Council of Europe
European Commission

Conseil de l'Europe
Commission européenne

Restricted

TACIS UKRAINE ACTION PROGRAMME 2004

Support to Good Governance: Project against Corruption in Ukraine - (UPAC)

Second progress report (revised)

Project title	Support to Good Governance: Project against Corruption in Ukraine (UPAC)
Reference number	TACIS 2006/120-157
Project starting date	8 June 2006
Project duration	36 months
Implementation	Council of Europe (Technical co-operation Department, Directorate General of Human Rights and Legal Affairs)
Project budget	1750000 Euros
Date of report	26 June 2007
Reporting period	8 December 2006 – 7 June 2007

Contents

For any additional information regarding this document, please contact:

Council of Europe
Directorate General of Human Rights and Legal Affairs
Directorate of Co-operation
Technical Co-operation Department
67075 Strasbourg CEDEX, France

Tel.: +33 3 90 21 45 06
Fax: +33 3 88 41 20 52
E-mail: Alexander.SEGER@coe.int

1 BACKGROUND INFORMATION

UPAC – Support to Good Governance/Project against Corruption in Ukraine – started on 8 June 2006. The present report summarises the activities carried out since the last project report of 8 December 2006 until 7 June 2007.

1.1 Beneficiary country and institution(s)

Ukraine

Primary beneficiary: Ministry of Justice of Ukraine.

Project Partners: Ministry of Justice, Council of National Security and Defence, Office of the Prosecutor General, Ministry of Interior, and other institutions represented in the Steering Group.

1.2 Contracting authority

European Commission (EC).

1.3 Implementing organisation

The Council of Europe is responsible for the implementation of the project and the use of the project funds under the contract with the European Commission. Within the Secretariat of the Council of Europe in Strasbourg, the Technical Co-operation Division (Technical Co-operation Department, Directorate General of Human Rights and Legal Affairs[1]) is responsible for overall management and supervision of the project. A Team Leader, and local support staff, based in Kyiv, are working directly with, and through, the Ministry of Justice.

2 THE PROJECT

2.1 Project objectives and activities

UPAC's objective is to strengthen the Ukrainian authorities' capacities and legal framework for the fight against corruption. In order to achieve this objective, the project is designed to work in three complementary directions:

1) It aims at supporting the adoption, elaboration and implementation of a Ukrainian National Anti-corruption Strategy and Action Plan against Corruption, and the creation of an efficient and effective monitoring mechanism to oversee and co-ordinate the implementation of the Strategy and Action Plan;
2) It supports policies aimed towards strengthening the institutional capacities of Ukraine in the fight against corruption;
3) It assists Ukraine in the approximation and harmonisation of its legal framework against corruption with European and international standards and legal instruments, in particular those set by the Council of Europe Criminal and Civil Law Conventions against Corruption, and the United Nations Convention against Corruption.

UPAC aims to deliver its objectives through the provision of targeted expertise by European experts, in close co-operation with Ukrainian experts, and through outreach to all relevant stakeholders and civil society on the expertise acquired. UPAC also foresees a number of study tours to European partner institutions to facilitate networking and lessons learned and best practices sharing.

[1] Due to recent merger of the Directorate General I of Legal Affairs and Directorate General II of Human Rights, into one Directorate General of Human Rights and Legal Affairs, the internal structure of departments and divisions has changed, thus the project is now implemented by the Technical Co-operation Department of the Directorate General of Human Rights and Legal Affairs.

2.2 Summary of Project Outputs/Purposes

Overall objective	**To contribute to the prevention and control of corruption so that it no longer undermines the confidence of the public in the political and judicial system, democracy, the rule of law and economic and social development in Ukraine**
Purpose 1	**To improve the strategic and institutional framework against corruption in Ukraine**
Output 1.1	Anti-corruption strategy and Action Plan available
Output 1.2	Effective monitoring, coordination and management of anti-corruption measures ensured
Output 1.3	Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption regarding preventive anti-corruption body or bodies
Purpose 2	**To enhance capacities for the prevention of corruption**
Output 2.1	Anti-corruption concerns incorporated into the process of public administration reform ("anti-corruption mainstreaming")
Output 2.2	Risks of corruption reduced in the judiciary
Output 2.3	Risks of corruption reduced in the prosecution and the police
Output 2.4	Conflicts of interest reduced in the political process
Output 2.5	Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity
Output 2.6	Public participation in the anti-corruption effort promoted
Purpose 3	**To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption**
Output 3.1	Draft laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions against corruption of the Council of Europe (ETS 173/174), the United Nations Convention against Corruption and other relevant international legal instruments
Output 3.2	Judges trained and specialised in adjudication of corruption, law enforcement officials trained in the investigation and prosecution of corruption offences

2.3 Inputs

The project provides funding for:

- National conferences
- Expert advice
- Written expert opinions/assessments (expertises)
- Workshops, round tables and in-country training activities
- Study visits
- Surveys
- Awareness raising activities
- Translations and publications
- Risks analyses
- Development of the terms of reference for a grant programme
- IT equipment.

3 OVERALL ACHIEVEMENTS

3.1 Overview

The number of activities carried out under the project during the reporting period has been substantially lower than what was initially foreseen in the Workplan which is now, as a result, facing severe delays.

The political situation following the 2 April 2007 presidential decree on early elections and suspending the Verkhovna Rada (VR), and the ensuing open political crisis that had been lingering since summer 2006 are partly to blame for this. The decree has caused the suspension of activities in the Parliamentary Committee on the Fight against Organised Crime and Corruption, as its members are in the majority representatives of opposition parties which have accepted the dissolution of the VR. This means that all legislative activity surrounding the anti-corruption draft laws is on hold.

However, the project faced problems with a consistent implementation of its planned activities from the onset. The - to date unresolved - issue of the allocation of the project office in the Ministry of Justice is a case in point. Other problems include, but are not limited to:

- the Workplan, which had been negotiated and agreed with all stakeholders, and which should, as the leading document, be binding for the project had to be reconfirmed with the main beneficiary throughout the project's duration, and during a Steering Group meeting in March 2007;
- the main beneficiary has 'opted out' of certain activities foreseen under the Workplan (political party and election campaign financing activities foreseen for 2007; public opinion surveys, after substantial funds and human resources had been spent already on their implementation);
- capacity constraints at the working level of the Ministry of Justice, but also with other beneficiaries, in ensuring effective co-ordination of the project among all beneficiaries, resulting in the inability to ascertain information regarding policies that should be assisted by the project;
- the difficulty of establishing and maintaining continuous and reliable communication on issues relating to the project with the MoJ

These problems are the result of the overall protracted uncertainty of the political situation in Ukraine. In the absence of a clear reform agenda or vision being pursued by the executive, it is almost impossible, at this stage, to provide assistance in a meaningful and coherent way.

There is therefore an urgent need to reconsider the way forward for the project in view to the ongoing disbursement of funds against the minimal impact made.

However, the following activities were carried out during the six months since the First Progress Report of early December 2006:

Description of activity	**Status**
Set-up of the Project Team	Partly completed, hiring of national legal advisor put on hold.
Set-up of the Project Office	Not completed; provisional solution through renting of private sector office space until end-August 2007.
Steering Group meeting to confirm activities from March to June 2007	Completed
Round-table with the Parliamentary Committee for the Fight against Organised Crime and Corruption on anti-corruption law package	Completed
Finalisation of methodology for public opinion surveys on corruption	Completed
Expertise on the Concept of the Reform of the System of Criminal Justice and Law Enforcement	Completed

Expertise on the Anti-corruption Action Plan emanating from the Anti-corruption Strategy 'On the Road to Integrity'	Ongoing
Facilitation of Ukrainian experts' participation in regional seminar on Corporate Liability for Corruption Offences	Completed
Facilitation of Ukrainian experts' participation in OECD/ACN peer review process	Completed
Activities on ethics an the local government level	Ongoing

3.2 Project Team

Set-up

The position of full-time National Legal Advisor has not yet been filled. The reduced amount of activities - caused by the current political situation in Ukraine - does not seem to justify a full-time post. Activities, when and if they happen, can be adequately supported by short-term national legal experts.

Other

The current Team Leader, Vera Devine, will be leaving the project at the end of her contract on 30 June 2007. A replacement will be identified once final certainty about the project's future has been achieved. For the same reason, the project assistant, Vlasta Sposobna, has been given a temporary contract until the end of July 2007, only.

The management of the project at the Secretariat continues to be ensured by Vesna Efendić, with the assistance of Astrid Wertenschlag, and under the overall supervision of the Head of Division 1 of the Technical Co-operation Department.

3.3 Project office

To date, 12 months since the start of the project implementation, the project team has not been allocated office space in the Ministry of Justice as foreseen by the project agreement, and no solution appears in sight.

As it became clear in December 2006 that the office will not be allocated, a temporary solution was found by renting private sector office space. The arrangement to rent an office was made after the approval from the EC Project manager in January 2007, and was concluded initially for period of three months. Subsequently the arrangement was extended until the end of August 2007.

3.4 Steering Group Meeting

A Steering Group meeting was held on 6 March 2007. The meeting had been initiated by the MoJ counterparts who did not wish to go ahead with implementing the project activities foreseen in the Workplan without renewed confirmation from all stakeholders. The MoJ provided the meeting facilities, but had to be assisted in all parts of the preparation of the meeting, and only reluctantly sent out invitations to SG members at the last minute. The objective of the meeting was to get agreement from stakeholders on activities to be carried out until August 2007; the MoJ had prepared a table of own proposals (including timelines), most of which were broadly corresponding to the Workplan. Notably, the MoJ felt that the project should not, at this stage, go ahead with the activities surrounding political party and election campaign financing. It also expressed that there was no need to implement the corruption surveys foreseen under the Workplan, the methodology of which had been allocated resources already. A detailed report of the SG meeting can be found in the
Annex II to this report.

Given the overt political stalemate in the country since 2 April 2007, most of the activities discussed and agreed during the SG meeting will not have been implemented at the agreed time and before the next SG meeting. There is now a need to communicate this to stakeholders, in coordination with the main beneficiary.

3.5 Visibility/Media Coverage

A generic webpage on UPAC was created on the Council of Europe website (www.coe.int/upac) as well as under the webpage on joint programmes of the Council of Europe and the European Commission (http://www.jp.coe.int/CEAD/JP/Default.asp?ProgrammeID=83). A joint EC/CoE press release was also issued and posted on the CoE and EC websites.

The project's roundtable discussion was covered by a number of media (see Annex III to this report) and announced and covered on the Verkhovna Rada's website. In April, the project was represented at two exhibitions, in Lviv and Kyiv, respectively, organised by the EC Delegation. The project was also represented at the Europe Day in the centre of Kyiv on 2 June 2007.

4 ACTIVITIES IMPLEMENTED DURING THE REPORTING PERIOD, PROGRESS MADE AND NEXT STEPS

4.1 Comments on specific project activities under the project's Workplan

PURPOSE 1: TO IMPROVE THE STRATEGIC AND INSTITUTIONAL FRAMEWORK AGAINST CORRUPTION IN UKRAINE

Output 1.1 - Anti-corruption Strategy and Action Plan available

Activity 1.1.1 Support to the drafting and elaboration of the Anti-corruption Action Plan in accordance with the National Anti-corruption Strategy

Support to drafting of the Anti-corruption Action Plan and related activities are one of the core objectives of the UPAC. Initially, the activity was supposed to be organised – through a series of 4 - 6 events/meetings – between October 2006 and March 2007. On several occasions, stakeholders, including the Ministry of Interior which was, at some stage in the lead of this process, did announce tentative needs for the drafting process, which, however, all came to nothing.

In early June 2007, the Ministry of Justice has approached the Council of Europe Secretariat for expertise to be made available through the project on the draft Action Plan that has been prepared as a result of the Anti-corruption Strategy, and against the recommendations to Ukraine made by the Group of States against Corruption (GRECO); the GRECO recommendations will be made public only once the Action Plan has been adopted by the Cabinet of Ministers.

Any offers to support to the drafting process met with little response. In February 2007, when it became clear that the Ministry of Interior was in the lead of the drafting process (and had been given an extremely short deadline to produce a document), the Team Leader addressed a letter to the deputy Minister of Interior confirming the availability of resources to assist the process. There was no reply to the letter, and there was a sudden hesitation from the Ministry of Interior immediate counterpart to communicate further on the issue (an experience shared by other partners in the international community). An early draft of the Action Plan was informally shared with the team in mid-March; however, the official final draft was sent to UPAC only in early June 2007.

An expertise of this draft was commissioned under UPAC and will be submitted to the Ministry of Justice by the end of June.

Activity 1.1.3 Finalisation of the First National and Regional Public Baseline Surveys on Corruption in the Judiciary, Law Enforcement, Political Parties

A second brainstorming meeting on the Public Baseline Surveys was held in Kyiv on 8 February 2007, following up on a meeting in Strasbourg in November 2006. In addition to the international experts who had been involved in the preparation of the surveys since November, representatives of all stakeholder institutions, including the MoJ, were invited to the meeting, at which the methodology to carry out the baseline surveys was discussed and finalised (the survey methodology is available upon request).

At the UPAC Steering Group meeting on 6 March 2007, it was, however, announced by the MoJ that such a survey was not considered to be necessary at this point in time, given several other ongoing surveys by international organisations (notably in the framework of the US funded Millennium Challenge Corporation programme).

Instead, the MoJ and the NSDC proposed to carry out a survey on "corruption in the law enforcement agencies". Based on information received, the project will assist in the elaboration of detailed terms of reference for such a study.

Output 1.2 - Effective monitoring, coordination and management of anti-corruption measures ensured

While no activities took place on this output during the reporting period, the Workplan had foreseen support to this objective, which was planned to be delivered as of March 2007, and in direct follow-up to the drafting of the Anti-corruption Action Plan. To date, there is no indication on what type of monitoring mechanism is foreseen for the implementation of the Action Plan, and whether the project would be able to provide expert and other input.

Output 1.3 - Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption regarding preventive anti-corruption body or bodies

Activity 1.3.1 Seminar[s] on the implementation of UN Treaty Law focussed on issues related to UNCAC applicability in Ukraine and its domestic legislation

Two activities were earmarked in the UPAC Workplan to take place in March 2007. The activities were to assist the finalisation of the draft anti-corruption legislation, and were confirmed during the 6 March 2007 Steering Group meeting to be held with the Parliamentary Standing Committee on the Fight against Organised Crime and Corruption in the second half of April 2007. A number of preparatory steps (including the lining up of experts and cooperation from the UN Office for Drugs and Crime/UNODC) were undertaken, but the 2 April 2007 presidential decree dissolving parliament led to the seminars not being pursued (the Committee has not been operating since then).

PURPOSE 2: TO ENHANCE CAPACITIES FOR THE PREVENTION OF CORRUPTION

Output 2.1 - Anti-corruption concerns incorporated into the process of public administration reform ("anti-corruption mainstreaming")

Activity 2.1.1 Promotion and introduction of the Draft Law on the Ethical Behaviour for Public Officials in order to facilitate the adoption of the new law

Albeit foreseen in the Workplan to be implemented in February 2007, this activity has not taken place. In fact, it has been impossible to ascertain – neither by the MoJ counterpart nor by the counterpart from the Main Civil Service Department itself (represented in the Steering Group) what next steps are foreseen for the adoption of this law. Although a previous draft law had already been commented upon in spring 2006 by the CoE, an analysis of a new draft law will be carried out under the project should this be requested by the Government.

Output 2.2 - Risks of corruption reduced in the judiciary

No activities were foreseen or took place on this output during the reporting period.

Output 2.3 - Risks of corruption reduced in the prosecution and the police

Although no activities were foreseen by the Workplan under this output, a scoping study/survey on corruption in the law enforcement system was discussed several times with the MoJ counterpart (see above comments under 1.1.3); this idea, however, did not result in any action, as the MoJ did not provide the Team Leader with an outline of a proposal that could have served as the basis for taking this idea forward.

Output 2.4 - Conflicts of interest reduced in the political process

Activity 2.4.1 Workshop on European standards of legislation, regulations and practices on financing of political parties and electoral campaigns in the light of European standards and

Activity 2.4.2 Workshop to support disclosure, reporting, monitoring and enforcement of legislation and regulations on financing of political parties and electoral campaigns

Both activities were foreseen to take place during the reporting period, and the Team Leader has initial meetings with other international (OSCE) and national stakeholders to ascertain needs and discuss coordination. However, the activities were explicitly deemed unnecessary by the MoJ during the 6 March 2007 Steering Group meeting, on the pretext of a busy schedule of the project.

Given the prospect of early elections to take place in the course of this year (at the time of writing of this report, no date had been agreed between the parties), it is in doubt whether it is meaningful to pursue this activity in the near future, as it appears unlikely that they will have an impact on the elections.

But it is also a problem in principle that the Workplan, which had been negotiated and agreed with all stakeholders, is handled with such a degree of flexibility.

Output 2.5 - Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity

Under Output 2.5 of UPAC, a set of activities under the "Public Ethics Benchmarking and Improvement Tools" has been launched last year. Its main objectives are:

- to identify a national level of public ethics against which local authorities can compare themselves;
- to help local authorities to drive up their standards towards those of best;
- to provide an opportunity for local authorities to take responsibilities for their own improvement;
- to help local authorities to assess the impact of their policies in respect of improving public ethics;
- to give the local government national associations the capacity to lead the drive for self-improvement throughout local government.

The Ukrainian counterpart is the NGO *Club of Mayors*, which is in charge of the implementation of the activities. Five municipalities were selected: Artemivsk (Donetsk region), Vinnytsiya, Kam'ianets – Podilskiy (Khmelnitskyi region), Slavutych (Kyiv region), Trostianets (Sumy region). None of these towns, except Vinnytsiya, have a Code of Ethics in their municipalities and therefore expressed a great interest in participating in the programme. The two main documents "The European Score Card" and "On the Implementation of the Model Initiatives Package on Public Ethics at Local and Regional Levels" were adapted to local circumstances and disseminated to all municipalities. On the base of the Score Card, participating municipalities had the opportunity to make a self-assessment and to identify their level of public ethics. The team in charge of the activities processed the contributions and created a National Benchmark composed of the National Score Card and the average scores of the participating municipalities. On 15th and 16th March, the first meeting of the Steering Group was organised in Kyiv, where the plan of action for realisation of the program was approved. On 25th and 26th May, a first peer–review visit took place in Vinnitsiya. Its aim was to study the Code of Ethics of Vinnytsiya, to observe the implementation of this Code at the municipal council, to share experience between the participating municipalities and to identify their strengths and weaknesses. Also, representatives from other towns and experts had the opportunity to meet with key senior staff of the council, to take part in the workshops with the representative groups of middle and junior staff in different departments, and to have discussions with the media and to learn about the relations between the media and the council. The next step is to prepare a set of recommendations for the Vinnytsiya council with the aim of creating a programme of improvement.

Output 2.6 – Public participation in the anti-corruption effort promoted

Activity 2.6.1 Development of the Terms of Reference for a grant programme to support civil society capacity to fight corruption

The Team Leader worked with the project manager of the European Commission on finalising the Terms of Reference for the grant scheme. The work was finalised in January 2007, but a decision was taken at the level of the European Commission to not proceed with the grant scheme.

PURPOSE 3: TO STRENGTHEN THE ANTI-CORRUPTION LEGAL FRAMEWORK AND EFFECTIVE AND IMPARTIAL ENFORCEMENT OF THE CRIMINAL LEGISLATION ON CORRUPTION

Output 3.1 - Draft laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions on Corruption of the Council of Europe (ETS 173/174), the United Nations Convention against Corruption and other relevant international legal instruments

Activity 3.1.1 Expert Opinion and Review of coherence of Draft Concept of Administrative Reform with European anti-corruption standards

Several meetings were held to ascertain progress made with the Administrative Reform Concept, and the needs that could be met by the assistance earmarked through UPAC, foreseen for January 2007. However, currently, the reform concept is not being further pursued by the Cabinet of Ministers, and no meaningful assistance appears to be possible.

Activity 3.1.2 Expert Opinion and Review of the Draft Concept of the Reform of Criminal Justice and Law Enforcement Agencies in line with European anti-corruption standards

Two technical papers were submitted, in April and May 2007 (see Annex IV), to the National Commission for the Strengthening of Democracy and the Rule of Law, which had been in charge of drafting the Concept. The expertise, carried out by Peter Gill/UK and Hans-Joerg Albrecht/Germany was reflected in the final draft Concept, which will be put forward for approval by the President of Ukraine. The most important contribution to the draft Concept was in ensuring that the corporate liability for criminal offences (including for corruption) was included as a provision (this principle is to date still very controversial in Ukraine).

Activity 3.1.5 Support to the drafting of legislation that results from the anti-corruption law package submitted by the President of Ukraine to the Parliament

Two roundtable discussions were held with the Standing Committee on Organised Crime and Corruption of the Verkhovna Rada on 16 and 17 January 2007 discussing the three draft anti-corruption laws which incorporate adjustments to be made in national legislation to meet Council of Europe and UNCAC standards.

The draft laws had been commented on in writing (see Annex V for detailed activity report; written expertise available upon request), and the experts presented their findings and concerns to a group of MPs, their assistants and technical advisors, and NGOs and the media. Due to meticulous preparation by UPAC, these roundtables were acknowledged to have been of a very high quality and judged to be extremely useful by the Committee, which expressed a wish to continue co-operation on the issue.

The draft laws had been adopted by parliament in the first reading in December 2007, primarily as a political gesture to make progress on the issue. However, parliament acknowledged the need to substantially re-draft parts of the legislation (a finding echoed by the CoE experts) and a Working Group inside the Standing Committee was created to come up with changes. However, this Working Group has made very little progress, and has not been in operation since 2 April 2007.

In the meantime, the MoJ is, apparently, working on producing comments to the three draft laws. Since the senior leadership of the MoJ is opposed to using project funds for purposes of

drafting legislation (as mentioned above), UPAC has been kept out of this process; the MoJ has, off the record, asked UPAC not to push for involvement at this stage.

In March 2007, UPAC facilitated the participation of three Ukrainian experts at a regional seminar in Almaty/Kazakhstan that dealt with the drafting of corporate liability for corruption offences (see Annex VI for detailed report).

Output 3.2 - Judges trained and specialised in adjudication of corruption, law enforcement officials trained in the investigation and prosecution of corruption offences

No activities were foreseen or took place on this output during the reporting period.

4.2 Other meetings and missions

UPAC facilitated the participation, in December 2006, of experts in the peer review process under the so-called Istanbul Action Plan, managed by the OECD's Anti-corruption Network for Transition Economies/ACN (see Annex VII for detailed report).

The Team Leader has established a sound network of international and local contacts and participates in regular formal and informal information exchanges with these counterparts.

5 RISKS

Many of the risks as identified and specified in the project documents and the Workplan have materialised. Prior to the 2 April 2007 presidential decree, they have been specifically related to the absence of a coherent policy framework in which systematic reforms are being pursued by all stakeholders horizontally across the institutions, and vertically, by all layers of the administration, including the operational level counterparts of UPAC. Since April 2007, this situation is exacerbated by the ongoing political uncertainty in Ukraine, which puts some question marks behind already commenced reforms; this uncertainty is likely to continue for some time, and possibly until the end of 2007.

6 STRATEGIC OVERVIEW AND CONCLUSION

Twelve months into project implementation there have been severe delays with most of the activities foreseen to be organised in this period, in particular those that had aimed to support policy framework drafting processes (as opposed to individual interventions), specifically those surrounding the Anti-corruption Action Plan. The interventions set out in the UPAC Workplan follow a logic in their sequencing: they are built one upon another, and activities are not simply interchangeable.

The project has been operating against a complicated political background which has also rendered co-operation with the main counterpart institution rather difficult, that is, with the Ministry of Justice. The continued absence of an office raises questions with regard to the commitment of the Ministry of Justice to this project. It also appears that the senior leadership of this Ministry considers that substantial parts of the project – assistance to drafting legislation – are no longer required.

Given the political situation and the perspective of elections later in the year it is difficult to conceive of any immediate improvement of the situation.

In the light of this, it is proposed to continue project implementation at a reduced scale only until the elections foreseen in autumn 2007. This also means that the position of the Team leader which becomes vacant from 1 July 2007 will not be filled immediately, and that for the time being activities will be handled by staff in Strasbourg and an assistant based in the project office in Kyiv.

It is furthermore proposed, the private sector lease agreement for the office be extended by making use of budget lines 4.3 and 4.4. This would not require a budget revision at this stage as sufficient funds are available under this line for the time being.

Within two months following the elections, a Steering Group meeting should be convened to evaluate the situation and to make recommendations regarding the further course of this project. Should it then be decided to continue the project, a revision of the project's logframe, workplan and budget may be required.

7 APPENDICES

7.1 Annex I

European Commission
Commission européenne

Council of Europe
Conseil de l'Europe

Support to Good Governance: Project against Corruption in Ukraine

(UPAC)

Workplan and Logical Framework

(Final version of 5 October 2006)

Timing	Level/ Activity	Description	Sources of verification	Assumptions /Risks	Responsible Institutions	Possible Input Required
Purpose (1): To improve the strategic and institutional framework against corruption in Ukraine						
Objectives supported through activities under Purpose 1: • Anti-corruption strategy and Action Plan; • Effective and efficient coordination and monitoring mechanisms of Anti-corruption Strategy and Action Plan. Sources of verification of objectives reached: • GRECO reports, communications and web-sites of the government and administration of Ukraine; media coverage of strategy and action plan etc. Assumptions/risks: • Commitment of the Ukrainian authorities to counter corruption in coordinated and coherent manner. Counterpart/beneficiary institutions: • Ministry of Justice, Cabinet of Ministers, Presidential secretariat, Ministry of Interior, National Defence Council, State Prosecutor's Office, State Audit Office.						
Output (1.1): Anti-corruption strategy and action plan available						
October 2006 – March 2007	Activity 1.1.1	Support to the drafting and elaboration of the Anti-corruption Action Plan in accordance with NACS, involving all relevant stake holders (national and local government) and including public consultations (civil society and business community representatives).	Workshop/Consultative meeting reports, recommendations, and final outcomes from the drafting process of Action Plan; Action Plan document and content including any potential evaluation/assessment carried out	Delays and controversies on asserting or merging Concept 2006 into a NACS version; Clarity of assignation of tasks and responsibilities in relation with implementing, operationalising and monitoring	Presidential Secretariat; Ministry of Justice; Cabinet of Ministers;	3-4 Experts; Desk Review/Field Work (3-4 days each); Delivery of Training,

			prior to its finalisation; Participatory data of all relevant institutions and key stake holders; Systematic and verifiable outreach efforts to the public and between institutions; Projects reports; Other reporting and communications of relevant Ukrainian institutions; GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	NACS. Creation of a working group; Lack of the institutional capacities and absorption of relevant tasks and responsibilities in line with the endorsed NACS. Political will and continuous institutional support in launching, implementing and monitoring the NACS. NACS not met with broad based public support; Institutional commitment throughout the drafting process, and recognition of assigned lead authority in coordinating the action plan drafting process; Clear time-line for the process to be finalised.	All institutions as assigned by the president's decree.	Technical Papers and guidelines 4-6 working Sessions or Round Table Discussion (RTD); Public Participation
August 2008 – January 2009	Activity 1.1.2	Assessment/Review and Recommendations on the effectiveness of the National Anti-corruption Strategy, its Action Plan and other policy related reforms in Ukraine.	Reports available; Recommendations and Observation as issued.	Assessment unable to draw clear conclusions and recommendations due to the limited time and experience to produce results as per required reforms and measures against corruption.	Designated institution in charge to monitor the implementation of the Anti-corruption Strategy and Action Plan;	2 Experts; 1 Local Expert; Desk review and field work Technical Paper; Round-table discussion to

						present findings to counterpart institution.
October 2006 – January 2007	Activity 1.1.3	**1st National (and regional) Public Baseline Survey**: - Perception, experience, and attitude on corruption and service delivery in the system of justice (police, prosecution, notary service, enforcement of civil and criminal judgements); and - Perception, experience, and attitude on corruption and service delivery in the public administration and the political system (including elected officials and officials of local and regional authorities).	1st Survey Report (in both languages); Other international community reports; All forms of media reporting; GRECO evaluation report[s]; Government response and acknowledgment of findings (reports, interviews, press releases); Specific measures designed in response to system identification tools; Reports on implementation of the Anti-corruption Action Plan.	Quality and Professionalism of Survey Providers (Contractor); Time line; Survey findings are not received adequately and therefore are not incorporated into policy making; Restriction of distribution and publication of Survey findings by beneficiary; A survey on corruption in the Judiciary has been carried out in spring 2006, albeit with a different methodology.	All relevant institutions which will be determined by Survey Providers and Service Provider ToR.	Independent institution as an outside contractor (Survey Provider)
October 2007 - January 2008	Activity 1.1.4	**2nd (Follow up) National (and regional) Public Baseline Survey**: - Perception, experience, and attitude on corruption and service delivery in the system of justice (police, prosecution, notary service, enforcement of civil and criminal judgements); - Perception, experience, and attitude on corruption and service delivery in the public administration and the political system (including elected officials and officials of local and	2nd (Follow up) Survey Report (in both languages); 1st Survey Report in order to compare data; Other international community reports; All forms of media reporting; GRECO evaluation report[s]; Government response and acknowledgment of findings (reports,	Quality and Professionalism of Survey Providers (Contractor); Time line; Survey findings are not received adequately and therefore are not incorporated into policy making; Restriction of distribution and publication of Survey findings by beneficiary;	All relevant institutions which will be determined by Survey Providers and Service Provider TOR.	Independent institution as an outside contractor (Survey Provider)

		regional authorities); - Perception, experience, and attitude on the system of delivery justice (follow-up to May 2006 Survey).	interviews, press releases); Specific measures designed in response to system identification tools; Reports on implementation of the Anti-corruption Action Plan.			
October 2008 - January 2009	Activity 1.1.5	**3rd (Follow up) National (and regional) Public Baseline Survey**: - Perception, experience, and attitude on corruption and service delivery in the system of justice (police, prosecution, notary service, enforcement of civil and criminal judgements); - Perception, experience, and attitude on corruption and service delivery in the public administration and the political system (including elected officials and officials of local and regional authorities);	2nd (Follow up) Survey Report (in both languages); 1st Survey Report in order to compare data; Other international community reports; All forms of media reporting; GRECO evaluation report[s]; Government response and acknowledgment of findings (reports, interviews, press releases); Specific measures designed in response to system identification tools; Reports on implementation of the Anti-corruption Action Plan.	Quality and Professionalism of Survey Providers (Contractor); Time line; Survey findings are not received adequately and therefore are not incorporated into policy making; Restriction of distribution and publication of Survey findings by beneficiary;	All relevant institutions which will be determined by Survey Providers and Service Provider TOR.	Independent institution as an outside contractor (Survey Provider)
Output (1.2): Effective monitoring, coordination and management of anti-corruption measures ensured						
January 2007 –	Activity 1.2.1	Technical advice and guidance/tools on the establishment/or re-enforcement of a structure/body to:	Monitoring reports; reports assessing the efficiency of the NACS and AP.	Sufficient resources (human and financial) made available to establish efficient and effective	TBD	3-4 Technical working group discussions;

August 2007		Monitor; Manage; and Coordinate The implementation of the National Anti-corruption Strategy and its Action Plan.		monitoring and coordination mechanism.		2 Experts; 1 Local Expert.
February 2007	Activity 1.2.2	System comparing process – Study visit and Workshops on existing practices and lessons learned from other European AC mechanisms for the Working Group (3 merged in one trip: Lithuania; Latvia; Slovenia)	Study visit reports; evaluation/feedback of Study visits by participants.	Genuine readiness and capacity to share lessons learned and best practices and to incorporate them into day-to-day operations.	TBD	CoE Kiev Project Team Experts from counterpart (receiving) institutions (in-kind contribution)
April 2009	Activity 1.2.3	Closing conference: Support to national anti-corruption conference to review the implementation of anti-corruption measures in Ukraine.	Final report of project activities against purposes, stipulating achievements.	Project has managed to carry out activities for all purposes foreseen.	All SG/stakeholder institutions reached by the project.	6 experts (international and national) having been involved in key project activities
Output (1.3): Proposals available to ensure the implementation of Article 6 of the United Nations Convention against Corruption (UNCAC) regarding preventive anti-corruption body or bodies						
March 2007	Activity 1.3.1	Seminar[s] on implementation of UN Treaty Law focussed on issues related to UNCAC applicability in Ukraine and its domestic legislation. (One Seminar designed for Codification Department of MOJ); one Seminar designed for all main key players and specifically on Article 6 of	Proposals reflected in legislative changes.	Continued commitment of Ukrainian authorities to the implementation of the UNCAC.	Codification Department of the MoJ; SG members/stakeholders of the projects	2 Seminars 2 international 2 local experts Desk review In-country visits Follow-up recommendation

		UNCAC).				s
Purpose (2): To enhance capacities for the prevention of corruption						
Objectives supported through activities under Purpose 2: • Documents related to the public administration reform amended in the light of anti-corruption standards and best practices; • Guidelines for risks analysis, prevention of corruption and elaboration / implementation of codes of conduct in the judiciary, public administration (in particular in the Ministry of Interior, Prosecution and local and regional authorities available; • Recommendations and draft laws aimed at reducing conflicts of interests in the political process available. Sources of verification of objectives reached: • Activity reports; Web-site and documents of the Central Department of Civil Service, High Council of Justice, Ministry of Justice, CEC, Prosecution, Ministry of Interior, National associations / Congress of local and regional authorities of Ukraine, GRECO, Congress of local and regional authorities (CoE), media Assumptions/risks: • Cooperation of relevant stakeholders						
Output (2.1): Anti-corruption concerns incorporated into the process of public administration reform ("anti-corruption mainstreaming")						
February 2007	Activity 2.1.1	Promotion and introduction of the Draft Law on the Ethics Behaviour for Public Officials in order to facilitate the adoption of the new law.	Number of participants in the promotion and introduction event;	Delays on finlasing the parliamentary sessions and reading of the draft law.	Members of Parliament Public Administration	1 expert
August 2007	Activity 2.1.2	Training on implementation issues with regard to the newly adopted Code of Ethics on behaviour of the Public Officials		Delays in adopting the nexw law by parliament.	Members of Parliament Public Administration	
January 2008	Activity 2.1.3	Training of public administration members on issues related legislation on Civil Service Law in light of international standards and best	GRECO and other international reports acknowledging progress on this issue.	Need for this type of training (need not covered by other donors/organizations)	Civil Service Department	TBD

		practices (i.e., OECD, WB)	Stakeholder/beneficiary feedback.			
September 2007- February 2008	Activity 2.1.4	Corruption Risk Assessment and Prevention Plans: **System Study No. 1** on Corruption Risks within the Public Administration Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (international/local) Media reports Stakeholder feedback	Need and readiness of relevant stakeholder institutions to participate in survey. Relevance and adequacy of methodology developed.	Civil Service Department	2 international 2 local experts Scoping study In-country visits to carry out survey and analyse findings Presentation of findings to stakeholders
March 2008	Activity 2.1.5	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 1 provision of methodology on the implementation of prevention plans.	Various reports (including GRECO reports). Reports used as starting point for initiation of policy changes.	Need for corruption risk assessments and its periodic repetition understood by stakeholders.	Civil Service Department	RTD 2 international 2 local experts
Output (2.2): Risks of corruption reduced in the judiciary						
May 2008- November 2008	Activity 2.2.1	Corruption Risk Assessment and Prevention Plans: **System Study No. 2** on Corruption Risks within the System of 3 different level courts and their administration Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and	Various reports (national/inter-national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Cooperation of Ukrainian judicial authorities in particular of the High Council of Justice. Cooperation of the Ministry of Justice.	MoJ, High Judicial Council	2 international 2 local experts Scoping study In-country visits to carry out survey and analyse findings

		plans.)				Presentation of findings to stakeholders
December 2008	Activity 2.2.2	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 2 provision of methodology on the implementation of prevention plans.	Various reports (including GRECO reports). Reports used as starting point for initiation of policy changes.	Need for corruption risk assessments and its periodic repetition understood by stakeholders.	MoJ, High Judicial Council	Experts who participated in 2.1.1
Output (2.3): Risks of corruption reduced in the prosecution and police						
January 2008 – June 2008	Activity 2.3.1	Corruption Risk Assessment and Prevention Plans: **System Study No. 3** on Corruption Risks within the System of Ministry of Interior (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	Various reports (national/inter-national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Commitment of MoI and relevant departments to participate in survey	MoI	2 international 2 local experts Scoping study In-country visits to carry out survey and analyse findings Presentation of findings to stakeholders
August 2008	Activity 2.3.2	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 3 provision of methodology on the implementation of prevention plans	Various reports (including GRECO reports). Reports used as sources for initiation of policy changes.	Need for corruption risk assessments and its periodic repetition understood by stakeholders.	MoI	Experts who participated in 2.3.1
January 2008	Activity 2.3.3	Corruption Risk Assessment and	Various reports (national/inter-	Commitment of prosecution and	Prosecution	2 international

– June 2008		Prevention Plans: **System Study No. 4** on Corruption Risks within the System of Prosecutorial Services (Development of methodology; System Study Analysis; Identification of risk area and their causes; and Developing prevention proposals and plans.)	national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media) Various reports (national/inter-national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	relevant departments to participate in survey		2 local experts Scoping study In-country visits to carry out survey and analyse findings Presentation of findings to stakeholders
August 2008	Activity 2.3.4	Provision and training of standard guidelines and methodologies in carrying out periodical corruption risk assessments based on the System Study No. 4 provision of methodology on the implementation of prevention plans	Various reports (national/inter-national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media) Various reports (national/inter-national), including GRECO Survey findings acknowledged by stakeholders and publicly discussed (incl. in media)	Need for corruption risk assessments and its periodic repetition understood by stakeholders.	Prosecution	Experts who participated in 2.3.2
June 2008	Activity 2.3.5	Workshop and expert advice for the elaboration, introduction and implementation of codes of conduct in the Prosecution system	Reports and public communications on Codes of Conducts in the prosecution system	Issue not yet covered by other TA programmes; Prosecution committed to introducing Codes of Conduct; Commitment translates into the allocation of human and financial resources to make system efficient and effective	Prosecution	1 – 2 Experts (national and international) TP Workshop
June 2008	Activity 2.3.6	Workshops and expert advice for (the elaboration) and implementation of	Reports and public communications on Codes of Conducts	Issue not yet covered by other TA programmes;	Ministry of Interior	2-3 experts (national and

		codes conduct and disciplinary and redress/appeal procedures in the Ministry of Interior bodies		Prosecution committed to introducing Codes of Conduct; Commitment translates into the allocation of human and financial resources to make system efficient and effective Ministry of Interior is ready to implement such measures		international) TP Workshop(s)
Output (2.4): Conflicts of interest reduced in the political process						
April 2007	Activity 2.4.1	Workshop on European standards of legislation, regulations and practices on financing of political parties and electoral campaigns in the light of European standards and good practices: Council of Europe guidelines "Financing political parties and election campaigns", (GRECO documents) related to immunities, lobbying and corruption of members of national assemblies. (identification of issues of concern as per subject)	Relevant reports, including GRECO reports Public debate on identified issues	Continued commitment of Ukrainian authorities to tackle issues	Central Election Commission MoJ Parliament	2 international experts 2 national experts Desk review and TP paper Workshop
June 2007	Activity 2.4.2	Workshop to support disclosure, reporting, monitoring and enforcement of legislation and regulations on financing of political parties and	Relevant reports, including GRECO reports Public debate on identified issues	Continued commitment of Ukrainian authorities to tackle issues	Central Election Commission MoJ	2 international experts 2 national

		electoral campaigns (follow-up to recommendations from GRECO)			Parliament	experts Desk review and TP paper Workshop
September 2007	Activity 2.4.3	Analysis of tools to minimise the vulnerability of the legislative process to corruption including regulation of lobbying (analysis of national practices, case studies from Europe and USA, elaboration of proposals).	Relevant international reports (including GRECO) Issues at stake discussed through public hearings, in parliament and in the media	Continued commitment of Ukrainian authorities to advance issues UPEPLAC project findings/recommendations to be incorporated and considered.	Ministry of Justice Parliament UEPLAC Project	2 international experts 2 national experts Desk review and TP paper Workshop
October 2007	Activity 2.4.4	Workshop to support the implementation of obligations of elected office holders to declare assets and conflict of interests as well as other measures to reduce, and control conflict of interests in general.	Relevant national and international reports (including GRECO).	Continued commitment of Ukrainian authorities and relevant stakeholders to advance issues	Tax administration TBD	2 international experts 2 national experts Desk review and TP paper Workshop
November 2007	Activity 2.4.5	Workshop and follow-up on GRECO recommendations with regard to immunities and privileges of parliamentarians and judges and other categories.	International reports, incl. GRECO. Media reports Public discussions	Continued commitment of Ukrainian authorities to tackle issues at stake.	Ministry of Justice; Parliament; Supreme Court High Judicial	2 international experts 2 national experts Desk review and

					Council of Judges	TP paper Workshop
Output (2.5): Capacities enhanced at the level of local and regional authorities for the prevention of corruption and strengthening of integrity						
November 2007	Activity 2.5.1	Support the drafting of a short and structured National Handbook on ethics in local government, based the European Public Ethics Handbook, and translation of other relevant documents into Ukrainian	Draft National Handbook	Identification of a competent local expert Help from national and local stakeholders in identifying and accessing sources of information		1 local expert 1 international expert
December 2007	Activity 2.5.2	Raise interest among local government stakeholders and create a Steering Group for supporting public ethics in local government	Letters of interest in taking part in the Steering Group Other forms of interest expressed in relation to the benchmarking programme Clear commitment expressed by at least 5 municipalities in implementing the full programme	Identification of a committed local partner Interest from local stakeholders 5 municipalities are committed to the programme		1 local expert
February 2007	Activity 2.5.3	Organise the first meeting of the Steering Group to revise the National Handbook and to revise and adopt the National Score Card for the benchmarking exercise	Documents of the Steering Group meeting Meeting report Revised National Handbook National Score Card	Identification of a committed local partner Interest from local stakeholders 5 municipalities are committed to the programme		1 local expert 1 international expert 1 workshop
March – April 2007	Activity 2.5.4	Organise the first round of self-assessments and preparation of the National Benchmark on public ethics at local level	Self-assessment forms National Benchmark (composed of the National Score Card plus average scores)	Identification of a committed local partner Interest from local stakeholders 5 municipalities are committed to the programme		1 local expert
May - June 2007	Activity 2.5.5	Selection and training to the use of the peer review and benchmarking process for 15 peer reviewers (5 local elected representatives, 5 senior local public servants and 5 specialists in public administration)	Training report Training evaluation forms filled in by the trainees at the end of the training session	Identification of a local partner Identification of a competent local expert Identification of 15 qualified volunteers for the role of peers		1 Training workshop 1 local expert 1 international expert
September –	Activity 2.5.6	Organise peer reviews in the 5 pilot	5 reviews reports	Identification of a local partner		1 local expert

October 2007		municipalities to evaluate their experience in view of its improvement and, if appropriate, dissemination and replication throughout Ukraine. Each peer review should lead to the preparation of reports including Recommendations for the improvement of the situation in the municipality under review	5 review Recommendations	Commitment of peer reviewers 5 municipalities are committed to the programme		5 review visits of 4 days for peer review teams of 4 persons each
December 2007 – February 2008	Activity 2.5.7	Support the preparation and implementation of Corruption Prevention Plans in the 5 pilot municipalities (risk analyses and benchmarking, review status of local officials, review effectiveness of internal and external monitoring and control mechanisms, implementation of codes of conduct)	5 Corruption Prevention Plans	Identification of a local partner 5 municipalities are committed to the programme		1 local expert
March - April 2008	Activity 2.5.8	Revise the National Handbook on public ethics in the light of the results of the Benchmarking exerice (Score Card, Benchmark, peer review recommendations and Corruption Prevention Plans) and, if appropriate, prepare a draft National Strategy to improve public ethics at local level	Revised National Handbook Possibly, the National Strategy	Identification of a local partner Identification of a competent local expert		1 local expert 1 international expert
June 2008	Activity 2.5.9	Organise the Second Steering Group meeting to adopt the revised National Handbook (and, if appropriate, the National Strategy) and to assess the implementation of the programme	Meeting report Meeting documents Handbook on Public Ethics at local level	Identification of a local partner		1 international expert 1 local expert 1 workshop
September 2008	Activity 2.5.10	Publish the revised National Handbook. Subject to agreement by participating municipalities, review Recommendations and Corruption Prevention Plans could be appended to the Handbook	Publication “Handbook on Public Ethics at local level” Distribution list Reactions from adressees and the media	Identification of a local partner		

(Subject to available resources)	(Activity 2.5.11)	(Subject to available resources, organise a second round of peer reviews in the 5 municipalities in order to assess changes)	(Peer reviews reports Reviews comments and recommendations)	(Identification of a local partner Commitment of peer reviewers 5 municipalities are committed to the programme)		(1 local expert 5 review visits for 5 peer review teams of 4)
Output (2.6): Public participation in the anti-corruption effort promoted						
October 2006	Activity 2.6.1	Develop the terms of reference for a grant programme open to NGOs and other civil society organisations aimed at promoting public involvement in the anti-corruption effort	Call for submission of proposals from NGOs.	N.A.	Council of Europe Kyiv Project Team	Team Leader in conjunction with EC consultants.
Purpose (3): To strengthen the anti-corruption legal framework and effective and impartial enforcement of the criminal legislation on corruption						
Summary of objectives supported under Purpose 3: • Relevant draft amendments in line with international anti-corruption standards and technical reports on specialisation, training, and multidisciplinary approach of law enforcement and judicial authorities in the fight against corruption elaborated Sources of verification of objectives reached: • Activity reports, GRECO reports, draft amendments, technical reports, partner institutions documentation Assumptions/risks: • Commitment and co-operation of relevant partner institutions						
Output (3.1): Draft laws available to improve the prevention and control of corruption in accordance with the Criminal and Civil Law Conventions of the Council of Europe (ETS 173/174), the United Nations Convention against corruption and other relevant international legal instruments						
January 2007	Activity 3.1.1	Expert Opinion and Review of coherence of Draft Concept of Administrative Reform with European anti-corruption standards.	Projects reports; Other reporting and communications of relevant Ukrainian institutions;	Draft Concept available for review by responsible institutions;	Main Civil Service Department of the of Ukraine;	2 Experts Desk review; 1 Fact finding

			Relevant institutions' web-sites disseminating information and providing feed back; Media coverage; GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards; Consistency of coordination and cooperation among all relevant institutions and key players during the entire process; Clear transparent process and a thorough stake holder consultation mechanism; Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions.	MOJ; National Commission for the Strengthening of Democracy and Rule of Law; Secretariat of the President of Ukraine; Council of National Security and Defence; School of Public Administration;	mission; Delivery of Technical Paper (Expertise Opinion); Round Table Discussion (RTD); Follow up.
January 2007	Activity 3.1.2	Expert Opinion and Review of the Draft Concept of the Reform of Criminal Justice and Law Enforcement Agencies in line with European anti-corruption standards.	Projects reports; Other reporting and communications of relevant Ukrainian institutions; Relevant institutional web-sites disseminating information and providing feed back; Media coverage; GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	Draft Concept available for review by responsible institutions; Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards; Consistency of Coordination and Cooperation among all relevant institutions and the key players during the entire process; Clear transparent process,	Ministry of Justice; National Commission for the strengthening of democracy and the rule of law; Secretariat of the President of Ukraine; Council of National Security and Defence.	2 Experts; Desk Review; 1 Fact finding Mission; Technical Paper (Expertise Opinion); Round Table Discussion (RTD); Follow up.

				including thorough stake holder consultation mechanism; Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions.		
October 2006	Activity 3. 1.3	Expert Opinion and Review on the coherence of: - Draft Law on the Judiciary; and - Draft Law on the Status of judges, with European anti-corruption standards.	Projects reports; Other reporting and communications of relevant Ukrainian institutions; Relevant institutions' web-sites disseminating information and providing feed back; Media coverage; GRECO Evaluation Report[s] and recommendations and GRECO compliance reports	Draft Concept available for review by responsible institutions; Political will to undertake necessary reforms, and review the on-going legislative process in line with the European standards; Consistency of coordination and cooperation among all relevant institutions and key players during the entire process; Clear transparent process, including a thorough stake holder consultation mechanism; Available resources provided and committed by the relevant beneficiary and coordinating bodies/institutions; In addition a financial feasibility concept has been provided and agreed/committed by government.	Ministry of Justice; National Commission for Strengthening Democracy and the Rule of Law; Supreme Court; Council of Judges; Secretariat of the President of Ukraine; Association of Judges of Ukraine.	2 Experts; Desk review; 1 Factfinding mission; Technical Paper (Expertise Opinion); Round Table Discussion (RTD); Follow up.
June 2007	Activity 3.1.4	Support the implementation of	Database of legal acts of Ukraine	Continuous commitment of	MoJ	Council of

		GRECO recommendations on compliance with relevant international anti-corruption legal instruments. (Activities need to be defined upon issuance of GRECO report)	GRECO compliance reports Other relevant monitoring reports (OECD)	Ukrainian authorities to adhering to international legal standards.	TBD	Europe local project team Relevant international and national experts
December 2006 – August 2007	Activity 3.1.5	Support to the drafting of legislation that results from anti-corruption law package, submitted by the President of Ukraine to the Parliament. Follow-up will be defined further after review.	Database of Legal Acts	Continuous commitment of Ukrainian authorities to align Ukrainian legal framework with international standards; Sufficient resources (human and financial) made available	MoJ	6 TP's 2-6 experts
December 2006 - February 2007	Activity 3.1.6	Expert support in aligning the draft Law of Ukraine "On Public Service" (new version) with the anti-corruption law package, submitted by the President of Ukraine to the Parliament	GRECO compliance reports Other relevant monitoring reports (OECD)		MoJ	
December 2006	Activity 3.1.7	Support to publicising the contents of the anti-corruption law package, submitted by the President of Ukraine to the Parliament	Database of Legal Acts	Broad-based commitment to fighting corruption, including through relevant legislation.	MoJ, Parliament	Workshop; Local and international experts.
Output (3.2): Judges trained and specialised in adjudication of corruption; law enforcement officials trained in the investigation and prosecution of corruption offences						
April 2008	Activity 3.2.1	Multidisciplinary Conference on issues related to investigation and prosecution of corruption related offences (challenges, national practices and foreign experience, case studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions).	Various reports (including GRECO)	Issue not yet covered by other donors	SG partners	TP

March – May 2008	Activity 3.2.2	Expert Review and Recommendations on the effectiveness of bodies responsible for the pre-trial investigation and prosecution of corruption offences (follow-up to recommendations from GRECO, special emphasis on specialisation and from the Multidisciplinary Conference Conclusions)	GRECO reports	Reform of system of prosecution is underway/finished in conjunction with international legal standards.	Bodies responsible for pre-trial investigation and prosecution.	2 experts (international and national) TP and Fact Finding Mission
September 2008	Activity 3.2.3	In-country training activity for prosecutors and investigators from central and regional offices (case studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions)	Reports, including GRECO	Reform of system of prosecution is underway/finished in conjunction with international legal standards.	Investigation and prosecution authorities from central and regional level and other relevant authorities	1 Training Activity 2 international experts 2 national experts
November 2008	Activity 3.2.4	In-country training activity for police officers and other law enforcement officials from central and regional offices (case studies, pro-active and multidisciplinary approach, participation of relevant bodies, including supreme audit institutions		Reform of system of prosecution is underway/finished in conjunction with international legal standards.	MoI, Prosecution	1 Training activity 2 international experts 2 national experts TP
October 2007-March 2008	Activity 3.2.5	Upon adoption of relevant legislation: Provide training tools through a Manual of Training on Investigation and Prosecution of Corruption related offences.		Reform of system of prosecution is underway/finished in conjunction with international legal standards. Legal acts have adopted	MoI, Prosecution	2 international experts 2 national experts TP
November 2008	Activity 3.2.6	Joint multidisciplinary training for judges, prosecutors, police and other law enforcement officers from central		Reform of system of prosecution is underway/finished in conjunction with international	MoJ, Prosecution, MoI	2 international experts

		and regional levels on pro-active and multidisciplinary approach, specialised officers on finance and economics, inter-agency and international cooperation during criminal proceedings on corruption related offences.		legal standards.		2 national experts TP
December 2008	Activity 3.2.7	Provide Technical Advice on the introduction and application of case management systems for the Ministry of Interior and Prosecution services, in particular of a unique system for registration of corruption and economic crime related offences.		Need not yet covered by other donors.	MoI, Prosecution	2 International experts 2 Local experts Scoping Study TP 2 Workshops (introduction and feedback)
January 2009	Activity 3.2.8	Provision of IT equipment / advice (to be specified if needed)				

7.2 Annex II

Minutes
UPAC Steering Group Meeting 6 March 2007

General:

Representatives from all SG institutions were present at the meeting, i.e. Ministry of Justice, Ministry of Interior, National Security and Defence Council, Prosecutor-General's Office, Presidential Secretariat, Verkhovna Rada, Main Civil Service Administration, Parliamentary Institute, and the Academy of Judges. Further the UPAC Team Leader and the Project Manager from Strasbourg were present, as well as a representative of the European Commission Delegation.

Invitations had been sent by the Ministry of Justice, along with an excerpt of the Workplan for the next 6 months. SG members had been asked to prepare suggestions and comments prior to the meeting.

Discussion:

a) Short presentation on activities so far:

The UPAC Team Leader provided a short synopsis of the activities held under the project so far; a written document had also been handed out to participants at the meeting, summarizing the events. SG members (from the Prosecutor General's Office and from the Academy of Judges) asked specific questions concerning the expertise done in the framework of UPAC on the draft Law on the Judiciary and the draft Law on the Status of Judges. It was agreed that the expertise would be forwarded to SG members. The SG member of the Verkhovna Rada Committee on the Fight against Organised Crime and Corruption commended the high quality of the expertise and roundtable discussions held in the framework of the project on the draft anti-corruption legislation currently being worked on in the Committee.

b) Discussion on up-coming events:

1. Events agreed

MoJ presented participants with a plan of proposed activities. These are the following:

- (UPAC Workplan Activity 1.1.1) Analysis and expertise on the draft Action Plan against Corruption, in light of international standards and best practices and against the up-coming GRECO recommendations. *TIMING: to be finished by 10 April 2007*

- Presentation of the expertise on the draft Action Plan in light of changes that might be necessary as a result of the GRECO recommendations, in two roundtable discussions involving MoI, MoJ, State Civil Service Department, Secretariat of the Cabinet of Ministers, State Security Service, the Parliamentary Committee on the fight against Corruption, the National Security and Defence Council, and the Presidential Secretariat.
  TIMING: third week of April 2007 (precise dates are currently being co-ordinated between the MoJ, the other stakeholders, and will have to be confirmed pending availability of the experts).

- One, possibly two, roundtable discussions on Article 6 of UNCAC and GRECO recommendations and the impact both have on anti-corruption draft legislation which is currently being elaborated, with the Parliamentary Committee on the Fight against Organized Crime and Corruption, involving also representatives of the National Security and Defence Council, Secretariat of the Cabinet of Ministers, the Presidential Secretariat, MoI, MoJ. *TIMING: second week of April 2007* (precise dates are currently being co-ordinated between

the MoJ, the other stakeholders, and will have to be confirmed pending availability of the experts).

The presidential secretariat requested:

- In accordance with the UPAC Workplan, the conduction of expertise on the up-coming draft Concept of Administrative Reform (UPAC Workplan Activity 3.1.1), and on the draft Concept of the Reform of Criminal Justice and Law Enforcement Agencies (UPAC Workplan Activity 3.1.2). *TIMING: Both concepts are currently being finalized, but it is expected that the expertise will be necessary to feed into the debate about their adoption before the end of June.*

2. Events not agreed upon:

The MoJ also suggested conducting a survey of corruption in the law enforcement system, as opposed to a general public opinion survey (UPAC Workplan Activity 1.1.3), the methodology for which had been in the course of preparation for several months now. MoJ said that there are too many public opinion surveys already, and that there was no need to duplicate and spend scarce resources on such an activity. CoE expressed surprise at this suggested turn of direction given that beneficiary institutions, including the MoJ, had been participating in the process of development of the methodology, without indicating that this was an unnecessary activity, and said that this would need to be discussed with the donor, as it would imply re-direction of funds; CoE also made clear that funds had already been spent on this. At the same time, CoE made clear that if the beneficiaries felt that this activity was not needed and duplicating ongoing activities, there was no point in insisting.

CoE raised the question of the activities foreseen according to the Workplan on financing of political parties (UPAC Workplan Activities 2.4.1, 2.4.2). The MoJ felt that there was no scope for an additional event, but that a thematic bloc on the financing of political parties should be part of one of the roundtables held to discuss the recommendations of GRECO.

3. Events pending decision:

The MoJ suggested requesting official CoE expertise on the new version of the Draft Law on the Civil Service (UPAC Workplan Activity 3.1.6), in accordance with the Workplan. However, there was conflicting information from the State Civil Service Department as to the timelines for the new draft to be finished. MoJ said that it would get back on this issue once the timelines were clarified. Expertise was necessary in order to accommodate concerns from GRECO in the new version of the draft Law. This also concerns the draft Law on Code of Conduct of Persons Empowered with State Functions (UPAC Workplan Activities 2.1.1, 2.1.2).

c) Follow-up:

It was agreed that participants would be sent, in electronic format, the minutes of the meeting, and the up-dated chart of activities for the forthcoming months (until end of June 2007). The deadline for the submission of comments or objections would be 23 March 2007. It was also decided that as of now, the SG should meet every three months to discuss progress made and up-coming activities.
The Team Leader will also send the expertise on the draft Law on the Status of Judges and the draft Law on the Judiciary to the Prosecutor-General's office; she will further communicate to SG members the contact details of the other three EC/CoE projects.
The Team Leader, together with the counterpart from the Ministry of Justice, will co-ordinate possible dates for the three roundtables; the MoJ will liaise with the other beneficiary institutions, and in particular the parliamentary committee; the Team Leader will confirm availability of experts on the potential dates.

7.3 Annex III

List of Mass Media

17 January 2007

1. RADA – Parliamentary TV channel
2. LUX - TV company
3. UTR - TV company
4. RADIO ERA - radio channel
5. TOVARYSH - newspaper
6. UT-1 – the National TV company
7. JURYDYCHNA PRAKTYKA (‘Legal Practice’) - newspaper
8. ROSBALT UKRAINE - news agency
9. GOLOS UKRAINY (‘The Voice of Ukraine’) - newspaper

7.4 Annex IV

Council of Europe
European Commission

Conseil de l'Europe
Commission européenne

Crime Problems Department
Directorate General I –Legal Affairs

May 2007

Support to good governance: Project against corruption in Ukraine - UPAC

Draft Expert Opinions on Draft Concept of the State Policy in the Sphere of Criminal Justice and Law Enforcement in Ukraine

By: Peter Gill

and

Hans-Joerg Albrecht

PCRED/DGI/EXP(2007)17

For more information, please contact:

Technical Co-operation Section *Department of Crime problems* *Directorate General I – Legal Affairs* *Council of Europe* *67075 Strasbourg CEDEX* *France*	*Tel: + 33 3 90 21 46 46* *Fax: + 33 3 90 21 56 50* *Email:vesna.efendic@coe.int* *Website: www.coe.int*

This document has been produced with the financial assistance of the European Union and of the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinions of the European Union and of the Council of Europe.

Background

This Technical Paper was prepared in the framework of the EC/Council of Europe 'Project against Corruption in Ukraine – UPAC', and as a response to a request by the National Commission for the Strengthening of Democracy and the Rule of Law. While Peter Gill commented on the pre-final version of the draft Concept of the State Policy in the Sphere of Criminal Justice and Law Enforcement Reform in Ukraine (March 2007), Hans-Joerg Albrecht commented on the draft Concept's final version (April 2007).

Concept of the State Policy in the Sphere of Criminal Justice and Law Enforcement in Ukraine	**Expert Opinion of Peter Gill**[2]
Section I	
Objective and Tasks of the Concept	
The objective of the Concept on the State Policy in the Sphere of Criminal Justice and Law Enforcement in Ukraine (hereinafter – the Concept) is to establish criminal justice and law enforcement system in Ukraine, which operates basing on principles of the rule of law in accordance with European standards and guarantees respect for human rights and fundamental freedoms.	
The tasks of the Concept, stemming from its objective, are the following:	
1) to create a scientifically grounded methodological framework for establishment of a new system of criminal justice and law enforcement agencies;	
2) to outline the steps and order of measures to reform the system of criminal justice and law enforcement agencies;	
3) to achieve practical implementation of the following main measures:	
• to humanise criminal legislation through decriminalisation of a significant part of offences punishable under criminal law and through classification of the latter into crimes [zlochyny] and criminal misdemeanours [kryminalni prostupky];	
• to ensure fair criminal trial;	
• to secure procedural equality of rights of participants of the criminal	

[2] Expert Opinion prepared by Peter Gill, Professor of Politics and Security Liverpool John Moores University, UK and supported by the joint CoE/EC project 'Support to Good Governance: Project against Corruption in Ukraine (UPAC)'

proceedings, based on adversarial and discretionary principles;	
• to unify, to the extent allowed by the specifics of the criminal procedure, procedures of judicial consideration of the criminal offence cases with those in civil and administrative adjudication;	
• to reform procedure and organisation of the pre-trial investigation of the criminal offences;	
• to structure the system of the pre-trial investigation bodies in accordance with new procedures of such investigation and in line with paragraph 9 of the Transitional Provisions of the Constitution of Ukraine;	
• to carry out other required institutional changes in the system of criminal justice and law enforcement agencies;	
• to introduce a probation procedure and to widen the scope of use of restorative justice (mediation) procedures.	
SECTION II	
The State of the Criminal Justice Sphere and Law Enforcement Agencies	
During the years after Ukraine regained its state independence and adopted Constitution criminal justice has not experienced substantial transformations. Theory of criminal law and theory of criminal procedure have not broken free from the doctrinal legacy of the Soviet era.	
The Criminal Code of Ukraine of 2001 does not differ in conceptual terms from that of 1960. Criminal procedure legislation of Ukraine was significantly improved in 2001 only in sections concerning review of the first instance court decisions, namely new types of appeal were introduced.	
Regulation of the pre-trial investigation and court consideration of criminal cases in the courts of the first instance remained in fact unchanged in its essence. Pre-trial investigation is still divided into inquiry [diznannya] and investigation [slidstvo] as it was introduced in the Criminal Procedure Code of 1960. Such division is unjustified. The criminal case can be instigated by both the inquiry body and the investigation body. The same bodies can conduct investigative actions, gather and fixate evidence, and most importantly, can file criminal cases with courts with the only difference – for the investigation it is done through an indictment and for the inquiry – through a protocol form. Nevertheless such a difference does not affect the essence of the	

investigation, thus making such a division unnecessary.	
The aspirations to adopt a new Criminal Procedure Code of Ukraine without a change of the concept of criminal justice; without fundamental reform of the pre-trial investigation stage of the criminal process; without creation of new standards for operation of the bodies within the system of criminal justice will simply be an attempt to conserve the existing model regardless of its inconsistency with the principle of the rule of law and international obligations of Ukraine.	
Versions of other reforms proposed previously provided solely for changes of the bodies which were to conduct procedural activities. Such proposals did not solve the existing problems.	
The European Court of Human Rights, having acknowledged in a number of its judgments the facts of violation by Ukraine of the prohibition of torture or inhuman or degrading treatment (case of *Afanasyev v. Ukraine*, et al.), of the right to a fair trial in criminal cases (cases of *Kobtsev v. Ukraine*, *Merit v. Ukraine*, et al.), etc., has thus detected systemic problems in the sphere of criminal justice in Ukraine.	
The system of bodies which are called "law enforcement" (bodies of the interior, security service, border guards, state tax service, etc.) inherited by Ukraine from the Soviet period has failed to transform from a mechanism of persecution and repressions into an institution for protection and restoration of infringed rights of individuals. No effective measures to reduce the level of corruption within this system have been undertaken. As a result there is a lack of proper public trust in these bodies.	
SECTION III	
Directions of the Reforming	
Comprehensive reform in the sphere of criminal justice and law enforcement agencies should cover the following areas: 1) criminal law; 2) criminal procedure; 3) bodies of the criminal justice system and law enforcement agencies; 4) procedure of execution of court judgments in criminal cases.	Given the aims of the new Concept, that is, to move away from the doctrinal legacy of the Soviet era, to remove the repressive and corrupt elements from and increase public faith in the criminal justice system, it would be appropriate to include a fifth point here, such as: 'procedures to ensure the integrity and transparency of the criminal justice process'.
Introduction of new approaches in the sphere of criminal responsibility and criminal justice will make it possible to change fundamentally the conditions for guaranteeing	New approaches to criminal justice will certainly contribute towards more effective protection of human rights etc., but alone cannot 'change fundamentally

human rights, to establish a belief in person and in the society of effectiveness of the principle of the rule of law, to raise the level of public trust in Ukraine towards institutions of the government overall and bodies of the criminal justice system in particular. It will eventually result in quality changes in the Ukrainian legal system, as expected by the society.	the conditions for guaranteeing human rights' – that depends on much broader political, social and cultural changes. There is a slight danger that the current phrasing makes impossible promises.
Criminal justice shall ensure strict adherence to human rights in the course of activities undertaken by the bodies which are empowered to investigate criminal offences and by the courts in accordance with the Constitution of Ukraine and international human rights treaties, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter – the European Convention on Human Rights) taking into account the practice of its interpretation by the European Court of Human Rights.	
The goal of the institutional reforming of the criminal justice system bodies is to establish a system complying with European standards. The system of law protection bodies [pravookhoronni organy] shall be transformed into a system of the law enforcement agencies which will primarily be tasked with ensuring public order in the society. Such a reform will provide that agencies in question will no longer have an inappropriate function of ensuring protection of the individual rights which should belong to courts in Ukraine.	While appreciating that this is a summary, the statement that law enforcement agencies 'will primarily be tasked with ensuring public order…' is unhelpful, as is the statement that it is 'inappropriate' that they protect human rights (this is also contradicted at beginning of section III of the Draft). I am assuming that this statement is made in an effort to distance the agencies from Soviet and immediate post-Soviet times. In 1996, when the new Constitution was adopted, some changes were agreed in the Ministry of Internal Affairs (MIA) of which a key component was that: '[t]he militia should focus on protecting the life, health, rights and freedoms of the individual and the interest of society and the state.' (Beck et al, 2004, 307) It is understood that the problem with such a broad view of the militia function is that it was the basis for widespread interference in citizens' lives and that individuals' rights were, in practice, normally subordinated to the interests of the state and its officials. However, while it is appropriate to seek a reduction in the role of law enforcement agencies, the statement in the draft goes too far. Rather, reference might be made to the following: 'The main purposes of the police in a democratic society governed by the rule of law are: to maintain public tranquillity and law and order in society; to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the ECHR;

	to prevent and combat crime; to detect crime; to provide assistance and service functions to the public.' [CoE Committee of Ministers (2001) 10] Therefore, the final sentence in the paragraph should be removed: it is the function of all criminal justice agencies to 'protect and respect' human rights.
The reforming of the criminal justice system should be carried out in line with the judicial reform according to the Concept for the Improvement of the Judiciary to Ensure Fair Trial in Ukraine in line with European Standards, approved by the Decree of the President of Ukraine of 10 May 2006 No. 361.	
1. Conceptual Changes in the Criminal Legislation	
All punishable deeds, identified in the current Criminal Code of Ukraine, are now encompassed by the notion of "crimes". First of all, such approach does not take into account the existence in the criminal law of deeds that vary in the degree of their danger to the society (for example, murder and violation of the right to education; state treason and violation of the labour law, etc.), which all nonetheless have the same legal consequence for the person – a conviction.	
Secondly, it excludes from the remit of criminal procedure guarantees persons who committed administrative offences, which are punished by penalties that are criminal in substance (short-term arrest, confiscation of property, withdrawal of a special right, etc.). The case-law of the European Court of Human Rights, in particular judgments against Ukraine (judgment in the case of Gurepka v. Ukraine), indicates that such approach is incorrect.	
All criminally liable deeds in the future should be covered by a new unifying notion of "**criminal offences**" with the relevant differentiation, taking into account particularity of each of the type, into *crimes* [zlochyny] and *criminal misdemeanours* [kryminalni prostupky].	
Main criteria for such differentiation will be the following features:	
• degree of danger to individuals, society or the state of the deed punishable under criminal law;	
• type of the criminal legal consequences.	

Criminal offences shall, therefore, be:	
a) *crimes* – deeds, which represent the highest and high degree of danger for individuals, society or the state. Amongst the types of punishment for a crime should be deprivation of liberty, including a life sentence. Crimes will entail a conviction of the individual;	
b) criminal misdemeanours – deeds, which represent a low level of danger for individuals, society or the state. The commission of criminal misdemeanours will not entail deprivation of liberty and conviction of a person. It will be possible to introduce criminal liability of legal entities for criminal misdemeanours.	The general section regarding division between 'crimes' and 'misdemeanours' is appropriate in that it separates 'crimes' from 'administrative offences'. However, there is one issue I would raise, not because the draft is inconsistent with European rights standards, but because it is a problem in many jurisdictions. This is the issue of 'criminal liability of legal entities for criminal misdemeanours.' It would be better not to exclude the possibility that 'legal entities' may commit serious crimes up to, and including, homicide. In the UK, for example, it is extremely difficult to convict companies of serious crimes because the way that responsibilities are fragmented through a corporate body make it unlikely that the necessary fault will reside entirely in one individual (Slapper and Tombs, 1999, 30-34). However, it can lead to a loss of legitimacy in the legal process if corporations can only be convicted of 'misdemeanours' however serious the offence.
The category of criminal misdemeanours will also include those offences currently provided for in the Code of Ukraine on Administrative Offences, which fall under court jurisdiction and are not of administrative nature (do not concern the administrative procedures), such as hooliganism, petty theft, etc. Such offences will fall under criminal court jurisdiction. Liability for actual administrative offences (non-compliance with the rules which relate to administrative procedures) should be withdrawn from under the court jurisdiction and transferred for consideration in non-judicial state authorities.	
Such approach will ensure that:	
a) individuals to whom the non-judicial state authorities applied administrative penalties will have an opportunity to appeal against such penalties in administrative courts;	
b) individuals who are held liable by court for commission of a criminal misdemeanour will have an opportunity to appeal against the court decision through the existing procedures.	
Such changes, in particular, will eliminate violation of the right of person to appeal against court decisions, which now exists in the cases of administrative offences in	

conflict with Article 2 of the Protocol No. 7 to the European Convention on Human Rights.	
Introduction of the mentioned innovations will require review of provisions of the Criminal Code, as well as adoption of the Code on Administrative Misdeeds which will replace the existing Code on Administrative Offences. As a result, provisions of the General Part of the Criminal Code will require amendments to define peculiarities of liability of natural and legal persons for criminal misdemeanours (provisions on the offender, his ability to be held liable, the guilt, complicity, types of punishment, relief from punishment and serving of the sentence, conviction, etc.). Provisions of the Special Part of the Criminal Code shall be divided into separate chapters on crimes and criminal misdemeanours.	
Revision of the Criminal Code shall also be aimed at the further humanisation of the criminal legislation, at the optimisation of the criminal legal sanctions, at the improvement of certain institutes of the General Part of the Code, etc.	
2. Conceptual Provisions of a new Criminal Procedure Code	
2.1. Criminal procedure in Ukraine shall be reformed based on the following principles:	
• procedural equality of rights of the prosecution and defence parties;	
• clear delimitation of the tasks and of the procedure at the stages of pre-trial and court proceedings;	
• introduction of a new, free from accusatory bias, procedure for pre-trial proceedings, in the course of which factual data as to the criminal offences and persons who committed those will be gathered by covert and overt methods, established by law;	Europe includes systems of criminal justice some of which are inquisitorial and others adversarial. Acknowledging the right of countries to determine their own justice system, European standards do not seek to advocate one or the other but attempt to accommodate 'best practice' from either. However, in doing this, care must be taken that incompatible aspects of the two systems are not incorporated since that may lead to confusion. At the moment, reading 2.2 Pre-trial proceedings, it seems as though there may be some such incompatibility. It proposes an essentially inquisitorial procedure by which 'Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.' It says that these proceedings 'shall be devoid of excessive
• adequacy of the procedures of the pre-trial and court proceedings to the aim and tasks of criminal justice;	
• broadening of the scope of application of restorative justice (mediation) procedures;	
• improvement of the judicial control and prosecutorial oversight during pre-trial proceedings;	

• concentration of the court consideration of all cases at first instance in the local courts; • creation of procedures which will enable attainment of the goal of punishment of the guilty persons without infringement of human rights and fundamental freedoms. *2.2.* Pre-trial proceedings *shall be devoid of excessive formalisation. Current inquiry [diznannya] and investigation [slidstvo] will be unified into one procedure of the pre-trial investigation.* The Code will stipulate different proceedings regarding crimes and criminal misdemeanours. Investigation of criminal misdemeanours will in particular provide for expedited procedures without a possibility of application of the preventive measure in the form of pre-trial detention. Pre-trial proceedings will consist of various types (overt and covert) of gathering and registration of the factual data on circumstances of the deed, which are necessary in order to sustain charges in the court. Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.	formalisation.' Yet, it also proposes that adversarial principles will ensure the procedural equality of rights of defence and prosecution. This is correct, but experience with the adversarial system in the UK is that arguments between defence and prosecution over the provenance and admissibility of evidence can be extensive. Therefore, it will be difficult to avoid 'formalisation', for example, the records of the judicial sanction for the use of covert methods, the records of resulting communication interceptions, other evidence of surveillance activities etc.
Ensuring of the procedural equality of rights of the parties will be based, first of all, on the adversarial and discretionary principles. To this end it is necessary to improve procedural rules for gathering of information and its submission to the court by parties of defence and prosecution. At the same time, it is necessary to provide for mechanisms to prevent abuse of the granted procedural rights (submission of incorrect information, procrastination of the proceedings, etc.).	
The procedure regulating the beginning of the pre-trial investigation, which will be carried out exclusively in connection to the fact containing elements of the criminally liable deed, needs to be simplified. The pre-trial proceedings will be deemed as commenced from the moment of address by a natural or legal person or of receiving information by other means. Relevant officials will have a responsibility to instigate pre-trial proceedings immediately upon obtaining such address or information. All procedural actions which do not require special court authorisation may be conducted from the moment when pre-trial proceeding began.	The Draft refers to the 'responsibility' of officials – presumably police and prosecutors – to instigate pre-trail proceedings on receipt of information of a possible crime; does it need to be made clearer as to whether they have a legal duty to investigate or whether they have discretion not to investigate under certain circumstances? Police normally do have such discretion given that they receive many more reports of crime than they have the resources to investigate. But where there are suspicions of corruption among police, then it is important to make clear those circumstances, since otherwise it will be impossible to determine subsequently whether a decision not to investigate was reasonable or not.

The role of the prosecutor in the pre-trial investigation will be to exercise control over the adherence to law in the course of such investigation according to the model of control functions of prosecutors in European states. The prosecutor shall assess and direct the course of investigation taking into account his/her future position in the court while supporting public prosecution.	This is the first of several places where reference is made to the role of the prosecutor (there are others under 3.1 and 3.2). These references establish clearly that the prosecutor will be responsible: for ensuring the legality of the pre-trial investigation [here; five lines below: 'control over the adherence to laws in the course of the pre-trial investigation… ; 'control over the legality of the pre-trail investigation' at 3.2 sub-section 2)]. a) the prosecutor determines whether the investigation shall be terminated or what charges are to be brought [at eight lines below and 3.1] and, b) conducts the prosecution in court [at ten lines below and 3.2 sub-section 1)]. However, there is some ambiguity as to the relationship between the prosecutor and militia in the investigation. The first reference is that the prosecutor will 'direct the course of (the) investigation…' but four lines below, the Draft refers to the 'procedural guiding of individual investigations…' Paragraph 3.1 refers to 'control over the pre-trial investigation…' but this refers to the decision as to whether or not the investigation should be continued, not how it is conducted. There is some ambiguity here that needs to be resolved in the interests of both prosecutors and law enforcement agencies. European standards incorporate both models in which the prosecutor directs police investigations compared with those in which police are independent [CoE Rec (2000) 19, paragraphs 21-23] but a precise statement of what is proposed could be included in the list of principles under 2.1 of the Concept.
Thus, the prosecutor will have the following powers in the criminal process:	
• control over the adherence to laws in the course of the pre-trial investigation exercised through procedural guiding of individual investigations (taking decisions as to the continuation or termination of the pre-trial investigation, etc.);	
• criminal prosecution of the person, including bringing charges and drawing up of the indictment act;	
• sustaining of public prosecution in the court.	There is a related issue that perhaps needs to be clarified in the Concept. This is whether the prosecutor is to be empowered to conduct investigations. The concern in the Soviet and post-Soviet period was that the procuracy was all-

	powerful throughout the criminal justice process. The Concept, in seeking to move away from this, does not say that investigation will be a function of the prosecutor (see previous comment) but it does not make clear that it will not be. In Europe, some prosecutors do conduct investigations [CoE Committee of Ministers (2000) 19, 3], but the CoE Parliamentary Assembly has stated more recently that the future investigations 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' (PACE, 2005, 166). There is certainly a strong argument for separating the institutions for investigation and prosecution so that they may 'check and balance' each other.
The Code shall clearly define the legal status of the victim, suspect and the accused; establish an exhaustive list of preventative measures, their duration, procedure for their application, procedure for appeal and review in accordance with the requirements of the Constitution of Ukraine and the European Convention on Human Rights.	
It is necessary to provide for in the legislation that the maximum duration of detention of the person without a court sanction (72 hours), as provided for in the Constitution of Ukraine, shall only be acceptable in exceptional cases. At the same time it is also necessary to constitute a procedure according to which further detention of the person following the first 24 hours will only be possible with the court sanction. Such procedure will comply with Article 9 of the 1966 International Covenant on Civil and Political Rights and with Article 5 of the European Convention on Human Rights.	The Draft is correct to note that attention will need to be paid to the length of time for which persons may be detained before being brought before a judge. ECHR Article 5(3) requires that this be done 'promptly'. The draft refers to 'exceptional cases', but the ECHR requires that a state may 'derogate' from its obligations under the Convention only to an extent that is strictly required by an emergency that threatens the life of the nation (Starmer et al, 2001, 3-4). The UK, for example, has done this in the case of its terrorism legislation.
As a general rule testimony of the person will have evidential validity under condition that such information is provided to the court directly. The parties of defence and prosecution will have to notify and provide each other with all available to them factual information about the deed. Relevant information will have to be examined within reasonable time prior to the beginning of court proceedings.	
Defence attorney (representative) shall be selected by the person in question (suspect, accused, victim) from among the advocates. Bodies of the pre-trial investigation, prosecutor and court should have no procedural opportunities to interfere with the selection of the defence attorney and to prevent his/her participation in the case. It is necessary to ensure procedural guarantees for confidentiality of communications	

between defence attorney (representative) and suspect, accused, victim.	
The Code has to provide for an appropriate procedure of obtaining free legal aid by persons who are victims and to the suspects (accused) in the criminal offences.	Somewhere in the Concept, there should be reference to the duty on police to inform promptly anyone arrested 'in a language he understands…the essential legal and factual grounds for his arrest' [ECHR Article 5(2)]. Also, any person taken into custody must be advised of their right to free legal assistance [ECHR Article 6(3)(c)].
As a rule, the accused has to remain free from detention until the court delivers a judgment. The accused can be held in custody only if there is no possibility to secure attainment of the objectives of justice by other means. In case of pre-trial detention the accused is to be granted additional guarantees, in particular, the right to an obligatory participation of the defence attorney.	
The parties shall have equal access to expert opinions. Selection of experts shall entirely be within parties' discretion.	
2.3. Procedures for court control at the stage of the pre-trial proceedings need to be further improved. Constitutional rights and fundamental freedoms of the person can be temporary limited only upon court's sanction. The judge will:	
• sanction carrying out of special investigative activities (interception of information from the communication channels, instalment of covert devices for surveillance over a place or a person, review and seizure of correspondence, etc.);	
• sanction all preventive measures (pre-trial detention, bail, written undertaking not to leave a place, etc.) and other measures of the procedural coercion, connected to the temporary restriction of personal and proprietary rights of the person (property arrest, removal from office, temporary ban to participate in commercial activities). The issues of application of the measures of procedural coercion must be decided at the court hearing with adherence to equality and adversarial principles with obligatory participation of the parties of prosecution and defence;	
• fixate information as evidence in separate instances (e.g., interviewing of the seriously ill witness or of the witness whose life and health are in danger in the course of pre-trial investigation);	
• review complaints on actions of the investigator, prosecutor during the pre-trial proceedings, etc.	

The judge who participated in the pre-trial proceedings will have no right to consider criminal case at the stage of the court proceedings.	
It is also necessary to improve the procedure for the judicial consideration of criminal cases at first instance. This procedure should be harmonised with civil and administrative adjudication in part where there should be no discrepancies based on the subject and task of the criminal adjudication. All cases of crimes and criminal misdemeanours at first instance should be considered exclusively by local courts with criminal circuit courts created therein to consider the gravest crimes.	
In the circuit criminal courts a jury trial shall be functioning, whereby a panel of jurors will issue a verdict in the criminal cases on the issues of fact only (for example, whether the deed took place, whether it was committed by the accused, whether he/she is guilty of committing this deed), and a person presiding in the process (professional judge) on the basis of the verdict will decide on the issues of law.	
The judge will study only the indictment and the registry of materials, documents and statements which may be used as evidence. Materials, documents and information about testimony shall be provided to the court directly by the parties of defence and prosecution.	
At the same time it is necessary to introduce an institute of the recognition in the courts of facts which are not disputed by the parties, instead of their scrutiny during the judicial consideration of the case.	
It is necessary to significantly widen the scope of application of the procedures of restorative justice (mediation), in accordance with which the judge will make a decision as to the agreement on pleading guilt or reconciliation between the accused and the victim.	Section I of the Concept refers to the introduction of a probation procedure and the intention to widen the scope of the use of 'restorative justice (mediation) procedures' and further reference is made here. There are a number of points to be made here: first, restoration and mediation are slightly different – the objective of the first is to 'restore' the victim to his/her situation before the crime, while the second is to provide some way of resolving a conflict between people. But in neither case do they sit very comfortably with ideas of human rights, that is, the protection of the rights of individuals from the abuse of power by state agencies within the criminal justice process. Rather, both refer to the relations between private individuals. The point of reparation is to place the victim more centrally into the decision-making process – this is a worthwhile enterprise to the extent that victims are often excluded from criminal justice processes but it requires much thought as to how it will be done within a

	framework of justice that is otherwise centred on establishing the guilt or innocence of suspects and their consequent punishment. For example, the Concept incorporates the right of victims to legal representation and refers here to the judge deciding on, presumably, the acceptability to the court of 'reconciliation between the accused and the victim'. But studies of restorative justice schemes suggest that they should be conducted independently of courts and lawyers, especially if they operate on an adversarial basis (Zedner, 2002, 443-47).
In order to provide the court with information on social characteristics of the person, who is being accused or is found guilty of committing a crime, in order to make a decision on selection of the most adequate preventive measure for this person or type of punishment, the probation service shall prepare and submit to the court materials on the social evaluation of the person with relevant recommendations.	
Special juvenile justice procedures shall be developed which will allow for better consideration of the rights and interests of the minors. Criminal cases in which the accused are minors shall be considered by the court comprising a professional judge and two people's assessors.	
In individual cases (for example, when the person who is accused of committing a criminal misdemeanour can not attend the court hearing due to certain circumstances) it is necessary to provide for a court hearing in absentia. In such cases participation of the defence attorney is obligatory.	
It is also required to envisage an order proceeding, whereby the judge, without holding a court hearing, delivers an order of court on the punishment of a person for commission of the criminal misdemeanour if the person pleads guilty of its commission and does not oppose the penalty which can be ordered by the judge. The person can be held criminally liable through the order proceeding only if he/she has a defence attorney and only if the opinion of the victim is taken into consideration, as well as the opinion of the prosecutor in the cases of the public accusation.	The Concept proposes that a person pleading guilty to a misdemeanour can only be sentenced by a judge if the opinion of the victim has been taken into consideration. There are two issues here, though current European rights standards require no particular approach. First, there is debate as to how much victims' views should be taken into account at sentencing – some say it is a good thing to give the victim a 'voice' at this stage – but others point out that possible inequalities in sentencing might result if judges take into account powerful victim statements in one case which are absent in another case. Second, it may just not be possible to obtain the views of the victim – research shows that some victims take a strong interest in the progress of the case while others do not (Zedner, 2002, 443-47). Some just prefer to try to forget their unpleasant experiences. There is no reason in terms of rights standards why judges

	should be unable to pass sentence in such cases.
Particularities of the closed hearings and special procedures for consideration of the evidence (for example, interrogation as a witness of the person who is under the protection) will be defined.	
With the view of respecting the presumption of innocence it is necessary to abrogate the possibility for courts to remit a case for additional investigation.	
The procedure for review of the court judgments in criminal cases should be improved. Appellate courts should function only as courts of appeal instance. The courts of the first instance should be deprived of the right to decide on the further fate of the appeals. To review cases in cassation, it is necessary to set up the High Criminal Court. The Supreme Court of Ukraine shall review court decisions in criminal cases only under exceptional circumstances.	
Opening of the case based on the newly discovered circumstances shall be carried out upon decision of the court. Prosecutors should be deprived of the exclusive right to initiate review of criminal cases based on the newly discovered circumstances. Such a right should belong to all parties to the proceedings and persons whose interests are affected by the judgment in the case.	
3. Reform of the bodies of criminal justice system and law enforcement agencies	
Reform of the bodies which carry out pre-trial investigation and/or secure public order shall be focused on the improvement of their operations in order to raise the level of human rights and fundamental freedoms protection, to reinforce fight against criminally punishable offences, and to increase public confidence in their work. Such reforming is supposed to ensure unified approaches, coherence and consistency of measures improving performance of these bodies, to harmonise forms and methods of their operation with European standards.	Please see comments made above (on changing 'fundamentally the conditions for guaranteeing human rights'). The statement here seems to contradict that made earlier about removing the protection of rights from the responsibilities of these agencies.
Reforming measures shall cover, in particular, the bodies of:	
• *Prokuratura*;	
• Security Service of Ukraine;	
• Ministry of the Interior of Ukraine;	

• State Criminal Execution Service of Ukraine;	
• State Border Guards Service of Ukraine;	
• State Customs Service of Ukraine;	
• State Tax Service of Ukraine;	
• Military Service of Order in the Armed Forces of Ukraine.	
The reforming of the said bodies will include changes in the forms and methods of their operation and their institutional reorganisation aimed at:	
• delineation of the political and professional leadership;	
• development and implementation of the professional standards of conduct of employees of the law enforcement agencies;	
• demilitarisation of the system of the law enforcement agencies, namely reduction in the number of posts which can be filled by persons of lower and higher military ranks;	
• carrying out of activities to secure public order in co-operation with the civil society through various forms of such co-operation;	For the reasons detailed above (on changing 'fundamentally the conditions for guaranteeing human rights'), I suggest replacing 'public order' with a phrase such as 'public safety and security'.
• changing approaches to the evaluation of the effectiveness of work of the criminal justice system bodies.	
3.1. Pre-trial investigation of crimes and criminal misdemeanours will be carried out by bodies of the inquiry and of the investigation, which shall in the future be unified under the name of bodies of the pre-trial investigation.	
Investigators of these bodies will gather materials about circumstances having significance for the case which will be fixated as evidence by the court.	
The role of the prosecutor will lie in the control over the pre-trial investigation through sanctioning of the continuation or termination of the investigation, in conducting criminal prosecution of the person and in support of the public prosecution in court.	
To ensure the adversarial principle and procedural equality of the parties of prosecution and defence, it is necessary to complete the establishment of the Bar as an independent self-governing profession which exercises the function of defence in the criminal proceedings, and to foresee a possibility to set up and regulate the operation of private detectives (detective agencies).	It is a feature of Anglo-American legal systems that lawyers are a self-governing profession in which those specialising in criminal law may, at different points in their careers, act either as defence lawyers, prosecutors or judges. The proposal in the Concept appears to envisage separate professions of prosecutors and defence lawyers – is that intentional?

	Given the rapid growth of the private security sector in the last twenty years, it is a very good idea to provide for its regulation. However, it would be best to substitute a term such as 'private security companies' for 'private detectives' or 'detective agencies' since these are more restricted terms. Since PSCs are not public bodies, by definition, the ECHR does not apply to them and this makes it all the more important that they be subject to some form of regulation (see, for example, Schreier & Caparini, 2005). The Parliamentary Assembly of the CoE proposes: e. Private companies dealing with intelligence and security affairs should be regulated by law, and specific oversight systems should be put in place, preferably at European level. Such regulations should include provisions on parliamentary oversight, monitoring mechanisms, licensing provisions and means to establish minimal requirements for the functioning of those private companies. [CoE Parliamentary Assembly 1713 (2005)]
3.2. It is necessary to bring constitutional functions and principles of organisation of the *Prokuratura* in line with European standards (according to the opinions of the Venice Commission and recommendations of the Parliamentary Assembly and Committee of Ministers of the Council of Europe).	
The Soviet model of the *Prokuratura* shall be transformed into the system of public prosecution which will be comprised of prosecutors with independent status and which will be headed by the Prosecutor General.	
The Constitution shall provide for the following functions of the prosecutors: 1) sustaining public prosecution in court; 2) control over the legality of the pre-trial investigation; 3) oversight over the enforcement of laws during execution of judgments in criminal cases and also in the process of application of other measures of coercion which are connected to the restriction of the personal freedom.	See comments at *7 and *8 [REPLACE] above
During the transitional period the prosecutors may be allowed to preserve the function of the representation of interests of persons and the state in court in cases defined by	

law and only upon request of relevant persons.	
Organisational structure of the prosecutor's bodies shall be built according to the functional principle (guiding of the pre-trial investigation and sustaining of the public prosecution in court; representation of the interests of persons and of the state; oversight over the enforcement of laws in the process of application of coercion measures) and be in line with Recommendation of the Committee of Ministers of the Council of Europe Rec(2000)19.	
The law shall define the status of prosecutors that will ensure their independence not only from outside political or other illegal influence but also from the procedural interference of the higher ranking prosecutor.	
To this end a new procedure for selection, initial and on-going training, bringing to disciplinary liability, dismissal, etc. of prosecutors shall be instituted.	
On-going training for prosecutors shall include improvement of knowledge on provisions of the Constitution of Ukraine, European Convention on Human Rights, case-law of the European Court of Human Rights, criminal law and procedure.	
3.3. *Security Service of Ukraine* shall be a body responsible for protection of the national security in line with European standards (Recommendations of the Parliamentary Assembly of the Council of Europe Nos. 1402 and 1713) which can be carried out, *inter alia*, through conduct of the counterintelligence activities.	
The SSU may conduct pre-trial investigation only with the view of protection of national security interests and only with regard to the strictly limited category of crimes against the state. The SSU, through its inherent measures, provides assistance to other agencies in investigation of economic and other crimes.	No agencies symbolised the abuse of human rights under former authoritarian regimes as much as internal security services. Therefore, the task of legislation for these agencies to work purely in defence of national security while respecting individual human rights is especially difficult yet important. First, legislation should distinguish clearly between the internal security service and other law enforcement agencies [CoE Recommendation 1713 (2005) ii.b.] Second, CoE Guidelines recommend that: 'Internal security services should not be authorised to carry out law enforcement tasks such as criminal investigations, arrests, or detention.' [CoE Recommendation 1402 (1999) Guidelines B.iii] Subsequently, the CoE has stated that, in order for the SSU to comply with these Guidelines, it would be necessary to delete the Security Service's 'current law enforcement character' by transferring part of its functions to other law enforcement agencies (PACE, 2005, 177). The Concept moves towards this position when it states that:

	'The SSU may conduct pre-trial investigation only with the view of protection of national security interests and only with regard to the strictly limited category of crimes against the state…' (3.3) Yet, to reduce public fears of the continuation of a 'political police', perhaps thought should be given to denying the SSU all powers of arrest and detention which, in cases involving national security and crimes against the state, could be exercised by the security militia (Concept 3.4 3) in the same way as they would be by other sections of the militia. If the SSU is to retain some law enforcement powers, it needs to be made clear just what they are, for example, can it arrest and detain people on its own decision or only on the direction of the prosecutor? Similarly, it should be made clear that covert information gathering techniques may only be deployed by the SSU with prior judicial authorisation [CoE Recommendation 1402 (1999) Guidelines B.ii].
An effective democratic oversight over the activities of the SSU, including a parliamentary oversight, shall be exercised.	
Other changes in the security sector will be identified in the Conceptual principles for the operation of the system of bodies of the national security and defence of Ukraine.	
3.4. *Ministry of the Interior* shall become a civilian agency of the European model in which militia (police) will be only one of its bodies.	
Responsibilities of the Ministry will include:	
1) protection of public order, traffic safety, border control (thus, the Ministry will receive the powers of the Central State Motor Vehicle Inspection of the Ministry for Transport and Communication and of the State Border Guard Service);	
2) fire protection, protection against natural disasters and man-caused catastrophes, civil defence of the population (thus, the Ministry will be assigned with the relevant powers of the Ministry for Emergency Situations and for the Protection of Population from Consequences of the Chornobyl Catastrophe);	
3) criminal police functions to be effected through unification of divisions of criminal militia and of the fight against organised crime (the tax militia of the State Tax Administration of Ukraine will join criminal police).	
Internal Troops of the Ministry of the Interior shall be transformed into militia (police) of the public safety, which secures legal order (public order and public safety). Divisions of the militia (police) of the public safety, in particular, will protect public	In line with the comments made at *3 above, this paragraph puts too much emphasis on the order-maintenance functions of police at the expense of other roles such as preventing crime. This should be emphasised more since it reinforces

order, convoy arrested persons, protect defendants during court proceedings, pursue and detain arrested and convicted persons who escaped from under the custody.	the shift proposed in the Concept from a paramilitary towards a more civilian style of policing.
Security militia (police) will ensure security of the state authorities of Ukraine and their officials, security of other important state locations, objects of material, technical and military maintenance of the Ministry of the Interior of Ukraine, escort special cargoes, ensure observation of the special entrance rules at the places which are under security, security of the diplomatic and consular missions of the foreign states on the territory of Ukraine, etc.	
The function of registration of natural persons shall be carried out by the Ministry of Justice in accordance with one of Ukraine's commitments undertaken upon accession to the Council of Europe.	
It is necessary to reorganise the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a demilitarised State Migration Service of Ukraine.	
3.5. It is necessary to introduce specialisation within the bodies of the pre-trial investigation and prosecution service concerning *combating corruption* in line with the 1999 Criminal Law Convention on Corruption and the 2003 United Nations Convention Against Corruption. As an alternative to the specialisation within the existing bodies, a separate special anti-corruption agency may be established.	Section II of the Concept refers to the lack of change since the Soviet period including the point that: 'No effective measures to reduce the level of corruption within this system have been undertaken. As a result there is a lack of proper trust in these bodies.' This is confirmed by Ukraine being at 99/163 nations on the Transparency International Corruption Perceptions Index 2006 (www.transparency.org/cpi) and a significant proportion of those charged with corruption were members of the militia (Beck et al, 2004, 312; see also PACE, 2005, para.155). Given this, the proposals in the Concept section 3.5 will need strengthening. It suggests either special units within the enforcement agencies or a separate special anti-corruption agency. At least for the foreseeable future, it will probably be necessary to have both. While acknowledging the frustration that can arise among police and other law enforcement personnel if they think that too many people are investigating them, there are problems with the current proposal. If only a separate body is established, the danger is that other personnel see 'corruption' as the responsibility of the special agency and not their problem. If and when the special agency do feel it necessary to institute investigations of other agencies, their task may be made much more difficult as the targeted agency 'closes ranks'. Therefore it is certainly necessary that each agency has its own internal unit responsible for anti-corruption efforts. However, a separate agency

	would also be required in order to deal with cases that transcended any particular agency or involved other non-law enforcement departments or which could receive complaints from 'whistleblowers' that the individual agency units were failing to investigate complaints. Again, this is an area where erecting institutional 'checks and balances' can help to minimise the opportunities for corruption.
3.6. The *penitentiary system* shall remain under the responsibility of the Ministry of Justice and be operated by demilitarised State Criminal Execution Service.	
Ministry of Justice of Ukraine shall determine state policy in the penitentiary sphere and exercise control over its implementation.	
State Criminal Execution Service of Ukraine shall ensure in establishments for the execution of judgments and in the pre-trial investigatory wards the order and conditions of detentions of persons as defined by law, shall implement European standards in this area, in particular, through execution of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, implementation of the European Prison Rules of 2006.	
The system of initial and on-going training, re-training for the personnel of the State Criminal Execution Service of Ukraine shall be improved.	
The probation service shall operate within the State Criminal Execution Service of Ukraine and be set up on the basis of the criminal execution inspection.	The proper place of the Probation Service needs to be considered. In the UK, for example, it is organised together with the Prisons Service, but if the Probation Service were to be involved in implementation of a reparation and/or mediation service then it might be considered more appropriate to locate it within a social welfare department rather than one responsible for punishment.
3.7. It is necessary to create an independent national preventive mechanism in order to prevent torture – according to the Optional Protocol to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	I am not sure of the details of the protocols of the Convention against Torture but, if possible, it might be appropriate to contemplate the establishment of independent inspectorates for law enforcement, prosecutors and prisons who would be responsible for the oversight and audit of these agencies with respect to human rights.
3.8. Reform of the *State Border Guards Service* shall be carried out in accordance with the Concept for the Development of the State Border Guards Service of Ukraine for the Period until 2015, which was adopted by the Decree of the President of Ukraine on 19	

June 2006 No. 546, without prejudice to the provisions of this Concept.	
3.9. The further exercising of the functions of the pre-trial investigation by the *tax militia* has no justification in light of the fact that the principal task of the tax bodies is to implement the fiscal policy.	The Draft Concept suggests that, since both tax (3.9) and customs (3.10) authorities are concerned primarily with fiscal and economic policy, it is inappropriate that they should continue to investigate criminal offences. There is an argument for this but the impact of 'economic crime' is serious in all states and, if there are organised and continuous criminal offences being committed in areas of smuggling then it is very likely that it will be the customs authorities who will become aware of it. It may be that if criminal investigation of these is passed to, say, the militia, they will not be treated with the same priority. Therefore to prevent the tax authorities from investigating revenue and smuggling offences may not be the most effective response to either organised crime or corruption (the two often being synonymous). Indeed, prosecuting people for tax offences has sometimes been the only way in which authorities could bring major criminals to justice. Therefore, what might be considered is the establishment of joint units of investigators from militia and tax units to conduct joint investigations. If a specific reason for the proposal in the Concept is continuing concern with levels of corruption within the tax and customs agencies, then that should be dealt with by the anti-corruption agency discussed above at *20 [INSERT].
Therefore, in order to increase the role of preventive measures and to reduce an ungrounded application of coercive methods in the course of carrying out of the fiscal functions, investigation in the cases of suspicion about the commission of the crime, related to the violations of the tax legislation, shall be carried out by the criminal police of the MoI.	
3.10. *State Customs Service*, whose principal function is to implement the state economic policy in the area of customs, shall not carry out investigations in the cases of suspicion about commission of the crime of smuggling and other crimes related to violation of the customs rules. Such combination of the function of an economic nature and of the function of the criminal investigation results in the conflict of interest and promotes abuse of relevant powers.	
3.11. *Military Service of Order in the Armed Forces of Ukraine* shall be transformed into a special body which will ensure legal order in the Armed Forces of Ukraine and will be functioning under the Ministry of Defence of Ukraine. The Military Service of Order will be responsible for prevention, detection, and investigation of certain types of criminal offences in the Armed Forces of Ukraine and some other military units of Ukraine according to the competence defined in the legislation.	
3.12. Proper execution by the bodies of the criminal justice system of their functions shall be proved not by the implementation of the so-called action plans on combating crime, but through a *set of the following new criteria for results evaluation* (taking into account European standards):	This is an important innovation given the unreliability of existing official statistics on the measurement of crime and militia performance by means of over-inflated `clear-up' rates that contribute to public lack of confidence (Beck et al, 2004, 310). In terms of measuring the performance of the agencies, the proposal here still suggests primary reliance on official data on outcomes and complaints. In addition to this, the best way of obtaining independent information is to commission research including what are usually referred to as 'crime' or 'victim' surveys. These provide a better measure of levels of some types of crime and,

	together with official data on outcomes, can enable researchers to provide more accurate data for government and public. In turn, this can provide the basis for new civilian oversight bodies.
• data about the number of cases wherein the proceedings were not finalised within the terms prescribed by the procedural law;	
• information on the number of complaints about violations of human rights in the course of the pre-trial investigation;	
• results of the judicial consideration of criminal cases;	
• level of public trust in the work of the pre-trial investigation bodies or prosecutors.	
Information concerning violations of procedural terms and complaints shall be accessible to human rights protection NGOs. It is necessary to create conditions which will enable introduction of an effective mechanism of civilian oversight over the operation of the criminal justice system bodies. Citizens' polls will measure the public trust in such bodies.	In broad terms, a number of 'levels' of oversight can be identified: the internal anti-corruption units discussed at *20 [INSERT] above, prosecutorial oversight as envisaged at paragraph 3.2 3 of the Concept, judicial oversight in their handling of specific pre-trial and trial procedures and parliamentary oversight (for example PACE, 2005, para. 180). In addition, the specific dangers to human rights posed by abuse of the criminal justice process requires a system of inspectorates as referred to at *22 [INSERT] above and an independent complaints commission for the receipt and investigation of complaints from aggrieved members of the public including victims.
SECTION IV	
Stages and Ways to Implement the Concept	
Measures to implement the Concept will be undertaken in three stages.	
1. *Stage one* (year 2007) provides for:	
– in the legislative sphere:	
1) revision of the criminal legislation through preparation and adoption of amendments to the Criminal Code of Ukraine concerning criminal misdemeanours and also with the view to humanise criminal legislation; preparation and adoption of the Code on Administrative Misdeeds of Ukraine;	
2) implementation of the new concept of the criminal procedure through preparation	

and adoption of the Criminal Procedure Code of Ukraine;	
3) preparation of amendments to the Criminal Execution Code of Ukraine and to the Law of Ukraine "On Executive Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
4) preparation of the draft amendments to the Constitution of Ukraine with regard to the *Prokuratura*;	
5) preparation of a new wording of the Law of Ukraine "On the *Prokuratura*";	
6) preparation of the draft new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
7) preparation of the draft new wordings of the laws of Ukraine "On Militia", "On the General Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
8) preparation of the draft Law of Ukraine "On the Free Legal Aid";	
9) adoption of the amendments to the legislation of Ukraine in order to fix the assignment of the State Criminal Execution Service to the Ministry of Justice of Ukraine;	
– in the institutional sphere:	
10) carrying out necessary organisational and personnel-related preparation of the Main Investigation Department of the MoI of Ukraine to perform tasks of the pre-trial investigation in light of additional investigative jurisdiction which will be transferred, in particular, from the General Prosecutor's Office of Ukraine and Security Service of Ukraine;	
11) deciding on the issue of specialisation of the pre-trial investigation bodies and prosecutors with regard to the fight against corruption;	
12) working out of a legal, functional and organisational basis for the transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and the State Customs Service to the MoI of Ukraine;	
13) preparation of proposals concerning creation of an independent national preventative mechanism according to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;	

14) preparation of proposals concerning improvement of the system and mechanisms of democratic civilian control over the law enforcement agencies of the state;	
15) consideration of issues, taking into account standards and recommendations of the Council of Europe, concerning the penitentiary system of Ukraine, which are related to the functions, organisational structure, powers and technology of operation of the Criminal Execution Service of Ukraine.	
2. *Stage two* (years 2008-2009) provides for:	
– in the legislative sphere:	
1) adoption of amendments to the Constitution of Ukraine with regard to the *Prokuratura* and of the new wording of the Law of Ukraine "On the *Prokuratura*";	
2) adoption of the new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
3) adoption of the new wordings of the laws of Ukraine "On Militia", "On the General Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
4) adoption of amendments to the Criminal Execution Code of Ukraine and the Law of Ukraine "On Execution Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
5) adoption of the Law of Ukraine "On the Free Legal Aid";	
6) preparation and adoption of other amendments to the legislation of Ukraine stemming from the Concept (in particular, amendments to the Law of Ukraine "On Operative and Search Activities", "On the State Customs Service", "On the State Tax Service of Ukraine");	
– in the institutional sphere:	
7) beginning of the transformation of the militia of Ukraine into a police agency within the MoI of Ukraine in line with European standards;	
8) reforming (based on the respective law) of the Internal Troops of the MoI of Ukraine;	
9) structural reforming of the Main Investigation Department of the MoI of Ukraine	

into a body of the pre-trial investigation within the MoI of Ukraine;	
10) reorganisation of the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a State Migration Service of Ukraine;	
11) transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and State Customs Service to the MoI of Ukraine;	
12) preparation of proposals on the further development of the local militia, its functions and powers, forms and methods of its operation, and also subordination and financing, taking into account principles of the administrative reform undertaken in the state, within the competence of local bodies of the state executive power and of the self-government bodies in the area of ensuring public order and safety as defined by the law;	
13) transformation of the Criminal Execution Inspection of the State Department of the Execution of Judgments into a Probation Service in line with European standards;	
14) preparation and beginning of implementation, in line with the Concept, of the law enforcement agency-specific plans on their reform as well as programmes for their personnel and resources management;	
15) preparation and implementation in the practical work of the professional codes of ethics and internal rules of conduct for employees of the criminal justice system bodies and law enforcement agencies;	
16) implementation of action plans to combat corruption (according to the Concept for the Eradication of Corruption "On the Way to Integrity", adopted by the Decree of the President of Ukraine of 11 September 11 No. 742), to combat organised crime, in particular in the spheres of human trafficking, illegal migration, money laundering of illegal proceeds, etc.;	
17) preparation and implementation of criteria and scientifically based methodologies of the internal and external evaluation of the work of bodies of the criminal justice system.	
3. *Stage three* (year 2010-2012) provides for:	
1) finalisation of the process of setting up a system of the pre-trial investigation, in particular of its component aimed at combating corruption;	
2) transformation of the functions of the *Prokuratura* in line with European standards;	

3) transformation of the Security Service of Ukraine into the agency of the executive branch with the special assignment (special service) which will secure national security of Ukraine;	
4) finalisation of the reform of the Ministry of the Interior of Ukraine into a civilian agency with functions and powers which correspond to the internal policy of the state, in particular through the following:	
• transfer of the law enforcement functions in the area of fire, emergency and industrial security, labour security and state mountain security, protection and security of the forests and animals, natural resources, waters and water life resources and their environments, and rescue services from respective ministries and agencies under the jurisdiction of the Ministry of Interior;	
• introduction of guidance and co-ordination of the State Border Guards Service of Ukraine by the MoI of Ukraine.	
5) taking other measures to improve and further optimise operation of the criminal justice system bodies and law enforcement agencies of Ukraine, to bring their organisational structures, mechanisms (goals, functions, principles and methods) and forms of their operation in line with the Concept and European standards.	
At the same time, during all stages of the reforming, respective bodies shall take measures, within defined jurisdiction, to ensure effective execution of their tasks concerning protection of human rights and fundamental freedoms, interests of the society and the state.	

Concept of the State Policy in the Sphere of Criminal Justice and Law Enforcement in Ukraine	Expert Opinion of Hans-Joerg Albrecht
Section I	
Objective and Tasks of the Concept	
The objective of the Concept on the State Policy in the Sphere of Criminal Justice and Law Enforcement in Ukraine (hereinafter – the Concept) is to establish criminal justice and law enforcement system in Ukraine, which operates basing on principles of the rule of law in accordance with European standards and guarantees respect for human rights and fundamental freedoms.	
The tasks of the Concept, stemming from its objective, are the following:	
1) to outline the steps and order of measures to reform the system of criminal justice and law enforcement agencies on the scientifically grounded methodological basis;	
2) to achieve practical implementation of the following main measures:	The objective of implementation should be complemented through the objective of evaluation. In particular seen from the viewpoint of safeguards for fundamental rights comprehensive evaluation is part of guaranteeing not only cost-effectiveness but of monitoring proportionality of legislation that allows for intrusion of privacy and other fundamental rights. The European Union has recently when adopting the Directive on Retention of Telecommunication Traffic Data (Directive 2006/24/EC) also voiced the need for sound evaluation of the Guideline and national legislation implementing the guideline. In Art. 10 of the Directive statistics are requested from Member States that will allow an assessment of the results and with that of the proportionality of the measure. Evaluation therefore should be made part of the overall approach of reforming and then operating the Ukrainian Criminal Justice System.
• to humanise criminal legislation, in particular, through decriminalisation of a significant part of offences punishable under criminal law, classification of such offences into crimes [zlochyny] and criminal misdemeanours [kryminalni prostupky], mitigation of punishments;	Beside the measures outlined (for implementation) the process of reform and implementation should deal also with Administration of justice New Information Technologies Establishing a proper administration of justice requires well elaborated organizational and staff structures. This must be complemented by education and

	training of administrative court staff (registrars etc.). Administrative elements are of paramount importance for implementing substantive and in particular procedural criminal law. The relationship between administrative staff and judges/prosecutors has to be regulated through procedural law, in particular as regards competencies and responsibilities. This should include consideration of introducing modern technology (in terms of digitalized information systems, videotaping and digitalization of trial proceedings and digital file administration) in the administration of criminal justice. However, new technologies not only impact on administration itself but have significant repercussions on procedural law (digital files, closed circuit TV transmissions etc.).
• to ensure fair trial in criminal cases;	
• to secure procedural equality of rights of participants of the criminal proceedings, based on adversarial and discretionary principles;	
• to unify, to the extent allowed by the specifics of the criminal procedure, procedures of judicial consideration of the criminal offence cases with those in civil and administrative adjudication;	
• to reform procedure and organisation of the pre-trial investigation of the criminal offences;	
• to structure the system of the pre-trial investigation bodies in accordance with new procedures of such investigation and in line with paragraph 9 of the Transitional Provisions of the Constitution of Ukraine; • to structure the system of the pre-trial investigation bodies in accordance with new procedures of such investigation and in line with paragraph 9 of the Transitional Provisions of the Constitution of Ukraine;	
• to carry out other required institutional changes in the system of criminal justice and law enforcement agencies;	
• to introduce a probation procedure and to widen the scope of use of restorative justice (mediation) procedures.	
• to improve procedures of juvenile justice.	
SECTION II	
The State of the Criminal Justice Sphere and Law Enforcement Agencies	

During the years after Ukraine regained its state independence and adopted Constitution criminal justice has not experienced substantial transformations. Theory of criminal law and theory of criminal procedure have not broken free from the doctrinal legacy of the Soviet era.	
The Criminal Code of Ukraine of 2001 does not differ in conceptual terms from that of 1960. Criminal procedure legislation of Ukraine was significantly improved in 2001 only in sections concerning review of the first instance court decisions, namely new types of appeal were introduced.	
Regulation of the pre-trial investigation and court consideration of criminal cases in the courts of the first instance remained in fact unchanged in its essence.	
Pre-trial investigation is still divided into inquiry [diznannya] and investigation [slidstvo] as it was introduced in the Criminal Procedure Code of 1960. Such division is unnecessary, since differences between two forms do not concern the substance of the investigation (both the inquiry bodies and the investigation bodies can instigate a criminal case, conduct investigative actions, gather and fixate evidence, etc.)	
The aspirations to adopt a new Criminal Procedure Code of Ukraine without a change of the concept of criminal justice; without fundamental reform of the pre-trial investigation stage of the criminal process; without creation of new standards for operation of the bodies within the system of criminal justice will simply be an attempt to conserve the existing model regardless of its inconsistency with the principle of the rule of law and international obligations of Ukraine.	
Versions of other reforms proposed previously provided solely for changes of the bodies which were to conduct procedural activities. Such proposals did not solve the existing problems.	
The European Court of Human Rights, having acknowledged in a number of its judgments the facts of violation by Ukraine of the prohibition of torture or inhuman or degrading treatment (case of *Afanasyev v. Ukraine*, et al.), of the right to a fair trial in criminal cases (cases of *Kobtsev v. Ukraine*, *Merit v. Ukraine*, et al.), etc., has thus pointed out systemic problems in the sphere of criminal justice in Ukraine.	
The system of bodies which are called “law protection” (bodies of the interior, security service, border guards, state tax service, customs service, etc.) inherited by Ukraine from the Soviet period has failed to transform into an effective institution for protection and restoration of infringed rights of individuals. These bodies are oriented	

at meeting formal indicators in their work, are rife with delays and corruption. As a result there is a lack of proper public trust in them.	
SECTION III	
Directions of the Reforming	
Comprehensive reform in the sphere of criminal justice and law enforcement agencies should cover the following areas: 1) criminal law; 2) criminal procedure; 3) bodies of the criminal justice system and law enforcement agencies; 4) procedure of execution of court judgments in criminal cases.	It is suggested to add **Prison law** As a reform topic separated from the procedure of the execution of court judgements. While the execution or enforcement of a criminal sentence (and other court decisions) should be entrusted to the office of the public prosecutor, the prison and prison administration pose different legal questions. Inso far, it should also be considered to establish a separate judicial body that deals exclusively with cases emerging from the prison environment (rights and duties of prisoners). Examples are the "juge d´ execution des peines" in France or the "Strafvollstreckungskammer" (Courts for the Execution of Prison Sentences) in Germany. Another reform topic that provides for a separate field of legal questions concerns **Data protection, criminal justice related personal data and all sorts of information systems** that are operated in the criminal justice system.(including police and prison adminsitration as well as judicial information systems that contain information about prior records of persons adjudicated and convicted. The fundamental questions to be dealt with in legislation on data protection concern What kind of personal data may be entered and stored Who will have access to such data and under what conditions To whom such data may be transferred How long such data may be kept in information systems before being erased.
Introduction of new approaches in the sphere of criminal responsibility and criminal justice will make it possible to change fundamentally the conditions for guaranteeing human rights, to establish a belief in person and in the society of effectiveness of the principle of the rule of law, to raise the level of public trust in Ukraine towards institutions of the government overall and bodies of the criminal justice system in particular. It will eventually result in quality changes in the Ukrainian legal system, as expected by the society.	Criminal justice reform has to be placed into a wider context when considering in particular the goal of changing fundamentally the conditions for guaranteeing human rights. Respect for human rights and the implemententation of human rights policies are dependent on large scale changes in the cultural, social and economic fabric. Although, criminal justice reform in itself certainly cannot carry a comprehensive and all inclusive human rights policy there exist some strategic points that can be successfully integrated in criminal justice reform when aiming at

	raising respect for human rights as well as public trust and confidence. These strategic points concern the inclusion of the civil society as well as officially established bodies of human rights protection at some stages of the proceedings and the execution of punishment. The inclusion of **data protection ombudsmen** who oversee the respect for privacy (in terms of supervising the process of collecting and handling personal data and information as well as the operation of criminal justice related information systems). The inclusion of the **civil society** is then particularly important for the prevention of torture and inhumane/degarding treatment. Insofar, the establishment of prison and police visitor boards should be envisaged. Practical exampes can be found in most European countries (see for example www.menschenrechtsbeirat.at (Prevention of torture in Austria); www.uu.nl (Netherlands Institute of Human Rights); www.rethinking.org.uk/involve/what/index.html (Prison Visitor Boards England/Wales); www.commission-droits-homme.fr/ (France, Commission for Human Rights) Police and prison visitor boards have been made an issue also by the Optional Protocol of the UN Convention Against Torture which requires (when signed and ratified) the organization of such boards or other mechanisms that implement additional protection against torture and inhumane, degrading or cruel treatment. Optional Protocol: "The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."
Criminal justice shall ensure strict adherence to human rights in the course of activities undertaken by the bodies which are empowered to investigate criminal offences and by the courts in accordance with the Constitution of Ukraine and international human rights treaties, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter – the European Convention on Human Rights) taking into account the practice of its interpretation by the European Court of Human Rights.	Particular importance – when considering the goal of "strict adherence to human rights" – should be assigned to education and training in human rights. This should be part of all curricula that are to be implemented in schools, universites, academies etc. that are involved in education and training of criminal justice personnel (see for example GUIDELINES ON THE ROLE OF PROSECUTORS, Adopted by the Eighth United Nations Congress an the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).
The goal of the institutional reforming of the criminal justice system bodies is to establish a system complying with European standards. The system of law protection bodies [pravookhoronni organy] shall be transformed into a system of the law	The task of ensuring public order in society is normally entrusted to the Ministry of the Interior and police, while law enforcement (which falls under the Ministry of Justice) should be guided by the goal of investigating crime, implementing

enforcement agencies which will primarily be tasked with ensuring public order in the society. Such a reform will provide that agencies in question will no longer have inappropriate functions.	criminal law and thus protecting basic interests (expressed in criminal offence statutes). Institutional reform, however, should deal also with the role and function of police and the relationship between law enforcement and maintenance of public order and security. In Continental European systems of policing and criminal justice police have adopted a double function. Police are on the one hand authorized to investigate crimes and support public prosecution services in launching formal criminal investigations and on the other hand are expected to establish or maintain public order or prevent dangers and risks for the social fabric. Insofar, the double function concerns repressive and preventive roles. That is why a distinction is made between powers of police based on criminal procedural law and powers coming with police laws. Procedural law contains powers of police while investigating crime, police laws define goals and measures for the purpose of maintaining public order and peace in society. Recent developments in many European countries have shown that the relationship between "order police" and "criminal police" becomes complicated with introducing for example a range of covert investigative methods like telephone tapping, under cover policing also in police laws. On the other hand, criminal procedural law has been upgraded with extending powers to collect strategic information used in risk control (organized crime, terrorism, drug trafficking etc.; see for example Loi du 10 juillet 1991 relative au secret des correspondances émises par la voie des télécommunications in France or in The Netherands, see Enquetecommissie opsporingsmethoden. In zake opsporing, TK, 1995-1996, Nr. 24072). This requires a comprehensive review of the relationship between police law and criminal procedural law, in particular as regards the transmission and use of information collected in one area of police surveillance in the other field of police investigative activities.
The reforming of the criminal justice system should be carried out in line with the judicial reform according to the Concept for the Improvement of the Judiciary to Ensure Fair Trial in Ukraine in line with European Standards, approved by the Decree of the President of Ukraine of 10 May 2006 No. 361.	
1. Conceptual Changes in the Criminal Legislation	
All punishable deeds, identified in the current Criminal Code of Ukraine, are now encompassed by the notion of "crimes". First of all, such approach does not properly take into account the existence in the criminal law of deeds that vary in the degree of their danger to the society (for example, murder and violation of the right to education;	

state treason and violation of the labour law, etc.), which all nonetheless have the same legal consequence for the person – a conviction.	
Secondly, it excludes from the remit of criminal procedure guarantees persons who committed administrative offences, which are punished by penalties that are criminal in substance (short-term arrest, confiscation of property, withdrawal of a special right, etc.). The case-law of the European Court of Human Rights, in particular judgments against Ukraine (judgment in the case of *Gurepka v. Ukraine*), indicates that such approach is incorrect.	
All criminally liable deeds in the future should be covered by a new unifying notion of "criminal offences" with the relevant differentiation, taking into account particularity of each of the type, into *crimes* [zlochyny] and *criminal misdemeanours* [kryminalni prostupky].	The concept of misdemeanours in legal systems point to attempts of legislators to distinguish between serious criminal offences (usually called felonies) and lighter or even petty forms of crime. Sovjet as most other former socialist countries had introduced a substantive approach in parcelling out non-serious offences. This was done by assessing the "social dangerousness" of human acts. Behaviour (or results of behaviour) going beyond the line drawn by "social dangerousness" were treated in administrative proceedings. What is seen to represent dangerous behaviour qualifies as crime and will go to criminal courts. However, the re-grouping of criminal offences according to their seriousness should deal also with decriminalization (a goal which evidently according to the goals of Ukrainian law reform ranks rather high on the agenda). Moreover, substantive law has to be linked up with criminal procedural law if discretionary powers of public prosecutors should be introduced which allow for non-prsecution on the grounds of trivilaity of criminal ofences or minor guilt of the offender. Insofar, a comprehensive, multi-step procedure for reform can be imagined which makes also use of the different approaches encountered in European criminal justice systems. It might be considered to incorporate a general concept, that eliminates behaviour not achieving a certain level of harm (see for example §42 Austrian Criminal Code which says that a criminal offence is not established if the guilt of the offender is minor, if the consequences of the crime have been insignificant or have been compensated by serious efforts of reconciliation/mediation on the side of the offender, and if a criminal sanction is not necessary for preventive reasons). This would create a parallel to the former criteria of "social dangerousness". The advantage of criteria provided in substantive law concerns the possibility to be reviewed by appelate courts on appeal. Decriminalization may be also achieved (as is evidently planned in the Ukrainian reform) by introducing a category of regulatory or administrative offences that fall

	under a different regime of procedural rules. Germany for example has created a separate system where administrative fences are dealt with while Sweden and France have adopted systems which within criminal law differentiate various levels of offence categories along seriousness. On the level of offence statutes – and as an element of decriminalization policies guided by the harm principle -, it should be considered whether the range of behaviour covered by the offence characteristics includes behaviour that is not creating harm that deserves any criminal law based response. Elimination of behaviour carrying negligible results conforms better to the proportionality principle and provides for a grounded approach to decriminalization. Such an approach becomes more important with the introduction of endangering offences which penalize a risk. Examples: Hit and run offences where the damage caused is trivial Possession of minor amounts of soft drugs for personal use Theft of items of a minor value Minor forms of assault Water pollution when the polluting substance is negligible In such cases, the offence statute may be worded in a way so that such minor harm is eliminated by specific offence characteristics. Many European systems provide then (as a procedural alternative to the substantive aproach or combined with the substantive approach) discretionary powers for the public prosecutor who may on the basis of assessment of harm make a decision for non-prosecution (non-prosecution may be made dependent on the fulfilment of a condition (for example a transaction fine or community service). The categories of criminal offences should then be linked with procedural rules that provide for simplified proceedings (for example penal orders).

	It will be important to integrate substantive criminal law differentiating offence seriousness with criminal procedural law that creates different avenues (from full procedure and trial down to accelerated and simplifed proceedings).
Main criteria for such differentiation will be the following features:	
• degree of danger to individuals, society or the state of the deed punishable under criminal law;	The main criteria should be the harm caused (and not the danger arising out of specific behaviour). The harm principle (together with the principle of guilt) is better suited to systematically develop penalty ranges that are carried by the criminal offence statute and allows for more transparency. Penalty ranges have to be narrow (rule of law and predictability) and graded along the seriousness of offences (as assessed by the Parliament). The systematic development of penalty ranges applicable for certain crimes is important also for rules on sentencing and for implementing fundamental principles of equality and justice in the imposition of criminal punishment.
• character of criminal legal consequences.	
Criminal offences shall, therefore, be:	
a) *crimes* – deeds, which represent the highest and high degree of danger for individuals, society or the state. Amongst the types of punishment for a crime should be deprivation of liberty, including a life sentence. Crimes will entail a conviction of the individual;	Corporate liability should be envisaged also for serious crime. It is in particular in the areas of environmental criminal law, organized crime, economic crime, money laundering and terrorist financing, corruption where international treaties as well as European Union instruments demand for introduction of corporate criminal liability. Corporate criminal liability has been introduced in recent years in many European criminal code books (most recently see the Luxembourg Draft Bill on Corporate Criminal Responsibility as November 2006) and it seems therefore that an international consensus is emerging as regards acceptance of criminal liability of legal persons. The European Union, the Council of Europe and the OECD therefore recommend the incorporation of corporate criminal liability in particular to respond effectively to serious organized crime (and terrorism), economic crime, corruption. See for example: Octopus 2000 – 47 Final, Strasbourg 20. December 2000

	Country Report Poland, pp. 23-25, corporate criminal liability. Examples: **Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA**) Article 7 Liability of legal persons 1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; (c) an authority to exercise control within the legal person. 2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 1 to 4 for the benefit of that legal person by a person under its authority. 3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4. Article 8 Penalties for legal persons Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order; (e) temporary or permanent closure of establishments which have been used for committing the offence.

	International Convention for the Supression of the Financing of Terrorism (1999) **Article 5** 1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative. 2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences. 3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.
b) *criminal misdemeanours* – deeds, which represent a low level of danger for individuals, society or the state. The commission of criminal misdemeanours will not entail deprivation of liberty and conviction of a person.	
The category of criminal misdemeanours will also include those offences currently provided for in the Code of Ukraine on Administrative Offences, which fall under court jurisdiction and are not of administrative nature (do not concern the administrative procedures), such as hooliganism, petty theft, etc. Such offences will fall under criminal court jurisdiction. Liability for actual administrative offences (non-compliance with the rules which relate to administrative procedures) should be withdrawn from under the court jurisdiction and transferred for consideration in non-judicial state authorities.	Above, it has been outlined that there exist several models of differentiating serious from petty offences. Debates going on over the last decades have shown that it is difficult to draw a clear line between regulatory or administrative offences and criminal offences as for example various economic and environmental offence statutes are of an administrative nature (as they require non-compliance with administrative or statutory rules set by administrative or other state bodies). Also, acording to rulings of the European Court on Human Rights, there is legitimate discretion in states decisions to classify behaviour as criminal or only administratively relevant. A main criteria, though, which is adopted in assessing whether a norm belongs to the body of criminal law statutes or to administrative norms concerns the severity of legal consequences. Administrative offences should carry a non-criminal fine only (and/or specific administrative consequences (eg. withdrawal of licenses which can be appealed in administrative courts).
Such approach will ensure that:	
a) individuals to whom the non-judicial state authorities applied administrative penalties will have an opportunity to appeal against such penalties in administrative	It should be considered to keep also administrative offences within the jurisdiction of penal courts. Procedure and consequences of administrative offences have more

courts;	parallels in criminal procedure and criminal sanctions than in ordinary administrative court proceedings. From the viewpoint of the punitive impact, administrative fines or other administrative sanctions in some systems go beyond the impact of criminal fines. This requires a judicial environment that is suited to protect procedural rights.
b) individuals who are held liable by court for commission of a criminal misdemeanour will have an opportunity to appeal against the court decision through the existing procedures.	
Such changes, in particular, will eliminate violation of the right of person to appeal against court decisions, which now exists in the cases of administrative offences in conflict with Article 2 of the Protocol No. 7 to the European Convention on Human Rights.	
Criminal liability of legal entities for commission of criminal offences should be envisaged.	**See above**
Introduction of the mentioned innovations will require review of provisions of the Criminal Code, as well as adoption of the Code on Administrative Misdeeds which will replace the existing Code on Administrative Offences. As a result, provisions of the General Part of the Criminal Code will require amendments to define peculiarities of liability of natural and legal persons for criminal misdemeanours (provisions on the offender, his ability to be held liable, the guilt, complicity, types of punishment, relief from punishment and serving of the sentence, conviction, etc.). Provisions of the Special Part of the Criminal Code shall be divided into separate chapters on crimes and criminal misdemeanours.	
Revision of the Criminal Code shall also be aimed at the further humanisation of the criminal legislation, at the optimisation of the criminal legal sanctions, at the improvement of certain institutes of the General Part of the Code, etc.	
2. Conceptual Provisions of a new Criminal Procedure Code	
2.1. Criminal procedure in Ukraine shall be reformed based on the following principles:	Developments over the last decades have shown that a major problem, recognized also by the European Court on Human Rights, in modern criminal justice systems may emerge with lengthy proceedings (see Art. 6 ECHR: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time). Lengthy proceedings are (also) due to the growing number of complex cases, in particular stemming

	from organized and transnational crimes as well as economic crimes. Therefore, reform should also be headed toward establishing criminal proceedings that offer final adjudication within a reasonable time. This requires for example the systematic inclusion of rules that determine the time available for certain stages of proceedings or for making decisions.
• procedural equality of rights of the prosecution and defence parties;	
• clear delimitation of the tasks and of the procedure at the stages of pre-trial and court proceedings;	
• court proceedings;	
• introduction of a new, free from accusatory bias, procedure for pre-trial proceedings, in the course of which factual data as to the criminal offences and persons who committed those will be gathered by covert and overt methods, established by law;	
• adequacy of the procedures of the pre-trial and court proceedings to the aim and tasks of criminal justice;	
• broadening of the scope of application of restorative justice (mediation) procedures;	
• improvement of the judicial control during pre-trial proceedings;	
• transformation of the prosecutorial oversight into prosecutorial control in the form of procedural guiding of the pre-trial investigation;	
• concentration of the court consideration of all cases at first instance in the local courts;	
• creation of procedures which will enable attainment of the goal of punishment of the guilty persons without infringement of human rights and fundamental freedoms.	
2.2. Pre-trial proceedings *shall be devoid of excessive formalisation. Current inquiry [diznannya] and investigation [slidstvo] will be unified into one procedure of the pre-trial investigation.*	
The Code will stipulate different proceedings regarding crimes and criminal	

misdemeanours. Investigation of criminal misdemeanours will in particular provide for expedited procedures without a possibility of application of the preventive measure in the form of pre-trial detention. Pre-trial proceedings will consist of various types (overt and covert) of gathering and registration of the factual data on circumstances of the deed, which are necessary in order to sustain charges in the court. Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.	
Ensuring of the procedural equality of rights of the parties will be based, first of all, on the adversarial and discretionary principles. To this end it is necessary to improve procedural rules for gathering of information and its submission to the court by parties of defence and prosecution. At the same time, it is necessary to provide for mechanisms to prevent abuse of the granted procedural rights (submission of incorrect information, procrastination of the proceedings, etc.).	In Europe there exist adversarial and inquisitorial systems of criminal justice. Experiences have shown that it can turn out to be difficult to transform an inquisitorial system into an adversarial one. The European Convention does not voice preference for the one or the other system. Adversarial principles, though, have been adopted also in inquisitorial systems and are required under Art. 6 of the Convention (for example contradictory proceedings and the right "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"). On the other hand, adversarial systems more and more adopt inquisitorial elements (see below for example the treatment of expert evidence). In fact, most European continental (or civil) systems of criminal justice have during the last 20 years adopted plea and sentence bargaining elements that shall accelerate criminal proceedings and strengthen the potential for decisions consented upon by state and accused/defence. Moreover, the course of criminal procedure reform in Europe over the last decades (in particular through the wide use of covert methods of investigaton and growing powers of the prosecutor) has moved the relative weight of the stages of proceedings from the trial to the investigative stage of proceedings. This had the consequence of strengthening the rights of suspects and defence in the investigative stage of proceedings (in former times the position of defence in civil law systems was weak during the investigative stage and strong during the trial stage). It is therefore suggested to build upon the inquisitorial aproach which is firmly rooted in Ukrainian history of criminal justice, most probably also better suited to the cultural, economic and social framework (within which systems of justice must operate) and develop from this system a modern criminal procedural law which is suited to respond to todays challenges. The old adversarial model certainly is not well positioned to cope with the problems posed by developments in crime.

The procedure regulating the beginning of the pre-trial investigation, which will be carried out exclusively in connection to the fact containing elements of the criminally liable deed, needs to be simplified. The pre-trial proceedings will be deemed as commenced from the moment of address by a natural or legal person or of receiving information by other means. Relevant officials will have a duty to instigate pre-trial proceedings immediately upon obtaining such address or information. All procedural actions which do not require court authorisation may be conducted from the moment when pre-trial proceeding began.	The approach used for determining the beginning of the investigative stage of criminal proceedings speaks in favour of the principle of legality which has been adopted in some European systems ("relevant officials (most probably police officers) will have a duty to instigate pre-trial proceedings immediately upon obtaining such address or information"). The decisive point, however, should be suspicion (reasonable suspicion) that a crime has been committed. Reasonable suspicion is also a basic requirement then for launching coercive or non-coercive investigative operations. From that point on all procedural actions (also those which require court authorization) may be conducted. Why should court authorized investigations not be launched immediately after suspicion has arised from relevant information?
The role of the prosecutor in the pre-trial investigation will be to exercise control over the adherence to law in the course of such investigation according to the model of control functions of prosecutors in European states. The prosecutor shall assess and direct the course of investigation taking into account his/her future position in the court while supporting public prosecution. The prosecutor shall thus carry out procedural guidance of the pre-trial investigation.	There exist several international and European instruments that can be helpful in developing the institutione of public prosecution. Some of them (UN Guidelines, Council of Europe Recommendations and the Code of Conduct are also interesting as they merge experiences and standards from inquisitorial and adversarial systems. UN-Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 Public Prosecution and the International Criminal Tribunal as set up by the Treaty of Rome Code of Conduct for Public Prosecutors as adopted by the International Association of Prosecutors, April 23rd 1999 Council of Europe Recommendation 2000/19 on the Role of Public Prosecution in the Criminal Justice System
Thus, the prosecutor will have the following powers in the criminal process:	It should also be considered to entrust the task of execution/enforcement of criminal penalties (in its administrative parts) as well as the operation of judicial information systems (prior records of convictions) to the office of the public prosecutor.
• control over the adherence to laws in the course of the pre-trial investigation exercised through procedural guiding of individual investigations (taking decisions as to the continuation or termination of the pre-trial investigation, etc.);	There must be clear assignments of powers and clear separation of tasks. In particular, the application for judicial decisions required for all coercive measures during the investigative stage of proceedings should be an exclusive power of the prosecutor (in order to be able to "control the adherence to laws in the course of pre-trial investigation"). This includes for example the application for warrants of search and seizure, warrants for wire tapping, telecommunication traffic data,

	arrest warrants, freezing orders. There must also exist clear regulations as to the relationship between police and the public prosecutor. International guidelines and recommendations outline in particular that the prosecutor has to play an active and neutral role (so, even if an adversarial model of procedure is adopted, the position of the prosecutor should be one that is obejective, neutral, without bias. From the international and European recommendations it follows that 1) Public prosecution must be strictly separated from judicial functions 2) Public prosecution should play an active role in criminal procedings, in particular in the institution of prosecution 3) where authorized by law an active role is demanded for also » during investigation » in the supervision of the legality of investigation » in the supervision of enforcement of judicial decisions Fair, consistent, expeditious performance of duties and protection of human rights and due process are demanded from the public prosecutor Functions shall be carried out » impartially and respecting confidentiality » without discrimination » objectively and with a view of protecting the public interest » irrespective of whether facts are to the advantage or disadvantage of the suspect » with due regard to the rights of suspect and victims The relationship between prosecutor and police is of particular importance as it is

	in this relationship where the balance between crime control efficiency and rule of law is generated. The basic model for regulating the relationship between prosecutor and police in Continental Europe (civil law systems) provides for the proesecutor being the head of criminal investigation and police subject to directives of the prosecutor: • Crime Investigation is directed by the Public Prosecutor, this means that police are subject to concrete directions given by a prosecutor assigned to a case » Exception: Systems that have an Investigating Judge (eg. France) » Exception: England/Wales or the US where police are independent in crime investigation • However, de facto, police are investigating independently in most systems, and, • The public prosecutor restricts himself to decision-making in legal matters Special emphasis should be laid on the relationship between police and public prosecution services in the field of investigation of police behaviour affecting human rights. Here, public prosecution services are under a duty to investigate effectively if garve human rights violations are at stake. Decisions of the European Court of Human Rights 28 March 2000, Kiliç vs Turkey: murder of journalist Kemal Kiliç, who had requested protection from the authorities several times 18 May 2000, Velikova vs Bulgaria: Mr Tsonchev, a Roma, had died in a police cell Turkey and Bulgaria have been found to be in violation of Art. 2 (right to life) of the European Convention on Human Rights The states obligation under Article 2 to protect the right to life requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, inter alia, thorough, impartial and careful. The nature and degree of scrutiny which satisfies the minimum threshold of the

	investigations effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The Court considers that where an individual is taken into police custody in good health but is later found death, it is incumbent on the State to provide for a plausible explanation of the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention In particular seen from this duty, public prosecution services should be in charge of supervising the process of investigation and authorized also to carry out investigations themselves.
• criminal prosecution of the person, including bringing charges and drawing up of the indictment act;	
• sustaining of public prosecution in the court.	
The Code shall clearly define the legal status of the victim, suspect and the accused; establish an exhaustive list of preventative measures, their duration, procedure for their application, procedure for appeal and review in accordance with the requirements of the Constitution of Ukraine and the European Convention on Human Rights.	
It is necessary to provide for in the legislation that the maximum duration of detention of the person without a court sanction (72 hours), as provided for in the Constitution of Ukraine, shall only be acceptable in exceptional cases. At the same time it is also necessary to constitute a procedure according to which further detention of the person following the first 24 hours will only be possible with the court sanction. Such procedure will comply with Article 9 of the 1966 International Covenant on Civil and Political Rights and with Article 5 of the European Convention on Human Rights.	The ECHR provides in Art. 5, 3 for a detained or arrested person to be brought promptly before a judge or other officer authorized to exercise judicial power. There must be concrete suspicion (facts) that a person has committed a criminal offence. The wording of the law regulating arrest therefore should be precise insofar as every arrestee has to be brought promptly before a judge, independent of whether the law provides for a regular review of detention and its grounds afterwards. Decisions of the European Court on Human Rights indicate that promptly refers to a certain urgency and that – exceptions exist for terrorist crimes – a state is required to provide for effective control by domestic courts (which includes effective organization of judicial control of arrest which suits the requirements of the European Convention on Human Rights. A 72 hours period of police detention (without having been brought to a court) necessitates derogation of Art. 5, 3.
As a general rule testimony of the person will have evidential validity under condition that such information is provided to the court directly. The parties of defence and prosecution will have to notify and provide each other with all available to them	

factual information about the deed. Relevant information will have to be examined within reasonable time prior to the beginning of court proceedings.	
Defence attorney (representative) shall be selected by the person in question (suspect, accused, victim) from among the advocates. Bodies of the pre-trial investigation, prosecutor and court should have no procedural opportunities to interfere with the selection of the defence attorney and to prevent his/her participation in the case. It is necessary to ensure procedural guarantees for confidentiality of communications between defence attorney (representative) and suspect, accused, victim.	The European Convention on Human Rights – on the condition that a person has been charged with a criminal offence – grants the right to defence by the person him- or herself or through legal assistance. Insofar, two forms of criminal defence are addressed and the wording of Art 6, 3c has provoked the question of whether it suffices to provide either for efficient self defence or for efficient defence through a defence council or whether both forms of defence have to be offered by national procedural law and practice. It seems clear that the right to have efficient defence cannot be reduced to either being represented by a defence council or defending oneself in person. However, the European Court of Human Rights has ruled that an accused person who lawfully chooses to defend himself in person waives his right to be represented by a lawyer (Melin v. France (1993) 17 EHRR, 1). This opinion is questionable as the two forms of defence fulfill different procedural functions. Defence by the defendant himself has the function to provide for a maximum of input by the defendant in terms of personal information (something the defence council cannot do) and defence by a lawyer has the function to provide for professional knowledge and legal strategies (moreover for personal assistance). Insofar, it is evident that in many cases only both forms of defence together will guarantee an effective defence in criminal proceedings. Another problem has been discussed with respect to the question of whether the state can restrict the right to have a lawyer if the defendant is assessed to be capable to defend him- or herself adequately or efficiently. Art. 6, 3c differentiates between defence by the defendant himself, defence by a defence council and mandatory assignment of a defence council or a legal aid lawyer (the latter under the conditions that the defendant cannot afford a defence lawyer and that the interests of justice require to assign a legal aid lawyer). So, in principle it would not make sense to differentiate between mandatory assignment of a legal aid lawyer on the one hand and access to a lawyer of a defendants choice on the other hand if the state could restrict access to a lawyer of ones own choice to those cases where the defendant is not capable to defend himself effectively (because this is essentially the ground which establishes interests of justice). Insofar, it is clear that the European Convention on Human Rights guarantees the right to have a defence council under all circumstances. The right to have a defence council may not be restricted. Restrictions may apply, however, to the provision of free legal aid.

The Code has to provide for an appropriate procedure of obtaining free legal aid by persons who are victims and to the suspects (accused) in the criminal offences.	The right to have a legal aid lawyer provided by the state is made dependent on two conditions (R.D. v. Poland (Appl. No. 29692/96) and 34612/97, 8 December 2001; for a discussion on Legal Aid see also Skinnider, E.: The Responsibility of States to Provide Legal Aid. Paper prepared for the Legal Aid Conference, Beijing, China. The International Centre for Criminal Law Reform, 1999). First, the defendant lacks sufficient means to pay for a defence council. Lack of sufficient means is not defined in the European Convention. However, most European justice systems have implemented legal aid which allows for identifying the standards to be applied when deciding on the element of lack of means. The defendant, however, has the burden to proof his or her indigency. The test to be applied should not be beyond all doubts but should refer to a lower level of proof (Pakelli v. Germany, Judgement of 25 April 1983, §34). As regards the second condition, that is the interests of justice require assignment of a legal aid lawyer, three situations are recognized as indicating interests of justice: ● Complexity of the case, in terms of legal and factual complexity, ● Personal characteristics of a defendant that restrict the capability of a defendant in defending him- or herself, ● Seriousness of the alleged crime and severity of the sentence that might be imposed. As regards seriousness of crime and the severity of the potential sentence the European Court on Human Rights has ruled that when the defendant is at risk of being deprived of liberty interests of justice require assignment of a legal aid lawyer (Behnam v. UK, Judgement of 10 June 1996, §61; Ezeh and Connors v. UK, Judgement of 15 July 2002 (adjudication proceedings), §§ 44-49). This is consistent with national systems of legal aid in European countries (Frowein, J., Peukert, W.: Europäische Menschenrechtskonvention. 2nd ed., Kehl 1996, Art. 6; see for example §140 German Criminal Procedural Code which demands for assignment of a defence council in each case where the charge concerns a felony crime (felony crimes carry a minimum sentence of one year imprisonment). In general, the right to a legal aid lawyer does not include the right of a lawyer of

	ones own (free) choice (For an overview of a selection of national legislation see Position paper submitted by the ICDAA: Freedom of Choice of the Defence Counsel. Documents presented during the United Nations Preparatory Conference on ICC Rules of Procedure and Evidence, 26 July-13 August 1999). The Court has ruled that the European Convention does not guarantee such a right (Croissant v. Germany (1992) 16 EHRR 135; European Court on Human Rights, Mayzit v. Russia (application no. 63378/00), 20 January 2005; see also EC Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union, §4.3.2). However, the Court has found also in recent decisions that, in general, an accused's choice of council should be respected (Goddi v Italy (1984) 6 EHRR 457) and that assignment of a defence council made against the wishes of the accused will be "incompatible with the notion of a fair trial…if it lacks relevant and sufficient justification" (Goddi v Italy (1984) 6 EHRR 457, §27). It seems evident that on the basis of the right to have effective legal defence the choice of legal aid lawyers by the state (or the court) must not lead to a situation where trust between defendant and lawyer – as the very basis of effective defence – cannot develop. In such a case – no basis for trust between defence council and defendant and no sufficient justification for a state appointed defence council – the state may not insist on a particular assignment (Goddi v Italy (1984) 6 EHRR 457; see also Spaniol, M.: Das Recht auf Verteidigerbeistand im Grundgesetz und in der Europäischen Menschenrechtskonvention. Berlin 1990). The view that free choice of defence council should prevail is consistent also with the United Nations Basic Principles on the Role of Lawyers (http://www.unhcr.ch/html/menu3/, adopted at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 28 August 1990 to 7 September 1990), which state that all persons are entitled to the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings (See also Position paper submitted by the ICDAA: Freedom of Choice of the Defence Counsel. Documents presented during the United Nations Preparatory Conference on ICC Rules of Procedure and Evidence, 26 July-13 August 1999).

As a rule, the accused has to remain free from detention until the court delivers a judgment. The accused can be held in custody only if there is no possibility to secure attainment of the objectives of justice by other means. In case of pre-trial detention the accused is to be granted additional guarantees, in particular, the right to an obligatory participation of the defence attorney.	
The parties shall have equal access to expert opinions. Selection of experts shall entirely be within parties' discretion.	If selection of experts shall be entirely within the parties discretion, a rule of the adversarial criminal justice model is adopted that does not lead to satisfying results as experiences show. The European Court on Human Rights has not extensively dealt with questions of experts (but see for example Mantonavelli v. France, ECHR, 18. March 1997; Brandstetter v. Austria, (1993), 15, E.H.R.R., 378; Bönisch v. Austria, (1987), 9, E.H.R.R., 191). However in several decisions the Court has confirmed that the general principle of the fair trial applies also for rules and practices with regard to experts. This means that accused/defence as well as prosecutor must have had an opportunity to get information about the evidence provided by the other party and must have had the opportunity to examine such evidence. Independent of the type of procedure model (adversarial or inquisitorial) it is necessary that the expert evdience could be examined by both parties. If there is reason to assume that an expert (who was appointed by the court) is not neutral the European Court demands that the accused/defence must have the right to introduce expert evidence under the same conditions as the state/prosecution. Persons should be excluded from the expert status who have contributed to establishing a case (suspicion) against he suspect/accused. According to the European Courts decision Art. 6 ECHR does not demand that the accused consents to the courts decision on who should be appointed as expert. Current practice in Europe and elsewhere shows that courts have lists of experts (that are licensed or otherwise officially appointed through particular procedures). Recently, there is a trend to concentrate certain forensic tasks in forensic institutes or laboratories which are either operated through the state or accredited/licensed by the state (see Nijboer, J.F., Sprangers, W.J.J.M. (Hrsg.): Harmonisation in Forensic Expertise. An Inquiry Into the Desirability of and Opportunities for International Standards. Amsterdam 2000). European countries tend to introduce special legislation for expertise on DNA. Such regulations require (organizational) distance between law enforcement agencies and laboratires certified for DNA-examination.

	As regards the differences in the position of experts in the adversarial and inquisitorial systems of justice there are signs of convergence. In inquisitorial systems there is a trend toward granting the accused more rights in the choice of experts (which are appointed by the court). In adversarial systems we find a tendancy to move toward a more neutral position of the expert in the trial. The Australian Supreme Court has in 1998 for the first time issued guidelines for forensic experts. These guidelines say that experts are not representing the parties of the trial and that he main duty of experts concern the support of the judge in making decisions in specific areas where the court has not the knowledge required to answer relevant questions.
2.3. Procedures for court control at the stage of the pre-trial proceedings need to be further improved. Constitutional rights and fundamental freedoms of the person can be temporary limited only upon court's sanction. The judge will:	In principle, all acts and decisions during the pre-trial proceedings that infringe upon rights of the suspect should be made reviewable in a separate, interlocutary procedure.
• sanction carrying out of special investigative activities (interception of information from the communication channels, instalment of covert devices for surveillance over a place or a person, review and seizure of correspondence, etc.);	Special investigative methods deserve particular attention from the viewpoint of human rights protection. It should be envisaged to regulate all special investigative methods comprehensively and in a uniform way. Special investigative methods have particular relevance for human rights as they are covert and have a high potential of intrusion into the core of privacy of individuals (Art. 8 ECHR). Special investigative methods concern Wire tapping/telecommunication surveillance Surveillance in the public space by means of covert methods (observation, videotaping etc.) Data mining Telecommunication traffic data retention and access to traffic data Informants Controlled delivery Undercover police Listening (audio/video) devices in private premises International instruments (for example Anti-Corruption Conventions,

	Transnational Crime Convention 2000) urge ratifying states to introduce such special investigative methods. Recently, the European Union has issued a directive that requires telecommunication traffic data retention (including internet connections) (see also the Cybercrime Convention of the Council of Europe) for a minimum period of 6 months. The situation in Europe displays in the area of rules on special investigative methods vast variation. However, the goal of effective protection of human rights according to European Court of Human Rights decisions as well as decisions of European constitutional courts requires beside a warrant issued by an independent judge that other conditions are met in order to justify intrusion in privacy. (1) Investigative methods heavily intruding into privacy must be restricted to the investigation of serious crime. This condition is normally met with providing for a catalogue of offence statutes to which for example wire taps may be applied (other methods concern limitations through minimum penalties or mixtures of catalogue and minimum penalties). (2) Such investigative methods must be authorized only temporally and for narrowly defined periods of time (three months seems to be the average time allowed in many European countries for wire taps, lower periods apply for listening devices in private premises) (3) The application of special investigative methods must be available only as a last resort (ultima ratio) in the investigation of a serious criminal offence. (4) Privileged communication (lawyer-client etc.) must not be placed under surveillance (except the lawyer etc. is an accomplice to the crime). Where information has been retrieved from privileged commnication such information may not be admitted as evidence and must be immediately destroyed. (5) As covert methods tend to generate information that can be used also for launching further criminal investigations it must be guaranteed that such information is only used for criminal proceedings where in general such special investigative methods could have been applied. (6) Persons who have been placed under surveillance must be notified after surveillance (and investigation) has been terminated in order to be able to bring such surveillance before a court. (7) Data coming from special investigative methods have to be earmarked in

	order to avoid their being laundered. (8) Data resulting from covert surveillance have to be destroyed after a statutorily set period of time. (9) Special records should be maintained for special investigative methods and published in the form of statistics which allow for transparency and for evaluation.
• choose preventive measure (pre-trial detention, bail, written undertaking not to leave a place, etc.) and sanctioning of other measures of the procedural coercion, connected to the temporary restriction of personal and proprietary rights of the person (property arrest, removal from office, temporary ban to participate in commercial activities). The issues of application of the measures of procedural coercion must be decided at the court hearing with adherence to equality and adversarial principles with obligatory participation of the parties of prosecution and defence;	
• fixate information as evidence in separate instances (e.g., interviewing of the seriously ill witness or of the witness whose life and health are in danger in the course of pre-trial investigation);	
• review complaints on actions of the investigator, prosecutor during the pre-trial proceedings, etc.	
The judge who participated in the pre-trial proceedings will have no right to consider criminal case at the stage of the court proceedings.	
It is also necessary to improve the procedure for the judicial consideration of criminal cases at first instance. This procedure should be harmonised with civil and administrative adjudication in part where there should be no discrepancies based on the subject and task of the criminal adjudication. All cases of crimes and criminal misdemeanours at first instance should be considered exclusively by local courts with criminal circuit courts existing therein to consider the especially grave crimes.	
In the circuit criminal courts a jury trial shall be functioning, whereby a panel of jurors will issue a verdict in the criminal cases on the issues of fact only (for example, whether the deed took place, whether it was committed by the accused, whether he/she is guilty of committing this deed), and a person presiding in the process (professional judge) on the basis of the verdict will decide on the issues of law (qualification of a deed, determination of the type and measure of punishment, etc.).	

The judge will study only the indictment and the registry of materials, documents and statements which may be used as evidence. Materials, documents and information about testimony shall be provided to the court directly by the parties of defence and prosecution.	
At the same time it is necessary to introduce an institute of the recognition in the courts of facts which are not disputed by the parties, instead of their scrutiny during the judicial consideration of the case.	
It is necessary to significantly widen the scope of application of the procedures of restorative justice (mediation), in accordance with which the judge will make a decision as to the agreement on pleading guilt or reconciliation between the accused and the victim.	Restorative justice, mediation and restitution should in principle be organized outside the courts and outside criminal proceedings. Though, restorative justice, mediation reconciliaton etc. point to different aproaches, in principle this should be organized by civil society. Substantive and procedural rules should then permit to take mediation, restitution etc. into account with allowing for example for non-prosecution, mitigated punishment etc. However, compensation of the victim may be an option as a condition for non-prosecution or as a sentencing alternative (possibly also as a condition coming with the suspension of a prison sentence).
In order to provide the court with information on social characteristics of the person, who is being accused or is found guilty of committing a crime, in order to make a decision on selection of the most adequate preventive measure for this person or type of punishment, the probation service shall prepare and submit to the court materials on the social evaluation of the person with relevant recommendations.	It shoud be considered to establish a uniform probation service responsible for collecting information necessary for the sentencing decision, the supervision of offenders placed under probation as well as the supervision of offenders required to to do community service.
Special juvenile justice procedures shall be improved which will allow for better consideration of the rights and interests of the minors. Criminal cases in which the accused are minors shall be considered by the court comprising a professional judge and two people's assessors.	It should be considered to establish a separate system of juvenile justice. International instruments speak strongly in favour of separating juvenile justice from adult justice (Bejing Rules, Minimum Rules for Juvenile Justice 1985; Minimum Rules for Youth Detention 1991; Minimum Rules for the Prevention of Juvenile Delinquency, Riyadh Rules 1991, Child Convention 1989). The principles to be derived from the UN instruments are found also in Recommendations etc. of the Council of Europe. It is then in particular three approaches that should be implemented in juvenile criminal justice: Diversion, Depenalization, Education and Rehabilitation, Decarceration (prison as a last resort).

In individual cases (for example, when the person who is accused of committing a criminal misdemeanour can not attend the court hearing due to certain circumstances) it is necessary to provide for a court hearing in absentia. In such cases participation of the defence attorney is obligatory.	
It is also required to envisage an order proceeding, whereby the judge, without holding a court hearing, delivers an order of court on the punishment of a person for commission of the criminal misdemeanour if the person pleads guilty of its commission and does not oppose the penalty which can be ordered by the judge. The person can be held criminally liable through the order proceeding only if he/she has a defence attorney and only if the opinion of the victim is taken into consideration, as well as the opinion of the prosecutor in the cases of the public accusation.	Here, a penal order procedure should be considered that is for example implemented in the Danish and in the German criminal procedural law (as well as in other European countries). According to that a simplified procedure may be initiated by the public prosecutor which consists of mere written proceedings (penal order procedure). If the public prosecutor concludes that the case is not complicated in terms of proving guilt and that a fine is a sufficient punishment, then, a penal order may be forwarded to the judge in which besides the indictment, the public prosecutor proposes a fine (according to the day fine system). If the court agrees with the proposal a penal order is mailed to the suspect who may appeal against the order within a period of two weeks. If an appeal is filed, then, ordinary proceedings take place. The procedural option of simplified procedures was extended drastically in 1993. Now, the public prosecutor may propose in a simplified procedure a suspended sentence of imprisonment of up to one year if the offender is represented by a defense counsel. As only 6 % of all criminal penalties meted out in the FRG by criminal courts today concern prison sentences of more than one year, in theory a full trial could be restricted to a neglectable part of criminal cases. It is most probably not feasible to make a penal order system dependent on the opinion of the victim. Victims are in general not that interested in following up cases if the crime was not serious. Moreover, powerful vicitm (shoplifting etc.) may exert an influence which ultimately could turn out to be to the disadvantage of justice. In many cases (victimless crime) there will be no victim anyway.
Particularities of the closed hearings and special procedures for consideration of the evidence (for example, interrogation as a witness of the person who is under the protection) will be defined.	In case of victim protection (or witness protection) the Art. 6 right to examine all evidence becomes particularly relevant. In any case the defendant must have had an opportunity to examine the witness in a way that – when taking into account all aspects of the case – leads to the assessment that a fair trial has been granted.
With the view of respecting the presumption of innocence it is necessary to abrogate the possibility for courts to remit a case for additional investigation.	There should be an intermediary procedure which allows the court to examine the indictment. The only possible decisions here are: rejection of the indictment or admission and trial.
The procedure for review of the court judgments in criminal cases should be	

improved. Appellate courts should function only as courts of appeal instance. The courts of the first instance should be deprived of the right to decide on the further fate of the appeals.	
To review cases in cassation, it is necessary to set up the High Criminal Court. The subject of the cassation review will be violation of rules of substantive and procedural law with the aim of ensuring unified court practice.	
The Supreme Court of Ukraine shall review court decisions in criminal cases only under exceptional circumstances.	
Opening of the case based on the newly discovered circumstances shall be carried out upon decision of the court. Prosecutors should be deprived of the exclusive right to initiate review of criminal cases based on the newly discovered circumstances. Such a right should belong to all parties to the proceedings and persons whose interests are affected by the judgment in the case.	Re-opening of criminal cases that have been concluded by final judgements interferes with the basic interest in a final termination of criminal cases (within due time). This interest in finally terminating criminal cases is explained by the need to restore peace in society after a criminal offence has been committed and with the pursuit of general prevention. However, there are also other interests at stake. Society and individuals may be interested in having wrongful judgements removed or altered. Insofar, the need to terminate criminal cases without prospects of being tried again on the one hand and interests in pursuing justice when it was recognized that a judgement was wrong after the judgement became final have to be balanced against each other and the rules concerning re-opening of criminal cases reflect societies` basic decisions in balancing such interests. **There exist different approaches in dealing with finalized criminal cases** Modern criminal justice systems have developed sofar three approaches in dealing with finalized criminal cases. These approaches differ in the reasons that initiate interests in altering criminal judgements and/or its enforcement process. However, these approaches are all interfering with a final judicial decision and they go beyond what is provided for in the ordinary systems of appeal and cassation. The approaches concern ● *Amnesty* ● *Clemency* ● *Re-opening of criminal proceedings* Amnesty usually is entrusted to the legislative power and the form it takes is that

	of a general law. The reasons for granting an amnesty vary, the most important, however, are amnesties that respond to basic social conflicts (eg. conflicts that resulted in civil war, civil unrest or a general uprising) that brought with them widespred violence or other criminal offences. In fact, a well founded amnesty requires that application of criminal law or enforcement of criminal sentences would not serve the goal of reaching peace in society but most probably would lead to an escalation of conflicts. An (political) amnesty thus responds to a need to resolve conflicts by way of restricting enforcement of criminal law and is therefore wider as it allows to stop initiation of criminal proceedings alltogether. However, amnesties are also implemented with what is called celebration amnesties (eg. amnesties granted to convicted and sentenced offenders at the occasion of high public holidays and the like). The power of granting clemency is entrusted to the head of state. With the power of clemency the head of state (or those to whom the power of clemency was transferred or delegated) that is the head of the executive power may intervene into judicial decisions to the effect that either prevent that such decisions are enforced or that further enforcement of criminal judgements is brought to a premature end. Although, seen from a formal perspective, clemency usually must not be justified, it is clear that a clemency decision must based on sound grounds and that clemency usually responds to a situation which for the sake of justice demands for an alteration of the judgement itself or the course of its enforcement. The power of re-opening criminal proceedings is entrusted solely to the judiciary. Here, it is the interest in removing or altering judgements that are evidently wrong which allow the judiciary itself to interfere in final judicial decisions. When looking for example at the German system of re-opening criminal proeedings (which in a certain way represents a standard model of the civil law system) a first characteristic concerns that a difference is made between re-opening of criminal proceedings to the advantage and re-opening of criminal proceedings to the disadvantage of the defendant. The reasons for making such a difference lies in the different rights and legal interests that are stake with allowing re-opening of proceedings to the advantage and disadvantage of the defendant. In general, German procedural rules allow for a broader range of grounds for re-opening to the advantage of the defendant. This is justified as with a wrongful judgement that carries a conviction and a sentence to the disadvantage of the defendant it is not only the general interest in justice but also individual interests in basic rights

	(freedom, life, property) of those who may be punished and loose basic rights that have to be considered. On the other hand, re-opening of criminal proceedings to the disadvantage of a convicted and sentenced offender aims at protecting the interest in justice alone. However, such differentiation is not always made. So, eg. the Dutch criminal procedural law in Art. 457 lists three grounds which allow re-opening of criminal proceedings in case two judicial decisions contain a contradicting factual basis or if the court has not recognized during the trial facts that would have led to an aquittal, to the inadmissability of the indictment or to the appliaction of a criminal statute that carries a lesser punishment. Re-opening is possible also if a judgement contains evidence that a criminal offence has been committed although the accused has not been convicted for such criminal offence.
3. Reform of the bodies of criminal justice system and law enforcement agencies	
Reform of the bodies which carry out pre-trial investigation and/or secure public order shall be focused on the improvement of their operations in order to raise the level of human rights and fundamental freedoms protection, to reinforce fight against criminally punishable offences, and to increase public confidence in their work. Such reforming is supposed to ensure unified approaches, coherence and consistency of measures improving performance of these bodies, to harmonise forms and methods of their operation with European standards.	There must be clear separation of intelligence services on the one hand and law enforcement agencies (police) on the other hand; as has been mentioned above, the relationship between “order police” and “criminal police” has to be separated, too. Separation should be also envisaged between internal security services and intelligence services operating abroad. From a viewpoint of law enforcement powers or investigative powers, intelligence agencies should never have powers that amount to the investigation of crime. They should be restricted to the collection of strategic intelligence. Since 9/11/2001 there have been numerous changes in the relationship between external and internal intelligence services as well as intelligence services and law enforcement bodies (changes affect also customs, tax authorities etc.). Most relevant issues here concern: The establishment and operation of uniform information systems, and The exchange of information between intelligence and law enforcement. Exchange of information with foreign security and law enforcement agencies The exchange of (personal information) in these fields carries a high risk of intrusion into privacy rights (with far reaching consequences). Particular emphasis

	therefore should be laid on the statutory basis for establishing integrated information systems respectively the mutual access to such information systems.
Reforming measures shall cover, in particular, the bodies of:	
• *Prokuratura*;	
• Security Service of Ukraine;	
• Ministry of the Interior of Ukraine;	
• State Criminal Execution Service of Ukraine;	
• State Border Guards Service of Ukraine;	
• State Customs Service of Ukraine;	
• State Tax Service of Ukraine;	
• Military Service of Order in the Armed Forces of Ukraine.	
The reforming of the said bodies will include changes in the forms and methods of their operation and their institutional reorganisation aimed at:	
• delineation of the political and professional leadership;	
• development and implementation of the professional standards of conduct of employees of the law enforcement agencies;	
• demilitarisation of the system of the law enforcement agencies, namely reduction in the number of posts which can be filled by military servicemen and persons of lower and higher military ranks;	
• carrying out of activities to secure public order in co-operation with the civil society through various forms of such co-operation;	
• changing approaches to the evaluation of the effectiveness of work of the criminal justice system bodies.	
3.1. Pre-trial investigation of crimes and criminal misdemeanours will be carried out by bodies of the inquiry and of the investigation, which shall in the future be transformed into bodies of the pre-trial investigation.	
Investigators of these bodies will gather materials about circumstances having significance for the case which will be fixated as evidence by the court.	

The role of the prosecutor will lie in the control over the pre-trial investigation through sanctioning of the continuation or termination of the investigation, in conducting criminal prosecution of the person and in support of the public prosecution in court.	See above and Prosecution services should also have the power to terminate criminal cases if such cases are petty in nature and the interest of justice can be served by making non-prosecution dependent on the payment of a transaction fine or community service. Most European criminal justice systems provide for such powers. Such powers of non-prosecution may be justified through • The nature of criminal offence: petty offences • Proportionality • Saving public Resources • Public Interest and Goals of Punishment • individual prevention • general deterrence • Avoiding Stigma and Labelling, in general negative side effects of criminal justice Such powers are particularly important in the juvenile justice system where diversion (see above) should be organized through the public prosecutors office.
To ensure the adversarial principle and procedural equality of the parties of prosecution and defence, it is necessary to complete the establishment of the Bar as an independent self-governing profession which exercises the function of defence in the criminal proceedings, and to foresee a possibility to set up and regulate the operation of detective agencies (private detectives).	It is recognized that the sector of private security should be regulated separate from the regulation of commerce. What is then also important concerns the relationship between private and public security, for example questions that address the admissability of evidence that has been collected by private security companies.
3.2. It is necessary to bring constitutional functions and principles of organisation of the *Prokuratura* in line with European standards (according to the opinions of the Venice Commission and recommendations of the Parliamentary Assembly and Committee of Ministers of the Council of Europe).	
The Soviet model of the *Prokuratura* shall be transformed into the system of public prosecution which will be comprised of prosecutors with independent status and which	There are diferent models of organization of public prosecution services

will be headed by the Prosecutor General. Public prosecution shall be defined on the constitutional level to be a part of the justice system.	Independent body, accuntable to Parliament Public prosection services fall under the authority Ministry of Justice (most common) **Duties of the state as regards safeguarding the functions of public prosecution** Adequate legal and organizational conditions Adequate budgets Conditions of work should be established in close cooperation with public prosecutors **Internal Organization** Assignment and re-assignment of cases should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where a prosecutor believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement **Relationships with the Political System (Government/Ministry** • In most systems and as a consequence of the hierachical structure of public prosecution the minister of justice is empowered to issue general guidelines and to interfere in individual cases The problem arises in general of • How to establish safeguards against political interests replacing legal considerations, political pressure and abuse of powers and • To what extent should public prosecutors be independent? Undue influence may be exerted through internal directives given through superior public prosecutors: for eaxmaple • re-assignment of cases • superior him-/herself takes up the case

	In some systems the Ministry of Justice may give directives in the form of • general guidelines • individual directives If such powers exist, then • any directive must be given in written • and • in case a public prosecutor thinks a directive is wrong the public prosecutor has the right give his opinion in written to his/her superior • in case a public prosecutor insists a directive is wrong the prosecutor is not obliged to implement the directive • In general, however, external directives should be abolished in total The independence of prosecutors should be safeguarded by securing that • No unjustified interference or unjustified exposure to civil, penal or other liability affects public prosecution services • However: the office of the public prosecutor should be obliged to periodical and public accounting for its activities • Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.
The Constitution shall provide for the following functions of the prosecutors: 1) sustaining public prosecution in court; 2) control over the legality of the pre-trial investigation through procedural guiding of the investigation; 3) oversight over the enforcement of laws during execution of judgments in criminal cases and also in the process of application of other measures of coercion which are connected to the restriction of the personal freedom.	See above
During the transitional period the prosecutors may be allowed to preserve the function	

of the representation of interests of persons and the state in court in cases defined by law and only upon request of relevant persons.	
Organisational structure of the prosecutor's bodies shall be built according to the functional principle (procedural guiding of the pre-trial investigation and sustaining of the public prosecution in court; representation of the interests of person and of the state; oversight over the enforcement of laws in the process of application of coercion measures) and be in line with Recommendation of the Committee of Ministers of the Council of Europe Rec(2000)19.	
The law shall define the status of prosecutors that will ensure their independence not only from outside political or other illegal influence but also from the procedural interference of the higher ranking prosecutor.	
To this end a new procedure for selection, initial and on-going training, bringing to disciplinary liability, dismissal, etc. of prosecutors shall be instituted.	
On-going training for prosecutors shall include improvement of knowledge on provisions of the Constitution of Ukraine, European Convention on Human Rights, case-law of the European Court of Human Rights, criminal law and procedure.	
3.3. *Security Service of Ukraine* shall be a body responsible for protection of the national security in line with European standards (Recommendations of the Parliamentary Assembly of the Council of Europe Nos. 1402 and 1713) which will be carried out mainly through counter-intelligence activities.	
During the transitory period, the SSU may conduct pre-trial investigation only with the view of protection of national security interests and only with regard to the strictly limited category of criminal offences – crimes against basics of the national security and terrorist acts.	See above, intelligence services should never have law enforcement powers.
The SSU, through its inherent measures, provides assistance to other agencies in the fight against crime.	See above, regulation in particular for exchange of information required
An effective democratic oversight over the activities of the SSU, including a parliamentary oversight, shall be exercised.	A democratic oversight is necessary in all those fields of activities where there is no judicial oversight because of the secrecy of the operations and those surveilled not knowing about surveillance.
Other changes in the security sector will be identified in the Conceptual principles for the operation of the system of bodies of the national security and defence of Ukraine.	

3.4. *Ministry of the Interior* shall become a civilian agency of the European model. The name "militia" will be preserved for the local militia; within the MoI there will function the police.	
Activities of the police and local militia shall be directed at the protection of human rights and freedoms and sustaining of law and order by prevention of human rights' violation by other persons and respect of human rights during the performance of these bodies' tasks.	
Responsibilities of the Ministry will include:	
1) protection of law and order: protection of life, health, human rights and freedoms, protection of property, interests of society and state from illegal encroachments, ensuring of public safety and public order, etc.;	
2) fire protection, protection against natural disasters and man-caused catastrophes, civil protection of the population (thus, the Ministry will be assigned with the relevant powers of the Ministry for Emergency Situations and for the Protection of Population from Consequences of the Chornobyl Catastrophe);	
3) traffic safety, border control (thus, the Ministry will receive the powers of the Central State Motor Vehicle Inspection of the Ministry for Transport and Communication and of the State Border Guard Service);	
4) pre-trial investigation which will be effected through unification of divisions of criminal militia and of the fight against organised crime (the tax militia of the State Tax Administration of Ukraine will join criminal police).	
Internal Troops of the Ministry of the Interior shall be united with the militia of public safety and be transformed into public safety police, which secures public order and public safety. Divisions of the police of public safety, in particular, will protect public order, convoy arrested and convicted persons, pursue and detain arrested and convicted persons who escaped from under the custody.	
Security police will ensure security of the state authorities of Ukraine and their officials, security of other important state locations, objects of material, technical and military maintenance of the Ministry of the Interior of Ukraine, escort special cargoes, ensure observation of the special entrance rules at the places which are under security, security of the diplomatic and consular missions of the foreign states on the territory of Ukraine, etc.	
The function of registration of natural persons shall be carried out by the Ministry of Justice in accordance with one of Ukraine's commitments undertaken upon accession	Beside registration of natural persons (most probably address etc.) it should be considered to develop legislation on telecommunication (identification) data. In

to the Council of Europe.	European countries and on the basis of directives such as the retention directive, registers on telecommunication are established which contain certain identifiers of persons who use telecommunication devices.
It is necessary to reorganise the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a demilitarised State Migration Service of Ukraine.	
3.5. It is necessary to introduce specialisation within the bodies of the pre-trial investigation and the prosecution service concerning *combating corruption* in line with the 1999 Criminal Law Convention on Corruption and the 2003 United Nations Convention Against Corruption. Besides, there should function a special state authority which would co-ordinate and monitor implementation of the state anti-corruption policy (short of exercising functions of criminal prosecution and investigation), as recommended by the Group of States against Corruption (GRECO).	
3.6. The *penitentiary system* shall remain under the responsibility of the Ministry of Justice and be operated by demilitarised State Criminal Execution Service.	
Ministry of Justice of Ukraine shall determine state policy in the penitentiary sphere and exercise control over its implementation.	
State Criminal Execution Service of Ukraine shall ensure in establishments for the execution of judgments and in the pre-trial investigatory wards the order and conditions of detentions of persons as defined by law, shall implement European standards in this area, in particular, through execution of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, implementation of the European Prison Rules of 2006.	
The system of initial and on-going training, re-training for the personnel of the State Criminal Execution Service of Ukraine shall be improved.	
The probation service shall operate within the State Criminal Execution Service of Ukraine and be set up on the basis of the criminal execution inspection.	
3.7. It is necessary to create an *independent national preventive mechanism* in order to prevent torture – according to the Optional Protocol to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	See above, in particular it should be thought about making civil society part of such a prevention mechanism.

3.8. Reform of the *State Border Guards Service* shall be carried out in accordance with the Concept for the Development of the State Border Guards Service of Ukraine for the Period until 2015, which was adopted by the Decree of the President of Ukraine on 19 June 2006 No. 546, without prejudice to the provisions of this Concept.	
3.9. The further exercising of the functions of the pre-trial investigation by the *tax militia* has no justification in light of the fact that the principal task of the tax bodies is fiscal activity.	In many systems preliminary investigation of tax offences remains within the tax authorities **because** the principal task is fiscal activities (which should not be hindered through law enforcement activities coming from outside. Furthermore, the tax secret must be respected in many systems.
Therefore, in order to increase the role of preventive measures and to reduce an ungrounded application of coercive methods in the course of carrying out of the fiscal functions, investigation in the cases of suspicion about the commission of the crime, related to the violations of the tax legislation, shall be carried out by the criminal police of the MoI.	
3.10. *State Customs Service*, whose principal function is to implement the state economic policy in the area of customs, shall not carry out investigations in the cases of suspicion about commission of the crime of smuggling and other crimes related to violation of the customs rules. Such combination of the function of an economic nature and of the function of the criminal investigation results in the conflict of interest and promotes abuse of relevant powers.	
3.11. *Military Service of Order in the Armed Forces of Ukraine* shall be transformed into a special body which will ensure legal order in the Armed Forces of Ukraine and will be functioning under the Ministry of Defence of Ukraine. The Military Service of Order will be responsible for prevention, detection, and investigation of certain types of criminal offences in the Armed Forces of Ukraine and some other military units of Ukraine according to the competence defined in the legislation.	
3.12. Proper execution by the bodies of the criminal justice system of their functions shall be proved not by the implementation of the so-called action plans on combating crime, but through a *set of the following new criteria for results evaluation* (taking into account European standards):	

• data about the number of cases wherein the proceedings were not finalised within the terms prescribed by the procedural law;	
• information on the number of complaints about violations of human rights in the course of the pre-trial investigation;	
• results of the judicial consideration of criminal cases;	
• level of public trust in the work of the pre-trial investigation bodies or prosecutors.	
Information concerning violations of procedural terms and complaints shall be accessible to human rights protection NGOs. It is necessary to create conditions which will enable introduction of an effective mechanism of civilian oversight over the operation of the criminal justice system bodies. Citizens' polls will measure the public trust in such bodies.	This should be part of a general freedom of access to information act. Access of human rights organizations is only one aspect of such a general regulation. What has to be considered, too, is data protection (also if NGOs should be granted access to personal (and sensitive) data.
3.13. Initial and on-going training for prosecutors, investigators, employees of the bodies of the interior, other bodies of the criminal justice system and law enforcement shall include improvement of knowledge on provisions of the Constitution of Ukraine, European Convention on Human Rights and other international documents on human rights, case-law of the European Court of Human Rights, criminal law and procedure, ethical standards of the professional activity and anti-corruption legislation.	
SECTION IV	
Stages and Ways to Implement the Concept	
Measures to implement the Concept will be undertaken in three stages.	
1. *Stage one* (year 2007) provides for:	
– in the legislative sphere:	
1) revision of the criminal legislation through preparation and adoption of amendments to the Criminal Code of Ukraine concerning criminal misdemeanours and also with the view to humanise criminal legislation; preparation and adoption of the Code on Administrative Misdeeds of Ukraine;	

2) implementation of the new concept of the criminal procedure through preparation and adoption of the Criminal Procedure Code of Ukraine;	
3) preparation of amendments to the Criminal Execution Code of Ukraine and to the Law of Ukraine "On Executive Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
4) preparation of the draft amendments to the Constitution of Ukraine with regard to the *Prokuratura*;	
5) preparation of a new wording of the Law of Ukraine "On the *Prokuratura*";	
6) preparation of the draft new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
7) preparation of the draft new wordings of the laws of Ukraine "On Militia", "On the General Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
8) preparation of the draft Law of Ukraine "On the Free Legal Aid";	
9) adoption of the amendments to the legislation of Ukraine in order to fix the assignment of the State Criminal Execution Service to the Ministry of Justice of Ukraine;	
– in the institutional sphere:	
10) carrying out necessary organisational and personnel-related preparation of the Main Investigation Department of the MoI of Ukraine to perform tasks of the pre-trial investigation in light of additional investigative jurisdiction which will be transferred, in particular, from the General Prosecutor's Office of Ukraine and Security Service of Ukraine;	
11) deciding on the issue of specialisation of the pre-trial investigation bodies and prosecutors with regard to the fight against corruption;	
12) working out of a legal, functional and organisational basis for the transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and the State Customs Service to the MoI of Ukraine;	
13) preparation of proposals concerning creation of an independent national preventative mechanism according to the Optional Protocol to the Convention against	

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;	
14) preparation of proposals concerning improvement of the system and mechanisms of democratic civilian control over the law enforcement agencies of the state;	
15) consideration of issues, taking into account standards and recommendations of the Council of Europe, concerning the penitentiary system of Ukraine, which are related to the functions, organisational structure, powers and technology of operation of the Criminal Execution Service of Ukraine.	
– in the sphere of organisational, financial and technical and material measures:	
preparation and adoption of the State Programme of the Reform of the Criminal Justice System and Law Enforcement Bodies for 2008-2012 with the indication of amounts of annual funding from the State Budget of Ukraine for relevant measures.	
2. *Stage two* (years 2008-2009) provides for:	
– in the legislative sphere:	
1) adoption of amendments to the Constitution of Ukraine with regard to the *Prokuratura* and of the new wording of the Law of Ukraine "On the *Prokuratura*";	
2) adoption of the new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
3) adoption of the new wordings of the laws of Ukraine "On Militia", "On the General Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
4) adoption of amendments to the Criminal Execution Code of Ukraine and the Law of Ukraine "On Execution Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
5) adoption of the Law of Ukraine "On the Free Legal Aid";	
6) preparation and adoption of other amendments to the legislation of Ukraine stemming from the Concept (in particular, amendments to the Law of Ukraine "On Operative and Search Activities", "On the State Tax Service of Ukraine", Customs Code of Ukraine);	
– in the institutional sphere:	

7) beginning of the transformation of the militia of Ukraine into a police agency within the MoI of Ukraine in line with European standards;	
8) reforming (based on the respective law) of the Internal Troops of the MoI of Ukraine;	
9) structural reforming of the Main Investigation Department of the MoI of Ukraine into a body of the pre-trial investigation within the MoI of Ukraine;	
10) reorganisation of the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a State Migration Service of Ukraine;	
11) transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and State Customs Service to the MoI of Ukraine;	
12) preparation of proposals on the further development of the local militia, its functions and powers, forms and methods of its operation, and also subordination and financing, taking into account principles of the administrative reform undertaken in the state, within the competence of local bodies of the state executive power and of the self-government bodies in the area of ensuring public order and safety as defined by the law;	
13) transformation of the Criminal Execution Inspection of the State Department of the Execution of Judgments into a Probation Service in line with European standards;	
14) preparation and beginning of implementation, in line with the Concept, of the law enforcement agency-specific plans on their reform as well as programmes for their personnel and resources management;	
15) preparation and implementation in the practical work of the professional codes of ethics and internal rules of conduct for employees of the criminal justice system bodies and law enforcement agencies;	
16) implementation of action plans to combat corruption (according to the Concept for the Eradication of Corruption “On the Way to Integrity”, adopted by the Decree of the President of Ukraine of 11 September 11 No. 742), to combat organised crime, in particular in the spheres of human trafficking, illegal migration, money laundering of illegal proceeds, etc.;	
17) preparation and implementation of criteria and scientifically based methodologies of the internal and external evaluation of the work of bodies of the criminal justice system.	

3. *Stage three* (year 2010-2012) provides for:	
1) finalisation of the process of setting up a system of the pre-trial investigation, in particular of its component aimed at combating corruption;	
2) transformation of the functions of the *Prokuratura* in line with European standards;	
3) transformation of the Security Service of Ukraine into the agency of the executive branch with the special assignment (special service) which will secure national security of Ukraine;	
4) finalisation of the reform of the Ministry of the Interior of Ukraine into a civilian agency with functions and powers which correspond to the internal policy of the state, in particular through the following:	
• transfer of the law enforcement functions in the area of fire, emergency and industrial security, labour security and state mountain security, protection and security of the forests and animals, natural resources, waters and water life resources and their environments, and rescue services from respective ministries and agencies under the jurisdiction of the Ministry of Interior;	
• introduction of guidance and co-ordination of the State Border Guards Service of Ukraine by the MoI of Ukraine.	
5) taking other measures to improve and further optimise operation of the criminal justice system bodies and law enforcement agencies of Ukraine, to bring their organisational structures, mechanisms (goals, functions, principles and methods) and forms of their operation in line with the Concept and European standards.	
At the same time, during all stages of the reforming, respective bodies shall take measures, within defined jurisdiction, to ensure effective execution of their tasks concerning protection of human rights and fundamental freedoms, interests of the society and the state.	

7.5 Annex V

European Commission
Commission européenne

Council of Europe
Conseil de l'Europe

23 January 2007

Synopsis of Activity

Field of activity: Directorate General I – Legal Affairs/Crime Problems Department

Type of activity: Expert Roundtable on the (Anti-corruption) Draft Laws
'On the Principles of Prevention and Countering of Corruption'
'On Responsibility of Legal Persons for Corruption Offences'
'On the Introduction of Changes to Certain Legal Acts Regarding the Liability for Corruption Offences'

Program: 'Support to good governance – Project against corruption in Ukraine' (UPAC)

Country: Ukraine

Date and place: 17 – 18 January 2007

Budgetary reference: **……..**

CoE experts:
1) Mr. Drago KOS (Slovenia);
2) Mr. Marin MRČELA (Croatia);
3) Mr. Ivar TALLO (Estonia);
4) Mr. Boštjan PENKO (Slovenia) [expert submitted written expertise, but was unable to be present at the meeting]

CoE Secretariat: …….

UPAC Project Team: Vera DEVINE (Team Leader), Vlasta SPOSOBNA (Project Assistant), Oleh TSELUYKO (Short-term consultant)

Participants: COE experts, Members of the Ukrainian Parliament, MPs' advisors/assistants, experts of the Parliament's Central Legal Department, the General Counsel of the Verkhovna Rada Budget Committee, representatives of the Ministry of Justice, the Ministry of Internal Affairs, the Presidential Secretariat, national and international NGO's and organizations, and media.

Total number of participants: 27 + media.

Partner institutions / organizations: Ministry of Justice, Presidential Secretariat, Parliamentary Committee on the Fight against Organized Crime and Corruption

Origin/reference to other activities: UPAC Work Plan; Objective 3, Activity 3.1.5 aimed at aligning UA anti-corruption legislation with international legal standards

Objectives: Presentation and discussion of CoE experts' findings on
1) The Draft Law of Ukraine 'On Responsibility of Legal Persons for Corruption Offences' (REG.#2114-D);
2) The Draft Law of Ukraine 'On the Introduction of Changes to Certain Legal Acts Regarding the Liability for Corruption Offences' (REG.#2112-D);
3) The Draft Law of Ukraine 'On the Principles of Prevention and Countering of Corruption' (REG.#2113-D).

Comments/results:
The three above mentioned draft Laws were submitted by the President of Ukraine at the end of September 2006 to the Ukrainian parliament (Verkhovna Rada) as part of an anti-corruption law package. Before that, only the CoE Civil Law Convention on Corruption had been signed and ratified by Ukraine.

The package contained 6 laws in total, of which in October 2006, the parliament adopted the following 3:

- the Criminal Law Convention on Corruption of the Council of Europe,
- the Additional Protocol to the Criminal Law Convention on Corruption of the Council of Europe,
- the United Nations Convention against Corruption (UNCAC).

The above 3 laws on the ratification of the international instruments require harmonization with national legislation before entering into force. The three draft laws in question aim at aligning the legislation to conform to the standards set in the Conventions and the Protocol.

Slightly revised versions of the draft Laws were adopted in the first reading in parliament on 12 December 2006. Second readings are foreseen for February and March 2007.

The expertise concluded that all three draft Laws fall short of European and UN standards and therefore, need to be substantially redrafted.

Detailed comments:

General:

The Deputy Head of the Committee On the Fight Against Organised Crime and Corruption, Mr. MISHCHENKO, opened the roundtable reminding participants that "these Drafts were introduced under the necessity to bring domestic legislation into conformity with the requirements of the UN Convention against Transnational Organised Crime, the UN Convention against Corruption, and the Criminal Law Convention on Corruption of the Council of Europe"[3].

CoE experts represented their findings on the 3 concerned Draft Laws in detail (clause-by-clause). Participants were able to follow the presentations as they had been given background material that included the written expertise. Discussions evolved around understanding some of the key concepts, and illustrating the need for certain provisions and different possible models with examples from Council of Europe member states.

Comments on the discussion on specific laws:

The Draft Law of Ukraine 'On the Principles of Prevention and Countering of Corruption' (REG. #2113-D).

Mr. KOS stated that "Ukraine has to be commended for the development of the idea on prevention and counteraction of corruption with this Law". This Draft Law's intention seemed to be some kind of "umbrella" for all other pieces of anti-corruption legislation, yet, on its own, it would not bring any improvement of the situation in the area of corruption in Ukraine. Some solutions provided really deserve attention, and they could

[3] See http://portal.rada.gov.ua/control/uk/publish/article/news_left?art_id=84645&cat_id=37486

(and should) be used in other countries, too. However, the regulation of some other ideas and principles was judged not to be the best possible one, and serious improvement would be necessary.
Mr. Kos read out his main remarks for this Draft Law as follows:
" -this law is referring so many times to other laws; sub-statutory acts and regulations that it is far from ensuring comprehensive and consistent prevention and counteraction of corruption. At least in some cases, the regulations which are now referred to other laws, would have to be provided by this one;

-the definition of the most important term – the one of "corruption" – is a very narrow one, which might lead to problems of misusing this fact in the future;

-although the Act is called "Law of Ukraine on Prevention and Counteraction of Corruption" there is not a lot on prevention in it – although some general principles are mentioned, no special body for the prevention is established, the participation of the public in "prevention" is a mere formality, there are no firm regulations on codes of conduct. Especially in this area, there is major room for the improvement of this Law;

-there are some serious restrictions given in the Law, but there are no sanctions provided for the breach of those restrictions;

-some of the highest-level state officials are not included in the restrictions given, which might already raise a concern on unfair and different treatment of different categories of state functionaries;

-some solutions in the Law in their further implementation might cause some problems from the perspective of the European Convention on Human Rights;

-reporting on financial assets as it is provided now can not function at all without serious amendments in this or in other laws;

-the confiscation regime of the proceeds of corruption represents no serious threat to the perpetrators of corruption"[4].

In Mr. TALLO's overall impression on the Draft Law in the current form was that it was not advisable to be submitted to parliament for second reading, "but first to rework and clarify the central message of the draft law, and to support it with an explanatory memorandum". "Then it could be submitted to parliament with the understanding that some provisions are sensible to be left open for the relevant parliamentary committee to help defining the suitable solutions for Ukraine". In his view "these debates could be organized also by an outside agency like the Council of Europe, the World Bank or UNDP, but it is imperative that they would include the very lawmakers responsible for this legislation"[5].

The Draft Law of Ukraine 'On Responsibility of Legal Persons for Corruption Offences' (REG.#2114-D).

Mr. MRČELA's view, which was expressed at the Roundtable, was that: "If Ukraine wants to harmonize criminal legislation in this area, internally and externally, following international standards on the one hand, and making it useful, operational and efficient on the other hand, the totality of circumstances has to be realized and taken into consideration.

-First, a clear distinction has to be established between corruption-related criminal offences and other corruption offences (possibly administrative, civil or those from the Law on the Principles of Prevention and Counteraction of Corruption). Corruption-related criminal offences should all (as a strict rule with no exemptions) be included in the Criminal Code; they still have to be changed and amended to comply with international standards (to my knowledge, other experts are simultaneously dealing with this issue). Mentioning liability of legal persons for criminal offences in the future can only mean liability for criminal offences from the Ukrainian Criminal Code. Ukraine may, of course, legitimately decide to establish the responsibility of legal persons in any other area, but borderlines and distinctions between different areas have to be evident and clear. As I have already mentioned: The international documents used as a reference in this work clearly demand establishing responsibility for criminal offences (active and passive bribery in the public and private sector, trading in influence). On this side the door for other options is closed; the alternatives are given only with respect to the nature, and the form of liability (civil, administrative, criminal). The modern approach is promoting development of "criminal" liability of legal persons – through establishing adequate grounds for liability that correspond to the specific nature of the legal person on the one hand, and traditional principles of criminal law on the other hand. The idea is reflected in my proposal how to balance those, often contradictory, concepts and formulate legitimate grounds for "criminal" liability of a legal person.

[4] Quote from the written expertise by Mr. KOS, submitted in preparation for the Roundtable.

[5] Quote from the written expertise by Mr. TALLO, submitted in preparation for the Roundtable.

-Second, from a systematic point of view, it would be a good idea to create one (or more) very fundamental provision(s) that would stipulate fundamental rule(s) on liability of legal persons and include them in the general part of the Ukrainian Criminal Code next to basic principles dealing with liability of natural persons.

-Third […] a new draft law on liability of legal persons should be prepared, rather than changing the current one. The drafters should consider introducing liability of legal persons for all (relevant) criminal offences and not just those related to corruption. The draft should be more comprehensive than the existing one and could include: specific provisions on grounds for liability of a legal person, restrictions in the liability of legal persons, liability in the case of statutory changes, provisions on necessity, attempt, complicity etc. of legal persons, provisions on sentences and other sanctions, safety measures, statute of limitation, scope of application of the general provisions of the Criminal Code, special procedural rules, scope of application of Criminal Procedure Code, to mention the most relevant"[6].

The Draft Law of Ukraine 'On the Introduction of Changes to Certain Legal Acts Regarding the Liability for Corruption Offences' (REG.#2112-D).

Mr. MRČELA's summary of the Draft Law is as follows:

"-The Draft represents a useful starting point on the basis of which further work would need to be done.

-Some parts of the Draft seem to be in need of substantial reconsideration and possible changes.

-The liability of foreign arbitrators and jurors as foreseen in the scope of the amendment of Article 18 of the Criminal Code seems not to be conclusively resolved by the draft, at least from the point of view of the interpretation of the law.

-With regards to the provisions dealing with 'Abuse of Authority', the inclusion of an 'omission to act' as a manner of perpetrating a criminal offence should be considered. From the current description of the offence it cannot be concluded that abuse of authority would not be committed if a perpetrator is acting for the purpose of receiving benefits for any legal person (entity), regardless of who the owner of such a legal person is. Therefore, adding a legal entity as an element to the criminal offence is desirable.

-The current provisions of the criminal offence 'Exceeding of Authority' should be reconsidered; it should be considered whether there is a need for such a criminal offence at all.

-The description of 'Commercial Bribery' should be improved in order to fully comply with the Council of Europe Criminal Law Convention against Corruption and the United Nations Convention against Corruption (UNCAC). Further consideration should be given regarding sanctions not only for this criminal offence, but also for active and passive bribery.

-There is an argument for reconsideration and improvement of the current provisions on 'Unlawful Enrichment' and for 'Trading in Influence'.

-Because of the lack of a definition of corruption and a definition (or explanation) of a bribe, there needs to be further discussion for a possible enhancement of the proposal"[7].

The MPs, members of the profile parliaments Committee expressed the will to discuss and debate all CoE experts' remarks during the process of final preparation of the concerned Anti-corruption Draft Laws for the second reading in the Verkhovna Rada.

[6] Quote from the written expertise by Mr. MRČELA, submitted in preparation for the Roundtable.

[7] Quote from the written expertise by Mr. MRČELA, submitted in preparation for the Roundtable.

7.6 Annex VI

European Commission
Commission européenne

Council of Europe
Conseil de l'Europe

March 2007

Synopsis of Activity

Field of activity: Assisting Advisor to Mr. Serhiy Mischenko, People's Deputy of Ukraine; Verhovna Rada Committee on the Fight against Organised Crime and Corruption.

Type of activity: The body of the Parliament of Ukraine formed among the People's Deputies of Ukraine to execute legislative work in certain areas, preparation and prior review of issues within the competence of the Verkhovna Rada of Ukraine, carrying out of monitoring functions.

Program: Criminalisation of corruption. Legal entities' responsibility for corruption offences. Seizure of corruption instruments and revenues from corruption. Mutual legal assistance in corruption related cases.

Country: Kazakhstan

Date and place: 26-28 March, 2007, Almaty

Budgetary reference:

CoE experts:

CoE Secretariat:

UPAC Project Team:

Participants: Representatives from France, Slovenia, Romania, Poland, Lithuania, Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Switzerland, Great Britain, representatives of OSCE and other international experts.

Total number of participants: about 60 participants

Partner institutions/organizations:

OECD, OSCE, United Nations Office on Drugs and Crime, Agency for fighting economic and corruption crime, Republic of Kazakhstan.

Origin/reference to other activities:

The Parliamentary Committee of Ukraine against organized crime and corruption shall draft relevant legislation; prepare and prior review the issues

within the competence of the Verkhovna Rada of Ukraine and monitor activities against corruption, organized crime, prevention of legalization of revenues from criminal activities, fighting terrorism, appointment to positions within the competence of the Committee.

Objectives: Better understanding by legal experts and prosecutors from Central Europe and Central Asia of certain international legal standards in the area of corruption criminalization adopted under the relevant OECD, CoE and UN conventions against corruption, as well as the best practices of other countries of practical incorporation of these standards in their legislation.

Comments/results: Participation in the seminar was efficient enough taking into consideration the importance of the issues under discussion for Ukrainian legislative process. Specifically, the first day topic was the issue of legal entities' responsibility for corruption offences. The overall attitude to this issue can be the best described by G.T. Nielsen: "The idea of criminal responsibility of legal entities has been long recognized by the society at large and its sections, and it is only the legal experts who have the problem whether to recognize this idea or not."

Detailed comments: The effectiveness of implementation of legislation concerning responsibility of legal entities for corruption offences was of great interest. In Poland, the Law "On Responsibility of Collective Entities" has been in force since October 2002, and as Rafal Kjerzhinka from the Ministry of Justice of Poland stated, that the statistics concerning the application of this law says that there are about 20-30 court trials annually.

Vitas Rimkus, Head of the Department for prevention of corruption of Special Investigation Office of Lithuania, said that in January 2002 the amendments to the Criminal Code of Lithuania were enacted concerning indirect responsibility of legal entities for criminal offences. Five criminal cases were brought to the court but their outcome is hardly predictable. Discussion of mutual legal assistance in order to obtain evidences was also useful for further implementation. There was a presentation of an instrument which enables to submit enquiries for mutual legal assistance.

7.7 Annex VII

REPORT
on participation of Ukrainian delegation in
the Sixth Review Meeting and the Seventh Meeting of the Steering Group
of Anticorruption Network and Advisory Group
within the Istanbul Anticorruption Action Plan
(Paris, December 11-13, 2006)

The Sixth Review Meeting and the Seventh Meeting of the Steering Group of Anticorruption Network and Advisory Group within the Istanbul Anticorruption Action Plan was held in Paris on December 11-13, 2006.

The following persons invited by the OECD Anticorruption Network participated in the events:

Yu.A. Petrochenko – Deputy Secretary of the National Security and Defense Council of Ukraine (NSDU), Deputy Head of the NSDU Interagency Committee on complex solving the anticorruption problems;

V.O. Ryabenko – Head of the Department of compliance to the law by special purpose military units and other anticorruption institutions, General Prosecution Office;

O.D. Markeyeva – Deputy Head of Department, Head of Division of anticorruption problems, NSDU office; Secretary of Interagency Committee on complex solving the anticorruption problems; National Coordinator of OECD Anticorruption Network for transition countries;

O.L. Smirnova – Head of Department of legislation on judiciary, law enforcement activities and fighting crime, Ministry of Justice of Ukraine, an expert;

Yu. Ye. Yurchenko – Head of Control and Inspection Department, Main Civil Service Department of Ukraine.

O. Mashtalir, Coordinator of Anticorruption Program, Coalition of NGOs "Svoboda Vyboru" participated in the meeting on a special invitation of Anticorruption Network.

The Ukraine and Armenia monitoring reports, and the regular brief reports by Georgia, Kazakhstan, Kyrgyzstan, Tadzhykistan on implementation of the previously adopted recommendations were on the agenda of the Sixth Review Meeting.

The Ukraine Review Report (see the Annex) was prepared by the experts of OECD Anticorruption Network based on the answers to the questionnaire prepared by Ukrainian ministries and agencies in August 2006 and the information obtained during the Network monitoring mission that took place on October 2-5, 2006. The report highlights the actions taken by Ukraine to implement the recommendations of Istanbul Anticorruption Action Plan for the period from January 2004 to December 2006.

The Ukrainian delegation had a preparatory meeting with the experts of Anticorruption Network, commented and clarified the content of the report during the plenary sessions. The overview of ongoing political and public processes in Ukraine and the new anticorruption steps by the country leaders was presented. Fighting corruption is becoming the permanent focus of the Government and the President of Ukraine. In September, 2006 the Anticorruption Concept "On the Way to Integrity" was adopted by the Presidential Decree; the issue of fighting corruption in budget and financial areas was under consideration at the meetings of the Cabinet of Ministers of Ukraine, the relevant resolution was taken based on the results of the considerations. The international cooperation is developed; the anticorruption technical assistance projects are under implementation (TACIS, USAID projects); the intergovernmental agreement between Ukraine and the USA on implementation of the Threshold Millennium Challenge Corporation Program designed to decrease the level of corruption has been signed.

The experts of the Network noted significant progress in increasing transparency of the civil service. The Main Civil Service Department of Ukraine has implemented the training program aimed to increase the standards of ethics for civil servants.

General Prosecution of Ukraine provided its clarifications with regard to existing coordination mechanisms in anticorruption area, the activities of joint operative and investigation groups, involvement of exerts and auditors to financial expertise of corruption offences.

The participants of the meeting and the experts were informed also on the state of consideration of anticorruption draft laws submitted by the President of Ukraine on September 11, 2006; the draft law "On the State Anticorruption Committee" registered at Verkhovna Rada, and the recent amendments to the Law of Ukraine "On Purchase of Goods, Works and Services" adopted by the Parliament of Ukraine on December 12, 2006.

At the same time it should be noted that anticorruption efforts of the country are appraised based solely on the actual and final implementation of recommendations of Anticorruption Network.

For today, the most fundamental recommendations for Ukraine are still not implemented or implemented partly. **The general appraisal highlights the lack of significant changes in the area of adoption of efficient anticorruption legislation, and establishment of special anticorruption institution although the work has been done in this area.**

Ukraine has made efforts to adopt the National Anticorruption Strategy. The Anticorruption Concept has been recognized as a document with some features of a strategy but the appraisal cannot be significantly higher because of the lack of Action Plan for its implementation.

The opinion of the experts of OECD Anticorruption Network is that the main problems for Ukraine are still the following:

1. **The lack of the single National Anticorruption Strategy** (recommendations 1 and 2).

   The Anticorruption Concept of Ukraine "On the Way to Integrity" was adopted by the Decree of the President of Ukraine #742 of September 11, 2006.

   Taking into consideration that the draft Concept was being agreed and finalized since October 2005, and the Action Plan has not been adopted by today, it should be noted that the process of adoption of anticorruption strategy is unjustifiably long.

   The relevant national strategies along with the relevant plans have been already adopted by Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Georgia and are under implementation.

2. **The needs for improvement of legislation** (section II). The priority is the ratification of UN Convention against Corruption, the Council of Europe Criminal Convention against Corruption and the Supplementary Protocol thereof together with relevant changes in the legislation.

3. Establishment of **special anticorruption group** with special powers and authorities with regard to investigation of corruption offences (recommendations 3 and 4).

The other anticorruption obligations need to be met in the nearest future – adoption of **the Code of Ethics for Civil Servants**, improvement of legislation regulating government purchases, tax procedures etc.

There are also needs to ensure the transparency of decision making procedures for the issues relating the rights of the citizens, improvement of public access to the information on the Government activities etc.

Since there is no significant progress in Ukraine in implementation of Istanbul Plan recommendations, OECD issued its declaration published on the official site of the organization and foreign mass media on December 15, 2006 (see the Annex).

By the next meeting to be held tentatively in summer **2007, Ukraine has to prepare the regular report on implementation of the recommendations of Anticorruption Network in the area of fighting corruption**.

The monitoring report and appraisals by the expert of Anticorruption Network will be made public and used by the international organizations (EBRD, the World Bank, FATF, Council of Europe, EU etc.).

The issues of funding activities under the Istanbul Action Plan and the organization of the general meeting of Anticorruption Network in summer 2007 were discussed during the Seventh Meeting of the Steering Group of Anticorruption Network and the Advisory Group within Istanbul Anticorruption Action Plan. The decisions of the issues will be published in the early 2007.

Since the negative appraisals of implementation of Istanbul Action Plan impact the ratings of investment attractiveness of Ukraine and the image of the country at large, the Ukrainian state authorities need to focus on implementation of international anticorruption obligations of the country in the nearest future.

Yu. Petrochenko

(signature)

Head of the Delegation,
Deputy Secretary,
National Security and Defense Council of Ukraine

December 27, 2006

7.8 Annex VIII

UPAC FINANCIAL REPORT as of 31/05/2007

Expenses	All years				Expenses at 31/05/2007
	Unit	# of units	Unit rate (in EUR)	Costs (in EUR)	
1. Human Resources					
1.1 Salaries (gross amounts, local)					
1.1.1 Technical					
Local long-term expert	Work/months	36	1500	**54,000**	
1.1.2 Administrative/ support Staff					
Project assistant - Kyiv	Work/months	36	1400	**50,400**	
Project assistant- Strasbourg	Work/months	36	4000	**144,000**	
1.2 Salaries (gross amounts, expat/int. staff)					
Team leader	Work/months	36	9500	**342,000**	
Output 1.1 Short term consultants/experts	Work/days	50	375	**18,750**	
Output 1.2 Short term consultants/experts	Work/days	50	375	**18,750**	
Output 1.3 Short term consultants/experts	Work/days	15	375	**5,625**	
Output 2.1 Short term consultants/experts	Work/days	65	375	**24,375**	
Output 2.2 Short term consultants/experts	Work/days	25	375	**9,375**	
Output 2.3 Short term consultants/experts	Work/days	40	375	**15,000**	
Output 2.4 Short term consultants/experts	Work/days	40	375	**15,000**	
Output 2.5 Short term consultants/experts	Work/days	80	375	**30,000**	
Output 3.1 Short term consultants/experts	Work/days	45	375	**16,875**	
Output 3.2 Short term consultants/experts	Work/days	70	375	**26,250**	
1.3 Per diems for missions/travel					
1.3.1 Abroad (project staff)	Per diem				
Project staff misc international missions	Per diem	40	169	**6,760**	
1.3.2 Local (project staff)					
Project staff missions	Per diem	70	169	**11,830**	
Output 1.1 Short term consultants/experts	Per diem	35	169	**5,915**	
Output 1.2 Short term consultants/experts	Per diem	35	169	**5,915**	
Output 1.3 Short term consultants/experts	Per diem	12	169	**2,028**	
Output 2.1 Short term consultants/experts	Per diem	55	169	**9,295**	
Output 2.2 Short term consultants/experts	Per diem	16	169	**2,704**	
Output 2.3 Short term consultants/experts	Per diem	35	169	**5,915**	
Output 2.4 Short term consultants/experts	Per diem	35	169	**5,915**	
Output 2.5 Short term consultants/experts	Per diem	60	169	**10,140**	
Output 3.1 Short term consultants/experts	Per diem	40	169	**6,760**	
Output 3.2 Short term consultants/experts	Per diem	60	169	**10,140**	
1.3.3 Seminar/conference participants					
Output 1.1	Per diem	40	169	**6,760**	
Output 1.2	Per diem	0	169	**0**	
Output 1.3	Per diem	0	169	**0**	
Output 2.1	Per diem	0	169	**0**	
Output 2.2	Per diem	40	169	**6,760**	
Output 2.3	Per diem	0	169	**0**	
Output 2.4	Per diem	40	169	**6,760**	
Output 2.5	Per diem	80	169	**13,520**	
Output 3.1	Per diem	0	169	**0**	
Output 3.2	Per diem	80	169	**13,520**	
Outputs 1.1, 1.3, 2.4, 3.2 - Study visits participants	Per diem	300	169	**50,700**	
Subtotal Human Resources				**951,737**	**246,913.14**
2. Travel					
2.1. International travel	Per flight				
Project staff travel		12	800	**9,600**	
International travel by consultants and participants in study visits Output 1.1		22	800	**17,600**	

Output 1.2		10	800	**8,000**	
Output 1.3		14	800	**11,200**	
Output 2.1		12	800	**9,600**	
Output 2.2		5	800	**4,000**	
Output 2.3		6	800	**4,800**	
Output 2.4		44	800	**35,200**	
Output 2.5		30	800	**24,000**	
Output 3.1		12	800	**9,600**	
Output 3.2		60	800	**48,000**	
2.2 Local transportation **(over 200 km)**	Per month	300	36	**10,800**	
In-country travel					
Subtotal Travel				**192,400**	**32,023.24**
3. Equipment and supplies* **					
3.1 Software (Case management)		2	20000	**40,000**	
3.2 Furniture, computer equipment				**0**	
Equipment project office (furniture, PC, fax, copy machine for 3 persons)	Per office	1	15000	**15,000**	
Personal Computers (incl. Office software)	Sets	30	2800	**84,000**	
Copy machines	Set			**0**	
3.3 Spare parts/equipments for machines, tools	Lump sum			**0**	
3.4 Other	Lump sum			**0**	
3.5 Training materials and supplies	Per event	36	1000	**36,000**	
Subtotal Equipment and supplies				**175,000**	**9,475.81**
4. Local office/project costs					
4.1 Vehicle costs	Per month		500	**0**	
4.2 Office rent	Per month				
4.3 Consumables - office + medical supplies	Per month	36	400	**14,400**	
4.4 Other services (tel/fax, electricity/heating, maintenance)	Per month	36	400	**14,400**	
Subtotal Local office/project costs				**28,800**	**15,740.72**
5. Other costs, services					
5.1 Publications**	Per publication	12	2500	**30,000**	
5.2 Survey**	Per survey	5	12000	**60,000**	
5.3 Auditing costs					
5.4 Evaluation costs		1	10000	**10,000**	
5.5 Translation, interpreters					
Translations and interpreters in-country	Days	200	350	**70,000**	
Interpretation abroad (study visit)	Days	35	600	**21,000**	
5.6 Financial services (bank guarantee costs etc.)					
5.7 Costs of conferences/seminars**	Per event	36	2500	**90,000**	
Subtotal Other costs, services				**281,000**	**22,817.35**
6. Real Estate and works** **					
6.1 Purchase of land					
6.2 Purchase of building					
6.3 Construction works					
Subtotal Real estate and works					
7. Other				**6,577**	
Subtotal Other				**6,577**	
8. Subtotal direct project costs (1.-7.)				**1,635,514**	**326,970**
9. Administrative costs (maximum 7 % of 8., direct eligible project cost)	Percent	7		**114,486**	
10. Total eligible project costs (8.+ 9.)				**1,750,000**	**349,858.18**
11. Contingency reserve* (maximum 5 % of 10., total eligible project costs)	Percent				
12. Total costs(10.+11.)				**1,750,000**	**349,858.18**

* Contingency reserve can only be used after written approval of the Commission

** Only indicate here when fully subcontracted *** Costs of purchase or rental

**** The purchase of land or purchase/construction of buildings is only permitted if indispensable for implementing the project

***** All items must be broken down into their individual components. The number of units for each component must be specified.