

# **Security Sector Reform in Ukraine**

Analytical report

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# Introduction

On gaining independence in 1991, Ukraine had to establish institutions of state, including a security sector, in a short period of time. With limited resources, experience and time, these new security agencies were largely based on Soviet-era institutions and practices. However, as Ukraine has continued its transition towards a democratic, market-based European state, the deficiencies in the security sector have become more obvious. The need for further reform of the Ukrainian security sector is thus widely recognised both by Ukrainian officials and their European counterparts.

The success or failure of security sector reform (SSR) in Ukraine is of vital importance. Above all, reform is in the interests of the Ukrainian people and the Ukrainian state. Firstly, reform of the security sector is necessary to build on the significant progress that Ukraine has made in democratisation. Without a state that is able to uphold the rule of law and command the public's trust in its security agencies, Ukraine will not be considered as a truly democratic state by its own citizens. Secondly, and even more importantly, unless significant reforms are undertaken Ukraine will remain unable to fully protect its citizens' fundamental rights and protect them from international (e.g. inter-state conflict), trans-national (e.g. terrorism, organised crime, human trafficking) and internal threats (e.g. crime, corruption) to their security. Thirdly, without reform Ukraine will be unable to achieve its key foreign policy objective of Euro-Atlantic integration.

Reform in Ukraine is equally important to the EU and NATO, even if Ukraine never joins these organisations. Successful SSR in Ukraine would make Ukraine a more stable, reliable partner and increase security across the European continent. If such reforms fail, or are never truly attempted, Ukraine is likely to remain an uncomfortable, possibly unpredictable neighbour for the EU, at a time when the EU's interests in the Black Sea region and the post-Soviet world are rapidly growing. It is thus in the EU and NATO's own interests to support SSR in Ukraine; indeed, support for SSR may become a test case for the EU's aspirations to promote stability and security in its 'neighbourhood' without a firm commitment to membership.

Yet while everybody agrees on the need for reforms, there seems to be little clarity about what reforms are actually necessary or how they should be implemented. Nor has there been much independent analysis of the reforms that have so far been carried out. There is a widespread feeling that previous reforms have been undertaken in an uncoordinated and often unsuccessful manner, but few attempts have been made to understand why this is the case or to consider how such problems could be avoided in future.

This report aims to go some way in filling these gaps. Although a number of research reports have been written over the past few years that consider security sector reform in Ukraine, they have tended to be limited to discussing specific issues or to summarising statements from conference participants. This report differs by considering SSR as it is understood by the growing international policy-making and academic community, and analysing reforms both at the level of each key ministry and across the sector as a whole. It also differs in its attempt to analyse the reasons why reforms have so far been piecemeal and often ineffective. Lastly, the report goes beyond simply analysing the situation by making a variety of recommendations about how SSR can be implemented in a more comprehensive and effective manner in future. It should therefore provide would-be reformers with a detailed independent analysis of reforms so far and generate debate about the way forward.

The aims of the report are as follows:

- To analyse the current state of reforms in all aspects of the Ukrainian security sector;
- To examine the positions of key stakeholders, in order to establish areas of consensus and identify current and future obstacles to reform;
- To raise awareness among key Ukrainian stakeholders of the benefits of reforming the security sector in a comprehensive and integrated manner;
- To propose priorities for future SSR in the short, medium and long-term;
- To identify methods for building consensus within Ukraine on SSR and creating systems that allow planned reforms to be implemented effectively;

It is expected that this paper will be of use to both Ukrainian reformers and international actors who wish to support SSR. More broadly, the report benefits the general public by making information and analysis of SSR available to a wider audience. It should also be of interest to the international academic community working on SSR, since relatively little information is currently available about the Ukrainian security sector.

## Security sector reform – an international perspective

The term ‘security sector reform’ is often used very loosely to refer to any types of changes to any part of the security sector. Furthermore, it is regularly confused with defence reform, since ‘security’ and the ‘security sector’ are still perceived by many people in purely military terms. Increasingly, however, ‘security sector reform’ has come to be equated with a specific set of theory and practice that has been developed in Western academic and policy circles over the last 10-15 years in response to a number of factors: the changing nature of security threats since the end of the Cold War and a corresponding reappraisal of the concept of security; increased international security-related assistance, particularly in post-conflict situations but also in countries undergoing democratic transitions; and a greater awareness of how security, governance and development are inter-related, which has led those interested in social and economic development to pay more attention to the security sector.

This paper considers the security sector and SSR in Ukraine largely from this Western perspective, since the authors believe that it is the most useful analytical tool for understanding the current state of the sector and the reforms that need to take place. In order to ensure that all readers of this paper, particularly Ukrainians, are able to appreciate the concepts that underpin this approach, this first section of the paper seeks to briefly explore these ideas of ‘security’, the ‘security sector’ and ‘security sector reform’, explaining how they are interpreted by Western academics and policy-makers, and where necessary drawing comparisons with how such concepts are traditionally understood in Ukraine.

### **The changing nature of security**

The end of the Cold War was also the end of an era in which the main threats were easily defined as issues of ‘national’ or ‘state’ security. For forty years, a bipolar system had existed in which nearly all security matters were seen through the prism of this simmering conflict. The biggest fears centred around the possibility of a global conflict, triggered by superpower hostility, involving nuclear weapons. Though these security threats were severe, this bipolar system had a certain predictability and stability about it, since to a considerable extent both sides simply mirrored their opponent’s moves. The fact that conflict was most likely to be a clearly defined affair between two (or more) states and their armed forces was also traditional enough, reinforcing the concept of ‘national’ security as the cornerstone of stability.

Of course, if in the West the main security threats were all considered to be external, in the Soviet Union the ruling elite also perceived a further threat to security, even if it rarely talked about it directly. This was the stability of the regime. The Communist Party ruled in an authoritarian manner, allowed virtually no mechanisms to criticise the situation (constructively or otherwise), and clearly feared that they would lose their position and privileges if they were to allow greater freedoms to the public. In short, the Soviet elite feared its own people and came to associate the ‘security’ of the state with the ‘security’ of their regime. This meant that in the Soviet Union, ‘security’ was as much about domestic oppression as it was about international aggression, and extremely powerful internal forces were in place to protect the regime; most famously, the KGB (*Komitet gosudarstvennoi bezopasnosti* – Committee for State Security), but also the police and other agencies. A corollary of this authoritarianism was that much more so than in the West, ‘security’ matters were automatically considered to be matters of the strictest secrecy. There was thus virtually no public engagement or debate about security matters, which both the state and the general public believed should be left to the professionals.

The breakdown in the old international order and continuing technological changes have completely changed the nature of the key international security threats. When the Cold War came to an end, it changed the whole balance of international relations since much of the world had positioned itself with regard to the two superpowers. At the same time, the idea of ‘globalisation’ was firmly taking hold, as new technologies and a more conducive political environment led to much deeper links between businesses and individuals from across the world being quickly formed and much greater levels of inter-dependence developing as a result. However, the same advances in technology also run the risk of making more powerful weaponry available to a greater number of state and non-state actors.

Fortunately, a major global conflict currently seems unlikely. New threats have sprung up in its place, however. The most obvious challenge is that of large-scale terrorism, brought into sharp relief by the events of 11 September 2001. Other major threats include but are not limited to trans-national organised crime, the proliferation of weapons of mass destruction, drugs and weapons trafficking, uncontrolled illegal migration,

and major environmental disasters or natural catastrophes. What they have in common is that they are 'asymmetric' in nature, i.e. the state and its citizens must protect themselves against threats that do not come from another state, but from other, often trans-national or non-state forces. This has been one catalyst for theorists and practitioners to significantly expand their understanding of security beyond the traditional state-centric concepts that served them well during the Cold War.

A second catalyst for this reassessment of the nature of security is that with many countries around the world, the West's relations now go far beyond traditional forms of bilateral foreign relations, being more supportive and/or interventionist. Many Western countries have been enthusiastic supporters of democratisation and development, and have provided significant aid to support partner states to strengthen democratic structures, improve economic development and deal with pressing social problems. At the same time, the international community has increasingly recognised the enormous damage that even the smallest violent conflicts can cause to international security, and has become more and more active in intervening to prevent or stop conflict and to support post-conflict operations designed to rebuild the state and avoid a return to violence. Over time, the tight relationship between these two sets of concerns have become more obvious. Persistent violence and conflict make sustainable development virtually impossible (as the situation in Iraq has graphically shown in recent years). Since security and development are so closely intertwined, and since security is a pre-condition for development, the international community has become much more active in promoting measures to improve security.

This leads on to the third catalyst for reform has been the attempt to look beyond the proximate causes of conflict to deeper structural reasons such as poverty, weak or failing states, and unrepresentative or corrupt governments. One consequence of this has been to call into question whether many the security sectors of many governments around the world are fit for purpose. Although the new security threats are increasingly trans-national or global in nature, the state currently still remains the most important medium for the provision of security. Yet in many states, the security sector is perceived either as being ineffective – due to out-dated, under-funded, poorly trained and resourced institutions – or even as a threat in themselves. The latter is often the case in authoritarian or post-authoritarian governments, where the security sector has not traditionally been governed in the interests of the public or the state, but to protect the ruling elite, or even for the direct personal interest of corrupt officials or criminal groups. The promotion of SSR is thus believed to be in the interests both of local populations, who stand to benefit from a more effective and reliable security sector, and for the international community as a whole, since countries with stable, democratically-managed security sectors are thought to be much less likely to wage war against each other or generate other security problems.

### **The security sector and the 'siloviki'**

As the concept of the security has been reassessed, so have perceptions of what constitutes the 'security sector'. This has led Western researchers to conceive of the security sector as an integrated system that includes not just the main bodies authorised to use force, but also the bodies that manage and oversee them and the law-enforcement and justice institutions that underpin internal stability. Furthermore, they also draw attention to a wider 'security community' that includes a range of non-state actors who are also concerned with security and influence the sector in either a positive or negative way. The most comprehensive typography of the security sector, developed by Nicole Ball, is summarised in the box below.

The breadth and scope of this definition of the security sector may still come as a surprise to many post-Soviet readers, where the concept of the '*siloviki*' ('power ministries') is still the dominant way of defining the security sector. This concept takes a much more traditional view of what constitutes security, and also emphasises the influential role of security actors within the state. It refers to the most important security agencies, usually the Ministry of Defence and the Armed Forces, the Ministry of Internal Affairs and the Police, the intelligence services, customs, border guards, and the General Prosecutor's Office. No clear distinction is made between the operational bodies authorised to use force and the civilian agencies overseeing them, since the Soviet system largely did not distinguish in this way and such ministries were almost entirely run by acting servicemen. Also, although the Prosecutor's Office is often included in the list of power ministries, the justice sector is not generally perceived to be a constituent part of the security sector in the way proposed above.

## The Security Sector and the Security Community<sup>1</sup>

Nicole Ball distinguishes between five different types of security actors. The first three of these are statutory security actors – the ‘security sector.’ The last two are non-statutory security actors. The five of them together represent the wider ‘security community.’

- **Organisations authorised to use force:** armed forces, police; paramilitary forces; gendarmeries; intelligence services (including both military and civilian agencies); secret services; coast guards; border guards; customs authorities; reserve or local security units (civil defence forces, national guards, presidential guards, militias etc)
- **Civil management and oversight bodies:** the president/prime minister; national security advisory bodies; legislature and legislative select committees; ministries of defence, internal affairs, foreign affairs; customary and traditional authorities; financial management bodies (finance ministries, budget offices, financial audit & planning units); and statutory civil society organisations (civilian review boards and public complaints commissions)
- **Justice and law enforcement institutions:** judiciary; justice ministries; prisons; criminal investigation and prosecution services; human rights commissions and ombudsmen; correctional services; customary and traditional justice systems.
- **Non-statutory security force institutions:** liberation armies, guerrilla armies, traditional militias, political party militias, private security companies.
- **Non-statutory civil society bodies:** professional organisations, including trade unions; research/policy analysis organisations; advocacy organisations; the media; religious organisations; non-governmental organisations; concerned public.

Nonetheless, the authors believe that it is appropriate to consider this wider concept of the security sector in this paper. There are two key reasons for this. Firstly, if Ukraine is to continue to pursue its aspirations for Euro-Atlantic integration, it will also need to integrate Western concepts of the security sector into its own dialogue on security and continue to adapt its sector to Western standards and forms of governance. It is therefore extremely useful to consider the Ukrainian security sector from this perspective at the current stage in order to assess how well integration is progressing and what still remains to be done. Secondly, regardless of NATO or EU integration, the authors believe that this wider concept of the security sector provides a better framework for understanding the provision of security, the nature of Ukrainian security institutions, and their position within the state. As the paper will repeatedly argue, one of the main obstacles to reform over recent years has been an inability to perceive the relationship between different security bodies and how the work of one agency affects the work of others. There is therefore an urgent need to raise awareness that the security sector needs to be considered as an integrated whole, and reforms must be designed appropriately. Without an understanding that the security sector goes far beyond the ‘siloviki’, it is equally likely that ‘security sector reform’ will continue to be confused with ‘defence reform’.

### Defining security sector reform

There is no internationally agreed definition of SSR,<sup>2</sup> but the general principles of SSR are widely accepted. These may be grouped into four broad categories:

- Strengthening democratic control over security institutions, by the state and civil society (including improving policy development and implementation and expenditure management);
- Professionalisation of the security forces;
- Demilitarisation and peace-building;
- Strengthening the rule of law.<sup>3</sup>

Running through all of these is an emphasis on governance. Essentially, governance is concerned with the whole architecture, both structures and processes, by which a certain institution gets things done. The level of security sector governance is thus a measure of the capacity and efficiency of the security sector. This has a normative element, inasmuch as there is growing consensus on what constitutes best practice or ‘good’

<sup>1</sup> Nicole Ball, *Democratic Governance in the Security Sector*, presentation prepared for UNDP Workshop on ‘Learning from Experience for Afghanistan’, 5 February 2002, <[http://www.undp.org/eo/afghanistan/doc/Nicole\\_Ball.pdf](http://www.undp.org/eo/afghanistan/doc/Nicole_Ball.pdf)>

<sup>2</sup> See for example Hendrickson D, *A Review of Security Sector Reform*; Department for International Development, *Understanding and Supporting Security Sector Reform*; Edmunds T, *Security Sector Reform: Concepts and Implementation*.

<sup>3</sup> Hänggi H, ‘Making Sense of Security Sector Governance’; Bouta T, van de Goor L & Ball N, *Enhancing Democratic Governance of the Security Sector: An Institutional Assessment Framework*.

governance. As Hänggi notes, there appears to be little difference between ‘good’ and ‘democratic’ governance, as both emphasise the importance of transparency, responsibility, accountability and responsiveness to the needs of the people. Improving security sector governance requires improving legal, civilian, parliamentary, judicial and ‘public’ control. SSR is the process by which this is achieved.

To be effective, SSR needs to be very broad in scope as reforms in one area may determine the success of reforms in other areas: without increased budget oversight, for instance, it may not be possible to allocate the resources need for force restructuring and professionalisation. Similarly, legislative improvements or police reforms may be undermined if judicial structures remain as corrupt and ineffective as ever. Reforms within the security sector can also positively or negatively affect reforms in other areas of government. For example, attempts to reform the economy are sometimes impeded by unaccountable security actors who control important sources of revenue. Another important element of SSR therefore is the emphasis on coordination and cooperation right across the sector. This has two elements. The first is that SSR seeks to improve practical levels of inter-agency cooperation across the security sector on a day-to-day basis, to ensure that security threats are faced more effectively, and proposes a variety of mechanisms and methodologies to do so. Secondly, SSR asks those responsible for the future of the sector to look at it as an integrated whole rather than as a list of separate agencies, and to ensure that responsibilities are distributed most effectively between agencies to best respond to all security threats. This often requires a major rethinking of the whole structure of the security sector, the transfer of responsibilities from one agency to another and the establishment of new mechanisms to ensure information exchange and cooperation on each particular issue. As this paper will argue, these last points are particularly relevant for Ukraine, where ministries have tended to operate in isolation, often duplicating the functions of and competing with other agencies, and designing reforms that are more focused on strengthening the ministry itself than on ensuring that the ministry is best placed to deal with new security challenges within the overall security sector.

## Ukrainian security in context

This chapter aims to place the discussion of SSR in Ukraine in its appropriate context. This is important because the direction and success of reforms in the security sector are strongly influenced by a wide range of domestic and international factors. Domestic factors include the overall direction of transition and reform across the state, the political situation and differing political attitudes towards the sector, and the way in which security-related issues are perceived by the public and the general public's general expectations of the state on such matters. International factors include Ukraine's foreign policy, the overall geopolitical situation and its impact on Ukraine's security, and the attitudes of neighbouring countries to reform in Ukraine.

Since this report tries to explore some of the obstacles to comprehensive SSR in Ukraine, this broader context cannot be ignored. In this chapter it is argued that it is precisely at this over-arching level, rather than in the specific reform plans of particular agencies, that some of the greatest challenges to reform arise. However desirable it may be to treat SSR as largely a technical, non-political matter, successful reforms are unlikely unless these issues are addressed.

### The domestic context

#### *The triple challenge*

The rapid changes to the international security context have made governments across the world aware of the need to adapt their security sectors to defend against contemporary threats (see previous chapter). Ukraine faces a triple challenge, however. Not only must it rebuild its security sector in light of these threats, it must do so while simultaneously strengthening its statehood and independence, and while undergoing a transition from authoritarianism towards democratic principles and European standards of governance.

These three challenges underline the complexity of the background to SSR in Ukraine. However, they are not necessarily contradictory goals, and may even be mutually reinforcing (essentially allowing reformers to kill several birds with one stone). Yet to some extent, the initial need to establish independent institutions of state has hindered the longer-term goal of democratisation. As the following chapter on the development of the security sector demonstrates, in the early years of independence it was almost inevitable that Ukraine would build its security sector in the image of its Soviet predecessor. This was partly because it had to use the physical and human resources it inherited from the Soviet break-up, but it was also because there was a natural inclination to follow the procedures, structures and methodologies that were familiar from Soviet times. Over time, however, it has become clear that this has also had the effect of prolonging Soviet-era standards and ways of working that are resistant to change, secretive and wary of the principles of democratic governance.

From an international perspective, more understanding needs to be shown towards this triple challenge in order to appreciate the difficulties of SSR in Ukraine. It is not uncommon to hear European officials wondering why Ukraine has not developed at the same pace as those post-Socialist countries in Central and Eastern Europe that recently joined the EU. This ignores the extra challenge brought by independence, and underestimates the depth of the Soviet legacy. On the other hand, this should not be used as an excuse for inaction, and suggests that much more attention needs to be paid to democratic governance of the security sector if this legacy is to be overcome. Meanwhile, from a Ukrainian perspective, there needs to be greater acknowledgement of the challenges caused by this Soviet legacy. Politicians, officials and the general public all need to be more aware that a failure to overcome this legacy will leave Ukraine unable to integrate into Euro-Atlantic structures and unable to reform the security sector quickly enough to provide an adequate response to modern threats.

#### *A lack of political will*

One of the paradoxes of reform is that although it usually arises as the result of unsettling changes, and reform itself is always unsettling, reforms are unlikely to be successful if the environment in which they are carried out is not kept relatively stable. Among other key factors, there must be a consolidated team of reformers who maintain their commitment and leadership, and there must be enough stability in the surrounding environment to ensure that these reforms are not derailed. And above all, political will is needed at the highest level to steer reforms through.

Throughout the last fifteen years, this political will has been largely lacking. Firstly, Ukrainian politics has been characterised by in-fighting and corruption, where noble goals of reform have been subordinated to

more basic concerns of maintaining and expanding one's power base. This has expressed itself in different ways during different periods. During the Kuchma period, the regime's commitment to democratic reforms in all spheres was mostly only skin-deep, beneath which traditionally bureaucratic and semi-authoritarian methods were employed. Towards the end of the Kuchma era, this resulted in parts of the security sector acting more in the interests of political leaders than in the state itself (see the chapter on key security actors below). The Orange Revolution marked a psychological break with the past and raised hopes for reform. However, these hopes have largely been disappointed, firstly because of the fractiousness and weakness of the 'Orange' team that came to power in 2005, and then by the constitutional changes that came into force in January 2006 that changed the balance of power between the President and the Cabinet of Ministers.

At the current stage, the security sector has become an object and an instrument in the battle for authority between the President and the Cabinet of Ministers that has consumed Ukrainian politics since the appointment of Viktor Yanukovich as Prime Minister in August 2006. The constitutional amendments transferred significant presidential powers to the Prime Minister, but the two sides have been unable to reach a consensus on how best to share power. Instead, both sides have tried to find mechanisms that would strengthen their control over important sections of the state. The security sector is of crucial importance in this fight because of its potential power and influence. The new constitution created an unstable balance whereby parts of the security sector, such as the Ministry of Defence, are primarily subordinate to the President, while other parts, such as the Ministry of Internal Affairs, are subordinate to the Cabinet of Ministers. Though this situation may turn out to be beneficial for democracy in Ukraine, since the division of authorities hinders a possible return to authoritarianism, it has complicated the process of reform by creating two centres of authority that are suspicious of each other and do not have a shared vision of what reforms are necessary or how they should be implemented. This situation is discussed further in the closing chapter on perspectives for comprehensive SSR.

#### *No clear vision for reform*

A fundamental problem for Ukraine, relating not only to the security sector but across the state, is the lack of consensus both within Ukrainian society and among the political elite of the direction that reforms should take. Although there is general agreement on the end goal – a democratic, market-based, European state – there is little clarity about how to achieve this. This reflects a wider problem about the lack of consolidation within Ukrainian society. While it is not appropriate to enter into a long sociological analysis in this paper, it is nonetheless important (especially for an international audience) to underline certain key factors that have negatively influenced Ukraine's capacity to define a reform strategy.

Since Ukraine had little recent experience of statehood before independence in 1991, Ukraine is still in the process of developing its national identity and defining its national interests. However, since different parts of the country have at the time come under different imperial influences, there are competing views about what these interests are and the type of state that Ukraine should become. While the differences between Eastern and Western Ukraine should not be exaggerated, it is nonetheless the case that Eastern Ukraine is strongly influenced by its links with Russia, while Western Ukraine is more westward-looking. This translates into different expectations about what kind of state (and what kind of security sector) is suitable for Ukraine, which in turn leads to different attitudes towards reform.

#### *No strategic planning*

There has been a lack of strategic planning. Nobody, regardless of their political outlook, has yet presented a strategy for reform that sets clear targets and outlines the way in which these targets will be achieved. To some extent, this reflects a suspicion of strategy and planning that is a reaction against Soviet times, where unrealistic plans were developed without consultation and were then implemented ineffectively using heavy-handed bureaucratic means. At the same time, this Soviet legacy means that political leaders and officials lack the skills to plan effectively in a democratic environment, and where plans are drawn up, they still tend to be done in a small circle with little feedback or analysis.

#### *Weak administrative capacity to reform*

Another obstacle to reform is the lack of administrative capacity within the state. Most Ukrainian state agencies have very poor physical resources, but they also lack human resources, in terms of competent, honest staff who are able to manage reforms and ensure that they are implemented effectively. In many cases, reforms to the Ukrainian state have been more about form than content, i.e. there has been great efforts to change legislation and restructure numerous agencies, but much less attention has been paid to reforming these agencies internal governance, i.e. issues such as their decision-making procedures, management styles,

training programmes, and human resource policies. As a result, well-intentioned reforms have often fallen by the wayside. These tendencies are visible right across the state, and it may be argued that it is unrealistic to expect better democratic governance in the security sector than in other parts of the state – and thus that the success of SSR in Ukraine depends in part on the overall public administration reform.

#### *Public perceptions of security*

Lastly, another factor that may hinder SSR in Ukraine is the lack of public engagement in security issues. To some extent, this may reflect the fact that the overall level of security provision in Ukraine is acceptable, i.e. most Ukrainians feel reasonably secure and it is therefore not a political priority for them when compared to other more immediate issues such as the economy or communal services. It may also indicate a certain apathy on the part of Ukrainian voters who are cynical about the prospects for reform. However, it also reflects lingering Soviet attitudes towards security both among security officials and the public themselves. During Soviet times, there was little public discussion of matters relating to internal or national security, with much of the security sector operating under a veil of secrecy. As a result, the public still largely assumes that it has no right to demand information from the state about these issues and that these things are best left to ‘professionals’ (and this in turn allows ‘professionals’ to argue that there is no point in dealing with civilians who are ill-informed and do not understand the issues). Many people are also distrustful or even suspicious of security sector actors such as the police, the intelligence services and the courts; rather than engaging with the security sector, therefore, many people try to have as little to do with it as possible, even in cases where their security is threatened.

There are two notable recent exceptions to this general apathy towards security matters. The first came during the Orange Revolution, when the role of internal security actors became crucial in ensuring that the protests remained peaceful. For a short term, this generated a more positive attitude towards the security sector among the Ukrainian public, although this optimism soon dissipated as post-revolutionary disappointment set in by mid-2005.

The second exception relates to NATO, which became a major topic of controversy in summer 2006 during ‘anti-NATO’ protests in Crimea. These helped to further worsen public perceptions of NATO and reduce support for Ukrainian membership in the Alliance. The danger is that this in turn will have a knock-on effect on SSR, since NATO plays a key role in supporting reform in Ukraine (see below). Reforms that are seen to be ‘Western-sponsored’ or ‘Western-imposed’ could meet with resistance and be undermined.

#### **The international context**

Ukraine finds itself in a difficult geopolitical situation. It is situated between an enlarged EU to the West, and a resurgent Russia to the East. Neither the EU nor Russia has a clear policy towards Ukraine at the moment, nor does Ukraine have a clear vision for how to position itself in relation to either of them (although Ukraine wishes to join the EU, it has been struggling for an alternative policy given that the EU is not currently prepared to offer a membership perspective). This situation has consequences for Ukraine in terms of its foreign policy, its position in the international security system, the types of reforms that are expected by its foreign partners and the type of support it can expect from these partners.

#### *Ukraine’s foreign policy*

As noted above, for historical and cultural reasons there is a wide range of contradictory attitudes within Ukrainian society towards both Russia and the EU. This has complicated the formulation of a clear foreign policy. For a start, it is difficult to have a foreign policy that promotes Ukrainian national interests if the country does not have a clear understanding of what its national interests are and does not have a clear domestic programme. Though it is simplistic to paint political figures or different regions of Ukraine as ‘pro-Western’ or ‘pro-Russian’, these are certainly the two ends of the political spectrum. This has usually led to attempts to pursue a ‘multi-vector’ policy. In Kuchma’s time, the basic formula was to keep good relations with Russia while slowly deepening integration with the EU and NATO (it was under Kuchma that membership of these organisations were determined as foreign policy objectives). However, the situation has recently been in flux. On becoming President, Viktor Yushchenko appointed Boris Tarasyuk as Foreign Minister, known for his strongly pro-Western orientation. As a result, in 2005-early 2006, Ukraine’s foreign policy was much more clearly directed towards Euro-Atlantic integration. However, after Viktor Yanukovich became Prime Minister in August 2006 the situation has begun to change again. His government has taken a more cautious approach to NATO, while seeking to re-build relations with Russia. The battle for authorities between Prime Minister and President expanded into the foreign policy arena, culminating in the Parliament voting to dismiss the Foreign Minister. However, the Foreign Minister refused

to accept the constitutionality of this decision. At the time of writing it is still unclear how this situation will be resolved, but it is obvious that Ukraine will find it difficult to define a coordinated foreign policy in the coming months.

### *Collective security*

One of the consequences of this ambivalence towards both NATO and Russia is that Ukraine has not defined where it belongs within the international security architecture. It is not a member of any collective security organisation. This may not seem a pressing problem, since Ukraine does not face any direct military threat. Ukraine will eventually have to make a clearer decision on collective security, since modern wars are rarely fought alone and it is unlikely that Ukraine could defend itself alone against any major military threat. However, this will not happen soon, since the two collective security organisations on offer – NATO and the Collective Security Treaty Organisation under the CIS – both arouse suspicion among Ukrainians. Furthermore, a decision to join either organisation would have significant diplomatic consequences. Russia is very hostile towards NATO expansion, and Ukrainian membership of NATO would provoke an extremely sharp reaction from Russia. Likewise, committing to the CSTO would effectively end Ukraine's integration not only into NATO but also the EU, and would attach Ukraine firmly to Russia's orbit.

### *International support for SSR in Ukraine*

The inability to define a clear foreign policy complicates SSR because of the different trajectories for state-building that are implied. Integration into Euro-Atlantic structures (i.e. the EU and NATO) would require extremely painful reforms that would change many of the foundations of the Ukrainian security sector. Russia, on the other hand, does not expect far-reaching reforms from its partners, particularly since the Ukrainian security sector shares a common heritage and many of the same attitudes as its Russian counterpart.

The level of international support for reform in Ukraine reflects these differences. Russia offers little real support for reform in Ukraine (particularly as it is suspicious of Ukraine's NATO aspirations), though it maintains strong military-to-military and defence industry contacts. NATO – both as a whole and its member states – provide considerably more support to reforms in Ukraine, through training, equipment, funding for core programmes, etc. However, given the scale of the reforms that are necessary, this is barely enough to carry out reform to the desirable depth.

The EU, meanwhile, has until recently been relatively unengaged in SSR in Ukraine, though this is slowly changing. Most notably, the EU Border Assistance Mission on the Ukrainian-Moldovan (Transnistrian) border has provided considerable support to the Ukrainian Border Guards and Customs Service, while other programmes on border controls and strengthening the rule of law have also been valuable. However, although the EU has recently developed a strategy for supporting SSR internationally, in practice it has not engaged fully on SSR in Ukraine, beyond areas such as border and migration control that are directly in its own interests. Greater support from the EU for comprehensive SSR would make a major difference, since reforms supported by the EU would be considered more welcome than reforms sponsored by NATO, and would be a very practical step towards deepening integration and improving stability and security on the EU's border. Given the internal disagreements within the EU with regard to Ukraine at the moment, however, EU engagement on SSR in Ukraine is likely to develop only gradually.

## **Key security actors in Ukraine and existing reforms**

As noted in the chapter ‘Security Sector Reform – An international perspective’, the security sector encompasses not only the main agencies that are authorised to use force, but also a wider range of institutions that are responsible for the rule of law and maintaining stability. This section looks in turn at the key security sector actors in Ukraine, including the judicial system and civil society’s role in providing democratic oversight.

As the next chapter will argue, there has not been enough understanding in Ukraine of the inter-linkages between different security sector institutions, which have rarely been considered as an integrated system. Nonetheless, across the security sector there have been major changes over the last fifteen years, starting from the initial establishment of independent institutions and leading gradually towards the greater adoption of European principles and standards in recent years. This chapter traces the path of reform in each of the key security sector agencies, providing an ‘audit’ of the changes that have occurred. It considers what plans for reform were adopted, how they were implemented in practice, and the reasons behind the success or failure of certain initiatives. It also looks at current plans for reform in each agency. In many cases, changes in one agency have a knock-on effect in other agencies, though the interaction between different agencies has usually fallen out of reformers’ line of sight. This section gives specific examples of this tension, leading to a discussion of inter-agency cooperation and the prospects for comprehensive reform in the next chapter.

### **a. The Ministry of Defence and the Armed Forces**

The need to rebuild Ukraine’s Armed Forces arose immediately after the country gained independence in 1991. Ukraine had an important position within the USSR, as it formed the Union’s Western border and had significant industrial capacities. Independent Ukraine thus inherited the massive armed forces and defence industries on its territory. Across all the Armed Forces, up to 1.5 million servicemen were on Ukrainian soil, some subordinate to Kyiv, some to Moscow, depending on their organisation and status. For example, troops from the Kyiv Military District reported to Kyiv, while the Transcarpathian and Odessan districts answered to Moscow. Some units were under direct orders from Moscow, such as railway troops, strategic units, strategic aircraft and the Black Sea Fleet. The forces left on Ukrainian soil after the collapse of the USSR were aimed against NATO and were intended to carry out offensive missions.

The physical number of troops made this the third largest army in the world. The flipside of this was that these troops were not necessarily ready for or capable of combat, and much of the equipment was in decline. As time went on, in a situation where Ukraine had chronic problems financing the defence sector, these problems continued to grow. The changing geopolitical situation, the change in the nature of contemporary security threats, and the impossibility of maintaining Soviet-era military structures all meant that deep qualitative and structural reforms of the armed forces were necessary.

#### **The development of the reform process**

In the first years of independence, the state’s policy towards the Armed Forces was far from systematic. When it became independent in 1991, Ukraine had virtually no experience of how to manage the defence sector independently, since during Soviet times it did not have its own defence ministry and the only coordination center was the central MOD in Moscow. After the collapse of the Soviet Union, the newly independent republics were forced to create their own defence ministries, even as the majority of the most experienced and professional officers remained in Moscow.

In the early 1990s, events at the Ukrainian MOD were influenced by competing political interests that were struggling for power. As an institution which requires a great deal of the state’s attention because of its potential resources and because of the possible dangers of an ill-considered defence policy, the Army was of great interest to the state. For example, an obvious threat to the newly-independent state’s security were the numerous units on Ukrainian soil that answered to Moscow and should fulfil Moscow’s orders. The establishment of a military-political structure and the subordination of ‘Moscow’ units to Ukraine, which went on even up to 1995, can be considered the first stage in the Armed Forces’ development. The second stage, beginning in about 1995-1996 was a period of reflection, in which the Armed Forces’ key tasks were defined and troop numbers and structures were decided (this process is still going on, but it was precisely in 1995-1996 that this stage began). Soviet approaches to security were still prevalent at this point, with

planners continuing to hunt for a specific enemy and then attempting to design force structures to combat precisely this enemy. Such behaviour can probably be explained by their attempts to justify the need to preserve the gigantic military machine which still existed in Ukraine, even after significant troop reductions had been made.

Once the backbone of the Ukrainian Armed Forces had essentially been established (by 1995-1996), the first strategic document relating to defence reform was written: the State Programme for the Construction and Development of the Armed Forces of Ukraine 1997-2005. However, the changing international situation at the end of the 20<sup>th</sup> century<sup>4</sup> made it necessary to adopt a new, modify development programme. The second programme, for 2000 to 2005, defined its goal as the establishment of Armed Forces that had the optimal number of troops, was as mobile as possible, possessed good quality weaponry, had suitable levels of professional training, and looked after its staff. In other words, the Armed Forces should be able to fulfil the tasks it is set, without being too much of the burden on the state.<sup>5</sup>

Ukraine's participation in NATO bodies and operations has been important for the transformation and modernisation of its Armed Forces. Its bilateral cooperation includes the Joint Working Group on Defence Reform, and the NATO-Ukraine Action Plan, on the basis of which yearly target plans are designed, contained a wide range of joint measures, from retraining servicemen through to destroying surplus ammunition. Ukraine's cooperation with the Alliance has acted as a catalyst for modernising the Army, adopting new planning and management standards, increasing transparency and strengthening democratic control over the Armed Forces. It has also helped to generate a corpus of critically-minded officers and generals who could understand why defence reform was necessary.

### **The Strategic Defence Review and the White Paper on Ukraine's Defence Policy**

The first comprehensive document to take an open look at Ukraine's defence policy was the 'Ukrainian Strategic Defence Review to 2015'. This defence review followed methodology used by NATO member states and aimed to evaluate the condition of the Armed Forces, whether current force structures were appropriate, to define future priorities in defence policy, etc. It was coordinated by the State Committee for the Reform and Development of the Armed Forces of Ukraine and Other Militarised Formations, Weaponry and Military Equipment. Ukraine also received methodological support from NATO in carrying out the review. The Defence Review gives current and future plans for defence reform.

An important step towards strengthening the Armed Forces' transparency and public accountability was the publication of a White Paper on Ukraine's Defence Policy at the start of 2006. This document was published in accordance with the Law 'On Democratic Civilian Control over the State's Military Organisation and Law-Enforcement Agencies'. This law states that a white paper should be published annually. The first paper (for 2005, though released in early 2006) contains a great deal of information about the main issues in Ukraine's defence policy, including a review of reforms over recent years, a reiteration of the policy for reforming the army, personnel policy, international cooperation, and arms control. Not only the Ministry of Defence and the General Staff, but also non-governmental organisations took part in preparing the document. The regular publication of a defence white paper is a major step forward, and is yet to be replicated by any other security ministry. Nonetheless, it should still be noted that in its current format, this White Paper does not correspond exactly with such papers as they are understood by most EU states. It has not been preceded by a green paper seeking to frame the issue, and does not really present the Government's vision for future policy development in enough detail; instead, much of it is more of a review of the current situation, in all its aspects.

The main priority for defence reform in Ukraine continues to be reducing and reorganising force structures in order to ensure that they correspond better to the threats and challenges now faced by the Ukrainian state. This can only be achieved if the strategic objectives for defence reform are clearly defined, which in turn depends on how well the national security concept as a whole defines its priorities and objectives. The inflated list of national security threats in current drafts of the concept make it impossible to focus effectively on the most pressing problems.

### **The main objectives for reform of the Armed Forces**

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<sup>4</sup> This relates in particular to changes in the types and methods of waging war (e.g. the wars in Yugoslavia), the use of high-precision weapons, and doctrines of pre-emptive strikes against major threats.

<sup>5</sup> White Paper 2005. Ukraine's Defence Policy.

- Reducing troop numbers
- Transferring to a fully professional army
- Reforming the Forces' organisational and governance structures
- Destroying surplus weapons and military equipment
- Updating the Armed Forces' equipment
- Developing new military technologies and supporting the defence industry

#### *Reducing troop numbers*

Various estimates place the number of servicemen in Ukraine in 1991 from 700,000 to over 1 million. Since then, troop numbers have been gradually reduced. As part of the State Programme for the Construction and Development of the Armed Forces of Ukraine to 2005, numbers were reduced from 400,000 in 2001 to 245,000 in 2005.

Further reductions are currently being hindered by the need to maintain a large number of troops to protect and service surplus weapons and equipment that is awaiting destruction. The plans for further reductions also envisage introducing the concept of outsourcing into the Armed Forces.<sup>6</sup> This has the potential to reduce the number of employees and troops in the Armed Forces by approximately another 20,000 people. However, this is only possible if the Government maintains the financial commitments made in the State Programme for the Development of the Armed Forces through 2007 to 2011. It must be noted, however, that planned budgetary expenditure on defence for 2007 is much lower than the MOD requested.<sup>7</sup>

#### *Transferring to a fully professional army*

The President set a deadline of 2010 for the Army to transfer towards a fully contract-based system of employment. This is an important part of the reform process, since in principle it makes it possible to select personnel who are suitable for the tasks carried out by modern servicemen. The Army needs to be professionalised, i.e. to be staffed by well-trained and highly-motivated people. However, though this policy is correct, it should be remembered that simply transferring to contract-based employment will not automatically raise troops' professional or ethical standards. This requires the development of a personnel policy to encourage young, well-educated people with strong potential to join the Forces. Realistic, effective systems need to be developed for improving troops' professionalism and to create suitable conditions for their work and rest. Unfortunately, the lack of a clear policy at the moment makes it less likely that simply transferring to contract-based employment will lead to any serious qualitative changes within the Armed Forces.

#### *Reforming the Forces' organisational and governance structures*

Defence reform cannot ignore the issues of organisational structure and governance of the Armed Forces. Legislation was passed to move from having four types of Armed Forces to three (land forces, air forces, and navy), in order to harmonise the structure of the Ukrainian Armed Forces with NATO member states. This improved the efficiency and readiness of the Armed Forces to fulfil their obligations, since the reduced number of military structures and equipment under a three-force structure made the Armed Forces more governable. The Armed Forces can be divided into the following structures and functions:

- Combined Rapid Reaction Forces (CRRF) to react instantly and localise threats and armed conflicts;
- Main Defence Forces, to reinforce the CRRF in order to end an armed conflict, and also to withstand aggression in the case of a large-scale violent conflict;
- Strategic reserves to reinforce the Main Defence Forces and for deployment just before or during violent conflict.

Since this functional division does not correspond to the new tasks and likely scenarios for using the Armed Forces envisaged by the MOD, there are plans to change this structure. In particular, specific units will be taken out of both the CRRF and the Main Defence Forces which have better trained troops, are better equipped and are more ready for battle if necessary. It is also planned to take the strategic reserves out of this functional structure.

<sup>6</sup> i.e. to outsource some of this protection and servicing work to civilian structures.

<sup>7</sup> The MOD requested 11 million UAH, but the final budget for 2007 allocates just over 8 million UAH for defence.

Another important element of defence reform has been the introduction of the J-structure<sup>8</sup> to improve internal command and control and to bring Ukraine army structures into line with those of NATO member states.

The introduction of the J-structure is making it possible to get rid of unnecessary command structures and make it clearer where lines of responsibility lie. A detailed range of measures has been developed to support the transfer to the J-structure of command:

- Departments for Humanitarian Issues and Social Protection have been added to the Main Personnel Department (J-1);
- A Main Reconnaissance Department has been added to the structure of the General Staff (J-2);
- The Main Operational Department (J-3) focuses on military-strategic analysis, prepares proposals about the strategic use of the Armed Forces, and set the main principles for the training and preparation of the Forces;
- The Main Defence Planning Department (J-5) has been restructured to remove unnecessary functions, such as the General Staff's tendering committee.

#### *Destroying surplus weapons and military equipment*

The large number of troops stationed on Ukrainian territory during Soviet times meant a large quantity of weapons and military equipment. Since independence, however, much of this has become surplus to requirement and needs to be destroyed. The main reasons for this are:

- The changing demands on the Ukrainian Armed Forces, which differ significantly from those of Cold War times.
- The decision to completely restructure the Army
- Many of the weapons are now technologically and physically obsolete
- The Ukrainian Government has not had the resources to destroy weapons as soon as they become obsolete, economically unattractive, or dangerous.<sup>9</sup>

The main problem is the Ukrainian states lack of organisational and physical resources to destroy weapons and equipment at the same pace as they are becoming obsolete. This is a threat to the environment and to the physical safety of people leaving close to these stockpiles. Ukraine is making use of donor support to speed up the destruction process. Most notably, a NATO project has started to destroy obsolete explosives, light weapons and ammunition. The project, which costs 25 million Euros, is the largest project of its kind in the world.

On 28 September 2006 the Cabinet of Ministers ratified the draft state programme to destroy conventional weapons and ammunition that are no longer suitable for use of storage, for the period 2006 to 2017. Following this, in early 2007 the Cabinet of Ministers created a commission to coordinate the destruction of ammunition. This included instructions to calculate expenses for financing this work in the annual budget. State financing for this programme amounts to 26 million UAH for 2007.

The Ministry for Emergency Situations is currently responsible for the destruction of ammunition. In January 2007 the Ministry began to destroy ammunition in controlled explosions at the 275<sup>th</sup> Artillery Base in Novobohdanivka in the Zaporizzhya oblast.

The Ukrainian Government still cannot destroy weapons fast enough, for the reasons noted above. This problem can only be solved through much greater cooperation between different ministries and agencies, parliament and international donors.

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<sup>8</sup> Military organizations have different ways of organizing themselves internally. The J-structure is an organizational approach which centers on the function of each 'J' (Joint Element). These 'J' Elements are different operational structures, such as J-1 (personnel) and J-2 (reconnaissance). Structuring the forces in this way makes it easy to focus on their functions and means it is an approach that provides control over the implementation of all types of missions. It also simplifies coordination between different commanders.

<sup>9</sup> According to a parliamentary hearing on 21 December 2006 'On the implementation of state programmes and decisions regarding the maintenance and destruction of ammunition that is not suitable for further use', more than 2 million tons of explosives are stored in more than 150 MOD arsenals, bases and warehouses. A significant proportion of this ammunition is obsolete and should be destroyed. The hearing concluded that '...the absence of a state programme for the destruction of conventional ammunition...generates dangerous trends towards the non-implementation of destruction plans, deteriorating storage conditions, the risk of explosion...which might lead to a catastrophe and is a threat to the state and the lives of its citizens'.

### *Updating the Armed Forces' equipment*

Since little money has been spent on technology in the last decade, the majority of the Armed Forces' weapons and equipment will need to be replaced in the next few years. The situation is particularly complicated with regard to the types of weapons that are decisive in modern armed conflicts:

- Most of the Air Force's fighter planes and missile complexes will be obsolete within five years;
- More than 60% of anti-aircraft artillery has been in use for more than 20 years;
- In the next five to seven years most of the Air Forces missiles and launch systems will be worn out.

Minister of Defence Anatolyi Hrytsenko has stated that updating military equipment is one of the most important tasks for the Armed Forces. Ukraine needs to begin planning this now. Otherwise, "within one to two years about 50% of [the Armed Forces'] equipment will stop working, and within three to five years, 30% – even 50% by some estimates – of the Combined Rapid Reaction Forces will not be combat ready," which would seriously undermine the military effectiveness of the Ukrainian Armed Forces.

### *Developing new military technologies and supporting the defence industry*

Since the first years of independence, there has been a sharp drop in orders to the Ukrainian defence industry from the MOD. This has led to the collapse of many producers and designers of defence equipment. The MOD currently makes up no more than 3-5% of orders for the Ukrainian defence industry. In order not to lose its defence industry and its related potential, Ukraine needs to draw up a policy for comprehensive reform of the industry, which among other things would make the industry more relevant to the needs of the Ukrainian Armed Forces.

Ukraine still possesses a number of leading technologies and designs, which could be used not only for export but to re-equip the national army if there was a suitable state policy towards defence production.<sup>10</sup> However, the miserly sums that the state can afford to pay for weaponry means that the internal market in Ukraine has collapsed.

### **Plans for the next five years**

Between 2005 and 2011 it is planned to carry out structural reforms right across the board, for both operational and support functions in the Armed Forces, in the MOD, and in the General Staff. This is necessary because of the new tasks set for the Armed Forces, and the need to improve coordination and interoperability between Ukrainian forces and those of other countries with whom joint operations may be carried out in different parts of the world. The structural changes are also a way to make spending on the Armed Forces more efficient, and to cut out unnecessary levels of command and improve coordination.

The Strategic Defence Review<sup>11</sup> sets the following goals:

- To complete the creation of new organisational structures for the Armed Forces
- To finish the transformation to an entirely civilian MOD
- To introduce new personnel and human resource management systems and to improve service and living conditions for troops and members of their families
- To create a unified, automated command and control structure for the Armed Forces and each of its main branches.
- To begin the large-scale modernisation of its weaponry and equipment, including through the purchase of new equipment.

The strategy aims to reach NATO standards in all key areas by 2015.

It is concerning that since the main priorities for the development of the Ukrainian Armed Forces were set in the Strategic Defence Review in 2004, they have not been reviewed at the highest level.

Without a clear analysis of the military threats facing Ukraine, defence reform cannot be fully effective. Ukraine does not face any obvious short-term military threats. In this situation, it is particularly important to

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<sup>10</sup> For example, Ukraine could equip its army with nationally-made missile complexes: the *Pivdenne* construction bureau has designed the *Grom* tactical missile complex and the *Korshun* cruise missile. These tactical missile complexes are considerably cheaper than aviation but are equally effective in defending both land and air space. The acquisition of high-technology weapons is listed as a priority in the Strategic Defence Review.

<sup>11</sup> Strategic Defence Review of Ukraine to 2015 (White Paper of Ukraine), Kyiv 2004.

have a clear understanding of the role of the Armed Forces and the challenges they face. Such a vision would help to ensure that efforts to carry out defence reform are properly targeted.

It is also necessary to protect the reform of the Armed Forces from the ongoing political battles in Ukraine. In most developed democracies, changes to the political or military leadership rarely lead to an immediate change to the military's key goals and priorities – changes are more likely to happen with regards to medium- and long-term planning, but radical changes are usually avoided. Nevertheless, it can be said that Ukraine's focus on NATO integration has helped it to be clear about its defence policy priorities and reform plans.

## **b. The Ministry of Internal Affairs and the Police**

In the Soviet system, law-enforcement agencies were not designed to protect citizens' rights, including against violations by the state. There has still not been a proper re-think of the role of the law-enforcement agencies, and the law-enforcement system is still perceived by both the public and by political actors as a tool of repression and a means for the state or certain state officials to put pressure on their economic and political opponents.

### **Policing in Soviet times and perestroika**

For many decades, the police of the Ukrainian Soviet Socialist Republic reported to three different bosses. In terms of direct hierarchy, it was subordinate to the Ukrainian SSR Ministry of Internal Affairs (MIA), but it was also horizontally answerable to local parliaments and their executive committees, and also town, raion, and oblast level Communist Party committees.

In general, this concerned the whole MIA system, which implemented the decisions of both local party and central Soviet bodies. The influence of these party organs extended right across the MIA system. In addition, some police divisions were financed from local budgets, were run according to the legislation of the Ukrainian SSR, and the decisions of local party and Soviet bodies.

The most characteristic traits of the Ukrainian police which are still visible today developed at the end of the 1980s/start of the 1990s during perestroika and the changing social and economic relationships this brought with it. This was one of the most difficult periods in the Ukrainian police's history. As a result of the transition from a planned to a market economy, many factories and businesses were closed, unemployment started to rise, people lost their savings and there was rapid inflation. A significant part of the population rapidly got poorer, and society became increasingly divided into the poor and the rich, with no middle class. Combined with collapsing public moral and growing trends of 'legal nihilism', this all led to a major rise in crime in Ukraine.

The introduction of a market economy required the state to take a new approach to regulating economic activity and fighting crime. The state did not always respond quickly enough to the new economic situation, particularly with regard to adopting legislation relating to taxation and combating financial crime.

Certain enterprises took advantages of the gaps in legislation to build up shadow capital, which in turn spurred the development of new forms of crime, particularly protection rackets. Groups running protection rackets, many of which were made up of former sportsmen, later transformed into organised criminal groups with clear structures and hierarchies. As a rule, they were highly mobile, and had their own transport, weapons and communications systems.

In order to strengthen the capacity of internal affairs agencies to combat this criminality, in 1988 a Department for Combating Group Crimes, the so-called 'Sixth Department' was established within the Criminal Investigation Department. This followed a similar department that had been operating in Donetsk since 1986. It had 10 employees and answered directly to the oblast headquarters of the MIA. A short time later a similar structure was also set up successfully in the Dnipropetrovsk oblast under considerable secrecy, with powers to undertake investigation on its own.

In 1990, the political situation in the USSR deteriorated. Inter-racial and inter-ethnic conflicts flared up in parts of the USSR, which led to mass unrest and deaths among the population.

The leadership of the central Soviet MIA considered the political situation in some of the Soviet republics at the start of 1990 and decided that in order to keep the situation under control, they would significantly extend the rights of the republic's local ministries of internal affairs. In accordance with Order of the MIA of the USSR № 2 of 24 January 1990 'On the Further Extension of the Rights of Ministers of Internal Affairs of Union Republics', these ministers were given significant authorities which had previously been solely the domain of the central authorities. For example, they were given the right to: define procedures for planning the work of internal affairs agencies; to publish normative acts relating to their service; and to publish information bulletins, compilations and other printed materials, and to control the publishing activities of subordinate agencies and divisions; to appoint and dismiss the heads of the Main Departments and Internal Affairs Departments in local and oblast councils. This extension of the rights of republican ministers of internal affairs gave them much greater opportunity to influence the political situation and to deal with internal corruption within the republic ministries.

On 16 July 1990, the Verkhovna Rada of the Ukrainian SSR made its 'Declaration on State Sovereignty'. Shortly after, on 30 July 1990, the Rada adopted a resolution 'On Military Services for Citizens of the Ukrainian SSR and the Employment of the Republic's Law-Enforcement Agencies Beyond its Borders'. According to this resolution, the Council of Ministers of the Ukrainian SSR was given a month to get Ukrainian law-enforcement officials who had been involved in maintaining order and stemming inter-ethnic conflicts in other parts of the Union to return to Ukraine and find them a permanent position.

An important stage in the development of the Ukrainian police was the adoption of the Law of the Ukrainian SSR 'On the Police' on 20 December 1990, which defined the legal basis underpinning the Ukrainian police's work. Although this law has been changed and added to since then, it still remains fundamental to the work of the Ukrainian police.

### **The Ukrainian Police: Attempts to reform**

According to current legislation, the main tasks of the police are: to maintain citizens' personal security and protect their rights, freedoms and legal interests; to prevent and stop legal violations; to maintain and protect public order; to uncover crimes and identify the culprits; road safety; protection of property from crime; to provide social and legal help to citizens; and to support state bodies, businesses, institutes and organisations as appropriate in carrying out their legal duties. The police thus have administrative, preventive, investigatory, procedural, protection (on a contract basis) and executive functions.

The police force contains a system of agencies under the MIA structure:

- **The Criminal Police:**<sup>12</sup> Its work is focused on the prevention, ending and discovery of serious crimes and undertaking criminal investigations in certain cases defined in legislation. Its structure includes: the Criminal Investigation Department, the State Service for Combating Economic Crime, departments for combating illegal drugs trafficking, forensics, and juvenile crime. It is made up of autonomous subdivisions which are managed down the following hierarchy: the MIA central command; the MIA main departments; the main departments in the Autonomous Republic of Crimea, the city of Kyiv and Kyiv oblast; the MIA commands at oblast-level and the town of Sevastopol; and lastly, the raion and local level MIA departments and police on transport routes.
- **The Public Safety Police:**<sup>13</sup> Focused on ensuring citizens' public safety, the defence of public order and safety, the prevention and stopping of crimes and administrative violations, and also as appropriate to provide help to citizens, officials, bodies, businesses, institutes and organisations, etc.
- **The Transport Police**, which protects public order and guards freight on rail, river, sea and air transport.
- **The State Automobile Inspectorate,**<sup>14</sup> which is currently undergoing reform. At the moment, its main tasks are: to maintain road safety and to fight criminality on state roads; to provide help to everyone on the roads; and to search stolen means of transport.

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<sup>12</sup> Order of the MIA of Ukraine 'Procedures for the Criminal Police of Ukraine' of 26 January 1997 № 62, Order of the MIA of Ukraine 'Procedures for the Main Criminal Investigation Department of the MIA of Ukraine' of 25 May 1992 № 287; Order of the MIA of Ukraine 'Procedures for the State Service for Combating Economic Crime' of 10 August 1993.

<sup>13</sup> Law of Ukraine 'On Road Transport' of 30 June 1993; Law of Ukraine 'On Administrative Supervision of Persons Released after Imprisonment' of 1 December 1994, Presidential Decree 'On Immediate Measures to Combat Crime More Effectively' of 21 July 1994, Order of the MIA of Ukraine 'Instructions for the Work of the Police Inspector' of 16 January 1992 №22, Order of the MIA of Ukraine 'Procedures for the Main Department for the Protection of Public Order of the MIA of Ukraine' of 18 September 1992.

<sup>14</sup> Resolution 'On the State Automobile Inspectorate of the Ministry of Internal Affairs of Ukraine' of 14 April 1997.

- **The State Protection Service:**<sup>15</sup> The State Protection Service system has both a central command and local departments across Ukraine. It is self-financing, working on a contractual basis to private individuals, firms and properties.
- **The Special Police**<sup>16</sup> contains the 'Berkut', 'Sokil' and 'Titan' subdivisions. 'Berkut' is a highly mobile special detachment, created to fight crime, to maintain order during major state, political, social, sport, cultural and religious events, to carry out special operations and to protect public order. 'Sokil' is a special mobile operations department which is part of the MIA's Main Department for Combating Organised Crime and the relevant agencies in all Ukrainian regions. It is responsible for anti-terrorist operations, breaking up gangs and organised criminal groups. 'Titan' was created to protect valuable freight, money being transferred, and protection of other property on a contractual basis.
- **The Judicial Police,**<sup>17</sup> which keeps order in the courts, stops any examples of disrespect for the courts, protects court buildings, provides state protection for judges, court officials, and other participants in the judicial process.
- **Special police subdivisions** can be created by the MIA with the permission of the Cabinet of Ministers to maintain public order in places of particular public or economic importance or have suffered from a natural disaster, a catastrophe, or ecological pollution.
- **The Local Police** can be established by decisions of local self-government bodies following agreement between local organs and the MIA. The local police's tasks are to protect the life, health, rights, freedoms and legal interests of citizens and to protect public order on its territory. However, due to the lack of local government financing to maintain local police forces, they have not yet been set up.

The organisational structures and staff numbers for the police are defined in procedures set by the Cabinet of Ministers of Ukraine. The police is subordinate in its work to the MIA.

One of the police's main role is to combat organised crime. This is directed by the specially created Department for Combating Organised Crime, which has been in operation since 1993. Its priorities include neutralising organised criminal groups, particularly those with regional or international links, the investigation of crimes involving explosive instruments and crimes involving attempts on the life of MPs and officials, and the protection of law-enforcement and court officials. In 1998 'Procedures on the Main Department for Combating Organised Crime of the MIA of Ukraine' were adopted, along with its organisational structure.

If the tasks facing the police as a result of changes to political, social and economic circumstances are to be dealt with effectively, police reform is urgently necessary. The severity of the problem is caused by the fact that the police system was created many years ago, and is stuck in Soviet ways of working. Although there have been certain evolutionary changes to the police's responsibilities and working methods, no proper attempt has been made to adapt the MIA to the contemporary situation, and the work of the MIA often lags behind developments in the rest of the state.

It should be noted that this is true of all law-enforcement agencies in Ukraine. Furthermore, the law-enforcement system and the way it is governed is far too cumbersome. Many subdivisions duplicate each other. For example, both the MIA and SBU deals with combating and investigating organised crime and corruption. The same goes for many other forms of crime prevention and public order maintenance. The result is that agencies often implement the same functions in parallel, and governance structures have little ability to improve the efficiency of this work. For this reason, for example, the former Minister of Internal Affairs and ex-Head of the SBU, Volodymyr Radchenko, argued that the intelligence services should remain its 'special' status, and not become a law-enforcement body dealing with investigations, arrests and so on.<sup>18</sup>

<sup>15</sup> 'Procedures on the State Protection Service under the Ministry of Internal Affairs', confirmed by Resolution of the Cabinet of Ministers of 10 August 1993 № 615.

<sup>16</sup> Order of the MIA of Ukraine 'Procedures for the Fast Reaction Subdivision 'Berkut'' of 31 August 1998 № 636

<sup>17</sup> The work of the Judicial Police is regulated by the 'Procedures on the Special Subdivision of the Judicial Police 'Grifon'', confirmed by Order of the MIA of Ukraine of 19 November 2003 № 1390.

<sup>18</sup> Radchenko V. *Spetsluzhba maye zalyshatysya spetsluzhboyu // Prezydentskyi visnyk* 2001. № 15. p. 16.

Reform needs to be defined not only by the police itself, but within the whole law-enforcement system; at the moment, the work of the law-enforcement bodies, in particular the police, is not founded on human rights and freedoms.

Between 1996 and 2006 a range of organisational and practical measures were taken to optimise the police's tasks and functions. The tax police, criminal executive system, medical centres for alcoholics, reception centres for socially disadvantaged children, and fire service have all been removed from the MIA, allowing it to focus on the prevention and investigation of crimes.

The need for reform was recognised in a presidential decree as early as 2001, when the first Commission for the Reform of the Law-Enforcement Agencies of Ukraine was established.<sup>19</sup> The former Interior Minister, Yuriy Kravchenko, presented a vision for police reform based on the following principles:

- Division of the political and administrative components of managing the MIA;
- A unified system, which is as economical, simple and flexible as possible;
- Urgent support for the lower levels of the police, which are the building blocks of the MIA system;
- Public access to information about the MIA's work;
- Ensuring that all services and departments, regardless of their specialisation, put combating crime and protecting public safety at the core of their work;
- Close cooperation with local executive bodies to maintain security on their territories;
- Ensuring that all changes are consistent and well-thought out.<sup>20</sup>

In August 2000, Kravchenko presented his proposals for the law 'On the Police' to the Verkhovna Rada through Prime Minister Viktor Yushchenko. These proposals included a suggested that the police should be renamed from '*militia*' to '*politsia*'. At the same time, policemen began to get new uniforms distinguishing them from their old Soviet uniforms. Despite proposing this 'revolutionary' change to the name, it was not backed up with any changes to the police's functions, tasks or structure.

At the start of 2000, the MIA adopted and began implementing a number of long-term programmes, particularly, the 'Programme of Action of the Internal Affairs Agencies to Improve Law and Order in Ukraine at the Start of the Third Millenium'.<sup>21</sup> This normative document was meant to be the basis for strengthening law and order, improving the police's effectiveness and a confirmation of the protection of human rights in Ukraine.

It is not possible to achieve the strategic goals of police reform without a new personnel policy. A Complex Programme to Improve Personnel Policy and Raise the Authority of the Police was adopted on 29 January 1999 in this regard.<sup>22</sup> This document envisages a comprehensive range of measures to improve the selection and training of staff, to set clear formulas for staff numbers, to provide suitable informational and analytical support for the police's work, etc.

The next priority for reform is improved cooperation between the police and the public. One aspect of such cooperation would be the ability for the public to evaluate the police's work. The 'Programme for the Development of Partnership Between the Police and the Public, 2000-2005' aimed to create legal principles for the development of partnerships between the police and the population and to allow the maximal use of positive forms of interaction.<sup>23</sup>

Another particularly difficult issue regarding reform in current economic conditions relates to the need to improve financing for the MIA. For the last few years, the MIA has had very limited budgetary resources. If in 1993 the MIA received 58% of the budget it requested and needed, by 2000 this figure had fallen to 25.2%.<sup>24</sup> The existing system of budgetary planning and expenditure relies on an MIA Special Fund, two

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<sup>19</sup> Presidential Decree, 'On the Commission for the Reform of the Law-Enforcement Agencies of Ukraine' of 17 January 2001 № 17/2001 // *Prezidentskyi visnyk* 2001. № 4 (30).

<sup>20</sup> Kravchenko Yu. F. *Militiya* Ukrainy, 1999. p. 221.

<sup>21</sup> 'Programme of Action of the Internal Affairs Agencies to Improve Law and Order in Ukraine at the Start of the Third Millenium', confirmed by a Decision from the Board of the MIA of 28 December 1999. № 8 km/1.

<sup>22</sup> Order of the MIA of Ukraine 'On A Complex Programme to Improve Personnel Policy and Raise the Authority of the Police' of 29 January 1999. № 61.

<sup>23</sup> 'Programme for the Development of Partnership Between the Police and the Public, 2000-2005' of 16 December 1999.

<sup>24</sup> Kravchenko Yu. F. *Hromads'ka dumka – dzerkalo diyalnosti militsii* // *Imenem Zakonu* 2000. № 35. 25 August.

thirds of which comes from money made by paid-for services. In certain cases this can lead to budgetary costs being spent in a badly planned manner.<sup>25</sup>

The law of financing is also leading to a reduction in staff numbers. In 2005, nearly 19,000 people left the MIA, a third of which did so because of low pay.<sup>26</sup> These reductions have not yet led to any qualitative improvements in the police's work, however.

The low level of material and technical resources is another reason for the growth in unsolved cases. This has even led to the death of some police employees. Since independence, 891 policemen have died and 5,917 have been injured.<sup>27</sup> The low level of social and financial support for police employees – low salaries, pensions and medical insurance – also has a negative effect on the service. 92% of employees who have reached pensionable age retire for health reasons. Illness among the police is 42% higher than the average among Ukrainian men of the same age.<sup>28</sup>

When Yuriy Lutsenko was Interior Minister, a new effort was made to reform the MIA to make it a civilian agency setting policy, which envisaged:

- The creation of a National Police of Ukraine according to European standards as a policing structure within the MIA;
- Transfer of the Tax Police from the State Tax Administration of Ukraine to the MIA and the creation of a tax investigation service;
- Reform of the MIA Internal Troops into the National Guard of Ukraine (NGU) within the MIA – a militarised grouping with certain law-enforcement functions, which would be brought in to support law and order;
- The creation of a State Migration Service on the basis of the MIA Department for Citizenship, Immigration and Registration of Physical Persons;
- The creation, after the process of territorial administrative reform has been completed, of local (municipal) police forces;
- The transfer from other ministries to the MIA of the corresponding departments dealing with law-enforcement and legal functions relating to fire-fighting, technological and industrial safety, labour protection and state monitoring of the mining industry, the protection of forestry resources and game animals, the protection of natural resources, water resources, and rescue services;
- The transfer of coordination of regional policy to the MIA.

However, these attempts to reform did not get beyond an attempt to dissolve one of the most corrupt parts of the police, the State Automobile Inspectorate (the Traffic Police). In July 2005, President Viktor Yushchenko produced a decree 'On the Liquidation of the State Automobile Inspectorate of the Ministry of Internal Affairs of Ukraine (№ 1109/2005), which would have changed its functions and methods of work. The law envisaged changes to other legislation to regulate the work of two newly formed structures – the State Inspectorate for Road Safety and the State Patrol Service – but these changes were not put to parliament for consideration. In fact, this means that the State Automobile Inspectorate continues to operate legitimate according to the relevant provisions in the law 'On the Police'. It is thus still continuing as normal, even though the presidential decree was not cancelled.

### **Reasons for failure: the political context in which the police operates**

The political environment, in which the police has developed has changed several times – from the early 1990s, to the mid-1990s, to the late 1990s/early 2000s, and through to the present day. The early 1990s were characterised by a patriotic renaissance on the one hand, and a very difficult social and economic situation on the other. The birth of the market economy was accompanied by the criminalisation of society and the economy. The lack of regulation in tax and monetary policy catalysed a massive growth in the shadow economy, and together with that came the growth of organised crime. This forced police chiefs to focus attention on combating organised forms of crime, and to a lesser extent, to try to interfere in political struggles within the country.

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<sup>25</sup> Report of the Accounting Chamber of Ukraine. [http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art\\_id=35944&cat\\_id=34665](http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=35944&cat_id=34665)

<sup>26</sup> Report of the Deputy Interior Minister L. Porechkina at parliamentary hearings on 8 February 2006 'On the maintenance of housing and other guarantees of social protection for servicemen, chiefs and rank-and-file staff of internal affairs agencies'

<sup>27</sup> <http://ua.proua.com/news/2006/08/22/115741.html>

<sup>28</sup> 'i pravookhorntsi potrebuyut' zakhystu' // *Uryadovyi kur'er*. 21 March 2001.

Furthermore, at the same time, the SBU was also dealing with the same functions of investigating and preventing organised crime, corruption and economic crime. Such a duplication of functions led to competition between the two agencies, as they battled for the influence and the chance to boast their successes to their political bosses. During the presidency of Leonid Kravchuk (1991-94), therefore, the police was not generally used as an instrument of political and economic competition. From the moment that independence was gained till July 1994, the MIA was headed by Andriy Vasylyshyn, who until then had been deputy head and then head of the MIA of the Ukrainian SSR.

After Leonid Kuchma won the presidential elections in 1994, Volodymyr Radchenko, who had trained in the Ukrainian KGB had previously been Deputy Head of the SBU, was made Interior Minister. Radchenko was a very cautious person who kept equal distance from all the political elites. He did not lead the Ukrainian police for long: in March 1995 he was appointed as Head of the SBU. During his leadership of the MIA, the police focused its attention on combating organised crime and corruption – the areas Radchenko had been responsible for at the SBU.

After Radchenko came one of the most odious figures in the MIA's history: Yuriy Kravchenko. Kravchenko soon became one of Kuchma's most trusted people.

By about 1998, the first big financial industrial groups ('clans') had formed in Ukraine, and they tried to influence the economic and political situation in the country. The Donetsk, Dnipropetrovsk, Kharkiv, and Kyiv groups all made sure they were represented in Parliament and became actively involved in the policy-making process, while remaining irreconcilable enemies in the division of property. This led to a situation when the ruling elite started to see the security services, and particularly the MIA, as a means of political and economic struggle, with the help of which it would be possible to gain control over essential sectors of the Ukrainian economy.

On the one hand, this meant that between them, the police and the SBU eliminated the most active criminal groups in Kyiv, Donetsk and Crimea. On the other hand, in doing so, the police became an object in the struggle to divide spheres of economic influence and to destroy political opponents. Instead of being pressured by criminals running protection rackets, business owners now received similar visits from policemen, especially from divisions that were supposed to be dealing with organised crime. They offered to act as a '*krysha*' (protection) for one or another business in return for payment for their services.

In 2000, Yuriy Kravchenko was implicated in the 'tape scandal'. The opposition accused him of complicity in the kidnapping and murder of the journalist Georgiy Gongadze. In December 2000, Parliament adopted a resolution recommending that the President should sack Kravchenko. The President did so in March 2001, 'with regard to [his] transfer to another position.'

Yuriy Kravchenko died in March 2005 from a gun wound. The investigation into this case is still continuing – one version is suicide. At the time of his death, Kravchenko had been called as a witness to the Gongadze case, and on the day of his death he was supposed to be questioned by the General Prosecutor.

After 2001, the main factor influencing who was appointed as Interior Minister was the struggle for power between the Government and the Opposition. In March 2001, Yuriy Smirnov, who had previously worked as head of various departments in the ministry, was appointed as minister. During his leadership, the police continued to become more politicised, gradually becoming a punitive organ for the ruling regime. The opposition accused Smirnov of falsifying material relating to the Gongadze case. At the same time, another high-profile murder took place, of the well-known Donetsk journalist Igor Oleksandrov, who had revealed links in his reports between Donetsk law-enforcement agencies, organised crime, and political figures linked to criminal groups.<sup>29</sup> The investigation into this case, carried out by the police and the Prosecutor's Office, was falsified, and a homeless person, Yuriy Veredyuk, was framed; his name was later cleared, but he then died of a heart attack in mysterious circumstances.<sup>30</sup>

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<sup>29</sup> Sergiy Harmash. *Komu zavazhav Ihor Aleksandrov*. <http://www.zn.kiev.ua/ie/show/353/31818/>

<sup>30</sup> 'Yuriy Veredyuk mertv. Predstavlenie okoncheno?'

[http://tvplus.dn.ua/news/emergency/2004/04/20/Urii\\_Vereduk\\_mertv\\_\\_Predstavlenie\\_okonceno\\_\\_\\_471.html](http://tvplus.dn.ua/news/emergency/2004/04/20/Urii_Vereduk_mertv__Predstavlenie_okonceno___471.html)

The greatest complaints against the police in this period came during the parliamentary elections in 2002. According to the opposition politician V. Chornovil, the police was given secret instructions which told the internal counter-surveillance teams of the oblast departments for combating organised crime to collect information and compromising material against opposition politicians, regional and local leaders, even though this was clearly against the constitution. These orders contained 23 points, including instructions to gather information on their relatives, friends, acquaintances, lovers, and other people with which they were involved, to track their financial support, and also to see what relations they had with state officials, to find out whether they had any sympathisers in local state agencies. Through secret channels this information was sent to the MIA, and from there given to the Presidential Administration in the form of secret reports.<sup>31</sup>

In August 2003, Mykola Bilokon, who had previously been Deputy Head of the Presidential Administration with responsibility for judicial reform, the military and law-enforcement agencies, was appointed as Interior Minister. He was one of President Kuchma's advisers and was considered to be very close to him.

In 2003-2004, on the eve of the presidential elections, Ukrainian society became increasingly politicised. Accusations increased that the Government was using the police and the whole law-enforcement system as an instrument in its battle with opposition politicians and to put economic pressure on businessmen who supported the opposition. One of the leaders of the Opposition, the head of the *Batkivshchyna* party, Yuliya Tymoshenko, was arrested at this time and spent three months on remand. Police were used against students protesting peacefully against the merger of higher education institutions in Sumy. During elections for the mayor of Mukachevo in April 2004, organised criminal groups interfered directly in the election campaign, threatening the local population with various punishments if they dared to vote against the pro-government candidate. On the day of the elections itself, they were allowed to control the voting process and stuff the ballot without any police intervention – in fact, some of the police even helped them.

In summer 2004, the Interior Minister announced support for the pro-government presidential candidate at an internal MIA staff meeting. The Opposition claimed that a secret order from the minister existed (№571 of 26 May 2004), not registered with the Ministry of Justice, instructing mass falsifications to be allowed to take place during the elections.

After the mass falsification of the results of the second round of the presidential elections in 2004, which were later recognised as such by the Ukrainian Supreme Court, mass demonstrations began in Kyiv – the so-called 'Orange Revolution'. On 27 November 2004, Deputy Minister General Popkov, Commander of the MIA Internal Troops, issued an order to arm Internal Troop divisions making their way towards the centre of Kyiv with military weapons and bullets. Only the intervention of other law-enforcement and security heads, particularly the Minister of Defence and the Head of the SBU, prevented force being used against the thousands of people protesting peacefully in the centre of Kyiv.

After a third round of voting, won by the opposition candidate Viktor Yushchenko, Mykola Bilokon was sacked in February 2005, he was accused of organising the rigged elections, abuse of power and of his office. After this he left the country and there is an international search warrant out against him.

The events of the 'Orange Revolution' and Viktor Yushchenko's victory gave a great thrust to the democratisation of society, proper respect for freedom of speech, the development of a free press, and the de-politicisation, de-corruption, and democratisation of the law-enforcement system.

In 2005, a civilian politician rather than a professional policeman was appointed as Interior Minister for the first time – Yuriy Lutsenko from the Socialist Party, who had taken part in the 'Ukraine without Kuchma' protests and was a 'field commander' in the tent city on Independence Square during the 'Orange Revolution'. He stayed as minister under three different governments (headed by Yuliya Tymoshenko, Yuriy Yekhanurov and Viktor Yanukovich (appointed under the President's quota)) until he was dismissed by Parliament on 1 December 2006.

One of Lutsenko's slogans was 'the police with the people'. In his first year in office, he sacked many officers who he believed had abused their office and had taken part in the election rigging. The Party of the Regions estimates that during his leadership, about 18,000 policemen of various ranks were sacked.

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<sup>31</sup> *'Priroetni napryamy reformuvannya neviys'koho sektoru bezpeky v Ukraini v suchasnykh umovakh . Dzerkalo tyzhnya № 23 (498) 12–18 June 2004*

Lutsenko understood the need to reform the MIA, but apart from his fight against corruption and the attempts to reform the State Automobile Inspectorate, there were no comprehensive reforms.

Following Lutsenko's dismissal, a representative of the ruling coalition and head of the Socialist fraction, Vasyl Tsushko, was appointed as Minister. He was the first Interior Minister not to be appointed by the President (due to the constitutional changes). He too was not a professional policeman but a politician who had positioned himself as a 'minister beyond politics' under whose leadership the police would not interfere in political and economic competition.

However, the events of January 2007 suggest that the MIA still remains extremely politicised. The Minister appointed deputy ministers who instantly accused the previous leadership of abuses of power and exceeding their authorities. These appointments included Serhiy Popkov, who had given the order to arms the interior troops during the 'Orange Revolution', and Mykola Plekhanov, who had ordered force against the students in Sumy. Furthermore, Minister Tsushko soon replaced the local police chiefs in 12 oblasts, Kyiv and Sevastopol, and also appointed a new head of the State Automobile Inspectorate. Most of these new appointments previously worked at the MIA under President Kuchma and had been fired by Yuriy Lutsenko.

Not long after a national police force had been established in Ukraine's early independence years, by the mid-1990s it gradually an instrument of political and economic pressure against political and business opponents. This reached its peak at election time. After the relatively unpoliticised parliamentary elections in 2006 (from a police perspective), the reappointment of the same faces to the ministry raises the risk that the police will once more be used for political and economic purposes.

### **The way ahead**

The intertwining of business and power created conditions for the law-enforcement agencies, and particularly the police, to be used in the interests of the government's business and political elite. Law-enforcement and police reform would have made such abuse of power impossible. Furthermore, until 2005, no vision existed of reform either for the ministry itself as a policy-making body, nor the police operational units.

The system for training, selecting and promoting staff is based on personal, and often corrupt, relations, which makes it impossible to form a critical mass of employees who want proper reforms. Past experiences of reform, which were chaotic and never transparent, have set many MIA employees against any sort of reform, particularly as they have previously led to confusing changes to organisational structures, redundancies and unjustified personnel changes.

Chronically low levels of budgetary funding have made it impossible to improve material and technical resources and to pay employees better. Low pay creates additional incentives for corruption among the police.

The first reforms that need to be carried out should deal with the decision-making process within the MIA and the separation of administrative and political management functions. In developed democracies, interior ministries answer for a much wider range of questions than just law and order. The same kind of ministry should be created in Ukraine, which would be responsible for state policy in the following areas:

- The protection of law and order;
- Ethnic and religious relations;
- Migration and asylum;
- Regional Development;
- Defence of national borders;
- Dealing with emergency situations.

The Ministry needs to be reformed into a body for policy making in law and order, removing functional departments from the central ministry. On the basis of these departments, autonomous agencies or departments should be set up (still under the MIA), headed by professionals rather than politicians, that have the right to spend their own budget and implement their own personnel policies:

- **Criminal Police** with the following tasks: criminal investigation; criminal surveillance; combating economic and tax-related crime through investigative work; pre-trial investigation in cases that are not especially serious. It should be created out of the MIA divisions working on criminal

investigation and surveillance, combating organised crime and financial crime, and also the Tax Administration departments working on tax evasion, and the SBU's economic crimes units.

- **Migration Service** with the following tasks: questions relating to Ukrainian citizenship; to accept applications from foreigners and individuals without nationality regarding refugee status in Ukraine; placing and holding people while they are going through asylum procedures; finding and deporting individuals who are on Ukrainian territory illegally or have lost the legal right to stay; the retention, filtration and identification of persons captured entering or staying in the country illegally. The Department would be created using specialists from the State Committee for National Migration and the State Department for Passports, Immigration and Registration within the MIA. It would have sub-departments dealing with citizenship questions, refugees and police relations with foreigners;
- **Public Safety Police**, which would form the basis for the municipal police and would be created from the organisational structures and responsibilities of the police patrols and the State Automobile Inspectorate.
- **MIA Guard** (special task police), created on the basis of the Internal Troops, special operations divisions, judicial and special police.

The police would only undertake pre-trial investigation in cases that were not considered serious crimes.

The title of '*militia*' does not fit the role of such a service, since it has its roots in the concept of military forces formed independently of the regular army. The service must therefore be renamed to the '*politsia*', which is a more suitable name, since police services are a system of agencies which maintain law and order and internal security.

All of these actions must be accompanied by legislative reforms that would recognise the new roles and responsibilities of the MIA, since without this, reform will be impossible.

The following priorities are suggested:

- Adoption of a new version of the law 'On the Police'
- Adoption of a new version of the law 'On the Prosecutor's Office in Ukraine'
- Introduction of Changes to the Criminal Procedural Code or the adoption of new version of this Code.
- Adoption of a law 'On the Migration Service'
- Adoption of a law 'On the Municipal Police'
- Adoption of a Police Procedural Code
- Adoption of a new version of the Ministry of Internal Affairs procedures.

Achieving these changes would be extremely important, but extremely difficult. They will face harsh resistance from ministry employees who would lose their levers of influence over the departments' personnel and financial policies. However, this will greatly reduce the risk that the police can continue to be used for political or economic purposes in the future.

### **c. The Border Guard Service**

The State Border Guard Service of Ukraine evolved out of units of the USSR Border Troops. This saw the role of the Border Guards gradually transform from military operations (even though one of their main tasks in Soviet times – to prevent their citizens leaving for the West – was not exactly military in nature) towards law-enforcement and preventing trans-border and trans-national crime. The main task of the newly independent Ukrainian state in this regard was to ensure that people and goods could move easily across borders but to rigorously prevent terrorism, weapons and drug trafficking, the proliferation of weapons of mass destruction, and illegal migration. All this required the militarised Border Guards to be transformed into a law-enforcement agency.

In the 16 years of its existence, the Border Guard Service has changed considerably. It has acquired new functions and tasks at the legislative level, has developed its infrastructure right along its borders, created its own system for training highly-qualified staff, and improved its level of material and technical resources. Nonetheless, there has still only been limited success in demilitarising the Service, which currently hinders its attempts to reach European standards.

### **Five stages of reform**

Ukraine's Border Troops were established on the basis of the Western Border District of the Border Troops of the USSR KGB. An analysis of the history of the Ukrainian Border Guards suggests that their development can be divided up into five key stages.

During the **first stage (1991–start of 1992)**, the main tasks were to create new Ukrainian Border Troops, to organise the defence of the new state borders on the former Soviet borders, to develop legislation to define the Troops' legal basis, roles and responsibilities, and to create the right organisational structure for them.

In 1991, Parliament adopted the laws 'On the Border Troops of Ukraine' and 'On Ukraine's State Borders', which defined Ukraine's state borders along the old administrative boundaries of the former Ukrainian Soviet Socialist Republic as Ukraine's new borders with other post-Soviet republics, and the former Soviet border as its Western border with the countries of Eastern Europe. In Soviet times, only the Ukrainian SSR's Western borders (with Poland, Czechoslovakia, Hungary and Rumania), and its Southern (maritime) borders had been defended. On gaining independence, the length of Ukraine's international borders more than quadrupled, to 6993.63km.

In the **second stage (1992–1993)**, border controls were established on the borders with Moldova, Russia, and Belarus, a training system was established, the first international agreements were signed on state border controls and border crossing procedures with neighbouring countries, and the development of the Border Troops and the border itself was legally secured.

In 1992, Parliament adopted the law 'On Operational Investigatory Activity', and a Resolution was passed on the State Committee for the Defence of Ukraine's State Border, within which a central operations division, the Border Surveillance Department, was established. In 1993, the State Committee for the Defence of Ukraine's State Border was established as the central control agency for the Border Troops, and regional divisions were established in the North-East (Kharkiv), North-West (Lviv), and South (Odessa). Ten border control divisions were created, making it possible to organise control over the borders with Moldova, Belarus and the Russian Federation. On 3 April 1993, all state airports within international connections were placed under the Border Guards' control. Naval units were used to organise the defence of Ukrainian territory, waters and economic zones in the Black Sea basin. A boat division was established in Kerch. The Institute of Border Troops of Ukraine was established in Khmel'nitsky in order to train border guards, and three training divisions were formed to prepare commanders, officers, and specialists.

The **third phase (1994–1999)** saw the further development of the border infrastructure, the start of a process of legally confirming the state's borders, an increase in staff numbers, and the start of active international cooperation with border guards in EU member and candidate states.

The long-term 'Complex Programme for the Development of Ukraine's State Border', approved by Presidential Decree of 16 December 1993 № 596/93, envisaged the development of policies on the Border Troops and the defence of the state border, and the creation of a system for border protection and management. In 1995, a group of legislative acts was developed concerning the defence of the state border and the sovereign right of Ukraine in its exclusive (maritime) economic zone, the combating of illegal migration, and on joint actions between Ukrainian Border Troops and the law-enforcement agencies to strengthen the defence of the state border.

Special air squadrons were created and rolled out in the Lviv and Kharkiv regions in order to allow air surveillance and to react quickly to changes in circumstances. In order to create a combined system of control at sea, a completely new structure was established, the Odessa Sea Border Division, which combined land and naval forces. Considering the specific nature of Ukraine's southern regions and the difficult tasks faced by the southern troops, in 2000 another regional division, the Crimean Division, was established in the Autonomous Republic of Crimea, mostly on the basis of troops and equipment from the Southern Division.

Given the massive increase in the length of Ukraine's borders, it was necessary to increase the number of Border Troops. In 1999, the Verkhovna Rada set an upper limit of 45,000 staff, of which 42,000 should be

troops and the other 3,000 civilian employees. This law allowed these limits to rise to 50,000 (of which 47,000 servicemen) by 2005.<sup>32</sup>

The **fourth stage (2000–start of 2003)** saw a reassessment of the role and place of the Border Troops in the state system, the writing of new legislation to reorganise the State Border Committee into a law-enforcement structure, and the completion of the process of creating the best organisational structures for border management and protection.

Experience from other countries suggests that simply reorganising and increasing the number of staff will not help to improve border guards' effectiveness in combating organised crime on the border – proper qualitative changes are what is really required. With the prospect of Ukraine's Western borders becoming borders with the EU, and the strict requirements this would place on its neighbours in terms of border control (particularly when they joined the Schengen Agreement), the need to reform Ukraine's border control system became more acute.

The Programme of Action to 2005, which was confirmed by presidential decree in 2000, aimed to strengthen Ukraine's border control regime and support the development of the Border Troops. It envisaged the gradual transformation of the Border Troops into the State Border Guard Service of Ukraine. The state's political leadership thus supported the State Border Committee's proposals saying that it was essential to reform the Border Troops into a law-enforcement agency with corresponding authorities.

In 2002, the Department for Border Surveillance was set up within the ministry to provide border-related intelligence. At the same time, a Northern Border Division was established that was responsible for defending the Belarussian section of the border. Between 2001 and 2003, the State Border Committee introduced a new institution into Ukrainian border control: the border inspectors, who were responsible for monitoring and controlling a specific section of the border. These inspectors' work might be compared with the work of divisional inspectors in the MIA. They live in the region, know the territory and the local population, track the appearance of new people and means of transport, create their own networks for obtaining information, undertake measures together with regular border guards to neutralise illegal border crossers, etc. Experience has shown that this type of border protection is effective and has great potential.

The length of border controlled by each unit was also changed. At the start of 2000, each border guard unit on the Western border was responsible for 20-25km, but on the Eastern border this figure was more than 50km. Between 2000 and 2003, an extra 120 units were established on the Eastern border, doubling the amount of people defending this section of the border. By 2004, there was an equal division of forces along the whole Ukrainian border, with each unit dealing with 25-30km. The only exception was the border with the self-proclaimed Transnistrian Moldovan Republic, where each unit protected 18km of the border.

The **fifth stage (2003 to present)** has involved the reform and reorganisation of the Border Troops into the Border Guard Service of Ukraine, and the transition of the border guard agency from a purely military structure towards a special law-enforcement body.

The law 'On the State Border Guard Service' was passed on 3 April 2003 and entered into force on 1 August 2003. The adoption of this law made it possible to significantly increase the law-enforcement aspects of the border guards' work and to bring the tasks of the Border Guard Service into line with their counterparts elsewhere in Europe. According to this law, the Border Guards' rights and responsibilities are now much more about law-enforcement:

- On the basis of an interview, to refuse entry into Ukraine if the purpose of the journey does not correspond with the stated purpose;
- To prevent crimes and administrative violations that are within the Border Guards Service's competence, to hold inquiries and investigate cases regarding administrative violations;
- To control the border and the flow of persons, means of transports, goods and other property;
- To register foreigners and persons without nationality on Ukrainian territory, together with their passport documents, at their place of entry across the state border;
- To detain illegal migrants until they are identified and deported from the country;
- To undertake surveillance measures in order to identify and prevent legal violations on the border;

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<sup>32</sup>Law of Ukraine 'On the General Structure and Staff Numbers of the Border Troops of Ukraine' №554-XIV of 24 March 1999.

- To control economic and other forms of activity in Ukraine's internal waters and exclusive economic maritime zone.<sup>33</sup>

The State Border Guard Service (SBGS) is made up of a specially authorised central coordinating body (the Administration of the State Border Guard Service of Ukraine), five regional divisions, and subdivisions responsible for border control, control of sea regions, and surveillance. Legally, it can have up to 50,000 employees, including 47,000 troops. This figure currently hovers around 37,000-40,000, of which only about 16% are conscripts. It is planned to have a fully professional, contract-based service by 2010.

The SBGS has developed most quickly since 2003, when state financing for the service began to rise rapidly and greater international technical assistance was provided for improving border control. The SBGS's budget almost doubled between 2002 and 2003, from 245m UAH to 420m UAH. The same dynamics continued in 2004 and 2005, and by 2006 its budget had reached nearly a billion UAH, a very large figure by Ukrainian standards for an agency with approximately 40,000 staff. This growth in activism and funding was also helped in part by the fact that the head of the Service was General-Colonel Mykola Lytvyn, the brother of Volodymyr Lytvyn, who was then Speaker of Parliament.

In recent years, there has been increasing understanding between the SBGS and foreign donors on border policy and greater cooperation, caused by mutual agreement on the threats they face and the best ways to deal with them. The following projects have been or are being implemented with donor support:

- Together with the European Commission and UNDP, a TACIS project is being run to equip border agencies on the Russian and Moldovan borders with heat-vision equipment and cars 3 (5.22m Euros);
- A TACIS programme (European Commission) is providing a radio communication network and special equipment in the Sumy oblast (1.26m Euros);
- The EU Border Assistance Mission to Moldova and Ukraine (EUBAM) has been supporting the development of stronger border controls on the Ukrainian-Moldovan border since late 2005;
- The US Department of Defense is helping Ukraine to strengthen the SBGS's capacity to identify and capture weapons of mass destruction on the Ukrainian-Moldovan border and Ukraine's maritime borders (the budget for 2004–2006 was approximately 20m USD). The project not only acquired special equipment for the SBGS on the Transnistrian part of the Ukrainian-Moldovan border, but also the creation of an integrated border management system at one of the command posts.
- The US Ministry of Energy's 'Second Line of Defense' Program, which aims to combat the proliferation of nuclear and radioactive material (the budget to 2011 is 15m USD);
- A project with Canada and the International Atomic Energy Agency as part of the Global Partnership to Prevent the Proliferation of Weapons of Mass Destruction in the Zhytomyr oblast (800,000 USD).

The SBGS also has joint projects with the UN, the OSCE, the US Coast Guards, and with Hungary and Poland.

### **The environment in which these changes occurred**

There have been significant changes to the environment in the years since Ukraine gained independence, within the country itself, on its borders, and internationally. Ukraine's Western neighbours have become full members of the EU and are preparing to join the Schengen Zone, which entails extremely strong border controls on the EU's external borders coupled with the free movement of citizens within the zone.

The main factor catalysing the further strengthening of the borders and reforms of the system is Ukraine's desire for integration with the EU. Alongside democratic transition and economic development, reliable border control is seen as one of Ukraine's key priorities for European integration. Ukraine is one of the most important transit routes for goods on their way between Europe and Asia. Five transport corridors pass through Ukraine, and these require a developed system for passing through state border. Ukraine also lies on one of the main transit routes for illegal immigrants coming from the CIS and South and Central Asia to Europe. Prospects for visa-free travel for Ukrainian citizens to the EU depend in large part on how well can defend its borders and prevent illegal migration. With EU member states strengthening their border with Ukraine, but Ukraine's Eastern and Northern borders remaining poorly equipped, the imbalance between the EU and Ukraine in terms of capacity to deal with contemporary threats is growing.

<sup>33</sup> Law of Ukraine 'On the State Border Guard Service of Ukraine' № 661-IV of 3 April 2003.

The process of legally defining Ukraine's borders, which began immediately after Ukraine gained independence, is still continuing. Between 1992 and 1997, Ukraine reached agreements with all its neighbours on border points. Agreements are also being concluded on mutual rules for citizens travelling to each other's countries. As part of its wish to develop good relations with all its neighbours, Ukraine is concluding agreements with Russia, Belarus, Moldova and Poland to organise joint border crossings.

By 2006, the delimitation of all Ukraine's new land borders with Moldova, Belarus and the Russian Federation, which began in 1998, was more or less complete. The Moldovan border is now being demarcated, while talks on demarcation are still continuing with Russia. The border between Ukraine and Russia in the Sea of Azov and the Kerch Straits, and the borders of their respective exclusive maritime economic zones in the Black Sea have yet to be defined, and there has been little progress in recent negotiations. The borders of maritime zones between Ukraine and Rumania in the Black Sea have also not yet been agreed due to the disagreement about the status of Zmiinyi Island; the UN International Court has been considering this case since 2004, and both Rumania and Ukraine have agreed to respect its decision.

The democratisation of Ukraine in recent years means there is now a demand for greater transparency from the SBGS both before civil society in Ukraine and before its foreign partners. In the near future, the SBGS will be set a series of wide-ranging tasks relating to Ukraine's European integration. In particular, they include:

- To take part in the delimitation and demarcation of the Northern, Southern and Eastern borders;
- The introduction of European approaches to defending 'green' borders and to controlling the transit of people and transport through border crossings;
- Ensuring that the main border threats are effectively managed: illegal migration, weapons smuggling, drug trafficking, and control over the transit of dual-use goods.

### **Prospects for development**

In 2006, the Concept for the Development of the State Border Guard Service of Ukraine in the Period to 2015 was approved by presidential decree. In order to implement the main tasks placed on the SBGS, the Concept defines the Service's priorities for this period.

Firstly, **European approaches to state border control will be introduced.**

- **Professional border units** will be created with enhanced authorities and suitable equipment, which will be responsible for the physical, technical and operational protection of green borders.
- **Criminal surveillance units** will be established at sections of the border where security threats are deemed to be highest. Their roles will include the identification and documentation of individuals acting as part of groups smuggling people across the border, and bringing them to justice. It also includes other organised forms of illegal activity on the border;
- **Highly mobile units** with suitable training and technical equipment will carry out patrols and searches and undertake special measures to localise conflict situations on Ukraine's borders and to prevent organised groups from operating, within the area of land around the border which falls within the border guards' responsibility;
- **Inspectorate posts** will be created on the basis of the existing inspectorate departments, and will answer for a specific stretch of the border.

Secondly, it is planned to **turn the Sea Guards into an autonomous structure** which would defend the sea border and protect Ukraine's sovereign rights in its exclusive maritime economic zone. A combined system will be created for checking the underwater situation, a special group of patrol boats will be created to defend the maritime zones, observation posts will be re-equipped, and the Sea Guards' boats and aviation will be updated.

The third priority is the **transition to a new organisational structure** to ensure:

- The optimal **shortening of the chain of command**, to ensure that resources are deployed more effectively and decision-making structures are clearer;
- The **reduction of staff numbers at the SBGS to 40,000** and the replacement of 10-15% of servicemen with civilian personnel;
- The **transition to contract-based service** by 2008.

Fourthly, border units will be **totally technically re-equipped** with modern observation and control technology, cars, radar complexes and systems for documenting legal violations on the border. The roll-out of satellite and modern radio communication systems should also be completed. Automated information systems and modern data transfer systems will also be introduced.

Lastly, Ukraine's **international cooperation should reach a new level of quality** in order to realise its strategic goal of European integration. The network of contact points will be extended and joint patrols and controls of border crossings will be instigated.

Although the Concept for the Development of the SBGS envisages reforming the Service as part of an overall concept for reform of the law-enforcement system, there are several views about the future place of the SBGS in the law-enforcement system.

The first scenario was suggested by Yuriy Lutsenko, the Interior Minister from 2004-2006. In his opinion, the MIA should coordinate the work of the SBGS. This would give the SBGS greater (policing) authorities, and in particular it would allow the Service to undertake investigations and surveillance across the country, rather than being restricted to border zones.

The heads of the SBGS have another opinion, believing that it should continue to develop as an autonomous law-enforcement agency, and that it should have the right of pre-trial investigation for crimes related to border management, as its counterparts in many Western countries do.

In most European countries, the border police are part of the law-enforcement system and are usually under the interior ministry. However, it is still too early to introduce such a model in Ukraine, at least until the MIA has been reformed from a functional/operational body into a policy-making and administrative body. Otherwise, such reforms could turn the border guards into an instrument of the police, with all its current shortcomings.

The SBGS's adoption of its own concept for development, before a state-wide vision for the future of the law-enforcement system has been agreed, is above all a way for the Service to protect itself as an autonomous central body of executive power.

The SBGS is also developing a draft 'Complex Programme for the Reconstruction and Development of Ukraine's State Border in the Period to 2015', based on a concept which was approved by the Government on 27 December 2006. The goals of the programme are: to improve the level of technical equipment on the border; to strengthen the relevant agencies' capacity to counteract potential threats; and to create suitable conditions for the development of cross-border cooperation and to benefit from Ukraine's potential as a transit state.

The main objectives of the programme are:

- To conclude legislation and agreements to complete the process of defining Ukraine's state borders;
- To develop a network of border crossings; to establish the optimal number of crossings (considering different categories of crossing, types of transport and working regimes) and improve the way they work; to create conditions for the improved effectiveness of national transport corridors and networks;
- To bring procedures for checking people, transport and freight at border crossings into line with EU standards;
- To improve standards along the state border outside border crossings, in order to ensure that the state's political, economic and other interests are better protected, taking into account international experience;
- To attract foreign and internal (non-state) investment, and also to define priorities for how financial and technical assistance can best be used to create a modern infrastructure and improve technical standards all the way along the border.

### **Successes and challenges**

The SBGS is probably developing more dynamically than any other security sector actor. This is in large part thanks to active cooperation with European partners and the will to learn from their experiences and introduce their methods of working into Ukraine.

Between 2002 and 2006, the SBGS followed a focused policy to begin the transformation of the border guards into a law-enforcement body which would reach European standards in its ways and means of working. This became possible, above all, thanks to a clear analysis of the threats and challenges Ukraine faced on its borders at the end of the 1990s.

Furthermore, successful regular contact and exchange of experiences between SBGS officials and their European colleagues encouraged a review of border management and protection systems. The EU expressed great interest in ensuring that all of Ukraine's borders were secure, and this opened up great opportunities to receive technical assistance from foreign donors.

Nonetheless, the agency still has its shortcomings, which are slowing down its development. First of all, this relates to its governance and decision-making systems, which remain essentially military in character, and the way much of the service is still run according to military statutes and orders. The declared changes from a military to a law-enforcement style agency have not always been reflected in the ways that decisions are made or changes to governance systems. Decisions are made according to military statutes and implemented as orders. Such orders are placed ahead of respect for and implementation of the law. Hierarchies in the Service are still based on military rank and years of service, which does not exactly foster a spirit among employees that they are a law-enforcement agency whose role is to precisely implement the law.

The system for selecting and promoting staff is unsatisfactory, as is the training system., which survives because of protectionism and corruption within the Service. The professional training curriculum for most categories of staff is still military in nature and is not designed to create law-enforcement officers. The SBGS's legal procedures do not take up more than 10% of the overall training programme.

#### **d. Intelligence services**

Intelligence operations and agencies with special functions are one of the main segments in the system of maintaining a state's national security. The need for reform is dictated by the fundamental changes to the security environment which have taken place in Europe and in Ukraine over the last decades; the demands of strategies for European and Euro-Atlantic integration; and the growing level and changing structure of real and potential threats to national security, primarily in the political, social and economic spheres. The main goal of reforming the Security Service of Ukraine (*Sluzhba Bezpeky Ukrainy* – SBU) is the creation of an effective, politically neutral and democratic structure, whose activities are adapted to European legal, social and professional norms and are capable of dealing with all contemporary threats. To achieve this goal, it is necessary to take a complex approach to the reform of the intelligence services, as an integral part of the security system, and to depoliticise the process. At the first stage of this process it is already clear that without serious changes to the whole law-enforcement system, any changes in one particular agencies can only be temporary measures. The reform of the SBU's operational intelligence structures will not fundamentally change the law-enforcement system, especially if they are not linked to reforms of the system for conducting investigations. The system can only be reformed as a whole. Given the political instability and the lack of strategic decisions, there are no consolidated reforms taking place in Ukraine, the process is chaotic, political factors play too great a role and corruption seems to be too deep-rooted. While these factors continue to be ignored, the further reform of the state's main intelligence agency – the SBU – is unlikely to have a positive result and might lead to the opposite – the weakening of this important organ.

##### **The development of the SBU, and priorities for reform**

The history of Ukraine's intelligence services begins on 20 September 1991, when the Verkhovna Rada adopted a resolution 'On the Creation of the National Security Service of Ukraine'. This resolution disbanded the Ukrainian chapter of the KGB, with the SBU effectively becoming its legal successor, inheriting its organisational structure, rules and norms.

In 1992 the Verkhovna Rada passed a Law 'On the Security Service of Ukraine', which defined its status and authorities. According to this legislation, the SBU is a state law-enforcement agency with special responsibilities, which maintains Ukraine's state security. It is subordinate to the President and under the control of the Verkhovna Rada.

The need to reform the old Soviet system of state security arose immediately after Ukraine declared its independence, since from the start the old system did not match the needs of a modern, democratic, independent state. In particular, the need to reform the SBU was conditioned by the appearance of new threats to national security, increased bilateral cooperation with EU and NATO member-states, and the need for Ukraine to fulfil its international obligations to transform its intelligence services in accordance with the standards of developed democracies.

In terms of the main contemporary threats to security, experts believe that the most serious threats at the global level will remain: international terrorism; trans-national organised crime; the proliferation of weapons of mass destruction; the use of modern information communication technology against the interests of international security and Ukraine's military and civilian security; and biological, nuclear and chemical terrorism.

#### *Private commercial interests and political factors*

Among the main preconditions for reforming the SBU is the threat of secret information being abused for private commercial interests or for internal political purposes. Since the SBU has hi-tech methods of collecting information and broad operational capacities, the potential for abuse is exceptionally wide – from the use of intelligence for commercial profit through to its manipulation to damage political opponents.

Powerful commercial structures have significant capacities to pressure the intelligence services and lobby their own interests. Given that intelligence officers are generally poorly paid, SBU officers often act in the interest of businessmen in order to earn extra money, for example by acting as their 'protection' or by supplying them with important information. Over the years, SBU officers have been accused of a range of serious crimes, such as carrying out raids on behalf of organised criminal groups and of taking orders to spy on commercial companies.

The current political situation in Ukraine leads inevitably to the politicisation of the law-enforcement agencies. Formally, these law-enforcement agencies are non-political, since this is enshrined in numerous normative acts regulating their activity. However, the Head of the SBU is appointed by the President, with the Verkhovna Rada's approval. The President thus has exclusive power to appoint and dismiss the head of the SBU. Naturally, therefore, SBU chiefs are loyal to the President. Since the President cannot physically control the whole security system himself, his immediate circle of administrative, political and business advisers have significant opportunities to use presidential powers not only in the President's, but also their own interests.

In this case there are grounds to assert that the use of the intelligence services for political purposes demonstrates that there is developed political corruption in Ukraine. Corruption is defined as activities of authorised persons, aimed at the illegal use of their authorities to obtain material benefit; political corruption is the same illegal use of one's authorities in order to obtain (or strengthen) so-called administrative rents. In exchange for complete loyalty to those in power and their readiness to carry out any order, SBU officials are given a free hand to engage in business activities and practise corruption.

Political pressure on the work of the intelligence agencies tends to be particularly strong during election campaigns, when their work is mostly focused on internal political processes. The illegal use of intelligence services in election campaigns forms an important element of the misuse of administrative resources. The main ways of using the intelligence services illegitimately include: artificially deteriorating the socio-political situation; provoking a gradual split in the country by stoking regional factors; discrediting potential candidates (by illegally gathering information); causing computer networks and websites to malfunction; destroying the databases of political opponents; stealing confidential information from candidates' personal computer systems, or planting untrue information on their systems; blocking candidates' communication systems or disseminating distorted information on them; not taking action to counteract semi-legal financing of one candidate while carrying out intensive financial checks on the campaign funds of other candidates; taking personal control over businesses, journalists, or publication houses which are helping to publish campaign material for unwanted candidates; using intelligence sources or activities to identify a candidate's activists and 'remove' them from the campaign process (by arresting them, influencing their boss, carrying out checks on them, discrediting them, threatening them, opening a criminal case against them, etc).

The politicisation of the reform process is one of the greatest problems facing the security sector. In this context, reform has a too negative character, since the main goal of reform is not to raise the effectiveness of

the Service's work, but to weaken it from its current position as a self-sufficient structure with great potential and authority that is able to have a significant effect on political life. The establishment of a separate Foreign Intelligence Service separate from the SBU in 2004 might be considered an example of the politicisation of the reform process: the aim was to administratively weaken the SBU's authority on the eve of the presidential elections (discussed in more detail below). The politicisation of the reform process can currently be seen in the struggle between different power groups to gain control over the security sector as a whole and the intelligence services in particular. The recent delays in appointing a new head of the SBU should be seen in this context.

#### *Inappropriate division of responsibilities*

When analysing the structure and work of the SBU, particular attention should be paid to the fact that Ukrainian intelligence agencies are performing roles that are not typically considered intelligence functions. This inappropriate division of responsibilities was put in place when the SBU was created. As noted above, the Law stated that the SBU is a 'law-enforcement agency with special powers'. The concept of 'agency with special powers' (*organ spetsial'noho pryznachennya*) needs to be further clarified. Furthermore, 'law-enforcement agencies' are essentially different from intelligence services. The task of the former is to identify and prevent infringements of existing laws, whereas the role of intelligence agencies is to identify and neutralise threats to the national interest through the collection and analysis of intelligence, and, at times, by carrying out special operations. According to theory and practice in developed Western democracies, intelligence services have the following tasks: intelligence and counter-intelligence – analytical work in areas relating to national security; anti-diversionary and anti-terrorist activities; giving timely warnings about potential crisis situations; managing crisis situations by identifying the intentions of real or potential adversaries; providing information to national defence planning and operational command structures; and the protection of confidential information.<sup>34</sup>

However, the SBU inherited various functions and tasks that were within the KGB's remit during Soviet times, such as: the protection of senior officials; control of special government communications; investigations into crimes relating to national security; intelligence and counter-intelligence. When the level of criminality rose abruptly in the 1990s, the SBU was also handed responsibility for combating financial crimes, corruption and organised crime. This was done in order to support the work of the MIA, which had special departments dealing with organised and financial crime. However, duplicating the MIA's functions had a negative effect on both agencies, particularly given the lack of trust and cooperation between them. There are still examples of different ministries carrying out separate investigations or operations against exactly the same criminals.

The SBU thus still retains a number of inappropriate functions: combating organised crime and corruption; combating financial crime, and carrying out pre-trial investigations of crimes that are not deemed to pose an immediate threat to national security (serious criminal offences such as smuggling, illegal migration, forging documents, human trafficking, etc).

These functions need to be removed from the SBU in order to fulfil the requirements of the Council of Europe and adhere to best international practice. The fight against corruption needs to be divided among various agencies with different responsibilities but with strong inter-agency coordination. One of the most effective ways of resolving this question is considered to be the creation of a separate agency for pre-trial investigation on the basis of the relevant units within the SBU, MIA, the Tax Administration and the General Prosecutor's Office in order to investigate particularly serious crimes by officials. An alternative point of view is that the SBU should maintain this function (in coordination with other law-enforcement agencies), but limit itself to combating corruption among officials in central or local state bodies, in the courts, and among the leadership of the law-enforcement and control agencies.

The relevant structures within the MIA should take responsibility for fighting organised crime and defending the economy. The SBU could also hand its anti-smuggling functions to the State Customs Service and the Police. Pre-trial investigations by the SBU should be limited to crimes striking at the fundamentals of Ukraine's national security, the fight against terrorism and also crimes against the peace and security of mankind.

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<sup>34</sup> Geneva Centre for the Democratic Control of Armed Forces Background Paper on Intelligence Services, [www.dcaf.ch/publications/backgrounders](http://www.dcaf.ch/publications/backgrounders)

Therefore, the main directions for reform of the SBU are:

- To bring its organisational structure, personnel numbers and other functional parameters into line with modern European and world standards, taking into account the state's economic capacities;
- To transfer to other agencies functions that are not appropriate for an intelligence agency and/or are being duplicated by other law-enforcement agencies;
- To improve legislation regulating the way in which national and state security is maintained
- Demilitarisation;
- Strengthening democratic control over the SBU's work.

### **The Reform Process**

Certain practical steps have already been taken to reform the SBU. Further constructive decisions are expected soon, given that a special committee has been established to develop a draft reform concept and a comprehensive reform target plan for the SBU.

A comprehensive review of the state of affairs in the SBU, looking at its potential and its resources, is currently underway. This includes an evaluation of the Service's tasks and functions as part of the security sector, in all to further delimit the division of responsibilities between different law-enforcement agencies. Work is also underway to improve current legislation by defining the organisation and legal principles for the Service's work and bringing them up to date with modern challenges.

#### *Improving the SBU's organisational structure in line with the tasks it faces*

The structure of the SBU was defined in accordance with a presidential decree<sup>35</sup> and the Law of Ukraine 'On the Overall Structure and Staff Numbers of the Security Service of Ukraine'.<sup>36</sup> Experts consider this organisational structure to be ineffective. There are plans to reduce the size of the department of economic counter-intelligence, and to radically cut the number of permanent state programmes that the SBU is responsible for running. Unfortunately, no analysis has yet been done to assess staff potential, the effectiveness of recruitment policies or the level of social protection available to SBU officials. Nonetheless, more than 1000 leadership posts have already been eliminated in areas that were overly-specialised or duplicated other functions. There are plans to make major reductions to the central management body, and figures are being discussed. About 50 generals have already been made redundant, while a number of positions that formerly bestowed the rank of general no longer do so. The number of deputies and heads of departments is also being reduced across the board. There are also plans to demilitarise much of the organisation and ensure that most employees have civilian status. This is linked in part to a review of the 'military' system for providing benefits to staff (methods for calculating pay, pensions, redundancy pay, etc). For this reason, most SBU employees are against demilitarisation, since they fear that they will not be so well compensated under the new system. It is also still an open question whether anything will be done to help those who lose their jobs find other work. As a result of all these issues, SBU employees feel disorientated by these top-down reforms, since they neither understand what they are for or how they will be carried out.

The legal framework and internal procedures regulating the work of the SBU are also being reviewed, and a draft law is being prepared 'On the Introduction of Changes to the Law of Ukraine "On the Security Service of Ukraine"' to take into account European standards, particularly the PACE recommendations.<sup>37</sup> This is related to the Plan of Action to Implement Ukraine's Obligations Arising from Membership of the Council of Europe, which was confirmed by presidential decree on 20 January 2006.<sup>38</sup> Several different drafts of this law currently exist, but no version has yet been submitted to the Verkhovna Rada for consideration.

#### *The Foreign Intelligence Service.*

An important recent structural innovation was the formation of a separate Foreign Intelligence Service (FIS) out of the SBU's Intelligence Department and special intelligence units. The FIS's role is to undertake intelligence work in the political, economic, military, scientific, informational and ecological spheres. The

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<sup>35</sup> Presidential decree № 1859/2005 on 'Issues regarding the Security service of Ukraine' of 27 December 2005.

<sup>36</sup> Law of Ukraine N 3014-IV "On the General Structure and Staff Numbers of the Security Service of Ukraine" of 20 October 2005.

<sup>37</sup> Recommendations of the Parliamentary Assembly of the Council of Europe № 1402 (1999) 'Control over internal security forces' and № 1743 (2005)

<sup>38</sup> Presidential Decree 'On the Plan of Action to Implement Ukraine's Obligations Arising from Membership of the Council of Europe' <http://www.president.gov.ua/documents/3854.html>

need for a separate structure stems from the need to ensure that intelligence operations are effective and that Ukraine is able to respond to contemporary international threats to its security.

#### **Main tasks of the Foreign Intelligence Service<sup>39</sup>**

- Acquiring and analysing intelligence and providing this information to the heads of the most important state agencies in the manner indicated within Ukrainian legislation;
- The use of special operations to support Ukraine's state policy in the economic, political, military, informational and ecological spheres, with a view to strengthening Ukraine's defence capacities and its economic and scientific development;
- Helping to ensure that Ukrainian institutions can function safely when abroad, protecting the employees of these institutions and their families, and also the protection of Ukrainian citizens travelling abroad who have knowledge of state secrets;
- Helping to combat international organised crime, terrorism, illegal drug trafficking, arms trafficking, and illegal migration
- Using special methods to counteract threats to Ukraine's national security life, the life and health of its citizens and to protect Ukraine state property abroad.

The creation of the FIS implemented another of the PACE recommendations about defining the roles and functions of the different internal security forces. However, the establishment of the FIS during Leonid Kuchma's regime was motivated not so much by this as by the desire to strengthen presidential control over the security sector before the presidential elections. The process of establishing the FIS as a separate structure was deliberately not backed up with the necessary material and organisational resources. It is also important to note that in this way, political circles acquired another useful instrument for studying the internal political environment, since the most powerful electronic surveillance systems were transferred to the FIS.

The Law 'On Ukraine's Intelligence Services' states that intelligence/reconnaissance activities are undertaken by the FIS, intelligence divisions of the Ministry of Defence and similar divisions of the State Border Guard Service. Given that there are thus three main such agencies in the state, the question of how they coordinate and cooperate becomes important.

An analysis of international experience suggests that a special coordinating body is needed to make sure different intelligence agencies work effectively together. This experience is relevant to Ukraine, and a similar body should be set up to coordinate the work of Ukrainian intelligence agencies.

The same type of combined strategic planning and reform mechanisms need to be established for the intelligence services as has happened in the military sphere.

The backbone of the national security strategic planning system should be a combination of analysis and forecasting of the international system and a suitable system of resource management. The main elements of such a system would be:

- Political leaders would give instructions to the intelligence agencies defining their tasks and areas of work, and would establish systems to evaluate the intelligence agencies work and mechanisms for feedback from users of this intelligence. Formalising the demands on the agencies in this way would allow the intelligence agencies to better focus and coordinate their work;
- The key principles for internal planning within the intelligence agencies should be defined, on the basis of intelligence users' needs, an appropriate division of responsibilities between agencies, and the best methods of coordinating work and facilitating information exchange between agencies. Based on international experience, this document would be a National Intelligence Programme.

#### *The State Service for Special Communications and the Protection of Information*

A new executive body began its work on 1 January 2007 – the State Service for Special Communications and the Protection of Information, created under the Law 'On the State Service for the Special

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<sup>39</sup> Law of Ukraine 'On the Foreign Intelligence Service of Ukraine'.

Communications and the Protection of Information' and the corresponding presidential decree.<sup>40</sup> This removed the Department of Special Telecommunication Systems and Protection of Information from the SBU and made it into a separate agency.

#### **Main tasks of the State Service for Special Communications and the Protection of Information<sup>41</sup>**

- Taking part in the formulation and implementation of state policy relating to the protection of state informational resources in telecommunications and information systems, cryptography and technical protection of information;
- Appropriate maintenance of communications for the President of Ukraine, the Speaker of the Verkhovna Rada, the Prime Minister, and other government officials, local-self government bodies, military governance agencies, and heads of important industries and organisations, during peacetimes, states of emergency and states of war;
- Maintenance, security and development of the state system for government communications and the National System of Confidential Communications;
- Identification of the current and future needs of the technical and cryptographic protection systems for information belonging to the government and restricted-access information, in accordance with the demands of the law;
- State control over the condition of technical and cryptographic information systems, and also ensuring that legislation is implemented regarding digital electronic signatures;
- The protection of objects, buildings, systems, networks, complexes and other means of government and special communications, documents relating to cryptographic information systems and the protection of information in Ukraine.

#### *The National Commission for the Reform of the SBU*

The most recent practical initiative relating to the SBU is the establishment of a commission to develop a draft concept for reform of the SBU and a corresponding comprehensive action plan for reform. Presidential instructions state that the draft concept should be prepared within two months, and the comprehensive action plan in three months.

If this concept is successful, it would help to systematise reforms, better define the goals and priorities of reform and the main activities to be undertaken. Further reform of the SBU is expected to be discussed in the first quarter of 2007 and an extended congress of the SBU in which the President will take part.

The issue of preparing a draft concept and comprehensive target plan for reform of the SBU was discussed at a meeting of the SBU Public Council. At this meeting, it was stressed that such reforms must be linked to overall law-enforcement reform, that they should take into account both the positive and negative international experiences of such reforms, and that they should take into account the National Security Strategy.

#### **Democratic control over the SBU<sup>42</sup>**

The strengthening of democratic control over state security actors is of vital importance to the national security system.

Intelligence agencies' core role lies in the collection and analysis of information. Such actions often require a significant level of secrecy. On the other hand, there is a threat that this secrecy can be abused for political or personal gain. There is also a danger that intelligence services become a threat to the political system and the society that they are supposed to be protecting. Intelligence agencies therefore need to be monitored not only by the executive, but also by the judiciary and the legislature and by the media. Only a suitable system of checks and balances can prevent the intelligence services being used by powerful figures for their own political or personal purposes.

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<sup>40</sup> Presidential Decree 'On the Upholding of Human Rights During Technical Intelligence Operations', №1556/2005 of 7 November 2005.

<sup>41</sup> Law of Ukraine 'On the State Service for the Special Communications and the Protection of Information'

<sup>42</sup> On the basis of information published on the SBU website:

[http://ssu.gov.ua/sbu/control/uk/publish/article?art\\_id=56851&cat\\_id=56802](http://ssu.gov.ua/sbu/control/uk/publish/article?art_id=56851&cat_id=56802)

Analysing the PACE Recommendations regarding democratic control of internal security services, it is possible to identify the following main commitments:<sup>43</sup>

- Legislative bodies must create clear and adequate legislation, in particular to define the types of intelligence operations that could potentially lead to human rights violations, how such operations should be conducted, and how to ensure that such operations do not break the law. These bodies should also be responsible for monitoring the budget of intelligence agencies, including by carrying out random checks and demanding annual reports on budgetary spending.
- Executive bodies should control the work of the intelligence agencies by monitoring its work through such mechanisms as annual reports. The relevant minister should take political responsibility for overseeing the intelligence services, and his agency should have suitable levers to exercise appropriate control. The minister should also provide annual reports on the activity of internal security services.
- Judicial bodies should have the right to maintain control over the security services both before and after they undertake activities. Certain operations that might risk human rights infringements should be subject to judicial permission. *Post factum* judicial control should be based on cases lodged by members of the public about human rights infringements by intelligence agencies.
- Other bodies (such as the ombudsman and the Parliamentary Representative for Information Protection) should be given the right to permanently monitor any specific case relating to the intelligence services.
- Private individuals should have the right to gain access to information collected by intelligence agencies, except in circumstances when there are national security concerns. Such cases should be clearly defined within the law.

Considering all of these conditions, it may be concluded that the main principles for civilian control over the SBU are already in place and that there is already a clearly regulated mechanism for permanent control over the SBU at all levels:

- The Verkhovna Rada has implemented a string of legislation relating to the intelligence services that regulates the work both of the SBU and other law-enforcement and intelligence services. Parliamentary standing committees currently exercise control over the SBU, while the Accounting Chamber monitors the budget;
- The SBU is under the control of the President and the Plenipotentiary for Control of the SBU;
- The courts give permission for operations that temporarily limit civil or human rights. Any citizen can apply to the courts if they feel their constitutional rights have been violated;
- Parliament's Human Rights Ombudsman considers public complaints about possible infringements of their rights; he/she can also send questions about upholding human rights to the General Prosecutor's Office, the heads of law-enforcement agencies and the intelligence agencies; he/she can also propose new legislation;
- According to the Law 'On Information', any citizen can address the intelligence or law-enforcement agencies about any questions. Such inquiries are automatically considered within the boundaries of the law.

#### *Legislative control*

According to Article 85 of the Constitution of Ukraine and Article 31 of the Law 'On the Security Service of Ukraine', the National Security and Defence Committee of the Verkhovna Rada monitors the actions of the SBU. The Head of the SBU provides regular information to Parliament and to the relevant committee about state security, adherence to current legislation, the protection of citizens' human rights and freedoms and other questions. He/she also provides an annual report about the SBU's activities to the Verkhovna Rada. This process is not made public, however.

According to procedures set by Ukrainian legislation, the SBU must also respond to standing and temporary committees formed by Parliament or a number of its MPs. Parliamentary control is also strengthened by the Parliament's role in accepting or rejecting the President's proposed candidate for Head of the SBU, and also its role in confirming the overall structure, number of staff and functions of the agency.

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<sup>43</sup> Basic principles for structuring control systems over internal security and law-enforcement agencies are defined in PACE Recommendations 1402 (1999), 1713 (2005)

In accordance with the Law 'On the Organisational and Legal Principles of the Combat against Organised Crime', the Verkhovna Rada and the Committee Combating Organised Crime and Corruption are responsible for monitoring the SBU to ensure that it adheres to the law and that its budget is spent appropriately.

Another example of parliamentary control over the SBU is the Human Rights Ombudsman. The Ombudsman can consider submissions from citizens regarding possible infringements of their rights; can question the General Prosecutor, the heads of the law-enforcement services and the intelligence services about cases concerning citizens' rights and freedoms; and can propose appropriate legislation.

The Accounting Chamber is responsible for monitoring how the SBU spends its budget.

#### *Presidential control*

According to section 14 of article 106 of the Constitution, and article 32 of the Law 'On the Security Service of Ukraine', the President also has a duty of control over the SBU.

The SBU regularly reports to the President and the members of the NSDC, in accordance with procedures defined by the President, on its activity, and also on cases of human rights violations. On the President's or the NSDC's request, this information can also be made available to other agencies. The Head of the SBU also gives the President an annual report about the SBU's work.

One form of presidential control over the SBU is the creation of the Plenipotentiary for Control over the Activity of the SBU, whose authorities include monitoring whether citizen's constitutional rights are being upheld during intelligence operations, and that such operations are within the boundaries of the law.

The Plenipotentiary now has clear legal mechanisms to monitor the work of security agencies. According to Presidential Decree of 22 October 1998 № 1172/1998, the Plenipotentiary has the following tasks:

- To study and analyse resolutions, orders, procedures and instructions given by the SBU to check whether they are in line with the Constitution and Ukrainian law, to decide whether they should be registered and included in the State Register of Normative Acts, and also to consider strategic and tactical directives from the SBU leadership about the agency's priorities;
- To investigate cases where officials have hindered the legitimate work of SBU employees while they are carrying out their duty and cases where SBU employees' social and legal rights have been infringed;
- On instructions from the President, to consider accusations that the SBU has infringed citizens' constitutional rights and freedoms and other infringements;
- If requested by a ministry or other executive bodies, to obtain expert opinions on particular matters;
- If necessary, with the consent of the SBU leadership, to hold interviews with SBU personnel;
- To provide reports and conclusions about the results of his/her work;
- To send the SBU methodological recommendations, suggestions and information about its operating standards.

#### *Judicial control*

Ukrainian legislation also envisages judicial control over the SBU. This involves considering information presented by SBU officers (including top secret information) to the courts in order to obtain a license to carry out an operation that might temporarily restrict citizens' constitutional human rights. In particular, the Laws 'On Operational Intelligence Work' and 'On Counter-Intelligence Work' clearly state that measures that might temporarily restrict citizens' rights (such as secretly searching a person's house or other properties, obtaining information from their channels of communication, monitoring their mail, telephone conversations, telegraphs and other forms of correspondence, the use of special instruments to obtain information) can only be carried out after the court has granted permission, except in cases that have been agreed between the Speaker of Parliament and the General Prosecutor (such as espionage operations to obtain intelligence, prevent or end the work of foreign intelligence officers or of other foreign organisations, including terrorist groups).

### *Civilian control: The Public Council*

The inaugural meeting of the SBU Public Council was held on 10 July 2006.<sup>44</sup> This meeting began the practical work of this civilian expert structure as a form of democratic control over the SBU. It is made up of politicians, civil society actors, academics, independent experts and media representatives.

The establishment of the Public Council answers PACE Recommendations 1713 (2005) 'Democratic Analysis of the Security Sector in Member States'.

According to the SBU Public Council's Operating Procedures, which were confirmed by an order from the Head of the SBU on 28 July 2006, the SBU Public Council is an advisory body whose role is to improve the effectiveness and transparency of state security bodies by strengthening public trust in them.

The Council's work is based on the following principles: independence from the government and from political parties; freedom of expression and equal rights for all members, openness and public transparency, cooperation between the state, law-enforcement bodies, civil society organisations, academic institutions and the media.

The Council's tasks are:

- To execute public control over the SBU's work with regard to the maintenance of state security, ensuring that its work is legal, that citizens' rights and freedoms have been preserved, and that the agency has upheld the principles of democracy and the rule of law;
- To assist in maintaining the transparency of the SBU and to raise public trust in the agency;
- To help to build relationships between the SBU and civil society organisations, legislative, executive and judicial bodies, local self-government bodies, and the mass media;
- To respond to cases in which employees of state security agencies are found to have broken the law or violated citizens' rights and freedoms, and also to publicly evaluate high-profile cases relating to the work of the SBU;
- To organise and carry out expert analysis of legislation and other normative acts regarding to state security agencies, and also to provide the SBU leadership with proposals regarding such matters;
- To hold academic and practical consultations, symposiums, round tables, seminars, public discussions and other measures, where necessary with the participation of foreign experts and academics;
- To assist in the practical implementation of measures relating to the patriotic education of SBU officers and to the legal and social protection of former and acting SBU staff.

The Council consists of up to 15 authoritative civil society actors, including members of human rights organisations, well-known scholars and journalists. They join the council either personally or through the proposal of the relevant body or organisation.

The Council's members study current problems relating to the SBU's work, discuss them, make appropriate recommendations, publicly comment on the most high-profile cases relating to the SBU, and organise public discussions. Public comments on the SBU's work or specific SBU employees can only be made after they have been agreed at a Council meeting or a working group of a majority of members. Members of the council have the right to enter the SBU buildings without constraint providing they have the right pass, to address public complaints and questions to the SBU leadership, and to become acquainted with restricted information where necessary. They cannot interfere in the SBU's operational work.

The establishment of the Council for civilian oversight is a step in the right direction. However, it is debatable whether it will have much effect in improving democratic oversight of the SBU or create a façade of civil control distracting from initiatives that might genuinely improve civilian control.

### *Measures to strengthen democratic control*

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<sup>44</sup> The establishment and work of the Public Council is covered by various pieces of legislation, particularly articles 17 and 38 of the Constitution, article 8 of the Law 'On the Security Service of Ukraine', articles 2, 4, 19, and 20 of the Law 'On Democratic Civilian Control over the State's Military Organisation and Law-Enforcement Bodies', articles 4 and 6 of the Law 'On the Fundamentals of Ukraine's National Security', and Cabinet of Ministers' Resolution 'Certain Matters To Ensure Public Participation in the Formulation and Realisation of State Policy' № 1378 of 15 October 2004. The grounds for the Public Council's establishment and work were also defined in the Presidential Address to the Verkhovna Rada and the corresponding report 'On Ukraine's internal and external environment in 2005' (Section 1.1.2 'The State and the People: Dialogue and Responsibility').

A general analysis of the system of democratic control over the SBU demonstrates the need for several measures to improve the situation. These include:

- In accordance with PACE Recommendation № 1713 (2005), control over intelligence agencies should be carried out by a special parliamentary committee. The Verkhovna Rada currently does not have such a committee, and should establish one;
- The new version of the Law ‘On the Security Service of Ukraine’ should maintain the role of the Presidential Plenipotentiary to Control the Activity of the SBU;
- Taking into account experience from EU and NATO countries, specific information in the budget about how the SBU is financed should be made secret, while maintaining the Accounting Chamber’s role in monitoring budgetary expenditure;
- A law on freedom of information that clearly defined procedures for publishing secret material would help to improve control and accountability;
- Civilian control over the SBU needs to be improved. The SBU Public Council’s operating procedures should be clearly defined in legislation.

### **The effectiveness of the reform process**

The effectiveness of the reform process is being undermined by political factors. The battle for power for and between different agencies has resulted in a situation where structures often change, sometimes radically, but the way things are done does not. Political leaders are more interested in maintaining control of the intelligence services than they are of truly fighting corruption, which has become deeply engrained in the state system. All political parties make their support for any budgetary or organisational changes in the law-enforcement agencies dependent on the right to appoint their own people to leading positions in these agencies.

The state’s vital national security interests should be above political battles, yet often political forces ‘jump’ on these issues as a means to exert pressure on their opponents. In order to prevent this, consensus must be found between the different political parties about the goals and course of intelligence reforms. This could be done by including all the main political parties in discussions on reform, and also by ensuring that parliamentary committees genuinely include representatives from across the board and represent all main interest groups. All political groups should be engaged in the reform process.

Intelligence reforms are not currently linked to overall reforms of the law-enforcement and justice system. The reform process is somewhat chaotic. Uncoordinated reforms in certain ministries has a negative effect on SSR overall. Reform of Ukraine’s intelligence agencies needs to be consistent and balanced, taking into account international experience and making sure that positive aspects are not lost in the process.

The Ukrainian Government has given no official public explanation about why it is necessary to transform the SBU – not only to the public, but also to the SBU itself. The Ukrainian Government does not seem to be able to justify the political decisions it makes regarding intelligence reform. Without real changes to the overall quality of the political system, substantial qualitative changes to the law-enforcement and intelligence agencies are unlikely over the next five to ten years.

To raise the effectiveness and transparency of state security bodies, and to increase public trust in them, the Public Council must work more productively. The Public Council has so far provided little information about what is currently going on in the SBU, which may have negative consequences – such as the further politicisation of the reform process. This is particularly relevant while such reforms are in the design phase, not to mention how important the Council might be once a reform concept has actually been designed and is ready for implementation.

### **e. The judicial system**

The courts are one of the most conservative parts of the state apparatus. The strong institutional system inherited from the USSR did not collapse as a new social and political order was being built in an independent Ukraine. However, this system did not correspond to the new challenges to the work of the judicial system, which arose as a result of the significant liberalisation of social and political life at the end of the last century. The justice system needed to make a transition from its Soviet-style punishment functions to ensuring that court decisions were independent, fair and transparent.

Ukraine inherited a system of general courts from the USSR with a developed judicial corps and functioning, reasonably high-quality procedural codes with developed histories of case law and interpretation. Furthermore, the judicial system also contained such essential elements as defending (barristers) and accusing (council for the prosecution) bodies, a system for the implementation of court decisions (the executive service) and the penitentiary system. Another part of Ukraine's inheritance from the USSR was a system of courts of arbitration, which resolved cases between economic subjects using simplified court procedures (following the example of international commercial arbitration).

Perhaps the greatest problem inherited from the Soviet Union was the overall status of the judicial branch within the state, since in Soviet times the whole branch was dependent on the will of Communist party bosses. It is for this reason that so much attention was later paid to the issue of ensuring judicial independence.

Another aspect of the Soviet judicial system that later became one of the main directions for reform was the rather substantial intervention of the Prosecutor's Office in the trial process. In particular, there was an oversight mechanism that allowed the Prosecutor to monitor court decisions and launch an appeal against decisions even if it was not one of the sides in the dispute. This mechanism took the place of the courts of appeals that are more usual in the European judicial tradition.

The Soviet judicial system placed somewhat different responsibilities on judges during the trial process from Western traditions. Trials were based on the principle of veritability ('*istinnost'*'), where the judge must get to the essence of the dispute even if neither side wishes him/her to. To some extent, this meant that the courts also had an investigatory function, which meant that courts could actively intervene to try to uncover the facts.

### **Goals and course of reform**

Although the judicial system was quite effective in its way, the changes to the social and political order made judicial reform essential. The creation of a democratic state based on the rule of law meant that the judicial branch had to become truly independent.

According to the Concept for Judicial and Legal Reform in Ukraine (1992),<sup>45</sup> 'the need for judicial and legal reform [was] also caused by the fact that the republic's courts, the whole justice system and the current legislation regulating the work of the law-enforcement agencies are undergoing a deep crisis, caused by many factors which negatively affect their work. The courts did not always reliably protect human rights and freedoms, and were an important instrument in a system of administrative command where they forced to be conduits of its will. The courts had no power, for the government had uncontrolled use of the courts. Legal and judicial reform should bring the judicial system, and the whole legal branch, into line with the social, economic and political changes that are happening in society.'

The reform of the Ukrainian judicial system can be divided into three stages.

During **the first stage**, the main goal for reform of the judicial system, as framed in the aforementioned Concept for Judicial and Legal Reform adopted by the Verkhovna Rada in 1992, was simply to ensure that the system could function effectively.<sup>46</sup>

To achieve this goal, the Concept defined the main tasks for reform, which it suggested should be implemented in phases.<sup>47</sup>

The concept started by suggesting the creation of a parliamentary committee for judicial and legal reform and a department for the same purpose within the Ministry of Justice. It proposed changes and additions to many basic procedure and normative acts, particularly the Law 'On the Judicial System of Ukraine', the Criminal Procedural and Civil Procedural Codes (new versions of these codes were also planned), laws on individual judicial consideration of criminal and civil cases, on judicial control, etc. A number of new laws were also envisaged, the most important of which were the laws on: the Constitutional Court of Ukraine; on

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<sup>45</sup> Resolution of the Verkhovna Rada of Ukraine 'On the Concept for Judicial and Legal reform in Ukraine', Document 2296-12, edited 28 April 1992 // *Vidomosti Verkhovnoi Rady* – 1992. - N 30. – p.426.

<sup>46</sup> Concept for Judicial and Legal reform in Ukraine (1992).

<sup>47</sup> See Section VII, 'Phases of judicial and legal reform', Concept for Judicial and Legal reform in Ukraine (1992).

the Council for the Defence; on the Judicial System and the Status of Judges; etc. An important step forward was the establishment of separate lines within the Ukrainian state budget for the financial, material, technical, and domestic support of the courts, the law-enforcement agencies, justice institutions and their employees.

The second phase envisaged by the Concept after these legislative changes was to focus on creating greater specialisation in the justice system (by creating a Higher Court of Appeal and Administrative Courts). It was equally important to establish a basis for funding the courts, and to codify the legal acts regulating judicial activity. During this phase, an Investigative Committee and an Institute for Legislation and Legal Reform should also be established.

The final phase in the Concept was to analyse the results of the reforms and evaluate their effectiveness. The Concept lays down the principle that the improvement of legislation relating to the organisation and work of the courts, investigatory, prosecution, justice bodies, etc is not a one-off act but a long-term process requiring constant reform and flexibility in responding to changes. Even if this idea was not always put into practice, it is extremely important, and should be recalled when considering reforms across the security sector.

Two of the most important achievements during this first stage of judicial reform were the adoption of the basic laws 'On the Status of Judges' and 'On Judicial Self-Governance'.

**The Law 'On the Status of Judges'** established principles for maintaining the independence of judges:<sup>48</sup>

- The establishment within the law of procedures for carrying out justice;
- Secrecy in judicial decision-making and prohibition of revealing how decisions were reached;
- Prohibition of interference in the carriage of justice, under threat of responsibility;
- Responsibility for disrespecting the court or judges;
- The right of judges to retire;
- The inviolability of judges;
- The creation of the necessary organisational, technical and informational conditions for the work of the courts, and for the material and social support of judges in accordance with their status;
- Particular procedures for funding the courts;
- A system for judicial self-governance.

Furthermore, according to this law, the judicial corps is formed through the judges' qualifications commission. The guarantees included in the law regarding the independence of judges, including measures to protect them legally and to ensure appropriate material and social protection, cannot be cancelled or reduced. This meant that judges no longer needed to give any kind of explanation about cases they have considered or are considering. At the same time, disciplinary punishments in the form of reprimands and lowering of judges qualifications were brought in. It is interesting to note that alongside complaints from various judicial bodies, references in the mass media can also be cited as a reason for beginning disciplinary procedures.<sup>49</sup> The law set the basic principles for judicial independence, and most of its articles are still cornerstones of the system for establishing the status of judges today.

**The second stage of reform** began after the adoption of the Constitution of Ukraine in 1996, replacing the procedures in the 1992 Concept, and came to an end with the adoption of the new law 'On the Judicial System of Ukraine' in 2002. Further steps in the judicial reform process were focussed on implementing the procedures defined in the Constitution. It should be noted that the transitional articles in the Constitution allowed five years for the adoption of articles relating to judicial reform. It is rather symptomatic that the necessary legislative changes were adopted only in June 2001, when this deadline had already passed.

The course of reforms in this stage were strongly influenced by the fact that Ukraine was increasingly active in the international arena. In 1997, Ukraine joined the Convention on the Protection of Human Rights and Basic Freedoms, thus recognising the jurisdiction of the European Court of Human Rights. Ukraine thus began to take certain commitments on itself, particularly regarding measures to ensure that court decisions were fair, that decisions were made within an adequate timeframe, and that legal aid was given where appropriate.

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<sup>48</sup> Article 11, 'Independence of Judges' of the Law of Ukraine 'On the Status of Judges' of 15 December 1992 № 2862-XII.

<sup>49</sup> Article 34 of the Law of Ukraine 'On the Status of Judges' of 15 December 1992 № 2862-XII

At the institutional level, a unified system of courts of general jurisdiction was created under the aegis of the Supreme Court, and a Constitutional Court was created as the only organ of constitutional jurisdiction. A High Council of Justice was established which was responsible for creating a professional judicial corps. There were a number of steps forward in procedural terms: the development and introduction of new procedures for appointing and electing judges; the introduction of a democratic system of cassation and appeal against court decisions, the establishment of judicial control over the lawfulness of the detention and arrest of individuals, and over the authorities' rights to intercept mail, telephone conversations and other correspondence, and other limitations of human rights.

**The third stage** covers the period from the adoption of the new law 'On the Judicial System of Ukraine' till the present. This new law replaced a number of laws, including the previous law 'On the Judicial System of Ukraine' from 1981, and the laws 'On Economic Courts', 'On the Qualifications Commission, Attestation and Disciplinary Responsibility of Ukrainian Court Judges', and 'On Organs of Judicial Self-Governance'. As argued by experts of the Centre of Political and Legal Reform, these laws, '...despite numerous changes and additions, were largely outdated and did not provide for full legislative regulation of significant areas of relations in the judicial system.'<sup>50</sup>

An important innovation in this new law was the creation of an extra rung in the system of courts of general jurisdiction, in the form of Courts of Cassation (as a court of appeal in the general court system) and Appeal (to appeal the decisions of other courts of appeal made in the first instance). This decision was challenged in the Constitutional Court by a group of MPs. On 11 December 2003, the Constitutional Court ruled that the Court of Cassation violated articles 125 and 131 of the Constitution, arguing that the system of courts of general jurisdiction already corresponded to the standard stages of justice and forms of trial.<sup>51</sup>

The Law also set a three-year deadline for the establishment of administrative courts to protect human rights with relation to the executive and to local self-government bodies. A system of administrative justice has now been created. The High Administrative Court is now funding and the Administrative Judicial Code has entered into force. The main problem now is to create a full system of administrative courts of first and second instance (currently this role is still being played by courts of general jurisdiction and economic courts).

In March 2004, the law 'On Procedures for Appointing and Dismissing Professional Judges by the Verkhovna Rada of Ukraine' was adopted, as was a new Civil Procedural Code. There has still been no real progress in adopting a new Criminal Procedural Code. This is due to the fact that it has not yet been possible to reach consensus on a final text for the Code. It is awaiting a repeat second reading in the Verkhovna Rada, but there have been attempts to write completely different drafts (such as that by the National Commission for the Maintenance of the Rule of Law).

Legal conditions for the work of courts of arbitration were created by the law 'On Courts of Arbitration' in 2004.<sup>52</sup> On 6 July 2005 the Administrative Justice Code was adopted, which should provide a procedural basis for the work of the Administrative Courts.

**After the change of power in Ukraine in late 2004/early 2005**, a number of new legal acts were passed to help improve the justice system, and this can be considered a positive step forward on the path of judicial reform:

- 1 September 2005: adoption of the new Civil Procedural Code. This defines procedures for holding civil cases in the courts according to the Constitution and international standards;
- 1 September 2005: the Administrative Justice Code entered into force, implementing the constitutional right to appeal to the courts about the decisions, actions, or lack of action of state bodies, local self-government bodies, and their officials.
- 22 July 2005: The Law of Ukraine 'On the Introduction of Changes to the Law of Ukraine "On the State Executive Service"' and the Law of Ukraine 'On Executive Trials'" entered force.<sup>53</sup> This Law brought the process of reforming the State Executive Service to a close.

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<sup>50</sup> See the Concept for the Development of the Justice System in Ukraine // Centre of Political and Legal Reform 2004-2005. [http://www.pravo.org.ua/files/Sud/Reforma/Koncepc\\_rozv\\_pravosud\\_230905.pdf](http://www.pravo.org.ua/files/Sud/Reforma/Koncepc_rozv_pravosud_230905.pdf)

<sup>51</sup> Decision of the Constitutional Court of Ukraine of 11 December 2003 № 20-rp/2003 (case on the Court of Cassation of Ukraine).

<sup>52</sup> Law of Ukraine 'On Courts of Arbitration' of 11 May 2004.

<sup>53</sup> Law of Ukraine 'On Executive Trials' of 23 June 2005 № 2716, signed by the President on 15 July 2005.

- 1 June 2006: the Law of Ukraine ‘On Access to Court Decisions’ entered into force, which regulated procedures about gaining access to court decisions and the transparency of the judiciary.
- 1 June 2006: On this day, the Combined State Register of Court Decisions became available online on the website of the State Court Administration ([www.court.gov.ua](http://www.court.gov.ua)).<sup>54</sup>
- 23 February 2006: The Law of Ukraine ‘On the Implementation of the Decisions and the Employment of the Practice of the European Court of Human Rights’ was passed, which defined procedures for the Ukrainian state to implement the decisions of the ECHR.
- March 2006: A Plan of Action for 2006 launched on strengthening the justice system and ensuring the fairness of the judiciary in accordance with European standards (approved by the President).
- May 2006: Adoption of the ‘Concept for Reforming the Justice System and Ensuring the Fairness of the Judiciary in Accordance with European Standards’ (‘the Concept for Reform to European Standards’). This introduced high courts of civil and criminal jurisdiction.

In June 2006, a presidential decree adopted the following:

- the ‘National Plan of Action to Ensure the Appropriate Implementation of Court Decisions’, which aims to guarantee the appropriate implementation of the decisions of national courts to European standards;
- the ‘Concept for the Reform of the System of Free Legal Aid’, which proposes ways of improving individuals’ access to justice, including improved access to a lawyer for free legal aid, and reforming the system for appointing lawyers for legal aid and their reimbursement.

To implement this Concept, draft laws have been written ‘On the Introduction of Changes to the Law of Ukraine “On the Judicial System of Ukraine”’ and ‘On the Introduction of Changes to the Law of Ukraine “on the Status of Judges”’.

In 2003, a special body was set up to support the organisational work of the courts, the State Court Administration (SCA). The idea for this body was related to public administration reform in Ukraine, with the intention of involving the judiciary in the monitoring of budgetary expenditure necessary for the running of the judicial system.<sup>55</sup> The SCA has the following tasks:<sup>56</sup>

- To provide organisational support for the work of the courts of general jurisdiction, the Academy of Judges of Ukraine, congresses of Judges, the Council of Judges, and conferences and councils involving judges;
- Within its authorities, to participate in the creation of courts of general jurisdiction;
- To develop proposals on how to improve organisational support for the courts of general jurisdiction;
- To provide material and social support to judges and court officials.

In accordance with these tasks, the service’s authorities include: the maintenance of appropriate condition for the work of the courts of general jurisdiction, the Qualifications Commissions, judicial self-governance bodies, and the Academy of Judges of Ukraine; studying the courts’ work, and developing proposals about how it can be improved; the organisation and development of training programmes in judicial institutions; the preparations of materials relating to budgetary proposals for the judicial system; the provision of material and social support to judges (including retired judges) and court officials; the provision of medical support and rest for judges and court officials; and much more.

The SCA is essentially the top link in the hierarchy of judicial administration. It has taken many functions from the Ministry of Justice and is currently a separate central body of the executive. Like other executive bodies, the SCA works in accordance with the Constitution, the laws and acts of the President, the Cabinet of Ministers and other legal normative legal acts, but given its particular status, it is also governed by decisions of congresses of judges and the Council of Judges of Ukraine. The Head of the SCA is appointed and dismissed by the President of Ukraine at the initiation of the Prime Minister, in coordination with the Council of Judges of Ukraine. In turn, the Head of the SCA appoints, with the approval of the Cabinet of Ministers, the heads of the structural departments of the SCA and the deputy heads of local representations of the SCA, and the heads of local representations of the SCA and the head and deputies of the Academy of Judges with the approval of the Council of Judges.

<sup>54</sup> See the Combined State Register of Court Decisions: <http://reyestr.court.gov.ua/pls/htmldb/f?p=200:1:1637097202686162541>

<sup>55</sup> Presidential Decree № 810/98 of 22 July 1998.

<sup>56</sup> See the Procedures on the SCA of Ukraine, approved by Presidential Decree № 182/2003 of 3 March 2003.

To sum up, it can be argued that Ukraine's declared goal is to achieve European standards in the judicial system. However, European political and legal systems have been strongly influenced by tradition. In Ukraine, given conditions in which the judicial corps is highly corrupt and there is low public knowledge about the details of how the judicial system works, further complicating the system may not serve to make it clearer and more effective, but just provide more opportunities for its abuse.

### **Implementing reform**

Although there has been very active, and apparently quite successful and broad reform of the judicial system, it is still hard to detect in these reforms the scale and comprehensiveness of vision that was found in the original concepts and laws on the judicial system. One reason for the slow and fragmentary nature of implementing reform has been the lack of a well-grounded strategy for reforming the system. After the adoption of the Constitution in 1996, the 1992 Concept for Judicial and Legal Reform became largely irrelevant as a programme for reform. However, the Constitution did not propose a detailed model of the judicial system, only its main features and structures.

Another problem is that as the concept of going to court has become more accepted and popular within Ukrainian society, the judicial system has found itself unable to deal with its increasing workload. Judges are becoming more and more overworked, and the quality of court decisions may suffer as a result. It also makes it very hard to pass decisions within a reasonable timeframe.

Two ways are being developed to solve these problems: increasing the numbers of judges and improving the effectiveness of the SCA. However, in both cases, any positive steps are still likely to fail because of human factors. Often enough, judicial bodies have not sought to appoint the people with the best qualifications and moral values. Without over-generalising, it would be fair to say that this is equally true of the judges themselves and of those responsible for implementing court decisions.

The chronic underfinancing of the courts means that judges and heads of courts often become dependent on local government bodies and commercial structures which provide extra funding to meet the courts' needs. This is obviously linked to the growth in 'pre-ordered' cases.

Disciplining judges still remains the exception rather than the rule. Given that there is no independent institution to consider such questions, there are virtually no cases of judges being held to account and disciplined. In practice, things work according to the principle of 'professional tolerance'. Judges that take independent positions quite often have to leave the court system altogether.

It is still too often the case that different judges will reach completely opposite decisions about exactly the same case. This may be related to judges feeling that they must uphold their oaths and are responsible for any conscious deviation from the law, yet have to deal with sometimes contradictory legislation and lack suitable cases to which to refer. At any rate, the current Minister of Justice, Oleksandr Lavrynovych believes that the judicial system is 'in such a state, that it is not only not possible to leave things the way they are – it might even be dangerous'.<sup>57</sup>

One of the most successful steps to have been taken recently was the adoption of the law 'On Access to Court Decisions' which envisaged the creation of the Combined State Register of Court Decisions. Access to court decisions are now available through the internet. The database is still not complete, but already contains all decisions of the Ukrainian Supreme Court.

In May 2006, the President approved by decree the Concept for Reform of the Judicial System developed by the National Commission for the Development of Democracy and Maintenance of the Rule of Law (an advisory body to the President). The Concept takes an objective look at the situation and sets quite realistic targets for reform. The fact that virtually all the main proponents of legal reform – Vasyl Onopenko (later elected as Head of the Ukrainian Supreme Court), Oleksandr Shyshkin, Ihor Koliushko – were all engaged in the development of the concept meant that it received quite strong public support. Nonetheless, some of the Concept's proposals, such as the creation of High Civil and Criminal Courts, were strongly criticised, particularly by the judicial corps.<sup>58</sup>

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<sup>57</sup> Hruzenko N, Solod'ko P, 'REESTrovets' // *Kontrakty*, № 5, 29 January 2007, p. 10.

<sup>58</sup> "Again it is suggested to us that we should legalise a four-level judicial system with an institution of repeat appeal to a large number of judicial bodies, each of which would be able to give its 'own' version of justice. The only consolation is that like its

The first step towards implementing the Concept was the drafting of laws ‘On the Introduction of Changes to the Law of Ukraine “On the Judicial System of Ukraine”’ and ‘On the Introduction of Changes to the Law of Ukraine “On the Status of Judges”’ by the Ministry of Justice, which were handed to the President to be presented to the Verkhovna Rada. Discussion of these draft laws is still continuing, particularly within the Ukrainian Supreme Court. Once consensus has been reached, they will be put to Parliament for consideration.

### **Achievements**

In practice it can be stated that Ukraine has now succeeded in creating an institutional judicial system based on European principles for organising the judicial system. The main issue now is to improve the effectiveness of the national judicial system on the basis of these institutions. Further reforms to the institutional system are likely to be more evolutionary than revolutionary.

The biggest problem for reform now is the creation of a highly qualified and authoritative corps of judges. The authority of the judicial profession has suffered because of low pay and benefits. On the other hand, high levels of corruption have meant that the main attraction of joining the profession is often the chance to get rich by taking bribes. The level of corruption among judges is extremely high, and ‘sorting a case’ with judges has virtually become a separate legal profession.

Furthermore, the judicial corps has not been ready for the increasing number of cases it has to deal with. This has led to human rights violations, particularly with regard to getting access to the court in the first place and then the length of time it takes to make a decision, since courts often try to reduce their workload by refusing to open a trial in the first place.

The main reason why reforms have often been less than effective is the resistance to reform within the system, much of which comes from senior officials who want to maintain their ability to directly influence judges (an article in the weekly newspaper *Dzerkalo tyzhnya* from August 2006 describes these methods of influencing judges in detail<sup>59</sup>). Insufficient funding for the courts is a direct result of this policy.

Another factor is the low quality of legal education as a whole, with training for judges particularly poor.

### **Links to other reforms**

Judicial reform is closely linked to the reform of the Prosecutor’s Office. At the conceptual level, judicial reform and reform of the Prosecutor’s Office were linked in 1996 within the Constitution. However, when the constitutional reforms in 2004 gave the authority to monitor all court cases back to the Prosecutor’s Office, this brought all previous attempts to define the position and role of the Prosecutor back to zero. New conceptual principles for reform of the Prosecutor’s Office have been drawn up in the draft changes to the Constitution developed by the General Prosecutor’s Office (which were positively evaluated by the Venice Commission).

The importance of law-enforcement reform for the judicial system relates to the need for effective criminal justice. There needs to be a complex review of the roles and responsibilities of all law-enforcement agencies in this regard, and of the Criminal and Criminal Procedural Codes. This is currently being done by the National Commission for the Maintenance of the Rule of Law. However, its positions on these matters are currently only supported by the President, and there is no coordination with the Verkhovna Rada to adopt a new Criminal Procedural Code, or with the Government on reform of the internal security sector.

### **Prospects for the future**

There is consensus across the state of the urgent need to reform the judicial system. The first step in this regard would be the adoption of the list of laws mentioned above. There is a good chance that this may

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predecessors, this Concept has little chance of being implemented...disbanding the institution of repeat appeal and the creation of a sensible three-level judicial system is a necessary condition of further judicial and legal reform...The first task should be to raise the authority of the court of first instance, which must take decisions that are clearly argued and based only on the law. There cannot be two different truths in the court of first instance and the courts of appeal”. L Drozdovs’kyi (a lawyer at the legal firm ‘Il’yashev and Partners’), ‘*Yak zibraty mekhanizm iz starykh zapchastyn?*’ // *Dzerkalo tyzhnya*, 21-27 October 2006, № 40 (619).  
<http://www.zn.kiev.ua/nn/show/619/54860/>

<sup>59</sup> Prymachenko O. ‘*Khto ocholyt’ verkhovnyi sud, abo pro rol’ osobystosti v istorii tret’oi vlady*’ // *Dzerkalo Tyzhnya* 29 July – 4 August 2006, № 29 (608).

happen in 2007. Achieving other reforms depends in large part on the success of the long and detailed task of developing a highly-qualified, authoritative set of judges. Since funding for such measures is generally available, the main risk here is that there will be a lack of political will to see this through and it will not be sufficiently managed, given that there is no state body responsible for coordinating and guiding the reform process.

### **The creation of an independent pre-trial investigation agency**

Another important part of the justice system that requires urgent reform is the system of pre-trial investigation, which is currently very muddled and the cause of much in-fighting between different agencies. This has led to proposals for the creation of an independent body for pre-court investigation. This idea can be found in the Ukrainian Constitution. Article 9 of Section 15 of the Constitution, 'Transitional Articles' states that the 'Prosecutor's Office continues, according to acting legislation, its function of monitoring adherence to and the upholding of legislation, and its preliminary investigative function – until laws are brought in that regulate the activities of state organs regarding control of the maintenance of laws, and until a pre-court investigation system is formed and legislation is activated to regulate its functioning'. In this way, the Constitution contains a requirement to adopt laws which would relieve the Prosecutor's Office of its pre-trial investigative functions and that a complete system of pre-court investigation is formed.

One element of such a system can and should be an independent organ to carry out pre-court investigations in cases where there is a significant risk to public safety. This was the view of the working group that in 1996 worked on the idea that Ukraine should create a National Bureau of Investigation.

The working group's proposals were realised in a presidential decree signed by Leonid Kuchma on 24 April 1997 N 371/97, 'On the National Bureau of Investigation of Ukraine'. This decree envisaged the create of an NBI that would first and foremost be aimed at 'carrying out, in accordance with Ukrainian legislation, pre-court investigation and operational intelligence measures in particularly difficult criminal cases about crimes, which have a heightened risk to public safety, and the implementation of informational-analytical work with the purpose of identifying and eliminating the reasons and conditions that aid corruption, the prevention of other dangerous crimes, and forecasts for crime dynamics in society.' Oleh Lytvak was named as the first director of the newly-created bureau.

The creation of yet another agency that had the right to carry out pre-trial investigation and operational intelligence work was a threat to the political and business interests of some of the President's opponents. As a result, a group of MPs made a submission to the Constitutional Court demanding that the presidential decree should be recognised as exceeding his authorities.

The Constitutional Court's decision<sup>60</sup> concluded that certain articles of the Presidential Decree 'On the National Bureau of Investigation of Ukraine' did not correspond to the Ukrainian Constitution (were unconstitutional). In particular, this related to articles which defined the NBI's organisational structure and maximum number of employees, and the article stating that the Director of the National Bureau of Investigation of Ukraine should report directly to the President of Ukraine.<sup>61</sup>

In turn, the Verkhovna Rada did not adopt the necessary laws about changing the system of pre-court investigation and defining who should investigate different types of crimes, which led to the liquidation of the National Bureau of Investigation of Ukraine by a presidential decree signed by Leonid Kuchma on 15 December 1999 (N 1573).

The idea of creating an NBI was reanimated by President Viktor Yushchenko in 2005, when on his instructions a working group was formed to develop a 'Concept for the Creation and Organisational Activity of a National Bureau of Investigation of Ukraine'.<sup>62</sup> In the last two years, many views have been expressed about how this agency should be organised, and what its functions and authorities should be. In general,

<sup>60</sup> Of 6 July 1998 N 10-rp/9

<sup>61</sup> Decision of the Constitutional Court of Ukraine in the case of the constitutional поданням of members of parliament of Ukraine regarding whether the Presidential Decree of 24 April 1997 N 371 'On the National Bureau of Investigation of Ukraine' corresponds to the Constitution of Ukraine (is constitutional). (Case regarding the creation of the National Bureau of Investigation of Ukraine'). 6 July 1998 N 10-rp/98 Case N 03/2444-97 N 1-9/98

<sup>62</sup> Presidential Order of 15 March 2005 N 782/2005-rp 'The Composition of the Working Group for Developing a Concept for the Creation and Organisation of the Activity of a National Bureau of Investigation of Ukraine'

however, these can be summarised by two key schools of thought. The first is that the agency should be established as an analytical-informational body with the right to undertake pre-court investigation regarding abuses and corruption by political actors and highest-level state officials. The second is that the agency should carry out pre-court investigation and operational intelligence work to uncover abuse and corruption among the same category of citizens.

In our view, both concepts might be false. It would be exceptionally expensive and ineffective to create a strong criminal-investigative and analytical service to uncover crimes committed by a limited number of people, most of which are based in the Ukrainian capital. Especially as the Constitution itself envisages the need for changes to the whole system of pre-trial investigation.

It might be more effective to set up a three-level system of pre-trial investigation as part of overall reforms to the law-enforcement system. In this case, the newly-created agency of pre-trial investigation would take responsibility for investigating particularly serious crimes against individuals (according to the acting criminal and criminal procedural legislation), in the sphere of service (corruption), crimes against society and the state. This agency should be created on the base of the investigative bodies within the MIA, the SBU, the Tax Administration and the General Prosecutor's Office, taking account of their costs and organisational structures. The municipal police would carry out pre-trial investigations in cases regarding crimes that do not pose a significant risk to public safety and in cases regarding administrative infringements, while the Criminal Investigation Department of the national police would investigate crimes that were not particularly dangerous for society. This division according to the level of danger to public safety exists in Ukraine's criminal legislation and therefore it would be possible to change procedures on which crimes are investigated by whom relatively quickly, by making appropriate changes to the Criminal and Criminal Procedural Codes.

The result of such reform in Ukraine might be to create a workable system of pre-trial investigation, to implement the demands of the constitution and Ukraine's international obligations to relieve the Prosecutor's Office and the SBU of their pre-trial investigative functions.<sup>63</sup>

## **f. The National Security and Defence Council**

To a significant extent, the success of SSR in Ukraine depends on how well the relationship all agencies and branches of power is balanced. Defining the division of responsibility between the executive, legislative and judicial branches, and creating suitable mechanisms for inter-agency cooperation, are essential pre-conditions for successfully implementing reform. With this in mind, the National Security and Defence Council (NSDC) is of particular importance within the security sector, and its status and functions raise a number of key questions.

Although in the early years of independence the NSDC had the status of a consultative/advisory body, it gradually grew into a coordinating organ for national security and defence issues that answered directly to the President, dealing with more and more issues and gaining responsibilities as it went on. If to begin with the NSDC's main tasks concerned the maintenance of national security and organisation of the defence sector, it later added extra functions, allowing it to control any work of executive bodies related to national security and defence. However, this added responsibility was not backed up with corresponding mechanisms to implement such control. As a result, as the NSDC's authorities were expanded but became less clearly defined, it turned into an additional means for the president to exert influence. This meant that it was worth fighting for control of the NSDC, which made it directly dependent on how the political situation develops: on the balance of political forces in Parliament; on the political strength of the President and his relationship with the Government; on how much the internal political situation is influenced by international factors, etc.

In 2006, Ukraine's transition towards a parliamentary-presidential republic triggered attempts to re-define the relationship between executive and legislative power. In the struggle for authority between the President and the Prime Minister, the NSDC has become a hostage of the political competition between them. This was demonstrated recently by attempts by certain politicians to make changes to the law on the NSDC, with the aim of significantly reducing its powers. This section analyses what role the NSDC can play in a situation

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<sup>63</sup> PACE Resolution № 1402 (1999) 'Control over internal security forces'

when the President and the Prime Minister belong to different political parties and how this will affect SSR in Ukraine.

### **The establishment and institutional development of the National Security and Defence Council**

During Soviet times, the analogous functions to those now exercised by the NSDC were carried out by the Politburo of the Central Committee of the Communist Party and the Third Department of the KGB. Although decisions were officially made collegially, this was in fact merely a formality and in reality where simply a way of legitimising the decisions of the General Secretary of the Communist Party. The NSDC was set up only after the collapse of the old totalitarian system, and was established as a consultative/advisory body subordinate to the President within the executive branch, drawing on international experience of countries with democratic systems.<sup>64</sup> One advantage of this is that unlike other parts of the security sector, it is not inhibited by a difficult Soviet legacy that might negatively influence its structures or way of thinking.

The creation of the NSDC was influenced by both Western and Russian experiences. The idea of establishing such a body became popular in the post-Soviet space (Russia, Ukraine, Georgia) under the influence of the national security governance systems typical to the US and France. However, the security councils in Russia and Ukraine differ considerably from their American and French counterparts in terms of their sphere of responsibilities and the normative principles regulating their activity.

The constitutional reforms in Ukraine in 2006 have made such comparisons even less accurate. Since these reforms have reduced the role of the President, while in both the US and Russia the President is the most powerful position, it becomes harder to draw a direct parallel between the different national security councils as instruments for implementing presidential powers. The NSDC is an institution that is more characteristic of presidential republics, where the role of the security council is more clearly defined and its work is therefore more effective.

Reforms of the NSDC were carried out not as part of a long-term strategy for transforming the agency, so much as to respond to contemporary political realities and the development of the Ukrainian political system. This was not a unique occurrence: Ukraine's NSDC followed a similar path in its development to the National Security and Defence Council of the Russian Federation.

The current NSDC was formed in 1996 through the merger of two separate institutions: the Defence Council and the National Security Council of Ukraine under the President of Ukraine.

**The Defence Council** (1991-1996) was the highest state organ for collegial leadership on matters of Ukraine's security and defence, and was established in order to defend the sovereignty, constitutional order, territorial integrity and inviolability of the republic, the development of strategy and the permanent improvement of state security and defence policy, to provide a comprehensive scientific evaluation of the nature of military threats, determine Ukraine's position regarding contemporary conflicts, to provide effective control over the implementation of state policy in order to ensure that Ukraine is able to defend itself.<sup>65</sup>

The Defence Council was created as a direct response to the changing political situation in the country in 1991. The main goals were to avoid a military coup, to protect territorial integrity and the inviolability of state borders, the maintenance of internal stability and security, and also the maintenance of external security.<sup>66</sup> Alongside the President, the Prime Minister, the Speaker of Parliament and his First Deputy, the heads of all the main 'power ministries' were represented on the Council. Unlike the current NSDC, the number of seats on the Council was set specifically at 11 people.

**The National Security Council** was established in 1992.<sup>67</sup> It was designed as a consultative/advisory body under the President in the executive branch of power, and its main tasks were to prepare proposals and draft decisions for the President concerning the implementation of policy relating to the defence of national

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<sup>64</sup> See Horbulyn V., *Demokratiya i natsional'na bezpeka: druzi ch vorohy (abbr.) // Uryadovyy kur'yer*. – 1997. – 25 грудня. Quoted in Horbulyn V., *Cherez roky, cherez vidstani... Derzhava i osobystist'* – K., 2006. – c. 13.

<sup>65</sup> Verkhovna Rada resolution of 11 October 1991 N 1658-XII.

<sup>66</sup> See the Resolution of the Verkhovna Rada of Ukraine of 24 August 1991 'On the Political Situation in Ukraine and the Immediate Actions of the Verkhovna Rada to Create Conditions to Prevent the Repeat of a Military Coup'.

<sup>67</sup> Presidential Decree of 1 July 1992 N 357.

interests and the maintenance of Ukraine's national security.<sup>68</sup> In other words, its function was to organise and coordinate.

Giving the National Security Council coordinating functions alongside its information maintenance function created the preconditions for the NSDC to be sucked into resolving strategic state questions that went beyond simply maintaining national security as it might be understood in military or political terms. This created a conflict of interests between political groups. When the Council's work, which was regulated by presidential decrees, began to affect the work of not only the president, but also the government and the security institutions, this led naturally to demands to define its status both within the constitution and through legislation.

In August 1994, new procedures for the National Security Council were adopted, according to which it was defined as a collegial organ under the President of Ukraine with responsibility for the organisation and coordination of activities relating to the maintenance of national security.<sup>69</sup>

The next change to the Council's status came when a Constitutional Agreement was signed between Parliament and the President in 1995, as a result of which the President was named as the guarantor of Ukraine's national security and was appointed as head of the National Security Council.<sup>70</sup>

The adoption of the Constitution of Ukraine in 1996 led to the start of the most important period in the Council's work. The National Security and Defence Council and its Secretariat were established by Presidential Decree of 30 August 1996 N 772, in accordance with Article 107 of the new Constitution.<sup>71</sup> In practice, this was a way of legitimising the creation of a new body uniting the Defence Council and the National Security Council. The Constitution defined this body's main task as coordination and control over agencies of executive power relating to national security and defence. The Constitution also defined the main principles for establishing the NSDC, containing a direct instruction to develop a special law to define the roles and responsibilities of the Council.

The creation of a suitable legislative base for the Council was completed in March 1998 with the adoption of the Law of Ukraine 'On the National Security and Defence Council of Ukraine'.<sup>72</sup> This defined the legal principles for the NSDC's organisation and work, how it should be structured, and lists its authorities and responsibilities.

The most influential Secretary of the NSDC since its establishment is generally considered to be Volodymyr Horbulyn, who headed the Council twice: from 30 August 1994 till 10 November 1999 as Secretary, and from 24 May till 10 October 2006 as Acting Secretary of the NSDC. The current Secretary of the NSDC is Vitaly Anatolyiovych Haiduk (since 10 October 2006).

No changes were made to the article about the NSDC in the Constitution during the constitutional reforms.

### **The role of the NSDC in Ukraine's current political system**

There have been no significant changes to the status, authorities or modes of activity of the NSDC since the law 'On the National Security and Defence Council of Ukraine' was adopted in 1998. It is extremely debatable whether anything approaching real reform has taken place in the NSDC: the only changes have been specific attempts to strengthen the Council's control over certain organs of executive power and transfer their powers to the Council.

This is entirely understandable, given that under the presidential republic there was neither the need nor the possibility to create an effective mechanism for inter-agency decision-making and coordination that could

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<sup>68</sup> Temporary resolution on the National Security Council of Ukraine, confirmed by the order of the President Of Ukraine of 3 July 1992 N 117.

<sup>69</sup> Presidential Decree of 23 August 1994 N 469 confirmed the new procedures from the resolution 'On the National Security Council'.

<sup>70</sup> Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the basic principles of the workings of state power and local self-government in the period until the new Constitutions of Ukraine is adopted, from 08.06.1995 № 1κ/95-BP // *Vidomosti Verkhovnoi Rady*, 1995, N 18, p.133.

<sup>71</sup> Presidential Decree of 4 October 1996 N 927 confirmed the Resolution on the Council Secretariat (revised by Presidential Decree of 14 October 2005 N 1446).

<sup>72</sup> Law of Ukraine 'On the National Security and Defence Council of Ukraine' of 5 March 1998 N 183/98-BP // *Vidomosti Verkhovnoi Rady*, 1998, N 35, p.237.

fulfil the control functions envisaged under the 1998 law. Under Leonid Kuchma's presidency the NSDC's main tasks were to provide consultation and advice and to implement the President's decisions. The NSDC's style of work depended heavily on the personality of its secretary.

The current political situation in the country means that reform of the NSDC is now overdue. The changes to the constitution at the end of 2004 altered the division of responsibilities between the President, the Parliament, and the Government.<sup>73</sup> In this context, the President has attempted to control the government by defining the NSDC's responsibilities in the broadest way possible – effectively an attempt to double the functions of the Government. It is therefore natural that the coalition government is trying to make changes to the law on the NSDC, and two draft laws have been submitted to parliament in this regard. The first was submitted by an MP from the opposition BYT fraction at the start of January 2007, but the text of this law has not yet been published in the Verkhovna Rada's database.<sup>74</sup>

The second draft law was introduced by representatives of the Party of the Regions.<sup>75</sup> Its authors propose eliminating the posts of Secretary of the NSDC, his deputies, and their authorities. The responsibilities of the NSDC secretariat, i.e. the maintenance of the Council's informational, analytical, organisational, technical, and financial systems would be transferred to the Presidential Secretariat. The MPs also propose that presidential decrees relating to decisions made within the NSDC should be counter-signed by the Prime Minister and the minister who will be responsible for implementing the decision. The Verkhovna Rada's Main Analytical Department concluded that 'many of these proposals go beyond the changes made to the Constitution of Ukraine and do not derive from the Law of Ukraine "On the Fundamentals of Ukraine's National Security"'.<sup>76</sup>

The Ministry of Justice, Oleksandr Lavrynovych, has stated that during the next stage of transition towards a fully parliamentary republic, it would be appropriate to remove the reference to the NSDC from the Constitution.<sup>77</sup> None of the proposals for reforming the NSDC have been connected to any other reforms of the security sector.

Since the President's authorities were reduced after the constitutional changes at the end of 2004, the NSDC's capacity to control organs of executive power has become an increasingly symbolic function. Although the NSDC continues to undertake analytical and informational work, all other matters are dealt with directly by the ministries and agencies themselves. Now more than ever, the extension of the NSDC's work to deal with issues that are not entirely security-related can only be seen as imposing on the Government's functions.

Nonetheless, the NSDC has its own range of responsibilities and could become a qualitatively new body under the new political system. There are several reasons to think this:

- The President was and still remains the Commander-in-Chief of the Armed Forces, has the right to declare war, and if he is close to the Army, he can use forceful methods to carry out his policies;
- The President appoints certain security ministers who have positions within the NSDC;
- At the same time, the Prime Minister also sits on the NSDC, meaning that the views of the parliamentary majority are also represented;
- Lastly, according to the law the NSDC acts as a platform for cooperation between government bureaucrats, servicemen and law-enforcement officials on the one hand, and the head of state and key political circles on the other.<sup>78</sup>

Any further reforms of the NSDC should take into account different political situations, such as when the Government and the President belong to the same force, and when they belong to different parties.

<sup>73</sup> See Lemak V., *Khto v domi khazyain?! Pro "slabkoho" prezidenta i "syl'nyi" uryad v ukrains'kii modeli vlady // Dzerkalo tyzhnya* – 13-19 Jan 2007 – № 1 (630). <http://www.zn.kiev.ua/ie/show/630/55579/>

<sup>74</sup> Draft Law of Ukraine 'On the Introduction of Changes to the Law of Ukraine "On the National Security and Defence Council of Ukraine"' of 13 January 2007 № 2724.

<sup>75</sup> Draft Law of Ukraine 'On the Introduction of Changes to the Law of Ukraine "On the National Security and Defence Council of Ukraine"' of 11 January 2007 p. № 2882, submitted by Party of the Regions MPs Y.R. Miroshnychenko and V.V. Zabars'kyi..

<sup>76</sup> Conclusions on the Draft Law of Ukraine 'On the Introduction of Changes to the Law of Ukraine "On the National Security and Defence Council of Ukraine"' of 11 January 2007 p. № 2882

<sup>77</sup> 'Lavrynovych vyrishiv likviduvaty Haiduka', *Ukrainska Pravda* website, 15 January 2007, <http://pravda.com.ua/news/2007/1/15/53224.htm>

<sup>78</sup> Bidenko A. 'Poserednyk mizh parlamentom i prezidentom: RNBOU v poshukakh novoho khazyaina', National Institute of Strategic Studies for Ukrainska Pravda, 30 May 2006, [ww.pravda.com.ua](http://www.pravda.com.ua)

In cases when the Government and the President belong to different political forces (so-called *cohabitation*), the NSDC will play a mediatory role as a space where compromises can be reached in crisis situations. Since the intervention of the NSDC would not be required in order to coordinate inter-agency relationships between ministries or between the Government and the Parliament, the Council's main role would be to coordinate relations in the triangle between the President, the Prime Minister and Parliament, within clear boundaries set within the President's authority. During *cohabitation*, it will be essential to find suitable forms of cooperation between those ministers which are appointed according to the President's quota and the other ministers appointed by Parliament; otherwise it will be difficult to run the security sector effectively and SSR becomes virtually impossible. Here again, the NSDC can act as a platform where political agreements can be reached.

If the President and the Government both belong to the same political force, the NSDC is likely to play more of an analytical-informational role. The NSDC secretariat would prepare a range of alternatives for decisions to be made during sessions of the NSDC, and the network of analytical centres operating under the NSDC framework would be responsible for strategic analysis, planning and forecasting relating to national security and defence.

Therefore, the NSDC has two potential functions – analysis and/or coordination. In order to properly clarify or change the NSDC's roles and responsibilities, however, it would be necessary not only to change legislation relating directly to the Council, but also to the Parliament and the Cabinet of Ministers. It would be good if the NSDC were to define and prioritise threats to security more precisely within the National Security Concept, which has been within government since 2003.

It is extremely important that parliamentary hearings and direct parliamentary control over the work of the NSDC are established, through special commissions, which would ensure that the Council's secretariat acts strictly within Ukrainian legislation.<sup>79</sup>

## **g. Democratic control mechanisms**

One of the main goals of transforming the security sector should be to introduce the values, principles and practice of democratic governance. An important element of this is the strengthening of democratic control over the security sector. However, when being translated and used in Ukraine, the concepts that make up the term 'democratic control of the security sector' are often understood in a rather narrow fashion. This narrow interpretation is often comfortable for officials, since it allows them to discuss only those areas where Ukraine can demonstrate real progress, leaving everything else out of its field of vision.

In Ukraine, 'democratic' control is often treated as being identical to 'civilian' control, which reduces it to the principle of military and security structures being subordinate to civilian politicians and agents of power, thus ignoring the idea that civil society institutions also have a role to play in exercising control. Similarly, the word 'control' in Ukrainian has a much narrower meaning than it does in English. In Ukrainian, 'control' refers only to functional 'control mechanisms' (i.e. checking and inspection). However, the concept of 'democratic control' should be wider, to include the ability of a range of public actors not only to exercise general democratic oversight over the sector but also to participate in the process of policy-making on security. Lastly, often talk of the 'security sector' relates only to the armed forces, since in recent times the transformations in the Armed Forces have received particular attention from donors, politicians and experts. It should be remembered, however, that in this study the 'security sector' is understood in a much wider fashion (see 'Security sector reform – an international perspective' above).

In this section, democratic control over the security sector will be discussed in its broadest sense:

- Control carried out by civilian leaders of the relevant services and ministries, organs of executive and legislative power, and representatives of civil society (the media, analytical centres, human-rights organisations, the Church, etc)
- Control not only as a check on what is happening, but also in terms of participation in the formation of security policy

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<sup>79</sup> Ibid.

- Control over all agencies that make up the security sector (the Armed Forces, the SBU, the MIA, the Ministry for Emergency Situations, etc).

At the same time, this section will not touch on the particularities of democratic control over intelligence services (which because of the nature of their work are naturally more closed institutions than other security actors). Instead, these issues are discussed (with particular reference to the SBU) in the section on Intelligence Services above.

### **The Soviet legacy**

The main actor exercising control over the security sector in Soviet times was the Communist Party. This control was exercised through the party's own organs, other security agencies (for example, the KGB exercised control over the army), and partly by prosecutor agencies. In particular, at all levels of the armed forces there were party organisations, and within the Communist Party's Central Committee there was a Central Political Department, which watched over the Army. The Third Central Department of Military Counter-Intelligence within the KGB also had control functions over the Army.

In other security structures, alongside party control there were also internal control services ('internal security'); the Prosecutor's Office also played a role in exercising control over internal affairs agencies.

For the media, and for normal citizens and civil society organisations, however – which at the time played a purely nominal role – most information about what was happening in their country's security agencies was completely inaccessible. During Soviet times, the security sector remained one of the most closed sectors of the state.<sup>80</sup>

### **Independent Ukraine's policy towards establishing democratic control**

International partners and organisations played a decisive role in promoting the concept of democratic control over the security sector and ensuring that it appeared on the Ukrainian political agenda. The goal of establishing democratic control over the security sector was defined in a string of international documents, including the Framework Document for NATO's Partnership for Peace (1994), the Code of Conduct on Military and Political Aspects of Security (from the OSCE Budapest Summit in 1994) and the Charter of Special Partnership between Ukraine and NATO (1997).<sup>81</sup>

In the context of implementing its international obligations in its national legislation, some principles for the realisation of democratic control were identified. In particular, in 1997 a 'Concept (Basis for State Policy) of Ukraine's National Security' was adopted, which identified the 'maintenance of democratic civilian control over the State's Military Organisation' as one of the main priorities of state policy in the military sphere.<sup>82</sup>

In 2003, a law was adopted 'On Democratic Civilian Control over the State's Military Organisation and Law-Enforcement Agencies', which identified procedures for exercising control over the security sector by Parliament, the President, organs of executive power and local self-governance, civil society organisations, and the media.<sup>83</sup> At the same time, the Law 'On the Principles of National Security' was adopted, which replaced the National Security Concept and reiterated that democratic control was a vital principle in maintaining national security.<sup>84</sup>

Later on, after the adoption in 2004 of a presidential decree 'On Ensuring Conditions for Broader Participation of the Public in the Formation and Realisation of State Policy' and related resolutions by the Cabinet of Ministers, public councils started to appear in various ministries, which were intended to ensure the participation of the public in the formation and realisation of state policy, particularly in the security sphere.

<sup>80</sup> Poltorakov O. *Hromads'kyi kontrol' nad "sylovymy" strukturami v Ukraini: problemy ta perspektyvy // Rozvitok demokratii ta demokratychna osvita v Ukraini. Responses to the III International Scientific Conference, Lviv, 20-22 May 2005.*

<sup>81</sup> 'Democratic civilian control over the military in Ukraine: on the road from form to content // National Security and Defence, October 2000, № 11. p. 3

<sup>82</sup> According to this Concept, Ukraine's 'military organisation' included the Armed Forces, the SBU, the National Guard, the Internal Forces, all organs and subdivisions of the MIA, the Border Guard Troops, militarised subdivisions of the Ministry of National Emergencies, and militarised groups within other ministries // Concept (Basis for State Policy) of Ukraine's National Security // *Vidomosti Verkhovnoi Rady Ukrainy – 1997 - № 10.*

<sup>83</sup> Law of Ukraine 'On Democratic Civilian Control over the State's Military Organisation and Law-Enforcement Agencies' // *Vidomosti Verkhovnoi Rady Ukrainy – 2003 - №. 46*

<sup>84</sup> Law of Ukraine 'On the Principles of National Security' // *Vidomosti Verkhovnoi Rady Ukrainy – 2003 - № 39.*

The main problems accompanying the development of democratic control are above all related to: the absence of support from internal political forces within the country; the dominance of a formal/structural approach to the decision-making process; and the absence of a systematic approach to analysing the security sector.

The aforementioned decisions were lobbied for only by Ukraine's international partners and civil society organisations. The politicians that took these decisions either did not fully understand the ideas that lie behind the implementation of democratic control of the security sector in Ukraine, or they deliberately only implemented such controls only at the level of formal procedures. After all, strengthening democratic control over security agencies would reduce the opportunities for these agencies to be used as instruments in political and business competition. For this reason, the concept of democratic control has not had enough support either within security sector institutions themselves, or among the civilian political elite.

Furthermore, throughout the 1990s there was low political will to democratise the country, and as Ukraine moved into the 21<sup>st</sup> century it was still classified by international organisations only as a 'partially free country'.<sup>85</sup> Obviously, in a situation where senior officials were in fact making efforts to oppose democratisation, the goal of establishing democratic control over the security sector became even more unrealistic, since it lacked political support from both the political leadership and the 'siloviki' themselves.

For a long time, a formal, structural approach dominated decision-making about democratic control. The main goal was to make steps that would show that Ukraine was formally moving towards democratic control over the security sector, so that progress could be demonstrated both to the public and to Ukraine's international partners. However, in many cases no real change took place. Most of these decisions involved matters such as the adoption of normative frameworks, the creation of inter-agency or international commissions, increasing the number of civilian personnel in security structures, and so on. Meanwhile, no attention at all was paid to whether these legally-created mechanisms actually worked in practice. As a result, although formally there is now an impressive system of democratic control over the security sector, it is largely non-functional or ineffective.

Another problem that arose almost immediately was the lack of a systemic approach to the security sector. Politicians never considered the sector as a complete unit that requires coordinated reforms. The directions of reform in each particular agency depended on two main criteria: its role in political life, and the attention paid to it by NATO and other international partners. The 'reform' processes that took place in different security institutions thus developed along totally different vectors. The Armed Forces, for example, were more open to external cooperation, since they were not a major instrument of political struggle in Ukraine, whereas institutions such as the MIA or the SBU, which were often used by the ruling regime as part of this internal struggle, had completely different priorities.

In 2004, the general atmosphere in the state changed as a result of the change of political leadership and the democratic developments in the system of power, which increased the opportunities for genuine democratic reform of the security sector. Unfortunately, however, the new government did not make this sector a priority, and no strategic policies were defined in this direction. Ukraine's security institutions thus continued to develop at their own pace, with every ministry formulating its own reform plans by themselves.

#### **Transformation of the security sector (1996–2004)**

Opportunities for parliament, the media and civil society organisations to exercise control over security agencies are now guaranteed by law. On the whole, however, these mechanisms have been ineffective. Security institutions have not provided enough information to the public about their activities, while parliament, civil society and the media have often not been prepared to play their corresponding oversight functions either.

Immediately after Ukraine gained independence, numerous changes were made to the acting Constitution (inherited from the Ukrainian Soviet Socialist Republic), dividing influence over the security sector between Parliament and the President. The latter was responsible for appointing most of the senior 'siloviki' (the Ministers of Defence and Internal Affairs, and the Heads of the Customs and Border Guard Services), but the appointments were supposed to be confirmed by Parliament, including through the conclusions made by the

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<sup>85</sup> Nations in Transit: 2003, 2004, 2005 editions., <http://www.freedomhouse.org/template.cfm?page=17&year=2006>

relevant parliamentary committees. Parliament appointed the General Prosecutor and the Head of the SBU itself, with these appointments also supposed to go through the appropriate committees. However, as A. Hutsal argues, the practice of filtering security sector bosses through the 'sieve' of the parliamentary committees proved to be ineffective and sometimes lead to a 'paralysis of law-enforcement agencies'.<sup>86</sup> The level of professionalism in Parliament was often low, and it was politically unstructured without strong parties to give direction, meaning that Parliament was not capable of fulfilling its functions responsibly and effectively. As a result, day-to-day influence over the security structures continued to flow towards the President.

In 1996, following a political struggle between Parliament and the President, a new Constitution of Ukraine was adopted, which handed the President the greatest influence over the security sector. He was now able to appoint the heads of most 'power' agencies either independently, or through a submission from the Prime Minister, who was completely dependent on the President. Only the General Prosecutor continued to be appointed with parliamentary approval.

As the President's position continued to strengthen while the existing democratic institutions remained weak, the security sector became increasingly dependent on the head of state, and increasingly closed to all other influences. Most notably, it is often argued that senior officials used the MIA as an instrument in their battles with political opponents, and against a free press. The most well-known case in this regard was the abduction and murder of the independent journalist Georgiy Gongadze in 2000: the suspects in this crime are former MIA officials.<sup>87</sup>

Parliament, which was politically weak and dependent on the President, was unable to become an effective monitor of the security sector, even though the relevant legislation was passed. Formally, the Verkhovna Rada had a range of agencies and mechanisms that would allow it to exercise parliamentary control over security institutions: temporary investigative and special parliamentary committees; Accounting Chamber; Parliament's Human Rights Ombudsman; debating and adopting the annual budget; the right to demand information from all government agencies; the right to question government representatives during hearings on 'Government Days' in Parliament; its role in approving the participation of the military in international operations; its role in approving the participation of foreign forces in training on Ukrainian soil, etc.

However, most of these mechanisms were and remain ineffective: presidential domination over parliament and the Verkhovna Rada's own weakness meant that the law-enforcement agencies often disregarded their obligations to provide full information about their activities to MPs and parliamentary structures. All attempts by MPs to strengthen the authorities of their control mechanisms (such as by changing the law on the Accounting Chamber to give them the ability not only to control not only the use but the collection of the budget, or by adopting a law on temporary investigative and special parliamentary committee) were vetoed by the President.

It was difficult for the media and civil society organisations to exercise any influence over the 'power' structures, or to gain up-to-date information about what was happening in these agencies. Since these agencies were secretive and information about their policies and practice was generally unavailable, the media and independent experts were unable to provide good-quality deep debate and analysis on the state of affairs in these ministries. As a result, public debate on most security issues has remained low, and tends to be dominated by sensational news that cannot be hidden from the public (such as accidents during training, when a military plane crashes, when a passenger jet was hit by a Ukrainian missile, etc).

Even if certain journalists were able to access 'closed' information regarding abuses in the security sector, they still faced a large problem throughout the 1990s in dealing with direct pressure from the 'power' agencies, who were not afraid to use their power to prevent such information being published. There were numerous cases of journalists being arrested on questionable grounds or mysteriously beaten up, their investigations being sabotaged, and newspapers with 'unnecessary' information being confiscated and withdrawn from sale. Another popular method of pressuring the media was for law-enforcement officials to

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<sup>86</sup> *Priorytetni napryamy reformuvannya neviys'kovogo sektora bezpeky Ukrainy v suchasnykh umovakh // Dzerkalo tyzhna – 2004. - № 23. – 12 – 18 June.*

<sup>87</sup> The so-called 'Melnychenko tapes', which were published in the press in recent years, are believed to be recordings of conversations between the President and senior officials, and many of the people involved have confirmed their authenticity. These tapes include conversations where the President is (allegedly) heard expressing his displeasure with Gongadze's work to police chiefs.

go to court demanding compensation for moral damage caused by papers that had published accusatory articles about them. As a rule, the courts would rule in favour of the plaintiff, placing large fines on newspapers or journalists that led them towards bankruptcy.<sup>88</sup>

Although there is a certain amount of contact between civil society institutions and security sector agencies, this does not amount to a 'controlling' or 'monitoring' function. Instead, it is usually the case that such contact depends on 'mutually beneficial cooperation' between a particular ministry and certain organisations, in at best a semi-transparent atmosphere. Examples include the Orthodox Church in Ukraine, various 'veterans' or 'pensioner' associations representing former security sector workers, and certain business structures. These civil society representatives are generally fairly close to the sector, and as they are therefore unlikely to take a particularly critical viewpoint of current events. Instead, they prefer to make specific deals behind closed doors in return for certain preferences (such as, for example, permission to undertake religious activity among particular sections of the Armed Forces<sup>89</sup>); such cooperation rarely has a positive influence on the level of transparency in the sector.

A positive exception to this rule can be found with the Armed Forces. Despite all the problems mentioned above, the Ministry of Defence has been one of the most often security institutions, and comparatively active and effective civil society organisations and media reporting has developed around it. There are several reasons for this.

Firstly, the political elite always allowed the Armed Forces more opportunities to cooperate with NATO and other international organisations, whose members uphold higher standards of democratic control.

Historically, the Armed Forces have rarely been used as an instrument of internal political competition in Ukraine, and they have therefore been more open to international cooperation: the MIA, the SBU and the Tax Police were much more likely to be instrumentalised in such struggles. In the early 1990s the Armed Forces were also one of the parts of the state that most desperately required outside support and was most eager to receive it. This support was necessary because during Soviet times Ukraine did not have its own Ministry of Defence, and so unlike other security actors, it was necessary to establish the Ministry from scratch from the remnants of the Soviet Armed Forces in Ukraine – which meant nearly 800,000 personnel, and a significant nuclear arsenal that urgently needed to be kept under control.

Secondly, the Army had less opportunity than other security actors to harass journalists. This allowed the press to be more active in this sector, reporting on and criticising the work of the MOD without fear of negative repercussions.

Thirdly, the Army was the only security actor which underwent a massive reduction in staff numbers throughout the 1990s. The radical downsizing of the Armed Forces was the source of various social problems that were ardently discussed by the public. Civil society organisations were formed to represent the interests of acting and former servicemen, such as retired officer groups, groups for officers who had not received promised housing, etc.

The large quantity of retired servicemen also helped to improve society's control over the army, since these retired officers knew a great deal about the real situation in the Forces, and publicised this information, going into politics, journalism and civil society work.

It is for this reason that the most professional non-governmental analytical centres working on security tend to focus on defence policy, where they were able to discuss policy openly, develop alternative policy-making procedures and suggest alternative policies, and learn from Western experience. They were also more likely to receive support from donors. A good example is the Razumkov Centre, one of the best analytical centres in Ukraine, which has employed several ex-servicemen. The Centre publishes a monthly journal called 'National Security and Defence', which draws attention to security sector reform, and particularly defence reform.

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<sup>88</sup> See for example statements from international human rights organisation "Article XIX" about freedom of speech restrictions in Ukraine between August and November 2003: [http://www.gipi.internews.ua/ukr/activity/informatization/article\\_19\\_analisys.doc](http://www.gipi.internews.ua/ukr/activity/informatization/article_19_analisys.doc)

<sup>89</sup> See for example agreements on cooperation between the Kyiv Patriarchate of the Ukrainian Orthodox Church and the Internal Forces of the Ministry of Internal Affairs, the Ministry of Emergency Situations, and the Customs Service: <http://kievpatrarmy.org.ua/partner/>

The participation of such organisations in public debate, using the media to present different points of view, has already shown some results in influencing defence policy; for example, such debates helped to generate support for the idea of transferring from conscription towards fully professional forces.

For all these reasons, at the end of 2004 the public was to a large extent able to influence and appreciate the system of democratic control over the Armed Forces, but had much less understanding of how this might relate to other parts of the security sector.

### **New opportunities for reform in the light of political changes**

The 'Orange Revolution' which took place at the end of 2004 led to major changes to the leadership of security sector institutions, which led to a certain democratisation of the political system. However, the new government did not manage to formulate or implement a full security sector reform policy, limiting itself to changing the heads of most agencies. Different ministries have hence continued to develop their own understanding of democratic control, which they have implemented in different directions and with varying levels of enthusiasm.

The most optimistic changes have come in the Ministry of Defence, where the Minister and several other officials have been drawn straight from the ranks of civil society organisations and have brought a new vision of defence policy, including a new respect for democratic control over the Armed Forces.

The main achievement of the new leadership of the MOD has been to make important information about its activities more widely available. In 2006, the Ministry published its first White Paper, and committed itself to publishing one every year. It has also begun publishing a yearly report on the Ministry's work. The Ministry's website is increasingly used to inform the public about the issues that matter to them most: the site contains all sorts of information, from the educational background and degree certificates of the Minister of Defence (placed on the site after the scandal about how the former Minister of Justice, Roman Zvarych, did not have a diploma to prove he had graduated where he claimed he had) through to the list of people awaiting housing and a list of the ministry surplus property which is earmarked for privatisation.

Changes to the leadership in other security institutions have shown far fewer results. The main innovation recently has been the establishment of 'public councils' in ministries and central executive organs. Most of these mechanisms are ineffective, however, since they were formed according to the old logic of creating formal institutions: a space has been created bringing together civil society and ministry representatives, but no clear procedures have been designed to detail how they can influence the policy or practice of these agencies. The civil society representatives that sit on these councils have few real means of influencing the relevant agency, since they are rarely supplied with all the necessary information to give appropriate advice or take decisions.

As well as the personnel changes in the security sector, there have also been various political changes in the country that have also improved the situation with regard to democratic control over the sector.

Above all, the constitutional reforms that came into effect in 2006 have significantly increased the role of parliament in the system of government. It is now up to parliamentary coalitions to form or dismiss a government. Parliament appoints all ministers (voting on proposals made either by the Prime Minister or the President, depending on the position), and approves the Head of the SBU proposed by the President. In this way, security sector bosses are now more directly responsible before Parliament, which has the potential to improve parliamentary control over the security sector. However, it is possible that this opportunity may not be realised as the result of delaying tactics to prevent the development or implementation of the corresponding control mechanisms, and the current coalition's unwillingness to allow the opposition to play a control function.

Another positive factor has been the significant reduction on pressure exerted on the press (particularly at the national level), although some problems do still exist. Firstly, the Ukrainian press generally only informs the public about what is going on, without putting things into enough context or giving reactions to security issues. It therefore does not play much of a role in influencing public perceptions of security, and does not really act as a channel for alternative views and ideas that may help to positively influence security policy. Secondly, when it comes to discussing complicated issues such as national security, the professionalism of much of the media still leaves a lot to be desired. This is both because of the lack of accurate information

(due to the low transparency of the security sector) and because many journalists do not know much about security matters and therefore do not know how to cover them.

The situation has changed only slowly with regard to other potential sources of democratic control over the security sector. The judicial system remains weak, and the media has little influence over state policy. This means that civil society organisations lobbying their own interests still prefer closed methods of ‘mutually beneficial cooperation’ with the security sector, since they are more effective than carrying out public discussions. State-backed analytical centres also tend to prefer such ‘cooperation’, and are thus often closer to the state than other civil society institutions.

### **Potential future changes**

Progress in strengthening democratic control over the security sector is likely to remain slow and unstable, due to the lack of political will at the highest level, the absence of a joint vision for comprehensive security sector reform across political forces and key ministries, and the ongoing battle over the ‘power’ ministries between the Cabinet of Ministers and the President.

The ability to influence various security institutions remains an important resource in political struggle in the country. Politicians are therefore unwilling to devolve this influence to abstract concepts of ‘society’. The weakness of both the courts and the media will also continue to hinder the development of truly democratic control over the security sector.

Therefore, even if the public were more ready to actively influence security policy, it is doubtful whether security actors themselves are willing to be more open and accountable to the public.

None of the main political parties in Ukraine yet has a realistic plan for reforming the security sector. This means that it is up to civil society itself to propose such reforms. It is likely that if both civil society organisations and donors were to focus more attention on other parts of the security sector, this would lead to the development of greater independent expertise and greater transparency, which could prepare the ground for positive changes in future.

The successful example of the Ministry of Defence demonstrates that if windows of political opportunity for security sector reform – which are far from frequent – are to be used effectively, it is necessary to have policy recommendations already prepared, and to have authoritative civil society activists that can either join government or continue to monitor its activities, to ensure that the proposed reforms are carried out.

Another potential factor that could lead to improved democratic control is Ukraine’s relationship with the EU. With Ukraine becoming more cautious with regard to integration with NATO, it is possible that its desire to integrate with the EU may play a greater role in stimulating democratic control of the security sector, particularly if the EU indicates that this is a priority for bilateral cooperation.

The past fifteen years in Ukraine suggest that the road to full democratic control over the security sector is a long one, and that major efforts are required to achieve even minor progress in this regard.

## Perspectives for comprehensive security sector reform in Ukraine

The previous chapter took a detailed look at the state of reforms in each of the main security actors in Ukraine, and also considered the role of parliament and civil society in exercising democratic control over the security sector. It was repeatedly argued that activities in one agency had not been linked or coordinated with other parts of the sector; in fact, it appeared that the links between the functions of different ministries were rarely considered when setting one's own reform priorities. This chapter considers the obstacles to comprehensive SSR in Ukraine in more detail, and then suggests a number of recommendations for steps that might begin to improve the situation.

### Obstacles to comprehensive reform

The chapter above entitled 'Ukrainian security in context' outlined some of the obstacles to SSR created by the overall political environment. Some of these issues need to be revisited in this section, particularly with regards to the current political struggles between the President, the Prime Minister and Parliament in the light of the constitutional reforms that came into force in 2006. However, there are a number of other reasons that relate more directly to the security sector. These include: the continued lack of a clear vision on what 'security' should mean to Ukraine and how this should best be protected; a lack of understanding of the comprehensive nature of SSR; the continued inability and/or unwillingness of officials in different parts of the security sector to cooperate and streamline their activities; and the weakness of the wider 'security community', which has led to a passive acceptance of the status quo.

#### *The security sector as a pawn in the political game*

One of the recurring themes through out this paper has been the instrumentalisation of security sector institutions as a means of wielding political or economic influence, which in turn has made them targets for control in high-level political struggles. Many examples have been given of how this happened during President Kuchma's reign, and it has also been repeatedly noted that the constitutional changes that came into force in January 2006 and the clashes between President Yushchenko and Prime Minister Yanukovich that followed have once more started a battle for control of the security sector.

This has led to calls for security matters to be 'depoliticised' so that necessary reforms are not hindered by political rivalries. It is certainly the case that Ukraine's national security is a matter of vital importance and it is desirable that all Ukrainian politicians would put Ukrainian security ahead of their own private political battles. However, calls for 'depoliticisation' tend to be disingenuous, since the subtext is usually that it is the opposition who are blocking reforms, and if they would only be silent and stop criticising then everything would be fine – which is hardly a democratic way of governing, nor is a way to build consensus within society.

What is truly needed is for a cross-party consensus to emerge on the fundamentals of reform – if all parties agree on what is needed, then the issue can truly be 'depoliticised'. As argued below, however, currently the prospects for reaching consensus on this issue do not look all that promising. At the end of the day, it will be impossible to make the different political parties sit down and negotiate a consensus unless they believe it is in their interests and have the strength of character to do so. However, it may be wise for other actors – particularly the Ukrainian public and international organisations such as the EU and NATO – to remind Ukrainian politicians of the importance of reaching a consensus and the consequences of not doing so.

#### *No consensus on what reforms are necessary*

Nearly everybody in Ukraine can agree that some sort of reform of the security sector is necessary. Everyone is painfully aware that much of the security sector is painfully unfit for purpose, being poorly resourced, stuck in Soviet ways of doing things, unloved and distrusted by the public and unready for greater Euro-Atlantic integration. The problem comes when it comes to the details of what reforms are necessary, and why. At this point, numerous competing visions for reform are proposed, running a wide spectrum from hugely ambitious plans to overhaul entire ministries through to devious cosmetic reforms that aim to maintain the status quo. There are probably two main reasons for this. The first, discussed in the section 'Ukrainian security in context' above, is the general weak capacity of the state to make and implement decisions and to build consensus through appropriate public policy mechanisms. The second is that there appears to be little clarity within Ukrainian society and the decision-making elite about just how Ukraine understands the term 'security', perceives threats to this security, and structures its security sector to defend against these threats.

It is unrealistic and even undesirable for everyone to have exactly the same views about how to reform the security sector. It is essential, however, that the majority of decision-makers are able to come to a joint decision on what reforms to undertake. To reach a consensus about this, they must first reach a consensus about the underlying issues: What are Ukraine's fundamental national interests? What are the main threats to Ukraine's security at the current time? What should the hierarchy of security be in terms of personal, community, national and international security? Inevitably, if the Ukrainian state is unsure what is most valuable to it and what it should be protecting, it will be impossible to guarantee that the security sector is well-enough designed to efficiently ensure such protection.

The best indication of the difficulties that are faced here is the sorry fate of the National Security Strategy. The Strategy is been 'in development' for a long time already and there appears to be no clear timeframe for publishing it – suggesting either that this is not a matter of much urgency for the Ukrainian Government, or that it is impossible to reach internal consensus on the document. Previous drafts of this strategy do not bode well, however, since they contain no real system for prioritising security threats: a vast number of potential security threats are listed, but there appears to be no categorisation of these threats are according to how likely they are to affect Ukraine or the severity of the consequences if they were to occur. As a result of this, the rest of the strategy is also equally unstructured, with far too many 'priorities' for action, none of which contain any realistic guidelines about how they might be implemented.

Another example of this inability to reach a basic consensus on the security threats facing Ukraine can be found in the ongoing disagreements about whether Ukraine should join NATO. Whether deliberately or not, it seems that both sides in the debate have tended to confuse cause and effect. Many supporters of NATO membership seem unable to come up with convincing arguments as to how membership might improve the country's security. Most likely, this is because they have not considered this matter in detail, supporting NATO membership for foreign policy or internal political preferences rather than because a rational analysis of Ukraine's international security situation has led them to conclude that NATO membership is the best option. Similarly, opponents of NATO membership also tend to give the impression that their opposition is rooted in their attitudes to the West and Russia, rather than because they are sure that it would have a negative impact on Ukraine's security; nor do they usually bother to propose alternatives to NATO membership, implying either that the status quo is perfectly acceptable or that they have not considered what international security needs Ukraine does in fact have.

This example may be a sensitive one, since the issue of NATO membership is highly emotive in Ukraine. This is precisely the point, however: until Ukrainian politicians and officials are able to step back and make such important decisions based on a thorough analysis of the security situation and Ukraine's security needs, these arguments are likely to go round in circles and it will be impossible to develop a properly-thought out strategy for SSR.

#### *Little understanding of the comprehensive nature of SSR*

This point does not need to be explored once more in detail, but it is clear that there is still limited understanding among many politicians, government officials and experts as to what international concepts of SSR mean and why they emphasise the need for 'comprehensive' reform and improving democratic governance. Without over-generalising, it seems that many decision-makers still assume that 'security sector reform' is the same as defence reform, and that democratic control of the security sector is more or less the same as placing civilians in charge at the Ministry of Defence.

If this is the case, then the international community has not always helped matters. Even though NATO has talked a lot about SSR, until recently it was primarily focused only on defence reform. This is perfectly understandable, but may have sent mixed messages to Ukrainian officials and politicians, particularly those who are not directly involved in these issues and thus do not engage regularly with international advisers. Similarly, the EU has talked about SSR but has largely focused on the issues that are of most concern to its member states, such as migration, terrorism, and weapons of mass destruction, without really seeking to engage the Ukrainian security sector in a comprehensive fashion. The result is that large areas of the Ukrainian security sector are still largely untroubled or highly resistant to reform; most notably, despite the MIA's central position in the state, and although the police remain deeply unpopular in society, there is little talk of police reform in Ukraine, let alone any concrete proposals as to how this could be achieved.

There is thus a need for both international actors and Ukrainian supporters of reform to do more to popularise the concept of ‘comprehensive’ SSR, explaining what this entails and why it is necessary.

#### *Official unwillingness to cooperate*

As noted at the start of this paper, SSR places great emphasis on inter-agency cooperation, both in terms of ensuring high levels of day-to-day cooperation and information exchange between security agencies, and in terms of assessing the overall structure of the security sector to ensure that its responsibilities are divided among agencies in the most efficient manner to face contemporary security threats. Unfortunately, the Ukrainian security sector has a rather bad record on both counts. Levels of co-operation between many agencies are notoriously poor (as officials will often admit in private), with different agencies competing to maintain or extend their influence and withholding information from other agencies in order to strengthen their position against them. To some extent, this is a symptom of the wider issue of how the security sector is structured. Partly by design, and partly because of the narrow interests of senior officials in each particular ministry, reforms that seek to streamline the security sector have been strongly resisted, and reforms that have been attempted have led in directly the opposite direction, towards increasing duplication of tasks.

During President Kuchma’s reign, a deliberate strategy of ‘divide and rule’ was often employed, by which two or more agencies or ministries were given similar roles and responsibilities. To some extent, this was justified as a means of ensuring control over these agencies and preventing them from becoming a danger to the state. The main purpose, however, was to create a situation in which it was possible to play different ministries off against each other and ensure that none of them became too powerful to threaten the President.

The same duplication of functions also sometimes occurred in a more ‘organic’ way, with different ministries seeking to extend their own power and spheres of influence, and so proposing thinly-disguised reforms to do just that. Since other ministries were hardly likely to quietly surrender these powers, and since this competition suited the President, this often led to further overlapping responsibilities.

This was not always the result of corruption or political power-broking. Reforms have also been resisted by officials who are genuinely concerned of the consequences if their agency’s role in the system changes – the natural assumption being that any changes proposed by others are designed to strengthen their role at the agency’s expense. At the core of most such bureaucratic obstruction, however, is the inability to truly put the interests of the state above their own narrow interests. This is partly because most senior politicians and officials belong to an extremely cynical generation that learnt its trade during Soviet times. In turn, this is another reason why the ruling elite has not even made much effort to reach a consensus on what security reforms are most important to the state.

There is a desperate need to establish coordinating bodies that could encourage (and impose) inter-agency cooperation to design and implement SSR. As the previous chapter has suggested, there is some potential for the NSDC to fulfil this role, but it is not currently doing so, and given the current political battles it may not currently be possible to either enhance the effectiveness of the NSDC or to create an alternative coordinating body.

#### *Acceptance of the status quo*

As noted earlier, a strong perception remains among many government officials and members of the public that security is a matter for the state alone, and that the public has neither the need nor the right to involve itself in such issues. The unfortunate result of this attitude is a vicious circle of apathy: the public is not well-informed enough to realise that it can and should expect more from the security institutions that are supposed to protect its interests and are paid for with its taxes; this lack of public pressure allows government officials and politicians to continue with the status quo (which is often comfortable or even profitable for them), making little attempt to design or implement serious reforms and keeping the public in ignorance of security matters.

This cycle can only be broken if the wider ‘security community’ – research institutions, NGOs, faith-based groups, the media, business organisations, etc – takes a much more active interest in security matters. This means that such organisations must act as a conduit between the security sector and the general public. On the one hand, they must raise public awareness of the need for SSR, and the costs of inaction and passively accepting the status quo. On the other hand, they must be able to engage much more deeply with security sector officials. They need to be able to gain their trust, and demonstrate that cooperation between civil society and the security sector can be of mutual benefit. Civil society organisations from other countries may

be able to share experience and advice on how such cooperation can be established and provide training and support, but building trust is likely depend on personal experiences of cooperation. In order to set this in motion, international organisations and Ukrainian supporters of reform need to do more to encourage their more reluctant colleagues to open their doors to civil society.

### **Recommendations for reform**

The analysis presented in the paper has suggested that despite much progress in the 16 years since independence, much of the security sector is still far from adequate to the contemporary demands placed on it in a democratic state. There is thus huge potential for SSR, though great obstacles to reform remain. This final section does not seek to recommend an entire SSR strategy for Ukraine for the coming years, which would be well beyond the scope of this paper. Instead, the authors have tried to suggest a number of immediate steps to ensure that the Ukrainian Government is better prepared to implement comprehensive reforms in future (and the international community to support it). This includes a desperate need to boost awareness of the concepts behind SSR and the reasons why such reforms are necessary, and to make more information about the security sector available.

#### *1. Organise debate within the Ukrainian 'security community' of how Ukraine should define its security interests.*

It is crucial that a greater understanding and consensus is reached about how Ukraine should understand its security, and therefore what the main threats to security are and how they should best be defended against. In order to gain consensus, consultation and debate is required that involves all key actors with the ability to influence perceptions of security: security sector workers, government policy-makers and officials, politicians, academics, non-governmental organisations, the media, international organisations (particularly the EU, NATO, and the OSCE), etc. Non-governmental organisations, research institutions and the media can play an important role both in facilitating this dialogue and publicising these ideas to a wider audience.

#### *2. Raise public awareness of the need for SSR through increased discussion of security issues and greater support for civil society to work on security.*

Greater public engagement on security issues is essential for two reasons. Firstly, it is impossible to greatly improve the level of democratic governance of the security sector without such public involvement in policy formulation and implementation. Secondly, the slow pace of reform is in part attributable to public apathy: officials do not feel under particular pressure to carry out reforms if they know that the public does not expect them to do so. Issues about security and about SSR must therefore be discussed more regularly in the public sphere. This can be done in a variety of ways. First of all, security issues should be discussed more regularly in the media. In order to do so, the government must make more information available and hold regular press conferences on security issues. Training should also be provided for journalists to improve their knowledge of security issues to ensure the quality of their reporting. It is also important that the topic of SSR is presented to Ukrainians in such a way that it does not appear to be a Western-imposed idea; it must be emphasised that reforms to the security sector are of benefit above all to Ukrainian citizens themselves, and that conversely, they have the most to lose if reforms do not take place.

Another aspect of raising public awareness is increasing the amount of financial and technical support given to civil society organisations (both by foreign donors and by the Ukrainian Government). Although donors like to stress the importance of civil society engagement in security sector reform, in practice they often do little to support the development of strong, knowledgeable civil society organisations in this sphere, since foreign financing of civil society to work on security is often viewed with suspicion by the national government. The result, however, is that this often perpetuates a situation when security officials can argue that there are no suitable civil society representatives to work with because they are ill-informed and do not understand the issues, and where civil society organisations do not have the knowledge and experience to become respected commentators and promoters of new ideas within society. This is not simply about financing; much can be done by both national champions of reform and international representatives to encourage more reticent security officials to change their attitudes towards civil society organisations and be more open to dialogue and cooperation.

#### *3. Clarify the role of the NSDC in coordinating reforms and its relationship to other agencies*

An inter-agency forum for coordinating SSR at the highest level is essential for the success of these reforms. The logical place to coordinate reforms would appear to be the NSDC. However, the role of the NSDC in the state architecture is not sufficiently delineated. It is unclear how much power it has to coordinate the work of other actors, where it may be considered the lead agency and where it should defer to other ministries. It is

also unclear how its function as an analytical body relates to its function as a coordinating body. There should also be clearer guidelines on which issues fall under the NSDC's mandate and which do not, in order to prevent 'mission creep' where all issues are defined as security issues but the organisation therefore lacks focus.

*4. Rewrite the National Security Concept so that it includes a clear system of prioritising security threats*

The National Security Concept has been under preparation for a long time. However, there are concerns that current drafts do not provide a clear system for prioritising security threats. The draft Concept should be revised to include a prioritisation of threats, perhaps by analysing probability of threat and likely consequences.

*5. Develop a comprehensive strategy for SSR based on the National Security Concept.*

On the basis of the priorities identified in the National Security Concept, Ukrainian policymakers must develop a comprehensive strategy for SSR. This policy should cover reforms of the entire sector. Future reform strategies must begin from a realistic assessment of the resources available (financial, administrative, personnel, etc) and must have a clear plan for year-on-year implementation. Since developing such a strategy is a very ambitious and complicated undertaking, the Ukrainian Government should seek the support of experienced Western advisers in managing the development of this strategy.

*6. Clarify the decision-making structure in each agency and make information about decision-makers and their decisions publicly available*

In order for decisions to be taken and implemented more effectively, Ukrainian policymakers and researchers should map out the decision-making structures in each ministry and agency so that it is clear how decisions are made. Public transparency in decision-making must then be made a priority, so that it is possible to track the progress of reforms through the system.

*7. Seek greater international support for SSR in Ukraine*

Undertaking comprehensive SSR in Ukraine is a major task that will require significant resources. This relates not only to financial resources, but also to knowledge and skills. A particular emphasis must be placed on restructuring existing management systems and retraining staff. International experience and assistance is not only desirable, it is essential. NATO already provides significant support, but other actors must become more engaged. In particular, the Ukrainian Government should encourage the EU to take a more proactive role in supporting SSR, since the EU is more trusted than Ukraine and has more potential influence on Ukraine's top political priorities. In turn, the EU should consider how it can implement its new strategies for SSR in Ukraine most effectively, perhaps by drafting a paper on a strategy for EU support for SSR to Ukraine together with the Ukrainian Government.

*8. Publish detailed regular reports on the state of affairs in each security ministry*

Currently, the Ministry of Defence is the only security sector institution that is committed to providing the public with detailed regular reports on its activities, updates on the main challenges facing the ministry, and statements of government policy and plans for reform. For most other ministries, little information is made publicly available, even though reports are regularly made to Parliament, parliamentary committees and/or the President. As a first step, therefore, these reports should be made publicly available and published on government websites. Fears over publishing confidential information can be assuaged by protecting the right to censor genuinely sensitive information (e.g. by blanking out relevant sections) according to strict freedom of information guidelines that dictate criteria for keeping information secret. Minutes of parliamentary committees and hearings should also be available to the public, with few exceptions. Parliament could also consider passing legislation to make the publication of white papers and activity reports obligatory, as the Ministry of Defence has done.