



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

WORKING PAPER – NO. 152

**AN ANALYTICAL OVERVIEW OF DEMOCRATIC
OVERSIGHT AND GOVERNANCE OF THE DEFENCE
AND SECURITY SECTOR IN UKRAINE**

Dr. Leonid Polyakov

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AN ANALYTICAL OVERVIEW OF DEMOCRATIC OVERSIGHT AND GOVERNANCE OF THE DEFENCE AND SECURITY SECTOR IN UKRAINE

Dr. Leonid Polyakov

Since independence, the Ukraine has made progress in establishing a system of democratic civilian control over the Armed Forces. The regulatory-legal basis which governs the activity of security structures and which defines the different aspects of civil-military relations has basically been established. These regulatory-legal structures co-ordinate and oversee the activity of these security structures. Co-operation between different authorities in matter pertaining to the formation of the defence budget and the development of state programmes in the military sector is gradually improving. Ideological indoctrination has loosened its hold on Ukraine's security structures and democratic values are formally now the foundation of their activity.

Security co-operation with western democracies made a noticeable difference by encouraging the Ukraine to declare its adherence to universal democratic principles: the rule of law, respect for human and civil rights, democratic accountability, transparency, the de-politicisation and de-ideologisation of civilian control. This co-operation also provided opportunities for Ukraine to gain foreign experience and to educate military and civilian personnel.

However, the current Ukrainian system of democratic civilian control over the security sector still reflects the transitional character of the nation, which, while it has already distanced itself from its totalitarian Soviet past, has not yet established firm democratic foundations. Despite a number of positive changes, the situation in the sphere of civilian control over the security sector in the Ukraine still causes concern.

For the moment, the system of democratic civilian control is more or less functioning in the Ukraine primarily in the Armed Forces, while other security structures are democratic only in their attributes, but not in their essence. This is much more evident in the sphere of intelligence and law-enforcement activity than in the military sphere. The military attempts to adhere to democratic norms as officially declared, but the intelligence and law-enforcement agencies have not gone yet retreated from excessive secretiveness nor the inherited Soviet

traditions of low transparency of their activities neither to society nor to even the Verkhovna Rada (Ukraine's Parliament).

As this study reveals, the transitional character is most tellingly reflected in the lack of clear delimitation of the powers and responsibilities between state bodies in Ukraine. The substantial imbalance of functions, powers and responsibilities in the security domain – between the institutions and branches of power as well as between the authorities and the public – concentrates all the influence and power of the Armed Forces and law-enforcement bodies into the hands of the President of Ukraine and his Administration.

There is probably a consensus in Ukrainian society now that the overwhelming Presidential control over security structures should be better balanced with that of the Parliament and the Government. If these attempts become successful, it will likely manifest the beginning of the new stage in the development of Ukraine's system of democratic civilian control over the Armed Forces and other security structures.

But so far, despite the outward attributes of democracy, the Ukraine still remains a half-authoritarian and half-democratic state, where significant progress towards democracy is conditioned by the improvement of democratic civilian control over the Armed Forces and especially over the other (non-military) security structures.

The main attributes of this current Ukrainian system of democratic civilian control over security sector are studied by systematising and analysing the constitutional, legal and procedural provisions for democratic control concerning the President of Ukraine, the Verkhovna Rada, the Cabinet of Ministers, the National Security and Defence Council. Civil society organisations are also considered. The quality of democratic oversight of many other important security issues like security strategy, defence management, emergency situations and crisis management, peace support operations, rights of service members, and security expert capacity building is also assessed.

This study could particularly assist in the understanding of many, if not most, of the key specifics of the Ukraine's system of civilian control over the security sector, thus helping those practitioners who care about the democratic future of the Ukraine, as well as providing concise reference for the broader audience of scholars in transitional development¹.

¹ I am grateful to people, who supported this study with their knowledge and advice. This volume would not be possible without friendly revision and skilful insight into legal matters provided by expert in international law Natalia Oliynyk. Special thanks for all possible support and for sharing expert opinion on parliamentary staff matters to my colleague Olexandr Demyanets. I am grateful to the Geneva Centre for the Democratic Control of

The Head of State

Ukraine's legislation delimits the powers and areas of responsibility of different bodies of state power, but the President has beyond doubt the dominant role in the control over the country's security sector and in strategic decision-making. Pursuant to the Constitution of Ukraine, the President of Ukraine as a Head of State is the guarantor of state sovereignty and territorial integrity of Ukraine. The President functions as well as the guardian of the Constitution of the Ukraine, of human and civil rights and freedoms. The Constitution stipulates that the President of Ukraine:

Guarantees state independence, national security of the state, appoints members of the Cabinet of Ministers of Ukraine (including the Minister of Defence and the Minister of Internal Affairs) and terminates their powers upon the submission of the Prime Minister of Ukraine;

Appoints, with the consent of the Verkhovna Rada of Ukraine, the Prosecutor General of Ukraine and dismisses him from office;

Appoints and dismisses the top command of the Armed Forces of Ukraine and other military formations (including — personally appoints and dismisses the head of the Security Service of Ukraine (Sluzhba Bezpeky Ukrayiny – SBU);

Administers the spheres of national security and defence of the state;

Heads the National Security and Defence Council of Ukraine;

Confers the top military ranks and top special ranks and classes;

Sets up courts in accordance with the procedure established by law;

Sets up consulting, advisory and other auxiliary bodies and services within the limits of funds allocated by the National Budget of Ukraine for the exercise of presidential powers (Article 106).

Meanwhile, there is no legislative regimentation of the procedure for the President to exercise his Constitutional powers. The Law "On the President of Ukraine" submitted to the

Armed Forces, in particular to the Dr. Philipp Fluri, who encouraged me to write the study. I should also like to thank Dr. William Sokolowski, whose invaluable help in preparing the text is greatly appreciated.

Verkhovna Rada for consideration and intended to regiment the President's status and powers pursuant to the Constitution has not yet been passed.

Given the above broad-sweeping presidential constitutional powers in influencing the Armed Forces, intelligence and law-enforcement bodies and the lack of proper regimentation of these powers in a specialised legislation, there are abundant opportunities for their arbitrary application. This also enables delegation of presidential powers to other bodies and/or persons in defiance of the Constitution of Ukraine.

The President of Ukraine may set up consulting, advisory and other auxiliary bodies and services for the exercise of his powers. However, there is also no law regimenting the procedure for the establishment and activity of such bodies and services. There are several bodies not directly envisaged by the Constitution that the President of Ukraine established and that exert a strong influence on the activity of the law-enforcement bodies. The central and the most influential among them is the Administration of the President of Ukraine (There are also different commissions and committees established by the Presidential decrees).

According to the Regulations of the Administration of the President of Ukraine², that body extends organisational, legal, consulting, informational, expert analysis and other support for the exercise of powers by the President of Ukraine, including in the domain of national security and defence. In particular, the Administration of the President supports the President in exercising his powers as Supreme Commander-in-Chief of the Armed Forces of Ukraine and in control over national security and defence of the state.

Administration of the President functions, *inter alia*, include:

Drafting proposals for the President "for the guarantee of state independence, state sovereignty, territorial integrity of Ukraine, national security and defence of the state, law and order";

Support for the President's relations with "law-enforcement and other state bodies";

Drafting proposals "on creation, liquidation and re-organisation of ministries and other central bodies of executive power, establishment of courts".

Preparation of submissions for "appointment and dismissal of heads of executive bodies and judges";

² Approved by the President of Ukraine Decree No.159 of February 19, 1997.

Drafting proposals “for conferment of top military ranks... And other special ranks and classes”.

To support those functions, the Administration of the President has a special unit called the Main Department of Activity of Military Formations and Law-enforcement Bodies and Judicial Reform, which:

Researches and analyses the activities of military units and their readiness, supervises the implementation by law enforcement agencies of state programs on the organized crime, and coordinates the activities of central executive bodies pertaining to the implementation of the judicial reform;

Upon instruction of the President of Ukraine, conducts expert evaluations of the degree to which military units, law enforcement agencies... follow the norms set out in the laws of Ukraine and the relevant international agreements;

Maintains liaison with military units, law enforcement agencies, justice bodies, and courts; familiarizes itself with their work in the order established by law;

Takes part in the preparation and analysis of draft decrees, regulations, and orders of the President of Ukraine on issues pertaining to the activities of military units, law enforcement agencies..., justice bodies, and courts, as well as the draft laws introduced by the President of Ukraine and analysis of the laws prior to their signature by the President of Ukraine.

Informs the President of Ukraine about the pace of the judicial reform, the reform and development of the Armed Forces of Ukraine, other military units, as well as their combat readiness; informs about measures taken by law enforcement agencies, justice bodies, and courts with regard to ensuring the rule of law in the country; develops recommendations with a view to improving their work;

Interacts with the Council of Ministers of the Autonomous Republic of Crimea, regional, Kiev, and Sevastopol administrations on issues pertaining to the activities of courts, justice bodies, and law enforcement agencies...;

Researches issues of organizational activities and personnel requirements of the Armed Forces of Ukraine and other military units, law enforcement agencies, justice bodies, and

courts; develops recommendations with a view to reforming them and increasing their efficiency...;

Studies the materials and plays an active role in preparing conclusions and recommendations on personnel policy as it relates to the appointment of heads of military formations and law enforcement agencies and their departments...;

Participates in the preparation of recommendations for the President of Ukraine with regards to conferring state honours and highest military ranks, special ranks, and grade levels for military servicemen and employees of law enforcement agencies;

Studies requests for establishing and liquidating courts of general jurisdiction, personnel requirements at these courts, as well as the appointment of judges to, and dismissal from, administrative posts; studies requests for transferring judges, appointing individuals to posts of professional judges, and dismissing judges...;

Ensures that judges, soon to be appointed by the President of Ukraine to posts of professional judges, are ready to give Oath of the Judge... .

The listed functions grant the Administration of the President strong and effective levers of influence on the Armed Forces and law-enforcement bodies, which objectively condition the dependence of their leadership upon the Administration of the President. Meanwhile, since the status and functions of the Administration of the President are regimented exclusively by presidential decrees, that body does not report and is not accountable to other institutions of power or to the Ukrainian public.

Another Administration's subdivision – the National Institute for Strategic Studies – provides analytical support to the activities of the Administration. It has several regional branches and is overall capable of producing quality analyses of security issues. In the sector of national security and defence, the Institute primarily employs retired military and law-enforcement personnel (retired generals and senior officers). Due to the rather closed nature of their work, it is not easy to give a definite assessment of the level of their professional advice to the President. However, some indicators suggest that this level is satisfactory.

Overall, the Constitution of Ukraine in the domain of civilian control provides the President with the exclusive powers in exercising control over the Armed Forces and law-enforcement

bodies³. Other legislation, for instance, the Law “On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State,” only reaffirms the relevant constitutional powers of the President of Ukraine in the appointment and dismissal of the top leadership of law-enforcement bodies and narrowly defines them in other security aspects.

Under the Law, “On the Armed Forces of Ukraine,” the President as Supreme Commander-in-Chief of the Armed Forces of Ukraine carries out direct guidance of the activities of the Armed Forces in peace as well as in wartime.

The Law, “On the National Security and Defence Council of Ukraine,” specifies the *ex officio* role of the President who chairs the National Security and Defence Council of Ukraine (NSDC). Though there is a Secretary of NSDC, who essentially is supposed to be the national security adviser to the President, but given Presidential exclusive overall influence over security matters in the state, the role of NSDC and its Secretary is often reduced to ceremonial backing of Presidential decisions. Oftentimes, much depends on the personal influence (or lack of it) of the Secretary of NSDC. As Yuliya Mostova, a knowledgeable domestic expert and first deputy editor-in-chief of influential weekly, “Dzerkalo Tyzhnia,” observed: “The Council serves as props to reach Kuchma’s decision. Within the available competence the duty of the NSDC Secretary could be performed by any tractable politician.”⁴

As far as the powers of the Head of State to declare the state of war or to declare the state of emergency is concerned, under the Constitution, the President “forwards the submission to the Verkhovna Rada of Ukraine on the declaration of a state of war, and adopts the decision on the use of the Armed Forces in the event of armed aggression against Ukraine”. In this particular case the Verkhovna Rada has the authority of “declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine”.

The Constitution, however, empowers the President of the Ukraine to decide on introducing the state of emergency and to declare zones of emergency in the Ukraine or in parts of its territory, with further approval of such decisions by the Verkhovna Rada of Ukraine.

³ There are no specifically «presidential» security structures in Ukraine. However, given current exclusive Presidential authority over security structures, practically all of them could be considered as “presidential”.

⁴ Yuliya Mostova. “Brave Man, Afraid of Everything”, *Dzerkalo Tyzhnia*, 28 June – 4 July, 2003.

The President of Ukraine also has the power to introduce a special regime in crisis situation. The President signs the Decree and afterwards submits it to the Verkhovna Rada of Ukraine for approval. The Verkhovna Rada is obliged to consider the Decree within two days after it has been submitted.

According to the Law, "On Legal Regime of the State of Emergency", the President of Ukraine, as the Supreme Commander-in-Chief of Armed Forces of the Ukraine, coordinates the order of interaction of military forces, which participate in carrying out the specific measures in crisis situations with other state and local bodies.

The Ukrainian Constitution also gives the President the power to make, according to legislation, the decision to introduce martial law in the Ukraine. According to the Law, "On Martial Law", the President, in his duty as the Supreme Commander-in-Chief of Armed Forces, carries out guidance of strategic planning of use of the Armed Forces and other military formations, established under the laws of the Ukraine. He also coordinates the introduction and the carrying out of the measures of the legal regime of martial law through the appropriate body, namely, the General Staff of the Armed Forces.

The "Law on State of Emergency" sets out the duration of the state of emergency. Normally it should not exceed 30 days for the entire territory of the Ukraine and 60 days in parts thereof. In case of necessity the President may prolong the state of emergency for no more than 30 days. Therefore, the maximum duration possible is 90 days. Such prolongation is to be approved by the Parliament.

It should be noted, however, that although the special regime is declared and abolished, as well as its duration, by Decree of the President, he might not adopt it himself. The Decree is adopted on the initiative from the National Security and Defence Council, the Cabinet of Ministers, the Verkhovna Rada, the Verkhovna Rada of the Autonomous Republic of Crimea and local authorities in accordance with the relevant Laws. The Decree should be approved by the Verkhovna Rada to gain effect.

It should be noted, however, that such general distribution of powers in the Ukraine's system of civilian control with domination of the President did not always exist. Until the adoption of Ukraine's Constitution (1996), the powers of the Verkhovna Rada in security domain were much stronger, when the President, for example had to seek the consent of the Parliament on appointment of the heads of security structures and other issues he now resolves independently.

However, in the absence of strong public interest to control the security structures in 1990-s, this function was eventually concentrated in the hands of the President. The Ukraine still remains in a contradictory situation, where the President has broad powers with respect to “control” over the activity of troops, but his responsibility for the state of affairs is, in fact, limited, since he does not resolve financial issues and has no structures for ensuring current support for the security structures. So, broad Presidential powers in “control” over the Armed Forces and other security structures appeared to be difficult to translate into their “effectiveness”. When something goes wrong, the official made responsible is never higher than the head of the unfortunate security structure, which is natural – the heads of security structures do not represent political parties sitting in the Parliament, and they are just nominal members of the Cabinet of Ministers really responding to the President only.

As a matter of fact, for many years the President’s domination in the security sector of the state provoked crises in relations with other centres of power in the Ukraine, especially with the Verkhovna Rada. In 2003-2004 there were persistent attempts in the Verkhovna Rada to adopt amendments to the Constitution. The important part of all key proposals was devoted to the issue of control over the security sector. The difference between these proposals is basically in the timing of the transfer of current Presidential powers – either immediately, or after some transitional period, let’s say after the parliamentary election in 2006.

In summary, the President as the head of state, the guarantor of state sovereignty and territorial integrity of the Ukraine and the Supreme Commander-in-Chief of Ukraine’s Armed Forces, manages the domains of national security and defence. He controls security structures directly, as well as through the Presidential Administration and through the National Security and Defence Council of Ukraine. Heads of Ukraine’s security structures are immediately subordinate to the head of state and appointed by the latter without Parliament’s consent.

There are no grounds (by Autumn 2004) for casting doubt on the reliability of Ukraine’s security structures’ subordination to the elected Head of State: Ukraine’s President, in fact, is in sole charge of their activity. Formal (and more particularly real) levers of presidential control are much stronger than the levers of influence on security structures by the Verkhovna Rada or the Cabinet of Ministers.

Given such broad, influential and penetrating control of the President of Ukraine over the security sector of the country, the specifics of the role of the President will be considered in more detail throughout this study.

Government, Ministers, and General Staff

Democratic society cannot be built up in the Ukraine without the creation of a system of democratic civilian control over the country's military (and other security structures). As far as the general constitutional, legal and procedural provisions for democratic control in regard to the Armed Forces are concerned, in general terms, the Ukraine has already built the legal foundation necessary for the functioning of a system of democratic civilian control. The requirements of the Ukrainian legislation dealing with democratic civilian control over the Armed Forces ensue from the Constitution of Ukraine and are fixed primarily in four basic laws: "On the Fundamentals of the National Security of Ukraine", "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State", "On Defence of Ukraine", and "On the Armed Forces of Ukraine"; as well as in the number of other laws, decrees and regulations.

According to the Constitution of Ukraine, it is a democratic state ruled by law (Article 1), where human life and health, honour and dignity, inviolability and security are recognised as the highest social values, and the establishment and guarantee of human rights and freedoms are the main duty of the state (Article 3); the people are the bearers of sovereignty and the only source of power (Article 5); the principle of the supremacy of law is recognised and applied (Article 8); power is separated into legislative, executive and judicial branches (Article 6).

These principles directly influence the formation of the regulatory legal base for democratic civilian control over the Armed Forces and over the national security sector overall.

The notion of democratic state means that power within the country originates from the people who exercise and control the exercise of power directly or through their representatives. This gives rise to the citizens' right to control the activity of those ruling, including the law-enforcement bodies and the relevant duty of state bodies to inform citizens about their activity, i.e., to act transparently. Democracy also envisages the division of powers, effective interaction between the branches of power and their mutual control.

The notion of a rule-of-law state means that the activity of state security structures should meet the principle of the rule of law, that is, first and foremost, the actions of the authorities should comply with national regulatory acts, and secondly, those acts themselves should meet the general principles of law: justice, equality and respect for human rights.

Constitutional provisions are specified and elaborated in the aforementioned basic laws containing the general provisions of the role and place of democratic civilian control within the Ukrainian national security system, where “establishing and securing human rights and freedoms” is identified as one of its three main objectives (Article 3).

The Law “On the Fundamentals of the National Security of Ukraine» defines democratic civilian control over the Armed Forces and other structures within the national security system as one of the key principles that guarantee the Ukraine’s national security. Those principles also include:

Priority of human and civil rights and freedoms;

The rule of law;

Clear delimitation of powers and interaction of the bodies of state power protecting the national security;

Adequacy of the measures taken to the character and scale of threats to national interests (Article 5).

Democratic civilian control is facilitated, *inter alia*, by the observance of the aforementioned principle of delimitation of powers of the state authorities, as well as by the provision of transparency in the activity of state bodies, defined by the Law as one of the key lines of national policy in the domain of national security of the Ukraine (Article 8). However, the general tenets of this Law are much broader than specifics of democratic control. They will be analysed in greater detail in one of the next chapters (see Chapter F. “National Security Strategy”).

The Law “On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State” contains, *inter alia*, definitions, key tasks, general principles and the list of entities subject to control.

Democratic civilian control is defined as a “set of legal, organisational, informational measures aimed at steadfast observance of the law and publicity in the activity of all components of the military organisation and law-enforcement bodies of the state, promotion of their effective operation and performance of assigned functions, strengthening of state and military discipline implemented pursuant to the Constitution and laws of Ukraine” (Article 1).

Among the main objectives of democratic civilian control, one should point out arrangements for the importance of political overtures regarding the direction of the activity of security structures (Article 2). However, this in no way means politicisation of their activity. This means orientation of the institutions controlling the activity of these structures solely towards the implementation of tasks “defined by the fundamentals of home and foreign policy”, i.e. the tasks set by the law. Meanwhile, the Law mentions de-politicisation and de-ideologisation among the main principles of civilian control (Article 4).

The Law lists the following general principles of democratic civilian control over the Armed Forces and other security structures (which naturally are very similar to the principles of the guarantee of the Ukraine’s national security):

The rule of law;

Clear delimitation of functions and powers in political management professional military and management of law-enforcement activity;

Interaction and responsibility of state authorities and security structures;

Judicial protection of the actors engaged in civilian control;

Transparency.

The Law defines the actors engaged in civilian control as the legislative, executive and judicial bodies, as well as individuals and public organisations (Article 6). The actors engaged in civilian control enjoy the right to request information from security structures and to receive a response, as provided by the Law (Articles 10, 11, 18-20).

The Law formally provides for the division of authority of the branches of power exercising control so as to avoid excessive concentration of influence on law-enforcement bodies in one of them. For instance, the budget of the law-enforcement bodies is drawn by the Cabinet of Ministers (Article 15), approved by the Verkhovna Rada (Article 8), and the use of funds is controlled by the Accounting Chamber (Article 12). The Cabinet of Ministers draws up programmes of reform of the Armed Forces and law-enforcement bodies as well as bills (Article 15) for approval by the Verkhovna Rada (Article 8).

As far as the specific role of the Government is concerned⁵, the Cabinet of Ministers, according to the Constitution and the laws of the Ukraine, monitors the activities of the Armed Forces and performs other functions on provision of military and mobilization readiness and functioning of the Armed Forces. It also elaborates on proposals regarding the budget of the Armed Forces and other security structures, provides for the implementation of these budgets and reports to the Verkhovna Rada on its activity.

Pursuant to the Constitution of Ukraine, the Cabinet of Ministers of the Ukraine (CMU) adopts measures to ensure the defence capability, national security, public order, struggle with crime; it also delegates and co-ordinates the work of ministries and other executive bodies. The powers of the Prime Minister among others also encompass submission of candidacies for the appointment of the heads of ministries and other central executive bodies (including the Minister of Defence and the Minister of Internal Affairs) to the President.

The CMU, entrusted with the formation and implementation of state policy (pursuant to the strategy specified by the Cabinet), including the security sector, is the Government Committee on Defence, the Defence Industry and Law Enforcement. The Committee consists of: the Prime Minister as Chairman of the Government Committee; Defence Minister as Deputy Chairman of the Government Committee; ministers of internal affairs, foreign affairs, economy and European integration, industrial policy, justice; First Deputy Minister of Finance; Head of the State Border Service; First Deputy Head of SBU; Deputy of the Minister of the Cabinet of Ministers (*ex officio*); People's Deputies (parliamentarians) of Ukraine (with their consent). Decisions of the Government Committee passed within the limits of its powers are binding.

The CMU Secretariat operates two departments dealing with defence and other security issues respectively: the Department of Defence, Defence-industrial Policy and Military-technical Co-operation and the Department on Activity of Justice and Law-enforcement Bodies. Unfortunately, public sources give no information on their functional tasks and powers.

Meanwhile, the Law, "On the Cabinet of Ministers of Ukraine," regimenting the discharge of functions by the Government has not entered into effect due to its being repeatedly vetoed by the President. More so, actual duplication of the Government's functions in security domain on the part of the Administration of the President largely diminish the possibility of

⁵ The general roles of the President and of the Verkhovna Rada in the system of democratic civilian control over the Armed Forces and other security structures in Ukraine are analysed in chapters A and C of this volume respectively.

the Cabinet of Ministers of exercising their Constitutional powers dealing with the activity of the Armed Forces and other security structures.

The constitutional fundamentals and provisions of the basic laws stipulating the competence of state bodies responsible for civilian control are specified in greater details in the Law, "On Defence of Ukraine," and other laws that deal with the issues of security sector of the state. In particular, the functioning of Ukraine's Armed Forces and other security structures on defence matters is stipulated in the laws, "On the Border Troops of Ukraine," "On the Internal Troops of the Ministry of Internal Affairs of Ukraine," "On Civil Defence in Ukraine," "On the Security Service of Ukraine," etc.

It should be noted that in the absence of the Law, "On the Cabinet of Ministers of Ukraine," the duties of the CMU of Ukraine regarding control over the Armed Forces are stipulated in the Law "On Defence of Ukraine," which provides the list of 17 general responsibilities (Article 9), as well as in the Law "On the Armed Forces of Ukraine," listing 8 general responsibilities of CMU, which in their substance mainly coincide with the list of the Law "On Defence of Ukraine".

According to the Law, "On Defence of Ukraine," the Ministry of Defence is the central organ of the executive power responsible for implementing the state policy on defence matters, as well as for development of the Armed Forces, their mobilisation and combat readiness to perform assigned functions and tasks (Article 10). The Law also gives the list of 16 general responsibilities.

The Law further provides that the General Staff of the Armed Forces of Ukraine is the principal military organ in the system of state defence planning and in the operational administration of the Armed Forces. It is primarily responsible for strategic co-ordination and control of defence matters between all central and local executive bodies and other security structures. There is also a list of 19 general responsibilities of the General Staff (Article 11).

In similar fashion, the Law defines missions for other security structures in the area of defence (Article 12), as well as responsibilities of central and local executive bodies and industries. (Articles 13-16)

According to the Law, "On the Armed Forces of Ukraine," the Ministry of Defence performs military-political and administrative guidance of the activity of the Armed Forces, carries out state policy, works out the principles of the build-up of armed forces and defines the ways of

their development and training in peace as well as in wartime. The Ministry monitors adherence to legislation within the Armed Forces (Article 10). However, this Law does not list the responsibilities of the General Staff.

The general responsibilities of the Ministry of Defence and of the General Staff stipulated in the Laws, “On Defence of Ukraine,” and, “On the Armed Forces of Ukraine,” are further specified in detail in the Charter of the Ministry of Defence and the Charter of the General Staff of the Armed Forces established by the Decree of the President⁶. These Charters provide for 40 specific responsibilities of the Ministry of Defence and for 47 specific responsibilities of the General Staff respectively.

In particular, the Charter of the General Staff of the Armed Forces provides that “The General Staff is headed by the Chief, who is appointed in accordance with the proposal of the Minister of Defence or relieved from his duties by the President of Ukraine. The post of the Chief of the General Staff can be occupied only by the military serviceman. The Chief of the General Staff reports to the Minister of Defence. When the Minister of Defence is a Commander of the Armed Forces, the Chief of the General Staff is his first deputy. When the Minister of Defence is civilian person, the Chief of the General Staff is a Commander of the Armed Forces” (Article 6).

This means that the appointment of the Chief of the General Staff does not require Parliamentary approval. This also means that the direct superior of the Chief of Staff is the Minister of Defence, both in peacetime and in war. In addition, the above quotation from the Charter repeated the norm of the Law, “On the Armed Forces of Ukraine,” which provides for the possibility of appointing either a civilian or military person to the post of Minister of Defence.

The extent to which the General Staff is included in the Ministry of Defence’s decision-making process or allowed to initiate policy decisions (for e.g., force structure, purchases) independently from the Minister of Defence is also specified in the Charters. The Charter of the General Staff of the Armed Forces provides for the freedom of action only within assigned missions and under subordinate status to the Ministry of Defence. However, there are few instances when the responsibilities of the Minister of Defence and the Chief of the General Staff are equal. The Charter of the Ministry of Defence, in particular, lists several important instances, when decisions are valid only if approved by both the Minister and the

⁶ The division of responsibility between the Ministry of Defence and the General Staff of the Armed Forces was agreed upon for the first time in January 1997. Since that moment these responsibilities have undergone several rounds of amendments and redistributions.

Chief: “Orders and directives on the issues pertaining to reform and development of the Armed Forces, their combat and mobilization readiness, operational (staff) and combat training, organisational measures and inspections of the troops (forces) Minister issues together with the Chief of the General Staff” (Article 12). These instances, as it is evident from the above quotation, establish higher responsibility for decision-making in the most important areas of military activity, but also insure sound advice from the military to the civilian Minister.

In terms of a civilian versus a military person occupying the post of Minister, it should be mentioned that from September 2003, the Ukraine already has had its second civilian Minister of Defence, Yevhen Marchuk (formerly Head of SBU, retired from the military with rank of General in the Army) and the sixth overall from the time of becoming an independent state. The first civilian Minister of Defence, Valeriy Shmarov, occupied this post in 1994-1996, but opposite to the appointment of Marchuk. In 1994, the legislature, the military and the civilian population was psychologically unprepared for the role of a civilian minister exercising control over defence matters.

It seems that the time is now ripe to abolish the “duality” of possible status of the Minister of Defence – either civilian or military. Under the classic scheme (when the Ministry of Defence is headed by a civilian politician, period), all professional military activities are subordinate to the Chief of the General Staff as the head military leader, who is, at the same time, the main military advisor to the Minister of Defence and the President - the Supreme Commander-in-Chief of the Armed Forces. Thus, periodical rotation of the political leadership of the country (the President, Parliament and the Government, including the Minister of Defence) does not automatically lead to the replacement of the top military command (often the case in the Ukraine), which guarantees uninterrupted control of forces, continuity in the Armed Forces command and execution of long-term state programmes.

As in the case of appointment of top military leadership, the President has exclusive powers to appoint and dismiss the top leaders of the police (in Ukraine - *militiya*), intelligence and border guards.

In reality, however, it is the Administration of the President that is the only body that effectively controls intelligence and law-enforcement bodies. The fact is that there are specific executive powers this controlling body has, but it does not assume immediate responsibility for the results of its actions. Such responsibility is indirectly passed on to the President himself, on whose behalf the Administration of the President acts, but who is not

immediately in charge overall. Heads of intelligence and law-enforcement bodies right down to the regional level (in the military – down to brigade level) are co-ordinated with the Administration of the President, not the Verkhovna Rada.

As a result, virtually all managerial and executive functions (in fact, their power) are concentrated in the hands of the Administration of the President. Ukrainian legislation in effect does not grant this body such functions, since, according to the Constitution of the Ukraine, the President cannot delegate his powers to any state body or official in public administration in general nor to any civilian control over security structures in particular.

Such a system, among other things is considered not transparent and is often criticized within Ukrainian society as well as abroad. To respond to this criticism, certain declarative measures were periodically taken. However, the directives of the President, who more than once emphasised the need for observance of the principle of transparency in the activity of law-enforcement bodies, were not properly implemented. For instance, in January 2001, the President said: “For me, the urgent need for the reform of the law-enforcement system is evident. First of all, this is to ensure greater effectiveness and transparency in its work and accessibility for public control”⁷. In August 2002, by virtue of the Presidential Decree, “On Additional Measures for Ensuring Transparency in the Activity of the Bodies of State Power,” the Cabinet of Ministers was instructed to “arrange, starting from January 2003, quarterly drafting of reports on the work of the Cabinet of Ministers on activities aimed at ensuring the defence capability and national security of Ukraine, public order, struggle with crime based on the preliminarily set, deeply entrenched structure and publication of the report for broad public discussion...”⁸

Notwithstanding these comments, there have been no such “broad public discussions” about such CMU reports even to this day because these reports are not available in accessible sources of information. Moreover, those sources do not give detailed and consistent statistical data on the state of law and order in the country, on the progress of so-called “notorious cases,” trustworthy substantiation of personnel changes in the law-enforcement bodies, etc.

In such a situation, the activity of law-enforcement structures (in the Ukraine, under law-enforcement structures, several bodies are meant - the police, the tax police, intelligence/counterintelligence agencies, Procurator office, customs and border guards)

⁷ *Interfax-Ukraine*, January 16, 2001.

⁸ President of Ukraine Decree No.683 of August 1, 2002.

remains largely closed and non-transparent for society, which relieves law enforcers of the responsibility for public control and distances them from the trust and support of the public.

As far as the civil service career system for Ministry of Defence civilians is concerned, it should be stated that for an effective civilian control, the Ministry of Defence should have a sufficient number of civil servants in executive positions at the level of heads of main directorates (military policy, logistics, personnel, foreign military co-operation, relations with Parliament, public relations, budget and finance, capital construction, defence research). In the Ukraine, it took a decade – from 1992 till 2003 - to move from mere discussion of this issue to the actual appointment of a critical mass of civil servants to key positions in the Ministry of Defence.

Sustaining this mass at the proper level of effectiveness would be impossible without an appropriate education programs and a system for promotion, pay, and allowances. Meanwhile, there was a basic experience of civilian “state service” already accumulated in “civilian” ministries. This experience just needed to be adopted into the military establishment, which proved to be not easy, but quite possible once there were sufficient political will.

Of course, there were numerous instances of tensions between civil servants and military professionals in 2003-2004. On the one hand, there was an instance in October 2003, when newly appointed Deputy Minister of Defence was relieved from the post within two weeks for physical abuse of duty officers in military hospital⁹. On the other hand, during the first year in office for Minister Marchuk, some 60 generals were relieved of their duties. Both sides were in need of time and effort to develop true respect for each side and to appreciate joint work. For more detailed analysis of a civil service career system for Ministry of Defence civilians see Chapter M. “Capacity building: security sector staff”.

As far as a military career system of the Armed Forces is concerned, it is still primarily based on the one the Ukraine inherited from the former Soviet Union. In this regard, an interesting observation was made by two distinguished Western scholars and is worth mentioning: “The career development system inherited from the Soviet system gives a very large measure of authority to commanders at every level, which includes authority for posting and promotion. An officer’s career development, therefore, depends almost exclusively on the opinion of his direct superior. The Soviet (and Ukrainian) Armed Forces never evolved the objective,

⁹ Alexandr Ilchenko. “Deputy Minister of Defence visited hospital: This could cost him a military career – the criminal case is about to be launched”. – *Segodnia*, October 8, 2003.

transparent, centralised personnel evaluation and reporting system that most Western armies have developed over the past few decades. Most personnel decisions are made on a “case-by-case basis”, with the results depending on the ability of an officer and his supporters to lobby the responsible personnel department. The practical effect of this is that there is no mechanism whereby a Ukrainian Minister of Defence or Chief of the General Staff seeking to push through reform can establish policies and mechanisms to identify which officers have the requisite personal qualities to implement the desired reforms. Without this knowledge, a reforming leadership cannot post the right officers into the key positions to ensure that their orders from above are translated into action throughout the system. It is illustrative that only a few dozen of the over 1000 Ukrainian personnel trained in NATO countries serve today in positions where their training can be put to use. In many cases, the Ukrainian system even refuses to acknowledge that their training has any validity.”¹⁰

But nevertheless, the Ukraine has managed to develop its own elaborate legal and procedural provisions for developing a military career system. There is a Law, “On General Military Obligation and Military Service,” which establishes the general framework for such a system. In particular, the Law provides that:

The President of Ukraine approves the list of posts to be filled with members of the senior officer corps. The Minister of Defence of Ukraine approves the list of all other posts.

The President of Ukraine appoints the Minister of Defence of Ukraine upon recommendation of the Prime Minister of Ukraine. The President of Ukraine may dismiss the Minister of Defence of Ukraine.

The President of Ukraine also appoints and dismisses Deputy Ministers of Defence of Ukraine, commanders of all military services of the Armed Forces of Ukraine, operational commands, individual armies, and higher commands of other military units.

The Minister of Defence of Ukraine appoints all other military officials.

Both civilian and uniformed military may be appointed Minister of Defence of Ukraine and Deputy Ministers of Defence.

¹⁰ James Greene and Christopher Donnelly. “The basic principles of structuring modern armies – in the context of Ukrainian security and defence reform”. – *National Security & Defence*, No.7, 2003.

Civilians may fill certain military posts in peacetime (pursuant to their respective labour agreements) in the order established by the Minister of Defence of Ukraine.

The Ministry of Defence of Ukraine and the Ministry of Education of Ukraine set forth programs for training officers at military institutions of higher education and military departments of civilian institutions of higher education.

The Law, among other general tenets, establishes age limits on military service, military ranks, basic order for joining and leaving the military, etc. However, despite the existence of this Law adopted by Verkhovna Rada, the key role in establishing all important specifics of a military career system like promotion criteria, promotion boards, education programs, etc., still belongs not to the legislative branch, but almost exclusively to the President and the Ministry of Defence. The President establishes all the practical rules, while their further elaboration and implementation is vested in the Ministry of Defence. In particular, the key regulating Charter, "On career developments for officers and warrant-officers of the Armed Forces," was adopted by the President. Among the long lists of detailed instructions, the Charter provides for the following important measures:

Servicemen, and persons subject to military service are conferred in accordance with their professional experience, organizational abilities, military and specialized training, service record, their post, and other criteria laid down in this Regulation;

The President of Ukraine confers military ranks upon members of senior officer corps upon recommendation of the Minister of Defence of Ukraine;

Military ranks for members of junior and senior officer corps are conferred consecutively, upon completion of their service under the previous rank, provided that they maintain a positive record and that the consecutive ranks correspond to the military ranks required by their staff posts;

The Minister of Defence of Ukraine sets forth the order in which military ranks are conferred in accordance with this Regulation;

Requests for conferring consecutive ranks beginning with colonel (Captain of the Navy) and above, as well as any consecutive ranks prior to the completion of service under the previous rank, are considered at the meetings of military councils of operational commands and the commands of all services of the Armed Forces;

Requests for conferring ranks upon members of senior officer corps are also considered by the High Commission on Performance Evaluation and the leadership of the Ministry of Defence of Ukraine;

The President of Ukraine lays down the order in which ranks are conferred upon members of the senior officer corps;

The posts to be filled with members of the officer corps and warrant officers, as well as respective military ranks, are set out in relevant staff regulations;

Members of the officer corps are appointed to staff posts by their commanders in accordance with the Nomenclature of Officer Posts approved by the Minister of Defence of Ukraine;

Vacant officer posts are filled with active duty officers through professional selection and on a competitive basis;

Members of the officer corps are appointed and moved between posts falling under their main or related specialization or experience. Should they be appointed to posts requiring a different specialization, they must receive relevant professional training;

Requests for appointing regiment commanders, persons of equivalent and higher ranks are considered at the meetings of relevant military councils and in the order set out by the Minister of Defence of Ukraine;

The Minister of Defence of Ukraine sets forth the order in which members of the officer corps and warrant officers are appointed and dismissed from their posts;

Members of the officer corps and warrant officers are appointed and dismissed by their commanders based on the results of performance evaluations and recommendations of their immediate supervisors;

Promotions are granted on the basis of professional qualities, achieved results, the ability to perform the required duties under the conditions of hardship, and good health;

A reserves list of candidates is created for the purpose of filling vacant posts, promotion, and servicemen education at military units, joint, operational and Armed Services commands,

General Staff of the Armed Forces of Ukraine, and the staff of the Ministry of Defence of Ukraine.

The major positive differences from the Soviet military career track are the absence of ideological indoctrination and the possibility of studying abroad. But, the negative differences are found in the much lower level of pay and allowances as well as a much lower prestige of the military service in society. Some changes were also introduced in the military education system, when education became more joint at all levels, but less time-wasteful on the level of middle and senior officers. For instance, after the dissolution of the USSR, the Ukraine inherited a numerically huge amount of Soviet scientific and educational systems. In 1991, there were some 150 colleges and universities, of which some 50 were military colleges and academies. However, all that potential was oriented towards servicing the security interests of a larger totalitarian state. It was fractional in form and unsystematic in substance. Somehow, the Ukraine has managed to numerically retain and even increase its system of higher education – the number of higher educational establishments has more than doubled and in 2004, there were over 300. The country has also adapted the system of military education to standards compatible with civilian institutions, while substantially (three times) reducing the number of military educational establishments. The system currently includes 3 senior level academies, 5 military institutes, 6 military institutes within civilian universities, and 4 military faculties at civilian universities.

However the interests of independent Ukraine required not just reductions and reshufflings as before, but more substantial and quality improvements within the military career system. In fact, by 2004, the Ukraine's own experience of independent military development, as well as the different nature of Ukrainian military doctrines from former Soviet ones prompted some key tenets of promotion criteria to be changed. In particular, this refers to many aspects of the military career system like the terms of obligatory service in each officer's rank; terms of rotation of officers after serving certain period at one place or at one position; requirements to professional military education; etc.

At this moment, after the Verkhovna Rada adopted radical numerical reductions of the Armed Forces in June 2004 (from previously planned 295 thousand of active military personnel by the end of 2004 to a much lower ceiling of 210 thousand), further changes in military education system were immediately announced.

Meanwhile, despite the many planned reforms, even more changes will be required in the future. These will concern certain areas untouched so far, like military ethos, daily routine,

social conditions, etc. Significant changes in the professional requirements defining the criteria for military career are conditioned by the changing nature of combat training and combat missions, when much more contemporary attention is paid to the issues of peace-keeping, interoperability and foreign language proficiency.

Ukrainians started a number of important changes to adopt their force structure, staff procedures, and professional education system to the standards of their Western partners. However, problems remain with the full adoption of Western combat and training doctrines and with the leadership/decision-making style. The comprehensive adaptation of Ukrainian manuals, headquarters' techniques and leadership styles to NATO models is declared, but not seriously implemented on the agenda yet. And to ensure effective implementation of doctrinal change, there will likely need to be a longer-term and deeper "cultural" change (and possibly a generational change) in the Ukrainian military and in the minds and styles of its members. Any more sudden radical "change of minds and styles" of the senior Ukrainian military leadership, especially when this is not strongly encouraged by their political masters, appears highly unlikely. This means that adoption of new standards of professional development and, consequently, new criteria for career progress are matters for the future.

In summery, there are reasons to believe that the general regulatory-legal base of civilian control that regulates the basic issues of operation and further development of the Armed Forces and law-enforcement structures has already been established in Ukraine.

Analysis of the provisions of the Ukrainian Constitution and its basic legislative acts proves that these documents generally provide for the establishment of democratic civilian control over the Armed Forces and law-enforcement structures on the basis of universal democratic principles: the rule of law, respect for human and civil rights, democratic accountability, transparency, de-politicisation and de-ideologisation of control.

The strict distinction between the functions of political control and the administration of military formations exercised by the Ministry of Defence, on the one hand, and purely professional military-command of their activities exercised by the General Staff, on the other, is supported by legislation and established in real practice.

However, the Constitution and basic legislative rulings regarding civilian control themselves lay down the systemic prerequisites for the ineffective division of powers and responsibilities between the branches of power. This occurs because the President has exclusive powers in exercising control over the Armed Forces and law-enforcement structures through the

appointment of the top leadership of these structures and through establishing of all specific regulations regimenting the functioning of these structures.

The military career system so far continues to retain many old style Soviet organisational forms and traditions. There are attempts to modernise it in accordance with requirements of an independent Ukraine, but much work remains to be done in order to become compatible with Western standards.

The Parliament (Verkhovna Rada)

The Verkhovna Rada is the highest supreme legislative body in the Ukraine. It has one chamber of 450 parliamentarians one half elected in half by local constituencies (the majority) and one half through the political parties' lists. Pursuant to Article 85 of the Constitution, the key powers of the Verkhovna Rada give it the direct or indirect possibility to influence the activity of the security sector and these include:

Adopting laws;

Approving the State Budget of Ukraine and introducing amendments to it; controlling the implementation of the State Budget of Ukraine and adopting decisions in regard to the report on its implementation;

Declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;

Confirming the general structure and numerical strength, and defining the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military formations created in accordance with the laws of Ukraine, and also the Ministry of Internal Affairs of Ukraine;

Approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states on to the territory of Ukraine;

Granting consent for the appointment to office by the President of Ukraine of the Procurator General of Ukraine; declaring no confidence in the Procurator General of Ukraine that has the result of his or her resignation from office;

Confirming, within two days from the moment of the address by the President of Ukraine, decrees on the introduction of martial law or of a state of emergency in Ukraine or in its particular areas, on total or partial mobilisation, and on the announcement of particular areas as zones of an ecological emergency situation;

Definition of fundamentals of home and foreign policy;

Granting consent to the binding character of international treaties of Ukraine within the term established by law, and denouncing international treaties of Ukraine;

Exercising parliamentary control within the limits determined by the Constitution.

In addition to the above powers, the Verkhovna Rada has the constitutional power to consider the vote of non-confidence to the Government and, in fact, fire the Government by a simple majority of 226 votes out of the total of 450 parliamentarians, which theoretically means relieving the Minister of Defence and the Minister of Interior.¹¹

The requirements of Ukrainian legislation dealing with democratic civilian control over security sector ensue from the Constitution of the Ukraine and are fixed primarily in two basic laws passed on June 19, 2003: "On the Fundamentals of the National Security of Ukraine" and "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State." The constitutional fundamentals and provisions of the basic laws are elaborated in constituent and branch legislative acts dealing with the activity of security structures (specialised legislation), such as the Laws of Ukraine, "On the Verkhovna Rada of Ukraine Committees," "On the Status of a People's Deputy of Ukraine," "On the Verkhovna Rada of Ukraine Commissioner for Human Rights," "On the Accounting Chamber," and in Verkhovna Rada's Regulation, "On the Procedures of Verkhovna Rada of Ukraine."

The Verkhovna Rada, as the highest supreme legislative body performs the function of civilian control via permanent parliamentary committees. As provided by the Constitution, committees of the Verkhovna Rada draft bills, prepare and preliminarily examine issues

¹¹ In practice, however, the Minister of Defence and the Minister of Interior never retire together with the Cabinet of Ministers, since they are reporting first and foremost to the President of the country. So, in every instance of the Cabinet reshuffle in the past, these ministers were simply reappointed again.

within the competence of the Verkhovna Rada (Article 89). Accordingly, the stance of specialised parliamentary committees is of importance during consideration of issues dealing with the activity of the security structures in the Parliament.

Parliament also exercises its supervisory powers through the Accounting Chamber, which controls the use of funds of the National Budget, through the permanent commissions of Verkhovna Rada (on certain issues of high importance) and through the Verkhovna Rada Human Rights Commissioner (post established in 1998). For the examination and preliminary review of certain urgent important issues, the Verkhovna Rada may establish temporary investigative and ad hoc (special) commissions.

Given the broad constitutional powers, parliamentary control presents an important element of the system of civilian control over the security sector. However, with all these written constitutional and legislative powers of the Verkhovna Rada, its real influence over security sector is rather limited and is universally considered as significantly lower than that of the President.

In the developed countries, the Government (including the heads of security structures) is formed by the parliamentary majority or is approved by the Parliament. This common procedure allows the legislative body to influence personnel policy within security structures. In Ukraine, however, the Verkhovna Rada currently has no power over appointment or dismissal of individual heads of security structures. This often causes the display of low respect and even ignoring of the Parliament by the leadership and representatives of security structures, especially in instances involving interests of opposition parties. Consequently, under the condition of limited influence of the third major branch of the power – judicial powers – such an attitude hampers the effectiveness of real parliamentary control over specific security issues and often makes it very difficult to enforce certain decisions and even enacting legislation if, for instance, the position of the Parliament and that of the President significantly diverge.

Other “classic” levers of parliamentary control in democratic states include the formation of the legal basis for the operation of military formations, the approval of the defence budget, and the approval of state programmes for the reform/development of security structures. Here, too, the real influence of the Verkhovna Rada is conditioned by the interests of the President and the Government, as in the case of adoption of legislative acts and the defence budget, which may be vetoed by the President. For example, to overcome a veto by the President, a constitutional majority of 300 votes is required. And in case of approval of state

programmes for the reform/development of security structures, the Parliament so far has neither real powers nor any real independent capacity.

The President, as a head of state, by his decree, approves the State Programme for Reform and Development of Ukraine's Armed Forces and other similar programmes. These programmes in the past were traditionally approved without a prior broad discussion in the Parliament, as Ukraine's Constitution does not require this. It is noteworthy that these documents define the parameters of the total numerical strength of the Armed Forces, or other security structures although the Constitution puts it as the exclusive prerogative of the Verkhovna Rada. So, the President or the Government have to submit to the Verkhovna Rada a bill on the new ceilings and structural changes. Given strong Presidential influence over the Verkhovna Rada, the latter, after some deliberations usually (but not always), approves the new parameters.

However, since the Parliament was not involved in the development of the programmes for reforms of security structures, it naturally had low incentive to fight for the proper funding of these programs at the implementation stage. In the end, the primary share of the defence budget for years included only the expenses on sustaining the basic needs of military personnel and a bit on weapons' maintenance, with almost nothing for modernisation and training. As a result, attempts at resolving the problems of the Armed Forces development by efforts of the executive branch (without proper legislative support) for years were failing to produce a positive result.

Provision for the right of approval of state programmes for reform/development in security sector by the Verkhovna Rada, established by the Law, "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State," in 2003, and not just by the President, as it was the case until today, would very likely harmonise the process of the security sector reform. In particular, this would help resolve a number of related problems. First, this would raise the transparency of the processes in the security sector thanks to a more detailed elaboration of the defence needs and the institution of control over the use of budget funds. Second, responsibility of the Verkhovna Rada, the Government, the Ministry of Defence and the executors of the programmes will increase; parliamentary discussion will become more specific – as a result, better-substantiated decisions pertaining to defence budget will be passed. Third, adoption of the Programme by Parliament will impart it a status of the law, which will make the items of defence expenditures better protected, which meets the interests of the military.

This issue should have been resolved long ago. The Constitution neither requires nor bans this, but the previous (still alive) practice was caused by the desire of the President and the Government to avoid the parliamentary procedures of decision-making in the sphere that requires rapid reaction. But the power of tradition in this case is so strong, that even a year after the Law provided the Verkhovna Rada with this important power to adopt defence reform/development programs, not a single program was adopted or even drafted in the Parliament. The latest defence reform parameters were again adopted by the President in the document called Strategic Defence Bulletin and partly submitted for the approval of the Verkhovna Rada in regard to the changes in total strength and overall structure of the Ukraine's military (constitutional authority of Verkhovna Rada).

In the opinion of defence experts, successful practical exercising of the recently acquired right of approval of state programmes for reform/development in the security sector, as well as acquiring powers to appoint the heads of security structures would be the first steps on the way out of many of the current deadlocks in security sector of the Ukraine.

The Committee on National Security and Defence is the key structure of the Verkhovna Rada in dealing with civil-military relations. In this capacity, the committee considers draft legislation, prepares preliminary overviews of issues pertaining to the national security and defence. The Committee consists of five sub-committees:

Sub-Committee on Economic Security, Military-Industrial Complex, Military, and Military-Technical Cooperation;

Sub-Committee on Informational, Technological, and Ecological Security;

Sub-Committee on Legislative Regulation of Security, Intelligence, Counterintelligence, Border and Customs Bodies;

Sub-Committee on Military Reform, the Armed Forces, and Civil Defence Troops;

Sub-Committee on Social Protection of Servicemen, their Families, and Military Pensioners;

These subcommittees are created in accordance with the Law, "On the Verkhovna Rada of Ukraine Committees," which stipulates that committees may establish sub-committees with a view to organizing work within specific areas. Sub-committees should include at least three members of the committee. Members of the committee may have membership in more than

one sub-committee. Sub-committees are supported by the respective divisions in the committee Secretariat and its staff members.

The main functions of the Committee on National Security and Defence are as follows¹²:

- lawmaking, including the examination, upon instruction from the Verkhovna Rada of Ukraine or on its own initiative, of draft laws and other documents pertaining to the issues of national security and defence; preliminary review and preparation of conclusions and recommendations with regards to draft laws submitted by other subjects empowered to propose laws; and the follow-up readings, upon instruction from the Verkhovna Rada or on its own initiative, of draft laws after their consideration by the Verkhovna Rada.
- participation in reviewing and adopting the State Budget, controlling the use of the State Budget funds;
- preliminary review of international treaties and agreements on national security and defence issues; preparation of conclusions with regards to their ratification or denunciation;
- preliminary review of draft economic, scientific-technical, social, national-cultural development and environmental protection programs; preparation of conclusions on issues pertaining to national security and defence.

The Committee also reviews the issues pertaining to the implementation of laws and acts of the Verkhovna Rada dealing with national security and defence on a regular basis. Based on the results of discussions and analysis of the situation on the ground, the Committee may also give specific recommendations on national security and defence issues to the President and the Government of the Ukraine.

The Secretariat of the Committee organizes the work of the Committee providing information, consultations, and documentation. The staffs of the Secretariat comprise about 30 experts. The Secretariat of the Committee also publishes reference materials on the national security law, military matters, peacekeeping activities, social protection of servicemen and their families, as well as materials of the "roundtable" discussions on important security issues organized under the auspices of the Committee.

¹² For more information, see the web site of the Verkhovna Rada of Ukraine Committee on National Security and Defence <http://www.rada.gov.ua/~k_obor/>.

There is no special parliamentary committee in Verkhovna Rada dealing exclusively with intelligence issues. The Committee of the Verkhovna Rada on National Security and Defence includes for these purposes a subcommittee “on the issues of legislative support of the activity of bodies of security, intelligence and counterintelligence, border and customs bodies”, powers of which are basically limited to preparation of draft laws and sessions of this Committee devoted to the issues pertaining to the activity of intelligence and counterintelligence agencies.

There is also no specialised parliamentary committee of the Verkhovna Rada on home affairs (internal security). The functions of parliamentary control over law-enforcement bodies of Ukraine responsible for internal security are spread between two committees of the Verkhovna Rada: Committee on the Legislative Support to the Law-enforcement Activity and Committee on the Issues of Fighting Organized Crime and Corruption.

Other parliamentary committees may also consider the issues pertaining to internal security, as well as to defence and intelligence in their respective areas of responsibility. For instance, Budget Committee, Committee on Social Protection and Veterans Affairs, Committee on Foreign Affairs, Committee on Issues of European Integration, etc.

Chief amongst them is the Budget Committee, which among other things also deals with the defence budget – one of the most critical spheres in civil-military relations. Theoretically, this Committee initiates and coordinates all budget cycles: controls the processes of preparation and adoption of defence budget, provides for its transparency during implementation stage and reviews the report on its implementation at the end of financial year.

However, the Budget Committee has no separate sub-committee on defence budget, or budgets of other security structures. As a rule, parliamentarians treat the discussion of defence issues at the stage of defence budget adoption quite seriously, but far less attention is paid to control over its execution. As a matter of fact, the Budget Committee in its current role is not even supported by sufficient number of qualified staff to effectively deal with budgeting of national defence and overall security sector. In addition, there are certain specifics in the practice of the budgeting process itself, when the role of the Budgeting Committee is basically limited to the general coordination and oversight of the budgeting process, while most of real powers on development of budgets for specific sectors, like national defence, belong to the Ministry of Finance and somewhat to specialised Committees (in this case – Committee on National Security and Defence).

The Budget Committee can and does interfere in the distribution of budgetary items, but in the case of the defence budget, it objectively can not make any major difference, particularly because of existent systemic problems: from the beginning, the structure of the defence budget is rather simplistic (as noted above – most of money is spent on personnel), and the process of planning and programming is inherently deficient. The existent practice of limiting the defence budget to a one year term has proved ineffective; the procedure of defence budget formation and substantiation requires serious changes to better reflect long-term development plans.

There is still a problem of low transparency in the defence budget. Though it is not totally closed as it was the case in early 1990s, it still has only about 30 lines in it, which is in stark contrast to the most of developed democratic countries operating with hundreds of specific lines of appropriation in their budgets on national defence. The key legislation regulating defence budgeting, the Budget Code, still provides for a maximum possible secrecy of specific defence expenditures. Article 31 of Ukraine's Budget Code does not specify the criteria for the level of detail withing specific articles. It does not also provide for clear differentiation between the open and secret articles:

- the State Budget of Ukraine should contain the clarification for all expenditures, except those related to the state secret (secret appropriations);

- secret appropriations for the activity of the bodies of state power and for support of national security interests are included to the State Budget of Ukraine without detalization.

In fact, the above very general provisions of the Budget Code offer a permissive environment for limited transparency of the defence budget and other security related articles. So, it is difficult to judge, whether the appropriate parliamentary committees are able to review, even in closed session, secret portions of the budget to the same standards as the non-secret portion of the budget. This, in turn, makes it difficult to effectively structure the budget in order for spending to be well organized by program (linked to clearly-defined requirements), components (e.g. personnel expenses, fuel, temporary duty, contracting), and financial centre (unit/organization/project). Therefore, the problem of inadequate funding of security structures could possible lie not only in the limited resources of the state, but also in the lack of specificity (transparency) in the budget of how security structures function and how their missions correspond to national capabilities.

Meanwhile, the Budget Code does not require a stable and effective structure of defence budget, which almost every year changes and makes it difficult to be sure that all costs involved with national defence are clearly indicated in the budget, with clear indications as to what portion of the budget addresses current needs (e.g. operations, procurement, personnel), future development (e.g. research & development, infrastructure, implementation of reforms), and pre-existing liabilities (e.g. pensions, disposal of aging ammunition and weapons and environmental damage, etc).

So, it could also be concluded that, in addition to the current limited influence of the Verkhovna Rad with regard to top appointments as well as to the definition of priorities in the development of security structures, their reform problems were conditioned to a large degree by another important factor - the imperfection of the defence budgeting process itself (as another key indication of overall imperfect defence planning process).

As far as the parliamentary power of inquiry into defence and security issues is concerned, it should be mentioned, that on paper the Verkhovna Rada possesses significant authority, and if necessary, it has access to classified information. Deputies and heads of other bodies of state governance may turn to the Cabinet of Ministers with inquiries. Article 86 of the Constitution stipulates that:

At a session of the Verkhovna Rada of Ukraine, a People's Deputy of Ukraine has the right to present an inquiry to the bodies of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, chief officers of other bodies of state power and bodies of local self-government, and also to the chief executives of enterprises, institutions and organisations located on the territory of Ukraine, irrespective of their subordination and forms of ownership.

Chief officers of bodies of state power and bodies of local self-government, chief executives of enterprises, institutions and organisations are obliged to notify a People's Deputy of Ukraine of the results of the consideration of his or her inquiry.

The controlling powers of parliamentary committees are also impressive, though substantially restricted with the adoption of the Constitution in 1996, whereby the committees were mostly left with the functions of drafting bills and the examination and preliminary reviews of issues deemed within the powers of the Verkhovna Rada. The norms of the Law, "On the Verkhovna Rada of Ukraine Committees," specifying the powers of committees on making enquiry include the following:

All executive bodies, enterprises, institutions, organizations, and their officials must provide committees with all original documents and copies thereof upon their request.

When performing their control functions, committees may task appropriate bodies to conduct an investigation as referred to the Law of Ukraine "On Operational Detective Activity."

Within the area of their competence, committees may request that the Speaker of the Verkhovna Rada of Ukraine, the President of Ukraine, Cabinet of Ministers of Ukraine, heads of bodies established or appointed by the Verkhovna Rada of Ukraine, other institutions, organizations, and enterprises regardless of the form of their ownership provide information.

The recommendations of committees must be considered by executive bodies, local self-government bodies, civic organizations, enterprises, institutions, and organizations. They must report to the committees on the measures taken to implement the recommendations on the date set by committees.

However, in reality, these powers are often ignored, and even when inquiry is conducted successfully, the problem is that Parliament has very limited power to enforce its own recommendations made as a result of a particular enquiry. This is particularly typical when law-enforcement structures are under review. Heads of certain parliamentary committees are complaining that enquiries of parliamentary committees are often ignored, answered with formal replies or untrue information without any responsibility whatsoever.

Formally, the Verkhovna Rada and its committees have the powers to require ministers to appear before parliamentary Committees; to organize hearings; request cabinet officers, civil servants and the military to testify there; request members of the executive to testify in Parliament; and require ministers to answer parliamentary questions. In particular, the Law of Ukraine, "On the Verkhovna Rada of Ukraine Committees," provides:

Committees may introduce proposals with regards to the hearings of the reports of the Cabinet of Ministers, heads of ministries of Ukraine, and heads of other executive bodies at sessions of the Verkhovna Rada of Ukraine.

When performing their functions, committees may request that First Deputy Prime Minister of Ukraine, Deputy Prime Ministers of Ukraine, Ministers of Ukraine, heads of state committees, agencies, other executive bodies and organizations, trade unions, self-government bodies, civic organizations, and private citizens appear before the Verkhovna Rada with a view to

exercising control over the observance of the Constitution of Ukraine, legality, frugality, and efficiency with which funds from the State Budget are disbursed.

Upon its recommendation, heads of these bodies and organizations, and other officials must report to the committee on the issues under consideration. Should these officials fail to appear before the committee, provide false or inaccurate information, refuse to provide information or purposefully conceal it, they will be held responsible in accordance with the laws of Ukraine. This provision does not apply to the information constituting a state secret. The access to this information is regulated by a special body of law.

Committees may require that officials, heads of institutions and organizations [referred above], attend sessions of the Verkhovna Rada of Ukraine when relevant issues are considered.

However, these aforementioned requirements of the effective legislation dealing with parliamentary powers of control over security structures in real practice are difficult to enforce. This is proven by numerous complaints about the failure to present information to the Verkhovna Rada and formal replies to inquiries of parliamentarians. For instance, the People's Deputy of the Ukraine, Ivan Bokiý said: "antagonism of the bodies termed as law enforcement against the Verkhovna Rada and people's deputies went too far. ...It seems that everything is settled by the legislation here. But in reality, the Ministry of Internal Affairs and General Prosecutor's Office demonstrate the greatest irresponsibility to the inquiries of people's deputies of Ukraine. During the two previous sessions, people's deputies of the Verkhovna Rada filed 19 inquiries with Ministry of Internal Affairs, 11 to the SBU and 89 to the Prosecutor General's Office. In response to the majority of them, people's deputies received merely formal replies. The State Tax Administration of Ukraine treats the problems raised in the inquiries of people's deputies in a similarly irresponsible fashion"¹³.

As one of the recent instances of the reluctance of law-enforcement bodies to report to Ukraine's Parliament was the neglect of the Verkhovna Rada Resolution "to hear at a Verkhovna Rada session on June 1, 2004, information of the Prosecutor General of Ukraine, the Minister of Internal Affairs of Ukraine, and the Head of the Security Service of Ukraine about the results of the investigation into the events that took place during the highly flawed April 2004 mayoral elections in town of Mukacheve, Transcarpathian region"¹⁴. None of the

¹³ See: Report of the People's Deputy of Ukraine Ivan Bokiý (Deputy Head of the Socialist Party faction in the Verkhovna Rada of Ukraine) at 3rd session of the Verkhovna Rada, 19 February 2003. <http://www.socinfo.kiev.ua/hotline/pod_com/p2003_02_19/htm>

¹⁴ Verkhovna Rada of Ukraine Resolution "On Informing the Prosecutor General of Ukraine, Minister of Internal

heads of the law-enforcement bodies mentioned in the Resolution bothered to attend the plenary meeting of Parliament.

On the positive side the Verkhovna Rada has used and often uses sources of information other than provided by governmental agencies. In particular, the Law, "On the Verkhovna Rada of Ukraine Committees," provides:

Committees may invite representatives of the Cabinet of Ministers of Ukraine, ministers and agencies, authors and initiators of draft laws, scientists, consultants, experts, practitioners, and other persons, whose presence is necessary, to attend their meetings.

Committees may establish Working Groups and appoint their heads in order to prepare draft laws of the Verkhovna Rada of Ukraine, decisions, recommendations, conclusions of committees and examine issues to be discussed at committee meetings.

Working Groups may include members of the committee, other people's deputies of Ukraine, who are not members of the committee, with their consent, staff of the Secretariat of the Verkhovna Rada of Ukraine, research institutes, educational institutions, practitioners, and authors of the laws.

Outside experts may be included in Working Groups on a contractual basis. They receive compensation from the budget set out by the Verkhovna Rada of Ukraine.

Secretariat of the Verkhovna Rada of Ukraine, the Administrative Department of the Verkhovna Rada of Ukraine, and committee secretariats provide organizational, technical, informational, and material support to committees.

Though legislation contains very few provisions concerning participation of non-governmental organizations in the activity of state agencies, e.g., in work of Parliament and in legislative work; however, even these few provisions indicate that non-governmental organizations and their experts may participate in work of state agencies by providing expert assistance on certain issues.

Affairs of Ukraine, Head of the Security Service of Ukraine about the Results of Investigation of the Events That Took Place During the Elections of the Mayor of Mukacheve, Transcarpathian Region" No. 1706 of May 12, 2004.

Thus, the Regulation, “On Procedures of the Verkhovna Rada of Ukraine,”¹⁵ in Article 6.3.4, provides that, if need be, the Presidium of the Verkhovna Rada may send legislative proposal or draft law for scientific, legal or other expertise information search or scientific research. As well, the Verkhovna Rada may apply for conclusions on legislative proposal or draft law to other state agencies and to other undertakings, institutions and organizations as well as to individual experts. This provision means that public organizations and their experts may provide conclusions on legislative drafts and participate in legislative activity in this way. Public organizations may also provide expert assistance to other state bodies. For instance, the Regulation, “Order of Expertise in Export Control,”¹⁶ holds that such expertise may be carried out by state and non-state experts with the advice of State Service on Export Control. Non-state experts are individuals with required level of qualification and special knowledge, necessary for carrying out of expertise in the sphere of expert control.

According to Ukrainian legislation, sessions of Parliament and meetings of its Committees are usually open. It means that members of public organizations interested in issues on the agenda may apply for permission to be present at session/meeting. Also, representatives of public organizations who provided expert assistance on issue on the agenda may be invited to participate in sessions of the Verkhovna Rada and the meetings of its Committees. The Law, “On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State,” provides that public organizations have the right to participate in public discussions and open parliamentary hearings on issues of reforming of the Armed Forces, other structural part of military organization and law-enforcement agencies, problems of legal and social protection of military servants and their families.

Overall, Parliament’s role in security sector is still confined mainly to formal approval of the security structures’ budgets and review of bills dealing with security structures’ operation, which are often drafted by those structures themselves. Due to the very imperfect distribution of powers between executive and legislative branches, the Verkhovna Rada is not always capable to use its few available levers of influence in security structures effectively.

There are also grounds to speak about low competence of parliamentarians on certain security issues. Knowledge of special services, intelligence services, effective defence budgeting is especially very limited. Therefore these issues remain poorly controlled by civilians.

¹⁵ The Regulations of the Verkhovna Rada of Ukraine No. 129a/94-BP of July 27, 1994.

¹⁶ Regulation of the Cabinet of Ministers of Ukraine “On Approval of Regulation on Order of Carrying Out of Expertise in the Sphere of Export Control” No. 767 of July 15, 1997.

In sum, the present powers of the Verkhovna Rada with respect to control of the security sector are rather limited, as compared to the practice in advanced democratic countries. Formally, parliamentary control over the security sector in the Ukraine exists, but the Parliament generally is not in a position to effectively oversee the security sector, which poses a potential threat to democracy.

Oversight Mechanisms of the Defence Sphere (Accountability and Transparency)

The principles of democratic accountability and transparency in the activity of security structures require, first and foremost, the ability of the representative body in the Parliament to control those security structures and to inform the public about their activity consistently and in detail. Effective oversight of defence management is the key to efficient use of resources to meet security tasks of interest to society. In the Ukraine, the legal base already provides for general powers of the Verkhovna Rada and its committees to support transparency and accountability in the security sector, but there is still a long way ahead to achieve the Western standards on the level of details.

It should be noted from the beginning that, under current legislation, financial capabilities to provide for national defence are seriously impaired due to the regimentation of fixed amounts of budget expenditures by applicable laws. Effective legislation regiments have fixed the amounts of budget expenditures for the support of the following sectors and social needs: national defence – no less than 3% of GDP; education – no less than 10% of GDP; culture – no less than 8% of GDP; public health – no less than 10% of GDP; science – no less than 1.7% of GDP; various privileges and subsidies – approximately 8% of GDP. Hence, different legislative acts together provide for fixed allocation of nearly 40% of GDP to separate sectors in advance, despite the fact that only about 25-27% of GDP is redistributed through the summary state budget.

So, it is actually impracticable to accurately define the amount of funds necessary for the Armed Forces. One reason for that lies in an ambiguous interpretation of the content of defence expenditures by Ukraine's Defence Ministry and Ministry of Finance. The Defence Ministry proceeds from the constitutional norm whereby "the defence of Ukraine, protection of its sovereignty, territorial integrity and inviolability is vested in the Armed Forces of Ukraine", which requires priority (no less than 3% of GDP) funding of the military

expenditures¹⁷. Meanwhile, the Ministry of Finance argues that the 3% of GDP spent on defence should include expenditures on all activities attributed to defence by the effective legislation and on military pensions. Such a situation causes heated discussions in the Verkhovna Rada every year in the process of the defence budget approval, and, in the end, often makes the amount of defence expenditures unpredictable.

In addition to this, there are no laws or requirements relating to the activities that the Ministry of Defence must provide to the Parliament in regard to defence resource management, apart from the annual budget. According to the number of legal acts, there is the only requirement to submit quarterly and yearly reports on implementation of the State Budget to the Auditing Chamber, which, in turn, reports to the Verkhovna Rada.

In similarly narrow fashion, the Ukrainian Parliament does not have the practice to approve, amend, or disapprove the budget of any organisation of the security sector (defence, police, border guards, intelligence/security agencies, para-military units). Though theoretically, such amendments can be considered, there is no precedent for such “micromanagement”, probably because of the absence of clear legal provisions and practical mechanisms for this, as well as because of absence of practice of relevant requests from the executive branch. Perhaps, there was no urgent need in the past. Correspondingly, there is no practice to consider and to vote on each supplementary estimate presented by the minister, simply because Ukrainian ministers do not present supplementary estimates to the Verkhovna Rada.

There is a practice, though, of making amendments to the State Budget as a whole (through increase or reduction/“sequester”), when some specific parts of these amendments are related to the article on national defence. In particular, “sequester” was used in the 1990s, during the heights of severe economic crisis in the Ukraine. The increase of the State Budget planned revenues and their distribution among the key articles of the State Budget, including national defence, was adopted for the first time in 2004, under pressure of parliamentary opposition, which accused the Government of deliberate and politically motivated “hiding” of extra revenues resulting from the rapid economic growth in the country.

¹⁷ In fact, the Law of Ukraine “On Defence of Ukraine” envisages that “the needs of the national defence of the state shall be financed solely at the expense of the State Budget of Ukraine within limits annually set by the Law of Ukraine “On the State Budget of Ukraine” providing for proper accomplishment of defence tasks, but no less than three per cent of the planned gross domestic product volume”. In reality, the Armed Forces of Ukraine themselves earn money to cover a significant part of the expenses, but together with budget funding this makes up far less than 3% of the GDP.

However, legal powers of the Verkhovna Rada or its committees exist to order the Accounting Chamber to conduct audits in the security sector. The Law, “On Accounting Chamber,” provides for the following functions:

Control the implementation of the State Budget of Ukraine, financing of the state programmes in the part related to the expenditures of the State Budget;

Carry out the orders of the Verkhovna Rada to control implementation of the State Budget of Ukraine on quarterly bases;

Carry out the orders of the Verkhovna Rada Committees to review the appropriateness of spending within state target funds and non-budget funds by the bodies of executive branch of power;

Control the effectiveness of management of the State Budget funds by the State Treasury of Ukraine, legality and timeliness of movement of the funds of the State Budget of Ukraine; etc.

To implement these function, the Law provides the Accounting Chamber with specific authority:

Conduct audit in the bodies of executive branch of power;

Receive from the heads of structures and organisations under review all relevant financial and accounting documentation;

Organise and conduct timely control of the implementation of the State Budget of Ukraine for the reporting period;

Conduct the complex audit as well as targeted reviews of the specific articles of expenditures of the State Budget;

Submit proposals to the Verkhovna Rada of Ukraine, President of Ukraine, and bodies of executive power on punishment of officials guilty in violations and subsequent losses; etc.

However, as in many other instances, the written broad authority is not always easy to translate into meaningful real influence. The activity of the Accounting Chamber often encounters sabotage on the part of security structures’ officials. The Law, “On the

Accounting Chamber,” was enforced only after the adoption of the Constitution and the overriding of the presidential veto by the Verkhovna Rada. Meanwhile, the President vetoed down amendments to the Constitution passed by the Verkhovna Rada, which provided for the extension of the powers of the Accounting Chamber to control both the expenditure and receipt of funds from the National Budget of Ukraine.

Meanwhile, to consider the internal functioning of each organizations of the security sector, the Verkhovna Rada can resort to the services of not Accounting Chamber only, but also the Verkhovna Rada Human Rights Commissioner (an ombudsman), or to create temporary investigative and ad hoc commissions. However, these institutions also have problems in exercising their authorities.

The flow of appeals by citizens to the Verkhovna Rada’s Human Rights Commissioner far exceeds the actual investigative capacity by the Commissioner’s staff. Meanwhile, security structures (especially law-enforcement bodies) do not effectively react to the inquiries of the Verkhovna Rada Commissioner.

The activities of temporary investigative and ad hoc commissions of the Verkhovna Rada are not properly regimented yet, although they proved rather effective, especially in dealing with publicity during the investigation of notorious cases. Meanwhile, the President many times vetoed down the relevant law passed by the Verkhovna Rada regulating the activity of these commissions. People’s deputies suggest that the political motives of such a move clearly outbalance the legal ones.

As far as audits on alleged corruption cases within the security sector are concerned, there are no powers of Verkhovna Rada “to order competent authorities” to carry out such audits. Effective legislation provides, *inter alia*, for the accountability (subordination) of security structures to the Verkhovna Rada (in the form of annual reports from their heads, response to inquiries of people’s deputies, parliamentary committees, standing and ad hoc commissions) and local councils (in the form of regular reporting of heads of local departments to the relevant councils).

Meanwhile, the real levers of control over law-enforcement bodies are evidently concentrated in the hands of the President. They include the right to set up law-enforcement agencies, appoint officials empowered to control law-enforcement bodies and approve regulations of the activity of said agencies and officials. For instance, according to the Law, “On the Security Service of Ukraine”, the President and state bodies empowered by him (Article 32)

control the activity of the SBU. Permanent control is vested in officials appointed by the President. Their powers and the legal guarantees of their activity are specified in the Provisions approved by the President.

However, there is a Committee of Verkhovna Rada on Fighting Organised Crime and Corruption. This Committee plays an important role in fighting corruption by improving legislature, organising hearings, requesting reports, conducting enquiries, and submitting targeted submissions on high-profile cases of corruption.

The Committee consists of six sub-committees. With regard to control over the activity of security sector, the key sub-committees are:

Sub-committee on issues of fighting organised crime and corruption in the bodies of state power, administration and local self-governance;

Sub-committee on issues of fighting organised crime and corruption in the law-enforcement and judicial bodies;

Sub-committee on issues of legislative support of fighting against terrorism and organised crime;

Sub-committee on issues of fighting organised crime and corruption and on secret appropriations and cooperation with the Accounting Chamber.

The Committee can in fact “order” audits on alleged corruption cases within the security sector to Accounting Chamber (when it is appropriate). It can also initiate the creation of a temporary investigative commission, which, if created, would possess relevant investigative and auditing powers.

As far as the submitting of “Defence White Papers” is concerned, there is no requirement either in the Constitution, or in any Law for the Defence Ministry to provide comprehensive periodic reports (e.g. “Defence White Papers”) to the Parliament on short term and long-term resource management. However, there is a practice of presentation by the Defence Ministry to the public of certain documents, which in their substance are quite close to the notion of the “Defence White Papers”.

First practical information on this subject in Ukraine goes back to February 1997. President

Leonid Kuchma was ordered to publish annually the Defence White Paper of Ukraine. The specific document was developed, approved, and even submitted for printing. However, somewhat mysteriously, it was never published as ordered either in 1997 or later.

The first report by Ministry of Defence on “The State programme of the Ukrainian Armed Forces reform and development until 2005” resembling in its content the Defence White Paper, was made public in late 2000. It provided a rather good summary of current activity and plans of Armed Forces reform for the next five years. Of course, the document could have been and was criticised for some inconsistencies and generalities, but overall it was already a comprehensive and well-designed document.

The next instance of submitting of the comprehensive report on the plans of defence policy and defence resource management took place in 2004 in two stages. First, in the yearly Address by the President to the Verkhovna Rada, the chapter, “Defence policy of Ukraine in a global perspective,” appeared to be unusually long and comprehensive. It later in the year became evident that the chapter of the Address represented kind of extracts from a larger and much more comprehensive document, the Strategic Defence Bulletin, which was formally approved by the President in July 2004 and was announced as the “Defence White Paper”.

The Bulletin has accumulated the results of two years of Defence Review in the Ministry of Defence and suggested a strategy for development of Ukraine’s Armed Forces till 2015. It is composed of three main chapters: “General conditions for the reform of the Armed Forces and other military formations of Ukraine by 2015”; “Model of the Armed Forces and other military formations of Ukraine by 2015”; “Directions and ways of building the model of the Armed Forces and other military formations of Ukraine by 2015”.

The document is outlining threats to Ukraine's national security and the duties of the state and the Armed Forces in countering these threats. The Bulletin also provides a two-stage process of reform for the military. According to the document, in the first stage, to be finished by 2009, the Ukrainian military would be reduced from current total of 350,000 personnel (including 265,000 of military servicemen) to 200,000 personnel (including 160,000 of military servicemen). The second step, to be completed by 2015, is the reduction to 100,000 personnel (including 75,000 of military servicemen), and foresees outfitting the army with the most modern equipment. Defence spending, according to the bulletin, will increase from the current 5.6 billion hryvnias (\$1.06 billion) to 17.2 billion hryvnias in 2015.

It should also be noted that there are plans to review the Bulletin every five years. As such, it will indeed become a regularly published “Defence White Paper”. However, it is important to remember that, if the current system of defence planning remains intact with its imperfect distribution of authority over defence resource management between the President and the Verkhovna Rada, then all perfect military White Papers will be at risk to be never implemented as planned because of possible opposition in the Parliament.

As far as the overall state of oversight of defence management is concerned, there appears to be some improvement in transparency in reference to the Ministry of Defence during the last few years. However, there is still a need to change the mentality of the authorities with regard to transparency in intelligence and law-enforcement structures.

Information that Parliament should be able to have is not always freely available to it. There is also a need to further develop the mechanisms of parliamentary control over defence resource management. Sometimes, grounds exist to suspect Government bodies and security structures resorting to excessive secrecy just for the sake of concealing mistakes, deficiencies and abuses.

If the Ukraine is destined to continue along the road of democratic transformation, the need for parliamentary control will become ever more clear. And, so, significant improvement of parliamentary oversight over the security sector reform in Ukraine needs to take place.

The National Security and Defence Council of Ukraine (NSDC)

The NSDC of Ukraine was established in 1992 as National Security Council, but redesigned in 1996 as National Security and Defence Council after adoption of Ukraine’s Constitution. Pursuant to the Constitution, NSDC is a co-ordinating body on national security and defence issues under the President, which “co-ordinates and controls the activity of executive bodies in the domain of national security and defence.” NSDC is headed by the President and incorporates, *ex officio*, the Prime Minister, the Secretary of NSDC, the Minister of Defence, the Head of the SBU, the Minister of Internal Affairs, and the Minister of Foreign Affairs. The Speaker of the Verkhovna Rada may attend the NSDC meeting. In addition to the constitutional provisions on the composition of NSDC, the President in 2000 by his decree, in fact, established *ex officio* membership in NSDC for the Chief of the General Staff. The President determines the composition of the Council and the body’s decisions go into effect by virtue of presidential decrees (Article 107). As a matter of systemic practice, the NSDC may also include the Minister of Economy, the Minister of Finance, the Minister of Justice,

the Minister of Emergency, the Minister of Industrial Policy, the Head of the State Border Service, the Head of the Administration of the President, and the President of the National Academy of Sciences.

The President personally presides over the sessions of NSDC, which are prepared under supervision of the Secretary of NSDC. According to the Law, "On the National Security and Defence Council of Ukraine," "a session is the principal organizational format in which the National Security and Defence Council of Ukraine carries out its activities. During sessions of the National Security and Defence Council of Ukraine its members vote in person. They may not delegate their obligation to be present during sessions of the National Security and Defence Council of Ukraine to other individuals."

The Law specifies the functions and competences of the NSDC. Its functions include the submission of proposals to the President for the implementation of fundamentals of home and foreign policy in the domain of national security and defence, co-ordination and control of executive bodies' activity in the domain of national security and defence in peacetime, wartime, in the state of emergency and in crisis situations threatening the national security of the Ukraine.

NSDC competences are applied to all aspects of the viability of society and, correspondingly, to the state bodies ensuring such viability. The specific competences are defined in accordance with the above functions of NSDC. The Law provides that NSDC:

1) Develops and reviews the issues that pursuant to the Constitution and laws of Ukraine, Concept (Basic Tenets of State Policy) of National Security of Ukraine, Military Doctrine of Ukraine belonging to the area of national security and defence and gives recommendations for the President of Ukraine with regards to:

- definition of strategic national interests of Ukraine, conceptual approaches and directions of ensuring national security and defence in political, economic, social, military, scientific-technological, ecological, informational, and other areas.

- draft state programs, doctrines, laws of Ukraine, decrees of the President of Ukraine, directives of the Commander-in-Chief of the Armed Forces of Ukraine, international agreements, other legal acts, and documents pertaining to national security and defence;

- improvement of the system of ensuring national security and organizing defence, establishment, re-organization, and dismantlement of executive bodies in this area;
- draft Law of Ukraine on State Budget of Ukraine in the part relating to articles dealing with national security and defence of Ukraine;
- material, financial, personnel, organizational and other types of ensuring the implementation of measures pertaining to national security and defence;
- measures of political, economic, social, military, scientific-technological, ecological, informational and other types of character commensurate with the scope of potential and more imminent threats to national interests of Ukraine;
- tasks pertaining to the study of specific issues and conduct of respective studies in the area of national security and defence by executive bodies and scientific institutions of Ukraine;
- involvement of controlling, inspection and supervisory bodies of the government with a view to exercising control over the quality and timeliness of the implementation of the decisions adopted by the National Security and Defence Council of Ukraine and enacted by the President of Ukraine;
- ensuring and exercising control over the collection and analysis of the necessary information, its security, confidentiality, and its use in the interests of the national security of Ukraine; on its basis, analysis of the state and trends in the development of events in Ukraine and the world, and definition of potential and more imminent threats to the national interests of Ukraine;
- issues relating to the declaration of war, general or partial mobilization, martial law or emergencies in Ukraine or its individual localities, and the declaration of certain localities in Ukraine to be ecological emergency zones;

2) Exercises day-to-day control over the activities of executive bodies in the area of national security and defence, gives the President of Ukraine respective conclusions and recommendations;

- 3) Involves government officials and experts from executive bodies, government institutions, research institutions, enterprises, and organizations of all forms of ownership in analysing information;
- 4) Initiates drafting legal acts and other documents on the issues of national security and defence, codifies the practice of their application, and the results of reviews of their implementation;
- 5) Coordinates and exercises control over organizing the work of central, local executive bodies, and the economy in time of war or an emergency;
- 6) Coordinates and exercises control over the activities of local self-government bodies within the specified limits in time of war or an emergency;
- 7) Coordinates and exercises control over executive bodies with respect to countering the aggression, organizing the defence of the population and ensuring its survival, protection of life, health, constitutional rights, freedoms and legitimate interests of the citizens, maintaining civil order in time of war, emergency, and crises threatening the national security of Ukraine.

It would probably be correct to conclude that NSDC has a rather strong influence, but its authority is always limited by what the President wants it to do. Theoretically, the NSDC has the power to propose any security official as a candidate for office, but in real practice it is doing just the opposite. There were several instances, when NSDC recommended this or that official allegedly responsible for negligence or wrongdoing be relieved from office. As observed by senior analyst of Canadian Ministry of Defence, Ben Lombardi, "its [NSDC's] broad mandate is perhaps the asset of greatest worth to the president, and over the years its role has been largely determined by what Kuchma wants it to do".¹⁸

In its practice, NSDC has many times reviewed defence issues at its sessions. These issues included the State Programme for Reforming and Development of Ukraine's Armed Forces through 2005, the State Programme for the Development of Armaments and Military Hardware, Ukraine's performance in implementing international arms control and disarmament treaties, funding of Ukraine's Armed Forces, the situation with Ukraine's mobilisation resources, safety of ammunition depots, planning of the strategic employment of Ukraine's Armed Forces, etc. NSDC has also discussed many foreign policy issues, priorities

¹⁸ Ben Lombardi. "A Political Minuet in Kiev" – Conflict Studies Research Centre, Camberley, Paper G123, July 2003, p.6.

of economic development and problems of environmental protection. However, it would be rather exceptional for NSDC to discuss issues dealing with intelligence/counterintelligence activity and law-enforcement bodies, since this sphere remains one of the most non-transparent in Ukraine.

As illustrative example, an extract from the Presidential Decree could be cited which was issued after the tragic accident of the downing of a Russian passenger plane over the Black Sea by an Ukrainian air-defence missile. The President fired the Minister of Defence, Olexandr Kuzmuck, and took certain related measures, making NSDC responsible for some of them. In particular, the Decree¹⁹ states:

In order to support Defence Reform and to establish civil democratic control over the Military structure of the State and to strengthen leadership over the defence sphere, in accordance with Article 17 of the Constitution, I decree that:

The National Security and Defence Council:

a. Jointly, with the Cabinet of Ministers, the Ministry of Defence and the Security Service:

- shall ensure interrelation and coordination between the Concept of National Security (as the prime policy document), the Military Doctrine, the Concept for the Armed Forces up to 2010, the basis for the training and employment of the Armed Forces, taking into account the peculiarities of the current international and domestic situations, as well as the State's economic potential;
- shall present, within three months, proposals on how to improve reporting system to the State leadership on the situation in the Armed Forces and other military formations, particularly over emergency situations, and how to make it timely, impartial and explicit.

b. jointly with the Cabinet of Ministers and Ministry of Defence

- shall take measures to improve the status of weapons and military equipment in the Armed Forces, to define their required types, nomenclature and quantity, as well as to identify sources of additional financing in order to maintain and support this equipment in the required condition, and also to provide for its modernisation;

¹⁹ Decree by the President of Ukraine № 1195/2001 "On Improving Ukrainian Defence Capabilities", Kiev, December 6, 2001.

- shall take urgent measures to reduce the number of weapons and ammunition dumps, to remove ammunition from those dumps situated in populated areas, which thus threaten the local population, as well as to speed up the disposal process for surplus ammunition and to ensure adequate funding for the Programme to support survivability and fire safety of arsenals, bases and dumps.

According to the Law, the Secretary of NSDC is in charge of the organisation of its work and implementation of the Council's decisions. To perform this mission, the Secretary has powers granted by same Law, which provides that the Secretary of NSDC:

Gives recommendations on the day-to-day and strategic planning of the activities of the National Security and Defence Council of Ukraine;

Introduces for consideration by the President of Ukraine draft decrees of the President of Ukraine pertaining to the implementation of the decisions of the National Security and Defence Council of Ukraine, including the proposals and recommendations dealing with the implementation of the foundations of domestic and foreign policies in the areas of national security and defence;

Organizes the work pertaining to the preparation and holding of sessions of the National Security and Defence Council of Ukraine and exercises control over the implementation of its decisions;

Keeps the President of Ukraine and members of the National Security and Defence Council of Ukraine apprised of the implementation of the decisions of the National Security and Defence Council of Ukraine;

Coordinates the activities of working and consultative bodies of the National Security and Defence Council of Ukraine;

Upon instruction from the Head of the National Security and Defence Council of Ukraine, presents the position of the National Security and Defence Council of Ukraine in the Verkhovna Rada of Ukraine and represents the National Security and Defence Council of Ukraine in interactions with executive and local self-government bodies, political parties, non-governmental organizations, the mass media, and international organizations.

The President determines the scope of the powers of deputies of the Secretary of the National Security and Defence Council of Ukraine.

The Staff of NSDC, which numbers about 100 personnel, renders everyday information, as well as analytical and organisational support for the NSDC. According to the Law, "The Staff of the National Security and Defence Council of Ukraine reports to the Secretary of the National Security and Defence Council of Ukraine. The functions, structure, and the number of personnel of the Staff of the National Security and Defence Council of Ukraine are determined by the President of Ukraine." The NSDC Staff employs mostly civilian experts, although there are many active and retired military and law-enforcement officers. There is a Defence Policy Directorate, whose competence encompasses the issues of defence and military-industrial policy. To support functions immediately dealing with control over intelligence/counterintelligence and law-enforcement bodies, the NSDC Staff operates the State Security Directorate. There are also directorates responsible for foreign policy, domestic policy, economic policy issues, as well as traditional support structures.

Separate place within NSDC framework is occupied by the Committee on military-technical cooperation policy and export control under the President of Ukraine. The Committee is not formally a part of the NSDC Staff and its members are representatives of all security structures at the level of deputy head. However, the Head of the Committee also has the title of the Deputy Secretary of NSDC, which means that the Committee reports to the Secretary, who supervises its activity.

The influence of Ukraine's NSDC Staff on issues dealing with power structures' activity is stronger in such domains as the development of the regulatory-legal basis, defence and law-enforcement budgets planning, co-ordination of international military co-operation, reform of the Armed Forces, weapon systems and military hardware development programmes, arms sales control, resolution of separate important issues (promotion of the AN-7X project, preparation of the Ukrainian-Russian agreement on strategic bombers, Euro-Atlantic integration, safety of ammunition depots, etc.). However, given the broad legal competences of NSDC, the real limits of the NSDC Staff influence are always a composite variable of the authority delegated by the President and of the personal influence of the NSDC Secretary, who coordinates the activity of NSDC Staff.

To provide analytical support to NSDC and its Staff, there is two research establishments: Institute for National Security Problems and National Institute for International Security Problems.

According to the Decree of the President²⁰, the Institute for National Security Problems is responsible for “development of national security foundations, improvement of scientific substantiation and effectiveness of the state policy, which directed at protection of national interests and guaranteeing in Ukraine of the security of person, society and state from foreign and internal threats in all spheres of human activity, as well as for improvement of consultative-advisory support to the President of Ukraine and the National Security and Defence Council of Ukraine in the above mentioned spheres”. To accomplish this duty the Institute among other things “develops the drafts of the National Security Strategy, concepts and programs, research projects, prepares analytical reports and policy recommendations on the issues of effective implementation of the state policy in the sphere of national security”.

Another NSDC research establishment – the National Institute for International Security Problems was also created by the Decree of the President.²¹ This Institute is *supposed “to conduct fundamental research on key problems of global and regional security and stability, international relations and foreign policy, as well as external influences on internal processes in Ukraine”*.

To accomplish this duty the National Institute for International Security Problems is tasked with:

- support the President, National Security and Defence Council, and Cabinet of Ministers with conceptual and analytical products on key issues of international processes, as well as scientifically substantiated proposals on formulation of specific strategies in relations with leading countries of the world, international organizations, and on adoption of state decisions in the sphere of national security and foreign policy;
- development of scenarios of possible policies of leading countries of the world towards Ukraine, its strategic partners and closest neighbours;
- prognosis for economic, political social crisis in Ukraine, which might negatively effect the processes of Ukraine’s integration to European and world communities;
- expert assessment of draft documents, bills and state decisions on issues of global and regional security;

²⁰ Decree by the President of Ukraine № 1396/2003 “On creation of Institute for National Security Problems”, Kiev, December 3, 2003.

²¹ Decree by the President of Ukraine № 173 “On creation of National Institute for International Security Problems”, Kiev, March 16, 2001.

- monitoring of developments in political and military-political alliances and situation in conflict zones of the world;

- analysis of issues of information security and of Ukraine's presence in the global information space.

It should be noted, that the NSDC research institutions mentioned above represent two of total three (the third – National Institute for Security Studies under the Administration of the President of Ukraine) of the best available strategic and international security studies institutions, which almost exclusively work in the interests of the executive branch of power of Ukraine. Their creative potential is still mainly based on employing former governmental officials and retired security structures officers – those who quit the civil (military) service and possess the knowledge, experience and desire to work. It is often problematic for the institutes to invite young bright researchers because of rather low levels of social benefits and incentives. In most cases the institutions' experts are over the age of 50 and many of them already receive the governmental pensions for their service in security structures. On the one hand, they possess professional and life experience, and their modest pensions together with modest salaries provide for rather acceptable living conditions, according to average Ukrainian standards. But on the other hand, a 'respectable' age naturally limits an expert's ability to learn, risk and improve.

Overall, Ukraine's NSDC as a constitutional body responsible for co-ordination and control of the executive branch activity in the sphere of national security and defence plays important role in formulating national security policy in its broad sense, in security sector reform, and in exercising democratic civilian control over security structures. However, the procedure for NSDC establishment and operation calls for the decisive influence of the President of Ukraine on its activity and decisions.

It is noteworthy that Ukraine's NSDC (headed by the President), the Administration of the President and the Government somewhat duplicate each other: all three structures are entrusted with the duty of co-ordination and control of the executive bodies' activity in the domain of national security and defence. But neither have a decisive influence over security matters in Ukraine, though the current position of the (unconstitutional body) Administration of the President in the security area is much stronger than the influence of the constitutional NSDC.

National Security Strategy/Concept

Soon after Ukraine became an independent country, on 15 January 1992, the first Ukrainian President Leonid Kravchuk issued a Decree (text is not for publication), according to which the National Security Concept had to be developed. However, it took another five years for the Ukrainian Parliament to develop and approve such a document on 16 January 1997.

Prior that date, the Constitution, adopted in 1996, for the first time defined the basic functions and powers in the field of national security and defence and distributed them among the state bodies. These constitutional basics were further conceptualised in the mentioned Concept (fundamentals of state policy) of National Security of Ukraine.

The Concept specified the principles and strategic missions with regard to formulation and implementation of national security policy. This was deemed to create fundamentals for the development and adjustment of the legislative base, working out doctrines, strategies, concepts, state and departmental programmes in all domains of national security.

This document was developed by the ad-hoc Working Group of the Parliamentary Committee on National Security and Defence. The Working Group included members of Parliament, parliamentary staffers as well as invited experts from the Ministry of Defence and other security structures.

In contrast to the previous Soviet tradition to put the state and ideological interests above everything, the Concept listed the main objects of the national security starting from “a citizen - his/her rights and freedoms”; then – “society - its moral and material values”; and “the state - its Constitutional system, sovereignty, territorial integrity and inviolability of its borders”.

The Concept provided the list of the main principles for providing the national security:

Priority of human rights;

Superiority of law;

Superiority of treaty (peace) means in managing conflicts;

Correspondence of measures of protection of the national security to real and potential threats;

Democratic civil control over the military sphere and other structures in the system of the national security;

Observing the balance of interests of an individual, society and the state, their mutual responsibility;

Clear division of power between state authorities.

This list of the main principles for the first time in Ukraine's history emphasised at the highest level the importance of the principle of democratic civil control over the military sphere and other structures in the system of the national security.

The Concept also established the list of priority national interests of the Ukraine, which was to reflect fundamental values and aspirations of the Ukrainian people, their right to have decent conditions for life, as well as civilised ways of creating such conditions and means to satisfy them. These national interests of Ukraine were stipulated by the real situation forming within and outside the country and included the following objectives:

Creation of civil society, increase of effectiveness of state power and local governmental bodies, development of democratic institutions to guarantee human rights and freedoms;

Achieving of national concord, political and social stability, guaranteeing rights of the Ukrainian nation and national minorities in Ukraine;

Guaranteeing state sovereignty, territorial integrity and inviolability of the state borders;

Creation of self-sufficient, socially orientated market economy;

Guaranteeing ecologically and technically safe conditions for the life of society;

Preserving and increasing scientific and technical potential;

Strengthening of genetic reserve of Ukrainian people, their physical and moral health and intellectual potential;

Development of the Ukrainian nation, historical consciousness and national dignity of Ukrainians; development of ethnic, cultural, language and religious distinctiveness of citizens of all nationalities constituting the Ukrainian people;

Establishing equal and mutually beneficial relations with all states, integration into the European and world community.

The above priority list of national interests might be assessed as too broad, but nevertheless they reflected the general desire for the country and state to follow, at least declaratively, the democratic norms and principles in providing national security in the Ukraine.

The Concept further identified the total of 32 potential threats to the national security of the Ukraine broken down into seven different spheres: political, economic, military, social, ecological, scientific-technological and information. The main potential threats to the national security of Ukraine in the military sphere of life were identified as:

Encroachment on the state sovereignty of Ukraine, its territorial integrity;

Accumulating of military force and armaments close to Ukrainian borders which breaks the existing forces balance;

Military and political instability and conflicts in neighbouring countries;

Possibility to use nuclear weapons and other types of mass destruction weapons against Ukraine;

Decrease of combat capability level of the Military organisation of the state;

Introducing political character into state force structures;

Creation and functioning of illegal armed formations;

Though the list of these threats, similar to the priority list of national interests, could not be assessed as perfect or complete, and it certainly reflected the constraints of internal and foreign policies of Ukraine in the 1990s, but having being approved by the Parliament, it created at least a minimal framework for national security planning.

The Concept itself further provided the first generic guidance for formulating and planning the national security policy in the Chapter, "Main directions of the state policy of the national security of Ukraine." It required that the state policy for national security should be identified by taking into account the primary national interests and threats to the national security and should be pursued by the implementation of corresponding doctrines, strategies, concepts and programmes in various spheres of the national security in correspondence to the valid legislation.

The main directions of the national security policy were correspondingly broken down into seven spheres. In the military sphere, the main directions were identified as:

Creation of effective mechanisms and taking complex measures to prevent potential aggression or military conflict, localisation and liquidation of their consequences;

Prevention of attempts and elimination of breaches of the state border and territorial integrity of Ukraine;

Providing for democratic civil control over the Military organisation of the state;

In the final analysis, among other things, the Concept became the first high-level state document to emphasise the importance of establishing democratic civilian control over the military for Ukraine's security. It defined "democratic civilian control over the military sector" as one of the fundamental principles at providing Ukraine's national security. The same document declared "providing democratic civilian control over the Military organisation of the state" as one of the main directions of Ukraine's state policy in the military sector. This demonstrated the official recognition of the importance of the issue of democratic control for ensuring steady development of the state and society.

In general, the Concept managed to provide general conceptual continuity and connectivity between national interests, security threats and directions of national response to these threats. It also re-emphasised the constitutional authorities of the main subjects of system of guaranteeing the national security:

The Ukrainian people – citizens of Ukraine of all nationalities at elections, referendums, through other forms of direct democracy as well as through state power and local government bodies express and realise their vision of national interests of Ukraine, means and methods of their protection, and voluntarily, while carrying out their Constitutional duties,

take measures specified by state power and local government authorities to ensure the national security of Ukraine; draw attention of public and state institutions to dangerous occurrences and processes in various spheres of life of the country; protect their own rights and interests as well as their own security by all legitimate means and methods;

The Verkhovna Rada of Ukraine – within the limits of authority set out by the Constitution of Ukraine maintains legislative regulation and control over the activity of state power bodies and officials in carrying out their correspondent authorities in the sphere of the national security;

The President of Ukraine – as Head of the state and guarantor of state sovereignty, territorial integrity of Ukraine, observing the Constitution of Ukraine, human and citizen rights and freedoms, and the Supreme Commander-in-Chief of the Ukrainian Armed Forces and Chairman of the National Security and Defence Council ensures state independence, carries out governing in the spheres of the national security and defence of Ukraine;

The National Security and Defence Council – as a co-ordinating body on issues of the national security and defence attached to the President of Ukraine co-ordinates and controls the activity of executive bodies in the sphere of the national security and defence;

The Cabinet of Ministers of Ukraine – as the supreme body in the system of executive power responsible to the President of Ukraine, under control and accountable to the Supreme Rada of Ukraine takes measures to guarantee human and citizen rights and freedoms; to guarantee defence capability and national security of Ukraine; social order and struggle against crime;

The Constitutional Court of Ukraine – decides questions on correspondence of laws and other legal acts in the sphere of the national security to the Constitution of Ukraine and gives official interpretation of the Constitution and laws of Ukraine on relevant issues;

Courts of general jurisdiction – administer justice in the sphere of guaranteeing the national security in accordance with the Constitution of Ukraine;

The Procurator's Office of Ukraine – carries out its authorities in the sphere of the national security in accordance with the Constitution of Ukraine;

The National Bank of Ukraine – works out and executes emissive and credit policy in the interests of the national security of Ukraine;

Ministries and other central bodies of executive power, within their authorities, available resources of budget and non-budget funding guarantee implementation of the laws, decrees of the President, concepts, programmes, resolutions of security structures of the state in the sphere of the national security, all ensure creation, readiness of action and application of forces and means of guaranteeing the national security and managing their activity.

In addition to the above constitutional authorities, the Concept for the first time established the term and added to the list of constitutional subjects of system of guaranteeing the national security such notions as the so-called Military organization of the state, which was to include “the Armed Forces of Ukraine, the Security Service of Ukraine, the National Guard of Ukraine, internal troops, bodies and units of the Ministry of Internal Affairs of Ukraine, the Border Troops of Ukraine, military units of the Ukrainian Ministry of Emergencies and on protection of population from Chernobyl consequences, other military formations organised in accordance with the Constitution of Ukraine”. The Military organization’s mission was:

“to guarantee defence of Ukraine, protection of its sovereignty, territorial integrity and inviolability of its borders; counteract external and internal threats of a military character; fight organised crime; provide protection of population in case of catastrophes, natural calamities, dangerous social conflicts, epidemics, etc.”

The more appropriate contemporary name for this “organisation» would probably be the “Security Sector of the State,” but one has to remember that the Ukraine inherited the Soviet militarised security culture, where even Security Service personnel, as well as border guards, had military ranks and legal status of military servicemen. Police also had (and still have) a rank system totally equivalent to that of the military.

After its adoption, foreign and domestic security experts practically unanimously assessed the “Concept (fundamentals of state policy) of the National Security of Ukraine (1997) as a rather successful theoretical accomplishment (Charles Dick, James Sherr, Anatoliy Grytsenko, etc.)²². But to become an effective practical guide, the Concept suffered from the

²² See, for instance: James Sherr. New Documents On Ukraine’s Security Policy: A Sound Basis For Action? Conflict Studies Research Centre, June 2003, p.3. “Ukraine’s first National Security Concept (1997) ... was a model statement of first principles. It assaulted the general war ethos (which has been inbred in the Soviet-trained officer corps of Ukraine) by stipulating that in conditions where both state and society were weak, the prime security challenge would be to forestall and resolve local crises, emergencies and conflicts and prevent them from being exploited by actors (internal and foreign) with ulterior political ends.”; and further, on p.6: “The 1997 National Security Concept was a refreshing exception to this [Soviet] pattern. It was drafted by a tightly knit

pervasive problem of Ukraine's politics – a misbalance in distribution of powers between the President and the Verkhovna Rada. Thus while remaining basically a good declaration of general conceptual security framework which was respected in theory, in practice it was respected only as a coincidence of immediate priorities between the President and the Government.

As it was indicated above, the Concept was intended to become the basis for formulating a relevant legislative base, drafting doctrines, strategies, concepts, state and departmental programmes in different spheres of national security, including the military one. However, the mechanisms for implementing this provision had not been defined. For this reason, not a single document of national importance has been approved over the years.

In addition to the lack of enforceable mechanisms, there were other factors which precipitated the attempts to revise the Concept a few years after its adoption – the rapid changes in regional security environment, the Kosovo and Chechnya wars in 1999, NATO and EU enlargement processes, terrorist attacks on 11 September 2001, etc. - and Constitutional provision, which in Article 92 required that “The following are determined exclusively by the laws of Ukraine: ... 17) the fundamentals of national security, the organisation of the Armed Forces of Ukraine and ensuring public order...”.

So, already in 2001, the first attempts to develop a new national security strategy document in Ukraine were initiated both in legislative and executive branches of power. This time the leading role in making amendments to the Concept belonged not to the Verkhovna Rada, but to the research institutions of the executive branch, like the National Institute for Security Studies (under the Administration of the President), the National Institute of the International Security Problems (under the National Security and Defence Council of Ukraine) as well as major research establishments of individual security structures. After the final amended draft Concept passed through the Administration of the President, it was submitted by the President for approval by the Verkhovna Rada, however with a different title. The new document was titled not as [an amended] Concept on National Security, but as the Law, “On fundamentals of national security of Ukraine” (see below – Law on national security).

This Law on national security was approved by Verkhovna Rada in June 2003. It represented, in essence, a modernised version of the Concept and structurally remained very similar to the latter as well as in terms of substance. As far as the principle of

team. It was concise. It had a clear theme: the weakness of state and society and the fragmentation of the state by design or mishap. It stuck to first principles, as an overarching concept should, and did not dilute its message by 'comprehensiveness' and detail.”

democratic civilian control over the military was concerned, the Law on national security, similar to its predecessor (the Concept) defined democratic civilian control over the military organisation and other structures within the national security system as one of the key principles of the guarantee of Ukraine's national security. Those principles also include: priority of human and civil rights and freedoms; the rule of law; clear delimitation of powers and interaction of the bodies of state power protecting the national security; adequacy of the measures taken to the character and scale of threats to national interests (Article 5).

Democratic civilian control is to be facilitated, *inter alia*, by the observance of the aforementioned principle of delimitating the powers of the state authorities, as well as by the provision of transparency in the activity of state bodies, defined by the Law on national security as one of the key lines of national policy in the domain of the national security (Article 8).

At the same time, several important amendments make the Law on national security quite distinct from the Concept. First of all, the Law on national security became the first legal document where the Ukraine identified its priorities in the security cooperation sphere in rather specific words. Among the chief directions of implementation of national security policy, there is a provision: "To provide for equal participation of Ukraine in European and regional systems of collective security, acquiring of membership in the European Union and North-Atlantic Security Organisation while maintaining good-neighbourly relations and relations of strategic partnership with Russian Federation, other countries of the Commonwealth of Independent States, and with other countries of the world." However, these more elaborate wordings cannot mask the still ambiguous strategic security substance, proving that Ukraine does not intend (or, is not able?) to make a choice between its Western or Eastern security partners.

Second, the Law on national security puts much more emphasis on the issues of internal security. Among the spheres of national security, the new sphere of "the security of the State" was introduced. According to the Law on national security, threats to national security in the "new" sphere of "the security of the State" include:

Intelligence and subversive activities by foreign special services;

Infringement of Ukraine's sovereignty, territorial integrity, economic, scientific and technical as well as defence potential, legitimate interests of the State and citizens' rights and freedoms by some organizations, groups and people;

Expansion of corruption and bribery among State official structures, merge of business and politics, organized crime and other illegal activities;

Criminal activities against peace and humanity's security, including the spread of terrorism;
Threat of the terrorist use of nuclear and other objects on the territory of Ukraine;

Possibility of illegal transfer to the territory of the country of weapons, ammunition, explosive substances and means of mass destruction, radioactive and narcotic substances;

Attempts to create and sustain activities of illegal militarised armed formations and intentions of some "forces" to use the State's military formations and law enforcement agencies in their own interests;

Manifestations of separatism and attempts to acquire an autonomous status to some regions in accordance with ethnic factor.

Subsequently, the basic directions of the national security policy in the "new" sphere of "the security of the State" according to the Law on national security include:

Reform of law enforcement system in order increase its efficiency, by optimising structure, improvement of coordination between law enforcement agencies, improvement of their financial, material and technical as well as organizational, legal and personnel support;

Concentration of resources and providing for coordination between law enforcement agencies of Ukraine to fight organized economic crime and illegal drug business;

Participation of Ukraine in international cooperation in the sphere of fighting international crime, terrorism, illegal drug business and illegal migration;

Creation of effective system of control over transfers of products and technologies of defence application and of dual-use;

According to this new distribution, the identification of threats to Ukrainian national security, as well as basic directions of the national security policy were redrawn and the general number of identified threats has doubled. In addition, the events of September 11 (large-scale terrorist attack on the United States) evidently prompted the Ukraine to devote much more attention to the threat of terrorism.

The former political sphere was broken down into “foreign policy sphere” and “domestic policy sphere”. The former social sphere became “social and humanitarian sphere”, and former military sphere was broadened and substituted by “the military sphere and the sphere of state border security”. In particular, the list of threats to national security in the “new” sphere now defined as “the military sphere and the sphere of state border security” includes: proliferation of WMD and their means of delivery;

Inefficiency of existing structures and mechanisms for ensuring international security and global stability;

Illegal immigration;

Involvement of Ukraine in regional armed conflict or confrontations with other States;

Deployment of military formations and armaments by foreign states near the borders of Ukraine, which upset the current balance of forces;

Damaging reductions in the supply of modern equipment and weapons to the Armed Forces and other military formations, which risk a decrease in combat readiness levels;

Insufficient funding of reform programmes for the Military Organisation and Defence Industry;

Accumulation of large amounts of outdated military equipment, weapons and ammunition;

Incomplete legal framework and insufficient equipment for the policing of State Borders;

Unsatisfactory levels of welfare support for servicemen, military pensioners and members of their families;

The basic directions of the national security policy in the “new” sphere of “the military sphere and the sphere of state border security” were updated accordingly:

Accelerating the Armed Forces’ and other military formations’ reform to provide for maximum efficiency and capability for adequate response to actual and potential threats to Ukraine; transition to a contract Manning system;

Pursuing programmes on updating existing kit in addition to the development and procurement of up-to-date armaments and equipment;

Enhancing control over armaments' stock and condition, as well as the protection arrangements for military installations; implementing weapons disposal projects;

Introduction of democratic control over both the Military Organisation and law-enforcement bodies;

Providing for proper welfare support for servicemen and members of their families;

Complying with agreements regarding the temporary stationing of the Russian Black Sea Fleet on Ukraine's territory;

Accomplishing the demarcation and delimitation of all borders;

Fighting international and national organized criminal groups, which operate across national borders, both at land border crossing points and in the exclusive (maritime) economic zone of Ukraine;

Enhancing cross-border cooperation with adjacent States.

In the context of the greater emphasis on issues of internal security, established by the Law on national security, it should also be noted that the text of the latter again gives a more ambiguous, though more elaborate, estimate to the threat of politicisation of security structures. While the Concept lists among the threats to national security the "politicisation of the security structures of the State", in the Law on national security, passed to replace the Concept, this threat was removed and replaced by the vague "intentions of exploiting the activity of military formations and law enforcement bodies of the State in the interests of certain forces". At the same time, the threat of "violation of human and civil rights and freedoms, including during election campaigns, insufficient effectiveness of control over the observance of the norms of the Constitution and laws of Ukraine" on the part of state bodies of power..." was rightly added.

However, the latter wording only partially overlaps with the term "politicisation of the "security" structures", since the Constitution requires a guarantee (i.e. active provision of the freedom of political activity), not just a warning against "violations on the part of bodies of

state power”. As Ukrainian experience shows, rights and freedoms of citizens could be violated not only by those bodies but also by other structures, e.g. private security or criminal. Therefore, the spread of actual non-interference of law enforcers in clashes provoked during political events, as if not “violating” that law, evidently constitutes a violation of constitutional guarantees.

By and large, both before the adoption of the Law “On fundamentals of national security of Ukraine”, when “politicisation of the “security” structures of the state” was officially considered a threat to Ukraine’s national security, and after that notion was withdrawn from the new version of the state’s main conceptual document in the sphere of national security, the phenomenon itself existed and continues to exist, even though remaining unlawful and threatening the strategic course of building democracy in Ukraine.

The third major difference of the Law on national security from the Concept is the provision for the President to oversee the development and approval of the new type of national security document – National Security Strategy –, whose specifics were not elaborated and whose terms of adoption were not suggested. The Law on national security also envisions the Military Doctrine to be approved by the President in contrast to the previous practice of approval by the Verkhovna Rada.

Indeed, as far as the Military Doctrine is concerned, this document could play an important part in further elaborating and specifying the framework for defence and security planning provided by the top conceptual documents on national security, like the Law on national security (and, maybe, by the future National Security Strategy), or its predecessor – the Concept. By the time of adoption of the Law on national security in June 2003, the Military Doctrine of Ukraine (1993) had long become obsolete, given the recent changes in the world and the situation in the regions near the Ukraine’s frontiers. Furthermore, Ukraine’s capabilities at maintaining the existing Military organisation structure declined drastically. As the result, the lowering of its combat readiness constitutes a real threat to national security.

Until the adoption of the Law on national security there were no effective mechanism for drafting of the Military Doctrine. Drafts by the Ministry of Defence, expert groups and other experts have been composed separately for many years... In May 1997, the former Minister of Defence, Kuzmuck, said in his speech at the Armed Forces Academy that the new Military Doctrine “has already been drafted”. Then, the Verkhovna Rada took a decision on the development of the new Military Doctrine at the end of 1999. This document was not published in mass media nor distributed among parliamentarians. Finally, the NSDC in close

cooperation with Ministry of Defence developed a new version, which from 2001 till its approval in June 2004 passed several rounds of preliminary approvals and subsequent amendments before being approved by the President in accordance with the Law on national security.

The long absence of a streamlined hierarchy of security documents in Ukraine starting from high level security concepts and going down to plans and programs constantly provoked large and small crises. Formally, in the summer 2004, with the approval of the Military Doctrine, such a hierarchy was created. Even though in essence it still needs to be corrected, since documents of practical guidance like the Laws, “On Defence of Ukraine”, “On the Armed Forces of Ukraine”, and other important legislature. Also, the key planning document – the State Programme for Reforming and Development of Ukraine’s Armed Forces through 2005 (2000) – were adopted long before the current Law on national security (2003) and the new Military Doctrine of Ukraine(2004) were approved. Moreover, the announcement was made in 2004 about the start of the development of two new documents: National Security Strategy and Military Security Strategy.

There was even an extraordinary occurrence, when in June 2004 the Verkhovna Rada adopted the Law, “On state guarantees for social support to military personnel, retiring from active service in accordance with reform of the Armed Forces of Ukraine and their family members,” while declining to adopt the actual reduction (envisioned by the new “reform” reduction from previously planned total 375 thousand of MoD personnel by the end of 2005 to much lower level of 285 thousand) as a Law. Minister of Defence, Yevhen Marchuk, was furious and accused parliamentarians of creating a politically driven absurdity. However, after the President of Ukraine adopted the new Military Doctrine, thus demonstrating executive vision of the priorities of national military policy and providing background for the assessment of the military’s need in human resources, the Verkhovna Rada returned to the unfortunate legislature on the reduction of total strength of the Armed Forces and just in one week adopted needed changes in total strength without delay.

In additional to the Law on national security, there are other official documents, that define issues of defence policy, military strategy, and other related issues. So, in general terms, the role, functions and missions of each of Ukraine’s security structures are legislatively defined. However, the relevant provisions of Ukraine’s Constitution and of the laws are often too general. The acts of the President, the Cabinet of Ministers and ministerial public acts also in many cases contain few concrete provisions and background data.

The discontinuity between conceptual provisions and practical requirements could be found in the top level normative documents – the above mentioned Concept and its successor from June 2003 – the Law on national security – which reflected rather sound understanding of security challenges, but failed to provide a clear mechanism of linkage between the visions of guidance documents and requirements of practice of security sector reform. And the same could be said about the adopted in Law “On Democratic Civilian Control Over the Military Organisation and Law-enforcement Bodies of the State”. The latter’s main positive effects beyond many declarative statements and appeals are two: its adoption once again attracted public attention to security sector reform. This law for the first time clearly emphasised the broad character of democratic control in overall security sector reform, and not just in controlling the military, as it was typical case before.

In such a situation, it is not easy for the military to substantiate manpower requirements, materiel, funds, supplies, technical and other resources, as well as work out plans of combat training and operational employment. Consequently, the civilians’ possibilities for the objective audit of budget proposals put forward by the military, control of the objectives and the level of training of troops, their readiness to accomplish their missions, on the basis of specific indicators, are also limited.

Without minimal specification of possible threats, too general formulations make it difficult to calculate the manpower and materiel needed for performing certain functions; types of weapon systems to be equipped with; indicators for assessment of the level of combat readiness, etc.

Ukraine’s regulatory-legal base could have laid more solid fundamentals for the security structures’ development and stable operation. In practice, however, despite recent theoretical documents’ improvements, it does not fully perform this task.

Generally, one can speak about the still limited effectiveness of the system of democratic civilian control over the security sector in the Ukraine, judging by the level of detail found in the conceptual and planning documents. The ambiguous definition of the power structures’ functions in the Constitution, the laws and the absence of a list of truly specific missions that should be elaborated in regulatory acts make it difficult to purposefully train military formations for future employment, or realistically plan their development.

The Intelligence Organisations

During the years of independence, the Ukraine made some progress in the establishment of a system of democratic civilian control over the Armed Forces. Meanwhile, the system of democratic civilian control over the intelligence/counterintelligence structures and other law-enforcement bodies is only in the making.

It is still an unfortunate reality for the Ukraine, when non-military security structures remain basically in the form of the non-transparent Soviet era relics, when their effectiveness and political impartiality are often questioned and outsiders are often confused by the complicated structures and missions. For example, the leading (coordinating) agency with regard to intelligence/counterintelligence activity²³ in Ukraine is Security Service of Ukraine, SBU (Sluzhba Bezpeky Ukrainy), the successor of the Soviet KGB. The SBU simultaneously performs law-enforcement, political and economic intelligence/counterintelligence and military counterintelligence missions. The Service includes paramilitary contingents and its employees have the legal status of military servicemen. A similar situation is in another major Ukrainian law-enforcement body, the Ministry of Internal Affairs of Ukraine, which, together with structures like criminal intelligence, criminal police, traffic police etc., where employees have rank structure and uniforms similar to those of the military (but do not have legal military status), also includes Interior Troops, where personnel so far is legally and "uniformly" military.

Both structures have undergone certain structural changes after Ukraine gained its independence. SBU lost the functions of border control and has established much stronger components dealing with fighting terrorism and corruption and providing for secret communication. SBU is the most closed state service, which managed to keep a relatively high quality of personnel and a rather high public support rating. However, the budgetary funding of SBU though greater than that of other security structures, is still far from being generous. The service is not totally immune from involvement in politics and the high level of corruption on the highest echelons of political authorities made it problematic to achieve noticeable results in this field. Intelligence and counterintelligence components worked under the same roof. This naturally lead to the domination of counterintelligence and to the detriment of intelligence.

²³ Besides political intelligence performed by SBU, the Ministry of Defence performs military intelligence and the Ministry of Internal Affairs performs criminal intelligence. In Ukraine many other structures like Tax Police, Border Service, State Guard Administration and Customs Committee, also have the intelligence functions which generally have somewhat similar problems to those of the SBU, the Ministry of Defence and the Ministry of the Internal Affairs in nature, but of much lower scale due to their rather narrow specialisation.

It should be noted, that in the Ukraine there is no separate intelligence organisation(s). The mission of intelligence is performed by several security structures, which have their subordinate intelligence organisations/agencies. There is a general definition in the Law, "On Intelligence Agencies of Ukraine," which defines intelligence agencies as "special agencies within executive bodies of central government which carry out intelligence operations with a view to defending the national interests from external threats". However, only for three of them (intelligence organisations of SBU, Ministry of Defence, and Border Service respectively) the duties are provided in the Law:

The duty of intelligence agencies of the Security Service of Ukraine is to protect state interests in political, economic, military-technical, scientific-technical, informational, and ecological areas;

The duty of intelligence agencies of the Ministry of Defence of Ukraine is to assess the level of military threat, ensure defence, and protect state interests in the following areas: military, military-political, military-technical, military-economic, informational, and ecological;

The duty of intelligence agencies of the special executive body charged with defending state borders of Ukraine is to protect state interests in the areas of border and immigration policy as well as other areas pertaining to the defence of state border of Ukraine and its sovereign rights in exclusive (maritime) economic zone and continental shelf.

Primary general responsibilities of all intelligence organisations according to the Law include: Collect, analyse, and disseminate intelligence among the bodies of state power as set out in this law;

Support through special actions the implementation of the state policy of Ukraine in economic, political, military, military-technical, ecological, and informational areas, strengthening of the country's ability to defend itself, and economic and scientific-technical development;

Ensure the security of Ukraine's missions abroad, their personnel, and members of their families abroad as well as those persons dispatched abroad who have knowledge of the information constituting state secrets;

Participate in fighting international organized crime, including terrorism, illicit drug trade, arms trafficking and technologies for arms manufacturing, and illegal migration.

To perform these duties and responsibilities, the intelligence organisations have the following powers:

Establish cooperation on a confidential basis with mentally sound adults who have voluntarily given consent thereto;

Collect for intelligence purposes all necessary information from all state bodies, enterprises, organizations and institutions, including banks without regard to the form of ownership, as well as information from automated information and data systems, databases, etc in the order set out in the law;

Employ the services, including paid services, of experts and consultants drawn from other state bodies, enterprises, institutions and organizations of all forms of ownership;

Employ on a contractual basis the premises, transportation means and other types of property of enterprises, institutions and organizations without regard to the form of ownership, and use the living and non-living premises, transportation means and other types of property of private persons, provided their consent thereto has been given;

Open accounts in national and foreign currencies in banks and other financial institutions in the order set out in the law;

Use documents that provide cover to operatives, departments, organizations, premises, and transportation means;

Establish for the purpose of covert action organizational structures (departments, institutions and organizations) necessary to accomplish tasks of intelligence agencies of Ukraine and provide cover to their operatives;

Contract scientific-technical, research and development, and other works pertaining to the production of special means necessary to conduct intelligence activities, develop and employ technical means of intelligence gathering;

Create in the order set out in the law professional education and research institutions, archives, and engage in publishing activities;

Organize and ensure within the boundaries of their competence the protection of state secrets in Ukraine's missions abroad, including taking measures aimed at preventing the information deemed to constitute state secrets from leaking through technical channels;

Ensure technical protection of the premises and property of intelligence agencies;

Ensure the security of intelligence agencies of Ukraine and the protection of their forces, means, and information from illegal actions and threats.

The Law further provides that intelligence agencies are authorized to bring into the territory of the Ukraine armaments, special technical and other means, firearms and the necessary ammunition to meet their needs in such equipment and, if necessary, transfer or move them abroad in the order established by the Cabinet of Ministers of Ukraine. To fulfil their duties, operatives of intelligence agencies may "employ means of physical influence, keep, carry on their persons, and use special means of active defence in the order established by laws of Ukraine; operatives in military intelligence agencies may in addition keep, carry on their persons, use and employ firearms".

Meanwhile, in contrast to the mission of intelligence, performed by at least seven individual security structures in Ukraine, the mission of counterintelligence is in one and only hand – that of the SBU, which is still in control of military intelligence as well. This heritage of Soviet past is long under debate, but so far the Ukraine keeps this system similar to few other world countries like Russia, Belarus, and Iran).

Soon after coming to power in 1995, President Leonid Kuchma made an attempt to raise the profile of intelligence in the country and created the Committee for Intelligence Co-ordination under the President, but, under pressure from the then SBU leadership that was dominated by the counterintelligence agenda, he had to abolish it in 1999. However, it is rather indicative (in terms of the objective necessity and importance to have good intelligence service which is not over-pressured by counterintelligence) that in September, 2003 the newly appointed Head of SBU, Igor Smeshko, the former Head of military intelligence, and President Kuchma, during the introduction ceremony, stated as priority requirements the elevation of the role and quality of intelligence work and fighting corruption²⁴.

²⁴ More on the democratic civilian control over the law-enforcement structures see: Leonid Polyakov. Ukraine - transformation between strains and uncertainty. Chapter in "SUCCESS AND FAILURE IN SECURITY SECTOR REFORM: LESSONS LEARNT FROM CENTRAL AND EAST EUROPEAN DEMOCRATIZATION PROCESSES (An Empirical Review of Case and Country Studies)" edited by Wilhelm N. Germann and Andrzej Karkoszka, DCAF, 2004. ; and Razumkov Centre analytical report, "Control of Law Enforcement Bodies in Ukraine: Civilian but Undemocratic", National Security & Defence No.4, 2004.

Still, according to the Law, "On Counter-intelligence," only the Security Service of Ukraine is specially authorized to conduct counterintelligence activities. However, according to the same Law, "Some counterintelligence measures may be undertaken by intelligence agencies of Ukraine and the State Guard Department exclusively for the purpose of protecting the state borders of Ukraine, government officials subject to state protection, and the forces and means, information systems and operational documentation of intelligence agencies of Ukraine and the State Guard Department."

Among the primary responsibilities of counterintelligence organisations are:

Counterintelligence support for economic, informational, scientific-technical potential, military-industrial and transportation complexes and their facilities, national system of communications, Armed Forces of Ukraine and other military units established pursuant to the laws of Ukraine, military-technical cooperation, participation in international non-proliferation regimes, as well as diplomatic missions of Ukraine and the security of Ukrainian citizens abroad;

Counterintelligence support for the protection of state bodies, law enforcement and intelligence agencies, and the protection of state secrets;

Defence of embassies and missions of foreign states in Ukraine and their employees from terrorist attacks;

Examination and clearance of persons seeking access to state secrets, work with nuclear materials and at nuclear facilities or involvement into confidential cooperation;

Ensuring security of employees of intelligence agencies and departments that conduct counterintelligence activities, as well as protecting their families and persons assisting in carrying out counterintelligence operations;

Information and analytical support to state bodies (as regards threats to state security of Ukraine);

Track using technical means and shut down radio-electronic and other types of equipment which pose threats to state security of Ukraine or may cause classified information to leak, as well as curb radio emissions from radio-electronic means that are used in illegal ways.

To perform their duties, counterintelligence bodies have the following powers:

Carry out counterintelligence searches, intelligence and operational search measures using operational and operational-technical forces and means, interview persons upon their consent, and use their voluntarily provided help;

Track, take note of, and document publicly and through private channels intelligence, terrorist and other types of operations against the state security of Ukraine, keep track of these operations, undertake visual surveillance in public places using photo-, cinema-, and video-recording, optical and radio equipment, and other kinds of technical means;

Undertake counterintelligence operations and the respective operational and operational-technical measures with a view to preventing, detecting in a timely manner, and stopping intelligence, sabotage, terrorist, and other kinds of illegal activities threatening the state security of Ukraine;

Employ non-cover and under-cover, staff and non-resident employees, establish for the purpose of providing cover enterprises, institutions, organizations, as well as use documents which conceal persons or their institutional affiliation, premises and transportation means of agencies and departments conducting counterintelligence operations;

Request, collect, and study, if deemed necessary by the law, documentation that characterize the activities of enterprises, institutions, organizations, as well as the way of life of private individuals, and sources and size of their income with a view to preventing and stopping intelligence, terrorist and other types of illegal infringements on the state security of Ukraine;

Detain and keep in specially designated areas: persons suspected of preparing or conducting intelligence, sabotage, and terrorist activities, as well as committing other crimes falling under the jurisdiction of the agencies of the Security Service of Ukraine for the duration, and in the order, provided in the law of Ukraine; persons who infiltrated the facilities and places guarded by the agencies and departments of the Security Service of Ukraine for up to three hours, and for seventy-two hours (with a 24-hour notification of the court to allow for checking whether such detention is justified) if it can prevent or stop a crime and help to determine the person's identity; conduct personal examination of the said persons, their belongings, and transportation means, as well as expropriate the documents and objects which may serve as evidence or is dangerous for public health and well-being;

With the exception of guarded military facilities entry must be undertaken in the established order, and exclusively for the purpose of halting intelligence, terrorist and other kinds of illegal acts with regards to the state security of Ukraine, enter and remain in the territory and premises of state bodies and their departments, local bodies of self-government, enterprises, institutions, and organizations without regard to the form of ownership;

Be present in the restricted border areas in the order mutually agreed upon with heads of agencies protecting state borders in the State Border Service of Ukraine to undertake counterintelligence measures along the borderline, controlled border region, points of entry into the territory of Ukraine and territorial waters of Ukraine;

In emergency cases have the right to use communication means that are property of enterprises, institutions and organizations, as well as communications means of private citizens, provided they have given their consent, with a subsequent reimbursement of all expenses at their request;

In the interest of ensuring state security and accomplishing the tasks of counterintelligence, organize, coordinate and conduct scientific and scientific-technical studies, establish scientific institutions and inter-departmental advisory bodies in the order established by laws of Ukraine;

Possess, carry, employ, use firearms, special means, employ means of physical influence in accordance with laws of Ukraine and other legislative acts of Ukraine, and carry arms and special means in all types of transportation.

An analysis of the current administrative and supervisory functions and powers of authorities responsible for civilian control over intelligence bodies shows that even the general requirements of the Constitution and basic laws lay down the preconditions for concentration of real power in the hands of one individual – the President. According to the Law: “Control over the activities of intelligence agencies of Ukraine within constitutional limits is carried out by the President of Ukraine, including via the National Security and Defence Council headed by the President of Ukraine. Intelligence agencies of Ukraine are accountable to the President of Ukraine and report to the President of Ukraine on issues, and in the order, determined by the President of Ukraine”.

This exclusive power to appoint and dismiss the top leaders of the intelligence and law-enforcement bodies quite naturally make these leaders *a priori* loyal, first of all, to the

President. And since the President is physically unable to control the entire system of security structures, business and political circles close to the Presidential Administration may effectively use the broad presidential powers not only within the framework of his directives but also for their own purposes.

The powers of the Verkhovna Rada in terms of control over intelligence and law-enforcement bodies were reduced to solely declarative ones after the adoption of Ukraine's Constitution. According to the Constitution, the Verkhovna Rada, with regard to intelligence bodies, can adopt legal acts regulating their activity, their general structures and total strength, approve their budgets, request information and summon their heads for parliamentary hearings. However, in reality even these powers are quite difficult to enforce.

As it was indicated above, there is no special parliamentary committee dealing exclusively with intelligence/counterintelligence issues. The Committee of the Verkhovna Rada on national security and defence includes for these purposes a subcommittee "on the issues of legislative support of the activity of bodies of security, intelligence and counterintelligence, border and customs bodies", which powers are basically limited to preparation of draft laws and sessions of this Committee devoted to the issues of intelligence/counterintelligence.

In addition to Constitutional powers, the Law, "On Intelligence Agencies of Ukraine," specifically mentions the role of the parliamentary Accounting Chamber:

In order to control the disbursement of the funds from the State Budget of Ukraine to support intelligence agencies of Ukraine and finance their activities a special group drawn from members of the Chamber of Accounting of Ukraine is established.

Special group of the Accounting Chamber of Ukraine is authorized in the order determined by law to receive from intelligence agencies of Ukraine documents certifying their expenditure of funds of the State Budget of Ukraine as well as call on heads of intelligence agencies to report on these issues.

Members of the special group of the Accounting Chamber of Ukraine carry out functions spelled out in this Article only provided that they have been granted access to the documents constituting state secrets in the order established by the Law of Ukraine "On State Secrets".

They are forbidden from revealing methods and means of the activities of intelligence agencies, uncovering the identity of their operatives, and disseminating the information received.

There is also a provision for the Office of Prosecutor General to oversee the intelligence activity:

Supervision over intelligence agencies as it relates to their observance of the laws of Ukraine is carried out by Prosecutor General of Ukraine and prosecutors authorized by Prosecutor General of Ukraine in accordance with the Constitution and laws of Ukraine.

The information about individuals who cooperate or cooperated with an intelligence agency of Ukraine, persons who work as staff members in intelligence agencies, and organizational and staffing structures of intelligence agencies do not fall under the jurisdiction of prosecutorial supervision.

Control over intelligence activity is performed by two directorates within the NSDC: the military policy directorate and the state security directorate. Meanwhile, the NSDC in reality has never had adequate number of qualified staff to effectively control the activity of security structures. Its influence was mainly dependent on the individual influence of the Secretary of the NSDC.

As far as the overall legal base for the activity of intelligence community is concerned, it is governed by the Constitution, and by several “specialised” laws: “On the Security Service of Ukraine,” “On Intelligence Bodies of Ukraine,” “On Counter-intelligence,” “On Operational Detective Activities,” “On the Fight against Terrorism,” as well as by other laws, by-laws and regulations approved by the President or the Cabinet of Ministers to regulate specific issues.

Similar to the legislation, which governs the military sphere in Ukraine, the legislature governing the intelligence/counterintelligence activity is almost exemplary of the first democratic principles: compliance of intelligence/counterintelligence activities with the principles of the rule of law and legitimacy, respect for human and civil rights and freedoms, non-partisanship and de-politicisation, democratic accountability, and transparency of intelligence/counterintelligence activity.

Compliance of official activity with the principles of the rule of law and legitimacy is officially ensured through legislative directives instructing them to act pursuant to the requirements of

the Constitution and laws of Ukraine, regimentation of their powers and responsibility for the breach of law, excess of vested authority or powers, abuse of granted powers, etc. Violations of the law, depending on the nature and consequences of the violation, may be disciplinary, administrative and criminal. In particular, on the compliance of intelligence/counterintelligence activity with the principles of the rule of law and legitimacy, the specialised legislation of Ukraine states the following:

SBU. The Law “On the Security Service of Ukraine”: the activity of the Security Service of Ukraine (SBU), its bodies and officers is based on the principles of legitimacy, respect for human rights and dignity, non-partisanship and responsibility before the people of Ukraine (Article 3).

Intelligence bodies. The Law “On Intelligence Agencies of Ukraine”: the intelligence bodies of Ukraine act on the basis of: legitimacy; respect for and observance of human and civil rights and freedoms; continuity; combination within the limits established by the law, overt and covert methods and means; delimitation of the spheres of activity of intelligence bodies, interaction and co-ordination of their activity; independence and expediency in submission of intelligence information; non-partisanship; subordination and accountability to the relevant bodies of state power within the limits established by the law.

The intelligence bodies of Ukraine cannot be employed for the fulfilment of tasks not provided for by this Law (Article 3).

Operational detective activities. The Law “On Operational Detective Activities”: operative detective activity is based on the principles of legitimacy, observance of human rights and freedoms, and interaction with government bodies and the public (Article 4).

Ordering operational detective activities in the absence of grounds stipulated by Article 6 of the Law (Article 6) is prohibited.

Counter-intelligence. The Law “On Counter-intelligence”: the main principles of counter-intelligence activities are: legitimacy; respect for and observance of human and civil rights and freedoms; non-partisanship; continuity; conspiracy, combination of overt and covert forms and methods of activity; comprehensive use of legal, preventive and organisational measures; adequacy of measures in the protection of state security against real and potential threats; interaction with the bodies of state power of Ukraine, local self-government bodies, non-government associations, legal entities and natural persons; subordination and

accountability to the concerned bodies of state power within the limits established by the law (Article 4).

The activity of the bodies and units of Security Service of Ukraine engaged in counter-intelligence activity shall not be used for fulfilment of tasks not provided for by this Law (Article 11).

Fight against terrorism. The Law “On the Fight against Terrorism”: struggle with terrorism is based on the principles of: legitimacy and steadfast observance of human and civil rights and freedoms; comprehensive use for that purpose of legal, political, socio-economic, informational, propagandist and other capabilities; priority of preventive measures ... (Article 3).

Because the primary attention of the Constitution as well as the main conceptual documents on national security are devoted to the universal democratic principles of respect for human and civil rights and freedoms, the specialised Ukrainian legislature on intelligence/counterintelligence activity established:

SBU. The Law “On the Security Service of Ukraine”: The SBU shall act on the basis of observance of human rights and freedoms. SBU bodies and officers must respect the dignity of human beings and treat them humanely and avoid disclosure of information about people’s private lives. In exceptional cases, certain rights and freedoms of an individual may be temporarily restricted in accordance with the procedure and within limits established by the Constitution and laws of Ukraine with the purpose of prevention and detection of crimes against the state.

Unlawful restriction of legitimate human rights and freedoms is inadmissible and entails legal liability as provided for by legislation.

In the event SBU officers violate human rights and freedoms while performing their duties, a higher body of the SBU shall take measures for restoration of those rights and freedoms, compensate moral and material damage inflicted and prosecute those guilty of such violation.

Upon request of Ukrainian citizens, the SBU shall present written explanations for restriction of their rights or freedoms within one month. Such persons may file a claim for unlawful acts by high-ranking officials and servants of the SBU in a court of law (Article 5).

Intelligence bodies. The Law “On Intelligence Agencies of Ukraine”: the intelligence bodies of Ukraine act on the basis of: legitimacy; respect for and observance of human and civil rights and freedoms; continuity; combination within the confines established by the law, over and covert methods and means; delimitation of the spheres of activity of intelligence bodies, interaction and co-ordination of their activity; independence and expediency in submitting intelligence information; non-partisanship; subordination and accountability to the relevant bodies of state power within the limits established by the law (Article 3).

The activity of intelligence bodies of Ukraine shall not be exploited for the restriction of rights and freedoms of citizens or for the forcible change of the constitutional order, removal of bodies of state power or intervention in their activity (Article 8).

Operational detective activity. The Law “On Operational Detective Activity”: operative investigation activity is based on the principles of legitimacy, observance of human rights and freedoms, interaction with the bodies of governance and the people (Article 4).

The data obtained as a result of operative investigation activity and dealing with the private lives, honour and dignity of people, unless they contain information about acts prohibited by the law having been committed, shall not be preserved and must be destroyed.

The results of operative investigation activity and information dealing with the private lives, honour and dignity of people shall not be transferred or disclosed if they constitute state secrets pursuant to the legislation of Ukraine. For the transfer or disclosure of such information, officers of operative units and persons to whom such information was entrusted in the course of operative investigation activity and who discovered such information within the parameters of their official duties shall be prosecuted in accordance with the effective legislation, with the exception of disclosure of information about illegal acts violating human rights.

Operational detective activities related to the temporary restriction of human rights shall be conducted with the purpose of prevention, preclusion and detection of severe or extremely grave crimes, searching for individuals evading criminal punishment or that went missing, protection of life, health, residences and property of officers of the court and law-enforcement bodies and persons engaged in criminal proceedings, and termination of intelligence and subversive activity against Ukraine.

Visual monitoring may be conducted in order to collect data about a person and its

connections in the event of the existence of facts proving that the person is planning to commit or has committed a grave crime, to obtain information pointing to elements of such a crime and to guarantee the security of officers of the court and law-enforcement bodies, persons involved in criminal proceedings and members of their families and close relatives.

It is prohibited to employ technical means, psychotropic, chemical and other substances depressing the will or harming human health and the environment for obtaining the information (Article 9).

Counter-intelligence. The Law “On Counter-intelligence”: the state guarantees observance of constitutional human and civil rights and freedoms in the course of counter-intelligence activity. Restriction of human and civil rights and freedoms is not permissible, except as provided for by the Law (Article 11).

In the former Soviet Union, whose structures the Ukraine inherited, the intelligence structures and law-enforcement bodies followed the will of one political force, the Communist Party, and were an instrument of its policy. Their activity was largely governed by ideological and political imperatives, which called for and enabled the use of such imperatives in fighting ideological opponents and the restriction of political freedom in general. That is why independent Ukraine, which in the Constitution declared itself a democratic, social and legal state, was very careful to declare the principle of non-partisanship and de-politicisation for its security structures:

SBU. The Law “On the Security Service of Ukraine”: the activity of the Security Service of Ukraine, its bodies and officers is based on the principles of legitimacy, respect for human rights and dignity, non-partisanship and accountability to the people of Ukraine (Article 3).

Employment of the SBU for political party, group or personal interests is not allowed.

The activity of parties, movements and other public associations pursuing political goals in the SBU is prohibited.

Over the period of service or work on the basis of a labour agreement, the membership of SBU officers in such associations shall be suspended (Article 6).

Intelligence bodies. The Law “On Intelligence Agencies of Ukraine”: the intelligence bodies of Ukraine act on the basis of: legitimacy; respect for and observance of human and civil rights

and freedoms; continuity; combination within the limits established by the law, overt and covert methods and means; delimitation of the spheres of activity of intelligence bodies, interaction and co-ordination of their activity; independence and expediency in submission of intelligence information; non-partisanship; subordination and accountability to the relevant bodies of state power within the limits established by the law (Article 3).

Employment of intelligence bodies of Ukraine by anyone for party interests is not permissible. Establishment and activity of organisational structures of political parties and other associations of citizens pursuing political goals in the intelligence bodies of Ukraine is prohibited. Membership and involvement of officers of intelligence bodies of Ukraine in the activity of political parties and other associations of citizens pursuing *political goals is not allowed* (Article 8).

On paper, the principle of democratic accountability of activity looks quite all right, but to achieve these written declarations in the situation of a lack of balance in real powers between the President and the Verkhovna Rada proved to be much more difficult than merely including the right words into the laws. Still, the Law states:

SBU. The Law “On the Security Service of Ukraine” specifies that responsibility to the people of Ukraine is one of the fundamentals of SBU activity, its bodies and officers (Article 3).

Control of the SBU activity is exercised by the President of Ukraine and the state bodies authorised by him (Article 32).

Permanent control of the observance of constitutional civil rights and legislation in the course of operative investigation activity of SBU bodies and units, as well as control over the compliance of regulations, orders, directives, instructions and prescripts issued by SBU with the Constitution and the laws of Ukraine is vested in officials specially appointed by the President of Ukraine. The powers of those officials and legal guarantees of their activity are specified in the Regulations approved by the President Ukraine.

The SBU shall regularly, in accordance with the procedure established by the President of Ukraine, inform the President, members of Ukraine’s National Security and Defence Council and officials appointed by the President Ukraine on the key issues of their activity, cases of violation of legislation, and, upon their request, present other required information.

The head of the SBU annually submits to the President Ukraine a written report about the

activity of the Security Service of Ukraine.

At the same time, the Head of the SBU regularly informs the Verkhovna Rada of Ukraine about the service's activity, the current state of affairs with national security, observance of the effective legislation, guarantee of human rights and freedoms and on other issues. The SBU shall respond to inquiries of standing and ad hoc committees of the Verkhovna Rada and people's deputies of Ukraine in accordance with the procedure established by the legislation (Article 31).

The head of the SBU annually submits to the Verkhovna Rada of Ukraine a report about its activity.

Intelligence bodies. The Law "On Intelligence Agencies of Ukraine" specifies that Ukrainian intelligence agencies shall act on the basis of subordination and accountability to the relevant bodies of state power within the limits established by the Law (Article 3).

There is also legal requirement on the general adhering to the principle of transparency of intelligence and law-enforcement structures activity. In particular, with regard to the key intelligence/counterintelligence agency – SBU – the Law states:

SBU. The Law "On the Security Service of Ukraine": Ukraine's public shall be informed about the activity of the Security Service of Ukraine in mass media and in other forms provided for by the legislation.

Imposing restrictions on information about the overall budget of the Security Service of Ukraine, its competence and key lines of activity, as well as cases of unlawful acts of SBU bodies and officers, is prohibited.

Information constituting state, military, official and commercial secrets, as well as confidential information, disclosure of which may damage Ukraine's national security, honour and dignity of persons or violate their legitimate rights, shall not be disclosed, except as provided for by the legislation in the interests of justice (Article 7).

It may be stated that the Ukrainian legislative norms by and large require from the intelligence/counterintelligence bodies and their officers observance of the principles of democratic civilian control and envisage responsibility for any violation.

However, in real life, practical actions of a particular intelligence/counterintelligence officer in Ukraine are often guided not by law, but by tradition or by order from his/her leadership, even if the latter contradicts the law. The traits inherited from Soviet totalitarian society are manifested, first and foremost, in the preservation of a psychological prejudice regarding the place and role of intelligence/counterintelligence bodies in public life and state activity, as well as in the organisational, managerial and human legacy.

After the declaration of Ukraine's independence, a paradoxical situation arose in the sphere of state governance, including the security system: the new state was built using the old state machinery, state methods of governance and operation. There was no radical change of the ruling elite that logically should have happened. Appointment of personnel ready to implement the will of the "governing and directing" political force remained unchanged. As a result, the content of activity of the intelligence/counterintelligence bodies is often determined not by the law but by the will of an executive.

This legacy factor leads to the preservation of the situation whereby intelligence/counterintelligence and law-enforcement bodies are viewed by their leaders and the government not as an instrument of defending civil rights and freedoms but as an instrument of attaining private and corporate interests leading to the politicisation of intelligence/counterintelligence and law-enforcement bodies. Politicisation of these bodies is objectively conditioned by the currently existing political system in the Ukraine (its basis, structure and elements). This phenomenon was formed on the threshold of the presidential elections in 1999. It was precisely then that the existing system of relations of power characterised by close interlacing of the interests of businessmen and politicians, wherein law-enforcement structures are viewed as an instrument in the struggle for power, was primarily formed in the Ukraine.

The problems of ridding the Soviet KGB heritage from time to time continues to attract public attention. For instance, in June 2003, after appointment of the former (1991-1995) SBU Head , Yevhen Marchuk, from his position of the Secretary of NSDC which he occupied from 1999-2003, as Minister of Defence, some experts publicly speculated on the possibility of transfer of military counterintelligence from SBU to Ministry of Defence.

On another occasion, in February 2004, President Kuchma signed a Decree, "On additional measures to further democratise society and strengthen civilian control over the activity of law-enforcement and intelligence bodies." By this Decree, all SBU personnel officially working in other executive structures to conduct detective missions there, should be

withdrawn. The Decree was meant to de-KGB-ize the executive branch and was presented as such, but it was also very evident that getting rid of the KGB legacy is a much more difficult process and would hardly amount to just one Decree.

In effect, the Soviet intelligence/counterintelligence legacy is to a degree preserving them as agencies of state security, rather than national security. As observed by James Sherr: “Conspicuously absent in Ukraine’s scheme of ‘democratic civilian control’ is an obligation on the part of the SBU and most other non-MOD security bodies to provide parliament with a breakdown of their budgets, expenditures and sources of finance, their staffing levels and their scheme of command, recruitment and training. Thus, when the Law refers to the ‘legal basis’ (‘other laws of Ukraine’, ‘implementing legislation’) of counterintelligence activity, it is referring to something that is often absent and quite often unsatisfactory when it is present – e.g. laws ‘On State Secrets’, ‘On Operational Detective Activity’ and ‘On the Security Service of Ukraine’ that are as permissive as the Law On Counterintelligence.”²⁵

There are security areas in Ukraine involving intelligence/counterintelligence activity like arms trade still remaining almost totally closed for parliamentary control and which are being criticised by Western partners. In March 2003, in Kyiv, during the international conference on export control conducted by Razumkov Centre, former US Ambassador Carlos Pascual observed that “An important question to ask today is whether checks and balances in export control work in Ukraine. Over the past months, as a result of numerous studies and interviews, we have seen and learned of some disturbing patterns. ... given the SBU’s role in [Ukraine’s State Arms Export Company] Ukrspetsexport and its role as the entity, which does the analysis on potential negative transactions, the SBU is put into the position of being both the proponent of export sales and the jury by which to judge whether they are legitimate. That, in and of itself, can be considered a conflict of interest and a closed internal circuit.”²⁶

In summary, analysis of the Ukrainian legislative norms gives grounds to state that, generally speaking, the Ukraine has the legal foundation necessary for the functioning of a system of democratic civilian control over intelligence/counterintelligence bodies.

Meanwhile, there are also preconditions existing for excessive concentration of powers controlling these bodies in the Administration of the President and the executive branch.

²⁵ James Sherr. “New Documents on Ukraine’s Security Policy: A Sound Basis for Action?” – Conflict Studies Research Centre, Camberley, Paper G121, July 2003, p.14.

²⁶ Remarks by Ambassador Carlos Pascual at the opening of the conference “Export Control in the Context of Security Sector Reform” Kiev, Ukraine, March 26, 2003.

The lack of balance of powers in between the President and the Verkhovna Rada, as well as certain permissiveness of the legislature on intelligence/counterintelligence in real life objectively create conditions for abuse of authority by officers while performing specific missions.

Democratic Oversight of Emergency Situations and Crisis Management

The section on democratic oversight of emergency situations primarily deals with the regulation of legislation for emergency situations. Thus far, fortunately, there have been no major emergencies in independent Ukraine akin to the Chernobyl nuclear accident of 1996.

As a result, the most important aspects of crisis management in Ukraine are considered primarily within theoretical framework.

Of particular interest for the purposes of research were such issues as Constitutional and legal provisions concerning types and classification of crisis situations, the order of their declaration, duration and abolition of emergency situations regime, institutional structure of their management and powers of state agencies as well as particularities of legal regime of crisis situations. The provisions of the Constitution and four main laws on crisis situations, namely the Law, “On Legal Regime of the State of Emergency,” “On Legal Regime of Martial Law,” “On Zone of Emergency Ecological Situation” and “On Protection of Population and Territories from Men-Caused and Natural Extraordinary Conditions,” as well as acts of relevant secondary legislation are studied in this section.

The Constitution of Ukraine does not have a separate title or article dedicated solely to definition and/or regulation of crisis situations or emergencies²⁷. However, the fact that such situations are explicitly mentioned in several articles indicates that the Constitution does recognize them.

Article 43 (right to work) says that the work or service performed by a person under Law on Martial Law and the Law on State of Emergency is not considered a forced labour. Article 64 states that during the state of emergency or martial law there may be some limitations imposed on the rights and freedoms, with indication of duration of such limitations. As well it enumerates those rights and freedoms, which may not be limited. Article 83 regulates the issue of emergency sessions of the Verkhovna Rada of Ukraine during crisis situations.

²⁷ Hereinafter the terms “crisis situation” or “Emergency situation” are used as collective definition for four types of crisis situations, namely, extraordinary conditions, the state of emergency, martial law and emergency ecological situation.

Article 85 enumerates the powers of the Verkhovna Rada. Par.31 of this article talks about the power of the Verkhovna Rada to approve Presidential Orders by which the state of emergency is introduced in Ukraine or in parts of its territory. Article 92 (19) provides that the legal regime of state of emergency, zone of emergency ecological situation and martial law may be defined only by the law. Article 106 (20) gives the President the power establish martial law. Article 106 (21) empowers the President of Ukraine to decide on introducing the state of emergency and to declare zones of emergency because of ecological situations within the Ukraine or in parts of its territory, with further approval of such decisions by the Verkhovna Rada

Article 138 (10) gives the Verkhovna Rada the right to initiate the state of emergency in the territory of the Autonomous Republic of Crimea or parts thereof and to declare Republic zones of emergency because of ecological situations. And, finally, Article 157 prohibits amendment of the Constitution during the state of emergency or during the martial law.

Ukrainian law classifies crisis situations vertically, that is, according to the level of escalation or seriousness of crisis, and horizontally, that is, depending on the type of crisis, on factors, which brought it about. The Constitution of Ukraine distinguishes three main types of crisis situation. They are state of emergency, martial law and emergency ecological situations. However, the Basic Law only operates within the terms of Articles 43, 64, 83, 92 (19), 106 (20,21), 138 (10) and 157), not defining the crises themselves or their legal regimes. Their definitions are given in specific laws, according to Article 92 (19) of the Constitution. Neither does the Constitution explain whether these types of crisis situations are divided horizontally or vertically. Grounds for such a division can also be found in specialized legislation.

There are four main laws on crisis situations, according to which emergency situations in Ukraine are divided into extraordinary conditions, emergency, emergency ecological situation, and martial law. The legal regime of crisis situations is divided into the regimes of state of emergency, martial law and legal regime of zone of emergency due to ecological situations. These are the following Laws: the Law, "On Legal Regime of the State of Emergency" of March 16, 2000 (hereinafter The Law on Emergency), the Law, "On Legal Regime of Martial Law" of April 6, 2000 (The Law on Martial Law), the Law, "On Zone of Emergency Ecological Situation" of July 13, 2000 and the Law, "On Protection of Population and Territories from Men-Caused and Natural Extraordinary Conditions" from June 8, 2000 (the Law on Protection of Population and Territories).

The Law on Protection of Population and Territories does not deal with legal regime but establishes types, levels and classification criteria of extraordinary conditions. According to Article 7 of this Law men caused and natural extraordinary conditions are classified depending on four criteria, namely, *nature of the situation, scope of territory involved, scope of human losses and material losses*. Depending on nature of developments, which can cause extraordinary conditions, the Law defines two types of emergencies, namely, *men-caused* and *natural*. It should be noted that in the Concept on Protection of Population and Territories in Case of Threat and Presence of Men-Caused and Natural Extraordinary Conditions²⁸ crisis situations, besides the two above named types, they are also divided into *military* and *socio-political*. However, the Law did not keep to this classification, joining under the “men-caused” type also military and socio-political situations. In April 22, 2003 the Ministry of Ukraine on Emergency Situations and Protection of Population from the Effects of Chernobyl Disaster adopted the Order on classification characteristics of extraordinary conditions²⁹. The document stipulates four main groups of extraordinary conditions, i.e. in the sphere of transport, industry, life support, environment and other spheres of human activity, with detailed description of characteristics of each situation (accidents, events, phenomena etc). There are 173 possible extraordinary conditions described at the document.

Depending on scope of extraordinary conditions and the effects thereof, the amount of technical and material resources necessary for elimination of their effects, there are four levels of men-caused and natural extraordinary conditions. Those are *state, regional, local and object* levels. Classification criteria of men-caused and natural extraordinary conditions are established by the Cabinet of Ministers on the basis of information analysis of men-caused and ecological emergency situations, threat of existing and possible men-caused and natural disasters and the experience in the elimination of such emergencies. In its Regulation of March 24, 2004, on classification of extraordinary conditions depending on their levels³⁰, the Cabinet of Ministers set out conditions under which an extraordinary condition is referred to one of the four levels. Thus, a *state* extraordinary condition is declared as such when it:

Has spread or may spread to the territory of other states;

Has spread to the territory of two or more regions of Ukraine and these regions do not have enough material and technical resources needed for its elimination;

²⁸ The Concept is approved by the President of Ukraine Decree No. 284/99, March 26, 1999.

²⁹ The Order of the Ministry of Ukraine on Emergency Situations and Protection of Population from the Effects of Chernobyl Disaster “On Adoption of Classification Characteristics of Extraordinary Conditions” No. 119, April 22, 2003.

³⁰ The Regulation of the Cabinet of Ministers of Ukraine “On Order of Classification of Men-Caused and Natural Extraordinary Conditions Depending on their Levels” No. 368, March 24, 2004.

Has caused death of at least 10 persons or injured more than 300 persons or affected normal living conditions of more than 50 000 persons for at least 3 days;

Has caused death of at least 5 persons or injured more than 100 persons or affected normal life conditions of more than 10 000 persons for at least 3 days and caused material damage exceeding 25 000 minimum wages.

Has caused material damage exceeding 150 000 minimum wages.

In other cases, provided for by the legislation.

An extraordinary condition is regarded as regional one when it:

Has spread to the territory of two or more regions (cities of regional meaning), the Autonomous Republic of Crimea, oblasts, and when the resources needed for its elimination exceed resources available in these regions;

Has caused death of 3-5 persons or injured 50 - 100 persons or affected normal life conditions of 1000 - 10 000 persons for at least 3 days and caused material damage exceeding 5 000 minimum wages;

Has caused material damage exceeding 15 000 minimum wages.

Local extraordinary condition is a situation, which:

Has spread over the territory of potentially dangerous object, endangers environment, neighbouring settlements, engineering structures and elimination of which requires more material and technical resources than are available at this object;

Has caused death of 1-2 persons or injured 20 - 50 persons or affected normal life conditions of 100 - 1000 persons for at least 3 days and caused material damage exceeding 500 minimum wages;

Has caused material damage exceeding 2 000 minimum wages.

Object extraordinary condition is the one, which does not fall under the above definitions.

Extraordinary condition has to correspond to at least one criterion of certain classification to fall under respective type.

The Law on Men-Caused and Natural Extraordinary Conditions does not apply in case of martial law.

The laws on the regime of crisis situations stipulate, respectively, the state of emergency, martial law and at the zone of emergency ecological situations, establish the order of their introduction and termination, powers and responsibilities of state agencies and local governments, undertakings, institutions and organizations, set out guarantees for human rights protection and protection of rights and legitimate interests of legal persons as well as provide for responsibility for breach of requirements or failure to carry out the measures prescribed by the regimes.

According to the Law on Emergency the “state of emergency” is a “specific legal regime, which may be temporarily established in Ukraine or in parts of its territory in case of extraordinary conditions of men-caused or natural character of national level, which can cause or have caused human and material losses, endanger the life and health of population or at attempt of seizure of state power or forceful change of the Constitutional regime in the Ukraine, which presumes the empowering of relevant state agencies, military command and local governments with powers, provided for by this Law and necessary to prevent the threat and protect safety and health of population, guarantee smooth functioning of national economy, state agencies and local governments, protect the Constitutional regime and which allows for temporary, required by the threat, limitations of human and citizen’s rights as well as rights and legitimate interests of legal persons, with indication of duration of such limitations”. Under Article 4 of the Law, the state of emergency is introduced only in case of real threat to security of people or safety of the Constitutional order, which cannot be removed by other means. If the crisis is caused by unlawful forceful actions of groups of individuals, the President has the power to turn to these organizations or groups and demand that they stop their actions to avoid introduction of emergency regime (Article 5). When conditions that require urgent measures to save the population and prevent death of people exist, the state of emergency may be introduced without warning (Article 5).

The Law on Martial Law defines “martial law” as a “specific legal regime established in the Ukraine or in particular parts of its territory in case of armed aggression or threat of aggression, threat to state independence of the Ukraine or its territorial integrity, which presumes empowering of the relevant state agencies, military command and local

governments with powers necessary to prevent the threat and protect national security and allows for temporary limitations, required by the threat, of constitutional citizen's rights as well as the legitimate interests of legal persons, with indication of duration of such limitations”.

Under the, “On Zone of Emergency Ecological Situation” “emergency ecological situation” is “an extraordinary condition when particular areas are subject to negative environmental changes, which require application of extraordinary measures by the State. “Negative environmental changes” means loss, depletion or extermination of whole natural complexes and resources in result of excessive environmental pollution, destructive effect of natural calamities and other factors limiting or excluding the possibility of human living and carrying out economic activities in such conditions”. In zones of emergency ecological situation, according to article 8 of the Law, a special legal regime may be established. “Legal regime of zone of emergency ecological situation” is a “specific legal regime, which may be temporarily introduced in particular places in case of emergency ecological situation and is aimed at prevention of human and material losses, removal of threat to life and health of population and elimination of negative effects of emergency ecological situation”.

Article 8 provides for possibility to introduce a legal regime of state of emergency in a zone of emergency ecological situation if there are sufficient grounds for this.

During the state of emergency, martial law and in cases when the emergency regime is introduced in a zone of emergency ecological situation the relevant Laws establish procedures and provide for the number of measures to be taken to prevent disorder and protect rights and freedoms of the population. These measures contain certain limitations of rights and obligations imposed on individuals and legal persons, necessitated by the crisis situation. There are few measures specific to each regime but most of them are common to all three of them. These measures include:

Introduction of special regime of entry into and exit from the territory, limitation of freedom of movement in the territory where the crisis regime was introduced;

Limitation of transport movement and possibility to search the transport;

Increased guarding of public order and of objects crucial to life of people and to economic activity;

Prohibition of mass public arrangements, except those, which can be prohibited only by the court decision;

Prohibition of strikes;

Temporary or permanent evacuation of population from the places dangerous for living with obligatory provision of temporary or permanent living places;

Special order of provision of food and living essentials;

Introduction of quarantine and carrying out of other necessary sanitary and antiepidemic measures;

Mobilization and utilization of resources of undertakings, institutions and organizations for prevention and elimination of emergency situation with obligatory compensation for losses;

Imposing the duty on legal persons to provide temporary living space for evacuated or temporary resettled population, survival groups and military units, which assist in elimination of crisis situation.

In addition, the Law on Martial Law provides for the power of military command to establish labour service for population capable to work, impose curfew, initiate the ban on activity of political parties, civic organizations if it threatens sovereignty, state security, state independence of Ukraine, its territorial integrity and the life of citizens and to put a ban on arms trade and use, dismiss heads of state undertakings, institutions and organizations for undue performance of their functions etc.

The Laws on crisis situations provide for general institutional mechanisms and, among other, participation and responsibilities of military formations, i.e. law-enforcement agencies and Armed Forces, in cases of emergency.

The Law on Protection of Population and Territories provides for establishment of a unified state system of executive bodies on the prevention of and response to man-caused and natural extraordinary conditions (a Unified State System), which consists of territorial and functional subsystems (Article 20). The latter are established by central state executive bodies, while the former are established by the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations. Example of such

subsystems may be found in the Regulation of the Cabinet of Ministers of Ukraine of January 7, 2001 on Complex Measures Aimed at Effective Fulfilment of State Policy in the Sphere of Protection of Population and Territories from Men-Caused and Natural Extraordinary Conditions and Rapid Reaction to them for the Period till 2005³¹. This Regulation provides for the establishment of, *inter alia*, State Inspection on Protection of Population and Territories from Men-Caused and Natural Extraordinary Conditions at the Ministry of Emergency Situations with Ministry of Emergency Situations, Ministry of Justice and other Central executive bodies being responsible for the process. As well, the Regulation sets the requirement to create mobile rapid reaction rescue services in the Republic of Crimea, regions, Kyiv and Sevastopol, and rescue services in regional centres and in the cities of regional significance. Responsibility for creation of these services was on Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city administrations and Ministry of Emergency Situations.

Article 22 of the Law on Men-Caused and Natural Extraordinary Conditions establishes three regimes of functioning of Unified State System of protection of population and territories:

Regime of everyday functioning – in conditions of normal production and industrial activity, radiation, chemical, biological, seismic, hydro-geological and hydro-meteorological situation, provided that there are no epidemics, epizooties etc.

Regime of increased readiness – in case of significant worsening of production and industrial activity, radiation, chemical, biological, seismic, hydro-geological and hydro-meteorological situation, when there is a possibility of men-caused and natural extraordinary conditions.

Extraordinary conditions regime – when men-caused and natural extraordinary conditions exist and during elimination of their effects.

It should be noted, that under Ukrainian legislation use of the Armed Forces in cases of state of emergency and emergency ecological situations is rather an exception than a rule. Article 10 of the Law on State of Emergency empowers Military Command to manage the regime of emergency situation together with state executive bodies, Council of Ministers of the Autonomous Republic of Crimea and local governments. Military Command for the purpose of these two types of emergency situations consists of the Central administration of the Ministry of Interior of Ukraine, Security Service of Ukraine, Central administration of Civil

³¹ The Regulation of the Cabinet of Ministers of Ukraine “On Complex Measures Aimed at Effective Fulfilment of State Policy in the Sphere of Protection of Population and Territories from Men-Caused and Natural Extraordinary Conditions and Rapid Reaction to them for the Period till 2005” No. 122, January 7, 2001.

Defence Forces of the Central executive body on emergency situation and protection of population from the effects of Chernobyl disaster³² and Military Service of Law and Order in the Armed Forces. According to Article 20 of the Law on State of Emergency and Article 10 of the Law on Emergency Ecological Situation, the protection of public order, human lives, health, rights freedoms and legitimate interests is provided by forces and resources of the Ministry of Internal Affairs, the SBU and the Military Service of Law and Order of the Armed Forces of Ukraine (in case of state of emergency). The Armed Forces may be called upon only when crisis situation takes extremely large scale and endangers lives and health of significant number of people. The decision on using the Armed Forces in rescue operations and elimination of effects of crises is taken by the President.

Things are different in case of martial law regime. The Armed Forces are the main actors in managing this type of crisis. According to the Law on Martial Law the power to manage the regime of martial law is given to Military Command together with the state executive bodies, Council of Ministers of the Autonomous Republic of Crimea and local governments. In case of martial law, the Military Command consists of the General Staff of the Armed Forces of Ukraine, Command of Land Forces and Command of Naval Forces, operations command, military units command, command of the units of the Armed Forces and other military structures, established under the laws of Ukraine (Article 4). Responsibility to take all the measures required by the legal regime to protect security of population and state interests rests with the Military Command (article 13).

The Laws on the legal regime of crisis situations do not establish detailed system of activity for all the relevant agencies under conditions of crisis. Detailed list of responsibilities, obligations and measures to be taken should be provided, according to the Laws, by Presidential Order, by which the special emergency regime is introduced. However, the Laws do provide for general institutional framework of crisis management, interrelation of state and local agencies in emergency situations and main responsibilities and powers of these agencies.

The main principle established in the Laws for crisis management is the principle of cooperation among state and local bodies in emergency situations. The Laws on legal regime of crisis situations oblige all the state bodies of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, Council of Ministers of the Autonomous Republic of

³² This point applies to Article 4(1) of the Law "On Legal Regime of State of Emergency", which concerns especially serious emergency man-caused or natural situations (natural calamities, disasters, especially large fires, use of means of mass destruction, pandemics, epizooties etc.) that threaten life and health of significant parts of population.

Crimea, local governments, undertakings, institutions, political parties, Civil Society organizations and population in the territory under the special regime to assist respective agencies to carry out the measures of the legal regime (Article 19 of the Law on State of Emergency, Article 16 of the Law on Martial Law).

General mechanism of action in emergency situation provides for the following functions and responsibilities of state agencies.

The President of Ukraine has the power to introduce a special regime in a crisis situation by the Decree of the President. Certain bodies according to the Laws, namely National Security and Defence Council, Cabinet of Ministers, in certain cases the Verkhovna Rada of the Autonomous Republic of Crimea and local authorities through the Cabinet of Ministers may initiate this action. The President signs the Decree and afterwards submits it to the Verkhovna Rada of the Ukraine for approval. *The Verkhovna Rada* is obliged to consider the Decree in two days after it has been submitted.

In case of state of emergency (Article 5 of the Law on State of Emergency), the President has the power to turn to the Mass Media or through other means to organizations, formations or groups of persons that may provoke by their actions the state of emergency, with the demand to stop their unlawful actions in term established in the statement and with warning to introduce the state of emergency. This provision may be applied in cases listed in para.2-7 of Article 4 of the Law. These are the cases of mass terrorist acts, international and inter-confessional conflicts, mass disorders, attempts of seizure of state power or forceful change in Constitutional regime, mass crossing of state borders by people from neighbouring countries or the necessity to re-establish constitutional legal order and the functioning of state agencies.

The President is empowered to decide on using Armed Forces in rescue operations and elimination of effects of crises. The President has also the power to cancel the special regime of crisis situation by the Decree. A crisis regime may be terminated before the date set in the Decree on proposal from National Security and Defence Council, Cabinet of Ministers, the Verkhovna Rada, the Verkhovna Rada of the Autonomous Republic of Crimea in accordance with the relevant Laws.

The Verkhovna Rada of Ukraine, as provided for by the Constitution and by the Laws in question, approves the Decree of the President regarding the introduction of the crisis regime. Under Article 7 of the Law on Martial Law, the Verkhovna Rada has the right to

initiate the termination of martial law before the President. During crisis regime, the Verkhovna Rada functions under the special order. In case of state of emergency, the Verkhovna Rada, under article 12 of the Law on the State of Emergency adopts a decision on prolongation of its session or plenary sessions to the period of emergency. The Law on Martial Law and the Law on the State of Emergency provide that if the crisis regime is declared between the sessions of the Parliament, the Verkhovna Rada convenes in two days without special warning and works in session. The heads of state and local agencies, undertakings, institutions and organizations are obliged to facilitate the immediate arrival of people's deputies of Ukraine to the meeting of the Verkhovna Rada and assist them in carrying out their functions. If the term in power of the Verkhovna Rada expires during the crisis regime, its powers are extended till the first meeting of the first session of the Verkhovna Rada, elected after the termination of crisis regime. The activity of the Verkhovna Rada, as well as the activity of the Ombudsman, the Verkhovna Rada of the Autonomous Republic of Crimea, Cabinet of Ministers, the ministries, central and local executive bodies, local governments, courts, prosecutors offices and interrogation and inquiry agencies cannot be stopped during the period of crisis regime.

The Cabinet of Ministers has the major part of its powers during emergency ecological situations as well as in man-caused and natural crisis situations. The Law on Martial Law does not contain any provisions regarding the Government. Under the Law on Emergency Ecological Situation, the Cabinet of Ministers has the right to initiate a declaration a zone of emergency ecological situation for a particular territory (Article 6) and to initiate the termination of the special regime in a particular territory (Article 6). The Cabinet of Ministers makes its proposals on the basis of initiative from the central executive agency, responsible for issues of ecological safety, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations, local governments as well as on its own initiative. The ecological emergency situation requires obligatory allocation of funds from state and local budgets, reserve fund of the Cabinet of Ministers or other sources allowed by the legislation. In case these funds are not sufficient, the Cabinet of Ministers submits to the President a draft project on amendments to the State Budget, which is submitted to the Verkhovna Rada as an urgent matter. The Cabinet of Ministers or central executive agency empowered by it, arranges respective state order for supply of products for state needs, approves and carries out national complex or individual programmes of public labour within the funds available.

Under the Law on State of Emergency, the Cabinet of Ministers has the right to initiate before the President introduces the state of emergency (Article 5). This may happen only in case of

especially serious men-caused or natural emergencies ((natural calamities, disasters, especially large fires, use of means of mass destruction, pandemics, epizooties etc.) that threaten life and health of significant parts of population (article 4(1)). In the same cases the Cabinet of Ministers is empowered to make suggestions on termination of the state of emergency (Article 8). Under Article 14 the Cabinet of Ministers coordinates activity of the executive agencies, the Council of Ministers of the Autonomous Republic of Crimea, military command, local governments, undertakings, institutions and organizations during the state of emergency, which do not fall within the powers of National Security and Defence Council.

National Security and Defence Council initiates the introduction and termination of the crisis situation regime before the President. Under Article 17 of the Law on Martial Law, the National Security and Defence Council decides on the use of Border Service and other military arrangements established according to the laws of the Ukraine in carrying out the functions connected with introduction and management of legal regime of martial law according to the aim and particularities of their activity. Such a decision is brought into effect by the Decree of the President. As a consulting body to the President, who is a Supreme Commander-in-Chief of Armed Forces of Ukraine. The National Security and Defence Council carries out general advisory and coordination functions on managing functions and interrelations of agencies as well as measures to be applied in crisis situations.

The Verkhovna Rada of the Autonomous Republic of Crimea may initiate introduction and termination of the state of emergency and of regime of area of emergency ecological situation in cases when the territory or parts of the territory of the Autonomous Republic of Crimea are concerned. As well, it performs all other functions, stipulated in the relevant Presidential Orders.

Local administrations cooperate with respective authorities, responsible for managing the crisis situation and carry out the measures provided for by the Laws and to control public order, guaranteeing constitutional rights and freedoms as well as safety of population, protection of state interests in their respective territories. In case of emergency, local administrations are obliged to allocate financial and other resources provided in their local budgets for respective purposes, and if need be, to allocate additional funds according to Article 67 of the Law, "On Local State Administration."³³ As well, local governments, or agencies empowered by them, arrange respective orders for supply of products for local needs, approve and carry out local complex or individual programmes of public labour within the funds available.

³³ The Law of Ukraine "On Local State Administration in Ukraine" (1997)

Military Command is a major operational arrangement for prevention of crisis situations and removal of their negative effects. In case of state of emergency and ecological emergency situation it consists of the Central administration of the Ministry of Internal Affairs of Ukraine, SBU, Central administration of Civil Defence Forces of the Central executive body on emergency situation and protection of population from the effects of Chernobyl disaster and Military Service of Law and Order in the Armed Forces of Ukraine.

The Law on State of Emergency charges the Military Command with carrying out measures on introducing and managing the State of Emergency legal regime. During the state of emergency, the Military Command acts together with executive agencies, Council of Ministers of the Autonomous Republic of Crimea and local governments with functions stipulated at the Presidential Order (Article 10, 14).

The role of Military Command is emphasized more in the Law on Martial Law. Article 13 of the Law states that in the whole territory of Ukraine, or in parts thereof where the martial law regime is introduced, the respective Military Command carries out administering the defence and protection of public order in cooperation with other state and local agencies, like in case of Emergency. However, in the territories where military actions are on the ground, the introduction and management of the legal regime of martial law is rendered fully under the direct competence of the Military Command. It has the power to take all the measures needed to protect the population and state interests on its own discretion and not under the Order of the President and is responsible for these measures being carried out.

The Constitution and the Laws establish procedures on the declaration of the regime of crisis situation. They are very similar for all three types of crises.

Crisis situations are introduced by the Decree of the President. According to Article 106(20) of the Constitution the President, following the Law, makes a decision on introduction of martial law in the Ukraine. Article 106(21) empowers the President to decide on introducing the state of emergency and on declaring zones of emergency ecological situations. All the three Laws give the right to initiate such a decision to the National Security and Defence Council, which is a coordinating body on security and defence issues for the President and to the Cabinet of Ministers. The Verkhovna Rada of the Autonomous Republic of Crimea also has a right to initiate the state of emergency provided the crisis takes place in the territory of the Crimea. The Decree of the President is to be approved by the Verkhovna Rada within two days after application of the President.

The Presidential Decree should be made in form provided for by the Laws and contain description of the following main items:

Developments that caused introduction of special regime³⁴;

Grounds for introduction of special regime;

Limits of the territory on which special regime is introduced;

Time of introduction and duration of special regime;

List of measures to be taken to eliminate the crisis situation and effects thereof and powers of agencies concerned;

In case of state of emergency and martial law the Order should set out an exhaustive list of constitutional human and citizen's rights as well as the list of rights and legitimate interests of legal persons subject to limitation in result of special regime. The duration of such limitations should be stated. In case of emergency ecological situation limitations concern certain types of activities.

The Decree should be made public without any prolongation through Mass Media or through other means.

The Law on the State of Emergency in Article 4 stipulates the following grounds for declaring special emergency regime:

Emergence of especially serious men-caused and natural emergency situations (natural calamities, disasters, especially large fires, use of means of mass destruction, pandemics, epizooties etc.) that threaten life and health of significant parts of population;

Mass terrorist attacks causing death of people or destruction of crucial objects of life support;

International and interconfessional conflicts, blocking or seizure of objects or territories of particular importance, which threatens the safety of people and affect normal activity of state agencies and local governments;

³⁴ This applies only to emergency ecological situations.

Mass disorders accompanied by violence and limitation of human rights and freedoms;

Attempts to seize state power or change the Constitutional regime by force;

Mass crossing of state border by people from the territories of neighbouring countries;

Necessity to re-establish the Constitutional legal order and activity of state bodies.

Particular territory may be declared a zone of emergency ecological situation, according to article 5 of the respective Law in following cases:

Substantial exceeding of environment quality criteria limits, set out in legislation;

Existence of real threat to life and health of great numbers of people or causing substantial material damage to legal persons, individuals or environment in result of excessive environmental pollution and destructive effect of natural calamities or other factors;

Negative environmental changes on substantial territorial scope, which cannot be removed without resort to state emergency measures;

Negative environmental changes that seriously limit or exclude possibility of living and carrying out economic activities in respective territories;

Considerable increase in population sickness rate brought about by negative environmental changes.

Article 1 of the Law on Martial Law states that martial law may be introduced in Ukraine or parts thereof in case of:

Armed aggression;

Threat of armed attack;

Threat to state independence of Ukraine; and

Threat to its territorial integrity.

The Law on State of Emergency sets out the duration of the state of emergency. Normally it should not exceed 30 days for the entire territory of Ukraine and 60 days in parts thereof. In case of necessity, the President may prolong the emergency regime for no more than 30 days. Therefore, the maximum duration possible is 90 days. Such prolongation is to be approved by the Parliament. The other Laws on crisis situations do not have arrangements limiting the time of special emergency regime. However, it is required by each of three Laws that in the Presidential Decree by which the emergency situation is declared, the time from which it is introduced and its duration should be explicitly stated.

The special regime introduced in the crisis situation is cancelled by the Decree of the President of Ukraine. If the grounds, which caused the crisis cease, the President may terminate the special regime before the schedule on proposal from the National Security and Defence Council or the Cabinet of Ministers when the crisis concerned man-caused and natural emergency situations. The Verkhovna Rada of the Autonomous Republic of Crimea, when the territory of the Autonomous Republic of Crimea is in question and the Verkhovna Rada of Ukraine, in case of state of emergency and martial law can cancel the special regime due to the crisis situation.

In summary, it can be concluded that emergency situations and their special legal regimes are regulated by Ukrainian legislation quite in detail by the Constitution and four main laws on crisis management.

The Laws provide for general institutional framework of crisis management, interrelation of state and local authorities in emergency situations and their main responsibilities. In particular, the Laws also provide for responsibilities of security structures, i.e. law-enforcement agencies and Armed Forces in cases of emergency.

It should be noted that under Ukrainian legislation, the use of the Armed Forces in cases of state of emergency and emergency ecological situation is rather an exception than a rule. In the case of martial law, the Armed Forces are the main actors.

Analysis of the legislation on crisis management allows us to conclude that legal the regulation dealing with emergency situations mainly corresponds to main democratic principles of separation of powers, respect to human rights and rule of law.

Peace Support Operations and Democratic Oversight Thereof

Ukraine considers its participation in international peace support operations as an important part of its foreign policy. Two Laws establish the main legal provisions of Ukraine's participation in peace support operations: "On the Fundamentals of the National Security of Ukraine" and "On the Armed Forces of Ukraine".

The Law "On the Fundamentals of the National Security of Ukraine" provides that one of the main directions of the state policy on issues of the national security of the Ukraine is "participation in international peace keeping missions under the auspices of the UN, OSCE, and other international security organizations"³⁵.

The Law, "On the Armed Forces of Ukraine," on its part provides that the Armed Forces can participate in international military co-operation and international peace-keeping operations as provided by the international treaties and in established legislation.

Based on the above general legal provisions, the Law, "On Participation of Ukraine in International Peace-keeping Operations," establishes the main procedural provisions for participation in peace support operations.

Ukraine first took part in peace support operations in 1992, when the Verkhovna Rada adopted the Resolution, "On participation of the Armed Forces of Ukraine in UN Peacekeeping Forces in conflict zones on the territory of Former Republic of Yugoslavia".

Overall, Ukrainian military³⁶ contingents took part in the following Missions (Peace Support Operations):

[Peacekeeping operations of UN Forces for security activity \(UNPROFOR\) \(1992-1995\)](#)

[International IFOR Forces and then Stabilization SFOR Forces \(Dec'95-Dec'99\)](#)

UN Mission to Eastern Slavonia(Apr'96-Jan'98)

International KFOR Forces in Kosovo (Since Sept'99)

[UN Mission to Angola \(Jan'96 – Feb'99\)](#)

UN Mission to Lebanon (Since Jul'00)

UN Mission to Sierra-Leon (Since Dec'00)

³⁵ Ukrainian legislature makes no distinction between types of peace support operations conducted by the international community. All those operations aiming to reach peace and stability are called *myrotvorci* (this term covers both peace making and peace-keeping) operations. For further reference the term "peace-keeping" will be used in most cases.

³⁶ In addition to Ukraine's Armed Forces, a lot of personnel are contributed to UN missions from the Ministry of Internal Affairs.

Humanitarian Mission to Kuwait (Apr-Aug'03)

UN Mission to Liberia (since Jan'2004)

In most of these Missions, the size of Ukrainian contingents varied from a platoon up to company and battalion(s) or helicopter squadron. However, in Iraq, Ukrainian contingent as a part of the Coalition Forces (since August 2003), has a brigade-size formation, approximately 1700 personnel.

In addition to contribution of military contingents, the Ukraine regularly contributes military observers, who fulfil(ed) their tasks in numerous UN and OSCE Missions (Afghanistan, Congo, Croatia, Ethiopia, Georgia, Guatemala, Kosovo, Liberia, Macedonia, Moldova, Tajikistan, Sierra-Leon). The Ukraine also provides its aircraft and airspace for humanitarian and peacekeeping missions in Afghanistan since 2001.

The Ukraine has been widening its participation in International peace support operations under the auspices of the UN and other International and regional security organizations from year to year. Currently, it is among the world largest contributor-countries for Peace Support Operations under the UN auspices. According to the Defence, Marchuk, (August 24, 2004), "Our country is convincingly demonstrating its aspiration to be an influential participant in the global system of collective security. It is actively taking part in peacekeeping operations and humanitarian missions. Over 22,000 Ukrainian servicemen have taken part in peacekeeping operations since independence. More than 3,000 servicemen are serving with dignity on peacekeeping missions in five countries of the world."³⁷ It should also be noted that Ukraine paid for this contribution with over 30 killed and over 80 wounded military servicemen.

As far as the possession of a unit in the Armed Forces designated for peace support operations is concerned, the Ukraine has several such units. However, all these units are formally designated for peace support operations only in accordance with NATO-Ukraine Charter on Distinctive Partnership, which provides that Ukraine will participate in NATO-led Peace Support Operations.³⁸ To support this commitment, Ukraine designated certain units (and assets) for possible use in NATO Partnership for Peace Programme's activities, as well as in NATO Planning and Review Process (PARP) designed to facilitate interoperability of NATO partners with NATO member states.

³⁷ See: Ukrainian Defence Minister Yevhen Marchuk speaks at Independence Day parade in Kiev. – *BBC Monitoring Service*, UK, August 24, 2004.

³⁸ To be precise, until 2001, NATO planned and conducted operations, which were called Peace Support Operations, but since 2001, these operations are called Crises Response Operations.

The list of these units and assets includes:

1. Separate special battalion (mechanized) of Western Operational Command;
2. Separate airborne battalion of 95th separate airborne brigade, Northern Operational Command;
3. Combined air squadron of army aviation regiment, Western Operational Command;
4. Engineer company of Western Operational Command (Ukrainian part of Combined Ukrainian-Hungarian-Romanian-Slovak battalion "Tysa");
5. Pontoon bridge launching battalion of Pontoon bridge launching brigade;
6. Air squadron of military-transport air division;
7. Frigate "Hetman Sahaydachny";
8. Big amphibious vessel "Kostiantyn Olshansky";
9. Group of Ukrainian officers appointed for service in multinational HQs.

All selected units and assets are required to be trained and prepared in accordance with NATO standards and procedures. More over, according to the Law, "On Participation of Ukraine in International Peace-keeping Operations," Ukrainian citizens who are selected to take part in international peace support operations should be trained at special Training Centres.

For that purpose, as well as for accumulation of lessons learned in numerous international peacekeeping missions, the Ukraine, together with NATO, have established a special library of required NATO Standards (STANAGS and Allied Publications).

Growing participation of Ukrainian officers in peacekeeping deployments abroad has prompted the opening in 2000 of special Course for the officers of multinational staffs within the National Defence Academy of Ukraine. These train officers, who are selected for the positions in international peacekeeping or similar multinational staffs. For each rotation up to 40 officers study the theoretical foundations of peacekeeping for two weeks, as well as

practical Ukrainian and international experience in working on a multinational basis. The curriculum is based on the programs from NATO peacekeeping schools.

In 2003, the Course became a Centre and provided training for a group of Ukrainian officers, which were to be appointed to various peacekeeping positions mostly in Iraq. Instruction was carried out exclusively in English, and the curriculum itself was adopted with consideration of actual operational experience. Instructors from the US, Canada and France helped to teach the course along with Ukrainian instructors.

Americans supplied the courses with the bulk of supporting computers, local network equipment, software and literature, as well as providing some visiting lecturers to supplement permanent NATO instructors from Canada and France. In addition to this, in 2004, the U.S. sponsored Simulation Centre was inaugurated to be the first of the several such Centres supplied by the US to Ukrainian military for the purpose of more efficient officers training for joint and peacekeeping operations. The overall cost of the U.S. supplied hardware, software and training package is \$5.4 million.

Ukraine trains its peacekeeping personnel in country (NATO recognized Ukraine's Yavoriv PfP Training Centre), as well as abroad – in Austria, Canada, Finland, Greece, Sweden, Switzerland, Turkey, etc.

In addition to NATO related planning of peace support capability, since 2000, the Ukraine attempts to plan its peace support capability for participation in UN missions as well. The State Programme for Reform and Development of the Armed Forces till 2005, approved by the President in 2000, stipulates that “the Armed Forces must be constantly ready for the participation in peacekeeping and humanitarian operations under the auspices of international organisations with up to one brigade (numbering 2,000-3,000 men)”.

In this regard, many Ukrainian experts immediately noted the lack of certainty of such planning, arguing that there is a big difference between training 2,000 and training 3,000 men. It is known, for example, that the maintenance of one peacekeeping battalion in Bosnia (with only 400 men) did cost Ukraine close to \$5 million per year. So, the claim was that the Ukraine should not have such big “scissors” of unit strength and needs more specific planning of its peace support capability. As of late, new plans are developed to have peace support capability within the recently created Rapid Reaction Corps.

The Government reaches its decision to participate in a peace support operation in accordance with the Law, "On Participation of Ukraine in International Peace-keeping Operations". The Law determines the legal, organizational and financial grounds for participation in international peace support operations. Also it determines the order, the procedure of forwarding military and civilian personnel to the Mission, as well as how to train and support them.

First of all, the Law determines the list of organisation, in operations of which Ukraine is allowed to take part. Those operations should be conducted by:

The UN (according to the UN Security Counsel Resolution);

OSCE or other regional organization according to the Article VIII of the UN Charter;

Multinational forces, created according to the Resolution of the UN Security Counsel and conducted under the overall control of the UN Security Counsel.

The Law also determines that the Presidential decision to participate in above mentioned operations should be approved by the Verkhovna Rada.

According to the procedures established by the Law, after Ukraine has received an invitation (to participate in operation) from either the UN Security Council, or OSCE, or any regional security organization, or from a specific country's (in accordance with the UN Charter), the Ministry of Foreign Affairs in consent with Ministry of Defence and other Ministries involved prepares a proposal (request) concerning participation in a peace support operation and forwards it to the National Security and Defence Counsel of Ukraine.

The proposal should include most possibly detailed information about the future region of an operation, tasks and number of personnel, types and number of armament, chain of command, length of time and procedures for its prolongation, procedures for rotation and withdrawal, guarantees and compensations for the personnel (military and civilian) and for members of their families, financial issues related to the operation, etc.

The National Security and Defence Counsel discusses the proposal and presents its recommendations to the President for his consideration. The President makes the final executive decision and, if it is positive, he presents to the Verkhovna Rada the following papers:

The Presidential decision which has two extra signatures: of the Prime Minister and of the Minister who is responsible for the implementation of the decision;

The draft Law on the approval of the decision to forward Ukrainian contingent to peace support operation;

The reference document, which includes detailed information about the operation (that was provided by the MFA to the NSDC).

The Presidential decision to forward a Ukrainian contingent to take part in peace support operation to another country should be approved by the Verkhovna Rada was quite extraordinary.

It should be noted that the period of participation of Ukrainian units in any operation abroad is determined by the Verkhovna Rada. The Law provides that “a peace-keeping contingent and peace-keeping personnel, that was assigned to another country to take part in an international peace support operation returns back to Ukraine on completion of the operation”.

Of course, it is possible that Ukrainian units can be withdrawn earlier, before the accomplishment of an operation. It is the sovereign right of the Ukraine, similar to the right of any other country. The Law provides that a peacekeeping contingent and peace keeping personnel can be called back home before the completion of a peace support operation in case when their further participation in the operation becomes impossible because of essential changes of either international political-military situation, or conditions in the region of operation, or financial constrains.

The decision about withdrawal of the contingent is made by the President on the bases of a proposal of either the Ministry of Foreign Affairs (agreed with Ministry of Defence) or the Verkhovna Rada. In this regard, the relevant comment of the Minister of Defence, Yevhen Marchuk, is characteristic: “Our troops will be withdrawn from Iraq for sure. We will not be there too long. Possibly, we will withdraw in a normal way, when it will be determined that recourses of our stay there are over. A technology of a political decision is well known. The withdrawal mechanism is in our Law. Our Parliament may initiate the request, but it is the

President, who will make the final decision, and it will not be surprising decision. It should be agreed with the coalition partners”³⁹.

Overall, Ukraine from the very beginning of being an independent country provided the armed contingents, materiel and other assistance to peace support operations in many places of the world.

To support this commitment, the Ukraine has developed relevant legal foundations and established training facilities. This lead to the increase of quality and scope of Ukraine’s participation in international peace support operations and allowed the country to claim the image of active contributor to international peace and security.

In the final analysis, it should be stated that successful experience of Ukraine’s peace-keeping activity in significant measure could be contributed to such factors as Ukraine’s active international co-operation with developed democracies in the area of peace-keeping, as well as to the creation in the country of a rather balanced and overall effective democratic oversight of peace support operations.

The Judiciary and the Rule of Law

In the Ukraine, opposite to the practice of developed democracies which the country strives to become, there still exists a system of military courts. The Government has already recognised the incompatibility of their existence with the norms of the Convention on protection of citizen rights and freedoms, which Ukraine has recognised. However, even if this system were abolished, this will take at least a couple of years, so it still makes sense to consider the provisions concerning military judiciary, particularly system and order of creation of military courts, appointment and dismissal of military judges, appeal and cassation procedures in military courts, and the role of civilian courts in military judiciary.

The main legal acts framing the operation of military courts are the Constitution of Ukraine and specialised legislation, particularly the Law, “On System of Judiciary,” “On the Status of Judges,” “On Security Service of Ukraine,” “On Militia” (Ukrainian police), “On State Tax Service of Ukraine,” “On Order of Election for the Position and Dismissal of Professional Judge by the Verkhovna Rada of Ukraine,” as well as secondary and procedural legislation relevant to military judiciary.

³⁹ See: Interview of the Minister of Defence of Ukraine Yevhen Marchuk to “Ukrinform” news agency, Brussels, April 14, 2004. <<http://www.mil.gov.ua/index.php?lang=ua&part=interv&sub=int52>>

Under the Constitution, judicial procedures are carried out by the Constitutional Court and the courts of general jurisdiction. The Law, "On System of Judiciary," stipulates that military courts are the courts of general jurisdiction, the task of which is to provide justice in the Armed Forces and other military arrangements in civil, criminal and administrative cases.

Military courts system in Ukraine consists of five levels. Local military courts, military appeal courts, military court chambers at the Appeal Court of Ukraine and at the Court of Cassation of Ukraine and Military Judicial Board at the Supreme Court of Ukraine.

In their judicial activity military courts are guided by provisions of the same laws and procedural legislation (The Codes on Civil, Criminal and Administrative Procedure, for example) as all other courts of general jurisdiction. Therefore, possibility of appeal and cassation are guaranteed in military courts as well as in any other court in the Ukraine. The decision of a lower military court may be appealed only to military appeal courts. However, the secondary appeal and cassation may be appealed to higher courts, which are civilian. These higher courts, namely, the Appeal Court of Ukraine, Court of Cassation of Ukraine and the Supreme Court of Ukraine have military chambers in their structures.

In Ukraine the general rule for court proceedings, regardless whether the court is civilian or military, is openness. Closed proceedings are rather an exception and should be allowed for by decision of the court made according to legislation.

Legislation provides for possibility of judicial self-government. Self-government in military courts takes the form of a conference of military court judges, who decides on internal organizational, financial, and disciplinary provisions of military courts' activities.

The State Judicial Administration cooperates with relevant agencies of the Ministry of Defence on issues of material and technical support of military courts. Military courts are financed from the state Budget. Expenditures on military courts are provided in the Budget of Ukraine in a separate title.

Military judges first pass the qualifying examination to receive a commission in the military court. Judges are appointed to the position of judge for the period of five years by the President. After the expiration of the first term in office, military judges are elected by the Verkhovna Rada for an unlimited period. Judges elected for unlimited period stay in office till the age of sixty-five. They may be dismissed earlier solely on the grounds provided for in the Constitution and that only by the body that appointed/elected him/her. Generally a candidate

for position of a judge should be at least twenty-five years old, have a higher legal education and working experience in law for no less than three years, have been residing in the Ukraine for at least ten years and be proficient in the state language. Applicants for the position of a military court judge should be enrolled into military service and have a military rank of officer level. Civilian judges cannot serve in the military legal system and on courts. The Law on System of Judiciary stipulates that judges of military courts are in the military service and belong to the regular staff of the Armed Forces. Assessors and juries in the military judiciary are elected from among military servants as well.

Under Ukrainian legislation, civilian judges cannot serve in the military legal system and on courts. Article 19 of the Law on System of Judiciary in Ukraine stipulates that the role of military courts is to provide justice in the Armed Forces and other military arrangements established under Ukrainian legislation. Such a provision establishes special status for military justice, which requires special qualifications and characteristics of judges who serve at military courts. Article 63 of the same Law explicitly states that *judges of military courts are at the military service and belong to the regular staff of the Armed Forces*. Article 60 provides that a person may become a professional judge if he/she meets all the requirements set by the Law, i.e. a person should be a citizen of Ukraine, be no younger than twenty five years of age, have the higher legal education and professional experience in the sphere of law of no less than three years, have been residing in Ukraine for at least ten years and be proficient in Ukrainian language. There is an additional requirement for a person who applies for the position of a military court judge. Such a person should be enrolled into military service and have a military rank of officer level. Military rank to a judge of military court is given by the President on submission from the Head of the Supreme Court. The terms and order of granting military ranks and the order of dismissal from military service of military courts judges are stipulated by legislation.

Moreover, according to the Law on System of Judiciary in Ukraine not only judges, but also assessors and the jury in military courts should consist of military personnel (Articles 65 and 69 of the Law).

It might seem that if a decision of a military court may be appealed to the Appeals Court, the Court of Cassation or the Supreme Court, which are civilian courts, it means that civilian judges do participate in military judiciary. However, one should remember that each of the named courts has chamber structure and one of the chambers, or the Board in case of the Supreme Court, is specially designed to deal with military issues and consists of professional judges, experienced in these matters. Legislation does not explicitly state that military

chambers should consist of military judges, in fact, it does not regulate appointment of judges within the Courts, leaving that to the Courts themselves. However, legislation pays special attention to the professional experience of judges in respective fields. For instance, Article 48 of the Law on System of Judiciary in Ukraine stipulates that “the Court Chambers, which consider the cases that fall under the jurisdiction of specialized courts, consist of judges with at least three-year experience in respective higher specialized court or at least five-year experience in respective specialized appeal court”. There is no separate provision on the Military Judicial Board at the Supreme Court, but one may logically presume that the rule relating to the Chambers equally concerns the Board.

The analysis of current Ukrainian legal provisions indicate that separate provisions on the status of and special requirements posed in Ukrainian legislation to military judges deny the possibility for civilian judges to serve in the military legal system and on courts.

Answering the question of whether civilian courts are competent to operate within security sector organizations one should understand what is meant under the term “security sector organizations”. In this research under “Security sector organizations,” all the organizations and formations in the Ukraine are considered, the aim of which is to protect both external and internal security in the state. That is why to include into this definition only the Armed Forces and other military formations would be too narrow an approach. Therefore, we think it appropriate also to view among security sector organizations, all the law-enforcement agencies of the Ukraine, e.g. militia (police), State Security Service and State Tax Service. Ukrainian legislation has a different approach concerning judicial matters in case of Armed forces and other military formations and in case of law-enforcement agencies. Therefore, both types of the security organizations will be considered separately in this section.

The Law on the System of Judiciary in Ukraine clearly states that these are military courts that provide justice at the Armed Forces and other military arrangements (but not law-enforcement agencies) established under Ukrainian legislation (Article 19). Among such courts the Law names local military courts established at the basis of garrisons and military appeal courts of the regions and of the Military-Naval Forces. However, the decision of these courts may be further appealed to the Appeal Court of Ukraine, the Court of Cassation of Ukraine and the Supreme Court of Ukraine. For this purpose, all of these three courts have special military judicial chambers (Military Judicial Board in the Supreme Court). Legislation in the Ukraine does not allow a civilian judge to provide justice in military cases. But the peculiarity is that, at the same time, civilian courts do compose, to some extent, a system of military justice. However, this is not without reservation. While the Appeal Court of Ukraine,

the Court of Cassation of Ukraine and the Supreme Court of Ukraine are civilian courts, only the military chambers within their structure provide military justice. Therefore, these civilian courts are structured in such a manner as to include military judiciary elements. Therefore, we tend to consider that in case of the Armed Forces and other military formations, civilian courts have an operational capability, limited in two parts. The first is that this is the case only for higher-level civilian courts (appeal and cassation) and second is that the role of these courts in military justice is performed only by the military chambers within their structure.

Unlike in the case of the Armed Forces, Ukrainian legislation has no reservations for participation of civilian courts in the sector of law-enforcement agencies. Special Laws, concerning the activities of each particular law-enforcement organization explicitly provides on the role of these courts. Several examples given below will illustrate the role of civil courts concerning these agencies.

The Law, "On Security Service of Ukraine," in Article 5, which concerns the activity of the Security Service and Human Rights, states that "on demand from citizens of Ukraine the Security Service of Ukraine within one month provides written explanations about limitation of Human Rights or Freedoms. The persons concerned have the rights to challenge before the court unlawful actions of officials and bodies of the Security Service of Ukraine". Article 25 empowers the Security Service to turn to the court, on the basis of the results of operational-investigative activity, with claims to cancel registration and prohibit the activity of entrepreneurships. Providing there are grounds set in legislation, it may submit to the court claims on invalidating the transactions, as provided for in legislation.

The Law, "On Militia," in Article 18 provides that in case of dismissal from the service initiated by the administration and the refusal to consider the claim by the higher official or body, a servant concerned has the right to challenge the dismissal before the court. A person serving at Militia has the right to challenge before the court the decisions of the officials and agencies of interior if he/she considers that such decisions affect his/her dignity and personal rights, not connected with his/her professional service. Article 25 states that "actions of Militia servants may be challenged according to legislation, before the agencies of interior, court or state prosecutor".

The same provision on responsibility of servants of one more law-enforcement agency is set by the Law, "On State Tax Service of Ukraine." Article 25 of the Law provides that "Actions or decisions of the tax militia, its officials and servants may be challenged before the law following the order set out in legislation". Article 10 of the Law on Tax Service enumerates

the functions of the State Tax Service and among the others names the following one. State Tax Service has the right to file to the court claims against entrepreneurs, establishments and organizations on invalidating the transactions and seizure to state coffers of income received in result of such transactions and in other cases of income received without grounds set in legislation, as well as on seizure of debts to the budget and state funds from their property. The same Article provides for the rights of Tax Service to turn to the court with the claim on cancellation of state registration of entrepreneurs.

The above provisions point on two major functions of law-enforcement agencies in relation to courts, namely, their possibility to be a plaintiff and a defendant.

Analysis of relevant legal provisions shows that civilian courts in Ukraine are fully competent to operate within the system of law-enforcement agencies and have a limited role in case of Armed Forces and other military arrangements. This situation may be explained by the fact that law-enforcement agencies are very closely connected with population and usually cases of civilian (civil, criminal or administrative) nature are brought to court in the context of these organizations. The situation differs at the Armed Forces and other military formations. They are specific arrangements, separated from society and more often than not connected with state secrets. Therefore, it seems logical that peculiarity of the nature in this sector requires special professional judicial skills.

To put it briefly, civilian courts also participate in the military judiciary in Ukraine. They are fully competent to operate within the system of law-enforcement agencies, but have a limited role in case of Armed Forces and other military arrangements.

The second subsection of this Chapter deals with soldier's rights. The main questions here are whether soldier's rights may be limited, on what basis and who makes respective decision. Legislative sources considered in this subsection include the Basic Law of Ukraine, the Law "On Armed Forces of Ukraine," the Charter of Internal Service of the Armed Forces and relevant procedural legislation. The question on human rights and humanitarian education of soldiers is as well considered in this subsection. The third subsection studies provisions on alternative service and conscientious objectors and considers mainly provisions of the Constitution, the Law, "On General Military Obligation and Military Service" and the Law, "On Alternative (Non-Military) Service".

However, before discussing the legislative base, framing soldier's rights, it is important to remember that under the term "soldier" the conscript military servicemen is considered. The

current system of conscription was inherited from the Soviet Union, but underwent some modifications and evolutionary changes. In 1982, during Soviet time, over 85% of the persons subject to call-up were drafted for active service. However, later, especially after Ukraine became independent, this share continuously declined. With accumulation of conscript resources and the spread of the practice of various deferments and privileges⁴⁰, the share of those who underwent military service went down: in 1992, it made up some 55% of conscript resources. The situation was further aggravated by a sharp reduction of the Armed Forces commenced in 1992: in 1997-2000, only 12-15% of conscripts went on active service; in 2000-2001 (after the upper limit of the service age was reduced from 28 to 25 years) – only 16-20%⁴¹.

Therefore, draft for active service actually became selective, arbitrary, and dependent on a personal factor — the position of the military registration and enlistment office. Such a situation presents a nutrient medium for abuses, corruption, and breach of social justice at performance of military duty by citizens.

There are grounds to speak about the breach of social justice at performance of military duty by Ukrainian citizens. In today's Ukraine, conscription service actually presents an extra social and financial duty forcibly imposed by society on one fifth of young men in the age of 18-25 years who appeared healthy enough, do not enjoy the right to deferment and do not evade draft, i.e., do not resort to infringement of the law.

Conscripts find themselves in a worse situation, compared to their peers not called up for service and with contracted servicemen who get higher pay and are entitled to higher insurance payments and greater privileges for performance of actually the same duties. Such a situation gives birth to the feeling of social injustice that worst hits law-abiding citizens, which presents an additional factor of moral and psychological discomfort of servicemen on active duty.

The breach of social justice is felt not only by those called up for active service. Inequality also hits their relatives left without support of able-bodied young men⁴² who have to visit their sons at their own expense and often support them financially, given the poor maintenance and miserable monthly pay obtained by active duty servicemen equivalent to several US dollars

⁴⁰ Deferment for the period of study at higher educational establishments, release from draft for graduates of higher educational establishments that have military departments, release for family reasons, etc.

⁴¹ See: Vorontsov A. "Who will respond to the spring call-up?" — *Argumenty i Fakty v Ukraine*, April, 2002, No.17.

⁴² For the sake of justice it should be noted that there are situations to the contrary, too, when parents want their child to be called up to the army, since, given the present high unemployment rate among the youth, this may put off solution of the problem of his employment and allow obtaining technical qualification free of charge.

per month.

Social injustice is also manifested in the fact that in the event of a judicial proceeding against a military unit, the latter enjoys legal support at the expense of the state, while a serviceman plaintiff or his relatives pay legal fees out of their own pocket.

Therefore, conscripts and their relatives pay a much higher price than the rest of citizens for “cheap” (for the state) draft, both in material and moral-psychological terms.

In addition, the selectivity of draft brings about a great deal of uncertainty (will I be taken to the army or not?) for many youths of the service age. This complicates planning of the life of young people — education, long-term employment, formation of family, etc.

There is also not rare practice of officials committing corrupt acts both during call-up and active service. This was admitted by the former Chief of the Main Organisation and Mobilisation Department of the General Staff of the Armed Forces of Ukraine, Lieutenant General Mykola Matiukh, who said that corruption at military registration and enlistment offices was conditioned by a number of subjective and objective reasons, but its scope “is not greater than in other state structures”⁴³.

The selective character of draft and breach of social justice created thereby are among the reasons for evasion of military service. The mechanism of responsibility for such acts does not work due to the imperfection of the relevant article of the Criminal Code of Ukraine, and the administrative fine is insignificant – about \$10. Another problem is presented by youths who at the time of draft are illegally employed abroad, with the geography of their employment spreading from “near abroad” to Australia. Today, there is no mechanism of their return (deportation) in place.

Cases related to evasion of service by servicemen on active service, though not systemic, are not rare, either. Most infringements include AWOL from a military unit or the place of service and desertion. There are also cases of self-inflicted wounds, sham illness, document forgery, the risk of which especially increases in the period of scheduled dismissal and call-up of new personnel due to the unstable spirits of conscripts and aggravation of the moral and psychological climate in military collectives.

The moral and psychological discomfort caused by the nature of the draft (its obligation,

⁴³ See: Vorontsov A. “Who will respond to the spring call-up?” — *Argumenty i Fakty v Ukraine*, April, 2002, No.17.

selectivity, rotation of the staff, which automatically divides it into “seniors” and “juniors”), in turn, creates a very bad moral and psychological spirit among active duty servants⁴⁴. The rate of violent crimes, infringements and cases of non-statutory relations in the Armed Forces is an alarming and dangerous phenomenon. Although by numerical indicators, the number of convictions for those crimes decreases every year, their share in all crimes committed in the AF steadily increases. In 1994, in all military formations of the Western region of Ukraine, 18.5% of all convicted military servants were convicted for such crimes; in 2000 — 20.7%; in 2001 — 23%. Unfortunately, no summarised relevant statistical data have been published later⁴⁵.

There are repeated cases of violence against subordinates on the part of their commanders. Cases of non-statutory relations and violence on the part of commanders arouse suspicion against the army among the public, fear and depression among conscripts, which lead to evasion of draft and suicides during military service. Given all this, public opinion strongly supports gradual transition to all-volunteer force. By the end of 2004, there were plans to abolish conscription completely by 2015.

Still, Ukrainian legislation guarantees all Constitutional rights to soldiers, with several limitations, necessitated by special status of service at the Armed Forces and prerogatives of this service, for example, use of arms. The Charter of Internal Service of the Armed Forces of Ukraine⁴⁶ stipulates that “military servicemen of the Armed Forces of Ukraine, who are only the citizens of Ukraine, enjoy rights and freedoms of citizens of Ukraine with limitations provided for by the Constitution of Ukraine, military legislation of Ukraine, Charters of the Armed Forces of Ukraine and other legal acts” (point 9). Point 18 states that military servicemen of the Armed Forces are protected by the state and enjoy all the rights and freedoms set out in the Constitution.

Several rights from among those entrenched in the Constitution are explicitly limited in case of soldiers. The main and unconditional limitation concerns the Constitutional right of people to unite into political parties for protection of their rights and freedoms and satisfaction of their

⁴⁴ It should be noted that an all-volunteer army, too, presumes age rotation and coexistence of elder and younger servicemen, in terms of age and experience. However, a professional army also presumes firm corporate relations and long duration of common service, resulting in the interest of the elder in high skills of the younger (transfer of experience) and a comfortable moral and psychological situation. Furthermore, contracted servicemen have greater possibilities for defending their rights, including in course of the law.

⁴⁵ *Corpora delicti* of such crimes encompass beating of servicemen, bodily injuries of different gravity or other violent actions intended to force a serviceman to perform all or some official duties entrusted to the guilty person or perform personal assignments and demands or any unlawful acts with the purpose of humiliation of honour and dignity of the victim, which is especially intrinsic in servicemen elder by their term of service. See: Interview with the Chairman of the Court Martial of Appeal of the Western region of Ukraine Major General of Justice B. Paliy: «Criminal responsibility for crimes of war is severe. Not a single revealed fact of infringement will remain unpunished». — *Armiya Ukrayiny*, April 4, 2002.

⁴⁶ The Law of Ukraine “On the Charter of Internal Service of the Armed Forces of Ukraine” (1999).

political, economic, social, cultural and other interests (Article 36 of the Constitution). The Article provides for the possibility of limiting the right in cases set out in legislation for protection of national security and public order, public health and rights and freedoms of others. The status and the role of the Armed Forces, their military nature requires their political neutrality. Article 17 of the “Basic Law of Ukraine” states that the Armed Forces and other military arrangements cannot be used for limiting human rights and freedoms or with the aim of forcefully changing the Constitutional regime, removal of state bodies or prevention of the activity of the latter. Article 37 of the Constitution explicitly prohibits establishment and functioning of political parties at military units. The Law, “On the Armed Forces of Ukraine,” which proposes the leading principles guiding the Armed Forces, prohibits the establishment and functioning of organized political parties in the Armed Forces.

Article 36 also concerns the rights of people to unite into public organizations. This right is also conditioned for the protection of national security and public order, public health and rights and freedoms of others. The Constitution, however, does not prohibit or limit this right as regards soldiers. The Law on the Armed Forces of Ukraine in Article 17 allows participation of soldiers in public organizations with several conditions. Statutory provisions of such public organizations should not contradict the activity of the Armed Forces. Soldiers can actively participate in public organizations only when they are free from their military service duties or when they are not considered as carrying out such duties.

Article 36 of the Constitution also provides for the right to be a member of trade unions for protection of one’s economic and professional interests. Under Article 17 of the Law on Armed Forces, this right may also be limited as regards military servicemen.

Another right that soldiers may not enjoy is the right, provided for in Article 44 of the Constitution, which concerns organization of and participation at strikes. The Law on the Armed Forces of Ukraine prohibits organization of and participation at strikes by the military servicemen of the Armed Forces. However, there are no provisions in Ukrainian legislation that prohibit participation of soldiers at peaceful meetings, assemblies and demonstrations (Article 39 of the Constitution).

Article 33 of the Constitution guarantees to everyone legally present within the Ukraine freedom of movement, freedom to choose the place of residence and the right to leave the territory of the Ukraine freely with limitations set out by legislation. Article 17 in the “Law on the Armed Forces” states that soldiers and servicemen may be limited in their freedom of

movement, freedom to choose the place of residence as well as their right to leave the territory of the Ukraine freely.

Article 34 of the Constitution of Ukraine concerns the freedom of speech, the free expression of one's thoughts and beliefs, the right to gather and the use and spread information. The Constitution sets out the conditions whereby these rights may be limited by legislation. The limitations may be imposed for the purposes of national security, territorial integrity or public order. The Law on the Armed Forces defines the keeping of state and military secrets as one of the grounds of activity of the Armed Forces and limits soldiers in their right to gather, use and spread information.

Therefore, there are six rights in the list of constitutionally protected rights and freedoms, which have limitations in case of soldiers and other servants of the Armed Forces and other military arrangements. All the other rights are enjoyed by soldiers as by ordinary citizens of the Ukraine.

The possibility of limiting a soldier's rights is provided for in Ukrainian legislation. Such limitation cannot be arbitrary. All the rights that may be limited are stipulated in legislation and the list of such rights cannot be extended.

There are two Constitutional rights, which soldiers cannot enjoy at all during their service in the Armed Forces or any other military arrangement. The first right, provided for in Article 36 of the Constitution, is the right of people to unite into political parties for protection of their rights and freedoms and satisfaction of their political, economic, social, cultural and other interests. Article 37 of the Constitution prohibits functioning of any kind of military arrangements at political parties. The reason is evident. The status and the role of the Armed Forces of Ukraine and other military formations, their military nature requires their political neutrality. The same Article provides for the possibility of limitation of this right in cases set out in legislation for protection of national security and public order, public health and rights and freedoms of others. Article 17 in the "Basic Law of Ukraine" states that the Armed Forces and other military formations cannot be used to limit human rights and freedoms. Nor can the Armed Forces be used to forcefully change the Constitutional regime, the removal of state bodies or the prevention of the activity of the latter. If political pressure could be exercised over the Armed Forces or any other military arrangements, all these values could be endangered. The Article explicitly prohibits the establishment and functioning of political parties at military arrangements. The Law on the Armed Forces, among the principles guiding

the Armed Forces, states the prohibition of the establishment and functioning of political parties in the Armed Forces.

The second right is provided for in Article 44 of the Constitution. It concerns organization of and participation at strikes. While the prohibition of participating in political parties during their service is entrenched in the Basic Law, all other limitations possible are provided for in Laws of Ukraine, particularly in the Law on the Armed Forces of Ukraine. Article 17 of this Law explicitly prohibits the organization of and the participation at strikes by the servicemen of the Armed Forces.

Four other rights, guaranteed in the Constitution may be limited during military service. The “*may*” wording here should be emphasized, as these rights are not prohibited as the two above-mentioned, but only are limited either in case of necessity or if their enjoyment prevents soldiers from effective performance of their military duty.

Establishment and participation in public organizations is one of these rights. It is guaranteed by Article 36 of the Constitution of Ukraine. The Law on the Armed Forces of Ukraine in Article 11 allows participation of soldiers in public organizations on several conditions. Statutory provisions of such public organizations should not contradict the activity of the Armed Forces. Soldiers can participate in the activity of public organizations only when they are free from their military service duties and when they are not considered as carrying out such duties.

The same Article 36 of the Constitution provides for the rights of working citizens of Ukraine to be members of trade unions for protection of one’s economic and professional interests. Under Article 11 of the Law on Armed Forces this right may also be limited as regards military servicemen.

Article 33 of the Constitution guarantees to everyone legally present within the territory of Ukraine freedom of movement, freedom to choose the place of residence and the right to leave the territory of Ukraine freely with limitations set out by legislation. Article 11 of the Law on the Armed Forces states that soldiers and servants of the Armed Forces of Ukraine may be limited in their freedom of movement, their freedom to choose the place of residence and the right to leave the territory of Ukraine freely.

Article 34 of the Constitution of Ukraine concerns the freedom of speech, the free expression of one’s thoughts and beliefs, the right to gather, the use and spread information. The

Constitution sets out the conditions whereby these rights may be limited by legislation. The limitations may be imposed for the purposes of national security, territorial integrity or public order. The Law on the Armed Forces defines keeping of state and military secrets as one of the grounds of activity of the Armed Forces and limits soldiers in their right to gather, use and spread information.

All the limitations on the rights of soldiers are set in legislation and should be used only for the best and effective performance of military service. No limitation should be imposed, which is not set in legislation.

Legislation of Ukraine defines several state bodies responsible for the functioning and organization of activity of the Armed Forces of Ukraine: the President as Commander-in-Chief of the Armed Forces, the Cabinet of Ministers, the Ministry of Defence, and the General Staff. Though no provision explicitly states on the right of these bodies to limit the rights of soldiers, such a power logically flows from their relevant competences (described above). Therefore, these four state institutions have the power to limit soldiers' civil rights in principle, exclusively within the limits set in legislation. In everyday activity of the Armed Forces and in individual cases, the Charter of the Internal Service of the Armed Forces of Ukraine provides the right of higher ranked military servicemen to limit in case of necessity certain rights of soldiers.

The limitations on civil rights of soldiers are set in two main documents. The first one is the Constitution. The Constitution contains one direct prohibition, i.e. the prohibition of political activity in the Armed Forces. The Constitution as well contains conditional clauses in some articles, for example on freedom of speech, freedom of movement, organization of strikes etc., which allow for further legislative limitation of civil rights of soldiers. The second legal act, which enumerates all the allowed limitations on soldiers' civil rights, is the Law on the Armed Forces of Ukraine. Article 11 of the Law prohibits establishment and functioning of organizational structures of political parties at the Armed Forces. Article 17 of the Law *limits* the following rights and freedoms of soldiers: the freedom of movement, freedom to choose the place of residence and the right to leave the territory of Ukraine freely, the right to be a member of trade unions, the right to establish and be a member of public organizations and the right to gather, use and spread information. Article 17 also prohibits organization of and participation in strikes by soldiers.

Other legal acts may also contain limitations, but they are based on provisions of the Constitution and the Law on the Armed Forces of Ukraine.

The Charter of the Internal Service of the Armed Forces of Ukraine states that a military servant must know and follow norms of international humanitarian law adopted by the Ukraine. Ukraine has signed and ratified all Geneva and Hague International Conventions on humanitarian law. The Charter provides that military academies' (military universities, academies, colleges, faculties and departments of military training at higher educational establishments) curriculum is worked out and approved by the Ministry of Defence together with the state bodies concerned. However, the general practice is that military educational establishments themselves work out their curriculum, which thereafter is approved by legislation. Courses on humanitarian and human rights law are obligatory parts of military educational establishments' curriculum.

The Constitution in Article 35 states that "if fulfilment of military duty contradicts religious beliefs of a citizen, his military duty should be substituted by alternative (non-military) service". The Law, "On General Military Obligation and Military Service," provides for the rights of citizens to have military duty substituted by alternative (non-military) service (Article 3). The main legal act regulating the terms and conditions of alternative service is the Law, "On Alternative Service".

The Law, "On Alternative Service," provides that those citizens whose religious beliefs prevent them from exercising military duty and who belong to religious organizations and who act according to legislation and whose religious beliefs do not allow use of arms, have the right to alternative service.

Alternative service is defined in the Law as a service introduced instead of military service in order to enable citizens to fulfil their duty before society. During Martial law and a state of emergency, the right to alternative service may be limited and the duration of such limitation shall be indicated.

Citizens of Ukraine enjoy all the rights and freedoms with limitations set in legislation and fulfil all the duties during their alternative service. The alternative service does not affect any social benefits they enjoy.

The alternative service is allowed to citizens subject to military service who personally stated that it was an impossibility to perform the latter due to their religious beliefs and who proved that their beliefs are genuine with respective documents or in any other way.

The alternative service may be carried out at entrepreneurs, establishments and organizations dealing mainly with social protection of population, protection of health, environmental protection, construction, housing and communal services, agriculture as well as at representation of Red Cross in Ukraine. The Cabinet of Ministers defines the types of duties for citizens carrying out alternative service.

The duration of alternative service is one and half times longer than duration of military service at the Armed Forces and other military arrangements. The duration of military service and, respectively, alternative service that substitutes it, depends on the educational level of the person.

Special commissions on alternative service are established by the Cabinet of Ministers of Ukraine in the Autonomous Republic of Crimea, regions, Kyiv and Sevastopol, if need be in districts and cities. These commissions deal with issues of alternative service. The commission should make its decision within one month after application from a person concerned. The central executive agency on labour and social policy provides the means for functioning of the commissions.

Certain rights of persons on alternative service are subject to limitations. Thus, they may not:

Avoid carrying out the alternative service;

Participate in strikes;

Undertake entrepreneurial activities;

Study at educational establishments other than basic professional or higher educational establishments on evening or distant forms of education;

Refuse from the place of alternative service defined by the commission.

The refusal to substitute military service with alternative service may be based on following grounds:

Failure to submit application on substitution of military service with alternative service;

Failure to prove that the religious belief is genuine;

Failure of a person concerned to come to the meeting of the commission without substantial reasons.

There may be no other ground for refusal. In case of refusal, the commission informs a person concerned in written form.

The commission makes a positive decision on alternative service if the genuine nature of religious belief raises no doubts.

When the alternative service is stipulated, the particularities of the religious belief regarding weekends should be taken into account, if possible.

During alternative service, a person may apply to the commission with grounded request on the change of place of service.

Alternative service ends in case of expiry of its term or before the term according to the decision of the commission. Such a decision may be taken in following cases:

Start of military service on wilful decision of a person concerned;

Decision of military-medical commission on impossibility of a person to further military service on the ground of health condition;

Obtaining by a person concerned a right for postponement of military service resulting from change in family conditions, provided for by legislation on military duty and military service;

Court verdict on imprisonment of a person concerned;

Breach of limitations imposed on certain rights according to this Law (listed above).

A person dismissed from alternative service has to perform military service in the Armed Forces of Ukraine or other military formations.

The decisions of the commission may be challenged to the commission of higher level or to the court.

Commissions on alternative service monitor the organization of alternative service.

The Constitution and legislation of provide for the possibility of release from military service on the ground of religious belief solely.

Article 35 of the Constitution states that “if fulfilment of military duty contradicts the religious beliefs of a citizen, his military duty should be substituted by alterative (non-military) service”.

The Law, “On Alternative Service,” provides that those citizens, whose religious beliefs prevent them from exercising the military duty and who belong to religious organizations, which act according to legislation and a religious doctrine which does not allow use of arms, have the right to alternative service.

The alternative service is allowed to citizens subject to military service who personally stated the impossibility of performing the latter due to their religious beliefs and by respective documents or in any other way proved that their beliefs are genuine. Failure to prove that the religious belief is genuine may be the ground for refusal to substitute military service with alternative service.

No other grounds for conscientious objection are provided for in Ukrainian legislation.

In summary, as far as the rights of soldiers are concerned, Ukrainian legislation guarantees all Constitutional rights to soldiers with several limitations, necessitated by special status of service at the Armed Forces and prerogatives of this service. The possibility for limiting soldier’s rights is provided for in Ukrainian legislation. Such limitation cannot be arbitrary. All the rights that may be limited are stipulated in legislation and the list of such rights cannot be extended. There are six rights in the list of constitutionally protected rights and freedoms, which have limitations in case of soldiers and other servants of the Armed Forces and other military formations. The first is the right to unite into political parties. The second limitation concerns the right to unite into public organizations. The third right that may be limited is the right to be a member of trade unions. The fourth right that soldiers may not enjoy is the right to organize and participate at strikes. Fifth, soldiers and servants of the Armed Forces may be limited in their freedom of movement, freedom to choose the place of residence and the right to leave the territory of Ukraine freely. And the last, sixth right subject to limitation is freedom of speech. The keeping of state and military secrets as one of the primary activities of the Armed Forces, limits soldiers in their right to gather, use and spread information. All the other rights are enjoyed by soldiers as by ordinary citizens of Ukraine.

The limitations on civil rights of soldiers are set in two main documents, namely, in the Constitution and the Law, "On the Armed Forces of Ukraine". Other legal acts may also contain limitations, but they are based on provisions of these two documents.

In the Ukraine, soldiers and military servicemen should be aware of the main humanitarian principles of International Law. The courses on Human Rights and Humanitarian Law are obligatory part of curriculum of military educational establishments.

Ukrainian legislation provides the possibility of non-military (alternative) service to people whose religious beliefs prevent them from exercising military duty and who belong to religious organizations, which act according to legislation and religious doctrine which does not allow the use of arms.

As for the rights of soldiers, they may be limited only on basis of and within the limits of the list set by legislation. This approach generally reflects requirements of human rights' protection principle. However, the legislation is rather vague as to who has a power to impose such limitations. There are no explicit provisions on this point, which may open the doors to abuses.

Rights of Military and Security Services Members

The first issue considered in this section concerns the rights military servicemen have under the legislation of Ukraine. The second issue deals with special institution of extra-judicial protection of human rights and freedoms, particularly of rights and freedoms of military servicemen, namely Human Rights Commissioner of the Verkhovna Rada. The order of his/her appointment and dismissal as well as competences necessary for protection of rights of military servicemen and the role of the Commissioner in this protection will be considered.

The main legal acts analysed in this section are the Constitution and the Laws, "On Social and Legal Protection of Military Servicemen and Their Family Members," "On the Human Rights Representative of the Verkhovna Rada of Ukraine" and "On Democratic Control Over the Military Organization and Law-enforcement Bodies of the State".

The Constitution does not contain special provisions on rights of military servicemen. It draws no distinction between the rights of military servicemen and civilians.

The main legal act regulating the issue of rights of military servicemen is the Law, “On Social and Legal Protection of Military Servicemen and Their Family Members”. The Law guarantees protection of political, civil, personal and social rights of military servicemen and well as social rights of their families. Under this Law, military servicemen have the right to participate in Ukrainian and local referenda, elect and stand as a candidate to the Radas (Councils) of People’s Deputies and other elective state bodies. Higher command of military servicemen, who are candidates to people’s deputies, shall create all conditions for fulfilment of this right. Military servicemen elected to the legislative/representative bodies stay in the military service and keep their status of military servicemen. During the term as a deputy, military servicemen do not perform their military service duties. As well, they may be temporarily released, according to their choice, into the reserves. After the term of office expires, the military serviceman returns to the military unit in which he served before being elected. His position after return may not be lower than the one he had before being elected. The People’s Deputy of Ukraine, who is a military servant, is assigned to the Verkhovna Rada for the term as a Deputy as stays at the military service.

Military servicemen have the right to establish public organizations, following the rules set by legislation. They may not be members of any political parties, organizations or movements. Military servicemen may not organize strikes or participate therein. They have the rights to challenge before the court illegitimate actions of military officials and military command. As well they have, as all the citizens of Ukraine, the right to leave the country.

Military servicemen have the right to pursue any religion or not to pursue it at all, to worship and to openly express and disseminate their religious or atheistic beliefs. No one has the right to restrict military servicemen in enjoying their right to religion. Persons whose religious beliefs prevent them from draft military service have the right to perform alternative service.

Security of person is guaranteed to military servicemen. They may not be arrested other than under the decision of the court, sanction of state prosecutor or order of their command according to the Disciplinary Charter of the Armed Forces⁴⁷.

Military servicemen may not be made to perform services not relevant to military service. Their service may be used for liquidation of the effects of accidents, catastrophes, natural calamities etc. only on the decision by the Verkhovna Rada.

⁴⁷ Adopted by the Law of Ukraine “On the Disciplinary Charter of the Armed Forces of Ukraine” (1999).

Military servicemen enjoy the freedom of scientific, technical and artistic activity. However, they may not take up entrepreneurial activities.

Military servicemen, except those who are in draft military service, may not be dismissed from service before they obtain the right to pension on the basis of years served. Exceptions concerning wilful dismissal of military servant, a health condition that does not allow the military servant to carry on the service, expiry of term of service or undue performance of a contract, in case of general reduction of the Armed Forces or in case of imprisonment on decision of the court.

The state undertakes to guarantee to military servicemen financial and other provisions in amount, which would stimulate interest of citizens in military service. Military servicemen receive state financing, goods and sets of products, or, on their discretion, financial compensation. Financial provisions depend on position, military rank, qualification, scientific degree and level, duration and conditions of military service.

Military servicemen work 41 hours per week. They have the right to annual paid leave with duration from 30 to 45 days depending on the number of the number of years in service. Additional paid leave may be given in the order set by the Cabinet of Ministers for special nature of service and for service in conditions harmful to one's health. Additional paid leaves may be given on decision of the commander when family situations, education or other serious reasons require such a leave.

Military servicemen enjoy free medical care in special military-medical establishments.

Female military servicemen enjoy all the social benefits provided by Ukrainian legislation on social protection of women, protection of motherhood and childhood. These benefits as well concern lonely fathers.

The state undertakes to provide military servicemen with dwellings, permanent or temporary.

As well military servicemen and their family members pay 50% less for the apartment and public utilities.

Military servicemen have the right to study in military educational establishments. They may also study in other educational establishments without interruption of service.

Military servicemen and their family members have the right to free travel to and from the annual leave, as well as free travel and transportation of baggage by train, air, water and land transport during the move to a new place of service. In this case they also receive financial aid provided by the Cabinet of Ministers. Draft military servicemen have the right to free use of all types of city transport.

Military servicemen have the right to pension. The amount of pension is set by legislation. Military servicemen are insured by the state. Conditions of insurance and payments are set by the Cabinet of Ministers.

The Constitution contains provisions on the office of Ombudsman, which in Ukrainian legislation has the name of "Human Rights Commissioner of the Verkhovna Rada of Ukraine". Article 101 of the Constitution provides that Parliamentary control over the human rights and freedoms is performed by the Human Rights Commissioner of the Verkhovna Rada.

Military servicemen as well as all other citizens have the right to apply to the Ombudsman. As Article 55 of the Constitution provides: "Everyone has the right to appeal for the protection of his or her rights to the Human Rights Commissioner of the Verkhovna Rada of Ukraine".

The Law, "On Democratic Control Over the Military Organization and Law-enforcement Bodies of the State," contains provisions on special functions of the Human Rights Commissioner as regards military servicemen. Under this Law the Human Rights Commissioner of the Verkhovna Rada has the following competence:

To check on his/her own initiative or on instruction of the Parliament or application from an individual or public organization the state of constitutional rights and freedoms of persons subject to draft military service, persons who are in reserve and summoned to a meeting, persons released from the military service and their families;

To inquire and receive from the command and other officials of the Armed Forces of Ukraine, other military arrangements, law-enforcement agencies documents, materials and explanations under condition of keeping the regime of secrecy;

Immediate reception by officials of the Armed Forces of Ukraine, other military arrangements, law-enforcement agencies;

For fulfilment of his/her duties has the right to uninhibitedly and without preliminary notification to attend military units, be present at the meetings of collegial bodies of the Armed Forces of Ukraine, other military arrangements, law-enforcement agencies when issues under the competence of the Human Rights Commissioner are discussed.

The Law on Democratic Control also provides for possibility of appointment of special representative of the Human Rights Commissioner on rights of military servicemen. This may not be a person who currently performs military service. In reality, however, the office of such representative does not exist yet.

The rights and freedoms of military servicemen is described in the annual report of the Human Rights Commissioner. The Report is made public.

The Emergency Situation regime or Martial Law does not limit the rights of the Human Rights Commissioner and of his representative on rights of military servicemen.

The Human Rights Commissioner of the Verkhovna Rada periodically informs the public on his activity connected with rights of military servicemen.

Under the Constitution and the Law, "On Human Rights Commissioner of the Verkhovna Rada of Ukraine," the Commissioner is appointed to his or her post and dismissed from it by the Verkhovna Rada through a secret ballot vote. The Commissioner is appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada. Proposals for candidate(s) to the post of Commissioner are made by the Head of the Verkhovna Rada or by one-fourth of the National Deputies from constitutional composition of the Verkhovna Rada. A respective Committee of the Verkhovna Rada submits its conclusions to the Verkhovna Rada on each candidate to the post of Commissioner, on whether the candidate meets the requirements envisaged by the Law, and on possible reasons which would prevent the candidate from holding this post.

The Commissioner cannot be given a Commissioner mandate, hold any other positions at bodies of state power, perform any other work, paid or unpaid, at state and local self-government agencies, associations of citizens, enterprises, institutions, organizations, except teaching, scholarly or any other creative activity.

The Commissioner cannot be a member of any political party.

The term in office of the Commissioner is terminated in the following cases:

Refusal of the Commissioner to further comply with his or her duties through submission of a statement of resignation;

Entry into legal force of court verdict against him or her;

Declaring a person holding the post of the Commissioner missing or dead;

Taking of oath by the newly elected Commissioner;

Death of a person holding the post of Commissioner.

The Verkhovna Rada shall adopt the resolution on dismissal from the post of Commissioner prior to the expiration of his/her term in office in the event of:

Breach of the oath;

Violation of incompatibility of office requirement;

Loss of citizenship of Ukraine;

Inability to comply with duties for a period exceeding four months due to health conditions or loss of ability to work.

The Temporary Special Commission of the Verkhovna Rada of Ukraine decides on whether there are grounds for dismissal of the Commissioner from his or her office.

Should the aforesaid grounds exist the Verkhovna Rada of Ukraine, on application from the Head of the Verkhovna Rada of Ukraine or one-fourth of People's Deputies from the constitutional composition of the Verkhovna Rada of Ukraine, considers the issue and adopts respective resolution on dismissal of the Commissioner from the office.

Decision on dismissal of the Commissioner is taken by the majority of People's Deputies of Ukraine.

The Commissioner is independent in his/her activities. Interference from state and local bodies, associations of citizens, enterprises, institutions, organizations, their officials, and

officers into the activity of the Commissioner is prohibited. The Commissioner is not obligated to provide explanations on details of cases settled or under consideration.

The Commissioner shall enjoy the rights to immunity during the entire period in office. He/she cannot be subject to criminal responsibility without consent from the Verkhovna Rada, or be subject to administrative punishment, be detained, arrested, searched as well as be subject to personal examination. No one except the Prosecutor General can initiate criminal proceedings against the Commissioner.

The authority of the Commissioner cannot be terminated or restricted in the event of expiration of term of the authority of the Verkhovna Rada or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its separate areas.

To be able to perform his/her functions regarding military servicemen the Human Rights Commissioner has, among others, the following rights:

To be received, without any delay, by the President of Ukraine, the Head of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the Head of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Procurator General of Ukraine, the Heads of other state and local agencies, associations of citizens, enterprises, institutions, organizations and their officials;

To attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegiums of State Prosecutor's offices of Ukraine and other collegiate bodies;

To appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms, the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

To visit, without hindrance, state and local bodies, enterprises, institutions, organizations, and be present at their sessions;

To read documents, including classified (secret) ones and obtain copies from state and local bodies, associations of citizens, enterprises, institutions, organizations, State prosecutor's offices, including documents on cases before court. Access to information on official and state secret is made in order set by legislation of Ukraine;

To demand from officials and officers of state and local bodies, enterprises, institutions and organizations assistance in conducting inspections on the activity of enterprises, institutions and organizations under their control and subordination, and ensure participation of experts in such inspections, providing their expertise and respective conclusions;

To invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations on cases under consideration;

To visit, at any time, places of detention, preliminary detention, places of imprisonment and forceful medical treatment and rehabilitation, psychiatric hospitals, to interview persons detained therein and obtain information on their living conditions;

To attend court sessions at all instances, including closed court hearings;

To appeal to the court about protecting human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate;

To submit to respective bodies, documents containing the response of the Commissioner to violation of human and citizens' rights and freedoms, and proposals for respective measures;

To monitor the observance of protected human and citizens' rights and freedoms by respective state agencies, including operational detective bodies.

Article 22 of the Law, "On Human Rights Commissioner," provides that state and local agencies, associations of citizens, enterprises, institutions, organizations, officials and officers to whom the Commissioner applies are obligated to cooperate with him/her and assist the Commissioner in:

Ensuring access to relevant materials and documents with due protection of official and state secret;

Providing information and explanations with regard to the factual and legal basis of their acts and decisions.

Any refusal to cooperate by agencies in question as well as deliberate concealment or providing of false information, illegal interference into activity of the Commissioner with the purpose of counteraction are subject to liability in accordance with effective legislation.

Article 64 of the Constitution provides that constitutional human and citizens' rights and freedoms shall not be restricted, except in cases envisaged by the Constitution. Neither the Constitution nor Laws require prior consent of the superior for a military servant to bring the case before the Human Rights Commissioner. In April 2000 the Constitutional Court of Ukraine referring to its decision of October 30, 1997 (*Ustymenko case*) ruled⁴⁸ that the requirement of challenging the actions of officials to higher-level authorities does not preclude the possibility for a person to turn directly to the court. This ruling concerns the courts, but as well as in the case of judiciary, there is no provision regarding such situation in legislation on the Human Rights Commissioner. This makes one believe that the same rule would, by analogy, apply to non-judicial protection of human rights, namely protection by the Commissioner. The only limitation on acceptance of applications by the Human Rights Commissioner is set in the Law on Human Rights Commissioner. This limitation states that the Commissioner may not accept applications considered at that time by the courts.

Legal provisions on the rights of military servicemen seem quite broad and democratic. However, what matters most is not the number of rights envisaged but their factual protection by the state. Similar to many other areas, this is where the main difficulties arise in case of Ukraine. Analysis of legislation does not enlighten all the problems that exist given the real condition of Ukrainian Armed Forces, economy, and law enforcement. Legislation provides judicial and extra-judicial protection of rights of military servicemen. Special Human Rights Commissioner of the Parliament of Ukraine has the competence to delve into military issues, apply for information and explanations to all the state and local agencies concerned, including the Armed Forces units and the Ministry of Defence. State and local bodies have the counter obligation to cooperate and assist the Commissioner in his/her inquiries. Every military servant whose rights or freedoms are abused has the right to appeal to the Commissioner. However, in real life the flow of appeals by citizens to the Verkhovna Rada Human Rights Commissioner far exceeds the actual capacity of their examination by the Commissioner's staff. Meanwhile, as it was already mentioned above (in chapter D)law-

⁴⁸ Constitutional Application of April 11, 2000 "On Constitutionality of paragraphs 3, 4 and 5 of Article 248-3 of the Code on Civil Procedure of Ukraine regarding complaints on decisions and actions not subject to jurisdiction of the courts".

enforcement bodies do not effectively react to the inquiries of the Verkhovna Rada Commissioner. By and large, the institution of the Verkhovna Rada Human Rights Commissioner has not yet gained the authority similar institutions enjoy in developed democracies and cannot be considered an effective mechanism of parliamentary control over security structures.

Capacity-Building in Parliament and Parliamentary Staff

According to the Law, “On the Structure of the Staff of the Verkhovna Rada,” adopted in April, 2000, the following units comprise the Staff: Office of the Head of the Staff; Secretariat of the Speaker of the Verkhovna Rada; Secretariat of the First Deputy Speaker of the Verkhovna Rada ; Secretariat of the Deputy Speaker of the Verkhovna Rada; Secretariats of committees, factions of People’s Deputies, groups of People’s Deputies; Department for Scientific-Technical Expertise; Law Department; Department of Documentation; Organizational Department, Information Department, Department of Information Technology; Department for Relations with Local Executive and Self-Government Bodies; Department for Inter-Parliamentary Relations; Personnel Department; Department for Relations with Law Enforcement Agencies; Control Department; Department for Citizens Complaints; First Department (secrecy regime and documentation); Department for Mobilization Work; and Department for Administrative Affairs. To man such a structure, the Verkhovna Rada, under its own Regulation “On Upper Limits of the Staff of the Verkhovna Rada,” is to have a parliamentary Staff with 1115 employees.

As far as the staffs dealing with security and defence questions is concerned, it is mostly concentrated within the Secretariat of the Committee on National Security and Defence and in the sub-division of the Department for Scientific-Technical Expertise focusing on national security, defence, law-enforcement, and organized crime. The staffs of the Budget Committee and of the Accounting Chamber have a limited mandate in defence and security questions focusing largely on the technical aspects of the overall budgetary process.

The Secretariat of the Committee on National Security and Defence constitutes the core of the parliamentary security and defence staff. It has 9 consultants and over dozen of administrative staff.

The sub-division on national security, defence, law-enforcement, and organized crime within the Department for Scientific-Technical Expertise has up to ten staffers.

In addition to the staff of the Verkhovna Rada, People's Deputies are allowed to have personal aides. Article 34 of the Law, "On the Status of People's Deputy," stipulates that "a People's Deputy may have up to thirty-one assistant-consultants." Aides are employed on a contractual basis (labour agreement) and work either full-time, part-time or voluntarily. According to Article 34, "Assistant-Consultants may be staff members of state enterprises, institutions, organizations or, upon request from the People's Deputy, be attached to executive committees of local self-government bodies or to the Secretariats of City Councils in Kyiv and Sevastopol." The Law grants four Assistant-Consultants the status of civil servants and attaches them to the Staff of the Verkhovna Rada or to executive organs of local self-government bodies. It also envisages that Assistant-Consultants, who work in the capital city Kyiv on a permanent basis, but are not civil servants, may also be attached to the Staff of the Verkhovna Rada. The Law establishes a fund to cover the salaries of these aides.

According to the Regulation of the Verkhovna Rada, "On Assistant-Consultants of People's Deputies of Ukraine," an Assistant-Consultant has the following rights:

Enter and stay on the premises of the Verkhovna Rada of Ukraine;

Enter the premises of central and local executive bodies, local self-government bodies;

Attend plenary sessions of the Verkhovna Rada of Ukraine;

Attend the meetings of Ad Hoc and Temporary Investigative Commissions upon written instruction from the People's Deputy of Ukraine and agreement of the Chairman of the committee or head of Special or Temporary Investigative Commission;

Attend meetings of local executive bodies or self-government bodies;

Use databases, communications networks of the Verkhovna Rada of Ukraine and local self-government bodies in the order laid down by law;

Familiarize him/herself with laws passed by the Verkhovna Rada, except those adopted at its closed sessions, as well as information and reference materials distributed by the Verkhovna Rada of Ukraine, the President of Ukraine, executive bodies, and local self-government bodies;

Upon written instruction of a People's Deputy, obtain documents, information, and reference materials from executive bodies, local self-government bodies, civic organizations, and state enterprises;

Upon instruction from the People's Deputy, receive all forms of correspondence addressed to the People's Deputy;

Present proposals, requests for information, and other documents at meetings of local executive and self-government bodies or submit them in writing;

Upon written request from the People's Deputy and agreement from heads of executive bodies, local self-government bodies, state enterprises, institutions, and organizations, use copying machines and computers." (Article 2.1).

According to the same Regulation the Assistant-Consultant is required to:

Follow the Constitution of Ukraine, laws of Ukraine, and provisions of this Act;

Refrain from making declarations and taking actions that may discredit People's Deputy; refrain from taking actions that may negatively affect the work of People's Deputy of Ukraine;

Maintain high standards when interacting with officials and citizens, Verkhovna Rada staff members, executive bodies, local self-government bodies, enterprises, institutions, organizations, and citizen unions;

Upon instruction from People's Deputy of Ukraine, study the issues that the People's Deputy deems necessary for the performance of his/her functions as a Deputy; prepare materials on these issues;

Assist People's Deputy in preparing reports and organizing meetings with constituents, labour groups of enterprises, institutions, and organizations;

Follow the orders of People's Deputy of Ukraine in relations with constituents, as well as with executive bodies, local self-government bodies, mass media, citizen unions, enterprises, institutions, and organizations;

Assist People's Deputy of Ukraine when s/he holds meetings with his/her constituents, considers citizens' requests, and solves the issues they bring up;

Assist People's Deputy of Ukraine in reviewing constituents' proposals addressed to him/her via mail or handed in during a meeting in person;

Systematize constituents' requests and inform People's Deputy of Ukraine about the outcome;

Upon instruction from People's Deputy, take part in studying public opinion, needs and constituent's requests, and introduce proposals for addressing them;

Prepare documents in accordance with the requirements set out in the Instructions of the Verkhovna Rada of Ukraine;

Ensure physical protection of documents addressed to People's Deputy of Ukraine; ensure that People's Deputy's requests are received in a timely manner;

Provide People's Deputy with all necessary administrative, technical, and other assistance" (Article 2.2).

Ukrainian law also provides parliamentary factions with their own staff. According to the Regulation "On Consultants of the Factions of the People's Deputies of Ukraine," its size is determined by the Presidium of the Verkhovna Rada. The Regulation recognizes the People's Deputies right to expand the staffs of their factions, albeit at their own expense.

According to the Regulation "On Consultants of the Factions of the People's Deputies of Ukraine" a consultant of a faction of People's Deputies may:

Enter and stay on the premises of the Verkhovna Rada of Ukraine;

Attend plenary sessions of the Verkhovna Rada of Ukraine, meetings of permanent and temporary commissions of the Verkhovna Rada where members of the faction work;

Use information databases;

Obtain information and reference materials from executive bodies, enterprises, and other institutions if they are deemed necessary for the work of the faction;

Receive correspondence addressed to the faction;

Take part in the work of local executive and self-government bodies;

Upon written request from the faction, use copying machines in the Secretariat of the Verkhovna Rada (Article 2.1).

According to the same Regulation the consultant is required to:

Upon instruction from the faction, prepare materials on the issues that are tabled in the Verkhovna Rada, its Presidium, permanent commissions, factions, other institutions and organizations; assist faction members in exercising control over the implementation that they made;

Assist People's Deputies who are members of the faction in reviewing and resolving the issues that they have brought up;

Take part in studying public opinion, needs, and request from constituents; introduce proposals with regards to solving the constituents' issues;

Prepare documentation; ensure physical protection of documents addressed to the faction, and control over timely responses to the faction members' inquiries;

Provide administrative and technical support to faction members (Article 2.2).

Furthermore, the Verkhovna Rada, as it was already mentioned, may establish Working Groups bringing in outside experts and consultants. The Committees are authorized to have non-resident consultants.

So, despite the developed legal base for the activities of parliamentary staff, it is evident that the small number of parliamentary staffers dealing with the security and defence issues is one of the impediments to an effective parliamentary control over the Armed Forces. Even more important is the fact that the majority of parliamentary staff does not have adequate expertise, training or understanding of the military and defence issues. Poor infrastructure,

including sometimes the lack of personal computers, often deprives the staff of access to professional literature, databases, and information networks, which reduces their ability to collect and process information. The sheer volume of issues that have to be considered by the Verkhovna Rada coupled with the lack of expertise and training often lead (or rather force) the parliamentary staff to defer to the executive branch on security and defence issues, making effective control over the defence sector a problematic proposition.

The lack of parliamentary capacity to deal with security and defence questions can be attributed to two main factors. The first, and most important, is the legacy of the Soviet system. Under the Soviet rule, the security and defence sector was covered with a veil of secrecy. Policymaking in these areas was tightly centralized in Moscow, with the CPSU being the ultimate arbiter on all strategic, programming, planning, and budgeting aspects of the Armed Forces. Since in the Soviet system, “parliaments” were to have no practical impact on defence policy, they did not see the need to have specialized staffs. The lack of trained civilian analysts of military and security issues is another effect of the Soviet system. While departments providing military training exist at civilian institutions of higher learning, they provide primarily operational, tactical or technical training (e.g. translators, engineers) to produce junior officers (most of whom never join the Armed Forces) as opposed to educating analysts who have an understanding of strategic and organizational issues.

Second, Ukrainian parliament does not have a separate research institution (e.g. Congressional Research Service in the U.S. Congress) that could provide research and analytical support to People’s Deputies. There are no research capabilities in the Verkhovna Rada similar to that which is available to executive structures like Presidential Administration’s NISS, or similar NSDC’s research institutions. Thus, lack of “parliamentary” pool of scholars in its own research establishment makes it more difficult to select needed experts for the Staff of Verkhovna Rada. Consequently, this factor among others also contributes to the difficulty for the Verkhovna Rada to exercise effective civilian control over the Armed Forces and other security structures, when the role of the Verkhovna Rada today is mainly confined to the formal approval of the defence and law enforcement budgets, and the review of bills concerning security structure operations.

The specific criteria for selecting consultants for the Secretariat of the Committee on National Security and Defence are set out in Internal Regulations of the Committee. In similar fashion, the criteria for selecting experts in the Main Department for Scientific-Technical Expertise are set out in Internal Regulations. As common rule, the candidates should have bachelor degree or higher, they should possess necessary personal and professional qualities, sound

command of Ukrainian language, and preferably have at least three years of experience of “state service”.

Ukrainian law does not set too many criteria for selecting personal aides. Article 34, paragraph 2, of the Law, “On the Status of People’s Deputy,” stipulates that “any citizen of Ukraine who has vocational training or higher education and speaks Ukrainian fluently may become Assistant-Consultant of People’s Deputy.” Beyond these basic criteria, People’s Deputies are authorized to select whomever they deem qualified. Thus, paragraph 3 of Article 3 reads: “A People’s Deputy decides on his/her own how many Assistant-Consultants may work full-time, part-time or on a voluntary basis within the limits set by the general fund established by a Regulation of the Verkhovna Rada of Ukraine; s/he selects them, determines the area of their responsibility, and personally decides on the size of the Assistant-Consultants’ salaries.” Likewise, Article 3.1 of Regulation on “Assistant-Consultant of People’s Deputy of Ukraine” holds: “People’s Deputy selects Assistant-Consultants, organizes their work, and determines the size of their monthly salaries. S/he is responsible for the legality of his decisions.” That said, the Law sets several restrictions on eligibility. Article 3.4. holds that “Members of the Staff of the Verkhovna Rada of Ukraine and executive bodies, who are civil servants or employees of local self-government bodies, as well as persons ineligible to receive compensation for additional work may not become Assistant-Consultants.” Further, if an aide, who is a civil servant, has reached the age of 60 (for men) and 55 (for women), a special request from the People’s Deputy is necessary before the extension of the aide’s employment can be authorized. The request has to be approved by the Head of the Department for Civil Service of Ukraine.

With regards to the criteria for selecting consultants of factions, the law does not set minimum educational or professional standards. Members of the faction have complete authority over the selection procedure. Article 3.1 of the “Members of the People’s Deputies’ Group (Faction) or their authorized confidant personally select(s) consultants of factions, organize(s) their work, and set(s) the size of their monthly salaries.” Paragraph 1 of Article 3.4., however, stipulates that “employees (except technical) of the Secretariat of the Verkhovna Rada, executive bodies, self-government bodies, and persons ineligible to receive compensation for additional work in accordance with the laws of Ukraine may not be consultants of factions.”

Thus, the Law does not set very high educational or professional standards. This in part explains the parliamentary staff’s lack of analytical capacity. On the other hand, the law is

fairly flexible. It gives a People's Deputy enough freedom to select the kinds of staff members s/he wants, theoretically creating opportunities for the rise of professional staff.

Relations between parliamentary staff and the civilian defence staff appear to exist only at the level of the Committee on National Security and Defence and the Ministry of Defence. According to the Head of the Department for Relations with the Verkhovna Rada and Executive Bodies, Valeriy Palamarchuk, there are several forms of interaction between the Committee on National Security and Defence staff and the Ministry of Defence staff⁴⁹:

The Chairman and members of the Committee on National Security and Defence are regularly invited to attend sessions of the Board of the Ministry of Defence discussing a range of issues, including major laws that have to be adopted in this area of national security and defence.

The Committee on National Security and Defence often holds sessions in the territory of military bases, "which allows people's deputies to see the level of the military's combat readiness... and the problems that the military is facing"

The Ministry of Defence staff takes part in the meetings and testifies before the Committee on National Security and Defence.

The Ministry of Defence gives advice and explains its position with respect to draft laws and the order in which they should be adopted.

The Ministry of Defence provides information to the People's Deputies when they request it.

As far as a civil service system operational for Ukraine's parliamentary staff is concerned, the Law, "On Civil Service" (1993), is the basic document regulating recruitment, selection, promotion, and dismissal of issues in Ukraine's civil service system.

On the recruitment of civil servants, Article 15 of the Law sets forth the following procedure for recruiting civil servants:

Civil servants of ranks 3 through 7, as set out in this Law, are recruited on a competitive basis, except in cases where the Law lays down a different procedure;

⁴⁹ Valeriy Palamarchuk. "Co-operation between the Ministry of Defence of Ukraine and the Verkhovna Rada of Ukraine in implementation of parliamentary control over the Armed Forces". – Parliamentary control over the Armed Forces: experience of European countries, Kiev, Stilos, p. 112.

A Regulation of the Cabinet of Ministers sets forth the order in which competitions for civil service posts are held;

All civil service vacancies must be published and disseminated in mass media at least a month prior to the beginning of competition;

No one may require that candidates participating in the competition for a civil service post submit documents other than those enumerated in the Law;

The President of Ukraine, the Speaker of the Verkhovna Rada of Ukraine, and members of the Government of Ukraine and heads of local executive bodies may personally select and hire their assistants, managers of public relations services, advisers, and secretaries in accordance with staff regulations and the category corresponding to the post ("patronatna" service). The status of such persons as civil servants is regulated by respective institutions.

According to Article 18 of the Law, "On Civil Service," a civil servant may be hired for a probationary period of up to 6 months. The Law, however, does not contain provision specifying when this should be the case.

On dismissal of civil servants Ukrainian law specifies that a civil servant may be dismissed or temporarily removed from his post. The latter procedure is set forth in Article 22 of the Law, "On Civil Service:

A civil servant who failed to perform his/her duties and thus caused significant casualties or material or moral harm to a citizen, enterprise, institution, organization, civic union, or the state may be temporarily removed from his post. S/he does not lose his salary. The manager of the state body where the civil servant works may make a decision about the removal;

The duration of the removal period may not exceed the duration of the investigation period. The investigation must be carried out within two months in the order set out in a Regulation of the Cabinet of Ministers of Ukraine;

Should the removal be deemed groundless following the outcome of the investigation, the decision to remove the civil servant must be annulled.

Article 30 of the Law enumerates reasons for dismissing a civil servant. It reads as follows:

In addition to the general reasons for dismissing an employee, which are laid down in the Labour Code of Ukraine, a civil servant may be dismissed if s/he has:

- 1) violated the terms and conditions of the right to civil service (Article 4 of this Law);
- 2) failed to meet the requirements set out in Article 16 of this Law;
- 3) reached the age of 60 (for men) and 55 (for women) as set out in Article 23 of this Law;
- 4) resigned having a rank of one and two (Article 31 of this Law)
- 5) refused to give an Oath of Civil Servant, set out in Article 17 of this Law, or violated the Oath of Civil Servant;
- 6) failed to disclose, or provide accurate data about, his/her income;

A civil servant may also be dismissed if there conditions arise preventing him/her from performing his/her duties (Article 12 of this Law).

Apart from the case of the “patronatna” service, a change of management or the composition of state bodies may not constitute a reason for dismissing a civil servant.

The civil servants of the first (the highest) rank who have held that rank for at least three years and were dismissed due to a change in the composition of the state body or its dismantlement must continue to receive the salary for up to a year pending their employment elsewhere.

On promotion of civil servants, Article 27 and Article 29 describe the relevant procedure. Article 27 provides that: “Civil servants are promoted by receiving a higher post on a competitive basis, except when laws of Ukraine and acts of the Cabinet of Ministers of Ukraine stipulate otherwise, or a higher rank. A civil servant may take part in the competition to fill a vacant post. Civil servants, who have distinguished themselves through superior performance, shown initiative, persistently raised the level of their professional development, and are members of the staff have an advantage.”

According to Article 29, "Civil servants have an option to raise their qualification by taking courses in the relevant educational institutions (faculties) and through self-education.

Civil servants must constantly raise their qualification, including by studying in the relevant educational institutions at least once every five years. The results of education and improved qualification constitute one of the criteria for promoting civil servants."

The civil service system is operational for all the staff of the Committee on National Security and Defence and for the staff of the Department for Scientific-Technical Expertise. However, according to the Law, "On the Status of People's Deputy," the civil service system is operational only for four personal aides, or Assistant-Consultants. Article 34.3 of the Law, "On the Status of People's Deputy," stipulates that "Four Assistant-Consultants are subject to the Law of Ukraine "On Civil Service." They are awarded a civil service rank that is no higher than rank seven. They are attached to the Staff of the Verkhovna Rada or to staffs of executive organs of local self-government bodies." And the civil service system is not operational for consultants of factions.

To raise the qualification of the parliamentary defence and security staffers, certain opportunities exist within, for instance, the National Defence Academy and the Academy of the Interior Ministry, or in the Academy of Public Administration under the President. However, one of the problems typical to parliamentary dimension of security sector expert development could partly rest in the mere low interest and lack of concern on the part of the current Parliament's and other structures' leaderships, resulting in low co-ordination and control. The former Minister of Defence, Olexandr Kuzmuk, now a member of the Parliament, not long ago complained⁵⁰ that almost all candidates for courses organised for civilian experts in the National Defence Academy were of inappropriately low status, which undermined the idea of civilian expert education in the military.

However, in many other cases where the effectiveness of experts' education is lower than desired, the problem is not only the subjective attitude of a particular person who makes the decision, but also, especially in the case of foreign college type education, it is the incompatibility of foreign graduation certificates with the standards of the Ukrainian national education system. This latter problem has been waiting for years to be resolved, but so far it is still waiting for resolution.

⁵⁰ During the discussion at the International Conference "Parliamentary Oversight over the Security Sector and Defence" held in Kiev on 27-28 September, 2002. Conference organisers were the Verkhovna Rada of Ukraine, NSDC of Ukraine, and Geneva Centre for the Democratic Control of Armed Forces.

Despite over decade after Ukrainian parliamentary staff received its first invitations to study abroad, there is still no systemic training system for parliamentary experts.

Since 1994, the U.S. Agency for International Development has been running a Parliamentary Development Program in the Verkhovna Rada. The objectives of the program include: more effective and democratic internal management system, improved legislative-executive relations, and increased access and feedback of citizens to legislative process. Managed by the School of Public and Environmental Affairs of Indiana University, the program 1) publishes Western literature dealing with issues of parliamentarianism; 2) translates Western legislative documents into Ukrainian and Ukrainian laws into English; and 3) holds periodic seminars focusing on issues pertaining to the improvement of law-making procedures. However, the program does not focus on defence and security issues.

During the past four years many seminars on security and defence issues are taking place in the Verkhovna Rada with the assistance of DCAF, certain assistance in organising conferences on security and defence issues is coming from NATO, OSCE, Marshall Centre and other foreign partners, but there is still no regular formal training program for the parliamentary staff.

In fact, parliamentary staff is the least provided with both domestic and foreign attention with regard to education opportunities and it is in the most need for additional regular courses. They need more knowledge of the Western practices of preparation of draft laws in the sphere of security and defence, of expert analysis of such draft laws, of other countries' practices and standards. Given the "parliamentary" specifics like low enthusiasm of the leadership to send staffers to long-term courses, as well as generally low foreign language proficiency and very uneven levels of expertise between different experts, the likely way out is to offer the Advanced Distance Learning (ADL) programmes in Ukrainian.

In summary, it could be stated that among the different sectors of Ukrainian expert community, parliamentary staff is probably in the worst situation. Though the legal bases for their functioning exist, the Verkhovna Rada so far fails to create decent working conditions and provide systemic education opportunities for staffers. The absence of the Verkhovna Rada's own research institutions further exacerbates the problem of the Parliament's analytical capacity.

Capacity-Building for Security Sector Staff

A civil servant system for the defence staff in terms of recruiting, selection, education, promotion, and dismissal has the same legal base as one for the parliamentary staff – the Law, “On Civil Service”. However, in practical terms, a civil servant system of the Ministry of Defence and of the Armed Forces is more elaborate and specific.

In accordance with the Order of the Minister of Defence, “On Measures Implementing the Law of Ukraine “On Civil Service” in the Armed Forces” (1998), the provisions of the Law hold with respect to the following MoD staff: heads of department, independent departments within the MoD, and their deputies; heads of divisions within departments and their deputies; senior specialists; economic advisers; consultants; leading specialists; 1st category specialists; 2nd category specialists; specialists (agriculturalist, veterinary doctor, accountant, accountant-inspector); senior accountant; all categories of engineers; inspectors, inspector-accountants, economists; legal consultant; assistants to the head of department (division); head (deputy head) of division; and secretary-translator, secretary.

Senior civilian defence staff has the option to take a course leading to a degree in military science at the National Defence Academy of Ukraine. The Cabinet of Ministers Regulation entitled “Order of Training and Re-training of Heads and Specialists of Central and Local Executive Bodies, Local Self-Government Bodies, Administrative Bodies of the Armed Forces Dealing with the Issues of Military Security and Defence” (2002) sets eligibility requirements, procedure for application, and regulates other issues pertaining to the education of the defence staff.

With regards to eligibility, the Regulation provides that “heads and specialists of central and local executive bodies, local self-government bodies, and military administration bodies of the Armed Forces dealing with military security and defence may attend the National Defence Academy of Ukraine”. According to the Regulation, three options of studies are available: servants-students may take courses on a full-time basis, attend the Academy part time, or do independent studies. The duration of a full-time program is 10 months. Those attending the National Defence Academy part time take 18 months to graduate. Upon a successful completion of the program, students receive a degree of “Master of Military Administration.”

The regulation stipulates that “admission into the Academy is merit-based” and that “any citizen of Ukraine irrespective of gender who is a civil servant of at least fifth category, aged

forty-five (for full-time studies) or fifty (for part-time studies) years old, a member of cadre reserves slated to become a civil servant of categories one through five on the staff of the Ministry of Defence or military administration bodies of the Armed Forces, and has higher education” may be admitted into the degree program at the National Defence Academy. The Ministry of Defence, however, sets “procurement” requirements. According to the Regulation, “on a yearly basis, the Ministry of Defence sets the necessary number of specialists in military administration for each form of study [part, full, independent] with a view to determining the overall state requirements.” Students attending the National Defence Academy full time as part of the Ministry’s requirements must work for five years in the Ministry of Defence or military administration bodies’ staffs upon completion of their programs of study.

The Regulation preserves the student’s civil service benefits and privileges. It stipulates that a full-time course at the National Defence Academy is counted towards the civil service record of the student (as well as his/her general labour record), “provided that upon graduation the student is employed as a civil servant or in a local self-government body.” It also provides that “during the studies at the Academy, heads and specialists receive a stipend in the amount that equals their monthly salary at their most recent place of work in accordance with the Law.” With regards to part-time studies, the Regulation guarantees reimbursement of expenses “related to their [students] course attendance, laboratory experiments, examinations, defence of thesis, or state examination.”

Upon completion of the course of study at the National Defence Academy, graduates may be employed in the Ministry of Defence or military administration bodies of the Armed Forces “in the categories of one through five.” (Paragraph 12). The regulation provides that the graduates have priority in terms of filling the existing vacancies. Their title and salary should be equivalent to the ones they had prior to enrolling at the National Defence Academy or higher.

The Regulation focuses on the basic content of the programmes to be taught within the framework of the Master of Military Administration Program at the National Defence Academy. According to Regulation, “Programs for raising the qualifications [of the aforementioned civil servants] must ensure that the students receive up-to-date, high quality instruction in theory and practice of military security and the defence of the state in their main aspects, strategic management of the activity of the state, including military strategy, management of the Armed Forces, methodology for crisis decision-making.” These programmes, according to the Regulation, are designed by the National Defence Academy

itself. The regulation, however, sets the upper limit on the number of class hours, which “may not exceed 216.”

Another Regulation of the Cabinet of Ministers “On Administrative Measures Pertaining to Raising the Qualifications of Heads and Specialists of Central and Local Executive Bodies, Local Self-Government Bodies Dealing with National Security and Defence” concerns the heads of central and local executive bodies, local self-government bodies and their specialists dealing with defence and mobilization issues who are civil servants of categories one through five.

This Regulation makes it mandatory for the senior staff in these bodies to raise their professional standards by enrolling in graduate programs in security and defence studies. Thus, the Regulation provides that civil servants of the aforementioned categories “must raise their qualifications” to be promoted, receive higher ranks, and have a positive performance evaluation.

The Institute for Raising Cadre’s Qualifications at the Academy of Public Administration under the President of Ukraine is tasked with designing and implementing academic programs for the aforementioned categories of civil servants. The Regulation provides, however, for the Academy of Public Administration access to the National Defence Academy’s resources: “The material-technical and educational-methodological resources of the Higher Academic Courses of the National Defence Academy may be used in the Institute for Raising Cadre’s Qualifications training programs.” In addition, “members of the National Defence Academy may be invited to give lectures and hold seminars” at the Academy of Public Administration.

The Regulation also determines the basic content of programs for raising civil servants’ qualification: “Programs for raising the [civil servants of the aforementioned categories] qualifications must ensure that the students receive up-to-date instruction in theory and practice of national security and defence of the state in their main aspects and strategic management of the state, including political, economic, military strategy, management of the Armed Forces, methodology for decision-making in any kind of crises situations.” It also specifies that “the number of hours dedicated to the study of theory regardless of the form of studies must be at least 8 hours.”

In principle, the defence staff has ample opportunities to pursue studies in the area of national security and defence. However, it is far from clear whether the current system is

either effective or efficient. Serious questions remain as to the standards of military education at the National Defence Academy. The overly centralized nature of curriculum development (classes, topics, numbers of hours dedicated to the study of each topic are in fact determined by the Ministry of Defence and the General Staff) means that the faculty do not have enough academic and teaching freedom and thus cannot adopt innovative teaching methods or curricula. Nor can they publish research that may be critical of the Ministry of Defence or the General Staff. The openness and transparency of the admissions is likewise questionable. The present level of the Ministry of Defence leadership's influence on military education means that the Academy finds it difficult to accept students solely based on their academic and intellectual merits. Furthermore, the focus on senior Ministry of Defence staff neglects junior analysts who often happen to be more forward-looking and amenable to accepting new ideas and practices. The upshot of these deficiencies is the visible lack of analysts schooled in cutting edge methodological and analytical techniques.

International organizations and foreign states are involved in capacity building within the Ministry of Defence. Overall, Ukraine's foreign partners already rendered noticeable assistance in uniformed and civilian personnel training for the higher headquarters of security structures. Ukrainian representatives are regularly invited to attend training courses, all the more so as their organisers encourage the priority of participation for civilian specialists dealing with security issues. The bulk of specific training courses provided by foreign partners for rank and file personnel have so far been directed to the Ministry of Defence.

The George C. Marshall Centre for Security Studies also offers significant opportunities for Ukraine's civilian experts formation. By the close of 2004, well over 200 representatives of Ukraine, including about 100 civilians, were educated in all three main training courses in the Marshall Centre. Every year some 100 of Ukrainians are trained in short-term courses or take part in the Marshall Centre's seminars in Ukraine and at the Centre.

Many countries, like the UK, Canada, France, Germany, Hungary, Austria, Switzerland and others are offering specific individual education, training and exchange programmes, which Ukrainian civil servants are happy to participate in. For instance, the training programme called "Democratic Civil-Military Relations" held in Canada. This programme brings together Canadian government and parliamentary officials, as well as specialists from leading universities and non-governmental research centres. Three Ukrainian senior officials (including civilians from the MoD, MFA, NSDC or other bodies) attend the programme each year.

Over thousand of Ukrainians have already graduated from colleagues and courses abroad.

The U.S. Office of Defence Cooperation (U.S. Embassy) works with the Ministry of Defence to provide equipment and training to support the modernization of Ukraine's military. The Office of Defence Cooperation manages two capacity-building programmes. These include Joint Contact Team Program-Ukraine (JCTP) and International Military Education and Training (IMET).

The official description of the JCTP program is as follows: "The mission of the Joint Contact Team Program (JCTP) is to deploy US military teams to Ukraine to acquaint the Ukrainian military with various aspects of western militaries. The programme was developed in 1992 to assist the armed forces of Ukraine, as the military of one of the emerging democracies of Central and Eastern Europe." In 2003, the programme's main accomplishments included (again, official data): assistance in reforming military education curriculums at all levels and specialties; familiarization of Ukrainian leaders with US recruiting programmes in support of an all-volunteer force; provision of models for a professional Non-Commissioned Officer (NCO) Corps; advancement of a closer relationship with NATO and greater interoperability with NATO forces.

The official designation of the mission of the IMET programme is as follows: "The IMET Program provides training in the United States to selected foreign military and related civilian personnel. The overarching security cooperation objective is to promote stability, democratisation, military professionalism, and closer relationships with NATO." The programme focuses on "developing professional level management skills, with emphasis on interoperability, military justice systems, codes of conduct and the protection of human rights." Since 1992, IMET has provided over US\$14 million to educate about 500 Ukrainian officers and NCOs and some 100 civilians in the US military establishments (See Table "The U.S. IMET program for Ukraine: general indicators"). IMET training supported efforts to improve interoperability between the Ukrainian and U.S. and NATO militaries, and to promote transformation and restructuring within the Ukrainian Armed Forces, by providing opportunities for select Ukrainian officials to attend U.S. military and educational institutions. In addition, the expanded IMET (E-IMET) Program provided training for Ukrainian military and civilian officials, including personnel from non-defence ministries and the legislative branch, on defence budget management, creating an effective military justice system and moving to civilian control of the military.

The U.S. IMET program for Ukraine: general indicators⁵¹

Fiscal Year	Training expenses, \$ thousand	Number of students, total	In that, civilians
1992	0,075	3	0
1993	0,413	13	0
1994	0,600	8	1
1995	0,707	40	23
1996	1,020	33	9
1997	1,015	37	9
1998	1,250	46	16
1999	1,250	48	4
2000	1,338	43	2
2001	1,443	49	5
2002	1,675	53	10
2003	1,692	48	13
2004	1,7	77	19
2005 (plan)	1,8	TBD	TBD
Total (end 2004)	14,178	498	111

In the Ukrainian case, the IMET Program has achieved qualified success. It might be judged as less successful if compared with participants from Ukraine's neighbours in Central Europe, but it is certainly more successful if compared with Russia. Several Ukrainian graduates of the IMET Programme have achieved prominent official positions, such as Minister of Foreign Affairs, Kostiantyn Hryshchenko (Naval Post Graduate School), former Head of the Analytical Service of the National Security and Defence Council of Ukraine, Anatoliy Grytsenko (Air War College) and a few ambassadors, deputy ministers and parliamentarians.

NATO also holds a series of training courses and seminars for the defence staff. For instance, as part of the NATO-Ukraine Target Plan 2004, NATO organized a seminars on "Problems and Prospects of Restructuring Defence Industry," on ensuring the functioning of the defence sector and defence reform issues. The plan also envisages training of Ukrainian

⁵¹ According to the Office of Defence Cooperation of the U.S. Embassy in Ukraine.

officers in standardization, interoperability assessment, and quality assurance according to NATO standards; training of experts in NATO IS divisions; internships of Armed Forces personnel at NATO HQ in the area of defence resources management; and training courses at NATO School in Oberammergau, Germany.

Overall, there are reasons to state that Ukraine's civilian defence personnel is provided with elaborate legal base and decent training opportunities at home and abroad. Except for the general problems characteristic to the whole country's "state service" system, when civil servants get rather low salaries and poor social benefits, there are good opportunities exist for raising sufficient number of quality civilian personnel for the Ministry of Defence and other security structures.

The Role of Civil Society

Civil society organizations in Ukraine slowly but steadily increase their influence in state building processes overall, and in exercising democratic civilian control over security sector in particular. In this final chapter the issues establishment, functioning and liquidation of public organizations in Ukraine will be considered. More specifically: whether Ukrainian legislation creates conditions for due performance of their main functions by public organizations; whether public organizations can receive necessary information from state agencies to carry out monitoring of activity of these agencies; whether civil society organizations have the possibility to participate in decision-making through proposing alternative approaches to the problems and participation in work of state agencies etc.; and whether state agencies guarantee the transparency of their activity, as they are obliged to in a democratic state, and through what means.

Ukrainian legislation does not provide separate provisions for independent public policy institutes. They are regarded as unions of citizens, namely public organizations and all the provisions concerning public organizations regulate activities of public policy institutes as well.

The Constitution in Article 36 guarantees to citizens of Ukraine the freedom to unite into public organizations for protection of their rights and freedoms and satisfaction of their political, economic, social, cultural and other interests. Enjoyment of this freedom may be limited on the basis of law for the purposes of protection of national security and public order, public health and rights and freedoms of others. No one can be forced to be a member of any organization of citizens or limited in his/her rights on the ground of membership or non-

membership in public organization. Article 37 of the Constitution stipulates the grounds for prohibition of activity of public organizations. Under this Article establishment and activity of public organizations shall be prohibited, if their statutory goals or actions are aimed at elimination of the independence of Ukraine, forceful change in the Constitutional regime, breach of sovereignty and territorial integrity of the state, undermining of its security, unlawful seizure of state power, propaganda of war, violence, instigation of interethnic, racial, religious hatred, violation of human rights and freedoms and damaging health of people. Activity of public organizations can be prohibited only by decision of the court. The Constitution prohibits functioning of military formations within public organizations.

The main law setting the rules of establishment, registration, functioning of public organizations is the Law, "On Unions of Citizens"⁵². The Preamble of the Law states that the state promotes development of public activity and creative incentives among citizens and provides equal opportunities for functioning of their unions.

The Law defines the union of citizens as a wilful public arrangement established by citizens on the basis of their mutual interests for common fulfilment of their rights and freedoms. The Law does not recognise as unions of citizens religious, cooperative organizations, unions, the aim of which is receiving the benefit, commercial funds, local and regional self-government and some other organizations.

According to the Law on Unions of Citizens public organization is a union of citizens established for satisfaction and protection of their legitimate social, economic, artistic, age, national-cultural, sport and other interests. Public organizations are established and function on basis of free will and equality of their members, self-government, legitimacy and openness. All the issues of functioning of public organizations should be considered at the assembly of all the members or representatives of the members of the union. Organizations should make public on a regular basis their main documents, membership of the administrative boards, sources of financing and expenditures. They are free to choose the types of their activity. Limitations on activity of public organizations may be imposed only on the basis of the Constitution and the laws of Ukraine.

Legalization of public organizations may be refused and the activity of legalized organization may be prohibited by decision of the court if the main aim of their activity is/are the following:

⁵² The Law of Ukraine "On Unions of Citizens" (1992).

Forceful change in Constitutional regime and through any illegitimate means of the territorial integrity of the state;

Undermining of state security through performing services to the benefit of other states;

Propaganda of war, violence or cruelty, fascism or neo-fascism;

Instigation of national or religious hatred;

Creation of illegitimate military formations;

Limitation of commonly recognized human rights.

No one may be forced to become a member of any public organization. Membership or non-membership in the organization may not be the ground for limitation of rights and freedoms or for granting any preferences or benefits by the state. Obligation to indicate in official documents one's membership in public organization may not be required other than in cases required by law.

The members of public organizations are subject to legislation on labour, social protection and social insurance.

The intrusion of state bodies and officials into activity of public organizations and the intrusion of public organizations into activity of state bodies, officials and other organizations is not allowed in cases other than provided for by legislation.

The Verkhovna Rada stipulates tax preferences on income of certain types of economic activity or other commercial activity of public organizations and sets up the list of all-Ukrainian public organizations to which the state grants material assistance.

Public organizations may have all-Ukrainian, local and international status. To all-Ukrainian organizations belong those organizations whose activity spread all over the territory of the state and which have branches in most oblasts. Local organizations are those whose activity is carried out at the territory of respective administrative-territorial unit or region. The territory of activity is defined by organizations themselves. International organizations are those whose activity spreads to the territory of Ukraine and at least one more country.

Public organizations may wilfully create unions, associations and conclude agreements on cooperation and mutual assistance.

The right to establish public organizations belongs to nationals of Ukraine, nationals of third states, stateless persons who attained the age of 18, and in case of youth and children organizations the age of 15. The decision to establish a public organization is taken by the establishing union (conference) or general assembly. Unions of public organizations are created by public organizations.

Persons of at least 14 years old may be members of public organizations. Public organizations may not have a fixed individual membership. In cases provided for by legislation, collective members may also participate in activities of public organizations.

Public organizations act on the basis of constitutive documents (charter, provisions etc.), which should include:

Name of organizations, its status and legal address;

Aim and tasks of organization;

Terms and order of membership and exclusion from membership in organization;

Rights and duties of the members;

Order of establishment and activity of statutory bodies of organization, local branches and their competence;

Sources of financing and order of use of financial resources and other property of organization, order of accounting, monitoring, carrying out economic and other commercial activity, necessary for performance of statutory tasks;

Order of amendment of constitutive document;

Order of abolishment of public organization and solving of property issues in case of abolishment.

Additional provisions on the establishment and activity of public organizations may be provided for in its constitutive document. Constitutive document may not contradict legislation of the Ukraine.

Public organizations are established through legalization. Legalization is obligatory and is performed through registration or notification on establishment. The activity of public organizations, which were not legalized or forcefully dissolved on court decision, is considered illegal. Legalization of public organizations is carried out by the Ministry of Justice, local executive bodies, and executive committees of village and city Councils. International public organizations should be obligatorily registered at the Ministry of Justice. A body that legalizes an organization informs the public through Mass Media.

After registration public organization acquires the status of legal person.

To register a public organization, its founders should file an application. Together with application the following documents are required:

Constitutive documents;

Minutes of establishing meeting (conference) or general assembly;

Information on composition of administration of the central statutory bodies;

Information on local branches;

Documents on registration fee payment, if organization is not exempted from such payment.

Respective institution considers application on registration within two months. If need be, it may verify the information provided in documents. Decision on registration or denial of registration is delivered to an applicant within ten days from the day it was taken. Representatives of public organizations may be present when the question on registration is taken.

Public organizations inform institution of registration within five days on amendments made to constitutive documents.

Registration of public organization may be denied if the name of the organization, its constitutive documents or other documents submitted for registration contradict Ukrainian legislation. The respective institution should provide the reasons for denial for registration. A negative decision can be challenged before the court. The institution of registration provides information on the denial of registration to the public through Mass Media.

Public organizations can legalize their establishment through written notification of, respectively, Ministry of Justice, local executive bodies, village and city Councils of People's Deputies.

Public organizations should have their own symbols registered by respective state institutions.

Public organizations cease to exist through reorganization and liquidation (voluntary or forceful). Reorganization of public organizations is provided for in the constitutive document. Liquidation of public organization may be based on provisions of its constitutive document or decision of the court.

In order to pursue their aims and performs tasks set out in their establishing documents public, organization have the following rights:

To be an actor in civil legal relations, acquire property and individual rights;

To represent and protect their legitimate interests and legitimate interests of their members in state and civic organizations,

To participate in political activity and carry out public measures (meetings, assemblies, demonstrations etc.),

Conceptually, organizationally and materially to support other public organizations and assist their establishment,

To establish institutions and organizations,

To receive from state bodies and administration as well as from local governments information necessary for carrying out their aims and tasks,

To present proposals to state bodies and administration,

To spread information and promote their ideas and aims;

To establish Mass Media,

To establish undertakings necessary for achievement of their statutory goals,

Other rights provided for by legislation of Ukraine.

Public organizations have property rights. They may possess financial and other means for carrying out their statutory activities. Public organizations acquire property rights over financial resources and other possessions given to it by its founders, members or state, acquired from entrance and membership fees, charity contributions from individuals, undertakings, institutions and organizations as well as over property acquired through their own means and other ways not forbidden by legislation. Public organizations may have property rights over possessions and financial resources acquired in result of economic and other commercial activity of economic organizations and undertakings established by these public organizations.

Finances and property of public organizations, including those, which are liquidated, may not be allocated among their members nor be used for achievement of statutory goals or charity and in cases provided for by legislation, it is turned over to the benefit of the state on the decision of the court.

Property rights of public organizations are carried out by their higher statutory administrative bodies (general assembly, conference, union etc.) following the order set out by legislation of Ukraine and their own constitutive documents. Certain functions on management of property may be conferred by higher statutory administrative bodies on bodies, local branches or unions of public organizations, established by organizations concerned.

For fulfilment of their statutory aims and tasks, public organizations may carry out necessary economic and other commercial activity through establishment following the law, of economic undertakings, organizations and institutions with the status of legal person. Public organizations and institutions and organizations established by them should keep the books, statistics, to register at state tax inspection and to make contributions to the state budget and in the amount set out at legislation.

State bodies monitor the activity of public organizations following the order stipulated by legislation. State bodies that carry out the legalization of public organizations monitor the adherence of the letter to the provision of their constitutive documents. Representatives of these bodies may be present at measures carried out by public organizations, require necessary documents and explanations. The State prosecutor's office monitors adherence of public organizations to legislation. Respective financial bodies and state tax inspection monitor the sources and amounts of income and tax payments of public organizations. Public organizations submit to financial bodies income declarations annually.

Officials of state bodies that carry out legalization of public organizations and individuals are subject to disciplinary, civil, administrative or criminal punishment for breach of legislation on unions of citizens. Public organizations are also legally responsible under the Law, "On Unions of Citizens," and other legal acts of the Ukraine. The function of public organizations, which was not legalized or to which legalization was denied or which was forcefully dissolved by the decision of the court but continues to function as well as participate in such public organizations are punished under administrative or criminal legislation.

For breaching the legislation, public organizations may be subject to following types of punishment:

Warning is resorted to when public organization violation of legislation by public organization does not require obligatory application of another type of punishment. Warning is made in written form by a body that carries out legalization of public organization.

Fine is imposed on public organization by court decision on submission from bodies that carry out legalization or state prosecutor's office in case of gross or systematic breach of legislation.

Temporary prohibition of certain types of activity as well as temporary prohibition of activity of public organization is applied according to decision of the court on submission from bodies that carry out legalization or state prosecutor's office with the aim to cease illegitimate activity of public organization. Prohibition may be imposed for the period of maximum three months. The court, however, may prolong the prohibition on request from the body, which applied to the court with submission on such prohibition. The overall duration of prohibition may not exceed six months. Once the reasons for prohibition of certain types of activity or of activity of public organization are eliminated the court on application from public organization concerned may restore the activity of organization in full amount.

Forceful dissolution (liquidation) is as well imposed by decision of the court on application from bodies that carry out legalization or state prosecutor's office. This type of punishment may be imposed for the following.

Activities provided for in Article 4 of the Law "On Union of Citizens". These are activities connected with forceful change in Constitutional regime and, through any illegitimate means of the territorial integrity of the state; undermining of state security through performing services to the benefit of other states; propaganda of war, violence or cruelty, fascism or neo-fascism; instigation of national or religious hatred; creation of illegitimate military formations; limitation of commonly recognized human rights.

Continuing illegal activities after punishment was imposed according to the Law "On Union of Citizens".

These are the main provisions concerning establishment, functioning and liquidation of public organizations in Ukraine.

Public organizations are recognized as legal persons after they have been *legalized* in respective state bodies. Legalization is obligatory and may be performed in two ways, namely, through *registration* or *notification* on establishment. Activity of public organizations, which were not legalized or forcefully dissolved on court decision, is considered illegal. Legalization of public organizations is carried out by the Ministry of Justice of Ukraine, local executive bodies, and executive committees of village and city Councils of People's deputies. International public organizations should be obligatorily registered at the Ministry of Justice of Ukraine. A body that performs legalization spreads information on legalization of a public organization through Mass Media.

To register a public organization its founders should file an application to respective state body. Together with application the following document are required:

Constitutive documents;

Minutes of establishing meeting (conference) or general assembly;

Information on composition of administration of the central statutory bodies;

Information on local branches;

Documents on registration fee payment, if organization is not exempted from such payment.

The Higher Court of Arbitration in its letter concerning the Law, "On Union of Citizens,"⁵³ provided explanation of certain provision on legalization of public organizations. The legalization of all-Ukrainian public organizations, which activity spreads all over the territory of the Ukraine, are legalized by the Ministry of Justice. The legalization of local public organizations is carried out by the department of justice in oblast, Kyiv and Sevastopol city state administrations, executive committees of village, town and city Councils depending on the territory to which the administrative -territorial unit activity of organization spreads. If its activity spreads to two or more administrative-territorial units, legalization is performed at the territory to which all types of activity of the organization concerned has spread.

A respective institution within two months considers application on registration. If need be it may verify the information provided in documents. The decision on registration or denial of registration is delivered to the applicant within ten days from the day it was taken. Representatives of public organizations may be present when the question on registration is considered.

Public organizations may legalize their establishment through written notification of, respectively, Ministry of Justice, local executive bodies, the village and city Councils of People's Deputies.

The Constitution in Article 34 states that everyone has the right to freely gather, keep, use and spread information orally, in written or other form according to his/her choice. This right equally concerns individuals and legal persons. The rights may be limited by Law for the purposes of national security, territorial integrity or public order with the aim to prevent disturbances or crimes, to protect public health, to protect reputation or rights of others, to prevent the publication of information obtained confidentially or to support the authority and impartiality of justice.

Article 20 of the Law, "On Unions of Citizens," provides for the rights of public organizations to receive from state bodies and administrations as well as from local governments, the necessary information for carrying out their aims and tasks.

⁵³ The letter of the Higher Court of Arbitration of Ukraine on the Law of Ukraine "On Unions of Citizens" (1997).

The main legal act in the sphere of information, including the question of access of public organizations to policy documents is the Law, "On Information"⁵⁴. Article 9 of this Law guarantees legal persons, and therefore public organizations, the right to information. This presumes the possibility of freely obtaining, using, spreading, and keeping information needed for the fulfilment of their rights, freedoms, and legitimate interests as well as carrying out their tasks and functions. At the same time, the Article contains reservation that enjoyment of the right to information by legal persons should not prejudice civil, political, economic, social, spiritual, ecological and other rights and freedoms of individuals and rights and interests of legal persons. Article 43 states that every participant of information relations with the aim to fulfil his/her rights, freedoms and legitimate interests, has the right to obtain information on the activity of state institutions, people's deputies, local and regional governments and local administration.

The state guarantees the right to information through the following measures:

Obligation of state institutions and local governments to provide information on their activity and decisions taken;

Creation within state institutions of information services and systems to provide access to information;

Free access of persons interested to statistic data, archives, library and museum funds, with limitations set by legislation.

The Law, "On Information," distinguishes several types of information. Information on activity of state bodies and local and regional governments, which is of interest for the purposes of this research, is a separate type (Article 18). Under Article 21 of the Law, to this type of information belongs official documentary information created in the process of activity of legislative, executive, and judicial powers, local and regional governments. Main sources of this information consist of legal acts of Ukraine, other acts adopted by the Verkhovna Rada and its agencies, acts of the President, secondary legislation, non-legal acts of state institutions, acts of local and regional governments.

The right of public organizations to access policy documents depends on the regime of access to information to which the documents in question belong. Article 28 of the Law, "On Information," defines the regime of access to information as set by the legislative order of

⁵⁴ The Law of Ukraine "On information" (1992).

obtaining, using, spreading and keeping of information. There are two regimes of access to information, namely, open and limited. Access to open information is guaranteed through regular publication of this information in printed media, spreading through Mass Media, providing on request of interested individuals, legal persons and state institutions. The right to obtain open information may not be limited.

Information with limited access also has two regimes. It is divided into confidential and secret. Confidential information is information owned, used or managed by individuals or legal persons and spread on their will and under conditions set by them. Status of confidential may also be given to information, which is the state property and is used by state bodies or local governments, undertakings, organizations and institutions with the aim to save such information. The Cabinet of Ministers sets the order of registering, keeping and using such information. Information on environment, accidents or catastrophes, public health, demographic data, human rights and freedoms, illegal actions of state institutions and officials etc. may not be referred to the status of confidential information.

Secret information consists of information containing facts considered as state or other secret, the publication of which may hurt the individual, society and/or the state. Rules of classification of information as secret and order of access to such information are established by the Law, "On State Secret"⁵⁵. Information with limited access may be made public without agreement of its owner, if it is socially significant, i.e., if it is of interest to the public and if the right of society overwhelms the right of the owner to keep such information secret (Article 30).

Under Article 32 of the Law, "On Information," public organizations may file written information request to state bodies on access to any official documents. Information request means the application for information on the activity of legislative, executive and judicial state institutions and their officials. The request is filed to the institution in question. State bodies are obliged to provide the information in question. The request is considered by the respective institution for the term of ten days. During this period the state institution informs the applicant in writing that the request will or will not be satisfied. If the decision is positive the document requested should be provided to applicant within one month. The denial to grant access to the information is notified to the applicant in written form with grounded reasons for such denial. Denial of access to information may be challenged to a higher-level institution. In case of a negative response from such institution, the applicant may turn to the courts. The burden of proof in court lays on the state institution. The court may request the

⁵⁵ The Law of Ukraine "On State Secret" (1994).

documents in question and after consideration of the information in these documents, it decides whether the negative response of the state institution was grounded or not. If the response was not grounded, the applicant receives access to information in question and the officials concerned are subject to discipline or other responsibility according to legislation.

Access to information may be denied if official documents concerned contain the following types of information:

Information regarded as state secret according to legislation;

Confidential information;

Information on operative and investigative activities of the Prosecutor's Office, the Ministry of Internal Affairs, the Security Service of Ukraine, on activities of investigation institutions and court in cases when opening of such information may affect operative measures, investigation or inquiry, violate human right to fair trial, pose a threat to life or health of a person;

Information concerning private life of people;

Documents of internal correspondence of state institutions if they concern working out of ways of activity of the institution, decision-making process and lead to adoption of a decision;
Information that may not be opened according to normative acts of other institution.

Article 46 of the Law "On Information" provides that information considered a state or other secret, provided by legislation, is not subject to publicizing. However, the Law "On State Secret" provides for possibility to access secret information. Access may be granted by institution that possess information in question upon application of legally capable citizens of Ukraine who reached the age of 18 and who need this information for official, production, scientific purposes, for scientific-research or education. The Law does not speak about public organizations, but members of public organizations are individuals who may receive access to secret information according to the Law. Third country nationals and stateless persons may receive access to secret information only in exceptional circumstances under duly ratified international agreements of Ukraine. Access presumes certain obligations and conditions regarding person to whom access is granted. Among such conditions and obligations are:

Stipulation of necessity of access of a person to secret information for the purposes of work;

Checking of information about applicant required by access to state secret (is carried out by Security Service of Ukraine);

Written obligation of applicant to keep state secret opened to him/her in secret;

Written agreement of applicant for limitation of his rights set by legislation required by access to state secret. Limitation of rights may concern freedom to leave Ukraine and right to information (to spread information);

Notification of applicant on responsibility for violation of legislation on state secret.

Denial of access to secret information may be challenged to a higher-level institution or to the court.

Secret information may not be disclosed to members of public organizations, whose activity was forbidden according to legislation.

Therefore, according to the Constitution and the Laws of Ukraine, public organizations through their members as well as themselves have the right to information, which means they may freely receive, keep and disseminate information they need for their functioning and for achieving their statutory goals. Legislation prescribes to state bodies the guarantee to public organizations the access to all documents concerning their activities. The right to receive information of an open regime may not be limited. Public organizations have the rights to receive access to information of limited regimes with permission from the concerned state institutions and to challenge negative decisions before higher-level bodies and before the court.

Ukrainian legislation contains no explicit provisions on state support of non-governmental organizations, in order to conduct research in military, defence and security issues. The Law, "On State Support of Undertakings, Scientific-Research Institutes and Organizations,"⁵⁶ concerns only organizations that produce weapons and not those, which carry out analytical research on military, defence and security issues. In 1994 a Fund for Support of Researches

⁵⁶ The Law of Ukraine "On State Support to Undertakings, Scientific-Research Institutes and Organizations, Which Develop and Produce Armaments, Their Elements and Special Chemical Products" (2000).

in the Sphere of National Security was established by the President⁵⁷. However, the Fund was dissolved in 1996⁵⁸.

The Budget of Ukraine 2004⁵⁹ contains two seemingly relevant points. The first one concerns expenditures on reforming and development of the Armed Forces. The second one concerns expenditures for applied research in the sphere of military defence. However, only when construed very broadly, these points may be considered as covering analytical activity of non-governmental organizations. Contextual analysis of the Budget and other relevant legal documents does not lead one to believe that the government intended to include support of non-governmental organizations into the Law.

Analysis of Ukrainian legislation indicates that the Ukrainian government does not provide support to non-governmental organizations for carrying out of research in military, defence and security issues. The government is prone to support technical and practical scientific research rather than analytical one.

The Law, "On Unions of Citizens," provides that to achieve their aims and to carry out their tasks, public organizations have the right to present proposals to state bodies and the administration. Logically, the obligation of state bodies and the administration to consider such proposals corresponds to the right of organizations. The Law, "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State,"⁶⁰ provides that civil control should guarantee the consideration of public opinion, proposals of individuals and public organizations in discussions and decision-making on issues of Armed Forces activity, other military formations, law-enforcement agencies and officials in the sphere of defence, national security, strengthening of public order and legal order (Article 2). Article 19 of the same Law states that public organizations in Ukraine may:

Carry out scientific research on issues of military building, organization of defence, security of the state etc., organize public discussion of results of the researches, establish for this purpose public funds, centres, unions of experts etc.;

⁵⁷ The Decree of the President of Ukraine "On Fund for Support of Researches in the Sphere of National Security" (1994).

⁵⁸ The Decree of the President of Ukraine "On Dissolution of Certain Funds" (1996).

⁵⁹ The Law of Ukraine "On State Budget of Ukraine 2004".

⁶⁰ The Law of Ukraine "On Democratic Civilian Control Over the Military Organization and Law-Enforcement Bodies of the State" (2003).

Carry out public expertise of draft laws, decisions, programmes, present their conclusions and proposals to respective state agencies to be considered in reforming of the Armed Forces of Ukraine, other structural part of military organization and law-enforcement agencies of Ukraine;

Participate in public discussions and open parliamentary hearings on issues of reforming of the Armed Forces of Ukraine, other structural part of military organization and law-enforcement agencies of Ukraine, problems of legal and social protection of military servants and their families;

To present legislative initiatives in the sphere of military building, law-enforcement activity etc. through legislative actors.

These provisions indicate that non-governmental organizations may be a source of information for decision-makers in governmental agencies, particularly in the sphere of security and defence. However, there is no explicit provision on obligation of state institutions to consider proposals of public organizations.

The Constitution provides that the Ukraine is a democratic republic, based on the rule of law, which presumes power of the people. This power in its turn presumes control over activities of state agencies. Every individual may fulfil this power through his/her right to information, which enables him/her to receive information on the activity of state agencies. State bodies therefore, have the corresponding duty to act transparently and provide information on their activities to the people of Ukraine.

The Law, "On Information," among state guarantees of the right to information, sets obligations to create within state agencies special information services or systems, which would provide access to information. The order of establishing such services is stipulated by the Cabinet of Ministers.

The Law, "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State," also speaks about information services within security and defence sector organizations providing that "press-services and departments on public relations operatively provide Mass Media with objective and comprehensive information on activities of the Armed Forces of Ukraine, other military formations and law-enforcement agencies".

In August 2001 a Press-Service of the Cabinet of Ministers was created⁶¹.

All the state agencies have Press-Services responsible for informing publicity on the activities of their respective bodies.

As it is evident from the activity of the Press-Services and Departments on Public Relations both responsible for informing Mass Media and wide publicity on current and scheduled events, developments within the respective agencies, speeches and meetings of officials, legal developments concerning their agencies etc. They may also organise meetings and conferences of high officials. However, provisions on functions of press-services are not set in legislation. These are internal statutory documents of each agency that stipulate functions and responsibilities of information services.

Press-Services and Departments on Public Relations of respective agencies, such as the Ministry of Internal Affairs or the Ministry of Defence as well as of the Cabinet of Ministers, other relevant ministries and agencies do provide information on security and defence. If information in question is of open regime, it may be found at electronic pages of respective agencies, in their press releases, in Mass Media as well as learned through application to the information services directly. For this, there are contact addresses of these services provided at the electronic pages of agencies in question. Despite all this, there is a general problem of lack of information from state agencies, particularly on security and defence issues. High level of bureaucracy, secrecy and absence of rigid distribution of functions in state agencies makes it difficult to obtain necessary information.

All the major state agencies have their electronic pages where they provide mostly all essential information on their activities, current and upcoming events, news, legislative developments and through which they communicate with the public. Thus, through the general web page of the Cabinet of Ministers⁶² one may find links to electronic sites of the following state agencies: the President, the Verkhovna Rada (Parliament), Central Governmental Agencies (Ministries), Judicial Power, Council of National Security and Defence, Regional and City State Administrations and Central Election Commission. Information at the electronic pages of the President and the Ministries is usually provided in three languages, namely, Ukrainian, Russian and English. It is the case of all the agencies in question that English version of their electronic pages is mostly abridged and does not

⁶¹ Regulation of the Cabinet of Ministers of Ukraine "On Creation of the Press-Service of the Cabinet of Ministers Of Ukraine" (2001).

⁶² See: the web site of the Cabinet of Ministers of Ukraine, <www.kmu.gov.ua>.

contain current news, electronic media, press releases and other information subject to fast changes. Available information mostly concerns basic facts on activities or most important events concerning these agencies. Most information in English is provided at the page of the President, while current⁶³ information in English at pages of some ministries, e.g. the Ministry of Internal Affairs, is not available at all. The general feature of all information sites of state agencies is that they do not cover all the essential aspects of the agencies' activities and usually lag behind the developments in their covering.

In summary, the Constitution guarantees to citizens of Ukraine the freedom to unite into public organizations. The main principles of the establishment and the functioning of public organizations are free will and the equality of their members, self-government, legitimacy, and openness. Civil society organizations choose themselves the type of activity they want to pursue. Limitations on the activity of public organizations may be imposed only on the basis of the Constitution and the laws of Ukraine. In order to be registered a public organization should be legalized. Legalization is performed through registration or mere notification on establishment. The legalization of public organization may be refused and the activity of legalized organization may be prohibited only by decision of the court, if the name of organization, its constitutive documents, and other documents submitted for registration or its activity contradict Ukrainian legislation. Public organizations cease to exist through reorganization and voluntary or forceful liquidation.

The Verkhovna Rada stipulates tax preferences on income of certain types of economic activity or other commercial activity of public organizations and set out the list of all-Ukrainian public organizations to which the state grants material assistance. These organizations include only unions of veterans, invalids and youth. No state support is available to analytical researches on security and defence.

Public organizations have legal capacity and may bear administrative, civil, and criminal responsibility. State bodies monitor the activity of public organizations following the order stipulated by legislation.

Public organizations in the Ukraine have the status of legal person and enjoy all the rights necessary to perform their functions and achieve their aims. One of the main rights is the right of public organizations to information, which presumes the possibility to obtain from state bodies and the administration, as well as from local governments, information necessary for carrying out their aims and tasks. The state in its turn obliges state institutions

⁶³ The research on this issue was made in Summer 2004.

and local governments to provide information on their activity and decisions taken. Access to information of open regime is unlimited. Access to limited-regime information may as well be received from the agencies concerned. However, practical experience as well as analysis of information provided at electronic pages of most state agencies raises concerns on due fulfilment of obligation to provide information and, therefore of the principle of transparency, by state bodies. The reason for doubt is that information provided on-line by vast majority of state agencies is mostly only on basic issues, like structure, press-releases, speeches of higher officials etc. Most essential developments are often not enlightened and covering of recent news is lagging behind.

As to participation of public organizations in decision-making processes, their role according to legislation is rather small. Though they have the right to present proposals to state bodies and the administration, there is no explicit legal provision obliging state agencies to consider such proposals. Legislation contains very few provisions concerning participation of non-governmental organizations in the activity of state agencies, e.g. in work of Parliament and in legislative work. They may participate mostly through providing expert assistance on certain issues. As to active participation of members of public organizations at meetings and hearings of state bodies only the Law, "On Democratic Civilian Control of the Military Organisation and Law-enforcement Bodies of the State," explicitly provides for the right of public organizations to participate in public discussions and open parliamentary hearings on issues of reforming of the Armed Forces, law-enforcement agencies, problems of legal and social protection of military servants and their families. Other laws only speak about inviting experts on issues on which they provided expert assistance with no indication of their rights at such meetings.

The analysis of legislation in this chapter leads to the conclusion that despite evident progress, the role of civil organizations in state activity could be much stronger. While they have rights, which should allow them to monitor activities of state agencies and contribute to the decision-making process, the corresponding obligations of state agencies are not entrenched in legislation. In cases, when state agencies have direct obligations, in this chapter, in so far as the obligation to provide information was concerned, they often fail to perform it properly. All this hampers and sometimes makes impossible the performance of their democratic role by public organizations.

Conclusion

The analysis of the general provisions of the Constitution and the basic legislative acts

proves that these documents generally provide for the establishment of democratic civilian control over the security structures (The Armed Forces, intelligence and law-enforcement bodies) on the basis of universally recognised democratic principles.

The analysis of the functions of the key actors exercising civilian control over security structures in Ukraine is evidence of the rather broad coverage of the spheres of the security structures' activities and sufficiently detailed elaboration of controlling functions.

Meanwhile, there is a notable imbalance between the scope of the functions and powers of the President and his subordinate executive bodies, on the one hand, and the legislative branch on the other. Even the Constitution and the basic legislative acts dealing with civilian control lay down systemic preconditions for the breach of a democratic balance of powers and responsibilities of the branches of power in exercising control over security structures by actually giving the President the possibility of exclusive influence on the leadership of security structures.

The parliamentary powers of control over security structures are limited due primarily to the poor legislative regimentation of the parliamentary enforcement mechanisms, and consequently often inadequate reaction or even ignoring of the security structures in official inquiries.

The absence of the Laws, "On the President of Ukraine" and "On the Cabinet of Ministers," regimenting, in particular, the procedures for exercising presidential and governmental powers in the sphere of control over security structures, allows for arbitrary application and/or delegation of those powers to other bodies that may be set up by the President.

A clear distinction must be made between civilian control and democratic control of security sector in Ukraine. True democratic civilian control has yet to be established in the country, so it is a bit early to speak about its effectiveness. It is necessary to eliminate the conception of "control" held by both the security structures and society – a narrow conception of oversight by a supervisory body. Control should be seen more broadly. Another key problem is the necessity for stronger democratic, that is, parliamentary, civilian control. The powers of the Verkhovna Rada over security and defence policy should be expanded.

Effective control over the security structures in Ukraine to significant degree depends on the ability to create a better environment for training of sufficient number of civil servants.

There also is a need for a stronger involvement of independent experts, scholars and journalists competent in military issues into the control process. So far, the capabilities of citizens and civil society institutions in the sphere of control over security structures are confined primarily to the right to make inquiries and obtain information.

It was also recognised that ineffective defence and law enforcement budgeting is among the major barriers to the steady and progressive development of Ukraine's security sector.

However, these challenges are of a systemic nature and cannot be resolved in the security sector alone, without the reform of the country's overall economic and political sectors. If no Constitutional changes repairing current systemic deficiencies occur, then the system of democratic civilian control over security sector will most likely continue to stagnate.

At this moment, without practical delegating of significant portion of authority and responsibility over security sector from the President to the Verkhovna Rada and the Cabinet of Ministers, it is impossible for the Ukraine to develop and implement more sound security policy, which is a prerequisite for further progress in democratic control and in achieving by Ukraine the standards of developed democracies.



Geneva Centre for the Democratic Control of Armed Forces (DCAF)

Established in October 2000 on the initiative of the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) encourages and supports States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and promotes security sector reform conforming to democratic standards.

The Centre collects information and undertakes research in order to identify problems, to gather experience from lessons learned, and to propose best practices in the field of democratic governance of the security sector. The Centre provides its expertise and support, through practical work programmes on the ground, to all interested parties, in particular governments, parliaments, military authorities, international organisations, non-governmental organisations, and academic circles.

Detailed information on DCAF can be found at www.dcaf.ch

Geneva Centre for the Democratic Control of Armed Forces (DCAF):
rue de Chantepoulet 11, PO Box 1360, CH-1211 Geneva 1, Switzerland
Tel: ++41 22 741 77 00; fax: ++41 22 741 77 05; e-mail: info@dcaf.ch;
website: www.dcaf.ch