

CENTRE FOR POLITICAL AND LEGAL REFORMS

**LEGAL REFORMS IN UKRAINE:  
Materials of the Centre for Political  
and Legal Reforms**

Kyiv  
2005

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**Legal Reforms in Ukraine:** Materials of the Centre for Political and Legal Reforms// Editorship by Ihor Koliushko, — Kyiv, 2005. — 272 p.

ISBN 966-96534-2-9.

This is a study of the constitutional, administrative and judicial reforms in Ukraine prepared by the Centre for Political and Legal Reforms. The ed also contains conceptual materials and reform legislation developed by the Centre.



The development of this publication was supported by the International Renaissance Foundation (IRF)



THE EURASIA  
FOUNDATION

Support for this project K02-0005 was provided by the Eurasia Foundation with funds from the United States Agency for International Development (USAID). The opinions expressed herein are those of the authors and do not necessarily reflect the views of USAID or the Eurasia Foundation.



The development of this publication was supported by the Neighbourhood Programme of the Danish Ministry of Foreign Affairs and the partnership between the Centre for Political and Legal Reforms and the Danish Institute for Human Rights.

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ISBN 966-96534-2-9

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## INTRODUCTION

Today, there are more and more foreign politicians, journalists, experts and representatives of international donor organisations who enthusiastically follow the developments and reforms in Ukraine. The international community has become especially interested in our country after the Orange Revolution. It is this interest that has suggested the idea to make a publication in English which would enlighten the status and prospects of legal reforms in Ukraine.

The subject of this booklet also covers the study area of the Centre for Political and Legal Reforms, in particular the following three topics:

- *the Constitutional Reform* (the edition gives a brief account of attempts to amend the 1996 Constitution of Ukraine, the Centre's assessment of the constitutional amendments passed on 8 December 2004, the Opinion of the Venice Commission, and the translation of the proposed constitutional amendments concerning the local self-governance now considered by Parliament);
- *the Administrative Reform* (a concise history of the administrative reform in Ukraine and its recent achievements, as well as the Public Administration Concept developed by the Centre and texts of two draft laws: on the Cabinet of Ministers of Ukraine and on the Ministries and Other Central Executive Authorities); and
- *the Judicial Reform* (an overview of the establishment of the judicial system in Ukraine, modern assessment of the current status of the judicial reform, as well as the Concept for the Development of

the Judicial System drafted by the Centre for Political and Legal Reforms).

Even though the above legislative proposals and concepts are being put forward by a non-governmental think tank, they have quite good chances to form the basis for the future decision-making at the governmental level. This is due not only to the high proficiency of the experts working for the Centre and involvement of leading professionals from other institutions and organisations, but also because the Centre maintains continuous contacts with various public authorities and institutions, like the parliamentary committees for legal policy and for public administration and local self-governance development, the Presidential and Governmental Secretariats, the Justice and Economy Ministries, the Main Civil Service Department, the State Judicial Administration and many others. The experts of the Centre are also frequent members of public boards and councils working under the above authorities, as well as various official task forces for the development of legislative proposals and public policy documents.

Publishing this book, we would like to thank all Ukrainian and international organisations, as well as foreign countries that have been upholding the efforts of Ukrainian non-governmental organisations, including the Centre for Political and Legal Reforms. First and foremost, I would like to mention in this context the International Renaissance Foundation, the Office of the OSCE Project Coordinator, the German Foundation for International Legal Cooperation, the Danish Institute for Human Rights, the US Agency for International Development, the Eurasia Foundation, the Canadian Office of International Education, as well as other institutions that support the establishment of the civil society in Ukraine and development of Ukraine as a democratic and constitutional state.

We hope that the materials included into this edition will be of help to all those who are interested in the progress made by Ukraine, in particular its reforms in the public and legal areas. More information on the above topics is available in the book called *Development of Public Law in Ukraine* (2003-2004 Report (in Ukrainian only), as well as in other publications issued by the Centre for Legal and Political Reforms and on our web-site: [www.pravo.org.ua](http://www.pravo.org.ua).

Finally, I would like to mention that the Centre for Politi-

cal and Legal Reforms remains open to further cooperation with all interested organisations and individual experts for the achievement of the highest standards of proper government and fair justice in Ukraine.

Ihor Koliushko  
Head of the Centre for Political and Legal Reforms  
Kyiv, December 2005

**CONSTITUTIONAL  
REFORM 2003—2004  
(Analysis of the  
Constitutional  
Amendments of 8  
December 2004)**





**CONSTITUTIONAL REFORM 2003—2004**  
**(Analysis of the Constitutional Amendments**  
**of 8 December 2004)**  
**by Ihor Koliushko and Victor Tymoshchuk**

**Timeline of Events**

After Ukraine became an independent country, there was quite a long period of institutionalisation of public authorities, especially as concerns the system of executive authorities and their relations with the President of Ukraine. The 1996 Constitution established a mixed presidential-parliamentary form of government in Ukraine. Under this form of government, the President appoints the Prime Minister on the consent of the Verkhovna Rada (the Parliament), whereupon members of the Cabinet of Ministers (the Government) are appointed by the President on the submission of the Prime Minister. The Cabinet of Ministers is the highest public executive authority, and the President is the guarantor of the Constitution and institutionally does not belong to any of the branches of power.

However, in reality, even after 1996, the Government remained subordinated to the President, who did everything to prevent the adoption or promulgation of any key laws which could constitutionally separate the powers between the President and the Cabinet of Ministers. Thus, the Law on the Cabinet of Ministers was passed by three different Parliaments eight times, and each time it was vetoed by President Kuchma.

In such a way, lack of legal regulation and free interpretation of the Basic Law finally degraded the constitutional norms that set out the status of the Government. As a matter of fact, the President and the presidential administration have always been and still remain the centre of power in Ukraine with the Government fully subordinated to them. President Kuchma practically usurped the majority of au-

thorities that should have been held by the Government, in particular many of the staffing and founding powers of the executive branch.

Such President's moves ran against the initiatives aiming to adjust the form of government, in particular by reinforcing the Parliament. The Socialist Party of Ukraine led by Oleksandr Moroz was among the key sources of such initiatives. There were also some quite radical proposals, like to abolish the post of the President, put forward by the Communists.

Between 1998 and 2002, members of the Ukrainian parliament, united in various possible configurations (but predominantly the leftists and other opposition politicians), submitted diverse constitutional amendments targeting at a stronger Parliament, which, nevertheless, had very slim chances to be approved.

In his turn, in 2000-2001, President Kuchma proposed his own amendments to strengthen the President by providing him *inter alia* with additional grounds to dissolve the Parliament, but in 2002 he suddenly changed his mind and joined the camp of those who supported the idea of a more powerful Parliament. Such a shift was inspired by the approaching end of his term of office, and therefore he was trying either to prolong it or to weaken the future President.

The coincidence of the interests pursued by the leftists (who were aware that they would not manage to get the President's post) and by the pro-presidential forces (namely Mr Kuchma himself, who hoped to move the centre of power to the «manageable» Parliament, and the pro-presidential factions that were not able to divide the post of the President among them) made attempts to change the Basic Law more realistic. The proposal, however, encountered strong resistance on behalf of the political forces that supported Victor Yushenko, who, not groundlessly, hoped for his victory in the upcoming presidential election.

Leonid Kuchma first publicly announced the necessity to transit to another political system, the parliamentary-presidential republic, on 24 August 2002.

It was at this moment in time when the misnomers began to be used. The call to a political reform in fact meant only amendment of the Constitution. The first constitutional amendments at this stage of the reform were submitted by the President in March 2003.<sup>1</sup> Their

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<sup>1</sup> Constitutional Amendments No. 3207 of 5 March 2003 later replaced by a new bill of 20 June 2003.

content evidenced that they targeted at the prolongation of the President's powers (thus, the main proposal was to conduct the next presidential and parliamentary elections in the same year – 2006). Other amusing suggestions included establishment of a bicameral parliament, even though it was obvious that such ideas were quite unpopular both among the general public and politicians, therefore all they were aiming at was to distract public attention. This was followed by an imitation of a «nationwide discussion» of the amendments, whereupon the President submitted a new bill in August 2003. This bill contained no provisions on the bicameral parliament, and prolongation of the President's powers was disguised in a more skilful fashion.

At that same time, in July 2003, the oppositional members of parliament introduced their own amendments suggesting a strengthened role of the Parliament in the formation of the Government and a number of other related innovations.

In their turn, in September 2003, the pro-presidential factions filed two almost identical bills (No. 4105 and No. 4180, one of which was co-sponsored by the Communists) that envisaged the **election of the President by Parliament**. President Kuchma recalled his previously submitted bill and channelled all his efforts at the promotion of bill No. 4105.

The Parliament voted on No. 4105 on 24 December 2003. The opposition (Nasha Ukrayina and Yulia Tymoshenko's Bloc) occupied the rostrum and disabled the electronic voting system. The decision was passed by the raise of hands, which subjected the correctness of the vote count to criticism.

In such a way, at the end of 2003 the constitutional amendments (No. 4105) were preliminary approved. Among other, the amendments envisaged the election of the President by Parliament in 2006 (which meant that in 2004 the President would be elected only for one year and a half) and prolongation of the term of parliamentary mandate from four to five years.

However, the absolute majority of the public opposed the change of the procedure for the election of the head of state. In addition, the pro-presidential factions were compelled to change this part of the bill to enlist the support of the Socialists otherwise they would definitely lack votes.

On 8 April 2004, the second vote on the bill took place and this time it was supported not only by the former pro-presidential fac-

tions, but also by the Socialists and the Communists. However, it still failed to collect the sufficient number of votes for its final approval.

This should have put an end to the constitutional saga or at least postpone it for a year, since, according to paragraph 1 of Article 158 of the Constitution, if the Parliament fails to pass any constitutional amendments, the same amendments can be submitted for the parliamentary consideration not earlier than in a year after the adoption of the decision on them.

However, the inspirers of the constitutional changes were not giving in and, having come back to their senses after the defeat, they continued looking for other ways to alter the Constitution. Thus, in violation of the above constitutional norm, on 23 June 2004 bill No. 4180 was again filed for parliamentary deliberation and preliminary approved. At that time, the opposition (at least *Nasha Ukrayina* and Yulia Tymoshenko's Bloc) did not believe in the smallest possibility of the successful completion of the amendment procedure, in particular in the view of the approaching presidential elections, and also hoping for the prudence of the Constitutional Court of Ukraine.

But in October 2004, the Constitutional Court issued its positive opinion<sup>2</sup> on the amended bill No.4180, thereby giving another reason to doubt its independence and professionalism (as mentioned above, No. 4180 was practically identical to the failed No. 4105).

At that time, there seemed to be no motives that could reanimate the discussion of the issue when the election campaign was at its full swing, especially in view of a very high tension in the society. However, during the Orange Revolution, the constitutional amendments came back to light as one of the conditions in the negotiations between Victor Yuschenko, Leonid Kuchma, and Victor Yanukovych (Yuschenko's opponent in the elections). In these negotiations with participation of international mediators, when the political crisis rose to its extreme point, Victor Yuschenko was forced to make a public commitment to support bill No. 4180 in exchange for the amendments to the election legislation. In other words, the previous government regime agreed to organise the third additional round of elections under fairer rules only if the constitutional changes are adopted.

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<sup>2</sup> Opinion of the Constitutional Court of Ukraine issued on the request of the Verkhovna Rada of Ukraine to verify the compliance of the constitutional amendments with Articles 157 and 158 of the Constitution (case of bill No.4180 as amended)

On 8 December 2004 the Parliament voted on the package that comprised amendments to the Law on Presidential Election, constitutional amendments, including those concerning the local self-government which required preliminary approval, and the decision on the dismissal of the Central Election Commission. Such package voting was especially solicited by Mr Lytvyn, Chairman of the Verkhovna Rada. Thus, the constitutional amendments were passed.

This event found an ambiguous response in the society. Some people were positive about the very fact of a compromise achieved, while others saw it as a defeat of the revolution. However, the biggest concerns about the Constitution being treated as a trade item rose among lawyers, including the experts of the Centre for Political and Legal Reforms.

### ***Key Amendment Points***

For the sake of truth, it should be noted that the constitutional amendments passed on 8 December 2004 under No. 2222 (further referred to as «the Amendments») have considerably evolved, especially as compared to their «elder brother», bill No. 4105. They lost the most unacceptable norms, like election of the head of state by Parliament, prolongation of powers of the current Parliament for one year, election of judges for 10 years (instead of their life-long appointment) and a few others.

The Amendments also include a number of positive provisions, in particular:

- termination of powers of the Cabinet of Ministers with the election of the new Parliament;
- prohibition of constitutional amendments being vetoed;
- provision of the Cabinet of Ministers with the powers to appoint heads of central public authorities (excluding ministries) and to decide on the establishment, reorganisation or abolishment of central executive authorities;
- specification of the mechanisms of the presidential oversight of the Cabinet acts;
- establishment of the promulgation procedure for the laws not signed by the President; and
- establishment of the requirement of a parliamentary consent for the dismissal of the Prosecutor General.

A well-deserved commendation should be rendered to those reform initiators who sincerely tried to increase the role of the Verkhovna Rada in the formation of the Cabinet of Ministers. There is no doubt about the idea that the Government should originate in Parliament. However, the declared intentions and the text of the Amendments are not fully adequate, since, instead of the targeted balance of power, the reform resulted in the irrational asymmetry of authorities for the benefit of the Parliament, as it is described in more detail below, and may lead to the accumulation of negative consequences upon the enactment of the Amendments. Therefore, it is important to pay a special attention to their drawbacks.

*First.* The Amendments prolong the term of the parliamentary mandate from four to five years. In our opinion, this step will in no way benefit democratisation of Ukraine. It will be even of a less help for putting the government under the public control. Now, vice versa, the citizens will have less levers of influence on the Parliament, since the increased term of the parliamentary mandate will move the people's representatives away from those whom they represent, as well as from the need to report to the voters or to take their interests into account. Politicians will be addressing people only once in five years, which is especially unacceptable in the time of fundamental reforms and accelerated development of the society. Therefore, this amendment can be regarded as undemocratic, because it weakens the influence of the public on the exercise of power and worsens the representation of the views of the society in the government. Changes made to the local and regional elections to village, settlement, town/city, rayon, and oblast councils deserve no better assessment, especially since the authors of the reform «forgot» to increase the term of mayoralty.

*Second.* Another problematic amendment that has been a target of justified criticism is the introduction of an imperative mandate envisaging a per-term termination of powers of any member of parliament if such a member fails to enter the parliamentary faction set up by the political party (or election bloc of political parties) which he or she has been elected with or if a member of parliament quits such faction. Luckily, the Amendments were passed without the provision on the loss of the mandate on the grounds of an MP's exclusion from

a faction, since it would have completely ruined the independence of people's representatives, and all political power would have concentrated in the hands of political party leaders which is especially dangerous under the current circumstances in modern Ukraine, when authoritarian trends dominate in the majority of political parties where power belongs to one person or a small group.

As to the norm that was passed, it may appear to be inefficient, since a member of parliament may formally stay in one faction, but vote contrary to the party policy. Thus, the Constitution has become in a sense littered with redundant norms, which should be inadmissible for the Basic Law of any country. The representation of the voter views should be ensured not by legal, but rather political mechanisms, and first of all by a careful selection of parliamentary candidates. For this purposes, it is important to take into account moral and political qualities of the candidates, and not only their financial possibilities.

*Third.* The Amendments cancelled the requirement to pass the Rules of Parliamentary Procedure as a law by excluding the keyword «law» from the text of the Constitution. Replacement of the law by a simple parliamentary resolution will make it possible to adjust the Rules fairly easily to a specific situation or a specific composition of the Parliament. The Rules will hardly achieve the required level of stability without the need of their signature and promulgation by the head of state. Thus, this step can also be deemed undemocratic, since the procedure is one of the most important guarantees of democracy and transparency. The amendment makes it problematic to control the decision-making process in the Verkhovna Rada which may even raise doubts about the legitimacy of laws from the point of view of respect of the procedure. The proposed norm also contradicts paragraph 2 of Article 6 of the Constitution under which «legislative, executive, and judicial authorities shall exercise their powers within the limits set by the Constitution and in accordance with the law of Ukraine», as well as paragraph 2 of Article 19 of the Constitution, which sets that «public authorities and local self-government bodies, and their officials are obliged to act only on the basis, within the limits and in the manner envisaged by the Constitution and laws of Ukraine». There is no doubt that the Verkhovna Rada of Ukraine is a public authority and its Rules of Procedure should have the form of a law.

*Forth.* The «coalition of parliamentary factions» also deserves a special attention. Introduction of such a political subject into the Basic Law seems unadvisable from the perspective of undeveloped political and legal culture and tradition in Ukraine. Creation of the parliamentary majority (and not necessarily a coalition) should not be seen as an objective *per se*, but just as an instrument to introduce a certain policy for the formation of the Government and to support governmental initiatives in Parliament. Therefore, the legal regulation of this issue should be primarily aiming at the effectiveness of the Government formation and avoidance of the stalemate in political situations. This could have been done through a gradual transfer of the initiative on the formation of the Government from the head of state to the Parliament. The emphasis on the creation and functioning of the coalition distracts attention from important to secondary issues and litters the Constitution.

*Fifth.* In this context, it is important to look at the grounds for the pre-term termination of powers of the Verkhovna Rada. Thus, one of such grounds is when «over month the Verkhovna Rada fails to form a coalition of parliamentary factions and groups in accordance with Article 83 of the Constitution». Previously, the Constitutional Court established that the majority in the Verkhovna Rada may be created by members of one faction. This means that the requirement to form a coalition is not quite proper, even with the reservation that a faction that includes the constitutional majority of the Verkhovna Rada has the rights of a coalition. The most dangerous aspect is that Article 83 sets no formal signs of when such a coalition should be considered to be formed: should it be confirmed by voting, signatures of members of parliament or leaders of parliamentary factions or in any other way? Such unclear constitutional requirements may provoke their abuse by any bad faith head of state and may start being used for manipulations, and pressure on the Parliament.

In addition, a proper ground for the dissolution of Parliament related to the formation of the Cabinet of Ministers is set by clause 2 of the same paragraph and Article of the Amendments, «if within sixty days upon the dismissal of the Cabinet of Minister of Ukraine the personal composition of the Cabinet of Ministers of Ukraine is not formed». Thus, the provision on the failure to form a coalition is not only unnecessary, but also bears a danger of abuse, especially since



«the coalition shall be formed on the results of the elections and on the basis of reconciliation of political positions».

It should also be taken into account that the final version of the Amendments was passed with a norm that had been absent in the preliminary approved text of the Amendments. This norm prohibits the dissolution of the Parliament elected at special elections during one year upon its election. Since the Amendments create such conditions when parliamentary crises, in particular, due to inability of the Parliament to form the Government, may be quite probable, the above norm is definitely destructive. Soon there may come up a question: what should be done if even the Parliament elected at special elections is unable to form the Government?

*Sixth.* The Amendments introduce an internally controversial procedure for the formation of the Cabinet of Ministers, since certain members of the Government (the Minister of Defence and the Minister for Foreign Affairs) shall be appointed by the Verkhovna Rada on the submission of the President (this procedure is similar to the appointment of the Prime Minister), and others – on the submission of the Prime Minister. Such approach undermines the principle of the Government as a single team, legitimises the minimal influence of the Cabinet of Ministers on defence and foreign affairs issues, and practically creates a model of government which is unique for the world constitutional practice.

*Seventh.* Uncharacteristic of the head of state is the participation of the President in the procedure of appointment of the Minister of Defence and the Minister of Foreign Affairs as set by the Amendments. In any country, in particular in a classical parliamentary republic, members of Government are legitimised (formally appointed or dismissed by a relevant legal act) by the head of state. The Amendments, however, set that the Verkhovna Rada can dismiss these ministers, just like other members of Government, by a simple constitutional majority without any agreement on behalf of the Prime Minister or the head of state. This is one of the most dangerous provisions, since it considerably weakens the Cabinet of Ministers (despite of the declarations made by the authors of the reform), especially taking into account the level of political and legal culture of Ukrainian poli-

ticians and the lobbyism by certain members of parliament. The danger of the unilateral dismissal (without the consent of any other political institution), which previously turned members of the Cabinet of Ministers into the obedient servants of the President, will now force members of the Cabinet of Ministers to be loyal to individual parliamentary lobby groups. Thus, the ministers will hardly be able to take the position of principle on the reform issues.

Since all powers to appoint and dismiss heads of local state administrations remain in the competence of the President, the Amendments also tear the executive branch between the head of state and the Parliament, leaving little administration tools to the Government. This endangers the stability and efficiency of the executive branch and more broadly, the system of government as such. Thus, this amendment appears to be another dangerous defect introduced into the Constitution.

*Eighth.* The Amendments set that the Head of Security Service can be dismissed only on the consent of the Parliament; however, this procedure should have been different. In accordance with the Constitution, the President of Ukraine shall ensure national security. The Security Service shall provide for the fulfilment of this function by the President, therefore this special service should be entirely subordinated to the President. However, the Security Service should be deprived of the powers to conduct the pre-trial investigation, excluding the crimes against the principles of Ukraine's national security. As to the political influence of the Parliament on this authority, it should have been brought down to the minimum.

*Ninth.* It also seems erroneous to have removed the norm that set (limited) the number of Vice Prime Ministers. Probably, in such a way the authors of the reform wanted to decrease their number, but, if the Government is to be formed by a «coalition», it is easy to foresee that these no-portfolio posts will be used for the unreasoned enlargement of the Cabinet of Ministers, which will have an adverse effect on the Government's ability to work. Here it is also important to bear in mind that the necessity of the Vice Prime Ministers posts is quite weakly grounded (if these posts are preserved, each Vice Prime Minister should also head one ministry at the same time).

*Tenth.* Another change that may have an ambiguous and most probably negative impact on the functioning of the executive branch is the amendment that enables the Cabinet of Ministers to create «in accordance with the law, ministries and other central public executive authorities». Firstly, if the Government is to pass decisions on the creation of ministries without the need to agree this issue with the President, this may lead to the fragmentation of the public administration sector, the swelling of the Government, replication of its functions, the conflict of interests and other negative effects. Secondly, the words «in accordance with the law» may have ambiguous interpretations. If they are interpreted that any specific ministry or any other central public executive authority shall be created by a law, then it is also easy to foresee a huge number of initiatives on «legalisation» of various bodies of public authority. Already today it is quite popular to lobby the perpetuation in a law of the institutions like the State Special Transport Service of Ukraine. With such an approach, the Government's abilities in the area of administrative reform will remain minimal.

*Eleventh.* It is not clear which motives lie behind the exclusion from the Constitution of the norms on countersignature of certain acts of the head of state by the Prime Minister and the minister responsible for the execution of the act. For example, it has become unnecessary for the relevant members of Government to countersign the President's acts on «the conduct of negotiation and conclusion of international treaties of Ukraine» or «adoption of decisions on the recognition of foreign states». It is well-known, however, that in developed democracies the countersignature not only helps the head of state to avoid erroneous decisions, but also secures the state itself from disadvantageous international treaties. Therefore it should be of particular importance for Ukraine.

*Twelfth.* What should be absolutely unacceptable is the return of the general oversight function to the public prosecution system as it is envisaged by the new paragraph 5 of Article 121. This paragraph sets that the public prosecution office is vested with the power «to supervise the observance of human rights and freedoms, and laws related thereto by public executive authorities, local self-government bodies, their officials and servants». This norm obliges the public prosecution office to check all decisions, actions and omission of action by public executive authorities, local self-government bodies, their officials and servants. However, in practice, such in-

spections usually appear to be selective both in terms of object and level of attention. The worst scenario would be (which is usually the case with the majority of the Soviet totalitarian inventions) when such general oversight function is used in political struggles and when it holds back the development of the judicial branch. The Venice Commission also expressed its disagreement with the extension of the public prosecution functions.

*Thirteenth.* The Amendments change the procedure for the election of deputy chairmen and secretaries of parliamentary committees. Previously, they were elected in committees, and not by the entire Parliament. Such a procedure made it possible to focus primarily on the professional skills and organisation abilities of the members of parliament, and not their faction affiliation. The new procedure will have an adverse effect on the professional quality of parliamentary decisions, since their development is the main objective of the committee work.

In general terms, it is hardly possible to disagree with the Opinion of the Venice Commission on bill No. 4105 listing the same drawbacks. According thereto, the proposed reform of Ukraine's government system does not bring Ukraine closer to the European standards of democracy, while some changes even take it back.

Thus, even though the time for a political reform in Ukraine has come long ago, its implementation in the above form and fashion may generate many negative consequences. In particular, we envisage the following most noticeable results of the reform:

- preservation of the influence of oligarchs on the Ukrainian politics;
- destruction of the executive branch and weakening of the judicial branch.

The Amendments do not feature coherence and proper legal quality which is inadmissible for a constitutional law. In general terms, the biggest problem of this political reform is that the attempts to amend the Basic Law were made with no respect of the current constitutional norms by the government system. Many of the objectives that were declared by the reform initiators could have been achieved by meeting the current constitutional requirements and through simple legislative regulation of the most important public relations. This should have included adoption and enactment of the laws on the President of Ukraine, on the Cabinet of Ministers of Ukraine, on the Parliamentary Rules of Procedure and a number of other acts which could

have helped stop the head of state from usurping powers that have not been vested into him by the Constitution, including:

- appointment and dismissal of deputy heads of central public executive authorities;
- appointment and dismissal of chief justices and their deputies;
- issuance of decrees on economic and social matters.

Even the most important issue – formation of the Government with the participation of the Parliament – could have been solved on the basis of the 1996 constitutional norms provided the proper level of political culture is demonstrated by the President and the Parliament.

There are also no doubts about the sufficiency of grounds to abolish the amendments passed on 8 December 2004:

- they were adopted with changes and without a preliminary opinion of the Constitutional Court;
- they were not discussed in Parliament; and
- the Parliament voted on them in the package with other laws.

However, today the time for their repeal seems to have been lost. Now it is important to focus on how to correct the drawbacks introduced into the Constitution, for example by adjusting the changes that have been made.

At the same time, to avoid the mistakes of the past in the future, it is necessary to follow a number of rules:

- 1) Any amendments should be initiated only if there is a real objective reason for them, and they have to be flawlessly worked out from the legal point of view;
- 2) All amendments should be subject to a broad public discussion, and the government should be able to present clear-cut arguments to prove their advisability in an open discussion with the public; and
- 3) Any law, and constitutional amendments in particular, shall be approved only in strict accordance with the established procedure.

**ANNEX 1. Constitution of Ukraine adopted on 28 June 1996  
vs. Amendments to the Constitution of Ukraine adopted on  
8 December 2004**

<b>CONSTITUTION OF UKRAINE</b> <b>adopted at the Fifth Session</b> <b>of the Verkhovna Rada of Ukraine</b> <b>on 28 June 1996</b>	<b>AMENDMENTS TO THE</b> <b>CONSTITUTION</b> <b>OF UKRAINE</b> <b>adopted on 8 December 2004</b>
<b>Chapter IV</b>	
<b>Verkhovna Rada of Ukraine</b>	<b>1)</b> Articles 76, 78, 81 — 83, 85, 87, 89, 90, 93, 98, 112 — 115 shall be reworded as follows:
<b>Article 76.</b> The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 National Deputies of Ukraine who are elected for a four-year term on the basis of universal, equal and direct suffrage, by secret ballot.	<b>Article 76.</b> The constitutional membership of the Verkhovna Rada of Ukraine is 450 National Deputies of Ukraine who are elected on the basis of universal, equal and direct suffrage, by secret ballot.
A citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided on the territory of Ukraine for the past five years, may be a National Deputy of Ukraine.	Any citizen of Ukraine who has attained the age of twenty-one on the day of elections, has the right to vote, and has resided in Ukraine for the past five years, shall be eligible to be elected a National Deputy of Ukraine.

A citizen who has a criminal record for committing an intentional crime shall not be elected to the Verkhovna Rada of Ukraine if the record is not cancelled and erased by the procedure established by law.	A citizen who has a criminal record for committing an intentional crime shall not be eligible to be elected to the Verkhovna Rada of Ukraine if the record has not been cancelled and erased under the procedure established by law.
The authority of National Deputies of Ukraine is determined by the Constitution and the laws of Ukraine.	The powers of National Deputies of Ukraine are determined by the Constitution and laws of Ukraine.
	<b>The Verkhovna Rada of Ukraine is elected for the term of five years;</b>
<b>Article 77.</b> Regular elections to the Verkhovna Rada of Ukraine take place on the last Sunday of March of the fourth year of the term of authority of the Verkhovna Rada of Ukraine.	<b>Article 77.</b> Regular elections to the Verkhovna Rada of Ukraine take place on the last Sunday <b>of the last month of the fifth year of the term of authority of the Verkhovna Rada of Ukraine.</b>
Special elections to the Verkhovna Rada of Ukraine are designated by the President of Ukraine and are held within sixty days from the day of the publication of the decision on the pre-term termination of authority of the Verkhovna Rada of Ukraine.	Special elections to the Verkhovna Rada of Ukraine are designated by the President of Ukraine and are held within sixty days from the day of the publication of the decision on the pre-term termination of authority of the Verkhovna Rada of Ukraine.
The procedure for conducting elections of National Deputies of Ukraine is established by law.	The procedure for conducting elections of National Deputies of Ukraine is established by law.
<b>Article 78.</b> National Deputies of Ukraine exercise their authority on a permanent basis.	<b>Article 78</b> National Deputies of Ukraine exercise their powers on a permanent basis.
National Deputies of Ukraine shall not have another representative mandate or be in the civil service.	A National Deputy of Ukraine shall not have any other representative mandate, be in the civil service, <b>hold any other paid offices, carry out gainful or business activity (with the exception of teaching, scientific, and creative activities), or to be a member of the administration/governing body of a profit-seeking enterprise or organisation.</b>
Requirements concerning the incompatibility of the mandate of the deputy with other types of activity are established by law.	Requirements concerning the incompatibility of the deputy's mandate with other types of activity are established by law.

	Where there emerge circumstances preventing the National Deputy of Ukraine from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, the National Deputy of Ukraine shall within twenty days from the date of the emergence of such circumstances shall withdraw from the business concerned or apply personally for divesting himself or herself of National Deputy powers;
<b>Article 81.</b> The authority of National Deputies of Ukraine terminates simultaneously with the termination of authority of the Verkhovna Rada of Ukraine.	<b>Article 81.</b> Powers of National Deputies of Ukraine shall terminate simultaneously with the termination of powers of the Verkhovna Rada of Ukraine.
The authority of a National Deputy of Ukraine terminates prior to the expiration of the term in the event of:	Powers of a National Deputy of Ukraine shall terminate prior to the expiration of his or her term in office in the event of:
1) his or her resignation through a personal statement;	1) his or her resignation through a personal application;
2) a guilty verdict against him or her entering into legal force;	2) a guilty verdict against him or her entering into legal force;
3) a court declaring him or her incompetent or missing;	3) a court declaring him or her incapacitated or missing;
4) termination of his or her citizenship or his or her departure from Ukraine for permanent residence abroad;	4) termination of his or her citizenship or his or her departure from Ukraine for permanent residence abroad;
	5) his or her failure, within twenty days from the date of the emergence of circumstances preventing him or her from fulfilling a requirement concerning incompatibility of the deputy's mandate with other types of activity, to remove such circumstances;
	6) his or her failure, as having been elected from a political party (an electoral bloc of political parties), to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or his/her withdrawal from such a faction;



5) his or her death.	7) his/her death.
	<b>The pre-term termination of powers a National Deputy of Ukraine shall also be caused by the early termination, under the Constitution of Ukraine, of powers of the Verkhovna Rada of Ukraine, with such termination of the Deputy's powers taking effect on the date when the Verkhovna Rada of Ukraine of a new convocation opens its first meeting.</b>
The decision about the pre-term termination of authority of a National Deputy of Ukraine is adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.	A decision on early termination of powers a National Deputy of Ukraine <b>on grounds referred to in subparagraphs 1), 4) of the second paragraph of this Article shall fall within the competence the Verkhovna Rada of Ukraine, while the ground referred to in subparagraph 5) of the second paragraph of this Article shall be a matter to be decided by court.</b>
In the event a requirement concerning incompatibility of the mandate of the deputy with other types of activity is not fulfilled, the authority of the National Deputy of Ukraine terminates prior to the expiration of the term on the basis of the law pursuant to a court decision.	
	<b>Where a guilty verdict against a National Deputy of Ukraine enters into legal force or where a court declares a National Deputy of Ukraine incapacitated or missing, his or her powers terminate on the date when the court decision becomes legally effective, while in the event of the Deputy's death on the date of his or her death as certified by the relevant document.</b>

	Where a National Deputy of Ukraine, as having been elected from a political party (an electoral bloc of political parties), fails to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or withdraws from such a faction, the highest steering body of the respective political party (electoral bloc of political parties) shall decide to terminate early his or her powers on the basis of a law, with the termination taking effect on the date of such a decision.
<b>Article 82.</b> The Verkhovna Rada of Ukraine works in sessions.	<b>Article 82</b> The Verkhovna Rada of Ukraine works in sessions.
The Verkhovna Rada of Ukraine is competent on the condition that no less than two-thirds of its constitutional composition has been elected.	The Verkhovna Rada of Ukraine is competent on the condition that no less than two-thirds of its constitutional membership has been elected.
The Verkhovna Rada of Ukraine assembles for its first session no later than on the thirtieth day after the official announcement of the election results.	The Verkhovna Rada of Ukraine assembles for its first session no later than on the thirtieth day after the official announcement of the election results.
The first meeting of the Verkhovna Rada of Ukraine is opened by the eldest National Deputy of Ukraine.	The first meeting of the Verkhovna Rada of Ukraine is opened by the eldest National Deputy of Ukraine.
<b>The operational procedure of the Verkhovna Rada of Ukraine is established by the Constitution of Ukraine and the law on the Rules of Procedure of the Verkhovna Rada of Ukraine.</b>	
<b>Article 83.</b> Regular sessions of the Verkhovna Rada of Ukraine commence on the first Tuesday of February and on the first Tuesday of September each year.	<b>Article 83</b> Regular sessions of the Verkhovna Rada of Ukraine commence on the first Tuesday of February and on the first Tuesday of September each year.

Special sessions of the Verkhovna Rada of Ukraine, with the stipulation of their agenda, are convoked by the Chairman of the Verkhovna Rada of Ukraine, on the demand of no fewer National Deputies of Ukraine than one-third of the constitutional composition of the Verkhovna Rada of Ukraine, or on the demand of the President of Ukraine.	Special sessions of the Verkhovna Rada of Ukraine, with the stipulation of their agenda, are convoked by the Chairperson of the Verkhovna Rada of Ukraine, on the demand of the President of Ukraine or on the demand of no fewer National Deputies of Ukraine than one-third of the constitutional membership of the Verkhovna Rada of Ukraine.
In the event of the introduction of martial law or of a state of emergency in Ukraine, the Verkhovna Rada of Ukraine assembles within a period of two days without convocation.	In the event that <b>the President of Ukraine declares, by proclaiming a decree</b> , a state of martial law or of emergency upon the whole territory of Ukraine or in some areas of the State, the Verkhovna Rada of Ukraine shall assemble within two days without convocation.
In the event that the term of authority of the Verkhovna Rada of Ukraine expires while martial law or a state of emergency is in effect, its authority is extended until the day of the first meeting of the first session of the Verkhovna Rada of Ukraine, elected after the cancellation of martial law or of the state of emergency.	In the event that the term of powers of the Verkhovna Rada of Ukraine expires while a state of martial law or of emergency is in effect, its powers are extended until the day when the Verkhovna Rada of Ukraine elected after the cancellation of the state of martial law or of emergency convenes its first meeting of the first session.
	<b>Rules on the conduct of work of the Verkhovna Rada of Ukraine shall be laid down in the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine.</b>
	<b>According to election results and on the basis of a common ground achieved between various political positions, a coalition of parliamentary factions shall be formed in the Verkhovna Rada of Ukraine to include a majority of National Deputies of Ukraine within the constitutional membership of the Verkhovna Rada of Ukraine.</b>

	A coalition of parliamentary factions in the Verkhovna Rada of Ukraine shall be formed within a month from the date of the first meeting of the Verkhovna Rada of Ukraine to be held following regular or special elections to the Verkhovna Rada of Ukraine, or within a month from the date when activities of a coalition of parliamentary factions in the Verkhovna Rada of Ukraine terminated.
	A coalition of parliamentary factions in the Verkhovna Rada of Ukraine submits to the President of Ukraine, in accordance with this Constitution, proposals concerning a person's candidature for the office of the Prime Minister of Ukraine and also, in accordance with this Constitution, proposes candidatures for the membership of the Cabinet of Ministers of Ukraine.
	Frameworks for forming, organising, and terminating activities of a coalition of parliamentary factions in the Verkhovna Rada of Ukraine shall be established by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine.
	A parliamentary faction in the Verkhovna Rada of Ukraine whose members make up a majority of National Deputies of Ukraine within the constitutional membership of the Verkhovna Rada of Ukraine shall enjoy the same rights under this Constitution as a coalition of parliamentary factions in the Verkhovna Rada of Ukraine;
<b>Article 85.</b> The authority of the Verkhovna Rada of Ukraine comprises:	<b>Article 85.</b> The authority of the Verkhovna Rada of Ukraine comprises:
1) introducing amendments to the Constitution of Ukraine within the limits and by the procedure envisaged by Chapter XIII of this Constitution;	1) introducing amendments to the Constitution of Ukraine within the limits and under the procedure specified in Chapter XIII of this Constitution;

2) designating an All-Ukrainian referendum on the issues determined by Article 73 of this Constitution;	2) instituting an All-Ukrainian referendum on the issues referred to in Article 73 of this Constitution;
3) adopting; laws;	3) adopting laws;
4) approving the State Budget of Ukraine and introducing amendments to it; controlling the implementation of the State Budget of Ukraine and adopting decisions in regard to the report on its implementation;	4) approving the State Budget of Ukraine and introducing amendments thereto; exercising control over the implementation of the State Budget of Ukraine and adopting decision in regard to the report on its implementation;
5) determining the principles of domestic and foreign policy;	5) determining the principles of domestic and foreign policy;
6) approving national programmes of economic, scientific and technical, social, national and cultural development, and the protection of the environment;	6) approving national programmes of economic, scientific-technical, social, national-cultural development, and of the protection of the environment;
7) designating elections of the President of Ukraine within the terms envisaged by this Constitution;	7) calling elections of the President of Ukraine within the terms specified in this Constitution;
8) hearing annual and special messages of the President of Ukraine on the domestic and foreign situation of Ukraine;	8) hearing annual and special messages of the President of Ukraine on the internal and external situation of Ukraine;
9) declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;	9) declaring war upon the submission by the President of Ukraine and concluding peace; approving a decision by the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;
10) removing the President of Ukraine from office in accordance with the special procedure (impeachment) established by Article 111 of this Constitution;	10) removing the President of Ukraine from office under a special procedure (impeachment) as provided for in Article 111 of this Constitution;
11) considering and adopting the decision in regard to the approval of the Programme of Activity of the Cabinet of Ministers of Ukraine;	11) considering and adopting a decision in regard to the approval of the Action Programme of the Cabinet of Ministers of Ukraine;

12) giving consent to the appointment of the Prime Minister of Ukraine by the President of Ukraine;	12) appointing to office — upon the submission by the President of Ukraine — the Prime Minister of Ukraine, the Minister of Defence, the Minister of Foreign Affairs of Ukraine; appointing to office — upon the submission by the Prime Minister of Ukraine — other members of the Cabinet of Ministers of Ukraine, the Chairperson of the Antimonopoly Committee of Ukraine, the Chairperson of the State Committee on Television and Radio Broadcasting of Ukraine, and the Chairperson of the State Property Fund of Ukraine; dismissing from office the officials mentioned above; deciding on the resignation of the Prime Minister of Ukraine and of members of the Cabinet of Ministers of Ukraine;
	12 <sup>1</sup> ) appointing to office and dismissing from office — upon the submission by the President of Ukraine — the Head of the Security Service of Ukraine;
13) exercising control over the activity of the Cabinet of Ministers of Ukraine in accordance with this Constitution;	13) exercising control over activities of the Cabinet of Ministers of Ukraine, in accordance with this Constitution <b>and law</b> ;
14) confirming decisions on granting loans and economic aid by Ukraine to foreign states and international organisations and also decisions on Ukraine receiving loans not envisaged by the State Budget of Ukraine from foreign states, banks and international financial organisations, exercising control over their use;	14) confirming decisions on loans and economic aid to be granted by Ukraine to foreign states and international organisations and also decisions on the receipt by Ukraine of loans not envisaged by the State Budget of Ukraine from foreign states, banks and international financial organisations; exercising control over the use of such funds;
	<b>15) adopting the Rules of Procedure of the Verkhovna Rada of Ukraine;</b>
15) appointing or electing to office, dismissing from office, granting consent to the appointment to and the dismissal from office of persons in cases envisaged by this Constitution;	

16) appointing to office and dismissing from office the Chairman and other members of the Chamber of Accounting;	(16) appointing to office and dismissing from office the Chairperson and other members of the Chamber of Accounting;
17) appointing to office and dismissing from office the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; hearing his or her annual reports on the situation of the observance and protection of human rights and freedoms in Ukraine;	(17) appointing to office and dismissing from office the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine; hearing his or her annual reports on the situation with regard to the observance and protection of human rights and freedoms in Ukraine;
18) appointing to office and dismissing from office the Chairman of the National Bank of Ukraine on the submission of the President of Ukraine;	(18) appointing to office and dismissing from office the Chairperson of the National Bank of Ukraine upon the submission by the President of Ukraine;
19) appointing and dismissing one-half of the composition of the Council of the National Bank of Ukraine;	(19) appointing and dismissing one-half of the membership of the Council of the National Bank of Ukraine;
20) appointing one-half of the composition of the National Council of Ukraine on Television and Radio Broadcasting;	(20) appointing <b>and dismissing</b> one-half of the membership of the National Council of Ukraine on Television and Radio Broadcasting;
21) appointing to office and terminating the authority of the members of the Central Electoral Commission on the submission of the President of Ukraine;	(21) appointing to office <b>and dismissing from office</b> , upon the submission of the President of Ukraine, the members of the Central Electoral Commission;
22) confirming the general structure and numerical strength, and defining the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military formations created in accordance with the laws of Ukraine, and also the Ministry of Internal Affairs of Ukraine;	(22) confirming the general structure and numerical strength of the Security Service of Ukraine, the Armed Forces of Ukraine, other military formations created in accordance with laws of Ukraine, and of the Ministry of Internal Affairs of Ukraine, as well as defining their functions;
23) approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states on to the territory of Ukraine;	23) approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to a foreign state, or on admitting units of armed forces of foreign states onto the territory of Ukraine;
	<b>24) establishing national symbols of Ukraine;</b>

24) <b>granting consent for the appointment to office and the dismissal from office by the President of Ukraine of the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Committee on Television and Radio Broadcasting of Ukraine;</b>	
25) granting consent for the appointment to office by the President of Ukraine of the Procurator General of Ukraine; declaring no confidence in the Procurator General of Ukraine that has the result of his or her resignation from office;	25) granting consent for the appointment to office or <b>dismissing from office</b> by the President of Ukraine of the Prosecutor General of Ukraine; taking a vote of no confidence in the Prosecutor General of Ukraine, the result of which shall be his or her resignation from office;
26) appointing one-third of the composition of the Constitutional Court of Ukraine;	26) appointing <b>and dismissing</b> one-third of the members of the Constitutional Court of Ukraine;
27) electing judges for permanent terms;	27) electing judges for permanent terms;
28) terminating prior to the expiration of the term of authority of the Verkhovna Rada of the Autonomous Republic of Crimea, based on the opinion of the Constitutional Court of Ukraine that the Constitution of Ukraine or the laws of Ukraine have been violated by the Verkhovna Rada of the Autonomous Republic of Crimea; designating special elections to the Verkhovna Rada of the Autonomous Republic of Crimea;	28) causing the early termination of powers of the Verkhovna Rada of the Autonomous Republic of Crimea where the Constitutional Court of Ukraine finds that the Verkhovna Rada of the Autonomous Republic of Crimea has violated the Constitution of Ukraine or laws of Ukraine; calling special elections to the Verkhovna Rada of the Autonomous Republic of Crimea;
29) establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts;	29) establishing and abolishing districts, establishing and altering the boundaries of districts and towns/cities, assigning inhabited localities to the category of towns/cities, naming and renaming inhabited localities and districts;
30) designating regular and special elections to bodies of local self-government;	30) calling regular and special elections to bodies of local self-government;



31) confirming, within two days from the moment of the address by the President of Ukraine, decrees on the introduction of martial law or of a state of emergency in Ukraine or in its particular areas, on total or partial mobilisation, and on the announcement of particular areas as zones of an ecological emergency situation;	31) giving its approval to decrees by the President of Ukraine — within two days from the moment of his or her relevant address — on introducing a state of martial law or of emergency in Ukraine or in some areas of the State, on declaring total or partial mobilisation, and on declaring particular areas to be ecological emergency zones;
32) granting consent to the binding character of international treaties of Ukraine within the term established by law, and denouncing international treaties of Ukraine;	32) granting its consent — by adopting a relevant legal act — to the binding character of international treaties of Ukraine and denouncing international treaties of Ukraine;
33) exercising parliamentary control within the limits determined by this Constitution;	33) exercising parliamentary control within the scope provided for by this Constitution;
34) adopting decisions on forwarding an inquiry to the President of Ukraine on the demand of a National Deputy of Ukraine, a group of National Deputies or a Committee of the Verkhovna Rada of Ukraine, previously supported by no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine;	34) adopting decisions on forwarding an inquiry to the President of Ukraine at request by a National Deputy of Ukraine, a group of National Deputies or by a Committee of the Verkhovna Rada of Ukraine, provided that such a request has been supported by no less than one-third of the constitutional membership of the Verkhovna Rada of Ukraine;
35) appointing to office and dismissing from office the Head of Staff of the Verkhovna Rada of Ukraine; approving the budget of the Verkhovna Rada of Ukraine and the structure of its staff;	35) appointing to office and dismissing from office the Head of Staff of the Verkhovna Rada of Ukraine; approving the budget of the Verkhovna Rada of Ukraine and the structure of its staff;
36) confirming the list of objects of the right of state property that are not subject to privatisation; determining the legal principles for the expropriation of objects of the right of private property.	35) confirming the list of objects owned by the State that are not subject to privatisation; establishing legal principles to underlie the expropriation of objects of private ownership;
	<b>36) confirming — by adopting a relevant legal act — the Constitution of the Autonomous Republic of Crimea or amendments thereto.</b>

The Verkhovna Rada of Ukraine exercises other powers ascribed to its competence in accordance with the Constitution of Ukraine.	The Verkhovna Rada of Ukraine shall also exercise any other powers falling within its competence under the Constitution of Ukraine.
<b>Article 87.</b> The Verkhovna Rada of Ukraine, on the proposal of no fewer National Deputies of Ukraine than one-third of its constitutional composition, may consider the issue of responsibility of the Cabinet of Ministers of Ukraine and adopt a resolution of no confidence in the Cabinet of Ministers of Ukraine by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.	<b>Article 87.</b> The Verkhovna Rada of Ukraine, on the proposal <b>by the President of Ukraine</b> or by National Deputies of Ukraine making up no less than one-third of the constitutional membership of the Verkhovna Rada of Ukraine, may consider an issue of responsibility of the Cabinet of Ministers of Ukraine and pass — by a majority of votes of its constitutional membership — a resolution of no confidence in the Cabinet of Ministers of Ukraine.
The issue of responsibility of the Cabinet of Ministers of Ukraine shall not be considered by the Verkhovna Rada of Ukraine more than once during one regular session, and also within one year after the approval of the Programme of Activity of the Cabinet of Ministers of Ukraine.	The issue of responsibility of the Cabinet of Ministers of Ukraine may not be considered by the Verkhovna Rada of Ukraine more than once during one regular session or within one year after the approval of the Action Programme of the Cabinet of Ministers of Ukraine, <b>or during the final session of the Verkhovna Rada of Ukraine.</b>
	<b>3) In Article 88:</b>
<b>Article 88.</b> The Verkhovna Rada of Ukraine elects from among its members the Chairman of the Verkhovna Rada of Ukraine, the First Deputy Chairman and the Deputy Chairman of the Verkhovna Rada of Ukraine, and recalls them.	The Verkhovna Rada of Ukraine elects from among its members the Chairperson of the Verkhovna Rada of Ukraine, the First Deputy Chairperson and the Deputy Chairperson of the Verkhovna Rada of Ukraine, and it is also empowered to remove <b>them from these offices.</b>
The Chairman of the Verkhovna Rada of Ukraine:	The Chairman of the Verkhovna Rada of Ukraine:
1) presides at meetings of the Verkhovna Rada of Ukraine;	1) presides at meetings of the Verkhovna Rada of Ukraine;
2) organises the preparation of issues for consideration at the meetings of the Verkhovna Rada of Ukraine;	2) organises <b>work of the Verkhovna Rada of Ukraine and co-ordinates activities of its bodies;</b>
3) signs acts adopted by the Verkhovna Rada of Ukraine;	3) signs acts adopted by the Verkhovna Rada of Ukraine;

4) represents the Verkhovna Rada of Ukraine in relations with other bodies of state power of Ukraine and with the bodies of power of other states;	4) represents the Verkhovna Rada of Ukraine in relations with other bodies of state power of Ukraine and with the bodies of power of other states;
5) organises the work of the staff of the Verkhovna Rada of Ukraine.	5) organises the work of the staff of the Verkhovna Rada of Ukraine.
The Chairman of the Verkhovna Rada of Ukraine exercises authority envisaged by this Constitution, by the procedure established by <b>law on the Rules of Procedure of the Verkhovna Rada of Ukraine.</b>	The Chairperson of the Verkhovna Rada of Ukraine exercises powers as specified in this Constitution, in compliance with the procedure set out in the <b>Rules of Procedure of the Verkhovna Rada of Ukraine;</b>
<b>Article 89.</b> The Verkhovna Rada of Ukraine confirms the list of Committees of the Verkhovna Rada of Ukraine, and elects Chairmen to these Committees.	<b>Article 89</b> In order to carry out its legislative drafting activities, prepare and conduct the preliminary consideration of issues falling within its competence, and performing its functions of control under this Constitution of Ukraine, the Verkhovna Rada of Ukraine shall set up Committees of the Verkhovna Rada of Ukraine composed of National Deputies of Ukraine and elect Chairpersons, Deputy Chairpersons, and Secretaries to these Committees.
The Committees of the Verkhovna Rada of Ukraine perform the work of legislative drafting, prepare and conduct the preliminary consideration of issues ascribed to the authority of the Verkhovna Rada of Ukraine.	
The Verkhovna Rada of Ukraine, within the limits of its authority, may establish temporary special commissions for the preparation and the preliminary consideration of issues.	Within the scope of its competence, the Verkhovna Rada of Ukraine may set up temporary special commissions for the preparation and preliminary consideration of issues.
To investigate issues of public interest, the Verkhovna Rada of Ukraine establishes temporary investigatory commissions, if no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine has voted in favour thereof.	In order to investigate matters of public concern, the Verkhovna Rada of Ukraine shall set up temporary investigatory commissions, provided that the measure has received votes of no less than one-third of the constitutional membership of the Verkhovna Rada of Ukraine.

The conclusions and proposals of temporary investigatory commissions are not decisive for investigation and court.	Findings and proposals made by temporary investigatory commissions shall not be decisive for investigation and court.
The organisation and operational procedure of Committees of the Verkhovna Rada of Ukraine, and also its temporary special and temporary investigatory commissions, are established by law.	The organisation and procedure for activities of Committees of the Verkhovna Rada of Ukraine and of its temporary special or temporary investigatory commissions shall be established by law;
<b>Article 90.</b> The authority of the Verkhovna Rada of Ukraine is terminated on the day of the opening of the first meeting of the Verkhovna Rada of Ukraine of a new convocation.	<b>Article 90.</b> Powers of the Verkhovna Rada of Ukraine shall terminate on the date when the Verkhovna Rada of Ukraine of a new convocation opens its first meeting.
The President of Ukraine may terminate the authority of the Verkhovna Rada of Ukraine prior to the expiration of term, if within thirty days of a single regular session the plenary meetings fail to commence.	The President of Ukraine may order the early termination of powers of the Verkhovna Rada of Ukraine where:
	1) there is a failure to form within one month a coalition of parliamentary factions in the Verkhovna Rada of Ukraine as provided for in Article 83 of this Constitution;
	2) there is a failure, within sixty days following the resignation of the Cabinet of Ministers of Ukraine, to appoint members of the Cabinet of Ministers of Ukraine;
	3) the Verkhovna Rada of Ukraine fails, within thirty days of a single regular session, to commence its plenary meetings.
	The early termination of powers of the Verkhovna Rada of Ukraine shall be decided by the President of Ukraine following relevant consultations with the Chairperson and Deputy Chairpersons of the Verkhovna Rada of Ukraine and with Chairpersons of Verkhovna Rada parliamentary factions.

The authority of the Verkhovna Rada of Ukraine, that is elected at special elections conducted after the pre-term termination by the President of Ukraine of authority of the Verkhovna Rada of Ukraine of the previous convocation, shall not be terminated within one year from the day of its election.	Powers of the Verkhovna Rada of Ukraine, which convenes following special elections conducted after the pre-term termination by the President of Ukraine of powers of the Verkhovna Rada of Ukraine of the previous convocation, shall not terminate within one year from the day of its election.
The authority of the Verkhovna Rada of Ukraine shall not be terminated prior to the expiration of term within the last six months of the term of authority of the President of Ukraine.	The pre-term termination of powers of the Verkhovna Rada of Ukraine may not be caused during the last six months <b>of its term</b> or of the term of the President of Ukraine.
<b>Article 93.</b> The right of legislative initiative in the Verkhovna Rada of Ukraine belongs to the President of Ukraine, the National Deputies of Ukraine, the Cabinet of Ministers of Ukraine <b>and the National Bank of Ukraine.</b>	<b>Article 93.</b> The right of legislative initiative in the Verkhovna Rada of Ukraine belongs to the President of Ukraine, National Deputies of Ukraine, the Cabinet of Ministers of Ukraine.
Draft laws defined by the President of Ukraine as not postponable, are considered out of turn by the Verkhovna Rada of Ukraine.	The draft laws defined by the President of Ukraine as urgent shall be considered out of turn by the Verkhovna Rada of Ukraine;
<b>Article 94.</b> The Chairman of the Verkhovna Rada of Ukraine signs a law and forwards it without delay to the President of Ukraine.	<b>Article 94.</b> The Chairman of the Verkhovna Rada of Ukraine signs a law and forwards it without delay to the President of Ukraine.
Within fifteen days of the receipt of a law, the President of Ukraine signs it, accepting it for execution, and officially promulgates it, or returns it to the Verkhovna Rada of Ukraine with substantiated and formulated proposals for repeat consideration.	Within fifteen days of the receipt of a law, the President of Ukraine signs it, accepting it for execution, and officially promulgates it, or returns it to the Verkhovna Rada of Ukraine with substantiated and formulated proposals for repeat consideration.
In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.	In the event that the President of Ukraine has not returned a law for repeat consideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.

If a law, during its repeat consideration, is again adopted by the Verkhovna Rada of Ukraine by no less than two-thirds of its constitutional composition, the President of Ukraine is obliged to sign and to officially promulgate it within ten days.	Where a law, during its repeat consideration, again receives votes of no less than two-thirds of the constitutional membership of the Verkhovna Rada of Ukraine, the President of Ukraine shall be obliged to sign and to officially promulgate it within ten days. <b>In the event that the President of Ukraine does not sign such a law, it shall be without delay promulgated officially by the Chairperson of the Verkhovna Rada of Ukraine and published under his or her signature;</b>
A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.	A law enters into force in ten days from the day of its official promulgation, unless otherwise envisaged by the law itself, but not prior to the day of its publication.
<b>Article 98.</b> The Chamber of Accounting exercises control over the use of finances of the State Budget of Ukraine on behalf of the Verkhovna Rada of Ukraine.	<b>Article 98.</b> The Chamber of Accounting shall, on behalf of the Verkhovna Rada of Ukraine, exercise control over State Budget <b>revenues</b> and the use of State Budget funds.
<b>Article 103.</b> The President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.	<b>Article 103.</b> The President of Ukraine is elected by the citizens of Ukraine for a five-year term, on the basis of universal, equal and direct suffrage, by secret ballot.
A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.	A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and has command of the state language, may be elected as the President of Ukraine.
One and the same person shall not be the President of Ukraine for more than two consecutive terms.	One and the same person shall not be the President of Ukraine for more than two consecutive terms.
The President of Ukraine shall not have another representative mandate, hold office in bodies of state power or in associations of citizens, and also perform any other paid or entrepreneurial activity, or be a member of an administrative body or board of supervisors of an enterprise that is aimed at making profit.	The President of Ukraine shall not have another representative mandate, hold office in bodies of state power or in associations of citizens, and also perform any other paid or entrepreneurial activity, or be a member of an administrative body or board of supervisors of an enterprise that is aimed at making profit.

Regular elections of the President of Ukraine are held on the last Sunday of October of the fifth year of the term of authority of the President of Ukraine. In the event of pre-term termination of authority of the President of Ukraine, elections of the President of Ukraine are held within ninety days from the day of termination of the authority.	The regular election of a new President of Ukraine shall take place [before the expiry of the powers of the President of Ukraine in office] <b>on the last Sunday of the last month of the fifth year of his or her term of office.</b> In the event of pre-term termination of powers of the President of Ukraine, the election of the President of Ukraine is held within ninety days from the date of termination of his or her powers;
The procedure for conducting elections of the President of Ukraine is established by law.	The procedure for conducting elections of the President of Ukraine is established by law.
<b>Article 106.</b> The President of Ukraine:	<b>Article 106.</b> The President of Ukraine:
1) ensures state independence, national security and the legal succession of the state;	1) ensures state independence, national security and the legal succession of the state;
2) addresses the people with messages and the Verkhovna Rada of Ukraine with annual and special messages on the domestic and foreign situation of Ukraine;	2) addresses the people with messages and the Verkhovna Rada of Ukraine with annual and special messages on the domestic and foreign situation of Ukraine;
3) represents the state in international relations, administers the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine;	3) represents the state in international relations, administers the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine;
4) adopts decisions on the recognition of foreign states;	4) adopts decisions on the recognition of foreign states;
5) appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states;	5) appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states;
6) designates an All-Ukrainian referendum regarding amendments to the Constitution of Ukraine in accordance with Article 156 of this Constitution, proclaims an All-Ukrainian referendum on popular initiative;	6) designates an All-Ukrainian referendum regarding amendments to the Constitution of Ukraine in accordance with Article 156 of this Constitution, proclaims an All-Ukrainian referendum on popular initiative;

7) designates special elections to the Verkhovna Rada of Ukraine within the terms established by this Constitution;	7) designates special elections to the Verkhovna Rada of Ukraine within the terms established by this Constitution;
8) terminates the authority of the Verkhovna Rada of Ukraine, <b>if the plenary meetings fail to commence within thirty days of one regular session;</b>	8) terminates the powers of the Verkhovna Rada of Ukraine <b>in cases specified by this Constitution;</b>
9) appoints the Prime Minister of Ukraine with the consent of the Verkhovna Rada of Ukraine; terminates the authority of the Prime Minister of Ukraine and adopts a decision on his or her resignation;	9) puts forward, following the relevant proposal by the parliamentary coalition formed in the Verkhovna Rada of Ukraine as provided for by Article 83 of the Constitution of Ukraine, the name of a candidate to be appointed to the office of the Prime Minister of Ukraine by the Verkhovna Rada of Ukraine, no later than fifteen days after the receipt of such a proposal;
10) appoints, on the submission of the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, chief officers of other central bodies of executive power, and also the heads of local state administrations, and terminates their authority in these positions;	10) puts forward to the Verkhovna Rada of Ukraine the name of a candidate to be appointed to the office of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine;
11) appoints the Procurator General of Ukraine to office with the consent of the Verkhovna Rada of Ukraine, and <b>dismisses him</b> or her from office;	11) appoints to office and <b>dismisses from office the Prosecutor General of Ukraine, with the consent of the Verkhovna Rada of Ukraine;</b>
12) appoints one-half of the composition of the Council of the National Bank of Ukraine;	12) appoints <b>and dismisses</b> one-half of the membership of the Council of the National Bank of Ukraine;
13) appoints one-half of the composition of the National Council of Ukraine on Television and Radio Broadcasting;	13) appoints <b>and dismisses</b> one-half of the membership of the National Council of Ukraine on Television and Radio Broadcasting;
14) appoints to office and dismisses from office, with the consent of the Verkhovna Rada of Ukraine, <b>the Chairman of the Antimonopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Committee on Television and Radio Broadcasting of Ukraine;</b>	<b>14) puts forward to the Verkhovna Rada of Ukraine the name of a candidate to be appointed to, or to be dismissed from, the office of the Head of the Security Service of Ukraine;</b>



15) establishes, reorganises and liquidates, on the submission of the Prime Minister of Ukraine, ministries and other central bodies of executive power, acting within the limits of funding envisaged for the maintenance of bodies of executive power;	15) suspends the operation of acts by the Cabinet of Ministers of Ukraine on grounds of their inconsistency with this Constitution and challenges concurrently the constitutionality of such acts before the Constitutional Court of Ukraine;
16) revokes acts of the Cabinet of Ministers of Ukraine and acts of the Council of Ministers of the Autonomous Republic of Crimea;	16) revokes acts of the Council of Ministers of the Autonomous Republic of Crimea;
17) is the Commander-in-Chief of the Armed Forces of Ukraine; appoints to office and dismisses from office the high command of the Armed Forces of Ukraine and other military formations; administers in the spheres of national security and defence of the State;	17) is the Commander-in-Chief of the Armed Forces of Ukraine; appoints to office and dismisses from office the high command of the Armed Forces of Ukraine and other military formations; administers in the spheres of national security and defence of the State;
18) heads the Council of National Security and Defence of Ukraine;	18) heads the Council of National Security and Defence of Ukraine;
19) forwards the submission to the Verkhovna Rada of Ukraine on the declaration of a state of war, and adopts the decision on the use of the Armed Forces in the event of armed aggression against Ukraine;	19) forwards to the Verkhovna Rada of Ukraine a submission on the declaration of a state of war and, in case of armed aggression against Ukraine, adopts a decision on the use of the Armed Forces <b>and other military formations established in accordance with laws of Ukraine;</b>
20) adopts a decision in accordance with the law on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, in the event of a threat of aggression, danger to the state independence of Ukraine;	20) adopts a decision in accordance with the law on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular areas, in the event of a threat of aggression, danger to the state independence of Ukraine;
21) adopts a decision, in the event of necessity, on the introduction of a state of emergency in Ukraine or in its particular areas, and also in the event of necessity, declares certain areas of Ukraine as zones of an ecological emergency situation — with subsequent confirmation of these decisions by the Verkhovna Rada of Ukraine;	21) adopts a decision, in the event of necessity, on the introduction of a state of emergency in Ukraine or in its particular areas, and also in the event of necessity, declares certain areas of Ukraine as zones of an ecological emergency situation — with subsequent confirmation of these decisions by the Verkhovna Rada of Ukraine;

22) appoints one-third of the composition to the Constitutional Court of Ukraine;	22) appoints <b>and dismisses</b> one-third of the composition to the Constitutional Court of Ukraine;
23) establishes courts by the procedure determined by law;	23) establishes courts by the procedure determined by law;
24) confers high military ranks, high diplomatic and other high special ranks and class orders;	24) confers high military ranks, high diplomatic and other high special ranks and class orders;
25) confers state awards; establishes presidential distinctions and confers them;	25) confers state awards; establishes presidential distinctions and confers them;
26) adopts decisions on the acceptance for citizenship of Ukraine and the termination of citizenship of Ukraine, and on the granting of asylum in Ukraine;	26) adopts decisions on the acceptance for citizenship of Ukraine and the termination of citizenship of Ukraine, and on the granting of asylum in Ukraine;
27) grants pardons;	27) grants pardons;
28) creates, within the limits of the funds envisaged in the State Budget of Ukraine, consultative, advisory and other subsidiary bodies and services for the exercise of his or her authority;	28) creates, within the limits of the funds envisaged in the State Budget of Ukraine, consultative, advisory and other subsidiary bodies and services for the exercise of his or her authority;
29) signs laws adopted by the Verkhovna Rada of Ukraine;	29) signs laws adopted by the Verkhovna Rada of Ukraine;
30) has the right to veto laws adopted by the Verkhovna Rada of Ukraine with their subsequent return for repeat consideration by the Verkhovna Rada of Ukraine;	30) has the power to veto laws adopted by the Verkhovna Rada of Ukraine ( <b>except for laws on amendments to the Constitution of Ukraine</b> ), with such laws being subsequently returned to the Verkhovna Rada of Ukraine for repeat consideration.
<b>31) exercises other powers determined by the Constitution of Ukraine.</b>	
The President of Ukraine shall not transfer his or her powers to other persons or bodies.	The President of Ukraine shall not transfer his or her powers to other persons or bodies.
The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine.	The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine.

Acts of the President of Ukraine, issued within the limits of authority as envisaged in <b>subparagraphs 3, 4, 5, 8, 10, 14, 15, 17, 18, 21, 22, 23 and 24</b> of this Article, are co-signed by the Prime Minister of Ukraine and the Minister responsible for the act and its execution.	Acts issued by the President of Ukraine within the scope of his or her competence as provided for in subparagraphs <b>5, 18, 21, 22, and 23</b> of this Article shall be co-signed by the Prime Minister of Ukraine and the Minister responsible for the act and its implementation.
<b>Article 112.</b> In the event of the pre-term termination of authority of the President of Ukraine in accordance with Articles 108, 109, 110 and 111 of this Constitution, the execution of duties of the President of Ukraine, for the period pending the elections and the assumption of office of the new President of Ukraine, is vested in the Prime Minister of Ukraine. The Prime Minister of Ukraine, for the period of executing the duties of the President of Ukraine, shall not exercise the powers envisaged by subparagraphs 2, 6, 8, 10, 11, 12, 14, 15, <b>16, 22, 25 and 27</b> of Article 106 of the Constitution of Ukraine.	<b>Article 112.</b> In the event of pre-term termination of powers of the President of Ukraine in accordance with Articles 108, 109, 110 and 111 of this Constitution, the execution of the office of the President of Ukraine, for the period pending the election of the new President of Ukraine and his or her assumption of office, shall be vested in the Chairperson of the Verkhovna Rada of Ukraine. The Chairperson of the Verkhovna Rada of Ukraine, while executing the office of the President of Ukraine, shall not exercise the powers specified in subparagraphs 2, <b>6 — 8, 10 — 13, 22, 24, 25, 27, and 28</b> of Article 106 of the Constitution of Ukraine.
<b>Article 113.</b> The Cabinet of Ministers of Ukraine is the highest body in the system of bodies of executive power.	<b>Article 113.</b> The Cabinet of Ministers of Ukraine is the highest authority within the system of executive authorities.
The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and is under the control of and accountable to the Verkhovna Rada of Ukraine within the limits envisaged in Articles 85 and 87 of the Constitution of Ukraine.	The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine <b>and the Verkhovna Rada</b> of Ukraine as well as under the control of and accountable to the Verkhovna Rada of Ukraine within the limits <b>provided for by this Constitution of Ukraine.</b>
The Cabinet of Ministers of Ukraine is guided in its activity by the Constitution and the laws of Ukraine and by the acts of the President of Ukraine.	In its activities, the Cabinet of Ministers of Ukraine is guided by this Constitution, laws of Ukraine, and also by decrees made by the President of Ukraine <b>and resolutions made by of the Verkhovna Rada of Ukraine in accordance with the Constitution and laws of Ukraine.</b>

<b>Article 114.</b> The Cabinet of Ministers of Ukraine is composed of the Prime Minister of Ukraine, the First Vice Prime Minister, <b>three</b> Vice Prime Ministers and the Ministers.	<b>Article 114.</b> The Cabinet of Ministers of Ukraine is composed of the Prime Minister of Ukraine, the First Vice Prime Minister, <b>Vice Prime Ministers</b> , and Ministers.
The Prime Minister of Ukraine is appointed by the President of Ukraine with the consent of more than one-half of the constitutional composition of the Verkhovna Rada of Ukraine.	<b>The Prime Minister of Ukraine is appointed by the Verkhovna Rada of Ukraine upon the submission by the President of Ukraine.</b>
The personal composition of the Cabinet of Ministers of Ukraine is appointed by the President of Ukraine on the submission of the Prime Minister of Ukraine.	<b>The name of a candidate for the office of the Prime Minister of Ukraine shall be put forward by the President of Ukraine following the relevant proposal by the parliamentary coalition formed in the Verkhovna Rada of Ukraine as provided for in Article 83 of the Constitution of Ukraine or by a parliamentary faction whose National Deputies of Ukraine make up a majority of the constitutional membership of the Verkhovna Rada of Ukraine.</b>
	<b>The Minister of Defence and the Minister of Foreign Affairs of Ukraine are appointed by the Verkhovna Rada of Ukraine upon the submission by the President of Ukraine; the other members of the Cabinet of Ministers of Ukraine are appointed upon the submission by the Prime Minister of Ukraine.</b>
The Prime Minister of Ukraine manages the work of the Cabinet of Ministers of Ukraine and directs it for the implementation of the Programme of Activity of the Cabinet of Ministers of Ukraine adopted by the Verkhovna Rada of Ukraine.	The Prime Minister of Ukraine manages the work of the Cabinet of Ministers of Ukraine and directs it for the implementation of the Action Programme of the Cabinet of Ministers of Ukraine adopted by the Verkhovna Rada of Ukraine.
<b>The Prime Minister of Ukraine forwards a submission to the President of Ukraine on the establishment, re-organisation and liquidation of ministries and other central bodies of executive power, within the funds envisaged by the State Budget of Ukraine for the maintenance of these bodies.</b>	

<b>Article 115.</b> The Cabinet of Ministers of Ukraine tenders its resignation to the newly-elected <b>President of Ukraine.</b>	<b>Article 115.</b> The Cabinet of Ministers of Ukraine divests itself of its powers before the newly-elected <b>Verkhovna Rada of Ukraine.</b>
The Prime Minister of Ukraine, other members of the Cabinet of Ministers of Ukraine, have the right to announce their resignation to the President of Ukraine.	The Prime Minister of Ukraine, other members of the Cabinet of Ministers of Ukraine, shall have the right to announce their resignation before the Verkhovna Rada of Ukraine.
The resignation of the Prime Minister of Ukraine results in the resignation of the entire Cabinet of Ministers of Ukraine.	<b>The resignation of the Prime Minister of Ukraine or the adoption by the Verkhovna Rada of Ukraine of a resolution of no confidence in the Cabinet of Ministers of Ukraine shall result in the resignation of the entire Cabinet of Ministers of Ukraine.</b>
	In such cases, the Verkhovna Rada of Ukraine shall form a new Cabinet of Ministers of Ukraine within the terms and under the procedure provided for by this Constitution.
<b>The adoption of a resolution of no confidence in the Cabinet of Ministers of Ukraine by the Verkhovna Rada of Ukraine results in the resignation of the Cabinet of Ministers of Ukraine.</b>	
The Cabinet of Ministers, whose resignation is accepted by the President of Ukraine, continues to exercise its powers by commission of the President, until a newly-formed Cabinet of Ministers of Ukraine commences its operation, but no longer than for sixty days.	The Cabinet of Ministers of Ukraine that has divested itself of its powers before the Verkhovna Rada of Ukraine or whose resignation has been accepted by the Verkhovna Rada of Ukraine shall continue to perform its functions until the newly formed Cabinet of Ministers of Ukraine starts its work.
<b>The Prime Minister of Ukraine is obliged to submit a statement of resignation of the Cabinet of Ministers of Ukraine to the President of Ukraine following a decision by the President of Ukraine or in connection with the adoption of the resolution of no confidence by the Verkhovna Rada of Ukraine.</b>	
<b>Article 116.</b> The Cabinet of Ministers of Ukraine:	<b>Article 116.</b> The Cabinet of Ministers of Ukraine:

1) ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, the execution of the Constitution and the laws of Ukraine, and the acts of the President of Ukraine;	1) ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, the execution of the Constitution and the laws of Ukraine, and the acts of the President of Ukraine;
2) takes measures to ensure human and citizens' rights and freedoms;	2) takes measures to ensure human and citizens' rights and freedoms;
3) ensures the implementation of financial, pricing, investment and taxation policy; the policy in the spheres of labour and employment of the population, social security, education, science and culture, environmental protection, ecological safety and the utilisation of nature;	3) ensures the implementation of financial, pricing, investment and taxation policy; the policy in the spheres of labour and employment of the population, social security, education, science and culture, environmental protection, ecological safety and the utilisation of nature;
4) elaborates and implements national programmes of economic, scientific and technical, and social and cultural development of Ukraine;	4) elaborates and implements national programmes of economic, scientific and technical, and social and cultural development of Ukraine;
5) ensures equal conditions of development of all forms of ownership; administers the management of objects of state property in accordance with the law;	5) ensures equal conditions of development of all forms of ownership; administers the management of objects of state property in accordance with the law;
6) elaborates the draft law on the State Budget of Ukraine and ensures the implementation of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine, and submits a report on its implementation to the Verkhovna Rada of Ukraine;	6) elaborates the draft law on the State Budget of Ukraine and ensures the implementation of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine, and submits a report on its implementation to the Verkhovna Rada of Ukraine;
7) takes measures to ensure the defence capability and national security of Ukraine, public order and to combat crime;	7) takes measures to ensure the defence capability and national security of Ukraine, public order and to combat crime;
8) organises and ensures the implementation of the foreign economic activity of Ukraine, and the operation of customs;	8) organises and ensures the implementation of the foreign economic activity of Ukraine, and the operation of customs;
9) directs and co-ordinates the operation of ministries and other bodies of executive power;	9) directs and co-ordinates the operation of ministries and other bodies of executive power;

	9 <sup>1</sup> ) sets up, re-organises, and liquidates, in accordance with law, ministries and other central executive authorities, acting therewith within the limits of funds allocated for the maintenance of executive authorities;
	9 <sup>2</sup> ) appoints to office and dismisses from office, upon the submission by the Prime Minister of Ukraine, the chief officers of central executive authorities who are not members of the Cabinet of Ministers of Ukraine.
10) performs other functions determined by the Constitution and the laws of Ukraine, and the acts of the President of Ukraine.	10) performs some other functions as provided for by the Constitution and laws of Ukraine.
<b>Article 120.</b> Members of the Cabinet of Ministers of Ukraine and chief officers of central and local bodies of executive power do not have the right to combine their official activity with other work, except teaching, scholarly and creative activity outside of work ing hours, or to be members of an administrative body or board of supervisors of an enterprise that is aimed at making profit.	<b>Article 120.</b> Members of the Cabinet of Ministers of Ukraine and chief officers of central and local executive authorities shall not be entitled to combine their official activities with any other work (with the exception of teaching, scientific and creative activities performed outside of their working hours) or to be members of an administrative body or <b>board of supervisors of a profit-seeking enterprise or organisation;</b>
The organisation, authority and operational procedure of the Cabinet of Ministers of Ukraine, and other central and local bodies of executive power, are determined by the Constitution and the laws of Ukraine.	The organisation, authority and operational procedure of the Cabinet of Ministers of Ukraine, and other central and local bodies of executive power, are determined by the Constitution and the laws of Ukraine.
<b>Article 121.</b> The Procuracy of Ukraine constitutes a unified system that is entrusted with:	<b>Article 121.</b> The Procuracy of Ukraine constitutes a unified system that is entrusted with:
1) prosecution in court on behalf of the State;	1) prosecution in court on behalf of the State;
2) representation of the interests of a citizen or of the State in court in cases determined by law;	2) representation of the interests of a citizen or of the State in court in cases determined by law;
3) supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation;	3) supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation;

4) supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens.	4) supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens.
	<b>5) supervision over the respect for human rights and freedoms and over how laws governing such issues are observed by executive authorities, bodies of local self-government and by their officials and officers;</b>
<b>Article 122.</b> The Procuracy of Ukraine is headed by the Procurator General of Ukraine, who is appointed to office with the consent of the Verkhovna Rada of Ukraine, and <b>dismissed from office by the President of Ukraine.</b> The Verkhovna Rada of Ukraine may express no confidence in the Procurator General of Ukraine that results in his or her resignation from office.	Public prosecution of Ukraine is headed by the Prosecutor General of Ukraine, <b>who is appointed to office and dismissed from office by the President of Ukraine, with the consent of the Verkhovna Rada of Ukraine.</b> The Verkhovna Rada of Ukraine may take a vote of no confidence in the Prosecutor General of Ukraine, which entails his or her resignation from office.
The term of authority of the Procurator General of Ukraine is five years.	The term of authority of the Procurator General of Ukraine is five years.
<b>Article 141.</b> A village, settlement and city council is composed of deputies elected for a <b>four-year</b> term by residents of a village, settlement and city on the basis of universal, equal and direct suffrage, by secret ballot.	The council of a village, town, city, <b>district, or of an oblast</b> is composed of deputies elected for a <b>five-year</b> term by residents of this village, town, city, <b>district, or of the oblast</b> on the basis of universal, equal and direct suffrage and by secret ballot.
Territorial communities elect for a four-year-term on the basis of universal, equal and direct suffrage, by secret ballot, the head of the village, settlement and city, respectively, who leads the executive body of the council and presides at its meetings.	Territorial communities elect for a four-year-term on the basis of universal, equal and direct suffrage, by secret ballot, the head of the village, settlement and city, respectively, who leads the executive body of the council and presides at its meetings.
The status of heads, deputies and executive bodies of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law.	The status of heads, deputies and executive bodies of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law.



<p>The chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive staff of the council.</p>	<p>The chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive staff of the council.</p>
	<p><b>II. Final and transitional provisions</b></p>
	<p>1. On the condition that the Verkhovna Rada of Ukraine adopts no later than 01 September 2005 the Law of Ukraine on Amendments to the Constitution of Ukraine improving the system of local self-government, this Law shall enter into force on 01 September 2005, with the exception of the fifth paragraph of Article 76, the first paragraph of Article 77, subparagraph 6 of the second paragraph and the sixth paragraph of Article 81, the sixth through tenth paragraphs of Article 83, subparagraph 1 of the second paragraph of Article 90, the first paragraph of Article 141 of the Constitution of Ukraine as amended by this Law – all these provisions shall enter into force on the day when the Verkhovna Rada of Ukraine to be elected in 2006 assumes its powers.</p>
	<p>In the event that the Verkhovna Rada of Ukraine fails to adopt no later than 01 September 2005 the Law of Ukraine on Amendments to the Constitution of Ukraine improving the system of local self-government, this Law shall enter into force on 01 January 2006, with the exception of the fifth paragraph of Article 76, the first paragraph of Article 77, subparagraph 6 of the second paragraph and the sixth paragraph of Article 81, the sixth through tenth paragraphs of Article 83, subparagraph 1 of the second paragraph of Article 90, the first paragraph of Article 141 of the Constitution of Ukraine as amended by this Law – all these provisions shall enter into force on the day when the Verkhovna Rada of Ukraine to be elected in 2006 assumes its powers.</p>

	<p>2. The Verkhovna Rada of Ukraine, elected in 2002, shall continue to exercise its constitutional powers until the Verkhovna Rada of Ukraine to be elected in 2006 assumes its powers.</p>
	<p>3. The election of 450 National Deputies of Ukraine making up the constitutional membership of the Verkhovna Rada of Ukraine shall take place in 2006 on the basis of universal, equal and direct suffrage, by secret ballot, in compliance with Proportional Representation rules underlying the election of National Deputies of Ukraine in a multi-mandate national constituency, according to the lists of parliamentary candidates as proposed by political parties, electoral blocs of political parties, and in accordance with the law.</p>

**ANNEX 2. Opinion on the amendments to the Constitution of Ukraine adopted on 8.12.2004 (Adopted by the European Commission For Democracy Through Law at its 63rd plenary session (Venice, 10-11 June 2005))**

Strasbourg, 13 June 2005 **Opinion no. 339 / 2005**  
**CDL-AD(2005)015 Or. Engl.**

**EUROPEAN COMMISSION  
FOR DEMOCRACY THROUGH LAW  
(VENICE COMMISSION)**

**OPINION  
ON THE AMENDMENTS TO THE CONSTITUTION OF  
UKRAINE  
ADOPTED ON 8.12.2004**

**Adopted by the Commission at its 63<sup>rd</sup> plenary session  
(Venice, 10-11 June 2005)**

**on the basis of comments by**

**Mr Kaarlo TUORI (Member, Finland)  
Mr Sergio BARTOLE (Substitute member, Italy)  
Ms Finola FLANAGAN (Member, Ireland)**

## INTRODUCTION

*1. By a letter from 21 April 2005, Mr Roman Zvarych, Minister of Justice of Ukraine, requested the Venice Commission expertise on the Law on Amendments to the Constitution of Ukraine as adopted on 8 December 2005 (CDL (2005) 036).*

*2. Messrs Kaarlo Tuori and Sergio Bartole and Ms Finola Flanagan, members of the Venice Commission's Working Group on constitutional reform in Ukraine examined this Law.*

*3. The present opinion was prepared on the basis of their comments and adopted by the Venice Commission at its 63<sup>rd</sup> Plenary Session (Venice, 10 – 11 June 2005).*

### **I. Background**

In April 2003, at the request of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Venice Commission got actively involved in the process of constitutional reform in Ukraine. In December 2003, the Commission adopted its opinion on three draft laws on amendments to the Constitution of Ukraine (CDL-AD (2003) 19). The opinion, whilst welcoming the efforts to reform the system of Ukraine's government to bring it closer to European democratic standards, nonetheless was critical of many aspects of each of the Draft Laws, notably the mandate of the National Deputies, the President's position in the appointment of Government, and the independence of judiciary.

On 22 June 2004, the Monitoring Committee of the Parliamentary Assembly held an exchange of views on the political situation in

Ukraine. On this occasion, it expressed great concern about the pre-election environment, and considered, in particular *«that the on-going constitutional reform, which is in principle highly needed, should be postponed until after the presidential election and then be conducted in a democratic and transparent manner»*.<sup>[1]</sup> The Parliamentary Assembly itself also strongly criticised the proposed adoption of constitutional amendments on the eve of presidential elections in its Resolution 1364 (2004) on political crisis in Ukraine.

On 23 June 2004, the Verkhovna Rada of Ukraine voted on the third of the three draft laws on amendments to the Constitution previously examined by the Commission, i.e. Draft Law no. 4180, and approved it in the first reading.

Draft Law no. 4180 was amended prior to its adoption; the modifications included provisions on the election of the President and the term of office of judges, thus taking into account two of the recommendations made by the Commission in its opinion of December 2003. Nevertheless, many of other provisions which had been criticised remained in the text. Furthermore, a number of political forces within Ukraine and most international organisations questioned the legitimacy of the voting procedure on various texts of draft amendments as well as the very procedure of adoption in the first reading of Draft Law no. 4180.

Following a request by the Monitoring Committee of the Parliamentary Assembly, in October 2004 the Venice Commission adopted its opinion on the procedure of amending the Constitution in Ukraine (CDL-AD (2004)030), which noted the complicated and hurried way in which several constitutional amendments had been proposed, amended and voted on, with each proposal being subjected to a process of further amendments in the process. In this opinion, the Commission also stressed that constitutional reforms and their entering into force should not be subject to short-term political calculations.

Further to the political crisis which had arisen after the presidential elections, on 8 December 2004 the Verkhovna Rada of Ukraine adopted the Law on amendments to the Constitution (hereinafter: *«the Law on amendments»*) that had as its basis Draft Law no. 4180. Although the Law on amendments, as adopted, takes into account many of the comments the Commission made in its previous opinion (CDL-AD (2003) 019), some of the Commission's criticism retains its pertinence.

## **II. Analysis of the Law on amendments as adopted on 8 December**

### **A. National Deputies' mandate**

The Commission welcomes the amendment to Article 81 § 2 (6) on national deputies' mandate which removed from the text the provision providing for the termination of a deputy's mandate on his or her dismissal from the parliamentary faction to which he or she belonged at the time of the election.

On the other hand, it is to be regretted that according to the revised Article 81 § 2 (6), a deputy's mandate would be terminated on his or her leaving or not joining the parliamentary faction to which he or she belonged at the time of the election. The relevant decision would be taken by the highest steering body of the respective political party, or election bloc of political party (Article 81 § 6).

Keeping the proposed procedure in the Constitution give the parties the power to annul electoral results. It might also have the effect of weakening the Verkhovna Rada itself by interfering with the free and independent mandate of the deputies, who would no longer necessarily be in a position to follow their convictions and at the same time remain a member of the Parliament. As the Commission has stressed in its previous opinion, linking a mandate of a national deputy to membership of a parliamentary faction or bloc is also inconsistent with the other constitutional provisions bearing in mind that Members of Parliament are supposed to represent the *people* and not their parties<sup>[2]</sup>.

The Commission thus strongly recommends that Article 81 § 2 (6) and 81 § 6 be removed from the Constitution. Instead, the free and independent mandate of the deputies should be explicitly guaranteed.

### **B. Amendments with respect to the relationship between the President, the Verkhovna Rada and the Government**

As regards the relationship between the main constitutional bodies in Ukraine, the Law on amendments has brought some positive changes, increasing the parliamentary features of the political system.

The text nevertheless contains some provisions that raise concern as they give certain powers to the President that might undermine the independence and effectiveness of the Government.

### ***Coalition of parliamentary factions***

*15. Pursuant to Article 83 § 6, «a coalition of deputies' factions and groups of deputies» representing a parliamentary majority should be formed in the Verkhovna Rada of Ukraine. Such a coalition is to be formed following «the results of elections and on the basis of a common ground achieved between various political positions». The formation of the coalition should take place within a month after the opening session of a newly elected Verkhovna Rada or the termination of the activities of a previous coalition. Such a coalition will nominate the candidate for the Prime Minister and propose candidates for membership of the Cabinet (Article 83 § 8).*

It may be questioned whether such a formalised procedure for forming a parliamentary majority would contribute to enhancing political stability in Ukraine. Furthermore, it could hardly be seen as compatible with the freedom of the choice and decision guaranteed to political parties by the Constitution, in conformity with European standards in this field. Generally speaking, alliances between political parties depend on the free choice of the parties concerned, and will last as long as the governing bodies of the parties find it convenient to stick to the negotiated agreements. In addition, a coalition government may give disproportionate power to small parties and therefore be unrepresentative.

The aim of ensuring political stability in Ukraine could also be attained without infringing the principles of the independent mandate of the deputies and the free choice of the political parties.

Following the example of the German Constitution, Article 87 of the Constitution of Ukraine, relating to the issue of the responsibility of the Cabinet of Ministers, could be amended to provide that the Verkhovna Rada may express its lack of confidence in the Cabinet only by electing a successor of the Prime Minister by the vote of a majority of its Members<sup>[3]</sup>. Such an amendment would allow a new majority coalition of political factions to be created within the Parliament at the moment of the introduction of the motion of no confidence.

The amendment of Article 87, again following the German example, would also implicitly require the removal of Article 90 § 2 (1), which gives the right to the President to dissolve the Verkhovna Rada in case of a failure to form, within one month, a coalition of parliamentary factions.

In the light of these considerations and bearing in mind the new electoral system based on proportional representation (Final and transitional provisions, paragraph 3) which will further favour a stronger link between the parties and the elected deputies, the Commission considers the requirement to form a parliamentary coalition to be excessive and would strongly favour its removal from the Constitution.

### ***Appointment of the Prime Minister***

*21. With respect to appointment of the Prime Minister and formation of the Cabinet, the changes brought about by the Law on amendments are rather limited with respect to the Draft Law No. 4180 previously commented on by the Commission in its December 2003 Opinion. It is still a coalition of parliamentary factions that remains empowered to nominate the candidate for the Prime Minister and propose candidates for membership of the Cabinet (Article 83 § 8).*

The inability of the parliament to form a coalition and form the government will result in the dissolution of the Verkhovna Rada and extraordinary elections (Article 90 § 1 (2)). The Commission notes that paragraph 4 of the same article introduces a one-year ban on another early termination of the Parliament. Yet, the Constitution does not give any solution to any potential crises caused by the newly elected Parliament's inability to form a stable majority and agree on formation on the Cabinet.

This inconsistency could be avoided by amending Article 87 as previously suggested (see *supra*, point 16), or by providing for an exception to the one-year ban where no candidate has obtained the confidence of the newly elected Parliament <sup>[4]</sup>.

### ***Formation of the Cabinet***

Regarding most Cabinet ministers, the Verkhovna Rada approves the composition of the Government nominated by the Prime Minis-



ter (Article 85 § 1 (12)). The Law on amendments has maintained a distinction between the procedure in relation to the appointment of Ministers for Defence and Foreign Affairs and the remainder of the Cabinet ; the Ministers for Defence and Foreign Affairs would be appointed by the Verkhovna Rada on the *President's* nomination. The Verkhovna Rada would have the power to terminate the authority of these persons (Article 85 § 1 (12)).

The nomination procedure and the differences in status for such an important political organ as the Cabinet of Ministers raise concerns with regard to the necessary cohesion of the Cabinet and the exercise of its policy, especially given the specific context of the Ukrainian political system where the relations between the President and the Prime Minister may have become at times highly competitive.

Furthermore, pursuant to Article 106 § 1 and § 3, «the President ensures state independence, national security [...]» and «administers the foreign political activity of the State». On the other hand, the government's tasks include «ensuring the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State [...]» and «taking measures to ensure the defence capability and national security [...]» (Article 116 § 1, §7). These overlapping competencies may be the source of future conflicts between the president and the government(s).

The prominent position of the President is further manifested by Article 113 § 2, according to which the Cabinet of Ministers is responsible not only to the Verkhovna Rada but also to the President.

Moreover, the Law on amendments has retained Article 106 § 3, according to which «the President, on the basis and for the execution of the Constitution and laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine». The precise meaning of this provision is ambiguous and should be clarified.

The Law on amendments has also maintained the power of the President to initiate the procedure of no confidence in the Cabinet (Article 87 § 1), as well as his or her right of legislative initiative.

As the Commission has previously stated, such provisions do not seem coherent with the said aim of the constitutional reform, that is to say, diminishing the powers of the president and strengthening the parliamentary traits of governing in Ukraine.

### ***Appointment and dismissal of some high officials***

The power of appointment, on nomination by the Prime Minister, and dismissal of some important heads of public bodies (the Head of the Antimonopoly Committee, the Chair of the State Committee on Television and Radio Broadcasting and the Chair of the State Property Fund) remains with the Verkhovna Rada (Article 85 § 1 (12)). On the other hand, the Head of the Security Service would be appointed on nomination by the President, and dismissed, on the request of the President.

The Commission is of the opinion that the decision on appointment and dismissal of the aforementioned officials should be taken by a special, qualified majority. The offices concerned are characterised by the neutrality of their functions and require the independence and impartiality of their holders. The persons eligible for the above-mentioned offices cannot be identified with the majority or with any political party. The requirement of a qualified, special majority could guarantee the fairness of their election and of the bodies they are supposed to chair.

With respect to the procedure of counter-sign, according to the revised Article 106 § 4, the counter-signature of the prime minister and a designated minister on issues of «negotiating and signing international treaties» and of «national security and defence» is no longer required. This change runs counter to the general tendency of the amendments to strengthen the parliamentary features of the system and is therefore to be regretted.

With regard to the right of the executive to counter-sign in issues relating to the judiciary, the Commission considers that the reasons allowing the Prime Minister and the Minister concerned to refuse to sign should be clearly stated in the Constitution (see *infra*, para. 44).

### **C. Amendments with respect to Procuracy and judicial system**

The Law on amendments has taken out the highly controversial provision providing for the election of judges (except those of the Constitutional Court) for a 10-year term, which is to be welcomed. However, a number of other provisions related to the judiciary remain problematic.

### ***Prokuratura (Prosecutor's Office)***

Transforming the role and functions of the public prosecutor's office to bring it into line with European democratic standards is one of the commitments undertaken by Ukraine when it became a member of the Council of Europe<sup>[5]</sup> (see several resolutions and recommendations of the Parliamentary Assembly on the Honouring of obligations and commitments by Ukraine, most recently Resolution 1346 (2003) and Recommendation 1622 (2003)).

The Commission notes with regret that the Law on amendments has reintroduced the previously criticised amendment to Article 121 § 5 proposed by Draft Law No. 4180<sup>[6]</sup>, giving institution the significant additional role of «supervision of the observance of human and citizens' rights and freedoms and the fulfilment of laws by bodies of executive power and by bodies of local self-government».

The Draft Law amending the Law of Ukraine on the office of public prosecutor, adopted in the first reading by the Verkhovna Rada, and aiming to implement this constitutional amendment has also been examined by the Commission<sup>[7]</sup>. In respect of this law, the Commission came to the following conclusions:

- *the draft law continues to centralise too much power in the hands of the procuracy and the Prosecutor-General, and in particular has failed to divest the procuracy of functions intended to be only transitional;*
- *the draft law continues to infringe the principle of the separation of powers. The Prosecutor's powers remain entwined with those of the legislative, executive and judicial branches;*
- *the draft law appears to confer powers on the procuracy which would be more appropriately exercised by the judicial branch;*
- *the relationship between the Public Prosecutor and the executive remains entangled and is not transparent;*
- *the provisions of Article 7 represent a potential threat to press freedom;*
- *the powers to represent the public and assert rights on their behalf are too widely drawn;*
- *the draft law continues to confer powers and responsibilities on the Public Prosecutor which go beyond the function of prosecuting crim-*

*inal offences and defending the public interest through the criminal justice system. Such powers and responsibilities are inappropriate for conferral on the Public Prosecutor;*

- *the position of the Prosecutor is not in conformity with Recommendation Rec(2000)19;*
- *there is no independent check on the operation and management of the Prosecutor's Office.*

In this respect, the Commission cannot but recall once again that such an extension of the power of the Procuracy goes against European standards in this field<sup>[8]</sup> as well as against the Ukrainian commitments made when acceding to the Council of Europe<sup>[9]</sup>.

In a state like Ukraine where the purported aim is to enhance an effective political democracy, it is of paramount importance that the institution that supervises compliance with the rule of law is a non-political one.

In the same spirit, in its Recommendation 1615 (2003) on the Institution of Ombudsman, the Parliamentary Assembly emphasised *«the importance of the institution of ombudsman within national systems for the protection of human rights and the promotion of the rule of law, and of its role in ensuring the proper behaviour of public administration. Ombudsmen have a valuable role to play at all levels of public administration, and they report on their activities to the political bodies to whom they are accountable»*.<sup>[10]</sup>

The Commission therefore strongly recommends that this new competence of the Prosecutor overlapping with the power of the Authorised Human Rights Representative of Ukraine to «exercise parliamentary control over the observance of constitutional human and citizen's rights and freedoms» (Article 101 of the existing Constitution) be removed from the text, and the office of the Authorised Human Rights Representative strengthened.

### ***Appointment and dismissal of the judges of the Constitutional Court***

*43. Regarding the appointment of judges of the Constitutional Court, the adopted Law on amendments went back to the original wording of Article 148 of the 1996 Constitution providing that the Verkhovna Rada,*

*the President and the Congress of Judges of Ukraine shall each appoint one-third of the judges, which is to be welcomed. The Constitution should nevertheless provide for the parliamentary election of constitutional judges by a qualified, special majority. Such a provision would oblige the majority and the minority in the Parliament to find an agreement in the selection of the constitutional judges and would ensure a more balanced membership of the Court.*

*44. A special, qualified majority of members of the Congress of Judges of Ukraine for the appointment of one-third of constitutional judges would also be necessary.*

The new Article 106 § 4 establishing the right of the Prime Minister to co-sign acts of appointment and dismissal of the constitutional judges could ensure a better balance in the exercise of the presidential right of election of constitutional judges, provided that the reasons allowing the executive to refuse to co-sign those acts are clearly stated. On the other hand, the requirement that the acts issued by the President relating to the appointment and dismissal of the constitutional judges be co-signed also by the «Minister responsible for the act and its implementation» raises some concerns as such provision might be a basis for interference of the executive in the functioning of the Court.

The Commission is aware that the specific grounds for dismissing the constitutional judges are listed in Article 126 of the Constitution. In this respect, it would strongly recommend introducing a specific requirement in Article 149 that a preliminary decision on this matter be entrusted to the Constitutional Court itself. Such a provision would strongly contribute to guaranteeing the independence of the judges.

In addition, the Constitution should expressly provide for the adoption of a normative act on the internal organisation and functioning of the Court, while establishing a distinction between issues to be regulated by law and issues reserved to the regulations of the Court.

#### **D. Final and transitional provisions**

Pursuant to the final and transitional provisions, the amendments adopted in December 2004 will enter into force on 1 September, pro-

vided that the set of amendments reforming local self-government in Ukraine is adopted before that date. Should the constitutional reform of self-government fail, most of the amendments will enter into force on 1 January 2006. The remaining amendments will enter into force on the day when the new Verkhovna Rada is elected in 2006.

The transitional provisions making the entering into force of the amendments dependent on the adoption of another set of amendments clearly reflect the context in which the amendments under examination have been adopted. Indeed, although the constitutional reform has been pending for several years, the Law on amendments was adopted in a hurried way, with the aim of solving the acute political crisis.

## **CONCLUSION**

The Law on amendments as adopted in December 2004 reflects many of the Commission's comments in its previous opinions on this matter. Nevertheless, a number of provisions, such as the rights of legislative initiative conferred on both the Cabinet and the President, or the President's role in foreign and defence policy might lead to unnecessary political conflicts and thus undermine the necessary strengthening of the rule of law in the country. In general, the constitutional amendments, as adopted, do not yet fully allow the aim of the constitutional reform of establishing a balanced and functional system of government to be attained.

On the basis of the above considerations, the Commission considers that, in order to bring the Law on amendments into compliance with the principles of pluralist democracy and the rule of law, the Law should be further discussed and some improvements made.

Attention should particularly be given to the following:

- the provisions on the National Deputies should not link an individual deputy to membership of a parliamentary faction or bloc, thus infringing his or her free and independent mandate (a deputy must be free to leave or not join the parliamentary faction from which he or she was elected);
- the principles governing the mutual relations between the President, the Verkhovna Rada and the Government should be fully con-

sistent: the President should not be given a prominent position thus undermining the necessary cohesion of the Cabinet (e.g. the President's right of legislative initiative, the right to nominate the Defence and Foreign Affairs Minister, the responsibility of the Cabinet towards the President);

- the decisions on appointment and dismissal of certain high officials and constitutional judges by the Verkhovna Rada should be adopted by a special, qualified majority;

- the role and competences of the Prosecutor General should be revised to bring them into conformity with European standards;

- the role of the Authorised Human Rights Representative should be strengthened.

The adoption of further amendments to the Constitution on the basis of the considerations set forth above would improve the compliance of the Ukrainian Constitution with the principles of representative democracy and the rule of law. In the opinion of the Commission, the adoption of such further amendments would be particularly welcome as additional evidence of the willingness of the new Ukrainian authorities to improve the state of democracy and rule of law in their country.

The Commission also wishes to stress once again that taking the time necessary for finding a real consensus among all political forces and the civil society on a well-balanced and coherent constitutional reform would secure the legitimacy of the new Constitution and the political system in Ukraine.

*[1] Statement by the Monitoring Committee on 22.06.04.*

*[2] The oath to be taken by Deputies contained in Article 79 of the Constitution expresses this clearly. See CDL-AD (2003)019, para. 56 – 58.*

*[3] See Article 67 of the German Constitution. The new Polish Constitution of 1997 has also introduced this rule (see Article 158 § 1). See also Article 113 § 2 of the Spanish Constitution.*

*[4] See Articles 99 § 5 and 115 § 3 of the Spanish Constitution.*

*[5] See Opinion No. 190 (1995) of the Parliamentary Assembly on the application by Ukraine for membership in the Council of Europe.*

*[6] See the Commission's opinion on three draft laws proposing amendments to the Constitution of Ukraine (CDL-AD (2003) 19), paras. 71-74.*

*[7] Opinion on the Draft Law amending the Law of Ukraine on the office of the public prosecutor (CDL-AD (2004) 038).*

*[8] See Parliamentary Assembly Recommendation 1604 (2003) on the role of the Public Prosecutor's office in a democratic society governed by the rule of law, and paragraph 12 of Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe which provides that public prosecutors should not interfere with the competence of the legislative and the executive powers.*

*[9] See Resolution 1244 (2001) on the Honouring of Ukraine's Obligations and Commitments, in which the Parliamentary Assembly of the Council of Europe invoked the commitment of the Ukrainian authorities to change the role and functions of the Prosecutor's Office (particularly with regard to the exercise of the general supervision of legality) with the aim of ensuring its conformity with the European standards. Later on, in its Resolution 1346 (2003), the Parliamentary Assembly expressed its deep concern with the functioning of the Prosecutor's Office, and more particularly, with regard to its independence and interference with the legislative and executive power.*

*[10] Paragraph 1.*



**ANNEX 3. Constitution of Ukraine adopted on 28 June 1996 vs. Draft Law 3207-1<sup>3</sup> on Amendments to the Constitution of Ukraine (concerning local government)**

<b>CONSTITUTION OF UKRAINE adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996</b>	<b>DRAFT LAW # 3207-1 ON AMENDMENTS TO THE CONSTITUTION OF UKRAINE</b>
<b>Article 85.</b> The authority of the Verkhovna Rada of Ukraine comprises:	<b>Article 85.</b> The authority of the Verkhovna Rada of Ukraine comprises:
29. establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts;	29) establishing and abolishing districts, establishing and altering boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts, <b>establishing and abolishing of inhabited localities and regions;</b>
<b>Article 118.</b> Executive power in oblasts <b>and districts</b> , cities of Kyiv and Sevastopol, shall be <b>exercised</b> by local state administrations.	<b>Article 118.</b> In oblasts, cities of Kyiv and Sevastopol <b>for discharge of authority according to the law local state administrations are created.</b>
<b>Particular aspects of exercise of executive power in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine</b>	
<b>The composition of local state administrations is formed by heads of local state administrations.</b>	

<sup>3</sup> The Version of 23 December 2005.

Hheads of local state administrations are appointed to office and dismissed from office by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine.	Hheads of local state administrations are appointed to office and dismissed from office by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine. Hheads of local state administrations in the exercise of their duties are responsible before the President of Ukraine, <b>are accountable to and under control of Cabinet of Ministers of Ukraine.</b>
In the exercise of their duties, the heads of local state administrations are responsible to the President of Ukraine and to the Cabinet of Ministers of Ukraine, and are accountable to and under the control of <b>bodies of executive power of a higher level.</b>	
<b>Local state administrations are accountable to and under the control of councils in the part of the authority delegated to them by the respective district or oblast councils.</b>	
<b>Local state administrations are accountable to and under the control of the bodies of executive power of a higher level.</b>	
<b>Decisions of the heads of local state administrations that contravene the Constitution and the laws of Ukraine, other acts of legislation of Ukraine, may be revoked by the President of Ukraine or by the head of the local state administration of a higher level, in accordance with the law.</b>	
<b>An oblast or district council may express no confidence in the head of the respective local state administration, on which grounds the President of Ukraine adopts a decision and provides a substantiated reply.</b>	

<p>If two-thirds of the deputies of the composition of the respective council express no confidence in the head of a district or oblast state administration, the President of Ukraine adopts a decision on the resignation of the head of the local state administration.</p>	
<p><b>Article 119.</b> Local state administrations on their respective territory ensure:</p>	<p><b>Article 119.</b> Local state administrations on their respective territory ensure:</p>
<p>1) the execution of the Constitution and the laws of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and other bodies of executive power;</p>	<p>1) the control on execution of the laws of Ukraine by local bodies of executive power, accounted to central bodies of executive power;</p>
<p>2) legality and legal order; the observance of laws and freedoms of citizens;</p>	
<p>3) the implementation of national and regional programmes for socio-economic and cultural development, programmes for environmental protection, and also — in places of compact residence of indigenous peoples and national minorities — programmes for their national and cultural development;</p>	
<p>4) the preparation and implementation of respective oblast and district budgets;</p>	
<p>5) the report on the implementation of respective budgets and programmes;</p>	

6) interaction with bodies of local self-government;	2) interaction of <b>local bodies of executive power</b> and bodies of local self-government;
7) the realisation of other powers <b>vested by the state and also delegated by the respective councils</b>	3) the realisation of other, <b>prescribed by law</b> , powers.
<b>Article 133.</b> The system of the administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, oblasts, districts, cities, city districts, settlements and villages.	<b>Article 133.</b> The system of the administrative and territorial structure of Ukraine is composed of: the Autonomous Republic of Crimea; oblasts, districts, cities, city districts, settlements and villages, and regions.
	<b>The region is created on the basis of voluntary association of inhabitants of administrative-territorial units, which consists of several inhabited localities.</b>
Ukraine is composed of the Autonomous Republic of Crimea, Vinnytsia Oblast, Volyn Oblast, Dnipropetrovsk Oblast, Donetsk Oblast, Zhytomyr Oblast, Zakarpattia Oblast, Zaporizhia Oblast, Ivano-Frankivsk Oblast, Kyiv Oblast, Kirovohrad Oblast, Luhansk Oblast, Lviv Oblast, Mykolaiv Oblast, Odesa Oblast, Poltava Oblast, Rivne Oblast, Sumy Oblast, Ternopil Oblast, Kharkiv Oblast, Kherson Oblast, Khmelnytskyi Oblast, Cherkasy Oblast, Chernivtsi Oblast and Chernihiv Oblast, and the Cities of Kyiv and Sevastopol.	Ukraine is composed of the Autonomous Republic of Crimea, Vinnytsia Oblast, Volyn Oblast, Dnipropetrovsk Oblast, Donetsk Oblast, Zhytomyr Oblast, Zakarpattia Oblast, Zaporizhia Oblast, Ivano-Frankivsk Oblast, Kyiv Oblast, Kirovohrad Oblast, Luhansk Oblast, Lviv Oblast, Mykolaiv Oblast, Odesa Oblast, Poltava Oblast, Rivne Oblast, Sumy Oblast, Ternopil Oblast, Kharkiv Oblast, Kherson Oblast, Khmelnytskyi Oblast, Cherkasy Oblast, Chernivtsi Oblast and Chernihiv Oblast, and the Cities of Kyiv and Sevastopol, <b>marches of which are defined by law.</b>
The Cities of Kyiv and Sevastopol have special status that is determined by the laws of Ukraine.	The Cities of Kyiv and Sevastopol have special status that is determined by the <b>separate</b> laws of Ukraine.

<p><b>Article 136.</b> The representative body of the Autonomous Republic of Crimea is The Verkhovna Rada of the Autonomous Republic of Crimea.</p>	<p><b>Article 136.</b> The representative body of the Autonomous Republic of Crimea is The Verkhovna Rada of the Autonomous Republic of Crimea, the <b>Deputies of which are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot.</b></p>
<p>The Verkhovna Rada of the Autonomous Republic of Crimea adopts decisions and resolutions that are mandatory for execution in the Autonomous Republic of Crimea.</p>	<p>The Verkhovna Rada of the Autonomous Republic of Crimea adopts decisions and resolutions that are mandatory for execution in the Autonomous Republic of Crimea.</p>
<p>The Council of Ministers of the Autonomous Republic of Crimea is the government of the Autonomous Republic of Crimea. The Head of the Council of Ministers of the Autonomous Republic of Crimea is appointed to office and dismissed from office by the Verkhovna Rada of the Autonomous Republic of Crimea with the consent of the President of Ukraine. The authority, the procedure for the formation and operation of the Verkhovna Rada of the Autonomous Republic of Crimea and of the Council of Ministers of the Autonomous Republic of Crimea, are determined by the Constitution of Ukraine and the laws of Ukraine, and by normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea on issues ascribed to its competence.</p>	<p>The Council of Ministers of the Autonomous Republic of Crimea is the government of the Autonomous Republic of Crimea. The Head of the Council of Ministers of the Autonomous Republic of Crimea is appointed to office and dismissed from office by the Verkhovna Rada of the Autonomous Republic of Crimea with the consent of the President of Ukraine. The authority, the procedure for the formation and operation of the Verkhovna Rada of the Autonomous Republic of Crimea and of the Council of Ministers of the Autonomous Republic of Crimea, are determined by the Constitution of Ukraine and the laws of Ukraine, and by normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea on issues ascribed to its competence.</p>
<p>In the Autonomous Republic of Crimea, justice is administered by courts that belong to the unified system of courts of Ukraine.</p>	<p>In the Autonomous Republic of Crimea, justice is administered by courts that belong to the unified system of courts of Ukraine.</p>

<p><b>Article 140.</b> Local self-government is the right of a territorial community — residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine.</p>	<p><b>Article 140.</b> Local self-government is the right of a territorial community — residents of a village, settlement, and a city or a voluntary association in <b>territorial unit of residents of several inhabited localities</b> — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine.</p>
	<p><b>Local self-government is exercised within the merges of administrative-territorial units.</b></p>
<p>Particular aspects of the exercise of local self-government in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.</p>	<p>Particular aspects of the exercise of local self-government in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.</p>
<p>Local self-government is exercised by a <b>territorial community</b> by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies.</p>	<p>Local self-government is exercised by <b>residents of inhabited localities, regions</b> by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies.</p>
<p>District and oblast councils are bodies of local self-government that represent the common interests of territorial communities of villages, settlements and cities.</p>	<p>District and oblast councils are bodies of local self-government that represent the common interests of territorial communities of villages, settlements and cities.</p>
<p>The issue of organisation of the administration of city districts lies within the competence of city councils.</p>	<p>The issue of organisation of the administration of city districts lies within the competence of city councils.</p>
<p>Village, settlement and city councils may permit, upon the initiative of residents, the creation of house, street, block and other bodies of popular self-organisation, and to assign them part of their own competence, finances and property.</p>	<p>Village, settlement and city councils may permit, upon the initiative of residents, the creation of house, street, block and other bodies of popular self-organisation, and to assign them part of their own competence, finances and property.</p>

<b>Article 141.</b> A village, settlement and city council is composed of deputies elected for a four-year term by residents of a village, settlement and city on the basis of universal, equal and direct suffrage, by secret ballot.	<b>Article 141.</b> A village, settlement and city council is composed of deputies elected for a four-year term by residents of a village, settlement and city on the basis of universal, equal and direct suffrage, by secret ballot.
Territorial communities elect for a <b>four</b> -year-term on the basis of universal, equal and direct suffrage, by secret ballot, the head of the village, settlement and city, respectively, who leads the executive body of the council and presides at its meetings.	Territorial communities elect for a <b>five</b> -year-term on the basis of universal, equal and direct suffrage, by secret ballot, the head of the village, settlement and city, respectively, who leads the executive body of the council and presides at its meetings.
The status of heads, deputies and executive bodies of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law.	The status of heads, deputies and executive bodies of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law.
The chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive <b>staff</b> of the council.	The chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive <b>body</b> of the council.
<b>Article 142.</b> The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by <b>territorial communities of villages, settlements, cities, city districts</b> , and also objects of their common property that are managed by district and oblast councils.	<b>Article 142.</b> The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by <b>communities</b> and also objects of their common property that are managed by district and oblast councils.
On the basis of agreement, territorial communities of villages, settlements and cities may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organisations and establishments, and create appropriate bodies and services for this purpose.	On the basis of agreement, <b>residents of the community or community councils according to the law</b> may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organisations and establishments, and create appropriate bodies and services for this purpose.

<p>The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. Expenditures of bodies of local self-government, that arise from the decisions of bodies of state power, are compensated by the state.</p>	<p>The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. <b>Minimal rates of taxes and charges that form the revenues of local budgets are defined by law.</b> Expenditures of bodies of local self-government, that arise from the decisions of bodies of state power, are compensated by the state.</p>
<p><b>Article 143.</b> Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; approve programmes of socio-economic and cultural development, and control their implementation; approve <b>budgets of the respective administrative and territorial units</b>, and control their implementation; establish local taxes and levies in accordance with the law; ensure the holding of local referendums and the implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity; resolve other issues of local importance ascribed to their competence by law.</p>	<p><b>Article 143.</b> Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; approve programmes of socio-economic and cultural development, and control their implementation; approve <b>respective local budgets</b>, and control their implementation; establish local taxes and levies in accordance with the law; ensure the holding of local referendums and the implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity; resolve other issues of local importance ascribed to their competence by law.</p>



<p>Oblast and district councils approve programmes for socio-economic and cultural development of the respective oblasts and districts, and control their implementation; approve district and oblast budgets <b>that are formed from the funds of the state budget for their appropriate distribution among territorial communities or for the implementation of joint projects, and from the funds drawn on the basis of agreement from local budgets for the realisation of joint socio-economic and cultural programmes</b>, and control their implementation; resolve other issues ascribed to their competence by law.</p>	<p>Oblast and district councils approve programmes for socio-economic and cultural development of the respective oblasts and districts, and control their implementation; approve district and oblast budgets and control their implementation; <b>resolve within the limits defined by law issues of administrative-territorial system</b>, resolve other issues ascribed to their competence by law.</p>
<p>Certain powers of bodies of executive power may be assigned by law to bodies of local self-government. The State finances the exercise of these powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to the local budget, by the procedure established by law, transfers the relevant objects of state property to bodies of local self-government.</p>	<p>Certain powers of bodies of executive power may be assigned by law to bodies of local self-government. The State finances the exercise of these powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to the local budget, by the procedure established by law, transfers the relevant objects of state property to bodies of local self-government.</p>
<p>Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power.</p>	<p>Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power.</p>

	<b>Transitional Provisions<sup>4</sup></b>
	<b>1. This law comes in force from the day of election of local councils of the fifth convocation in 2006, except articles 118, 119 of The Constitution of Ukraine as amended, which come in force in 60 days after this law is in force, and except provision 6 of Transitional Provisions, which comes in force on the day of publication of this law.</b>
	<b>2. Executive bodies of district and oblast councils are created in two month period from the election of local councils of fifth convocation.</b>
	<b>3. Transition from district and oblast state administrations to executive bodies of district and oblast councils documentation on preparation and execution of district and oblast budgets, conduction of authorities delegated by respective district and oblast councils carries out in two month period after the creation of district and oblast councils.</b>
	<b>4. Liquidation of district state administration carries out not more than in four month after the creation of district and oblast councils.</b>
	<b>5. For the period of Treaty between Ukraine and Russian Federation «On status and conditions of presence of Black Sea Fleet of Russian Federation at Ukraine territory» Sevastopol's state city administration conducts the authority in accordance with Law «On local state administrations» in the version dated January 1, 2006.</b>

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<sup>4</sup> Provisions of the constitutional amendments laid down in Draft Law № 3207-1.

**FORMATION  
OF PUBLIC  
ADMINISTRATION  
IN UKRAINE**  
*(background  
and explanations)*



## **Formation of Public Administration in Ukraine**

### **by Ihor Koliushko and Victor Tymoshchuk**

In order to understand how important it is to implement the administrative reform in Ukraine, one should bear in mind that when Ukraine acquired its independence back in 1991, it did not have any system of public administration at all. Therefore, the administrative reform has been and still remains one of the key issues in the development of Ukraine's government system.

The immediate implementation of the administrative reform in the first years of independence was hindered by the absence of the constitution that could have laid a legal basis for the construction of the public administration system.

Such a basis was formed in 1996, when the new Ukrainian Constitution was passed. However, it did not lead to the development of an efficient public administration system, evidently, due to the attempts of the previous head of state to concentrate the maximum of power in his hands, for which purpose various instruments were employed, including the actual blocking of the legislative initiatives aiming at a clearer separation of powers between the President and the Government.

A long history of confrontation between the Verkhovna Rada on the one hand and the head of state on the other about the Law on the Cabinet of Ministers of Ukraine and the Law on Local State Administrations finally forced President Kuchma to accept the proposal of the parliamentary working group, and in July 1997 he set up a State Commission for Administration Reform.

On 25 March 1998, the above Commission approved the Administrative Reform Concept for Ukraine that had been worked out by its task force on the basis of a draft developed in its time by the Verkhovna Rada. On 22 July 1998, the President issued a decree<sup>5</sup> which put the Concept at the core of the public administration reform. The main tar-

gets of the Concept included the reform of public executive authorities, and organisation of the civil service and local self-governance.

However, no real steps have been practically made in the administrative reform ever since. In particular, no legislation has been put into effect to support the functioning of public executive authorities. Only the Law on the Cabinet of Ministers of Ukraine was passed eight times by the Verkhovna Rada, and each time it was vetoed by the head of state. Accordingly, in the absence of this basis for the administrative reform act, other bills were even not proposed. The Law on the Administrative and Territorial System in Ukraine was similarly many times vetoed.

Now, there are but few laws that set the legal framework for public administration, namely:

- the Law on Civil Service of 16 December 1993 (development of a new version is underway);
- the Law on Local Self-Governance of 21 May 1997 (the local self-governance reform is also in progress);
- the Law on Local State Administrations of 9 April 1999; and
- the Law on Service in Local Self-Government Bodies of 7 June 2001.

Besides laws, there are also decrees that were issued by President Kuchma to introduce certain reform measures. However, many experts considered his innovations to be more of a simulation rather than a true reform which is, after all, proved by the ultimate results. Thus, on 15 December 1999 the President passed three decrees on the reform of the top and central public executive authorities<sup>6</sup>, and on 29 May 2001 he introduced the posts of state secretaries in ministries.<sup>7</sup> However, the December decrees envisaged so many changes that their content would become considerably degraded if all changes were to be implemented; therefore, in a two-year time the posts of ministerial state secretaries were abolished (in May 2003).

Under such circumstances, the new government that came at the beginning of 2005 was predestined to the implementation of the ad-

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<sup>5</sup> Presidential Decree No. 810 of 22 July 1998 on Measures to Implement the Administrative Reform Concept

<sup>6</sup> Presidential Decrees No. 1572 of 15 December 1999 on the Central Public Executive Authorities System; No. 1573 of 15 December 1999 on the Changes to the Structure of Central Public Executive Authorities; No. 1574 of 15 December 1999 on the Composition of the Cabinet of Ministers of Ukraine

<sup>7</sup> Presidential Decree No. 345 of 29 May 2001 on Regular Measures for Further Implementation of the Administrative Reform in Ukraine

ministrative reform, and relevant priorities were mentioned in the in the first Action Programme of the new Cabinet. In addition, the seriousness of the intentions was also proved by the appointment of a Vice Prime Minister in charge of the administrative reform.

However, today it appears that the new government has also failed to achieve any noticeable results in the implementation of the administrative reform, as its attempts encountered adamant resistance of both the public, and the majority of political forces, and now hardly any efforts will be made before the 2006 parliamentary elections are over. This provides for an opportunity to summarise the current achievements of the reform and draw certain conclusions on its status and needs. Such an endeavour has been made in the Draft Concept of Public Administration Reform developed by the Centre for Political and Legal Reforms which you will find in the next section of the edition, just like two draft laws on the Cabinet of Ministers of Ukraine in the version reconciled with the governmental working group in April-May 2005 and on Ministries and Other Central Executive Authorities prepared on the basis of the draft developed by the Centre with participation of the Governmental Secretariat. These materials should give a deeper insight in the present-days problems of Ukraine and the solutions proposed to solve them.

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\* Developed by the Centre for Political and Legal Reforms with the support of the Eurasia Foundation funded by the US Agency for International Development (USAID) and the institutional support of the Danish Institute of Human Rights. The draft is as of 25.12.2005.



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## **I. Current Status of Public Administration and Preconditions for Administrative Reform in Ukraine**

Over the period between 1991 and now, Ukraine has managed to form the majority of its public administration institutions or bodies and other agencies subordinated to the political government that ensure the administration of law and exercise of other public functions. In particular, there are executive public authorities and executive bodies of local self-governments at villages, settlements, and towns/cities, as well as the civil service has been established alongside with the service in local self-governance bodies.

However, the current public administration in Ukraine does not meet the strategic policy of Ukraine aiming at strengthening democracy and establishing the European standards of good governance, since it remains inefficient, prone to corruption, internally controversial, excessively centralised, cumbersome and detached from the problems of average citizens. As a result, it hinders social, economic and political reforms.

The above problematic aspects of Ukraine's public administration have been caused by:

### **1) Incomplete transformation of the Cabinet of Ministers of Ukraine into a body of political management:**

- Unclear separation of policy development functions between two centres of power: the President and the Government;
- Government's limited levers of influence on certain central executive authorities;
- Lack of strategic planning in the functioning of the Cabinet of Ministers of Ukraine;

### **2) Inefficient organisation of operation of ministries:**

- Ministers and ministries alike are overburdened with administrative issues;
- Political and administrative leadership has not been yet fully separated;
- Political and administrative functions in ministries are not separated;
- Excessive dependence of government bodies on ministries in terms of organisation issues;

**3) Unpractical system of central executive authorities:**

- Unreasonably many central executive authorities with a similar status;
- Low level of horizontal coordination between ministries;
- Excessive centralisation of executive powers;

**4) Inefficient organisation of public authorities at the regional and local levels:**

- Inefficient mechanisms of the Government's influence on local state administrations;
- High level of concentration of public administration powers and functions in the government system;

**5) Inefficient local self-governance and unpractical administrative and territorial system:**

- Financial incapability of the basic local self-governance units in rural areas;
- Lack of clear division of powers and responsibilities between the levels, bodies and officials of the local self-governance;
- Lack of full-fledged local self-governance in rayons;
- Noticeable disproportions in the size of rayon territories and population;
- Disproportions in the development of rayons and regions;

**6) Inefficient system of the civil and municipal service:**

- High staff turnover and low professional level of the staff;
- Subjectivism in the administration of the civil service;
- Vulnerability of civil servants in the face of political influences;
- Low salaries and lack of labour remuneration transparency;

**7) Lack of parity principles in the relations between individuals and public administration:**

- Improper legal regulation of relations between individuals and public administration;
- Prevalence of rights and interests of bureaucrats, formalism, red tape, and corruption;
- Improper dissemination of public information and problems of access to information;

- Inefficient procedure set for the appeal against decisions, action and omission of action by public administration.

The issues described above not only prove that the Ukrainian public administration system needs to be reformed, but also suggest the priorities of such reform.

Here it is important to take into account the positive achievements of the 1998-2004 administrative reform in Ukraine, like the development and adoption of the Administrative Reform Concept, certain regulation of the central executive authorities system, partial reorganisation of the governmental secretariat, establishment of governmental committees, and adoption of the Temporary Rules of Procedure of the Cabinet of Ministers. In all other respects, the 1998 Administrative Reform Concept has been implemented incoherently and not on the basis of the law, as it is required by the Constitution, but rather through the adoption of by-laws, which is why no irreversible positive changes have occurred.

The attempts to undertake the administrative reform in 2005 were hardly effective, mainly due to the lack of a clear vision of the reform priorities by the new political leadership of the country.

## **II. Reform Aim, Objectives, Principles**

The public administration reform is the fulfilment of a social order for the efficient, responsible and open executive power and territorial self-governance institutions, which is the essence of good governance.

The reform aims to establish an efficient system of public administration able to provide a high quality of public services.

To achieve this aim it is important to establish the ideology of «serving the society» as the operating principle of the public administration, and to implement the following objectives:

- 1) to establish a stable and efficient system of executive authorities and ensure its functioning;
- 2) to organise a professional, politically neutral and open public civil service (in executive and local self-governance bodies);
- 3) to establish the system of capable local self-governance;
- 4) to strengthen the status of citizens in their relations with

the public administration and to guarantee that the public administration is under the control of the political power and the society.

These objectives should be achieved by the following means:

1) The powers between the Government and the head of state should be separated by legislation; political and administrative functions in the executive branch should be practically and institutionally separated; operation procedures of public administration bodies should be improved;

2) Political offices should be separated from the public civil service; legal mechanisms should be established to protect civil servants from illegal political influences; true competition should be introduced for employment and promotion in the civil service; management of the public civil service should be improved;

3) Public functions and resources should be decentralised as much as possible; economically self-sufficient local self-governance subjects should be established through the enlargement of village and settlement communities; full-fledged local self-governance should be introduced in rayons as an additional (subsidiary) local self-governance level;

4) There is a need for a fair legal regulation of administrative procedures; operation of public institutions should be primarily aiming at the provision of public services; new organisation forms and quality of service standards should be introduced; mechanisms of legal protection of citizens in their relations with the public administration should be improved;

5) Oversight functions of the Parliament and local councils should be strengthened as well as the state financial control; the system of administrative justice should be further developed; the public should be involved into the administration of public affairs and the operation of the public administration.

The reform should be grounded on the principles of organisation and operation of the public administration in constitutional democracies, in particular:

- *Rule of Law* as a top priority of human and civil rights, humanism and justice of the public administration;

- *Legality* as operation of the public administration in accordance with provisions and procedures established by law;
- *Openness* as provision of public access to the information on the activities and decisions of the public administration and dissemination of such information, as well as provision of public information on the citizens' request;
- *Proportionality* as the restriction of the public administration decisions by the aim that needs to be achieved, conditions of its achievement, and the obligation of the public administration to pay attention to the consequences of its decisions, action or omission of action;
- *Efficiency* as a duty of the public administration to ensure that the necessary results are achieved through the fulfilment of the established objectives with the optimal use of public resources;
- *Oversight* as a mandatory internal and external, including judicial, control of the public administration; and
- *Responsibility* as an obligation of the public administration to be responsible for its decisions, action and omission of action.

The reform should also be based on the principle of legality in view of its special methodological importance. The 1999-2004 reform has demonstrated that a failure to meet this requirement leads to distortions, incoherence, and regresses. Therefore, it is so critically important to ensure a steadfast compliance with the constitutional provisions which set that only the law can regulate the powers, the organisation and the operation procedures of executive authorities, local self-governance bodies, their officials and employees. In the same way, only the law can delegate the regulation of certain issues related to the exercise of executive powers to the Cabinet of Ministers, and those related to the local self-governance – to local councils.

This approach will make it possible to secure the stability of public administration institutions guaranteeing democracy and observance of the rule of law and human rights as a mandatory requirement in the context of Ukraine's potential membership in the European Union. At the same time, it will prevent the appearance of casual obstacles to the continuous improvement of the governance system with due consideration of the available financial and staff resources.

### **III. Reform Priorities**

#### **3.1. Reform of Higher and Central Public Executive Authorities**

##### **Cabinet of Ministers of Ukraine (Government)**

The main aim of the Cabinet of Ministers reform is to ensure the constitutional status of the Ukrainian government as the top public executive authority in the state. The conceptual idea of the Government's reform is to establish the formation of the state policy, i.e. development of the domestic and foreign policies, as its principal operation priority.

The Government's responsibility and efficiency can be increased by ensuring that:

- the Government works on the basis of the strategy set in its Action Programme;
- the Government focuses on the solution of strategic and political issues;
- the governmental decisions are passed by ministers jointly at the governmental meetings; and
- all draft governmental decisions are studied by governmental committees before they are submitted for the Government's consideration.

The Government's Action Programme should be prepared for the entire period of the Government's powers.

The system of public executive authorities should exclude institutions that are not subordinated to the Government, either directly or indirectly. To focus on the policy-making, the Government should delegate or pass in any other legitimate way the maximum of its administrative powers to the lower executive institutions.

For the efficient management of the executive institutions, the Cabinet of Ministers should be empowered to appoint and dismiss deputy ministers and top officials of lower institutions, and also repeal their acts.

The governmental officials should work together as much as possible to prevent the excessive influence of individual members of Government on the development and implementation of the govern-

mental policy and to provide all members of Government with equal possibilities. This would also benefit from a clearer definition of the place and role of Vice Prime Ministers in the process of formation and implementation of public policies. In the future, ministers should be allowed to combine their office with the posts of Vice Prime Ministers.

Members of the Cabinet should focus on their work in the Government and the Parliament, including the parliamentary committees.

Only members of Government should be allowed to participate in the governmental meetings, while other individuals should be permitted to come in only for the consideration of specific issues. Under a general rule, the Cabinet meetings should be closed to ensure free and open discussion of the agenda.

Governmental committees should become a full-fledged instrument of political reconciliation of governmental decisions. The procedure when governmental decisions are supported by visas of members of Government should be replaced by the discussion and reconciliation of such decisions by means of the internal computer network where every participant will be able to submit his/her remarks and suggestions to the proposed draft and see the remarks and suggestions submitted by other participants. For this purpose, it is necessary to deploy internal computer networks as soon as possible, and start the electronic circulation of documents.

Governmental committees should include only members of Government, and only deputy ministers should be allowed to replace ministers on governmental committees (the posts of deputy ministers should be classified as political ones).

To ensure competent preparation of issues to be considered at the meetings of governmental committees, as well as to improve the institutional memory and proficiency in the operation of governmental committees, each committee should have its own secretariat as a structural unit of the Cabinet's Secretariat. For the purposes of the day-to-day management, each committee secretariat should be subordinated to the head of the governmental committee.

It is necessary to continue with the implementation of other measures to improve the organisation of work of the Cabinet's Secretariat. The Secretariat should not substitute the activities of the mem-



bers of Government. The main objectives of the Secretariat should be to provide organisational support to the operation of the Government, analyse whether the proposed governmental decisions comply with the Cabinet's Action Programme, and monitor the fulfilment of the governmental decisions.

There is a need to eliminate the duplication of work of the Cabinet's Secretariat and the ministries. The main work on the preparation of bills and acts of the Cabinet of Ministers should be done by ministries on the initiative of ministers.

To preserve the institutional memory and continuity in the operation of the Cabinet of Ministers, the Secretariat should be headed by a civil servant (the State Secretary of the Cabinet of Ministers).

The Head of the Government's Secretariat should be appointed and dismissed on the basis of the law on civil service. This official, just like other civil servants, should not be dismissed due to the formation of a new Cabinet.

## **Ministries**

Reform of the ministries and other central public executive authorities should be focused on:

- 1) Revision of the status of central executive authorities and their number, and specification of their functions;
- 2) Security of the leading role of ministries as the main policy making institutions in relevant sectors of public administration; and
- 3) Upgrade of the role of ministers as public political figures, separation of the political and administrative ministerial leadership.

The ministries should be the main central executive authorities. They should be seen as an «extension of the Government» and they should become the main policy making centres.

Accordingly, in the executive branch, only the Government and ministers as members of Government should be permitted to issue regulations («of external action»).

Separation of the political and administrative leadership in the ministries should be continued. It is important not only to classify the ministers' posts as political ones, but also to ensure the legitimacy of such a definition, as well as to provide ministers with political

support in the person of a deputy minister. The deputy minister's office should also be classified as a public political post. Due to a broad scope of political objectives, from two to three posts of deputy ministers may be introduced in some ministries.

In order to manage a ministry secretariat, ensure the institutional memory of any ministry, as well as stability of the civil service, the office of the ministerial state (permanent) secretary should be restored. This official should have the status of a civil servant. The ministerial state secretary should be appointed by the Cabinet of Ministers in accordance with the procedure set by the civil service legislation. The ministerial state secretary should be subordinated to, and put under the control of the minister.

The number of ministerial departments should be essentially decreased, while the internal structure of each ministry's secretariat should correspond to the key functions (or working priorities) of the ministry. All ministries should have the same structure of such secretariat services as chancelleries, staff offices, accounting offices and others.

To improve the information, analysis, and consultation support to the minister, the minister's board should be further transformed into an advisory body that should include the ministry's state secretary, top officials of government agencies subordinated to the minister, representatives of relevant parliamentary committees, other public executive institutions, establishments, NGOs, researchers and other individuals.

Approaches to the territorial organisation of the executive branch should also change. Under a general rule, the absolute majority of ministries will need no territorial network of their own, since the main task of ministries as political institutions will be to ensure the activities of the minister, prepare development programmes, draft regulations etc.

### **Other Central Public Executive Authorities**

Central executive institutions should function separately from ministries. The Cabinet's influence on them should be limited to the bounds established by the Constitution, which, for example, sets special procedures for the appointment and dismissal of the top officials

of the Antimonopoly Committee, the State Property Fund, and the State TV and Radiobroadcast Committee. These institutions, as well as the Security Service of Ukraine should exercise their powers in an autonomous manner and in accordance with relevant laws.

The state committees as a type of executive authorities should be eliminated.

### **Government Bodies**

Government bodies should make the biggest group of public authorities in terms of their quantity, territorial network and the number of staff. Such bodies should focus on the day-to-day management or administration of laws in individual sub-sectors (a service), provision of administrative services (an agency), and exercise of control and oversight functions (an inspection). Government bodies should make part of the ministerial system in accordance with the by-sector division of powers between various ministries.

Key founding and staff issues related to the above bodies should be dealt with by the Cabinet of Ministers on the submission of the relevant minister.

Responsibility of government bodies to individuals should be based on the personal responsibility of the top official of any government body to the minister. For sufficient autonomy of government bodies, the influence of the minister to whom any relevant government body is subordinated, should be limited to the following powers:

- 1) Normative regulation of the operation of the government body (the head of the government body should be entitled to propose draft regulations);
- 2) Participation in the budgeting for the government body;
- 3) Control of the operation of the government body (by receiving reports and other information etc); and
- 4) Initiation of the replacement or dismissal of the head of the government body.

The minister and the ministerial staff should not be entitled to issue instructions to the head or members of staff of any government body.

To improve the quality of administrative services provided by gov-

ernment bodies, it would be advisable to envisage the possibility of using business management methods in the organisation of agencies' operation, including as concerns the selection of staff and labour remuneration. To improve the agencies' efficiency, the obligations between the minister and the head of agency should be fixed in the form of a contract.

## **Regulators**

The role of the government in the regulation of operation of natural monopolies and related markets needs to be clearly defined in order to prevent the Cabinet of Ministers from direct interference with their activities. Due to a poor definition of their status, caused by the lack of constitutional preconditions, and direct dependence on the political leadership of the country, regulators do not always properly fulfil their regulatory functions. As a result, state-run companies that occupy the dominant position on their relevant markets are able to violate consumer interests when establishing prices or tariffs for goods and services, at the same time failing to ensure the proper quality of service. This circumstance is exploited by the government to solve social problems at the expense certain groups of consumers.

The reform of the state regulators should ensure the balance between the interests of consumers, monopolists and the state in the process of decision-making by the regulator. This needs to be done by the following means:

- 1) The consumers should be guaranteed high quality services at the economically grounded prices;
- 2) The influence of monopolists on the public policy should be decreased;
- 3) Proper conditions for the efficient and stable development of monopoly companies should be established; and
- 4) The government's attempts to solve social problems at the expense of certain groups of consumers should be prevented.

The state regulator reform should envisage the following:

- 1) Regulators should be defined as a separate and specific unit of the public administration;
- 2) The competence of regulators should primarily cover such areas as

energy, transport, communications, and housing and communal system;

3) The procedure for the formation and operation of regulators should be improved (if necessary, the Constitution should be amended as concerns the dismissal of the regulator leadership and membership); and

4) Operation independence, objectivity and transparency of regulators should be ensured through parity representation of all interested parties – the government, consumers and producers – in their membership (or oversight structures).

### **3.1. Reform of Local Public Executive Authorities**

#### **Oblast State Administrations**

The aim of the local executive authorities reform is to support the development of local self-governance through the transfer (decentralisation) of the maximum of public objectives to local self-governance bodies and clear separation of powers between local self-governments and local administrations.

For this purpose, at the first stage of the reform, operation of oblast state administrations should be aiming at the socio-economic and cultural development of the region.

To improve the subordination of local state administrations to the Government, the appointment powers should be transferred to the Cabinet of Ministers (with constitutional amendments introduced accordingly).

At the second stage, simultaneously with introduction of the regional self-governance, executive bodies of oblast councils should be established on the basis of oblast state administrations. The Ministry of Justice offices may oversee how local self-governance bodies observe the legislation, while the interests of the state may be represented by new coordination and oversight bodies of the prefecture type which need to be established.

#### **Rayon State Administrations**

At the first stage of the reform (prior to the amendment of the Constitution), rayon state administrations should be completely subordinated to oblast state administrations.

Rayon state administrations should be abolished by a relevant constitutional amendment since introduction of a full-fledged local self-governance in rayons will eliminate the need for this kind of public authorities.

### **Territorial Offices of Ministries and Central Public Executive Authorities**

The organisation and work of ministerial territorial offices (institutions) should undergo a major transformation.

Territorial offices (institutions) of government bodies should become the main type of local state powers if their setup is recognised necessary in every specific case. It is these offices (institutions) that should perform the day-to-day administration.

Here territorial boundaries of government bodies should be defined in a more flexible way. It should be possible to establish joint territorial offices (institutions) of government bodies for a number of oblasts, rayons, towns, or city boroughs. Establishment of such offices should be guided by accessibility and public convenience, especially if their main task is to provide administrative services.

Only certain ministries, like the Ministry of Interior Affairs, the Ministry of Finance and the Ministry of Justice should definitely have their oblast bodies to coordinate and oversee the work of the territorial offices (institutions) of government bodies within a relevant ministry. After the regional self-governance is introduced, offices of the Ministry of Justice should also oversee how local self-governance bodies observe the law, while the Finance Ministry institutions should monitor the area of public finance.

### **3.2. Local Self-Governance and Administrative and Territorial System**

The reform of the local self-governance and the territorial system should aim at the development of conditions for the provision of high quality public services at the level which is the closest to the people. In the meantime, the reform should be targeting at the optimisation of the structure of the administrative and territorial system to establish an efficient system of public administration in the country through

the broad decentralisation of executive authorities and transformation of local self-governments into financially capable, efficient, and responsible authorities.

The municipal reform should optimise the financial and economic basis of the local self-governance bodies and interbudget relations, formation of efficient budgets able to secure the local governance functions.

As the very first step to be made to ensure the success of the municipal reform, the administrative and territorial system needs to be modernised. Here it is important to take into account the historically developed system of administrative and territorial units (ATUs):

- Third level (basic): a community;
- Second level: a rayon (city/town/rayon);
- First level: a region (Crimean Autonomous Republic, oblasts, special status cities).

Commitments taken by Ukraine under the European Charter of Local Self-Government require legislation to be passed to clearly separate two levels of territorial self-government: regional and local. Provisions on the first subnational level should be taken out of the Law on Local Self-Government and set forth as a separate law. Regional self-governance should be introduced in a more distant future.

At the second and third levels, local self-governance should be introduced without any restraints (this would require constitutional amendments).

## **Community**

A community<sup>8</sup> is defined as a basic ATU that includes people of one or a number of settlements with their territories (a village, a town,<sup>9</sup> a city and/or their associations) that have clearly established boundaries and make a territorial basis for the local self-governance bodies that provide the community with administrative, health care, educational, social, cultural and other public services.

To ensure the economic capability of the community, provided the condition of its territorial compactness is met, a «mixed» mod-

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<sup>8</sup> The term *volost* may be introduced to denote the basic ATU.

<sup>9</sup> The historically correct term *mistechko* should be reintroduced.

el of local self-government may be introduced (**with the community as a basis and the rayon as a supplementary level**). Here the right of local self-government will be given to all rural rayons and individual communities with the population of more than 5,000 people. As an exception, a community may be set up with less people depending on the factors of the administrative centre accessibility, density of population, national and religious affiliation of citizens, development of transport networks etc.

An ATU should be separated from other similar ATUs by boundaries. This should secure the principle of ubiquity of the local self-governance and will make it possible to extend the jurisdiction of the local self-governance bodies, in particular the community, not only to the territory of any given settlement, but also to the lands around.

It is also advisable to differentiate between various models of local self-governance proceeding from the size of the community population.

*A community of up to 5,000 people* should elect a council of up to 15 members (one mandate per 330 people, but not less than 9 members) on the basis of the relative majority system in multi-seat constituencies.

The head of community elected by voters should also function as the council chairman and the head of the council's executive body.

Each settlement inside the community may establish self-organisation institutions and elect village mayors (*starosta* or *viyt*) vested with some of the powers of the executive body of the community council.

*A community of more than 5,000 and less than 50,000 people* should elect a council comprising from 15 to 25 members on the basis of the relative majority system in multi-seat constituencies.

The head of community elected by voters should also function as the council chairman and the head of the council's executive body. The council executive body should have a collective nature.

*A community of more than 50,000 people* should elect a council of not less than 50 members for 50,000 people (one member should be added for every other 50,000 people; however, not more than 100 deputies should be elected altogether). The council should be elected on the basis of the relative majority system in multi-seat constituencies.



The head of community elected by voters should also function as the council chairman. The council's executive body should be formed and should function with due consideration of one of the following systems as set in the city statutes:

1) The top institution in the system of the community executive bodies should be the executive committee headed by the head of community and formed by the council on the proposal of the head of community;

2) The executive body of the community should be town/city government (town/city *uprava*) headed by the «town/city premier» appointed by the council on the proposal of the head of community;

3) The executive body of the community is a town/city administration (*uprava, dyrectsiya*) headed by the «town/city administrator» (*uryadnyk*) appointed by the head of community on the results of an open competition; the administrator should work on the basis of an employment contract.

Here it is advisable to stimulate the introduction of such management systems in the local self-governance bodies that envisage a clear separation of political and administrative (professional and management) functions and offices.

## **Rayon**

A rayon is an association of communities aiming to ensure the implementation of their common interests. It should have relevant transport, information, and other infrastructure and should be set up provided that no less than **70,000 citizens** live within its boundaries.

The rayon should be an additional (subsidiary) level of local self-governance to supplement the community and accomplish those public objectives which cannot be achieved by the community. If certain functions cannot be efficiently fulfilled by the community, they should also be passed to the rayon.

If one community has at least one town with no less than 70,000 people, such a community should be provided with the status of the **rayon-town**. Rayon-towns should not make part of other rayons and should not include other communities. Also, rayon-towns should not function as capitals for the neighbouring rural rayons.

At the first stage of the reform, rayon state administrations should be abolished. The representative local self-governance body – the rayon council – should form its own executive bodies and elect its chairman. The chairman of the council should be elected from the members of the council. In the future, rayon councils should be formed through indirect elections from amongst the authorised representatives of the rayon communities (constitutional amendments needed).

The majority of powers of the abolished rayon state administrations should be transferred (delegated by the state) to the rayon council's executive committee. In particular, such powers should include the following: title registration, issuance of state land acts, approval of land allocation and construction plans etc. Due to the considerable enlargement of communities, such services could be provided to citizens not only in rayon centres but also in new communities that will be set up around settlements, so called «natural concentrators». The beginning of transformations at the rayon level should be synchronised with the implementation of the community reform.

### **Division of Powers Between Various Levels of Local Self-Governance**

An important element of the reform is a clear division of powers between various levels of local self-governance in accordance with the subsidiarity principle in order to avoid the replication and double subordination of local self-governance functions and powers.

**Community** self-governance bodies should be dealing with the following public affairs:

- Pre-school education and training;
- Care for elderly and disabled individuals;
- Primary and general education;
- Prevention and primary health care;
- Organisation of the essential commodities trade;
- Land use planning;
- Environmental protection;
- Residential housing construction;
- Communal and everyday life support (water supply, sewerage systems, heating systems and energy supply);

- Territory improvements, maintenance of local roads, villages, cemeteries etc;
- Transport service within the community;
- Organisation of free time (clubs, libraries);
- Sanitary control and preventive measures; and
- Veterinary control and preventive measures.

**Community** self-governance bodies should also be dealing with other important for the community life public matters provided they are not attributed to the competence of other public administration bodies. Communities and local self-governance bodies should be able to work freely for the realisation of the common interests of the community members.

**Rayon** self-governance bodies should be dealing with the public affairs related to:

- Provision of in-patient health care services;
- Vocational training and college education (primarily oriented to provide local self-governance services);
- Organisation and maintenance of the local police;
- Local land survey;
- Maintenance of rayon roads;
- Transport service within the rayon; and
- Free time and culture (cinema, rayon libraries, museums).

In case of rayon-town communities, their self-governance bodies should fulfil not only community duties, but also deal with the public affairs attributed to the rayon level.

### **3.1. Introduction of Regional Self-Governance**

Reform of the centre-regions relations should aim to overcome the negative influence of the centralisation of the public administration and to establish an efficient model of cooperation between central and regional/local authorities. Decentralisation, as an instrument to level the development of the regions, should be done with due consideration of the differentiation and disproportion of Ukraine's territorial development. It should include a combination of the state aid to the depressed territories with support and con-

solidation of economies of the most developed regions. The regional development should be based on the mobilisation of their internal potential. At the same time, the system of financial levelling should be improved both vertically and horizontally on the basis of tax capacity of each territory and with application of the differentiated approaches to the levelling of the income basis of each region.

To ensure the well-balanced functioning of all levels of local self-governance and distinct understanding and division of relevant powers, the Constitution and legislation should very clearly distinguish the local self-governance from the regional self-governance, and the latter from the local executive public authorities.

To introduce the regional self-governance, there is a need for the legislative definition of its concept and powers, the competence and procedures for formation and activities of its representative and executive bodies, their officials and other aspects, which can be set forth in a special law on the legal status of the oblast. Here it is important to clearly separate the levels of exclusive competence of the local and regional self-governance so that they do not overlap.

Regional self-governance bodies should be dealing with the development and implementation of the regional development programmes, investment attractiveness of the region, development of the transport infrastructure, as well as higher education, specialised health care, and culture.

It is necessary to prepare the reform of public authorities at the oblast level during the first and second stages of the administrative and territorial system reform, however it should be implemented in a more distant future, in particular as concerns the revision of the boundaries of the current oblasts and their number.

Even though the powers of oblast councils of the 5<sup>th</sup> convocation (to be elected in 2006) will not be considerably increased, they will be able to set up their executive bodies, and their budget system may be reformed (amendments to the Constitution and the Budget Code of Ukraine needed).

The administrative and territorial system at the regional level should be improved through the enlargement and transformation of the oblast boundaries, singling out of the metropolitan district with its administrative centre in Kyiv (constitutional amendments need-

ed) and the change of the state power function at the level of the region.

It is possible to form the full-fledged executive bodies of the regional self-governments only after the election of oblast councils of the 6<sup>th</sup> convocation (in 2011). Such executive bodies should be established on the basis of oblasts state administrations. Territorial offices of certain ministries, like the Ministry of Justice, the Ministry of Finance and the Ministry of Internal Affairs may further continue functioning at the regional level in order to oversee how local self-governance bodies observe the law, to monitor public finance, and to coordinate the internal policies. If necessary, new coordination and oversight councils of a prefecture type may also be set up in the regions.

A special attention should be given to the establishment of the mechanism for coordination of the state regional policies and reconciliation of various regional interests. Importance of the balanced implementation of the state regional policies, gradual extension of regional powers related to the implementation of regional policies and introduction of efficient oversight mechanisms for the exercise by regional and local self-governance bodies of the delegated powers require a ministry to be established to deal with the state regional and local development policies.

### **3.2. Budget Reform (in the Context of the Administrative Reform)**

The **budget reform** should be an indispensable component of the administrative reform with two main priorities, the first of which is suggested by the changes in the system of top executive authorities, while the second is related to the reform of the local self-governance and the administrative and territorial system, as well as fiscal decentralisation.

This means that it is necessary to improve both the budget process and the budget system.

There are **two main deficiencies** characteristic of the development, approval and execution of the national budget making it inefficient and having a negative impact on the economic development rates, namely the excessive political sensitivity of the process of budget approval and the inefficient use of the available financial resources.

The **first deficiency** is caused by the fact that the Parliament considers both macroeconomic and structural parameters of the national budget simultaneously which is the main reason of the increased political sensitivity and noticeable deterioration of the State Budget Act. There is a need to separate in time the consideration of these two aspects specified below:

**1) The next budget year and medium-term macroeconomic parameters of the national budget** (*revenues by their main kinds; expenses by their main functions; and the deficit by its coverage sources*); these parameters should be approved together with the Economic and Social Development Programme and the Main Budget Policy Priorities;

**2) The next year budget indicators**, as well as main funds managers and budget programmes (*in perspective, the same will have to be done for the medium term*).

To eliminate the second deficiency there is a need:

**1) to improve the application of the programme and target method** and put it in the core of the budget process in Ukraine; it should also be used for the development and execution of all kinds of budgets in Ukraine; and

**2) to decentralise the national budget development and execution**, as well as to pass the majority of the related functions from the Ministry of Finance to other ministries, making the former responsible for the coordination and oversight of the budget process; the ministers, as the main funds managers, should also report directly to the Parliament on the use of the allocated funds and achievement of the results set by the State Budget Act.

**Ukraine's budget system should correspond to its administrative and territorial system**, therefore it should be reformed in accordance with the changes introduced into the latter. The two-level budget system should be transformed into a three-level one to include the national, regional and local budgets. The *regional budgets* should include the budget of the Crimean Autonomous Republic and oblast budgets, while the *local budgets* should comprise rayon and community budgets (budgets of villages, settlements, towns/cities and their associations).

The budget legislation should clearly define the status of the regional and local budgets. Budget powers of regional and local self-

governance bodies should be defined on the basis of their authorities and functions. Thus, budget powers of Crimea should reflect the peculiarities of the powers provided to its representative and executive authorities by the Constitution.

The budget legislation should also clearly divide the budget powers between:

- the public authorities and the regional and local self-governance bodies of all levels;
- the representative and the executive bodies of regional self-governance; and
- the representative and the executive bodies of local self-governance of all levels.

**The budget reform should be reconciled with the tax and social reforms.** In the context of the administrative reform, the budget and tax reform priorities should include improvement of financial independence of the local self-governance bodies through the perfection of the local tax system and distribution mechanisms for nationwide financial resources between the state and the regional and local self-governments. The regional and local self-governments should avail themselves of sufficient resources to be able to fulfil their own and delegated powers and functions. Any kinds of delegated powers should be financially supported by means of interbudget transfers that need to be calculated on the basis of an economically grounded formula set by the unchangeable budget legislation. It is also important that the interbudget transfer formula is developed and established in a transparent manner with involvement of representatives of the regional and local self-governance. Such formula should not be influenced by the annual State Budget Act.

*The regional and local budget revenues* should include their own and fixed revenues, and interbudget transfers. In order to improve their infrastructure, certain towns/cities meeting the criteria set by the Budget Code of Ukraine, as well as the Crimean Autonomous Republic should be entitled to making internal and external borrowings. The regional self-governments should be entitled to borrowings only if regional taxes and charges are established by law to provide the regions with their own revenues.

*The local budget own revenues* should include proceeds from the relevant communal property, local taxes, as well as proceeds from ad-

ministrative fines and other incomes established by laws and decisions of local self-governance representative bodies.

*The own revenues of communities, villages, settlements, towns/cities* and their associations, as well city district budgets should include proceeds from the real estate tax; the land tax; the trade tax; the advertisement tax; the fixed agricultural tax; the single tax for business operators using a simplified taxation system; the market fee; the recreation fee; the permission fee for the location of trade and service outlets; the fee for the right to use local symbols; proceeds from communal property; other local taxes and charges; and fines levied for the violations related to the payment of taxes and fees that form the local budget revenues. There is also a need to consider the possibility of attributing a share of personal income tax to the local budget own revenues. Such a share could be established by the local self-governments as a supplement to the nationwide rate of this tax.

*The local budget fixed revenues* should include the nationwide taxes and charges and full amounts of mandatory payments attributed by the unchangeable legislation to the local budget revenues or parts thereof as established by relevant deduction standards approved by the Budget Code. Such deduction standards should not be changed by the annual State Budget Act.

*The community fixed revenues* should include proceeds from the personal income tax, state duties, and other proceeds related to the licensing and registration of business operators.

*The rayon budget own revenues* should be established on the basis of functions and powers that will be provided to rayon authorities as a result of the administrative reform and reform of the administrative and territorial system.

*The rayon budget fixed revenues* should be established on the basis of functions and powers that will be provided to the rayons as a result of the administrative reform and the reform of the administrative and territorial system.

*The regional budget revenues* should include the own and fixed revenues and interbudget transfers.

*The region budget own revenues* should include proceeds from regional taxes and charges, administrative fines and other proceeds established by Ukrainian laws and decisions of regional self-governance bodies.



*The regional budget fixed revenues* should include nationwide taxes and charges, as well as mandatory payments attributed by the legislation to the regional budget revenues in the amount set by deduction standards established by the Budget Code. Such deduction standards should not be changed by the annual State Budget Act.

*Revenue capacities of different local and regional budgets* can be levelled by means of interbudget transfers. The levelling criteria and calculation principles for transfer formulas should be transparent and established by the unchangeable budget legislation. They should also be developed with involvement of local and regional self-governance representatives. The general calculation formula should envisage the definition of the transfer amounts for each budget type: regional budgets; rayon budgets; budgets of towns/cities that meet the criteria established by the budget legislation. The local budget own revenues should not be included into the transfer calculation formulas and should be fully used for the allocations to the improvement and development of the communal property and infrastructure, and exercise of the indigenous local self-governance powers set by law.

*Allocations of all types from regional and local budgets* should be defined on the basis of powers and functions envisaged by the current legislation for the relevant self-governance bodies. The expenditures allocated for the exercise of the delegated powers should be sufficient for the provision of the services guaranteed by the state in accordance with the standards set by law.

To ground the local budget allocations for the delegated powers and to establish oversight over the fund spending, it is important **to introduce standards for the provision of the main social services** which should become the basis for the calculation of interbudget transfers. The total scope of local budgets and their weight in the consolidated budget should be defined with due account of such standards and the number of consumers of the relevant services.

The system of interbudget transfers envisaged by the Budget Code of Ukraine should be improved in order to make possible the use of target transfers that would improve the interestedness and responsibility of their beneficiaries in making a better use of funds and in executing programmes funded by such transfers in a more efficient way.

Generally, the delegated powers of local self-governance should become the indigenous ones, which should ensure further fiscal de-

centralisation and increase of the capacity of local self-governance bodies to pass independent decisions in the interest of the public and with its support.

**To improve the efficiency of the use of financial resources** of the local and regional self-governance, it is necessary to introduce the programme and target method into the budget process of Ukraine for the development and execution of both the national budget and the budgets of regional and local self-governance. This method should be introduced as a system for planning and management of budget resources in the medium term aiming at the development and execution of budgets of all levels on the basis of budget programmes and sub-programmes oriented towards the final result. The programme and target method also envisages that any budget allocations should be provided exclusively for the purposes that meet the medium- and long-term objectives of each territory development strategy. Provided it is properly used, this method will make it possible to considerably improve the efficiency of distribution and use of budget resources to fund the most efficient programmes, as well as to replace the existing principles, that are used to provide funding to the inefficient infrastructure of budget-funded organisations and institutions, by the principle of funding the services that should be provided to the public in accordance with the guarantees set by the government and local self-governance bodies. The main conditions for the introduction of the above method, both at the nationwide and at the local levels, is the democratic style of administration and reporting to the society on the use of funds.

To improve the transparency of the budget process, there is a need to introduce public hearings on budget issues where an executive body would present a report on the execution of the previous year budget and a draft budget for the next year. In order to provide the public with regular and profound information, it is important to envisage a variety of possibilities to publish information on the budget address and the draft budget, its execution with the explanation of the main budget programmes, analysis of the execution of the previous year budget and development priorities of the relevant community, rayon or region in the next budget year, as well as in the medium- and long-term period.

### **3.1. Reform of Public Civil Service**

One of the priorities of the public administration reform is the public civil service reform (in particular at public executive authorities) and the service in local self-governance bodies.

Such reform should aim at the establishment of the professional, politically neutral and trustworthy civil service.

Political offices should be excluded from the civil service system. Due to the nature of powers, the appointment (election) and dismissal procedures, as well as various kinds of responsibility, the offices of members of Government and deputy ministers should be considered as political ones. At local self-governance bodies, offices of chairmen and members of local councils should also be deemed political.

Political figures should be distinguished from political servants, as employees selected by political figures to work for their patronage services (political cabinets). Such servants are employed without a competition for as long as the relevant political figure stays in office.

State and municipal servants should occupy administrative (bureaucratic, service) posts or the posts related to the performance of organisation, management, consultation and advisory functions.

It is a matter of principle for the civil service reform to ensure the political neutrality of civil servants. To this end, a law needs to be passed to prohibit public servants from being involved in political activities, and to ban top servants to be members of political parties or demonstrate their political views in public.

Since the current classification of civil service posts into seven categories makes it difficult to ensure equal legal regulation within one category, a new system of categories should be set:

- Category A: heads of institutions (secretariats)
- Category B: heads of structural subdivisions
- Category C: experts and specialists

Objectivity and transparency in employment and promotion of civil servants should be ensured by means of a real competition for employment and promotion.

The administration of the civil service should also be reformed (it is the main feature of the civil service as compared to the service in the local self-governance bodies).

Political administration of the civil service system should be carried out by the Cabinet of Ministers. Relevant powers, including the responsibility for the issues related to the service in local self-governance bodies, can be vested into a member of Government in charge of the public administration.

Functional (methodical) administration of the civil service should be carried out by a specially empowered public executive body (the Civil Service Administration as the successor of the Main Civil Service).

An independent collective body should also be set up (modelled on the High Council of Justice) to give its consent to appointment of top civil servants, make decisions on violation of incompatibility requirements, initiate disciplinary proceedings against top civil servants and consider complaints against decisions to impose disciplinary penalties on other civil servants. The procedure for the formation of the Civil Service Council should ensure its political neutrality, objectivity and fidelity to principles.

The functions of the civil service management within each public executive body should be carried out by the top official with the status of the civil servant. Thus, in ministries and oblast state administrations such functions should be performed by heads of secretariats, and in other public executive bodies – by their respective heads.

Reform of the remuneration system should aim to preserve competitiveness of the civil service in the labour market, therefore the remuneration in the public service system should be close to the salaries offered in the private sector. The established official salaries should be considerably increased and in general make up 80% of the remuneration. The list of additional payments should be fixed by law. The differentiation of labour remuneration should be strengthened with due consideration of each servant's level of responsibility to ensure quick growth of salary at the beginning of the carrier, as well as to decrease the interdepartmental and local discrepancies.

The civil service rank scale should be changed to ensure flexibility in the definition of the servant's qualification and remuneration. The number of ranks should be sufficient to stimulate the servant's growth over the entire service period.

There is also a need to accomplish the development of the system of regular result-oriented assessment of civil servants.

The reform of the disciplinary liability system in the civil service should aim at passing to a collective consideration of disciplinary cases and envisaging a more flexible system of disciplinary penalties.

There is a need to ensure continuous training of civil servants and improvement of their qualification.

### **3.2. Exercise of Political Functions by Ministries**

#### **Strategic Planning and Policy Development**

Any ministry should act on the basis of a strategic plan.

*Strategic planning* is the programming of a long-term strategy for the sector development focused on the long-term perspective of the ministry's (and the Government's) operation in such a sector of public administration. It should define the aims, the means to achieve such aims and the expected results, as well as include the mission definition.

These parameters should be reflected in a formalised document (e.g. a Sector Development Strategy Paper).

**Public policies** in any public administration sector should be developed in accordance with the strategy plan.

The public policy development process should go through a number of stages:

1. *Problem Definition.* This is the stage to analyse the events and facts evidencing the existence of a social problem, its conception and political interpretation.

2. *Development of Potential Measures for the Problem Solution.* At this stage it is important to develop and consider a number of conceptually different alternatives for the problem solution. To a considerable extent, the success depends on the forecast of potential consequences of the application of each policy variant.

3. *Choice, Approval, and Organisation of the Public Policy Implementation.* The minister as a politician has a key role in this issue. The minister (independently or together with the Government) should choose the optimal variant for the problem solution and legitimise it by drafting legislation (a bill, a draft resolution of the Cabinet of Minister or a draft order of the minister etc) or a programme.

Here it is advisable to use the experience of Western countries as

concerns the use of such instruments as Green and White Books. In particular, if the Government wants to receive observations and proposals of the Parliament, the interested stakeholders, and the public about various alternatives of the proposed public policy, it publishes a Green Book. Its aim is to help the government to attract the attention of the citizens to the problems or emerging possibilities, as well as to reveal their attitude to the potential problem solutions or the use of the possibilities available. A White Book is published on the results of consultations and consideration of proposals and recommendations.

The White Book sets out detailed information (a detailed statement) about the policy representing the Government's positions. Its main aim is to help the leadership to inform the public on the policy implemented in response to the new needs and possibilities and to find out the reaction of the society. Publication of the White Book is usually accompanied by its presentation by the minister in Parliament.

Proper methods should also be used for public consultations (for the purpose of problem discovery, development of solution alternatives etc), in particular such methods should include focus groups, written consultations, studies, public opinion surveys, questioning, interviews, hot lines, consultative groups, seminars (conferences), public hearings, public councils, advisory committees, open working groups etc.

When choosing a public policy alternative, the minister as a political figure should express and defend social and political interests. The ministerial staff should function as experts to provide the minister with the necessary information, as well as to define and implement relevant measures in accordance with the decisions passed on the new public policy.

### **Monitoring and Control**

*Public Policy Monitoring and Assessment.* One of the most decisive factors for successful implementation of the public policy is the organisation of the continuous and careful monitoring of the policy measures and social changes related to their implementation. It is also important to set up special policy monitoring offices (units) simultaneously with approval of the detailed plans for the public policy implementation.

The monitoring results should form the basis for the policy assessment in order to define its usefulness for the society in general, as well as for individual groups and sectors. The monitoring and assessment will make it possible to reveal new social problems, develop proposals on their solution and organise the development and approval of the new public policy or its amendment.

The structural and organisation plan for the development and implementation of the public policy by the ministry should look as follows:

1. The ministry analytical sections should pay close attention to the monitoring results and changes in the sector to reveal problems, develop alternatives for their solution and, if necessary, organise their discussion, as well as draft political documents.

2. The minister as a political figure should present the proposals developed by the ministry at higher levels of public authorities (the Government, the Parliament) for the adoption of relevant political decisions. The Ministers can also pass such decisions themselves within the framework of their competence.

3. The ministry staff should specify (operationalise) the adopted norms by transforming them into specific measures, and organise the implementation of such measures.

4. The ministry system (in particular, the government bodies) should implement the public policy and administer laws and other legal acts.

5. The ministry control and analytical offices should develop and monitor the changes in the relevant sector as a result of the public policy implementation and, if necessary, draw attention to the problems that require solution.

### **Normative Regulation and Regulation Drafting**

The *normative regulation* means one of the forms of policy implementation, while *regulation drafting* is one of the most important tasks of the ministry which includes a number of mandatory stages.

A *regulation proposal* means a submission by any subject of legal relation of a motivated proposal to adopt, change or cancel a normative act. A regulation proposal should be presented in the form

of a concept of a *draft normative act* as a document that includes the grounding of the alternative chosen for the problem solution and that defines the principles of the normative and legal settlement of such problem.

A normative act is drafted upon the approval of its concept by: subjects of regulation powers; subjects of the regulation initiative; consultative, advisory and auxiliary bodies and services, working groups etc.

Afterwards, the normative act is submitted for the consideration of the subject of regulation initiative. The *regulation initiative* means the official submission, in accordance with the established procedure, of the draft regulation for the consideration of the relevant subjects of regulation powers. The draft regulation should be submitted together with the explanatory note, reference and analytical materials, expert opinions (scientific, legal, economic, criminological, environmental etc).

Draft regulations should be carefully studied by experts to ensure their high quality, substantiation and timeliness. It should also help to reveal its potential positive and negative consequences.

If necessary, draft regulations should also be submitted for the *public discussion*. For this purpose, such draft regulations should be published in the printed and electronic media, as well as disseminated in any other possible manner.

The results of the expert study and public discussions should be taken into account and considered by the subject of regulation powers.

### **3.3. Relations of Public Administration Authorities with Citizens**

#### **Administrative Procedure**

One of the priorities of the public administration reform which touches upon every citizen is a practical and fair legal regulation of procedures for relations between public administration authorities and individuals.

Under a general rule, the administrative procedure should be simple and efficient. In the cases, when any administrative act may touch upon rights and legal interests of other persons (interested parties) or



when additional procedural actions are required (discovery of documents or information, expert examination, reconciliation, organisation of hearings etc), a formalised procedure defined by law should apply.

The state should guarantee every one the right to an unbiased and fair settlement of their cases within the rational period of time. A special attention should be given to the procedural guarantees of protection of rights of individuals (addressees of administrative acts or interested parties) which should include the following:

- security of the private right to be heard before an administrative body passes an individual decision (administrative act) which can have negative consequences for the individuals concerned;
- access to the case materials used as a basis for the decision;
- limitation of discretion powers of administrative bodies;
- administrative acts should be grounded;
- recognition of the private right to assistance and representation in administrative proceedings;
- any administrative body should notify the person concerned of appeal procedures to complain against the administrative acts and relevant legal remedies.

Everybody should also be guaranteed the right of compensation of damages caused by the public administration.

Such rights should be fixed in legislation (in the law on the administrative procedure or the Code of Administrative Procedure). They should be valid in relations with all public administration bodies without exceptions. Principles and rules set in such legislation should penetrate into all other legal acts that concern the relations between individuals and public administration bodies.

### **Administrative Services**

One of the most far-looking steps of the public administration reform and its ideological basis should become the implementation of the doctrine of administrative services. Recognition of an individual, human life and health, honour and dignity as the highest social values requires reinterpretation of the role of the government and a drastic change of relations between the government and the citizen. Citizens should not be petitioners in the relations with public administration bodies but rather service consumers.

Here the primary attention should be given to prevention of provision of commercial services by public administration bodies, which discredits the very idea of public services in the eyes of the people. In addition, provision of chargeable services results in an inefficient use of public resources and improper execution of public tasks.

An administrative service means a positive public official action undertaken by a public administrative body on the request of an individual or a legal entity and aiming to ensure (or legalise) conditions for the exercise of subjective rights or execution of duties by individuals or legal entities.

Currently, provision of administrative services features many drawbacks including:

- Existence of unjustified administrative services;
- Division of administrative services into smaller paid services;
- Shift of the duty to collect certificates and consents to individuals;
- Unjustified payments for certain administrative services;
- Unjustifiably high payments for certain services;
- Limited number of days and hours for the reception of citizens;
- Problems with the access to the information necessary to receive administrative services;
- Unjustifiably postponed deadlines for the provision of certain services;
- Controversial legal regulation and improper regulation of procedural issues;
- Practical obligation of individuals to receive accompanying paid services and pay «voluntary» charitable contributions.

However, the main drawback in the provision of administrative services is that administrative bodies treat individuals as petitioners. They are also more orientated not towards the satisfaction of the person's expectations, but rather to formal pursuance of rules. Therefore, the most important task of the administrative services doctrine is to introduce the attitude to the person as a consumer or a customer. This means a focus on the satisfaction of the request of the individual in the same way as it is done in the private sector.

To improve the quality of administrative services, it is necessary:

- 1) To separate the policy-making intuitions and the bodies in

charge of day-to-day administration. In the latter group, it is necessary to single out the bodies providing administrative services and focus their attention on provision of high quality services;

2) To minimise the number (nomenclature) of administrative services preserving only the services justified by public interests. For these purposes, all services should be regrouped:

a. Services that should be further provided by public authorities and local self-governments;

b. Services that can be abolished with no harm to the society or the state;

c. Services, the provision of which can be passed to non-government entities by delegation or privatisation and should be provided under the government's or self-government's oversight or responsibility.

The number or nomenclature of administrative services should be revisited continuously;

3) To maximally decentralise the provision of administrative services. The majority of administrative services should be provided by local self-governance bodies. It will bring administrative services closer to consumers which will be not only convenient for them, but will also help to define their needs and expectations more accurately and will increase the responsibility of the government. Administrative services can also be provided by non-governmental institutions or professional self-governance bodies which can be commissioned to do it either through an open tender mechanism or by delegation. Execution of public tasks passed to other institutions should be supported by relevant public funding;

4) To regulate the procedure for the provision of administrative services. Such a procedure should be based on the principles of integrity (effectiveness) of the administrative services and «one-stop» approach, which means that an individual needs only to file a request and, if required, the minimum number of documents, while collection of certificates and consents should be done within the administration (either within one administrative body or between a number of them); this task should not be put on the person. Establishment of the administrative service procedure should be guided by the final result, while division of an administrative service into smaller ones should be avoided;

5) To set up conditions under which institutions providing administrative services could organise their work on the basis of the private sector principles. First and foremost, this should be extended to the staffing, personnel management, and labour remuneration;

6) To develop standards of administrative services similar to the private sector. Quality standards and assessment of administrative services should be based on the following criteria: effectiveness, timeliness, accessibility, convenience, openness, respect to the individual, and professionalism. The standards of administrative services should be regularly revisited and improved; and

7) To create «service supermarkets» to make it possible to get all or at least the most wide-spread administrative services provided at a certain administrative and territorial level in one place; to organise the reception of citizens during all business hours; to organise payment for services on site etc. For this purpose, at the first stage of the reform the cooperation between public executive authorities and local self-governance bodies should be especially encouraged.

Normally, administrative services would be provided for money. The service fee in this case should be defined by law or in accordance with the procedure set by law. The fee should be fixed and it should be defined on the basis of the primary cost of this kind of service.

### **«Intervention» Proceedings and Control**

The legislation on the administrative procedure should introduce one key innovation, in particular, it should regulate the «intervention» proceedings or the cases when administrative bodies initiate and make decisions that entail certain implications for rights and interests of a specific individual (individuals). Such cases need to be accurately regulated in order to protect private rights and interests in the decision-making process.

Thus, an administrative body should notify the individual whose rights and interests can be affected by its decision about the fact that such a decision is under preparation (or that a specific case is under consideration). The notification should also provide information on the right of the individual to get acquainted with the materials of the case that will serve as a basis for the relevant decision, as well as

the right to participate in the proceedings and to provide explanations (objections) to the administrative body.

Individuals whose rights and legal interests are affected by the decision of administrative bodies should be officially notified and provided with explanations and information on the appeal procedure.

A special category of intervention proceedings includes inspections and exercise of other control and oversight functions by administrative bodies. The inspection procedure should be regulated in detail by law. In particular there is a need:

- 1) To establish legal procedures for inspection and other types of control powers;
- 2) To establish a clear and exclusive list of grounds for inspections;
- 3) To limit the number and duration of inspections of business operators;
- 4) To establish that an administrative body should notify the individual of a planned inspection;
- 5) To entitle an individual to submit explanations and additional documents or information to the administrative body before it passes its decision on the results of the inspection;
- 6) To entitle an individual to use technical means to record the inspection;
- 7) To establish a procedure for the access to private premises, retrieval of information, obtaining of documents, acquisition of product samples etc; and
- 8) To establish that the oversight bodies should be obliged to notify the individual (interested party) concerned as soon as possible of the results of the inspection.

It is necessary to drastically decrease the number of the oversight bodies.

Developing new control and oversight relations, it is also important to provide administrative bodies with powers sufficient to protect public interests.

### **Administrative Liability**

Reform of the administrative liability is an important part of the public administration reform.

It should be established that administrative penalties should be applied only by administrative bodies and not by the court. The offences that currently fall under the administrative jurisdiction (petty hooliganism, pilfering etc) should be taken out of the administrative justice and be classified as criminal misdeeds.

A fine should be the main kind of the administrative punishment and it should be paid only through banks.

If an administrative offence is established, administrative penalty can be imposed as follows:

1) If an individual guilty of the offence is known, and this individual admits the guilt, an official of the administrative body (further referred to as «the authority») should draft a Penalty Act (in a simplified form) and define the amount of the penalty. To avoid abuses, the individual to whom a penalty is applied should confirm the admittance of guilt, for example, by making a relevant record or signing the act;

2) If an individual does not admit his/her guilt, the administrative authority should:

a. Draft an Offence and Penalty Act if the authority considers that the individual is obviously guilty and has proper evidence. The Act should describe all essential circumstances of the case including the explanations (objections) of the individual (signed by the individual), as well as motives (grounding) of the decision passed;

b. Draft an Offence Act if the guilt of the individual is subject to proof. The Act should describe all essential circumstances of the case including explanations of the individual (signed by the individual).

The administrative body should use the above and the investigation materials (expert examinations, hearing of the suspected individuals, witnesses etc) to pass a decision on the application or rejection of the administrative penalty. Here the following private rights should be envisaged:

- to be heard before the decision is made;
- to participate in the proceeding and be represented;
- to get acquainted with the materials of the case.

If in the course of the investigation the individual is proved guilty, the administrative authority should draft an Offence and Penalty Act.

In the first variant, the individual preserves the right to judicial appeal, which should be limited to one judicial authority.

In the second variant, the individual should be able to appeal both to an administrative and judicial authority against the decision to ap-

ply an administrative penalty. A decision should be appealed to the administrative court.

### **Administrative Appeal Procedures**

Another important element of the public administration reform and legal regulation of the administrative procedure is improvement of administrative (pre-trial) mechanisms of appeal against decisions, action and omission of action by public administration authorities.

It is important to develop the provisions on the administrative appeal as a means to protect private rights and legal interests of individuals in their relations with the executive and local self-government authorities due to its convenience and cost-effectiveness for an individual. It will also help to decrease the burden on the judicial system.

Since many units of public administration lack hierarchy and many agencies are vested with exclusive competence, the traditional concept of administrative appeal as an appeal to the higher-level authorities should be revisited.

In particular, it is advisable to envisage a private right to address the public authority that passed a relevant decision with a petition complaint to reconsider the decision case. This will help to eliminate a conflict between the government and the citizen within one specific authority.

One of the prospects to improve the mechanisms of administrative appeal is to introduce special appeal institutions to consider complaints, especially in those administrative authorities that get many of them. Such institutions should guarantee an unbiased approach to the consideration of complaints and the objectivity of the procedure. In the majority of cases such appeal units (institutions) should be formed with involvement of public representatives. This will improve the objectivity of the process and the trust of citizens to the administrative appeal as a pre-trial procedure.

The administrative appeal should be based on the general principles and rules of the administrative procedure.

## **E-Government**

The government's transparency and subordination to the society can be ensured through the implementation of the technological aspect of the reform – the electronic government.

The e-government provides every individual or legal entity with a possibility to use the Internet and address themselves to public authorities with requests to provide necessary information or take legal actions.

To establish and develop the e-government in Ukraine, there is a need:

- 1) to organise electronic circulation of documents at public administration bodies;
- 2) to raise public awareness of the activities of public administration bodies by means of information technologies;
- 3) to provide individuals with possibilities to address themselves to public administration bodies by means of information technologies; and
- 4) to organise provision of administrative services by means of information technologies.

### **3.4. External Oversight of Public Administration**

#### **Judicial Oversight**

The judicial oversight of the public administration guarantees the rule of law in the public and legal relations. The judicial oversight in Ukraine is exercised by the Constitutional Court and courts of general jurisdiction.

The Constitutional Court checks the constitutionality of the presidential and governmental acts.

General jurisdiction courts protect human, civil and corporate rights from violations committed by the public administration. They settle disputes that arise from the exercise of executive government and local self-government powers. A particular feature of this kind of oversight is that it is always initiated by individuals who consider their rights to have been violated.



In Ukraine, disputes related to the actions of public administration are (will be) attributed to the jurisdiction of administrative courts that (will) settle them in accordance with the rules of the administrative procedure. Specialisation of courts and judicial procedures should increase the efficiency of the judicial control in administrative cases. The need to set up administrative courts was called forth by the necessity to ensure accessibility of justice in administrative cases and independence of judges at the same time. Therefore, the powers on the settlement of administrative cases by the primary judicial authority have been divided between rayon courts and district administrative courts.

Administrative proceedings are based on special rules due to a particular nature of public legal relations where its participants find themselves having unequal possibilities. Since disputes here usually arise on the fault of the public administration, the burden of proof of the lawfulness of its decisions, action or omission of action should be put on the administrative authority. In administrative justice, the principles of competitiveness and discretion are supplemented by the principle of the official character of proceedings according to which the court should undertake all measures envisaged by law to protect the rights violated by the public administration. For this purpose, the administrative court is vested with powers to collect evidence on its own initiative, as well as to go beyond the demands of the parties to the extent necessary for full protection of private rights.

### **Parliamentary Oversight**

Public administration should operate under a full-fledged parliamentary oversight.

Since the Parliament is a political body, the Cabinet of Ministers of Ukraine should be in the very focus of the parliamentary oversight.

One of the main mechanisms of the parliamentary oversight is the hearing of the reports on the activities of the Cabinet of Ministers as a whole and the activities of individual members of government. These reports should be used to assess not only the general status of affairs

in the country or in certain sectors of public policy, but also the appropriateness and efficiency of government's actions. Negative assessment of the report should result in the consideration of the responsibility of the Cabinet of Ministers (or its individual members). If the Verkhovna Rada votes no confidence in the Cabinet of Ministers, the government should resign.

The Government Day in Parliament is a different form of government's reporting, as its main aim is to inform members of parliament and the society on the status of individual sectors of public administration or certain individual issues. No decisions are passed on the results of Government Days.

As another form of parliamentary oversight, members of parliament are entitled to forward their requests to the Cabinet of Ministers of Ukraine and top officials of other public executive and local self-government authorities who are obliged to provide the information required.

To organise investigation on the issues of public interest, the Verkhovna Rada can set up temporary investigation commissions. This parliamentary mechanism is especially important for the opposition since a temporary investigation commission is created on the consent of only one third of the constitutional number of members of parliament.

One of top oversight bodies in the public finance area is the Accounting Chamber. The Accounting Chamber is vested with a special constitutional competence to exercise an independent external control of the receipt and distribution (re-distribution) of all public funds, and other financial resources of the state and local self-governance bodies. It also oversees the formation, preservation and use of the property, as well as tangible and intangible assets and liabilities of the state and local self-governance bodies (constitutional amendments required). The Accounting Chamber is entitled to establish its regional representative offices and delegate some of its expert and analytical, as well as control and audit powers to such local offices.

Another type of the target parliamentary oversight of the public administration is the office of the parliamentary Ombudsman. However, the Ombudsman's possibilities to react to the violations human rights by the public administration need to be enhanced.

## **Oversight by Local Councils**

All bodies, institutions, companies and organisations responsible for the implementation of the communal policy and fulfilment of the local objectives should be under the oversight of the local council. Local councils should be able to cease the operation of other subjects of communal administration (especially those established by the council) which is either illegal or inefficient.

The local council should keep the right to cancel the decisions made by the executive committee (or executive bodies). The council should also have legal possibilities to stop the inefficient management of the communal property. In particular, the council should be able to deprive the bodies of public self-organisation and communal companies, which have received certain property for its management, of the right to manage such property if it is not used in a proper way.

Local councils should oversee the execution of their budget decisions.

The oversight tools can also include the termination of powers delegated to other local self-governance bodies, executive power bodies, as well as companies, institutions, and organisations.

For the proper exercise of the above powers, the organisational forms of activities of the council and its bodies should be developed. Thus, there is a need to regulate the procedure for the check-up of the status of the execution of Ukrainian laws and council decisions by standing and temporary council commissions, as well as for the establishment of circumstances by the council members. It is also important to increase the role of civil associations in the support provided to the council as concerns the implementation of its oversight powers.

## **Public Oversight**

The public oversight is an important aspect of the reform, and it needs to be efficiently introduced.

Its primary objective should be to ensure openness of the public administration. To this end, it is necessary to reform the legislation on information, in particular to define clearly the types of public information and the procedures for its mandatory/automatic publi-

cation, to create possibilities for a broader access to it, as well as to establish the procedure for provision of public information on the request of individuals. The scope of restricted information should be minimal, while limitations should be grounded and clear.

The second objective is to ensure the right of the individuals affected by the decisions passed by the public administration to testify before the decision is made and to read the materials of the case. If certain decisions of the public administration concern many people, representatives of civil organisations should be able to participate in the relevant proceedings and defend/represent the interests affected. This mechanism is an important kind of preventive public oversight.

Also, the following public oversight tools should be applied:

1) public debates of proposed administrative decisions and consultations with representatives of the public before the adoption of decisions;

2) reporting by public administration officials to the public; and

3) establishment of advisory bodies to public administration authorities with public representatives involved.

Such public representatives should include not only representatives of civil organisations and professional self-governance bodies, but also independent experts and other individuals.

### **3.1. Public Institutions, Companies and Other Organisations Performing Public Functions**

Reform of public administration bodies should go in line with the reform the public sector including public and communal institutions, organisations, and companies. Primarily, it is necessary to regulate the settlement of statutory issues related to these institutions.

The functioning of such institutions should aim at the provision of public services, as a rule, of the intellectual or complex technical nature, if provision of such services needs to be financed at the expense of the public funds. Thus, such institutions should be set up with support of direct public funding.

Companies are set up by public authorities and local self-governance bodies to operate and provide services that cannot be (or not

provided voluntarily) by the private sector, but are required by people or the government.

The status of a company should be provided only if the operations of an organisation aim at making a profit. State companies should be set up (preserved) if it is necessary to preserve a long-standing control of the resources that are vital for the state and the society, or there are other strategic interests of the state, or there is a need for capital investments that cannot be made by the private sector. A particular feature of state companies is that, unlike other public organisations, they should organise their activities and function on the basis of the private law. A state or communal company also cannot set up other business operators.

A public organisation should not be provided with the status of a company if it is involved in the policy making, exercises control or oversight functions in relation to other organisations, issues unfavourable administrative acts and gets a full funding from the state or local budget.

Public institutions and companies should be eliminated or privatised if the private sector ensures provision of all relevant services, and an individual has a possibility of a free choice of services.

The public sector should not compete with the private sector. The government should only do what the private sector does not, will not or should not do.

In this sense, the following public services should be distinguished:

a) public services or services provided by public authorities (usually only by the executive branch), institutions, organisations, and companies;

b) municipal services or services provided by local self-governance bodies and communal institutions, organisations, and companies.

By the subject responsible for the provision of public services and by the source of its funding (type of the budget), services provided by local self-governance bodies and non-state institutions, organisations, and companies, due to the powers delegated by the state, can also be classified as public services, while services provided at the expense of local budgets can be regarded as municipal services.

## **IV. Support to Public Administration Reform and Its Stages**

### ***Policies and Organisation***

The public administration reform needs a comprehensive mechanism of organisation support.

It is especially important to ensure that the Cabinet of Ministers plays a leading role in the initiation and implementation of the public administration reform measures. For a certain period of time, there should also function a special member of the Cabinet (a Vice Prime Minister or a Minister Without Portfolio) vested with all necessary interdepartmental powers to exercise political leadership, development and implementation of such measures for all reform priorities.

All changes concerning the public administration should be implemented only upon an opinion issued by the member of Cabinet of Ministers in charge of the administrative reform.

To prepare the reform of the administrative and territorial system, an advisory body (a council or a commission) should be formed jointly by the President of Ukraine, the Parliament and the Government of Ukraine.

In addition, to provide support to the members of the Cabinet of Ministers in the conduct of the local self-governance reform, including the changes of the administrative and territorial system, there is a need to introduce the offices of the Authorised Representatives for the Administrative Reform, including in the regions. Such Authorised Representatives should provide the advisory, methodological and other support to the implementation of the local self-governance reform. These offices can be included into the staff of the oblast state administrations.

The member of Government in charge of the administration reform should be supported by the Ministry of Justice, the Ministry of Finance, and the central executive authority for the civil service affairs. These authorities also need to be reformed. Thus, the competence of the Ministry of Finance should be extended not only to the Treasury, but also to other bodies such as tax authorities, the customs service, and the control and oversight office, while the competence of the Ministry of Justice should cover such issues as regis-

tration of citizens and corporations, title registration, and the penitentiary system.

One of the ways to ensure the institutional support to the public administration reform is a radical reform of the Ministry of Internal Affairs to make it compliant with the European standards. The militia (police) should be transformed into an ordinary governmental body in the system of the Ministry of Internal Affairs. The competence of the Ministry should be considerably extended by the powers necessary for the formation of the domestic policy, protection from emergency situations, border service etc. The reformed Ministry of Internal Affairs should also be in charge of the continuous modernisation of the public administration, political aspects of regional policies and the area of local self-government. Alternatively, the Ministry for Public Administration and Regional Policies could be set up for a transitional period to exercise the above powers.

The central executive authority for the civil service affairs should be subordinated to the Cabinet of Ministers. In addition, as one of the steps of the civil service reform, there is a need to establish an independent collective body that would be in charge of appointment and dismissal of top civil servants.

### ***Legislation***

The public administration reform should be supported by the adoption of the following laws:

- on the Cabinet of Ministers;
- on Ministries and Other Central Public Executive Authorities;
- on Civil Service;
- on Service in Local Self-Governance Bodies (new version);
- on Local State Administrations (new version);
- on Administrative and Territorial System;
- on the Local Self-Governance in Ukraine (new version) (or two new laws on the Community Self-Governance and on the Ray-on Self-Governance);
- on the Status of Oblasts and Regional Self-Governance;
- The Budget Code of Ukraine (new version or amendments);
- The Tax Code of Ukraine (new version or amendments);

- on the Accounting Chamber (new version or amendments);
- on Communal Property;
- on Administrative Procedure (the Code of Administrative Procedure);
- on Regulations; and
- on Information (new version)

The Law on the Cabinet of Ministers has a crucial importance for the reform, since in its absence it will be impossible to develop legislation necessary to reform other elements of the public administration. Enactment of this law will solve many issues like:

- definition of the composition of the Government and its formation procedures;
- forms of the Cabinet's work;
- procedures for the delegation of the Cabinet's functions and powers;
- relations of the Cabinet with other executive authorities, the President and the Parliament; and
- organisation and logistic support to the Cabinet's work.

The Law on Ministries and Other Central Public Executive Authorities will set the following:

- kinds of central public executive authorities, their main objectives, principles, and organisation of their work;
- new structure of the ministry leadership;
- general competence of the central public executive authorities;
- objectives, organisation and activities of government bodies.

The package of laws to be passed and implemented should also include a new version of the Law on Civil Service which should:

- separate types of offices in public authorities;
- establish the principles of political neutrality of civil servants;
- reform the system of civil servant classification by categories;
- establish of procedures for civil service employment competition;
- establish of procedures for evaluation of civil servants;
- reform the civil servant remuneration system;
- set the disciplinary penalty rules etc.



Similar problems of service in local self-government offices should be solved by the adoption of a new version of the Law on Service in Local Self-Governance Bodies.

Reform of the administrative and territorial system of Ukraine should be implemented through the Law on Administrative and territorial System in Ukraine which should clarify the following issues:

- merger of communities;
- definition of the territory and boundaries of administrative and territorial units; and
- procedures for the solution of issues related to the administrative and territorial system.

Accordingly, there will be a need to amend the Law on Local State Administrations, pass a new version of the Law on Local Self-Governance in Ukraine, and later on adopt the Law on the Status of Oblasts and Regional Self-Governance.

The Budget Code should define:

- the budget powers of the local self-governance bodies and public authorities;
- the principles of interbudget relations as concerns the distribution of revenues and expenditures between different units of the budget system and different budgets;
- broad revenue basis for local budgets; and
- improvement of the mechanisms of interbudget transfers in combination with the mechanisms of distribution of tax revenues, introduction of the programme and target method for the purpose of formation and implementation of the budget.

The Tax Code should provide for a new definition of the list of local taxes and charges, by complementing it with such new taxes as the private income tax; the single tax; the land tax; the real estate tax and the tax on movables. The Tax Code should also establish the invariability of its provisions on the main tax elements for a clearly set minimal period of time, e.g. 5 years.

The Law on the Accounting Chamber (with due consideration of the constitutional amendments) should extend the powers of the Chamber, in particular as concerns the oversight of the formation of the national budget revenues, audit of all public funds, cash and financial resources of the state and local self-governance bodies; formation, preservation, and use of property, tangible and intangible as-

sets and liabilities of the state and local self-governance bodies. The Law should also define possibilities for the establishment of regional offices of the Accounting Chamber.

The Law on Communal Property should establish:

- the objects of the communal property right;
- the subjects of the communal property right;
- the content and the procedure for the management of the communal property objects;
- the legal regime for the use of every type of the communal property object; and
- the oversight of the management and use of the communal property objects.

The procedure of the external operation of the public administration, in particular as concerns adoption of administrative acts, should be regulated by the Code of Administrative Procedure (or the Law on Administrative Procedure). This legislative act should set forth the procedure for procession of applications filed by individuals and corporations or on the initiative of administrative bodies, as well as the procedure of administrative appeal.

The procedure for the development and adoption of regulations should be established by the Law on Regulations. It should specifically focus on the limitation of the number of bodies entitled to issue regulations, as well as on ensuring transparency of the decision-making by public authorities and forms of participation of the public in such procedures.

The Law on Information (new version) should define the types of information, the procedures for promulgation of public information and access to it, responsibility for the violation of the right of access to information etc. There are two very important principles here that need to be respected:

- all information kept by public authorities should be published;
- the number of exceptions should be limited, comprehensible and clearly defined; such exceptions should also be subject to control in terms of the potential damage or impact on public interests.

Dozens of other related laws and regulations will also need to be revisited and amended.

## ***Research***

Public administration reform measures should be developed on the basis of a sound methodological research. It is especially important to focus on the issues that are new for Ukraine, in particular the public administration doctrine, public service principles, problems of decentralisation, deconcentration, delegation, regional self-government, professional self-government, and administrative procedure (or procedures).

## ***Information and Education***

Public administration reform should be accompanied by a comprehensive information campaign addressed to the key reform targets. Such campaign should be used to disseminate information on the content of key reform measures and expected results. Primarily, it is necessary to ensure that the society is properly informed on the reform objectives, its priorities and implications.

The information campaign should especially target at certain groups, such as:

- individuals that occupy political offices of all levels;
- civil and local self-government servants; and
- the mass media.

To do this, target information materials and information campaigns should be well-prepared. It is also important to set up a feedback mechanism and ensure efficient monitoring of the changes in the public administration system.

## ***Stages of Public Administration Reform***

### ***Stage I (by May 2006)***

The Public Administration Reform Concept should be approved by the President of Ukraine.

Before the Government is formed on the results of the 2006 parliamentary elections, there is a need to pass and enact the laws on

the Cabinet of Ministers of Ukraine and on the Ministries and Other Central Public Executive Authorities.

The new Government will have to pass an Action Programme for Public Administration Reform. In addition, it will be necessary to set up a commission for the local self-governance reform and reform of the administrative and territorial system.

If possible, it would be advisable to postpone the local election date, for example, till November 2006. The postponement of local elections could be done on the basis of the transitional provisions of the Law on Constitutional Amendments (bill No. 3207-1). This step would make it possible to complete the reform of the administrative and territorial system at the level of communities by 1 January 2007.

## ***Stage II (by the end of 2006)***

### ***Priorities:***

*Reform of Public Executive Authorities.* Function and sector analysis of the central public executive authorities and government bodies; introduction of the offices of the ministerial state secretaries; enactment of other norms of the Law on Ministries and Other Central Public Executive Authorities;

*Reform of the Civil Service System.* Adoption of the Law on Civil Service and the Law on the Service in Local Self-Governance Bodies (new version);

*Administrative and Territorial System and Local Self-Governance Reform.* Adoption and preparation of the implementation of the Law on Administrative and Territorial System in Ukraine, adoption of the Law on Local Self-Governance in Ukraine (new version), amendment of the Budget Code of Ukraine.

*Administrative Procedure.* Development of the Code of Administrative Procedure, development of the Law on Information (new version) and the Law on Regulations.

### **Stage III (2007-2010)**

#### **Priorities:**

*Reform of Public Executive Authorities.* Institutional reform of the public administration sectors on the results of the function and sector analysis; decentralisation and deconcentration of managerial functions and powers;

*Reform of the Civil Service System.* Implementation of the Law on Civil Service (new version) and a new version of the Law on the Service in Local Self-Governance Bodies. A special attention should be given to the reform of the training system for civil and local self-governance servants.

*Administrative and Territorial System and Local Self-Governance Reform.* Legal establishment of the status of the enlarged communities and rayons, introduction of the full-fledged local self-governance in rayons (elimination of rayon state administrations, transfer of their main powers to executive committees of rayon councils), establishment of mechanisms that can be used by the state to oversee the activities of rayon councils.

If the constitutional amendments related to the local self-governance are not enacted in 2006, another variant (methodology) of the local reform should be chosen, in particular stimulation of voluntary unification of territorial communities. The «united communities» should be vested with the full scope of powers related to the provision of public services, as well as relevant budget possibilities.

*Administrative Procedure and Administrative Services.* Adoption of the Law on Information (new version) and the Law on Regulations. Reform of the system of administrative services: electronic services, «service supermarkets», privatisation, delegation and introduction of competition etc.

*Introduction of Regional Self-Governance.* Adoption of the Law on Regional Self-Governance in Ukraine (with a prospect of its enactment after the 2011 elections); preparatory work for the purpose of optimisation of oblast administrative and territorial units.

## **Stage IV (2011-2016)**

### **Priorities:**

*Executive Authorities Reform.* Further decentralisation and deconcentration of management functions and powers; increase of autonomy of government bodies.

*Civil Service System Reform.* Training of civil and local self-governance servants.

*Administrative and Territorial System and Local Self-Governance Reform.* Completion of community enlargement (including by means of compulsory methods), further decentralisation and privatisation of public functions and resources.

*Introduction of Regional Self-Governance.* Optimisation of the administrative and territorial system at the oblast level. Enactment of the Law on Regional Self-Governance in Ukraine; establishment by oblast councils of full-fledged executive bodies (through transformation of oblast state administrations); provision of justice and finance public offices with powers to oversee the activities of local and regional self-governance bodies.

*Administrative Procedure and Administrative Services.* Further improvement of the organisation of provision of administrative services: electronic services, «service supermarkets», privatisation, delegation and introduction of the competition, improvement of the service standards etc.

After the main measures of the public administration reform are implemented, there is a need for continuous monitoring of such measures and their adjustment.

## **V. Expected Results**

The public administration reform in Ukraine should achieve the following results:

- 1) Proper and efficient division of functions between different levels of public administration;
- 2) Practical, efficient and relatively stable system of executive authorities;

- 3) Practical and transparent development of the public policy with involvement of the public and other interested parties;
- 4) Financially self-sustainable communities able to provide the necessary scope of public services;
- 5) Functioning of the local self-governance at rayons as a unit supplementing the community self-governance;
- 6) Efficient, professional, politically neutral, and transparent civil service;
- 7) Fair legal regulation of the administrative procedure (procedures);
- 8) Minimisation of the conditions for corruption;
- 9) Efficient legal mechanisms for the protection of citizens in the relations with public administration authorities; and
- 10) Efficient oversight by the Parliament and local councils, as well as the state financial oversight of the public administration operation.

## **ANNEX 5. Draft Law<sup>10</sup> on the Cabinet of Ministers of Ukraine**

### **LAW OF UKRAINE on the Cabinet of Ministers of Ukraine**

In accordance with the Ukrainian Constitution, this Law defines main objectives, principles, and organisation of the Cabinet of Ministers of Ukraine as the Government of Ukraine, its composition and formation procedures, its place in the system of public authorities, as well as its executive powers.

#### **Section I. GENERAL PROVISIONS**

##### **Article 1. The Cabinet of Ministers of Ukraine in the System of Public Authorities of Ukraine.**

The Cabinet of Ministers of Ukraine – **the Government of Ukraine** – shall be the *highest authority* in the system of executive authorities. The system of executive authorities shall include the Cabinet of Min-

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<sup>10</sup> The text has been developed by the Government's Working Group (as of 08.07.2005) with additional amendments for the implementation of the Law of Ukraine on Constitutional Amendments as of 8 December 2004 No. 2222-IV. The text of the bill is as of 12.10.2005. The **bold fonts** mark the proposals of the Working Group, while the ***bold italics*** highlight the changes introduced to make the bill compliant with the Law on Constitutional Amendments.



isters of Ukraine, ministries and other central executive authorities, **government bodies**, the Council of Ministers of the Crimean Autonomous Republic, and local state administrations.

The Cabinet of Ministers of Ukraine shall exercise its executive power directly, as well as through central and local executive authorities. It shall also direct, coordinate and oversee these authorities.

The Cabinet of Ministers of Ukraine shall be responsible to the President of Ukraine **and the Verkhovna Rada of Ukraine**. It shall be accountable to, and under control of the Verkhovna Rada of Ukraine within the limits set the Ukrainian **Constitution**.

## **Article 2. Main Objectives of the Cabinet of Ministers of Ukraine**

The main objectives of the Cabinet of Ministers of Ukraine shall include the following:

1) to ensure the state sovereignty and economic independence of Ukraine; to implement the domestic and foreign policy for the interests of the Ukrainian people; to administrate the Constitution and laws of Ukraine, and acts of President of Ukraine;

2) to undertake measures to ensure human and civil rights and freedoms; to create beneficial conditions for free and coherent development of the individual;

3) to ensure the implementation of financial, price, investment, and tax policies, as well as the policies of labour and public employment, social security, education, science and culture, environmental protection, environmental security and the use of natural resources;

4) to develop and implement nationwide public programmes of economic, science and technology, social and cultural development of Ukraine;

5) to ensure equal conditions for development of all forms of ownership; to manage public property as set by law;

6) to develop the bill on the State Budget of Ukraine and to ensure the administration of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine;

7) to undertake measures to ensure the defensive capacity and national security of Ukraine, public order, and combat against organised crime;

8) to organise and ensure foreign economic activities of Ukraine and customs affairs;

9) to direct and coordinate ministries and other executive authorities;

10) to coordinate and oversee executive authorities in terms of provision of **administrative** services to individuals and legal entities.

### **Article 3. Principles of Activities of the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine shall act on the basis of the principles of the rule of law, legality, separation of powers, collective work and publicity.

The Cabinet of Ministers of Ukraine shall act to secure human and civil rights and freedoms, to guarantee the responsibility of the state to its citizens for providing them with decent living conditions.

The Cabinet of Ministers of Ukraine *shall exercise its executive powers on the basis, within the limits and in the manner set* by the Constitution *and* laws of Ukraine. Unlawful interference by any authorities, officials, institutions, organisations, or civil associations into the settlement of issues attributed to the competence of the Cabinet of Ministers shall not be permitted.

The Cabinet of Ministers of Ukraine shall be a collective authority. It shall pass its decisions upon discussion of relevant issues at its meetings with the exception envisaged by Article 55 hereof.

The Cabinet of Ministers of Ukraine shall regularly inform the public on its activities through the mass media. Adoption of secret (closed) decisions shall be possible only in the cases envisaged by law and in connection with requirements of the national security of Ukraine.

### **Article 4. Legislation on the Cabinet of Ministers of Ukraine**

Organisation, powers, functions, and procedures for the activities of the Cabinet of Ministers of Ukraine shall be set by the Ukrainian Constitution, by this Law and other laws of Ukraine.

*In its activities, the Cabinet of Ministers of Ukraine shall be governed by the Constitution and laws of Ukraine, as well as by decrees of the*

***President of Ukraine and resolutions of the Verkhovna Rada of Ukraine passed in accordance with the Constitution and laws of Ukraine.***

According to the Constitution and laws of Ukraine, certain issues related to the activities of the Cabinet of Ministers of Ukraine can also be set by resolutions of the Cabinet of Ministers of Ukraine.

**Article 5. Location and Symbols of the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine shall be located in the capital of Ukraine – Kyiv.

The State Coat of Arms of Ukraine and the State Flag of Ukraine shall be placed on the building of the Cabinet of Ministers of Ukraine.

The State Coat of Arms of Ukraine and the State Flag of Ukraine shall be the attributes of the Cabinet of Ministers of Ukraine meeting room.

**Section II. COMPOSITION AND PROCEDURES  
FOR FORMATION OF THE CABINET OF MINISTERS OF UKRAINE**

**Article 6. The Composition of the Cabinet of Ministers of Ukraine and the Status of Its Members**

The Cabinet of Ministers of Ukraine shall include the Prime Minister of Ukraine, the First Vice Prime Minister of Ukraine, three Vice Prime Ministers of Ukraine and ministers of Ukraine.

On the submission of the Prime Minister of Ukraine, the *Verkhovna Rada of Ukraine* can appoint ministers not heading ministries. The Cabinet of Ministers of Ukraine shall have not more than two of such ministers, *as well as not more than three Vice Prime Ministers*.

The total number of members of the Cabinet of Ministers of Ukraine shall be defined by the posts of the Cabinet of Ministers of Ukraine *approved by the Verkhovna Rada of Ukraine on the submission of the Prime Minister of Ukraine*.

The Cabinet of Ministers of Ukraine shall be formed **and shall acquire powers** within no more than sixty days after the resignation **or termination of powers** of the previous Cabinet of Ministers of Ukraine.

By the nature of powers and activities of members of the Cabinet of Ministers of Ukraine, their posts shall belong to the state political posts and shall not be considered as posts of public servants envisaged by the legislation on civil service.

The status of members of the Cabinet of Ministers of Ukraine shall be defined by the Ukrainian Constitution, this Law and other laws of Ukraine. No other posts in the system of executive authorities shall be equalled by their status to members of the Cabinet of Ministers of Ukraine.

Members of the Cabinet of Ministers of Ukraine shall be subject to legislative norms on fighting corruption.

### **Article 7. Appointment of the Prime Minister of Ukraine**

*The Prime Minister of Ukraine shall be appointed by the Verkhovna Rada of Ukraine on the submission of the President of Ukraine.*

*The President of Ukraine shall submit the candidacy for the Prime Minister of Ukraine on the proposal of the coalition of parliamentary factions formed in accordance with Article 83 of the Ukrainian Constitution, or the parliamentary faction that includes the majority of the members of the constitutional composition of the Verkhovna Rada of Ukraine not later than on the 15<sup>th</sup> day upon receiving such a proposal.*

The Verkhovna Rada of Ukraine shall consider the candidacy for the Prime Minister of Ukraine submitted by the President of Ukraine not later than within ten days after its submission.

Simultaneously with the proposal on the candidacy for Prime Minister of Ukraine, the Verkhovna Rada of Ukraine shall also receive information on the candidate as required by the Law on the Rules of Procedure of the Verkhovna Rada of Ukraine.

Before considering the issue at the plenary sitting, parliamentary factions and groups shall be entitled to meet the candidate for Prime Minister of Ukraine and get answers to their questions. The President of Ukraine or the individual authorised by the President of Ukraine shall introduce the candidate *for the Prime Minister of Ukraine* at the plenary sitting of the Verkhovna Rada of Ukraine. The candidate for Prime Minister of Ukraine shall present a programme declaration and answer the questions of the members of parliament. Representatives

of parliamentary factions and groups shall be entitled to express the position of their parliamentary associations.

The Verkhovna Rada of Ukraine shall pass its resolution on the appointment of the Prime Minister of Ukraine by roll call vote. The decision shall be passed by the majority of votes of the constitutional composition of the Verkhovna Rada of Ukraine.

*If the Verkhovna Rada of Ukraine fails to appoint the Prime Minister of Ukraine, the President of Ukraine, upon consultations with leaders of parliamentary factions and groups and not later than within seven days, shall submit a new candidacy for the consideration of the Verkhovna Rada of Ukraine or propose the same candidate again.*

#### **Article 8. Appointment of Other Members of the Cabinet of Ministers of Ukraine**

*The Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine shall be appointed by the Verkhovna Rada of Ukraine on the submission of the President of Ukraine, while other members of the Cabinet of Ministers of Ukraine are appointed by the Verkhovna Rada of Ukraine on the submission of the Prime Minister of Ukraine.*

*The President of Ukraine and the Prime Minister of Ukraine shall file the submissions on the appointment of the members of the Cabinet of Minister of Ukraine with the Verkhovna Rada of Ukraine in accordance with paragraph one above on the proposal of the coalition of parliamentary factions formed in accordance with Article 83 of the Ukrainian Constitution, not later than on the 15<sup>th</sup> day upon receiving such a proposal.* The Prime Minister of Ukraine shall concurrently inform *the President of Ukraine* on the content of the proposal, while the President of Ukraine shall inform the Prime Minister of Ukraine. Only one candidacy can be proposed for each post.

On the basis of the submissions made by the Prime Minister of Ukraine *and the President of Ukraine, the Verkhovna Rada of Ukraine* shall approve *by one vote* the posts of the Cabinet of Ministers of Ukraine and appoint members of the Cabinet of Ministers of Ukraine.

*In case the Verkhovna Rada of Ukraine fails to appoint all members of the Cabinet of Ministers of Ukraine by one vote, it may appoint members of the Cabinet of Ministers one by one.*

**Article 9. Acquisition of Powers by the Newly Formed Cabinet of Ministers**

*The newly formed Cabinet of Ministers of Ukraine shall acquire its powers after no less than two thirds of the members of the Cabinet of Ministers of Ukraine swear the oath below to the Ukrainian people:*

«Aware of my high responsibility, I solemnly swear to be loyal to Ukraine. I commit to respecting the Ukrainian Constitution, laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, to making all my efforts to defend the sovereignty and independence of Ukraine, to protecting human and civil rights and freedoms, to caring for the well-being of the Ukrainian people, and to consolidation and sustainable democratic development of Ukraine».

The Oath shall be sworn **at the plenary sitting of the Verkhovna Rada of Ukraine** upon formation of the Cabinet of Ministers of Ukraine (**appointment of no less than two thirds of the total number of members of the Cabinet of Ministers of Ukraine**).

The Oath of members of *the newly formed* Cabinet of Ministers of Ukraine shall be declared by the Prime Minister of Ukraine, and its text shall be signed by every member of the Cabinet of Ministers of Ukraine. The signed text of the Oath shall be kept in the personal file of any member of the Cabinet of Ministers of Ukraine.

If any member of the Cabinet of Ministers of Ukraine refuses to swear the Oath, *the part of the resolution of the Verkhovna Rada of Ukraine on the appointment of such an individual as a member of the Cabinet of Ministers shall become ineffective*.

**Article 11. The Action Programme of the Cabinet of Ministers of Ukraine**

No later than within *thirty* days upon acquisition of powers, the newly formed Cabinet of Minister of Ukraine shall submit for the parliamentary consideration the Action Programme of the Cabinet of Ministers of Ukraine for the period of its powers.

The Action Programme of the Cabinet of Ministers of Ukraine shall contain the conceptual presentation of the strategy of action, measures and terms for the achievement of objectives of the Cabinet

of Ministers of Ukraine. The Action Programme of the Cabinet of Ministers of Ukraine shall also be supplemented by the general structure of the system of executive authorities and information on the members of the Cabinet of Ministers of Ukraine.

The Action Programme of the Cabinet of Ministers of Ukraine shall be considered by the Verkhovna Rada of Ukraine within no later than ten days since the day of its submission.

Before the Action Programme of the Cabinet of Ministers of Ukraine is considered at the plenary sitting of the Verkhovna Rada of Ukraine, it shall be preliminary discussed by parliamentary committees, factions and groups.

The Prime Minister of Ukraine shall present the Action Programme of the Cabinet of Ministers of Ukraine at the plenary sitting of the Verkhovna Rada of Ukraine and shall answer the questions of members of parliament.

The Verkhovna Rada of Ukraine can provide the Cabinet of Ministers of Ukraine with a possibility to improve the Action Programme of the Cabinet of Ministers of Ukraine within twenty days on the basis of proposals and observations made in the course of its discussion by parliamentary committees, factions and groups and the plenary sitting of the Verkhovna Rada of Ukraine.

The Verkhovna Rada of Ukraine shall pass the Action Programme of the Cabinet of Ministers of Ukraine by roll call vote. The Action Programme of the Cabinet of Ministers of Ukraine shall be considered approved if no less than the majority of the constitutional composition of the Verkhovna Rada of Ukraine votes in its favour.

If the Verkhovna Rada of Ukraine fails to approve the Action Programme of the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine can consider no confidence in the Cabinet of Ministers of Ukraine in accordance with the Ukrainian Constitution.

### **Article 11. *Changes in the Composition of the Cabinet of Ministers of Ukraine***

Due to political or personal motives, any member of the Cabinet of Ministers of Ukraine shall be entitled to declare his/her resignation to *the Verkhovna Rada of Ukraine*.

Members of the Cabinet of Ministers of Ukraine shall inform the

Prime Minister of Ukraine beforehand on their intention to resign, *while the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine shall also inform the President of Ukraine.*

Any member of the Cabinet of Ministers of Ukraine whose resignation has been accepted by *the Verkhovna Rada of Ukraine*, on its commission and on such member's consent shall continue performing his/her powers until a new member of the Cabinet of Ministers of Ukraine acquires powers, but no longer than for sixty days.

*The powers of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine may be terminated on the submission of the President of Ukraine. For other members of the Cabinet of Ministers, such submission shall be filed by the Prime Minister of Ukraine.*

For the termination of powers or acceptance of resignation of members of the Cabinet of Ministers of Ukraine, *the Verkhovna Rada of Ukraine shall pass relevant resolutions.*

*The President of Ukraine and the Prime Minister shall submit their respective proposals on appointments to the vacant posts in the Cabinet of Ministers of Ukraine within 14 days after such posts become vacant and in accordance with the procedure set by Article 8 hereof. If the Verkhovna Rada of Ukraine fails to appoint the proposed candidate as a member of the Cabinet of Ministers of Ukraine, the Prime Minister and the President of Ukraine respectively shall propose another candidate for this post in accordance with the same procedure.*

*The newly appointed members of the Cabinet of Ministers of Ukraine shall acquire their powers upon swearing the Oath, which they shall declare themselves at the parliamentary sitting and sign.*

## **Article 12. Requirements to the Individuals Constituting the Cabinet of Ministers of Ukraine**

Only Ukrainian citizens enjoying the voting right and speaking the state language shall be appointed to the Cabinet of Ministers of Ukraine. **Individuals that have been convicted of a deliberate crime shall not be eligible to be appointed to the Cabinet of Ministers of Ukraine if such conviction has not been cleared as established by law.**



Members of the Cabinet of Ministers of Ukraine cannot be members of parliament of Ukraine or hold any other representative mandate. They shall not be entitled to combine their service activities with any other work, than teaching, research or creative work during off-business hours, participate in a management body or a supervisory board of a company or any other profit making organisation or organisation set up to provide commercial, industrial or financial services to other companies, organisations or individuals.

### **Section III. TERMINATION OF POWERS OF THE CABINET OF MINISTERS OF UKRAINE**

#### **Article 13. Period of Powers of the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine shall be set up for the period of powers of *the Verkhovna Rada of Ukraine*.

The powers of the Cabinet of Ministers of Ukraine shall be terminated before term in the following cases:

- 1) *No confidence vote by the Verkhovna Rada of Ukraine in the Cabinet of Ministers of Ukraine;*
- 2) Resignation or death of the Prime Minister of Ukraine;
- 3) *Simultaneous resignation of more than one third of the total number of the members of the Cabinet of Ministers of Ukraine.*

#### **Article 14. Termination of Powers of the Cabinet of Ministers of Ukraine Due to Election of a New Verkhovna Rada of Ukraine**

The Prime Minister of Ukraine *shall declare* the resignation of the Cabinet of Minister of Ukraine *at the first sitting of the newly elected Verkhovna Rada of Ukraine*.

#### **Article 15. Termination of Powers of the Cabinet of Ministers of Ukraine Due to the No Confidence Vote by the Verkhovna Rada of Ukraine**

On the proposal of *the President of Ukraine* or no less than one third of the constitutional number of its members, the Verkhovna

Rada of Ukraine can consider the responsibility of the Cabinet of Ministers of Ukraine and vote no confidence in the Cabinet of Ministers of Ukraine.

This issue shall be considered at the plenary sitting of the Verkhovna Rada of Ukraine within ten days after such a proposal is submitted. The Verkhovna Rada of Ukraine shall invite all members of the Cabinet of Ministers of Ukraine to such a sitting.

The Verkhovna Rada of Ukraine shall pass the resolution on no confidence in the Cabinet of Ministers of Ukraine by roll call vote. The decision shall be passed by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.

If the Verkhovna Rada of Ukraine votes in favour of the resolution on no confidence in the Cabinet of Minister of Ukraine, this shall result in the resignation of the Cabinet of Ministers of Ukraine.

The Verkhovna Rada of Ukraine shall not consider the responsibility of the Cabinet of Ministers of Ukraine more than once during its one ordinary session, as well as within one year upon the adoption of the Action Programme of the Cabinet of Ministers of Ukraine *or over the last parliamentary session*.

#### **Article 16. Termination of Powers of the Cabinet of Ministers of Ukraine Due to the Resignation or Death of the Prime Minister of Ukraine**

The Prime Minister of Ukraine shall be entitled to request his/her resignation to *the Verkhovna Rada of Ukraine*. Within ten days after receiving such a request, *the Verkhovna Rada of Ukraine* shall make a decision on accepting or declining the resignation of the Prime Minister of Ukraine.

*Acceptance of the resignation* or death of the Prime Minister of Ukraine shall result in the resignation of the entire Cabinet of Ministers of Ukraine.

#### **Article 17. Termination of Powers of the Cabinet of Ministers of Ukraine due to the Simultaneous Resignation of More than One Third of the Total Number of Members of the Cabinet of Ministers of Ukraine**

*Members of the Cabinet of Ministers of Ukraine shall be entitled to file a joint resignation request to the Verkhovna Rada of Ukraine.*

*If the above request is filed by more than one third of the total number of members of the Cabinet of Ministers of Ukraine, and the Verkhovna Rada of Ukraine accepts their resignation, this shall result in the pre-term termination of powers of the entire Cabinet of Minister of Ukraine.*

*The request mentioned in paragraph one above shall be considered by the Verkhovna Rada of Ukraine not later than within 10 days upon its submission.*

#### **Article 18. Exercise of Powers of the Cabinet of Ministers of Ukraine upon Its Resignation**

*The Cabinet of Ministers of Ukraine that has resigned due to the election of the new Verkhovna Rada of Ukraine or the resignation of which was accepted by the Verkhovna Rada of Ukraine, shall continue exercising its powers on the decision of the Verkhovna Rada of Ukraine before the new Cabinet of Ministers of Ukraine begins its work. This decision shall be passed in the form of a parliamentary resolution.*

### **Section IV. COMPETENCE OF THE CABINET OF MINISTERS OF UKRAINE**

#### **Article 19. General Issues of Competence of the Cabinet of Ministers of Ukraine**

Acting within their competence, the Cabinet of Ministers of Ukraine shall direct its work to ensure the interests of the Ukrainian people by following the Constitution and laws of Ukraine, acts of President of Ukraine, implementation of the Action Programme of the Cabinet of Ministers of Ukraine approved by the Verkhovna Rada of Ukraine, and solving public administration issues in the areas of economy and finance, social policy, labour and employment, health care, education, science, culture, sport, tourism, environmental protection and security, the use of natural resources, legal policy, legality, provision of human and civil rights and freedoms and other objectives of domestic and foreign policies, national security, and defensive capacity.

The Cabinet of Ministers of Ukraine shall continuously oversee how executive authorities comply with the Constitution and other legislative acts of Ukraine, and undertake measures to eliminate drawbacks in the functioning of these authorities.

## **Article 20. Main Functions and Powers of the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine shall:

1) in the areas of economy and finance:

a) ensure implementation of the public economic policy, forecast and regulate the economy of Ukraine;

б) develop and implement nationwide programmes of economic and social development;

в) manage public property in accordance with law, delegate, as established, certain management powers to ministries, other central executive authorities, governmental bodies, local state administrations and relevant business operators, develop and ensure implementation of state privatisation programmes; **file for the parliamentary consideration proposals on the list of public property objects that shall not be subject to privatisation;**

г) promote development of entrepreneurship based on the principles of equality of all forms of ownership before law and security of the social orientation of economy, undertake measures on demonopolisation and antimonopoly regulation of economy, development of competition and market infrastructure;

д) ensure development and implementation of programmes of structural reconstruction of the national economy sectors and innovation development, undertake measures related to reconstruction and readjustment of companies and organisations, develop and implement public industrial policies, define priority industrial sectors for their accelerated development, ensure protection and support of domestic producers;

е) implement public investment policy, regulate investment activities, promote beneficial conditions to attract investments into the Ukrainian economy;

є) define the volume of products (works or services) for public needs, the procedure for formation and placement of orders for their production,

solve, in accordance with legislation, other issues concerning security of public needs for products (works or services); create, in accordance with law, state reserves of financial, material and technical resources;

ж) ensure implementation of state agrarian policy, secure public food needs;

з) implement financial and tax policies, promote stability of the Ukrainian monetary unit;

и) develop the bill on the State Budget of Ukraine and **on amendments to the State Budget of Ukraine**, ensure administration of the State Budget of Ukraine approved by the Verkhovna Rada of Ukraine, **file a report on its administration for the parliamentary consideration**;

і) make decisions on the use of funds of the **state budget reserve fund**;

ї) oversee the servicing of the state debt of Ukraine, make decisions on the issuance of government domestic loans, and organisation of money and commodity lotteries;

й) organise state insurance;

к) ensure implementation of the state price policy and state regulation of pricing;

л) organise and ensure implementation of the foreign economic policy of Ukraine, and regulate, within the limits set by law, the foreign economic activity;

м) organise customs affairs;

н) organise the development of the payment balance and the consolidated monetary plan of Ukraine, ensure rational use of the state monetary funds;

о) be a guarantor of loans that are provided, within the limits set by the law on the State Budget of Ukraine, by foreign countries, banks, financial international organisations, or in other cases provided under the international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine;

2) in the areas of social policy, health care, education, science, culture, sports, tourism and environmental protection:

а) administrate public social policy, undertake measures to increase real income of the population and ensure social protection of citizens;

б) ensure development of drafts and approval of minimal state social standards, minimal consumption budget, minimal salary and the cost of living;

в) develop and implement state social aid programmes, undertake measures to strengthen the material and technical basis for the institutions of social protection of disabled individuals, pensioners, and other individuals unable to work or receiving low incomes;

г) ensure administration of the public employment policy, develop and implement relevant state programmes, in particular for creation of new jobs and social adaptation of the youth, solve the issues of professional orientation, staff training and retraining, and regulate migration processes;

д) ensure administration of public policies on health care, motherhood and childhood protection, education, physical training, **in particular as concerns accessibility and proper quality of medical aid, sanitary and epidemical order, and control of medicine prices**; ensure accessibility of medical, education, and sports and recreation facilities;

е) ensure administration of public policy in relation to culture, ethnic development of Ukraine and interethnic relations, protection of historic and cultural heritage, comprehensive development and functioning of the state language in all spheres of public life all over the territory of Ukraine, create conditions for the free development of languages of native peoples and national minorities in Ukraine, care for satisfaction of national and cultural needs of Ukrainians living abroad;

ж) develop and undertake measures on creation of the material and technical basis and other conditions necessary for development of health care, culture and sport, tourism and recreation business;

з) administrate public policy related to the development of IT technologies, and promote the establishment of the single information space on the Ukrainian territory;

и) develop and ensure implementation of the research and technology policy, development and consolidation of the research and technology potential of Ukraine, develop and implement the nationwide research and development programmes;

й) undertake measures to improve state regulation in the research and development area to stimulate innovation efforts of companies, institutions, and organisations;

к) define procedures for formation and use of funds for research and development purposes;

л) ensure implementation of the public policy for environmental protection and security, and the **use of natural resources**;

й) develop state and interstate environmental programmes; ensure their implementation;

к) manage, within its powers, protection and rational use of land, underground and water resources, plant and animal world, and other natural resources;

л) make decisions on restriction, temporary prohibition (suspension) or termination of operation of companies, institutions and organisations independently of the form of their ownership if they violate the legislation on environmental protection;

м) coordinate efforts of executive authorities, local self-government bodies, companies, institutions, and organisations in terms of environmental protection, and implementation of state, regional, and interstate environmental programmes;

н) ensure performance of measures envisaged by the Programme on Elimination of Consequences of Chernobyl Nuclear Power Plant Accident, and make decisions on elimination of harmful consequences of other accidents, as well as fires, disasters, and acts of God.

3) in the areas of legal policy, legality, and security of human and civil rights and freedoms:

а) develop and implement public legal policy, organise work aiming at improvement of legal regulation of government development, business, social and cultural sectors;

б) oversee compliance with legislation by executive authorities, their officials, as well as local self-government bodies in terms of performance of powers of executive authorities delegated to them;

в) undertake measures to ensure and protect human and civil rights and freedoms, life and health against unlawful attempts, ensure protection of property and civil order, fire security, and combat against crime;

г) undertake measures to ensure implementation of judicial rulings by ministries and other executive authorities and their leadership;

д) create conditions for free development and functioning of the system of legal services and **legal aid** to the public;

е) ensure funding of allocations to maintain courts within limits envisaged by the Law on the State Budget of Ukraine, and create proper conditions for the functioning of courts and activities of judges;

є) undertake measures on financial, material and technical support to operation of law enforcement authorities, and social protection of law enforcement officers and their family members;

**ж) ensure implementation of the public policy on adaptation of the national legislation to the EU legislation;**

4) in the areas of foreign policy, national security, and defensive capacity:

a) ensure, within its powers, foreign political activities of Ukraine and representation of Ukraine in foreign countries and international organisations;

б) **ensure**, in accordance with the law on international treaties, solution of issues related to **conclusion and implementation** of international treaties of Ukraine;

в) undertake measures to ensure implementation of international treaties of Ukraine;

г) ensure the guard and protection of the state border and the Ukrainian territory;

д) undertake measures to strengthen the national security of Ukraine;

е) undertake measures to ensure the military efficiency of the Armed Forces of Ukraine, define, within budget allocations for the defence staff, the Ukrainian citizens that shall be subject to draft and fixed-term military service and training meetings;

є) undertake measures to ensure the defensive capacity of Ukraine, equipment of the Armed Forces of Ukraine and other military units set up in accordance with the Ukrainian laws with everything they need to fulfil the duties vested in them;

ж) solve issues related to social and legal guarantees to military servants, persons released from the military service and their family members;

з) manage civil defence of Ukraine, mobilisation preparation of the economy and its conversion into the regime of operation under extraordinary conditions and marshal law;

и) solve issues related to the participation of Ukrainian military servants in the peace-making operations in accordance with the procedure set by law;



5) in the areas of civil service and staffing policy:

a) organise implementation of the single public policy in the civil service sector;

б) undertake measures to staff executive authorities, state companies, institutions, and organisations;

в) develop and undertake measures aiming at improvement of the system of central and local authorities to enhance their efficiency and **optimise** expenses for the maintenance of the administration secretariat.

The Cabinet of Ministers of Ukraine shall exercise also other powers, *set by the Constitution and laws of Ukraine*.

### **Article 21. Delegation of Functions and Powers of the Cabinet of Ministers of Ukraine**

In case of necessity, the Cabinet of Ministers of Ukraine may pass its certain functions and powers for temporary or unlimited use to **other executive authorities**, if the law does not prohibit such delegation. In case of delegation, the Cabinet of Ministers of Ukraine shall provide such central executive authorities with financial and materials resources necessary for the proper implementation of such functions and powers.

The Cabinet of Ministers of Ukraine shall oversee the performance of the delegated functions and powers and shall be responsible for the results of their performance.

## **Section V. POWERS OF THE CABINET OF MINISTERS OF UKRAINE IN TERMS OF ADMINISTRATION OF THE SYSTEM OF EXECUTIVE AUTHORITIES**

### **Article 22. Powers of the Cabinet of Ministers of Ukraine in Relations with Ministries and Other Central Executive Authorities**

The Cabinet of Ministers of Ukraine shall direct, coordinate and oversee the operation of ministries and other central executive authorities, ensure implementation of public policies in relevant sectors

of social and public life of the country, administration of the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, and respect of human and civil rights and freedoms in these areas.

Ministries and other central executive authorities shall be accountable to, and under control of the Cabinet of Ministers of Ukraine. Issues considered by ministries shall be represented in the Cabinet of Ministers by ministers, and issues considered by other central executive authorities – by members of the Cabinet of Ministers that direct and coordinate such authorities.

Ministries and other central executive authorities shall be set up, reorganised, and abolished by *the Cabinet of Ministers of Ukraine* on the submission of the Prime Minister of Ukraine **within the limits of funds envisaged for the maintenance of executive authorities**. Such a proposal shall contain suggestions on the legal status, functions and powers of the newly created or reorganised authority, as well as on the **cap** number of staff and amount of allocations for its maintenance or arguments supporting the necessity to abolish a certain authority.

The Cabinet of Ministers of Ukraine shall approve the cap number of staff of secretariats of ministries and other central executive authorities.

The Cabinet of Ministers of Ukraine shall be entitled to abolish acts or parts of acts of ministries and other central executive authorities (*ministries excluded*).

*The Cabinet of Ministers of Ukraine shall appoint and dismiss chief officials of central executive authorities that are not members of the Cabinet of Ministers of Ukraine on the submission of the Prime Minister of Ukraine.*

The Cabinet of Ministers of Ukraine shall appoint and dismiss first deputy and deputy chief officials of central executive authorities, **as well as state secretaries of ministries and their deputies**.

The Cabinet of Ministers of Ukraine shall hear reports by chief officials of central executive authorities.

Special relations between the Cabinet of Ministers of Ukraine and *the Antimonopoly Committee of Ukraine, the State Property Fund of Ukraine, the State Committee for TV and Radio Broadcasting of Ukraine, and the State Security Service* shall be set by relevant laws.

**Article 23. Powers of the Cabinet of Ministers of Ukraine in Relations with Government Bodies**

Within the limits of funds envisaged by the State Budget of Ukraine for the maintenance of executive authorities, the Cabinet of Ministers of Ukraine may set up government bodies (**services**, inspections, agencies) in the system of relevant ministries. Government bodies shall manage individual subsections or areas of activities, as well as perform control and oversight functions, ensure **provision of registration, permission and other administrative functions to individuals and legal entities**.

The Cabinet of Ministers of Ukraine shall appoint and dismiss chief officials of government bodies **on the proposal of the minister that manages the ministry within which the government body functions**, and approve regulations on each government body that shall lay out the objectives, functions, subordination, accountability and other issues related to its operation.

**Article 24. Powers of the Cabinet of Ministers of Ukraine in Relations with the Council of Ministers of the Crimean Autonomous Republic and Bodies Subordinated Thereto**

The Cabinet of Ministers of Ukraine shall direct, coordinate, and oversee the Council of Ministers of the Crimean Autonomous Republic in terms of its abidance by the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine on the territory of the Crimean Autonomous Republic as an indispensable part of Ukraine. The Cabinet of Ministers of Ukraine shall be entitled to receive from the Council of Ministers of the Crimean Autonomous Republic information on the organisation of its activities.

The Council of Ministers of the Crimean Autonomous Republic shall be subordinated to, and under control of the Cabinet of Ministers of Ukraine in terms of issues related to the powers of executive authorities. The Cabinet of Ministers of Ukraine shall regularly hear reports by the Head of the Council of Ministers of the Crimean Autonomous Republic on the issues defined by the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine sets the procedure for the participation of the Council of Ministers of the Crimean Autono-

mous Republic and its subordinated bodies in the implementation of the nationwide programmes and other measures of nationwide significance and oversees the compliance of the programmes of the Crimean Autonomous Republic on social, economic, and cultural development, practical use of natural resources, and **environmental protection** with nationwide programmes.

The Cabinet of Ministers of Ukraine shall ensure the cooperation, necessary for the efficient administration of the Ukrainian legislation, between the Council of Ministers of the Crimean Autonomous Republic and ministries and other central executive authorities of Ukraine, organise reconciliation of candidates for members of the Council of Ministers of the Crimean Autonomous Republic, chief officials of other republican executive authorities with chief officials of relevant central executive authorities.

If the Head of the Council of Ministers of the Crimean Autonomous Republic fails to properly perform the functions vested in him/her, the Cabinet of Ministers of Ukraine shall be entitled to request his/her dismissal from the President of Ukraine or the Verkhovna Rada of the Crimean Autonomous Republic.

If the Council of Ministers of the Crimean Autonomous Republic passes a decision that contradicts the Ukrainian Constitution, laws of Ukraine and other legislative acts, the Cabinet of Ministers of Ukraine shall request its abolishment from the President of Ukraine.

On the proposals of the Verkhovna Rada of the Crimean Autonomous Republic or the Council of Ministers of the Crimean Autonomous Republic, the Cabinet of Ministers of Ukraine may undertake to exercise some of the powers of the Council of Ministers of the Crimean Autonomous Republic.

## **Article 25. Powers of the Cabinet of Ministers of Ukraine in Relations with Local State Administrations**

The Cabinet of Ministers of Ukraine shall direct, coordinate, and oversee the activities of local state administration in terms of their abidance by the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, higher executive authorities, as well as the exercise of other powers vested in such state administrations on relevant territories.

At its meeting, the Cabinet of Ministers of Ukraine shall consider the candidates for heads of local state administrations and pass a decision to submit a proposal on their appointment to the President of Ukraine. In the cases envisaged by law, members of the Cabinet of Ministers of Ukraine shall reconcile the candidates for relevant posts at oblast state administrations before their appointment.

The Prime Minister of Ukraine shall submit to the President of Ukraine a proposal on the **appointment** of heads of local state administrations **and termination of their powers**.

Local state administrations are accountable to, and under control of the Cabinet of Ministers of Ukraine. When exercising their powers, heads of local state administrations are also responsible to the Cabinet of Ministers of Ukraine. Accountability and under-control position of oblast and rayon state administration to the Cabinet of Ministers of Ukraine shall not extend to the powers delegated to them by relevant councils.

***The Cabinet of Ministers of Ukraine shall be entitled to cancel the acts issued by local state administrations if such acts contradict the Constitution and laws of Ukraine, act of the President of Ukraine, the Cabinet of Ministers of Ukraine, and the ministries.***

The Cabinet of Ministers of Ukraine shall receive from local state administrations information on their activities, regularly hear reports by heads of local state administration on the issues defined by the Cabinet of Ministers of Ukraine. If any heads of local state administration fails to properly exercise his/her powers, the Cabinet of Ministers of Ukraine shall be entitled to apply disciplinary measures to him/her, with the exception of dismissal, or request his/her dismissal from the President of Ukraine.

The Cabinet of Ministers of Ukraine shall approve a Recommended List of Departments, Sections, and Other Structural Subsections of Local State Administration and model regulations on them. It shall also define the cap number of staff of local state administrations and expenditures for their maintenance.

Draft acts of the Cabinet of Ministers of Ukraine on the issues related to the development of specific regions and settlements shall be first sent to the relevant local state administration. Before passing such acts, the Cabinet of Ministers of Ukraine shall study the observations and proposals submitted to it by local state administrations.

The Cabinet of Ministers of Ukraine shall consider proposals of ob-

last, Kyiv and Sevastopol city state administrations on the issues that require solution by the Cabinet of Ministers of Ukraine. During the consideration of such proposals, heads of oblast, Kyiv and Sevastopol city state administrations shall be entitled to participate in the meetings of the Cabinet of Ministers of Ukraine with the right of advisory vote.

#### **Article 26. Powers of the Cabinet of Ministers of Ukraine in Relations with Subordinated Institutions and Organisations**

Within the limits of funds envisaged by the State Budget of Ukraine, the Cabinet of Ministers of Ukraine may set up, reorganise and abolish the subordinated institutions and organisations, including for performance of individual functions to manage the state property. The Cabinet of Ministers of Ukraine shall approve regulations on such institutions and organisations, the cap number of their staff and the amount of allocations for their maintenance, appoint their chief officials and their deputies, apply disciplinary measures to them and dismiss.

In the cases envisaged by law, the Cabinet of Ministers of Ukraine shall coordinate and oversee these institutions and organisations, as well as business operators that have been delegated as established the functions of state property management.

Chief officials of state institutions and organisations set up by the Cabinet of Ministers of Ukraine, as well as business operators that have been delegated the functions of state property management, shall be personally responsible to the Cabinet of Ministers of Ukraine for lawful and efficient use of the state property, selections and appointment of the staff to the state companies under their management, as well as performance of other functions vested into them.

#### **Section VI. POWERS OF THE CABINET OF MINISTERS OF UKRAINE IN RELATIONS WITH THE PRESIDENT OF UKRAINE AND BODIES SET UP UNDER THE PRESIDENT OF UKRAINE**

#### **Article 27. Participation of the Cabinet of Ministers of Ukraine in the Exercise of Powers by the President of Ukraine**

The Cabinet of Ministers of Ukraine shall direct and coordinate the activities of executive authorities to secure the exercise of pow-

ers by the President of Ukraine in terms of respect of the Constitution and laws of Ukraine, human and civil rights and freedoms, performance of domestic policy, administration of the foreign economic activity of the state, security of the state sovereignty, economic independence, national security and defensive capacity, creation and reorganisation of executive authorities, as well as other issues defined by the Constitution of Ukraine.

Acts of President of Ukraine on the issues described in paragraph 4 of Article 1006 of the Ukrainian Constitution shall be countersigned by the Prime Minister of Ukraine and the minister in charge of the development of the relevant act and its implementation.

**Article 28. Preparation of Proposals on the Issues Attributed to the Powers of the President of Ukraine by the Cabinet of Ministers of Ukraine**

On its own initiative or to implement acts of President of Ukraine, the Cabinet of Ministers of Ukraine shall prepare proposals on the issues attributed to the competence of the President of Ukraine and draft of relevant laws and acts of President of Ukraine.

The Cabinet of Ministers of Ukraine may address a grounded petition to the President of Ukraine on the necessity to define a relevant bill, in particular the one submitted by the Cabinet of Ministers of Ukraine, as urgent.

According to the Ukrainian Constitution, the Prime Minister of Ukraine shall submit a proposal to the President of Ukraine on the candidates for the appointment of members of the Cabinet of Ministers of Ukraine, chief officials of other central executive authorities, heads of local state administrations, as well as proposal on the setup, reorganisation, and abolishment of ministries, and other central executive authorities.

**Article 29. Relations of the Cabinet of Ministers of Ukraine with the National Security and Defence of Ukraine, Consultative, Advisory and Other Supplementary Bodies and Services Created by the President of Ukraine**

The Cabinet of Ministers of Ukraine shall cooperate with the National Security and Defence of Ukraine, consultative, advisory and

other supplementary bodies and services created by the President of Ukraine.

Officials of the consultative, advisory, and other supplementary bodies and services created by the President of Ukraine shall not be entitled to give instructions to the Cabinet of Ministers of Ukraine or individual members of the Cabinet of Ministers of Ukraine or interfere into their activities.

The procedure for the relation of the Cabinet of Ministers of Ukraine with the National Security and Defence of Ukraine, consultative, advisory and other supplementary bodies and services created by the President of Ukraine, shall be defined by this and other laws of Ukraine, as well as decrees of the President of Ukraine.

## **Section VII. POWERS OF THE CABINET OF MINISTERS OF UKRAINE IN RELATIONS WITH THE VERKHOVNA RADA OF UKRAINE AND ITS BODIES**

### **Article 30. Exercise of the Right to legislative Initiative by the Cabinet of Ministers of Ukraine**

In accordance with the Ukrainian Constitution, the Cabinet of Ministers of Ukraine shall have legislative initiative in the Verkhovna Rada of Ukraine.

The Cabinet of Ministers of Ukraine shall file bills for the parliamentary consideration in accordance with the Law on the Parliamentary Rules of Procedure.

The Prime Minister of Ukraine shall assign a member of the Cabinet of Ministers of Ukraine or a **deputy minister** to present a bill filed by the Cabinet of Ministers of Ukraine in the Verkhovna Rada of Ukraine.

The Cabinet of Ministers of Ukraine shall be entitled to recall the bill filed for parliamentary consideration within the terms set by law.

The newly formed Cabinet of Ministers of Ukraine shall be entitled to recall the bills filed for the parliamentary consideration by the previous Cabinet of Ministers of Ukraine before they are passed in the first reading.



Decisions of the Verkhovna Rada of Ukraine passed upon consideration of the bill filed by the Cabinet of Ministers of Ukraine in the first reading shall be forwarded to the Cabinet of Ministers of Ukraine within three days upon their signature by the Chairman of the Verkhovna Rada of Ukraine.

### **Article 31. Powers of the Cabinet of Ministers of Ukraine in the Process of Parliamentary Consideration**

**The Cabinet of Ministers of Ukraine files for parliamentary consideration proposals on the issues related to creation and abolishment of rayons, establishment and change of rayon and town/city boundaries, classification of settlements as towns/cities, appellation and re-appellation of settlements and rayons, as their solution is attributed by the Ukrainian Constitution to the powers of the Verkhovna Rada of Ukraine.**

On the request of the Verkhovna Rada of Ukraine or on its own initiative, the Cabinet of Ministers of Ukraine shall provide conclusions on the completeness of economic feasibility study and financial support to the legislative initiatives and bills implementation of which requires material and other expenses from the state or local budgets. The Cabinet of Ministers of Ukraine shall receive from the Verkhovna Rada of Ukraine for its examination all bills filed for parliamentary consideration by other subjects of legislative initiative.

Members of the Cabinet of Ministers of Ukraine shall be entitled to give its conclusions on bills. These conclusions shall be sent to the Verkhovna Rada of Ukraine and added to the conclusion of the parliamentary committee defined as the main committee for the development of the relevant bill.

The Prime Minister of Ukraine, other members of the Cabinet of Ministers of Ukraine, and **deputy ministers** shall be entitled to be present at the parliamentary sittings and make statements on the issues under deliberation in accordance with the Law on the Parliamentary Rules of Procedure.

If at the parliamentary sitting members of parliament raise issues related to the activities of the Cabinet of Ministers of Ukraine or its members, the Prime Minister of Ukraine **and other members of the Cabinet of Ministers of Ukraine** shall be entitled to make a remark or receive necessary explanations on these issues.

Members of the Cabinet of Ministers of Ukraine or, on their commission, officials of ministries, other central executive authorities of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine shall participate in the meetings of parliamentary committees and ad hoc special commissions on their invitation for consideration of issues related to the powers of the Cabinet of Ministers of Ukraine or bodies, institutions and organisations subordinated to it.

**Article 32. Powers of the Cabinet of Ministers of Ukraine Related to Approval and Execution of the State Budget of Ukraine**

The Cabinet of Ministers of Ukraine shall develop and, no later than by 15 September of each year, file with the Verkhovna Rada of Ukraine a bill on the next year State Budget of Ukraine. Simultaneously with the bill, the Cabinet of Ministers of Ukraine shall submit a report on the execution of the current year State Budget of Ukraine.

The bill on the State Budget of Ukraine shall be developed with due consideration of the next year budget policy main priorities (the Budget Resolution) approved by the Verkhovna Rada of Ukraine. Deviations from the indicated main priorities shall mentioned separately and grounded.

The bill on the State Budget of Ukraine shall be presented at the parliamentary sitting by the Minister of Finance of Ukraine or the person fulfilling his/her duties.

The procedure for the participation of the Cabinet of Ministers of Ukraine in the parliamentary deliberation of the bill on the State Budget of Ukraine shall be established by law.

On later than 1 May, the Cabinet of Ministers of Ukraine shall file with the Verkhovna Rada of Ukraine and promulgate the report of the execution of the previous year State Budget of Ukraine which shall be considered no later than in ten days upon its delivery.

**Article 33. Powers of the Cabinet of Ministers of Ukraine Related to Development, Approval and Implementation of Nationwide Programmes**

The Cabinet of Ministers of Ukraine shall develop and file for parliamentary consideration draft nationwide programmes for economic,

science and technology, social, national and cultural development of Ukraine, environmental protection **and other** issues.

Simultaneously with the report on the execution of the previous year State Budget, the Cabinet of Ministers of Ukraine shall file with the Verkhovna Rada of Ukraine reports on the implementation progress of nationwide programmes.

#### **Article 34. Relations of the Cabinet of Ministers of Ukraine with the Accounting Chamber**

On the request of the Accounting Chamber, the Cabinet of Ministers of Ukraine shall provide statistical, financial, accounting, and other information and documents necessary for the Chamber to fulfil its tasks, perform functions and exercise powers established by *the Constitution of Ukraine and the law*.

The Cabinet of Ministers of Ukraine shall receive from the Accounting Chamber information on the results of inspections, revisions, and examinations, as well as petitions on disciplinary charges against persons guilty of violation of legislative requirements, non-purpose and inefficient use of funds, damaging public property. The Cabinet of Ministers of Ukraine shall consider these materials and petitions, undertake measures within its competence and information thereon the Accounting Chamber of Ukraine.

#### **Article 35. Relations of the Cabinet of Ministers of Ukraine with the Parliamentary Ombudsman of Ukraine**

Activities of the Cabinet of Ministers of Ukraine related to the respect of the constitutional civil and human rights shall be subject to parliamentary oversight **exercised by the Parliamentary Ombudsman**.

Within the boundaries established by law, the Cabinet of Ministers of Ukraine shall ensure that the Parliamentary Ombudsman has access to all documents of the Cabinet of Ministers of Ukraine and bodies, institutions, and organisations subordinated to it.

#### **Article 36. Replies of the Cabinet of Ministers of Ukraine and Its Members to Parliamentary Appeals and Inquiries**

The Cabinet of Ministers of Ukraine or **members of the Cabinet of Ministers of Ukraine**, to whom a parliamentary appeal is addressed or to whom an inquiry has been made at the parliamentary session, are obliged to provide a reply in accordance with the procedure established by law.

If a reply on a parliamentary inquiry is discussed at the parliamentary plenary sitting, member of the Cabinet of Ministers of Ukraine to whom the inquiry has been addressed shall be invited to such a sitting.

Members of the Cabinet of Ministers of Ukraine shall **without delay** receive members of parliament of Ukraine on the issues of their parliamentary activities.

### **Article 37. Consideration of Appeals of Parliamentary Committees and Temporary Commissions**

The Cabinet of Ministers of Ukraine shall organise consideration of appeals of parliamentary committees and temporary commissions concerning the issues of its activities. A relevant person from the number of members of the Cabinet of Ministers of Ukraine shall inform such committees and commissions on the results of consideration and measures undertaken with the terms established by law.

### **Article 38. Information of the Verkhovna Rada of Ukraine on the Activities of the Cabinet of Ministers of Ukraine**

To regularly inform the Verkhovna Rada of Ukraine on the activities of the Cabinet of Ministers of Ukraine, but not more frequently than once a month, the Verkhovna Rada of Ukraine may conduct Government Days where it shall hear relevant information presented by members of the Cabinet of Ministers of Ukraine.

The dates of Government Days shall be defined by the Verkhovna Rada of Ukraine. Their topics shall be defined by the Verkhovna Rada of Ukraine in accordance with the procedure set by law, but no later than fourteen days before its conduct.

The Cabinet of Ministers of Ukraine shall provide the Verkhovna Rada of Ukraine with analytical and reference materials on the is-

sues considered at Government Days but not later than three working days before their conduct.

Questions for Government Days shall be submitted in accordance with the defined topic and shall not go beyond the competence of the Cabinet of Ministers of Ukraine and central executive authorities.

Any member of the Cabinet of Ministers of Ukraine shall answer all questions on the defined topic that have been received by the Cabinet of Ministers of Ukraine from parliamentary committees, factions and groups, and members of parliament. If necessary, his/her answers can be extended by other members of the Cabinet of Ministers of Ukraine.

A member of the Cabinet of Ministers of Ukraine may be invited to make a presentation at Government Days at the Verkhovna Rada of Ukraine as a rule not more frequently than twice a year.

The Verkhovna Rada of Ukraine shall take into consideration the information presented at Government Days and shall use it in its work.

## **Section VIII. RELATIONS OF THE CABINET OF MINISTERS OF UKRAINE WITH OTHER PUBLIC AUTHORITIES, LOCAL SELF-GOVERNMENT BODIES AND CIVIL ASSOCIATIONS**

### **Article 39. Addresses of the Cabinet of Ministers of Ukraine to the Constitutional Court of Ukraine**

The Cabinet of Ministers of Ukraine shall be entitled to address itself to the Constitutional Court of Ukraine to get conclusions concerning compliance with the Ukrainian Constitution of the valid international treaties of Ukraine or the international treaties that are filed with the Verkhovna Rada of Ukraine for its ratification, as well as to get official interpretation of the Constitution and laws of Ukraine.

### **Article 40. Relations of the Cabinet of Ministers of Ukraine with the National Bank of Ukraine**

The Cabinet of Ministers of Ukraine shall cooperate with the National Bank of Ukraine on the issues within its competence in accordance with the Constitution and laws of Ukraine.

#### **Article 41. Relations of the Cabinet of Ministers of Ukraine with Local Self-Government**

The Cabinet of Ministers of Ukraine shall direct the system of executive authorities to promote efficient functioning and development of local self-government, compliance with the rights of local self-government defined by law, ensure cooperation of central and local authorities with local self-government bodies on the issues of local significance, implementation of tasks of social, economic and cultural development of settlements and regions.

Draft acts of the Cabinet of Ministers of Ukraine, that directly concern the functioning of the local self-government of specific territorial communities shall be preliminary forwarded to relevant local self-government bodies. Representatives of the interested local self-government bodies shall be invited to participate in the meetings of the Cabinet of Ministers of Ukraine to consider the above issues.

The Cabinet of Ministers of Ukraine shall compensate the local self-government bodies **their** expenses caused by decisions of the Cabinet of Ministers of Ukraine, or other executive authorities at the expense of funds envisaged by the State Budget of Ukraine.

The Cabinet of Ministers of Ukraine can submit for the parliamentary consideration the bills on delegation of certain executive powers to local self-government bodies. Simultaneously, the Cabinet of Ministers of Ukraine shall file proposals on the funding of these powers at the expense of the State Budget of Ukraine or by attribution of certain nationwide taxes to the local budget, as well as on the transfer of relevant public property into the communal property or into the disposal of local self-government bodies.

In terms of the exercise of the executive powers delegated to them, local self-government bodies shall be under control of the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine shall be entitled to suspend, as established, the validity of act of local self-government **on the grounds of their incompliance** with the Constitution and laws of Ukraine and simultaneously appeal the legality of such acts to the court.

## **Article 42. Powers of the Cabinet of Ministers of Ukraine in Relations with Civil Associations**

Either directly, or through the system of central and local executive authorities, the Cabinet of Ministers of Ukraine shall ensure the exercise of the rights of civil associations envisaged by law, and assist them in the implementation of their statutory objectives within the measures set by law.

The Cabinet of Ministers of Ukraine shall consider proposals of All-Ukrainian and international civil organisations concerning the issues of their statutory activity that need to be solved by the Cabinet of Ministers of Ukraine.

## **Section IX. ORGANISATION OF THE ACTIVITIES OF THE CABINET OF MINISTERS OF UKRAINE**

### **Article 43. Organisation Forms for Performance of Functions and Powers of the Cabinet of Ministers of Ukraine**

According to the Constitution and laws of Ukraine, the Cabinet of Ministers of Ukraine shall perform its functions and exercise its powers through the meetings of the Cabinet of Ministers of Ukraine, the work of governmental committees, activities of members of the Cabinet of Ministers of Ukraine and other forms envisaged by the legislation.

### **Article 44. The Prime Minister of Ukraine**

The Prime Minister of Ukraine shall:

1) manage the work of the Cabinet of Ministers of Ukraine, direct this work to ensure performance of the domestic and foreign policies of the state, compliance with the Constitution and laws of Ukraine, acts of President of Ukraine, the Action Programme of the Cabinet of Ministers of Ukraine approved by the Verkhovna Rada of Ukraine and fulfilment of other tasks vested into the Cabinet of Ministers of Ukraine, ensure general management of the Secretariat of the Cabinet of Ministers of Ukraine, represent the Cabinet of Ministers of Ukraine in relations with other executive authorities;

2) direct, coordinate, and oversee activities of Vice Prime Ministers and ministers of Ukraine, heads of other central executive authorities, the Council of Ministers of the Crimea Autonomous Republic, oblast, Kyiv and Sevastopol city state administrations, and, for this purpose, gives mandatory for execution instructions to these officials;

3) submit a proposal to *the Cabinet of Ministers of Ukraine* on the setup, reorganisation, and abolishment of ministries and other central executive authorities;

4) submit a proposal to *the Verkhovna Rada of Ukraine* on candidates for members of the Cabinet of Ministers of Ukraine, *except the posts of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine*, as well as their dismissal;

*4-1) submit a proposal to the President of Ukraine on the candidates for the posts of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine, as well as their dismissal;*

*4-2) submit a proposal to the Verkhovna Rada of Ukraine on the candidates to the posts of the Head of the Antimonopoly Committee of Ukraine, the Head of the State Property Fund of Ukraine, the Head of the State Committee for TV and Radio Broadcasting, as well as their dismissal;*

5) submit for the consideration of the Cabinet of Ministers of Ukraine candidates for heads of local state administrations and *proposals* on termination of their powers,

*5-1) On proposals of relevant members of the Cabinet of Ministers of Ukraine, submit to the Cabinet of Ministers of Ukraine the candidates for heads of central executive authorities (with the exception of ministries) and submissions on their dismissal;*

6) submit a proposal to the President of Ukraine on the candidates approved by the Cabinet of Ministers of Ukraine for their appointment as heads of local state administrations and proposals on their dismissal;

7) define the personal composition of governmental committees and appoint their heads;

8) call meetings of the Cabinet of Ministers of Ukraine and chairs them;

9) sign acts of the Cabinet of Ministers of Ukraine and issues instructions of the Prime Minister of Ukraine on the issues attributed to his/her competence and mentioned in items 7, 12 — 14 above;



10) in the cases envisaged by paragraph 4 of Article 106 of the Ukrainian Constitution, countersign the decrees of the President of Ukraine;

11) enter into relations with governments of foreign states, conduct negotiations and sign international treaties of Ukraine in accordance with the law;

12) appoint heads of joint intergovernmental cooperation commissions set up on the basis of international treaties concluded on behalf of the Government of Ukraine;

13) define duties and ensure cooperation between members of the Cabinet of Ministers of Ukraine.

The Prime Minister of Ukraine shall be a member of the National Security and defence Council *ex officio*.

The Prime Minister of Ukraine can exercise other powers envisaged by the Constitution, this and other laws of Ukraine.

In the cases and within measures set by Article 112 of the Ukrainian Constitution, the Prime Minister of Ukraine shall fulfil the duties of the President of Ukraine in case of preterm termination of his powers.

If the Prime Minister of Ukraine is absent, his/her duties are fulfilled by the First Vice Prime Minister of Ukraine or another Vice Prime Minister of Ukraine in accordance with division of duties between them.

#### **Article 45. First Vice Prime Minister of Ukraine, Vice Prime Ministers of Ukraine**

In accordance with division of duties between them, the First Vice Prime Minister of Ukraine and Vice Prime Minister of Ukraine shall exercise the following powers:

1) ensure execution of the Ukrainian Constitution *and* laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, the Action Programme of the Cabinet of Ministers of Ukraine, exercise of the competence of the Cabinet of Ministers of Ukraine on the relevant priorities;

2) **coordinate ministries, direct, coordinate and oversee other central executive authorities under their direction and coordination**, local executive authorities and to this end and for the execution of acts of

the Cabinet of Ministers of Ukraine issue instructions that are mandatory for the execution by such authorities; submit for the consideration of the Cabinet of Ministers of Ukraine proposals on solution of issues related to the exercise of powers on direction and coordination of central executive authorities;

3) **head** governmental committees;

4) prepare issues for consideration at the meetings of the Cabinet of Ministers of Ukraine, preliminary consider and reconcile draft laws of Ukraine, acts of President of Ukraine, prepared by the Cabinet of Ministers of Ukraine, and draft acts of the Cabinet of Ministers of Ukraine, undertake measures to eliminate discrepancies related to them between members of the Cabinet of Ministers of Ukraine; submit proposals on the agenda and precedence of meetings of the Cabinet of Ministers of Ukraine;

5) ensure, in accordance with division of duties, the cooperation between the Cabinet of Ministers of Ukraine and the President of Ukraine and the Verkhovna Rada of Ukraine in the process of preparation, adoption and implementation of regulations, as well as the day-to-day activities of the Cabinet of Ministers of Ukraine and other executive authorities;

6) participate in the consideration of issues at the meetings of the Cabinet of Ministers of Ukraine, be entitled to participate in the work of the Verkhovna Rada of Ukraine and its bodies, operation of relevant collective bodies set up by the President of Ukraine, the Cabinet of Ministers of Ukraine, boards of ministries and other central executive authorities, meetings of the Council of Ministers of the Crimean Autonomous Republic, and the work of local state administrations;

7) head, on the decision of the President of Ukraine or the Prime Minister of Ukraine, relevant collective consultative and advisory bodies;

8) submit to the Prime Minister of Ukraine proposals on appointment of chief officials of relevant central and local executive authorities and application of disciplinary charges to them;

9) on the commission of the Prime Minister of Ukraine, represent the Cabinet of Ministers of Ukraine in relations with other authorities, institutions, and organisations in and outside Ukraine;

10) in accordance with the powers provided to them by law, conduct negotiations and sign international treaties of Ukraine.

## **Article 46. Ministers of Ukraine**

Ministers as members of the Cabinet of Ministers of Ukraine shall:

1) ensure development and implementation of public policies in the areas entrusted with them;

2) manage relevant ministries and public administration areas, direct and coordinate as established other executive authorities on behalf of the Cabinet of Ministers of Ukraine;

3) submit for the consideration of the Cabinet of Ministers of Ukraine proposals on solution of issues related to the exercise by the minister of powers of the ministry chief official and powers provided to him/her by legislation in terms of direction and coordination of other executive authorities;

**4) submit to the Prime Minister of Ukraine proposals on appointment and dismissal of chief officials of central executive authorities which their direction and coordination;**

5) on their own initiative or on the commission of the Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine, or a Vice Prime Minister of Ukraine prepare issues for the consideration of the Cabinet of Ministers of Ukraine;

6) participate in the consideration of issues at the meetings of the Cabinet of Ministers of Ukraine and submit proposals for the agenda of such meetings;

7) participate in the meetings of governmental committees;

8) on the commission of the Prime Minister of Ukraine, represent the Cabinet of Ministers of Ukraine in relations with public authorities, local self-government bodies, companies, institutions, and organisations inside and outside Ukraine;

9) within powers provided to them as established, conduct negotiations and sign international treaties of Ukraine;

10) on the decision of the President of Ukraine or the Cabinet of Ministers of Ukraine direct relevant advisory or other collective bodies.

## **Article 47. Other functions and Powers of Members of the Cabinet of Ministers of Ukraine and Their Responsibility**

In addition to the powers set by this law, members of the Cabinet of Ministers may have other powers envisaged by laws of Ukraine, as well as perform other functions in accordance with acts of the president of Ukraine and the Cabinet of Ministers of Ukraine.

Members of the Cabinet of Ministers of Ukraine shall be personally liable for the status of public administration affairs entrusted with them and the activities of the Cabinet of Ministers in general.

#### **Article 48. Meetings of the Cabinet of Ministers of Ukraine**

The main organisation form of the activities of the Cabinet of Ministers of Ukraine shall be its meetings. At its meetings, the Cabinet of Ministers of Ukraine shall pass acts of the Cabinet of Ministers of Ukraine, including on the issues of the exercise of the right of legislative initiative of the Cabinet of Ministers of Ukraine, discuss the most important issues of the social life, as well as the activities of the Cabinet of Ministers of Ukraine itself and shall hear reports of members of the Cabinet of Ministers of Ukraine and chief officials of executive authorities.

Meetings of the Cabinet of Ministers of Ukraine shall be called by the Prime Minister of Ukraine on his/her own initiative or on the initiative of the President of Ukraine and no less than one fifth of the total number of members of the Cabinet of Ministers of Ukraine. The frequency of meetings of the Cabinet of Ministers of Ukraine shall be set by the Prime Minister of Ukraine with due consideration of proposals of other members of the Cabinet of Ministers of Ukraine.

Meetings of the Cabinet of Ministers of Ukraine shall be considered **authorised** if no less than two thirds of the total number of members of the Cabinet of Ministers of Ukraine.

If any minister is not able to participate in the meeting of the Cabinet of Ministers of Ukraine, he/she shall be replaced with the right of advisory vote by a deputy minister.

On proposals of its members, the Cabinet of Ministers of Ukraine shall approve the list of individuals entitle to participate on a permanent basis in its meetings with the right of the advisory vote.

Meetings of the Cabinet of Ministers of Ukraine shall be chaired by the Prime Minister of Ukraine, and in case of his/her absence – by the First Vice Prime Minister of Ukraine.

The agenda of the meetings of the Cabinet of Ministers of Ukraine shall be approved by the Cabinet of Ministers of Ukraine. A draft agenda shall be submitted by the Prime Minister of Ukraine with due consideration of proposals of other members of the Cabinet of Ministers of Ukraine.

Meetings of the Cabinet of Ministers of Ukraine shall be recorded in minutes and shorthand notes. The minutes and the shorthand notes of the meetings of the Cabinet of Ministers of Ukraine shall be

official meetings that shall confirm the discussion and adoption of decisions by the Cabinet of Ministers of Ukraine.

The agenda of meetings of the Cabinet of Ministers of Ukraine, their recording in minutes and shorthand notes of meetings, preparation and adoption of decisions, as well as other procedural issues of the activities of the Cabinet of Ministers of Ukraine in accordance with this Law shall be defined by the Rules of Procedures of the Cabinet of Ministers of Ukraine that shall be approved by a resolution of the Cabinet of Ministers of Ukraine.

#### **Article 49. Governmental Committees**

**To coordinate the work of members of the Cabinet of Ministers of Ukraine, to prepare and reconcile issues for their consideration at the meetings of the Cabinet of Ministers of Ukraine, as well as to eliminate discrepancies in the approaches to the determination of the mechanism for their solution, the Cabinet of Ministers of Ukraine *shall set up* governmental committees.**

Governmental committees shall include members of the Cabinet of Ministers of Ukraine. As a rule, governmental committees shall be headed by the Prime Minister of Ukraine, the First Vice Prime Minister of Ukraine, or a Vice Prime Minister of Ukraine.

The Prime Minister of Ukraine **or a head of the governmental committee** may decide to invite to the work of the governmental committee chief officials of executive authorities or deputy ministers with the right of advisory vote.

Other members of the Cabinet of Ministers of Ukraine that are not included into a relevant governmental committee shall be entitled to participate in its work with the right of the decisive vote.

The list of governmental committees shall be approved by the Cabinet of Ministers of Ukraine on the proposal of the Prime Minister of Ukraine, and their personal composition shall be approved by the Prime Minister of Ukraine.

A meeting of any governmental committee shall be considered **authorised** if no less than two thirds of its members are present at the meeting.

On the results of deliberations at its meeting, a governmental committee shall pass a decision by consensus. The decision shall be announced by the presiding officials and recorded in the minutes.

The procedure for the organisation of work of governmental committees shall be defined by the Cabinet of Ministers of Ukraine.

## **Article 50. Main Functions and Powers of Governmental Committees**

Governmental committees shall:

- 1) consider and approve the concepts of proposed regulations and other documents to be developed;
- 2) consider proposed regulations and other documents submitted for consideration of the Cabinet of Ministers of Ukraine, regulate discrepancies relation to them and pass decisions on their preliminary approval or rejection or on their return for further development to the body in charge of its development; and
- 3) consider other issues related to formation and implementation of public policies in relevant areas;

Governmental committees shall be entitled to:

- 1) submit proposals on priority consideration of issues at meetings of the Cabinet of Ministers of Ukraine;
- 2) create, if necessary, subcommittees, expert commissions and task forces to consider certain issues within their competence;
- 3) receive, as established, information necessary for their work from executive authorities; and
- 4) invite to their meetings representatives of executive authorities, as well as other experts on the issues considered by the committee.

## **Article 51. Acts of the Cabinet of Ministers of Ukraine**

On the basis and for the compliance with the Ukrainian Constitution, laws of Ukraine, acts of President of Ukraine, the Cabinet of Ministers of Ukraine shall issue, within its competence, mandatory for execution resolutions and instructions.

Acts of the Cabinet of Ministers of Ukraine of the normative nature shall be issued in the form of resolutions of the Cabinet of Ministers of Ukraine.

Acts of the Cabinet of Ministers of Ukraine on organisation, instruction and other current issues shall be issued in the form of instructions of the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine shall organise and oversee the execution of its acts either directly or through central executive authorities, local state administrations or other bodies subordinated to it.

*Effect of acts* issued by the Cabinet of Ministers of Ukraine *may be suspended* by the President of Ukraine *on the motives of their incom-*

*pliance with the Ukrainian Constitution. Concurrently, the President of Ukraine shall request that the Constitutional Court of Ukraine check the constitutionality of such acts.*

Acts of the Cabinet of Ministers of Ukraine may be recognised by the Constitutional Court of Ukraine unconstitutional either in full, or in some of its parts. Such acts or their individual provisions shall be invalidated since the day when the Constitutional Court of Ukraine passes a ruling on their unconstitutionality.

Acts of the Cabinet of Ministers of Ukraine or their individual provisions may be appealed to the **administrative court within its territorial jurisdiction** and in accordance with the procedure established by law, if such acts or their individual provisions violate human and civil rights and freedoms.

#### **Article 52. Development of Draft Acts of the Cabinet of Ministers of Ukraine**

The right to initiate adoption of acts by the Cabinet of Ministers of Ukraine shall belong to members of the Cabinet of Ministers of Ukraine, central executive authorities, the Council of Ministers of the Crimean Autonomous Republic, heads of oblast, Kyiv and Sevastopol city state administrations.

Draft resolutions of the Cabinet of Ministers of Ukraine shall be prepared by ministries, and if necessary – with participation of other central executive authorities, as well as members of parliament of Ukraine, researchers, and other experts on their consent.

#### **Article 53. Consideration of Issues and Decision Making at the Meetings of the Cabinet of Ministers of Ukraine**

The Cabinet of Ministers of Ukraine shall pass decisions in the form of resolutions and instructions by vote at its meetings.

Decisions of the Cabinet of Ministers of Ukraine shall be passed by the majority of votes from the total number of members of the Cabinet of Ministers of Ukraine. In case of a tie, the Prime Minister of Ukraine shall have a decisive vote.

In case of an urgent need, on the decision of the Prime Minister of Ukraine, an instruction of the Cabinet of Ministers of Ukraine may be passed by means of a written survey of members of the Cabinet of Ministers of Ukraine. A draft of such an instruction shall be sent to all members of the Cabinet of Ministers of Ukraine.

**Article 54. Official Promulgation, Effectuation and Registration of Acts of the Cabinet of Ministers of Ukraine**

Upon their signature by the Prime Minister of Ukraine, resolutions of the Cabinet of Ministers of Ukraine shall be forwarded to the Ministry of Justice of Ukraine for their inclusion, in accordance with the established procedure to the Single State Regulation Register and shall be published in the *Uryadovy Kurier*<sup>11</sup> newspaper and the *Ofit-siynyi Visnyk Ukrayiny*<sup>12</sup>.

Resolutions of the Cabinet of Ministers of Ukraine shall come into force after their official publication if they envisage no later date of their effectuation. In cases envisaged by law, resolutions of the Cabinet of Ministers of Ukraine or their individual provisions that contain limited access information, shall not be subject to publication and shall come into force as soon as their implementers are notified of them, if they envisage no later date of their effectuation.

Instructions of the Cabinet of Ministers of Ukraine shall come into force upon their adoption, if they envisage no later date of their effectuation.

Implementers of the instructions of the Cabinet of Ministers of Ukraine shall be duly notified of them by the Secretariat of the Cabinet of Ministers of Ukraine, and if necessary, they shall be promulgated in another manner.

**Article 55. Permanent and Temporary Bodies of the Cabinet of Ministers of Ukraine**

To ensure efficient exercise of its powers, the Cabinet of Ministers of Ukraine can set up permanent consultative, advisory and other support bodies.

To prepare proposals on solution of certain public administration issues, develop draft laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, as well as to fulfil certain instructions, the Cabinet of Ministers of Ukraine may set up temporary and other working or advisory bodies.

Members of parliament of Ukraine, civil servants, researchers and other experts can be involved in permanent and temporary bodies of the Cabinet of Ministers of Ukraine on a voluntary basis.

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<sup>11</sup> The official newspaper of the Ukrainian Government.

<sup>12</sup> The official weekly of the Ministry of Justice of Ukraine publishing all official acts issued by Ukrainian authorities.



Employees of bodies, institutions, and organisations outside the system of executive authorities shall be involved into the work of the consultative, advisory, and other support bodies of the Cabinet of Ministers of Ukraine on their consent.

If necessary, the Cabinet of Ministers of Ukraine shall provide such bodies with premises, equipment and attract support staff from the number of employees of relevant central authorities or persons specially hired for this.

Rights, functions, and the personal composition of such bodies shall be defined by the Cabinet of Ministers of Ukraine.

Experts involved in the work in task forces for preparation of draft legislative acts can be remunerated at the expense of funds envisaged for the activities of the Cabinet of Ministers of Ukraine.

### **Article 56. Secretariat of the Cabinet of Ministers of Ukraine**

Organisation, expert and analytical, legal, information, and material and technical support to the Cabinet of Ministers of Ukraine is provided by the Secretariat of the Cabinet of Ministers of Ukraine.

The Secretariat of the Cabinet of Ministers of Ukraine shall ensure preparation and conduction of meetings of the Cabinet of Ministers of Ukraine, governmental committees, and activities of members of the Cabinet of Ministers of Ukraine. The Secretariat shall be responsible for timely provision of draft laws, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, other documents for their preparation for consideration by the Cabinet of Ministers of Ukraine, governmental committees, their permanent and temporary bodies.

The Secretariat of the Cabinet of Ministers of Ukraine shall be headed by the State Secretary of the Cabinet of Ministers of Ukraine, who is appointed and dismissed by the **Cabinet of Ministers of Ukraine** on the proposal of the Prime Minister of Ukraine in accordance with the procedure established by the legislation on the civil service.

The State Secretary of the Cabinet of Ministers of Ukraine shall have the first deputy and deputies appointed and dismissed by the **Cabinet of Ministers of Ukraine** on the proposal of the Prime Minister of Ukraine in accordance with the procedure established by the legislation on the civil service. Proposals on the appointment of the first deputy and deputies of the State Secretary of the Cabinet of Ministers of Ukraine shall be submitted to the Prime Min-

ister of Ukraine by the State Secretary of the Cabinet of Ministers of Ukraine.

The staff of the Secretariat of the Cabinet of Ministers of Ukraine shall be appointed and dismissed by the State Secretary of the Cabinet of Ministers of Ukraine in accordance with the legislation on the civil service.

Members of the Cabinet of Ministers of Ukraine shall be entitled to patronage services.

The personal composition of patronage services shall be formed by members of the Cabinet of Ministers of Ukraine. The patronage services of the Prime Minister of Ukraine, Vice Prime Ministers of Ukraine and ministers that do not head ministries shall be set up **within** the Secretariat of the Cabinet of Ministers of Ukraine. Their staff shall be appointed by the State Secretary of the Cabinet of Ministers of Ukraine. The patronage services of ministers shall be set up **within central secretariats** of relevant ministries of Ukraine.

Rights, duties and responsibility of the staff of the Secretariat of the Cabinet of Ministers of Ukraine shall be defined by the legislation on the civil service and the Regulation on the Secretariat of the Cabinet of Ministers of Ukraine approved by the Cabinet of Ministers of Ukraine.

Termination of powers of the Cabinet of Ministers of Ukraine shall be not used to terminate employment agreements with the staff of the Secretariat of the Cabinet of Ministers of Ukraine, **with the exception of the staff of patronage services of members of the Cabinet of Ministers of Ukraine.**

The structure of the Secretariat of the Cabinet of Ministers of Ukraine shall be approved by the State Secretary of the Cabinet of Ministers of Ukraine **on the reconciliation** with the Prime Minister of Ukraine.

The Secretariat of the Cabinet of Ministers of Ukraine shall be a legal entity. ***The State Secretary of the Cabinet of Ministers of Ukraine shall act on behalf of the Secretariat of the Cabinet of Ministers of Ukraine as a legal entity.***

The costs of expenditures for the Secretariat of the Cabinet of Ministers of Ukraine shall be approved by the Cabinet of Ministers of Ukraine on the proposal of the State Secretary of the Cabinet of Ministers of Ukraine within budget allocations for the **support of activities** of the Cabinet of Ministers of Ukraine.

## **Section X. SOCIAL AND OTHER SUPPORT TO MEMBERS OF THE CABINET OF MINISTERS OF UKRAINE**

### **Article 57. Remuneration and Leaves of the Cabinet of Ministers of Ukraine**

Conditions of the remuneration of members of the Cabinet of Ministers of Ukraine, amounts of salaries, additional payments, bonuses and material aid shall be defined in accordance with the **legislation**.

Members of the Cabinet of Ministers of Ukraine shall be entitled to the annual leave of forty five calendar days with the payment of health care aid equalling to the double **average monthly** salary.

### **Article 58. Material and Day-to-Day Support to Members of the Cabinet of Ministers of Ukraine**

Any member of the Cabinet of Ministers of Ukraine shall be provided with a service car and shall be entitled to use it 24 hours a day.

If necessary, a member of the Cabinet of Ministers of Ukraine shall be ensured with a service residence and communication in accordance with the procedure established by law.

Any member of the Cabinet of Ministers of Ukraine shall be entitled to receive tickets out of turn for all kinds of intercity transport within Ukraine.

Medical care of members of the Cabinet of Ministers of Ukraine and sanatorium and resort cards shall be provided to them as established.

Life and health of any member of the Cabinet of Ministers of Ukraine shall be subject to mandatory state insurance equalling to ten year money support. The insurance conditions shall be established in accordance with the law.

The Prime Minister of Ukraine, the First Vice Prime Minister of Ukraine, Vice Prime Ministers of Ukraine, the Minister of Foreign Affairs of Ukraine, and, if necessary, other members of the Cabinet of Minister of Ukraine and their family members shall be ensured with personal security.

**For the period of their powers, members of the Cabinet of Ministers of Ukraine shall receive diplomatic passports as established.**

### **Article 59. Social Guarantees in Case of Termination of Powers of the Prime Minister of Ukraine**

If the Prime Minister of Ukraine is dismissed due to the expiry of his/her powers or due to per-term termination of powers of the Prime Minister of Ukraine due to circumstance out of his/her control (pre-term termination of powers of the President of Ukraine), **he/she shall receive material support equalling to his/her salary including all established additional payments and bonuses**, received by the current Prime Minister of Ukraine, **until his/her employment**, but no longer than for one year.

If necessary, the former Prime Minister of Ukraine and his/her family members shall be ensured with bodyguards in accordance with the legislation.

Social guarantees, established by this Law, shall not be extended to the former Prime Minister of Ukraine convicted by court of a deliberate crime.

### **Article 60. Social Guarantees in Case of Termination of Powers of Other Members of the Cabinet of Ministers of Ukraine**

If any member of the Cabinet of Ministers of Ukraine is dismissed due to changes in the composition of the Cabinet of Ministers of Ukraine, termination of the period of powers of the Cabinet of Ministers of Ukraine or pre-term termination of powers of the Cabinet of Ministers of Ukraine due to reasons independent from it (pre-term termination of powers of the President of Ukraine, death or resignation of the Prime Minister of Ukraine), **such a member shall be paid material support equal to the salary including all established additional and extra payments received by the relevant current member of the Cabinet of Ministers for the period until such a member of the Cabinet of Ministers is employed**, but for no longer than one year.

Social guarantees established by this Law shall not be extended to any former member of the Cabinet of Ministers of Ukraine who has been convicted by court of a deliberate crime.

### **Article 61. Pension and Other Support to Former Members of the Cabinet of Ministers of Ukraine**

If any member of the Cabinet of Ministers of Ukraine resigns to pension, as well as when former members of the Cabinet of Minis-

ters of Ukraine achieve the pension age, if the powers of such Cabinet of Ministers were terminated on the basis of reasons set in Article 62.1, such a member shall be assigned the pension and other payments that shall be paid in the amount and in accordance with the procedures established by law.

Former members of the Cabinet of Ministers of Ukraine of the pension age shall be served by state health care institutions and provided with resort care in accordance with procedures established by law.

## **Section XI. FINAL PROVISIONS**

1. This Law comes into force *with the enactment of the Law of Ukraine on Constitutional Amendments as of 8 December 2004.*

2. Within two months upon enactment of this Law, the Cabinet of Ministers of Ukraine shall:

- 1) develop and submit for the consideration of the Verkhovna Rada of Ukraine its proposals on amending laws of Ukraine due to adoption of this Law;
- 2) bring its regulations into compliance with this Law;
- 3) pass regulations proceeding from this Law.

## **ANNEX 6. Draft Law<sup>13</sup> on Ministries and Other Central Executive Authorities**

### **LAW OF UKRAINE on Ministries and Other Central Executive Authorities**

In accordance with the Ukrainian Constitution, this Law defines types, main objectives, principles and organisation of operation of ministries and other central executive authorities of Ukraine, their general functions and powers, as well as principles of relations with other public authorities and local self-government bodies.

#### **TITLE I. GENERAL PROVISIONS**

##### **Article 1. Central Executive Authority of Ukraine**

A central executive authority of Ukraine (further referred to as «a central executive authority») shall be an executive authority within the jurisdiction of the Cabinet of Ministers of Ukraine which is set up, reorganised, and abolished by the President of Ukraine on the proposal of the Prime Minister of Ukraine. Its chief official shall be appointed and dismissed by the President of Ukraine on the proposal of the Prime Minister of Ukraine

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<sup>13</sup> The draft law is as of 20.07.05 and without the changes introduced by the constitutional amendments of 8 December. The italicised provisions are open to discussion.

Powers of central executive authorities shall extend to the entire territory of Ukraine.

## **Article 2. Ministries of Ukraine**

The ministries of Ukraine (further referred to as «the ministries») shall be the leading authorities in the system of central executive authorities that perform functions on formation and implementation of public policies in the relevant sectors of public administration aiming at execution of the Action Programme of the Cabinet of Ministers of Ukraine.

All public administration issues attributed to the responsibility of the Cabinet of Ministers of Ukraine by the Constitution and laws of Ukraine shall be divided among the ministries but for the issues attributed to the competence of the members of the Cabinet of Ministers that head no ministries.

The ministries shall be directly accountable to, and under the control of the Cabinet of Ministers of Ukraine, as well as the President of Ukraine within his/her constitutional powers.

## **Article 3. Other Central Executive Authorities**

Other central executive authorities may be set up for the performance of specific functions aiming at implementation of public policy.

Other central executive authorities shall be accountable to, and under the control of the Cabinet of Ministers of Ukraine through the direction and coordination of their operation by relevant members of the Cabinet of Ministers of Ukraine representing in the Cabinet of Ministers of Ukraine the issues attributed to the competence of **these authorities**.

As to the Security Service of Ukraine, the Antimonopoly Committee of Ukraine, the State Property Fund of Ukraine, and the State Television and Radio Broadcasting Committee, their special organisation, powers, and operation procedures shall be set by the Constitution and special laws.

## **Article 4. Main Objectives of Ministries and Other Central Executive Authorities**

In the relevant public administration sectors, the ministries and other central executive authorities shall aim at the following main objectives:

- 1) to forecast evolution and develop proposals on formation of public policy;
- 2) to implement the Action Programme of the Cabinet of Ministers of Ukraine;
- 3) to develop concepts of draft laws and government decisions;
- 4) to undertake normative and legal regulation in accordance with laws and resolutions of the Cabinet of Ministers of Ukraine;
- 5) to organise implementation of the nationwide programmes;
- 6) to coordinate and direct other executive authorities, including central authorities;
- 7) to oversee and control implementation of legislation and secure implementation of the single public policy.

Other central executive authorities shall aim at the implementation of the Ukrainian Constitution and other legislative acts as their main objective.

#### **Article 5. Principles of Organisation and Operation of Central Executive Authorities**

Organisation and operation of central executive authorities shall be based on the following principles:

- 1) rule of law: in their activities, central executive authorities shall aim at the security of human and civil rights and be governed by the principles of humanism and justice;
- 2) legality: central executive authorities shall exercise their powers within the limits and in accordance with the procedure set by the Constitution and laws of Ukraine;
- 3) openness: central executive authorities shall operate openly guaranteeing and securing public access to the information on their activities. Secret (closed) decisions shall be passed only in the cases defined by law. Central executive authorities shall be obliged to provide the public with regular reports on their operation, as well as publicly discuss the draft decisions that affect civil rights and freedoms;
- 4) security of the public policy integrity: central executive authorities shall implement the public policy developed by the Cabinet of Ministers of Ukraine on the basis of the principles set by the Verkhovna Rada of Ukraine and with due consideration of the constitutional powers of the President of Ukraine;



5) controlled operation: operation of central executive authorities shall be subject to the internal control and control of other public authorities;

6) efficiency: central executive authorities shall achieve the required results by accomplishing the tasks set for them at the lowest cost possible;

7) **strategic planning: central executive authorities shall operate with due account of short- and long-term development forecasts of relevant public administration sectors;**

8) decentralisation and deconcentration: central executive authorities shall take necessary measures by having transferred (delegated) the maximum of powers on provision of administrative services, performance of other administrative functions and public property management to the lower executive authorities, local self-government bodies, institutions and organisations, including also those not run by the state;

9) sustainable development: central executive authorities shall ensure careful attitude to human, natural, financial, and other resources, and care for the future generations;

10) constant improvement and modernisation: central executive authorities shall be constantly improving their organisation and operation, and enhancing their efficiency.

## **Article 6. Legal Basis for Operation of Central Executive Authorities**

Powers, organisation and operation procedures of public executive authorities shall be set up by the Ukrainian Constitution, this and other laws of Ukraine.

In their activities, central executive authorities shall be governed by the Ukrainian Constitution, this and other laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine passed in accordance with the Constitution and laws of Ukraine.

On the basis of Ukrainian laws, the Cabinet of Ministers of Ukraine shall approve regulations on every central executive authority setting its objectives, powers, territorial organisation and other issues related to its operation.

### **Article 7. Setup, Reorganisation and Abolishment of Central Executive Authorities**

Central executive authorities shall be set up, reorganised and abolished by the President of Ukraine on the proposal of the Prime Minister of Ukraine in accordance with the Ukrainian Constitution, the Law of Ukraine on the Cabinet of Ministers of Ukraine, this and other laws of Ukraine within the funds envisaged for the maintenance of executive authorities.

A proposal on the setup or reorganisation of any central executive authority shall contain suggestions on the main functions and powers of the central executive authority setup or reorganised, as well as the cap number of staff and the cap amount of allocations for its maintenance. **As a rule, any central executive authority shall be set up or reorganised since the new budget year.**

A proposal on the abolishment of any central executive authority shall ground the necessity for the abolishment of the relevant central executive authority and contain suggestions either on the redistribution of its functions and powers between other executive authorities, or the expedience to reject the performance of such functions by the state.

**The procedure for the setup, reorganisation and abolishment of central executive authorities shall be set by the Cabinet of Ministers of Ukraine.**

### **Article 8. Location and Symbols of Central Executive Authorities**

Central executive authorities shall be located in the Capital City of Ukraine — Kyiv.

The buildings, housing central executive authorities, shall be marked by single standard plaques with the State Coat of Arms of Ukraine and names of the authorities located therein. The State Flag of Ukraine shall be raised on the building.

Central executive authorities shall be legal entities and have their own balances, accounts with the Ukrainian State Treasury bodies, and stamps bearing the State Coat of Arms of Ukraine and their names.

The stamp and plaque models for central executive authorities shall be approved by the Cabinet of Ministers of Ukraine.

### **Article 9. Staff of Central Executive Authorities**

The staff list of central executive authorities shall include public political positions in the cases envisaged by law, positions of civil servants and positions of members of staff employed in accordance with the labour legislation.

Requirements to officials occupying public political positions at central executive authorities shall be set by the Constitution, this and other laws of Ukraine.

Requirements to officials occupying civil servant positions at central executive authorities shall be set up by the Ukrainian Constitution and the civil service legislation.

The persons eligible to appointment as chief officials and deputy chief officials of central executive authorities shall be Ukrainian citizens having higher education and speaking the state language.

Chief officials of central executive authorities shall not be entitled to combine their service activities with other work, with the exception of teaching, research and art in their off-business hours. They shall not be entitled to be members of management or supervisory bodies of any commercial company or any other profit-making organisation. This provision shall also extend to deputy ministers.

## **TITLE II. MINISTRIES**

### ***Chapter 1. ORGANISATION OF MINISTRY ACTIVITIES***

#### **Article 10. System and Composition**

Any ministry shall include a minister, deputy ministers and an apparatus. The minister and deputy ministers shall be supported by a minister patronage service set up for this purpose

The ministry system shall include government bodies, as well as institutions, organisations and companies. In the cases envisaged by law, territorial bodies may be set up within the ministry system.

#### **Article 11. Minister**

The minister shall be a member of the Cabinet of Ministers of Ukraine and shall head a ministry. The minister shall be accountable to, and under the control of the Cabinet of Ministers of Ukraine, and responsible to the Prime Minister of Ukraine for the status of the rel-

evant public administration sector. The minister shall also be responsible to the President of Ukraine as concerns the issues related to the constitutional powers of the President of Ukraine.

The procedure for the appointment of, and acquisition of powers by the ministers, requirements to the candidates for ministers, termination of the minister's powers shall be set by the Ukrainian Constitution and the Law of Ukraine on the Cabinet of Ministers of Ukraine.

*The Minister shall:*

1) head the relevant ministry and manage its operation; be responsible for the status of the relevant public administration sector and for the accomplishment of tasks set for the ministry;

2) define public policy priorities for the relevant public administration sector in accordance with the Action Programme of the Cabinet of Ministers of Ukraine and organise their implementation;

3) direct and coordinate central executive authorities in accordance with Article 37 hereof;

4) file for the consideration of the Cabinet of Ministers of Ukraine proposals on the regulation of issues related to the execution of the minister's powers as the chief official of the ministry, as well as powers vested in the minister by legislation in terms of direction and coordination of other executive authorities;

5) on the minister's own initiative or on the instruction of the Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine, **the First Vice Prime Minister of Ukraine**, a Vice Prime Minister of Ukraine, prepare issues for the consideration of the Cabinet of Ministers of Ukraine;

6) participate in deliberations at the meetings of the Cabinet of Ministers of Ukraine and make proposals on agendas of such meetings;

7) participate in the meetings of government committees;

8) on the instruction of the Prime Minister of Ukraine, represent the Cabinet of Ministers of Ukraine in relations with public authorities, local self-government bodies, companies, institutions and organisation inside and outside Ukraine;

9) in compliance with the powers provided as established, conduct negotiations and sign international treaties of Ukraine;

10) on the decision of the President of Ukraine or the Cabinet of Ministers of Ukraine, manage relevant advisory and other collective bodies;

11) approve programmes and plans of the ministry operation; con-

sider and approve reports issued by the ministry state secretary on their execution;

12) represent the ministry in relations with the Verkhovna Rada of Ukraine, other bodies, institutions, and organisations inside and outside Ukraine;

13) submit, as established, for the consideration of the Cabinet of Ministers of Ukraine concepts of draft laws, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine developed by the ministry on the issues related to the regulation of relations in the relevant public administration sector;

14) submit to the Prime Minister of Ukraine proposals on appointment and dismissal of deputy ministers;

15) submit to the Prime Minister of Ukraine proposals on the reorganisation of the ministry;

16) on the proposal of the ministry state secretary, make decisions on the distribution of budget funds managed by the ministry; consider and approve the report issued by the ministry state secretary on the execution of such decisions;

17) **on the proposal of the ministry state secretary**, approve the apparatus structure;

18) submit to the Cabinet of Ministers of Ukraine proposals on the setup, reorganisation and abolishment of government bodies within the ministry system;

19) submit to the Cabinet of Ministers of Ukraine proposals on the appointment and dismissal of chief officials of government bodies within the ministry system; appoint and dismiss deputy chief officials of government bodies on the proposals of their chief officials;

20) direct and coordinate the operation of government bodies within the ministry system;

21) be entitled to cancel orders of chief officials of government bodies within the ministry system if they fail to comply with the legislation;

22) be entitled to require from other central executive authorities, the Council of Ministers of the Crimean Autonomous Republic and local state administrations that they cancel their acts and acts of their subordinated bodies;

23) on the proposal of the ministry state secretary, create, reorganise, and abolish institutions, organisations and companies within the ministry system and approve its regulations (charters);

24) on the proposal of the ministry state secretary, appoint and dismiss, as established by law, chief officials of institutions, organisations and companies within the ministry system;

25) appoint and dismiss non-staff advisors (up to 10 persons) and set their working procedure;

27) initiate, as established, disciplinary charges against the ministry state secretary; impose disciplinary charges on chief officials of government bodies, institutions, organisations and companies within the ministry system;

28) organise the work of the ministry board and chair its meetings;

29) recommend, as established, servants and employees of the ministry and subordinated bodies, institutions, organisations and companies that have made outstanding working achievements for a decoration by state awards of Ukraine and insignia of the President of Ukraine;

30) coordinate the operation of other central executive authorities on the issues within the competence of the ministry;

31) issue ministry acts;

32) report on the draft laws and other issues within the competence of the ministry at the Verkhovna Rada of Ukraine;

33) sign agreements with employer organisations and trade unions functions in the area of the minister's responsibility;

34) give instructions to deputy ministers, the ministry state secretary, *other officials of the ministry apparatus* and oversee their execution;

35) exercise other powers attributed to the competence of the ministry by laws of Ukraine, as well as perform other functions in accordance with acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

## **Article 12. Deputy Minister**

The deputy minister shall fulfil the minister's duties in terms of the ministry management when the minister is away or unable to exercise the minister's powers. The deputy minister shall also replace the minister at the meetings of the Cabinet of Ministers of Ukraine (with the right of advisory vote) and government committees and, on the instruction of the minister, represent the ministry in relations

with other public authorities and non-state organisations, as well as manage relevant advisory bodies of the ministry and perform other duties.

The position of the deputy minister shall be classified as a public political position. The requirements and restrictions concerning the combination of jobs set for the members of the Cabinet of Ministers of Ukraine shall also extend to the deputy minister.

The number of deputy minister positions in each ministry shall be defined by the Cabinet of Ministers of Ukraine on the proposal of the relevant minister, but not more than three. Duties between deputy ministers shall be distributed by the minister.

### **Article 13. Appointment and Termination of Powers of the Deputy Minister**

The deputy minister shall be appointed by the Cabinet of Ministers of Ukraine **on the minister's proposal reconciled with the Prime Minister of Ukraine.**

The deputy minister's powers shall be terminated in the following cases:

- 1) **resignation due to the appointment of a new minister;**
- 2) voluntary dismissal or dismissal due to the resignation on political or personal motives;
- 3) dismissal by the Cabinet of Ministers of Ukraine.

**If a new minister is appointed, the deputy minister shall immediately file a resignation request.** The resignation request shall be submitted to the minister to be submitted thereby within three days for the consideration of the Cabinet of Ministers of Ukraine. The deputy minister whose resignation is accepted may continue exercising his/her powers on the instruction of the minister and on his/her consent until a new deputy minister acquires his/her powers.

### **Article 14. Ministry Apparatus**

The ministry apparatus shall support the minister in performance of his/her functions and exercise of his/her powers. It shall also control the implementation of the legislation and the Action Programme of the Cabinet of Ministers of Ukraine in the area of the minister's responsibility.

The apparatus shall be headed by the state secretary and shall include departments and a secretariat.

### **Article 15. Ministry State Secretary**

The ministry state secretary is the chief civil servant official of the ministry. The ministry state secretary shall manage the ministry apparatus. The state secretary shall be accountable to, and under the control of the minister.

Main tasks of the state secretary shall include:

- support to the activities of the minister as the chief official of the ministry and a member of the Cabinet of Ministers of Ukraine;
- organisation of the day-to-day work related to the accomplishment of the tasks set for the ministry, including the oversight of the implementation of the legislation and the Action Programme of the Cabinet of Ministers of Ukraine within the ministry system; and
- stability and succession in the operation of the ministry apparatus.

In accordance with the tasks set therefore, the ministry state secretary shall:

- 1) organise the work of the ministry apparatus, including the document flow;
- 2) ensure the execution of orders and instructions of the minister;
- 3) organise and oversee the implementation of laws, acts of President of Ukraine, acts and instructions of the Cabinet of Ministers of Ukraine;
- 4) develop and submit for the minister's approval programmes and plans of the ministry's operation; organise and oversee their execution; report to the ministry on their execution;
- 5) ensure the preparation of concepts of draft laws of Ukraine and acts of the Cabinet of Ministers of Ukraine developed by the ministry, as well as other documents, and submit them for the minister's consideration;
- 6) organise the development of regulations passed by the ministry and submit them for the minister's signature;
- 7) submit proposals to the minister on the ministry structure;
- 8) approve the regulation on the ministry structural units;
- 9) submit for minister's approval the regulations (charters) on institutions, organisations and companies within the ministry system;
- 10) submit to the minister proposals on the distribution of the



budget funds managed by the ministry; ensure and oversee the execution of the minister's decisions on the distribution of such funds and report to the minister thereon;

11) manage budget funds envisaged for the maintenance of the ministry apparatus and inform the minister on their use;

12) approves the list of staff and the estimates of the ministry expenditures on the agreement with the Ministry of Finance;

13) in accordance with the procedure set by the civil service legislation, appoint and dismiss civil servants of the ministry apparatus; employ and dismiss members of the ministry staff in accordance with the labour legislation;

14) reconcile appointments and dismissals of chief officials of the relevant structural units of oblast, Kyiv and Sevastopol city administrations;

15) approve job descriptions of chief officials of the ministry apparatus structural units;

16) in accordance with the established procedure, regulate the conferment of relevant civil service ranks to civil servants of the ministry apparatus and encouragement thereof;

17) in accordance with the established procedure, regulate the imposition of disciplinary charges on the civil servants of the ministry apparatus;

18) form and approve the staff reserve of the ministry apparatus and the management of government bodies and institutions; ensure organisation of ordinary and continuous training of ministry servants;

19) ensure implementation of the single public policy in civil service and perform other powers of the head of civil service of the authority in accordance with the legislation;

20) ensure protection of state secrets and undertake measures on mobilisation training within his/her powers envisaged by law;

21) perform functions on the management of the property within the ministry's responsibility;

22) represent the ministry as a legal entity;

23) receive, as established, information, documents and materials from other executive authorities, authorities of the Autonomous Crimean Republic, secretariats of the President of Ukraine, the Verkhovna Rada of Ukraine, judicial authorities, public prosecu-

tion offices, and local self-government bodies; and from state statistics bodies — statistics data necessary for the execution of the duties vested on the ministry; and

24) issue orders on the aspects within his/her competence and oversees their execution.

The ministry state secretary shall not be a member of a political party. The ministry state secretary shall not demonstrate his/her political views in public or be governed thereby when fulfilling his/her service duties.

If the state secretary is absent or is unable to exercise his/her powers due to other reasons, his/her duties shall be fulfilled by the head of the ministry secretariat or one of the deputy ministry state secretariats — chief officials of the ministry departments in accordance with the division of duties between them as set by the ministry state secretary.

#### **Article 16. Appointment and Dismissal of the Ministry State Secretary**

The ministry state secretary shall be appointed by the Cabinet of Ministers of Ukraine on the proposal of the State Secretary of the Cabinet of Ministers of Ukraine, agreed with the relevant minister for the period of no less than five years with the right of reappointment.

Candidates for ministry state secretaries shall be selected on the results of an open competition conducted in accordance with the procedure set by the Cabinet of Ministers of Ukraine.

Candidates for ministry state secretaries shall be Ukrainian citizens with higher education and the general job experience of no less than seven years including the management experience of no less than three years. The candidates shall also meet other requirements envisaged by the legislation.

The ministry state secretary may be dismissed in the cases of improper fulfilment of duties in accordance with the disciplinary liability procedure, termination of the period of his/her powers or impossibility to fulfil his/her duties due to the physical condition, conviction by court, **as well as on the basis of other grounds envisaged by the Law of Ukraine on the Civil Service.**

Termination of powers of the Cabinet of Ministers of Ukraine or

changes in its composition shall not be used as the grounds for the dismissal of the ministry state secretary.

### **Article 17. Ministry Departments**

A ministry department shall be the biggest structural unit of the ministry apparatus set up for the accomplishment of the main objectives of the ministry.

Directors of ministry departments shall manage the work on individual functional and sector priorities of the ministry operation and shall have relevant offices, sections and sector subordinated to them. Ex officio, directors of some departments shall be ministry deputy state secretaries. Directors of departments may have a deputy appointed by the ministry state secretary.

Heads of offices, sections and other structural units of the ministry apparatus shall be appointed and dismissed by the ministry state secretary in accordance with the procedure set by the civil service legislation.

Replacement of the minister or termination of powers of the ministry state secretary shall not be used as the grounds for the dismissal of the ministry apparatus staff.

### **Article 18. Ministry Secretariat**

The ministry secretariat shall provide legal, organisation and logistic support to the operation of the ministry and performance of other support functions. *The ministry secretariat shall include structural units in charge of the following issues:*

- 1) legal support;
- 2) information and analytical support;
- 3) budget and finance;
- 4) filing and IT;
- 5) staff;
- 6) international contacts and protocol;
- 7) mobilisation training;
- 8) information protection;
- 9) public procurements;
- 10) reception of citizens;
- 11) logistic support;
- 12) other support services.

*Ex officio, the head of the ministry secretariat is a ministry deputy state secretary. The head of the ministry secretariat is appointed and dismissed by the minister on the proposal of the state secretary in accordance with the procedure set by the civil service legislation.*

#### **Article 19. Minister Patronage Service**

With involvement of deputy ministers, the minister forms his/her patronage service of up to ten people within the remuneration fund defined by the Cabinet of Ministers of Ukraine. The staff of such patronage service is appointed by the ministry state secretary on the instruction of the minister.

The minister patronage service is an independent unit of the ministry apparatus that prepares materials required by the minister and deputy ministers, provides them with the information support, ensures communication with the ministry apparatus, organises meetings for the minister and deputy ministers and their contacts with the public and the mass media, communication with other members of the Cabinet of Ministers of Ukraine, as well as performs other functions set by the Regulation on the Patronage Service. Such Regulation shall be approved by the minister.

The staff of the minister patronage service shall not be entitled to instruct the ministry state secretary, heads, servants and members of staff of the ministry apparatus.

Civil servants of the ministry apparatus may be transferred to the patronage service on their consent. Other individuals may also be employed by the patronage service **through the conclusion of fixed-term labour contracts** signed by the ministry state secretary on the agreement with the minister.

The staff of the patronage service shall be dismissed due to the termination of powers of the minister or on other grounds envisaged by the labour legislation. If a member of the patronage service is dismissed due to the termination of powers of the minister, he/she shall receive a severance pay in the amount of their average salary. They shall also receive their average salary until they are employed but not longer than for three months. Upon their dismissal from the service, the civil servants transferred to the patronage service shall be renewed in their previous positions or other equivalent position.

## **Article 20. Consultative and Advisory Bodies of the Ministry**

The minister may set up permanent or temporary consultative and advisory bodies of the ministry in the form of commissions, councils etc for the discussion of development prospects for the relevant public administration sector, provision of academic recommendations and expert consultations, as well as other issues.

The ministry state secretary may set up working groups for the development of draft regulations and other documents and their expert analysis.

In addition to the civil servants and members of staff of the ministry, government bodies, institutions, organisations and companies making part of the ministry system, the consultative and advisory bodies of the ministry may involve representatives of other public authorities, local self-government bodies, academic institutions, and civil associations on their consent or on the consent of their management, including on the contractual basis.

## **Article 21. Ministry Board**

The ministry board is a permanent consultative and advisory body of the ministry. Its main objective is to provide information and analysis support for the definition of the ministry operation priorities, development of draft decisions, and forecast of the ministry operation results.

The ministry board shall include, *ex officio*, the minister (the chairman of the board), deputy ministers, the ministry state secretary, and heads of the government bodies subordinated to the minister. It shall also involve representatives of the relevant parliamentary committees, institutions, civil organisations, academics, and other individuals. The personal membership of the ministry board shall be approved by the minister.

**Meetings of the board shall take place on the decision of the minister as necessary, but no less than once a month.**

At its meetings, the board shall:

- 1) develop public policy recommendations for **the relevant public administration sector**;
- 2) discuss draft regulations and development programmes in the area of the minister's responsibility, as well as other documents of strategic importance;
- 3) discuss solutions of conflicts and other controversies within the ministry system or the relevant public administration sector;

4) organise academic and expert consultations and provide information on the issues of the ministry operation; and

5) consider other issues on the proposal of the members of the board.

### **Article 22. Ministry Territorial Bodies**

Within any ministry system, the Cabinet of Ministers of Ukraine may set up its territorial bodies. The ministry territorial bodies shall coordinate, oversee and control the operation of the ministry system in the relevant region and perform other functions envisaged by the regulation on the relevant ministry.

The ministries without territorial bodies shall exercise their powers on coordination, oversight and control of the operation of the ministry system in the regions through relevant units within local state administrations.

### **Article 23. Ministry Acts**

**Ministry acts are issued in the form of orders of minister. Ministry normative acts (instructions, regulations, rules etc) are approved by the order of minister.**

In the cases set by law, ministry acts shall be binding for other central executive authorities, local executive authorities, local self-government bodies, companies, institutions and organisations, independently of their ownership form, and citizens.

Ministry normative acts are developed, adopted and enacted as set by law.

Ministry normative acts are subject to registration by the Ministry of Justice as set by law.

Ministry acts or their individual provisions can be appealed by individuals and legal entities, local self-government bodies to the court as set by law.

## **Chapter 2. GENERAL ISSUES OF COMPETENCE**

### **Article 24. Definition of the Ministry Competence**

The ministry shall form and implement public policies in the public administration sector defined by the regulation on the ministry.

Any government bodies, institutions and companies shall be attrib-

uted to the ministry system by the Cabinet of Ministers of Ukraine, if another is not set by law.

When forming and implementing public policies in the national security sector, competition development, public property privatisation, TV and radio broadcasting, the ministries shall cooperate, in accordance with the law, with the Security Service of Ukraine, the Antimonopoly Committee of Ukraine, the State Property Fund of Ukraine, and the State TV and Radio Broadcasting Committee of Ukraine.

### **Article 25. General Functions and Powers of Ministries**

The ministries shall:

**1) form and implement public policies in relevant public administration sectors;**

2) take measures to ensure human and civil rights and freedoms;

3) take measures to improve the provision of administrative services in relevant public administration sectors;

4) develop and implement target development programmes in relevant public administration sectors;

5) participate in the development of the bill on the State Budget of Ukraine and ensure efficient use of budget funds provided for the development of relevant public administration sectors;

6) develop nationwide programmes for economic, scientific, technical, social, national and cultural development of Ukraine, protection of environment, and ensure their execution;

7) participate in the formation and implementation of policies related to the execution of works, service and delivery of products for the state purposes, as well as creation of state reserve funds for financial and logistic resources, and be the state customer of the indicated works and services;

8) submit, as established, proposals on transformation of taxation and pricing conditions, as well as special rules for privatisation and demonopolisation of companies in individual sectors;

9) develop relevant financial, economic, and other standards, as well as mechanisms of their introduction; approve state standards in accordance with the legislation;

10) participate in the formation and implementation of the anti-monopoly policy; participate in the implementation of privatisation programmes;

11) within the limits set by the legislation, manage public property objects;

12) independently or with involvement of employers of non-state companies, participate in negotiations and conclude sector agreements with employee representatives;

13) within the limits set by the legislation, ensure implementation of public policies on state secrets and control their preservation;

14) conduct methodological, scientific and practical seminars, and take other measures for the exchange of experience on the issues related to the relevant public administration sector;

15) participate in the implementation of other measures to ensure the defence capacity of the state; ensure the accomplishment of tasks on mobilisation training and mobilisation preparedness of the states within the limits set by the legislation;

16) help to bring the Ukrainian legislation into the compliance with its international commitments and international legal norms;

17) consider proposals, requests and complaints of citizens and legal entities;

18) exercise other powers envisaged by laws of Ukraine and perform other functions, including those defined by acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

## **Article 26. Delegation of Ministry Powers**

If necessary, the ministries may issue an act, if another is not envisaged by laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, to delegate its individual powers to its subordinated government bodies, territorial ministry bodies, **relevant structural** units within local state administrations, **and, in cases set by law, also to organisations and companies.**

When delegating their powers, the ministries must also transfer financial and material resources necessary for the proper execution of the powers delegated into the disposal of such bodies.

The ministries shall be responsible to the Cabinet of Ministers of Ukraine for the exercise of the powers delegated.

The subjects exercising the powers delegated shall be accountable to, and under the control of ministers in terms of their exercise of the powers delegated and their use of the funds and property transferred to them in support of the exercise of such powers.



### **Chapter 3. GOVERNMENT BODIES**

#### **Article 27. Functions and Legal Status of Government Bodies**

*Government bodies may be set up within the ministry system to manage individual subsections or areas of operation (a service), to provide registration, permission or other administrative services to individuals and legal entities (an agency), or to perform control and oversight functions (an inspection).*

*Government bodies shall be set up, reorganised and abolished by the Cabinet of Ministers of Ukraine on the proposal of the minister.*

Objectives, functions, subordination, accountability, funding procedures, existence of territorial bodies the government body and other issues related to its operation shall be set in the regulation on such body approved by the Cabinet of Ministers of Ukraine on the proposal of the relevant minister.

The model government body regulation shall be passed by the Cabinet of Ministers of Ukraine.

#### **Article 28. Head of Government Body**

Heads of government bodies (directors) shall be appointed and dismissed by the Cabinet of Ministers of Ukraine on the proposal of relevant ministers. Candidates for heads of government bodies shall be selected on the competition principles and as set by the civil service legislation.

Heads of government bodies (with the exception of agencies) shall be appointed for the period of five years with the right of reappointment.

*Heads of agencies shall be appointed for the period defined in the contract concluded with the minister, but for no more than five years with the right of reappointment. Heads of agencies shall be considered appointed since the moment defined in the contract, but no earlier than the day when this contract is approved by the Cabinet of Ministers of Ukraine.*

The head of any government body shall:

- 1) manage the operation of the government body and be responsible for the compliance with the legislation by the government body;
- 2) appoint and dismiss the body's civil servants; and employ and dismiss the body's staff;

3) submit proposals to the minister on the normative regulation necessary for the operation of the government body;

4) approve, on the agreement of the minister, the structure of the government body; on the agreement of the minister and the Minister of Finance, approve the list of staff and the estimates of the government body, and oversee the execution thereof;

5) define the responsibilities of deputy heads of the government body and deputy heads of structural units of the government body; approve regulations on structural units;

6) impose disciplinary charges on heads of structural units and other members of staff of the government body, with the exception of deputy heads of the government body;

7) sign orders issued within the competence of the government body and organise the revision of their execution; and

8) exercise other powers in accordance with this and other legislative acts.

The head of government body shall have deputies appointed and dismissed by the relevant minister on the proposal of the head of government body.

### **Article 29. Contract with the Head of Agency**

*The minister and the head of agency shall sign a contract setting the following:*

*1) aims of the agency;*

*2) objectives of the agency for the current year and its perspective tasks;*

*3) funding for the performance of the agency functions;*

*4) quantity and quality indicators of the agency operation, including the indicators for the envisaged amount of services, the cost of services and quality standards;*

*5) assessment criteria for the agency operation;*

*6) accountability procedure;*

*7) encouragement and punishment procedure for the agency civil servants and members of staff depending on their contract execution assessment;*

*8) special provisions to allow the use of resources at the end of the financial year, including the procedure for the use of the extra plan revenues;*

9) contract amendment dates, terms and procedures; and

10) other issues considered important by the minister and the head of agency.

*Membership changes in the Cabinet of Ministers of Ukraine shall have no effect on the contract.*

*The contract shall be open for public access.*

### **Article 30. Ministry Oversight of the Government Body**

The minister in charge of the government body operation shall oversee such operation and shall be empowered to:

1) approve the government body's operation and development strategy;

2) reconcile the government body's estimates;

3) approve cap number of civil servants and members of staff of the government body;

4) assess the government body operation and, on the basis of such assessment, submit proposals to the Cabinet of Ministers of Ukraine on encouragement, decoration or disciplinary punishment, including the dismissal, of the head of government body; and

5) control tariffs for the paid services provided by the government body.

The head of government body shall report to the minister on the government body operation and the use of funds as set by the government body regulation.

The minister may instruct relevant officials of the ministry apparatus to be in charge of the oversight of the government body operation.

To exercise their powers, the minister and the officials in charge of the government body oversight shall be entitled to address a request to the government body and receive any information on its operation.

The ministry officials shall not be entitled to instruct or take any other actions to directly interfere into the government body operation undertaken as set by the law and the Regulation thereon.

### **Article 31. Territorial Units of Government Bodies**

Territorial units of government bodies may be set up in the Crimean Autonomous Republic, oblasts, districts, cities of Kyiv and Sevastopol and their boroughs, and other towns/cities. If necessary, single territorial units of government bodies may be set up for a number

of oblasts, districts, districts and towns/cities or town/city boroughs. Boundaries of territorial bodies are set and changed by heads of government bodies on the agreement with the minister and as set by the body regulation.

Heads of territorial units of government bodies shall be appointed and dismissed by heads of government bodies as set by the civil service legislation.

Regulations on territorial units shall be approved by heads of government bodies.

### **Article 32. Acts of Government Bodies**

Heads of government bodies and heads of territorial units of government bodies shall issue orders within their powers related to the internal organisation of the relevant body operation.

Upon consideration of individual cases of individuals and legal entities, the government body and its territorial office officials shall pass (implement) administrative acts.

Any administrative act of a government body official may be appeal to the head of the relevant territorial unit or the head of government body. An administrative act of the head of government body may be appealed to the relevant minister.

Complaints of individuals and legal entities shall be considered by specialised appeal sections set up within agencies and inspections, including with involvement of representatives of the public. The procedure for the formation and organisation of operation of such sections shall be set by the government body regulation.

Acts of government bodies or their individual provisions can be appealed by individuals and legal entities to the court as set by law.

### **Article 33. Special Rules for Government Body Funding**

Maintenance expenditures of government bodies shall be funded by the state budget.

Proceeds received by agencies from the service provision shall be used for the organisation of such service provision by including such proceeds into the State Budget of Ukraine as set and in the amount set by the Cabinet of Ministers of Ukraine.

### **TITLE III. ORGANISATION OF OPERATION OF OTHER CENTRAL EXECUTIVE AUTHORITIES**

#### **Article 34. Composition and System of Other Central Executive Authorities**

Other central executive authorities shall consist of departments, offices, sections, and secretariats.

**Criteria for the formation of the apparatus of the other central executive authorities shall be set by the Cabinet of Ministers of Ukraine.**

Territorial units may be set up within the system of other central executive authority.

In addition to territorial units, the system of the other central executive authority may also include institutions, organisations and companies.

#### **Article 35. Appointment and Dismissal of Heads of Other Central Executive Authorities**

Heads of other central executive authorities shall be appointed and dismissed by the President of Ukraine on the proposal of the Prime Minister of Ukraine in accordance with the Constitution of Ukraine, the Law of Ukraine on the Cabinet of Ministers of Ukraine and the civil service legislation.

Candidates for heads of other central executive authorities shall be selected on the basis of a competition run in accordance with the civil service legislation. They shall also be considered by the Cabinet of Ministers of Ukraine.

Heads of the other central executive authorities shall be dismissed on the grounds envisaged by the civil service legislation.

#### **Article 36. Powers of Heads of Other Central Executive Authorities**

The head of any other central executive authority shall:

1) manage the authority's operation and be responsible for the accomplishment of its tasks;

2) organise and oversee the execution of laws, acts of President of Ukraine, acts and instructions of the Cabinet of Ministers of Ukraine and ministers;

3) represent the central executive authority in relations with other authorities, institutions, and organisation inside and outside Ukraine;

4) manage the budget funds envisaged to support the authority's operation;

5) approve the authority's structure, unless it is directed and coordinated by one of the ministers;

6) approve, on the agreement with the Ministry of Finance, the authority's list of staff and its estimates;

7) approve regulations on the authority's structural and territorial units;

8) create, reorganise, and abolish institutions, organisations and companies within the authority's system, approve their regulations (charters); appoint and dismiss their chief officials;

9) appoint and dismiss the authority's civil servants as set by the civil service legislation; employ and dismiss the authority's staff as set by the labour legislation;

10) form and approve the authority's staff reserve, ensure organisation of ordinary training and retraining and continuous training of the authority's civil servants;

11) regulate, as established, the conferment of relevant civil service ranks to the authority's civil servants, and the imposition of disciplinary charges on the authority's civil servants and staff;

13) manage the authority's property;

14) ensure protection of state secrets and take measures on mobilisation training within the powers envisaged by law;

15) within his/her powers, issue orders and oversee their execution;

16) exercise other powers attributed to his/her competence by laws of Ukraine, and perform other functions as set by acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

Heads of other central executive authorities shall have deputies in the number determined by the Cabinet of Ministers of Ukraine. Deputy heads of central executive authorities shall be appointed and dismissed by the Cabinet of Ministers of Ukraine as set by the civil service legislation.

### **Article 37. Direction and Coordination of Other Central Executive Authorities Operation**

On the decision of the Cabinet of Ministers of Ukraine, operation

of other central executive authorities shall be directed and coordinated by one of the ministers through:

1) formation of public policies in the relevant area and oversight of their implementation by other central executive authorities;

2) submission for the consideration of the Cabinet of Ministers of Ukraine of draft regulations developed by other central executive authorities;

3) reconciliation of draft regulations of other central executive authorities;

4) definition of procedures for the information exchange between the ministries and other central executive authorities;

5) approval of other central executive authorities' structure;

6) submission of proposals to the Prime Minister of Ukraine on appointment and dismissal by the President of Ukraine of heads of central executive authorities; and

7) establishment of the procedure for the appointment and dismissal of heads of territorial units (if created) of other central executive authorities.

### **Article 38. Acts of Other Central Executive Authorities**

Acts of other central executive authorities shall be passed in the form of orders of heads of such authorities. Regulations of other central executive authorities may only concern the issues of the internal organisation and operation of such authorities if another is not envisaged by law.

Acts of other central executive authorities or their individual provisions may be appealed by individuals and legal entities, local self-government bodies to the court as set by law.

## **TITLE IV. PRINCIPLES OF RELATIONS BETWEEN CENTRAL EXECUTIVE AUTHORITIES AND OTHER PUBLIC AUTHORITIES AND LOCAL SELF-GOVERNMENT BODIES**

### **Article 39. Relations with the Verkhovna Rada of Ukraine and Its Bodies**

When exercising their powers, central executive authorities shall cooperate with the Verkhovna Rada of Ukraine and its bodies on the principles and in accordance with the procedure set by the Ukrainian

Constitution, the laws on the Parliamentary Rules of Procedures, on the Cabinet of Ministers of Ukraine, on the Parliamentary Committees and Commissions, this and other laws.

On the decision of the Cabinet of Ministers of Ukraine or the Prime Minister of Ukraine, the minister or a deputy minister shall present the bill submitted by the Cabinet of Ministers of Ukraine or its position on any other issues at the Verkhovna Rada of Ukraine.

#### **Article 40. Relations with the President of Ukraine and the Bodies Created under the President of Ukraine**

In their relations with the President of Ukraine and the bodies created under the President of Ukraine, central executive authorities shall be governed by the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

To organise the execution of acts of President of Ukraine, on the instruction of the Cabinet of Ministers of Ukraine central executive authorities shall prepare proposals on the issues related to the competence of the President of Ukraine, and develop draft laws and acts of the President of Ukraine.

Officials of the Secretariat of the President of Ukraine, members of staff of the patronage service, consultative, advisory and other support bodies and services under the President of Ukraine shall not be entitled to instruct officials of central executive authorities and their subordinated bodies, institutions, and organisations.

#### **Article 41. Relations with the Cabinet of Ministers of Ukraine**

Central executive authorities shall be accountable to, and under the control of the Cabinet of Ministers of Ukraine as the highest authority in the system of executive authorities.

The Cabinet of Ministers of Ukraine shall:

- 1) direct, coordinate and oversee the operation of central executive authorities;
- 2) appoint and dismiss deputy heads of central executive authorities, **as well as ministry state secretaries and their deputies;**
- 3) approve the cap number of **staff** of central executive authorities;



- 4) hear reports issued by heads of central executive authorities;
- 5) be entitled to abolish acts of central executive authorities (the ministries excluded) or their individual provisions;
- 6) solve competence disputes between central executive authorities;
- 7) impose disciplinary charges on heads of central executive authorities (the ministries excluded), but for the dismissal, or request their dismissal from the President of Ukraine;
- 8) create, reorganise and abolish government bodies within the funds envisaged by the State Budget of Ukraine for the maintenance of executive authorities, and approve regulations thereon;
- 9) on the proposal of the relevant minister, appoint and dismiss heads of government bodies;
- 10) implement public policies in civil service in accordance with the law.

Relation of central executive authorities with the Cabinet of Ministers of Ukraine shall be regulated by the Law of Ukraine on the Cabinet of Ministers of Ukraine, this and other laws of Ukraine, and within the limits set thereby and by the acts of the Cabinet of Ministers of Ukraine.

#### **Article 42. Powers of Central Executive Authorities in Relations with the Council of Ministers of the Crimean Autonomous Republic and Its Subordinated Bodies**

Central executive authorities shall cooperate with the Council of Ministers of the Crimean Autonomous Republic and its subordinated bodies on the issues concerning the execution on the territory of the Crimean Autonomous Republic of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and central executive authorities, implementation of state programmes and other measures, compliance of the programmes of the Crimean Autonomous Republic with the state programmes, as well as the conduct of joint measures requiring the reconciliation of actions between the indicated authorities. Central executive authorities shall be entitled to receive from the Council of Ministers of the Crimean Autonomous Republic and its subordinated bodies information on these activities.

Central executive authorities shall be entitled to suspend the validity of any act issued by the bodies subordinated to the Council of

Ministers of the Crimean Autonomous Republic and simultaneously address the Cabinet of Ministers of Ukraine with a grounded proposal on its abolishment. If within one month the Cabinet of Ministers of Ukraine does not abolish the act, the decision of the central executive authority on the suspension of its validity shall be invalidated.

Central executive authorities shall oversee the execution by the Council of Ministers of the Crimean Autonomous Republic of public executive powers, delegated to it in accordance with the Ukrainian Constitution, on the territory of the Crimean Autonomous Republic, as well as the use of the financial and material resources and public property objects provided to it for this purpose. As concerns the issues of the exercise of public executive powers, the Council of Ministers of the Crimean Autonomous Republic, the Head of the Council of Ministers of the Crimean Autonomous Republic, his/her deputies, heads of ministries and republican committees of the Crimean Autonomous Republic shall be accountable to, and under the control of the central executive authorities.

Central executive authorities shall reconcile the candidates for appointment and dismissal of deputy Heads of the Council of Ministers of the Crimean Autonomous Republic, ministers and heads of republican committees of the Crimean Autonomous Republic.

#### ***Article 43. Powers of Central Executive Authorities in Relations with Local State Administrations***

When exercising their powers, central executive authorities shall cooperate with local state administrations. Structural units of local state administration shall be accountable to, and under the control of relevant central executive authorities.

Within the boundaries of the relevant administrative and territorial units, local state administrations shall ensure the execution of acts of central executive authorities.

Heads of local state administrations shall coordinate the operation of territorial units of central executive authorities and assist them in the accomplishment of tasks set for these units. As concerns the exercise of powers of **local** state administrations, heads of territorial units of central executive authorities shall be accountable to, and under the control of heads of relevant state administrations, if another is not envisaged by law.

In the cases envisaged by law, the head of local state administration shall reconcile appointment and dismissal of heads of territorial units of central executive authorities, as well as chief executive officers of companies, institutions, and organisations.

The head of local state administration shall be entitled to file a grounded request with central executive authorities and government bodies to check whether heads of their territorial units meet the requirements set for their positions. On the grounds thereof, heads of central executive authority or government bodies shall make a decision and provide a grounded answer within a month's term.

The central executive authority may cancel any order of the head of the relevant structural unit of the local state administration if it contradicts the Ukrainian Constitution, other legislative acts, rulings of the Constitutional Court of Ukraine, acts of the relevant central executive authority, or may submit to the head of local state administration a proposal on the abolishment of the act.

Heads of oblast, Kyiv and Sevastopol city administrations shall reconcile with central executive authorities the candidates for heads of structural units of these state administrations.

If a ministry or any other central executive authority recognises the work of the relevant department, section or any other structural unit the oblast state administration apparatus or its head as dissatisfactory, the minister or the head of any other central executive authority shall file a relevant grounded submission to the head of oblast state administration. The head of oblast state administration shall be obliged to consider the submission and provide a grounded answer within a month term.

#### ***Article 44. Relations with the Constitutional Court of Ukraine***

If a minister deems necessary to get the constitutionality conclusions on the current international treaties of Ukraine or those submitted for parliamentary ratification, the Cabinet of Ministers of Ukraine shall be obliged to forward a relevant request to the Constitutional Court of Ukraine.

#### ***Article 45. Relations with Local Self-Government Bodies***

Central executive authorities shall direct the operation of their

subordinated territorial units and other offices to support the local self-government, respect its rights set by law, and ensure cooperation with local self-government bodies as concerns the regulation of local issues and accomplishment of objectives of social, economic, and cultural development of regions and localities.

Draft acts of central executive authorities that directly concern the functioning and development of local self-government shall be forwarded for the preliminary consideration to local self-government bodies for their conclusions, observations and proposals.

Central executive authorities may delegate their powers to local self-government bodies exclusively on the basis of the law.

Central executive authorities may initiate that the Cabinet of Ministers of Ukraine consider the development of bills on delegation of certain executive powers to local self-government bodies with simultaneous submission of proposals on the funding of the exercise of such powers.

As concerns the exercise of the delegated executive powers, local self-government bodies shall be under the control of the relevant central executive authorities and government bodies.

Decisions of local self-government bodies on the issues related to the exercise of the delegated executive powers that contradict the Constitution and laws of Ukraine may be suspended by relevant central executive authorities and government bodies and simultaneously appealed to the court.

## **TITLE V. PROCEDURE FOR THE SUPPORT OF OPERATION AND RESPONSIBILITY OF CENTRAL EXECUTIVE AUTHORITIES**

### ***Article 46. Funding of Central Executive Authorities***

The operation expenditures of executive authorities shall be covered by the state budget.

Central executive authorities shall be prohibited from setting up extra-budget funds, having extra-budget special accounts and using the funds received in any other way but their depositing into the budget.

### **Article 47. Conditions of Remuneration and Other Issues of Material Support to Civil Servants and Other Employees of Central Executive Authorities**

Conditions of remuneration and other issues of material support

to civil servants and other employees of central executive authorities shall be set by the Cabinet of Ministers of Ukraine in accordance with the Ukrainian legislation.

**Article 48. Conditions of Remuneration and Material Support to Chief Officials of the Central Executive Authorities**

Conditions of remuneration and material support to ministers and their deputies shall be set up hereby and by other legislative acts. *By the conditions of remuneration, ministers shall be equalled to chairmen of parliamentary committees, and deputy ministers – to deputy chairmen.*

Conditions of remuneration and material support to chief officials of other central executive authorities shall be set in accordance with the civil service legislation.

Ministers and chief officials of other central executive authorities shall be provided with a personal service cars which they shall be entitled to use 24 hours a day.

If necessary, ministers and chief officials of other central executive authorities shall be temporary, for the term of their powers, provided with service residence and communications in accordance with the procedure set by law.

Ministers and chief officials of other central executive authorities shall be entitled to buy tickets to all kinds of intercity transport within Ukraine out of turn.

**Article 49. Guarantees for Persons Occupying Political Positions at Executive Authorities**

Life and health of ministers and deputy ministers shall be subject to mandatory state insurance in the amount of the 10-time *monetary maintenance*. The insurance conditions shall be set by the Cabinet of Ministers of Ukraine.

If necessary, ministers and chief officials of other central executive authorities shall be provided with state bodyguard service in accordance with the legislation.

Upon termination of their powers and until they are employed, ministers and deputy ministers shall receive material assistance in the amount of their monthly salary, but no longer than for one year.

The guarantees set hereby shall not extend to former chief officials

of central executive authorities and their deputies convicted of a deliberate crime by the court.

#### **Article 50. Liability of Officials and Servants of Central Executive Authorities**

Officials and servants of central executive authorities shall be liable in accordance with the current legislation.

The damage caused by unlawful decisions, actions or omission of action by officials and civil servants of central executive authorities in the exercise of their powers shall be indemnified by the state.

The state shall be entitled to regress claims to officials and civil servants of any executive authority for the damage within the amount and in accordance with the procedure set by the legislation.

### **TITLE VI. FINAL AND TRANSITIONAL PROVISIONS**

1. This Law comes into force on the day of its official promulgation.

2. Temporary, for two years since the enactment hereof, the powers on appointment and dismissal of heads of ministry apparatuses and chiefs of ministry departments shall be exercised by the minister on the proposal of the ministry state secretary. Candidates for heads of ministry apparatuses and chiefs of ministry departments shall be selected in accordance with the civil service legislation.

3. Within two months upon the enactment hereof, the Cabinet of Ministers of Ukraine shall prepare and submit for the parliamentary consideration proposals on amendment of laws of Ukraine due to the adoption hereof, bring its acts into the compliance herewith and submit proposals on the bringing of acts of President of Ukraine into compliance herewith.

# **JUDICIAL REFORM IN UKRAINE**





# **JUDICIAL REFORM IN UKRAINE**

## **by Roman Kuybida and Oleksander Banchuk**

### **INTRODUCTION**

The judicial reform is one of the key components in the current development of government system in Ukraine. It aims at comprehensive changes to the judicial system and administration of justice, as well as in related areas like provision of legal aid, pre-trial investigation, public prosecution system and some others.

Unfortunately, today there is no single and all-embracing vision of how the judicial reform should be implemented in Ukraine. After the new Ukrainian Constitution was passed in 1996, the Legal and Judicial Reform Concept approved by Parliament back in April 1992<sup>14</sup> lost its significance for the most part as a reform plan, since quite a number of its clauses failed to meet the provisions of the Basic Law. In addition, by that time the reform revealed many additional problems that needed new conceptual solutions.

This lack of a single vision led to inconsistent and unjustifiably slow implementation of the reform. Instead of being firmly founded on a clear-cut and scientifically grounded concept, which still remains non-existent, it became a hostage of an unstable ratio of political forces in Parliament.

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<sup>14</sup> Parliamentary Resolution of 28.04.1992 on the Concept of Judicial and Legal Reform in Ukraine // Vidomosti Verkhovnoyi Rady. — 1992. — No. 30. — p. 426.

<sup>15</sup> Stefanyuk V. Judicial System in Ukraine and Judicial Reform. — K.: Yurinkom Inter, 2001. — p. 6.

There are two main ideas of the judicial reform: moderate and radical. The essence of the first lies in the use of new judicial procedures within the existing system of courts, while the second calls for a substantial reorganisation of the judiciary system to strengthen the guarantees of the right to a fair trial of any case by a competent court.

Those who favour the first approach are negative about the proposal to abolish and reorganise the present-day courts and create new ones, since they see it as a ruin of the judicial system which may lead to its disorientation with disastrous consequences for the country.<sup>15</sup> Supporters of the second approach are convinced that Ukraine has a unique chance to produce a new quality of judiciary which can help to fully implement the democratic standards into the legal proceedings in Ukraine. In their opinion, it is not the organisation of the judicial system that should determine the system of administration of justice, but rather the concept of justice administration that should define the system of courts.

The current problems of the judicial system in Ukraine are better seen at the background of the course and results of the reform development in time.

## **BACKGROUND**

The **first stage** of Ukraine's judicial reform should be considered in the context of the court system reform launched at the end of 1980s in the entire Soviet Union. It is at that time when serious deficiencies in the organisation of government were recognised, including the mechanism of the judicial system and administration of justice. The main basics of the future justice system were also concurrently defined. Analysis of the Soviet structure of government proves that a deviation from the principle of separation of powers resulted in the strengthened administration authorities on the one hand, and the decreased and dependent status of the judicial branch, which developed into authoritarianism in public administration, abasement of the role of an individual, and vulnerability of human rights and freedoms.

It is difficult to call the condition of the judicial system of that time anything but poor. Even then it was clear that the totalitarian regime

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<sup>15</sup> Stefanyuk V. Judicial System in Ukraine and Judicial Reform. — K.: Yurinkom Inter, 2001. — p. 6.

needed no democratic administration of justice. Courts were part of the administration and command system of government, where the principle of separation of powers was denied as such both in theory and practice. Being put at the core of the criminal justice, courts served as repressive bodies rather than bodies of justice, since all criminal justice authorities had to pursue a single task of fighting crime. Thus, the objective of justice administration was distorted: the court shared the same function with the prosecution system, and the principle of competition of trial participants worked neither in criminal, nor in civil proceedings.

According to Bohdan Futey, U.S. Federal judge of Ukrainian origin, the best way to describe the Soviet legal system is to give it the definition that it deserves – the command legal system. The law of command and instruction was shared between the prosecutor and the secretary of the Communist Party. In the majority of cases, a judge would pronounce the sentence that was persistently suggested by this shady duet. Over many years of its existence, the practice of this form of justice administration became known as «the telephone justice». Courts acquired the reputation not of the place where justice is established, but rather punitive institutions where an individual was usually deprived of freedom. Ukrainian courts appeared as oppressors of freedom, rather than its guarantors.<sup>16</sup>

Courts did not have any true power and failed to become an instrument for protection of human rights also due to a considerable restriction of their competence. Even though the 1978 Constitution of the Ukrainian SSR provided for the possibility to appeal against decisions, action or omission of actions committed by public authorities and their officials, the judicial appeal procedures were seriously limited by various legislative acts. There was a general rule that actions of administrative bodies, for which a special appeal procedure was foreseen, were not subject to judicial appeal. This became the main reason why the judicial mechanism of protection was used on very rare occasions, since in the majority of cases the legislation envisaged the administrative appeal procedure.

The courts also had no constitutional control powers which is why certain laws and by-laws that essentially cut down quite democratic provisions of the Soviet Ukrainian Constitution were still subject to implementation.

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<sup>16</sup> Futey B. Establishment of the Constitutional State: Ukraine in 1991-2001. -K.: Yurinkom Inter, 2001. – pp. 15, 17, 28.

As to the appeal system, it was far from being democratic. The procedural codes provided for very limited appeal possibilities. Predominantly, the right of appeal was at the free discretion of top public prosecution or judicial officials entitled to submit protests against court rulings. A rejection of a protest was not subject to appeal. The right to a full-fledged revision of a case by a higher court did not exist as such. A case could be reviewed only by a trial court (court of first instance) if its ruling was abolished by a cassation or supervisory authority. Cassation and supervisory authorities reviewed only observance of the law, while, if any mistake was committed in the establishment of the circumstances of the case, such a case would be returned for a new trial.

The formation of the judicial corps also did not favour the independence of judicial bodies for the purpose of justice administration. In practice, judges were selected by party authorities, even though the formal procedure envisaged their election by the people living on the territory of the relevant administrative unit. As rule, those who were not members of the Communist Party were not able to become judges. In addition, judges were elected for a limited period of five years. Therefore, the independence of judges was only declared, and courts were subject to the subordination relations.

This evidenced a deep crisis of the Soviet system that featured:

1) Rejection of the principle of separation of powers which produced courts dependent on the Communist Party and public administration authorities;

2) A distorted objective of criminal justice courts – fighting crime, rather than rendering justice, which resulted in the accusatory bias of legal proceedings;

3) Domination of government interests over private matters in the settlement of civil disputes;

4) Abasement of the role of courts in the settlement of legal disputes or protection of human rights due to the essential restriction of the judicial jurisdiction;

5) Non-democratic system of appeal, dependence of the right to appeal on the discretion of public prosecution and judicial officials;

6) Low-grade and dependant status of judges.

This crisis of the Soviet judicial system became especially evident with the beginning of the perestroika in late 1980s, development of the integration processes, and activated exchange of experience with the developed democracies.

The need of changes in this area was recognised in the resolution on Judicial Reform passed by the Communist Party of the Soviet Union in the summer of 1988. The resolution enumerated the principles of the court system and administration of justice, a desperate need for enforcement of which called forth the judicial reform. Such principles included the independence of the court, competition of trial participants, publicity, presumption of innocence, and provision of the right to defence. These basic values mainly had no real implementation in legislation or practice.

The first step to the implementation of the resolution was made in December of the same year when the USSR Constitution was amended. The amendments also changed the procedure for the election of judges and prolonged the term of their powers. People's judges were no longer elected by the general public, as previously, but by members of oblast councils, now for ten and not five years. Corresponding alternations were also made to Ukraine's Constitution of 1977. Moreover, it even set forth a requirement that judges cease their membership in political parties for the period of their powers. Certain all-Union legislative acts passed between 1989 and 1991 also introduced innovations into the judicial system: on the status of judges, liability for the disrespect of the court, appeal against decisions, actions and omission of actions committed by public administration authorities.

Another resolution on the Main Priorities of the Domestic and Foreign Policy of the USSR passed by the First USSR People's Deputies Congress<sup>17</sup> set that the judicial system of the Soviet Union republics had to be developed with due consideration of their political, legal, and cultural traditions and preserve all principles of democratic administration of justice. Authorities also officially recognised the necessity to consider the possibility of using the jury in legal proceedings as a form of democratic administration of justice.

A new important step in the Ukrainian judicial reform was made when Ukraine's State Sovereignty Declaration was passed on 16 July 1990. The Declaration set that the government system in Ukraine had

to function on the basis of its division into the legislative, executive and judicial branches. On 24 October 1990, the Ukrainian Constitution was supplemented with a provision on the establishment of the Constitutional Court of Ukraine, which found, however, no implementation until as late as 1996.

At that time, there was an active discussion around transformation of the state arbitration authorities (administrative bodies that settled disputes between legal entities) into the arbitration courts. A relevant bill was developed for the entire Soviet Union. However, in June 1991, in order to set up its own structure for the settlement of commercial disputes to be independent from the Soviet Union system, Ukraine became the first among other Soviet Republics to establish its arbitration courts.<sup>18</sup>

The **second stage** of the judicial reform in Ukraine began on 28 April 1992, when the Parliament adopted the Concept of Legal and Judicial Reform in Ukraine, and lasted until 28 June 1996, when the new Ukrainian Constitution was passed. Within this span of time, the reform succeeded to:

- shape its priorities;
- regulate the work of the specialised arbitration courts;
- pass legislation to set the status of judges;
- establish the system and powers of the boards of experts;
- introduce judicial self-governance;
- regulate the judicial procedure for the appeal against decisions, actions and omission of actions committed by administrative authorities; and
- set the procedure for the indemnification of the damage caused by the investigation, public prosecution, and judicial authorities.

Accordingly, the main acts passed at this stage included the laws:

- on the Constitution Court of Ukraine (of 3 June 1992; was not effectuated);
- on the Status of Judges (of 15 December 1992);

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<sup>18</sup> See: Law of the Ukrainian Soviet Socialist Republic of 4 June 1991 on Arbitration Court // Vidomosti Verkhovnoyi Rady URSR. — 1991. — No. 36. — p. 469 and the Parliamentary Resolution of 4 June 1991 on the Procedure for Implementation of the Law on Arbitration Court// Vidomosti Verkhovnoyi Rady URSR. — 1991. — No. 36. — p. 470.

- on the State Protection of Judicial and Law-Enforcement Authorities (of 23 December 1993);
- on the Boards of Experts, Qualification Attestation, and Disciplinary Liability of Judges in Ukraine (of 2 February 1994; became ineffective in 2002);
- on Judicial Self-Governance (of 2 February 1994; became ineffective in 2002); and
- on the Procedure for the Indemnification of the Damage Caused to a Citizen by Illegal Actions of Inquiry, Pre-Trial Investigation, Public Prosecution and Judicial Authorities (of 1 December 1994).

At its **third stage**, the judicial reform (between the adoption of the Ukrainian Constitution and enactment of the laws dubbed as the Small Judicial Reform) managed to outline a new judicial system at the constitutional level, fix the guarantees of judicial protection, and define the main justice administration principles. It is at this stage that the Constitutional Court of Ukraine was finally set up as the sole body of constitutional jurisdiction, and the High Council of Justice was founded as a body responsible for the formation of the corps of professional judges. It was also at this stage that a new procedure for the appointment and election of judges was established.

Clause 12 of Ukraine's Constitution Transitional Provisions stipulated that the Supreme Court of Ukraine and the High Arbitration Court of Ukraine had to exercise their powers in accordance with the effective legislation of Ukraine until a system of general jurisdiction courts would be formed as set in Article 125 of the Constitution but not longer than for five years. Over those five years, the Verkhovna Rada of Ukraine never managed to pass a new law on judiciary.

At their time, six relevant bills were proposed for parliamentary consideration. Under the domination of the leftists, on 7 April 1999 the Parliament passed a striking decision – to adopt two judiciary bills<sup>19</sup> in the first reading and instruct the Committee for Legal Policy to use them as a basis to prepare one bill for the second reading.

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<sup>19</sup> Bill on Judiciary filed by MP Sirenko and Bill on State Judiciary, filed by MP Shyshkin.

According to the initiator of the Small Judicial Reform, Stepan Havrysh, member of Parliament and the then-First Deputy Chairman of the Rada, one bill was just as undemocratic as the second was detailed (it included even descriptions of individual judicial procedures). This conflict between the old judicial system and the corporate interests of the Supreme Court on the one hand and the top democratic nature of the norms proposed for the structure and functioning of the new system on the other ended in a real deadlock. It was impossible to use even individual ideas without ruining the legal logic.<sup>20</sup> The variants of the judicial system that lied in the basis of the two alternative bills split the Parliament into two parts and none of them gathered the necessary support.

Prior to the expiry of the 5-year term set by the above Transitional Provisions, the Verkhovna Rada hastily worked out two parallel judicial reform bills. The first envisaged the adoption of the new Law on Judiciary, which in its transitional clauses would provide for the minimum of what was required by the Constitution:

- establishment before 28 June 2001 of the High Commercial Court on the basis of the High Arbitration Court, as well as creation of the High Civil Court and the High Criminal Court, and
- reorganisation of the Supreme Court of Ukraine.

With the above changes effectuated, the judicial reform could be further gradually implemented in a longer run.

However, it was the second variant that was chosen, which can be regarded as the beginning of the **forth stage** of the reform. A week before the fifth anniversary of Ukraine's Basic Law, on 21 June 2001 the Parliament passed a package of laws that amended other laws regulating the judiciary, the status of judges and administration of justice. These amendments, or the Small Judicial Reform as they became eventually known, were primarily aiming at creation of the single system of general jurisdiction courts through:

- inclusion therein of arbitration courts renamed as commercial courts, and
- introduction of new procedures for:

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<sup>20</sup> «Compromises Should be Greeted, But Not the Ones Emasculating the Core of the Reform». Stepan Havrysh, Deputy Chairman of the Verkhovna Rada, answers questions of the Viche // Viche. — 2000. — No. 10 (103). — p. 4.



- appeal of court rulings;
- arrest, detention, and confinement of individuals suspected of committing crime; and
- inspection and search of residence or other private property.

The above amendments also set up the appellate commercial courts set up for appeal of decisions of local commercial courts.

The new legislation solved the problem of appointment of chief justices of general jurisdiction courts. Previously, this power, in violation of the Constitution, was exercised by the President. The Small Judicial Reform vested this power, including appointment of deputy chief justices, into the Minister of Justice who had to exercise it on the submission of the Council of Judges of Ukraine. As to the chief justices of appellate courts and their deputies, they were to be elected by general meetings of judges.

Due to the rejection of the supervisory review of court rulings, the presidia of oblast courts lost their powers for the administration of justice. They started functioning as consultative and advisory bodies to the chief justices of relevant courts.

The Small Judicial Reform transformed the national judicial system in such a way that it became compliant with the constitutional norms and established proper preconditions for the adoption of a new Law on Judiciary.

The **fifth** stage of the judicial reform started with the adoption on 7 February 2002 of the Law on Judiciary in Ukraine and continues until now. This new law replaced a number of other acts related to the functioning of courts; namely the laws:

- on Judiciary in Ukraine of 1981;
- on Commercial Courts;
- on Boards of Experts, Qualification Attestation and Disciplinary Liability of Judges; and
- on the Bodies of Judicial Self-Governance,

These acts, despite of multiple amendments thereto, became obsolete and no longer suited the regulation of the administration of justice.

In its turn, the new Law on Judiciary introduced a number of new judicial authorities:

- the Cassation Court of Ukraine as a cassation body in the system of general courts; and

- the Appellate Court of Ukraine as the appellate authority for the rulings of other appellate courts passed in the first instance.

It also set a three-year term for the establishment of administrative courts.

To provide courts with logistics and organisation support, the Law established a new public executive authority, the state court administration, and subordinated it to the bodies of judicial self-governance. The State Court Administration of Ukraine as a central executive authority in the system of state court administration bodies was set up by the Presidential Decree on the State Court Administration passed on 29 August 2002, but it started functioning only on 1 January 2003.

Previously, the above support to the courts of general jurisdiction was provided by the Ministry of Justice and its territorial divisions, while the High Commercial Court supported correspondingly other commercial courts. At the same time, the burden of court management was also put on chief justices, who were in such a way forced to care for the refurbishment of court offices and provision of judges with paper, envelopes, stamps, and forms. Their other similar duties included arrangement of the delivery of the detained defendants, or even care for repairs of convoy automobiles and the purchase of fuel. The state budget provided only 8-10 per cent of the funds needed, but nevertheless courts managed to function, even though they were getting almost no money. Clearly, this was only due to the inventiveness of judges who, by the government's will, had to beg support from local authorities and business. This definitely ruined any assumptions of judges' independence.

However, the new Law also somewhat deteriorated the guarantees of the judge's independence, in particular, by having extended the constitutional powers of the President related to the judicial branch which can hardly favour its independence. Thus the President became empowered:

- to appoint and dismiss chief justices of courts and their deputies (the Supreme Court excluded);
- to transfer judges from one court to another;
- to award all military ranks to the judges of military courts (and not only the top ranks as set by the Constitution); and
- to define the number of judges of the Supreme Court.

The above powers are not envisaged by the Constitution, which sets an exhaustive list of the President's authorities.

The administrative powers of chief justices and their deputies were also extended, thereby threatening the possibility that judges may be influenced in the course of trials. In addition, chief justices will need to continue fulfilling some minor administrative functions.

The Law regulates certain aspects related to the status of judges by setting requirements to the candidate judges and establishing the procedure for how judges shall be selected and appointed or transferred to other courts, how qualification assessments shall be arranged, and how judges shall answer for disciplinary offences. At the same time, the Law also makes a number of references to the Law on the Status of Judges. However, regulation of the same issue by two laws leads to replications or parallelism, since the subject of regulation of such laws cannot be divided. Replications (including regulation collisions and mutual references) were also present in the previous laws on judiciary and the status of judges due to low quality of legislative drafting, which made it more difficult to understand these laws. Unfortunately, the proposal to regulate the judiciary and the status of judges in a single act found no support.

Adoption of the new Judiciary Law became an important but not the final step in the establishment of a new and accessible judicial system to ensure competent, timely and predictable judicial proceedings. Today, a lot of work is being done in relation to the new procedural codes. On 18 March 2004, the new Code of Civil Procedure was passed, and on 6 July 2005, the Parliament adopted the Code of Administrative Justice. Both codes came into force on 1 September 2005, while the Codes of Commercial and Criminal Procedures are pending parliamentary consideration.

Having won the 2004 elections, President Yushenko mentioned the implementation of the judicial reform among the priorities of his government, for which purpose, on 26 May 2005, he set up a judicial reform commission. The commission has been instructed to draft proposals on the solution of the judicial reform issues by the end of 2005.

The Government's Action Programme contains a special chapter dedicated to the development of justice, «Judicial Reform» (*Justice Section*). According thereto, the Government shall make every effort to pro-

mote the accelerated construction of a new system of justice in Ukraine. To achieve this, the Programme sets forth certain objectives, some of which, like proper funding of the judicial branch, introduction of free legal aid to the individuals with low incomes, restriction of administrative powers of chief justices, and adoption of a decision on the necessity of military courts, could have been achieved relatively promptly through amendment of the 2005 State Budget, development and adoption of relevant legislative proposals and governmental decisions.

However, the Government managed only to initiate certain increase of expenses for the judicial system, when in March 2005 the Parliament passed a new version of the 2005 State Budget. In general, the increase is insignificant with the exclusion of the budget of local courts which was raised by one third.

## **MODERN TIMES**

### **1. General Overview**

Despite of the new legislation, modern Ukrainian courts have not changed much since the Soviet times. Their main difference from the Soviet heritage lies in the appearance of commercial courts and the Constitutional Court. The system of general courts for civil, criminal and certain other cases, which also includes military courts, apart from various renames, has not undergone any structural changes so far. For the time being, the Appellate Court of Ukraine and the administrative courts still exist only on paper.

The logistic support to courts has hardly improved since the Soviet age and in some cases has even become worse. Poor state of court facilities, lack of IT equipment, central heating, electric power, and telephone connection cut-offs, insufficient funds for mission trips, paper, envelopes, stamps, stationery, or reimbursement of witnesses and victims for their participation in proceedings are among the main reasons why the work of many courts has still not been properly organised.

The majority of court offices do not meet the standards set for justice administration, while some of them need to be urgently repaired. Cases are often tried in the judges' private offices and not in court session halls, which undermines the principle of publicity of court sittings.

The strengthened role of courts in the current legal relations has enlarged the number of legal proceedings, and consequently the caseload of courts has but swollen. One of the reasons of such overload is the increased quantity of cases on administrative offences put under the competence of courts. The Supreme Court is just as overloaded, in particular its Civil Chamber.

The heavier caseload has prolonged the terms of legal proceedings that often can hardly be called rational, and deteriorated the quality of legal proceedings, which has had a negative effect on the trust of the people to the court.

The increase of the number of judges is unlikely to solve the above problem, since today more and more former law-enforcement officers, investigators, prosecutors and other people without proper professional qualities are appointed as judges. At the same time, ample possibilities of receiving illegal favours attract people whose purposes are far from the fair administration of trials. This has an adverse effect on the authority of the judiciary and results in low professional level of judgments, as well as burdens the appellate and cassation courts with more caseload. On the other hand, not all judges can be provided with jobs, and staffing problems still remain unresolved.

Selection of judges is a rather corruptive exercise in Ukraine, feeding on the so-called «staff reserve» pooled from the people who have passed qualification exams but, because of the lack of vacant posts, cannot be appointed judges right away. Provision of such «reserve» candidates with jobs in many cases lacks transparency. The same is true about the selection of judges for higher courts due to no competition envisaged for the vacant posts in higher courts.

Also, today Ukraine lacks efficient mechanisms to institute proceedings against the judges who violate the law to secure effective and timely response to their self-will and incompetence. In addition, it is difficult to punish a judge for a disciplinary offence, because the disciplinary bodies work on a temporary basis, and terms of disciplinary liability are quite limited. Disciplinary charges were also often brought against those judges who resisted the external influence and passed a decision contrary to the one proposed from outside.

The criminal procedure still has not been cleared of the accusatory role of courts. Courts are still entitled to the discretion to send cases for additional pre-trial investigation if they consider the evidence

insufficient for conviction, even though, in accordance with the principle of competition of trial participants, the court should pronounce the verdict of «non guilty».

The procedure for submission and consideration of appeals also remains far from being perfect, since it enables trial courts to decline appeals without a reason, while courts of appeal have a possibility to return cases to the public prosecutor for an additional investigation or a new trial.

Another problem of justice administration in Ukraine is that the new democratic mechanisms of appeal (appellation and cassation) are still not applied to the cases related to the administrative offences considered by courts. There is still an oversight procedure used to protest against court rulings, which was recognised by the European Court of Human Rights as a violation of Article 6 of the Convention for Protection of Human Rights and Fundamental Freedoms.

Today, there are two procedural codes pending consideration in Parliament – the Code of Criminal Procedure and the Code of Commercial Procedure. The Code of Criminal Procedure has evoked sharp criticism of the public and experts, since it considerably worsens the conditions of an individual in the course of a pre-trial investigation and application of preventive measures even as compared to the current 1960 Code of Criminal Procedure.

There still remains a problem with subordination of the State Court Administration. Despite of the fact that it started functioning not so long ago, the debate has risen around whether it should be subordinated to the Supreme Court or the Ministry of Justice.

The need to pass the support functions to the Supreme Court is reasoned by the necessity to strengthen the independence of the judicial branch. However, this move may yield the exactly opposite result due to the factual and juridical combination of judicial and administrative functions within one judicial branch. Apart from running counter the principles of separation of powers set by Article 6 of the Ukrainian Constitution, it will also make a judge responsible not only for the administration of justice, but also for the day-to-day management of the court. Put in such circumstances, the judge will have to be pleading either with the Chief Justice of the Supreme Court, or the local governor or businessmen, which will only deepen the dependence of courts.

Even today, the idea of distinct separation of judicial and executive powers is still not easily perceived. The essence of this idea, however, is that courts should administer justice, and executive bodies should support their functioning. Such a division is characteristic for the majority of the European countries. If such system is introduced, a judge will be able to dedicate all his/her professional efforts to the single task of justice administration. There will be no longer any need in vesting general administration and economic functions into a judge. The judge will administer justice provided the court secretariat has ensured proper trial conditions, otherwise the case should not be tried. The secretariat should be held responsible for not having secured proper conditions for the trial. This approach will make it possible to guarantee the independence of judges and improve the quality of adjudication.

The current Law on Judiciary divides the court administrative functions between the judges occupying administrative positions in courts (excluding local courts), the state court administration, court secretariats, and judicial self-governance bodies. However, such a division is not always grounded. Thus, the organisation support to the Constitutional Court, the Supreme Court and high specialised courts should be provided by the secretariats of these courts, while in the case of other general jurisdiction courts such support should be rendered by the state court administration. Today, court secretariats subordinated to chief justices replicate certain powers of the state court administration, and, as a result, in one case the same functions are fulfilled by the judicial branch, and in another – by the executive.

A considerable problem for the independence of judges is posed by the relations between courts and the public prosecution system. In accordance with the Soviet tradition, very few non-guilty verdicts are pronounced in Ukraine, since, due to the previously mentioned accusatory bias of criminal proceedings, judges are used to working with public prosecutors.

The fact that Ukraine's public prosecution system has preserved the functions of pre-trial investigation and general oversight of legality is incompliant with democratic principles. According to the 1996 Constitution, the powers of the public prosecution offices are limited only by the support of the public prosecution on behalf of the state in courts, representation in courts in the cases envisaged by law, and

oversight of the pre-trial investigation and execution of criminal punishments. However, these constitutional requirements still have not been met. The oversight of pre-trial investigations can hardly be efficient if the same authority both conducts the investigation and oversees its legality. Also, under the disguise of general oversight, the public prosecution offices are able to arrange and conduct inspections and revisions, which were often used for political and economic reprisals.

The reputation of the judicial branch also suffers because many court rulings on civil and commercial cases remain unfulfilled. This is one of the key problems, since the right to a fair trial is violated if there is no possibility to administer the judgment.

The right to a fair trial is also violated by the absence of an efficient mechanism to provide legal aid to the people with low incomes. As a result, judges in civil cases are often forced to become legal advisers to the parties, which raises doubts about their objectivity and violates the principle of competition of trial participants. As to criminal proceedings, the quality of legal aid provided therein is not very high due to low royalties offered to attorneys by the government for the provision of free legal aid.

To sum up, the course of the reform, despite of considerable positive shifts, still does not encourage a conclusion that the key reform objective has been achieved, namely the true security of the human right to a fair trial by an independent and unbiased court.

## **2. System of Courts: Main Discussions**

The 2002 Judiciary Law was passed as a compromise between the political forces. Therefore, despite of regulating many problems caused by the Small Judicial Reform, some of its provisions appeared to be a step back from the changes introduced the year before. The system of general jurisdiction courts became very complicated and went beyond the framework set by the Constitution. The Law failed to implement the principle of «one stage of proceedings = one judicial authority». According to the Law, general courts (commercial courts excluded) of any level can fulfil the functions of trial courts, provided this possibility is envisaged by a procedural law. This raises additional difficulties for the development of new procedural codes,



and limits the rights to appeal against the judgments of higher courts if they act as trial courts.

**Appellate Court of Ukraine.** The Law on Judiciary envisaged the establishment of not only territorial appellate courts, but also the Appellate Court of Ukraine. According to the Law, this Court should consist of three chambers: civil, criminal and military. The argument behind the set-up of this court was that the participants of the trial proceedings conducted by appellate general courts were unreasonably deprived of the right to appeal. Here one should bear in mind that after the Small Judicial Reform, due to the introduction of the appeal procedure, oblast general courts were turned into the appellate courts and were permitted to review cases with the right to investigate evidence and establish new circumstances. However, simultaneously, they preserved the functions of trial courts for some categories of cases, in particular criminal ones. Therefore, the Appellate Court of Ukraine had to secure the possibility of appeal against the judgments issued by the appellate courts as trial courts.

However, the work on the drafts of new procedural codes raised certain question: Does Ukraine need such Court of Appeal? If so, what jurisdiction in civil and criminal justice it should have?

Today, oblast appellate courts almost do not deal with civil cases in the first instance and similarly military courts of appeal also rarely consider cases in the first instance. Thus, apart from the criminal chamber that may appear to be more or less loaded, two other chambers of the above Court of Appeal (civil and military) will practically have no caseload. Such a distribution of workload would be irrational.

There is no grounded need for the Court of Appeal of Ukraine in civil justice, since, as soon as election disputes are excluded from the civil jurisdiction, the courts of appeal will stop considering civil cases in the first instance. Therefore, the new Code of Civil Procedure even does not mention the Court of Appeal of Ukraine. As of the time of its preparation to publication, it was proposed to preserve the references to the Court of Appeal of Ukraine in the draft Code of Criminal Procedure, since courts of appeal do try individual categories of criminal cases as courts of first instance, and there are no appellate authorities for them. However, to create sufficient caseload for the Court, more far-fetched categories of criminal cases were attributed to the jurisdiction of appellate courts as compared to the past.

At the same time, the Court of Appeal of Ukraine may disappear

from the criminal justice as well, since the first instance cases may be passed from the courts of appeal, if not to all, then at least to some local courts that function in oblast centres with no prejudice to the quality of the future verdicts. Alternatively, such cases could be tried by special district criminal courts singled out from the courts of appeal.

**Cassation Court of Ukraine.** After the 2001 Small Judicial Reform, the decisions of local and appellate general courts were considered in accordance with the cassation procedure by the Supreme Court of Ukraine. At the same time, the Supreme Court of Ukraine was entitled to review its own decisions due to exceptional circumstances, which actually meant the second cassation. Due to individual defects admitted when the Code of Civil Procedure was amended in the course of the Small Judicial Reform, the Supreme Court appeared to be overloaded by cassation complaints against the rulings in civil cases. At the beginning of 2003 more than 16,000 cases still remained unresolved. While the Civil Chamber is composed of only twelve judges, and since cassation cases shall be reviewed by not less than two thirds of the Chamber, the chances of timely resolution of all such cases came to zero.

In order to unload the Supreme Court of Ukraine, the Judiciary Law provided for the establishment of the Cassation Court of Ukraine. However, the Constitutional Court recognized the existence of the Cassation Court unconstitutional<sup>21</sup> with the underlying argument that, unlike other judicial authorities, the Cassation Court is not mentioned by the Constitution.

This ruling left the future of the cassation authority in civil and criminal cases unclear, since it cannot be determined by procedural codes alone without relevant changes to the law on judiciary.

In its time, there was a governmental bill<sup>22</sup> that proposed, instead of establishing a separate cassation authority, to pass the cassation factions to appellate courts with panels of judges set up for cassation review of cases, while the Supreme Court would continue fulfilling only the

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<sup>21</sup> Ruling of the Constitutional Court of Ukraine on the constitutional petition of 62 members of parliament concerning the constitutionality of Article 18.2.3, Articles 32, 33, 34, 35, 36, 37, Clause 3.5 of Section VII «Closing and Transitional Provisions» of the Law on Judiciary in Ukraine (the case of the Cassation Court of Ukraine) of 11 December 2003 No. 20-pn/2003 // *Uryadovi Kurier*. – 2003. – No. 241. – 20 December 2003.

<sup>22</sup> Draft Amendments to the Law on Judiciary No. 4588 of 31 December 2003.

function of exceptional cassation. However, there were serious doubts about the correctness of this variant. Firstly, the above approach would hinder one of the main objectives of cassation: uniform application of laws by courts, since each oblast would be pursuing its own autonomous judicial practice, and the majority of disputes would be settled at the oblast level, and it would result in a dissimilar administration of laws in different regions. There is also a danger that local governments will be trying to influence the adoption of final judgments, and the Supreme Court with its repeated cassation would hardly be able to help resolve this problem, since it is limited by cases with exceptional circumstances. Secondly, it would be a bit of a paradox to combine both appellate and cassation authorities in one court of appeal. This runs counter the Constitution which sets that courts of appeal shall form the second stage of the judicial process. Thirdly, revision of judgments by the judges of the same judicial authority that approves such judgments would violate the principle of the court's objectivity. It is obvious that the result of such revisions will often depend on personal relations between the judges of the cassation and the appellate authorities working at the same court of appeal. In addition, it is not advisable to provide for a double check of legality by the judges selected on the basis of the same qualification requirements.

There are also two parliamentary bills aiming to solve this problem.<sup>23</sup> They propose that civil and criminal judgments be reviewed by the High Civil Court and the High Criminal Court of Ukraine that will have to be set up for this purpose specifically. These bills also propose to repeal provisions on the Appellate Court of Ukraine. New procedural codes should define relevant local courts to try cases that are now considered by the courts of appeal in the first instance. Unfortunately, at the moment the parliamentary consideration of the bills aiming at the solution of the problem of the Cassation and the Appellate Courts of Ukraine has been hampered.

**Military Courts.** The Law on Judiciary preserves the military courts in the system of general jurisdiction courts. The military courts are attributed to the general courts and try civil, administrative and

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<sup>23</sup> Bill No. 4541 filed by MPs Karmazin and Potebenko on 19 December 2003 and Bill No. 4588-1 filed by MPs Onopenko, Onischuk, Musiyaka, and Peklushenko on 20 January 2004.

criminal cases in the Armed Forces of Ukraine and other paramilitary units.

Today, it is actively discussed whether the jurisdiction of these courts should be limited, or such courts should be simply abolished. The constitutionality of these courts is doubted since they match neither the principle of specialisation, nor that of the territorial division set by Article 125 of the Constitution as the basics of general jurisdiction courts. In addition, the military courts receive double funding from the State Court Administration and the Ministry of Defence which puts them into a more favourable position as compared to other courts. Since the Defence Ministry and its bodies often become parties in the legal proceedings conducted by such courts, this raises doubts about the objectivity of the decisions passed by the military court. The military court judges also have a special status as compared to other judges which contradicts the principle of the uniform status of judges stipulated by the Judiciary Law. The privileged status of the military court judges, whereby with lesser workload they get a better material support, was not altered by the new Law. In addition, military court judges receive salary-effective military ranks on the submission of the military command.

The above arguments provide grounded reasons to give no credence to the independence and objectivity of such courts and, in accordance with the practice of the European Court of Human Rights, violate the Convention on Human Rights and Fundamental Freedoms. Thus, in the case of *Çiraklar vs. Turkey*, the European Court of Human Rights came to a conclusion that the involvement in the court panel of a military judge who is on military service and has an officer rank, despite of certain guarantees of his independence, justifiably provokes doubts about his independence and objectivity and violates §1 of Article 6 of the European Human Rights Convention.<sup>24</sup>

An attempt to limit the jurisdiction of the military courts was made when the new Code of Civil Procedure was deliberated in Parliament. The Code developers «forgot» to mention the military courts and cases attributed to their competence in the Code. In the same way, there are no references to the military courts in the Code of Administrative Justice. In July 2005, the Cabinet of Ministers proposed legislative amendments that abol-

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<sup>24</sup> See Judgment of the European Court of Human Rights: *Çiraklar vs. Turkey* (70/1997/854/1061), 28 October 1998 // *Reports of Judgments and Decisions*. – 1998. – VII.

<sup>25</sup> Bill No. 7807 of 12 July 2005.

ish the military courts in the system of general jurisdiction courts.<sup>25</sup> Due to this, vacant posts of military court judges remain unoccupied.

**Commercial Courts.** The commercial courts, which used to be arbitration courts before 2001, act as a specialised branch in the system of general jurisdiction courts. Like general courts, they try the same civil cases but with participation of legal entities. This is the reason why western experts often do not understand why commercial courts are preserved in the Ukrainian judiciary.

The arbitration courts were set up on the basis of the state arbitration bodies of Ukraine as a Soviet Republic which formed a system of administrative, and not judicial authorities. The state arbitration bodies settled disputes between companies. In the Soviet times, the majority of companies were state-run, therefore disputes between them were considered in accordance with the administrative procedure. The decision on the setup of arbitration courts was passed just before Ukraine became an independent state in order to separate such courts from the Soviet Union system of state arbitration.

Today, preservation of such courts is questionable, as they can be successfully integrated into the system of civil courts. Such integration is especially advisable since certain commercial courts have been criticised for a different application of laws as compared to the general courts of civil jurisdiction. The commercial courts are also often characterised as the most corrupted bodies in Ukraine's judicial system.

**Administrative Courts.** The Judiciary Law provides for the establishment of administrative courts between 2002 and 2005 for protection of human and civil rights in the public area.

According to the Law, the system of administrative courts shall include local (district) administrative courts, administrative courts of appeal and the High Administrative Court of Ukraine.

To implement the above provisions, on 1 October 2002 the President of Ukraine issued relevant decrees that have set up the High Administrative Court of Ukraine in Kyiv<sup>26</sup> and approved its composition of 65 judges.<sup>27</sup> In November 2004, the President issued another decree to set up

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<sup>26</sup> Presidential Decree of 1 October 2002 on the Court of Appeal of Ukraine, the Cassation Court of Ukraine and the High Administrative Court of Ukraine.

<sup>27</sup> Presidential Decree of 7 November 2002 on the Number of Judges of the Court of Appeal of Ukraine, the Cassation Court of Ukraine and the High Administrative Court of Ukraine.

27 local (district) courts and 7 administrative courts of appeal since 1 January 2005. Local (district) courts are modelled on the system of commercial courts: they are created in every oblast, in Kyiv and Sevastopol, and in the Crimean Autonomous Republic. The appellate courts are established in Dnipropetrovsk, Donetsk, Kyiv, Lviv, Sevastopol, and Kharkiv. The decree also sets the number of judges for such courts, namely 215 judges for local administrative courts and 66 judges for the courts of appeal.<sup>28</sup> Unfortunately, as of now, when the Code of Administrative Justice has come into force, the district and appellate administrative courts have yet not been completed. Before they start functioning, administrative cases will have to be tried in accordance with the rules set by the Code of Administrative Justice by general and commercial courts.

## **JUDICIAL REFORM DEVELOPMENTS**

### **Proposed by the Centre for Political and Legal Reforms**

Support to the judicial reform in Ukraine is one of the key priorities pursued by the Centre for Political and Legal Reforms. In 1998-2001, the experts of the Centre were actively involved in the development of the new Law on Judiciary in Ukraine by assisting Victor Shyshkin and Ihor Koliushko, who were members of parliament at that time, in updating the Law on State Judiciary which had been filed for the parliamentary consideration but was not considered.

The Centre participated in the development of the Small Judicial Reform legislation and provided its assistance in the preparation of six out of ten Reform laws to the second reading, where the majority of the bills passed in the first reading had to be rewritten from scratch.

After the Small Judicial Reform, the work on the new Law on Judiciary was resumed. Unfortunately, the Law passed on 7 February 2002 did not include the predominant majority of the proposals made by the Centre.

The Centre had been studying the judicial reform ideas and at the beginning of 2004 it presented its draft Concept for Development of Justice Administration in Ukraine in the Next Ten Years for public discussion<sup>29</sup>. The necessity of such a Concept was called

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<sup>28</sup> Presidential Decree of 16 November 2004 on Creation of Local and Appellate Administrative Court, Approval of Their Network and the Number of Judges.

<sup>29</sup> The Draft Concept of Justice Development can be found at [www.pravo.org.ua](http://www.pravo.org.ua).

forth by the inconsistency and incompleteness of the judicial reform in Ukraine.

The draft Concept proposed specific measures aiming at:

- accessibility of justice;
- fair judicial procedures;
- professionalism, independence and objectivity of judges;
- predictability and openness of court rulings; and
- efficiency of judicial defence.

As proposed by the draft Concept, the general jurisdiction courts should develop in accordance with the principles of specialisation, and territorial and court instance division.

To implement the Concept ideas, the Centre also developed comprehensive amendments to the Law on Judiciary and a new version of the Law on the Status of Judges. The experts of the Centre are constantly monitoring all bills related to the administration of justice that are currently pending parliamentary consideration. Their opinions are used by the profile Parliamentary Committee for Legal Policy.

In the recent years, the Centre has also been focusing on the development of new procedural codes. It was involved in the working group that was preparing a new version of the Code of Civil Procedures for the second and third readings (passed on 18 March 2004).

In addition, the experts of the Centre prepared a draft Code of Administrative Procedure as an alternative to the one drafted by the Supreme Court of Ukraine. Both bills were submitted to the Parliament. To speed up the adoption of the Code, representatives of the Supreme Court and the Centre together with the Parliamentary Committee for Legal Policy combined the two codes into one. The joint document preserved the system of administrative courts proposed by the Centre which meets the requirement of accessibility of court and independence of judges. It also preserved the system of principles of administrative justice and the general structure of the code proposed by the Centre. The Centre supported the consideration of the draft in the Parliament until it was finally passed under the title of the Code of Administrative Justice<sup>30</sup> on 6 July 2005.

Together with scholars dealing with the administrative law and justice, the Centre developed an academic course for the judges of the

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<sup>30</sup> The Code of Administrative Justice of Ukraine can be found at [www.pravo.org.ua](http://www.pravo.org.ua).

future administrative courts which is now offered by the Academy of Judges of Ukraine.

Today, the Centre is working on scientific and practical comments to the 2004 Code of Civil Procedure and the 2005 Code of Administrative Justice.

The Centre is also actively involved in the public discussion of the new Code of Criminal Procedure and it has prepared proposals on its amendment. The experts of the Centre participate in the working group on further development of the new version of the Code of Commercial Procedure set up under the Parliamentary Committee for Legal Policy.

To ensure transparency of judiciary and create the mechanism for the implementation of the constitutional principles of publicity of legal proceedings in terms of availability of court decisions, the Centre has developed a bill on the access to court rulings.<sup>31</sup> The bill provides for creation of a database of texts of judicial decisions with free access to them through the Internet, as well as qualifies the information that shall not be subject to disclosure in such texts open for public access. The described mechanism aims at the uniform application of law, formation of the single enforcement practice in courts, as well as proper attitude of judges to the preparation of court decisions in view of their prospective availability for public access.

The Centre is equally active in the areas related to the administration of justice. Thus, it has developed draft legislation on legal aid, on the public prosecution office, and on the National Investigation Bureau. Now, it is working on the new version of the law on the Bar.

To support the judicial reform in Ukraine, the Centre has been working closely with the Parliamentary Committee on Legal Policy, the Ministry of Justice, the State Court Administration, international organisations, Ukrainian research institutions and think tanks, and non-governmental organisations.

The key results of the Centre's activities are presented in its publications:

- Administrative Justice: European Experience and Proposals for Ukraine/Author-compilers I.Koliushko, R. Kuibida. — K.: Fact, 2003. — 536 pages.

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<sup>31</sup> The Bill on Public Access to Court Rulings can be found at [www.pravo.org.ua](http://www.pravo.org.ua)



- Kuibida R. Reform of Justice System in Ukraine: Monograph. — K.: Ataka, 2004. — 288 pages.
- Legal Aid: European Experience and Proposals for Ukraine/ Author-compilers O.A. Banchuk, M.C. Demkova. — K.: Fact, 2004. — 336 pages.
- Shyshkin B., Kuibida R. Appeal and Review of Court Rulings in Ukraine. — K.: Fact, 2003. — 128 pages.

## **ANNEX 7. Draft Concept of Justice System Development in Ukraine**

### **Concept Objectives**

This **Concept** aims at setting a purposeful and scientifically grounded methodological basis for the development of the justice system over the next ten years. It should also define priorities for the related legislative improvements and key measures to eliminate negative tendencies caused by incoherent reform measures. The Concept should provide for accessible justice and its fair administration, transparency of courts, and an optimised system of general jurisdiction courts. Its other aims include enhanced guarantees of independence of judges and their abidance only by law, upgraded judicial status and improved conditions of their activity, guaranteed enforcement of court rulings, and setup of conditions for the development of alternative (extrajudicial) ways to handle disputes.

Implementation of the above ideas should promote establishment of an understandable and efficient mechanism for the defence of human rights, high prestige of the judicial branch and respect of its independence, especially by other branches of government.

### **Judiciary Development Objectives**

**Development of judiciary** should aim to ensure the true rule of law and the right of every individual to a fair trial by an independent and impartial court. Under the rule of law principle, human rights are defined as the highest values that determine the content and priorities

of public policies. However, this principle will not work as long as it remains a mere theoretical concept without its implementation in judicial practices.

Continued development of the justice system should aim at:

- Accessibility of justice;
- Fair judicial procedures;
- Professionalism, independence and impartiality of judges;
- Predictability, and openness of judgments; and
- Efficient defence.

**Accessibility of justice** requires judges to accept all cases within their jurisdiction and turn down no person that pleads defence of his/her violated rights. Court costs should not be too high to prevent defence. There can also be no true accessibility of justice until an efficient legal aid system is in place to provide such aid either free of charge or at a reasonable cost to the people with low incomes. Justice cannot be deemed accessible while the court system is complicated and intricate, which makes it difficult to find out which court has a jurisdiction over a specific case. It is also important that people are aware of organisation and functioning of courts as an indispensable condition of accessibility of justice. Accessibility of justice, however, does not mean that people cannot settle their disputes through extra-judicial procedures. On the contrary, the state should support development of non-governmental institutions such as arbitration courts, mediation and others that can help to settle disputes without bringing them into court.

**Judicial procedures** can be fair only if they aim at the rule of law and only if they are based on the principles of legality, equality of all trial participants before law and court, competition, discretionary use of law, openness, transparency, and mandatory enforcement of court rulings. These principles can be restricted only in exceptional cases and only as set by law. Legality of a court ruling should be guaranteed by the consent of the parties thereto, as well as by the right to appeal the ruling and review it by a court above. Court rules should be free from unnecessary formalities. For quick restoration of rights, especially in easy cases, court procedures should be simplified there where such simplification does not violate the interests of the parties to a fair trial of their case. There should be efficient mechanisms in

place to prevent trial participants from using their procedural rights in bad faith, just as there is a need to establish liability for the failure to fulfil procedural duties.

**Professionalism, independence and impartiality of judges** should be an obligatory guarantee of a fair trial. The procedures used to select judges and prestige of the judicial office should provide for the formation of a highly competent judiciary. Deepened specialisation of courts and judges will also promote timely and high-quality settlement of cases. Organisation of the court system and administration of justice should prevent any possibilities of pressure on judges or anything that may raise doubts about any judge's impartiality. The mechanism of judicial liability should guarantee efficient and timely response to the cases of judicial self-will and incompetence.

**Judgments should be predictable.** This can be achieved mainly through univocal and clear legislation. At the same time, when any court applies the law, it should take into account its aims and interpret it in such a way as to strengthen the rule of law. **Open access to court rulings** should become one of the most efficient ways of civil control of the judicial branch. In addition, openness of court rulings should promote uniform application of laws and predictability of similar trials. Openness of court rulings may be restricted only in accordance with the law and in the interests of non-disclosure of sensitive information about any individual or any other secrets protected by law.

**Efficient defence** means that any case should be settled without ungrounded delays to ensure timely protection of any individual's rights. Defence is inefficient and courts have no sense if their rulings are disregarded, not enforced or enforced improperly.

## **Court System**

Proper organisation of the court system should be one of the guarantees of fair and efficient justice. The modern system of general jurisdiction courts should be improved for better implementation of principles defined by the Ukrainian Constitution and provisions of Article 6 of the Convention for the Protection of Human Rights and

Fundamental Freedoms concerning the right to a fair trial.

The system of general jurisdiction courts should be based on the following principles:

- **Specialisation**, which means division of courts by the subject of disputes attributed to their jurisdiction and relevant peculiarities of specific types of judicial procedures (in other words, court jurisdiction should be extended to certain kinds of legal relations);

- **Territoriality**, which means that court jurisdiction should cover specific geographical territories within Ukraine proceeding from the need to approximate them closer to the people (courts should be set up in such a way that their jurisdiction covers a specific territory);

- **Court instance division**, which means that the court system should secure the right to the revision of rulings.

The entire system of general jurisdiction courts should be specialised, and not only some part of it. Division of general jurisdiction into certain types of specialised jurisdictions is necessary to improve the efficiency and quality of trials. Courts should be specialised by branches of law and relevant judicial procedures. These criteria will make it possible to single out civil, criminal, and administrative courts in the system of general jurisdiction courts.

The principles of territoriality should provide for approximation of trial and appellate courts closer to the people. At the same time, when defining the territorial jurisdiction of courts it is necessary to take a due account of requirements set for the independence of judges from local public authorities. It appears that an optimal combination of accessibility of courts and independence of judges could be ensured by a two-tier structure of trial courts. Trial courts should hear simple civil, criminal and administrative cases and operate in districts and towns to be the closest to the people. Such courts should be comprised of specialised judges, which will decrease the probability of pressure thereon.

If courts are set up in city boroughs, it does not seem advisable to bind their territorial jurisdiction to any specific borough. This is because the city self-government may decide to reorganise such boroughs, and such reorganisation will require a presidential decree to change the number of courts with no objective reasons for that. Or-

ganisation of courts should not depend on the local self-governance. For this purpose, it is possible to set up city area courts and define territories (areas) that should be covered by their jurisdiction. To improve the logistic support to trial courts, town-district courts may be set up through the merger of town and district courts provided they are located in the same town.

As concerns regions and their parts, it is appropriate to establish trial specialised courts, specifically regional civil courts, criminal courts, and administrative courts. Such courts would be capable of providing more efficient, competent and impartial trial of cases, including those with high probability of pressure on judges.

Courts of appeal are set up per region or a number of regions depending on the need for each type of justice.

Territorial jurisdiction of trial and appellate courts should not be tied up to the administrative and territorial system and should be established with due consideration of certain objective criteria. The jurisdiction of each court of the same level should be extended to the territory inhabited by approximately the same number of people. A court should be easily reachable in terms of transport. Names of trial and appellate courts should include the name of the city/town of its location.

The number of judges in local and appellate courts should be defined as an average number of cases tried in a specific territory divided by a workload standard per judge. The workload standard depends on the number cases that an ordinary judge can handle over the established working hours with enough attention paid to each of them.

Different levels of the court system should ensure legitimacy of court rulings. If any individual does not agree with the ruling passed by the court of the first instance, he or she should be guaranteed the right to appeal against such a ruling to the court of the second instance (appellate court) to check whether the facts were established correctly and whether legal provisions were applied in a fair and proper manner. Proceeding from the necessity of uniform application of law all over the Ukrainian territory, any trial participant should be entitled to appeal against decisions of trial and appellate courts to the court of cassation instance (a relevant high specialised court) to check

whether provisions of law were applied correctly. If revealed that one and the same norm is applied in a different way by courts of separate specialised jurisdictions, then the highest judicial authority in the system of general jurisdiction courts, which is the Supreme Court of Ukraine, should check the legitimacy of the given court ruling.

Different levels of the court system should be developed with due consideration of the fact that trial participants shall have equal rights in terms of appeal against decisions of the court. This means that each level of courts should perform only one function: trial courts shall try cases; appellate courts shall consider appeals against the decisions of trial courts; high courts shall review the rulings of the courts of appeal; and the Supreme Court of Ukraine shall review cases with exceptional circumstances.

There is a need to set up a separate judicial authority in the system of general courts to review civil and criminal cases in the way the High Commercial and the High Administrative Courts do it in their respective areas. In this connection, the Cassation Court of Ukraine, which is not foreseen by the system of general jurisdiction courts defined by the Ukrainian Constitution, should be replaced by the High Civil Court (as a cassation court for civil cases) and the High Criminal Court (as a cassation court for criminal cases). It would also be advisable to use one of the approaches that have been successfully implemented in commercial courts where only trial courts operate as the authorities of the first instance, while courts of appeal can operate only as appellate authorities in accordance with their name.

It is necessary to single out regional criminal courts from the general courts of appeal to try criminal cases that are now tried in the first instance by courts of appeal. Such courts need to have juries. Implementation of this approach will provide for a more professional administration of justice in criminal proceedings due to the deepened specialisation of courts, and will also relieve general courts of appeal from their trial functions that are not characteristic of such courts. This will also eliminate reasons for setting up the Appellate Court of Ukraine and make it possible to bring down much of the costs necessary for escorting prisoners to courts and summoning participants of criminal proceedings. Regional criminal courts will become the first

step towards creation of the system of specialised criminal courts.

The next step in development of administrative justice should be the establishment of the system of administrative courts with High Administrative Court on the top. It is necessary to speed up the establishment of administrative courts of appeal and regional administrative courts, provide them with proper premises as soon as possible, and staff them with judges. To ensure independence of judges from the influence of local authorities, the territorial jurisdiction of these courts should not be tied up to the administrative and territorial system. Regional administrative courts should be set up per region or a number of regions. To secure accessibility of administrative justice, cases against local self-government bodies and their officials, as well as against certain officials of public authorities should remain under the jurisdiction of more accessible district, town, area, and town-district courts.

There should be no military courts in the courts system of Ukraine, since their existence in the system of general jurisdiction courts is justified neither of the principles set by the Ukrainian Constitution for the system of general jurisdiction courts. Military courts have no specialisation and try both civil and criminal cases arising in military units, and they also have a special status as compared to other courts, which runs counter the principle of common judicial status stipulated by the Basic Law. In addition, judges of military courts are conferred military ranks on the request of the military headquarters. This raises grounded doubts about independence and impartiality of such judges. The practice of the European Court of Human Rights also suggests that this is a violation of human rights and fundamental freedoms.

It is necessary to set up mechanisms to encourage military judges to switch from military service to other courts. Upon final abolishment of military courts, military judges should become entitled to privileged resignation (with smaller work experience as a judge).

Further development of the system of general jurisdiction courts should aim at the setup of criminal, civil and administrative courts. **Civil courts** should settle all private disputes in accordance with the civil procedure (an individual vs. an individual). **Administrative courts** should settle public disputes (an individual vs. the state), with the ex-



ception of constitutional and criminal cases. **Criminal courts** should try criminal cases in accordance with the criminal procedure (the state vs. an individual).

**The Constitutional Court of Ukraine** as the sole body of constitutional jurisdiction should be preserved unchanged in the judicial system of Ukraine. Its formation procedure also does not need to be amended.

However, there is a need to separate the jurisdiction of the Constitutional Court and courts of general jurisdiction as concerns the application of legal acts with regard to the constitutional requirements. If any general jurisdiction court establishes that a law or any other legal act does not comply with the Constitution of Ukraine, such a court should apply constitutional provisions as direct norms. However, a general jurisdiction court should not be entitled to declare legal acts unconstitutional, which is attributed to the jurisdiction of the Constitutional Court. Such a court should be entitled only to refuse to apply it to specific disputes. If any cases like this come about, the Supreme Court may request that the Constitutional Court declare such an act unconstitutional.

If there are doubts about the constitutionality of any legal act, a general jurisdiction court should suspend proceedings due to the lack of relevant jurisdiction and file a petition with the Supreme Court to forward a relevant request to the Constitutional Court.

### **Administration of Justice**

Rules of the judicial procedure should aim to ensure a fair and legal ruling. Therefore they should be based on common principles providing for equal guarantees of legal protection of rights of all trial participants. Among such principles, the following ones have a determining significance:

- **Rule of law**, which means that protection of human rights should be the main aim of justice;
- **Discretionary application of law**, which means that parties should freely use their rights in relation to the subject of dispute;
- **Competition**, which means that parties should prove the exist-

ence of the dispute circumstances that are important for fair solution of the case;

- **Rational terms of trial**, which means that the court should solve the case without ungrounded delays; and
- **Openness**, which means free access of the public to court sittings and rulings that can be restricted only by law and only in good faith.

Implementation of these principles for the purpose of each type of justice administration should correspond to the specific features of the subject of proceedings and tasks of the court. Modern priorities of legal defence require clear definition of tasks of each type of justice.

The main task of the **constitutional justice** is abstracted from specific legal relations and is defined as the oversight of constitutionality of legal acts issued by top public authorities. Today, the number of subjects entitled to appeal to the Constitutional Court is limited. In order to improve the efficiency of constitutional protection of rights and freedoms, there is a need to consider the possibility of entitling individuals and corporate bodies with the right of appeal to the Constitutional Court. It is also necessary to enhance competition in the area of constitutional justice through a clear definition of the parties and other interested participants of proceedings.

The **civil justice procedure** should be considered as a service of the state in terms of settling private disputes between the parties that are unable to settle them. The principles of discretionary application of law and competition should be fully implemented in the civil justice. To avoid accusations of preconceptions, the civil court should hear only the issues brought about by the parties. The courts should consider only the civil side of the case within the framework of claims made by the parties. The parties should have equal possibilities to ground and defend their positions. They should observe the rules of the bona fide litigation. For these purposes, it is necessary to establish a requirement that the parties should inform each other and the court on the evidence that they will use to ground their claims and objections prior to the proceedings. If parties fail to meet this requirement, the court may reject the evidence that has not been provided on time, as required. This will make it possible to decrease the term

of trial, unload courts, and also restrict the parties in possibilities of protracting the trial.

The **administrative justice procedure** should aim to protect human rights from violations of the public administration (public executive authorities, bodies of local self-governance etc). Participants of such public relations have unequal possibilities, therefore the administrative court should use all measures envisaged by law to protect the rights violated by authorities. To do so, the administrative court should be entitled to collect evidence on its own initiative, and also go beyond the framework of claims made by the parties to the extent necessary for full protection of human rights. Such a role of the court is conditioned by the fact that usually it is the public administration that is guilty of the conflict or the public administration may have not taken sufficient steps to prevent the conflict.

The **criminal justice procedure** should aim at finding an individual guilty or non-guilty of a criminally liable action, fair application of criminal liability measures, as well as protection of victim's rights and public interests against criminal endeavours. It should also aim, however, to protect any individual from ungrounded criminal punishment and violation of such individual's rights during the inquiries and pre-trial investigation. There is a need to direct application of presumption of innocence and the principle under which a doubted criminal should be treated as non-guilty. The criminal court should be relieved from prosecutorial features. It should not forward cases for additional investigation on its own initiative or commission pre-trial investigation bodies to search for more evidence. If the public prosecution does not prove that the person is guilty, the court shall pronounce the verdict of non-guilty.

To ensure the equality of the parties in criminal proceedings, there is need to enhance the basics of the competition at the stages of inquiries and pre-trial investigation. The defence should get procedural possibilities for an alternative investigation. At the same time, victims should have effective possibilities to protect their interests from inappropriate pre-trial investigation.

Services included into the structure of pre-trial investigation bodies should not make forensic inquiries for criminal proceedings.

Detention should be used as a preventive measure only in exceptional cases. The gravity of the crime of which any person is accused should not be used as the grounds for choosing such a preventive measure. The number of preventive measures alternative to the detention should be extended. There is also a need for more efficient use of the existing preventive measures that do not require detention.

Another important priority for improvement of justice procedures is the **unification** of trial procedures if no special rules are required by the tasks of any specific type of justice. One of the necessary steps is the unification of civil and commercial procedures in one code, since there are no substantial differences between them, while the majority of the existing differences are not caused by specificities of justice administration. The justified specific features of administration of justice with participation of businesses can be set forth in a separate section.

There is a need to improve the procedures for recusal of judges. Today, judges themselves decide on this issue, which runs counter the principle that nobody can be a judge in his/her own case. If participants of proceedings have any doubts about the impartiality of any judge, the same judge should not make decisions on the recusal, while the issue should be better passed to another court authorised to issue rulings on relevant cases. If such a court order recusal of the relevant judge, such court should try the case. If a second recusal request is filed with the aim to protract the trial, the court in relation to which such a request is filed should be entitled to reject it.

To simplify the procedures and to decrease the workload for courts, it is important to enhance the role of the preliminary court sitting where the parties and the judge can discuss the possibilities of a conciliatory settlement of the dispute and exchange their evidence and arguments. At this sitting, parties will be able to estimate their chances to win the case and they can also settle their dispute themselves without resorting to an open court hearing. In such a way, the parties will be able to save on court costs.

There is a need to define procedural rules for the **written proceedings** when cases are tried without participation of the parties and without a hearing if parties have expressed their positions in writ-

ing and do not wish to participate in a trial. The written proceedings should be possible in trial and appellate courts if the parties have filed a petition to try their case without their participation, while there is no need for petitions in cassation courts, since cassation courts do not examine the evidence. This will also make it possible to decrease court costs.

Trial participants should be punished more strictly for abusing procedural rights, especially for protraction of the trial. The forms of liability may include not only the measures of procedural enforcement (warning, penalty), but also the increase of the court costs for such parties, independently of whether the party wins the case or not. In addition, a failure of the defendant to appear in the court without serious reasons should be estimated as recognition of the lawsuit if such a defendant has not filed a petition for *ex parte* proceedings.

To provide additional guarantees for the independence of judges and improve the trust to the court, there is a need to develop rules for the participation of **people's assessors** in the administration of justice. Participation of people's assessors is particularly important there where the law provides for broad possibilities of the judge's discretion and the result of the trial depends on the estimation of circumstances from the moral point of view (juvenile crimes, children and care proceedings). Correct and fair application of legal provisions in such proceedings is more dependant on life experience and moral qualities of judges rather than their knowledge of law. It is also advisable to involve people's assessors in trials of certain administrative cases. Participation of people's assessors in such proceedings should aim to balance private and public interests in a relevant court ruling.

Another pressing matter is the legislative regulation of the work of a **jury**. First, participation of the jury should be envisaged for certain kinds of criminal proceedings, e.g. trials of the gravest crimes. The accused should be entitled to choose between the jury and the panel of professional judges to try their case. Due to the existence of people's assessors in Ukraine, the functions of the jury should be separated from the functions of professional judges. The jury should decide only on the fact (e.g. whether the crime was committed, whether the crime was committed by the accused in-

dividual, whether the accused individual is sane to be guilty of the crime), and the professional judge should pronounce the verdict on the basis of the jury's decision and norms of the criminal law.

Independently of the type of justice, the **procedure for revision of court rulings** should be based on the same principles. The courts of appeal should be in charge of full or partial revision of cases to find out whether the circumstances were established rightly and whether the trial court has applied legal norms in a correct way. The ruling of the court of appeal in terms of the established facts should be final. The cassation courts should review rulings of trial and appellate courts only to check whether legal norms were applied in a proper way. They should ensure uniform application of legal norms by courts of specific jurisdiction. Only the most difficult cases of principle, for example, involving different application of legal norms by the cassation court or courts of different specialised jurisdictions, or concerning the determination of a competent court for handing over a certain dispute or legality of court rulings should be reviewed by the highest general judicial authority, the Supreme Court of Ukraine. Such revision of rulings by the Supreme Court in accordance with the exceptional cassation procedure should guarantee the integrity of the judicial practice of all courts of general jurisdiction.

Certain procedural functions performed by judges today should be passed to the staff. Thus, members of the staff can receive citizens, prepare cases for trials, ensure participation of people's assessors and juries in the trial, draft court rulings etc.

### **Status of Judges**

The judicial reform cannot be efficient if the status of judges is not enhanced and the image of the judicial profession is not improved. An indispensable feature of the judicial status is the independence from any interferences into the activities of judges. Such independence should guarantee a fair trial. A mere legislative declaration of the principle of judicial independence is not enough, as there is a need for arrangements to prevent the possibilities of external influence on judges.

Judicial independence can be guaranteed through the procedures established for the selection and promotion of judges. Such a guaran-

tee is efficient if appointment/election of judges excludes the possibility of informal commitments of the future judges to the people who can influence this process. For this purpose, it is also necessary to remove those who appoint/elect judges from making decisions on promotion of professional judges.

Judges are first appointed by the President of Ukraine for the period of five years and, upon termination of this period, they are elected for a lifelong term by Parliament. On the whole, this procedure does not endanger the judicial independence, since, after their appointment or election, judges become independent from the authorities that appointed or elected them.

However, the procedure for selection and promotion of judges should become more transparent. Candidate judges should not depend on the decisions of individual officials in the executive or the judicial branch that are involved in the selection procedure. Further, judges should be appointed, elected to other offices and promoted only on the basis of a competition. The competition should be organised in the form of a test to improve the impartiality of assessment of the candidates' knowledge. Information on vacant posts, as well as the time and the place of the competition should be open.

For future judges to learn better all the peculiarities of the judge's job, they should go through a two-year training at the Academy of Judges. Such training should combine theoretical courses with internship as a judge assistant. The State Court Administration should make an annual state order for training the candidates in the judge's positions following the forecast of demand for judges.

To provide for a unified method of the proficiency evaluation, all tests should be passed in the presence of an examining board to be established by the boards of experts. To improve the neutrality of evaluation, the proficiency level should be evaluated by means of a test. Candidates should be recommended to the judges' positions only upon the consideration of the results of their proficiency test, as well as medical and physical examination.

The job should be offered to those candidates who get the best results of the test. If there is a number of vacant posts, candidates with the best proficiency results should be entitled to a privileged choice of

their future place of work. Proficiency results should be cancelled if any candidate repeatedly refuses to occupy the proposed vacant post. This will provide for fair and transparent selection of candidates from the reserve. Professional judges, who would like to work in another court, including a higher court, should go through the same procedure.

To make a decision on submission of a formal request to the President of Ukraine concerning a judge appointment, the High Board of Justice should be entitled to interview the candidates to check their professional and moral qualities important for the proper performance of their judicial duties. It should be possible to appeal against the decision of the High Board of Justice to make no appointment submission.

Before their election for the lifelong term, the judges appointed for the first time should take regular training courses at the Academy of Judges and pass a mandatory test at the end. If any judge fails to pass the proficiency test, this can be used as a ground for dismissing such a judge at the end of his/her appointment term. Such trainings should also be envisaged for the judges already elected for the lifelong term.

The declared uniformity of the status of judges as a condition of equality and non-discrimination of judges should be implemented into the reality. This principle requires that judges have equal guarantees of their activities independently of their specialisation or the level of the court where they serve. Higher court judges should have no privileges as compared to their colleagues from lower court, while the salaries of judges should depend on the duration of experience rather than the level of the court. No restrictions should be imposed on judges that want to switch from one court to another if such courts have the same jurisdiction.

Military courts should have no special status. Judges should not be part of the Armed Forces of Ukraine and should not be on military service. Their salaries and careers should not depend on military ranks, and no court should be getting any logistic support from a public authority (e.g. the Defence Ministry) that often participates in the proceedings, otherwise the reasons to doubt the independence and impartiality of such courts will persist.



The level of salaries and social care provided to judges should correspond to the high and important role that they perform in a democratic society. Judges should be guaranteed high salaries and a stable payment system so that the executive branch could have no influence on them through the regulation of their salaries. Salaries should be increased simultaneously with the rejection of certain privileges that are not conditioned by the judicial status and contradict the principle of equality of all citizens (e.g. the right to place a child into education institutions for children out of turn, the right to the free use of public transport etc). Prestige of the judicial profession should be based on high salaries and high status in the social hierarchy, and not on the system of privileges.

The judicial bonus system should also be revised. Judges should receive additional remuneration only on the basis of objective criteria (e.g. long stay in office, optimal ratio of resolved cases and repealed or altered decisions, excellent test results). Such criteria should be set by law. Decisions on additional remuneration should not depend on individual officials or authorities.

Provision of judges with residential property should be improved. Each judge without a residence should get a free and furnished one which shall become his/her property after such judge completes a certain period of service as a judge as established by law. If a judge is dismissed, this should terminate his/her right to use the above residence. To ensure the judges' right to the residential property, the government should develop a programme of residential construction for judges and members of court secretariats and take measures for its implementation. The procedures for provision of residential property to judges should prevent bureaucrats from the possibility of protracting the solution of such issues or benefiting specific judges. Increased salaries and improved social care should raise the image of the judicial profession, and set up additional guarantees for the independence and impartiality of judges.

Due to their special status, judges should avoid state and other awards or honourable titles for their service. Judges can accept awards and honourable titles only under the conditions that exclude any doubts about their independence from the individual or the au-

thority that makes an award decision. Such restrictions should not extend to the retired judges.

Judges should not act in such a way as to undermine their reputation neither in court, nor out of court. The discredit of the judicial branch can be prevented through an improved system of disciplinary provisions applied to judges. Boards of experts should be deprived of their disciplinary powers, since the discipline issues are not directly related to the qualification of judges. Another difficulty with bringing judges into account is that the boards do not work on a constant basis while the term established for instituting disciplinary proceedings is quite limited. Therefore, it seems reasonable to set up a standing disciplinary commission to be formed by the Congress of Judges from among the competent retired judges. Such disciplinary commission, the High Board of Justice and their members should be prompt in responding to the reports of the cases when any judge's behaviour traces features of a disciplinary infringement. The checking of the judge's behaviour should not disturb the administration of justice.

To provide for the timely verification of such judge's behaviour, it is necessary to establish judicial inspection offices in each region (oblast) of Ukraine. The Congress of Judges should appoint them from amongst the competent judges, including the retired ones, proposed by the Council of Judges. The inspectors should also be empowered to institute disciplinary proceedings upon the verification.

Each interested person should be entitled to apply to the disciplinary body and request that disciplinary proceedings are instituted due to the improper action/omission of action by any given judge.

To achieve fair results, the disciplinary procedure should be approximated to the judicial procedure. Those who believe that they have suffered from improper judge's actions and the judge against whom the disciplinary proceedings are instituted should be entitled to be heard. A disciplinary case should be considered on the competitive basis. Members of the disciplinary body that checked the report on improper behaviour should not participate in the process of making a decision on the case. The results of the proceedings should be used as a basis for applying relevant measures to the infringers, up to

initiating their dismissal due to the violation of the oath. Such measures should prevent the cases of judicial self-will, as well as ensure proper attitude of judges to their duties and perception of the high judicial status.

### **Qualification of Judges**

There should be independent bodies in place to assess professional skills of candidate judges and recommend them for the posts of judges. Such bodies should be formed of highly skilled experts. No less than half of each such body should be composed of representatives of the judiciary.

In Ukraine, judges are selected by boards of experts and the High Board of Justice. In general terms, today's composition of board of experts meets the European norms set for such bodies as the majority of their members are elected from judges.

In order to bring the composition of the High Board of Justice into compliance with the European standards aiming to ensure the independence of this authority, only the most competent, especially retired, judges should be appointed/elected as its members.

The current system of board of experts should be revisited. Today, the boards of experts for general courts are set up at appellate districts established for the specialized courts of appeal. The change of borders and the number of appellate districts automatically affects the number of territorial boards of experts for the general court judges without any grounded need for such a change. In addition, appellate districts of various specialised courts may not coincide.

Judicial conferences elect 6 judges to each territorial board of experts. However, conferences of judges of general courts convene at the regional level as previously. This means that there may be an uneven representation of judges from different regions in the boards of experts. There are also no standards established for such representation.

To clear up the above defects, the boards of experts should be set up with due regard of the administrative and territorial system. Territorial boards of experts for general courts could be established in Lviv (for

Volyn, Rivne, Zakarpattia, Ivano-Frankivsk, Lviv, Chernivtsi, and Ternopil regions), Kyiv (for Zhytomyr, Vinnytsya, Cherkasy, Kyiv, Chernihiv, Khmelnytsk regions and Kyiv City), Mykolayiv (for Crimea, Odesa, Mykolayiv, Kherson regions and Sevastopol City), Dnipropetrovsk (for Dnipropetrovsk, Kirovohrad, Poltava, and Zaporizhzhya regions), and Kharkiv (for Donetsk, Kharkiv, Sumy, and Luhansk regions). The compositions of such boards should include: two judges from each regions elected by a relevant conference of judges of trial and appellate courts, and territorial boards of experts set up in Lviv and Kyiv should have one judge from each region. Schools of law should also be represented in such boards to raise their professional level.

For efficient and continuous operation of boards of experts, their members should be considered on mission over the time when they exercise their powers as members of the board.

With development of courts of general jurisdiction, judicial territorial boards of experts (5-7 boards in total) should become in charge of proficiency certification of judges of trial courts (district, town, area, town-district courts, and circuit specialised courts). On the basis of recommendations made by boards of experts, the High Board of Justice should decide whether to submit an appointment petition for any candidate.

The High Boards of Experts comprised of three sections (civil, administrative, and criminal ones to match the types of specialised jurisdiction) should certify the qualification of the judges of appellate and high courts, as well as the judges of the Supreme Court of Ukraine.

### **Judicial Self-Governance**

Judicial self-governance as a mechanism for judges to settle their internal operation issues and protect their professional interests should become a real guarantee of judicial independence. Bodies of judicial self-governance should actively respond to any cases of interference into judicial affairs, as well as violation of judicial rights and guarantees of their high status.

The judicial self-governance should be most active at the level

of each specific court. Thus, meetings of judges of one court should solve issues associated with the introduction of specialisation of judges, approve procedures for the distribution of lawsuits among judges (today, it is done by chief justices who often abuse this power), for formation of panels of judges and appointment of the presiding judge, as well as for replacement of judges in case of their absence. This will ensure that neither the government, nor other public authorities will be able to influence the choice of a judge for specific proceedings.

Judge and presidia meetings (in big courts) duly commissioned by judge meetings may settle certain issues of social care, e.g. approve the leave planner, distribute sanatorium cards etc.

In terms of administrative posts, judges should be appointed to them by judicial self-governance bodies for the term set by law, but for no more than two successive terms. Chief justices and associate chief justices should be elected by judge meetings of the relevant court, and chief justices of small trial courts may be appointed by territorial councils of judges. Chief justices should have no administrative powers. Their functions should be limited to the representative powers and oversight of operation of the staff.

Chief justices should represent their courts as a state authority, and depute chief justices — as a legal entity. Court presidia should be abolished, since, being the administrative bodies in courts, they deal with issues of interior judicial activity, which Constitution attributes to the powers of the judicial self-governance.

The system of judicial self-governance bodies and the range of their powers should be improved. The system of representative bodies of local self-governance should be built with due account of the development of the system of general jurisdiction courts. Thus, judges of trial courts located on the territory of a specific region should have a possibility to be represented at the conference of trial court judges. Conferences of trial court judges should appoint members of boards of experts for trial courts, elect councils of judges and delegates to the Congress of Judges of Ukraine. Representatives of appeal and high specialised courts should participate in conferences of judges of relevant specialisation. Conferences of appeal and high specialised courts should appoint members of respective sections of the High Board of

Experts, elect relevant councils of judges and delegates to the Congress of Judges of Ukraine. Apart from participation in the formation of the Constitutional Court and the High Board of Justice, the Congress of Judges of Ukraine should elect the Council of Judges of Ukraine and part of the High Board of Experts.

The Council of Judges of Ukraine as a body of professional self-governance that represents all the judiciary should participate in the development of legislative proposals related to the judicial system, the status of judges, administration of justice, logistic support to courts, development of the code of ethics etc.

To improve the efficiency of judicial councils, the State Court Administration should provide them with permanent secretariats and logistic support.

### **Logistic Support to Courts**

Proper logistic support to courts should guarantee the impartiality and independence of judges. The quality of justice considerably depends on the amount of time judges spend for judicial proceedings without diverting their attention to the issues not related to justice administration. Therefore, for efficient organisation of their working time, judges should be relieved from the necessity to deal of the logistics matters.

In accordance with the principle of separation of powers, judicial and administrative functions should not be combined with the judicial branch. It is important to clearly separate powers of courts and public executive authorities. Courts should administrate justice, and specialised public executive authorities should support the functioning of courts. Such separation of powers would guarantee the maximum independence of judges.

Logistic support to courts should be ensured by the State Court Administration. Judges should deal only with judicial proceedings to ensure their timely and fair resolution. Judges should not get preoccupied with organisational support to proceedings (summons of parties, witnesses and other trial participants, conveyance of the accused etc). These problems should be solved by the staff subordinated to the State Court Administration and not to the chief justice to

relieve judges from the responsibility for action or omission of action by the staff. With such subordination, chief justices will have no need to deal with the administrative issues, and therefore will not get dependent either on local authorities, or on businesses. The executive branch should be in charge of organisation support to the system of justice, while proceedings should be held by the judicial branch. This should prevent the executive branch from making business on judicial proceedings.

The court secretariat should care for proper technical equipment of offices and courtrooms. It should arrange for the refurbishment of the court building, record-keeping and maintenance of judicial statistics, summons of trial participants, people's assessors, and jurors, conveyance of the detained and the accused, court recording etc.

Logistic support to courts should be overseen by judicial self-governance bodies. The secretariat should be accountable to the chief justice and general judge meeting of the relevant court.

With such a logistics system of, judges will be able to focus entirely on their sole professional aim — administration of justice. There will be no need to impose administrative or economic functions into judges. Judges will administer justice provided the secretariat arranges proper conditions for it. Such an approach will make it possible to guarantee the independence of judges.

Improved funding of the judicial branch should also be of a considerable effect. There is a need to approve the standards of financial support to courts, boards of experts, and judicial self-governance bodies. On the basis of such financial support standards, the main funds managers (defined by the Law on Judiciary) should put forward annual proposals for the law on the national budget. Such proposals should be included into the draft national budget. If the Government disagrees with the proposals, it can make its own motivated remarks thereon and forward them together with the draft budget to the Parliament. To ensure expenses for a specific purpose, the list of budget programmes for the judicial branch should be specified in a more detail.

The funds envisaged for courts by the State Budget of Ukraine should be used by the State Court Administration only for pecuniary

and social support to judges, remuneration of people's assessors and jurors. Court secretariats should be funded from the funds envisaged separately for the State Court Administration. Such funds should be managed by the State Court Administration.

Funding of courts can also be improved if the state duties paid for appealing to the court are replaced by court duties. This money can be used to meet the needs of proceedings. The amounts of court duties can be set beforehand depending on the type and complexity of the case. Such duties should be considerably lower in administrative proceedings, as compared to civil proceedings. Introduction of court duties will make it possible to refuse from the payment made by the parties to cover information and technical support to the trial.

Computerisation of courts should be one of the priorities of the State Court Administration. This will make it possible to ensure gradual transition from printed to electronic record keeping. A single judicial information network should be set up. There is also a need to create a single electronic library, as provision of necessary documents and books to all court requires considerable time and money. In the long-term, each workplace should be equipped with a computer. A single information network should contain a legal database, samples of judicial documents, and a database of judicial cases (a state electronic archive of judgments). Later, electronic archives could be set up for specific case documentation and court recordings. In the future, these archives could be united into a single network where trial materials could be accessed by trial participants through the Internet.

Courts should be properly equipped for court recording. An electronic recording should be equalled to the written/printed minutes of a court sitting.

In terms of information support, the state court administration should ensure cooperation of courts with law enforcement authorities and bodies responsible for enforcement of court rulings, and other justice authorities to set up a single information network for these bodies.

Transparency of the judicial branch requires that all interested parties have access to court rulings. For these purposes, regular publication of collections of court cases should be supplemented with a



search system for court rulings with an open Internet access to it. On the one hand, it will promote uniform application of law and will improve predictability of trial results, and on the other hand it will ensure public control of courts. However, there is a need to define privileged information in a judgment. Texts of judgments provided for public access should not contain information that will make it possible to identify any of the trial participants.

Implementation of all these measures will result in improved efficiency of judges and court secretariats, simplified record keeping, rapid trial, and transparency of court operation.

Budget funds can be saved through deployment of videoconference communications between the criminal cassation authority and penitentiary institutions. This will make it possible to avoid conveyance of prisoners whose verdicts are reviewed in the court.

To ensure security of judges and other court officers, as well as participants of criminal proceedings, the court militia should be created in the structure of the State Court Administration, while order at court sittings can be ensured by court ushers.

Training and methodological support to the judicial system also requires development. The Academy of Judges should play a leading role in this process. It should generalise the judicial practice, provide methodological support to courts, train candidate judges, arrange trainings for judges, as well as scientific, practical, and educational seminars, courses, conferences etc. The Academy should also support cooperation with leading judicial institutions abroad for the exchange of experience in the area of justice and organisation of study tours.

### **Related Institutions**

It is impossible to undertake a full-fledged judicial reform without the reformation and development of the institutions related to the exercise of the right to defence.

Justice cannot be deemed accessible to all if there are no efficient **legal aid** arrangements in place. The state should set up conditions that could guarantee legal aid to individuals that are deprived of the possi-

bility to defend their rights in the court due to their scanty means. Such people with low incomes should get legal aid either for free or at a reasonable price and not only in criminal, but also in civil and administrative proceedings where the most important human rights are protected. The state should encourage creation of the communal barrister offices under local self-governance bodies to provide legal aid to members of the territorial community either for free or under privileged conditions.

The **Bar** should play an enhanced role in provision of legal aid. To ensure high quality of legal aid there is a need to separate the status of barristers from other lawyers. Due to high guarantees provided to barristers, the law should limit the descriptions of cases where legal aid can be provided by lawyers without a barrister status. The law should also establish liability for barristers and other lawyers for incompetent legal aid.

The State Court Administration jointly with bodies of local self-governance should organise the setup of **information centres** at trial courts to provide members of relevant territorial communities with free or reasonably charged access to legal data bases, legal consultations on procedural aspects, standardised forms of statements, complaints, petitions and assistance on their completion, as well as other information necessary to go to the court.

Another pressing task is to develop mechanisms to involve translators and other experts into judicial processes. These mechanisms should establish efficient cooperation with relevant offices and experts (urgent arrival of experts, guaranteed payment of their services etc).

The system of **pre-trial investigation** in criminal proceedings also requires substantial reformation. Under the Ukrainian Constitution, the **Office of Public Prosecutor** should be deprived of the function of pre-trial investigation since it oversees such investigation. One Office should not combine investigation and its oversight. Therefore, investigation divisions of the Public Prosecutor's Office should be transformed into the National Investigation Bureau as a central executive authority with territorial bureaus set in regions.

To meet the constitutional requirements, the Public Prosecutor's Office should be stripped of the general oversight powers. Oversight of the observance of law has already been established through the op-

eration of public authorities in clearly defined areas. In addition, the use of the Public Prosecutor's Office vested with such powers for political and economic repressions has discredited the concept of general oversight.

In terms of **enforcement of court rulings**, encouragement of civil servants to efficient enforcement of court rulings has a considerable potential, just like the increased liability for the failure to enforce court rulings or impediment to the ruling enforcement. This means that there is a need to set up such conditions under which voluntary enforcement of rulings would be much more advantageous as compared to their forced enforcement. Later, the State Execution Service may be transformed into a self-sustained enforcement agency under the State Court Administration. There is also a need to study how state enforcement of court rulings can be monopolised and non-state enforcers and enforcement agencies introduced.

To raise the efficiency of enforcement of court rulings in criminal proceedings, it is necessary to improve the organisation of the **penitentiary system**. The state should take measures to bring the penitentiary system into compliance with international and European standards. Specifically, any cases of tortures and other inhuman or humiliating treatment of detained or imprisoned individuals should be resolutely prevented. For these purposes, the functions of administration and security of penitentiary institutions should be separated and divided between the Ministry of Justice and the Ministry of Interior Affairs, for example.

Prisoners should be provided with the necessary medical aid. The administration of penitentiary institutions jointly with medical services should prevent dissemination of contagious diseases among prisoners. The possibility of repeated criminality can be diminished by ensuring proper conditions for efficient adaptation of former prisoners. The state should not set up ungrounded obstacles to activities of charitable and religious organisation aiming at social rehabilitation of such individuals.

The unloading of courts requires the development of **alternative (extrajudicial) ways to settle legal conflicts**. The state should

set up conditions to stimulate cheaper and less formalised ways for handling legal conflicts. Sufficient legal and organisation conditions should be set up for operation of arbitration courts. The parties could choose arbitration proceedings having agreed on the mandatory nature of the arbitration decision. There is a need for the scientific grounding and practical implementation of the mediation as activities of professional intermediaries that promote a compromise between the participants of any legal conflict encouraging them to settle the dispute themselves. The public should be informed of the advantages of such methods over the judicial mechanism. People should become more interested in using these methods first, and resort to judicial proceedings as an exceptional method of settling a legal dispute.

Development of **notaries' offices** can also help to considerably unload the judicial system. The function of the court to issue an order in civil proceedings when there is no legal dispute between the parties that have committed certain obligations to each other may be transferred to notaries. Notaries could issue writs of execution for creditor demands if a debtor does not object to the existence of a relevant commitment and its compulsory enforcement.

There should be no division of the notary offices into the public and private ones. The state should not fulfil the notary's functions that are more successfully performed by private notaries. At the same time, the state should be able to regulate the cost of notary services for people with low incomes. Reliable mechanisms of notaries' liability should be established for provision of low quality services.

Powers of courts to settle **cases on administrative infringements** and impose administrative sanctions should be limited and later on passed to administrative agencies. It will be possible to appeal against decisions of administrative agencies made in such cases to the administrative court. Cases on infringements that result in arrest or seizure of property should be transferred to criminal courts that should try them in accordance with the criminal procedure. In that case, such infringements should not be called administrative.

## **Legislative Support**

Successful implementation of measures to secure the rule of law and the right to a fair trial in Ukraine depends on their proper legislative support. Today, a gradual improvement of legislation is needed in the area of justice to secure a coherent and smooth transition to the new judicial standards.

The **first stage** (2006-2007) should be aiming to further implement provisions of the Ukrainian Constitution and the Law on Judiciary, approximate relevant Ukrainian laws to the European standards, upgrade the status of judges, unload courts, improve the accessibility of justice and trust to courts, and combat corruption in the judicial system.

For these purposes, it is first and foremost important to enforce the Code of Civil Procedure and the Code of Administrative Justice, pass a new Code of Criminal Procedure and make relevant amendments to the Law on Judiciary to replace the Appellate Court and the Cassation Court of Ukraine by the High Civil Court and the High Criminal Court respectively, and abolish military courts. In addition, the above amendments should extend the powers of the judicial self-governance, establish a Disciplinary Commission for Judges and subordinate court secretariats to the State Court Administration. There is also a need to draft and pass new versions of the Law on the Status of Judges which should include the provisions of the Law on the Procedure for the Election and Dismissal of Professional Judge by Parliament. It is also necessary to develop a Law on Legal Aid to define various types of legal aid and set the grounds and mechanisms for free legal aid or its provision under privileged conditions. This act should establish liability for provision of legal aid in bad faith too.

Transparency of courts can be ensured by the adoption of the Law on Public Access to Court Rulings which shall provide for the establishment of the rulings register accessible through the Internet. There is also a need for the legislation that would set the mechanisms of the appeal against the omission of action by judges or delay of proceedings, as well as the indemnification for such cases.

This is the stage, when it is necessary to develop common methodological approaches to the legal regulation of relations in the area of justice and common terminology in legislation on the judicial system, status of judges and administration of justice.

Enforcement of constitutional provisions on the powers of the Public Prosecutor's Office requires adoption of a new version of the Law on the Public Prosecutor's Office and approval of the Law on the National Investigation Bureau and provision of organisational support to their gradual enforcement. There is a need to update the legislation on the Bar and notaries and amend the Laws on the High Board of Justice, on forensic inquiry, and on the ruling enforcement (due to enactment of new codes of substantive law and codes of procedures).

Due to the increasing number of the rulings of the European Court in Human Rights against Ukraine, the Law on the Enforcement of the ECHR Rulings should be adopted to establish relevant clear and effective mechanisms for the proper enforcement of such rulings.

It would also be advisable to draft laws on the State Court Administration, on the court militia, on court charges (with relevant amendments to the legislation on state duties) to improve the support of courts. The Budget Code should also be amended to improve the funding of courts through the change of the procedure for the development of the national budget.

The **second stage** (2007-2010) should aim to optimise the judicial system and administration of justice, as well as improve efficiency of justice administration.

This is the stage when the Law on Judiciary and the Law on the Status of Judges should be used to prepare a comprehensive act to provide for the setup of the system of civil and criminal courts, and integration of commercial courts into the system of civil courts. To this end, provisions on special features of proceedings with participation of corporate bodies should be included into the Code of Civil Procedure. There is also a need to draft a **law on court charges** to guarantee the state aid in paying court duties to the people with low incomes and a new version of the law on enforcement of court rulings to ensure more efficient mechanisms for the enforcement of judgments.

The new Code of Administrative Infringements should take administrative infringements off the jurisdiction of courts. The non-administrative infringements should be transferred to the Criminal Code of Ukraine as criminal infringements that, unlike crimes, shall not result in punishment and conviction. Such criminal infringements should be tried by criminal courts in accordance with the criminal procedure.

The **third stage** (2010-2015) should complete the establishment of a substantially new legal basis for the operation of courts and ensure proper stability of the justice system. There is a need to eliminate negative tendencies produced by the side effects of the measures undertaken to develop the judiciary. The judicial system, the status of judges, and justice administration should fully comply with the requirements set for the justice systems in developed democracies.

*Наукове видання*

**Legal Reforms in Ukraine:** Materials of the Centre for Political and Legal Reforms// Editorship by **Ihor Koliushko**, — Kyiv, 2005. — 272 p.

*Scientific and technical preparation of the edition  
by Andriy Kirmach*

Художній редактор *В.Сахоров*  
Підписано до друку 12.09.05. Формат 60х90/16.  
Папір офсет № 1. Гарнітура Таймс. Друк офсетний.  
Умовн. друк. арк. 28,0. Обл.-вид. арк. 28,2.  
Наклад 300 прим. Зам. №

Видавець ПП Т.Мосієнко  
Видруковано з готових діапозитивів  
в ОП «Житомирська облдрукарня»  
10014, Житомир, вул. Мала Бердичівська, 17  
Свідоцтво про внесення суб'єкта видавничої справи до Державного  
реєстру видавців, виготівників і розповсюджувачів видавничої  
продукції серія ЖТ №1  
від 06.04.2001 р.