Parliamentary **Assembly**
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Honouring of obligations and commitments by Ukraine

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Summary

Upon accession to the Council of Europe almost 10 years ago, in November 1995, Ukraine committed itself to respect its general obligations under the Statute of the Council of Europe and agreed to comply with a number of commitments listed in Assembly Opinion No. 190 (1995).

This is the 6th regular monitoring report on Ukraine and the first one to take stock of what has been achieved and what remains to be done a year after the 2004 presidential elections and the Orange *Revolution* that brought President Yushchenko to power.

The Parliamentary Assembly welcomes the first achievements of the new leadership but notes that a lot remains to be done to ensure the success of the reforms which Ukraine badly needs. The post-revolutionary situation should not become an alibi for hasty decisions, infighting and neglect for democratic and human rights standards. The fight against corruption and the strengthening of the rule of law should be a priority for Ukraine in order to build solid and lasting foundations for a stable, prosperous and democratic future.

The Assembly commends the authorities for the progress made since its previous report in 2003 and welcomes the broad reform agenda. However, it reminds the country's leaders that a number of important specific commitments still remain unfulfilled, in particular the adoption of the new Criminal Procedure Code, the reform of the prosecutor's office, the establishment of a truly professional bar association and the ratification of the European Charter for Regional or Minority Languages.

The draft resolution also lists a number of other recommendations, the implementation of which will show whether Ukraine truly adheres to the principles of pluralistic democracy, the rule of law and respect of human rights.

The Assembly proposes to pursue its monitoring and to return to the assessment of Ukraine's compliance with its obligations and commitments after the March 2006 parliamentary and local elections. The preparation and conduct of these elections, in line with Council of Europe standards, will be a major test for the new authorities. The Assembly will also assess the functioning of democratic institutions and the progress in the implementation of significant reforms in the country by using the concrete benchmark recommendations which are proposed in the draft resolution.

I. Draft resolution

§ 1. Ukraine joined the Council of Europe on 9 November 1995. Upon accession, it committed itself to respect its general obligations under the Statute of the Council of Europe, namely pluralist democracy, the rule of law and respect for human rights and fundamental freedoms of all persons under its jurisdiction. At that moment, Ukraine also agreed to comply, within set deadlines, with a number of specific commitments listed in Assembly Opinion No. 190 (1995).

§ 2. In 2004, Ukraine went through critical presidential elections: two fraudulent rounds of voting in October and November 2004 provoked non-violent massive popular protests and led to a repeat second round on 26 December that, in general, complied with Council of Europe standards of free and fair elections. The Ukrainian people thus demonstrated their commitment to democratic values and aspirations for a better leadership that would reinforce the rule of law and human rights in the country and fight corruption.

§ 3. To live up to the high expectations generated by the *Orange Revolution,* the new leadership has pledged sweeping political, legal, social, and economic reforms. In the first nine post-revolution months, it has nonetheless encountered numerous difficulties originating in particular from the years of rule of the previous regime as well as from internal conflicts within the new administration.

§ 4. The Parliamentary Assembly welcomes the positive evolution in Ukraine and the first achievements of the new President and Government. It hopes that the new leaders will manage to preserve their steadfast resolve and to succeed in the crucial reforms which Ukraine badly needs. In this regard, the preparation and conduct of the 2006 parliamentary and local elections, in line with Council of Europe standards, will be a major test for the new authorities. The 2006 elections will show whether Ukraine has passed the point of no return on its road to becoming a truly democratic European state governed by the rule of law. In this respect, the Assembly declares its readiness to send a pre-electoral mission to Ukraine to follow the preparations for the elections and subsequently to deploy a large-scale observer mission to follow their conduct.

§ 5. In its Resolution 1346 (2003) on the honouring of obligations and commitments by Ukraine, the Assembly concluded that, although notable progress had been made by Ukraine in the field of legislation since the adoption of the Assembly's Resolution 1262 (2001), the country had not yet honoured all obligations and commitments it entered into on becoming a member state of the Council of Europe and that the rule of law in many areas had not yet been fully established.

§ 6. The Assembly is pleased to note that Ukraine has since made further significant progress:

§ 6.1. a new Civil Procedure Code entered into force on 1 September 2005;

§ 6.2. a Code of Administrative Justice was adopted in July 2005 and put into effect on 1 September 2005, enabling the operation of administrative courts;

§ 6.3. all pre-trial detention centres were transferred to the State Department for the Execution of Punishments;

§ 6.4. a new code on the execution of sentences was enacted and the number of persons in custody has significantly decreased;

§ 6.5. publication of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report was authorised;

§ 6.6. a law on public financing of political parties came into effect on 1 January 2005;

§ 6.7. a law that reinforced prosecution of torture and the protection of the rights of detained and arrested persons was adopted in January 2005;

§ 6.8. the reservation to Article 5 § 3 of the European Convention on Human Rights was withdrawn;

§ 6.9. a law strengthening the State service for enforcement of non-criminal judicial decisions was adopted in June 2005;

§ 6.10. the draft law on the establishment of the system of public television and radio in Ukraine was adopted in the first reading as well as a new version of the law on TV and radio broadcasting; a new law on the national council on broadcasting was enacted;

§ 6.11. Protocol No. 14 to the European Convention on Human Rights and the recent Convention on the Prevention of Terrorism were signed respectively in November 2004 and May 2005;

§ 6.12. the European Agreement relating to persons participating in proceedings of the European Court of Human Rights and the Civil Law Convention on Corruption were ratified respectively in November 2004 and March 2005.

§ 7. The Assembly also commends the new authorities for eliminating the previously widespread censorship practices with regard to mass media and ensuring freedom of expression and freedom of assembly throughout the country. The new leadership has furthermore embarked on comprehensive measures aimed at curbing rampant corruption and committed itself to fighting human trafficking.

§ 8. Whilst welcoming the zeal of the new authorities with regard to the prosecution of previous election frauds, the Assembly underlines that it is of utmost importance to bring to justice not only those who executed illegal orders but also the masterminds behind the massive election fraud, those who instigated violence or bribed voters, in order to prevent future infringements and to instil the principles of the rule of law.

§ 9. The Assembly notes that the new wording of the Law on the Elections of People's Deputies, adopted in July 2005, has significantly enhanced the election procedures and taken account of the recommendations of international observers issued after the last presidential elections. However, the new law introduces the possibility to suspend the activities of media outlets, including without a prior court decision, which is highly susceptible to abuse. The Assembly, therefore, urges the Ukrainian authorities to amend this provision as soon as possible and to enact legislation on the state registry of voters. Legal liability for election violations listed in the new law should be established as well.

§ 10. The Assembly deeply regrets that the constitutional amendments of 8 December 2004, adopted as part of a package deal to halt the political turmoil, contained provisions which the European Commission for Democracy through Law (Venice Commission) has repeatedly found incompatible with the principles of democracy and the rule of law, in particular with regard to the imperative mandate of people's deputies and the powers of the prosecutor's office. These provisions should be brought in line with the Venice Commission opinion as soon as possible.

§ 11. Whilst welcoming the broad reform agenda of the new authorities, the Assembly considers that the following specific measures need to be taken in order to accelerate the reforms that will transform Ukraine into a stable and prosperous European democracy.

§ 12. With respect to the improvement of the conditions for the functioning of pluralist democracy in the country, the Assembly calls on the Ukrainian authorities to:

§ 12.1. adopt the laws on the functioning of the branches of power, as required by the Constitution, in particular to enact as soon as possible the laws on the President of Ukraine and on the Cabinet of Ministers of Ukraine;

§ 12.2. strengthen the oversight function of the Parliament, in particular to adopt the law on the Verkhovna Rada's temporary special and investigatory commissions; establish legislative guarantees and conditions for the functioning of parliamentary opposition; streamline the Parliament's internal activity by adopting a law on the new Rules of Procedure;

§ 12.3. continue the reform of local self-government in order to implement the provisions of the European Charter of Local Self-Government;

§ 12.4. transform the State broadcasters into public service broadcasting channels in line with relevant Council of Europe standards; exclude the control of public authorities over any other mass media outlets; guarantee the transparency of media ownership; create equal conditions for the functioning of all media by revising the 1997 law on governmental support for the media and social protection of journalists; ratify the European Convention on Transfrontier Television.

§ 13. With regard to the respect for the rule of law and protection of human rights, the Assembly calls on the Ukrainian authorities to:

§ 13.1. continue the reform of the judiciary in order to ensure its independence and effectiveness. To this end, in particular, to subordinate the State Judicial Administration to the judiciary; to transfer to the latter the authority to appoint presidents of courts; to allocate to it all necessary resources, notably for the functioning of administrative courts vested with the adjudication of election disputes and to guarantee by law the level of remuneration of judges;

§ 13.2. 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;

§ 13.3. establish a professional Bar association, by adopting a new law on the Bar without further delay, as required by the Assembly's 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;

§ 13.4. regretting the step back in the reform of the Prosecutor's Office marked by the December 2004 constitutional amendments, modify the role and functions of this institution as required by the Assembly's Opinion No. 190 (paragraph 11.vi.) and paragraph 9 of the transitory provisions of the 1996 Constitution of Ukraine and in line with the Assembly's Recommendation 1604 (2003) on the role of the public prosecutor's office in a democratic society governed by the rule of law;

§ 13.5. continue to reform the Security Service of Ukraine in line with Council of Europe standards, in particular the Assembly Recommendations 1402 (1999) and 1713 (2005);

§ 13.6. finalise the new version of the draft Criminal Procedure Code 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;

§ 13.7. further improve conditions of detention and medical treatment in the penitentiary establishments in line with CPT standards and recommendations; finalise the transfer of the State Department for the Execution of Punishments to the Ministry of Justice as required by Opinion No. 190 (paragraph 11.vii.); continue the commendable practice of authorising the publication of CPT reports with respect to Ukraine;

§ 13.8. continue efforts aimed at fighting corruption and make sure that economic reforms do not simply lead to the redistribution of power among oligarchs; take full advantage of Ukraine's participation in the Group of States against Corruption (GRECO) and ratify the Criminal Law Convention on Corruption;

§ 13.9. step up the activities in the field of combating trafficking in human beings, allocate sufficient resources for this purpose and ratify the Council of Europe Convention on action against trafficking in human beings;

§ 13.10. ensure full and speedy implementation of the decisions of the European Court of Human Rights; adopt the law on the execution of decisions of the European Court of Human Rights and ratify Protocol No. 14 to the Convention;

§ 13.11. improve the democratic control over the law enforcement bodies, continue to apply a zero tolerance policy and to secure prompt, impartial and full investigation into all allegations of torture and other ill-treatment, including prosecution and punishment of those responsible of these acts;

§ 13.12. guarantee the protection against arbitrary or illegal detention; secure strict compliance by law enforcement bodies with the principles of due criminal procedure, in particular whilst investigating election and corruption related offences; abrogate provisions banning an attorney from the representation of his/her clients if a criminal case was instituted against him/her;

§ 13.13. improve the conditions of access to 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;

§ 13.14. establish effective control over the interception of communications by law enforcement bodies and to this end adopt special legislation, which would comply with the democratic standards on the protection of privacy and national security;

§ 13.15. with regard to the Gongadze case and following the promise of the new leadership to solve the case and the indictment of the alleged perpetrators, consider the case solved only after those who ordered, organised and executed the murder are brought to justice, i.e. subjected to a fair trial before a criminal court; investigate and if necessary prosecute the officials responsible for the shortcomings of the previous investigation;

§ 13.16. referring to the Assembly's Resolutions 1239 (2001), 1262 (2001), and 1346 (2003), conduct a credible examination of the recordings allegedly made by Mykola Melnychenko and obtain his testimony; launch a new investigation into the case of Mr Yeliashkevych and other high-profile cases allegedly documented on the Melnychenko recordings; allow the Verkhovna Rada's ad hoc inquiry commission on the Gongadze and other high-profile cases to present its findings to the parliament's plenary meeting;

§ 13.17. enhance the legal framework for access to information, strictly adhere to Article 34 of the Ukrainian Constitution on freedom of information while classifying documents and declassify all official documents which were closed to the public contrary to the law;

§ 13.18. introduce clear rules on the restitution of church property as required by Opinion No. 190 (1995) (paragraph 11.xi.);

§ 13.19. ratify Protocol No. 12 to the European Convention on Human Rights;

§ 13.20. conclude the ratification procedure with regard to the European Charter for Regional or Minority Languages without further delay and thus comply with the commitment for which the initial deadline expired in November 1996;

§ 13.21. implement in good faith the Framework Convention for the Protection of National Minorities, especially in the field of education, and revise the 1992 Law on national minorities in Ukraine taking into account the recommendations of the Venice Commission and the Advisory Committee on National Minorities;

§ 13.22. ratify as soon as possible the European Social Charter (revised).

§ 14. In light of the above, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Ukraine and to return to the assessment of Ukraine's compliance with its obligations and commitments after the March 2006 parliamentary and local elections.

II. Draft recommendation

§ 1. The Parliamentary Assembly refers to its Resolution ... (2005) on the honouring of obligations and commitments by Ukraine.

§ 2. The Assembly recommends that the Committee of Ministers:

§ 2.1. 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 (as of August 2005);

§ 2.2. intensify co-operation activities to assist the Ukrainian authorities in the implementation of the European Charter of Local Self-Government in order to strengthen the development of local democracy in Ukraine (both as regards the legislative and regulatory framework and the training of public servants of local self-government bodies);

§ 2.3. intensify co-operation activities in the field of fight against corruption, reform of the prosecutor's office and independence of the judiciary;

§ 2.4. invite the Ukrainian authorities:

§ 2.4.1. to rapidly ratify Protocols Nos. 12 and 14 to the European Convention on Human Rights, the European Social Charter (revised), the Criminal Law Convention on Corruption, the European Convention on Transfrontier Television, the European Convention on Nationality and to finalise the internal process allowing ratification of the European Charter for Regional or Minority Languages;

§ 2.4.2. to strengthen co-operation with the Council of Europe in order to ensure full compatibility of Ukrainian legislation and practice with the Organisation's principles and standards, especially with regard to the standards embodied in the European Convention on Human Rights, as well as full compliance with the decisions of the European Court of Human Rights as regards the individual and general measures that may be required;

§ 2.4.3. to submit to Council of Europe experts such as the European Commission for Democracy through Law (Venice Commission) any new draft amendments to the Constitution, draft legislation concerning the reform of the prosecutor's office, creation of a public service broadcasting, revision of the law on the Bar, on legal aid, etc.

§ 3. The Assembly, referring to its Resolution 1364 (2004) on the political crisis in Ukraine, recommends that the Committee of Ministers and the Secretary General of the Council of Europe reinforce Council of Europe presence in Ukraine, in particular by designating a special representative of the Secretary General in Ukraine whose mandate should be to follow current political developments in the country, to provide advice and Council of Europe expertise if and when needed and generally to enhance and co-ordinate the ongoing co-operation with the Ukrainian authorities.

III. **Explanatory memorandum by Mrs Severinsen and Mrs Wohlwend**

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I. INTRODUCTION

1. Ukraine acceded to the Council of Europe on 9 November 1995. The monitoring procedure began on 11 December 1995, initially under Order No. 508 (1995) and, subsequently, under Resolution 1115 (1997)[1]. Under the terms of this resolution, the Monitoring Committee is responsible for verifying the fulfilment of the obligations assumed by member states under the terms of the Council of Europe Statute[2], the European Convention on Human Rights and all other Council of Europe conventions to which they are parties[3], as well as the honouring of the commitments entered into upon their accession to the Council of Europe. The list of Ukrainian specific commitments which, together with general obligations, constitute the basis for the monitoring procedure is contained in Assembly's Opinion No. 190 (1995)[4].

II. OVERVIEW OF UKRAINE'S RELATIONS WITH THE COUNCIL OF EUROPE

2. Ukraine applied to join the Council of Europe on 14 July 1992. By Resolution (92) 29 of 23 September 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30. A special guest status with the Parliamentary Assembly of the Council of Europe was granted to the Ukrainian Parliament on 16 September 1992. A "political dialogue" between Ukraine and the Committee of Ministers of the Council of Europe was initiated on 13 July 1994.

3. In a letter of 27 July 1995, the highest authorities of the state – the President of Ukraine, the President of the Parliament and the Prime Minister – noted that Ukraine's accession to the Council of Europe ... "is of great importance for our country and we regard this process as one of the strategic trends of Ukrainian foreign policy".

4. On 26 September 1995, the Assembly adopted Opinion No. 190 on the application by Ukraine for membership of the Council of Europe, which was followed by the Committee of Ministers' Resolution (95) 22 of 25 October 1995 inviting Ukraine to become a member of the organisation. Ukraine became a member state of the Council of Europe on 9 November 1995.

5. Since Ukraine's accession, the Assembly has considered five regular reports on the honouring of obligations and commitments by Ukraine[5] and three special reports on the reform of institutions in Ukraine, freedom of expression and political crisis in Ukraine[6].

6. In January 1999, the Assembly adopted Resolution 1179 and Recommendation 1395, where it noted that Ukraine had honoured some of its obligations and commitments as a member state of the Council of Europe. At the same time, it was "deeply concerned by the slow pace at which the state is fulfilling its remaining obligations and commitments." This was the reason why the Assembly decided on 27 January 1999 that, should substantial progress not be made by 21 June 1999, it would proceed to the annulment of the credentials of the Ukrainian parliamentary delegation and recommend to the Committee of Ministers to suspend Ukraine from its right of representation.

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[1] Resolution 1115 (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee).

[2] Article 3 of the Council of Europe Statute: "Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I."

[3] The list of conventions, to which Ukraine is a party, is annexed to the report (Appendix II).

[4] Appendix III to the report.

[5] The following resolutions and recommendations have been adopted with regard to Ukraine: resolutions 1179 (1999) of 27 January 1999, 1194 (1999) of 24 June 1999, 1244 (2001) of 26 April 2001, 1262 (2001) of 27 September 2001, 1346 (2003) of 29 September 2003; on the same dates – recommendations 1395 (1999), 1416 (1999), 1513 (2001), 1538 (2001), 1622 (2003).

[6] Recommendation 1451 (2000) of 4 April 2000 on reform of the institutions in Ukraine, Resolution 1239 (2001) of 25 January 2001 on freedom of expression in Ukraine, Resolution 1364 (2004) of 29 January 2004 on political crisis in Ukraine.

7. In June 1999, the Assembly considered it appropriate to start – as from the first part of the 2000 Ordinary Session – the procedure aiming at suspending the rights of the members of the Ukrainian delegation to table official documents in the sense of Rule 23 of the Rules of Procedure, to take on duties and to vote in the Assembly and its bodies (while maintaining those members' rights to attend and to speak at Assembly part-sessions and meetings of its bodies) until substantial progress in the sense of Resolution 1179 of January 1999 had taken place. In April 2001, the Assembly decided that, should no substantial progress in honouring these obligations and commitments be made by the opening of its June 2001 part-session, it would consequently consider imposing sanctions against the Ukrainian parliamentary delegation in accordance with Rules 6 to 9 of its Rules of Procedure. In conformity with Article 8 of the Statute of the Council of Europe, it also recommended the Committee of Ministers to consider suspending Ukraine from its right of representation, should no substantial progress be made by the opening of the Assembly's June 2001 part-session.

8. In September 2001, the Assembly concluded that substantial progress had, indeed, been made by Ukraine since the adoption of Assembly Resolution 1244 (2001) in April 2001, particularly with respect to the enactment of significant new legislation. Hence, the Assembly further resolved that in the event that Ukraine should ultimately honour its few remaining commitments before the Council as per Opinion No. 190 (1995) by the January 2002 part-session, it would consider terminating the formal monitoring procedure regarding Ukraine, while continuing the ongoing dialogue with the Ukrainian authorities within a broader monitoring framework.

9. In September 2003, the Assembly noted that, although notable progress had been made by Ukraine in the field of legislation since the adoption of the Assembly's Resolution 1262, Ukraine had not yet honoured all obligations and commitments it entered into on becoming a member state of the Council of Europe, and that the rule of law in many areas had not yet been fully established. Therefore, it resolved to pursue the monitoring procedure in respect of Ukraine in close co-operation with the Ukrainian delegation.

10. It is regrettable that Ukraine is among the countries that have acceded to the smallest number of Council of Europe treaties – only 45 treaties have been ratified and 27 signed out of almost 200 as of September 2005 although, by virtue of Opinion 190 (paragraph 12.vi.) Ukraine undertook to sign and ratify, and meanwhile to apply the basic principles of other Council of Europe conventions. **We call on the Ukrainian authorities to accede more actively to the Council of Europe *acquis* and to further develop its legal framework by harmonising it with European standards.**

11. In the preparation of this sixth report on the honouring of obligations and commitments by Ukraine we visited the Zakarpattya Oblast, the city of Odessa, the Crimea and Kyiv from 27 May to 3 June 2004, the cities of Dnipropetrovsk and Donetsk from 29 August to 1 September 2004, and Kyiv from 21 to 23 March 2005[7].

12. We would like to express our gratitude to the Ukrainian parliamentary delegation secretariat for their great effort in accommodating all our wishes and priorities for our visits. We also extend our gratitude to the Council of Europe Information Centre in Kyiv who has always efficiently arranged our meetings with NGOs and assisted us in the practical arrangements, especially during the trips to the regions.

III. PRINCIPAL DEVELOPMENTS SINCE 2003

A. The *Orange Revolution*

13. In January, June and September 2004, the PACE Monitoring Committee stated that credible democratic presidential elections in 2004 could reverse the current political trend in the country and give it a chance to anchor itself more firmly in the family of European democracies. It was difficult to anticipate at that time that this chance would be given to Ukraine, on the contrary, by two fraudulent rounds of presidential elections in October-November 2004.

[7] The programmes of these visits can be found in Appendix I to this report.

14. Indeed, at a pivotal moment in the nation's history, the Ukrainian people stood up in unprecedented mass peaceful protests – dubbed as *Orange Revolution* in reference to the campaign colour of the opposition leader Mr Yushchenko – against the government's attempt to steal the 2004 presidential election, choosing freedom, democracy and the rule of law over corruption and intimidation. In the weeks that followed the fraudulent second-round presidential vote of 21 November 2004, hundreds of thousands of ordinary Ukrainians spontaneously braved snow, freezing temperatures and a threat of violence in order to peacefully take back control of their country's destiny and freely choose their leadership. Their courage and conviction not only brought about a peaceful and legitimate transfer of power, it also ushered in a new era of hope and desire for integration into new European and Euro-Atlantic alliances.

15. From the outset of the *Orange Revolution*, the new authorities expressed their intention to carry out sweeping political, legal, social, and economic reforms to transform Ukraine into a law-abiding European democracy with genuine market economy and media freedom. Nine months after the revolution, it is time now for President Yushchenko and the executive institutions of the country to accelerate delivering on their promises.

16. Ukraine's *Orange Revolution* has inevitably unleashed immense expectations, some of which will not be met due to political, economic or social realities or because of the limited time before the forthcoming parliamentary elections of March 2006. Another challenge is the constitutional reform, which will re-distribute the power in favour of the parliament, a significant part of which is controlled by powerful oligarchs and businessmen. A faster reform pace is further constrained by regional divisions, with support for reform lower in eastern Ukraine. Thus not surprisingly, shortcomings are being registered in the slow pace of economic and legal reform, the persistence of corruption and patronage, the limited volume of foreign investment, and the intensive political infighting. The *Orange Revolution* has further lost some of its initial lustre by the recent decision of President Yushchenko to dismiss the entire government after its own members accused one another of corruption. Ukraine's path to democracy has been a long and challenging one and it will take time for its new leadership to clean up the excesses of the past and implement the changes necessary to reform Ukraine's political and economic systems.

17. The *Orange Revolution* of the end of 2004 is the third democratic revolution that followed Serbia in 2000 and Georgia in 2003. The victory of democracy in Ukraine has inspired successful revolutions in Kyrgyzstan and Lebanon, and is continuing to give sustenance to democratic reformers in other countries, especially some neighbouring republics that seek to remove oppressive governments. Therefore the long-term success of the *Orange revolution* and the newly emerged "democracy in action" in Ukraine will have far-reaching consequences, not only in the country but also for the spread of democracy worldwide.

18. During our visit in March 2005, we have witnessed a new positive spirit and a greater political will to tackle issues that have been dormant for a long time and have thus hindered Ukraine's progress in fulfilling its obligations to the Council of Europe. During the Council of Europe Third Summit in Warsaw in May 2005, President Yushchenko stated that all commitments Ukraine undertook upon its accession to the Council of Europe would be fulfilled. **It is still somewhat too early to make a final evaluation of the new leadership's ability to stick to the fundamental principles underpinning the Council of Europe. This report, therefore, is aimed mainly at putting forward the list of priority spheres of reform in order to assist the new administration in its venture to overhaul the system of governance.**

B. Installation of the new authorities

19. President Yushchenko was sworn in on 23 January 2005 and the first post-revolution Cabinet of Ministers was formed on 4 February 2005. The first months were full of revolutionary rhetoric and far-reaching promises of ambitious reforms in almost all spheres of social, economic, and political life, which are badly needed in Ukraine. This went along with an exceptionally soaring level of support for the new President and Prime Minister (50% and 52% respectively in June 2005). All the same, harsh criticism has been voiced against the new leadership with regard to some mistakes, lack of proper actions and internal conflicts. The way these deficiencies are addressed will impact considerably on the success of the new administration.

20. During the first months of 2005, more than 18,000 posts in the central and local bodies of the executive have been filled with newcomers. The new leadership has not escaped mistakes during such an in-depth revision of the state officialdom though it has so far been generally courageous enough to admit and correct them[8]. However, we share the concern of some observers that the authorities, especially at the local level, have been formed not on a merit basis but according to their political involvement and purported contribution to the *Orange revolution*. The oppositional parties have called these dismissals a persecution of ordinary people for their political views. **While understanding the wish of the new leadership to replace corrupt and compromised officials, it seems at the same time important to find them a professional and qualified replacement.**

21. Some steps of the new authorities have raised doubts as to their adherence to or rather awareness of the principles of the rule of law. It seems that a violation of constitutional procedure occurred as regards the appointment by the new President of regional governors on the day of the formation of the new Cabinet of Ministers on 4 February 2005. According to the Constitution the President appoints/dismisses heads of local state administrations upon submission of the Cabinet of Ministers. The latter, however, had in this case, not even held its first meeting by the time of the appointment of the new governors.

22. During his first months in power, the new President also issued a significant number of classified decrees, allegedly in violation of the applicable procedure, although this used to be an everyday practice during President Kuchma's rule (see more details in the section on access to information of the report).

23. President Yushchenko, by his decree of 8 February 2005, extended and re-shaped the authority of the National Security and Defence Council (NSCD) and its Secretary, exceeding, as many legal experts have claimed, his powers defined by the Constitution and the relevant law. First of all, the decree allegedly violates provisions of the Constitution (Articles 19 and 106), which forbid the President to delegate his/her powers to other officials or bodies unless it is provided in the Constitution or a law. Moreover, the Secretary of the Council, who is formally not even a member of the Council, is authorised to preside this body, which comprises, in particular, the Prime Minister and the Chairman of the Supreme Court (the inclusion of the latter also raises doubts with regard to the separation of powers, as the law envisages membership in the Council only of representatives of the executive). Furthermore, the Council was entitled to submit proposals for the appointment of judges to the President. Two groups of MPs have addressed the Constitutional Court asking it to examine the decree on its constitutionality. To avoid ambiguity, the President could have submitted proposals to the parliament to amend the Law on the National Security Council in order to re-word the functions of this body[9].

24. A significant number of MPs appointed in the government or local state administrations have violated the Constitution by refusing for a long period to abdicate their mandates despite appeals by the parliament's speaker and the President. Political expediency – a fear of dismissal from the administration versus the safe immunity offered by an MP mandate or a wish to maintain the number of pro-presidential faction members – should not outweigh the necessity to adhere to the rule of law and observe the Constitution. This issue was mainly resolved only in June-July 2005, when 14 MPs resigned after the parliamentary opposition blocked the parliament's work demanding, *inter alia*, abdication of mandates from officials. On 8 July 2005, the Verkhovna Rada adopted the Law on the peculiarities of dismissal of persons who combine people's deputy mandate with other activities, which has been promulgated by the President[10]. On 8 September 2005, the parliament approved resignations of another 13 MPs.

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[8] The most notable ones were the dismissals of two newly appointed governors and the resignation of the Deputy State Secretary of Ukraine.

[9] In the same decree, the President ordered the newly appointed Secretary to the Council to submit within one month proposals on the amendments to the Law on the National Security and Defence Council. As of mid-May 2005, no information on such proposals was available.

[10] After the aforementioned law came into effect on 30 July 2005, governmental officials whose resignation applications had been sent to the parliament, found themselves in a legal limbo, since, according to the law, relevant acts on their appointment were supposed to become void unless their mandates were terminated following an established procedure. The latter required a decision by the parliament, which recessed on 8 July until 6 September 2005.

25. Another contentious issue is the structure of the presidential secretariat (the former Administration of the President). It was much hoped that this body would be transformed into an effective apparatus of the President without excessive functions and far-reaching authorities[11]. However, after the publication of the decree on the structure of the Secretariat it has become obvious that most of the previous administration's formal characteristics are still being preserved[12]. The functions of the presidential secretariat differ positively from the previous administration only with regard to foreign policy and the co-ordination of law enforcement bodies. The post of the State Secretary of Ukraine (introduced instead of the position of the head of the presidential administration) still holds authority and political pretensions incompatible with the role of the chief of president's office.

26. Quite unfortunately, the first seven months of the new administration have been marred with intense internal conflicts. Serious collision between the Prime Minister, Secretary to the NSDC and the presidential secretariat – the closest partners who brought President Yushchenko to the presidency in the first place, and discords within the Cabinet of Ministers led to an acute political crisis in September 2005. After the resignation of the State Secretary of Ukraine Mr Zinchenko and Vice-PM Mr Tomenko, who both accused President Yushchenko's close entourage (including the Secretary to the NSDC Mr Poroshenko, first aid to the President Mr Tretyakov and one of the leaders of the presidential party "People's Union Our Ukraine" Mr Martynenko) of corruption, the President took an unexpected decision on 8 September to dismiss the whole Cabinet, the Secretary to the NSDC, the heads of the Security and Customs Service, and to suspend his first aide. This was followed by a series of acrimonious statements from both sides with mutual accusations of high-level corruption. The heat of the political struggle has been further raised by the upcoming parliamentary elections in March 2006. The last-year-winner "orange" bloc of politicians disintegrated and will probably participate in the elections under the different banners of the leaders – Mrs Tymoshenko and Mr Yushchenko.

27. Although it is regrettable that the unity of the Orange coalition has collapsed, it should be acknowledged that revolutionary ideas are difficult to implement overnight, especially as regards uprooting corruption and changing the mindset of the powers-that-be. At the same time, **it is now extremely important not to allow further political struggle to undermine the reforms momentum and not to close the window of opportunity which opened after last year's presidential elections. Political interests should not override the commitment to stick to the fundamental principles of democracy and the rule of law. It is equally necessary to elucidate and properly investigate the serious corruption allegations that have been voiced by the former high officials.**

C. *Constitutional reform*

28. The Constitution currently in force in Ukraine, adopted on 28 June 1996, established a presidential-parliamentary type of institutional regime. Former President Leonid Kuchma first sought changes to the country's political system by organising a misnamed "referendum at the people's initiative" soon after being re-elected President in 1999. Due to its grave deficiencies and alleged vote manipulations, the 2000 referendum was not accepted by the international community, including the Council of Europe. The motives behind this referendum and the whole four-year long history of pushing through the so-called "political reform" were to suit the interests of President Kuchma and his entourage – at first, to establish a pliant and controllable Verkhovna Rada and a subservient judicial branch; later, when the risk of losing the 2004 presidential elections to an oppositional candidate became tangible, to weaken the office of the President.

29. In 2003, different groups of parliamentarians had submitted three draft laws (Nos. 3207-1, 4105, and 4180) with constitutional amendments, which replaced the draft law earlier proposed by the President. The Constitutional Court, having considered the three drafts, concluded that they complied (with the exception of one provision in draft law No. 3207-1) with the rules on amending the Constitution of Ukraine, thus making them eligible for further consideration by the parliament. The three draft laws were also sent to the Venice Commission, which adopted an opinion in December

[11] On 30 December 2004, Mr Yushchenko promised that his Administration would not mean a "first government" anymore, would be called a chancellery and would solely provide for the president's activity.

[12] The number of divisions and staff was not reduced significantly, an additional Cabinet of the President was created, all power within the secretariat was still concentrated in the hands of its head – the State Secretary of Ukraine.

2003[13], emphasising that none of the drafts offered a consistent and fully democratic solution that would propose a coherent political structure and respect the separation of powers. In June 2003, the Assembly stressed in Resolution 1346 (2003) that in the process of amending the Constitution of Ukraine all provisions of the constitution in force should be thoroughly respected, in particular as regards the procedure of amending the constitution.

30. On 24 December 2003, despite the persistent efforts of the opposition to block the parliamentary proceedings, sometimes even in a violent way, in order to prevent a vote, the draft law No. 4105 was supported by a mere raising of hands without a formal vote-count, resulting in an alleged 276 votes "in favour".

31. In January 2004, the PACE held an urgent debate on the political crisis in Ukraine, called forth by the developments in the Verkhovna Rada of Ukraine – namely by the fact that an unconstitutional procedure had been used and the rights of opposition had been infringed. Following an urgent debate in the Assembly, the Verkhovna Rada cancelled some of the contested constitutional amendments, notably those pertaining to changing the modalities of presidential elections and the limited tenure of judges. These amendments were adopted in the first reading in an extraordinary meeting of the Verkhovna Rada on 3 February 2004.

32. In a letter addressed to the President of the PACE on 12 March 2004[14], we deplored the manner and in particular the precipitation with which the amendments of 3 February 2004 had again been pushed through, leaving no room for proper discussions or consideration of the recommendations of Resolution 1364 (2004), notably as regards taking into account all recommendations of the Venice Commission while amending the Constitution. In addition, Article 155 of the Ukrainian Constitution requires a draft law on introducing amendments to the Constitution of Ukraine to be adopted at two consecutive ordinary sessions of the Verkhovna Rada of Ukraine, with no less than two-thirds of the constitutional composition of the Verkhovna Rada having voted in favour. It this respect, the legality of the voting at the extraordinary session of 3 February 2004, which had been opened on the very morning that a regular session of the Verkhovna Rada should have commenced, in keeping with Article 83 of the Ukrainian Constitution, remained highly questionable.

33. On 16 March 2004, the Constitutional Court found draft No. 4105 (as amended) to be in compliance with Articles 157 and 158 of the Constitution. The Court also found no violation of procedure during the December 24 and February 3 voting as it was claimed to be the parliament's internal business. By the latter decision (concerning legitimacy of constitutional amendments during extraordinary sessions), the Constitutional Court disregarded its own previous conclusion that constitutional issues should be considered only during ordinary sessions.

34. On 8 April 2004, the Verkhovna Rada, despite enormous pressure from the presidential administration, failed to pass in the second reading draft No. 4105 by six votes. The constitutional process had not stopped however, as the two other draft laws had been taken on board and one of them (No. 4180) was adopted by 276 votes in the first reading on 23 June 2004. Again, that procedure raised serious doubts as to its constitutionality, because draft No. 4180 was almost identical to draft No. 4105 and Article 158 of the Constitution provides that the draft law on introducing amendments to the Constitution, considered by the Verkhovna Rada and not adopted, may be submitted to the Verkhovna Rada no sooner than one year from the day of the adoption of the decision on this draft law.

35. However, the Constitutional Court opted for a formalistic legal approach, according to which all three drafts had been submitted to the Constitutional Court under a different number and with textual differences and could therefore be considered as different legal documents. It, therefore, found on 12 October 2004 that there was no violation of Article 158 of the Constitution, basing itself upon formal criteria while comparing the two drafts and not taking into account that they concerned the same issues in substance.

[13] Opinion no. 230 / 2002 (CDL-AD (2003) 19) of 15 December 2003.

[14] Forwarded to the President of the Verkhovna Rada by President Schieder on 25 March 2004.

36. The Monitoring Committee, in its statement of 22 June 2004, underlined that the ongoing constitutional reform, which was in principle highly needed, should be postponed until after the presidential election and then be conducted in a democratic and transparent manner, in strict compliance with the existing constitution and taking into account the advice of the Venice Commission. Furthermore, the constitutional reform can only be credible through a strict and unconditional adherence to the provisions of the Constitution of Ukraine.

Constitutional amendments of 8 December 2004

37. In the aftermath of the second round of the presidential elections in November 2004, at the climax of popular upheaval, the election contestants Mr Yushchenko and Mr Yanukovych upon mediation of European politicians and President Kuchma reached a political compromise, which included the adoption of the constitutional amendments. Subsequently, on 8 December 2004 the Verkhovna Rada approved by 402 votes a package of two draft laws with constitutional amendments (No. 4180 in the final reading and No. 3207-1 in the first reading) together with a law on the special procedure for the repeat voting on 26 December 2004. It also agreed to replace the full board of the Central Election Commission and President Kuchma dismissed Prosecutor General Vasylyev as was demanded by the opposition. The laws included in the package compromise deal were signed by President Kuchma immediately after their passage in the parliament's session hall.

38. On 15 December 2004, the Monitoring Committee, whilst welcoming the halt of political turmoil by the adoption of a compromise reform package, expressed its disappointment that the constitutional amendments were included into the political bargaining and served not the purpose of a well-considered overhaul of the system of governance but as a tool for reaching an agreement between political forces. The Committee regretted that the previous PACE resolutions were thus ignored. At the same time, we share the opinion of many of our colleagues that the Council of Europe should have had a much more active role in the negotiation process[15], especially, as regards the question of the constitutional reform, where the voice of the PACE and the Venice Commission was distinctly heard in 2003-2004. The issue of constitutional reform was brought up during the talks by former President Kuchma and it was supported by high European mediators, who obviously overlooked the inconsistency of the amendments and the contradiction of some of their provisions with European standards.

39. The draft amendments of 8 December 2004 (law No. 2222) will come into effect on 1 January 2006. They will be fully implemented in practice after the convention of the new parliament elected in March 2006. The amendments provide for the repartition of powers between parliament and president, and shift the political regime to a parliamentary-presidential republic. The parliament will be authorised to appoint – upon submission by the President of Ukraine – the Prime Minister, the Minister of Defence, the Minister of Foreign Affairs; upon the submission by the Prime Minister – other members of the Cabinet of Ministers and central bodies of the executive. The parliament will have the power to decide by itself on the resignation of the Prime Minister and of members of the Cabinet of Ministers. The President will retain the authority to appoint and dismiss heads of local state administrations. If no party receives a majority in the parliament, the new constitutional provisions will require members of the parliament to form, under the risk of being dissolved by the President, within 30 days after its convention a "coalition of factions" which will be responsible for proposing the candidacy of the Prime Minister.

40. In its Resolution 1364 (2004), the Assembly asked the Verkhovna Rada to take fully into account the recommendations of the Venice Commission when amending the Constitution, and in particular to reconsider the provisions regarding the imperative mandate of national deputies and the extension of the Prosecutor General's Office power[16], all of which conflict with the principles of

[15] In January 2005, a group of PACE members submitted a motion for resolution on the evaluation of the role of the Council of Europe during the presidential elections in Ukraine (Doc. 10444). The motion sponsors proposed to evaluate the different contributions of different organs and bodies of the Council of Europe to the process of the 2004 presidential elections and "why the Organisation was so marginalised at least in the public European perception". The motion was referred to the PACE Committee on Rules of Procedure and Immunities to prepare a report for the attention of the Bureau.

[16] The Venice Commission, in its Opinions of 2001 and 2004, stressed that linking "the mandate of a national deputy to membership of a parliamentary faction or bloc *infringes the independence of the deputies and might also be unconstitutional*...bearing in mind that Members of Parliament are supposed to represent the *people* and not their parties." The oath to be taken by Deputies contained in Article 79 of the Constitution expresses this clearly. Furthermore, such a rule would "put the parliamentary bloc or group in some ways above the electorate which [...] is unable to revoke individually a

democracy and the rule of law. **It is highly regrettable that these recommendations were not taken into consideration**[17]. In its statement of 15 December 2004, the PACE Monitoring Committee stressed that those provisions of the amended Constitution, which did not conform with European standards, should be brought into line with Ukraine's obligations and commitments to the Council of Europe. **The Committee was also concerned that the new constitutional changes were adopted without consulting the Constitutional Court.**

41. The latter issue is of considerable importance, because it may lead to the annulment of law No. 2222 by the Constitutional Court. According to Article 159 of the Constitution, a draft law on introducing amendments to the Constitution of Ukraine is considered by the Verkhovna Rada upon the availability of an opinion of the Constitutional Court on the conformity of the draft law with the requirements of Articles 157 and 158 of the Constitution. Therefore, the text, which had been examined by the Court, cannot be changed anymore prior to its adoption. This was not the case as regards the draft law No. 4180, which was amended – and not only with technical corrections – before its final adoption on 8 December 2004.

42. A group of parliamentarians (from the Yuliya Tymoshenko's Bloc faction) has reportedly prepared a motion to the Constitutional Court asking to check whether the procedure for the adoption of the constitutional amendments had been respected. The motion was not sent to the Court as of August 2005. The Chairman of the Constitutional Court Mr Selivon, when asked by us about the prospects of such a motion, refused to comment in order not to forestall the Court's possible decision but referred to the previous ruling delivered by the Constitutional Court in 1998[18]. In the latter, the Court clearly stated that its opinion is necessary not only with regard to the initial text of constitutional amendments but also concerning all other versions of draft amendments if they are altered before final adoption as a law.

43. The hastily drafted text of the amendments is also full of internal contradictions. For example, according to the amended text, the Rules of Procedure of the Verkhovna Rada will be adopted by a parliament's resolution, which is promulgated by the speaker of parliament, and not by a law as in the current Constitution. The official justification of the amendment was that the current provision gives the President a veto right over the parliament's Rules of Procedure allegedly undermining its independence[19]. Besides the risk that the amendment can lead to the instability of the Rules of Procedure, which can be adjusted to political circumstances and manipulated, it can also be viewed as contradictory to Articles 6 and 19 of the Constitution[20]. Another controversy caused by the amendments concerns the provisions on the scope of authority of the prosecutor's office (see relevant section in the Rule of law part of the report).

44. During our meeting in March 2005, PM Mrs Tymoshenko underlined that, in her opinion, the constitutional amendments did not correspond to the requirements of an effective government. Firstly, the parliamentary majority would appoint and dismiss members of the Cabinet of Ministers; hence, the Prime Minister would not be able to control his/her government. Ministers should not depend on the parliamentary majority, which at the moment is controlled mainly by wealthy businessmen. Moreover, after the introduction of an imperative mandate, the parliament would be controlled by several people – leaders of factions and groups. Secondly, the amendments would ruin the balance between branches of power by breaking the vertical of the executive power, because the Cabinet of Ministers would be appointed by parliament while the heads of regional state administrations would be

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parliamentary mandate conferred through election." The Commission therefore strongly recommended withdrawing the proposed provision from the Draft Law. Concerning objections with regard to the powers of the Prokuratura – see relevant subchapter of the report.

[17] The text of the amendments as regards the imperative mandate was slightly changed though: expulsion of a member of the parliament from a faction will not lead to the termination of his/her mandate.

[18] Decision No. 8-pn/98 of 9 June 1998 in the case of the official interpretation of the provisions of Articles 158 and 159 of the Constitution of Ukraine upon the constitutional motion of the President of Ukraine.

[19] The Verkhovna Rada's internal procedures are regulated to date by the Rules of Procedure adopted in 1994 by a parliament's resolution. They were amended many times and thus have become rather a complicated and inconsistent text. There is an opinion that such a situation is favourable to the speaker of parliament, who can easily manipulate an imprecise text.

[20] Article 6 § 2: "Bodies of legislative, executive and judicial power exercise their authority within the limits established by the Constitution and in accordance with laws of Ukraine." Article 19 § 2: "Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and laws of Ukraine."

appointed by the President. She also doubted the constitutionality of the procedure applied, as the text was changed after the review by the Constitutional Court. Finally, according to Mrs Tymoshenko, it was not politically fair to deprive the President of his powers just after the people of Ukraine gave him their support[21].

45. In June 2005, the Venice Commission, upon request of the Ukrainian Ministry of Justice, adopted its Opinion on the 8 December 2004 amendments to the Constitution of Ukraine[22]. The Commission concluded that the Law on amendments reflected many of the Commission's comments in its previous opinions on this matter. Nevertheless, a number of provisions, such as the rights of legislative initiative conferred on both the Cabinet of Ministers and the President, or the President's role in foreign and defence policy might lead to unnecessary political conflicts and thus undermine the necessary strengthening of the rule of law in the country. In general, the constitutional amendments, as adopted, do not yet fully allow the aim of the constitutional reform of establishing a balanced and functional system of government to be attained. The Commission also reiterated its concerns with regard to the imperative mandate of the people's deputies and extended authority of the Prokuratura. The Commission considered that, in order to bring the Law on amendments into compliance with the principles of pluralist democracy and the rule of law, the Law should be further discussed and some improvements made.

46. We note that President Yushchenko, while addressing the PACE in January 2005, pledged to establish initiatives to amend the constitution, "because the parliament understood that changes had to be made as a result of commitments made to Europe." However, according to the Constitution, once amended the same provisions cannot be revised again during the same convocation of the Verkhovna Rada. Hence, the adopted amendments can be revised only after parliamentary elections in 2006 (in practice, not earlier than May 2006). By that time, **a clear political commitment should be made and a draft proposal be prepared to amend the controversial provisions in order to bring them in line with Ukraine's commitments to the Council of Europe and the Venice Commission opinions.**

47. **We are also deeply concerned by statements of the President and several other high officials about the possibility of calling a referendum to adopt constitutional amendments.** This idea of a referendum seems questionable, since it was established back in 2000 by the Ukrainian Constitutional Court and the Venice Commission that referenda do not have direct binding force unless they concern amendments to Chapters I, II and XII of the Constitution and are organised according to Article 156 of the Constitution. In its Recommendation 1704 (2005)[23], the Assembly stressed that complementarity between direct and representative democracy implies that referendums should not be considered as an alternative to parliamentary democracy and should not be misused to undermine the legitimacy and primacy of parliaments as legislative bodies[24].

D. Relations with the EU, NATO, Russia, and CIS

48. One of the most visible changes after the *Orange Revolution* can be witnessed in the field of Ukraine's foreign policy. Ukraine finally abandoned its notorious policy of multi-vectorism (i.e. trying to suit interests of the West and Russia at the same time) and firmly opted for a full-fledged European and Euro-Atlantic integration. The *Orange revolution* opened a new chapter in Ukraine's history and brought changes to the political situation in the region. Ukraine officially declared its objective to promote an area of freedom and justice in the region and to strengthen the space of stability and co-

[21] Some of these points were also raised in the public statement made by a group of prominent Ukrainian NGOs in April 2005 who asked the President to challenge the 8 December 2004 constitutional amendments in the Constitutional Court. The NGOs referred to a number of internal inconsistencies in the text of amendments and to the fact that they were adopted without prior examination by the Constitutional Court. The statement underlined that the amendments contradicted the political will of the majority of the population of Ukraine, which was neglected by the parliament that significantly reduced the powers of the President.

[22] Opinion no. 339 / 2005 (CDL-AD(2005)015) of 13 June 2005.

[23] Recommendation 1704 (2005), Referendums: towards good practices in Europe, adopted by the Assembly on 29 April 2005; see Doc. 10498, report of the Political Affairs Committee, rapporteur: Mr Elo.

[24] Furthermore, it was announced in April 2005 that the Constitutional Court has started the consideration of the motion submitted by the former President Kuchma, who asked the Court to interpret the Constitution on whether laws could be adopted directly through a nation-wide referendum. President Yushchenko, who had such a right, did not withdraw this motion.

operation[25]. Ukraine also decided to review its position in the UN Human Rights Commission and declared that from now on it would not keep silent when violations of human rights were taking place, especially in the CIS countries[26].

49. The new President and the government proclaimed the ultimate goal of joining the EU and NATO[27]. Starting from its first days, the new administration has pushed for a new intensified agreement between Ukraine and the EU, e.g. in the form of an European Association agreement, which would bring prospects of an eventual membership[28]. However, it had to scale down its ambitions due to the reluctance of the EU officials to even start discussing prospects of accession. The parties, therefore, reached a tacit agreement to proceed with the implementation of the Action Plan and Ukraine undertook to do its "homework" first and deliver on promises made. At the same time, Ukraine's officials responsible for the EU integration[29] repeatedly mention the plans to submit a membership application at the end of 2005 or in the beginning of 2006. **The first year of the new authorities will finally show whether they will manage to move from declarations, equally made by their predecessors, to real action**[30].

50. Due to a significant support from the USA, Ukraine has much better chances to accede to NATO in the foreseeable future. On 21 April 2005, NATO invited Ukraine to begin an 'Intensified Dialogue' on Ukraine's aspirations to membership and relevant reforms, "without prejudice to any eventual Alliance decision[31]." However, NATO membership seems to be an issue, which the Ukrainian authorities try to elaborate on step by step, as a significant part of the population is still hostile towards the North-Atlantic Alliance[32]. In view of the upcoming parliamentary elections, the government first decided to improve the understanding of NATO in Ukraine. Also on 21 April 2005, President Yushchenko issued a symbolical decree re-introducing in the Ukraine's military doctrine provisions about a full-fledged membership in NATO and the EU. These provisions had been removed from the Doctrine by former President Kuchma in July 2004. In April 2005, the Target Plan Ukraine-NATO for 2005 within the Ukraine-NATO Action Plan was adopted, which *inter alia* mentions completion of the fulfilment of Ukraine's commitments to the Council of Europe.

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[25] Minister of Foreign Affairs Mr Borys Tarasyuk's statement at the 61st session of the UN Human Rights Commission.

[26] In their joint statement "A New Century Agenda for the Ukrainian-American Strategic Partnership", Presidents Bush and Yushchenko committed themselves to work together to back reform, democracy, tolerance and respect for all communities, and peaceful resolution of conflicts in Georgia and Moldova, and to support the advance of freedom in countries such as Belarus and Cuba.

[27] The Foreign Affairs Minister predicted that in 2008 Ukraine will become a member of NATO and will also switch to a new format of relations with the EU by signing a new agreement. The EU accession is anticipated in 2015.

[28] EU relations with Ukraine are based on the Partnership and Co-operation Agreement (PCA) which entered into force in 1998 (for an initial ten-year period renewable by mutual consent). Ukraine is considered a priority partner country within the European Neighbourhood Policy (ENP). A joint EU-Ukraine Action Plan was endorsed by the EU-Ukraine Co-operation Council on 21 February 2005. On 22 April 2005, the Cabinet of Ministers approved a comprehensive set of measures ("Road Map") for implementation of the Action Plan in 2005. The Action Plan includes elements to strengthen democracy and to help prepare Ukraine for membership of the WTO, a key condition for a possible free trade area with the EU. In order to further strengthen and enrich the Action Plan, the EU General Affairs External Relations Council also agreed on further measures in support of Ukraine's reform efforts based on the additional 10-point proposals made jointly by the Commissioner for External Relations and European Neigbourhood Policy, Mrs Ferrero-Waldner, and the High Representative for Common Foreign and Security Policy, Mr Solana. Additional proposals for closer co-operation were conceived following the December election, demonstrating the EU's willingness to go substantially beyond what was originally on offer. One of them is to initiate early consultations on an enhanced agreement between EU and Ukraine, as soon as the political priorities of the ENP Action Plan have been addressed.

[29] The new Cabinet of Ministers includes the Vice-Prime Minister on European Integration, Mr Rybachuk, and the Foreign Affairs Minister, Mr Tarasyuk. We heard criticism that there was no clear separation of functions between the two offices so far. Also despite the anticipated creation of a European Integration ministry or a state committee to support Mr Rybachuk's efforts, as of August 2005 no such decision was made. Though on 16 June 2005, President Yushchenko announced the plan to create a Ministry of European Integration and Foreign Economic Relations.

[30] As was said by Vice-PM Mr Rybachuk in Brussels in April 2005: "Ukraine is ready to go as far in developing its relations with the EU as the EU and its Member States are ready to go... We stand ready to prove the seriousness of our declared aspirations by practical hard daily work. Because it is clear that actions, not words, are opening the doors."

[31] The Meeting of the NATO-Ukraine Commission at the level of Foreign Ministers also agreed on a series of concrete and immediate measures to enhance co-operation in support of Ukraine's reform priorities (Short-term Actions).

[32] According to a poll carried out in May 2005 by the Razumkov Centre and KIIS, 56.7% of the respondents "completely disagree" or "rather disagree" that Ukraine should become member of the NATO; 22.4% "completely agree" or "rather agree"; 22% could not answer. Source: Ukrainian News, 9 June 2005.

51. The relations with the Russian Federation have proved to be uneasy, because of centuries' long ties and controversial past. The *Orange revolution* humiliated President Putin, who campaigned openly for Yushchenko's opponent. Mr Putin later awkwardly tried to justify his interference by stating that Russia used to co-operate only with ruling regimes and he was asked to do so by his Ukrainian counterpart Mr Kuchma[33]. In a conciliatory move, Mr Yushchenko paid his first foreign visit as a President of Ukraine to Moscow. The two states try to establish their new relations on a pragmatic and economy-driven approach. Ukrainian officials continue to reiterate that they want to build up a strategic partnership with Russia and that Ukraine's move towards the EU and NATO should not be perceived as steps against Russia. Many senior officials in Putin's administration at the same time remain cautious about the new neighbouring democracy[34]. Also the Russian State Duma, having issued in May 2005 a statement on the political situation in Ukraine, instructed the Russian Federation parliament's delegation to the PACE to initiate a debate on the "violation of democratic norms in Ukraine"[35]. The two countries indeed have no alternative but friendly neighbourly relations. However, it will be very difficult for the one to overcome the loss of control over its long time dependent neighbour and challenging for the other to smooth the contradictions and build up reciprocal relations.

52. Ukraine has also reviewed its policy with regard to the CIS[36] and relations with the former Soviet states. It decided to exit the CIS election observation mission after the latter discredited itself during the presidential election campaign by accepting the fraudulent results of the first two votes and disputing the internationally-validated ones. Ukraine intends to pursue the co-operation within the CIS in the humanitarian and economical directions[37]. It also limited the number of agreements that can be signed within the Single Economic Space (SES) with Russia, Belarus, and Kazakhstan only to those which are necessary for the establishment of a free trade zone[38]. However, the constitutionality of the SES founding agreement was not challenged by the new authorities, despite their opposition to the treaty at the time of accession and its negative appraisal by the ministries of justice and foreign affairs back in 2004[39]. On 28 July 2005, the Ministry of Foreign Affairs of Ukraine stated that "the conception of Ukraine's further participation in the formation of the SES must rest on co-operation, which is aligned with the county's strategic course towards European and Euro-Atlantic integration and does not obstruct Ukraine's own joining the World Trade Organization."

[33] However, after the formerly pro-presidential Ukrainian parties (e.g. Regions of Ukraine, Social Democrats) turned into the new opposition, the Russian politicians started active co-operation with them. The Regions of Ukraine Party signed a co-operation agreement with the Russian party of power – "United Russia" (on behalf of the latter the agreement was signed by Mr Kosachev, the chairman of the Russian Federation parliament's delegation to the PACE).

[34] E.g., the Russian Federation Security Council Secretary Sergeiy Ivanov in May 2005 described the recent political changes in Ukraine, Georgia, and Kyrgyzstan as "coups", whereby power changed hands in "unconstitutional" ways, with "violations of basic democratic principles". Source: *Strategiya Rossii, 5 May.*

[35] In its official statement of 20 May 2005 the State Duma claimed that there were numerous facts of political persecution of the opposition in Ukraine, massive dismissals of civil servants and other people, attempts of the new leadership of Ukraine to establish "political and ideological control" over the mass media, pressure on critical journalists, etc. The Ministry of Foreign Affairs of Ukraine in its official declaration named the State Duma's statement an "unfriendly act", "distortion of facts" aimed at the support of those political forces, which previously "applied undemocratic practice in Ukraine and then called themselves an opposition".

[36] Ukraine is not a full-scale member of the Commonwealth of Independent States, since it did not sign nor ratify the CIS Statute.

[37] Commenting on the informal CIS summit held in Moscow on 8 May 2005, President Yushchenko pointed out that the organisation was "of little use" to anyone and that the "CIS is history." Yushchenko noted that only a Free Trade Zone, devoid of political connotations, can begin to lay the foundation for co-operation within the CIS.

[38] The framework agreement on the Single Economic Space was signed by President Kuchma and ratified by parliament in 2004 with a reservation that it should not contradict provisions of the Constitution of Ukraine. To implement the idea in full, more than 90 agreements had to be prepared. The Ukrainian government has finally agreed in May 2005 to consider the signature of only 15 of them, excluding those that provided for the creation of any supra-national bodies or establishment of a customs union.

[39] It seems that in this case the adherence to constitutional provisions was sacrificed to political expediency, as it was reportedly decided not to jeopardise the "strategic partnership" with Russia by submission of a motion to the Constitutional Court.

53. In its move to emerge as a regional democracy champion, Ukraine agreed to revive together with Georgia, Moldova, and Azerbaijan the GUUAM organisation[40]. On 22 April 2005, the presidents of Georgia, Ukraine, Azerbaijan, and Moldova gathered in Chisinau for a summit of the GUUAM. President Yushchenko said: "Our goal of creating a zone of stability, security, and prosperity is tightly linked with the European Union, and it should be [achieved by following] European rules and standards. I think in order to achieve it, we should enhance our co-operation, we should create a new international regional organisation based on GUUAM, that should have its own office, its own secretariat, and its own plan of actions." In August 2005, the Georgian and Ukrainian Presidents made a joint statement in the Georgian town of Borjomi announcing their intent to establish a Community for Democratic Choice in the Baltic-Caspian-Black Sea region with the first summit to be held in autumn 2005 in Kyiv. Ukraine has also put forward a proposal to facilitate the settlement of the Transnistrian conflict which was in general supported by the sides to the conflict and their international counterparts.

IV. FUNCTIONING OF PLURALIST DEMOCRACY

A. Free and fair elections

2004 presidential elections

54. In 2004, Ukraine organised its fourth presidential elections since its independence in 1991. Under pressure from the opposition and foreign states, President Leonid Kuchma decided not to stand for the third time, even though he was allowed to run for a third mandate by a dubious decision of the Constitutional Court of December 2003[41].

55. In several statements adopted during 2004, the PACE Monitoring Committee called on the Ukrainian authorities to conduct the election process with absolute impartiality and respect for the Council of Europe standards and to allow all candidates to compete on fair and equitable grounds. Throughout the year 2004, the Committee had also urged to address a number of specified problems arising from the deficiencies in the election law and to improve significantly the technical preparedness for the voting. Unfortunately, most of the recommendations were ignored and the calls remained unheeded.

56. The election campaign, which started in July 2004, was implacable and divisive with an extensive use of inflammatory and discrediting material and rhetoric[42]. It was marked by an extraordinary abuse of power with state resources widely used to favour Mr Yanukovych. The opposition's campaign public events were often obstructed and disrupted; the law enforcement bodies hindered the free movement of people to these events; the rights to peaceful assembly and freedom of association were impinged upon. Dependent groups of the population (students, state enterprises' employees, and public servants) were coerced to participate in campaigning to support the pro-governmental candidate. The broadcast media provided a clearly biased news coverage, inspired by *temnyky* (guidelines from the presidential administration) in favour of Mr Yanukovych. The Central Election Commission (CEC) was reluctant to address the numerous irregularities and did not meet its obligation to ensure compliance with the law. Observers noted a variety of inaccuracies in the voter lists, which disfranchised thousands of voters or allowed abuse by the election commissioners.

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[40] GUUAM is a regional association of Georgia, Ukraine, Uzbekistan, Azerbaijan, and Moldova, created in the form of a consultative forum in October 1997 during the Council of Europe 2nd Summit in Strasbourg. The forum was re-organised into an organisation in Washington in 1999 (Uzbekistan joined it at that time). It was the only regional organisation where the Russian Federation was not a member and it was seen as a counter-balance to Russian influence. The first summit of GUUAM presidents was held in June 2001 in Yalta. After two other summits, GUUAM's activity had stalled in 2004. In May 2005, Uzbekistan left the organisation.

[41] The 1996 Constitution of Ukraine provides that one and the same person shall not be the President of Ukraine for more than two consecutive terms. Inasmuch as President Kuchma was elected for the first time in 1994, the Court held that he did not serve full two terms under the 1996 Constitution and that hence his first term started in 1999. The Court's decision was accompanied by three dissenting opinions. It was widely perceived to be biased and mistaken.

[42] The presidential election was contested by 24 candidates with the two front-runners – Mr Yushchenko, who enjoyed popular support in Kyiv and Western Ukraine, and Mr Yanukovych, who was supported in the Eastern and Southern regions. Mr Yanukovych, the incumbent Prime Minister, was nominated by the Regions of Ukraine party and enjoyed support of the pro-Kuchma forces in the parliament. Mr Yushchenko was formally "self-nominated" but was backed by a coalition of the opposition forces of the "Our Ukraine" bloc and the Yuliya Tymoshenko's bloc.

57. In mid-September 2004, candidate Yushchenko suddenly fell ill, as was later established by international medical experts, because of a poisoning by dioxin. He accused the authorities of involvement in the poisoning, which endangered his life and seriously affected his health. The poisoning is still being investigated by the law enforcement bodies.

58. In the first round of voting of 31 October 2004, Mr Yushchenko and Mr Yanukovych received the majority of votes, 39.9% and 39.26% respectively. According to the official results of the second round of 21 November, Mr Yanukovych received three per cent more votes than Mr Yushchenko did. However, both rounds were marred with systematic fraud, massive manipulations, and abuse of power by state officials. This fraud compromised the official results to such an extent that they could not be accepted as the reflection of the free will of the Ukrainian people.

59. Large scale multiple voting had occurred because of the misuse of the absentee voting certificates. Also in some polling stations of Eastern and Southern regions, the number of people who applied for home voting had reached up to 30%. Yushchenko's representatives in the territorial and polling station commissions were discriminated and on the day of elections were massively dismissed or expelled from commissions. The secrecy of the vote was not ensured and the work of observers was obstructed. The decisive manipulation was carried out by the Central Election Commission during tabulation of the results after the second round. For example, it inflated the turnout figures for the Donetsk region after the polling stations were closed to improbable 96% and more. There were also allegations of intrusion into the CEC' network and that the main server received rigged voting results with delay, because they were first processed and manipulated by the "shadow" headquarters of Mr Yanukovych.

60. Immediately after the end of the voting, when the preliminary results from the CEC were published showing first signs of manipulation, Mr Yushchenko called his supporters to gather in Kyiv Independence Square and other locations around the country and remain there until their claimed electoral victory was recognised. This launched a two-week blockade of the governmental institutions and mass protests of up to one million people in Kyiv. A number of regional local self-governments, predominantly in Western Ukraine, announced that they would not recognize Mr Yanukovych as a winner and some even adopted resolutions recognising Mr Yushchenko as President. Conversely, in the Eastern and some Southern parts of Ukraine, regional governments reacted with indignation to the Kyiv-centred protests. On 28 November 2004, at a congress in Severodonetsk (Luhansk region) attended by Mr Yanukovych, some regional governors began discussing proposals for the autonomy of some Eastern regions if Yushchenko won.

61. Prior to a hastily announcement of the final results on 24 November 2004, the CEC failed to consider a large number of official complaints filed by Yushchenko's team. Four CEC members refused to sign the protocol with the official results. On 26 November, a roundtable process was launched with the participation of international mediators[43] trying to find a political solution to the crisis. On 27 November, the parliament adopted a resolution invalidating the election results announced by the CEC. It also passed a no-confidence motion in the CEC and adopted a resolution calling on the President to dismiss the government. The officially announced results had also been rejected by the international community, in particular by the EU, the USA, and the OSCE.

62. On 1 December, the participants of the roundtable signed a document, which included commitments to abide by the anticipated ruling of the Supreme Court, to refrain from using force and to adopt amendments to the Law on elections and the Constitution regarding the distribution of powers between the President and parliament.

63. On 3 December 2004, the Supreme Court invalidated the results of the second round of the elections and ordered its re-run in a historical judgment, which was based on the Ukrainian Constitution and the European Convention on Human Rights. The judgment cleared the way for a peaceful settlement of the political crisis and the reconstitution of the rule of law in the country, as well as respect for the judiciary. The Court confirmed that a number of grave violations of the law and the Constitution had taken place before, during and after the 21 November vote, including violations in the

[43] The roundtable participants were: the two candidates, President Mr Kuchma, Speaker Mr Lytvyn, OSCE Secretary General Mr Kubis, European Union High Representative for the Common Foreign and Security Policy Mr Solana, Polish President Mr Kwasniewski, Lithuanian President Mr Adamkus, Polish Minister of Foreign Affairs Mr Cimoszewicz (also Chairman of the Committee of Ministers of the Council of Europe), and Speaker of the Russian Duma Mr Gryzlov.

areas of voter registration, the issuance and use of absentee voting certificates, media and campaign regulations, composition and functioning of commissions, mobile (home) voting, polling station commission protocols, etc.

64. On 8 December 2004, the Verkhovna Rada passed temporary amendments to the elections procedure, which were applicable to the repeat second round to be held on 26 December 2004[44]. It also appointed a new CEC. The International Election Observation Mission[45] concluded that the conduct of the 26 December election process brought Ukraine substantially closer to meeting OSCE election commitments and Council of Europe and other European standards. In the run-up to the keenly contested repeat second round, campaign conditions were markedly more equal in contrast to previous polls. The main media provided voters with a balanced coverage of the campaign and observers received few reports that voters were pressured to support one of the candidates. The re-composed electoral administration conducted the election much more transparently. .

65. On 10 January 2005, the CEC announced Mr Yushchenko to be the winner of the contest with almost 52% votes, Mr Yanukovych gained 44.2%. Yanukovych's team filed a complaint with the Supreme Court, which was rejected on 20 January 2005.

Prosecution of election violations

66. The new authorities have promised that election violations will be thoroughly investigated and prosecuted. As of August 2005, the prosecutor's office opened 1,218 criminal cases and brought to the courts 790 of them, including more than 200 cases against chairmen and members of election commissions. The Ministry of Interior had more than 700 cases opened at the end of June 2005, including more than 110 cases submitted to the courts. According to the Minister, 526 cases are considered high-profile and involve directors of large state enterprises or public officials, starting from heads of district (rayon) state administrations. Around 5,500 people have been charged with multiple (some – up to 20 times) use of absentee certificates[46]. During the first 200 days of work of the new leadership of the Ministry, 250 police officers involved in election fraud were identified, 40% of whom were middle and senior level officers[47]. A number of court judgments in election cases have already been delivered throughout the country.

67. After the second round of voting, Yushchenko's headquarters published the audio taped recordings of conversations allegedly held among the then top Ukrainian government officials and their aids[48] documenting vote count manipulations. The tapes were passed to the opposition leaders by unnamed Security Service officers. In March 2005, the Deputy Minister of Interior stated that the beating of Yushchenko's supporters on the night of 23 October 2004 (the night when the CEC was trying to set up more than 400 additional polling stations in Russia) was commissioned by a member of Yanukovych's headquarters, Sergiy Kliuyev, brother of the ex-vice-PM. In spite of these serious allegations, no tangible results of the investigation have been announced so far.

68. In April 2005, the Prosecutor General's Office announced it preparedness to charge several members of the CEC with falsification of the election results. The same promise was made in June 2005. The highest official indicted so far for an election-related violation is the former governor of the

[44] On 25 December 2004, the day before the elections, the Constitutional Court ruled that the amendments were in conformity with the Constitution except for one limiting the right to vote at home.

[45] Comprising OSCE/ODIHR Election observation mission and delegations of Members of the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the Parliamentary Assembly of the North Atlantic Treaty Organization (NATO PA). On 31 October and 21 November, the IEOM deployed 636 and 563 observers, respectively, from 33 OSCE participating States. On 26 December, 1,372 observers were deployed from 46 OSCE participating States, making the EOM the largest ever deployed by the OSCE/ODIHR. Other international organizations, non-governmental organizations and individual states deployed large numbers of observers, particularly on the second and third voting rounds (with an overall number of accredited observers reaching 12,000 during the repeat second round).

[46] Source: *Interfax-Ukraine*, 29 June 2005, quoted from www.proua.com.

[47] Source: *Ukrainian News*, 25 May 2005, www.ukranews.com.

[48] The voices of the presidential administration head Mr Medvedchuk, the CEC head Kivalov, brothers Kliuyev (Andriy – Vice-PM and MP, allegedly the head of the "shadow" headquarters of Yanukovych; Sergiy – deputy head of the Donetsk oblast council, allegedly active member of the the "shadow" headquarters), MP Mr Tsariov, Kuchma's adviser Mr Liovochkin, Yanukovych's advisor Mr Prutnik are recorded.

Sumy Oblast Mr Shcherban, who reportedly fled to the USA and was put on an international wanted list[49]. Also former vice-prime-minister Mr Tabachnyk and former minister of the Cabinet of Ministers Mr Tolstoukhov were charged with the abuse of power, as they allegedly endorsed publication in the government's newspaper of the results of the second round of voting despite the Supreme Court's injunction.

69. We received claims from members of the new opposition of alleged abuse of power by the authorities and illegal prosecution of election commissioners in the Kyrovograd region. The law enforcement bodies allegedly did not comply with due procedure rules. We note that the OSCE/ODIHR election observation mission final report refers to a number of violations that had occurred in the territorial election districts nos. 100 and 101 in the Kyrovograd region. Also the courts had already found guilty several election commissioners from these districts; investigation and court proceedings in some other cases are pending.

70. It is commendable that the law enforcement bodies have managed to progress with the investigation of the blatant violations during the April 2004 local elections in Mukacheve, which proved to be a dress rehearsal before the presidential campaign. In April 2005, the Prosecutor General's Office opened criminal cases and arrested the former deputy head of the Zakarpattya Oblast state administration Mr Dyadchenko and the former Mukacheve police chief Mr Dernovyi who were charged with vote rigging and theft of election documents. In July 2005, the Mukacheve court ordered the arrest of three local residents allegedly responsible for the theft of voting ballots. The former head of the Zakarpattya police Mr Vartsaba was also charged and reportedly fled to Moscow. Also arrested were the chairman of the district election commission Mr Solyanyk and advisor to the former Zakarpattya governor Mr Paulyo, who was charged with 34 criminal cases, including those connected with the Mukacheve events. In August 2005, the Deputy Prosecutor General instituted a criminal case against Mukacheve local council deputy, advisor to the former Zakarpattya governor, Mr Chubirko, on suspicion of bribing members of election commissions.

71. **Whilst welcoming the zeal of the new authorities as regards prosecution of election frauds, we wish to note that not only those who executed illegal orders should be brought to justice but also those who organised the massive rigging, instigated violence or bribed voters. It is of utmost importance to punish masterminds, especially on the highest level, of the fraud in order to prevent future infringements and to instil the rule of law principles. It should also be stressed that the investigation and the prosecution of election-related violations should be carried out in full compliance with European standards, in particular the right to a fair trial.**

March 2006 parliamentary elections

72. The new law on parliamentary elections was adopted in March 2004 and was due to come into force on 1 October 2005. It had the same defects as the law on the presidential elections that served as a legal base for the 2004 elections. The risk of election fraud, therefore, remained unless the law was revised. Consequently, a new wording of the election law[50] was adopted on 7 July 2005 by 319 votes and promulgated by President in August 2005. It comes into effect on 1 October 2005 (except for provisions on voter lists which entered into force on the day of the law's publication).

73. The Law of 7 July 2005, without changing the election system (fully proportional based on closed party lists with a 3% election threshold), has significantly enhanced election procedures, taking into account in particular recommendations of the OSCE/ODIHR Election Observation Mission's Final Report on the 2004 presidential elections.

74. The main improvements include:

– Better rules for compiling and verification of voter lists. Special control groups, including a representative of each party or bloc participating in the election, will be established at local government bodies to compile lists. The sole task of these control groups will be to ensure the

[49] According to the Ukrainian authorities' comments to the preliminary draft report, the indictment of CEC members for violation of the election legislation during the presidential elections in 2004 is possible after the "systematic character of violations is established and corroborated by sentences in other criminal cases."

[50] On the basis of a draft law no. 6531-2 that was submitted on 28 April 2005 by a group of parliamentarians.

integrity of voter lists. Election commissions' ability to enter changes in voter lists prior to and during election day will be limited. However, **the law on the state voter register that was passed in the first reading in June 2004 was not adopted so far and its implementation therefore unfortunately did not start**[51].

- Domestic non-partisan NGOs have been granted the right to observe elections, as was recommended by the Assembly, in particular its Monitoring Committee, and the OSCE.

- The enhanced rules for the set up of election commissions provide for a fixed number of poll workers at polling station commissions depending on their "size", i.e. the number of voters registered at said PSC[52]. The Law provides that if an election commissioner is dismissed from a commission, the commission resolution dismissing the commissioner must also provide for the appointment of a replacement from the dismissed commissioner's party or bloc.

- Improved procedures for absentee and home voting. The Law provides for full inventory and *de facto* registration of all absentee ballot certificates; voters voting by absentee ballot certificate shall have a mark/seal placed in their passports noting they have received a certificate (and another mark noting they have voted absentee); absentee voting will be possible only at a limited number of polling stations (one per municipality or rural district).

- Vote counting and tabulation procedure at PSCs, as well as the transfer of PSC vote tabulation protocols and other documentation to TECs, was greatly elaborated and enhanced.

- Judicial review procedures have been strengthened for complaints arising at all phases of the electoral process. In particular, the Law has broadened the number of potential complainants and strengthened appellate review of all court cases[53].

- The role of the police in the transportation of electoral material and rules on its presence in polling stations was clarified.

75. However, the law contains serious flaws with regard to the regulation of media activity during the election campaign. This, in particular, includes introducing a possibility of suspension of the broadcasting licence or media outlet's publication until the end of the election process (Article 71 § 10). The CEC and district election commissions are authorised to suspend, without a court order, the licence or publication for spreading unconstitutional materials or spreading of knowingly false or slanderous statements about a party (bloc) or a candidate. Also the courts will be able to suspend the media for commitment of other possible election law violations, which are numerous. This provision, which is moreover drafted in vague terms[54], even if not abused to punish some media outlets will have a "chilling effect" on freedom of expression and, therefore, should be rectified as soon as possible[55]. By the time this provision is amended, the CEC could issue a clarification of the procedure for implementation of this norm strongly encouraging its application only in exceptional cases.

76. Another defect of the election legislation which needs to be amended is the lack of regulations on the legal responsibility (criminal and administrative) for election violations[56]. A number of election-related violations foreseen by the election law are not supplemented by relevant criminal or administrative law provisions. This makes election law unenforceable and fosters impunity. In July 2005 a draft law on the amendments to the Criminal Code, Administrative Offences Code and Criminal

[51] The draft law was submitted in June 2005 for examination to the Venice Commission.

[52] Election Update No. 12, Strengthening Electoral Administration in Ukraine Project, published at www.vybory.com on 8 July 2005.

[53] *Idem.*

[54] As was reported by the Kyiv Media Law Institute, the final text of the law differed from the version which was voted by MPs on 7 July, because of mistakes in the text submitted for the final reading. As a result, the adopted text during its editing, which is usually carried out after the text is adopted and before it is signed by the parliament's speaker and sent to the president, was altered and deviated from the original wording of relevant provisions.

[55] According to the Law it could have been amended not later than 240 days prior to the 26 March 2006 elections, i.e. not later than end of July 2005.

[56] See *The Parliament Journal*, No. 2/2005, by NGO Laboratory for Legislative Initiatives, http://www.parlament.org.ua/index.php?action=magazine.

Procedure Code (draft no. 7790) was submitted to the parliament, aiming at the eliminating of this deficiency. **We call on the Ukrainian authorities to consider this piece of legislation as a matter of priority and strengthen liability for election fraud.**

77. In addition, in the course of the discussion of the new law an agreement not to review the election system and the size of the election threshold was achieved by the parliament in order not to jeopardise the adoption of the enhanced election rules. However, on 24 August 2005 in his speech dedicated to the Independence Day President Yushchenko called on the parliament "to be patriotic" and raise the election barrier. Immediately several draft laws were submitted to the parliament by different MPs proposing to set the election threshold at the level ranging from 4 to 7 per cent of votes cast. **In this respect we would like to stress that the establishment of an inflated threshold (e.g. 7 per cent) some months before the start of the official election campaign would be considered as an undemocratic move aimed at restricting political competition.**

78. The training and professional competence of election commissions, their technical preparedness also remain crucial for a transparent and efficient management of the election process. **The preparation and conduct of the election process with absolute impartiality and respect for Council of Europe standards will be a major test for the new authorities. The 2006 parliamentary elections will show whether Ukraine has passed the point of no return on its road to becoming a truly democratic and law-abiding European state.**

B. Functioning of the Parliament and status of opposition

79. Nine months after the *Orange revolution*, the forces that lost the presidential elections[57] and declared their opposition to the new government are finding it difficult to adjust to acting as a united and coherent opposition. The former pro-Kuchma parties were created as ruling parties and are therefore finding it difficult to come to terms with being in "opposition". As ruling parties, they served mostly as political shelter for oligarch, regional, business and criminal interests[58]. Today they lack sustainable political programmes and political credibility. The opposition status is often used merely to protect themselves from possible criminal prosecution for numerous alleged misdeeds during the Kuchma regime. The Communists, who could be regarded as opposition, also continue to lose their popular support.

80. The absence of opposition was particularly clear during the vote on the candidacy of Prime Minister Yuliya Tymoshenko, who was elected with more than 300 votes in favour, including the majority of those MPs who had been ardent political rivals of the Yushchenko coalition just weeks before. Even with a lack of majority support[59], the activity programme of the new Cabinet of Ministers was supported by 357 parliamentarians in February and the new wording of the 2005 State budget law proposed by the government – by 376 in March 2005. Furthermore, the statistics regarding MPs' migration after the election show that the former pro-Kuchma parliamentary factions have lost over half of their parliamentary deputies, some of whom have defected to Yushchenko and Tymoshenko[60]. Many business supporters of former pro-Kuchma parties do not want confrontational relations with the authorities either.

81. Unfortunately, a fully effective system of checks and balances does not exist so far: besides a weak parliamentary opposition, the judiciary is not sufficiently independent; local self-government is underdeveloped and short of resources; the media are free but sometimes resort to self-censorship and the state television is not transformed into a public service broadcasting. **The absence or weakness of the opposition may become a negative factor in the future political development**

[57] Party of Regions of Ukraine (leader – Viktor Yanukovych), United Social Democrats (Viktor Medvedchuk), Labour Party (since April 2005 – Valeriy Konovalyuk), etc.

[58] *Developments in the aftermath of the Orange Revolution*, testimony by Taras Kuzio, PhD, Institute for Russian and Eurasian Studies, Elliott School of International Affairs, George Washington University, at the hearing of the Committee on International Relations – Sub-Committee on Europe and Emerging Threats, United States House of Representatives, Washington, D.C., on 27 July 2005.

[59] The political forces, which participated in the formation of the new government, number around 180 MPs while a minimum of 226 is needed to pass a decision.

[60] Yuliya Tymoshenko's Bloc and the Socialist Party factions have increased their ranks with parliamentarians from the former pro-Kuchma majority, including former members of the United Social-Democrats Party faction.

of the country. Nonetheless, we believe that Ukraine will have a real political opposition after the 2006 election.

82. Parliamentary oversight remains insufficient and this is an obstacle to the accountability and transparency of public administration. In particular, the legislation pertaining to parliamentary oversight contains a number of serious gaps. The Verkhovna Rada thus faces the task of adopting a new version of the Law on the committees of the Verkhovna Rada, the Law on temporary investigation and special commissions, revising its Rules of Procedure, etc. We also welcome that according to the 2005 "Road Map" for the EU-Ukraine Action Plan the Ministry of Justice is assigned to support the adoption of the draft Law on the guarantees for parliamentary opposition in Ukraine. The legislative regulation of the rights of the opposition was also put forward as a task in the government's Activity Programme and backed by President Yushchenko. In August 2005, the Government approved a draft presidential decree on the creation of a working group to be chaired by the Minister of Justice, which would be assigned to prepare draft legislation on the guarantees for opposition by 1 October 2005. **We, therefore, urge the authorities to adopt the aforementioned legislation based on European standards as soon as possible.**

C. Administrative and territorial reform, local self-government

83. During our visit in March 2005, we were impressed by the clear concept of the reform presented by then Vice-Prime Minister on administrative reform Mr Bezsmertny. As was outlined by him, the comprehensive reform under the showy slogan of "Power at the Service of a Person" embraces the following actions: 1) to make the authorities public and transparent; 2) to transit to a functional model of public governance; 3) to concentrate all powers and responsibilities in the minister's hands according to a sectoral division instead of a branch-based; 4) to change the system of state authorities on the local level, to liquidate state presence on the basic (rayon) level of administration; 5) to reform the law enforcement bodies; 6) to transfer penitentiary system to the Ministry of Justice; 7) to minimise the controlling functions and eradicate those that are duplicated; 8) to guarantee the necessary resources to local self-government through territorial and budgetary reforms. This is supposed to be accomplished through amendments to the Concept on the administrative reform (adopted in 1998), adoption of the laws on the Cabinet of Ministers, civil service, local self-government, central and local bodies of the executive power, territorial division, and through changes in the structure of the government by presidential decrees[61].

84. The reform started with the revision of the system of executive bodies. In April 2005, the President signed several decrees subordinating the State Tax Administration, the State Customs Service and the Treasury to the Ministry of Finance; subordinating the State Committee on Ethnic and Migration Issues and the State Committee on Archives to the Ministry of Justice; liquidating the State Committee on Natural Resources, the State Committee on Religious Affairs, and the State Committee on Technical Regulation and Consumer Rights; subordinating several other state committees to ministries; ordering creation of the Ministry on construction, architecture, housing and communal services, etc[62]. This was aimed at improving the irrational system of central executive authorities, which was characterised by an excessive number of such bodies, their direct subordination to the President instead of to the government, the lack of clear difference between ministry and other central executive authority, etc.

85. The Cabinet formed in February 2005 was purported to be the first government consisting of ministers – political figures. It is further intended to re-introduce the position of state secretary (chief of staff) in the ministries, who will top the administrative apparatus and preserve his office in case of a change of government. Ministers should represent political leadership and be relieved of most of their administrative functions and a different person should be responsible for preserving "institutional memory" within the executive. We recall that the introduction of state secretaries by President Kuchma was assessed as wrongly implemented and having little resemblance to other European examples. **We welcome the intention of the authorities to separate the political and administrative**

[61] Draft laws on the territorial division of Ukraine, on the local self-government of communities, on the local self-government of districts (rayons), on the local self-government of regions (oblasts), on the amendments to the Law on the Local State Administrations, draft presidential decree on the experiment of the improvement of the administrative and territorial division in the Kyiv Oblast were submitted to the Cabinet of Ministers in June-July 2005.

[62] On 12 February 2005, the Cabinet of Ministers decided to liquidate 13-14 state committees. The general number of central bodies of executive power (62) is intended to be decreased to 47.

functions within the ministries and encourage them to make use of the relevant experience of other European countries.

86. *We were encouraged to hear the assurances of the new authorities on their intentions to finish* preparation of the draft laws on the Cabinet of Ministers and central bodies of executive and support its consideration in the parliament. On 15 April 2005, the President ordered the government (Decree No. 658/2005) to step up the adoption of the Law on the Cabinet of Ministers and after that to submit in two months the draft law on the central bodies of executive power. However, as of September 2005 this was not done and we **urge, therefore, the authorities to proceed with the consideration of this basic draft legislation without further delay**[63].

87. The former Vice-Prime Minister on the administrative reform presented in April 2005 a draft law on the territorial division, which was widely discussed and tested in four regions. The new model of territorial division is a three-tier structure with community (more than 5,000 inhabitants), rayon (not less than 70,000 residents), and region (more than 750,000 residents) levels[64]. The local (rayon) state administrations will be abolished and their functions transferred to the executive bodies of the rayon councils. The regional (oblast) state administrations will be stripped of their executive bodies; the latter will be created at the oblast councils. Cities qualifying for rayon or a region status will become separate administrative units. This supposedly will reinforce the self-government and budgetary resources of the basic level of administrative units – communities; decentralise the power and implement the subsidiarity principle. It appears nonetheless that the enactment of the proposed law would require amendments to the text of the Constitution. The reform enactment and implementation *were postponed until after the 2006 parliamentary and local elections.*

Reform of local self-government

88. Within the political deal package of 8 December 2004, a draft law No. 3207-1 on constitutional amendments was adopted in the first reading ("preliminary approved"). It was sent to the Constitutional Court for an opinion on its constitutionality[65]. The Court announced its positive opinion (with four dissenting justices) only on 13 September 2005 (the opinion itself is dated 7 September). The draft law provides for the reform of local self-government – abolishment of state administrations on the district (rayon) level (preserving them on the regional level – oblast, cities of Kyiv and Sevastopol), introduction of executive bodies at the rayon and oblast councils, etc. It is seen as a step towards compliance with the European Charter of Local Self-Government, to which Ukraine became a party in 1998.

89. On 10 December 2004, the Congress of Local and Regional Authorities of the Council of Europe welcomed the amendments as they "paved the way for an historic reform of the system of local and regional self-government." It stated that the establishment of executive bodies of regional councils would serve to define more clearly the status of the Ukrainian oblasts and rayons, which at present are hybrid structures, being administrative divisions of the state and, at the same time, a co-operation forum for local authorities.

90. The draft amendments have been sent to the Constitutional Court and after their examination would need to be adopted by a 2/3 majority to become a law. However, it remains to be seen whether the draft law no. 3207-1 can be voted for, since according to Article 155 of the Constitution the preliminary approved draft amendments have to be adopted in final reading during the next ordinary session of the parliament, i.e. the draft law No. 3207-1 would have had to be adopted during the 7th session which ended in July 2005. Also the Constitutional Court in its opinion of 7 September 2005 listed a number of the draft's provisions, which, although being in compliance with Article 157 and 158 of the Constitution, nonetheless fell in contradiction with other constitutional provisions. Therefore, the draft law will obviously require a revision.

[63] As we understood, the parliament's Committee on Legal Policy has finished the preparation of the revised draft law on the Cabinet of Ministers in January 2005 but its consideration has been stalled because of the government's intention to submit its own draft.

[64] It is proposed to create 4,000 communities, 280 rayons, 70 city-rayons, and 33 regions and city-regions.

[65] The Court's jurisdiction in this regard is limited to the review of the proposed amendments as to their compliance with Articles 157 and 158 of the Constitution.

91. The revised draft amendments could also include those needed to correct the deficiencies of other 8 December 2004 amendments (Law No. 2222, cf. supra). We **urge the Ukrainian authorities, if the revision of the text is made, to submit the amendments for the Venice Commission opinion and implement its recommendations. It is also imperative, in the course of the further consideration of draft law No. 3207-1, to stick to Article 159 of the Constitution as interpreted by the Constitutional Court in 1998** (cf. supra).

Local elections in 2006

92. The question of local elections to be held in 2006 is discussed within the general debate on the local self-government reform. According to the new wording of the law on local elections adopted in April 2004 and coming into effect on 1 October 2005, the next elections are to be held in March 2006, simultaneously with the parliamentary elections, on a totally proportional basis.with party lists of candidates, thus abolishing the first-past-the-post system. However, there are growing doubts as to the use of party-list elections on the basic level of elected bodies – village, town, and small city councils of deputies.

93. Another proposal, which should be welcomed, is to separate the local and nation-wide parliamentary elections in time (e.g. to conduct the local elections in the autumn of 2006). This would increase the significance of the local elections, which fade in the background of national parliamentary campaign, and give the political forces more time to get prepared[66]. It will also provide a time lag for finalising the administrative and territorial reform; otherwise, the enforcement of the new administrative division would require extraordinary elections or its adjournment until the next regular elections.

Reform of civil service

94. The reform of the civil service was launched by the previous Government and is now continued by the new one. In March 2004, President Kuchma approved the Concept on the adaptation of the civil service institution to European Union standards (Decree No. 278/2004). The latter was elaborated in the Programme of civil service development for 2005-2010, adopted by the Cabinet of Ministers in June 2004. The Main Department for Civil Service of Ukraine is the principal state agency responsible for the Programme's implementation. There are 240,000 public officials (including 80,000 in the local self-government bodies) in Ukraine at the moment.

95. The new government's Activity programme "Towards the People", approved by parliament in March 2005, includes a number of measures concerning the reform of the civil service in Ukraine. Among them: to increase the responsibility for corruption offences, to ensure proper working conditions and salary rates for civil servants, to adopt the Civil servant ethics code, to reform the current institutional structure of the state governance (optimisation of the system of executive agencies, elimination of the double controlling functions), to introduce the concept of "public services", etc.

D. Pluralism of the media

96. Media freedoms used to be systematically impinged upon in Ukraine by Kuchma's regime. The Assembly continuously expressed its concerns over the intimidation, repeated aggression, and murders of journalists in Ukraine, the frequent abuse of power by the Ukrainian authorities in respect of freedom of expression, the practice of imposing on journalists and TV channels officially approved guidelines *(temnyky)* for covering events, which constituted a type of implicit censorship. The Assembly condemned the presidential administration's attempts to establish ever tighter control over the state-run, oligarch-controlled, or independent media. The political forces in opposition had little access to electronic media, especially state-controlled ones. The only channel that covered the opposition favourably – 5th Channel (joined by *Era* during the elections) – had a limited coverage and

[66] There was a belief that the simultaneous holding of nation-wide and local elections was used by the previous regime to limit the possibilities of the opposition, which was not able to conduct several election campaign simultaneously, and thus leave the so-called "administrative resource" (use of public officials and resources for campaigning purposes) uncontrolled.

viewership, was short of resources, and during the presidential campaign experienced serious obstructions in its activity[67]. The authorities even clamped down on foreign broadcasters (e.g. RFE/RL).

97. The primary source of information for the majority of the population – nation-wide TV channels – has been largely controlled by the state authorities directly or through oligarchs. Journalists were forced to resort to self-censorship to save their jobs. The broadcasting sector was monopolised by three oligarch families. The situation in terms of the ownership monopoly remains the same up to now. However, the coverage of political events by nation-wide broadcasters changed drastically as an outcome of the *Orange revolution*. The latter was marked *inter alia* by the so called "journalist revolt" when journalists of the biggest channels[68] refused to follow *temnyky* and opted for an impartial and relatively balanced news coverage[69]. Freedom of media is an undisputable achievement of the *Orange revolution*.

98. We were encouraged to hear that the new authorities understand and promote the idea of free media as one of the cornerstones of a democracy. They also pledged to support the atmosphere of openness and freedom of the journalistic profession. However, one may also witness a lack of culture of media independence and professionalism as a result of years of government's stranglehold on the media, persecution of critical journalists, implicit state censorship. TV channels have been blamed for not being critical enough of the new authorities and for not always presenting another point of view, for example that of the new opposition. Journalists continue to resort to self-censorship, as they did during the period of intimidation and harassment under President Kuchma. This can partly be explained by the fact that most of the nation-wide TV channels are controlled by people who do not want to irritate the new administration. At the same time, other media, especially Internet outlets, were initially too critical and used an acrimonious reporting instead of impartial and objective coverage. We believe that exercise of the profession in an atmosphere free of governmental interference and raising journalists' awareness of the independent journalism standards will eventually lead to development of genuinely free media and balanced reporting[70].

99. The new authorities also face an implicit monopoly of the broadcast media market. This might jeopardise the independence and political impartiality of TV channels on the eve of the parliamentary elections. This is why, the authorities intend to amend the legislation and reinforce the guarantees for securing competition in the media sector. **We invite the Ukrainian authorities to take account of European experience and standards in the sphere of media ownership concentration and also urge them to submit all relevant draft legislation for evaluation by the Council of Europe.**

Public service broadcasting

100. The Council of Europe has always advocated the development of a public service broadcasting (PSB) as a "vital element of democracy" in its member states. In Resolution 1346 (2003) on the honouring of obligations and commitments by Ukraine, the Assembly held that it was of great

[67] One of the MPs filed a libel lawsuit against Mr Poroshenko, member of Yushchenko's team, who held a share in the channel's ownership. A court ordered freezing of the channel's bank account between 15-27 October. The Economic Court of Appeal decided to invalidate the channel's license for Kyiv. It also had broadcasting problems in regions where most channel's viewers could only receive its programmes via satellite – cable operators, acting under the pressure from the local state authorities, were partially or fully removing 5th Channel from their packages. On 25 October 2004, many employees of 5th Channel began a hunger strike, demanding to cease harassment of their channel by the authorities, and for the courts to reverse their decisions. The hunger strike terminated on 2 November 2004 after all their demands were met.

[68] On 28 October 2004, more than 40 journalists of *Inter*, *ICTV*, *Novy kanal* and *NTN* TV channels issued a statement against censorship on their TV stations, accusing the authorities and some of the owners and managers of "ignoring important events or twisting facts". Seven journalists from the *1+1* TV's newsroom resigned for similar reasons. By the end of November, 346 journalists from a variety of TV channels signed this statement.

[69] The most remarkable example was after the 21 November voting round, when UT-1 sign-language interpreter deliberately mistranslated to sign language the official news bulletin declaring Yanukovych the winner. 47-year-old Natalya Dmytruk signed to 100,000 deaf Ukrainian viewers: "I am addressing all the deaf citizens of Ukraine. Don't believe what they [authorities] say. They are lying. Our President is Yushchenko. I'm very sorry for being obliged to interpret the untruth up to now. I won't do it anymore. I don't know whether we will ever see each other again." Mrs Dmytruk then joined 237 of her UT-1 colleagues in a strike against state control over news coverage.

[70] In this regard, it was quite indicative how the media, except for the Internet media, covered a scandal connected with the new Minister of Justice Mr Zvarych who has allegedly falsified information on his education. The article published in one of the most popular Internet news outlets went almost unnoticed by other media. The information, which in other countries, would immediately have become top news was scarcely noticed.

importance to establish an objective and functioning public broadcasting system in Ukraine. In Resolution 1239 (2001) on freedom of expression and the functioning of parliamentary democracy in Ukraine, the Assembly called on the Ukrainian authorities, in order to set the grounds for a stable and irreversible democratisation of the media field, *inter alia*, to promote public service broadcasting. In Recommendation 1641 (2004)[71], the Assembly recommended the Committee of Ministers to consider specific measures to ensure that a legislation in this area in line with European standards is adopted as soon as possible in several countries, including Ukraine.

101. The topic of the creation of a public service broadcasting in Ukraine emerged immediately after the *Orange revolution* as a result of the assessment of the way the previous regime had handled the state television. Many politicians, including the President and other high officials, and experts were in favour of a speedy transformation of the state TV and radio channels into public ones. Public and parliamentary hearings on the PSB have been held in April 2005. The parliament's Committee on freedom of speech and information has prepared recommendations on the results of the hearings, one of which was to urgently adopt the amendments to the Law on the system of public broadcasting[72], to transform the state television and radio companies into public service broadcasters. A working group, comprising MPs and representatives of the civil society, has prepared a draft with a new wording of the law on the system of PSB, which was adopted in the first reading on 8 July 2005.

102. While welcoming all actions aimed at the creation of a genuine public service broadcasting in Ukraine, we are however concerned by the recent statements of State Secretary Mr Zinchenko, who agitated against creation of the PSB in Ukraine "as no proper conditions existed for that", and his deputy Mr Lubkivsky, who expressed the official position of the presidential secretariat about the necessity to strengthen the state television and radio without mentioning its reform into public broadcasting. These ideas were further developed by President Yushchenko who stated during the government's meeting on 25 July 2005 that both, state and PSB, should function in parallel. The same position is strongly advocated by the State Committee on TV and Radio Broadcasting in the comments of the Ukrainian authorities to the preliminary draft report. These are disappointing statements, since **in a democratic society there is no place for state controlled media and there should be no alternative to transformation of the state broadcasters into public service ones**. Unfortunately, some representatives of the new leadership continue to view the media as authorities' "resource" and advocate preservation of state control over media outlets.

103. **We are deeply convinced that further democratisation of Ukraine would be hampered if the state TV channels are not transformed into genuine public service broadcasting in the nearest future**. The change of the state television staff[73] would not suffice and the possibility of its manipulation through a direct control and dependence could tempt any government in a country with undeveloped democratic traditions. We believe that the process of the PSB creation should have started immediately after the installation of the new authorities. It was alleged that the new administration under the excuse of a need of thorough preparations and discussions protracted the possible creation of the public broadcaster until after the 2006 parliamentary elections in order to have control over the state nation-wide television during the campaign.

104. We, therefore, **call on the Ukrainian authorities to transform the state TV and radio channels into public service broadcasting as soon as possible – in any case to start the process before the parliamentary elections in March 2006 – in co-operation with the Council of Europe and in line with the CE *acquis***[74].

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[71] Recommendation 1641 (2004) on public service broadcasting adopted by the Assembly on 27 January 2004, Doc.10029, report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney.

[72] The law on the system of public broadcasting was adopted in 1997 and stipulated that in order to introduce a public TV or radio channel an additional law was needed. The 1997 Law regulates the structure of public service broadcasting, its governance principles, sources of funding, principles of functioning, etc.

[73] In February 2005, President Yushchenko appointed former MP Taras Stetskiv the head of the National TV Company (UT-1 Channel). Mr Stetskiv, a politician with no television experience who was one of the Revolution's "field commanders", was assigned to clean up the mess in the company and push for radical reforms. Later, a group of young, reform-minded professionals was hired on high managerial posts in the company.

[74] See, *inter alia*, Committee of Ministers' Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting and the Parliamentary Assembly's documents: Recommendation 748 (1975) on the role and management of national broadcasting, Recommendation 1147 (1991) on parliamentary responsibility for the democratic reform of broadcasting, Recommendation 1641 (2004) on public service broadcasting, etc.

New legislation on broadcasting media

105. In its Resolution 1239 (2001), the Assembly called on the authorities to amend the Law on the National Council on TV and Radio Broadcasting (NCB) in line with the expertise provided by the Council of Europe. In October 2003, the Council of Europe examined the draft new wording of the law on the NCB and law on the TV and radio broadcasting and made a number of recommendations. The Assembly, by Resolution 1346 (2003), urged the authorities to take these recommendations into account.

106. On 3 March 2005, the parliament adopted a new Law on the National Council on TV and Radio Broadcasting, prepared by the parliamentary Committee on freedom of speech and information, taking into account some of the suggestions of President Kuchma[75]. The main features of the Law are: a substantial reduction of grounds for the dismissal of the Council members in order to guarantee their independence; an abolishment of the rotating membership procedure; an election of the Council chairman by its members along with curtailing chairman's powers; a new procedure of imposition of sanctions on TV and radio companies for non-compliance with legislation, etc. However, the Law, being generally quite progressive, at the last moment before its adoption was supplemented with a dubious provision, which might undermine the NCB's independence. According to Article 16 of the Law, *upon results of the NCB's annual report the President of Ukraine and/or the parliament can* declare no-confidence in the Council which leads to its dismissal. **It is noteworthy that the new Law is mostly in line with the Council of Europe recommendations, except for the "last minute" amendment on the possibility of dismissal.**

107. The new wording of the Law on TV and Radio Broadcasting was adopted in the first reading in November 2003. The text for the second reading was not prepared as of September 2005. **We call on the Ukrainian authorities to submit the final version of the draft for the Council of Europe expertise and adopt it as soon as possible.**

108. The state governance in the media sphere should also be optimised in order to eliminate the duplication of functions between the National Broadcasting Council and the State Committee on TV and Radio Broadcasting. Both bodies are mentioned in the Constitution and have different remits despite similar appellations[76]. It is already planned to transfer the functions of the State Committee to other executive bodies[77] and, therefore, there is no need to maintain an additional state agency in this sphere. **As far as liquidation of the State Committee necessitates amendments in the Constitution, we call on the Ukrainian authorities to consider this issue during the next revision of the Constitution.**

Privatisation of the print media

109. Privatisation of the state print media can be viewed as an important element of introducing market relations in the media sphere and extending the range of media outlets free from political and economical pressure. Existence of the state media in Ukraine is an anachronism that impedes development of the information society in the country. The system of direct or implicit state subsidies to the print media and benefits to their employees distorts the market competition and discriminates publications of other owners. Journalists of the public print outlets (state and municipal) enjoy the status of civil servants and have a number of additional perks. In June 2004, there were more than 1,500 printed outlets in Ukraine of local or nation-wide circulation, which were founded by the state or local self-government bodies[78]. They employ several thousand journalists and staff.

[75] The initial draft law was adopted in October 2004 but was vetoed by President Kuchma a month later.

[76] The National Broadcasting Council is responsible for issuing broadcasting licences and overseeing TV and radio companies' compliance with legislation. The State Committee deals with the print media, publishing houses, and general information policy issues, for instance language policy.

[77] It was announced that the President plans to restructure the State Committee on TV and Radio Broadcasting by transferring its functions to other bodies: the registration of the print media outlets to the Ministry of Justice, language issues – to the Ministry of Culture, the protection of morals – to a special national commission.

[78] It is habitual for each body of local self-governmental (city, oblast, rayon councils) and local state administrations (rayon and oblast administrations) to have its own printed outlet, which is assigned to cover this body's activity. The general number of registered printed outlets was 21,000, including 12,000 of local circulation. The actual number of outlets, however, may differ significantly. Official statistics of the State Committee on TV and radio broadcasting, http://comin.kmu.gov.ua.

110. The privatisation of the print media in Ukraine is considered to be rather complicated because of a set of concomitant legal, social, and economical problems, especially with regard to municipal outlets. In particular, social guarantees for employees should be secured. The government is preparing a 2-year privatisation programme with pilot projects in selected regions. The national publishers' association had earlier prepared a draft law on privatisation, which was not submitted to the parliament. A good example was set by the liquidation of the presidential administration publication "Presidential Herald", established by the previous President. The state ownership of the printed media is nonetheless supported by the State Committee on TV and Radio Broadcasting.

111. **We encourage the authorities to proceed with the liquidation of the state ownership in media outlets, as the existence of state media contradicts European standards. We also call for the revision of the Law on state support for the media and social protection of journalists, as was recommended by the Assembly in Resolution 1239 (2001) and by Council of Europe experts.**

V. RULE OF LAW

A. Constitutional laws

112. The Constitution of Ukraine refers in a number of its provisions to specific laws which are designed to elaborate its precepts. Amongst them are the laws on the President, the Cabinet of Ministers, the parliament's temporary investigative and special commissions, the pre-trial inquiry bodies, the parliament's Rules of Procedure, etc. Most of the relevant laws have been blocked for years by President Kuchma and his allies in the parliament: the draft law on the President of Ukraine was adopted in the second reading in 2001 and stalled since then; the draft law on the Cabinet of Ministers was vetoed by President Kuchma 8 times – lastly in December 2002; the draft law on parliamentary temporary investigative and special commissions was vetoed by President Kuchma 5 times.

113. Many experts considered (and still consider) the adoption of these laws as a viable alternative to constitutional reform. Most of the problems in the relations between parliament and the president arose from the lack of relevant legal provisions. The fact that in practice the presidential administration had usurped extensive powers was also a consequence of this legal vacuum. Parliamentary temporary inquiry commissions remain forceless up to now, as their powers have not been defined – thus undermining the parliament's control function. The absence of these fundamental acts gave President Kuchma a possibility to manipulate the political system and abuse the constitutional provisions by means of interpretation suited to his needs.

114. The lack of legal provisions, for example, on the formation and functioning of the Cabinet of Ministers resulted in the practice of appointment by the President of deputy ministers and deputy heads of other central bodies of executive power. This raised doubts as to its compliance with the Constitution that entitles the President to appoint only the leadership of executive bodies[79]. Other spheres of abuse included issuing of regulations on economic matters, organisation of public authorities, relations with local self-government bodies, etc.

115. We welcome the plans of the new authorities to prepare and proceed with the adoption of the draft law on the Cabinet of Ministers. Two alternative draft laws on the parliament's ad hoc commissions have been submitted to the parliament in January 2005. The consideration of the draft Law on the President, which is pending since 2001, can be renewed as well. While understanding that the enactment of the 2004 constitutional amendments will change the system of state governance which needs to be reflected in the relevant legislation, it should not be used as an excuse for delaying the adoption of the above mentioned legislation. **We, therefore, regret that so far there was no progress with the adoption of the above mentioned legislation and urge the Ukrainian authorities to proceed with the consideration of these fundamental laws as soon as possible.**

[79] In its decision of 17 October 2002, the Constitutional Court of Ukraine held that leadership of central bodies of the executive power are ministers and officials who are the heads of other central executive bodies (e.g. state committees), but not their deputies.

B. Independence and proper functioning of the judiciary

116. Upon accession to the Council of Europe in 1995 Ukraine committed itself to secure the independence of the judiciary in conformity with Council of Europe standards. One of the most important and extremely difficult endeavours of the new authorities is to ensure the independence and restore the credibility of the judiciary, which was tainted under the previous regime. The judiciary was believed to be one of the most corrupted institutions in the country. This was due to a set of legislative, administration, financial, and political reasons: from the subordination to the executive of the agency responsible for the logistical support and staffing of the judiciary, the appointment of the courts' presidents by the President to a biased activity of the Superior Justice Council and the bribery among judges.

Financing of the judiciary

117. It is impossible to guarantee the independence and viability of the judiciary without proper funding and maintenance. Unfortunately, in Ukraine the courts are still understaffed (there are 1,208 open vacancies), lack premises and equipment[80], and judges are underpaid.

118. The Ukrainian Constitution provides that the State shall finance the appropriate conditions of the functioning of courts and the work of judges. Expenditures for maintenance of the court system shall be provided for in the State Budget of Ukraine (Article 130). However, annual budgetary laws usually only cover the basic needs of the judiciary, like judges and staff's salaries. Despite the fact that the state funding of the judiciary is gradually increasing[81], only 42% of the needs are covered in 2005[82]. Moreover, the budgetary appropriations are often not fulfilled and the judiciary is underfinanced even within the already scarce budgetary allocations[83]. This clearly undermines the capacity to deal with the increasing workload of the general jurisdiction courts[84]. According to the European Judicial Systems report[85], in 2002 Ukraine had one of the lowest rates of public expenditure on courts and legal aid per inhabitant (EUR 2.32) while having a relatively high number of first instance courts of general jurisdiction per 1 million inhabitants (15.1).

119. The high level of corruption in the judiciary is also caused by the low salaries of judges and court staff. Judges in Ukraine are clearly under-paid: lower court judges are paid USD 100 to USD 200 per month, appellate judges receive several hundred dollars per month, and Supreme Court justices – approximately USD 1,000[86]. Although the question of a decent remuneration of civil servants is a general problem in Ukraine, special attention should be paid to the remuneration of the judiciary.

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[80] Local general courts have at their disposal only 1,857 courtrooms for more than 4,000 judges. 412 court buildings are unsuitable for administration of justice, 35 local courts operate in wrecked premises, 170 courts require major repairs. Even the Supreme Court has no hall to house a large number of people (Bulletin of the Supreme Court of Ukraine, No. 1 (53), 2005). The governmental programme for providing the courts with the necessary premises in 2002-2006 is poorly implemented. Due to the lack of courtrooms, judges are forced to hear the cases in their offices, which contradicts the public hearing principle.

[81] 0.17% of GDP in 2003, 0.20% in 2004, 0.24% according to the 2005 State Budget Law adopted in December 2004, and 0.27 of GDP according to the amendments passed in March 2005 upon proposal of the new government. This includes the expenses on administration of justice by all general jurisdiction courts, training of judges by the Academy of Judges, other expenses assigned to the State Judicial Administration, funding of the Supreme Court of Ukraine, Higher Commercial Court, Higher Administrative Court (starting from 2004), Constitutional Court, and the Superior Justice Council.

[82] Parliamentary hearings on judicial reform, 16 March 2005.

[83] 87% from the appropriations foreseen by the state budget law have been accomplished in 2001, 73% in 2002, 97% in 2003, 82% during the first 10 months of 2004. Source: Pylypchuk P. *Independent financing of the judiciary as one of the guarantees of courts' and judges' independence*, Visnyk Verkhovnogo Sudu Ukrainy (Bulletin of the Supreme Court of Ukraine), No. 1 (53), 2005.

[84] A total number of 754 courts with 7,580 judges considered 6.4 million cases in 2004. The number of complaints against acts or omissions by the state bodies and officials lodged with the courts increased 38 times from 1992; the number of civil law cases – by 803,000 from 2000. Hence, the workload of the courts increased in overall 2.4 times during the last 5 years. The average monthly number of cases assigned to one judge increased from 50 cases in 2000 to 118 in 2004 (up to 150 cases in some courts).

[85] The report presented the results of a survey that was conducted in 40 member States of the Council of Europe and was released by the European Commission for the Efficiency of Justice in December 2004. See http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice.

[86] Ivan Lozowy, *Ukraine: "Underpaid, Underqualified, and Under the Gun" A Profession Without Honour*, Transitions Online, 27 May 2004, http://www.tol.cz. According to the Ukrainian authorities' comments to the preliminary draft report, in 2005 the monthly salary of a judge averaged to Hr 2,857 (around EUR 475), two times more than in the executive bodies.

Therefore, we welcome the Cabinet of Ministers' decision of 3 September 2005 to triple the judges' base salary rate starting from 2006. The situation with the judges' salaries could be improved by fixing the minimum salary rates by law, instead of leaving this discretion to the President and the Government as it is now. **The executive branch should be stripped of the possibility to influence the salary rate of judges**[87].

120. Insufficient funding contradicts international and Council of Europe standards on the independence and efficiency of the judiciary. According to the UN Basic principles on the independence of the judiciary and the European Charter on the statute for judges, it is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions, and in particular to deal with cases within a reasonable time. In its Recommendation No. R (94) 12, the Council of Europe Committee of Ministers recommended to provide proper working conditions to enable judges to work efficiently and, in particular, to recruit a sufficient number of judges and provide for appropriate training, to ensure that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibility, to provide adequate support staff and equipment to ensure that judges can act effectively and without undue delay, to ensure the safety of judges, etc.

121. Moreover, there is an obvious link between, on the one hand, the funding and management of courts and, on the other, the principles of the European Convention on Human Rights: access to court and the right to fair proceedings are not properly guaranteed if a case cannot be considered within a reasonable time by a court that has appropriate funds and resources at its disposal in order to perform efficiently.

122. Notwithstanding the difficult economical situation, **we urge the Ukrainian authorities to ensure the sufficient stable funding of the judiciary** as prescribed by the Constitution of Ukraine, Article 118 of the Law on the Judicial System (budgetary expenditures on the financing of the judiciary should not be less than the level necessary to guarantee the possibility of a full and independent administration of justice according to law) and international standards. In this regard, adoption of the draft law on the temporary order of financing of the judiciary (No. 4189 of 24.09.2003) could be seen as a measure for improvement of the situation in this field[88]. Also the replacement of the so-called "state duty" (which is now included in the general state budget revenues without any link to the following expenditures on the judiciary) with a court fee should be implemented.

123. We are also concerned that local budgets remain one of the sources of judicial funding, thus subjecting courts to a possible influence by the local authorities. For example, in 2003 one fifth of the overall funds received by the judiciary came from sources other than the State budget (which is contrary to the Constitution and the Law on sources of financing of the state bodies). This is all the more worrying as it is a *de jure* established procedure – the courts funding from local budgets is regulated by the Cabinet of Ministers relevant regulations (No. 1313 of 24.11.1997) and by the State programme of organisational provision of the courts activity in 2003-2005 (approved by the regulation No. 907 of 16.06.2003)[89].

Status of the State Judicial Administration

124. The role of the State Judicial Administration that is responsible for allocating funds to courts, their logistical and material supplies (except for the Supreme Court, Constitutional Court, higher specialised courts) is crucial in terms of the independence of the judiciary. The State Judicial Administration was created in 2002 as a central body of the executive power; its head is appointed and dismissed by the President of Ukraine upon submission of the Prime Minister agreed with the

[87] According to Recommendation No. R (94) 12 on the independence, efficiency and role of judges, remuneration of judges should be guaranteed by law (Principle I, §2.a.ii.).

[88] In June 2005, the Verkhovna Rada's Committee on Legal Affairs recommended its adoption in the first reading. According to the comments of the Ukrainian authorities to the preliminary draft report, some of the draft law's provisions contradict the Budgetary Code of Ukraine.

[89] In the judgment in the case of *Sovtransavto Holding v. Ukraine*, the European Court on Human Rights referred to the applicant's submission that tribunals were financially dependent on local-authority budgets, a point that had been noted by the Ukraine Auditing Chamber (Рахункова Палата України) in its annual report for 1999. Such dependence constituted "a means of influencing the tribunals.and was a threat to the constitutionally guaranteed independence of the State legal service".

Judges' Council of Ukraine. The creation of the Administration was purported to bolster the independence of the judiciary, since previously courts were funded through the Ministry of Justice and local authorities thus making them dependent and susceptible to undue influence.

125. On 14 March 2005, the National Security and Defence Council, while discussing issues of administrative reform, agreed to dissolve the Judicial Administration and transfer its functions to the judiciary[90]. At the same time, Justice Minister Mr Zvarych recently proposed to re-subordinate the Administration to the Ministry. In our opinion, the latter would be a false step as it might undermine the independence of judiciary. **Therefore, the subordination of the State Judicial Administration to the judiciary (one should decide in which form[91]) should be encouraged as a measure to secure the proper functioning of the judiciary**.

Appointment of the courts' presidents and distribution of cases

126. Two further important developments, which may promote the independence and impartiality of the judiciary, are the change of the rules on the appointment of presidents of courts and establishment of an unbiased procedure for the distribution of cases within the courts. Currently, the president of any court (except for the Supreme Court and Constitutional Court) is appointed by the President of Ukraine. Taking into account the vast powers of the court's president (who distributes the cases among the judges, influences judges promotion and decides on awarding bonuses and additional benefits, etc.), the President of Ukraine is indirectly given a possibility of exerting influence on judicial decisions. One of the examples of arbitrariness in this regard was the appointment of the president of the Higher Administrative Court that was delayed by the former President of Ukraine for more than a year, thus impeding development of administrative justice in the country. As was pointed out by the Supreme Court chairmanship, the election of the courts' presidents by judicial bodies would also be logical in view of the fact that the president of the supreme judicial body of the country – the President of the Supreme Court of Ukraine – is, according to the Constitution (Article 128 § 2), elected and dismissed from office by the Supreme Court's Plenary Assembly (Plenum) by a secret ballot.

127. In January 2005, a draft law (No. 7003) was submitted proposing to amend the Law on the Judicial System in order to transfer the authority to appoint/dismiss presidents of courts (and their deputies) to the gatherings of judges of the court upon recommendation of the bodies of judicial self-government and following approval by the Verkhovna Rada. The proposed procedure is far from perfect and should be amended significantly but **the idea of securing the division of powers by depriving the President of Ukraine of the authority to appoint presidents of courts and transferring this authority to the judiciary should be supported**.

128. As regards the procedure for distribution of cases among judges within a court, at present the president of the court can assign a case to any judge and thus try to obtain the necessary decision. A randomised system of assignment of cases was introduced only in the Supreme Court. We were also told that the random distribution is foreseen in the Civil Procedure Code, but not in the Criminal Procedure Code. The procedure should be changed – **all cases should be distributed according to an objective criterion**. According to the Committee of Ministers' Recommendation No. R (94) 12 on the independence, efficiency and role of judges, the distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing lots or a system for automatic distribution according to an alphabetic order or some similar system.

Composition of the Constitutional Court

129. We are disturbed by the reports that the Constitutional Court's activities may come to a standstill in autumn 2005 because of a lack of quorum. Already when we met the Court's President in March 2005 the Court, which according to the Constitution is composed of 18 justices, lacked three members who had to be elected by the parliament and the national congress of judges. Difficulties have already occurred with the Court failing to reach a necessary quorum due to the absence of some judges. This has reportedly been one of the reasons why the Court has so far not considered the

[90] Source: http://www.rainbow.gov.ua/action/2005/03/0315rnb1.shtml.

[91] For example, in the Russian Federation the Judicial Department is a separate structure whose Head is appointed by the judicial community – by the Supreme Court upon consent of the Judges' Council.

motion on the constitutionality of the presidential decree on the extended powers of the National Defence and Security Council and provided its opinion on the compliance with the Constitution of the draft constitutional amendments on the reform of local self-government (no. 3207-1) only in September 2005, thus significantly delaying the adoption of the latter in the final reading.

130. In September–October 2005 the Constitutional Court will "lose" another ten justices as their terms of office will expire. There are reasons to fear that some political forces, notably those supporting the constitutional reform, which is due to come into effect as of 1 January 2006, would be interested to deliberately obstruct the election of the six judges to be elected by the parliament according to the Constitution or to block the swearing in of those appointed by the President in order to make the Court inoperative and thus prevent it from considering the legitimacy of the 8 December 2004 constitutional amendments (cf. relevant subchapter supra). With regard to this, we underscore that **justice should not be held hostage to the political interests and therefore call on the authorities and political forces to ensure that the composition of the Constitutional Court of Ukraine is renewed without undue delay once the terms of office of its justices expire.**

Legal responsibility of judges

131. A criminal case against a judge can be instituted by any investigator of a law enforcement body, whereas the opening of a criminal case against an attorney can only be initiated by the regional prosecutor (or prosecutor of the higher level). Therefore, **the legislation should provide additional guarantees for judicial immunity**. At the same time, **all acts of corruption within the judicial system should be properly prosecuted**, as it is one of the conditions of the system's credibility.

132. Moreover, the Law on the status of judges was amended in March 2004 and the parliament can no longer suspend a judge if a criminal case is instituted against him (this provision was deleted as the Constitution did not authorise the parliament to exert such power). However, no alternative procedure has been proposed instead. Hence, a judge elected for life tenure can be suspended by an investigator's decision to open a criminal case against him/her. Whereas, according to the Criminal Procedure Code, a person appointed by the President, including a judge, can be suspended only by the President upon submission by the Prosecutor General. This legal blunder should be corrected.

Judicial security

133. We note that from 1 January 2005 a special division of court police has been introduced[92]. Also a service of court ushers is to be created according to the Temporary regulations on the service of court ushers and organisation of their activity, adopted by the State Judicial Administration in April 2004[93]. **We hope that these provisions will be properly enforced and that their enactment will not be further delayed due to a lack of sufficient resources.**

C. Reform of the Judiciary

134. In his address during the 16 March 2005 parliamentary hearings on judicial and legal reform in Ukraine, the president of the Supreme Court of Ukraine Mr Malyarenko admitted that the judicial reform is advancing "slowly, chaotically, and unsystematically. Reforms are constantly followed by counter-reforms and attempts to review previous legislative decisions". The new Law on the Judicial System was adopted in 2002, but was incomplete and some its provisions were unconstitutional (e.g. the Constitutional Court invalidated provisions on the establishment of a separate Court of Cassation which was not prescribed by the Constitution). In May 2005, the President established a judicial reform commission, which, in particular, in order to fulfil Ukraine's commitments to the Council of Europe, was assigned to submit relevant proposals by the end of 2005. The draft amendments to the Law on the Judicial System are being prepared in consultation with Council of Europe experts.

[92] According to Law No. 1724-IV of 18 May 2004.

[93] Creation of the court ushers service was prescribed by Article 132 of the Law on the Judicial System adopted in 2002.

135. A number of issues are yet to be decided, in particular with regard to the jurisdiction of the Appellate Court of Ukraine, the cassation instance in the civil and criminal cases[94], the fate of military courts, etc. Also a number of legislative acts should be adopted or revised, e.g. on legal aid, on the court fee, new wordings of the laws on the bar, on the prosecutor's office, etc. Obviously, a new concept of judicial and legal reform is also needed since the previous one, adopted in 1992, became obsolete after the adoption of the Constitution in 1996[95]. It is also recommended to review the procedure for judges' election (appointment) – e.g. to revise the practice whereby the appraisal by the president of the court is needed for a judge to be admitted to the qualification test which, in its turn, is necessary to be eligible for a life-term tenure[96].

Administrative courts

136. One of the most important measures in the field of judicial reform is the introduction of an administrative justice system and the creation of administrative courts. According to the transitory provisions of the Law on the Judicial System, the system of administrative courts should have been created by June 2005. However, up to now only the Higher Administrative Court was established comprising a president and 18 other justices (out of the required 65). Twenty seven first-instance district courts and seven appellate administrative courts are yet to be created.

137. The Higher Administrative Court began to operate in January 2005 and needed at least 25 judges in its composition to form the general assembly (Plenum) and chambers in order to start administering justice from 1 September 2005. According to the president of the Court Mr Pasenyuk, by 1 September three or four appellate courts will also be established to consider election disputes during the 2006 parliamentary campaign as appeal courts. The ordinary general jurisdiction courts will continue to adjudicate this category of cases as first instance courts by the time local administrative courts are formed – supposedly, after the March 2006 elections – within the local general courts. The Higher Administrative Court, while serving as a cassation court, will also act as a court of first instance for cases on the election results established by the Central Election Commission and concerning the cancellation of registration of candidates for presidency.

138. A major step forward was made by the adoption of the Code of Administrative Justice on 6 July 2005[97]. The enactment of the Code as from 1 September 2005 will also allow the fulfilment of one of Ukraine's commitments under Opinion No. 190 (1995), which should have been fulfilled within a year after accession, i.e. to adopt a new Civil Procedure Code (according to the Final provisions of the latter, it was to come into effect on 1 January 2005 but not earlier than the Code of Administrative Justice).

139. The main purpose of the administrative justice system is the restoration of a person's rights infringed by public authorities. The administrative courts will adjudicate on the following issues: 1) disputes between natural persons and legal entities on the one side and public authority (central and local bodies of executive power, local self-government bodies, their officials) on the other, where

[94] The current procedure for cassation complaints lacks clarity and the Supreme Court is the only judicial institution authorised to review final judgments (within the cassation and exceptional procedures). The backlog of this kind of complaints in the Supreme Court was 28,615 cases as of 1 January 2005 (the Supreme Court Presidium's resolution no. 1 of 28 January 2005 "On the results of the Supreme Court activity in 2004 and its tasks for 2005").

[95] President Yushchenko said that he is preoccupied with the incompatibility of the Ukrainian judicial system with European standards and saw the primary task of the new authorities in the establishment of a genuinely independent judiciary. Source: *Interfax-Ukraine*, 19 April 2005.

[96] In March 2004, the Law on the election and dismissal of professional judges by the Verkhovna Rada of Ukraine was passed. Contrary to expert recommendations it did not envisage competition procedure for judges' selection and promotion. The Government's 2005 Programme "Towards People" envisages establishment of a transparent competitive system of selection according to the law.

[97] The Code was initially adopted on 17 March 2005 but was vetoed by the President on several counts – the main one being the alleged intrusion of the Code into the jurisdiction of the Constitutional Court. The Code provided for a possibility to appeal any legal act, except for a law, to the administrative court, which was considered by the President as interfering in the Constitutional Court's power of constitutional review. The veto was criticised by experts as unsubstantiated and depriving persons of their right of access to a court. The veto also appeared to be in contradiction with several rulings of the Constitutional Court. Therefore, the parliament rejected all but one recommendations of the President and adopted the new wording of the draft code by 305 votes in favour.

the plaintiff appeals against an authority's act, action or omission ("person vs. state" cases); 2) disputes concerning civil service; 3) competence disputes between public authorities; 4) elections and referendum disputes.

140. Local courts of general jurisdiction, acting as first-instance administrative courts, will consider cases brought against local self-government bodies or their officials and against bodies that consider issues of administrative liability (offences). Twenty-seven district administrative courts will adjudicate on the cases brought against state bodies or their officials. In cases where the local body of the executive power or its official stands as a defendant, the plaintiff will have the right to choose between a local administrative court and a district court. Seven appellate administrative courts will accordingly review appeals against first-instance court decisions. The Higher Administrative Court will become a cassation instance. The Supreme Court's Chamber for administrative cases, which is also planned to be created by 1 September 2005, will hear the so called "repeat cassation" cases (in connection with "exceptional circumstances") involving issues of inconsistent implementation of law by different cassation court judgments and enforcement of decisions of international judicial institutions. Along with professional judges (single or in a panel), the district administrative courts will consider cases by a panel of three professional judges and two people's assessors upon the request of one of the parties or a judge.

141. Due to the significance of the administrative courts in the adjudication complaints where personal rights and freedoms are encroached and the consideration of election disputes, their sufficient financing and maintenance should be dealt with as a priority. Moreover, administrative courts will be entitled to consider a number of cases, which are now adjudicated by the economical courts (e.g. tax disputes). Thus, the administrative courts must be provided with the resources commensurate with their future enormous workload. **We hope that all proper conditions for dispensing justice by administrative courts will be secured promptly**, especially with regard to court premises, staffing and training, and that the administrative courts will be ready to face the election related cases next year.

Military courts

142. The existence of military courts and their extensive jurisdiction have also been criticised. Although such courts exist in other European countries, they have a more limited jurisdiction, and the general trend is that of their liquidation. The special status of military judges, compared with other justices, contradicts the principle of the common status of judges. Military judges are army servicemen and have military ranks, upon which their remuneration is based. The military judge ranks are granted by the President of Ukraine upon submission of the Supreme Court president (but the initial submissions come from the military commandment)[98].

143. The military courts in Ukraine enjoy double funding – through the State Judicial Administration and the Ministry of Defence, thereby undermining their independence, especially taking into account that they consider cases where the Ministry or its servicemen are a party. The Courts martial's competence *ratione personae* and not *ratione materiae* seems incompatible with Article 125 of the Ukrainian Constitution according to which the courts of general jurisdiction are based on the territorial principle and the principle of specialisation and extraordinary and special courts shall not be permitted[99]. Therefore, we welcome the statement made by the Supreme Court president that the courts martial will be gradually disbanded as they are not foreseen by the newly adopted Civil Procedure and Administrative Justice Codes (seven courts have already been dissolved in 2004 and military judges are not recruited anymore)[100]. **However, the Criminal Procedure Code and the Law**

[98] In the cases of *Ciraklar, Incal, Seher, Karatas, Tore Tore* and a number of other cases against Turkey, the European Court on Human Rights held that the National Security Court could not be regarded as an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention because its three members included a military judge who, despite the constitutional guarantees of their independence, was a serviceman still belonging to the army and subject to military discipline.

[99] See *inter alia* Venice Commission Opinion on the Draft Law of Ukraine on the Judicial System, 10 February 2000, CDL-INF (2000) 5, http://www.venice.coe.int/docs/2000/CDL-INF(2000)005-e.asp.

[100] The system of military courts comprises currently 17 local garrison courts (89 judges), 4 regional appellate courts (43 judges), and a military judicial college within the Supreme Court. 90% of the cases considered by military courts are civil cases. Taking into account that the new Civil Procedure Code did not foresee military courts' jurisdiction over civil cases it is estimated that on average every local military court judge will consider annually up to 10 criminal cases only and appellate court judge – up to 6.

on the Judicial System should be amended. We note that in July 2005 the new government submitted a draft law (No. 7807)[101] amending a number of legislative acts aimed at abolishment of the military courts. **Its speedy adoption should be encouraged.**

Jury courts

144. The Constitution of Ukraine provides for the administration of justice, *inter alia*, by jury courts. The 2002 Law on the Judicial System outlined the requirements for a person to be eligible to serve as a juror, the procedure for compiling lists of jurors, etc. However, the actual involvement of the jurors in the administration of justice is yet to be elaborated in the procedural codes. It appears that jury courts, if introduced, will first dispatch justice only in criminal cases and only in cases where life-term imprisonment is provided as a punishment[102]. The accused will be given a right to decide in which court (jury court or a panel comprising two professional judges and three people's assessors) they wish to have their cases heard. Jurors will decide only on points of fact (e.g. whether there was an event of crime, whether the crime was committed by the accused, whether the accused was guilty) and provide a professional judge with a verdict to base his sentence on[103].

Juvenile courts

145. It has been noted by UNICEF and other organisations that the absence of a juvenile justice system in Ukraine is an urgent social problem. To date no separate judicial system that addresses the special needs of children and ensures that their rights are respected has been established. Despite the fact that some peculiarities are envisaged, such as a different system of punishment or special provisions and procedures, under the present arrangement juvenile cases are regularly considered within the adult system, which is contrary to international human rights standards. The Committee on the Rights of the Child has expressed concern with regard to the absence of specialised juvenile courts and juvenile judges[104]. We, therefore, **welcome the prepared draft Concept on the creation and development of a juvenile justice system in Ukraine and call for its quick adoption and implementation.**

D. Status of the legal profession and professional Bar association

146. Ukraine undertook in 1995 to protect the status of the legal profession by law and to establish a professional bar association (Opinion No. 190 (1995), § 11.ix.). **We are discouraged by the fact that this commitment remains mainly unfulfilled to date.**

147. As regards the status of the legal profession (not taking into account the law-connected public servants, e.g. judges, prosecutors, investigators, bailiffs, etc.), the Ukrainian legal system, as in all other former Soviet states and some Central and Eastern European countries, is characterised by a division of the legal profession into several branches (advocates, notaries, and other legal professionals who have an entrepreneurial status or act on behalf of their employers), which is not incompatible with Council of Europe standards[105].

148. In many countries the representation in criminal cases is a prerogative of advocates. This was also the case in Ukraine before the Constitutional Court judgment of 16 November 2000 that declared unconstitutional the Criminal Procedure Code provision limiting legal representation in criminal matters

[101] A similar draft law was submitted by the previous government in August 2004.

[102] Article 345 of the draft Code of Criminal Procedure (version of 27 June 2004).

[103] Such an Anglo-Saxon model of jury courts (contrary to the continental or French system where the judge together with the jurors make up one panel deciding both on points of fact and law) was functioning on the territory of Ukraine since the 1864 judicial reform (on the territory included in the Soviet state it was abolished *de jure* only in 1922). The same system functioned on the territory of Western Ukraine that was under the Austro-Hungarian Monarchy.

[104] UN Common Country Assessment for Ukraine, October 2004, http://www.un.kiev.ua.

[105] In the expertise of the Ukrainian Bar Association, commissioned by the Council of Europe in 2001, the expert noted that it is not unusual to see legal services split into two groups of lawyers in some countries (Czech Republic, Slovakia, Poland, Croatia, etc.) so that besides the "advocate" as generally known, there is another type of lawyer (jurist, commercial lawyers, legal advisor, etc.) who is not a member of the Bar but renders limited legal services. This dichotomy created problems in the administration of justice in some of these countries (i.e. Hungary, Czech Republic, etc.), which had already merged the two into a single profession of advocates).

only to licensed advocates[106]. Representation in civil cases can be carried out even by persons having no legal training, who obtained a power of attorney. By ruining the monopoly of the advocates to practice as counsels in criminal case, the Constitutional Court levelled the advocate's rights with those of other lawyers. At the same time, according to the Ukrainian Union of Advocates, the requirements for access to advocate's practice (law faculty graduation, two years of legal experience of any kind, bar exam, and advocate's oath are required to obtain the certificate) make their situation uncompetitive. However, the latter requirements, in our opinion, could be rather seen as an advantage for a credible, self-sustainable Bar if it were a solid professional association governed by strict rules. But this is so far practically impossible taking into account the current legal framework for the functioning of the Bar and the absence of a genuine professional association.

149. The existing Advocates' Union (chaired by Mr Viktor Medvedchuk, former First Deputy President of the Parliament and the former head of President Kuchma Administration) is a voluntary all-Ukrainian public association of advocates (legal entity of private law) established in 1990 with branches in regions, whose status is not different from other non-governmental non-commercial organisations and is governed by the Law on civic associations. It is also governed by Article 19 of the current Law on the Bar, which states that advocates and their organisations (firms, bureaus, etc.) are free to associate into regional, nation-wide, and international unions and associations. The latter represent interests of advocates in state bodies, public organisations, and defend advocates' social and professional rights, etc.

150. The Law on the Bar was adopted in 1993 and since then was slightly amended several times. The legal profession is protected by law, but additional guarantees should be provided. **We must regrettably note that a professional Bar association was not established contrary to the relevant commitment.** The professional Bar association should be a self-governing body representing the country's advocate community, be created on the basis of law, participate in the licensing and debarring of attorneys, maintain respect of lawyers for their code of conduct and professional ethics by establishing a disciplinary jurisdiction, etc.

151. One of the controversial issues in Ukraine is the mandatory membership in the Bar association. Council of Europe experts recommended that the new wording of the Ukrainian Law on the Bar would contain provisions on the creation of a national bar association with an obligatory membership for all advocates who received a certificate to practice as an advocate. However, this proposal was countered by an assertion that the mandatory membership would fall in contradiction with the freedom of association guaranteed by the Constitution[107]. We would like to draw attention in this respect to the case-law of the European Court of Human Rights, which on a number of occasions held that some associations due to their public nature (e.g. associations of advocates, notaries, doctors, architects, etc.) are not included in the definition of the term "association" in Article 11 § 1 of the European Convention on Human Rights. Members of some professions may be legitimately required to associate. The European Court has regarded such organisations as being public law bodies designed to regulate a particular profession and, as such, not normally attracting the protection of Article 11[108]. The Court declared inadmissible the application of *O.V.R. v. Russia*[109], which

[106] The Court explained that Article 59 of the Ukrainian Constitution, which stipulates "everyone shall freely choose his defendant", should be interpreted as meaning the right "to seek legal assistance by choosing as his defender a person competent in law and lawfully authorised to provide legal assistance in person or upon charges of a corporation".

[107] According to Article 36 § 1, Citizens of Ukraine have the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests. § 4. No one may be forced to join any **association of citizens** or be restricted in his or her rights for belonging or not belonging to political parties or public organisations.

[108] See e.g. *Le Compte, Van Leuven and De Meyere v Belgium* (an obligation to belong to a body that was required to keep a register of medical practitioners), *A. and Others v. Spain, Barthold v. Federal Republic of Germany, Revert and Legallais v. France* in respect of bodies created under legislation to regulate lawyers, veterinary surgeons, and architects. See also McBride, Jeremy, *NGO rights and their protection under international human rights law*, http://www.osce.org/documents/html/pdftohtml/3666_en.pdf.html.

[109] Also in 1998 the Constitutional Court of the Russian Federation ruled that compulsory membership of a notary chamber is not contrary to Articles 19 and 30 § 2 of the Russian Constitution. It stated, *inter alia*, that notary chambers perform important public law functions, which include the supervision of the exercise of private notaries' professional duties, and the right to address a court with a request to deprive a notary of the right to practise because of a violation of the law. Having regard to these public law functions and duties, the Constitutional Court found that the principle of voluntary membership could not apply to notary chambers. As regards the status of notary chambers, the Constitutional Court added that they were to be considered as non-governmental organisations taking part in State power.

concerned the requirement to belong to the regional notary chamber or otherwise losing the right to practise as a private notary, and argued that the Convention organs have consistently held that the regulatory bodies of liberal professions are not "associations" within the meaning of Article 11 of the Convention.

152. We also refer to the report on the compatibility of Croatian legislation with the requirements of the European Convention on Human Rights prepared by the Council of Europe Directorate of Human Rights in 1998[110]. It states that bearing in mind the fact that the establishment of the Croatian Bar Association and its competencies are determined by law, that this Association has extensive and significant powers in terms of defining the rules of the profession, as well as an important role in ensuring supervision of the professional performance of lawyers, its public nature can be established, in spite of the unclear determination of the public or private nature of this organisation. Therefore, the application of Article 11 of the Convention can be excluded.

153. In February 2005, in a draft law with a new wording of the Law on the Bar put before the parliament (a consolidated version of three other drafts previously submitted by different authors) – the Bar was defined as a professional non-governmental independent institution of the legal system; all attorneys of Ukraine would automatically become members of the All-Ukrainian Chamber of Attorneys. The draft law was supported by the Union of Advocates but opposed by some non-affiliated advocates and representatives of broader coalitions of lawyers. In September 2005, an alternative draft law was submitted by MPs (no. 7051-1), which besides defining the status of the Bar ("a specially authorised non-state institute of rights protection") proposed to widen the scope of guarantees of advocate activity, to set up a system of advocates' self-government bodies whose decisions would be obligatory for all lawyers with an advocate status and which would be mainly funded by mandatory annual fees of advocates. The regional and national self-government bodies of the advocate community would regulate and run the admission to the advocate activity (through testing and licensing of advocates) and exercise the disciplinary jurisdiction in case of violation of the laws or codes of conduct.

154. The 2005 Road Map for the implementation of the EU-Ukraine Action Plan envisages support by the Ministry of Justice of the adoption of the amendments to the law on the Bar concerning establishment of a professional bar association. In April 2005 the Minister of Justice created a working group to prepare a draft new law on the Bar. **We hope that the parallel work on the new law by the parliament and the government will not result in the delay of its adoption. We call on the Ukrainian authorities to proceed without further delay with the consideration of the draft law and to submit it for examination by the Council of Europe experts.**

E. Reform of the public prosecutor's office and other law enforcement bodies

155. One of the major problems that afflicted the law enforcement bodies until recently was their politicising, i.e. their inclusion in the political struggle, execution of illegal orders, political partiality of the higher officials, giving priority to private or corporate interests before public ones, etc. The law enforcement agencies have been used as a coercive tool by the highest public officials. The collusion of law enforcers with organised crime used to be also widespread. The Ministry of Interior Department for combating organised crime was notoriously known for covering up criminals. This, for example, became obvious during the Mukacheve local elections and the presidential campaign[111]. The prosecutor's office, the police, the security service, and the tax police have been extensively used to suppress the opposition and its funding sources. In Resolution 1346 (2003), the Assembly expressed its deep concern over the practice of the highest executive giving systematic instructions to the Prosecutor General's Office with regard to special cases of criminal prosecution. The law enforcement bodies also have been commonly regarded by the population as corrupt and frequently violating human rights. According to a poll, conducted by the Razumkov Centre in January – April 2004, 19.2% respondents knew from their own experience about human rights violation by law enforcers. 71.6% viewed corruption as the main reason of negative attitude towards the law enforcement bodies.

[110] Source: http://www.coe.int/T/E/Human_Rights/Awareness/4._Our_Activities/Compatibility_Reports/.

[111] This was also illustrated by the statement made by the Minister of Interior Mr Bilokon before the first round of the presidential elections, who said during a staff meeting in Donetsk that "we all will drink for three days after our candidate wins".

156. We welcome the new government's undertaking to bring the law enforcement bodies' activity back into legal boundaries and ensure their depolitisation and decriminalisation. It is also a considerable achievement that the reform of the two principal bodies – the Ministry of Interior and the Security Service – was started by their first civilian heads. On 19 July 2005, President Yushchenko issued a decree on the measures for ensuring personal security of citizens and counteracting criminality, and stated that the assessment of the law enforcement bodies' activity should be carried out in particular on the basis of indices of people's trust towards these agencies. He ordered *inter alia* the Government to increase funding of departments responsible for the inquiry and search/detective activity within law enforcement bodies.

Reform of the public prosecutor's office

157. Ukraine undertook to modify the role and functions of the Prosecutor's Office (particularly with regard to the general oversight function) and to transform this institution into a body which is in accordance with Council of Europe standards. In its subsequent resolutions the Assembly regretted that the reform of the general prosecutor's office was not implemented and emphasised the need to bring it into line with European democratic standards. **To date this commitment remains unfulfilled and even more – a huge step back was made by the 2004 constitutional amendments.**

158. The current Constitution of Ukraine (before the 8 December 2004 amendments come into effect) provides for a European model of the prosecution, which limits the functions of public prosecutors mainly to the criminal prosecution on behalf of the state[112]. In view of the functions traditionally carried out by the Prokuratura since Soviet times, the Constitution provided for a transitional period to reform the prosecutor's office – paragraph 9 of the Transitional Provisions stipulated that the Prokuratura was to continue to exercise, in accordance with the laws in force, the function of supervision over the observance and application of laws and the function of preliminary investigation, until the laws regulating the activity of state bodies with regard to the control over the observance of laws were put into force, and until the system of pre-trial investigation was formed and the laws regulating its operation were put into effect. This provision still remains in force.

159. In October 2004, the Venice Commission examined the draft law on the prosecutor's office[113], which was adopted in the first reading in March 2004, and reiterated its position that the existing law established a very powerful institution whose functions considerably exceeded the scope of functions performed by a prosecutor in a democratic law-abiding state. In effect, it provided for a Soviet-style "Prokuratura". The Venice Commission held that, despite some marginal improvement over the existing law, the draft law could not be regarded as a fundamental reform of the existing Prokuratura. **We urge the Ukrainian authorities to revise the draft law on the prosecutor's office in line with the Venice Commission's opinion and submit the final version, before its adoption by the parliament, for a new examination[114].**

160. On 8 December 2004, the Verkhovna Rada passed a compromise package of constitutional amendments and changes in the law on the presidential elections. Whilst understanding the complicated political circumstances in which the deal on political reform was struck, **we regret nevertheless that the Venice Commission opinion was not taken into consideration.** The amendments to Article 121 of the Constitution made permanent the Prosecutor's function which, according to the transitional provisions of the Constitution, was intended to be only temporary. Thus **the constitutional amendments threw Ukraine back to 1996 when the Constitution ordered the reform of the prosecutor's office.**

[112] This is in line with the Assembly's Recommendation 1604 (2003) which states, as regards the non-penal law responsibilities of public prosecutors, that it is essential that "powers and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal justice system, with separate, appropriately located and effective bodies established to discharge any other function".

[113] Opinion no. 292/2004 (CDL-AD(2004)038) of 12 October 2004.

[114] According to the 2005 Road Map for the EU-Ukraine Action Plan, the Ministry of Justice and the GPO are responsible for the consideration in the parliament of the new wording of the Law on the prosecutor's office, "taking into account the necessity to leave out the functions of general oversight and pre-trial investigation from the prosecution's remit".

161. The Venice Commission was highly concerned with the amendments as "the extension of the power of the Prosecutor can be considered a step backward not in line with the historical traditions of the procuracy in a state subject to the rule of law. In a state like Ukraine where the purported aim is to enhance an effective political democracy, it is of paramount importance that the institution that supervises compliance with the rule of law is non-political."

162. Therefore, **the long overdue abolition of the general oversight function should be accomplished as soon as possible. This function should be transferred to the judiciary (administrative courts) and ombudsperson institution** gradually since the prosecutors' role in restoring individual rights remains traditionally high[115]. We were encouraged by the statements made by the President, Prime Minister and other high officials that the constitutional amendments should be revised to bring them in conformity with the Venice Commission opinion. We were also told by the Prosecutor General Mr Piskun that his Office was not going to use the extended authority and was also ready to implement the Transitional provision of the Constitution concerning pre-trial investigation. While welcoming such eagerness, we would like to stress that functions exercised by the prosecutor's office should not depend on the goodwill of the Prosecutor General but should be established by law. Moreover, the PGO should not just abstain from using this "new" power but in fact stop exercise the functions it had, generally speaking, since the 1920s. That is why, once the amendments are reviewed – and we really do hope this will happen as soon as possible – the prosecutor's office should refuse to exercise the oversight function according to paragraph 9 of the Transitional Provisions, given the fact that all the relevant conditions envisaged thereby are now fulfilled[116].

163. The amendments to the Constitution also created a problem of interpretation of paragraph 9 of the Transitional Provisions and Article 121, which was supplemented with a new clause empowering the prosecutor's office to exercise "supervision over the respect for human rights and freedoms and over how laws governing such issues are observed by executive authorities, bodies of local self-government and by their officials and officers". The amended Article 121, as a later provision, could be seen as abrogating paragraph 9. However, the latter is a part of the Transitional provisions, which could be viewed as determining the temporary character of the relevant powers of the prosecutor's office that would cease to be active once the necessary conditions are present.

164. We **welcome the intended transfer of the pre-trial inquiry powers to a "system of pre-trial inquiry" as prescribed by paragraph 9 of the Constitution's Transitory Provisions.** Currently, the Prokuratura combines the functions of pre-trial investigation, criminal prosecution on behalf of the state, and oversight over other inquiry bodies, which creates an internal conflict of interests. However, no official initiatives have been put forward to implement this provision. One of the ideas was to separate the inquiry departments of all law enforcement agencies (the prosecutor's office, the police, the tax police[117], and the security service) and merge them into one inquiry body (e.g. Inquiry Committee[118] or National Bureau of Investigations) or introduce the institution of investigation judges.

165. We were encouraged to learn that the Prosecutor General ordered re-activation of the programme of co-operation with the Council of Europe, which included the training of Ukrainian prosecutors to give them a better knowledge of the European Convention on Human Rights and the case-law of the European Court of Human Rights[119]. A new Concept of the prosecutor's office reform was also drawn up and reviewed by the Council of Europe experts.

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[115] According to the European Judicial Systems report, in 2002 in Ukraine there were 211 public prosecutors per 1 million inhabitants (a higher number was reported only for Moldova – 216, Georgia – 242, Latvia – 282 and Lithuania – 251). That is more than 10,000 prosecutors overall compared to around 8,000 judges. In 2004, the prosecutor's office restored rights of 886,000 citizens. Only during January – March 2005, prosecutors received 111,000 individual complaints.

[116] A number of the "laws regulating the activity of state bodies in regard to the control over the observance of laws" have been put into force (e.g. the laws on the Local State Administrations, on the Ombudsperson, on the Auditing Chamber, on the State Tax Administration, on the State Controlling and Revision Service, on the Police, on the Security Service, on the Antimonopoly Committee, etc.) or will be enacted shortly (e.g. the Civil Procedure and Administrative Justice Codes).

[117] According to the Deputy Head of the State Tax Administration a "political decision" was made to disband the tax police by the end of 2007.

[118] Its creation was stipulated by the Concept on the judicial and legal reform in Ukraine adopted by the Verkhovna Rada in 1992.

[119] The programme includes training of 56 trainers from among the prosecutors, who will then during May - December 2005 run 165 seminars for 7,000 local prosecutors.

National Bureau of Investigations

166. One of the reform ideas, which emerged after the *Orange Revolution*, was the establishment of a National Bureau (or Service) of Investigations (NBI). It was announced by President Yushchenko on 1 March 2005. However, it appears that there exists no clear concept of the functions and powers of this new law enforcement agency and views on its creation are sometimes contradictory[120]. The Minister of Interior Mr Lutsenko, Prosecutor General Mr Piskun and Head of the Security Service Mr Turchynov in their joint address to the State Secretary of Ukraine advocated the creation of the NBI on the basis of the Department for investigation of especially important cases within the Main investigation department of the Prosecutor General's Office with future possible merger with the investigative department of the Tax police. It was hence suggested to preserve the investigation departments of the Ministry of Interior and the Security Service. **In this regard we would like to stress that in order to implement paragraph 9 of the Constitution's Transitional Provisions, the future Bureau (or Service) should provide for the detachment of all investigative powers from the prosecutor's office and not just those connected to high-profile and corruption cases.**

167. It appears that a consensus was reached between different bodies at least with regard to the investigative remit of the NBI – corruption offences committed by senior public officials[121]. However, they disagreed on the scope of authorities of the new agency – whether to confer on it operative and search powers or not. The leaders of the Ministry of Interior, the PGO, and the Security Service spoke against empowering the NBI with this role. An opposite point of view was represented by the Secretary of the National Security and Defence Council Mr Poroshenko and MP Mr Korol, who co-chairs the Working group created in March 2005 by presidential order to draft the concept of the NBI creation[122]. According to Mr Korol, the NBI should be created on the basis of the Ministry of Interior Department for fight against organised crime ("UBOZ") plus the anti-corruption department of the Security Service (department "K") and the relevant Tax police department with about 5,000 general staff in the central and regional divisions[123]. Because of the existence of the two different approaches to the functions and authorities of the NBI, the President has ordered the National Defence and Security Council to consider this issue within the elaboration of a wider project of the reform of the law enforcement system.

168. We, therefore, **urge the Ukrainian authorities to start implementing paragraph 9 of the Constitution's Transitional Provisions and to submit the draft legislation on the creation of the National Bureau of Investigations for Council of Europe expertise.**

Ministry of Interior

169. We were encouraged to find out that according to the NGOs, the Ministry of Interior became much more open in it activity and co-operation with the civil society. For example, the representatives of human rights NGOs are invited to participate in the qualifications check of the Ministry of Interior

[120] A National Bureau of Investigations had already been foreseen in 1997 by President Kuchma's decree. It was assigned to carry out pre-trial investigation and the operative-search activity in "especially complicated criminal cases constituting a great public danger." In 1998, the Constitutional Court of Ukraine held that the president could create a state body like the NBI by his decree, but that the body's structure, staffing, subordination, and other basic provisions on its activity should be defined by law exclusively. The decree was never implemented.

[121] Civil servants of the highest ranks (I-III categories), senior officers of the law enforcement bodies, judges, deputies of all levels.

[122] According to the Order, the draft concept and the necessary draft legislation were due to be presented by 1 April 2005. They were not available when this report was drafted. Eight different draft laws concerning the setting up of the National Bureau of Investigations have already been submitted. All of them were rejected by parliament in 1999-2003. On 19 April 2005, another co-chair of the working group, MP Mr Stretovych, Chairman of the parliament's Committee on the fight against corruption and organised crime, said to the media that the President received two different concepts on the creation of the NBI, which mostly reflect the two competing views described above. In particular, Mr Stretovych suggested first to hire 150-200 analysts to examine the roots and forms of corruption; then to expand the NBI's staff to 1,500-2,000 – mainly not recruited from the employees of the Ministry of Interior.

[123] Prymachenko Oleksandra, *NBI: Specially for VIP-"clients"*, Dzerkalo Tyzhnia, No. 11(539), 26 March – 1 April 2005, www.zn.kiev.ua.

staff. The latter was introduced by the new minister Mr Lutsenko as one of the first measures to cleanse his agency of corruption and human rights violations. Mr Lutsenko has made the tackling of corruption an urgent priority[124].

170. The new minister has introduced a number of key reforms in the Ministry. Firstly, all the ministry's officers were to be evaluated by 1 March 2005. Citizens with grievances against any police officer were asked to come forward and provide evidence. According to the minister, during January – April 2005, there were 253 criminal cases of abuse of office (overall 209 cases during 2004) opened against the ministry's staff, including 2 colonels and 17 majors. 127 heads of the regional departments and their deputies have been dismissed. Also during the first months of 2005, the Ministry instituted 161 criminal cases on corruption allegations (not within its personnel), 28 high-ranking civil servants have been indicted[125].

171. We also note that in September 2004 **a position of the minister's advisor on human rights and gender issues was introduced – the activity of this office should be encouraged and provided with the necessary resources**. Also in line with the June 2003 Law on the democratic civil control over the armed forced and law enforcement bodies, a public council was established at the ministry.

172. Secondly, the reform of the Ministry's Internal Troops, which was the only body of power ready to use force against the *Orange revolution* crowds: the Internal Troops will be renamed Republican (or national) Guard[126], which is a throwback to the 1990s, when the National Guard was modelled on West European paramilitary formations, such as the Italian Carabinieri, French CRS, and Spanish Republican Guard[127]. Recently, the Ministry dispatched Internal Troops to the two most "criminalised" regions of Ukraine, Trans-Carpathia and Donetsk, to assist in rooting out organised crime and high-level corruption.

173. Third, the most "criminalised" wing of the Ministry, the Department for Combating Organised Crime (UBOZ), will undergo reform. UBOZ stands accused of colluding with organised crime – not combating it – under President Kuchma. A large group of UBOZ officers and organised crime gang members were recently detained and charged with murdering wealthy individuals in order to steal their property.

174. We welcome President Yushchenko's Decree of 20 April 2005 whereby, in order to "improve the system of the executive power bodies and to ensure fulfilment of Ukraine's obligations to the Council of Europe", the Cabinet of Ministers was ordered to submit proposals on conferring on the Ministry of Justice the following functions: enforcement of the legislation on citizenship, immigration, registration of persons, and refugees (save for combating illegal migration). Such transfer of "civil" functions, which are exercised currently by the Ministry of Interior, to the Ministry of Justice is an important step in the light of the commitment to transfer the responsibility for the registration of entry to and exit from Ukraine to the Ministry of Justice, which was undertaken by Ukraine by virtue of Opinion No. 190 (1995), paragraph 11.vi.

175. However, according to the 2004 State Budget expenditure report, the 2004 state budget law provided only 26% of the required funds for the Ministry of Interior and 65% with regard to the remuneration of its staff. Unfortunately, even these allocations have been underfinanced. The ministry is provided only with 54% of the needed communication equipment and 30% of uniform. It goes without saying that **the reform of the Ministry and the fight against corruption within its ranks should be supported by sufficient funding and decent salaries.**

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[124] "Without this step it will be impossible to revive trust towards the Ministry," he declared, adding "And only after this can one hope start struggling against criminality inside Ukraine".

[125] According to the Deputy Minister of Interior, the Ministry detected 3,050 corruption acts and opened more than 800 relevant criminal cases in 2004 (the data do not concern the corruption in the Ministry).

[126] Two alternative draft laws – on the National Guard of the Ministry of Interior (No. 7716) and on the Republican Guard of Ukraine (no. 7716-1) – were submitted by MPs to the parliament in June and July 2005 respectively.

[127] Taras Kuzio, *Kyiv launches far-reaching reform of the Interior Ministry*, Eurasia Daily Monitor, Volume 2 Issue 44 (4 March 2005).

Security service

176. The Security Service of Ukraine (SBU – *Sluzhba Bezpeky Ukrainy*) functions on the basis of the 1992 Law which defines it as a special state law enforcement body that is subordinated to the President and operates under control of the parliament. The SBU is vested with broad powers, including the powers to investigate crimes punishable according to 37 articles of the Criminal Code[128] and to carry out operative and search activities.

177. In its Recommendation 1402 (1999), the Assembly stated that the risk of abuse of powers by internal security services, and thus the risk of serious human rights violations, rises when such services wield certain powers such as preventive and enforcement methods which involve forcible means (for example the power to search private property, run criminal investigations, arrest and detain) and when they are inadequately controlled (by the executive, legislative and the judiciary). Thus, it recommended that security services should not be allowed to run criminal investigations, arrest or detain people, nor should they be involved in the fight against organised crime, except in very specific cases, when organised crime poses a clear danger to the free order of a democratic state. **We note that the Ukrainian Security Service's remit does not comply with these standards and, therefore, should be aligned with the Guidelines appended to the Recommendation 1402 (1999). This would require the deleting of the current law enforcement character of the Ukrainian security service and the gradual transfer of part of its functions to other law enforcement agencies.**

178. It is commendable that the Ukrainian authorities appear to have met the commitment to transfer all pre-trial detention centres under the SBU to the Ministry of Justice in accordance with the amendments to the appropriate laws passed on 6 February 2003, as was required by the Assembly's Resolution 1346 (2003).

179. Until the enactment of the 1996 Constitution, the Security Service head was appointed by the Verkhovna Rada. The Constitution of Ukraine entitles the President to guide national security and defence and to appoint the head of the SBU as part of his power to appoint the heads of central bodies of the executive power. The December 2004 constitutional amendments returned the power to appoint and dismiss the Head of the SBU to parliament upon presidential submission. We would like to draw attention to the Venice Commission opinion[129] which stated that the decision on appointment and dismissal should be taken by a special, qualified majority. The office of the head of the SBU should be characterised by the neutrality of its functions and requires the independence and impartiality of its holder. The person eligible for the Head of the SBU office cannot be identified with the majority or with one or another political party. The requirement of a qualified, special majority could guarantee the fairness of his election and of the body he is supposed to chair.

180. **We also call on the Ukrainian authorities to reinforce the parliamentary control over the security service and other law enforcement bodies' activity. In particular, the Assembly's Recommendation 1713 (2005) on democratic oversight of the security sector in member states[130] should be taken into account.**

F. Penitentiary and criminal law reform

Penitentiary system

181. According to Opinion No. 190 (1995), the responsibility for the prison administration and execution of judgments was to be transferred to the Ministry of Justice before the end of 1998. The State Department for the Execution of Sentences was created in 1998 as an autonomous central body

[128] Crimes against the basics of national security of Ukraine (espionage, state treason, acts of sabotage, attempt on the life of a state or public figure, encroachment on the state integrity and independence), smuggling, money laundering, terrorism, mass riots, trafficking in drugs, divulging of state secrets, illegal migration, illegal eavesdropping, hacker fraud, crimes against peace and humanity. The SBU can also carry out pre-trial investigations when it opens a criminal case for abstraction or peculation of property, violations of the legislation on public funds, creation of a criminal organisation, and gangsterism.

[129] Opinion No. 230 / 2002 (CDL-AD (2003) 19) of 15 December 2003 on three draft laws proposing amendments to the Constitution of Ukraine.

[130] Report by the Political Affairs Committee, rapporteur Mr Lluis Maria de Puig, Doc. 10567.

of the executive power subordinated directly to the Cabinet of Ministers. In February 2003, the Security Service of Ukraine was stripped of the power to operate detention centres – gradually all temporary investigative isolation wards (SIZOs) under the Security Service have been transferred to the State Department in line with the Assembly's Resolutions 1262 (2001) and 1346 (2003). The new government advocated the idea to subordinate the State Department to the Ministry of Justice and the Cabinet of Ministers made a relevant recommendation to the President. At the same time, there were doubts, first of all inside the State Department itself, on the effectiveness of such a re-subordination as the Department proved to be quite efficient in coping with its tasks. **We welcome the decision to transfer the penitentiary system to the Ministry of Justice as required by Opinion No. 190 (1995)[131]. However, we urge the Ukrainian authorities not to delay the decision on the new status of the State Department and to ensure that the transitional period will not last long and will not have a negative impact on the penitentiary system and its personnel.** In June 2005, a law on the State criminal-executive service of Ukraine was adopted which, without defining the subordination of the service, regulates the status of the bodies of the criminal execution system and its personnel.

182. Currently, the penitentiary system under the State Department for the Execution of Sentences includes 180 institutions (32 investigative isolation wards – SIZOs, 134 corrective colonies, 11 juvenile educational colonies, 22 corrective centres, and 2 medical and labour preventoriums) with 190,800 inmates as of January 2005 (197,222 in November 2002). There are 1,278 life-term prisoners. A further 187,300 people are registered with 700 departments of the criminal inspection, which supervise the execution of punishments not related to confinement.

183. The Ministry of Interior runs 501 temporary holding facilities (ITTs – *Izolyator Tymchasovogo Trymannia*), where the detained can be held up to 3 days (10 days in exceptional cases) before being transferred to a SIZO. Currently, ITTs hold 7,000 detainees with a 10,400 places capacity. According to the Ministry of Interior, 127 ITTs require repairs; however, the relevant funding was diminished in 2005.

184. **Despite the significant decrease in the number of inmates, the problem of overcrowding remains acute.** The current Criminal Execution Code provides for 3 sq. m of living space for men and 4 sq. m for women. The actual figures, however, are 2.6 sq. m and 2.8 sq. m respectively. The legal standard is met only in juvenile educational colonies. The standard for the medical establishments is 5 sq. m, the rate in practice is 3.2 sq. m. In SIZOs inmates in fact have only 2.3 sq. m per person against the standard of 2.5 sq. m. In general, there is a deficit of around 30,000 places (or 20% of the current capacity). More than 5,000 places need to be created for the purposes of pre-trial detention (none of the 1,250 places planned for 2004 have been commissioned). The Department plans to meet the international standards in this regard only by 2012.

185. It should be stressed that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) adopted a minimum standard for living space per prisoner which is 4 sq. m. **Therefore, we call on the Ukrainian authorities to amend the relevant legislation and establish the objective of at least 4 sq. m per person.** This standard should be eventually attained both in the establishments under the State Department for the Execution of Sentences and the Ministry of Interior.

186. In April 2004, the General Prosecutor's Office carried out an extensive audit of the SIZOs and found systematic violations of constitutional rights of citizens and legislative requirements concerning the material, medical and sanitary conditions of detention. The report mentioned the overcrowding in pre-trial centres, lack of bedding, detention in SIZOs of convicted life-term prisoners, non-compliance with the provisions of the law on the fight against TB illness, etc. In general, prosecutors filed more than 10,000 warnings concerning violations in the penitentiary in 2004; 6,000 members of the penitentiary personnel have been held liable for different offences.

[131] The Ministry of Justice has prepared and submitted to the Cabinet of Ministers a draft presidential decree on the Concept of the state policy in the sphere of execution of sentences, which provides for the "direction" and "co-ordination" of the penitentiary system through the Ministry of Justice.

187. We welcome the adoption of the law on amnesty, submitted by President Yushchenko in March 2005 and passed by the parliament in the final reading on 31 May 2005, which will release from prison around 17,000 people (a pardon was not announced in 2004). However, we cannot accept that according to the explanatory note to the bill the amnesty is in particular aimed at decreasing the amount of funds allocated for the improvement of the detention conditions. The latter remain far from perfect and the relevant funding should not be curtailed but significantly increased. Whilst welcoming the task President Yushchenko, according to the media reports, assigned the government – to reduce by half the number of inmates, this should not, however, result in the deterioration of the detention conditions for the rest of the prison population.

188. **We welcome the Ukrainian Government's consent to declassify the CPT report on the visits to Ukraine held from 24 November to 6 December 2002 (published on 1 December 2004), as it routinely did with regard to all three previous CPT reports, and urge the Ukrainian authorities to take full account of the CPT's recommendations.**

189. **Special attention should also be paid to the need for significant improvement of the conditions of transportation of the convicts,** which is carried out by the Internal Forces of the Ministry of Interior[132]. This especially concerns convoying of ill people, e.g. TB-infected. The problem was acknowledged by the Ukrainian authorities, who mention in their comments that 20-40 year old railway carriages are used (while the norm of the maximum use is 28 years) and that the draft State programme on the alignment of the conditions of detention in the penitentiary institutions with the legislative requirements provides for the renewal of the special carriages fleet.

190. Other important problems to be tackled are lack of funds and understaffing. In 2005, only 37% of the necessary funds have been allocated (the estimated necessary budget was Hr 2.5 billion). The system includes 44,900 employees, which is only 64% of the number prescribed by law. Only 50% of inmates capable of work are provided with some sort of activity in the penitentiaries.

191. Along with the allocation of sufficient funds for the maintenance and development of the penitentiary system, additional attention should also be paid to the effectiveness of the expenditures. The parliament's Auditing Chamber, after a thorough inspection of the State Department's budgetary expenditures in 2004, concluded in March 2005 that the Department failed to implement the assigned budgetary programmes in a proper way. Due to the lack of pertinent internal control and non-compliance with previous Chamber's recommendations, the Department's officials committed budgetary violations and ineffective spending in the amount of Hr 136 million (almost EUR 19 million)[133].

192. **We welcome the decrease in the number of TB cases in the penitentiary** (a 38% decrease during the last 4 years according to the State Department, lethal instances were divided by two). **However, further efforts should be made in this direction.** Now 10 special TB clinics of the penitentiary accommodate 10,200 ill convicts, the number of HIV infected is 3,600. The State Department began implementation of a World Bank financed project (USD 12.8 million for the penitentiary component during 2004-2007) of control over TB and HIV/AIDS. We also note that the State Department was instructed by the Cabinet of Ministers (Instruction No. 419-p of 5 July 2004) to prepare a draft State Programme for the reform of the penitentiary system for 2005-2010 and, in particular, to foresee therein the creation of special facilities for the treatment of TB in each SIZO.

193. **We urge the Ukrainian authorities to provide sufficient funds for the penitentiary system, to eradicate overcrowding in the prisons and to improve the conditions of detention.** The European Court on Human Rights on numerous occasions observed that the lack of resources cannot justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. In six cases against Ukraine the Court found the conditions of detention to be inhuman and degrading[134].

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[132] According to Ombudswoman Mrs Karpachova, on average 5 persons die annually during transportation to places of detention.

[133] Official statement of 22 March 2005.
Source:http://www.acrada.gov.ua/achamber/control/uk/publish/article?showHidden=1&art_id=318933&cat_id=502&ctime=1112262531926.

[134] See the judgments in the cases of Kuznetsov, Nevmerzhitskiy, Aliev, Nazarenko, Dankevich, Khokhlich, Poltoratskiy, which concern conditions of detention of those subjected to a death penalty.

Humanisation of criminal law and punishment system

194. The new code on the execution of sentences (Criminal Execution Code) was enacted on 1 January 2004, reforming the system of penitentiary establishments (a differentiation based on the security level was introduced). The Code's provisions were brought in conformity with the Constitution of Ukraine, the 2001 Criminal Code, and international standards. It contains procedural provisions for the implementation of new punitive measures as an alternative to imprisonment such as restriction of liberty, public works, arrest, and also on life-term imprisonment. The Code also introduced the possibility of changes in the conditions of imprisonment depending on an inmate's behaviour. In January 2004, a Law on social adaptation of former convicts came into effect[135].

195. The humanisation of the criminal legislation was followed by a trend of milder punishment measures imposed by the courts. In 2003 – 30.3% and in 2004 – 26.5% of the sentences envisaged detention compared to 37.5% in 1999. In spite of this decrease, the rate of imprisonment sentences in Ukraine is still one the highest in the world (by way of comparison, the average rate for other European countries is between 10 and 12%, the USA – 22%). Also the number of persons sentenced to fines, public works and other alternative to imprisonment has increased (10.4% of all punishments in 2003 and 11.6% in 2004). More people are released on probation – 122,900 in 2004 or 60% of all convicts (55.4% in 2003)[136]. This must result in the lessening of the burden on the penitentiary system, promote eradication of the repeated crimes, and enhance social rehabilitation of criminals.

196. After the 2001 amendments to the Criminal Procedure Code which transferred the power to sanction detentions to the courts, the number of persons detained during pre-trial investigation or pending court's judgement also decreased[137]. Nevertheless, the number of cases of detention on remand remains high[138]. We urge the authorities **to raise the awareness of the investigative bodies, prosecutors and judges, and to give the highest priority to ensuring that detention on remand is used only exceptionally and for the minimum duration compatible with the interests of justice** *in line with the Council of Europe Committee of Minister's Recommendations* R (80) 11 concerning custody pending trial and R (99) 22 concerning prison overcrowding and prison population inflation.

197. **We encourage the Ukrainian authorities to proceed with the further democratisation and humanisation of the criminal justice system, since Ukraine is still one of the world leaders in terms of the number of convicts**[139].

Criminal Procedure Code

198. In 1995, upon accession to the Council of Europe, Ukraine undertook to enact *inter alia* a new code of criminal procedure within a year from the accession. In January 2003, the speaker of parliament established a working group for the preparation of the draft code. The draft code was adopted at the first reading on 22 May 2003. It was sent for revision in July 2003. In April and June 2004, two new versions of the text were submitted for the second reading.

199. All versions of the draft code have received highly negative comments from independent experts and human rights NGOs who claimed that the new code, being mostly a repressive and undemocratic document, was a step backward to Soviet-style justice. The Council of Europe reviewed

[135] The Ministry of Justice and the Ministry of Interior have prepared a draft law on the amendments to the active Criminal Procedure Code on the punishments alternative to the imprisonment.

[136] Statistics from the Bulletin of the Centre for Judicial Studies, No. 2-3, 2004, http://www.judges.org.ua.

[137] In 2002 courts sanctioned arrest of 60,700 persons, 55,647 in 2003 and in 2004 – 47,838 (out of 52,872 submissions) compared with 73,900 detentions in 2000 sanctioned by the prosecutors. Source: Summary of the judicial practice of application of the taking into custody preventive measure, prepared by the Supreme Court, 1 February 2005.

[138] According to the comments of the Ukrainian authorities, the draft Criminal Procedure Code significantly limits the terms of pre-trial detention and detention pending court's decision, defines pre-trial confinement as an exceptional measure, etc. The Ministry of Interior and the Prosecutor General's Office held a meeting of the commandment of the law enforcement bodies on the wider application of preventive measures alternative to detention on remand.

[139] Around 400 of convicts per 100,000 of population (293 persons in 1993). The same rate for Russia as of January 2005 was 532 and Council of Europe member states' average rate was 138 as of September 2003.

the draft code (the version adopted in the first reading, comments released in September 2004) and called for its significant revision due to its inconsistency with a number of Council of Europe standards[140]. In its Resolution 1346 (2004), the Assembly expressed its deep concern with the fact that the latest version of the draft code, in a number of its provisions, was incompatible with the standards of the Council of Europe. Hence, the consideration of the draft Code was postponed several times (last time in July 2004) because of vigorous objections by the civil society and some MPs. However, the draft code in the old wording continued to appear on the draft agendas of the parliament's 2005 spring session plenary meetings.

200. We reiterate the call made in Resolution 1346 (2003) that the text of the code to be adopted should take account of the previous conclusions by the Council of Europe experts. Therefore, **regretting the fact that this important commitment remains unfulfilled, we urge the Ukrainian parliament to finalise the new version of the final text of the draft code, to submit it to Council of Europe expertise and thereafter, taking into account the conclusions of this expertise, to proceed with the adoption of the code without further delay.**

Protection of rights of crime victims

201. During 2003 more than 352,000 Ukrainian citizens have become victims of crimes and Hr 100 million of damages have been inflicted. In December 2004, the Concept for ensuring the protection of the rights of crime victims was adopted by a Presidential Decree (No. 1560/2004) that was later elaborated on in the relevant Action Plan endorsed by the Cabinet of Ministers in April 2005. It is planned to prepare a draft law on the compensation of damage caused to crime victims and to improve the legal status of victims in the criminal procedure. On 8 April 2005, Ukraine signed the European Convention on the Compensation of Victims of Violent Crimes (CETS No. 116). **We welcome these steps of the Ukrainian authorities and call for the further implementation of the relevant initiatives, in particular the ratification of the aforementioned Convention.**

G. Fight against corruption and money laundering

Fight against corruption

202. As was stated in the Transparency International 2004 Global Corruption Report[141], during the last decade politics in Ukraine was a combination of business projects run by oligarchs enjoying political immunity, and individuals who used public office to gain personal wealth. Informal political actors – financial-industrial groups and oligarchs – have dominated the political spectrum by forming business-oriented parties. Therefore, the declared fight against corruption conducted in reality by corrupted officials could not have any real success. It is not exaggerated to say that the plague of corruption permeated all levels of Ukrainian authorities and public institutions, starting from the highest state officials[142]. The TI Corruption Perception Index (which aggregates the perceptions of well-informed people with regard to the extent of corruption, defined as the misuse of public power for private benefit) for 2004 ranked Ukraine 122nd out of 146, placed between Sudan and Cameroon. 25% of Ukrainian households paid a bribe in some form during last year, which placed Ukraine within 10 countries with the highest reported level of bribery (TI 2004 Global Corruption Barometer)[143].

203. President Yushchenko has pledged the fight against corruption as the first task of his presidency. During the Council of Europe Third Summit in Warsaw President Yushchenko said, "We should restore the rule of law and restore belief in justice. We declare war on corruption and we will use all means, including the mechanism created by the Council of Europe." However, the first months

[140] One of the experts, Dr Joachim Herrmann, pointed out that to bring the draft up to the standards of the European Convention and of modern European legal principles it needs to be thoroughly and carefully revised. Another – Mr Jeremy Mc Bride – also referred to extensive changes in the code's provisions necessary to ensure compliance with the requirements of the Convention. The Ukrainian translation of Mr McBride's comments can be found at http://www.rada.gov.ua/~k_zakon_pr/KOMENTAR%20KPK.htm.

[141] Source: http://www.globalcorruptionreport.org/gcr2004.html.

[142] According to an April 2004 nation-wide poll carried out by the Razumkov Centre, 80% of respondents considered corruption to be one of the country's most serious problems (third after poverty and unemployment), while 57% viewed the police, 34% the courts, and 30% the prosecutor's office as corrupt.

[143] Source: http://www.globalcorruptionreport.org/gcr2005/download/english/corruption_research_%20I.pdf.

of the new administration showed a lack of a clear plan and systematic approach. **A National Strategy and Action Plan on combating corruption should be developed and efficiently implemented.** The new Government's Activity Programme, approved by parliament in February 2005, contains a subchapter on the fight against corruption which provides mainly for a row of objectives that need to be elaborated in a detailed action plan[144]. The provisions on criminal liability for corruption offences should be strengthened and extended to make them more effective.

204. The 2005 Road Map for the EU-Ukraine Action Plan includes a number of measures aimed at combating corruption, including the ratification of the Criminal Law Convention on Corruption and Additional protocol thereto; the ratification of the UN Convention on the Fight against Corruption; preparation of draft laws on the prevention and counteracting corruption, on the liability of legal entities for corruption offences; the elaboration of the Programme of the state anticorruption policy; the preparation of a new wording of the Law on civil service, of the draft Ethics Code for civil servants, etc. A set of measures with regard to curbing customs-related corruption was elaborated in a comprehensive and radical governmental programme "Smuggling – STOP" for 2005-2006, which has yielded additional EUR 660 million of dues during the first five months of its operation in 2005 (March-July). Also in July 2005, upon the order of the President, all heads of the regional customs have been demoted to the first deputy head posts in order to be substituted by civilians with relevant economic background. However, in September 2005 the newly appointed head of the Customs Service resigned after allegations of corruption were voiced by higher officials.

205. According to former Prime Minister Mrs Tymoshenko, the government will combat corruption by depriving the bureaucrats of numerous functions connected with granting permissions, eliminating the grounds for bribery (there are more than 100 various unnecessary documents or permits that are given out by officials)[145], reinforcing the control and responsibility of those who issue such permits, and increasing the salary of civil servants[146].

206. According to the Deputy Minister of Interior, during the first months of 2005 the Ministry has already compiled more than 100 protocols on corruption allegations against high-level public officials. As of 1 August 2005, 13 former heads of the regional (oblast) state administration, 17 former deputy heads of the regional state administrations, 65 former heads of the local (rayon) state administrations and their 41 deputies, 4 presidents of the regional (oblast) councils and their 6 deputies were under criminal investigation. The Ministry was publishing lists of dozens of former and current high officials, including active members of parliament, who were summoned to testify or to "give explanations" on the alleged misdeeds (mostly abuse of power, embezzlement, etc.) and then producing reports on the results of such calls. During January – June 2005 the prosecutor's office sent more than 500 criminal cases on corruption offences to the courts (19% increase over the previous year) and 600 administrative offences cases.

207. New criminal charges against representatives of Leonid Kuchma's circles are brought almost every day. The Prosecutor General's Office has already questioned Mr Kuchma on two occasions. His protégé Igor Bakay, former head of the oil and gas state company Neftegaz Ukrainy and former director of the State Directorate of Affairs (office for property management and logistical support of the highest state officials), was placed on the internationally wanted list and reportedly fled to Russia where he was granted Russian citizenship. A number of other former high officials – such as the former Minister of Interior Mr Bilokon, the former governor of the Sumy Oblast Mr Shcherban, the ex-mayor of Odessa Mr Bodelan, the former first vice-prime minister of the Crimea Mr Rayenko, the former deputy head of the Security Service Mr Satsiuk – have fled the country (in most cases to Russia). Extensive checks and investigations are also carried out by the Controlling and Inspection Service (Derzhavna Kontrolno-Revisiyna Sluzhba) and the parliament's Auditing Chamber.

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[144] The state anti-corruption policy is currently based on the Concept on the fight against corruption for 1998-2005 adopted by presidential decree in April 1998. A significant number of measures foreseen in the Concept has not been implemented. The Cabinet of Ministers was assigned to prepare annual programmes of urgent measures and action plans. The last such action plan was approved in 2003.

[145] According to the Government, 3,318 regulatory acts of the bodies of the executive, including 241 of the Cabinet of Ministers, should be abolished. President Yushchenko in May and June 2005 issued decrees with a strict timetable for the revision of the state regulatory acts with a deadline of 1 September 2005.

[146] In May 2005, the Cabinet of Ministers has increased significantly the salaries of the highest officials establishing the gross salary of the President at around EUR 3,900, Prime Minister, Secretary to the National Defence and Security Council, State Secretary of Ukraine – at EUR 2,800, ministers – at EUR 2,600.

208. We welcome Ukraine's determination to fight corruption, particularly through the ratification of the Civil Law Convention on Corruption on 16 March 2005[147]. The Ministry of Justice has also announced that it is preparing the ratification of the Criminal Law Convention on Corruption, which was signed by Ukraine in 1999[148]. **We welcome Ukraine's accession to these important Council of Europe instruments for combating corruption and also its future participation in the GRECO.** We urge the President to appoint the Ukrainian representative in GRECO as soon as possible.

209. We commend the government's intention to carry out a systematic expertise of draft legal acts in terms of their impact on corruption and also the criminological expertise[149]. Such a mechanism for anti-corruption expertise could be established both in the parliament and in the Ministry of Justice.

210. Road police corruption is one of the facets of the graft practice in Ukraine. In.2003, a law was enacted prohibiting the police from levying immediate fines from drivers and vesting in courts the power to impose fines for all traffic violations. This, however, significantly contributed to the increase in the courts' workload and had no major effect on curbing extortion practices. Hence, proposals to re-institute the previous practice of collecting spot fines have been voiced, in particular by the judiciary[150]. We are encouraged to learn that the new Ministry of Interior leadership pledged to tackle this problem as well as other corruption allegations connected with its employees. In July 2005, the President resorted to a radical measure ordering liquidation of the state road inspection and creation of the state service of the road traffic security and the patrol service within the Ministry of Interior.

The Law on introduction of public financing of political parties

211. A major step towards eradicating the so-called political corruption was made with the adoption of the Law on the introduction of public funding of political parties (amending the laws on political parties, on parliamentary elections, etc.) in November 2003 that came into force on 1 January 2005.

212. The actual implementation of the law's provisions will take place after the next parliamentary elections in 2006. The law provides for two types of party financing from the State budget – funding of the statutory activity of the parties and reimbursement of their election-related expenses (within the limits of the law-provided election funding). The party that overcomes the election threshold – 3% for the next elections – will be eligible for both types of funding. **Welcoming the enactment of the Law, which will contribute to the building of a healthy political system, we call on the Ukrainian authorities to implement its provisions by allocating the relevant funds in State Budgets and by adopting the necessary by-laws.**

Fight against money laundering

213. Ukraine has signed and ratified the 1988 United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention). The latter was done in 1998 in line with the relevant commitment assumed under Opinion No. 190 (1995). We also **urge the Ukrainian authorities to accede to the revised**

[147] Already in April 2005 one of the MPs submitted a draft law (No. 7355) with amendments to the Civil Code aimed at aligning the code's provisions with the Convention.

[148] The legal difficulty with the ratification of the Criminal Law Convention on Corruption stems from the fact that there is no criminal responsibility of legal entities in the criminal legislation of Ukraine. According to the comments of the Ukrainian authorities to the preliminary drat report, the Ministry of Justice has submitted in June 2005 to the presidential secretariat the draft laws on the ratification of the Council of Europe Criminal Law Convention and Additional Protocol thereto, and ratification of the UN Convention on the Fight against Corruption.

[149] The relevant draft law (no. 7755, On the criminological expertise of draft legal acts) was submitted to the parliament in July 2005 by the government.

[150] In its judgment in the case of *Öztürk v. Germany*, the European Court of Human Rights held: "Having regard to the large number of minor offences, notably in the sphere of road traffic, a Contracting State may have good cause for relieving its courts of the task of their prosecution and punishment. Conferring the prosecution and punishment of minor offences on administrative authorities is not inconsistent with the Convention provided that the person concerned is enabled to take any decision thus made against him before a tribunal that does offer the guarantees of Article 6 [of the Convention]."

Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, which was opened for signature during the Warsaw Third Summit of the Council of Europe in May 2005.

214. Ukraine is a member of the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures – MONEYVAL, which unites 27 Council of Europe member States that are not members of the Financial Action Task Force (FATF). In February 2004, Ukraine was excluded from the FATF Money Laundering Blacklist. In June 2004 the State Department for Financial Monitoring was accepted as a member of the Egmont Group, an informal international group of financial investigation units.

215. Ukraine was within the MONEYVAL 'compliance enhancing procedures', as a result of the first evaluation report on Ukraine, before the necessary changes to the legislation had been introduced. As a result of the second MONEYVAL round of mutual evaluation report[151], the evaluation team found significant improvements in the anti-laundering system in Ukraine. The main achievements were the legislative base to fight money laundering with the passage of the Law on prevention and counter-action to the legalisation (laundering) of the proceeds from crime and the associated resolutions under it, and the setting up of the state system to combat money laundering with the State Department for Financial Monitoring, as the country's Financial Investigation Unit (FIU), at the centre of the system. The Law provides for a basically sound, if complex, legal basis for a reporting regime of unusual and suspicious financial transactions. The political commitment to improve the anti-laundering regime is also evidenced by the allocation of significant human resources and an impressive IT infrastructure to the FIU. **We call on the Ukrainian authorities to fully implement the evaluation's recommendations.**

216. A CoE/EC Joint Programme against Money Laundering in Ukraine (MOLI-UA) was implemented since 2003 (the implementation period has been extended to June 2005; a follow-up joint programme MOLI-UA 'bis' is under discussion) and aimed at contributing to the establishment of a fully functioning anti-laundering system, preventing use of the financial system to launder proceeds of serious crime, and enabling the authorities to co-operate internationally in fighting crime in accordance with European and international standards. Hence, possibilities and resources of the MOLI-UA project are supposed to ensure appropriate implementation of the anti-money laundering legislative and regulatory framework and enable the State Department for Financial Monitoring to exercise its functions in accordance with relevant regulations.

H. Fight against trafficking

217. Ukraine, along with other Central and Eastern Europe countries, is a major source of trafficked persons, besides being a transit and, to some extent, destination country. According to the International Organisation for Migration and the Europol statistics, Ukraine is one of the major countries of origin for the trafficking of women and children for the purpose of forced prostitution and sexual exploitation[152]. There is a multitude of root causes for the increase of such a criminal phenomenon in Ukraine, including harsh socio-economic conditions especially affecting women and children, great profits for traffickers and high level of impunity, extensive corruption, rampant criminal syndicates, and lack of resources and training for law enforcement personnel[153]. Ukraine is also a significant transit country for Asian and Moldovan victims trafficked to Western destinations.

218. We are also disturbed by reports of disappearances of children in some regions of Ukraine which may constitute a new form of trafficking – trafficking in newborn children. According to the All-Ukrainian Federation of Families with Many Children – Family Network for Central and Eastern Europe, there was a total lack of information about 300 disappearances that occurred in mysterious

[151] Source: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Money_laundering

[152] The Ministry of Interior estimated that during the previous decade approximately 400,000 women were trafficked abroad. The main destinations were Russia, Turkey, Central and Western European countries, the United States, and the Middle East. There were also reports that women and girls were trafficked to Australia, Japan, Ethiopia and South Africa.

[153] Trafficking of Minors from Ukraine for sexual exploitation purposes, UN Interregional Crime and Justice research Institute, 2005, http://www.unicri.it/wwd/trafficking/minors/docs/dr_ukraine.pdf.

circumstances between 2001 and 2003[154]. Special attention was paid to the disappearance reports in the Kharkiv region[155]. We, therefore, **call on the Ukrainian authorities to investigate the cases in order to establish the real causes of the disappearance of the newborn children and prosecute those responsible.**

219. We also note in this regard that there are numerous allegations that the adoption procedure is being abused in Ukraine. In November 2004, a member of parliament submitted a draft law (No. 6318) proposing to introduce a moratorium on the adoption of Ukrainian children by foreigners until 2010, which was supported by the parliament's Legal Policy Committee. According to the explanatory note, to date there are around 100,000 children registered in Ukraine who are eligible for adoption. Since 1996, 11,000 Ukrainian children were adopted and taken abroad to 32 countries (including such socially and economically unstable states as Columbia, Guatemala, Iran, Argentine, etc.). Only half of them were on the consular register. **We urge the Ukrainian authorities to enhance the adoption procedure and strengthen the control over its observance.**

220. The fight against trafficking in persons in Ukraine is currently carried out on the basis of the 1999 Programme of Prevention of Trafficking in Women and Children and the 2002 Comprehensive Programme for Combating Trafficking in Human Beings for 2002-2005, both approved by government resolutions[156]. Furthermore, in December 2002, an Inter-departmental co-ordination council on the combating of trafficking in human beings was established. We refer to the findings of the US State Department 2004 Trafficking in Persons Report, which stated that the Government of Ukraine did not yet fully comply with minimum standards for the elimination of trafficking; however, it was making significant efforts to do so. Despite resource constraints, Ukraine continued to make progress in combating trafficking, demonstrated by a steady increase in prosecutions and convictions. But progress has lagged in implementing the Comprehensive Program for Combating Trafficking in Persons, co-ordinating with law enforcement officials of destination countries, and fighting government corruption[157]. **We urge the Ukrainian authorities to step up their activity in the field of combating trafficking and allocate sufficient resources for this purpose. We also encourage the authorities to closely co-operate with civil society organisations and international donor projects in this field[158].** We also call on the authorities to implement the recommendations contained in the April 2005 comprehensive report on trafficking in Ukraine ("An Assessment of Current Responses"), commissioned by the UNICEF, OSCE, USAID and the British Council.

221. Ukraine was one of the first countries in Europe to formally criminalise human trafficking. The 2001 Criminal Code made trafficking in human beings a criminal offence. Specialised counter-trafficking law enforcement units have been created within the Criminal Investigation Department of the Ministry of Interior. There has been an increase in the number of trafficking cases investigated and prosecuted. While in 1998 only 2 trafficking cases were opened, in 2003 that number had risen to 289. Between 1998 and 2002 there were only 41 convictions for human trafficking. In 2003 alone there were 160 convictions[159]. We welcome the establishment of a separate Counter-Trafficking Department

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[154] According to the comments of the Ukrainian authorities to the preliminary drat report, the Ministry of Interior's investigation did not corroborate the alleged disappearances. However, the city district court of Makeyevka (Donetsk Oblast) is hearing a criminal case on the sale of newborn babies from local hospital. The pre-trial investigation has established that the head physician of the hospital and the head of the maternity ward were involved in the sale of six babies.

[155] On 29 August – 1 September 2005, the PACE Social, Health and Family Affairs Committee's rapporteur, Mrs Vermot-Mangold, carried out a fact-finding visit to Ukraine in the framework of the preparation of the report on the disappearance of newborn children. See the PACE press-release on the outcomes of the rapporteur's visit http://assembly.coe.int/ASP/Press/StopPressView.asp?CPID=1673.

[156] Preparation of a new programme for 2006-2007 was ordered by the governmental decree No. 733 of 10 August 2005 with a December 2005 as a deadline.

[157] The Interdepartmental Coordination Council for Combating Trafficking in Persons has had no formal meetings since its establishment in December 2002. Local commissions on combating trafficking were created throughout Ukraine pursuant to the Comprehensive Program, but their quality and effectiveness vary. Source: http://www.state.gov/g/tip/rls/tiprpt/2004.

[158] In 2005, the US Agency for International Development launched a two-year, USD 2 million project "Countering Trafficking in Persons in Ukraine", which will be implemented by the International Organization for Migration (IOM) Mission in Ukraine. There are also an anti-trafficking programme in the office of the OSCE Project Coordinator in Ukraine and a number of other relevant initiatives and programmes.

[159] According to the Ministry of Interior's data, during January-May 2005 148 cases of trafficking in humans have been registered compared with 42 cases in 2000 and 269 in 2004. Source: *AP Worldstream*, 2 August 2005.

within the Ministry of Interior as ordered in May 2005 by the new Minister Mr Lutsenko, which **shows the acknowledgement by the new government of the seriousness of the problem and raises hope that the trafficking will be curbed.**

222. We welcome the fact that in February 2004 Ukraine ratified the UN Convention against Transnational Organised Crime and Protocols thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air) and **urge the Ukrainian authorities to align its legislation with their provisions**[160]. **We also call on Ukraine to accede to the European Convention on action against trafficking in human beings (CETS No. 197) and to implement relevant recommendations of the Parliamentary Assembly**[161].

VI. HUMAN RIGHTS

A. Cases against Ukraine before the European Court of Human Rights

223. The Convention entered into force for Ukraine on 11 September 1997. In July 2002, the Court issued its first judgment on the merits[162] in the case of Sovtransavto Holding where it found a violation by Ukraine of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In this landmark case the Court stated that judicial systems characterised by the supervisory review procedure and, therefore, by the risk of final judgments being set aside repeatedly, were, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention. The Court also acknowledged that the Ukrainian authorities acting at the highest level intervened in the court proceedings on a number of occasions and, in view of their content and the manner in which they were made, this was *ipso facto* incompatible with the notion of an "independent and impartial tribunal".

224. As of 13 September 2005, the European Court had delivered 54 judgments in cases against Ukraine (with 52 judgments where at least one violation of the Convention was found), including 31 judgments in the period of January – September 2005. The annual number of applications lodged with the Court increased from 764 in 1999 to 2,265 in 2004[163]. Since 1997, there were 13,201 applications lodged with the Court against Ukraine (as of January 2005) and around 4,000 applications are still pending. 367 applications have been communicated to the Government for observations.

225. In a number of judgments[164] the Court, referring to the *Ryabykh v. Russia* and *Brumărescu v. Romania* judgments, found a violation of Article 6 § 1 in respect of the quashing of the final and binding judgment given in the applicants' cases due to the infringement of the principle of legal certainty and "right to a court". In the case of *Svetlana Naumenko*, the Court also found that the practice where the *protest* is lodged by the deputy president of the court with the Presidium of the same court is incompatible with the "subjective impartiality" of a judge hearing a particular case, since no one can be both plaintiff and judge in his own case. The Court thereby confirmed the position taken in the *Ryabykh* judgment, where the application for supervisory review was also lodged by a judge, that the issue should be regarded as one of legal certainty and not just interference by the executive (which is the case when the *protest* is lodged by the prosecutor).

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[160] We note that draft laws were registered with the parliament (consolidated version of the MPs' initiative – draft law no. 4179-д of 29 April 2005; governmental draft law no. 7718 of 23 June 2005), which are in particular aimed at amending the provisions of the Criminal Code concerning the criminal liability for trafficking. **Their consideration is highly recommended.**

[161] See, *inter alia*: Resolution 1337 (2003) on migration connected with trafficking in women and prostitution (adopted on 25 June 2003; Doc. 9795, report of the Committee on Equal Opportunities for Women and Men, rapporteur Mrs Zwerver); Recommendation 1545 (2002) on campaign against trafficking in women (adopted on 21 January 2002; Doc. 9190, report of the Committee on Equal Opportunities for Women and Men, rapporteur Mrs Err); Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states (adopted on 23 April 1997; Doc. 7785, report of the Committee on Legal Affairs and Human Rights, rapporteur Mrs Wohlwend).

[162] The first judgment against Ukraine was delivered in May 2001 in the case of Kaysin and Others (application No. 46144/99) and concerned the non-execution of final and enforceable judicial decisions. The case was struck out of the Court's list due to a friendly settlement. Under the latter it was agreed that the Government of Ukraine would pay each of the 13 applicants the amount of the invalidity pension claimed and compensation for damages.

[163] However, the 2004 figure is lower if compared with the peak in 2002 – 2,944 applications.

[164] In addition to Sovtransavto Holding (No. 48553/99), these are also the cases of Svetlana Naumenko (No. 41984/98), Tregubenko (no. 61333/00), Poltorachenko (No. 77317/01), Agrotehservis (No. 62608/00).

226. In 26 judgments (in cases with 44 applicants) the Court found Ukraine responsible for non-execution or lengthy execution of domestic court decisions, mostly concerning payment of salary arrears. In six similar cases[165] the Court declared the conditions of detention on death row to be incompatible with Article 3 of the Convention (other rights, like the right to private and family life, the right to correspondence had also been violated in these cases).

227. In October 2004, the Court delivered a judgment in the case of *Melnychenko* where it found that the decision of the Central Electoral Commission to refuse the applicant's candidacy for the election to the Verkhovna Rada of Ukraine in 2002 was in breach of Article 3 of Protocol No. 1 to the Convention. On 14 July 2005, the Supreme Court of Ukraine ordered the CEC to consider the case of Mr Melnychenko's registration in view of the ECtHR decision[166]. **We call on the Ukrainian authorities to implement the judgment of the Court and to restore the right to be elected of Mr Melnychenko as soon as possible.**

228. In March 2005, the Court found for the first time in Ukrainian cases a violation of Article 10 concerning a complaint lodged by the *Ukrainian Media Group*. The Court held that with regard to the disputed publications, balancing the conflicting interests between the freedom of expression and the right to respect for reputation, the Ukrainian courts overstepped the margin of appreciation afforded to the domestic authorities under the Convention and their finding of the applicant's guilt of defamation was clearly disproportionate to the aim pursued (see more details under the freedom of expression section of this report).

Execution of decisions of the European Court on Human Rights

229. The draft law regulating the procedure for execution of the ECtHR judgments was submitted to the parliament in 1999 but fell victim of a six-time veto imposed by President Kuchma (last veto in February 2003). The draft law (No. 7261) was re-submitted by its author – MP Holovaty – in March 2005 and defined the application of the individual and general measures deriving from the Court's judgement, compulsory publication of the judgments, the functions and authority of an office of the Commissioner for observance of the European Convention on Human Rights. **We call on the Ukrainian parliament to consider the draft law as soon as feasible in order to enhance the enforcement of the Court's judgments related to Ukraine.**

Persons participating in proceedings of the European Court of Human Rights

230. We welcome the fact that Ukraine has ratified the European Agreement relating to persons participating in proceedings of the European Court of Human Rights (CETS No. 161) in June 2004. The Agreement entered into force for Ukraine on 1 January 2005.

231. In August 2004, the Cabinet of Ministers of Ukraine submitted a draft law[167] proposing that letters (statements, complaints) of arrested (convicts) addressed to the ECtHR, as already provided for the national ombudsperson and prosecutor, shall not be censored, and should be sent to the addressee within one day. The bill amends the law on the preliminary detention and the Criminal Execution Code. On 15 March 2005, the new Cabinet of Ministers re-submitted the draft law (No. 7182) with a slightly different wording. It was adopted in the first reading on 7 September 2005. **We encourage the parliament to adopt the amendments as they would bring the legislation into conformity with Article 34 of the European Convention on Human Rights**, according to which States undertake not to hinder in any way the effective exercise of the right of individual petition to the Court.

[165] Cases of Poltoratskiy (No. 38812/97), Kuznetsov (No. 39042/97), Nazarenko (No. 39483/98), Dankevich (No. 40679/98), Aliev (No. 41220/98), Khokhlich (No. 41707/98).

[166] In the comments of the Ukrainian authorities to the preliminary draft report the CEC refers *inter alia* to the lack of legal provisions concerning the ways the non-judicial state body can review its decision after the latter was acknowledged by an international court to fall in contradiction with Ukraine's international obligations.

[167] Draft law no. 6038; it was sent for a repeat first reading in January 2005.

Protocol No. 14 to the European Convention on Human Rights

232. In view of the continuing rise of the workload of the European Court of Human Rights and in order to contribute to the improvement of the efficiency of the Convention's control system for the long term, we call on the Ukrainian authorities to take all necessary steps **to ratify Protocol No. 14 to the Convention**[168] as speedily as possible, as was recommended by the Declaration of the Committee of Ministers "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels"[169]. This would, *inter alia*, facilitate the decrease in the high number of pending applications before the Court, where Ukraine is a respondent state, and expedite the processing of new applications.

B. Torture and inhuman or degrading treatment

233. Police brutality and ill-treatment of persons in custody remains a serious problem[170]. The Ombudswoman Mrs Nina Karpachova told the media in 2004 that during her nearly 7 years tenure she had received approximately 12,000 complaints from persons who alleged that they had been tortured in police custody. She also said that during the last years the number of illegal arrests and torture by the police had not decreased at all. According to the President of the Supreme Court of Ukraine Mr Malyarenko, in every third case of grave and especially grave crimes the accused are complaining of illegal investigation methods[171]. Between July 2003 – July 2004, 436 reports of alleged cases of torture were gathered by several human rights NGOs, including the Kharkiv Human Rights Protection Group and its regional partners, which provided legal and financial support to victims of torture[172]. During our visits in the regions we received also numerous complaints on alleged ill-treatment by the police or during detention on remand.

234. We join the call made by Amnesty International in January 2005 to the new administration **to take concrete steps to eradicate torture and ill-treatment in police custody**. In recent months Amnesty International has also documented new cases of torture and ill-treatment in police custody[173]. The organisation called on the new authorities to take steps to set up an independent body to monitor places of detention and to ensure that detainees are fully informed of their rights and given access to medical examinations[174].

235. We are disturbed by information, according to which by virtue of regulations adopted by the State Department for the Execution of Sentences[175], persons suffering from infectious diseases (including tuberculosis) cannot be transferred to the investigation isolation wards (SIZOs) from the

[168] The Protocol was signed by Ukraine on 10 November 2004. During the Council of Europe Third Summit in Warsaw in May 2005 President Yushchenko said that Ukraine regards the European Court of Human Rights as the efficient means for the protection of human rights and that Ukraine intends to ratify Protocol No.14 to the European Convention on Human Rights. According to the comments of the Ukrainian authorities to the preliminary draft report, the ratification of Protocol No. 14 is delayed due to the unsettled issue of the "conformity of the official translations into Ukrainian of the Convention and the protocols thereto to their authentic texts." To solve the problem a special working group was created comprising in particular the ECtHR judge from Ukraine Mr Butkevych.

[169] Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session.

[170] See, for example, bulletins of the NGO Kharkiv Human Rights Protection Group where numerous cases of torture and ill-treatment are reported, http://www.khpg.org/index.php?r=7. Also according to a poll, conducted by the Razumkov Centre in January – April 2004, about 40% of respondents have heard that the law enforcement agencies resort to torture and 7.7% knew that from their own experience.

[171] Address during the parliamentary hearings on judicial reform on 16 March 2005.

[172] Human Rights in the OSCE Region, 2005 Report by the International Helsinki Federation.

[173] In October 2004, Amnesty International issued an urgent action concerning Beslan Kutarba and Revaz Kishikashvili who have spent more than six weeks in police custody in the city of Sevastopol and have been repeatedly beaten by police to force them to confess to unsolved crimes that they apparently have not committed. In May 2005, Amnesty International sent a letter to the Justice Minister concerning two reports of torture and inhuman treatment by the police in Simferopol (Crimea) and Chernihiv.

[174] See also Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State, as revised in April 2005, http://web.amnesty.org/library/Index/ENGACT400012005?open&of=ENG-313.

[175] Joint order of the State Department for the Execution of Sentences and the Ministry of Health Protection No. 3/6 of 18 January 2000, Order of the State Department No. 192-2000 and instruction No. 24/44 of 3 January 2003. The joint order was declared illegal by the Ministry of Justice, but the State Department for the Execution of Sentences appealed against this decision in the Cabinet of Ministers.

temporary holding facilities (ITT) under the competence of the Ministry of Interior. According to media reports[176], 739 arrested people were not admitted to SIZOs during 2004. TB-infected people were thus held in detention in the ITTs, which are not fit for holding such persons, beyond the legally established maximum term of arrest (3 or 10 days). This not only violates the rights of the arrested but also promotes the spreading of diseases in the ITTs. According to the Ministry of Interior, more than 1,000 people are held daily in the ITTs after the maximum time-limit established by law, including 100 people ill with TB. The situation has not improved even after an Instruction (No. 419-p of 5 July 2004) was issued by the Cabinet of Ministers whereby the State Department for the Execution of Sentences was ordered to ensure admission of the arrested ill with TB. According to the comments of the Ukrainian authorities, this problem is intended to be solved by delegating the treatment of persons in detention on remand to the special establishments of the Ministry of Health Protection which will be guarded by the Ministry of Interior forces. This requires changes to the relevant legislation. Until these plans are implemented, **we call on the Ukrainian authorities to strictly adhere to the legal provisions on the duration of detention in the ITTs.**

236. We welcome the fact that the parliament has strengthened legal guarantees for the control over the law-enforcement bodies activity and their compliance with human rights by adoption of the Law on the civilian control over the army and law enforcement agencies and the Law of July 2003 which envisages the imposition of administrative fines against individuals seeking to impede the work of the Ombudsperson or of MPs investigating human rights violations. The Law on civilian control extended the authority of the Ombudsperson to initiate investigations into the law enforcement agencies and the military's activity.

237. We are also encouraged by the recently promulgated Law (No. 2322-IV of 12 January 2005, see more details below) which *inter alia* has reinforced the criminal prosecution of torture. The Law aligned the legal definition of torture, contained in Article 127 of the Criminal Code, with the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The amendments expanded the definition of torture to include torture inflicted with the purpose of obtaining information or confession and provided for a more severe punishment under this *corpus delicti* if committed by an employee of a law enforcement body (10-15 year prison term). It also increases criminal liability for torture if it resulted in death (12-15 year prison term or life-term imprisonment).

238. In July 2005, President Yushchenko addressed the meeting of the Ministry of Interior's senior officers and leadership with a warning that any registered fact of torture would lead to the dismissal of the head of the relevant Ministry's oblast department and deputy Minister of Interior. In August 2005, the President authorised the representative of Ukraine to the UN to sign the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in December 2002.

239. Whilst welcoming the recent steps to improve the legal framework for combating ill-treatment and the new leadership's commitment to eliminate torture, we urge the Ukrainian authorities **to continue to apply a zero tolerance policy and to secure prompt, impartial, and full investigation into all allegations of torture, prosecution, and punishment of those responsible, and to improve the control over the law enforcement bodies in practice.**

C. Arbitrary or illegal detention

240. According to the Ministry of Interior, there were 31 cases of illegal detention and 74 cases of illegal indictment during 2004. During the first months of 2005, 11 cases of illegal actions by the police have been reported, including five cases of violence. The Prosecutor General's Office currently investigates 191 criminal cases on allegations of abuse of power by the police.

[176] *Against Torture*, Electronic bulletin of the Kharkiv Human Rights protection Group, February 2005, http://www.khpg.org/index.php?id=1113464414&r=7&s=2005&n=2.

241. **We welcome the significant improvement of the legislative guarantees for the protection of the rights of detained and arrested persons** made by the amendments passed in January 2005 and signed into law by President Yushchenko[177]. According to the Explanatory memorandum to the draft law, it intends, *inter alia*, to bring the national legislation in line with international standards.

242. Accordingly, the Law on the Police was amended to oblige the police: to notify the relatives of a detainee/arrestee within 2 hours – instead of 24 – after the detention/arrest; to notify the counsel, work or education administration about the detention if requested by the detainee/arrestee: to provide three meals a day to every detainee/arrestee; to notify the person detained or arrested of his procedural rights and of the grounds for detention/arrest. The police are prohibited from interviewing or interrogating the detainee/arrestee if the latter asked for lawyer participation until such lawyer arrives. The right to monetary compensation if the above mentioned and other provisions were not complied with[178] was established.

243. This Law also enhances the procedural rights of the detainees by amending the Law on the Preliminary Detention in order to secure the privacy of the detainees' meetings with their counsels, to ensure that the detainees are aware of their procedural rights foreseen by legislation, including the right to appeal the detention, that they have an access to the printed copies of relevant legislation, etc. In all cases when coercive measures have been applied to the detainee the prosecutor should be notified. **We call on the Ukrainian authorities to ensure that all the new and already existing guarantees are strictly complied with in practice.**

244. By Law of 3 February 2004 (No.1420-IV), Ukraine withdrew one of its reservations to the European Convention on Human Rights, namely that the provisions of Article 5 § 3 of the Convention shall apply in the part that does not contravene Articles 48, 49, 50 and 51 of the Disciplinary Statute of the Armed Forces of Ukraine concerning the imposition of arrest as a disciplinary sanction. Thus the detention in the guardhouse as a disciplinary punishment of conscripts was abolished.

245. We note with satisfaction that the Criminal Procedure Code was amended recently (Law No. 2376-IV of 20 January 2005) in order to grant inquiry bodies and prosecutors an authority to release a person from detention if the criminal case is closed or the arrest warrant expires or is not prolonged with a relevant notification of the court. This new rule does not extend to criminal cases under judicial review. Such an amendment was aimed at avoiding cases when a person was kept in remand waiting for a delayed court's decision on release (there were examples when a person, with regard to whom the criminal case was closed by an investigator, was detained for another 3-10 days because of the court's backlog).

246. We also take note that the Verkhovna Rada adopted on 7 September 2005 in the first reading a draft law (No. 7359; submitted by the new government on 14 April 2005) amending the Criminal Procedure Code and the Law on the compensation of the damage inflicted on citizens by illegal actions of the bodies of enquiry, pre-trial investigation, prosecutor's office and courts. The bill aims at aligning the relevant provisions with Article 5 § 5 of the European Convention on Human Rights that envisages that everyone who has been the victim of arrest or detention in contravention of the provisions of Article 5 shall have an enforceable right to compensation. Currently, the Ukrainian legislation foresees a possibility of obtaining a compensation only if a person was acquitted or the criminal case against him/her was closed, which is contrary to Article 5 § 5 as interpreted by the European Court of Human Rights[179].

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[177] Law No. 2322-IV of 12 January 2005 "On the amendments to certain legislative acts of Ukraine concerning reinforcement of the legal protection of citizens and introduction of the mechanisms for realisation of the constitutional rights of citizens to entrepreneurship, personal integrity, safety, respect of person's dignity, legal aid, and protection". The Law was initially adopted in September 2004 but vetoed by President Kuchma.

[178] The moral distress and financial losses, like the counsellor's payment, are to be redressed The policemen will be held personally liable for payments.

[179] See the judgment in the case of *Rehbock v. Slovenia* (application no. 29462/95), where the Court found that the applicant's right to compensation was not ensured with a sufficient degree of certainty by the Slovenian legislation which was similar to the Ukrainian. See also the cases of *Ciulla v. Italy*, *Sakik and Others v. Turkey*.

D. Fair trial

247. **We are very disturbed by the implementation of the legislative provisions allowing prosecutors to suspend an attorney from practising as a defence counsel by way of instituting a criminal case against him/her**. Despite the guarantee contained in the Law on the Bar, namely that only the regional or higher prosecutor can open a criminal case against an attorney, this power has on some occasions been abused. This was clearly demonstrated with regard to Mr Fedur, counsel to Mrs Lesya Gongadze and since recently also to Mr Boris Kolesnykov (chairman of the Donetsk regional council who was detained in April 2005 and released in August 2005). Mr Fedur was continuously facing difficulties while representing his clients because of criminal cases opened against him. It is all the more disturbing that in August 2005 Mr Fedur was again suspended from representation of Lesia Gongadze in court because of the criminal case instituted against him by the PGO in connection with the attorney's statements in the Kolesnykov case[180]. The relevant Criminal Procedure Code provisions (Article 61) provide grounds for abuse by way of bringing trumped up charges against a counsel. **These legal provisions should therefore be abolished as a matter of priority**[181].

248. The detention on 6 April 2005 of the head of the Donetsk Oblast Council and of the regional branch of the Regions of Ukraine party Mr Kolesnykov on charges of extortion and threat to murder raised protests of the opposition. He was accused of carrying out a campaign of violent intimidation in 2002 to force the owner of Donetsk's largest supermarket chain to hand over his shares[182]. The opposition claimed that the arrest was part of a wave of repression directed against them since installation of the new administration. After several days of opposition protests, the parliament created an *ad hoc* investigation commission on the control over observance of constitutional rights and freedoms of persons, chaired by members of the opposition. There were reports that during his first hours of detention Mr Kolesnykov had no access to a lawyer and that later foreign advocates were not allowed to act as defence lawyers. Mr Kolesnykov was detained in the premises of the Prosecutor General's Office after he was summoned as a witness on a different case[183]. The arrest was sanctioned by the Kyiv city local court and then upheld by the Kyiv appellate court. However, on 2 August 2005, Mr Kolesnykov was released from custody by another judge of the Kyiv appellate court upon a written undertaking not to leave his place of residence.

249. The oppositional parties have alleged that procedural violations were also committed in other cases against former high officials, in particular in the case of former governor of the Zakarpattya region Mr Rizak. The latter was detained on 13 May in the city of Uzhhorod on charges of abuse of power and of driving a former rector of Uzhhorod University to commit suicide (later he was also charged with a large-scale bribery). Mr Rizak is also believed to be the one who ordered the beating of members of parliament from the opposition during the Mukacheve elections in 2004. Soon after his primary detention Mr Rizak was hospitalized. On 20 May 2005, at 23.40, upon the relevant court's decision and the findings of the medical expertise that Mr Rizak could be placed in a SIZO, Mr Rizak was transferred by a group of masked special police forces from the hospital to the local SIZO. At the moment of the transfer, Mr Rizak had a visit from several MPs from the oppositional Social Democratic Party-united (SDPUo), one of whom had chained herself to the former governor. The policemen, to carry out the court's detention order, had to "push away" (the allegations of "beating" have not been confirmed) the parliamentarians and carry Mr Rizak out. The Deputy Minister of the Interior and the Prosecutor General immediately visited the city to investigate the incident. On 1 June the Minister of

[180] In July 2005, the Highest Qualification Commission of the Bar (responsible for admittance into the Bar and disciplinary procedures against attorneys) protested against the institution of this criminal case by the PGO.

[181] This provision is absent in the latest version of the draft new Code of Criminal Procedure (version of 27 June 2004). Concerning the current Criminal Procedure Code, this problem is properly addressed by the draft new wording of the Law on the Bar (no. 7051-1 of 13 September 2005, submitted by MPs Holovaty, Sobolev, Stretovych and Musiyaka), whose Final and transitory provisions amend, *inter alia*, Article 61 of the Code.

[182] Under Leonid Kuchma's presidency, the Donetsk region had been allowed to exist as a *de facto* independent fiefdom run by local elites loyal to Kuchma. A Donetsk Special Economic Zone and widespread corruption in the coal sector allowed the expansion of Ukraine's most powerful oligarchic clan. Throughout the Kuchma era, local elites, such as in Donetsk, were never held accountable for infringements of the law -- corruption was condoned in return for political loyalty. Oxford Analytica, 20 April 2005.

[183] Similarly, on 17 August 2005 former Kharkiv Oblast governor Mr Kushnaryov was detained on the suspicion for the abuse of power after he was summoned to the Prosecutor General's Office to consult the materials of another criminal case - on the charges of the instigation of separatism. On 19 August the Kyiv city district court sanctioned his 10-day pre-charge detention. On 25 August Mr Kushnaryov was released from custody by the Prosecutor General's Office on a USD 1.5 million bail.

Interior and the Prosecutor General reported to the parliament about the incident. The same day the Verkhovna Rada adopted by 237 votes a special resolution where it called the incident "a gross human rights violation", "violation of the status of the MP" and recommended to dismiss the regional prosecutor and the heads of the regional and city police. Upon the internal investigation of the Ministry of Interior, the head of the Special Forces' unit and the city police chief were reprimanded[184].

250. In response to accusations of political witch-hunting, the authorities referred to cases where high officials from other regions or from the new pro-governmental camp were charged with criminal offences. For example, another head of a regional Council – that of Ternopil Oblast where Yushchenko received more than 95% of votes – Mr Zhukinskiy was detained (land ater released on parole because of poor health); the former head of Lviv city police Mr Salo was searched for misusing public funds; Mr Chabanov, the secretary of the Yalta city council and Yushchenko's proxy during the elections, was interrogated, etc.

251. It should be underlined that popular expectations cannot justify violations of the rights of suspects and the failure to respect the basic principles of due criminal procedure. We **call, therefore, the Ukrainian authorities to strictly adhere to the fair trial and other rule of law principles while investigating and addressing corruption. At the same time, belonging to the opposition should not exempt from criminal liability as the law should be applied uniformly to everybody.** The ultimate evaluation of the quality of investigations and their legitimacy should be given by the courts.

252. **We also call on the highest officials to respect the presumption of innocence** (see e.g. part on the Gongadze case) – no one is guilty unless proven otherwise. In several cases the European Court of Human Rights has recalled that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair criminal trial. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to the law. The Court has emphasised in this respect the importance of the choice of words by public officials in their statements.

Access to a court

253. The provision of a free or a partly free of charge legal aid is a part of the fundamental human right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights and is an essential component of the proper functioning of the judicial system in a state governed by the rule of law. The right to legal assistance and representation stems from the necessity to ensure an effective access to a court and, in criminal matters, from Article 6 § 3.c. of the Convention that guarantees to persons charged with a criminal offence, who do not have sufficient means to pay for legal assistance, free legal aid "when the interests of justice so require".

254. **The legal aid system in Ukraine cannot be recognised as sufficient and complete both in terms of the legislative framework and its practical enforcement.** Article 59 of the Ukrainian Constitution guarantees that everyone has the right to legal assistance, which should be provided free of charge in cases envisaged by law. Currently, legal aid is provided only in criminal proceedings according to the Law on the Judicial System and the Criminal Procedure Code. However, the extremely low lawyer's fee for rendering legal aid[185] and the delays in payment make it inefficient. We wish to note that Resolution (78) 8 of the Committee of Ministers specifically states that the lawyer "so appointed should be adequately remunerated for the work he does, on behalf of the assisted person". Sufficient funding should be allocated by the state for providing legal aid[186]. There is also no clear and transparent system for granting legal aid and managing its funding.

255. No actual possibility is provided in Ukraine for legal aid in civil and administrative cases. However, according to the European Court of Human Rights case-law (see e.g. *Airey v. Ireland*), Article 6 § 1 of the Convention may sometimes compel the State to provide for the assistance of a

[184] Mr Rizak was released on bail by the regional prosecutor's office on 13 September 2005.

[185] According to government regulations (No. 821 of 14 May 1998), the rate for advocate's payment is Hr 15 per day (EUR 2.3).

[186] According to the Law on the State Budget in 2005 (in the wording of 25 March 2005), annual expenses for legal aid in criminal cases constitute Hr 1,960,900 (around EUR 280,000), almost equal to the 2004 amount.

lawyer when such assistance is indispensable for an effective access to court either because legal representation is compulsory, as in certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case[187].

256. The new Civil Procedure Code and the recently adopted Code of Administrative Justice provide for a possibility of free legal aid but refer to a specific law to regulate the procedure for granting legal assistance. The law should, *inter alia*, clearly define what representatives of the legal profession are entitled to provide legal assistance in criminal and other cases, which will partly solve the problem of the status of the legal profession in Ukraine (see relevant section of the report)[188]. Therefore, **a specific law on free legal aid in criminal and civil matters should be adopted as soon as possible in line with the Council of Europe's *corpus juris* of principles and rules in the field of access to justice and legal assistance[189] and ECtHR case-law**. We were told by the NGOs that the Ministry of Justice delays the consideration of the draft law submitted by the MPs[190] on the grounds that it is preparing its own initiative. **We urge the Ukrainian authorities to submit the relevant draft legislation to Council of Europe expertise**. The free legal aid should not mean though that it is provided free of charge by lawyers, but that the state remunerates the lawyer's services when a competent body grants legal aid. The State should make a firm political and financial commitment to support the development of a comprehensive system of legal aid in criminal and non-criminal matters.

257. According to the Ministry of Justice, 845 public offices were created within the Ministry's local departments and 1,175 public offices at the local state administrations, centres of social services for youth and 1,531 travelling consultation units provided free legal assistance to 215,000 indigent people during 2004. The public offices recruit volunteers with proper legal training and operate under the control of the local justice departments. **While welcoming such an extensive legal education and assistance exercise, we would like to stress that it cannot totally replace a qualified, professional legal aid, especially when it involves representation in the courts.**

Remittal of criminal cases for additional investigation

258. One of the major drawbacks of the current criminal procedure is the possibility for courts to remit criminal cases for additional or new investigation[191]. A number of Criminal Procedure Code provisions entitle courts to send back the case for an additional investigation due to the incompleteness or incorrectness of the pre-trial investigation, empower the appellate or cassation courts to quash the first-instance courts decisions and return cases for additional inquiry or to the prosecutor. Moreover, while remitting the case a court can instruct the inquiry or pre-trial investigation body to carry out specific investigative measures. The law does not limit the number of remittals either[192].

259. Such legal practice (in 2003 – 18,692 or 7.2% of cases have been remitted) appears to contradict the fair trial principles by hindering access to the judiciary and resulting in an unreasonable length of criminal proceedings and pre-trial detention. This also contributes to the large number of people in detention. It contradicts Article 6 of the European Convention on Human Rights and the

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[187] See, for example, the judgment in the case of *Steel and Morris v. the United Kingdom*.

[188] For example, the law could entitle advocates to be the *ex officio* defence counsel representing indigent criminal defendants.

[189] See the following Committee of Ministers documents: Resolution No. (76) 5 on legal aid in civil, commercial and administrative matters; Resolution No. (78) 8 on legal aid and advice; Recommendation No. R (81) 7 on measures facilitating access to justice; Recommendation No. R (93) 1 on effective access to the law and to justice for the very poor; Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer. See also the European Committee on Legal Co-operation Action plan on legal assistance systems.

[190] In October 2004, a draft law on legal aid (No. 6320) was submitted to the parliament by MPs.

[191] This legal practice was introduced by the Soviet Criminal Procedure Code in 1927 and was developed within the totalitarian concept of the court's role not as a justice institution but as a body for the fight against crime. *Malyarenko V., President of the Supreme Court of Ukraine, Visnyk Verkhovnogo Sudu Ukrainy (Bulletin of the Supreme Court of Ukraine), No. 6 (46), 2004.*

[192] In *Salov v. Ukraine* (application no. 65518/01 judgement of 6 September 2005) the applicant claimed that the remittal of his case for additional investigation directly influenced his rights and legal interests (the District Court found in 2000 that "the investigative authorities have conducted their preliminary investigation insufficiently and that this could not be rectified in the course of the trial, ... the court cannot convict Mr Sergey P. Salov of a crime under Article 125 § 2 of the Criminal Code [libel] since it cannot re-classify his actions and the case must therefore be remitted for additional investigation...").

provisions of the Constitution of Ukraine (Articles 6, 62, 121, 124, 129) on the separation of powers, equality of arms in the court proceedings, interpretation of all doubts as regards to the proof of guilt of a person in his or her favour, presumption of innocence. Lengthy detention on remand cannot be justified by the poor quality of the investigation, and the courts should not side with the prosecution by assisting it and applying in fact the presumption of guilt principle by refusing to acquit a person due to a faulty investigation. **We, therefore, urge the Ukrainian authorities to abolish this archaic practice and review the relevant Criminal Procedure Code provisions. This should also be taken account in the preparation of the new wording of the Criminal Procedure Code** (the last version of which preserved the possibility of case remittal).

Supervisory review

260. One of the major flaws of the civil and criminal procedure was the possibility to quash a final binding court judgment through the supervisory review initiated either upon a prosecutor's or superior court's objection (protest). The European Court of Human Rights on a number of occasions[193] declared this procedure incompatible with the principle of legal certainty enshrined in Article 6 of the Convention.

261. With regard to the criminal procedure this irregularity was addressed by the reform of the relevant legislation that was carried out in June 2001 – the so-called "small judicial reform". However, the current Civil Procedure Code still empowers public prosecutors (who do not even need to be a party to the proceedings) to lodge applications to have the final judgment reviewed due to newly discovered or exceptional circumstances. The same applies also to the relevant provisions of the Commercial Procedure Code of 1991[194], currently in force (Articles 107, 111-14 and 113)[195]. **This appears to be in a clear contradiction with the nature of civil law litigation and principles of fair trial.**

262. In its current wording the Criminal Procedure Code (Article 400-7) envisages that a motion for the review of a judgment due to newly discovered circumstances can be lodged only by the regional or the higher level prosecutors. However, insofar as one of the circumstances that could be acknowledged as "newly discovered", is abuse by a prosecutor or an investigator, the prosecutor might not be interested in detecting mistakes of his subordinates and, therefore, be reluctant to file the motion for review of a judgment. **The necessity for the accused to apply to the prosecution for *lodging a review motion infringes the principle of the equality of arms and limits the rights of* the defence[196].**

263. The supervisory review procedure was also preserved in the Code of Administrative Offences, which allows only the prosecutor to lodge a protest (upon which the same judge can revise his/her ruling) and empowers the president of the superior court to quash the decision on his/her own initiative. At the same time, the review procedure is not directly accessible to a party to the proceedings and does not depend on his/her motion and arguments. This was underlined by the European Court of Human Rights in its judgment in the case of *Gurepka*[197], where the Court, having established that the purported administrative offence, by virtue of the severity of the sanction, was in fact of a criminal character attracting the full guarantees of Article 6 of the Convention and, consequently, those of Article 2 of Protocol No. 7 to the Convention, found a violation of Article 2 of

[193] Cases with regard to Ukraine – Sovtransvato Holding, Svetlana Naumenko, Tregubenko, Poltorachenko

[194] On 5 July 2005, in the case of *Agrotehservis* (application no. 62608/00) the European Court of Human Rights found a violation of Article 6 § 1 of the Convention, as the Presidium of the Highest Arbitration (Commercial) Court infringed the principle of legal certainty and the applicant's "right to a court" under Article 6 § 1 of the Convention by using the supervisory review procedure to set aside the earlier judgment of the Highest Arbitration Court. The judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

[195] It should be noted that the draft new wording of the Commercial Procedure Code (draft code no. 4157-2), adopted by the parliament in the first reading in June 2004, gives no authority to prosecutors to challenge a final court judgment unless he was participating in the proceedings.

[196] According to the Ukrainian authorities' comments, this issue is addressed in the draft Criminal Procedure Code.

[197] *Gurepka v. Ukraine* (application no. 61406/00), judgment of 6 September 2005. The judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

Protocol No. 7, as "the extraordinary appeal was not an effective remedy which could have satisfied the requirements of this article" (§ 61). Therefore, **proper appeal and cassation procedures should be introduced in the consideration of administrative offence cases**[198].

264. The new Civil Procedure and Administrative Justice Codes, both coming into effect on 1 September 2005, provide for the possibility of review of a final binding ruling only in connection with "exceptional circumstances" (different application of law in cassation court judgments or a decision of an international court) or newly detected circumstances, which is in line with Article 4 of Protocol No. 7 to the ECHR and Committee of Ministers' Recommendation No. R (2000) 2 on the re-examination or re-opening of certain cases at the domestic level following judgments of the European Court of Human Rights. The supervisory review procedure as such is also absent in the new draft Criminal Procedure Code, which envisages that a final judgment can be only reviewed in case of emergence of newly discovered circumstances or exceptional circumstances[199]. The extensive list of grounds for reviewing judgments under the 'exceptional circumstances' procedure and the absence of any time limits for that are balanced with the provision that it could not be utilised to the detriment of a person.

Enforcement of judgments

265. As elaborated by the European Court on Human Rights, the "right to a court" would be illusory if a state's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 of the Convention should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. It is also not open to a state authority to cite lack of funds as an excuse for not honouring a debt arising from a judgment passed against it. Unfortunately, up to now the non-enforcement or unreasonably lengthy execution of judgments constituted a major problem for Ukraine's adherence to the rule of law.

266. A significant number of applications against Ukraine lodged with the European Court concern the enforcement of judicial decisions. The Court has already delivered a number of judgments where it found a violation of Article 6 of the Convention by Ukraine due to non-enforcement of internal judicial decisions[200]. Therefore, **the judgment execution system should be reinforced in order to guarantee the litigants their right to a fair trial.** Also additional enforcement mechanisms should be provided for the future judgments of administrative courts, since the enforcement agencies, which are part of the executive, will have to execute judgments against other state bodies[201]. **State-employed enforcement agents (Execution Service) should have proper working conditions, adequate physical resources and support staff; they should also be adequately remunerated.**

267. We welcome the statement made by Minister of Justice Mr Zvarych who admitted that the failure to enforce judgments constitutes a significant problem and assessed the activity of the State Execution Service (the Bailiffs Service) as unsatisfactory referring to the fact that it managed to enforce only 34.6% court decisions in 2004 (41.3% of judgments concerning the payment of salary arrears). In June 2005, the Cabinet of Ministers submitted a draft law proposing the reform of the judgment execution system by separation of regional branches of the execution service from the Ministry of Justice regional departments and subordinating the State Department of the Executive Service directly to the Ministry. This law was adopted on 23 June 2005 and came into force. Also special divisions on the compulsory execution of decisions of the State Department of the Executive

[198] The President of the Supreme Court has created in May 2005 a working group on the preparation of the draft Code of administrative offences.

[199] Application of a law which contradicts the Constitution; different interpretation of the same provisions in cassation court decisions; non compliance with Supreme Court decisions; incorrect application of international treaties; decision of an international judicial institution; incorrect application of the criminal law and significant breach of the criminal procedure law requirements that substantially influenced the accuracy of the court judgment.

[200] See e.g. the judgments in the cases of Varanitsa, Mykhaylenky and Others, Bakalov, Romashev, Shmalko, Voytenko, Bakay and Others, Derkach and Palek, Dubenko, Sharenok.

[201] Kuybida R., Reform of the Judiciary in Ukraine: current situation and prospects, Kyiv, Atika, 2004, p. 134.

Service were created. They are responsible for the enforcement of judgments against state authorities. **Welcoming these developments, we also call on the authorities to take full account of the Council of Europe relevant standards[202] and practice[203].**

E. Right to respect for private life

268. One of the previous regime's legacies which was not addressed properly so far is the uncontrolled illegal eavesdropping and surveillance, which was systematically carried out during Kuchma's regime in order to obtain information and put under pressure oppositional politicians, public figures, businessmen, etc[204]. Unfortunately, the post-revolutionary period was marred with numerous allegations by public officials that their communications were bugged and they were shadowed[205]. In July 2005 President Yushchenko sent letters to the heads of the Security Service, Ministry of Interior, State Tax Administration, State Frontier Guard Service and Prosecutor General drawing their attention to the unacceptability of the illegal (i.e. without court sanction) surveillance over politicians and businessmen. Law enforcement bodies' chiefs were warned of the personal responsibility for respecting legislation in this field. The Ukrainian Ombudswoman Mrs Karpachova stated that an "epidemic of illegal eavesdropping" persisted in Ukraine. **We urge the Ukrainian authorities to establish effective control over the interception of information from the means of communication by the law enforcers and to this end to adopt special legislation which would comply with the democratic standards on privacy protection and national security[206].**

F. Freedom of conscience and religion

269. Ukraine undertook to introduce a new non-discriminatory system of church registration and to find a legal solution for the restitution of church property. The present Law on freedom of conscience and religious organisations dates back to 1991. Despite the fact that it is regarded as one of the best freedom of religion laws in the region, some of its provisions lack clarity. The Law limits the forms in which a religious organisation can be created, limits the minimum number of founders to have the statute of the organisation registered to 10 adults (whereas the same requirement for other civic associations is 3 persons), bans creation of local or regional divisions without legal entity status, provides no possibility for granting legal entity status to religious associations, discriminates foreigners and stateless persons. There is a lack of clarity with regard to which organisations are registered by regional state administrations and which by the State Committee on Religious Affairs. The law also contains a number of other ambiguous provisions, which leave a wide discretion to the implementing authorities[207]. Hence, **the quite progressive law for the time of its adoption now requires significant rewording[208]**. At the same time, the current principle of registration of religious

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[202] Committee of Ministers Recommendations: Rec(2003)17 on enforcement and Rec(2003)16 on the execution of administrative and judicial decisions in the field of administrative law.

[203] Having regard to the considerable number of similar applications now pending before the European Court of Human Rights, the Committee of Ministers suggested to the Ukrainian authorities that the experience of other countries confronted with similar problems in the past might be taken into account in planning and adopting general measures in these cases (see, for example, *Hornsby against Greece* and *Burdov against Russia*, final resolutions ResDH(2004)81 and ResDH(2004)85 respectively).

[204] The Prosecutor General's Office announced in June 2005 that it investigated 119 facts of illegal eavesdropping of the former opposition politicians.

[205] E.g. in June 2005 Internet web-sites published recordings of alleged conversations between Prosecutor General Piskun and MP Mr Pinchuk, between Mr Piskun and US Ambassador Mr Herbst; in another scandal recorded conversations between former Deputy Minister of Interior Mr Fokin and MP Mr Filenko became available, etc.

[206] There was a number of relevant draft laws submitted to the parliament recently. Human rights NGOs advocated the adoption of the draft law on the interception of telecommunications submitted by a group of parliamentarians (no. 4042-1, last version of 2 June 2005).

[207] See, e.g., Gennadiy Druzenko, *Status of the legal entity for Church: a dream or a reality?*, Yuridicheskiy Zhurnal, No. 10 (16), 2003.

[208] There are three draft laws in the parliament – one governmental and two submitted by MPs – with a new wording of the Law, none of which was adopted in the first reading. The evaluation of the governmental draft law was included in the Non-Discrimination Review under the Stability Pact for South-Eastern Europe Final Report on Ukraine (SP/NDR(2003)025), December 2003.

organisation statutes in order to obtain the legal entity status and the absence of a requirement for registration of religious organisations as such should be maintained in line with the Assembly's Recommendation 1556 (2002)[209].

270. The Ukrainian legislation still lacks effective legal tools for restitution of church property. So far restitution was carried out occasionally on the basis of the parliament's 1991 resolution and several presidential decrees. The legal problem of restitution mainly stems from the fact that religious associations[210] have no right to obtain a legal entity status and thus cannot possess property. Most of the organisations, which owned the property that should be restituted, ceased to exist and the Orthodox Church is represented by several organisations. This leads to an *ad hoc* restitution practice[211] totally depending on the local authorities' preferences and which in most cases entails not the return of the ownership rights but transfer of property into a gratis rent. **We, therefore, call on the Ukrainian authorities to elaborate clear rules on the restitution of religious property.**

271. According to the 2005 Report by Quaker Council for European Affairs, the 1999 Law on Alternative Civil Service requires revision since it explicitly restricts the right to conscientious objection to religious grounds; non-religious conscientious objectors (COs) have no chance of obtaining CO status. In 2001, the United Nations Human Rights Committee called upon the Ukrainian government to "widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner"[212]. The Ukrainian government is, however, not known to be considering widening the grounds for recognition. Consequently, non-religious COs can only avoid military service by bribing draft officials or by not responding to call-up orders[213].

G. Freedom of expression and access to information

The Gongadze case

272. The investigation of the Gongadze case was stalled and obstructed under President Kuchma for a long time. President Yushchenko and the new government, including Prosecutor General Svyatoslav Piskun who was reinstated in his office by a court decision in December 2004[214], have pledged to solve the case and bring those responsible to justice. For this purpose a joint special investigation group was established comprising officers of the prosecutor's office, the Ministry of Interior and the Security Service.

273. On 1 March 2005, President Yushchenko announced that three Ministry of Interior Offices who executed the murder of Georgiy Gongadze had been detained and interrogated. "I can declare here that Gongadze's murder has been solved. The murderers have been detained and are now giving evidence," Yushchenko said. "The former authorities not only lacked the political will to solve this

[209] The Assembly urged to guarantee all churches, religious associations, centres, and communities the status of legal entities, if their activity does not violate human rights or international law. Recommendation 1556 (2002) on religion and change in central and eastern Europe, adopted by the Assembly on 24 April 2002; see Doc. 9399, report of the Committee on Culture, Science and Education, rapporteur: Mr Baciu.

[210] Such as the Ukrainian Orthodox Church of Kyiv Patriarchate, the Ukrainian Orthodox Church, the Ukrainian Greek Catholic Church, the Ukrainian Autocephalous Orthodox Church, the Ukrainian Roman Catholic Church, etc

[211] According to the State Committee on Religious Affairs, as of 1 January 2004, religious organizations in Ukraine were using 19,975 religious buildings. There were 863 religious buildings and premises, including 53 architectural heritage sites, transferred into ownership or use to religious organisations in 2003.

[212] United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Ukraine (CCPR/CO/73/UKR), October 2001.

[213] The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council for European Affairs, http://www.quaker.org.

[214] President Kuchma dismissed Mr Piskun on 29 October 2003 after corruption allegations made by the Co-ordination Committee on Fight against Corruption. Mr Piskun had served as a PG since 4 July 2002. After his dismissal Mr Piskun was appointed Deputy Secretary to the National Security and Defence Council. Mr Piskun claimed that his dismissal was connected to the progress he achieved in the investigation of the Gongadze murder. In December 2004, Mr Piskun challenged the October 2003 presidential decree on his dismissal, as the decree did not state a legitimate ground for dismissal as required by the Law on the Prosecutor's Office. He managed to obtain the court's authorisation to resume the possibility of filing a complaint with the court. On 9 December 2004, the Kyiv City Pecherskiy district (rayon) court renewed Mr Piskun in his position. The next day President Kuchma issued a decree enforcing the court's decision. Mr Kuchma did not use his right to challenge the court's decision by an appeal.

murder. They covered up for the murderers. ... My main task today is to come to the principle thing together with the law enforcement bodies – who organised and ordered this murder. This is the next step of the investigation."

274. On 2 March 2005, Prosecutor General Piskun informed the media that the former Minister of Interior Yuriy Kravchenko was summoned to give testimony in the PGO on Friday 4 March. The next day, Mr Omelchenko, head of the parliamentary ad hoc commission on the Gongadze case, said that he had asked PG Piskun to urgently detain Mr Kravchenko because his detention would save his life. On Friday 4 March, several hours before the interrogation, Kravchenko was found dead at his datcha outside Kyiv with two bullet holes in his head, one shot through his chin, and the other through the right temple. A letter was found on him, in which he proclaimed his innocence and accused former President Kuchma and his entourage of framing him.

275. Despite the strange manner of committing suicide (by two shots in the head), the Minister of Interior, the Security Service head and the Prosecutor General stated that they had no doubts that it was indeed a suicide. This was later confirmed by the official investigation. However, there seems to be a certain failure (one should prove whether deliberate or not) on behalf of the Prosecutor General's Office to ensure Mr Kravchenko's safety, especially after the clear warnings from MP Omelchenko[215]. The security of other potential important witnesses (e.g. Mr Derkach, Mr Volkov, and Mr Lytvyn) should therefore be ensured.

276. We welcome the numerous pledges to investigate the case and punish perpetrators made by President Yushchenko[216] and other high public officials. **We welcome the arrest and indictment of the three alleged direct executors of the murder** (Colonel Mykola Protasov, Colonel Valery Kostenko, and Oleksandr Popovych who, according to the PGO, have confessed to a premeditated murder). It is however regrettable that the law enforcement bodies failed so far to arrest the former head of the Ministry of Interior surveillance unit, General Pukach[217], who was arrested in 2003 but released several days after Mr Piskun was dismissed by ex-President Kuchma in October 2004. **We call on the authorities to bring the case to court and to hold the whole chain of perpetrators (*those who ordered, organised, assisted, executed*) responsible.**

277. In this regard we are disturbed by the decision of the Prosecutor General's Office to send the case to the court by parts, singling out into a separate file the cases of alleged direct perpetrators of the murder (excluding even general Pukach who absconded). Some people believe that this may be done to avoid prosecution of those who ordered and organised this crime. The mother and widow of Georgiy Gongadze, as well as their lawyers, have expressed their strong disapproval of such a decision. It is also inappropriate that the murder of the journalist was dubbed by the Prosecutor General as solved after the indictment of the alleged executors. Therefore, we would like to reiterate that, despite the tradition of Ukrainian criminal statistics, **the case of the Gongadze murder can be regarded as solved only when those who masterminded, organised and executed it are brought to justice, i.e. subjected to a fair trial before a criminal court**.

278. We also regret that there is no investigation of the failure to prevent the death of Mr Gongadze and of the reason behind the inefficient investigation of the case by the law enforcement bodies carried out during President Kuchma's rule. We believe that the investigation of the allegedly deliberate obstacles to the investigation and the elucidation of the relevant circumstances and persons responsible could also be helpful in finding and charging those who ordered and organised the murder.

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[215] Mr Omelchenko stated that the same request to the Prosecutor General was sent also by the then Security Service head Mr Turchynov.

[216] In his address to the Parliamentary Assembly of the Council of Europe on 25 January 2005 President Yushchenko mentioned the Gongadze case twice. He thanked the Assembly for raising its voice at the time when journalist Georgiy Gongadze was killed. He assured that the investigation of Gongadze murder case would be completed, all cases related to violence against journalists investigated, and those guilty brought to trial.

[217] In June 2005 the media reported that General Pukach was found in Israel by the Ukrainian Security Service but after this information had been leaked from the Prosecutor General's Office to a newspaper he again absconded.

279. The authorities are also urged to closely co-operate with the PACE special rapporteur on the Gongadze case – appointed by its Legal Affairs and Human Rights Committee – Mrs Sabine Leutheusser-Schnarrenberger who conducted her first fact finding visit in Kyiv at the end of March 2005.

280. In March 2005, the European Court of Human Rights declared admissible, without prejudging the merits, the application lodged in September 2002 by Myroslava Gongadze who complained under Article 2 of the Convention that the death of her husband was a result of a forced disappearance and that the State authorities failed to protect his life; that the State failed to investigate the case in a coherent and effective manner, in violation of Article 2; that the atmosphere of fear and uncertainty, as well as the incomplete and contradictory information provided during the investigation, had forced her to leave the country and caused her suffering, which amounted to inhuman and degrading treatment, contrary to Article 3; and finally she complained of the lack of effective remedies, contrary to Article 13 of the Convention. The new administration reportedly proposed Mrs Gongadze a friendly settlement in the case, which she has refused.

The Melnychenko recordings

281. The alleged Melnychenko recordings, and what is even more important – his personal testimony, are a crucial element of any further investigation in the cases of Gongadze, Yeliashkevych and, possibly, others. A credible expertise of the recordings should be carried out. We call on the PGO to fully co-operate with the US Justice Department and obtain the testimony of Mr Melnychenko as was promised by Mr Piskun. We welcome the statements made by the President and the head of the Security Service as regards the guarantees to Mr Melnychenko's security if he comes back to Ukraine.

282. We note that in July 2005, a motion for a resolution "Investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine" was filed with the Assembly (Doc. 10653). The authors of the motion stated that no progress was achieved in some high-profile cases, examined *inter alia* by the Verkhovna Rada's *ad hoc* Commission of Inquiry, despite allegations that the recordings of conversations of ex-President Kuchma, purportedly made by Major Mykola Melnychenko, could provide useful evidence. This concerns, beside the Gongadze case, in particular the attempt on the life of a former member of the Verkhovna Rada, Mr Oleksandr Yeliashkevych, and the assault on Mr Oleksiy Podolskiy, an assistant to a member of parliament.

283. In April 2005, the extracts of the original recordings that had been examined by Bruce Koenig (BekTek) in 2002 were brought to Ukraine together with the original of BekTek's conclusions. It was alleged that the expert assessment by BekTek was funded by Mr Beresovskyi[218], who had also received the original results of the expertise and the original recordings and equipment, sealed by BekTek. Speculation abounded in the Ukrainian media as to the motives of Mr Beresovskyi, and as to his relations with Mr Melnychenko. The recordings and other materials were brought to Kyiv by Mr Goldfarb, head of Beresovskyi's "Civil Liberties Foundation", and handed over to the PGO. Goldfarb and other Berezovskyi's allies, based in London, also claimed that the recording was conducted not by Melnychenko alone but by a group of five security department employees who are now hiding in Europe. The same statement was later made by Mr Omelchenko[219]. Major Melnychenko has denied these claims by saying that these actions were part of a plot to undermine his credibility.

284. On 1 March 2005, the Prosecutor General's Office confirmed its 2002 request of legal assistance to the US Justice Department in the case of Gongadze asking the US authorities to obtain Mr Melnychenko's answers to 92 questions and "to seize" the recordings and devices in his possession. According to the PGO, in July 2005 the US authorities agreed to execute the request and to issue a subpoena to Mr Melnychenko requiring him to provide answers. Mr Melnychenko claims that the scope of 92 questions goes beyond the needs of the current stage of the investigation and that his full testimony can be used to distort evidence or concoct counter-evidence. He agreed however to give full testimony in the court proceedings and also to provide explanations necessary for the expertise of

[218] A former Russian oligarch, who obtained refugee status in the UK and resides in London.

[219] The previously undisputed version of how Melnychenko produced his recordings was further put into doubt by the then Security Service Head Mr Turchynov who in his April interview given to Ukrainska Pravda web-site denied that the recordings were made with a dictaphone hidden under the sofa in Kuchma's office. Ex-major Melnychenko confirmed that there were several recording devices mounted in different locations, but insisted that he was acting alone.

his alleged recordings. He also refers to his certified testimony given in 2002 to the Kyiv judge Mykola Vasylenko who opened a criminal case against then-President Kuchma. He argues that the latter is sufficient to institute a criminal case against Mr Kuchma and others and to admit the recordings. Mr Melnychenko also repeatedly challenged the credibility of Mr Piskun as Prosecutor General[220].

285. In view of the Ukrainian prosecutor's office's request for legal assistance to the US Justice Department and in order to remove any possible doubts as to the credibility of the expertise of the alleged Melnychenko recordings, we would also advise the PGO to ask the US authorities to conduct an expertise within the legal assistance procedures. According to Myroslava Gongadze, the US authorities have expressed their readiness to carry out such an expertise, but they require an official request.

286. We are concerned by the reports that Mr Melnychenko's lawyers were not allowed to consult the criminal case-file opened against him during President Kuchma's rule which, as was announced by the Prosecutor General, was closed in 2005 due to the absence of any *corpus delicti*. Taking into account the 4 March 2005 decision of the Kyiv's Pecherskiy district court that ordered the PGO to allow access to the file, we see no reason why Mr Melnychenko, through his lawyers, cannot consult the file. The PGO's demand that Mr Melnychenko should visit the PGO's office personally and confirm the authority of his legal representative seems groundless.

287. In July 2005, the then Security Service head Mr Turchynov announced that his agency would carry out an expertise of the alleged Melnychenko recordings which were in its possession. In August 2005 the Prosecutor General's Office officially commissioned the Security Service with conducting an expertise of the recordings. We hope the expertise will be conducted in a way leaving no doubts as to its credibility and that it will be admissible as proof before court. **If the recordings' authenticity is confirmed again by an independent expertise, their contents indicating the commitment of crimes (not only in the Gongadze case) should be investigated and the guilty brought to justice. This would prove Ukraine's adherence to the rule of law.**

The Aleksandrov Case

288. In September 2003, the Prosecutor General's Office declared that the alleged two killers of journalist Aleksandrov (who was beaten to death in July 2001 in the Donetsk region), the organiser and the person who ordered the murder had been arrested. It was also established that Yuriy Veredyuk, who was previously accused of the murder and confessed, was not connected to the murder; he was acquitted in May 2002. Veredyuk died in July 2002 from what was then deemed a heart attack, but what some sources have later suspected was poisoning. Currently, the Appellate Court of Luhansk Oblast considers the indictment against 12 people for commitment of a number of murders, murder attempts and other grave crimes, including the murder of Aleksandrov.

289. President Yushchenko held a news conference in Donetsk in which he promised to take personal control over the investigation of Aleksandrov's murder. President Yushchenko also met several times with the slain journalist's widow. Aleksandrov's wife said that Yushchenko sent her an attorney to represent her family's legal interests at the beginning of March. In 2005 the Ministry of Interior renewed in their positions two police officers who were witnesses in the Aleksandrov case and who were previously dismissed from the police (Oleh Solodun and Mykhailo Serbin). They were two whistleblowers who participated in the TV programmes hosted by Aleksandrov denouncing corruption in the local police.

290. The prosecutor's office opened a criminal case against two policemen in connection with the forging of the case-file of Aleksandrov's murder which resulted in the false accusation of Veredyuk. On 18 April 2005, the Security Service forces detained three active police officers (two in Donetsk region and one in Kyiv) who were charged with the murder of Veredyuk.

[220] In June 2005 several Internet web-sites published audio-files and transcripts of alleged conversations between Mr Piskun and U.S. Ambassador to Ukraine John Herbst and MP Viktor Pinchuk (Mr Kuchma's son-in-law). In one of the recordings of the conversation, a voice resembling Mr Piskun's asked somebody sounding like Mr Pinchuk to help in reinstating him as a chief prosecutor, and promised Mr Pinchuk not to prosecute Mr Kuchma in return when Yushchenko becomes president. As the conversation allegedly happened on 9 December 2004 several hours after the Kyiv district court ordered reinstatement of Mr Piskun as a Prosecutor General, Mr Piskun allegedly asked Mr Pinchuk to dissuade Mr Kuchma from filing an appeal. Mr Piskun denied that the voice belonged to him.

291. **We welcome the recent achievements in the investigation of the murders of Aleksandrov and Veredyuk, and hope that the guilty persons will soon be brought to justice.**

The Yeliashkevych Case

292. Mr Yeliashkevych, at the material time Deputy Chairman of the Financial Committee of the parliament and member of the parliament since 1994, was assaulted on the evening of 9 February 2000 and as a result suffered serious injuries. On the Melnychenko tapes, ex-president Kuchma, annoyed by Yeliashkevych's parliamentary activity and statements, is allegedly heard as saying to the head of the Security Service to beat the "Jew" several days before the actual beating. On the day of the attack MP Grygoriy Surkis allegedly approached Yeliashkevych in the parliament and said that he will "receive a pipe on his head" if he doesn't stop criticising Kuchma. The police detained Vitaliy Vorobei, who previously served a sentence, and in April 2002 he was convicted for this attack on Yeliashkevych to 5.5 years of imprisonment. Mr Yeliashkevych claims that it was a fake suspect and that real perpetrators and organisers should be found. We were told in the Prosecutor General's Office that it will open a new criminal case if Mr Yeliashkevych returns to Ukraine and produces new evidence. In the comments of the Ukrainian authorities to the preliminary draft report, the PGO also stated that it sent to the US Justice Department a request to question Mr Yeliashkevych, who obtained an asylum in the USA, on the territory of the Ukrainian Embassy in the USA.

293. The obscure results following the investigation of this case of intimidation and beating of Mr Yeliashkevych have been denounced by the Assembly in its Resolution 1346 (2003). We, therefore, reiterate the call on the authorities made by the Assembly in Resolution 1262 (2001) to **investigate thoroughly the allegations brought by Mr Yeliashkevych and to re-open the criminal case if needed.**

Report of the Parliamentary ad hoc inquiry commission on the cases of Gongadze, Yeliashkevych, Aleksandrov and others

294. Since 2003, the ad hoc commission, chaired by MP Hryhoriy Omelchenko from the Yulia Tymoshenko Bloc faction, was trying to present its conclusions to the parliament during its plenary session. Each time the decision to hear the report was blocked at meetings of the Rada factions and groups' leaders and chairs of the committees. In the commission's conclusions the Rada speaker Mr Lytvyn, together with ex-president Mr Kuchma, former Security Service head Mr Derkach and former Minister of Interior Mr Kravchenko, are named as organisers and instigators of the Gongadze murder. The Commission decided to propose to the parliament to ask the prosecutor's office to open criminal cases against these persons and also to suspend Mr Lytvyn from the parliament's presidency.

295. In March 2005, Mr Lytvyn announced that President Yushchenko had asked the parliament not to hear the report of the *ad hoc* commission on the Gongadze case. "The position of the President is that today is not the time for politics and that one should give the professionals a possibility to carry out the investigation." Only three factions have voted in favour of the report's presentation – Yuliya Tymoshenko Bloc, the Socialist Party, and the Communist Party. The Rules of Procedure require that factions numbering at least 226 MPs should give their support for the item to be included in the parliament's weekly agenda. On 19 April the parliament refused to consider the possibility of hearing the report (184 votes in favour). However, according to the Rules of procedure reports of the *ad hoc* parliamentary commissions do not require the plenary's consent to be included in the agenda. On the contrary, each commission is obliged by virtue of the Rules of Procedure to present its findings after six months of activity.

296. We are discouraged by the fact that the ad hoc commission was not able to present it findings and cannot accept the argument that it would politicise the case. In our opinion, a case involving the former president of the country and the murder of a journalist is politicised *per se* and additional public discussion would only contribute to the clarification of the case and would remove political speculations, for example, on a possible deal between the ex-President Mr Kuchma, the Prosecutor General Mr Piskun, and the President Mr Yushchenko. **We, therefore, strongly urge the Ukrainian authorities to stop hindering the presentation of the report.**

Licensing practice (case of the NTN TV channel)

297. One of the features of the previous regime's handling of the media sphere was the non-transparent and often arbitrary practice of awarding broadcasting licences carried out by the National Council on TV and Radio Broadcasting (NCB). Due to an imperfect law, the Council's activity could be blocked by one member and its head was given broad authorities. Suffice is to say that the head of the Council Mr Kholod was holding his office illegally for a long period of time as his term of office expired in June 2004. The situation improved slightly after the parliament elected its representatives to the Council in 2002-2003, three of whom were supported by the opposition. This resulted in the fact that the most notorious cases of dubious licensing were blocked by concerted efforts of the "oppositional" members.

298. The first months of the new administration were marked with a scandal connected to the broadcasting licence of the NTN TV Channel, which claimed to be a victim of political persecution. The NTN was bought in 2003 by a Donetsk based company and was allegedly controlled by an advisor to the ex-PM Yanukovych. It started broadcasting on 1 November 2004. The NTN received broadcasting licences for Kyiv and Symferepol in April 2004 and applied for new frequencies. The new 75 frequencies were unusually quickly allocated ("calculated") to the NTN by the State Radio Frequencies Centre (e.g. oppositional 5th Channel waited for more than 1.5 year to get the similar allocations). In July 2004, at one of the meetings of the NCB, contrary to the established procedure, it was proposed to announce a competition for a number of frequencies including those 75 allocated for NTN. The NCB refused several times to announce the competition. The NTN, having failed to get through the NCB, applied to the Kyiv Commercial Court asking it to force the NCB to change the NTN's licence and put down in it those additional 75 frequencies, because they were calculated "for" the NTN. The court satisfied the request in October 2004 and in November 2004 it was upheld by the Kyiv Appellate Commercial Court. Then the NCB Chairman Mr Kholod without proper decision of the NCB signed the relevant amendments to the NTN's licence.

299. In April 2005, the Higher Commercial Court rejected the cassation motion filed by the Deputy Prosecutor General who asked to invalidate the previous courts' decisions as illegal. The NCB was planning to appeal the latter judgment in the Supreme Court.

300. Several active NCB members claimed that through corrupted judicial decisions the NTN Channel managed to receive 75 new frequencies without participating in any competitions and without involvement of the NCB, which is clearly against the Law on TV and Radio Broadcasting and the Law on the NCB. Such practice was quite common during the last months of the previous regime – there were three other TV companies, of which all were close to the authorities and received additional frequencies in the same way during 2004. They were TET Channel (allegedly controlled by Mr Medvedchuk), Kyiv Rus TV Company (allegedly controlled by the ex-Prosecutor General Mr Vasylyev, who represented the Donetsk clan), and regional TV Company Astra-TB. This appeared to be a clear strategy of developing new nation-wide channels by uncompetitive means and discriminating other channels with illegal procedures. Obviously, it was masterminded on the highest level in preparation for the presidential and 2006 parliamentary elections.

301. However, the NTN Channel gained support even from those who saw no political reason behind the challenging of its licences, as it was considered that it has been producing balanced news coverage and professional TV programming. We urge the Ukrainian authorities to be cautious with depriving a TV channel of licences. It would help smoothing the public's doubts in impartiality of the prosecutor's office if the latter did not pick and prosecute one channel for illegal licensing when several other channels made use of the same illegitimate practice. The best solution in the current situation seems to be the annulment of the challenged licences and the organisation of a competition. It is also evident that the final binding court decision in this case should be respected.

Case of Ukrainian Media Group v. Ukraine

302. In March 2005, the European Court of Human Rights found a violation of Article 10 of the Convention in the case of *Ukrainian Media Group*. The case concerned two articles about the 1999 Ukrainian presidential campaign, in which the author made a number of critical statements about two presidential candidates. In 2000 district courts of Kyiv found the articles to be untruthful, as the Ukrainian Media Group had failed to prove the truth of the statements published. The applicant

company complained that the Ukrainian courts had not been able to distinguish between value judgments and facts in their assessment of the two newspaper articles at issue and that the courts' decisions were a form of political censorship, which interfered with the company's right to impart information freely.

303. The Court observed that the Ukrainian legislation on defamation made no distinction, at the time, between value judgments and statements of fact, in that it referred uniformly to "statements" (*відомості*) and proceeded from the assumption that any statement was amenable to proof in civil proceedings. The Court found that finding the applicant guilty of defamation was clearly disproportionate to the aim pursued. The interference with the applicants' right to freedom of expression did not correspond to a pressing social need outweighing the public interest in the legitimate political discussion of the electoral campaign and the political figures involved in it. Moreover, the standards applied by the Ukrainian courts in the case were not compatible with the principles embodied in Article 10, and the reasons put forward to justify the interference could not be regarded as "sufficient".

304. We note with satisfaction that the Ukrainian defamation legislation was amended in 2003 and exemption from defamation liability for value statements was introduced in line with European standards. The Information Law was supplemented with a provision granting a protection for disclosure of the classified information if the public interest overrides ("whistleblower protection"). The public authorities have lost the right to seek redress for moral damages. Also the provisions on court fees for filing defamation complaints were amended in order to discourage excessive punitive claims[221].

Civil Code provisions on the right to information

305. The new Civil Code, adopted in January 2003, includes a number of provisions relating to freedom of expression and information. However, some of the new rules were poorly drafted. Among the most problematic aspects of the new Civil Code is Article 277 § 3, which states that "negative information published about a person is considered untrue." 'Negative information' is to be understood as any form of criticism or description of a person in a negative light. As Article 19, a highly reputed media NGO, put it "This provision is not only a breach of the right to freedom of expression but turns reality on its head to the extent that something that is true but negative will be considered false. It cannot possibly be justified as necessary, since it will often be a matter of great public interest to disseminate negative facts, as well as opinions, about people. The exposure of corruption, for example, may well require both". There are also a number of other incorrect provisions, which require amendments. The draft law No. 3547 submitted a year ago by the Verkhovna Rada Committee on Freedom of Speech and Information members eliminates all these inaccuracies. A new version of the bill was approved in the first reading in October 2004. **We urge the parliament to complete the consideration of the present draft law and amend the Civil Code provisions to exclude the possibility of media rights abuse.**

Access to information

306. One of the important pre-conditions for rooting out corruption and improvement of the public administration is increased transparency of the public authorities. The access to information possessed by public authorities (state bodies and local self-government) and information about their decision-making process remains insufficient and hindered by legal and administrative hurdles. It could be enhanced by the adoption of the so-called "Sunshine Law" or access to information act.

[221] However, the right to seek protection of their own reputation continues to be abused by state officials, even by those appointed after the *Orange revolution*: e.g. the new governor of Rivne Oblast Mr Chervoniy filed a libel lawsuit against a local newspaper asking for punitive damages of around EUR 7,500. On 11 May 2005, a local court has rejected the complaint referring *inter alia* to Article 10 of the European Convention on Human Rights. Zakarpattya oblast governor Mr Baloga sued three local newspapers claiming award of defamatory damages of around EUR 20,000, which he later under the public pressure changed to a symbolic 1 Hryvnya. In our opinion, **seeking of excessive and unproportional pecuniary damages, especially by public officials, should be discouraged inasmuch as large financial penalties inhibit the free flow of information and have a "chilling effect" on the freedom of expression.**

307. Currently, the access to public information is regulated by the Law on Information of 1991, which is considered to be relatively good but could be improved in terms of the procedures for granting access to public documents, obtaining information from state officials, etc. The group of NGOs (under the co-ordination of the Kharkiv Human Right Protection Group and the international organisation Article 19) has prepared a draft new wording of the law on information which contains detailed rules of the access to information in line with European standards. The draft law was not submitted to the parliament so far. There is also a draft law on the "informational openness" of the state bodies and officials submitted by MP Mr Holovaty that was approved in the first reading in December 2004 but is far from being perfect as it contains no detailed procedures. In April 2005, the State TV and Radio Broadcasting Committee responsible for the state policy with regard to the print media, publishers and general informational policy, presented its draft law on information, which to date was not submitted to the parliament. **We urge the Ukrainian authorities to take full account of Council of Europe applicable standards and European Court of Human Rights case-law on Article 10 of the Convention in the process of preparation of the relevant draft legislation. We also recommend submitting it for examination by Council of Europe experts.**

308. We regret that on 11 May 2004 a law restricting access to information (Law No. 1703) was adopted despite criticism by Ukrainian and international organisations. According to the new Law, the right of printed media journalists to freely receive, use, disseminate and store information will be limited to information which has "open access mode"; legal liability (disciplinary, civil, criminal and administrative) was introduced for "violation of the rules of storing and using of documents which contain confidential information owned by the state", etc. According to the IHF, the law has paved the way to a great deal of self-censorship from journalists and the media[222].

309. We are also concerned by the fact that from the time of taking up of his office President Yushchenko has signed more than 40 classified decrees (with a stamp "Not Subject To Publication"). We were told by State Secretary Mr Zinchenko that he was shocked when he discovered the contents of the secret decrees he was supposed to approve (they concerned the appointment of heads of the regional security service departments). However, the number of such decrees is not decreasing. The stamps "Not For Publication" and "Not Subject To Publication", which are not foreseen by any law, have been extensively used by the previous president. The State Secrets Law defines three types of classified document stamps – "Of Special Importance", "Secret" and "Top Secret" – and provides for the procedure of their assignment. In this regard, **Article 34 of the Constitution, which guarantees freedom of information and its possible restriction only according to law, should be respected. The new administration should adhere to the legal procedure for classifying documents and promote public access to its documents.** The use of illegal stamps evokes suspicion amid the public, especially in view of the legacy of the previous regime. In this regard, it would be also worthy to declassify the decrees of the former presidency whenever they have nothing to do with the protection of state secrets.

310. The soaring number of complaints and petitions the new Government and President receive[223] shows the enormous respect and credibility the new authorities enjoy for the time being. This, however, also indicates that people are not confident that their problems will be properly addressed on the local level and that there is a lack of credibility of the bodies responsible for human rights protection, in particular the law enforcement agencies.

European Convention on Transfrontier Television

311. In its Resolutions 1239 (2001) on freedom of expression and the functioning of parliamentary democracy in Ukraine and 1244 (2001) on the honouring of obligations and commitments by Ukraine, the Assembly called on the relevant Ukrainian authorities in order to improve the general framework in which media operate and, in the longer term, setting the grounds for a stable and irreversible democratisation of the media field, *inter alia*, to ratify the European Convention on Transfrontier Television. Ukraine signed the Convention in 1996. In 1998 the Convention was amended by a

[222] Human Rights in the OSCE Region, 2005 Report by the International Helsinki Federation.

[223] For example, the Cabinet of Ministers during January – March 2005 received more than 170,000 petitions from citizens from all over Ukraine and from abroad, which is equal to the number of the two previous years taken together. During the same period, the presidential secretariat has received around 36,000 of petitions (17,492 in March), most of which concerned violations of human rights, problems with legal order – it was the first time the number of this sort of complaints has outnumbered those regarding the social protection (source: Ukrainska Pravda, www.yushchenko.com.ua, www.kmu.gov.ua).

Protocol (entered into force in 2002). **We reiterate our call on the authorities to sign the Protocol amending the European Convention on Transfrontier Television and ratify it together with the basic text of the Convention.**

H. Protection of national minorities

312. According to the last census (2001) representatives of 130 peoples are living now on the territory of Ukraine[224]. During our fact-finding visit in May-June 2004 we visited Trans-Carpathia, Odesa and the Crimea in particular to gauge the situation with the rights of national minorities in Ukraine. In general we were satisfied that the majority of problems for the different ethnic groups living on the Ukrainian territory lie more in the limited economic resources and the lack of supportive legislation and representation in local power structures than in any risk of inter-ethnic conflicts or violations of civil or human rights.

313. The state policy with regard to the national minorities' rights protection is regulated, besides the Constitution, by the Law on national minorities, the Government approved Programme of adaptation and integration into Ukrainian society of deported Crimean Tatars and persons of other nationalities, the Target branch Programme of social and spiritual renaissance of the Roma of Ukraine until 2006, etc. According to the Law on national minorities, a Council of representatives of the all-Ukrainian civil organisations of national minorities was established at the State Committee on ethnic and migration affairs. Several leaders of national minorities are members of the parliament (e.g. Bulgarian, Hungarian, and Armenian); another MP is the chairman of the Association of the ethnic-cultural unions of Ukraine.

314. It has been long intended to revise the 1992 Law on national minorities in Ukraine and align it with the Constitution and international standards. There are currently two draft laws proposing a new wording of the law[225]. Both drafts have been reviewed by the Venice Commission in 2004[226], which stated that they were, generally speaking, in line with applicable international standards. Later the Venice Commission provided its opinion on the new draft law[227] prepared as the result of a merger of the two previous ones. According to the Commission, the draft constituted a valuable improvement vis-à-vis the previous drafts. However, a series of questions had to be clarified. **We urge the Ukrainian authorities to start considering the draft law taking into account the recommendations made by the Venice Commission.**

315. The draft Concept on the state ethno-national policy was submitted to the parliament by the government in June 2004 and aimed at elaborating on the constitutional principles and provisions concerning inter-ethnic relations. The Venice Commission examined the draft concept[228] and concluded that it lacked clarity and specificity in many respects: the draft law only contained principles, aims, and issues to be addressed; it required further legislative and administrative acts. It was unclear whether in the concept of the State ethnic policy provision was made for the promotion and protection of rights of Ukrainian citizens only. There were many repetitions and overlaps in the draft. This made it difficult to determine the exact meaning and scope of the provisions concerned, and their mutual relation.

316. According to Article 11 of the Ukrainian Constitution, "the state promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine". Article 92 § 3 of the Constitution stipulates that the rights of indigenous peoples are determined by a law of Ukraine exclusively. The relevant draft law was prepared by the government but was not sent to the parliament so far. In October 2004, the Venice

[224] The ethno-national structure of Ukrainian society was as follows Ukrainians (37.5 mln.), Russians (8.3 mln.), Byelorussians (275,000), Moldavians (258,600), Crimean Tatars (248,200), Bulgarians (204,600), Hungarians (156,600), Romanians (151,000), Poles (144,100), Jews (103,600), Armenians (99,900), Greeks (91,500), Tatars (73,300), Roma (47,600), and others.

[225] No. 3558 submitted by the MPs – representatives of different national minorities (the last version of March 2005) and No. 4027 submitted by the government in July 2003.

[226] Opinion no. 265 / 2003 (CDL-AD(2004)013) of 22 March 2004.

[227] Opinion no. 5/2003 (CDL-AD(2004)022) of 23 June 2004.

[228] Opinion no. 297 / 2004 (CDL-AD(2004)021) of 23 June 2004.

Commission adopted its opinion[229] on the draft Law on the status of indigenous (autochthonous) peoples of Ukraine. It found that, in its present wording, the draft law remained incomplete in many respects and did not seem to respond to its objective. It also lacked clarity, especially with regard to a definition of "indigenous peoples" given in Article 1. In particular, from the point of view of the protection of human rights and equal treatment, the restriction of the application of the law only to those members of indigenous peoples who are citizens of Ukraine represents a serious shortcoming that should urgently be remedied.

317. **The opinion of the Venice Commission should be taken into account while preparing and considering the mentioned pieces of legislation.**

Deported peoples

318. According to the UNHCR, 98 percent of the approximately 260,000 Crimean Tatars who returned to the country from exile in Central Asia have received citizenship. However, Crimean Tatar leaders complained that their community has not received adequate assistance in resettling and that the previously onerous process of acquiring citizenship excluded many of them from participating in elections and from the right to take part in the privatization of land and state assets. Many Crimean Tatars, Bulgarians, Armenians, Greeks, Germans came to Crimea or received the Ukrainian citizenship after privatization of the land took place in many regions of Crimea.

319. One of the most urgent problems for former deported peoples is unemployment. In 2004, 60% of repatriates had no job; it means that more than a half of the unemployed in Crimea (140-145 thousand) are the representatives of Crimean Tatars and other deported peoples. The employment problem was mainly a consequence of the fact that the infrastructure of the regions was not adapted to the high number of returnees. The second reason of unemployment was sharp reduction of working places as a result of the economic crisis in Ukraine[230].

320. The representation of Crimean Tatars continued to increase in local and regional councils; however, Crimean Tatar leaders continued to call for changes in the electoral law that would allow them to achieve greater representation in the Crimean parliament.

321. In June 2004, the parliament adopted in the final reading a draft law on the recovery of the rights of peoples deported according to an ethnic feature but it was vetoed by the President. The consideration of the law is still pending before the parliament and is much expected by the deported peoples.

322. Hence, a number of recommendations contained in the Assembly's Recommendation 1455 (2000) on repatriation and integration of the Tatars of Crimea[231] still remain topical.

323. However, the naturalisation of the former deported people, especially the Crimean Tatars, is a specific sphere where the efforts of the Ukrainian authorities can, in general, be commended. In particular, after Uzbekistan refused to extend the bilateral agreement on simplified procedures for changing citizenship, the Ukrainian government decided to denounce bilateral agreements on the prevention of dual citizenship with Uzbekistan and Georgia, which allowed Crimean Tatars returning from those countries to benefit from simplified procedures under the 2001 Citizenship Law. Due to this and other developments in Ukrainian law, the rate of naturalisation has risen sharply since 2004, with over 3,500 Crimean Tatars receiving citizenship during the period October 2004 – June 2005 (with more than 300,000 since 1991)[232]. The legislation on nationality was further improved by a Law of 16

[229] Opinion no. 303 / 2004 (CDL-AD(2004)036) of 12 October 2004.

[230] Non-Discrimination Review under the Stability Pact for South-Eastern Europe Final Report on Ukraine (SP/NDR(2003)025), December 2003. Source: http://www.coe.int/T/e/human_rights/Minorities/3._CO-OPERATION_ACTIVITIES/1._Co-operation_activities/2._Stability_Pact_activities/PDF_SP_NDR(2003)025%20Final_Report_Ukraine.asp.

[231] Adopted by the Assembly on 5 April 2000, Doc. 8655, report of the Committee on Migration, Refugees and Demography, rapporteur Lord Ponsonby.

[232] The UN High Commissioner for Refugees Ruud Lubbers, speaking at the annual meeting of the UNHCR's governing Executive Committee in October 2004, named Ukraine as a positive example of countries that had found solutions for large groups of stateless people. See in particular Ukraine's country page on the UNHCR web-site: http://www.unhcr.ch/cgi-bin/texis/vtx/country?iso=ukr. According to the Assistance foundation, some 8,000 Crimean Tatars and their families who have

June 2005 (No. 2663-IV) on amendments to the law on citizenship. At the same time, the Ukrainian authorities should be encouraged to accede to the European Convention on Nationality (signed by Ukraine in 2003), the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, especially taking into account the fact that the current Ukrainian legislation is *de facto* already in compliance with the relevant international instruments.

Roma and other minorities

324. More then 90% of Roma are now jobless and earn their living by occasional works. For example, only 700 Roma of the 25,000 living in the Transcarpathian region, where the Roma segment is high enough, have a job. Sociologists indicate that unemployment is the main reason of criminality among Roma[233]. In 2002, the Advisory Committee on the Framework Convention for the Protection of National Minorities[234] considered that Ukraine has not been able to secure full and effective equality between the majority population and Roma and that the situation of Roma remained difficult in such fields as employment and housing. These problems were exacerbated by the unsatisfactory situation of Roma in the educational system. The Advisory Committee was of the opinion that these issues merited increasing attention.

325. Rusyns (Ruthenians) continued to call for status as an official ethnic group in the country, noting that they are accepted as minorities in neighbouring countries. Representatives of the Rusyn community have called for Rusyn language schools, a Rusyn language department at Uzhhorod University, and for Rusyn to be recognized as one of the country's ethnic groups[235].

326. With regard to the right of the Russian minority to use their language, the following statistics speaks for itself. 1.2 million, or 23%, of pupils learn in 1,500 Russian-language schools (excluding bilingual schools)[236], 280 thousand children are taught in Russian-language groups of 17.600 infant schools, 35% of students learn in Russian language. 14 state Russian-language theatres function in Ukraine, 440 million units of printed matter or 55% of the whole library fund consist of editions in Russian, 90% of new editions are published in Russian, Russian-language newspapers make 49.7% (1195 newspapers) of the total number of periodicals. The requirement to pass entrance examinations to higher schools in Ukrainian however seemed to experts to be premature, since the greater part of entrants does not know the state language well enough, and so they are handicapped compared to Ukrainian-speaking entrants. In its Resolution ResCMN(2003)5 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine the Committee of Ministers concluded that the implementation of the Framework Convention in the educational sphere merits particular attention from the authorities with a view to ensuring that the on-going reforms in this sphere would not result in undue limitations on the existing right of persons belonging to national minorities to receive instruction in and/or of their languages.

327. We also refer to the Non-Discrimination Review experts' opinion concerning statements on the infringement of the Russian language. Experts oppose the demands to declare Russian as the second state language of Ukraine. Granting the status of a state language to several languages is quite possible, provided that the starting conditions are equal. Bearing in mind, however, that, as the consequence of the prolonged russification, the Russian and Ukrainian languages are not in equal starting conditions, the application of the principle of their free competition will inevitably lead to strengthening the position of the Russian language. Furthermore, granting the status of a state language to Russian would lead to a fixation of the "influence spheres" of each language. Under

returned from deportation remain foreign citizens as of June 2005, and between 1,000 and 2,000 more are coming back every year. Thanks to the simplified procedures, the naturalisation rate is outpacing the new arrivals, with passports being issued within weeks.

[233] According to the comments of the Ukrainian authorities to the preliminary draft report, the Ministry of Labour and Social Policy together with the All-Ukrainian Union of NGOs "Congress Romen of Ukraine" prepared draft measures of employment and re-qualification of unemployed Roma, their support in small entrepreneurship, which are due to be adopted soon.

[234] Source: ACFC/INF/OP/I(2002)010, http://www.coe.int/T/E/human_rights/minorities.

[235] US State Department 2004 Country Report on Human Rights Practices, 28 February 2005, http://www.state.gov/g/drl/rls/hrrpt/2004/41715.htm.

[236] Source: *Interfax-Ukraine*, 31 August 2005.

conditions when citizens behave according to old stereotypes, this division could lead to a counter-position of the languages and set insurmountable borders between the territories where they are used, and thus may result in disintegrating the Ukrainian state.

328. We share the conclusion that the state policy concerning languages must avoid extreme solutions. On the one hand, the state must not encourage citizens, who see no necessity to learn Ukrainian and who call every step in this direction compulsory "ukrainisation". On the other hand, it is unacceptable to ignore the wish of the Russian-speaking citizens of Ukraine and press on them the Ukrainian language by compulsory methods, making the mastery of the language a permission card for social benefits. It is necessary to guarantee steady step-by-step introduction of the Ukrainian language into all spheres of life, taking into account the inertia of language processes. According to the Advisory Committee on the Framework Convention, the Law on Languages provides far-reaching guarantees for the use of Russian language in relations with administrative authorities but implies more limited guarantees for the persons speaking other languages of national minorities.

329. At the same time, the Advisory Committee in its opinion on Ukraine adopted in 2002[237] with respect to the broadcasting media stated that, while recognising that the need to promote the official language can be one of the factors to be taken into account while granting broadcasting licenses, an overall exclusion of the use of the languages of national minorities in the nation-wide public service and private broadcasting sectors was not compatible with Article 9 of the Framework Convention, bearing in mind *inter alia* the size of the population concerned and the fact that a large number of persons belonging to national minorities reside outside areas of compact residency. Although the Advisory Committee acknowledged that, in practice, a level of flexibility prevailed in terms of the interpretation of Article 9 as regards broadcasting at the state-level and that, as a result, broadcasting in languages other than the official language appeared to be tolerated to a certain degree, albeit not encouraged, by the authorities concerned, as far as private broadcasting is concerned. The Advisory Committee considered it important that a maximum level of flexibility be maintained pending amendments to the relevant legislation. Therefore, the Advisory Committee considered that Ukraine should review the provisions pertaining to the use of the languages of national minorities in nation-wide and regional broadcasting in its Law on Television and Radio Broadcasting, with a view to clarifying them and to ensuring that they are fully compatible with the principles contained in Article 9 of the Framework Convention. **We call on the Ukrainian authorities to implement the Committee's recommendations.**

330. We **call on the Ukrainian authorities to ratify Protocol No. 12 to the European Convention on Human Rights that was signed by Ukraine in 2000**[238], which extends the scope of application of Article 14 of the Convention and contains a non-exhaustive list of grounds of discrimination. In 2002, the European Commission against Racism and Intolerance also encouraged the Ukrainian authorities to sign and ratify the European Convention on Nationality (signed in July 2003), the Convention for the Participation of Foreigners in Public Life at Local Level (neither signed nor ratified), and the European Convention on the Legal Status of Migrant Workers (signed in March 2004).

European Charter for Regional or Minority Languages

331. According to Opinion No. 190 (1995), Ukraine committed itself to ratify the European Charter for Regional or Minority Languages within one year after its accession. The Charter was first ratified in 1999 but the Constitutional Court declared the ratification law invalid, since the legislative procedure defined by the Constitution was not respected. The Charter was again ratified in May 2003 but until now the ratification instrument was not deposited with the CE Secretary General. In February 2005, one of the MPs submitted a draft law proposing to supplement the ratification law with a provision obliging the Cabinet of Ministers to deposit the ratification instrument by 1 June 2005.

332. We were told in the Ministry of Foreign Affairs, which is responsible for the technical operation of depositing the ratification instrument, that the ratification law includes a number of incorrect provisions, which should be amended. Also no calculation of the budgetary allocation needed for the

[237] ACFC/INF/OP/I(2002)010, source: http://www.coe.int/T/E/Human_Rights/Minorities.

[238] According to the Ukrainian authorities' comments, the ratification of Protocol No. 12 is delayed because of the same reasons pertaining to the ratification of Protocol No. 14 (see relevant part above).

Charter's implementation has been made[239]. The Ministry now considers the possibility of initiating amendments to the ratification law or depositing the ratification note with regard to the adopted version.

333. The ratification law was adopted in May 2003 and since then the government has had all possibilities to finish the ratification process or to ask the parliament to change the law. Taking into account the position of the Ministry of Foreign Affairs, we cannot accept the non-enforcement of the parliament's decision by the executive and encourage the ministry to proceed with one of the avenues it indicated. Given that the ratification of the Charter is a formal commitment of Ukraine and the deadline for its fulfilment has expired in 1996, **we urge the Ukrainian authorities to conclude the ratification of the Charter without any further delay**.

I. European Social Charter

334. According to the Assembly's Opinion No. 190 (1995) Ukraine undertook to study with a view to ratification the Council of Europe's Social Charter, and meanwhile to conduct its policy in accordance with the principles of these conventions. The Revised Social Charter was signed by Ukraine in May 1999 but the ratification law was not submitted to the parliament by the government to date.

335. In view of the absence of submission on behalf of the government, in March 2005 a draft ratification law was submitted by one of the MPs. However, this is not in compliance with the procedure since all ratification draft laws should be submitted by the Cabinet of Ministers or the President as prescribed by the law on international treaties and parliament's Rules of Procedure[240]. **We, therefore, urge the Ukrainian authorities to start the ratification process as soon as possible.** Also the new Labour Code, which is currently considered by the Verkhovna Rada (second reading is expected), should be checked against the Charter provisions.

[239] The Minister, however, mentioned that the implementation of the information rights-related bloc of the Charter alone would require Hr 150 million (around EUR 23 mln.) of budgetary funds.

[240] The author of the draft law, MP Mr Khara, also submitted a proposal to change the current ratification procedure by authorising members of the parliament to submit draft ratification laws in case the government or the president fail to do this within one year after the international treaty was signed on behalf of Ukraine.

APPENDIX I. Programmes of the co-rapporteurs' visits to Ukraine

Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES OF THE COUNCIL OF EUROPE

Programme of the visit of the co-rapporteurs to Ukraine
26 May – 3 June 2004

Members of the delegation:

Co-rapporteurs: Mrs Hanne SEVERINSEN (Denmark, LDR)
Mrs Renate WOHLWEND (Liechtenstein, EPP)

Secretariat: Mrs Ivi-Triin ODRATS

26 May 2004, Wednesday — **BUDAPEST**

18:25 Departure from **Budapest** to **Chop**

27 May 2004, Thursday — **UZHGOROD – BEREGOVO**

00:28 Arrival in **Chop** train station
Transfer to hotel "Star" in **Mukacheve**

7:10 Transfer from Mukacheve to **Uzhgorod** by car (ca. 40km)

8:00 – 9:30 Meeting with **Mr. I.M. Rizak**, Governor of the Trans-Carpathian Region

9:30 – 10:30 Meeting with **Mr M.I. Andrus**, Chairman of the Trans-Carpathian Regional Council, and **Mr I. V. Artjomov**, Deputy head of the Regional Council for office Administration

10:40 – 11:30 Meeting with **Mr V.J. Lemak**, Prosecutor of the Trans-Carpathian Region

11:45 – 12:50 Meeting with **Mr A.A Stryzhak**, Chairman of the Court of Arbitration

13:00 – 13:50 Meeting with **Mr A.V. Vartsaba**, Chief of the Administration of the Interior of the Trans-Carpathian Region

14:30 – 17:00 Working lunch with **Mr Otto Szabo**, Consul General of Hungary in Uzhgorod, **Mr Laszlo Somogyi**, Consul of Hungary, and their collaborators-observers at the Mukacheve elections

17:00 Departure to **Beregovo** by car (ca 60 km)

18:00 – 20:00 Meeting with the **Hungarian community** in Beregovo

20:00 Transfer from Beregovo to Mukacheve by car

21:00 Dinner

28 May 2004, Friday — **MUKACHEVE – UZHGOROD**

9:30 – 10:30 Meeting with **Mr Ernest Nuser**, Mayor of Mukacheve

10:30 – 12:00 Meeting with **Mrs M.D. Steblak**, Secretary of the Territorial Electoral Committee, and Chairs of Polling Stations Nos. 7, 8, 11, 23, 26 and 32

12:15 – 13:45	Working lunch and meeting with **Mr. Viktor Baloha**, MP, candidate in the election of 18 April, and his team
13:45	Transfer from Mukacheve to **Uzhgorod** by car
14:30 – 16:30	Meeting with **Mr Aladar Adam**, Chairman of Romani Yag NGO and representatives of other Roma and minority NGOs at the Romani Centre in Uzhgorod
17:00 – 18:00	Visit to a **Roma community** settlement in the outskirts of Uzhgorod
19:00 – 21:30	Europe Day celebration concert Dinner
	Accommodationt at Hotel "Duet" in **Uzhgorod**

29 May 2004, Saturday — **UZHGOROD-KYIV-ODESSA**

6:00	Departure from hotel to Uzhgorod airport
7:30	Departure from Uzhgorod to **Kyiv** (Boryspil) by Aerosvit flight VV4120
9:10	Arrival in Kyiv
10:30 – 11:30	Meeting with representatives of **minority NGOs** at the CoE Information Centre
11:30 – 13:00	Meeting and working lunch with **human rights NGOs and independent media** representatives at the CoE Information Centre
15:00	Departure from Kyiv (Borsypil) to **Odessa** by Aerosvit flight VV107
16:40	Arrival in Odessa Transfer to hotel "Palace Del Mar"
18:00 – 18:45	Short guided tour in Odessa
19:00 – 20:30	Meeting of international observers at Hotel Mozart
21:00	Dinner
	Accommodation at hotel "**Palace Del Mar**" in **Odessa**

30 May 2004, Sunday — **ODESSA**

7:30	Departure from hotel
7:45 – 8:50	Observation of an opening of polling stations Nos. 48 and 49 – observation of parliamentary by-elections in Odessa
9:00 – 9:50	Meeting with **Mr Kuperyanov**, Chairman of the Territorial Election Committee
10:00 – 10:50	Meeting with **Mr Epur**, Chief of the Regional Directorate of the Interior
11:00 – 11:40	Meeting with **Mr Gavrilyuk**, Prosecutor of the Odessa Region
12:00 – 13:00	Meeting with **Mr. V.M. Novatskyi**, Governor of the Odessa Region
13:30 – 15:00	Lunch meeting with international observers
15:00 – 16:30	Visit to various polling stations
16:30 – 17:00	Press conference at the Headquarters of the Committee of Voters of Ukraine
17:15 – 18:30	Meeting with the representatives of the **Roma minority** in Odessa
18:30 – 19:45	Short rest and snacks at the hotel

19:45 – 23:30	Visit to polling station No. 46. Observation of the ballot count
23:30 – 00:30	Visit to the Territorial Election Committee. Observation of the counting of in-coming results

31 May 2004, Monday — **SIMFEROPOL-YALTA**

6:00	Departure from hotel to Odessa International Airport
7:00	Departure by charter flight to **Simferopol**
9:00 – 11:00	Meeting with **Mr Mustafa Jemilev**, Chairman of the Mejlis (Assembly) of the Crimean Tatar People, and members
11:00	Transfer to Yalta by car (ca. 80 km)
13:00 – 14:00	Short visit to Yalta
14:00	Transfer to the Verkhovna Rada sanatorium "Djul'ber" in **Mishor** (Yalta) Lunch
15:30 – 17:00	Briefing meeting of the delegation
19:00	Dinner

1 June 2004, Tuesday — **YALTA-SIMFEROPOL**

8:00	Transfer from Yalta to Simferopol by car
10:00 – 10:45	Meeting with the **Mr Rudolf Akopyan**, Chairman of the Committee of the Supreme Rada of the Autonomous Region of Crimea on interethnic relations and problems of the deported citizens, **Mr Aleksandr Anfalov**, Consultant of the same Committee, and **MM Vladimir Kazarin** and **Edip Gafarov**, Deputy Chairmen of the Council of Ministers of the Autonomous Republic of Crimea
11:00 – 12:00	Meeting with the Chair and representatives of the Permanent Committee of the Supreme Council of the Autonomous Region of the Crimea on Deputy Ethics and Participation in Mass Media
12:00 – 13:15	Meeting with MM **Umerov and Kiselyov**, Deptuty Chairs of the Supreme Rada of the Autonomous Region of Crimea
13:30 – 14:45	Working lunch hosted by the Supreme Rada of the Autonomous Region of Crimea
15:00 – 15:50	Visit to the office of the United Nations Development Program. Meeting with **Mr Basant Subba**, Regional Development Advisor of the Crimea Integration and Development Programme
16:00 – 16:45	Meeting with Deputy Director of the Interior of the Autonomous Region of Crimea, and his team
17:00 – 17:50	Meeting with **Mrs Dzhos**, Deputy Chairman of the Council of Ministers of the Autonomous Region of Crimea
18:00 – 19:30	Round table meeting with the members of the Association of national cultural organisations and the Foundation for interethnic concern (incl. representatives of Armenians, Bulgarians, Germans, Greeks, Karaites, Krymchaks and Russians), chaired by **Mr Oleg Smirnov**, Crimean Projects Manager, International Renaissance Foundation Russian Cultural Center
21:10	Departure from Simferopol to Kyiv (Boryspil) by Aerosvit flight VV 4607
22:35	Arrival in Kyiv (Boryspil). Transfer to **Hotel Dniepro**

2 June 2004, Wednesday **KYIV**

8:00 – 9:15	Working breakfast with **Mr Igor Popov**, Chairman of the Board of the Committee of Voters of Ukraine
9:30 – 10:45	Meeting with **Mrs Nina Karpachova**, Ukrainian Parliament Commissioner for Human Rights
11:00 – 11:50	Meeting with **Mr Sergiy Kivalov**, Chair of the Central Election Committee
12:30 – 13:15	Meeting with **Mr Mykhailo Kornienko**, First Deputy Minister of the Interior of Ukraine
13:30 – 14:30	Working lunch hosted by **Mr Borys Oliynyk**, Chairman of **Ukrainian delegation** to the Parliamentary Assembly to the Council of Europe
15:00 – 16:00	Meeting with **Mr Volodymyr Shapoval**, Deputy Chairman of the Constitutional Court
16:30 – 17:15	Meeting with **Mr Viktor Yanukovich**, Prime Minister of Ukraine
17:30 – 18:15	Meeting with **Mr Oleksandr Lavrynovych**, Minister of Justice of Ukraine
18:30	Mrs Severinsen's TV interview with 5th Channel
19:00 – 24:00	Dinner with the Ambassadors of CoE member states, hosted by **Mr. Jostein Helge Bernhardsen**, Ambassador of Norway

3 June 2004, Thursday **KYIV**

7:00 – 7:45	Working breakfast with **Mrs Nadia K. Mc Connell**, President, **Mr Markian Bilynskyi**, Vice-President, **Mrs E. Morgan Williams**, Senior Advisor on Government Relations and Foundation Development and other representatives of the US – Ukraine Foundation
7:45 – 8:45	Working breakfast with the **Mr David R. Nicholas**, OSCE Ambassador in Kyiv, **Mr Marten Ehnberg**, OSCE Elections Officer and **Mrs Rosaria Puglisi**, Political Affairs Officer of the EU delegation in Kyiv
9:00 – 9:50	meeting with **Mr Volodymyr Lytvyn**, President of the Verkhovna Rada
10:00 – 10:50	meeting with **Mr Victor Yushchenko**, head of the "Our Ukraine" faction, candidate for presidential elections
11:00 – 12:15	Meeting with independent media NGOs chaired by **Mr Dmytro Kotliar**, Manager of Mass Media Program, International Renaissance Foundation
12:30 – 13:15	Meeting with **Mr Gennadiy Udovenko**, Chair of the Verkhovna Rada Committee on Human Rights and Minorities, **Mr Yuriy Artyomenko**, Vice-Chair of the VR Committee on Freedom of Speech and Information, and **Mr Yuriy Kluchkovsky**, Vice Chair of the VR Committee on State Building and Local Self-Government
13:15 – 13:45	Press conference
13:45	Departure of Mrs Wohlwend and Ms Odrats for airport (Austrian Air flight OS 662 at 15:20)
14:30 – 15:15	Meeting of Mrs Severinsen with **Mr Kostiantyn Hryshchenko**, Minister of Foreign Affairs of Ukraine
15:30 – 16:15	Meeting of Mrs Severinsen with **Mr Gennadiy Vasilyev**, Prosecutor General of Ukraine
20:50	Departure of Mrs Severinsen to Copenhagen by Cimber Air flight QI 753

The delegation was be accompanied by:
Ms Natalia MIKHALCHUK, International relations department, Verkhovna Rada

Interpreters: **Mr Alexander SAMBRUS, Mr Sergey MAKSIMOV.**

Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES OF THE COUNCIL OF EUROPE

Programme of the visit of the co-rapporteurs to Ukraine 29 August – 1 September 2004

Members of the delegation:

Co-rapporteurs: Mrs Hanne SEVERINSEN (Denmark, LDR)
Mrs Renate WOHLWEND (Liechtenstein, EPP)

Secretariat: Mr David Ćupina

The delegation was accompanied by Mr Rakhansky, MP, member of the Monitoring Committee

Sunday, 29 August 2004 — ***DNIPROPETROVSK***

14:00	Arrival of the delegation by Austrian Air flight OS 675 Transfer to Grand Hotel Ukraine
16.00 – 17.05	Meeting with **Mr I.I. Kulichenko**, Mayor of ***Dnipropetrovsk***, Head of the Ukrainian Delegation to the Congress of Local and Regional Authorities of the Council of Europe, Vice-President of the Ukrainian Association of Cities and Head of the Dnipropetrovsk Regional branch of the Ukrainian Association of Cities; **Mr Yu.V. Lyubovenko**, Mayor of ***Kryvyy Rih***, Vice-President of the Ukrainian Association of Cities; **Dr V.Ya. Shvetza**, Mayor of ***Dniprodzerzhinsk***, **Mr S.V. Starun**, Mayor of ***Nikopolsk*** and **Mr M.P. Vitintskiy**, Mayor of ***Ordzhonikizevsk***
17:10 – 19:15	Meeting with NGOs and media representatives at the Grand Hotel Ukraine
19:30	Dinner given by **Mrs G.I. Bulavka**, Chairwoman of the Oblast Council (Rada), vice-chair of the Ukrainian delegation to the Chamber of Regions of the Congress of Local and Regional Authorities of the Council of Europe, and national deputies – heads of committees of Regional Council

Monday, 30 August 2004 — ***DNIPROPETROVSK***

8.00 – 8.30	Breakfast
9.00 – 10.15	Meeting with representatives of the main political parties and non-governmental organisations
10.20 – 11.00	Meeting with Heads of Territorial Election Committees
11.15 – 12.00	Meeting with **Mr P.P. Ovcharenko**, Head of the Regional Working Group for Promotion of Activity of Foreign Observers during the 2004 Elections
13.00 – 14.30	Lunch
14.30 – 15.30	Meeting with the **Heads of the Regional Department of the Ministry of Interior, Court of Appeals, Regional Department of Justice**
15.45 – 16.45	Meeting with the **Heads of the Department on Press and Information of the Oblast State Administration, Dnipropetrovsk Oblast State Television and Radio Company, Department of Public Relations and Media of the Oblast State Administration**, and the representative of the **National Council on Television and Radio Broadcasting**, leading journalists of the region
17.00 – 18.00	Meeting with **Mr V.G. Yatsuba**, Head of the Oblast State Administration
18.00	Press conference
18.30	Dinner
20.00	Departure of the delegation to the city of Donetsk

21:30	Welcome by **Mr M.I. Kupin**, Deputy Head of the Department of External Relations and External Economic Activity of the Oblast State Administration of Donetsk, at the border of the Donetsk Oblast
22:30	Arrival at Hotel Donbass Palace

Tuesday, 31 August 2004 ***DONETSK***

7:30 – 7:50	Breakfast at hotel
8:30 – 9:55	Meeting with **NGOs and media** representatives
10:00 – 10:30	Meeting with **Mr S.V. Savelyev, representative of the National Council for Radio and TV broadcasting** of Ukraine in Donetsk Oblast
10:40 – 11:40	Meeting with **Heads of Territorial Election Committees**
11:40 – 12:40	Meeting with **representatives of political parties** which have nominated their candidates to run for the elections of the President of Ukraine *Person in charge: Mr M.I. Slivka, Head of Department of Internal Policy of Oblast State Administration*
12:50 – 13:30	Meeting with **Mr V.I. Markov**, Head of the Donetsk Regional Department of Justice, and the **Deputy Head of the Court of Appeals**
13:30 – 14:00	Lunch
14:15 – 15:00	Meeting with **Mr N.I. Volkov**, Deputy Mayor of Donetsk
15:15 – 15:45	Meeting with **Mr V. Dzharty**, Deputy Head of the Donetsk Oblast State Administration
15:50 – 16:50	Meeting with **Mr B.V. Kolesnikov**, Chair of the Donetsk Oblast Council (Rada)
16:55 – 17:25	Press conference
19:30	Dinner given by the Donetsk Oblast Council (Rada)

Wednesday, 1 September 2004 ***DONETSK***

5:45	Departure from hotel to Donetsk International Airport
6:50	Flight 7B 585 to Vienna

The delegation was accompanied by:
Ms Natalia MIKHALCHUK, International relations department, the Verkhovna Rada.

Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES OF THE COUNCIL OF EUROPE

Programme of the visit by the co-rapporteurs to KYIV (UKRAINE)

20-23 March 2005

Members of the delegation:

Co-rapporteurs: Mrs Hanne SEVERINSEN (Denmark, LDR)
Mrs Renate WOHLWEND (Liechtenstein, EPP)

Secretariat: Ms Ivi-Triin ODRATS, Co-Secretary to the PACE Monitoring Committee
Mr Dmytro KOTLYAR, Deputy Secretary to the PACE Monitoring Committee

20 March 2005, Sunday

Arrival to Boryspil Aeroport:

13.00 Deputy Secretary to the Committee Mr Kotlyar (by LH 3236 from Frankfurt)

13.40 PACE Co-rapporteur Mrs Wohlwend (by OS 661 from Vienna)

14.00 PACE Co-rapporteur Mrs Severinsen (by PS 0102 from Amsterdam)

23.45 Co-Secretary to the Committee Ms Odrats (by SN 5231 from Brussels)

Departure to the Dnipro Hotel. Accommodation at the Hotel.

21 March 2005, Monday

8.00 Breakfast with Deputy Head of European Commission Delegation **Mr Steffen SKOVMAND** and Political Affairs Officer of the European Commission Delegation **Mrs Rosaria PUGLISI** (Dnipro Hotel)

Meeting with NGOs in the CE Information Office (24a Ivana Franka st.)

9.00-10.30
Mr Ihor KOLIUSHKO, Centre for Political and Legal Reforms
Mr Roman ROMANOV, International Renaissance Foundation
Mr Ihor ZHDANOV, Razumkov Centre of Politic and Economic Research
Mr Oleksiy KOSHEL, Committee of Voters of Ukraine
Mr Ihor KOHUT, Laboratory for Legislative Initiatives

10.45-12.15
Mr Taras SHEVCHENKO, Media Law Institute
Mr Sergiy TARAN, Institute of Mass Information
Mr Valeriy IVANOV, Academy of Ukrainian Press
Mr Oleksandr CHEKMYSHEV, Equal Opportunities Committee
Mrs Natalia LIGACHOVA, Internet edition Telekrytyka

12.30 Meeting in the Prosecutor General's Office with Deputy PG **Mr Viktor SHOKIN**, Deputy PG **Mr Oleksandr SHYNALSKY**, Head of the PGO Main Department of Organisational and Legal Maintenance **Mr Anatoliy MUDROV**, Head of the PGO International Legal Department **Mr Sergiy KRAVCHUK**, Head of the PGO Department for Supervision over Investigation of Criminal Cases by the Prosecutor's Office Investigators **Mr Anatoliy KOLISNYK**

14.00 Lunch

15.00 Meeting with President of the Verkhovna Rada of Ukraine **Mr Volodymyr LYTVYN**

16.00	Meeting with First Deputy Chairman of the Verkhovna Rada Committee on Legal Affairs **Mr Mykola ONISHCHUK**, Chairman of the Sub-Committee on Legal and Judicial Reform of the Verkhovna Rada Committee on Legal Affairs **Mr Viktor MUSIYAKA**, Deputy Chairman of the Verkhovna Rada Committee on the Legislative Provision of the Law-Enforcement Activity **Mrs Mariya MARKUSH**, member of the Verkhovna Rada Committee on the Legislative Provision of the Law-Enforcement Activity **Mr Andriy SHKIL**
17.00	Meeting with Deputy Chairman of the Verkhovna Rada Committee on State Building and Local Self-Government **Mr Yuriy KLUCHKOVSKIY** and First Deputy Chairman of the Verkhovna Rada Committee on Freedom of Speech and Information **Mr Sergiy PRAVDENKO**
18.00	Meeting with State Secretary of Ukraine **Mr Oleksandr ZINCHENKO**
19.45	Meeting with Prosecutor General of Ukraine **Mr Svyatoslav PISKUN**
20.30	Departure to Hotel

22 March 2005, Tuesday

8.00	Breakfast with US-Ukraine Foundation Vice-President **Mr Markian BILYNSKYJ**, SigmaBleyzer Director and Chief Economist **Mr Edilberto SEGURA**, and SigmaBleyzer Head of Representtaive Office **Mr Vadym BODAYEV**
9.00	Meeting with Chairman of the Parliamentary Ad Hoc Inquiry Commission on the Investigation of Gongadze, Alexandrov and Yelyashkevich Cases **Mr Hryhoriy OMELCHENKO**
10.00	Meeting with Prime Minister of Ukraine **Mrs Yulia TYMOSHENKO** and Vice-Prime Minister of Ukraine on Administrative Reform **Mr Roman BEZSMERTNY**
10.50	Meeting with Vice-Prime Minister of Ukraine on the European Integration **Mr Oleh RYBACHUK**
11.40	Meeting with President of the Constitutional Court of Ukraine **Mr Mykola SELIVON**
13.00	Lunch
14.15	Meeting with First Deputy President of the Supreme Court of Ukraine **Mr Petro PYLYPCHUK**, Deputy President of the Supreme Court **Mr Mykola SELIVANOV**, Deputy Chairman of the Supreme Court Civil Chamber, Chairman of the Judges' Council **Mr Viktor KRYVENKO**, Head of the State Judicial Department **Mr Volodymyr KARABAN**
15.15	Meeting with Vice-president of the Attorneys' Union of Ukraine **Mrs ZHUKOVSKA**, First Vice-president of the Attorneys' Union of Ukraine **Mr VARFOLOMEYEVA**
16.15	Meeting with President of the Higher Administrative Court of Ukraine **Mr Oleksandr PASENYUK**
17.15	Meeting with Vice-Prime Minister of Ukraine on Humanitarian Issues **Mr Mykola TOMENKO**
18.30	Meeting with Deputy Head of the State Department of Sentences Execution **Mr Mykola VOITSEKHIVSKY**
20.30	Working dinner with Ambassadors of the Council of Europe member States, organised by the Polish Ambassador in Kyiv

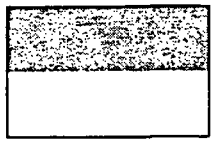
23 March 2005, Wednesday

7.00	Breakfast at the Hotel
8.00	Meeting with Minister of Foreign Affairs of Ukraine **Mr Borys TARASYUK**
9.00	Meeting with Head of the Security Service of Ukraine **Mr Oleksandr TURCHYNOV**
11.00	Meeting with Ombudswoman **Mrs Nina KARPACHOVA**
12.10	Meeting with **Ukraine's Delegation to the PACE**
13.00	**Press conference**
13.40	*Departure of Mrs Wohlwend and Ms Odrats to the Boryspil Airport*
14.00	Lunch
15.40	Meeting with Deputy Minister of Internal Affairs of Ukraine **Mr Mykhailo VERBENSKY**
17.15	Departure to the Hotel

24 March 2005, Thursday

12.20	*Departure of Mrs Severinsen to the Boryspil Airport*

APPENDIX II



Ukraine

Treaties signed and ratified or having been the subject of an accession as of 31/8/2005

No.	Title			Opening of the treaty	Entry into force	E.	N.	C.
001	**Statute of the Council of Europe**			5/5/1949	3/8/1949			
		Ratification or accession: 9/11/1995	Entered into force: 9/11/1995					
002	**General Agreement on Privileges and Immunities of the Council of Europe**			2/9/1949	10/9/1952			
		Ratification or accession: 6/11/1996	Entered into force: 6/11/1996					
005	**Convention for the Protection of Human Rights and Fundamental Freedoms**			4/11/1950	3/9/1953			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
009	**Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**			20/3/1952	18/5/1954			
	Signature: 19/12/1996	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
010	**Protocol to the General Agreement on Privileges and Immunities of the Council of Europe**			6/11/1952	11/7/1956			
		Ratification or accession: 6/11/1996	Entered into force: 6/11/1996					
018	**European Cultural Convention**			19/12/1954	5/5/1955	X		
		Ratification or accession: 13/6/1994	Entered into force: 13/6/1994					
024	**European Convention on Extradition**			13/12/1957	18/4/1960	X	X	
	Signature: 29/5/1997	Ratification or accession: 11/3/1998	Entered into force: 9/6/1998					
030	**European Convention on Mutual Assistance in Criminal Matters**			20/4/1959	12/6/1962	X	X	
	Signature: 29/5/1997	Ratification or accession: 11/3/1998	Entered into force: 9/6/1998					
044	**Protocol No. 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**			6/5/1963	21/9/1970			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
045	**Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention**			6/5/1963	21/9/1970			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
046	**Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto**			16/9/1963	2/5/1968			
	Signature: 19/12/1996	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
051	**European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders**			30/11/1964	22/8/1975	X	X	
		Ratification or accession: 28/9/1995	Entered into force: 29/12/1995					
055	**Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention**			20/1/1966	20/12/1971			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					

062	**European Convention on Information on Foreign Law**			7/6/1968	17/12/1969	X	X	
		Ratification or accession: 13/6/1994	Entered into force: 14/9/1994					
070	**European Convention on the International Validity of Criminal Judgments**			28/5/1970	26/7/1974	X	X	
	Signature: 8/6/2000	Ratification or accession: 11/3/2003	Entered into force: 12/6/2003					
073	**European Convention on the Transfer of Proceedings in Criminal Matters**			15/5/1972	30/3/1978	X	X	
		Ratification or accession: 28/9/1995	Entered into force: 29/12/1995					
086	**Additional Protocol to the European Convention on Extradition**			15/10/1975	20/8/1979	X	X	
	Signature: 29/5/1997	Ratification or accession: 11/3/1998	Entered into force: 9/6/1998					
090	**European Convention on the Suppression of Terrorism**			27/1/1977	4/8/1978			
	Signature: 8/6/2000	Ratification or accession: 13/3/2002	Entered into force: 14/6/2002					
097	**Additional Protocol to the European Convention on Information on Foreign Law**			15/3/1978	31/8/1979	X	X	
		Ratification or accession: 13/6/1994	Entered into force: 14/9/1994					
098	**Second Additional Protocol to the European Convention on Extradition**			17/3/1978	5/6/1983	X	X	
	Signature: 29/5/1997	Ratification or accession: 11/3/1998	Entered into force: 9/6/1998					
099	**Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**			17/3/1978	12/4/1982	X	X	
	Signature: 29/5/1997	Ratification or accession: 11/3/1998	Entered into force: 9/6/1998					
104	**Convention on the Conservation of European Wildlife and Natural Habitats**			19/9/1979	1/6/1982	X	X	X
	Signature: 17/8/1998	Ratification or accession: 5/1/1999	Entered into force: 1/5/1999					
106	**European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities**			21/5/1980	22/12/1981	X		
		Ratification or accession: 21/9/1993	Entered into force: 22/12/1993					
112	**Convention on the Transfer of Sentenced Persons**			21/3/1983	1/7/1985	X	X	
		Ratification or accession: 28/9/1995	Entered into force: 1/1/1996					
114	**Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty**			28/4/1983	1/3/1985			
	Signature: 5/5/1997	Ratification or accession: 4/4/2000	Entered into force: 1/5/2000					
117	**Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms**			22/11/1984	1/11/1988			
	Signature: 19/12/1996	Ratification or accession: 11/9/1997	Entered into force: 1/12/1997					
118	**Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms**			19/3/1985	1/1/1990			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 11/9/1997					
120	**European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches**			19/8/1985	1/11/1985	X	X	
	Signature: 20/12/1999	Ratification or accession: 13/3/2002	Entered into force: 1/5/2002					
122	**European Charter of Local Self-Government**			15/10/1985	1/9/1988			
	Signature: 6/11/1996	Ratification or accession: 11/9/1997	Entered into force: 1/1/1998					
126	**European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**			26/11/1987	1/2/1989	X	X	
	Signature: 2/5/1996	Ratification or accession: 5/5/1997	Entered into force: 1/9/1997					
135	**Anti-Doping Convention**			16/11/1989	1/3/1990	X	X	

	Signature: 2/7/1998	Ratification or accession: 29/11/2001	Entered into force: 1/1/2002					
141	**Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime**			8/11/1990	1/9/1993	X	X	
	Signature: 29/5/1997	Ratification or accession: 26/1/1998	Entered into force: 1/5/1998					
143	**European Convention on the Protection of the Archaeological Heritage (Revised)**			16/1/1992	25/5/1995	X	X	X
	Signature: 2/7/1998	Ratification or accession: 26/2/2004	Entered into force: 27/8/2004					
151	**Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**			4/11/1993	1/3/2002			
	Signature: 26/1/1998	Ratification or accession: 7/11/2001	Entered into force: 1/3/2002					
152	**Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**			4/11/1993	1/3/2002			
	Signature: 26/1/1998	Ratification or accession: 7/11/2001	Entered into force: 1/3/2002					
155	**Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby**			11/5/1994	1/11/1998			
	Signature: 9/11/1995	Ratification or accession: 11/9/1997	Entered into force: 1/11/1998					
157	**Framework Convention for the Protection of National Minorities**			1/2/1995	1/2/1998	X	X	
	Signature: 15/9/1995	Ratification or accession: 26/1/1998	Entered into force: 1/5/1998					
159	**Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities**			9/11/1995	1/12/1998	X		
	Signature: 1/7/2003	Ratification or accession: 4/11/2004	Entered into force: 5/2/2005					
161	**European Agreement relating to persons participating in proceedings of the European Court of Human Rights**			5/3/1996	1/1/1999			
	Signature: 22/5/2003	Ratification or accession: 4/11/2004	Entered into force: 1/1/2005					
162	**Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe**			5/3/1996	1/11/1998			
	Signature: 3/11/1998	Ratification or accession: 17/9/2003	Entered into force: 18/10/2003					
165	**Convention on the Recognition of Qualifications concerning Higher Education in the European Region**			11/4/1997	1/2/1999	X	X	X
	Signature: 11/4/1997	Ratification or accession: 14/4/2000	Entered into force: 1/6/2000					
167	**Additional Protocol to the Convention on the Transfer of Sentenced Persons**			18/12/1997	1/6/2000	X	X	
	Signature: 8/6/2000	Ratification or accession: 1/7/2003	Entered into force: 1/11/2003					
169	**Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation**			5/5/1998	1/2/2001	X		
	Signature: 3/11/1998	Ratification or accession: 4/11/2004	Entered into force: 5/2/2005					
187	**Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances**			3/5/2002	1/7/2003			
	Signature: 3/5/2002	Ratification or accession: 11/3/2003	Entered into force: 1/7/2003					
188	**Additional Protocol to the Anti-Doping Convention**			12/9/2002	1/4/2004	X	X	
	Signature: 7/11/2003	Ratification or accession: 4/11/2004	Entered into force: 1/3/2005					

45 treaties found

Notes: Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to the: E.: European non-member States; N.: Non-European non-member States; C.: European Community. See the final provisions of each treaty.
Source: Treaty Office on http://conventions.coe.int.

APPENDIX III

Parliamentary **Assembly**
Assemblée parlementaire

Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

OPINION No. 190 (1995)[1]

on the application by Ukraine for membership of the Council of Europe

1. Ukraine applied to join the Council of Europe on 14 July 1992. By Resolution (92) 29 of 23 September 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30 A.

2. To establish the primacy of its own laws over those of the Soviet Union, Ukraine made a declaration of sovereignty on 16 July 1990. On 24 August 1991, with the imminent dissolution of the Soviet Union, independence was declared in Ukraine and received massive public support in the referendum of 1 December 1991. A series of amendments to the Constitution of 1978 set the state on the path towards democracy.

3. Special guest status with the Parliamentary Assembly of the Council of Europe was granted to the Ukrainian Parliament on 16 September 1992.

4. Parliamentary and presidential elections were held in Ukraine in spring and summer 1994. Assembly observers of the first round of the parliamentary elections concluded that "the electoral process was fairly conducted and the election was free and fair, despite an apparently flawed electoral law...". New laws on elections and political parties are now being prepared.

5. In the course of 1994, after separate but co-ordinated visits effected at the request of the Assembly, two eminent jurists reported "spectacular progress" in bringing the constitutional provisions and general legislation of Ukraine into conformity with the Council of Europe's general principles (notably the European Convention on Human Rights). They concluded that further profound reform was necessary, but that this might well be effected "after accession". This report was released on 6 April 1995. It was the basis for the visit of the Assembly's three rapporteurs to Ukraine (Kiev and Crimea) from 10 to 14 April 1995.

6. The constitutional situation has since been clarified - notably in regard to the separation of powers, the protection of human rights and the prospects for fast economic reform - with the signing by the President and the Parliament of Ukraine, on 8 June 1995, of a constitutional agreement on basic principles of the organisation and functioning of state power and local self-government. This agreement should be followed by the adoption of a new constitution in conformity with the Council of Europe's principles, not later than 8 June 1996. Meanwhile, provisions and concepts of the Constitution of 1978 which are incompatible with the agreement are made inoperative.

7. The Act of 17 March 1995, the Constitutional Agreement of 8 June 1995 and a presidential decree of 19 August 1995 confirm the special status of Crimea. The precise scope of its autonomy is to be laid down in the new Constitution of Ukraine, as well as in the Crimean Constitution which is now being drawn up by its parliament for approval by the Parliament of Ukraine.

8. Ukraine's relations with the Russian Federation will be a determining factor for the security of the country, as well as for stability in the region. Ukraine is heavily dependent on Russia for energy. It

is deeply in debt to the Russian Federation. More than 11 million (22%) of Ukraine's 52 million population are ethnic Russian. Four million ethnic Ukrainians live in Russia. In Crimea - administrative authority over which was transferred to Ukraine in 1954 - ethnic Russians account for 70% of the population. Russia retains an interest in access to the ports of the Black Sea, which in turn give access to the Mediterranean. On 9 June 1995, an agreement was signed by the President of Ukraine and the President of Russia on division of the Black Sea fleet of the former Soviet Union and on access to the naval facilities in Sebastopol. This has removed a significant cause of tension and distrust. It should help towards the conclusion of a comprehensive treaty of friendship, co-operation and partnership, the provisional text of which was initialled on 8 February 1995.

9. A partnership and co-operation agreement between Ukraine and the European Union was signed on 14 June 1994. Progress in macro-economic stabilisation and structural reform, despite unfavourable developments in terms of trade, enabled the signing of a further "interim agreement" on 1 June 1995. Membership of the World Trade Organisation is envisaged.

10. With support from the European Union, the International Atomic Energy Agency and the G-7, Ukraine expects to close the Chernobyl nuclear power plant before the year 2000, according to a timetable announced on 19 May 1995. Following a decision to transfer all tactical and strategic nuclear weapons inherited from the former Soviet Union to the Russian Federation, Ukraine acceded on 5 December 1994, as a non-nuclear weapon-state to the Treaty on Non-Proliferation of Nuclear Weapons. Laws have been enacted to combat illegal trade in nuclear materials, after consultation with the International Atomic Energy Agency and the Nuclear Suppliers Group.

11. Accordingly, in the light of assurances given by the highest authorities of the state (letter of 27 July 1995 from the President of Ukraine, the President of the Parliament and the Prime Minister), and on the basis of the following considerations, the Assembly believes that Ukraine is able and willing, in the sense of Article 4 of the Statute of the Council of Europe, to fulfil the provisions for membership of the Council of Europe as set forth in Article 3: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council...":

i. Ukraine has been taking part in various activities of the Council of Europe since 1992 - through its participation in intergovernmental co-operation and assistance programmes (notably in the fields of legal reform and human rights) and the participation of its special guest delegation in the work of the Parliamentary Assembly and its committees;

ii. political dialogue" between Ukraine and the Committee of Ministers of the Council of Europe was initiated on 13 July 1994;

iii. a joint European Union/Council of Europe programme for the reform of the legal and judicial system and local government is being prepared and its implementation is scheduled for autumn 1995;

iv. Ukraine has signed the Framework Convention for the Protection of National Minorities. Moreover, it has acceded to the European Cultural Convention, the European Convention on Information on Foreign Law and its additional protocol and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;

v. the following legislation, in conformity with Council of Europe standards, will be enacted within a year from accession:
- a new constitution;
- a framework-act on the legal policy of Ukraine for the protection of human rights;
- a framework-act on legal and judicial reforms;
- a new criminal code and code of criminal procedure;
- a new civil code and code of civil procedure;
- a new law on elections and a law on political parties;

vi. the role and functions of the Prosecutor's Office will change (particularly with regard to the exercise of a general control of legality), transforming this institution into a body which is in accordance with Council of Europe standards;

vii. the responsibility for the prison administration, for the execution of judgments and for the registration of entry to and exit from Ukraine will be transferred to the Ministry of Justice before the end of 1998;

viii. the independence of the judiciary in conformity with Council of Europe standards will be secured, notably with regard to the appointment and tenure of judges; the professional association of judges will be involved in the procedure for the appointment of judges;

ix. the status of the legal profession will be protected by law and a professional bar association will be established;

x. the Constitutional Court of Ukraine will be competent to decide on the compatibility of the acts of the legislative and executive authorities of the Autonomous Republic of Crimea with the Constitution and laws of Ukraine;

xi. a peaceful solution to the disputes existing among the orthodox churches will be facilitated while respecting the Church's independence vis-à-vis the state; a new non-discriminatory system of church registration and a legal solution for the restitution of church property will be introduced;

xii. the state and progress of legislative reform will permit the signature and ratification, within the delays indicated, of the European conventions listed hereunder;

xiii. policy towards ethnic minorities will be further developed on the basis of the Framework Convention for the Protection of National Minorities and according to the principles of Assembly Recommendation 1201 (1993) on an additional protocol to the European Convention on Human Rights on this question.

12. The Parliamentary Assembly notes that Ukraine shares its interpretation of commitments entered into as spelt out in paragraph 11, and intends:

i. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission and the compulsory jurisdiction of the European Court (Articles 25 and 46 of the Convention);

ii. to sign within one year and ratify within three years from the time of accession Protocol No. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty, and to put into place, with immediate effect from the day of accession, a moratorium on executions;

iii. pending further research on the compatibility of the two legal instruments, not to sign the Commonwealth of Independent States (CIS) Convention on Human Rights and other relevant CIS documents, given the fact that individual applications submitted under this convention might render impossible the effective use of the right to individual application under Article 25 of the European Convention on Human Rights;

iv. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment;

v. to ratify within a year from the time of accession the Framework Convention for the Protection of National Minorities, and to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201 (1993) and incorporate it into the legal and administrative system and practice of the country;

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

vii. to sign and ratify, within one year from accession, the European Charter of Local Self-Government and the European Charter for Regional or Minority Languages, to study with a view to ratification the Council of Europe's Social Charter, and meanwhile to conduct its policy in accordance with the principles of these conventions;

viii. to seek settlement of international disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe);

ix. to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe, and its additional protocols;

x. to co-operate fully in the monitoring process for implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th Session).

13. For these reasons, the Assembly recommends that the Committee of Ministers:

i. invite Ukraine to become a member of the Council of Europe;

ii. allocate twelve seats to Ukraine in the Parliamentary Assembly.

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[1] Assembly debate on 26 September 1995 (26th Sitting) (see Doc. 7370, report of the Political Affairs Committee, rapporteur: Mr Masseret; Doc. 7398, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Németh; and Doc. 7396, opinion of the Committee on Relations with European Non-Member Countries, rapporteur: Mrs Severinsen). Text adopted by the Assembly on 26 September 1995 (26th Sitting).

APPENDIX IV:

Address by Mr Viktor Yushchenko, President of Ukraine
2005 Ordinary Session of the PACE, 1st Part, 3rd sitting
Tuesday 25 January 2005

THE PRESIDENT. – We now have the honour of hearing an address by Mr Viktor Yushchenko, President of Ukraine. After his address, President Yushchenko has kindly agreed to take questions from the floor.

I am very pleased to welcome in this Hemicycle, on behalf of the Assembly, the new President of Ukraine, Mr Viktor Yushchenko. (Applause.) The applause shows how welcome you are in this Assembly. I wish to extend to you my sincere congratulations on your recent election. It is particularly gratifying that you have decided to visit Strasbourg, the seat of the Council of Europe, and to address our Assembly only two days after your inauguration. Your choice of this early trip abroad bodes well for our future co-operation.

We followed very closely the unfolding political drama in the autumn of 2004. We dispatched no fewer than four missions in connection with the election. We had a very representative delegation during the last round, which fell in a particularly important festive period in many of our member states. That clearly shows the commitment of members of this Assembly to fostering democracy in a member state. Like many in this Hemicycle, I was watching the televised ceremony of your inauguration last Sunday, where you stated that Ukraine's way to the future is the way of a united Europe. Mr President, we very much look forward to your statement. I give you the floor.

Mr YUSHCHENKO (President of Ukraine) said that it was a great honour to start his work as President of the Ukraine with a visit to Strasbourg. The idea of European unity had been proposed in 1946 by Winston Churchill as a way to bring Europe together and to make it free and happy. When Ukraine had joined the Council of Europe it had wanted to share its values and to find solutions to joint problems. He was grateful for the support of the Parliamentary Assembly of the Council of Europe and for its fair criticism.

He thanked the courageous rapporteurs who had been the voices, eyes and conscience of the Council of Europe in Ukraine. He would build civil society in Ukraine and seek to approach the ideals of the Council of Europe. The "orange revolution" had succeeded because the Ukrainian people had already embraced European values. Ukraine was a free European country and would not allow the violation of human rights. Now it would be possible to pursue development. The Ukrainian people thanked the Council of Europe and the Assembly for their solidarity and for monitoring the election process in such a persistent way.

From Strasbourg he would be leaving for Auschwitz which was the symbol of pain in Europe. He would honour the prisoners and the liberators and on a personal level would also think of his father who had suffered at Auschwitz. He would never allow anti-Semitism to grow in Ukraine.

It was also a time to remember the famine of 1932-3 in Ukraine that had killed 10 million people and was hidden by the Stalinists. Europe had lived through many horrific events during the twentieth century. Those events should remind them of their duties never to allow hidden crimes to be committed in Europe again. It was necessary to secure the rule of law and not to permit the abuse of human rights. The strength of Europe was its commitment to human rights, not just as words but as legally binding responsibilities.

As the President of Ukraine he would make the democratic transformations including the rule of law, human rights and pluralistic democracy irrevocable. He would also work towards true independence of the judiciary, freedom of speech and expression, freedom of the media, strengthening civic society and combating crime. He hoped to benefit further from the expertise of the Council of Europe so that Ukraine could harmonise its society with Europe. The Ukrainian Government would co-ordinate with the judiciary to fulfil the moral duty of investigating cases of violence against journalists in bringing those responsible to justice. The transformation of the society in Ukraine must be in co-operation with the Council of Europe and he hoped they could go beyond the current relationship to form a real partnership.

Ukraine was on the road towards becoming a fully participatory democracy. The end of the presidential elections in Ukraine was the beginning of a movement into stable economic prosperity. The road would be difficult but not long. Ukraine would be capable of change.

His plan of action for the coming three years was based on the implementation of a strategic foreign goal: membership of the European Union. The process of integration into the European Union would now become a real, not just a declared, aim. The relationship between Europe and Ukraine had to include the prospect of membership.

Ukraine would, in future, become a market economy. By the end of 2005, it would join the World Trade Organisation. He said that Ukraine would also simplify visa restrictions between European Union countries and Ukraine. As Ukraine continued to improve, the wave of immigration into Europe would reduce, and Ukrainians would go to Europe only to visit. The viability of the democratic process would be seen in the future Ukraine.

He was looking forward to participating in the third summit of the Council of Europe.

THE PRESIDENT. – Thank you very much, Mr President, for your inspiring, encouraging and courageous speech. Members of the Assembly have expressed a wish to put questions to you. A list has been circulated of the names of members wishing to ask questions, in the order in which they were notified to the Table Office.

I remind members that questions must be limited to thirty seconds. Please show solidarity with your colleagues. You should ask questions and not make speeches.

The first question is from Mr Mercan.

Mr MERCAN (Turkey). – On behalf of the European People's Party, I congratulate you on your personal victory, Mr Yushchenko. Your people's determination and strong will expressed through democratic values throughout the election period in your country have been admirable. I am very pleased to welcome you to the Hemicycle as the President of Ukraine. It has been a pleasure to hear your vision for your country. The fact that you are visiting the Council of Europe after your inauguration ceremony is not simply symbolic.

We would like to take this opportunity to invite your views on regional co-operation and European Union relations and Nato.

THE PRESIDENT. – Thank you. I call Mr Yushchenko to answer that question.

Mr YUSHCHENKO said that he was very grateful for such an important question. The general strategy of Ukraine was integration into European structures. It would also develop regional structures, paving the way to membership of the European Union. Ukraine was planning many initiatives – for example, the Black Sea initiatives – which were establishing economic structures on the basis of projects. Other initiatives included projects with neighbouring countries – for example, producing energy for a united Europe.

THE PRESIDENT. – Thank you. The next question is from Mr Eörsi, on behalf of the Liberal, Democratic and Reformers' Group.

Mr EÖRSI (Hungary). – Mr Gongadze's widow is present in the Chamber. She can never get her husband back, but she is entitled to know the truth about what happened to him. You mentioned the Gongadze case twice. What can you do to ensure that the truth is revealed and justice restored? Mrs Gongadze and all democrats in Ukraine will want to hear your answer.

THE PRESIDENT. – Thank you. I call Mr Yushchenko to answer that question.

Mr YUSHCHENKO said that it was the goal of his country to finalise a solution to this moral, ethical and judicial problem, which was a problem of conscience. For both him and his government it was a

moral challenge to which they would react quickly and in full. Next week he would be holding a meeting with Mr Gongadze's mother to establish what she wanted him to do.

In the previous week he had met the Prosecutor General with whom he discussed the issue. They had decided that the case would go to the court as soon as possible. Two cases had already gone to court that were directly linked with the murder of Mr Gongadze. He said that he was completely responsible for taking this issue forward and that there would be an open public investigation in the Ukrainian court in the near future.

THE PRESIDENT. – Thank you. The next question is from Mr Margelov of the European Democratic Group.

Mr MARGELOV (Russian Federation) said that Mr Yushchenko had set out some prospects for Ukraine's integration into the European Union. He asked how the President saw Ukraine's integration with European states that were not in the European Union.

THE PRESIDENT. – Thank you. Would you, Mr Yushchenko, like to answer that question?

Mr YUSHCHENKO said that Russia was Ukraine's strategic partner and neighbour. It was to Russia that Ukraine turned to develop its interests. Relations with Russia would be formalised on an economic and fiscal basis.

THE PRESIDENT. – Thank you, Mr Yushchenko. The next question is from Mr Rochebloine of the European Democratic Group.

Mr ROCHEBLOINE (France) said that during the presidential campaign the public had been struck by the risk of internal dispute within Ukraine. He asked whether this risk was still topical and, if so, what measures Mr Yushchenko would take to combat it.

THE PRESIDENT. – Thank you. I call Mr Yushchenko to respond.

Mr YUSHCHENKO said he had won the Ukrainian presidential election in seventeen regions and in the capital city, Kyiv. No previous presidential winner had been victorious in more than fifteen regions. He had wide geographical support across Ukraine and was certain that there was no natural reason for dispute between the east and west of Ukraine.

He said that initiatives made several weeks ago by his opponent did not reflect the natural inclination of the people and he felt that breaking Ukraine with federalism would not be possible. He said that it would be very important to Ukraine to hear the European institutions support unity within Ukraine, and he was grateful for the support he had heard that afternoon in the Assembly.

THE PRESIDENT. – Thank you, Mr Yushchenko. The next speaker is Mr Rzymełka, from the European People's Party.

Mr RZYMEŁKA (Poland). – I want to ask President Yushchenko about the future of nuclear energy, and its safe production, in Ukraine as it relates to the nuclear power plants of Chornobyl, Khmelnitsky and Rivne. Will you consult neighbouring countries on the construction of such plants, as required by international convention? I wish you and Ukraine all the best. We have a common future in Europe.

THE PRESIDENT. – Thank you, Mr Rzymełka. I call Mr Yushchenko to respond.

Mr YUSHCHENKO said that a number of international agreements had been signed with European banks to fund the construction of two nuclear plants in Ukraine. In 2000, a number of meetings had also been held regarding seeking European funding to help close the Chornobyl plant. He said that special funding had been found to complete the two nuclear plants and their construction was now over. Ukraine would now work to improve the safety of the country's entire nuclear power system.

THE PRESIDENT. – Thank you, Mr Yushchenko. The next speaker is Mr Gadzinowski from the Socialist Group.

Mr GADZINOWSKI (Poland) asked Mr Yushchenko what his opinion was of the situation of national minorities in Ukraine, particularly with regard to Polish minorities.

THE PRESIDENT. – Thank you. Would you, Mr Yushchenko, like to respond?

Mr YUSHCHENKO said that he appreciated the relations that had developed between Ukraine and Poland. He had seen many examples of the two nations working together to reach compromise.

He and his government would pursue the road of mutual understanding with the Polish Government. On the specific issue of the Lviv cemetery he had called on Lviv Regional Council to take action.

He said that the children of any minority group in Ukraine would be able to speak the language of their father. Any minority would have his full support.

THE PRESIDENT. – Thank you, Mr Yushchenko. I call Ms Durrieu, on behalf of the Socialist Group.

Ms DURRIEU (France) asked what immediate action Mr Yushchenko would take to further democratic ideals in Ukraine.

THE PRESIDENT. – Thank you. Would you, Mr Yushchenko, like to answer that question?

Mr YUSHCHENKO said that most Ukrainians did not like the fact that they had had criminal regimes, no rule of law, no independent courts and no free media. He noted that 55% of the economy was hidden.

Last year he had set up the "Centre of Europe", a project to further democracy in Ukraine. It had developed a strategy on how to develop access to the European Union and this strategy would form the basis of the policies that his government would submit to parliament.

Ukraine was already a different country. The media was not censored and there were 136 criminal cases pending on electoral fraud. This showed that a lot had been done already. He would develop a dialogue with the business world and reduce taxation, but would make sure that everybody would pay tax. There was a lot of work to do but with the assistance of bodies like the Council of Europe he would be successful.

THE PRESIDENT. – Thank you. I call Ms Hoffmann, on behalf of the Socialist Group.

Ms HOFFMANN (Germany) asked how Mr Yushchenko intended to work closely with both the European Union and with Russia.

THE PRESIDENT. – Thank you. I invite Mr Yushchenko to respond.

Mr YUSHCHENKO said that Russia was Ukraine's strategic partner. His heart belonged to Europe, but Ukraine could not arrive in Europe carrying the baggage of its problems with Russia. Europe expected Ukraine to solve these problems. He undertook to work with Russia on these issues.

The borders of Ukraine were borders with Europe. The European market was six times more valuable than that of Russia. Ukraine would be stupid to ignore this fact. He would try to open the door to Europe but could not do this through rhetoric alone. He would work effectively to ensure that Ukraine became a member of the European Union.

THE PRESIDENT. – Thank you. The next speaker is Mrs Tevdoradze from the Liberal, Democratic and Reformers' Group.

Ms TEVDORADZE (Georgia) said that Ukraine had obligations to the Council of Europe and the Venice Commission to change its constitution. She asked what Mr Yushchenko was doing to this end.

THE PRESIDENT. – Thank you. I invite Mr Yushchenko to reply.

Mr YUSHCHENKO said that recent changes to the constitution were based on compromise. Some parliamentarians did not share the views on which this compromise was based. He would establish initiatives to amend the constitution because parliament understood that changes had to be made as a result of commitments made to Europe.

THE PRESIDENT. – Thank you. The next speaker is Mr Rakhansky of the Group of the Unified European Left.

Mr RAKHANSKY (Ukraine) congratulated Mr Yushchenko and noted that the permanent delegation of Ukraine to the Council of Europe had been criticised for not implementing Ukraine's commitments to the Council of Europe. He asked how this would change.

THE PRESIDENT. – Thank you. I invite Mr Yushchenko to respond.

Mr YUSHCHENKO thanked Mr Rakhansky for an important question. Ukraine should endeavour to meet all the commitments that it took on when it joined the Council of Europe. There were two outstanding commitments, of which the legislative initiative would be dealt with within six months. After this he hoped that there would be a review of the monitoring of Ukraine by the Council of Europe.

THE PRESIDENT. – Thank you. I call Mr Wielowieyski of the Group of the European People's Party.

Mr WIELOWIEYSKI (Poland). – Thank you, Mr President.

Mr Yushchenko, I am happy that I have lived to see this fascinating emergence of popular energy and initiative in Ukraine for a better world, for dignity, freedom and democracy. But what about the follow-up? What measures should be taken to attract direct foreign investment to enlarge the activities of foreign firms in Ukraine? That will be important for the modernisation of the country and should be a strong incentive for its quick development.

THE PRESIDENT. – Thank you. I invite the President to reply.

Mr YUSHCHENKO said that Mr Wielowieyski had raised an important question relating to the national economy. Today $600 million was invested annually in Ukraine. By contrast, over $7 billion was invested each year in Poland. He said that the difference spoke for itself. Investors did not like political instability, the absence of independent courts, or the lack of guaranteed security for capital that had been invested.

Corruption had permeated Ukraine from top to bottom. He was appalled that bureaucrats accepted bribes. The regulatory policy was too complicated. This elevated the role of the bureaucrats and allowed corruption to flourish. This had to change.

He would create investors' councils to learn from them what they thought and to help them to remove the obstacles to foreign investment in Ukraine. He wanted to send a clear message to the rest of the world that Ukraine was a good place to invest and was stable, ruled by law, and protected its investors. Ukraine would be the next modern market in Europe.

THE PRESIDENT. – Thank you, Mr Yushchenko. I can call only two more members for questions, which is a pity as there are so many on the list. The first is Mr Marty.

Mr MARTY (Switzerland) said that the applause after Mr Yushchenko's speech had been an expression of the great expectations placed on Mr Yushchenko. He asked whether the new President would assist in the fight against trafficking of human beings, especially of new born babies, and whether he was prepared to investigate the cases in the Ukraine and assist the Rapporteur of the Social Affairs and Family Committee?

THE PRESIDENT. – Thank you. I call Mr Yushchenko to reply.

Mr YUSHCHENKO said that he could guarantee that Ukraine would do everything in its power to help in that process, and would open the procedures up to transparency. His government would host the mission and assist it wherever possible.

THE PRESIDENT. – The last question is from Mr Mihkelson.

Mr MIHKELSON (Estonia). – We are aware of the enormous challenges that you face at home, but we understand that it is important to Ukraine's future that its people share a clear vision. Do Ukrainians have that vision? How do you, Mr Yushchenko, visualise Ukraine's international position in, let us say, fifteen years?

THE PRESIDENT. – I invite Mr Yushchenko to respond.

Mr YUSHCHENKO said his policy was based on Ukraine being both the geographic centre of Europe and its heart. The future of Europe was impossible without Ukraine. Further European integration would take account of the fact that Ukraine was part of European culture. Ukraine.would be a long term member of the European Union and of other European structures. When that would happen was not known, but the answer lay not in Brussels but in Kyiv. It depended on the ambition of the government's agenda and the ability of the new team to deliver it. The road to Europe was scattered not only with roses but with rocks. The strategic goal was to overcome those problems and that must always be kept in mind. Ukraine would also work on developing good bilateral relations with neighbouring countries. As he had said the day before to President Putin of Russia, bilateral policy must be effective. He would be responsible for everything he said and expected his colleagues to be the same. Ukraine would be European, democratic and prosperous.

THE PRESIDENT. – We must now conclude questions to Mr Yushchenko. On behalf of the Assembly, we thank him most warmly. When he arrived at the Council of Europe, the first thing he did was go to his people. He occupies a warm place in the hearts of so many in this country and outside it. He has encouraged us today to pursue our ideals and to fight harder to achieve our goals and to uphold our principles. I hope that through our applause we have encouraged you, Mr President. Thank you very much for your speech and especially for your willingness to co-operate with the Council of Europe in an open and transparent way. We shall support you with all the tools at our disposal in all aspects of your reform process.

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

Reference to committee: Resolution 1115 (1997).

Draft resolution and draft recommendation unanimously adopted by the committee on 7 September 2005.

Members of the committee: Mr György **Frunda** (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mrs Naira Shakhtakhtinskaya (2nd Vice-Chairperson), Mr Mikko **Elo** (3rd Vice-Chairperson), Mr Pedro **Agramunt**, Mr Bakhtiyar **Aliyev**, Mr René André, Mr Giuseppe Arzilli, Mr David Atkinson, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mrs Gülsün **Bilgehan**, Mr Rudolf Bindig, Mrs Mimount Bousakla, Mr Luc **Van den Brande**, Mr Patrick Breen, Mrs Beáta Brestenskтá, Mr Milos Budin, Mr Mevlüt **Çavuşoğlu**, Mr Jonas Čekuolis, Mr Doros Christodoulides, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás Eörsi, Mr Eduardo Ferro Rodrigues, Mr Jean-Charles Gardetto, Mr József **Gedei**, Mr Marcel Glesener, Mr Stef Goris, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael Hagberg, Mr Michael **Hancock**, Mr Andres Herkel, Mr Jerzy **Jaskiernia**, Mr Erik **Jurgens**, Lord Kilclooney of Armagh, Mr Evgeni **Kirilov**, Mr Shavarsh **Kocharyan**, Ms Synnøve Konglevoll, Mr Konstantin Kosachev, Mr André **Kvakkestad**, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Eduard Lintner, Mr Mikhail Margelov, Mr Dick **Marty**, Mr Frano Matušić, Mr Miloš **Melčák**, Mr Neven **Mimica**, Mr Azim **Mollazade**, Mr Zsolt Németh, Mr İbrahim **Özal**, Mr Theordoros **Pangalos,** Mrs Sólveig Pétursdóttir, Mr Leo Platvoet, Mr Christos **Pourgourides**, Mr Dumitru Prijmireanu, Mr Anatoliy Rakhansky, Mr Dario Rivolta, Mr Armen Rustamyan, Mrs Katrin **Saks**, Mr Kimmo Sasi, Mr Adrian Severin, Mr Vitaliy **Shybko**, Mr Leonid **Slutsky**, Mr Jerzy **Smorawiński**, Mr Michael Spindelegger, Mrs Maria Stoyanova, Mr Qazim Tepshi, Mrs Elene **Tevdoradze**, Mr Tigran Torosyan, Mr Miltiadis **Varvitsiotis**, Mrs Birutė **Vėsaitė**, Mr Rudolf Vis, Mr Oldřich Vojíř, Mrs Renate **Wohlwend**, Mr Marco Zacchera, Mr Emanuelis **Zingeris**.

*N.B. The names of those members who were present at the meeting are printed **in bold**.*

Head of the secretariat: Mrs Ravaud

Secretaries to the committee: Mr Gruden, Mrs Odrats, Mrs Theophilova-Permaul.