of the general courts, which has led to different conclusions on the same issue, each of which is then used against the other to delay or prevent enforcement. Moreover, the Mission was told that, "the more divided the system, the greater the opportunity for corruption – the judge will be sole master of the case before him". Indeed the Commercial Court was the one most often cited as being corrupt: one lawyer described it to me as, "an everyday practice" – the fault as much of the judges for accepting the bribe, as of the parties' preparedness to offer it.

The Concept for the Improvement of the Judicial System argues that:

“Commercial courts adjudicate commercial cases in accordance with long-outdated rules inconsistent with the modern tendencies of civil proceedings development.”

“**Unification of the trial proceedings** is important for improvement of legal proceedings if the task of a certain type of proceedings does not require special rules. Rules of the civil and commercial proceedings should be gradually brought closer and afterwards combined in one code since they have no substantial differences resulting from specific nature of legal proceedings.”

“**Specialised nature** should be enshrined in the entire system of general jurisdiction courts, rather than a separate part thereof. Division of general jurisdiction into separate types of specialised jurisdictions is aimed at raising the speed and quality of adjudication. Court specialisation should be carried out under the branch principle and type of proceedings determined thereby. This allows distinguishing the following types of jurisdiction within the general jurisdiction – civil, criminal and administrative jurisdiction, and also commercial jurisdiction as a special type of civil proceedings. Thus, it would be expedient, at the initial stage of reform, to determine *general courts* as *specialised* in considering such cases as civil, criminal, and also administrative ones, which are within the jurisdiction of local general courts. Commercial and administrative courts as the courts of separate judicial jurisdictions operate along with general courts. Court specialisation should later – at the next reform stage – be introduced with division of courts into civil, criminal and administrative courts; judge specialisation should be introduced within those courts (panels of judges, judicial divisions trying separate categories of cases), including according to a *rationa personae* principle (for instance, in juvenile cases).”

“In future, criminal courts should be separately formed on the basis of general courts, and civil courts - on the basis of general and commercial courts. Thus, the system of general jurisdiction courts will be composed of: civil, criminal and administrative courts. **Civil courts** will resolve all the private law disputes under the rules of civil proceedings; **administrative courts** will, under the rules of administrative proceedings, resolve public law disputes, save for the cases of constitutional and criminal jurisdiction; and **criminal courts** will consider cases of criminal offences in accordance with rules of criminal procedure. Local district-level courts, which are the most accessible for the people, will continue to try simple civil, administrative and criminal cases.”

Individual **court presidents** have considerable authority (each court is a legal entity in its own right.), and to them is attributed much of the blame for the present malaise. He or she –

- Distributes work to the judges of the court, not necessarily on a random basis;
- Can refuse promotion;
- Can award bonuses;
- Can refuse leave;
- Discriminate in matters of judicial housing.

The president also employs the court staff⁴⁷. However, in the opinion of the State Court Administration of Ukraine (SCA), the Chief Clerk in each court should be recruited by the regional office of the SCA, and he or she should in turn recruit the more junior staff. “The president of the court should be a judge not a manager.” The National Commission has recommended that court presidents should be stripped of their powers over promotion and the distribution of cases.

The *State Court Administration of Ukraine* was established in 2003, under the Law on the Judiciary, and came into operation in 2004. It has its headquarters in Kiev with a staff of 120, and 27 regional offices, each with 10 to 50 staff. The operation of the local offices is subject to central control.

The SCA, which provides the infrastructure for the courts, including staff⁴⁸, and is responsible for judicial salaries, is accountable to the President and to the Cabinet of Ministers. However, that with the support of the Ministry, it is proposed to subordinate the SCA solely to the judiciary: a recommendation to that effect was submitted to the President in March 2005.

The present division of accountability is reflected in the procedure for the appointment of the Head of the SCA and his/her deputies. They are appointed by Presidential decree, on the basis of a list put forward by the Prime Minister in consultation with the Council of Judges. The Head and his deputies are “members of the executive with special status”: a draft law would (further) “raise” the status of the Head of the SCA.

Funding comes from the executive, although again a draft law proposes financial independence. The SCA submits a bid to the Ministry of Finance, and there follows ‘a lot of lobbying to hold the baseline’. The budget for 2006 is 1.277, - UAH bn (approximately €207mio.), an increase from 1bn UAH for 2005, reflecting salary increases and a court building programme. The sum allocated for 2005, however, represented only 60% of the amount bid for.

One judge described the court administration in Ukraine as, “unchanged since 1963”; and, “still very Soviet”.

The quality of *court staff* is low: salaries are low and educational requirements are low. However, the SCA was not aware of corruption.

According to the SCA only 6% of *court buildings* are adequate, in that they provide separate accommodation for each judge and “somewhere for the defendant”. The court the Mission visited in Odessa, the Malinovsky District Court, seemed to be one of those: the judge’s room that the Mission saw was spacious and well furnished and had an adjoining meeting room. The courtroom was small but adequate, with accommodation for the public. However the defendants were held in a small cage, albeit large enough for them to sit and have access to their papers⁴⁹. The Malinovsky District Court has recently been refurbished. The Mission also visited the Pecherski District Court in Kiev. The courtrooms and offices were adequate if

⁴⁷ This is inconsistent, however, with the assertion made to me elsewhere that the SCA is responsible for recruitment

⁴⁸ This is inconsistent, however, with the assertion made to me elsewhere that the *court presidents* are responsible for recruitment

⁴⁹ Two guards stood outside the cage. The offence charged was not one of violence but of fraud by former directors of a company.

unprepossessing; the cells, whose guests had included Mrs Timoshenko, were rudimentary. However, a new court building is under construction on an adjacent site.

Two computers were installed in every court in 2003 and each court now has its own website and access to e-mail and to a legal database (primarily of legislation). The computers are not networked. Computerised case management is to be introduced in 2006/7. A practical reason for not employing a computerised register is the incidence of power failures. Judges often have to rely on their personal computers.

From September 2006, all courts will have the facility to tape-record all proceedings, although criminal proceedings are only recorded if requested by the defendant⁵⁰.

The rapporteur visited one of the SCA's local offices, that in Odessa. The Odessa office has existed since 2002, seemingly since before the establishment of the SCA itself. It provides logistical support to the 33 courts of general jurisdiction within its area, although not to the appellate courts. There are 1,196 staff in those courts and 23 in the local headquarters. The annual budget, including the salaries of the 242 judges, amounts to 18 mio. UAH which, the rapporteur was told, was "not adequate" as it made no allowance for the maintenance of premises or for judges' housing costs (as are allowable by law). An estimated 40 mio. UAH was needed for capital expenditure, the City Court alone requiring 5 mio. UAH to restore. All bills are paid centrally by the regional headquarters.

Other functions falling to the SCA include –

- Ensuring judges' personal safety, and the security of courtrooms;
- "Social security" issues in respect of the judiciary, for example, housing;
- The deployment of judges and staff;
- The SCA maintains a central register of judgments⁵¹ enabling the monitoring of the number of cases handled by individual judges. A qualitative assessment is carried out by the Qualification Commission and the High Council, although it was not clear on what occasions or against what criteria.

The Council of Europe Parliamentary Assembly's Resolution 1466 (2005)⁵² called on the Ukrainian authorities, "to subordinate the State Court Administration to the judiciary [and] to allocate all necessary resources to it".

There is no single body regulating the *legal profession*: one view was that the disparate bodies which do claim to represent 'the Bar' or 'Advocates' have little legitimacy. The quality of the service offered by the profession is thus, uncertain. Disciplinary issues are handled by a commission including practising lawyers and members of the executive.

In practice, advocates have a monopoly in the criminal courts, although there appears to be no basis for it in legislation. In the civil courts, anyone, whether or not a lawyer, has a right of audience.

Art 59 of the Constitution, as interpreted by the Constitutional Court in 2000 in the *Soldatov* case, permits the practice of law by so-called "lawyer entrepreneurs". Lawyer entrepreneurs

⁵⁰ If the defendant does not make such a request, a shorthand note will be taken. I am not clear as to the logic of this arrangement.

⁵¹ By inference, a purely quantitative record

⁵² <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

can do anything a member of the Bar Association can do, and are subject to none of the duties owed by a conventional practitioner, including the obligation to provide free advice or indeed abide by a code of ethics. They handle mostly commercial disputes.

The Ministry of Justice's view is that the 1992 law on the Bar is out-dated. At present three rival draft laws are competing for enactment.

The Council of Europe Parliamentary Assembly's Resolution 1466 (2005)⁵³ called on the Ukrainian authorities to, "establish a professional Bar association, by adopting a new law on the Bar without further delay, as required by Assembly Opinion No. 190 (paragraph 11.ix) and in compliance with the principles of the Council of Europe and the case law of the European Court of Human Rights".

The rapporteur spoke to representatives of both the Ukrainian Bar (*pravniki*) Association and the Union of Advocates. Although they disagreed vehemently as to the means by which an independent profession might be created, the rapporteur was impressed that that was the fervent ambition of both groups. One approach, that of the Bar Association, is that membership of the *profession* should entitle the individual to join a professional body; the other, that of the Union, was that membership of the *professional body* should be the route to membership of the profession. These approaches are reflected in two of the draft Laws now before parliament, the 'Zvarych' and the 'Markush–Demyokhin–Karmasin' drafts respectively. Supporters of the former cited experience in Russia and Belarus, where, it was suggested, a monopolistic professional body had been used to punish lawyers for working with political opponents, the example given being the treatment of Mikhail Khordakovsky's defence lawyers. The Ukrainian Bar Association says that its proposed structure is modelled on the International Bar Association. The Union of Advocates owes its allegiance to the CCBE, the Council of Bars and Law Societies of Europe/Conseil des Barreaux européens.

A fundamental problem would seem to be that, whilst there are some excellent and well-established law faculties, the standard of many of the 187 law schools is indifferent: extreme examples were cited of law schools attached to an academy of culture and even to a school for divers.

Whilst there is a central Qualification Commission, exams are set by the regional offices without any co-ordination. The National Commission on Democracy has recommended that this task should be passed over to a unified bar association.

The judicial perception of the profession is that the standard is "variable" and the Mission certainly met several practitioners who, in terms of intellectual ability and general presentation, would not have been out of place in any Western European law firm. But the Mission was told that many lawyers have, 'no understanding of any responsibility to the court, only to their client'. Indeed, some felt that the responsibility owed was solely by the court to them.

The rôle and functions of the ***Prokuratura*** are set out in § 121 of the constitution and in the Law on the Prokuratura. Thus, from 1st January 2006 the Prokuratura is empowered:

- To bring prosecutions on behalf of the State.

⁵³ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

- To represent the interests of a citizen or the State in court in those cases stipulated by the law.
- To supervise various agencies, ensuring compliance with the law.
- To supervise the enforcement of decisions by the criminal courts.
- To ensure that the rights and freedoms of the individual are honoured, and that executive agencies, local self-governing bodies and their officials comply with the relevant laws (*Art. 121 is supplemented with Par. 5 according to Law No. 2222-IV of 08.12.2004*).

Further, by the transitional provisions of the constitution, the Prokuratura also continues, for the present, to conduct pre-trial investigations [досудове слідство] and ‘to supervise law enforcement’.

The fifth function (above), added by the Law of December 2004, and the responsibility for conducting pre-trial investigations and supervising law enforcement were seriously criticised by the Venice Commission, which in its conclusion No.339/2005 of 13th June 2005 stated that such an extension of the power of the Prokuratura was contrary to European standards, as well as to the commitments given by Ukraine on its accession to the Council of Europe.

Reform of the Prokuratura had begun in 1991 but received new impetus with Ukraine’s accession to the Council of Europe in 1995. However, according to the Office of the Prosecutor General, reform had not been as radical as the Council of Europe wished. Nonetheless, the Prokuratura has lost its power to sanction arrest and search of premises.

A Joint Action Plan was drawn up with the Council of Europe in 2003⁵⁴ and, following some interruption in implementation, was renewed in February 2005. And in October 2005, the Procurator General submitted to the Council of Europe a draft “Code of Prosecutors’ Ethics and Professional Conduct” and draft Disciplinary Regulations, designed to ensure the independence of the service. The recommendations on these by the Council of Europe’s experts have now been delivered: Opinion by Jesper Hjortenberg and W Roy Junkin of 5th January 2006⁵⁵.

Discussions are underway as to how the Code should be made compulsory for all prosecutors: that might be effected either by –

- its approval by an order of the Prosecutor General, after which the document would have the effect of a departmental normative act, or
- its adoption together with the new revision of the Law of Ukraine "On the General Prosecutor's Office" as its annex.

Proposals have also been submitted to the Council of Europe⁵⁶ for wider reforms.

The President has committed himself to compliance with the Council of Europe’s recommendations⁵⁷. Approval by him of a new version of the Law on the Prosecutor’s Office

⁵⁴ Resolution 406/2003

⁵⁵ Council of Europe ref PCRED/DGI/EXP (2005) 60/61

⁵⁶ Specifically, Guy de Vel, Director of Legal Affairs

⁵⁷ 39/2006 of 20th January 2006 an action plan on honouring the responsibilities and commitments of Ukraine resulting from its membership in the Council of Europe. One of the paragraphs of the Plan envisages preparing a new version of the Law of Ukraine *On the Procuratorate*

was due in December 2005, however, the Venice Commission⁵⁸ had advised that the current draft should not be approved, because it did not reflect European standards. Further work on a new draft is being done in the context of the Action Plan and it will contain two elements –

- Reform of the conduct of pre-trial investigation [досудове слідство]
- Reform of a general power of supervision on behalf of those unable to afford to take action themselves. This power would seem to be a relic of the Soviet era when the Prokuratura had a rôle as guardian of the public interest: it involves ensuring compliance with the law by the executive authorities.

Reform of the pre-trial investigatory procedure would take the form of –

- The Prosecutor's responsibilities for the conduct of pre-trial reviews being redistributed between the other investigatory bodies and the SBU. The present responsibility of the Prosecutor is provided for by law and comprises 137 different offences.
- The creation of a National Investigatory Bureau, responsible for crimes committed by parliamentarians and senior officials
- The Ministry of the Interior's (the militia's) responsibilities and those of the Tax Police would be expanded
- The Prosecutor General, however, would retain the power to investigate offences committed by the military and by judges

The Prosecutor General is appointed by the President, with the approval of parliament. From 1st January 2006, he may similarly only be dismissed by the President with the approval of Parliament⁵⁹, or by the Parliament alone. However, the precise mechanism of his appointment and the necessary grounds for his dismissal remain unclear. He was described to the Mission as ‘less protected than any other State official’, despite the recent strengthening of the law. It was argued that the Parliament might vote for his (or her) dismissal on entirely subjective grounds unconnected with the legal criteria for dismissal. Prosecutors General are appointed for a 5-year term, but in the past 14-years there have been nine changes in the office.

There exist at least two possible models for the appointment of a Prosecutor General: he might be nominated to the President by the Prosecutors' Association (the Brazilian model) or by the High Council of Justice (the Hungarian model). In either event, “he should be a natural leader”.

Under the Prosecutor General there are 27 regional prosecutors and four military prosecutors, and a total of 10,500 individual prosecutors, including those who presently undertake pre-trial investigations. The Prosecutor General can step in to halt a pre-trial investigation being taken forward locally, or may take it forward himself.

Complaints against individual prosecutors are, for the future, to be determined by an independent body, albeit of prosecutors.

Courts have the power to force a prosecutor to close a case on an application brought by the defendant.

⁵⁸ Prepared by the Venice Commission in June 2005

⁵⁹ Formerly he might be dismissed by the President alone and for reasons which might not be specified in the Presidential decree (Commentary by Centre for Political and Legal Reforms, dated 22nd November 2005, on the dismissal of Mr S Piskun)

The Mission also visited the office of the Odessa City Prosecutor, which comprises 23 prosecutors (including 7 investigators) and 3 deputies. Responsibility for investigating crimes is presently divided between the City Prosecutor, the Ministry of the Interior, the SBU, and the Tax Police.

In the year 2005, the City Prosecutor's office concluded the investigation of 135 cases, of which 70 were concluded (in terms of its own procedures). Those cases included 20 murders, 60 crimes by officials and 20 cases of corruption. Drug importation is handled by the SBU, and drug dealing by the Drug Enforcement Agency.

The City Prosecutor said his office had a 100% conviction rate. Pressed on this, he said that there was 'an elaborate procedure, against prescribed criteria, for filtering out those cases which should not be pursued'. By comparison, the District Prosecutor, who handles less high profile cases, has a conviction rate of (only) 95%. An acquittal is seen as a failure by the Prokuratura.

A superficial impression might be that the Prokuratura enjoys a higher status than the judiciary. However, the rapporteur was struck by the enthusiasm of the senior officials the Mission met for implementing reform of the system and of the functions of the Prokuratura on the lines set out in the interdepartmental working group's paper '*Conceptual Foundations for Reforming the Law Enforcement Agencies of Ukraine*'.

The Council of Europe Parliamentary Assembly's Resolution 1466 (2005)⁶⁰, 'whilst regretting the step back in the reform of the *Prokuratura* marked by the December 2004 constitutional amendments, called on the Ukrainian authorities to modify the role and functions of this institution as required by Assembly Opinion No. 190 (paragraph 11.vi) and paragraph 9 of the transitory provisions of the 1996 Constitution of Ukraine and in line with Assembly Recommendation 1604 (2003) on the role of the public prosecutor's office in a democratic society.'

8.2.2. Procedures

In 2005, there were 89 findings by the European Court of Human Rights of violations of Art 6 ECHR (for want of a fair trial) against Ukraine, the second highest for any country and twice the number for the Russian Federation. That figure represents 23% of the total.

New Civil and Commercial Codes were put into place in January 2004. A new Administrative Justice Code⁶¹ and a new Civil Procedure Code came into force in September 2005. A Criminal Procedure Code⁶² has had its First Reading in Parliament and should be in place this year. The text, however, still reflected the old Soviet approaches and did not comply with rule of law principles. According to the Action Plan adopted by the presidential decree of 20th January 2006 the Ministry of Justice and the National Commission are to prepare a new draft Criminal Procedure Code by November 2006. A working group has been set up within the National Commission. A code on Administrative Procedural law has yet to go before

⁶⁰ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

⁶¹ As a draft, the Administrative Justice Code was known as the Administrative Procedure Code

⁶² The Council of Europe Parliamentary Assembly's Resolution 1466 (2005) called on the Ukrainian authorities to finalise the new version of the draft code of criminal procedure and adopt it without further delay to comply with the commitment for which the initial deadline expired in November 1996. The final version of the draft code, 'should be debated in the parliament only after the opinion of Council of Europe experts on the final text is obtained and taken into account'.

parliament: the present draft ‘requires much elaboration’. There is as yet no new Criminal Code.

A significant problem, as put to me, is the fact that decisions of the Supreme Court are not binding on inferior courts. The Supreme Court’s decision applies only in the particular case and is not of wider application. So, of the two million cases heard each year at first instance, only 5,000 are subject to review. The other 99¾% go unchecked, providing, I was told, a fruitful atmosphere for corruption.

Some of the arguments against reform of the 2002 legislation on the legal system, in order to provide for the binding authority of Supreme Court decisions, are based on a misapprehension of a doctrine of precedent, even in its looser form as understood in Western European Civil Law jurisdictions⁶³. It is suggested, at its most extreme, that it would turn the judge into a mere cipher: “all he or she would need to do is substitute the name of the parties into the previous judgment”. That, of course, is a travesty of the notion of binding authority. It is further argued that such a doctrine would violate a judge’s independence: an argument which would seem to imply that ‘judicial independence’ confers on a judge the freedom to come to whatever decision he wishes – that he should be independent of everything save his own conscience. An interpretation, it was suggested, which suited those judges who were in fact dependent on patronage from whatever quarter.

Another argument against the introduction of some form of a doctrine of precedent is ‘the quality of the Supreme Court’. Whilst such a suggestion is deeply troubling, it should not be determinative of the system to be adopted.

There does, however, exist a system of “court practice”, a more or less optional form of precedent in which superior court judgments act as guidelines, which may be followed doggedly, or ignored.

Incidentally, the free rein thereby presently accorded to the judges of the lower courts makes harder any assessment of their competence.

It was suggested that judges often impose restrictions on the reporting of cases. Whilst that can be justified in particular circumstances⁶⁴, it was argued that restricting publicity was too useful a device for a judge who might have a vested interest in the outcome.

A particular problem was identified in respect of the new Civil Procedure Code, which enforces a ‘one language’ policy: the only official language in courts is Ukrainian, but in the Crimea and cities in the East, for example, Dnieperetrovsk, Russian is the predominant

⁶³ The doctrine is not unproblematic, even in Common Law jurisdictions: see, Neil Duxbury, ‘The Authority of Precedent: Two Problems’ <http://upload.mcgill.ca/legal-theory-workshop/Neil-Duxbury-McGill-paper.pdf>

⁶⁴ Art 6(1), ECHR provides that, ‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.’

language. Those who wish to, or can only, speak Russian must pay for an interpreter⁶⁵. However, the Mission was assured by the Deputy Minister of Justice that this was not, in reality, a problem, but was an issue deployed for political purposes.

The district courts have jurisdiction over all criminal cases, except those reserved to higher courts or military tribunals. At the same time, appellate courts have jurisdiction over criminal cases concerning the crimes against the foundations of national security of Ukraine, and crimes punishable by life imprisonment according to the Criminal Code of Ukraine.

8.2.3. Effectiveness and Efficiency of Policy Implementation

The basic ***judicial salary*** is 2.300, - UAH /month, an experienced judge receiving 4-5.000, - UAH⁶⁶. The legal minimum wage, by comparison, is 320, - UAH, one seventh of the basic judicial salary. The Mission was told by judges that a realistic judicial salary would be 7.000, - UAH/month. There is a proposal that a newly appointed judge should be paid 8.000, - UAH and an experienced judge 10-12.000, - UAH. There is, however, some scepticism as to whether this will materialise.

Some judges have sued for the payment of a living allowance, provided for by statute but unpaid because the SCA lacks the resources. Similarly, there are claims in respect of court dress outstanding since the Soviet period.

The salaries of judicial assistants are, correspondingly, “miserable”.

Notwithstanding these drawbacks, the morale of the group of judges the rapporteur spoke to at the Pecherski District Court in Kiev was high: they described their prospects and their job-satisfaction as “good”.

The Council of Europe Parliamentary Assembly’s Resolution 1466 (2005)⁶⁷ called on the Ukrainian authorities, ‘to guarantee by law the level of remuneration of judges’.

The Mission was informed by the Deputy Minister of Justice that there are presently 50,000 cases awaiting consideration by the Supreme Court: a backlog which could take “several years” to clear; another, more optimistic, commentator put the delay at “two to three years”.

In courts of general jurisdiction a caseload of 120 to 150 cases per judge per month seems to be the norm, and whilst the procedural code envisages a period of two months for the conclusion of certain cases, the rapporteur was told that even a straightforward divorce case might take 8 or 9 years. However, in the Pecherski District Court the rapporteur was assured that 50% of cases were concluded within the time limits set. Nonetheless, in 2005, there were 18 findings by the European Court of Human Rights of violations of Art 6 ECHR (for delay) against Ukraine, the sixth highest for any country. That figure represents 6% of the total.

⁶⁵ Art 6(3)(e), ECHR provides that, ‘Everyone charged with a criminal offence has the following minimum Rights [including] the free assistance of an interpreter if he cannot understand or speak the language used in court.’

⁶⁶ These were the figures given by the SCA as current. However, the local office in Odessa suggested that that level would only be achieved in 2006, and that the basic salary, as at December 2005, was 1.000,- UAH, rising to 2.500,- UAH after 20 years.

⁶⁷ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

Legal aid ‘exists only on paper’. In theory, it is available in criminal cases but the level is €3/day, and ‘it isn’t paid anyway’. However, a scheme is to be piloted, on the basis of a Concept proposed by a Ministry of Justice working group and approved on 22nd March by the National Commission: it has now been sent to the President for adoption. If the pilot is successful, a draft law will be brought forward. A ‘strategy’ will be prepared during 2006. The Council of Europe Parliamentary Assembly’s Resolution 1466 (2005)⁶⁸ called on the Ukrainian authorities, ‘to improve the conditions of access to a court by establishing a system of free legal aid in line with Council of Europe standards and the case law of the European Court of Human Rights’.

8.2.4. Human Resources Management Capacity

The Law on the *Procedure for the Election to and Dismissal from the Post of Professional Judge* entered into force on April 21st 2004.

To become a judge you must first have graduated from a law school, of which there are some 200, and practised law for three years, although that might include service in the police.

The Mission was informed by the SCA that there were 1,000 vacant posts for judges throughout the country, including 100 judges for the still to be established local Administrative Courts. In the Crimea Autonomous Republic, for example, there are 39 vacancies out of 211 posts; in Kiev 30 out of 192. The reason the SCA gave for these unfilled posts was the complexity of the recruitment process: there are several stages, involving the SCA (which checks for compliance with the eligibility criteria), the Qualification Commission⁶⁹, which is small; then follow more exams⁷⁰ before a final recommendation can be made.

Similar hoops, whether bureaucratic or substantive, also await the candidate at the confirmation stage. And if no permanent appointment has been made within the 5-year period, the individual cannot continue to work as a judge – although his or her salary will continue to be paid pending the final outcome.

One person to whom the rapporteur spoke said that 95% of candidates were not competent: “how they passed the regional examinations was a mystery”. Nonetheless their applications were often successful. The examinations set by the regional Qualification Commission are either passed or failed, so a candidate who has passed with 51% will be considered on the same footing as one who achieved 81%. How a successful candidate was picked was “a bureaucratic secret”, but it was a process in which the court president had an unspecified rôle. One lawyer of some standing said that ‘between 30 and 60% of judges are incompetent and should be dismissed’. Whether as a consequence or as a cause of that situation, “Society has no respect for the judiciary”. Another person described the appointments system as, “corrupt from bottom to top”. Another said that a judicial appointment “cost” 50.000, - UAH. Another, whilst noting that, “it is logical and is as open as our society is in general”, conceded that there was ‘much incentive to influence the process, and a member of parliament with business interests might raise a campaign against an individual appointment’.

⁶⁸ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

⁶⁹ The High Qualification Council is made up of judges but subordinated to the Council of Ministers

⁷⁰ The nature of these exams is unclear

Judges are appointed initially for a period of 5-years. If after that period the appointment is confirmed, it becomes a permanent appointment⁷¹. All appointments for the initial 5-year period are on the basis of recommendation by the High Council of Justice: there is no formal competition. Indeed, there are no clear criteria for appointment, although it seems there are criteria for *eligibility*. Insofar as there are interviews, they are, the rapporteur was told, “superficial”.

It was suggested that the High Council of Justice⁷² was unimpressive in its operation, possibly corrupt: ‘The principle is alright, it’s the people’. It was also suggested that it was used as a lever to control the judiciary. There is a proposal that the Ministry of Justice should be enabled to bring proceedings against the High Council as a last-resort for controlling its activities.

Given the salary levels and general conditions, it is perhaps unsurprising that competition for judicial posts is not strong. In one District Court the Mission was told that they had three vacancies – and three candidates. The situation in the Commercial Courts, however, is different: the salary is higher, the conditions better, ‘and there are other advantages’.

The presidents of individual courts are appointed by the President, although there is no constitutional basis for that. There is a proposal that such appointments should be made by the judiciary themselves, but neither would that route be immune to manipulation.

Appointments on promotion are made by more senior judges, often, it is said, on the basis of personal inclination.

The Council of Europe Parliamentary Assembly’s Resolution 1466 (2005)⁷³ called on the Ukrainian authorities, ‘to transfer to the State Court Administration the authority to appoint presidents of courts’.

The Ministry of Justice has drawn up an anti-corruption strategy, including the judicial selection process, which has been submitted to the Council of Europe for an expert opinion.

8.2.5. Infrastructure and Equipment

As with the development of legislation, the development of the *budget* would seem to follow an uncertain course, with the Budgetary Committee of the Verkhovna Rada and the Ministry of Finance themselves having wide powers, unpredictable in their effect and potentially leading to results at variance with government policy.

The rapporteur understood from the Deputy Minister of Justice that a draft law presently under consideration, with the support of the Ministry, would establish new arrangements for the financing of the judiciary.

It was generally accepted that the Judicial Administration of Ukraine presently receives around 40%-45% of the funding it needs.

⁷¹ The President has, the Mission was told, indicated that he is reviewing the legislation providing for lifetime tenure

⁷² The Law on the High Council of Justice of Ukraine entered into force on February 17th 1998

⁷³ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

There is no *database of judgments*, and amongst the most vociferous opponents of such a database are some judges: one can only speculate as to their motives. However, the President has recently promulgated a law on Access to Judicial Decisions, requiring their publication.

Judicial training is one of the areas identified by the Deputy Minister of Justice as one where there is ‘much still to do’.

The Judicial Academy opened for business in March 2003, and its first students ‘graduated’ that April. It has seven regional bases. It is presently subordinate to the SCA, which in turn is under the executive. Its budget is 1/12th of that for the Academy of Prosecutors.

When fully operational it is claimed it will –

- Conduct in-service training for first instance, appeal and Supreme Court judges
- Train new judges: a two-year programme is envisaged
- Train court staff
- Test those seeking appointment to the judiciary
- Issue guidance materials *e.g.* on the implementation of the Civil Code or on consistency of practice

The training of new judges has not yet begun because of a lack of premises, which will be available, at the earliest, in September 2006. The training will be based on the training given to the *magistrature* in Spain and France. However, one NGO described this as “fanciful”, doubting that the Academy would ever have the resources to do more than provide some continuing professional development (in-service training).

During their first 5-year term every judge receives 2-weeks in-service training each year; those judges with permanent appointments receive 2-weeks training every 3-years.

The training of court staff is important in particular for the legally qualified judicial assistants who prepare draft judgments.

The training is done mostly by judges. New judges will be trained in judgment writing and other practical skills, including psychology.

There also exists the Centre for Judicial Studies, with which the Swiss Agency for Development and Co-operation (SDC) is running a project supporting ‘justice reform’ in Ukraine⁷⁴, the first objective of which is –

“To provide support to the organisational development of the Centre for Judicial Studies, which is a key non-governmental provider of in-set training programmes for judges in Ukraine.”

It is also with the Centre for Judicial Studies that the Dutch Center for International Legal Co-operation is working ‘to support a proper understanding and application of the new Ukrainian Civil Code by the legal professionals’.

⁷⁴

<http://www.swisscooperation.org.ua/index.php?navID=22124&langID=1&userhash=e37e442abbcc9bf5756d8384afbad7>

Separately, the OSCE Project Co-ordinator in Ukraine, in co-operation with the Ukrainian judiciary, has also launched a special project to assist judges and practitioners in ensuring the correct application of the Civil and the Commercial codes particularly in relation to the provisions of the Constitution, the needs of the market economy and the citizen's confidence in rule of law.

Around 40% of civil judgments are successfully *enforced*: again, corruption was advanced as the main reason for this low level, but it was not clear what proportion of judgments wasn't enforced because, as in all jurisdictions, the defendant lacks the means to satisfy the claim. It was also suggested that (for whatever reasons) the police might not execute court orders, and, for example, the customs authorities might not return illegally confiscated goods. One commentator described the situation as inappropriate. This assessment would seem to be reflected by the incidence of European Court of Human Rights judgments against Ukraine on this issue. Attempts to arrange a meeting with those responsible for the enforcement of civil judgments were unsuccessful, however, it is noted that the Swiss Agency for Development and Co-operation (SDC) is running a project supporting 'justice reform' in Ukraine⁷⁵, one objective of which is –

"To encourage the development of new approaches and stable value orientations in the practice of ... bailiffs"

8.2.6. Co-operation with Third Countries

Ukraine has already ratified many UN, Hague and Council of Europe Conventions in the civil, family and criminal law fields (see Annex IV for a non-exhaustive list). Whilst that represents a basis for further international co-operation, the Council of Europe Parliamentary Assembly's Recommendation 1722 (2005)⁷⁶ recommended that the Committee of Ministers 'analyse the obstacles encountered by the Ukrainian authorities with regard to the ratification of Council of Europe treaties as, since its accession ten years ago, Ukraine has ratified only 45 and signed 27 out of 200 treaties'. Moreover, the operation of these conventions within Ukraine needs to be monitored.

In December 2005 a joint Council of Europe/European Commission project was launched with Ukraine on international co-operation in criminal matters⁷⁷.

8.3. Achieved Progress since 2001

As noted throughout this report a significant amount of legislation has been put in place in the past four years (e.g. the Civil, Commercial, Administrative Justice and Civil Procedure Codes) and progress has been made in developing a strategy for judicial training. The problem is often in translating good legislative intentions into reality (e.g. judicial salaries). Moreover, other areas, the Law on the Status of Judges, on the Legal Profession, the Procuratorate, Legal Aid, remain in dire need of attention even at the legislative level.

⁷⁵<http://www.swisscooperation.org.ua/index.php?navID=22124&langID=1&userhash=e37e442abbcc9bfc5756d8384afbad7>

⁷⁶ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/EREC1722.htm>

⁷⁷ http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Combating_economic_crime/3_Technical_cooperation/UPIC/Default.asp#TopOfPage

Nonetheless, if the ambitions set out in the “Concept for the Improvement of the Judicial System and for Ensuring Fair Trial in line with European Standards”, approved by the National Commission at its plenary meeting on 22 March 2006, are realised, and its spirit respected, a very significant step forward will have been taken.

9. Detention and Imprisonment

Introductory Remarks

During the two visits to Ukraine, the Mission visited a number of detention facilities, colonies, pre-trial detention centres and police cells with a view to getting an impression of the situation of detention conditions in Ukraine. In addition, meetings with the State Department for the Execution of Penalties (SDEP) at central and local level, as well as with representatives from the civil society took place.⁷⁸

It has to be acknowledged that the Mission had unlimited access to the detention centres. While the choice of detention places visited during the first visit to Ukraine was left to the SDEP, the Mission requested to see specific holding facilities and colonies (upon advice from representatives of Human Rights organisations) during the second visit. The relevant authorities accommodated all these requests.

9.1. Legal Framework and Policy

9.1. 1. National Legislation, Strategies and Implementation Plans

Historically, the penitentiary system has been developing for 74 years in the framework of the former Soviet Union. The existing establishments with their industrial base and infrastructure have been created since 1964. The work was financed from funds earned by the penitentiary establishments. In 1960, the Correcting Labour Code of Ukraine was adopted, and in 1969, the fundamentals of the correcting labour laws were approved.⁷⁹

Since Ukraine became independent there have been several reforms to improve the penitentiary system. The penitentiary system was earlier a part of the Ministry of Interior, until July 1998 when the Regulation on the State Department for the Execution of Penalties of Ukraine was adopted and relevant amendments were introduced. Thereby a legal framework was set up for the independent operation of bodies and agencies for the execution of sentences.⁸⁰ The State Department for the Execution of Penalties of Ukraine was withdrawn from the jurisdiction of the Ministry of Interior.⁸¹ It did not become part of the Ministry of Justice as it has been expected by the Council of Europe since 1998. Indeed, the Council of Europe has been demanding for years that the penitentiary system is transferred to the Ministry of Justice. The SDEP however claims that the Ministry of Justice could not handle

⁷⁸ The SDEP submitted in writing information on a number of actions taken during the first months of 2006 in order to deal with some of the existing problems mentioned in this report. The SDEP also mentioned some of their plans for the future. However, it is not possible to evaluate the recent actions taken after the Mission’s visits, nor the plans for the future. It will be a task for a possible follow up report.

⁷⁹ Ptashinskiy, Aleksandr: Problems of reforming the penitentiary system of Ukraine. 1998.

⁸⁰ Ukrainian Parliament Commissioner for Human Rights, “First Annual Report of the Ukrainian Parliament Commissioner for Human Rights- State of Observance and Protection of Human Rights and Freedoms in Ukraine”, 1999

⁸¹ Bukalow & Bukalow: Criminal punishments in Ukraine. Statistics Review. 2004

the gigantic penal system. According to the SDEP, the reform of the penal system would thus end in a stalemate.

On the first of January , the new Ukrainian Criminal Executive Code, which is the basic document regulating the conditions for the execution of penalties and for the establishment and functioning of the institutions for sentence execution that belong to the SDEP, came into force.

The new Criminal Code sets forth that the amount of living space per convict should be no less than 3 m² and no less than 4 m² in educational colonies and colonies for women. The new Code regulates the number of visits and parcels. The right of a convict to four telephone calls per year is legislatively enforced. According to the Code there are no restrictions on correspondence with very few exceptions. All convicts have the right to vote.⁸²

Alternatives to incarceration do exist, however the number of people detained or sentenced to imprisonment is still extremely high. It is questionable whether the intentions of the SDEP to reduce the number of prisoners and to implement the new Criminal Executive Code in the few years to come, can be realized. So far, the number of convicts was reduced by 20.000 persons in the course of 2005.

On June 23, 2005, the Law of State Criminal Justice (Penitentiary) Service of Ukraine was adopted. It regulates the rights and the obligations of the employees of the penitentiary institutions and amended the rules for the Penitentiary Service. It also regulates the legal and social protection for the personnel. The law mentions that the funding of activities of the State Penitentiary Service of Ukraine is provided from the State Budget of Ukraine and other sources envisaged by law.⁸³ This legal reform is of great importance since it should improve the culture of the penitentiary service. The existence of a modern written law, that clarifies the rights and the obligations of the staff, is indeed necessary.

During meetings with representatives of the management of the SDEP the latter generally positively evaluated the new Criminal Code, although it was acknowledged that some changes are needed. The new law has not changed prison life in a radical way, but as a result, the treatment of the prisoners has improved and become more humane. As an example, it was mentioned that the director of a prison no longer has the right to forbid family visits and that there are more possibilities for co-operation with NGOs than before.

Despite the fact that the above-mentioned changes are mainly positive, it has to be taken into account that the poor economic situation of the country has made it difficult to implement the laws and to provide the staff and the prisoners with the necessary “tools”.

However, the most difficult part is the need to change the attitudes of the staff towards the prisoners in their daily work.

When the country became independent, the Penitentiary Service faced new kinds of problems. While it was earlier a task of the colonies to use the labour force of the prisoners as much as possible, there are now not enough jobs for the prisoners. During Soviet times, education and vocational training was available. It was only last year that education and vocational training for prisoners was reintroduced. There is still a tremendous need for vocational training for

⁸² Bukalow A. & Bukalow O. Criminal Punishments in Ukraine: Statistics review. 2004

⁸³ The Law of Ukraine: On State Criminal Justice (Penitentiary) Service of Ukraine. 2005.

prisoners. Many of them are young and don't have a profession. Especially technical training and training in electrics are urgently needed.

Among the recent positive changes that have taken place is the fact that nowadays, orthodox churches offer religious services in almost all the colonies.

9.1. 2. Approximation of Ukrainian Legislation to EU Norms and Standards

The Human Rights Situation in Prisons and Detention Centres

The Ombudsperson's Office ("Ukrainian Parliament Commissioner for Human Rights") has existed in Ukraine for seven years. According to the Deputy of the Ombudsperson, prisoners are an important target group for the Ombudsperson's Office since they are the least protected persons in Ukraine. The Deputy Ombudsman stated that it is difficult to find evidence of a prisoner being abused by prison staff members, but in cases where the abuse can be proven, the staff member is held responsible for his or her acts.

According to the Ombudsman's office, there have not been any complaints regarding torture within penitentiary institutions for many years, but rather regarding ill-treatment and torture by the police and during investigation activities. The Ombudsperson is monitoring the activities in different police stations and has spent 200 days visiting different penal institutions during the last two years.

The Mission was informed by several interlocutors about a case in 2000, where there was a systematic use of violence towards prisoners. The so-called "Bercut" (special police forces) were allowed to use the prisoners as their target group when practicing the use of force. This information was confirmed by the Deputy Ombudsman. All the persons involved in these actions were punished at the time. However, as late as in May 2005, there have been news about the "Bercut" practising on prisoners again, but there is no supporting evidence that "Bercut" is still practising on prisoners.

In an Amnesty International report of March 5th 2006, Ukraine was mentioned as one of the countries to which the USA had deported detainees for questioning under torture in secret investigation centres.⁸⁴

During the mission, there were only a few possibilities to meet with the prisoners in circumstances that would allow them to speak openly about their treatment. There was no possibility to meet for example persons kept in isolation who are most likely among the target group for some kind of use of force. Prisoners whom the Mission met in big groups generally did not have any complaints regarding the conditions of their detention. Rather, the complaints were made about their treatment during the investigation and about the treatment they received from the police to get a confession. Most of the prisoners also expressed concerns about their future, their precarious financial situation and the difficulties they will face when looking for work after their release. The prisoners have no possibility to earn money so they would have some savings when they are released. Their difficult socio-economical situation had, in many cases, been one of the main reasons for committing crimes and if their social and economical conditions are not changed, there is an increased risk for their recidivism.

⁸⁴ Amnesty International report "About violations against prisoners in Iraq transported to other countries for investigation under torture", March 2006

Considering the poor conditions and lack of sufficient resources in the prisons, it is difficult to provide prisoners with a minimum quality standard treatment. A statement given by many informants was that the situation in prisons has become better during the last years, or at least, it has not become worse.

Those prisoners sentenced to a lifetime sentence met during the two visits of the Mission to Ukraine, stated that most of the human rights violations occur during the investigations. This information was confirmed by many of the Mission's interlocutors.

Persons arrested by the police might be hidden for two weeks from their families and their lawyer during which time they are interrogated and tortured to get a confession. Using torture to obtain a confession is prompted by the fact that police officers are rewarded according to the number of arrests and that there is a requirement for investigators to solve 100% of the crimes.

This is of course a matter of serious concern and seriously affects the credibility of the whole judicial system of Ukraine and the authorities of the penitentiary cannot ignore it. At present, even public opinion is not convinced of the fact that all detained persons who have been sentenced are guilty. The situation is worsened by the fact that although there is a formal right to appeal provided for by the law, it is unlikely that a verdict is lifted or changed in practice⁸⁵.

Reports about serious problems while in police custody (use of violence), in detention camps and in some pre-trial units have also been published by the Committee for the Prevention of Torture (CPT) and Amnesty International. This assessment is shared by national Human Rights organisations. Their information is based on statements by detained persons, from the detained persons' family members and from statistics on how many times ambulances have been called to pick up a person from police custody whose condition has "rapidly become worse" after arrest.

During a visit to the police custody in Kiev where people are being questioned for a period of up to 72 hours, the Mission was informed that four staff members had been dismissed last year for disciplinary reasons. This is an indication that actions are being taken to remove investigators who do not act in a professional way.

The Mission noted that the questioning of persons is not being taped. Taping questioning, as it is being done in many EU countries, could prevent misuse of power in certain situations.

Fight against Corruption

The Mission was informed that it is still possible for detainees to be released before the end of their prison term by bribing the authorities. There is evidence that this happened quite recently in 2004. A prisoner who had been sentenced to seven years was released after two years, after having bribed the doctor, the prison director and the judge (1.000,- USD each for each year he was released before the end of his prison term). During the Mission's visit to the Donetsk region, a corruption case at a high level of the penal system's hierarchy was mentioned in newspapers. The Mission positively acknowledges the fact that this case is currently under investigation. During the first quarter of the year 2006, 14 staff members of

⁸⁵ Please also see Chapter 8 of this report.

the institutions for the execution of punishment were detected as having committed offences connected with corruption (as compared to eight during the first quarter of 2005).⁸⁶

However it has to be stated that urgent actions have to be taken within the police administration to control and prevent the taking of bribes in a more efficient way. First steps have already been taken in this regard, as noted by the Mission during a visit to a police station in Kiev where all activities in the corridors are being observed in order to prevent accepting bribes.

9.2. Institutional Framework

9.2.1. Organisation and Structure

An ongoing fight about competences impedes an efficient organisation of the penitentiary system. As long as this fight goes on, there might not be enough resources left to implement reforms and to take important steps to solve the most urgent problems. As it is the case in most of the countries, the prison service does not get the attention required to solve of the existing major problems. The SDEP estimates that they will be able to implement the European prison rules in the penal institutions in Ukraine in about three to five years. This goal sounds very optimistic considering the economic constraints and the fact that the unstable political situation makes the implementation and adoption of new laws very difficult.

It is however encouraging seeing that the SDEP seems to be enthusiastic about the challenges that still lie ahead. In a short period of time some positive changes have taken place within the penitentiary system, for example, a reduction of the number of prisoners. The fact that there are less detained persons or prisoners than one year ago makes it easier to improve the conditions, although the prisons are still very crowded.

9.2.2. Human Resources Capacity Management

The work with convicts and prisoners is organised and carried out by 46.300 staff, which is 84,2% of the number envisaged by the Law “On the Overall Structure and Number of the Criminal Executive System of Ukraine”. The funding of the State Criminal Executive Service of Ukraine from the general State budget is currently insufficient and only covers 24,5-45,2% of the required resources (as compared to 25,1% in 2000, 39,2% in 2001, 24,5% in 2002, 43,8% in 2003, 37,3% in 2004 and 44% in 2005). As a consequence, the SDEP cannot increase the number of staff or provide the current personnel with the appropriate salary.⁸⁷

The salaries of prison staff are indeed quite low, starting with 100 € / month. The prisons have the right to pay the staff twice as much as they are paying now, but, as mentioned above, lack the financial means to do so. The profession of a correctional officer does not have a very high status. It is therefore not surprising that those recruited often abandon their jobs as soon as they find a job that is financially more attractive. The Mission was told that many qualified staff members with a substantial professional experience have left the penal system.

Prison staff members have a right to get 50% compensation of their housing costs, but again this entitlement is purely theoretical. If the colonies or prisons were unable to arrange the

⁸⁶ Written information provided by the SDEP on 25.04.2006

⁸⁷ Information provided by the SDEP on 25.04.2006

transportation to work, many prison staff members would have to spend 30% of their incomes just on transportation.

The low wages provide for vulnerability to accepting bribes. This fact should be taken into consideration when the improvement of the penal system is discussed.

The fact that the penal service is not able to attract qualified and motivated staff is a matter of utmost concern.

Training

The training of prison staff is a major challenge. The personnel for the bodies and institutions for the execution of penalties is trained at the Yaroslav Mudriy National Law Academy of Ukraine in Kharkiv, at the Kharkiv Karazin National University and at the Chernigiv Law College of the State Department of Ukraine for the Execution of Penalties. The initial training is offered at Dniprozhyansk and Bila Tserkva vocational schools for the staff of the criminal executive system.⁸⁸

The training at the Academy of the Ministry of Interior is still very much based on security issues. The SDEP is currently negotiating with the MoI with a view to handing over the training to the SDEP, which is willing to change the curriculum.

To be able to adopt a new attitude towards the work in prison and towards the prisoners as human beings, the content of the professional training is extremely important. The prison management and the prison staff at different levels should be offered a wide-ranging professional training to be able to meet all the demands in their difficult and demanding tasks.

During the meeting with the management of the SDEP, the importance of a reform of the curriculum of the professional training of the prison staff was emphasized. The SDEP is very much aware of the fact that the current security-related and military nature of the training no longer meet the needs of the penitentiary, where broader skills are required. In parallel to the Model Prison in Bila Tserkva⁸⁹, a new training centre was established. This Training Centre offers further education for teachers and lecturers in the field of didactics, increases the general pedagogical qualification and enhances the common institutional development. The goal of this Training Centre is also to improve the competence of the management by providing modern, solution-oriented and civil management education.

On the other hand, Human Rights organisations in Ukraine maintain that prison officers and the rest of the employees within the penal system should be trained at Universities together with other professionals instead of being trained in separate institutions.

There is an overall need for specialized staff like social workers, psychologists, teachers and advisers in the prison system, since one of the major challenges for the prison system of today is the social rehabilitation of former inmates. More attention also needs to be paid to the rehabilitation and treatment of the large number of detained drug abusers.

⁸⁸ Information provided by the SDEP on 25.04.2006

⁸⁹ <http://swisscooperation.org.ua/index>: Model prison and training centre for staff in Bila Tserkva Phase II. 2.1.2006 online.

9.2.3. Infrastructure and Equipment

In general, the penitentiary institutions are still overcrowded. The total capacity of different kinds of institutions within the penitentiary system was not available at the time of reporting. It is therefore not possible to estimate to which extent the different kinds of units are overcrowded. The number of persons detained within the penitentiary institutions was 170.923 at the end of the year 2005, but the total capacity of the penal institutions is unknown. The number of staff working within the penitentiary system was 45.980 at the end of the year 2005. According to information received by the SDEP, the State of Ukraine allegedly spent nearly 912, - mio. UAH on penitentiary and 130, - UAH per prisoner a month.

The prison facilities are in general very old and in a dilapidated condition. During the years of Soviet power in Ukraine only 2 out of 32 preliminary prisons were built. The Ukrainian government approved a special programme aimed at aligning the prison conditions with international norms, but its implementation has been unfortunately delayed because of the lack of necessary financing.⁹⁰ The Swiss government started a project in 1998 in order to improve the framework conditions for the prison management and to achieve a better application of human rights in Ukrainian prisons. The prison facilities in Bila Tserkva (Kiev region) were rebuilt (living conditions of the inmates improved) important organisational and conceptual changes introduced, a vocational school for inmates established and social work services improved. The institution became a model for the common Ukrainian penitentiary system, a basis for new prison specific developments according to the European norms and standards.⁹¹

9.2.4. Observations made during Field Visits

The following Chapter provides a description of the detention facilities visited during the two missions to Ukraine and highlights their specific needs:

ITT Chernigiv

During the first mission to Ukraine, a visit was paid to a pre-trial detention centre, the ITT Chernigiv, in the northeast of Ukraine run by the SDEP. It is the oldest penitentiary unit in Ukraine, founded in 1706. At the time of the visit there were 290 detained persons and 129 staff members. The Mission does not know the capacity of this prison and it is therefore not possible to make any judgement about possible overcrowding.

The Mission met female detainees and juveniles and one person waiting for a lifetime sentence. One of the women's cells was overcrowded. All of the beds were side by side with no corridors between the beds. The female prisoners did not complain about anything, except about the fact that they don't have a television set in their cells and that they are not able to follow what was going on in the world outside the detention centre.

The juveniles did not complain about anything either. They reported that they use the library and attend school. A question about how many lectures they had a day or a week remained

⁹⁰ Ptashinsky Aleksandr, "Problems of Reforming the Penitentiary System of Ukraine". 1998.

⁹¹ <http://swisscooperation.org.ua/index>: Model prison and training centre for staff in Bila Tserkva Phrase II. 2.1.2006 online.

unanswered. The Mission was only informed that the teacher works on a voluntary basis. The frequency of these visits was not reported. The question to what extent their educational needs are met was not answered either. The juveniles reported to be between 16-18 years of age. Many of them however looked very young. Most of them have been brought up by just one parent or by their grandparents. Some of them have committed serious crimes despite their young age.

A lifer reported to the Mission that his case went on the wrong track from the time the police started investigating his case. He said that the court was not able to come to any other conclusions on the basis of the evidence the police had come up with. He said that the most serious mistakes are made at the beginning of crime investigations. If the evidence is false then the court cannot do much about it later. This prisoner was wearing a uniform different from all the other detained (orange overalls). This was a way to stigmatise him from other prisoners. He also had a label on his overall with the inscription that he was sentenced to life. The State Department for Execution of Punishments (SDEP) has in a letter to the Mission of 07.02.2006 promised that the uniforms of the life time sentenced prisoners will be changed to normal uniforms within 3 months. There is a need to follow up on this promised change.

The Mission also visited the library and a simple gym in the same facilities as the library. We did not see the facilities for male detainees. The detained persons the Mission met did not have any major complaints. But on the other hand, the Mission did not talk to them privately, the prison management and the prison officers being present all the time. The Mission was not denied access to the units for male detainees, but the tight time schedule prevented it. The conditions in those parts that the Mission was able to visit were quite good.

The management of the pre-trial unit was concerned about the number of detainees who were drug addicts. Most of the female prisoners were detained because of crimes related to drugs. The Mission members could not see the kitchen or taste the food but was told that relatives of inmates are allowed to bring food to the detained persons, which intimates that these food supplies are needed.

The Mission was able to visit the medical units and to talk to the medical staff. Tuberculosis is still among the serious diseases occurring in the penitentiary institutions.

Bucha Colony (medium security)

The capacity for this place is 1.950 prisoners and in February 2006 the number of prisoners varied between 1.600 and 1.700. The prisoners come from the Kiev region. The number of staff is 360 of which 240 belong to the security and 120 to other staff categories. At the time of the Mission's visit, three psychologists were working with 1.600-1.700 prisoners.

The Bucha colony runs a farm with 200 pigs and an artificial fishpond. The colony is able to offer jobs to 600 prisoners. Prisoners who do not need to be guarded are entitled to work.

There are high school classes offering 3 to 4 lectures per day, attended by 70-80 prisoners. The prison also offers vocational training courses (one with a six month and one with a three month duration). 62 students are able to attend these vocational training courses starting twice a year. The teachers are paid by the Ministry of Education and Science, but the costs for the equipment and the classroom facilities have to be paid by the colony.

There is also a hospital in this colony with 120 beds and 36 medical officers, nurses and assistant doctors.

The Bucha colony had international contacts with the Thill prison in Berlin, Germany.

Concerns and needs:

- The main concern is that there is not enough money to run the colony. The colony gets about 40 % of the money needed, the rest of the needs are supposed to be covered by the colony's own production, which is difficult to achieve. The lack of money makes it impossible to pay better salaries to the prison staff and to maintain and recruit competent personnel.
- The shabby facilities are a matter of concern. There is a need to renew the entire heating system, the current one being deficient and dating back to 1961. No investments have been made during the last 15 years. The colony does not get any compensation for the higher gas costs, which are a consequence of the current, gas consuming heating system.
- The Ministry of Education and Science demands that facilities and equipment for training courses are appropriate. If the colony does not fill the minimum required standards, it does not get the permission from the Ministry of Education to extend the number of courses or the number of students. The Ministry of Education wants the prisoners to be trained in the same way as students outside the colony. The Bucha colony is obviously interested in extending the vocational training, both when it comes to the number of training topics and the number of students. This is particularly important since many inmates of the colony are first time offenders. They are young and lack professional training. However, the colony would need a new school building and lacks the necessary equipment listed by the Ministry of Education.
- The production facilities are not sufficient either and it is difficult for the colony to earn the income that could fill the relevant budgetary gaps.
- The available medical equipment is inappropriate. During the Mission's visit several seriously ill prisoners, including prisoners who are suffering from AIDS or cancer were being treated in the colony's hospital. Their treatment and medication is a matter of serious concern. The colonies do not receive special compensation for the additional costs caused by the expensive treatment of these prisoners.
- The number of HIV positive prisoners has almost doubled in a short period of time. A programme started in 2004, continuing until 2008, to reduce the number of HIV positive prisoners, but the high number of HIV positive prisoners is a serious problem within the penal system of Ukraine.⁹² According to a recent Human Rights Watch report HIV positive inmates do not get sufficient treatment or health care.⁹³ Drug abuse is also a serious concern in the Bucha colony.

⁹² Björklund Fredrik: Kriminalvård i Ukraina. Sveriges Ambasad i Kiev. 2005.

⁹³ Rhetoric and Risk: Human Rights Abuses Implementing Ukraine's Fight Against HIV/AIDS. Human Rights Watch.2.3.2006.

- There are also a very high number of prisoners suffering from tuberculosis in Ukraine, approximately 14.000. As a result of efforts to reduce the occurrence of tuberculosis in prisons in 2003-2004, the number of cases dropped 2,5 times⁹⁴, but in 2005 the numbers seem to have increased again, mainly because of a lack of resources. During the last 10 years, 6.500 prisoners died of tuberculosis.⁹⁵

Borisply Colony (medium security)

The Borisply colony detains first time male offenders from the Kiev region who have committed serious crimes. .

The capacity of this colony is 700 detainees. At the time of the Mission's visit, the colony detained 578 prisoners. 388 of them were between 20 and 30 years old and 400 were serving a sentence between 5 and 8 years. In 2005, 177 prisoners had been suggested for parole, of which 140 prisoners were successful. During the same year 70 prisoners were amnestied and in addition, 7 prisoners got amnesty from the President.

At the time of the Mission's visit the total number of prison staff was 292. The security staff is working 24 or 12 hours shifts.

The prison is divided into seven divisions of activities. Most of the prisoners are occupied in farming. The colony keeps about 800 pigs.

Some prisoners (13 in 2005) are allowed to work outside the colony, guarded, but in freer conditions on farms close to the colony. They are paid in vegetables, which they hand over to the colony. There are plans to extend the number of prisoners working outside the colony from 13 to 20, which can only happen if the accommodation facilities are adapted accordingly. The colony also undertakes industrial activities, such as shoemaking, and there are plans to start a five month long vocational training course for those prisoners who work in shoe production.

At present, the colony offers training for electricians and welders. There are 30 places available for each topic and those prisoners who pass a basic exam are able to continue.

All prisoners in this colony have some kind of privileges. A progressive system is in place, which means that the prisoners receive a bonus for good behaviour. 774 prisoners were given bonuses in 2005. The bonus will help them to get parole. According to the management in the Borisply colony, the relation between the staff and the prisoners is satisfactory and based on the principle of fair treatment of all inmates. Persons having committed a wrongdoing are punished no matter if the person belongs to the staff or whether he is an inmate. The punishment used for prisoners is an entry into his file, which implies an obstacle to parole.

In case of serious offences, 14 days of isolation are used as punishment. In the most serious cases of misbehaviour the punishment is 3 months of isolation.

Disciplinary measures in the Borisply colony⁹⁶:

	2004	2005
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⁹⁴ Action plan for the reform of the Prison System of Ukraine, Prison Programme Management meeting, Strasbourg, 10-11.5.2005.

⁹⁵ As of 12.7.2005

⁹⁶ Information given during the Mission's visit on the 13.02.06

Total number of cases	604	442
14 days of isolation	369	334
3 months isolation	38	51
Inmate removed to a closed institution		12

Although the overall development of the number of disciplinary actions is to be positively acknowledged, it should be noted that the number of cases where a prisoner has been isolated for 3 months has increased by 34%. These numbers show that the number of serious misbehaviour is increasing and it is doubtful, whether these cases can be solved by using isolation.

The expert was informed during the mission that some of the isolation cells (not only limited to the Borisply colony) do not meet the minimum standards. There are isolation cells in prisons in Ukraine that are only 2,3 m² and prisoners can be isolated in such a small space for up to 3 months. Isolation in such conditions and for such a long time cannot result in anything positive, but have to be defined as torture.

Concerns and needs:

- As stated previously, improvement of the economicl conditions is the basic assumption to implement relevant laws and to improve the detention conditions. Again, it has to be pointed out that the Borisply is working under difficult financial conditions. The colony faces problems in finding reliable partners for co-operation and for the distribution of its products in the markets.
- There is an urgent need to repair the facilities and the roofs of the buildings. The prisoners expressed as one of their most important needs the refurbishing of the visitors' rooms.
- There is a need to extend the number of topics in vocational training and the number of students. The Borisply colony is interested in connecting the vocational training with the existing production.
- There are still internal problems within the penal system that could be easily removed. As an example, the management of the colony mentioned that the colony has to pay 20% tax to the State for refurbishments that can be done by the colony, without external costs. In some cases this means that the colony is not able to improve the facilities because of the taxation.
- The social and economic conditions of the released persons have to be addressed, so that they don't have to steal to survive.
- The use of 3 months isolation must be avoided

Visit to the Donetsk region

The Donetsk region in the South East of Ukraine is the region with one of the highest crime rates in the country and the highest number of prisoners. There are currently 25.000 prisoners in this region and in addition 180.000 people who are punished but not kept behind bars.

Every fourth person has some kind of experience of being arrested, detained or sentenced. There are 20 penal institutions in this area. Three institutions were visited in one day during the second visit to Ukraine:

- The Primazovskaya colony Nr. 107 for women in Mariupol;
- The Mariupol educational colony for juveniles;
- The Yenakievo prison Nr. 52 (high security).

All these groups of prisoners (female, juveniles and life time sentenced) are to be considered particularly vulnerable within the penal institutions and it is therefore important to have a closer look at their conditions and their treatment.

Primazovskaya colony Nr.107 in Mariupol for women:

The colony is still overcrowded although the number of inmates has been reduced from 1.300 in the year 2002 to 605 in February 2006. The ideal number would be 400. In the sleeping rooms there were only 2,5 m² per person, which is less than recommended.

The facilities are not planned to be a prison. The area of the entire colony is big enough (5,3 ha) for new buildings and there is a need for help in planning more functional facilities.

There is a factory, which provides work for 400 prisoners. The inmates are working in two shifts, producing different kinds of uniforms. The colony cannot offer jobs to all the women that want to work, but alternatively some of them are able to participate in handicraft activities or in education. There is a reported good co-operation between the colony and the civil society.

The overall impression was that the colony is well managed, but many of the women who do not take part in activities seem to be depressed.

Concerns and needs:

- The female prisoners would need a hospital of their own to meet the needs of their health care. The budget for such a hospital would be around 1 mio. UAH, (650.000, - UAH for the building and 350.000, - UAH for the equipment). None of the women serving her sentence in the colony Nr. 107 suffers from tuberculosis, but many of them are HIV positive and have sexual diseases. There are no resources for supported treatment of sexual diseases and consequently the patients do not get the appropriate treatment.
- There is a lack of hygienic articles available for the women, which adds to their difficult detention conditions.
- The prisoners expressed the wish to have access to sports activities and to a gym.
- There is a need for new books for the library.

Mariupol educational colony for juveniles:

The number of detained juveniles (only boys) in the Mariupol educational colony has been reduced from 400 in 2005 to 295 in January 2006. The overall number of young people sent

to prison is still too high and the detained juveniles are often too young. 47 juveniles were only 15 years old.

It has to be acknowledged that the local government pays increased attention to the detention conditions for juveniles. The local government has invested 500.000, - UAH to refurbish the facilities where the juveniles are living.

Generally, there is a positive attitude towards the juveniles in the society and among the local industries. Generally, a representative of the local industries makes contact with the detained orphans, picking the child up upon his release and offering him work and a place to live.

Concerns and needs:

- Providing education and vocational training to detained juveniles is of utmost importance since they often have no educational background and should not be used as the prison labour force. Many detained juveniles need special social, psychological and pedagogical support because their families do not support them. Consequently, the demands on the staff working with the juveniles are very high. Unfortunately, the staff turnover in the colony is high, again partly due to the poor salary that is not consistent with the high demands and the difficult working conditions.
- The director of the colony stated that there is a need to establish special courts dealing with crimes committed by young people and which should consult psychologists and social workers, who are able to give their views on the cases.

Yenakievo prison Nr.52 (high security):

Due to time constraints, the Mission only had a short meeting with four lifetime-sentenced prisoners who reported about ill-treatment by the police while in custody. They told the Mission that the police had tortured them to obtain a confession. They expressed concern about the fact that they do not have access to legal assistance to re-open their cases a life-time sentenced person can ask for amnesty after 20 years. In Ukraine 30 years is the average duration of a life-time sentence.

Concerns and needs:

- The life-time sentenced prisoners spend their whole days in their small cell, which keeps four persons. They do not have any opportunity to work or to study.
- There should be a possibility for the life-time sentenced to take part in work, education and spare time activities outside their cells for at least 8 hours a day. Improving the conditions of life-time sentenced should be considered a high priority.
- Life-time sentenced prisoners must have access to legal advice.
- Human rights organisations should have the right to monitor the detention conditions of the life-time sentenced and to record their statements about their experiences during the investigations.

9.2.5. Co-operation with the Civil Society

Human Rights organisations, which the SDEP considers to be “serious”, have access to penal institutions. There are more than 60 different NGOs co-operating with the SDEP, but not many of them are directly dealing with the rights of prisoners. Most of them are dealing with some kind of charity work in order to improve the detention conditions for prisoners. Some of them are arranging spare time activities or help getting better equipments for the detention institution. A penal system that is willing to promote the human rights of prisoners should not be afraid to co-operate with Human Rights organisations. An open attitude and willingness to co-operate with human rights organisations would increase the credibility of the penitentiary and of the overall Human Rights record. Co-operation with Human Rights organisations could also help the penal system to improve the conditions of prisoners and to reveal cases of ill treatment of prisoners and misuse of power.

9.2.6. International and bilateral co-operation and agreements and co-operation with international organisations

In 2006, as a way to develop friendly relations with the penitentiary services of other countries, working meetings and exchange visits were held with representatives of governmental and non-governmental organisations of the United States, Poland, the Netherlands, Switzerland, Hungary and Sweden. Bilateral relations within the framework of research and exchange with Poland, the Russian Federation, Belarus, Slovakia, Moldova, Hungary and Turkey were extended.

There is an ongoing fruitful co-operation with the Dutch colleagues within the framework of the MATRA program, which primarily focuses on the issues of re-socialisation and rehabilitation of convicts.

Active co-operation has also been established with Penal Reform International (PRI). Currently a long-term project is being developed with the support of monitoring commissions.

In addition, on 20 July 2005 the SDEP of Ukraine signed a co-operation agreement with the Prisons and Probation Administration of Sweden in Norrköping with a view of bringing the criminal executive system of Ukraine in compliance with European standards.⁹⁷

⁹⁷ Information provided by the SDEP on 25.04.2006

III. Recommendations

Migration and Asylum

Institutional Set-Up

1. With the expected decision by the Ukrainian authorities to establish a **Ukrainian Migration Service**, the coming years shall focus on making this new institution function. The Service is supposed to include an appropriate departmental structure and structures at local and regional level and ensure adequate intra-agency co-operation. The basis of this new institution is a combination of the structures of the Department of Citizenship, Immigration and Registration of Individual Persons of the Ministry of Interior, the State Committee for Nationalities and Migration and the respective part of the Ministry of Labour and Social Policy dealing with labour migration. In an initial period it is planned to establish the new institution within the Ministry of Interior. If the Migration Service at a later stage is given a more independent status, it shall be considered how the present functions of the Department of Citizenship, Immigration and Registration of Individual Persons, dealing with popular register and issuing of passports to Ukrainians, are to be organisationally placed.
2. With a reference to the new institutional set-up proposed, the Ukrainian State authorities shall review the current **legal and administrative framework** regulating migration and asylum processes with the purpose of ensuring their overall transparency and adequate protection mechanisms while taking into account the European Union acquis and European Union best practices. Based on that evaluation, the Ukrainian Migration Service shall propose, with the assistance of the European Union, a strategy and an action plan on further development of the system for handling migration and asylum issues, including the approximation to the EU standards.
3. A thorough **restructuring of the institutional responsibilities** in the areas of fight against **illegal migration** and practical handling of issues related to the presence of illegal migrants shall be introduced. Areas such as identification of illegal migrants, running of accommodation facilities for illegal migrants and return to the country of origin or former residence shall be transferred from the State Border Guards Service and the militia (police) to the Ukrainian Migration Service.

Procedures

4. Within the asylum system, **adherence to fundamental international principles and the basic elements of EU best practices** shall be ensured. This includes (1) the right to seek asylum, (2) respect of the non-refoulement principle, (3) access to independent legal counselling, (4) access to decent accommodation facilities during the asylum procedure, (5) a simplified procedure for issuing identification documents to all applicants which are valid during the procedure, (6) case handling in a transparent way, including providing reasoned decisions, also if an asylum claim is rejected as inadmissible or manifestly unfounded in accelerated procedure (7) transparency also includes the right for the applicant to see his or her asylum file (excl. classified documents), (8) proper functioning appeals procedures, (9) simplified, uniform and

transparent procedures for handling return of rejected asylum applicants and illegal migrants.

5. New provisions on **subsidiary, humanitarian and temporary protection** shall be introduced in the Refugee Law. Either in the Aliens Law or in the Refugee Law shall be introduced regulations on the legal status of rejected asylum applicants, who for objective, general reasons cannot return to their country of origin or former residence. Ukrainian authorities shall consider establishing a single procedure unifying refugee status determination procedure and subsidiary forms of protection procedure.
6. The relevant Ukrainian authorities, particularly the State Border Guards Service (SBGS), the Ministry of Interior (militia) and the Security Service of Ukraine (SBU) shall enhance their capacity to ensure that the **referral of asylum seekers** to the Ukrainian Migration Service is fully implemented in practice through adequate legal and administrative procedures.
7. A reform of the **decision making process in the asylum procedure** at the level of the Migration Service shall be introduced. Decisions shall in the future be made directly at the local level on the basis of a draft decision by the interviewing officer. The central office shall ensure practice coordination, education programmes for staff, support to local management etc.
8. Future **assistance** provided to Ukraine in the areas of migration and asylum shall have emphasis on **benefiting local and regional branches** of the relevant authorities, as they are faced with huge challenges as regards the practical administration in this area.
9. There is at present, but not least in the light of the expected decision to establish a new institution, the Ukrainian Migration Service, a need for an increased focus on **human resource management** and strategies to keep trained staff.
10. A **law on social integration** of recognised refugees and other categories of legal immigrants shall be introduced.
11. **Detention of illegal migrants** shall be carried out in accordance with relevant European and international standards.
12. The Ukrainian State authorities having responsibilities in the areas of migration and asylum, shall in the coming years be committed to increased participation in **regional and international co-operation**.
13. **Monitoring** of the application of existing and future **readmission agreements**, involving Ukraine, shall be carried out in co-operation between experts from Ukraine and EU countries.

Border Management

The following recommendations should be considered for the updating of the existing document “Concept and Program of development of the State Border Guards Service of Ukraine” and its implementation, since it is the basic document for the reform process

(alignment to EU standards, notably the Schengen acquis and good practices in the implementation and the alignment process, e.g. new EU MS).

Reform

14. Understanding the importance of facilitating the legal movement of persons and goods for the development of the country in conjunction with the overall security of the borders, the SBGS should further progress in a gradual shift from their border *protection* system to an effective **border management system** based on adjusted best practices in this field.

Legislation

15. An **analysis of the existing legal framework** aiming at a simplification of basic laws and bylaws is recommended since the concrete implementation of all recommendations has obviously to be based on the legal and regulatory framework and a thorough analysis of gaps and needs.

Procedures

16. In view of **simplifying procedures** (standard operating procedures) it is recommended to carry out a comprehensive description of responsibilities and steps to be taken by the SBGS at each type of border crossing point (BCP) - and at the green border. Also, the level of control applicable (minimum control, intensive control) should be clearly defined in accordance with a risk analysis and appropriate profiling methods. Each border guard should have operational instructions at his/her disposal (online and in hard copy), which need to be updated continuously, including a complete list of relevant contact points.
17. In addition to checks based on risk analysis, **random checks** should also be performed at BCPs.
18. At the BCPs the thorough **check of luggage** should always take place separated from the traffic flow, inside the building.
19. The first line officer should have electronic access to the **registration** of foreigners entering the country, which on the visited BCPs was only accessible at the duty officer's room.
20. The presence of **phyto-sanitary and veterinary inspection services** should be limited to prioritised international BCPs. The prioritisation of BCPs should take place in coordination with the other border agencies as well as with neighbouring countries and also take into account, planned investments at BCPs.
21. In the field of management and organisation, the setting up of a system of **mobile units** should be supported, both at the border and in-land.

Inter-agency co-operation

In the implementation of all recommendations the **interagency co-operation** aspects needs to be taken into account. The following recommendations aim at strengthening this aspect of border management:

22. The SBGS, in close co-operation with all relevant authorities, should review the existing legal and regulatory basis for inter-agency co-operation with a view to **ensuring a clear division of responsibilities and competencies** between all agencies. Gaps and needs in relation to the current situation and co-operation on the ground should be identified in this process and should be followed up by a specialised working group under the responsibility of a general coordination body in Ukraine.
23. In view of the harmonisation of procedures and to avoid overlapping, a **workflow analysis** should be carried out. The description of the joint workflow should be made available to the staff of all agencies in the form of a manual in order to ensure coherent procedures at BCPs.
24. In mobile units, as well as in **joint operations** on drugs, migration or other specific topics of interest – under the responsibility of the SBGS - all relevant State bodies should be included or invited to participate in certain operations. In the form of a pilot project, controls could be carried out by customs (for trade activity) and other border services (for immigration control, drug search) as well as in a limited zone close to the border depending on national legislation. It is recommended to offer training on the legal basis of Mobile Control Units in Europe and on good practices in this respect.
25. In the field of training, the border guards should participate in setting up a training module on **interagency co-operation training** based on a training curricula and a manual on co-operation aspects (i.e. the basic knowledge of tasks of other agencies working at the BCPs). This training would already start at the level of new recruits. Also, in the field of interagency co-operation, training of staff at the border should be a focus, as on the job training is most efficient for identifying concrete possibilities to improve co-operation and coordination at the BCP.
26. The nature of **information to be usefully exchanged** and the level at which this should take place should be addressed by the competent services, mainly by the SBGS. After identification of useful information by the respective service, an analysis or adaptation of the legal framework would have to be followed by considerations on a technical level on how to most efficiently and safely implement relevant solutions.
27. Where new BCPs are built or existing ones renovated/refurbished, the advantages of **joint use of infrastructure** for the closer and more efficient co-operation between the services present at the border should be taken into consideration.
28. The SBGS should be given **investigative power** in connection with cross border crime, in cases when the border guards detected the infringement of the law.
29. In connection with the Border Guard's role as coordinating body for inter-agency co-operation, it was reported to the Mission that the SBGS was elaborating **legal drafts** for a number of issues that are not chiefly related to border security. The international transport of nuclear material, for example, is under the responsibility of the Ministry of Transport, which consequently should assume responsibility for the draft.
30. While it is on the one hand positive that a strong service is taking the leadership on inter-agency topics, it needs to be taken into account that this kind of co-operation needs a **basis of equality**. An in-depth analysis of the position of the other services in

this regard is therefore recommended because it may be found that their role should be strengthened, e.g. to the extent that they also feel responsible for initiating consultancy processes with their counterparts on issues of concern to them.

31. **Legal provisions on information and data exchange** between the law enforcement agencies are scattered over a number of laws and bilateral agreements. It is recommended to collect all these provisions within one law or multilateral agreement to facilitate an analysis of the status quo and future legal amendments in this field. This will help avoiding the risk of developing contradicting provisions for the individual services.

Recruitment and Training

32. Recruitment procedures should be clearly described in the reform of the existing staffing system. A clear **description of tasks and of the necessary skills** required for the different levels of officers is needed. The replacement of conscripts by civil servants for carrying out border management tasks, especially at BCPs, should be continued and completed as soon as possible.
33. Basic and specialised training for new officers and officers in service needs to be adapted to new requirements, to ensure a high level of professionalism. In this regard **training curricula and manuals** for basic, continuous and specialised training should be developed for each type of officer (newly recruited, in service officers and non commissioned officers). The training concept would include the tasks of the officers, including in the field of migration and visa related matters. In general, the training system should contain a train-the-trainer/multiplicators element, to be used for modules that foresee on- the- job training of staff at the border.
34. **EU experts** could deliver lectures on EU legislation and standards concerning several areas of border management in Ukraine;
35. **Trainers** could be sent to the EU member states for special courses so as to apply the “train the trainer” system.

Infrastructure

36. Night vision equipment could be usefully utilised at the BCPs for controlling the vicinity of the territory. The passport readers that were tested during the study visit were not of appropriate quality and often did not function at first attempt. According to the staff at the border, this seems to be a wide- spread problem. An **upgrade** would be recommended. As soon as the travel documents contain biometric data, not only in Ukraine but also in the region and the EU, the necessary equipment for control needs to be procured.

International co-operation

37. The **demarcation process** needs to be completed and further expansion of the cross border co-operation with other countries should be envisaged. In the implementation of the existing agreements and in the negotiation of new agreements, the fields and modalities of exchange of information and data should be included. It is recommended that regular meetings of all services be introduced at the BCPs on international level in

the form of a coordination committee. This committee would discuss day-to-day operations but would also include more strategic issues on its agenda. To improve co-operation and to facilitate the exchange of information, the introduction of joint contact offices (with possible association of customs or other services) should be envisaged.

38. Due to the **different capacity** of the BCPs on the Ukrainian / Belarusian border, it is recommended to upgrade the Ukrainian BCPs to reach the same capacity (e.g. Novi Jarilovichi, where the capacity is one fifth of that on the Belarusian side). It also needs to be taken into account that the infrastructure of the BCPs must be adequate to accommodate the peak-season influx of persons and goods and the number of staff must be sufficient to avoid congestions and unnecessary waiting times.
39. The central level should liaise with the responsible counterparts in the **neighbouring countries** regarding the upgrading of BCPs and corresponding infrastructure to ensure that the capacity of processing persons and cargo is harmonised with a view to ensuring a smooth flow of traffic.
40. According to information received during the study visit, the **Cabinet of Ministers elaborated the List of Risk Countries currently used as a basis for risk assessment**, in 2003. Since migratory streams are very volatile, more frequent updates of this list are recommended. International information exchange on risk assessment is, according to the Mission's information, taking only place at regional and local level. It is recommended that this information exchange also take place at central level.

Customs

Legislation

41. The Customs authorities should be conferred with the status of a law enforcement agency, while certain customhouse divisions should be vested with the authority to conduct criminal investigations.
42. Legal means should be established by which Customs officers are authorized to perform so-called preventive checks to ascertain whether **goods relieved from customs duty** entirely or in part were actually utilized for the purposes foreseen;
43. In order to fight possible **internal corruption**, an investigative unit should be created.

Procedures

44. A pilot project dealing with **risk management** respectively risk analysis could be considered. A trial phase would serve to determine how much staff would actually need to be present for targeted customs control (taking risk factors into account). Vehicles and persons to whom the risk factors do not apply could thus be waved on quickly to support an unimpeded traffic flow.
45. It could be suggested that e.g. the **veterinary-, phyto-sanitary- and sanitary services** should be available upon demand, however the permanent presence of this staff does

not, in view of the frequency, seem necessary. In case of need the Customs could call these officials to the clearance area.

46. It is also recommended to consider the hours of duty. **24-hour shifts** seem too long to fulfil the manifold tasks of a Customs officer in an efficient manner.

Inter-Agency Co-operation

47. The mission was positively impressed by the co-operation between the individual administrations involved in clearance at the border as well as by the work at the operational level, however the **personnel deployment** appears very high compared to European standards. Especially the time allotted to the clearance of goods could be shortened for the benefit of the clients if the staff was to be deployed in a more targeted manner.

Training

48. There might be a need for **Integrated Border Management training** including in speeding up the clearance procedure (extra-departmental co-ordination of the sequence of operations).

Visa

Legislation and Policy

49. Adopting the **Concept of Migration and Visa Policy in Ukraine** introducing the approach of the Schengen group States (negative and positive list) as elaborated by the Ministry of Foreign Affairs (MFA) is of utmost importance. On the basis of the guidelines contained in the Concept, relevant implementing acts are to be prepared.
50. Clear and transparent **guidelines** and/or obligatory standards should be adopted and **control mechanisms** created, which on the one hand guarantee the security of the country, on the other hand do not permit arbitrariness of the authorities, corruption etc.
51. Ukraine could, whilst taking into account its national interests, consider adopting relevant presidential decrees that **abolish a visa obligation** for citizens of those countries that are not considered as countries of origin of potential migrants and that are exempt from a visa when entering EU Member States.
52. Regardless of the close ties between the populations of both countries, the number of documents valid for crossing the border with the **Russian Federation** should be reduced or at least a time schedule to implement this measure should be determined.

Visa authorities

53. Ukraine could examine the possibility to adjust its legislation in such a manner that, as derogation from the general rule that visas shall be issued by diplomatic and consular authorities, a third-country national who is required to be in possession of a visa when

crossing the borders may exceptionally be issued with a **visa at the border** when the conditions are satisfied⁹⁸.

Inter-agency co-operation

54. The existing working relationship between the relevant authorities should be preserved and further strengthened. A **working group** of relevant authorities on visa matters could be considered.
55. Establishing an **online connection** between the Ministry of Foreign Affairs, border crossing points, the Ministry of Interior and DMCPs abroad, supported by a national visa register including all data connected with the issuance of visa, entering and exiting Ukraine, is of utmost importance. The existence of such a register, additionally supported by a list of persons whose entrance to Ukraine was denied, a list of persons wanted etc. would facilitate the decision making process at the DMCPs and also at the BCPs in case of doubt of the person's real purposes to enter Ukraine. Online connections among the authorities would enable a consultation without loosing time for transmitting the information.

Due to the enormous amount of financial means needed, and taking into account the economic situation of Ukraine, the EC could consider this issue as a possible co-funding project.

Types of visa

56. The present types of visa are not in line with the **Schengen types of visa** while they are listed according to purpose, which according to the Schengen acquis is of national concern. The Schengen acquis foresees two categories of visas – travel and transit.

An airport transit visa that would be issued to nationals of certain third countries transiting an international area of an airport in Ukraine does not exist. An introduction of an airport transit visa could be considered.

It is recommended that Ukraine adjust its types of visa to the Schengen types.

Procedures

57. A visa may be extended if new facts have arisen since the visa was issued. Applications to extend visa on the following grounds must be duly substantiated: force majeure; humanitarian, serious occupational or personal reasons.
Regarding the **extension of visa**, no change of purpose should be allowed, except for humanitarian grounds.
58. Special attention should be paid to the following issues: defining a validity of a visa and defining the duration of stay in Ukraine. The current visa has a **period of validity of visa** but does not define the **duration of stay**.

⁹⁸ Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visa at the border, including the issue of such visa to seamen in transit

59. As a general rule it should be compulsory for an alien to appear in person at the DMCP at least at one occasion. An **interview** should be an integral part of the visa procedure, which can be waived only in exceptional cases (bona fide applicant).
60. Consular fees of Ukraine are much higher than the fees of EU Member States. Therefore it is recommended that **consular fees** (including fees for the application form and fees for processing documents and issuance of visa) be unified and not subject to the economic situation of the country where the Diplomatic Mission and Consular Post is located.
61. A decision concerning the issuance of free visa for groups of school **children less than 18 years of age** could be considered if they travel for educational, cultural or sports purposes. It could also be considered to reduce or waive the amount of fees for persons participating in a conference held under the auspices of the United Nations or its specialised agencies, the Council of Europe, the European Union or the OSCE and for humanitarian reasons in cases of major accidents and other comparable emergencies.
62. It could also be considered that no fees are charged for **administrative costs** for visa applications submitted by third country nationals who are family members of a Ukrainian citizen.
63. During the mission the Ukrainian authorities expressed their willingness to accept the experts of the EU Member States to demonstrate the existing level of the appropriate devices and software in this sphere and to discuss specific parameters of possible technical assistance and the frameworks of final aid.

The expansion of the pilot project on visa containing **biometrical data** is to be considered. The full scale of the system is however still uncertain due to the non-existing online connection between the relevant authorities. The possibility of co-funding the project could be considered.
64. It is recommended that a **standard text used for refusal** of visa be elaborated. It could be considered to shorten the period expired from the previous denial of visa (to for example three months).
65. Introducing a **passport reading device** at all Border Crossing Points in Ukraine is planned but no time schedule has been made so far. The use of these devices for the registration of foreigners entering Ukraine would speed up the checking procedure at the Passport Control.
66. The amount a foreigner has to present in order to prove sufficient **means of subsistence** should be determined
67. At certain Border Crossing Points two Border Guards jointly **control the travel-** and additional documents. Where possible, it is recommended that a more economic approach be considered (handing a passport directly to border guard behind the counter).

Security related matters

68. The issues relating to the technical equipment of the DCMPs abroad for the **identification of fake / forged travel documents** should be considered from a cost/performance related point of view. It is recommendable to consider an electronic type of instruction with all documents and its protection signs included.
69. Introducing a **passport reading device** at all Border Crossing Points in Ukraine is planned but no time schedule has been made so far. It is assumed that a time schedule for such action will be presented to the Government within three months.

Travel Document Security

70. There is a need to reconsider the **list of persons entitled to obtain Diplomatic and especially Service Passports** since the current list of persons is too extensive.
71. It is recommended that the process of introducing **new secure travel documents** be continued. Due to the fact that old travel documents (red passports with picture glued and data entered manually) are still issued in Ukraine and at the Diplomatic Missions and Consular Posts of Ukraine abroad, there is a necessity of replacing them by the new type of travel documents (red passports with digital photo and data printed, introduced in 2002) as soon as possible.
72. In accordance with the financial means available, a time schedule should be made for establishing missing **application centres** (of 763 planned 88 are operating) all over Ukraine for submitting a request for the new travel document.
73. The abolition of the **Child Travel Document** is to be considered and to be replaced by a regular travel document.
74. After an agreement among relevant authorities in Ukraine is reached on the new travel document (dark blue passport) containing **biometrical data**, all efforts should be focused on replacing all old travel documents (red) in the shortest period of time.
75. Additionally there is a need to speed up the functioning and capacity of the **central passport register** based in Kiev (containing only data on passports with digital photo issued from 2002 on), where the possibility of multiple identity can be reduced to a minimum (for example - person's ID number as one of the parameters).

Fight against Organised Crime

Reform of Law Enforcement

76. Ukraine should implement the National Security Council proposal for **reform of Ukraine Law Enforcement** without delay. This proposal plans to create or bring the following Departments under the Ministry of Interiors control:
 - National Police Force (all uniformed police departments);

- National Investigation Service (responsible for all criminal investigations and would include elements of the MoI, the SBU and the Prosecutor's Office);
- National Immigration Service (to include State Immigration Service and Passport Agency);
- Border Guards Service

The European Commission should support them in this venture providing the **advice and expertise** it has, which could assist Ukraine in their endeavours. However, caution should be exercised in two areas in implementing these reforms with respect to the SBU and Ministry of Interior troops. The SBU have a proven track record in fighting organised crime and have very experienced and professional officers. Care needs to be exercised to ensure these skills are not lost during the reforms. With regard to the Ministry of Interior troops, operational control and budget should pass to the Ministry of Defence. This is in line with the European model. A modern democratic State should not have a separate paramilitary force to the Ministry of Defence. However, specific elements required to act as a rapid reaction force to counter violent organised crime should remain under the Ministry of Interior's control.

Legislation

77. Ukraine has some effective policies and legislation, but this is being impaired by low level corruption at the point of contact with organised crime i.e. Border Guards on the border. Consideration needs to be given to developing a **Road map** to improve terms and conditions at the lowest levels of the Ministries and Agencies tackling organised crime **to counter corruption**. As part of the Road map an effective evaluation mechanism has to be developed in parallel in order to achieve visible changes in the system.
78. Ukraine should introduce legislation, which regulates and puts in place a formal process for authorising surveillance on citizens, authorising the interception of their communications and the obtaining of personal information in connection with electronic communication. This legislation should devolve the authorising of such activity to an operational level, but should introduce an Independent Commissioner to ensure legislation is complied with. The legislation should be similar in nature to the UK Regulation of Investigatory Powers Act.

Inter-Agency Co-operation

79. Although there is regular communication between the various Ministries and Departments involved in the fight against organised crime it was not clear that there was a co-ordination of operational activity against key targets. One Ministry or Department should be designated to maintain a **database of operational activity against all key targets**. A process would have to be agreed for updating the information and resolving conflicts. This would ensure that duplicate effort was not expended against the same target. More importantly it would avoid the possibility of two operational teams from different units encountering each other whilst taking action against the same target. Access to this database would have to be very tightly controlled, as the information would be very valuable to criminals.

Fight against Illegal Migration

80. The Ukrainians have difficulty in negotiating **repatriation agreements** with some countries whose citizens enter Ukraine illegally. This is because they do not have a diplomatic presence in many of the countries. The EU should consider using its offices to assist in negotiating these agreements or facilitating introductions.
81. The Ukrainian authorities should utilise the **EU Member States Liaison Officers** to their full extent to further the fight against organised illegal migration and other types of organised crime. They can facilitate the exchange of intelligence and initiate joint operations to pursue criminals beyond the borders of Ukraine.
82. The EU should give consideration to requesting **EUROPOL** to initiate a project with Ukraine with the aim of disrupting the organised illegal migration routes transiting Ukraine to EU Member States. EUROPOL could co-ordinate the collection and analysis of intelligence and then through the EUROPOL Liaison officers based in The Hague co-ordinate operational activity, which would disrupt the organised crime groups who often organise their activities beyond the borders of Ukraine.

Fight against Trafficking in Human Beings

While the current report tackles the topic of combating trafficking in human beings in the Chapter on the Fight against Organised Crime, the following recommendations aim at a comprehensive perception of the problem in all relevant fields (prevention, protection and prosecution) and are therefore not limited to its law enforcement aspects.

83. With the creation of Inter-Agency Coordinating Council on combating human trafficking in December 2002 (chaired by the Ministry for Family, Youth and Sports of Ukraine) the government of Ukraine has taken a first, important step to co-ordinate anti-trafficking efforts in the country. In addition an expert working group has been established to enhance/support the work of the Council. It now must be ensured that the Council meets on a regular basis and that it takes the political decisions allowing for the implementation of the recommendations made by the expert working group. It is recommended that a **co-ordinating body**, acting as secretariat to the Council, facilitates and ensures the regular operation of the Council.
84. Currently a discussion about the creation of a National Bureau on Countering Human Trafficking is ongoing in Ukraine. In this respect Ukraine could seek advice from States that have established a **National Co-ordinator** for the fight against trafficking in human beings with a view to gathering experience and good practices in this area.
85. Although the Resolution of the Cabinet of Ministers of Ukraine N° 1961 Establishing an Inter-Agency Coordinating Council for the Prevention of Trafficking in Persons provides for the inclusion of representatives from the civil society in the Council, this has so far not been the case in practice. It is recommended that the Council include representatives from **civil society** such as NGOs providing services for trafficked persons as well as social partners, with a view to benefiting from their genuine experience in the field.

86. A new National Action Plan is currently under consideration by the relevant authorities. It is recommended that the new Action Plan defines clear responsibilities and timelines and contains **indicators and benchmarks** that allow for a methodical monitoring and evaluation of its implementation.
87. To ensure and measure the impact of anti-trafficking activities **data gathering, monitoring and evaluation** of the situation is crucial be it for prevention, protection or prosecution measures.
88. The new National Action Plan should contain a provision regarding the funding of its implementation via the **State budget**. It is indeed of utmost importance that sufficient funds for all anti-trafficking activities are allocated from the State budget. While often good legislation and policies are in place, insufficient funding hampers their implementation. This is for instance the case for the witness protection programme⁹⁹, which is not implemented due to a lack of funds. It is also necessary that sufficient funds are made available for shelters and rehabilitation centres which often cannot be financed through the local budgets. It is also recommended to consider setting up a compensation fund.
89. The **International Community** should closely coordinate with the relevant Ukrainian coordination body when considering funding and/or implementing anti-trafficking activities in the country to ensure the implementation of activities that are defined under the national anti-trafficking action plan.
90. On January 12th the Verkhovna Rada has adopted amendments to Article 149 of the Criminal Code of Ukraine, which criminalises trafficking in human beings with a view of bringing Ukraine in line with the provisions of the Additional Protocol to the UN Transnational Organised Crime Convention, on the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children ("Palermo Protocol"). To ensure that law enforcement agencies such as specialized investigators, front line police, border guards, labour inspectors etc. and the judiciary are aware of this **new anti-trafficking legislation** and their role in implementing it, it is recommended that the relevant ministries and national training institutes provide and institutionalize multi-agency and multi-disciplinary anti-trafficking training.
91. Based on EU good practice experiences it is recommended to set-up **multi-agency investigation teams** in order to foster pro-active anti-trafficking investigations and increase the number of trafficked persons being identified.
92. The formalisation of the **co-operation between law enforcement agencies and NGOs** by a memorandum of understanding or a ministry directive is recommended to ensure the proper support services for trafficked persons, victim witness protection and increase the number of perpetrators being prosecuted and convicted.

⁹⁹ Law on 'Ensuring the Protection of Persons Involved in Criminal Proceedings', adopted in 1994.

93. Victims of trafficking having returned to Ukraine should be provided not only with psycho-social, legal and medical support but their **re- integration into society** should also be secured through further education, vocational training and job opportunities/placements, also in order to minimize the risk of being re-trafficked.
94. While general awareness of trafficking in human beings has been raised over the past years, there is a need for **more targeted information campaigns** that provide updates on new tactics of traffickers and describe the many different forms of trafficking in persons. There is also a need for more information on possibilities for legal migration, job opportunities and employment provisions abroad. Ideally awareness campaigns should address a targeted audience and be adapted to the needs of the different at risk groups (rural population, youth).
95. It is recommended to enhance international co-operation, especially with **destination countries**, on all levels to combat the transnational crime of trafficking in human beings efficiently.

Fight Against Corruption

96. As a demonstration that corruption should not be tolerated and that all citizens are equal, special **number plates** should be withdrawn. Currently the Verkhovna Rada, Militia and other Government Departments have special number plates (BP, MI, II****II). These are used by drivers to break traffic regulations and demonstrate that they are above the law. Currently there are four times as many Verkhovna Rada plates in circulation than sitting Deputies. This is an overt display of position bringing power and should not be tolerated in a modern democracy.
97. The European Commission and EU MS should provide every assistance and encouragement to the Ukraine to ensure that draft “Concept on Reducing Corruption in Ukraine: On the Road to Integrity” is implemented by Presidential Decree and that they use their expertise in this area to assist Ukraine in its implementation.

Training

98. There is a need for Investigators to be trained in conducting **criminal investigations overseas**. Ukrainian investigators are very proficient. However, they have limited experience of conducting investigations overseas. They need to be aware of the means available to continue their enquiries and how best to do this. Evidence was seen on a number of occasions where investigations were stalled overseas because of a lack of knowledge.
99. There is also a requirement for training within the Ministry of Interior and Security Service in conducting **under cover operations** and some other specialised police techniques. This would assist them in their fight against organised crime.
100. There is a need to change the culture, **increase the professionalism** and broaden the outlook of senior and middle ranking officers. There are a large number of highly motivated officers trying to drive change through and assist in creating more

professional law enforcement agencies. The vast majority of these officers were younger than their peers; many have served in other Ministries and/or had served abroad.

101. The EU and Ukraine should introduce and fund an **exchange programme** for senior and middle ranking officers to spend a minimum of one month with corresponding organisations in EU MS and the Ukraine. This will assist in changing the culture of Ukrainian agencies and ministries and allow the sharing of ‘best practise’ between EU MS and Ukrainian officials.
102. Consideration should be given to creating **modular specialist law enforcement courses** on subjects such as ‘Running Undercover Operations’, ‘Conducting International Investigations’ and other specialist areas, which can be delivered either in the Ukraine or a EU MS. This would improve the effectiveness of Ukrainian law enforcement.

Best practices

103. The State Committee for Financial Monitoring of Ukraine is a young organisation and as such has not had to struggle with historic structures and methodologies. It is probably the most advanced law enforcement agency within the Ukraine. It should be recognised as an **example of best practise**, which other Ukrainian Law Enforcement Organisations should aspire to attain. Ukrainian legislature should recognise the actions carried out here to allow it to flourish and replicate them within other agencies and Ministries. Senior Officers in other agencies and ministries should be able to take up secondments with the State Committee for Financial Monitoring in order to encourage the sharing of ‘best practise’.

IT Projects

104. EU MS should provide expert assistance to Ukraine to assist them in developing the integrated law enforcement IT system envisaged under Decree of President of Ukraine 31.01.06 N.80/2006 “On the single computer information system for law enforcement relating to the fight against crime.”
105. The EU should press forward with its plan to fund the roll out of the **Interpol I24/7** system throughout the Ministry of Interior locations in Ukraine as this will facilitate the exchange of intelligence between the centre and the regions and make the fight against organised crime more effective. However, care needs to be taken to ensure it does not duplicate the \$1.6 million pilot IT project the USA is initiating with the Ministry of Interior.
106. The EU should assist in the role out of the **Interpol AFS database** of stolen vehicles to key border crossing points (BCPs) and to the Traffic Police HQ in Kiev. This will assist in the fight against organised vehicle crime. However, deployment at BCPs should occur in conjunction with a road map to improve terms and conditions of the Border Guards and counter corruption, else corruption will make the deployment of the system ineffective.
107. Ukraine should rationalise the **High Tech Crime** (Internet Crime/Child pornography) Units into a single effective national unit. They should draw on the expertise of EU

MS in doing this. In particular the National High Tech Crime Unit in the UK, this has recently undertaken such a rationalisation.

International Co-operation

108. Ukraine should consider the adoption of the **European Criminal Intelligence Model** adopted by EUROPOL in 2005. This is a ‘bottom up’ approach, which will allow the Ukraine to identify those areas of crime having the greatest impact and more importantly areas where they lack intelligence and need to focus more resources. As this will be the same process used by EUROPOL it would assist the Ukraine in exchanging intelligence with this agency as and when it receives membership.

Fight against Terrorism

109. The Verkhovna Rada should with all due haste pass the draft legislation currently before it, which will ratify the **Council of Europe Convention on the Prevention of Terrorism**.
110. Currently the Verkhovna Rada has before it draft legislation, which implements the eight special **FATF recommendations** specific to countering the financing of terrorism. The Verkhovna Rada should, as a matter of urgency enact this draft legislation to assist the fight against terrorism.
111. EU Member States Agencies should make available opportunities for SBU officers to undertake **training** with them and to participate in exchanges to assist in the sharing of best practice.

Rule of Law, Judiciary and Good Governance

Good Governance

112. A **civil society** needs to be developed in which respect for the rule of law is paramount.
113. Legislative procedures are in need of reform: the notion of a **coherent government legislative programme**, or at least bringing one into effect, presently seems unattainable: the legislative foundation of the law is seen as constantly changing, and “unstable”.
114. Awareness of **human rights**, and adherence to human rights norms, must be developed not just amongst the judiciary but also in all quarters, including the police and prisons. To that end, the Council of Europe’s publications (including the *Short guide to the European Convention on Human Rights* by Donna Gomien; the *Human Rights Manual for Prosecutors*, and the volumes of materials relating to the European Court) should be given wide circulation.

- 115. It was suggested that Ukraine is negligent in its implementation of decisions against it by the European Court of Human Rights¹⁰⁰. An audit needs to be conducted of those decisions and the response by the Ukrainian authorities. Moreover, the Council of Europe Parliamentary Assembly's Resolution 1466 (2005)¹⁰¹ called on the Ukrainian authorities, "to ensure full and speedy implementation of the decisions of the European Court of Human Rights, in particular in the cases of Sovtransavto and Melnychenko; adopt the law on the execution of decisions of the European Court of Human Rights and ratify Protocol No. 14 to the Convention". To that end the Law on the Enforcement of Judgments and the Application of the Case Law of the European Court of Human Rights was adopted on 23rd February 2006.
- 116. The undertakings in the Presidential Decree of 20th January 2006 for honouring Ukraine's obligations and commitments to the Council of Europe¹⁰² must be carried through.

Judicial Independence

- 117. The **status of the judiciary** has to be reinforced in its own mind, *and* in the eyes of the legislature and the executive. It must be capable of acting, and be acknowledged as, the third, and equal, limb of government.
- 118. Removal of **lifetime tenure** would be a retrograde step: whilst security of tenure may be abused, it is an essential pre-requisite for independence. There are other ways of dealing with lapses rather than putting everyone on permanent probation, and they are provided for by existing legislation.
- 119. There is criticism of the level of **legal education** offered in many of Ukraine's law schools. The Mission understands that at present consideration is being given to restricting access to the judiciary to graduates of certain law faculties e.g. those of the Universities of Kiev, Kharkiv, Odessa and Lviv, and the Institute of International Relations. However, rather than simply compiling a static list, consideration should be given to validating, on a competitive basis, law schools which can demonstrate the requisite standards. Unless judges are of high intellectual and academic ability, the establishment and maintenance of their independence will be hampered.
- 120. Reform of the **judicial appointments procedure** is crucial: initial appointment should be open and against clear criteria and the standard should be common throughout the country.
- 121. There should be no political involvement in the **appointment of judges**.
- 122. The introduction of **anonymised examinations** is to be encouraged as a mechanism for reducing unfairness in the appointments process: ABA CEELI is apparently already working on such a system.

¹⁰⁰ The Ministry of Justice comments: "Only a few decisions, and only in terms of general measures (amendments to legislation) are still to be fully implemented. There was more a lack of understanding what the execution should do to enforce a judgment, that it's not only the payment of just satisfaction but also other individual measures and, more importantly, general measures to address structural problems."

¹⁰¹ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1466.htm>

¹⁰² http://www.minjust.gov.ua/?do=d&did=6985&sid=pare_ukraine

- 123. The system for confirming a **life-time appointment** also needs to be made more rigorous, possibly involving a presumption in favour of confirmation with strict criteria for *not* confirming.
- 124. Admirable steps are being taken to improve judicial education but it is doubtful whether the Judicial Academy will be in a position to offer meaningful **training for newly appointed judges** for some time to come. It is of the highest importance that such a programme be developed as soon as possible.
- 125. The various **training initiatives** (of the Academy, the Centre for Judicial Studies, the Swiss Agency for Development and Co-operation, the Dutch Center for International Legal Co-operation) should be coordinated.
- 126. **Presidents of individual courts** are nominated by the Council of Judges but are appointed only with the approval of the executive. The executive is not bound by the Council's nomination and is not required to have reference to any set criteria in rejecting that nomination. The result is that "placemen" are appointed. These appointments too, need to be made on a fair and open basis, and without intervention by the executive.
- 127. Any proposal, that Presidents of individual courts might be given the power to review the decisions of the other judges in that court, should be resisted.
- 128. **Appointments to superior courts**, including the Constitutional Court and the Supreme Court, should be subject to the same conditions of clarity and objectivity as the appointment of ordinary judges *ie* against published criteria and by a fair and open process.
- 129. **Judicial salaries** must be set at a realistic level and the budget for them ring-fenced. Whilst the proposed salaries are adequate, the concern is whether they will actually be paid.
- 130. The handling of **disciplinary proceedings** should be undertaken by an independent commission, including lay people of some standing, which should make recommendations to the Chief Justice or to some appropriate judicial body.
- 131. The **disciplinary commission** should observe the rules of natural justice, including allowing the judge an opportunity to present his or her case.
- 132. The High Council of Justice is not an appropriate body for a **disciplinary rôle**, containing as it does those who are actual or potential parties before the judge subject to the proceedings e.g. the Minister of Justice, the Prosecutor General. It is perceived as 'a mechanism for controlling judges'.
- 133. A code of **Judicial Ethics** should be adopted

Court Structure and Procedures

- 134. It is imperative that a **strategic approach** be adopted. Although steps are being taken in that direction, there is some doubt as to whether the strategy is being drawn up by the right people and as to whether it would be implemented.

135. The jurisdiction and operation of the **Constitutional Court** require review. The procedures for the swearing-in of judges should be simplified.
136. **Membership of the Constitutional Court** should be confined to those of eminence within Ukraine and ideally with a reputation internationally: a parallel might be with the provisions of Art 223 EC, “The Judges shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices ... or who are jurisconsults of recognised competence”. Justice Volodymyr Shapoval was cited as a model.
137. The **jurisdiction of each court**, e.g. the Commercial Court, needs to be defined with precision.
138. Consideration should be given routinely to conducting the most serious criminal cases, e.g. murder, in **second instance courts**, and not just exceptionally.
139. The argument was put to the Mission that the Commercial/Economic Courts, the successors to the Soviet Courts of Arbitrage, should be merged with the general civil courts. However the argument for that was that, as they consider cases of high value, they have the greatest scope of corruption. The rapporteur doesn't accept that argument. If there is corruption, there are other ways of dealing with it than by abolition. Countries in transition need to encourage inward investment, and foreign investors will be reluctant to risk money in a country where they cannot be confident that the courts are capable of handling commercial disputes fairly. The **Economic Courts** may not have fully shed their Soviet past, but they need to be developed into modern and effective fora at least for the resolution of complex disputes. A credible mechanism for the determination of commercial disputes is an absolute pre-requisite for inward investment by any but the most courageous international entrepreneur.
140. Moreover, at present, a relatively inexperienced judge can be faced with a complex high-value dispute. Consideration needs to be given to matching **judicial expertise and experience** to the cases to be heard.
141. In the event that the Commercial Courts are retained, the issue of their **concurrent jurisdiction** with the general courts needs to be addressed to prevent the inconsistencies and consequent abuses described above.
142. The Concept for the Improvement of the Judicial System seeks to negotiate a way between pragmatism and an acknowledgement that some specialism is required. Sensibly, it encourages an alignment of procedural rules, and it accepts the need for a discrete criminal court. However, it is not clear how far specialism within the ‘general civil court’ will be taken. Areas such as international trade and intellectual property require not just high level ‘judicial’ skills, but also an awareness of, for example, business reality, or (in the case of patents) science. A class of sophisticated commercial lawyers is developing in Ukraine: they need to be served by a cadre of judges of equal ability and expertise.

- 143. The judges of the military courts are military officers and subject to promotion by the Ministry of Defence, potentially incompatible with the 1998 decision of the European Court of Human Rights in *Ciraklar v Turkey*¹⁰³.
- 144. Consideration might be given to the **use of juries** in criminal trials as a means of reinforcing public confidence in the legal system.
- 145. The rôles of the respective **appellate levels** need to be clarified, especially if the notion of a court of cassation were to be resurrected. There remains a need to ensure that jurisprudence across the jurisdictions is consistent, as with decisions of the Commercial Courts and the courts of general jurisdiction, which are sometimes hard to reconcile.
- 146. The lack of a coherent interpretation of the law was the cause of much concern. **Judgments of the Supreme Court** should have binding force not merely in the particular case, but should represent an interpretation of the law from which lower courts might depart only for good reason.
- 147. Similarly, appellate courts should, in the absence of good reason, adopt a **consistent approach to the law**: for example, the High Administrative Court gave two different and incompatible rulings on the same issue within 24-hours.
- 148. **Access to judgments** is difficult at present, and concrete steps need to be taken to give effect to the recent Presidential decree creating an electronic database, also the Law on Access to Judgments of 22nd December 2005..
- 149. A **system of legal aid**, complying with the requirements of the Council of Europe, should be introduced and funded.
- 150. Alternative Dispute Resolution is being encouraged as a means of relieving pressure on the courts. This needs careful consideration. **Mediation** in particular is only effective in the context of a legal system which itself can be relied upon. Without the reference points provided by such a system, mediation, itself importing a number of ethical problems for the mediator, could result in outcomes no more fair than those perceived to be available in the courts. A party who enters into mediation in ignorance of his or her legal rights can be seriously disadvantaged.

Court Administration

- 151. The rôle of the **State Court Administration** needs reconsidering. At present there is uncertainty as to where its responsibilities begin and end. The proposal to subordinate it to the judiciary is to be welcomed, but with that responsibility will go the need for accountability by the judges.
- 152. Court presidents have considerable **administrative responsibilities**, and power, but often lack the resources to exercise them. It is for consideration whether these non-judicial functions should be passed to the SCA. Judges are, or ought to be, appointed for their legal and judicial abilities; they can lack administrative expertise.

¹⁰³ Judgment of 28th October 1998

The Prokuratura

153. The powers of the Prokuratura should be brought into line with rule of law principles (see, the Venice Commission's opinion on the constitutional amendments and Resolution 1466 of the Parliamentary Assembly of the Council of Europe, paragraph 13.4, "regretting the step back in the reform of the Prosecutor's Office marked by the December 2004 constitutional amendments").
154. Dismissal of the **Prosecutor General** should be possible only against predefined criteria.
155. Similarly, the **appointment procedure** is presently opaque, and needs to be made open and fair.
156. The **respective responsibilities** of the Prosecutor General and of regional/local prosecutors in relation to a particular case require clarification. Whilst it might be appropriate for the Prosecutor General to be able to issue general guidelines to his local counterparts, on an operational level they should be independent.
157. **Human rights awareness** within the Prokuratura is essential¹⁰⁴.
158. The EU and Council of Europe Action Plans should be consolidated.

The Legal Profession

159. The creation of a single, strong, independent **professional association** which can set entry standards, secure proper levels of service and enforce discipline, as well as raise professional self-esteem, is of high importance. The precise model to be adopted should be chosen by the lawyers themselves. Nonetheless, a disadvantage of the Bar Association's scheme would appear to be that it leaves responsibility for admission to the profession to the Qualification Commission, which is (a) a State body and (b) which has so far not distinguished itself.

The objectives should include –

- a. Vesting powers of self-regulation in the profession;
- b. Guaranteeing professional independence.

¹⁰⁴ The Office of the Prosecutor General of Ukraine has asked for it to be recorded that it, together with the Council of Europe, continues the implementation of *The Educational Programme for the employees of the Prosecutor's Office of Ukraine concerning the provisions and the practice of implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms*. Within the framework of this programme, a group of trainers has been prepared from among the employees of the Prosecutor's office, comprising 47 persons, who, together with national experts should conduct 125 one-day trainings on the provisions and practical implementation of the Convention, that should involve all employees of the Prosecutor's Office of Ukraine (the total of about 10.500 persons). At present, already 60 such regional seminars have been conducted and they involved over 4.300 prosecutor's office employees. Under the agreement with the Council of Europe, and in connection with the allocation of appropriate funding, there are plans to fully complete the implementation of the programme by the end of May 2006.

When implementing this programme, the Human Rights Manual for Prosecutors and the volumes of materials of the European Court of Human Rights were translated into Ukrainian and 8.000 copies were published to be presented to the participants of the seminars.

Such an organisation should, however, be confined to those with a proper professional qualification and not simply embrace all *pravniki*.

Judicial Co-operation

160. Ukraine has already ratified several UN, Hague and Council of Europe Conventions in the civil, family and criminal law fields. That represents a sound basis for further **international co-operation**, although the operation of these conventions within Ukraine needs to be monitored. It is therefore recommended that possibilities of an EC-Ukraine agreement on judicial cooperation in civil matters be explored.

Co-ordination of assistance

161. Continuing emphasis needs to be given to **co-ordinating assistance** to Ukraine. The EU and the Council of Europe do have a steering committee for joint programmes¹⁰⁵, but it is not clear whether such co-operation extends to all areas or includes other donors e.g. OSCE, DANIDA, ABA. Without co-operation and long term planning there is a risk that there will be a duplication of effort and a temptation to go for ‘quick wins’.
162. It would be helpful to all concerned, not least the Ukrainian authorities, if a **literature survey** could be undertaken drawing together, and identifying the common themes and recommendations in, the recent reports by the whole range of national and international organisations which have considered judicial reform and the rule of law in Ukraine, only some of which no doubt are referred to in this report.
163. The **long-term objectives** of each project should be identified as part of their planning.

Detention and Imprisonment

Penitentiary reform

164. The most important challenge in the area of the penitentiary is to reduce the **number of detainees and sentenced prisoners**. Judges should therefore be encouraged to use alternative sanctions and measures to incarceration (e.g. bail orders, community service orders, probation orders, parole, semi-liberty, conditional release...). The use of alternative sentences should be particularly encouraged for minor crimes. Promotion of alternative sanctions and measures in Ukraine could be achieved by using best practices in this regard from other EU countries. A reduction of the prison population could partly be achieved by amending the criminal law accordingly and by changing the practice of the courts.
165. The penitentiary system should be more transparent also with a view of **raising more awareness** about the problems the system faces, including the lack of resources to implement the Criminal Code. The role of the press and the right of expression both for the representatives of the civil society and the authorities working within the penitentiary should be encouraged to create a public discussion about the problems

¹⁰⁵ [http://jp.coe.int/programmes/ukraineV/DSP\(2005\)22_E.pdf](http://jp.coe.int/programmes/ukraineV/DSP(2005)22_E.pdf)

that the penitentiary system is facing. It is still obvious that there is a fear within the penitentiary system to talk about certain problems, for example about corruption.

166. **Corruption** within the prison service remains a problem, although there have been improvements mostly due to the fact that more attention has recently been paid to this serious problem.
167. The SDEP must be aware of its important role as a part of the judicial system. It is responsible for fulfilling the legal provisions, and to respect and implement the international agreements and conventions that Ukraine has signed. The current situation seems to lack functioning control mechanisms. The SDEP cannot be the primary legal body to control its own actions. This would be counteracted if Ukraine would transfer the **responsibility for penal system to the Ministry of Justice**, as it was expected when Ukraine became a member of the Council of Europe.
168. A special court dealing with crimes committed by **juveniles** needs to be established and it should be ensured that judges and relevant experts ensure the special needs of young people.

Human rights of detained persons

169. The **treatment, conditions and rights of all detained persons** (including detained irregular migrants) should be regulated by the same legislation and must be in accordance with the International Human Rights treaties to which Ukraine is party. The State Border Guards Service needs to be made aware of the fact that immigration detainees must enjoy their human rights in the same way as other categories of persons deprived of their liberty. It must be stated again that the responsibility for the treatment, conditions and rights of detained persons or prisoners lies both with the government and those authorities supervising the detainees.
170. Human rights violations were reported to occur during the **investigation** phase. The Mission heard numerous allegations about torture and ill-treatment during the investigations in order to obtain confessions. This is unacceptable. Another matter of concern is the fact that evidence gathered during the pre-investigation is generally outweighing evidence brought up during trial. There are theoretical possibilities to appeal, but usually the appeals do not change the situation, because the cases are often partially handled by the same authorities that have made the initial decision, or they have a strong influence on the decision-making process. It is strongly recommended that allegations of ill-treatment be followed by a thorough examination by the prosecutors.
171. It was reported to the Mission that **persons sentenced to a lifetime sentence** face a particular harsh treatment. The protection of their rights therefore require special attention. Lifers are not allowed to take part in any activities and have to spend their day in the cell. This treatment is not at all compliant with minimum prisoners' rights standards as the Council of Europe defined them and is also in contradiction with international human rights agreements signed by Ukraine. Immediate action is required.
172. The use of **physical violence against the prisoners**, organised and permitted by the police and the penitentiary authorities in the year 2000, is totally contrary to any basic

human rights standards. Special police forces called *Bercut* were allowed to operate in prisons, using the prisoners as their target group when practising the use of force. Evidence for 2 such cases was provided in the year 2000. To which extent the prisoner are still used for training purposes is not clear. There has been news of similar actions as late as in spring 2005. These kinds of incidents show a lack of sufficient control and of human rights awareness.

173. **Lifers** are wearing orange uniforms and labels indicating their status. They should have the right to wear uniforms similar to the other prisoners. The State Department for Execution of Punishments (SDEP) has in a letter to the Mission of 07.02.2006 promised that the uniforms of the life time sentenced prisoners will be changed to normal uniforms within 3 months. This promised change would need to be followed up.
174. The use of 3 months isolation must be avoided. To isolate people in cells of 2,3 m² is inhuman and must be forbidden. Prison staff needs training in conflict mediation and in alternative disciplinary methods.

Co-operation with the civil society

175. A constructive dialogue between the State Department for Execution of Punishments (SDEP) and **Human Rights organisations** should be promoted, not only to improve the conditions of the facilities but also to ensure a respectful treatment of the prisoners. A constructive co-operation between the penitentiary authorities, NGOs, representatives of the Universities and different actors from the civil society is needed to achieve an improvement of the penitentiary system in Ukraine. It is recommended that regular round table meetings gathering the above mentioned actors are organised with a view to discussing the most urgent questions in the area of penitentiary reform. It is also recommended that these round tables seek advice from the existing Advising Councils.

Re-socialisation and aftercare

176. Wherever possible, **vocational training** should be offered to prisoners. Vocational training is an important part of the re-socialisation of the prisoners and at the same time it contributes to the production in the colonies to generate income. There is also a need for modern equipment for vocational training (e.g. in metal work and for electricians).
177. Reducing the **number of detained juveniles** is of paramount importance. There is a need to meet this challenge on many levels for example by supporting the families, by supporting alternative ways of sentencing and by creating a sufficient aftercare system. There is an urgent need to develop the aftercare of prisoners with a view to reducing recidivism -not only for the juveniles but also for adults. The civil society, the municipalities and the judiciary should cooperate to foster the development of this area.

Training

178. The **low level of training**, the difficult working conditions and the low salary of prison staff is a matter of serious concern. The ways to motivate prison staff or to attract new people to the penitentiary service are limited. In addition, low salaries make the prison staff vulnerable to accepting bribes. It is important that experienced staff does not leave the penitentiary system and that young skilled people are attracted to work in the penitentiary service.
179. There is a need for **trained psychologists, teachers, social workers, probation officers and counsellors**. Organizing study visits or establishing twinning projects between EU and Ukrainian prison authorities could contribute to exchanging experiences and lessons learnt among different categories of prison staff.
180. There is a need to renew the **curriculum for professional training** of prison staff. Before these challenges can be met however, the question regarding competences within the penal system needs to be solved.

Infrastructure

181. The poor state of the prison facilities is a matter of utmost concern: boilers and pipelines for the heating are old and have to be renewed, the roofs of the colony buildings have to be repaired, facilities for family visits need to be renovated. The detention conditions could be considerably improved by **investment into infrastructure**. It is therefore important that sufficient funds from the State budget are allocated for the refurbishing of colonies and prisons. This is a responsibility of the government and not of the local civil servants working in the colonies or prisons.
182. There should be a mechanism to compensate penitentiary units for unexpected costs caused by the rise of gas prices. There is also a need to identify additional financial means for costs caused by expensive medical treatment of prisoners who suffer from AIDS or cancer. There is an obvious need to support the health care and the prison hospitals. The responsibility to handle **unexpected costs** cannot lie with the management of a certain colony or prison but is the responsibility of the State.
183. The visited Mariupol colony nr. 107 for female prisoners was **overcrowded**. Female prisoners had only 2,5 m² /person in their cells. They did not have access to basic hygiene articles. Health care was not sufficiently available. There is a need for a hospital service for women. Help in the planning of the area and the facilities is needed.

ANNEX I: List of Countries / Negative List

ANGOLA
ALBANIA
AFGANISTAN
BANGLADESH
BENIN
BOTSWANA
BURKINA FASO
VIETNAM
GABON
GAMBIA
GHANA
GAVANA
REPUBLIC OF GUINEA
GUINEA BISSAO
EQUATORILA GUINEA
PAPUA NEW GUINEA
DOMINC REPUBLIC
ERITREA
ETHIOPIA
EGIPT
ZAMBIA
ZIMBABWE
INDIA
INDONESIA
IRAQ
IRAN
JORDAN
COMBODIA
CAMERUN
KENIA
CHINA
COLUMBIA
CONGO /BRAZAVIL/
DEMO R OF CONGO
PDR NORTH KOREA
LAOS
LIBERIA
LEBANON
LYBIA
MAURETAINA
MADAGASCAR
MALESIA
MALI
MAROCCO
MOZAMBIQUE
MONGOLIA
NAMIBIA
NEPAL

NIGERIA
NIGER
NIKARAGUA
OMAN
PAKISTAN
PALESTINA
RUANDA
SENEGAL
SYRIA
SOMMAILA
SURINAM
SUDAN
SIERRA LEONE
TAIWAN
TANZANIA
TOGO
TONGA
TUNIZIA
UGANDA
PHILIPPINES
CENTRAL AFRICAL REPUBLIC
CHAD
SRI LANKA

ANNEX II: Legislation Introduced in Ukraine since 2002 in Support of the Fight against Organised Crime

- 10 January 2002 – the CMU Resolution #35 "On the Establishing of the State Department for Financial Monitoring" established the State Department for Financial Monitoring within the Ministry of Finance of Ukraine;
- 15 May 2002 – the CMU Resolution #676 approved the Program for Counteracting Legalisation (Laundering) Proceeds, Criminally Obtained, for 2002;
- 28 November 2002 - the Verkhovna Rada of Ukraine adopted the Law # 249-IV "On Prevention and Counteraction of Legalization of Money, Criminally Obtained";
- 29 January 2003 – the CMU Resolution #140 "On the Approval of the Programme or Counteracting Legalization (Laundering) Proceeds, Criminally Obtained, for 2003";
- 16 January 2003 - the Law of Ukraine "On Introducing Amendments to the Criminal and Criminal Procedure Codes of Ukraine" was adopted (new edition of Article 209 "Legalization of money and other proceeds, criminally obtained and new Article 209-1 "Deliberate Violation of the Requirements of the Legislation on Preventing of and Counteracting to Legalisation (Laundering) of the Proceeds, Criminally Obtained");
- 6 February 2003 - the Law of Ukraine #458-IV "On Introducing Amendments to Some Laws of Ukraine On Prevention of Use of Banks and Others Financial Organizations with a view to Legalization (Laundering) of the Proceeds, Criminally Obtained" was adopted;
- 24 April 2003 – the Order of the State Committee for Financial Monitoring "On the Adoption of Qualification Requirements for the Persons Appointed Responsible for the Primary Financial Monitoring in the Sphere of Prevention of and Counteraction to Legalization (Laundering) of Proceeds, Criminally Obtained, and Financing Terrorism";
- 26 April 2003 - the CMU Resolution # 644 "On Approving the Order of Registration of Financial Operation by Agencies of the Primary Financial Monitoring";
- 26 April 2003 - the CMU Resolution # 645 "On Approval of Order of Determination of Countries (Territories) which do not Cooperate in the Sphere of Prevention of Money Laundering and Financing of Terrorism";
- 26 April 2003 – the CMU Resolution #646 "On the Approval of the Procedure for Accounting by the State Committee for Financial Monitoring of Financial Transactions Which Are Subject to Compulsory Financial Monitoring";
- 12 May 2003 – the Order of the State Committee on Financial Monitoring # 46 "On the Adoption of Qualification Requirements for the Employees of the Agencies of the Primary Financial Monitoring, Responsible for Carrying out the Financial Monitoring in the Sphere of Prevention of Money Laundering and Financing of Terrorism";
- 13 May 2003 - the Order of the SCFM #48 "On the Adoption of Some Forms Connected with Carrying Out the Financial Monitoring and the Instruction on Their Filling out";

- 14 May 2003 - the Regulation # 189 on Realization of Financial Monitoring by Banks was approved by the Resolution of the National Bank of Ukraine # 189
- 4 June 2003 – the CMU Resolution #233 "On the Approval of the Scope of the Requisites and Structure of the Files for Informational Exchange between Specially Authorized Executive Agencies on Financial Monitoring and Banks (Branches)";
- 17 July 2003 – the CMU Resolution #419 "On the List of Countries (Territories) Which Do Not Take Part in International Co-operation in the Sphere of Preventing and Counteracting Legalization (Laundering) of Proceeds, Criminally Obtained, and Financing Terrorism";
- 22 July 2003 - the Presidential Decree # 740 On Measures to Develop System of Counteraction to Legalization (Laundering) of the Proceeds, Criminally Obtained and Financing Terrorism;
- 5 August 2003 – Order of the State Commission for Regulation of Financial Services Markets of Ukraine # 26 “On the Adoption of the Order of Carrying Out of Check-ups in the Sphere of Prevention of and Counteraction to Legalization (Laundering) of Proceeds, Criminally Obtained”;
- 5 August 2003 – Order of the State Commission for Regulation of Financial Services Markets of Ukraine # 25 "On Financial Monitoring by Financial Institutions";
- 2 October 2003 - the Cabinet of Ministers of Ukraine adopted the Resolution # 1565 On Establishment of Interagency Group for Investigation of Methods and Tendencies in Money Laundering;
- 20 November 2003 – the CMU Resolution # 1800 “On Adopting the Order of Carrying Out the Internal Monitoring by the Agents of Management, which deal with organization and maintenance of Gambling-houses and Pawnshops”;
- 10 December 2003 - the CMU Resolution # 1896 “On the Single State Data System in the Sphere of Prevention of and Counteraction to Legalization (Laundering) of the Proceeds Criminally Obtained and Financing Terrorism”;
- 16 January 2004 – CMU Resolution #45 “On Approving the Programme of Counteraction to Legalization of Proceeds, Criminally Obtained for 2004”;
- 18 May 2004 - Law of Ukraine # 1726-IV “On Introducing Amendments to Article 4 of the Law of Ukraine On Prevention of and Counteraction to Legalization of Proceeds, Criminally Obtained” (concerning central executive body with special competence in the sphere of financial monitoring) was adopted;
- 25 August 2004 – CMU Resolution # 1081 “Certain Issues of the State Department of Financial Monitoring”, envisaging implementation of organisational measures aimed at the establishment of structural subdivisions of the State Committee of Ukraine on Financial Monitoring in regions;

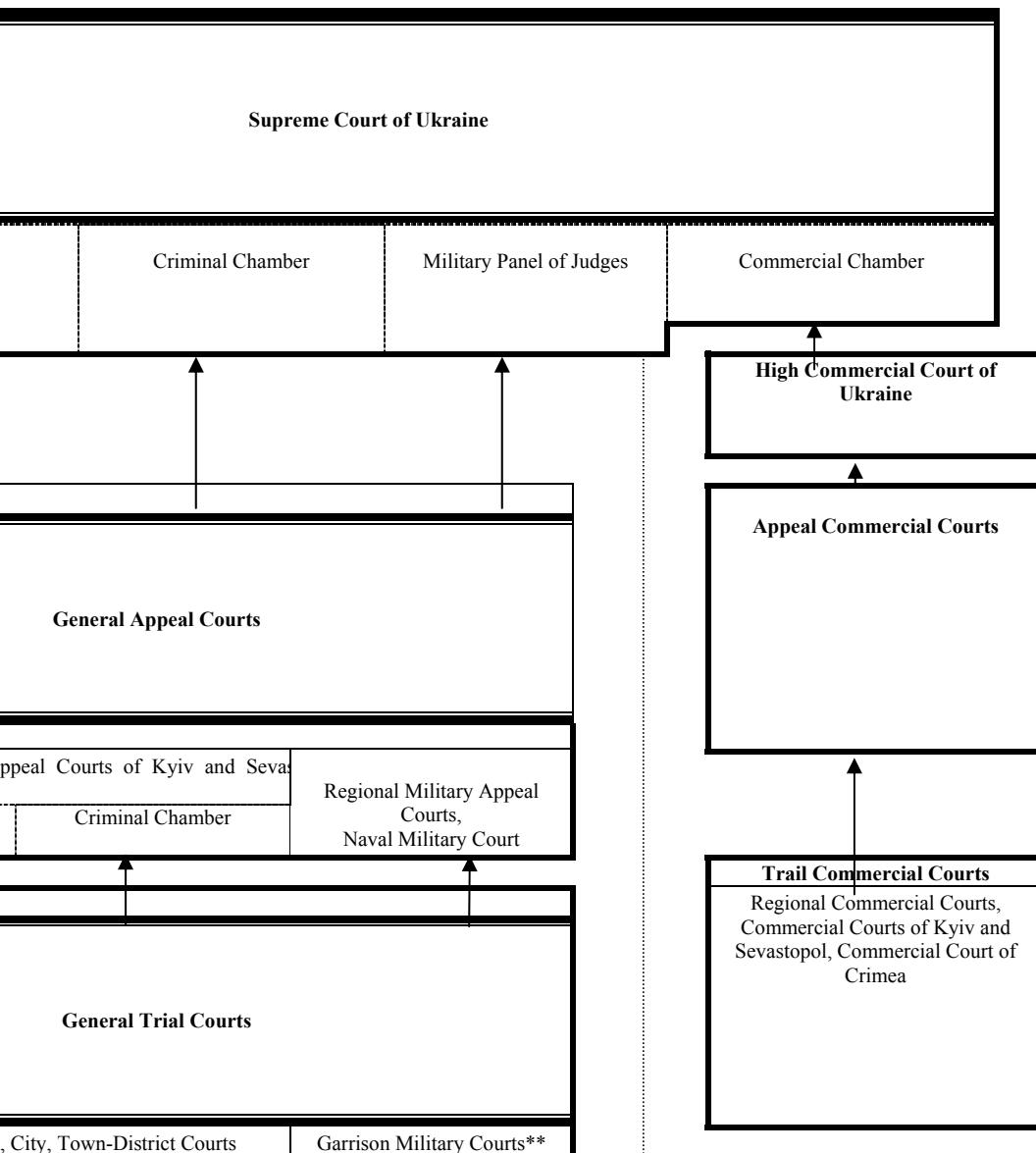
- 28 September 2004 – Presidential Decree # 1144 On State Committee of Ukraine on Financial Monitoring, that envisages that the State Department of Financial Monitoring will be the basis for establishment of a governmental body of state management, acting within the Ministry of Finance of Ukraine, namely, the State Committee of Ukraine on Financial Monitoring as a central executive body with the special status;
- 30 September 2004 - Presidential Decree # 1156 On Participation of Ukraine in the Eurasian Group on counteraction to money laundering and financing of terrorism, by which the SDFM is determined responsible for co-operation with this Group; 28 December 2004 – Presidential Decree # 1527 on “Regulation of the State Committee of Ukraine on Financial Monitoring”;
- 1 December 2005 – Law of Ukraine # 3163-IV “On Amending Some Laws of Ukraine to Improve Legal Regulation of the International Co-operation in the Prevention of Terrorism Financing”;
- 15 April 2005 – the Resolution of the Plenum of the Supreme Court of Ukraine "On the Practice of Courts Using the Legislation on Criminal Responsibility for Legalization (Laundering) of the Proceeds Criminally Obtained";
- 12 July 2005 – CMU Resolution # 572 on amending some CMU resolutions with a view to provide subjects of primary monitoring with the right to inform the SCFM on suspicious financial transactions;
- 3 August 2005 – CMU Resolution # 315 On Approving the Concept of development of the system of prevention of and counteraction to money laundering and financing of terrorism for 2005-2010;
- 10 August 2005 – CMU Resolution # 736 on Approving the Action Plan on Prevention of and Counteraction to Money Laundering and Financing of Terrorism for 2005;
- 21 April 2006 – CMU Resolution # 359 On Approving Action Plan on Prevention of and Counteraction to Legalization (Laundering) of Proceeds Criminally Obtained and Terrorism Financing for 2006.

of General Jurisdiction Courts

dition* |

Criminal Jurisdiction

| Commercial Jurisdiction



Specialized Courts

ANNEX IV: Ukrainian Ratification of International Conventions Listed as Important in the Justice, Freedom and Security Area¹⁰⁶

Convention	Signature	Ratification	Entry into Force
Convention for the Protection of Human Rights and Fundamental Freedoms, 1950	09.11.1995	11.09.1997	11.09.1997
Protocol N.2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions, 1963	09.11.1995	11.09.1997	11.09.1997
Protocol N.7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1984	19.12.1996	11.09.1997	01.12.1997
Protocol N. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 1994	09.11.1995	11.09.1997	01.11.1998
Convention relating to the Status of Refugees, Geneva 1951		10.06.2002	29.06.2002
Protocol relating to the Status of Refugees, New York 1967		04.04.2002	04.04.2002
International Convention on the Elimination of All Forms of Racial Discrimination, 1966	07.03.1966	07.03.1969	06.04.1969
European Convention on the Legal Status of Migrant Workers, 1977	02.03.2004	Not yet ratified	-
International Convention on the Protection of the Rights of Migrant Workers and Members of their Families	Not yet signed	-	-
European Agreement on the Abolition of Visas for Refugees	Not yet signed	-	-
Protocol to the European Convention on Consular Functions concerning the Protection of Refugees	Not yet signed	-	-
European Agreement on Transfer of Responsibility for Refugees	Not yet signed	-	-
United Nations Convention against Transnational Organised Crime, Palermo 2000	12.12.2000	21.05.2004	03.06.2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo 2000	15.11.2001	21.05.2004	03.06.2004
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Palermo 2000	15.11.2001	21.05.2004	03.06.2004
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention	Not yet signed	-	-

¹⁰⁶ Sources: <http://conventions.coe.int/Treaty/EN/v3MenuTraites.asp>; <http://www.ohchr.org/english/law/>; http://www.hcch.net/index_en.php?act=conventions.listing; <http://www.wcoomd.org/ie/En/Conventions/conventions.html>;

against Transnational Organized Crime, 2001			
Council of Europe Convention on Action against Trafficking in Human Beings, 2005 (convention not yet entered into force)	17.11.2005	Not yet ratified	-
Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child prostitution and Child pornography	07.09.2000	03.07.2003	03.08.2003
European Convention on the Compensation of Victims of Violent Crimes, 1983	08.04.2005	Not yet ratified	-
European Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 1981	29.08.05	Not yet ratified	-
Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows, 2001	29.08.05	Not yet ratified	-
UN Single Convention on Narcotic Drugs, 1961		27.09.2001	10.10.2001
UN Convention on Psychotropic Substances, 1971	30.12.1971	20.11.1978	09.12.1978
Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	16.03.1989	28.08.1991	
Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1995	20.12.2004	Not yet ratified	-
European Convention on the Transfer of Proceedings in Criminal Matters, 1972		28.09.1995	29.12.1995
European Convention on Extradition, 1957	29.05.1997	11.03.1998	09.06.1998
Additional Protocol to the European Convention on Extradition, 1975	29.05.1997	11.03.1998	09.06.1998
Second Additional Protocol to the European Convention on Extradition, 1978	29.05.1997	11.03.1998	09.06.1998
European Convention on Mutual Assistance in Criminal Matters, 1959	29.05.1997	11.03.1998	09.06.1998
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 1978	29.05.1997	11.03.1998	09.06.1998
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 2001	08.11.2001	Not yet ratified	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990	29.05.1997	26.01.1998	01.05.1998
Council of Europe Convention on the Prevention of Terrorism, 2005 (convention not yet entered into force)	16.05.2005	Not yet ratified	-
European Convention on the Suppression of Terrorism, 1977	08.06.2000	13.03.2002	14.06.2002
Protocol amending the European Convention on the Suppression of Terrorism, 2003 (protocol not yet entered into force)	15.05.2003	Not yet ratified	-

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005 (convention not yet entered into force)	29.11.2005	Not yet ratified	-
Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague 1970	16.12.1970	21.02.1972	-
Convention for the Suppression of Unlawful Acts against Safety of Civil Aviation, Montreal 1971	23.09.1971	26.01.1973	-
Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963		29.02.1988	29.05.1988
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome 1988		Ratified	
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf		Ratified	
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973		Ratified	
International Convention against the Taking of Hostages, 1979		Ratified	
Convention on the Physical Protection of Nuclear Material, 1980		05.08.1993	
Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal 1988	24.02.1988	03.01.1990	02.02.1990
Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal 1991	01.03.1991	18.03.1999	17.05.1999
International Convention for the Suppression of Terrorist Bombings, 1997		Ratified	
International Convention for the Suppression of the Financing of Terrorism, 1999		Ratified	
International Convention for the Suppression of Acts of Nuclear Terrorism, 2005	Signed		
United Nations Convention against Corruption, 2003	11.12.2003	Not yet ratified	-
European Civil Law Convention on Corruption, 1999	04.11.1999	19.09.2005	01.01.2006
European Criminal Law Convention on Corruption, 1999	27.01.1999	Not yet ratified	-
Additional Protocol to the Criminal Law Convention on Corruption, 2003	15.05.2003	Not yet ratified	-
Statute of the Hague Conference on Private International Law	03.12.2003	-	03.12.2003
Convention of 25 October 1980 on International Access to Justice	Not yet signed	-	-
Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters		01.02.2001	01.04.2001
Convention of 1 March 1954 on Civil Procedure		28.10.1966	26.07.1967
Convention of 1 February 1971 on the Recognition and Enforcement of Foreign	Not yet signed	-	-

Judgments in Civil and Commercial Matters			
Supplementary Protocol of 1 February 1971 to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters	Not yet signed	-	-
Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents		02.04.2003	22.12.2003
Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters		01.02.2001	01.12.2001
European Convention on Information on Foreign Law, 1968		13.06.1994	14.09.1994
Additional Protocol to the European Convention on Information on Foreign Law, 1978		13.06.1994	14.09.1994
European Convention on the International Validity of Criminal Judgements, 1970	08.06.2000	11.03.2003	12.06.2003
European Agreement relating to persons participating in proceedings of the European Court of Human Rights, 1996	22.05.2003	04.11.2004	01.01.2005
European Convention on the Calculation of Time-Limits	Not yet signed	-	-
European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, 1978	Not yet signed	-	-
European Agreement on the Transmission of Applications for Legal Aid, 1977	Not yet signed	-	-
Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid, 2001	Not yet signed	-	-
Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions	Not yet signed	-	-
Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption	Not yet signed	-	-
Convention of 25 October 1980 on the Civil Aspects of International Child Abduction	Not yet signed	-	-
European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, 1980	24.01.2006	Not yet ratified	-
Convention on Contact concerning Children, 2003	15.05.2003	Not yet ratified	-
Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors	Not yet signed	-	-
European Convention on the Repatriation of Minors, 1970 (convention not yet entered into force)	Not yet signed	-	-
Convention of 24 October 1956 on the law applicable to maintenance obligations towards children,	Not yet signed	-	-
Convention of 15 April 1958 concerning the recognition and enforcement of decisions	Not yet signed	-	-

relating to maintenance obligations towards children			
Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations	Not yet signed	-	-
Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations	Not yet signed	-	-
Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes	Not yet signed	-	-
Convention on the Establishment of a Scheme of Registration of Wills, Basel 1972	29.11.2005	Not yet ratified	-
Rome Statute of the International Criminal Court, 1998	20.01.2000	Not yet ratified	
Agreement on Privileges and Immunities of the International Criminal Court	Not yet signed		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	27.02.1986	24.02.1987	26.06.1987
European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, 1964		28.09.1995	29.12.1995
Convention on the Transfer of Sentenced Persons, 1983		28.09.1995	01.01.1996
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987	02.05.1996	05.05.1997	01.09.1997
Protocol N. 1 to the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1993	26.01.1998	07.11.2001	01.03.2002
Protocol N. 2 to the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1993	26.01.1998	07.11.2001	01.03.2002
Additional Protocol to the Convention on the Transfer of Sentenced Persons, 1997	08.06.2000	01.07.2003	01.11.2003
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (protocol not yet entered into force)	23.09.2005	Not yet ratified	-
Convention establishing the Customs Co-operation Council		26.06.1992	
Convention on the Harmonized Commodity Description and Coding System		26.08.2002	01.01.2004
Convention on Temporary Admission (Istanbul Convention)		22.06.2004	
Customs Convention on Containers	22.10.1973	01.09.1976	
International Convention on Mutual Administrative Assistance for the prevention, investigation and repression of Customs offences (Nairobi Convention)		11.07. 2000	
International Convention on the simplification and harmonization of Customs procedures (1974 Kyoto Convention and its 1999 amended version).	Not yet signed	-	-

ANNEX V: List of Persons Met and Field Visits

Ministries and other central Ukrainian Authorities

Ministry of Justice of Ukraine,

Kotliar Dmytro, Deputy Minister of Justice;

Zerkal Lena, Director of the State Department on Approximation of Legislation

Volkova Xeniya, Head of Division, Civil Law and Entrepreneurship;

Suskaya Tatyana, Execution of International Agreements (Criminal);

Barina Irina, Execution of International Agreements (Civil);

Ms Trefanova, Family Law Department;

Mayorova Marina, Head of Unite, Co-ordination of Co-operation with the EU;

Dzyubiy Olga, Chief Adviser, Co-ordination of Co-operation with the EU.

Ministry of Foreign Affairs of Ukraine,

Bazylevskyi Borys, Director general, Consular service directorate;

Al'oshyn Sergiy, Deputy Director general, Consular service directorate;

Vladymyrov Artem, First secretary, Visa Division, Consular service directorate.

Ministry of Interior of Ukraine,

Yarmash Aleksandr, Major.General, Director of Training;

Kornish Serhiy, Head of Organised Crime Directorate;

Gubskiy Sergey V., Head of Immigration Department, State Department of Citizenship, Immigration and Registration of Individual Persons;

Sachik Nelya, State Department of Citizenship, Immigration and Registration of Individual Persons;

Melnichuk Viktor, Deputy Head of the Drug Enforcement Department;

Klyuchnikov Daniil, Deputy Head of the Department to fight Trafficking in Human Beings;

State Border Guards Service,

Shysholin Pavel Anatolievich, General-Colonel, First Deputy Chairman of the State Border Guards Service;

Melnikov Oleksandr G., Lieutenant-General, Deputy Head of the State Border Guards Service, Director of Law and International Directorate;

Zarytskiy Anatoliy M., Major General, Deputy Head of Law and International Directorate, Chief of International Cooperation and European Integration Department;

Potomskiy Y.V., Major General, Head of Operational Department;

Fesenko S.O., Major General, Head of Department, Communication management and IT;

Fedoseev A.D., Colonel, Head of Unit for Work with Foreigners;

Meehenko M.M., Colonel; Head of Department, Legal Services Management;

Kozyenko V.V., Colonel, Department for Border Control and Registration;

Evdokimenko V.V., Colonel, Department for Border Control and Registration;

Pritula S.G., Colonel, Department for Border Control and Registration;

Palamarchuk V.G., Colonel, Department for Communication and Informatics;

Levchenko S.P., Lieutenant Colonel, Finance Department;

Morozov S.O., Captain, Department for International Cooperation and European Integration;

Nazarchuk O.D., Lieutenant, Department for International Cooperation and European Integration.

State Customs Service,

Nebrat L., Director of Law-Enforcement Department;

Zavtur Dmitro, Director of International Department;

Kolesnik S., Chief of ITA Sector.

State Security Service, Headquarters, Kiev,

National Security and Defence Council,

Petetrochenko Y., Deputy Secretary National Security and Defence Council;

	Markeeya O. , Secretary of the Inter-agency's Commission of the National and Defence Council of Ukraine on the Comprehensive Tackling of Issues in the Area of Fight against Corruption
State Department of Execution of Punishments,	Koshchinets Vasil , Head of State Department of Enforcement of Punishments of Ukraine;
	Kalashnik Natalia , Deputy Head of State Department of Enforcement of Punishments of Ukraine;
	Gorobtsov Nikolay , Head of the Division on regulation of the pretrial centers' activity;
	Babak Konstantin , Head of Unit on European Integration.
State Committee of Ukraine for Nationalities and Migration,	Fandykova Tetiana , Deputy Director of the Department for Refugees and Migration, Head of the Refugees Division;
	Schmidt Victoria , Deputy Director of the Department for Refugees and Migration - Head of the Migration Division.
State Committee for Financial Monitoring,	Klushke Stanislav , Deputy Head.
State Court Administration,	Bulka Olga , Deputy Head, Ribka Andrei , State Judicial Administration.
Constitutional Court of Ukraine,	Yevhrafov Pavlo , Acting President.
Supreme Court of Ukraine,	Shytskiy Ivan B. , President of the Commercial Chamber;
Office of the Prosecutor General of Ukraine,	Potapenko Viktor P. , Head of International Legal Co-operation. Shynalskyi Oleksandr , Deputy Prosecutor General of Ukraine; Titarchuk Grygory , Head of Department for Organisation and Control;

Kovalenko Alexander, Deputy Head of the International Law Department;

Lytvynchuk Olga, Senior Prosecutor, International Law Department;

Dovgan Svitlana, Senior Prosecutor;

Drozach Sergiy, Prosecutor.

Academy of Judges of Ukraine,

Voityuck Irina, President.

Ukrainian Parliament Commissioner for Human Rights (Ombudsperson of Ukraine),

Usatov Dmitro Alexandrovitch, Counsellor of the Commissioner on Human Rights and Legal Affairs;

Kortchak Mikola Stepanovitch, Head Assistant, Department on Criminal, Administrative and Civil Law and Penitentiary Bodies;

Kudruk Serhiy Michailovitch, Head of Unit on Penitentiary Service;

Timanov Volodymyr Grigorovitch, Chief Adviser, Unit on Penitentiary Service;

Kovtunenko Yevgen Mikolayevitch, Adviser, Unit on Penitentiary Service;

Kusmanenko Aleksiy Olegovitch, Chief Expert, Unit for International Organisations

National Institute for International Security Problems,

Malynovska Olena.

Regional Ukrainian Authorities

Ministry of Interior, Odessa,

Kornishev Yevgeniy, Head of Odessa Region; Department on fight against organised crime;

Kaprun Fedir Vasilovitch, Head of Odessa region, Department of Citizenship, Immigration and Registration;

Stasyuk Oleksandr, Deputy Head of Odessa region, Department of Citizenship, Immigration and Registration;

Vintsevskiy Anatoly Vasylevitch, Head of Odessa city district, Department of Citizenship, Immigration and Registration

South Regional Directorate of State Border Guard Service, **Titarenko Sergey**, Lieutenant Colonel, Deputy Head;

Pleshko Vladimir, Colonel, International Relations;

Kharkiv Eastern Direction Border Guards,

Khadzhioglo Sergey, Captain,
International Relations.

Security Service Odessa (SBU)

Belyatsky Igor, Colonel;

State Court Administration Odessa,

Dzyruk Nikolai, Deputy Head Odessa
Region.

Prosecutor for the City of Odessa,

Yershova Larisa, Deputy Head;

Regional Migration Services,

Danielin Sergei, Prosecutor for the City of Odessa;
Anatolievich Viktor, Deputy Prosecutor for the City
of Odessa;

Koval Ludmilla, Prosecutor' Office, City of Odessa.

Dergach Oleksander V., Head of Office, Regional
office of State Committee for Nationalities and
Migration, Kiev;

Mikola Towt, Head of Office, Regional Office of the
State Committee for Nationalities and Migration,
Zakarpatska region.

State Department of Execution of Punishments- ITT Chernigiv, **Lopatin Victor**, Head of the State
Department's Division in Chernigiv
oblast;

Gorobtsov Nikolay, Head of the
Division on regulation of the pre-trial
centers' activity;

Babak Konstantin, Head of Unit on
European Integration;

Skulbida Anatoliy, First Deputy
Head of the State Department's
Division in Chernigiv oblast;

Kasimir Valentin, Head of Chernihiv
pre-trial center;

Kozka Vyacheslav, Deputy Head of
Chernihiv pre-trial center.

Mariupol Educational Colony for Juveniles,

Valentina Petronja, Director

Pecherski District Court, Kiev,

Gorjianov Andrei, Vice-President.

International Organisations

Council of Europe Information Office in Ukraine,	Pavlichenko Oleksandr , Director.
ILO,	Kostrytsya Vasyl , ILO National correspondent in Ukraine;
	Litvin Sofia , National manager of the ILO project on Prevention of trafficking in women.
IOM,	Frederic Larsson , Deputy Chief of Mission;
	Tatiana Hadjiemmanuel , Sub-regional project development co-ordinator;
	Sandrine Peillon , Project Specialist.
OSCE Project Coordinator to Ukraine,	Shevchuk Stanislav , Legal Advisor;
	Piñeiro Costas Begoña , Anti-Trafficking Programme Officer.
UNHCR,	Ouellet Guy , Regional Representative;
	Weil Roland , Senior Protection Officer.

EU Member States

Austria,	Klugmaier Rudolf , Attaché Police Liaisons
Denmark,	Grunnet Lars O.S. , Royal Danish Embassy to Ukraine
	Kristensen John , Royal Danish Embassy to Ukraine
Finland,	Reinilä Laura , Ambassador, Embassy of Finland to Ukraine;
	Pullola Lauri , First Secretary;
	Pajarinen Jukka , Second Secretary;
	Sarivaara Pia , Attaché consular affairs.
Hungary,	Tanczos Miklos , Counsellor , Embassy of the Republic of Hungary to Ukraine;
	Puzsik Krisztina , Consul;
	Újlaki György , Consul.
United Kingdom,	Grzenda Daniel , Second Secretary.

NGOs and others

Asylum lawyers network ,

Keil Magdalena Maria.

Caritas Austria,

Mueller Wolfgang, Project Coordinator.

Centre for Political and Legal Reform

Koliushko Ihor, Head of centre, member of parliament.

Kharkiv Human Rights Protection Group

Yavorsky Volodymyr.

The International Women's Rights Centre "La Strada- Ukraine", **Kovalchuk Lyudmyla**, Prevention and Education Programs Co-ordinator.

Neeka,

Pirchak Albert.

South-Ukrainian Centre of Legal Initiatives,

Pakhaluk Nikolay, Manager

Kurochkina Marina, Lawyer

Various

ABA/CEELI Ukraine,

Heuer Robert, Ukraine and Belarus Country Director;

Weise Gavin, Deputy Country Director Ukraine;

Antonina Prudko, Clinical Legal Education Program Coordinator.

European Business Association,

Derevyanko Anna, Executive Director

Ukrainian Bar Association,

Kukhnyuk Dmytro V.,

Gusak Mykola, Administrative Law Chamber, Supreme Court of Ukraine,

Fedeyeva Nina, Supreme Administrative Court, High Qualification Commission.

Union of Advocates of Ukraine,

Zhukovska Olga, Vice-President, Member of the Supreme Council of Justice.

Yuris Law

Marmazov Vasyl, partner, formerly Deputy Minister of Justice;

Petryna Volodymyr, partner.

Field visits (outside Kiev)

Borispol (14.02.06)- visit of the Borispol colony;

Airport Borispol (13.12.2005 and 14.02.2006);

Bucha (13.02.2006)- visit of the Bucha colony;

Chernigiv Oblast (16.02.2006)- visit of the BCP Novi Yarilovichi and the BGU Zadereyevka

Chernigiv (13.12.2005)- visit of the ITT Chernigiv;
Donetsk (16.02.2006)- visit of the Mariupol educational colony for juveniles, of the Priazovskaya prison for women and Yenakievo prison N.52;
Kharkiv Oblast (13/16.12.2005)- visit of border crossing points Hoptivka, Pletenyovka, Chuhunovka;
Khmelnitsky (16.02.2006)- visit of the Border Guard Academy;
Lviv Oblast (15/17.02.2006)-visit of border crossing points Rava Ruska and Sehyni

Odessa (13/15.12.2005 and 14/15.02.2006)) – visit of the seaport and of the airport of Odessa. Visit of the Malinovsky district Courtand of the reception centre for refugees;
Zakarpattya Oblast (13/15.12.2005)- visit of the Pavchino detention camp and the border crossing point Lujanka.

The Mission would like to thank all those who took the time to meet us and for their contribution to the information in this report.

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Council of Europe Joint Action Plan on the Prokuratura Resolution 406/2003.

Council of Europe, Opinion by Jesper Hjortenberg and W Roy Junkin of 5th January 2006 Council of Europe ref PCRED/DGI/EXP (2005) 60/61.

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International Centre for Migration Policy Development (ICMPD), “Regional Best Practice Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response”, Project funded by the EU, Vienna 2005

International Organization for Migration (IOM), Report “Combating Trafficking in Human Beings in Ukraine”..

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UNICEF, provided written support material.

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