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

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Background

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

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

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

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

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

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

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

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

courts;	
b) individuals who are held liable by court for commission of a criminal misdemeanour will have an opportunity to appeal against the court decision through the existing procedures.	
Such changes, in particular, will eliminate violation of the right of person to appeal against court decisions, which now exists in the cases of administrative offences in conflict with Article 2 of the Protocol No. 7 to the European Convention on Human Rights.	
Introduction of the mentioned innovations will require review of provisions of the Criminal Code, as well as adoption of the Code on Administrative Misdeeds which will replace the existing Code on Administrative Offences. As a result, provisions of the General Part of the Criminal Code will require amendments to define peculiarities of liability of natural and legal persons for criminal misdemeanours (provisions on the offender, his ability to be held liable, the guilt, complicity, types of punishment, relief from punishment and serving of the sentence, conviction, etc.). Provisions of the Special Part of the Criminal Code shall be divided into separate chapters on crimes and criminal misdemeanours.	
Revision of the Criminal Code shall also be aimed at the further humanisation of the criminal legislation, at the optimisation of the criminal legal sanctions, at the improvement of certain institutes of the General Part of the Code, etc.	
2. Conceptual Provisions of a new Criminal Procedure Code	
2.1. Criminal procedure in Ukraine shall be reformed based on the following principles:	
• procedural equality of rights of the prosecution and defence parties;	
• clear delimitation of the tasks and of the procedure at the stages of pre-trial and court proceedings;	
• introduction of a new, free from accusatory bias, procedure for pre-trial proceedings, in the course of which factual data as to the criminal offences and persons who committed those will be gathered by covert and overt methods, established by law;	Europe includes systems of criminal justice some of which are inquisitorial and others adversarial. Acknowledging the right of countries to determine their own justice system, European standards do not seek to advocate one or the other but attempt to accommodate 'best practice' from either. However, in doing this, care

• adequacy of the procedures of the pre-trial and court proceedings to the aim and tasks of criminal justice;	must be taken that incompatible aspects of the two systems are not incorporated since that may lead to confusion. At the moment, reading 2.2 Pre-trial proceedings, it seems as though there may be some such incompatibility. It proposes an essentially inquisitorial procedure by which 'Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.' It says that these proceedings 'shall be devoid of excessive formalisation.' Yet, it also proposes that adversarial principles will ensure the procedural equality of rights of defence and prosecution. This is correct, but experience with the adversarial system in the UK is that arguments between defence and prosecution over the provenance and admissibility of evidence can be extensive. Therefore, it will be difficult to avoid 'formalisation', for example, the records of the judicial sanction for the use of covert methods, the records of resulting communication interceptions, other evidence of surveillance activities etc.
• broadening of the scope of application of restorative justice (mediation) procedures;	
• improvement of the judicial control and prosecutorial oversight during pre-trial proceedings;	
• concentration of the court consideration of all cases at first instance in the local courts;	
• creation of procedures which will enable attainment of the goal of punishment of the guilty persons without infringement of human rights and fundamental freedoms.	
2.2. *Pre-trial proceedings* shall be devoid of excessive formalisation. Current inquiry [diznannya] and investigation [slidstvo] will be unified into one procedure of the pre-trial investigation.	
The Code will stipulate different proceedings regarding crimes and criminal misdemeanours. Investigation of criminal misdemeanours will in particular provide for expedited procedures without a possibility of application of the preventive measure in the form of pre-trial detention.	
Pre-trial proceedings will consist of various types (overt and covert) of gathering and registration of the factual data on circumstances of the deed, which are necessary in order to sustain charges in the court. Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.	
Ensuring of the procedural equality of rights of the parties will be based, first of all, on the adversarial and discretionary principles. To this end it is necessary to improve procedural rules for gathering of information and its submission to the court by parties of defence and prosecution. At the same time, it is necessary to provide for mechanisms to prevent abuse of the granted procedural rights (submission of incorrect information, procrastination of the proceedings, etc.).	

The procedure regulating the beginning of the pre-trial investigation, which will be carried out exclusively in connection to the fact containing elements of the criminally liable deed, needs to be simplified. The pre-trial proceedings will be deemed as commenced from the moment of address by a natural or legal person or of receiving information by other means. Relevant officials will have a responsibility to instigate pre-trial proceedings immediately upon obtaining such address or information. All procedural actions which do not require special court authorisation may be conducted from the moment when pre-trial proceeding began.	The Draft refers to the 'responsibility' of officials – presumably police and prosecutors – to instigate pre-trail proceedings on receipt of information of a possible crime; does it need to be made clearer as to whether they have a legal duty to investigate or whether they have discretion not to investigate under certain circumstances? Police normally do have such discretion given that they receive many more reports of crime than they have the resources to investigate. But where there are suspicions of corruption among police, then it is important to make clear those circumstances, since otherwise it will be impossible to determine subsequently whether a decision not to investigate was reasonable or not.
The role of the prosecutor in the pre-trial investigation will be to exercise control over the adherence to law in the course of such investigation according to the model of control functions of prosecutors in European states. The prosecutor shall assess and direct the course of investigation taking into account his/her future position in the court while supporting public prosecution.	This is the first of several places where reference is made to the role of the prosecutor (there are others under 3.1 and 3.2). These references establish clearly that the prosecutor will be responsible: for ensuring the legality of the pre-trial investigation [here; five lines below: 'control over the adherence to laws in the course of the pre-trial investigation… ; 'control over the legality of the pre-trail investigation' at 3.2 sub-section 2)]. a) the prosecutor determines whether the investigation shall be terminated or what charges are to be brought [at eight lines below and 3.1] and, b) conducts the prosecution in court [at ten lines below and 3.2 sub-section 1)]. However, there is some ambiguity as to the relationship between the prosecutor and militia in the investigation. The first reference is that the prosecutor will 'direct the course of (the) investigation…' but four lines below, the Draft refers to the 'procedural guiding of individual investigations…' Paragraph 3.1 refers to 'control over the pre-trial investigation…' but this refers to the decision as to whether or not the investigation should be continued, not how it is conducted. There is some ambiguity here that needs to be resolved in the interests of both prosecutors and law enforcement agencies. European standards incorporate both models in which the prosecutor directs police investigations compared with those in which police are independent [CoE Rec (2000) 19, paragraphs 21-23] but a precise statement of what is proposed could be included in the list of principles under 2.1 of the Concept.

Thus, the prosecutor will have the following powers in the criminal process:	
• control over the adherence to laws in the course of the pre-trial investigation exercised through procedural guiding of individual investigations (taking decisions as to the continuation or termination of the pre-trial investigation, etc.);	
• criminal prosecution of the person, including bringing charges and drawing up of the indictment act;	
• sustaining of public prosecution in the court.	There is a related issue that perhaps needs to be clarified in the Concept. This is whether the prosecutor is to be empowered to conduct investigations. The concern in the Soviet and post-Soviet period was that the procuracy was all-powerful throughout the criminal justice process. The Concept, in seeking to move away from this, does not say that investigation will be a function of the prosecutor (see previous comment) but it does not make clear that it will not be. In Europe, some prosecutors do conduct investigations [CoE Committee of Ministers (2000) 19, 3], but the CoE Parliamentary Assembly has stated more recently that the future investigations service: '…should provide for the detachment of all investigative powers from the prosecutor's office and not just those connected to high-profile and corruption cases' (PACE, 2005, 166). There is certainly a strong argument for separating the institutions for investigation and prosecution so that they may 'check and balance' each other.
The Code shall clearly define the legal status of the victim, suspect and the accused; establish an exhaustive list of preventative measures, their duration, procedure for their application, procedure for appeal and review in accordance with the requirements of the Constitution of Ukraine and the European Convention on Human Rights.	
It is necessary to provide for in the legislation that the maximum duration of detention of the person without a court sanction (72 hours), as provided for in the Constitution of Ukraine, shall only be acceptable in exceptional cases. At the same time it is also necessary to constitute a procedure according to which further detention of the person following the first 24 hours will only be possible with the court sanction. Such procedure will comply with Article 9 of the 1966 International Covenant on Civil and Political Rights and with Article 5 of the European Convention on Human Rights.	The Draft is correct to note that attention will need to be paid to the length of time for which persons may be detained before being brought before a judge. ECHR Article 5(3) requires that this be done 'promptly'. The draft refers to 'exceptional cases', but the ECHR requires that a state may 'derogate' from its obligations under the Convention only to an extent that is strictly required by an emergency that threatens the life of the nation (Starmer et al, 2001, 3-4). The UK, for

	example, has done this in the case of its terrorism legislation.
As a general rule testimony of the person will have evidential validity under condition that such information is provided to the court directly. The parties of defence and prosecution will have to notify and provide each other with all available to them factual information about the deed. Relevant information will have to be examined within reasonable time prior to the beginning of court proceedings.	
Defence attorney (representative) shall be selected by the person in question (suspect, accused, victim) from among the advocates. Bodies of the pre-trial investigation, prosecutor and court should have no procedural opportunities to interfere with the selection of the defence attorney and to prevent his/her participation in the case. It is necessary to ensure procedural guarantees for confidentiality of communications between defence attorney (representative) and suspect, accused, victim.	
The Code has to provide for an appropriate procedure of obtaining free legal aid by persons who are victims and to the suspects (accused) in the criminal offences.	Somewhere in the Concept, there should be reference to the duty on police to inform promptly anyone arrested 'in a language he understands…the essential legal and factual grounds for his arrest' [ECHR Article 5(2)]. Also, any person taken into custody must be advised of their right to free legal assistance [ECHR Article 6(3)(c)].
As a rule, the accused has to remain free from detention until the court delivers a judgment. The accused can be held in custody only if there is no possibility to secure attainment of the objectives of justice by other means. In case of pre-trial detention the accused is to be granted additional guarantees, in particular, the right to an obligatory participation of the defence attorney.	
The parties shall have equal access to expert opinions. Selection of experts shall entirely be within parties' discretion.	
2.3. Procedures for *court control at the stage of the pre-trial proceedings* need to be further improved. Constitutional rights and fundamental freedoms of the person can be temporary limited only upon court's sanction. The judge will:	
• sanction carrying out of special investigative activities (interception of information from the communication channels, instalment of covert devices for surveillance over a place or a person, review and seizure of correspondence, etc.);	

• sanction all preventive measures (pre-trial detention, bail, written undertaking not to leave a place, etc.) and other measures of the procedural coercion, connected to the temporary restriction of personal and proprietary rights of the person (property arrest, removal from office, temporary ban to participate in commercial activities). The issues of application of the measures of procedural coercion must be decided at the court hearing with adherence to equality and adversarial principles with obligatory participation of the parties of prosecution and defence;	
• fixate information as evidence in separate instances (e.g., interviewing of the seriously ill witness or of the witness whose life and health are in danger in the course of pre-trial investigation);	
• review complaints on actions of the investigator, prosecutor during the pre-trial proceedings, etc.	
The judge who participated in the pre-trial proceedings will have no right to consider criminal case at the stage of the court proceedings.	
It is also necessary to improve *the procedure for the judicial consideration of criminal cases at first instanc*e. This procedure should be harmonised with civil and administrative adjudication in part where there should be no discrepancies based on the subject and task of the criminal adjudication. All cases of crimes and criminal misdemeanours at first instance should be considered exclusively by local courts with criminal circuit courts created therein to consider the gravest crimes.	
In the circuit criminal courts a jury trial shall be functioning, whereby a panel of jurors will issue a verdict in the criminal cases on the issues of fact only (for example, whether the deed took place, whether it was committed by the accused, whether he/she is guilty of committing this deed), and a person presiding in the process (professional judge) on the basis of the verdict will decide on the issues of law.	
The judge will study only the indictment and the registry of materials, documents and statements which may be used as evidence. Materials, documents and information about testimony shall be provided to the court directly by the parties of defence and prosecution.	
At the same time it is necessary to introduce an institute of the recognition in the courts of facts which are not disputed by the parties, instead of their scrutiny during the judicial consideration of the case.	
It is necessary to significantly widen the scope of application of the procedures of	Section I of the Concept refers to the introduction of a probation procedure and the

restorative justice (mediation), in accordance with which the judge will make a decision as to the agreement on pleading guilt or reconciliation between the accused and the victim.	intention to widen the scope of the use of 'restorative justice (mediation) procedures' and further reference is made here. There are a number of points to be made here: first, restoration and mediation are slightly different – the objective of the first is to 'restore' the victim to his/her situation before the crime, while the second is to provide some way of resolving a conflict between people. But in neither case do they sit very comfortably with ideas of human rights, that is, the protection of the rights of individuals from the abuse of power by state agencies within the criminal justice process. Rather, both refer to the relations between private individuals. The point of reparation is to place the victim more centrally into the decision-making process – this is a worthwhile enterprise to the extent that victims are often excluded from criminal justice processes but it requires much thought as to how it will be done within a framework of justice that is otherwise centred on establishing the guilt or innocence of suspects and their consequent punishment. For example, the Concept incorporates the right of victims to legal representation and refers here to the judge deciding on, presumably, the acceptability to the court of 'reconciliation between the accused and the victim'. But studies of restorative justice schemes suggest that they should be conducted independently of courts and lawyers, especially if they operate on an adversarial basis (Zedner, 2002, 443-47).
In order to provide the court with information on social characteristics of the person, who is being accused or is found guilty of committing a crime, in order to make a decision on selection of the most adequate preventive measure for this person or type of punishment, the probation service shall prepare and submit to the court materials on the social evaluation of the person with relevant recommendations.	
Special juvenile justice procedures shall be developed which will allow for better consideration of the rights and interests of the minors. Criminal cases in which the accused are minors shall be considered by the court comprising a professional judge and two people's assessors.	
In individual cases (for example, when the person who is accused of committing a criminal misdemeanour can not attend the court hearing due to certain circumstances) it is necessary to provide for a court hearing *in absentia*. In such cases participation of the defence attorney is obligatory.	
It is also required to envisage an order proceeding, whereby the judge, without holding	The Concept proposes that a person pleading guilty to a misdemeanour can only

a court hearing, delivers an order of court on the punishment of a person for commission of the criminal misdemeanour if the person pleads guilty of its commission and does not oppose the penalty which can be ordered by the judge. The person can be held criminally liable through the order proceeding only if he/she has a defence attorney and only if the opinion of the victim is taken into consideration, as well as the opinion of the prosecutor in the cases of the public accusation.	be sentenced by a judge if the opinion of the victim has been taken into consideration. There are two issues here, though current European rights standards require no particular approach. First, there is debate as to how much victims' views should be taken into account at sentencing – some say it is a good thing to give the victim a 'voice' at this stage – but others point out that possible inequalities in sentencing might result if judges take into account powerful victim statements in one case which are absent in another case. Second, it may just not be possible to obtain the views of the victim – research shows that some victims take a strong interest in the progress of the case while others do not (Zedner, 2002, 443-47). Some just prefer to try to forget their unpleasant experiences. There is no reason in terms of rights standards why judges should be unable to pass sentence in such cases.
Particularities of the closed hearings and special procedures for consideration of the evidence (for example, interrogation as a witness of the person who is under the protection) will be defined.	
With the view of respecting the presumption of innocence it is necessary to abrogate the possibility for courts to remit a case for additional investigation.	
The *procedure for review of the court judgments in criminal cases* should be improved. Appellate courts should function only as courts of appeal instance. The courts of the first instance should be deprived of the right to decide on the further fate of the appeals. To review cases in cassation, it is necessary to set up the High Criminal Court. The Supreme Court of Ukraine shall review court decisions in criminal cases only under exceptional circumstances.	
Opening of the case based on the newly discovered circumstances shall be carried out upon decision of the court. Prosecutors should be deprived of the exclusive right to initiate review of criminal cases based on the newly discovered circumstances. Such a right should belong to all parties to the proceedings and persons whose interests are affected by the judgment in the case.	
3. Reform of the bodies of criminal justice system and law enforcement agencies	
Reform of the bodies which carry out pre-trial investigation and/or secure public order	Please see comments made above (on changing 'fundamentally the conditions for

shall be focused on the improvement of their operations in order to raise the level of human rights and fundamental freedoms protection, to reinforce fight against criminally punishable offences, and to increase public confidence in their work. Such reforming is supposed to ensure unified approaches, coherence and consistency of measures improving performance of these bodies, to harmonise forms and methods of their operation with European standards.	guaranteeing human rights'). The statement here seems to contradict that made earlier about removing the protection of rights from the responsibilities of these agencies.
Reforming measures shall cover, in particular, the bodies of:	
• *Prokuratura*;	
• Security Service of Ukraine;	
• Ministry of the Interior of Ukraine;	
• State Criminal Execution Service of Ukraine;	
• State Border Guards Service of Ukraine;	
• State Customs Service of Ukraine;	
• State Tax Service of Ukraine;	
• Military Service of Order in the Armed Forces of Ukraine.	
The reforming of the said bodies will include changes in the forms and methods of their operation and their institutional reorganisation aimed at:	
• delineation of the political and professional leadership;	
• development and implementation of the professional standards of conduct of employees of the law enforcement agencies;	
• demilitarisation of the system of the law enforcement agencies, namely reduction in the number of posts which can be filled by persons of lower and higher military ranks;	
• carrying out of activities to secure public order in co-operation with the civil society through various forms of such co-operation;	For the reasons detailed above (on changing 'fundamentally the conditions for guaranteeing human rights'), I suggest replacing 'public order' with a phrase such as 'public safety and security'.
• changing approaches to the evaluation of the effectiveness of work of the criminal justice system bodies.	
3.1. Pre-trial investigation of crimes and criminal misdemeanours will be carried out	

by bodies of the inquiry and of the investigation, which shall in the future be unified under the name of bodies of the pre-trial investigation.	
Investigators of these bodies will gather materials about circumstances having significance for the case which will be fixated as evidence by the court.	
The role of the prosecutor will lie in the control over the pre-trial investigation through sanctioning of the continuation or termination of the investigation, in conducting criminal prosecution of the person and in support of the public prosecution in court.	
To ensure the adversarial principle and procedural equality of the parties of prosecution and defence, it is necessary to complete the establishment of the Bar as an independent self-governing profession which exercises the function of defence in the criminal proceedings, and to foresee a possibility to set up and regulate the operation of private detectives (detective agencies).	It is a feature of Anglo-American legal systems that lawyers are a self-governing profession in which those specialising in criminal law may, at different points in their careers, act either as defence lawyers, prosecutors or judges. The proposal in the Concept appears to envisage separate professions of prosecutors and defence lawyers – is that intentional?
	Given the rapid growth of the private security sector in the last twenty years, it is a very good idea to provide for its regulation. However, it would be best to substitute a term such as 'private security companies' for 'private detectives' or 'detective agencies' since these are more restricted terms. Since PSCs are not public bodies, by definition, the ECHR does not apply to them and this makes it all the more important that they be subject to some form of regulation (see, for example, Schreier & Caparini, 2005). The Parliamentary Assembly of the CoE proposes: e. Private companies dealing with intelligence and security affairs should be regulated by law, and specific oversight systems should be put in place, preferably at European level. Such regulations should include provisions on parliamentary oversight, monitoring mechanisms, licensing provisions and means to establish minimal requirements for the functioning of those private companies. [CoE Parliamentary Assembly 1713 (2005)]
3.2. It is necessary to bring constitutional functions and principles of organisation of the *Prokuratura* in line with European standards (according to the opinions of the Venice Commission and recommendations of the Parliamentary Assembly and Committee of Ministers of the Council of Europe).	
The Soviet model of the *Prokuratura* shall be transformed into the system of public prosecution which will be comprised of prosecutors with independent status and which	

will be headed by the Prosecutor General.	
The Constitution shall provide for the following functions of the prosecutors: 1) sustaining public prosecution in court; 2) control over the legality of the pre-trial investigation; 3) oversight over the enforcement of laws during execution of judgments in criminal cases and also in the process of application of other measures of coercion which are connected to the restriction of the personal freedom.	See comments at *7 and *8 [REPLACE] above
During the transitional period the prosecutors may be allowed to preserve the function of the representation of interests of persons and the state in court in cases defined by law and only upon request of relevant persons.	
Organisational structure of the prosecutor's bodies shall be built according to the functional principle (guiding of the pre-trial investigation and sustaining of the public prosecution in court; representation of the interests of persons and of the state; oversight over the enforcement of laws in the process of application of coercion measures) and be in line with Recommendation of the Committee of Ministers of the Council of Europe Rec(2000)19.	
The law shall define the status of prosecutors that will ensure their independence not only from outside political or other illegal influence but also from the procedural interference of the higher ranking prosecutor.	
To this end a new procedure for selection, initial and on-going training, bringing to disciplinary liability, dismissal, etc. of prosecutors shall be instituted.	
On-going training for prosecutors shall include improvement of knowledge on provisions of the Constitution of Ukraine, European Convention on Human Rights, case-law of the European Court of Human Rights, criminal law and procedure.	
3.3. *Security Service of Ukraine* shall be a body responsible for protection of the national security in line with European standards (Recommendations of the Parliamentary Assembly of the Council of Europe Nos. 1402 and 1713) which can be carried out, *inter alia*, through conduct of the counterintelligence activities.	

The SSU may conduct pre-trial investigation only with the view of protection of national security interests and only with regard to the strictly limited category of crimes against the state. The SSU, through its inherent measures, provides assistance to other agencies in investigation of economic and other crimes.	No agencies symbolised the abuse of human rights under former authoritarian regimes as much as internal security services. Therefore, the task of legislation for these agencies to work purely in defence of national security while respecting individual human rights is especially difficult yet important. First, legislation should distinguish clearly between the internal security service and other law enforcement agencies [CoE Recommendation 1713 (2005) ii.b.] Second, CoE Guidelines recommend that: 'Internal security services should not be authorised to carry out law enforcement tasks such as criminal investigations, arrests, or detention.' [CoE Recommendation 1402 (1999) Guidelines B.iii] Subsequently, the CoE has stated that, in order for the SSU to comply with these Guidelines, it would be necessary to delete the Security Service's 'current law enforcement character' by transferring part of its functions to other law enforcement agencies (PACE, 2005, 177). The Concept moves towards this position when it states that: 'The SSU may conduct pre-trial investigation only with the view of protection of national security interests and only with regard to the strictly limited category of crimes against the state…' (3.3) Yet, to reduce public fears of the continuation of a 'political police', perhaps thought should be given to denying the SSU all powers of arrest and detention which, in cases involving national security and crimes against the state, could be exercised by the security militia (Concept 3.4 3) in the same way as they would be by other sections of the militia. If the SSU is to retain some law enforcement powers, it needs to be made clear just what they are, for example, can it arrest and detain people on its own decision or only on the direction of the prosecutor? Similarly, it should be made clear that covert information gathering techniques may only be deployed by the SSU with prior judicial authorisation [CoE Recommendation 1402 (1999) Guidelines B.ii].
An effective democratic oversight over the activities of the SSU, including a parliamentary oversight, shall be exercised.	
Other changes in the security sector will be identified in the Conceptual principles for the operation of the system of bodies of the national security and defence of Ukraine.	
3.4. *Ministry of the Interior* shall become a civilian agency of the European model in which militia (police) will be only one of its bodies.	

Responsibilities of the Ministry will include:	
1) protection of public order, traffic safety, border control (thus, the Ministry will receive the powers of the Central State Motor Vehicle Inspection of the Ministry for Transport and Communication and of the State Border Guard Service);	
2) fire protection, protection against natural disasters and man-caused catastrophes, civil defence of the population (thus, the Ministry will be assigned with the relevant powers of the Ministry for Emergency Situations and for the Protection of Population from Consequences of the Chornobyl Catastrophe);	
3) criminal police functions to be effected through unification of divisions of criminal militia and of the fight against organised crime (the tax militia of the State Tax Administration of Ukraine will join criminal police).	
Internal Troops of the Ministry of the Interior shall be transformed into militia (police) of the public safety, which secures legal order (public order and public safety). Divisions of the militia (police) of the public safety, in particular, will protect public order, convoy arrested persons, protect defendants during court proceedings, pursue and detain arrested and convicted persons who escaped from under the custody.	In line with the comments made at *3 above, this paragraph puts too much emphasis on the order-maintenance functions of police at the expense of other roles such as preventing crime. This should be emphasised more since it reinforces the shift proposed in the Concept from a paramilitary towards a more civilian style of policing.
Security militia (police) will ensure security of the state authorities of Ukraine and their officials, security of other important state locations, objects of material, technical and military maintenance of the Ministry of the Interior of Ukraine, escort special cargoes, ensure observation of the special entrance rules at the places which are under security, security of the diplomatic and consular missions of the foreign states on the territory of Ukraine, etc.	
The function of registration of natural persons shall be carried out by the Ministry of Justice in accordance with one of Ukraine's commitments undertaken upon accession to the Council of Europe.	
It is necessary to reorganise the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a demilitarised State Migration Service of Ukraine.	
3.5. It is necessary to introduce specialisation within the bodies of the pre-trial investigation and prosecution service concerning *combating corruption* in line with the 1999 Criminal Law Convention on Corruption and the 2003 United Nations	Section II of the Concept refers to the lack of change since the Soviet period including the point that: 'No effective measures to reduce the level of corruption within this system have

Convention Against Corruption. As an alternative to the specialisation within the existing bodies, a separate special anti-corruption agency may be established.	been undertaken. As a result there is a lack of proper trust in these bodies.' This is confirmed by Ukraine being at 99/163 nations on the Transparency International Corruption Perceptions Index 2006 (www.transparency.org/cpi) and a significant proportion of those charged with corruption were members of the militia (Beck et al, 2004, 312; see also PACE, 2005, para.155). Given this, the proposals in the Concept section 3.5 will need strengthening. It suggests either special units within the enforcement agencies or a separate special anti-corruption agency. At least for the foreseeable future, it will probably be necessary to have both. While acknowledging the frustration that can arise among police and other law enforcement personnel if they think that too many people are investigating them, there are problems with the current proposal. If only a separate body is established, the danger is that other personnel see 'corruption' as the responsibility of the special agency and not their problem. If and when the special agency do feel it necessary to institute investigations of other agencies, their task may be made much more difficult as the targeted agency 'closes ranks'. Therefore it is certainly necessary that each agency has its own internal unit responsible for anti-corruption efforts. However, a separate agency would also be required in order to deal with cases that transcended any particular agency or involved other non-law enforcement departments or which could receive complaints from 'whistleblowers' that the individual agency units were failing to investigate complaints. Again, this is an area where erecting institutional 'checks and balances' can help to minimise the opportunities for corruption.
3.6. The *penitentiary system* shall remain under the responsibility of the Ministry of Justice and be operated by demilitarised State Criminal Execution Service.	
Ministry of Justice of Ukraine shall determine state policy in the penitentiary sphere and exercise control over its implementation.	
State Criminal Execution Service of Ukraine shall ensure in establishments for the execution of judgments and in the pre-trial investigatory wards the order and conditions of detentions of persons as defined by law, shall implement European standards in this area, in particular, through execution of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, implementation of the European Prison Rules of 2006.	
The system of initial and on-going training, re-training for the personnel of the State	

Criminal Execution Service of Ukraine shall be improved.	
The probation service shall operate within the State Criminal Execution Service of Ukraine and be set up on the basis of the criminal execution inspection.	The proper place of the Probation Service needs to be considered. In the UK, for example, it is organised together with the Prisons Service, but if the Probation Service were to be involved in implementation of a reparation and/or mediation service then it might be considered more appropriate to locate it within a social welfare department rather than one responsible for punishment.
3.7. It is necessary to create an independent national preventive mechanism in order to prevent torture – according to the Optional Protocol to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	I am not sure of the details of the protocols of the Convention against Torture but, if possible, it might be appropriate to contemplate the establishment of independent inspectorates for law enforcement, prosecutors and prisons who would be responsible for the oversight and audit of these agencies with respect to human rights.
3.8. Reform of the *State Border Guards Service* shall be carried out in accordance with the Concept for the Development of the State Border Guards Service of Ukraine for the Period until 2015, which was adopted by the Decree of the President of Ukraine on 19 June 2006 No. 546, without prejudice to the provisions of this Concept.	
3.9. The further exercising of the functions of the pre-trial investigation by the *tax militia* has no justification in light of the fact that the principal task of the tax bodies is to implement the fiscal policy.	The Draft Concept suggests that, since both tax (3.9) and customs (3.10) authorities are concerned primarily with fiscal and economic policy, it is inappropriate that they should continue to investigate criminal offences. There is an argument for this but the impact of 'economic crime' is serious in all states and, if there are organised and continuous criminal offences being committed in areas of smuggling then it is very likely that it will be the customs authorities who will become aware of it. It may be that if criminal investigation of these is passed to, say, the militia, they will not be treated with the same priority. Therefore to prevent the tax authorities from investigating revenue and smuggling offences may not be the most effective response to either organised crime or corruption (the two often being synonymous). Indeed, prosecuting people for tax offences has sometimes been the only way in which authorities could bring major criminals to justice. Therefore, what might be considered is the establishment of joint units of investigators from militia and tax units to conduct joint investigations. If a specific reason for the proposal in the Concept is continuing concern with levels of corruption within the tax and customs agencies, then that should be dealt with by
Therefore, in order to increase the role of preventive measures and to reduce an ungrounded application of coercive methods in the course of carrying out of the fiscal functions, investigation in the cases of suspicion about the commission of the crime, related to the violations of the tax legislation, shall be carried out by the criminal police of the MoI.	
3.10. *State Customs Service*, whose principal function is to implement the state economic policy in the area of customs, shall not carry out investigations in the cases of suspicion about commission of the crime of smuggling and other crimes related to violation of the customs rules. Such combination of the function of an economic nature and of the function of the criminal investigation results in the conflict of interest and	

promotes abuse of relevant powers.	the anti-corruption agency discussed above at *20 [INSERT].
3.11. *Military Service of Order in the Armed Forces of Ukraine* shall be transformed into a special body which will ensure legal order in the Armed Forces of Ukraine and will be functioning under the Ministry of Defence of Ukraine. The Military Service of Order will be responsible for prevention, detection, and investigation of certain types of criminal offences in the Armed Forces of Ukraine and some other military units of Ukraine according to the competence defined in the legislation.	
3.12. Proper execution by the bodies of the criminal justice system of their functions shall be proved not by the implementation of the so-called action plans on combating crime, but through a *set of the following new criteria for results evaluation* (taking into account European standards):	This is an important innovation given the unreliability of existing official statistics on the measurement of crime and militia performance by means of over-inflated `clear-up' rates that contribute to public lack of confidence (Beck et al, 2004, 310). In terms of measuring the performance of the agencies, the proposal here still suggests primary reliance on official data on outcomes and complaints. In addition to this, the best way of obtaining independent information is to commission research including what are usually referred to as 'crime' or 'victim' surveys. These provide a better measure of levels of some types of crime and, together with official data on outcomes, can enable researchers to provide more accurate data for government and public. In turn, this can provide the basis for new civilian oversight bodies.
• data about the number of cases wherein the proceedings were not finalised within the terms prescribed by the procedural law;	
• information on the number of complaints about violations of human rights in the course of the pre-trial investigation;	
• results of the judicial consideration of criminal cases;	
• level of public trust in the work of the pre-trial investigation bodies or prosecutors.	
Information concerning violations of procedural terms and complaints shall be accessible to human rights protection NGOs. It is necessary to create conditions which will enable introduction of an effective mechanism of civilian oversight over the operation of the criminal justice system bodies. Citizens' polls will measure the public trust in such bodies.	In broad terms, a number of 'levels' of oversight can be identified: the internal anti-corruption units discussed at *20 [INSERT] above, prosecutorial oversight as envisaged at paragraph 3.2 3 of the Concept, judicial oversight in their handling of specific pre-trial and trial procedures and parliamentary oversight (for example PACE, 2005, para. 180). In addition, the specific dangers to human rights posed by abuse of the criminal justice process requires a system of inspectorates as

	referred to at *22 [INSERT] above and an independent complaints commission for the receipt and investigation of complaints from aggrieved members of the public including victims.
SECTION IV	
Stages and Ways to Implement the Concept	
Measures to implement the Concept will be undertaken in three stages.	
1. *Stage one* (year 2007) provides for:	
– in the legislative sphere:	
1) revision of the criminal legislation through preparation and adoption of amendments to the Criminal Code of Ukraine concerning criminal misdemeanours and also with the view to humanise criminal legislation; preparation and adoption of the Code on Administrative Misdeeds of Ukraine;	
2) implementation of the new concept of the criminal procedure through preparation and adoption of the Criminal Procedure Code of Ukraine;	
3) preparation of amendments to the Criminal Execution Code of Ukraine and to the Law of Ukraine "On Executive Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
4) preparation of the draft amendments to the Constitution of Ukraine with regard to the *Prokuratura*;	
5) preparation of a new wording of the Law of Ukraine "On the *Prokuratura*";	
6) preparation of the draft new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
7) preparation of the draft new wordings of the laws of Ukraine "On Militia", "On the General Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
8) preparation of the draft Law of Ukraine "On the Free Legal Aid";	
9) adoption of the amendments to the legislation of Ukraine in order to fix the	

assignment of the State Criminal Execution Service to the Ministry of Justice of Ukraine;	
– in the institutional sphere:	
10) carrying out necessary organisational and personnel-related preparation of the Main Investigation Department of the MoI of Ukraine to perform tasks of the pre-trial investigation in light of additional investigative jurisdiction which will be transferred, in particular, from the General Prosecutor's Office of Ukraine and Security Service of Ukraine;	
11) deciding on the issue of specialisation of the pre-trial investigation bodies and prosecutors with regard to the fight against corruption;	
12) working out of a legal, functional and organisational basis for the transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and the State Customs Service to the MoI of Ukraine;	
13) preparation of proposals concerning creation of an independent national preventative mechanism according to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;	
14) preparation of proposals concerning improvement of the system and mechanisms of democratic civilian control over the law enforcement agencies of the state;	
15) consideration of issues, taking into account standards and recommendations of the Council of Europe, concerning the penitentiary system of Ukraine, which are related to the functions, organisational structure, powers and technology of operation of the Criminal Execution Service of Ukraine.	
2. *Stage two* (years 2008-2009) provides for:	
– in the legislative sphere:	
1) adoption of amendments to the Constitution of Ukraine with regard to the *Prokuratura* and of the new wording of the Law of Ukraine "On the *Prokuratura*";	
2) adoption of the new wordings of laws of Ukraine "On the Security Service of Ukraine", "On the General Structure and Strength of the Security Service of Ukraine";	
3) adoption of the new wordings of the laws of Ukraine "On Militia", "On the General	

Structure and Strength of the Ministry of the Interior of Ukraine", "On the Internal Troops of the Ministry of the Interior of Ukraine";	
4) adoption of amendments to the Criminal Execution Code of Ukraine and the Law of Ukraine "On Execution Proceedings" resulting from changes in the legislation on criminal and administrative offences;	
5) adoption of the Law of Ukraine "On the Free Legal Aid";	
6) preparation and adoption of other amendments to the legislation of Ukraine stemming from the Concept (in particular, amendments to the Law of Ukraine "On Operative and Search Activities", "On the State Customs Service", "On the State Tax Service of Ukraine");	
– in the institutional sphere:	
7) beginning of the transformation of the militia of Ukraine into a police agency within the MoI of Ukraine in line with European standards;	
8) reforming (based on the respective law) of the Internal Troops of the MoI of Ukraine;	
9) structural reforming of the Main Investigation Department of the MoI of Ukraine into a body of the pre-trial investigation within the MoI of Ukraine;	
10) reorganisation of the State Department on the Issues of Citizenship, Immigration and Registration of Natural Persons of the MoI of Ukraine into a State Migration Service of Ukraine;	
11) transfer of functions of the pre-trial investigation from the tax militia of the State Tax Administration of Ukraine and State Customs Service to the MoI of Ukraine;	
12) preparation of proposals on the further development of the local militia, its functions and powers, forms and methods of its operation, and also subordination and financing, taking into account principles of the administrative reform undertaken in the state, within the competence of local bodies of the state executive power and of the self-government bodies in the area of ensuring public order and safety as defined by the law;	
13) transformation of the Criminal Execution Inspection of the State Department of the Execution of Judgments into a Probation Service in line with European standards;	

14) preparation and beginning of implementation, in line with the Concept, of the law enforcement agency-specific plans on their reform as well as programmes for their personnel and resources management;	
15) preparation and implementation in the practical work of the professional codes of ethics and internal rules of conduct for employees of the criminal justice system bodies and law enforcement agencies;	
16) implementation of action plans to combat corruption (according to the Concept for the Eradication of Corruption "On the Way to Integrity", adopted by the Decree of the President of Ukraine of 11 September 11 No. 742), to combat organised crime, in particular in the spheres of human trafficking, illegal migration, money laundering of illegal proceeds, etc.;	
17) preparation and implementation of criteria and scientifically based methodologies of the internal and external evaluation of the work of bodies of the criminal justice system.	
3. *Stage three* (year 2010-2012) provides for:	
1) finalisation of the process of setting up a system of the pre-trial investigation, in particular of its component aimed at combating corruption;	
2) transformation of the functions of the *Prokuratura* in line with European standards;	
3) transformation of the Security Service of Ukraine into the agency of the executive branch with the special assignment (special service) which will secure national security of Ukraine;	
4) finalisation of the reform of the Ministry of the Interior of Ukraine into a civilian agency with functions and powers which correspond to the internal policy of the state, in particular through the following:	
• transfer of the law enforcement functions in the area of fire, emergency and industrial security, labour security and state mountain security, protection and security of the forests and animals, natural resources, waters and water life resources and their environments, and rescue services from respective ministries and agencies under the jurisdiction of the Ministry of Interior;	
• introduction of guidance and co-ordination of the State Border Guards Service of Ukraine by the MoI of Ukraine.	

5) taking other measures to improve and further optimise operation of the criminal justice system bodies and law enforcement agencies of Ukraine, to bring their organisational structures, mechanisms (goals, functions, principles and methods) and forms of their operation in line with the Concept and European standards.	
At the same time, during all stages of the reforming, respective bodies shall take measures, within defined jurisdiction, to ensure effective execution of their tasks concerning protection of human rights and fundamental freedoms, interests of the society and the state.	

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

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

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

The system of bodies which are called "law protection" (bodies of the interior, security service, border guards, state tax service, customs service, etc.) inherited by Ukraine from the Soviet period has failed to transform into an effective institution for protection and restoration of infringed rights of individuals. These bodies are oriented at meeting formal indicators in their work, are rife with delays and corruption. As a result there is a lack of proper public trust in them.	
SECTION III	
Directions of the Reforming	
Comprehensive reform in the sphere of criminal justice and law enforcement agencies should cover the following areas: 1) criminal law; 2) criminal procedure; 3) bodies of the criminal justice system and law enforcement agencies; 4) procedure of execution of court judgments in criminal cases.	It is suggested to add **Prison law** as a reform topic separate from the procedure of the execution of court judgements. While the execution or enforcement of a criminal sentence (and other court decisions) should be entrusted to the office of the public prosecutor, the prison and prison administration pose different legal questions. Therefore, it should also be considered to establish a separate judicial body that deals exclusively with cases emerging from the prison environment (rights and duties of prisoners). Examples are the "*juge d'execution des peines*" in France or the "*Strafvollstreckungskammer*" (Court for the Execution of Prison Sentences) in Germany. Another reform topic that provides for a separate field of legal questions concerns **data protection, criminal justice-related personal data, and all sorts of information systems** that are operated in the criminal justice system (including police and prison administration, as well as judicial information systems that contain information about prior records of persons adjudicated and convicted). The fundamental questions to be dealt with in legislation on data protection concern: • the kind of personal data may be entered and stored; • who will have access to such data and under what conditions; • to whom such data may be transferred; how long such data may be kept in information systems before being erased.

Introduction of new approaches in the sphere of criminal responsibility and criminal justice will make it possible to change fundamentally the conditions for guaranteeing human rights, to establish a belief in person and in the society of effectiveness of the principle of the rule of law, to raise the level of public trust in Ukraine towards institutions of the government overall and bodies of the criminal justice system in particular. It will eventually result in quality changes in the Ukrainian legal system, as expected by the society.	Criminal justice reform has to be placed into a wider context, particularly when considering the goal of fundamentally changing the conditions for guaranteeing human rights. Respect for human rights and the implementation of human rights policies are dependent on large scale changes in the cultural, social and economic fabric. Although criminal justice reform in itself certainly cannot carry a comprehensive and all inclusive human rights policy, there exist some strategic points that can be successfully integrated in criminal justice reform when aiming at raising respect for human rights as well as public trust and confidence. These strategic points concern the inclusion of the civil society as well as officially established bodies of human rights protection at some stages of the proceedings and the execution of punishment. The inclusion of **data protection ombudsmen** who oversee the respect for privacy (in terms of supervising the process of collecting and handling personal data and information as well as the operation of criminal justice-related information systems). The inclusion of the **civil society** is then particularly important for the prevention of torture and inhumane/degrading treatment. Therefore, the establishment of prison and police visitor boards should be envisaged. Practical examples can be found in most European countries (see, for example, www.menschenrechtsbeirat.at (Prevention of torture in Austria); www.uu.nl (Netherlands Institute of Human Rights); www.rethinking.org.uk/involve/what/index.html (Prison Visitor Boards England/Wales); www.commission-droits-homme.fr/ (France, Commission for Human Rights) Police and prison visitor boards have been made an issue also by the Optional Protocol of the UN Convention against Torture which requires (when signed and ratified) the organisation of such boards or other mechanisms that implement additional protection against torture and inhumane, degrading or cruel treatment. Optional Protocol: "The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."
Criminal justice shall ensure strict adherence to human rights in the course of activities undertaken by the bodies which are empowered to investigate criminal offences and by	Particular importance – when considering the goal of "strict adherence to human rights" – should be assigned to education and training in human rights. This should be part of all curricula that are to be implemented in schools, universities,

the courts in accordance with the Constitution of Ukraine and international human rights treaties, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter – the European Convention on Human Rights) taking into account the practice of its interpretation by the European Court of Human Rights.	academies etc. that are involved in education and training of criminal justice personnel (see for example GUIDELINES ON THE ROLE OF PROSECUTORS, Adopted by the Eighth United Nations Congress an the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).
The goal of the institutional reforming of the criminal justice system bodies is to establish a system complying with European standards. The system of law protection bodies [pravookhoronni organy] shall be transformed into a system of the law enforcement agencies which will primarily be tasked with ensuring public order in the society. Such a reform will provide that agencies in question will no longer have inappropriate functions.	The task of ensuring public order in society is normally entrusted to the Ministry of the Interior and the police, while law enforcement (which falls under the Ministry of Justice) should be guided by the goal of investigating crime, implementing criminal law and thus protecting basic interests (expressed in criminal offence statutes). Institutional reform, however, should deal also with the role and function of police and the relationship between law enforcement and maintenance of public order and security. In Continental European systems of policing and criminal justice, police have adopted a double function. Police are, on the one hand, authorised to investigate crimes and support public prosecution services in launching formal criminal investigations, and, on the other hand, are expected to establish or maintain public order or prevent dangers and risks for the social fabric. Insofar, the double function concerns repressive and preventive roles. That is why a distinction is made between powers of police based on criminal procedural law and powers coming with police laws. Procedural law contains powers of police while investigating crime, police laws define goals and measures for the purpose of maintaining public order and peace in society. Recent developments in many European countries have shown that the relationship between "order police" and "criminal police" becomes complicated with introducing, for example, a range of covert investigative methods like telephone tapping, undercover policing also in police laws. On the other hand, criminal procedural law has been upgraded with extending powers to collect strategic information used in risk control (organised crime, terrorism, drug trafficking etc.; see, for example, *Loi du 10 juillet 1991 relative au secret des correspondances émises par la voie des télécommunications* in France, or in The Netherands, see *Enquetecommissie opsporingsmethoden. In zake opsporing, TK, 1995-1996, Nr. 24072*). This requires a comprehensive review of the relationship between police law and criminal procedural law, in particular as regards the transmission and use of information collected in one area of police surveillance into the other field of police investigative activities.
The reforming of the criminal justice system should be carried out in line with the	

judicial reform according to the Concept for the Improvement of the Judiciary to Ensure Fair Trial in Ukraine in line with European Standards, approved by the Decree of the President of Ukraine of 10 May 2006 No. 361.	
1. Conceptual Changes in the Criminal Legislation	
All punishable deeds, identified in the current Criminal Code of Ukraine, are now encompassed by the notion of "crimes". First of all, such approach does not properly take into account the existence in the criminal law of deeds that vary in the degree of their danger to the society (for example, murder and violation of the right to education; state treason and violation of the labour law, etc.), which all nonetheless have the same legal consequence for the person – a conviction.	
Secondly, it excludes from the remit of criminal procedure guarantees persons who committed administrative offences, which are punished by penalties that are criminal in substance (short-term arrest, confiscation of property, withdrawal of a special right, etc.). The case-law of the European Court of Human Rights, in particular judgments against Ukraine (judgment in the case of *Gurepka v. Ukraine*), indicates that such approach is incorrect.	
All criminally liable deeds in the future should be covered by a new unifying notion of "criminal offences" with the relevant differentiation, taking into account particularity of each of the type, into *crimes* [zlochyny] and *criminal misdemeanours* [kryminalni prostupky].	The concept of misdemeanours in legal systems points to attempts of legislators to distinguish between serious criminal offences (usually called felonies) and lighter or even petty forms of crime. Soviet as most other former socialist countries had introduced a substantive approach in parcelling out non-serious offences. This was done by assessing the "social dangerousness" of human acts. Behaviour (or results of behaviour) going beyond the line drawn by "social dangerousness" were treated in administrative proceedings. What is seen to represent dangerous behaviour qualifies as crime and will go to criminal courts. However, the re-grouping of criminal offences according to their seriousness should deal also with decriminalisation (a goal which evidently according to the goals of Ukrainian law reform ranks rather high on the agenda). Moreover, substantive law has to be linked up with criminal procedural law if discretionary powers of public prosecutors should be introduced which allow for non-prosecution on the grounds of triviality of criminal offences or minor guilt of the offender. Insofar, a comprehensive, multi-step procedure for reform can be imagined which makes also use of the different approaches encountered in European criminal justice systems.

	It might be considered to incorporate a general concept, that eliminates behaviour not achieving a certain level of harm (see, for example, §42 Austrian Criminal Code which says that a criminal offence is not established if the guilt of the offender is minor, if the consequences of the crime have been insignificant or have been compensated by serious efforts of reconciliation/mediation on the side of the offender, and if a criminal sanction is not necessary for preventive reasons). This would create a parallel to the former criteria of "social dangerousness". The advantage of criteria provided in substantive law concerns the possibility to be reviewed by appellate courts on appeal. Decriminalisation may be also achieved (as is evidently planned in the Ukrainian reform) by introducing a category of regulatory or administrative offences that fall under a different regime of procedural rules. Germany, for example, has created a separate system dealing with administrative offences, while Sweden and France have adopted systems which within criminal law differentiate between various levels of offence categories according to their seriousness. On the level of offence statutes – and as an element of decriminalisation policies guided by the harm principle -, it should be considered whether the range of behaviour covered by the offence characteristics includes behaviour that is not creating harm that deserves any criminal law-based response. Elimination of behaviour carrying negligible results conforms better to the proportionality principle and provides for a grounded approach to decriminalisation. Such an approach becomes more important with the introduction of endangering offences which penalise a risk. Examples: Hit and run offences where the damage caused is trivial Possession of minor amounts of soft drugs for personal use Theft of items of a minor value Minor forms of assault Water pollution when the polluting substance is negligible

	In such cases, the offence statute may be worded in a way so that such minor harm is eliminated by specific offence characteristics. Many European systems provide then (as a procedural alternative to the substantive approach or combined with the substantive approach) discretionary powers for the public prosecutor who may on the basis of assessment of harm make a decision for non-prosecution (non-prosecution may be made dependent on the fulfilment of a condition, for example, a transaction fine or community service). The categories of criminal offences should then be linked with procedural rules that provide for simplified proceedings (for example penal orders). It will be important to integrate substantive criminal law differentiating offence seriousness with criminal procedural law that creates different avenues (from full procedure and trial down to accelerated and simplified proceedings).
Main criteria for such differentiation will be the following features:	
• degree of danger to individuals, society or the state of the deed punishable under criminal law;	The main criteria should be the harm caused (and not the danger arising out of specific behaviour). The harm principle (together with the principle of guilt) is better suited to systematically develop penalty ranges that are carried by the criminal offence statute and allows for more transparency. Penalty ranges have to be narrow (rule of law and predictability) and graded along the seriousness of offences (as assessed by the Parliament). The systematic development of penalty ranges applicable for certain crimes is important also for rules on sentencing and for implementing fundamental principles of equality and justice in the imposition of criminal punishment.
• character of criminal legal consequences.	
Criminal offences shall, therefore, be:	
a) *crimes* – deeds, which represent the highest and high degree of danger for individuals, society or the state. Amongst the types of punishment for a crime should be deprivation of liberty, including a life sentence. Crimes will entail a conviction of the individual;	Corporate liability should be envisaged also for serious crime. It is in particular in the areas of environmental criminal law, organised crime, economic crime, money laundering and terrorist financing, and corruption where international treaties as well as European Union instruments demand for introduction of corporate criminal liability.

	Corporate criminal liability has been introduced in recent years in many European criminal code books (most recently see the Luxembourg Draft Bill on Corporate Criminal Responsibility as November 2006) and it seems therefore that an international consensus is emerging as regards acceptance of criminal liability of legal persons. The European Union, the Council of Europe and the OECD therefore recommend the incorporation of corporate criminal liability in particular to respond effectively to serious organised crime (and terrorism), economic crime, and corruption. See for example: Octopus 2000 – 47 Final, Strasbourg 20 December 2000 Country Report Poland, pp. 23-25, corporate criminal liability. Examples: **Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)** Article 7 Liability of legal persons 1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; (c) an authority to exercise control within the legal person. 2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 1 to 4 for the benefit of that legal person by a person under its authority. 3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal

	proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4. Article 8 Penalties for legal persons Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) a judicial winding-up order; (e) temporary or permanent closure of establishments which have been used for committing the offence. **International Convention for the Suppression of the Financing of Terrorism (1999)** **Article 5** 1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organised under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative. 2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences. 3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.
b) *criminal misdemeanours* – deeds, which represent a low level of danger for individuals, society or the state. The commission of criminal misdemeanours will not entail deprivation of liberty and conviction of a person.	

The category of criminal misdemeanours will also include those offences currently provided for in the Code of Ukraine on Administrative Offences, which fall under court jurisdiction and are not of administrative nature (do not concern the administrative procedures), such as hooliganism, petty theft, etc. Such offences will fall under criminal court jurisdiction. Liability for actual administrative offences (non-compliance with the rules which relate to administrative procedures) should be withdrawn from under the court jurisdiction and transferred for consideration in non-judicial state authorities.	Above, it has been outlined that there exist several models of differentiating serious from petty offences. Debates going on over the last decades have shown that it is difficult to draw a clear line between regulatory or administrative offences and criminal offences as for example various economic and environmental offence statutes are of an administrative nature (as they require non-compliance with administrative or statutory rules set by administrative or other state bodies). Also, according to rulings of the European Court on Human Rights, there is legitimate discretion in states' decisions to classify behaviour as criminal or only administratively relevant. A main criteria, though, which is adopted in assessing whether a norm belongs to the body of criminal law statutes or to administrative norms concerns the severity of legal consequences. Administrative offences should carry a non-criminal fine only (and/or specific administrative consequences, e.g. withdrawal of licenses which can be appealed in administrative courts).
Such approach will ensure that:	
a) individuals to whom the non-judicial state authorities applied administrative penalties will have an opportunity to appeal against such penalties in administrative courts;	It should be considered to keep also administrative offences within the jurisdiction of penal courts. Procedure and consequences of administrative offences have more parallels in criminal procedure and criminal sanctions than in ordinary administrative court proceedings. From the viewpoint of the punitive impact, administrative fines or other administrative sanctions in some systems go beyond the impact of criminal fines. This requires a judicial environment that is suited to protect procedural rights.
b) individuals who are held liable by court for commission of a criminal misdemeanour will have an opportunity to appeal against the court decision through the existing procedures.	
Such changes, in particular, will eliminate violation of the right of person to appeal against court decisions, which now exists in the cases of administrative offences in conflict with Article 2 of the Protocol No. 7 to the European Convention on Human Rights.	
Criminal liability of legal entities for commission of criminal offences should be envisaged.	See above comment.
Introduction of the mentioned innovations will require review of provisions of the Criminal Code, as well as adoption of the Code on Administrative Misdeeds which will replace the existing Code on Administrative Offences. As a result, provisions of the General Part of the Criminal Code will require amendments to define peculiarities of liability of natural and legal persons for criminal misdemeanours (provisions on the	

offender, his ability to be held liable, the guilt, complicity, types of punishment, relief from punishment and serving of the sentence, conviction, etc.). Provisions of the Special Part of the Criminal Code shall be divided into separate chapters on crimes and criminal misdemeanours.	
Revision of the Criminal Code shall also be aimed at the further humanisation of the criminal legislation, at the optimisation of the criminal legal sanctions, at the improvement of certain institutes of the General Part of the Code, etc.	
2. Conceptual Provisions of a new Criminal Procedure Code	
2.1. Criminal procedure in Ukraine shall be reformed based on the following principles:	Developments over the last decades have shown that a major problem, recognised also by the European Court on Human Rights, in modern criminal justice systems may emerge with lengthy proceedings (see Art. 6 ECHR: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time). Lengthy proceedings are (also) due to the growing number of complex cases, in particular stemming from organised and trans-national crimes as well as economic crimes. Therefore, reform should also be headed toward establishing criminal proceedings that offer final adjudication within a reasonable time. This requires, for example, the systematic inclusion of rules that determine the time available for certain stages of proceedings or for making decisions.
• procedural equality of rights of the prosecution and defence parties;	
• clear delimitation of the tasks and of the procedure at the stages of pre-trial and court proceedings;	
• court proceedings;	
• introduction of a new, free from accusatory bias, procedure for pre-trial proceedings, in the course of which factual data as to the criminal offences and persons who committed those will be gathered by covert and overt methods, established by law;	
• adequacy of the procedures of the pre-trial and court proceedings to the aim and tasks of criminal justice;	

• broadening of the scope of application of restorative justice (mediation) procedures;	
• improvement of the judicial control during pre-trial proceedings;	
• transformation of the prosecutorial oversight into prosecutorial control in the form of procedural guiding of the pre-trial investigation;	
• concentration of the court consideration of all cases at first instance in the local courts;	
• creation of procedures which will enable attainment of the goal of punishment of the guilty persons without infringement of human rights and fundamental freedoms.	
2.2. *Pre-trial proceedings* shall be devoid of excessive formalisation. Current inquiry [diznannya] and investigation [slidstvo] will be unified into one procedure of the pre-trial investigation.	
The Code will stipulate different proceedings regarding crimes and criminal misdemeanours. Investigation of criminal misdemeanours will in particular provide for expedited procedures without a possibility of application of the preventive measure in the form of pre-trial detention.	
Pre-trial proceedings will consist of various types (overt and covert) of gathering and registration of the factual data on circumstances of the deed, which are necessary in order to sustain charges in the court. Gathered factual data will be recognised as evidence in the case solely by the court in the presence and with direct involvement of the parties of prosecution and defence.	
Ensuring of the procedural equality of rights of the parties will be based, first of all, on the adversarial and discretionary principles. To this end it is necessary to improve procedural rules for gathering of information and its submission to the court by parties of defence and prosecution. At the same time, it is necessary to provide for mechanisms to prevent abuse of the granted procedural rights (submission of incorrect information, procrastination of the proceedings, etc.).	In Europe, there exist adversarial and inquisitorial systems of criminal justice. Experiences have shown that it can turn out to be difficult to transform an inquisitorial system into an adversarial one. The European Convention does not voice preference for the one or the other system. Adversarial principles, though, have been adopted also in inquisitorial systems and are required under Art. 6 of the Convention (for example contradictory proceedings and the right "to examine or have examined witnesses against him and to obtain the attendance and examination of

	witnesses on his behalf under the same conditions as witnesses against him"). On the other hand, adversarial systems more and more adopt inquisitorial elements (see below, for example, the treatment of expert evidence). In fact, most European continental (or civil) systems of criminal justice have during the last 20 years adopted plea and sentence bargaining elements that shall accelerate criminal proceedings and strengthen the potential for decisions consented upon by state and accused/defence. Moreover, the course of criminal procedure reform in Europe over the last decades (in particular through the wide use of covert methods of investigation and growing powers of the prosecutor) has moved the relative weight of the stages of proceedings from the trial to the investigative stage of proceedings. This had the consequence of strengthening the rights of suspects and defence in the investigative stage of proceedings (in former times, the position of defence in civil law systems was weak during the investigative stage and strong during the trial stage). It is therefore suggested to build upon the inquisitorial approach which is firmly rooted in Ukrainian history of criminal justice, most probably also better suited to the cultural, economic and social framework (within which systems of justice must operate) and develop from this system a modern criminal procedural law which is suited to respond to today's challenges. The old adversarial model certainly is not well positioned to cope with the problems posed by developments in crime.
The procedure regulating the beginning of the pre-trial investigation, which will be carried out exclusively in connection to the fact containing elements of the criminally liable deed, needs to be simplified. The pre-trial proceedings will be deemed as commenced from the moment of address by a natural or legal person or of receiving information by other means. Relevant officials will have a duty to instigate pre-trial proceedings immediately upon obtaining such address or information. All procedural actions which do not require court authorisation may be conducted from the moment when pre-trial proceeding began.	The approach used for determining the beginning of the investigative stage of criminal proceedings speaks in favour of the principle of legality which has been adopted in some European systems ("relevant officials (most probably police officers) will have a duty to instigate pre-trial proceedings immediately upon obtaining such address or information"). The decisive point, however, should be suspicion (reasonable suspicion) that a crime has been committed. Reasonable suspicion is also a basic requirement then for launching coercive or non-coercive investigative operations. From that point on all procedural actions (also those which require court authorization) may be conducted. Why should court authorized investigations not be launched immediately after suspicion has arisen from relevant information?
The role of the prosecutor in the pre-trial investigation will be to exercise control over the adherence to law in the course of such investigation according to the model of control functions of prosecutors in European states. The prosecutor shall assess and	There exist several international and European instruments that can be helpful in developing the institution of public prosecution. Some of them (UN Guidelines, Council of Europe Recommendations and the Code of Conduct) are also interesting as they merge experiences and standards from inquisitorial and

direct the course of investigation taking into account his/her future position in the court while supporting public prosecution. The prosecutor shall thus carry out procedural guidance of the pre-trial investigation.	adversarial systems. UN-Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 Public Prosecution and the International Criminal Tribunal as set up by the Treaty of Rome Code of Conduct for Public Prosecutors as adopted by the International Association of Prosecutors, April 23rd 1999 Council of Europe Recommendation 2000/19 on the Role of Public Prosecution in the Criminal Justice System
Thus, the prosecutor will have the following powers in the criminal process:	It should also be considered to entrust the task of execution/enforcement of criminal penalties (in its administrative parts) as well as the operation of judicial information systems (prior records of convictions) to the office of the public prosecutor.
• control over the adherence to laws in the course of the pre-trial investigation exercised through procedural guiding of individual investigations (taking decisions as to the continuation or termination of the pre-trial investigation, etc.);	There must be clear assignments of powers and clear separation of tasks. In particular, the application for judicial decisions required for all coercive measures during the investigative stage of proceedings should be an exclusive power of the prosecutor (in order to be able to "control the adherence to laws in the course of pre-trial investigation"). This includes for example the application for warrants of search and seizure, warrants for wire tapping, telecommunication traffic data, arrest warrants, freezing orders. Clear regulations must also exist as to the relationship between police and the public prosecutor. International guidelines and recommendations outline in particular that the prosecutor has to play an active and neutral role (so, even if an adversarial model of procedure is adopted, the position of the prosecutor should be one that is objective, neutral, without bias. From the international and European recommendations it follows that 1) Public prosecution must be strictly separated from judicial functions 2) Public prosecution should play an active role in criminal proceedings, in

	particular in the institution of prosecution 3) where authorized by law an active role is demanded for also » during investigation » in the supervision of the legality of investigation » in the supervision of enforcement of judicial decisions Fair, consistent, expeditious performance of duties and protection of human rights and due process are demanded from the public prosecutor Functions shall be carried out » impartially and respecting confidentiality » without discrimination » objectively and with a view of protecting the public interest » irrespective of whether facts are to the advantage or disadvantage of the suspect » with due regard to the rights of suspect and victims The relationship between prosecutor and police is of particular importance as it is in this relationship where the balance between crime control efficiency and rule of law is generated. The basic model for regulating the relationship between prosecutor and police in Continental Europe (civil law systems) provides for the prosecutor being the head of criminal investigation and police subject to directives of the prosecutor: • Crime Investigation is directed by the Public Prosecutor, this means that police are subject to concrete directions given by a prosecutor assigned to a case » Exception: Systems that have an Investigating Judge (e.g. France) » Exception: England/Wales or the US

	where police are independent in crime investigation • However, de facto, police are investigating independently in most systems, and, • The public prosecutor restricts himself to decision-making in legal matters. Special emphasis should be laid on the relationship between police and public prosecution services in the field of investigation of police behaviour affecting human rights. Here, public prosecution services are under a duty to investigate effectively if grave human rights violations are at stake. Decisions of the European Court of Human Rights 28 March 2000, Kiliç vs. Turkey: murder of journalist Kemal Kiliç, who had requested protection from the authorities several times 18 May 2000, Velikova vs. Bulgaria: Mr Tsonchev, a Roma, had died in a police cell Turkey and Bulgaria have been found to be in violation of Art. 2 (right to life) of the European Convention on Human Rights. The states obligation under Article 2 to protect the right to life requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, inter alia, thorough, impartial and careful. The nature and degree of scrutiny which satisfies the minimum threshold of the investigation's effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The Court considers that where an individual is taken into police custody in good health but is later found death, it is incumbent on the State to provide for a plausible explanation of the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention. In particular seen from this duty, public prosecution services should be in charge of supervising the process of investigation and authorised also to carry out investigations themselves.

• criminal prosecution of the person, including bringing charges and drawing up of the indictment act;	
• sustaining of public prosecution in the court.	
The Code shall clearly define the legal status of the victim, suspect and the accused; establish an exhaustive list of preventative measures, their duration, procedure for their application, procedure for appeal and review in accordance with the requirements of the Constitution of Ukraine and the European Convention on Human Rights.	
It is necessary to provide for in the legislation that the maximum duration of detention of the person without a court sanction (72 hours), as provided for in the Constitution of Ukraine, shall only be acceptable in exceptional cases. At the same time it is also necessary to constitute a procedure according to which further detention of the person following the first 24 hours will only be possible with the court sanction. Such procedure will comply with Article 9 of the 1966 International Covenant on Civil and Political Rights and with Article 5 of the European Convention on Human Rights.	The ECHR provides in Art. 5, 3 for a detained or arrested person to be brought promptly before a judge or other officer authorised to exercise judicial power. There must be concrete suspicion (facts) that a person has committed a criminal offence. The wording of the law regulating arrest therefore should be precise insofar as every arrestee has to be brought promptly before a judge, independent of whether the law provides for a regular review of detention and its grounds afterwards. Decisions of the European Court on Human Rights indicate that promptly refers to a certain urgency and that – exceptions exist for terrorist crimes – a state is required to provide for effective control by domestic courts (which includes effective organisation of judicial control of arrest which suits the requirements of the European Convention on Human Rights). A 72 hours period of police detention (without having been brought to a court) necessitates derogation of Art. 5, 3.
As a general rule testimony of the person will have evidential validity under condition that such information is provided to the court directly. The parties of defence and prosecution will have to notify and provide each other with all available to them factual information about the deed. Relevant information will have to be examined within reasonable time prior to the beginning of court proceedings.	
Defence attorney (representative) shall be selected by the person in question (suspect, accused, victim) from among the advocates. Bodies of the pre-trial investigation, prosecutor and court should have no procedural opportunities to interfere with the selection of the defence attorney and to prevent his/her participation in the case. It is necessary to ensure procedural guarantees for confidentiality of communications between defence attorney (representative) and suspect, accused, victim.	The European Convention on Human Rights – on the condition that a person has been charged with a criminal offence – grants the right to defence by the person him- or herself or through legal assistance. Insofar, two forms of criminal defence are addressed and the wording of Art 6, 3c has provoked the question of whether it suffices to provide either for efficient self defence or for efficient defence through a defence council or whether both forms of defence have to be offered by national procedural law and practice. It seems clear that the right to have efficient defence cannot be reduced to either being represented by a defence council or defending

	oneself in person. However, the European Court of Human Rights has ruled that an accused person who lawfully chooses to defend himself in person waives his right to be represented by a lawyer (Melin vs. France (1993) 17 EHRR, 1). This opinion is questionable as the two forms of defence fulfil different procedural functions. Defence by the defendant himself has the function to provide for a maximum of input by the defendant in terms of personal information (something the defence council cannot do) and defence by a lawyer has the function to provide for professional knowledge and legal strategies (moreover for personal assistance). Insofar, it is evident that in many cases only both forms of defence together will guarantee an effective defence in criminal proceedings. Another problem has been discussed with respect to the question of whether the state can restrict the right to have a lawyer if the defendant is assessed to be capable to defend him- or herself adequately or efficiently. Art. 6, 3c differentiates between defence by the defendant himself, defence by a defence council and mandatory assignment of a defence council or a legal aid lawyer (the latter under the conditions that the defendant cannot afford a defence lawyer and that the interests of justice require to assign a legal aid lawyer). So, in principle it would not make sense to differentiate between mandatory assignment of a legal aid lawyer on the one hand and access to a lawyer of a defendants choice on the other hand if the state could restrict access to a lawyer of ones own choice to those cases where the defendant is not capable to defend himself effectively (because this is essentially the ground which establishes interests of justice). Insofar, it is clear that the European Convention on Human Rights guarantees the right to have a defence council under all circumstances. The right to have a defence council may not be restricted. Restrictions may apply, however, to the provision of free legal aid.
The Code has to provide for an appropriate procedure of obtaining free legal aid by persons who are victims and to the suspects (accused) in the criminal offences.	The right to have a legal aid lawyer provided by the state is made dependent on two conditions (R.D. vs. Poland (Appl. No. 29692/96) and 34612/97, 8 December 2001; for a discussion on Legal Aid see also Skinnider, E.: The Responsibility of States to Provide Legal Aid. Paper prepared for the Legal Aid Conference, Beijing, China. The International Centre for Criminal Law Reform, 1999). First, the defendant lacks sufficient means to pay for a defence council. Lack of sufficient means is not defined in the European Convention. However, most European justice systems have implemented legal aid which allows for identifying the standards to be applied when deciding on the element of lack of means. The

	defendant, however, has the burden to proof his or her indigence. The test to be applied should not be beyond all doubts but should refer to a lower level of proof (Pakelli vs. Germany, Judgment of 25 April 1983, §34). As regards the second condition, that is the interests of justice require assignment of a legal aid lawyer, three situations are recognised as indicating interests of justice: ● Complexity of the case, in terms of legal and factual complexity, ● Personal characteristics of a defendant that restrict the capability of a defendant in defending him- or herself, ● Seriousness of the alleged crime and severity of the sentence that might be imposed. As regards seriousness of crime and the severity of the potential sentence, the European Court on Human Rights has ruled that when the defendant is at risk of being deprived of liberty interests of justice require assignment of a legal aid lawyer (Behnam vs. UK, Judgement of 10 June 1996, §61; Ezeh and Connors vs. UK, Judgment of 15 July 2002 (adjudication proceedings), §§ 44-49). This is consistent with national systems of legal aid in European countries (Frowein, J., Peukert, W.: Europäische Menschenrechtskonvention. 2nd ed., Kehl 1996, Art. 6; see for example §140 German Criminal Procedural Code which demands for assignment of a defence council in each case where the charge concerns a felony crime (felony crimes carry a minimum sentence of one year imprisonment). In general, the right to a legal aid lawyer does not include the right of a lawyer of ones own (free) choice (For an overview of a selection of national legislation see Position paper submitted by the ICDAA: Freedom of Choice of the Defence Counsel. Documents presented during the United Nations Preparatory Conference on ICC Rules of Procedure and Evidence, 26 July-13 August 1999). The Court has ruled that the European Convention does not guarantee such a right (Croissant v. Germany (1992) 16 EHRR 135; European Court on Human Rights, Mayzit vs. Russia (application no. 63378/00), 20 January 2005; see also EC Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal

	Proceedings throughout the European Union, §4.3.2). However, the Court has found also in recent decisions that, in general, an accused's choice of council should be respected (Goddi vs. Italy (1984) 6 EHRR 457) and that assignment of a defence council made against the wishes of the accused will be "incompatible with the notion of a fair trial…if it lacks relevant and sufficient justification" (Goddi vs. Italy (1984) 6 EHRR 457, §27). It seems evident that on the basis of the right to have effective legal defence the choice of legal aid lawyers by the state (or the court) must not lead to a situation where trust between defendant and lawyer – as the very basis of effective defence – cannot develop. In such a case – no basis for trust between defence council and defendant and no sufficient justification for a state appointed defence council – the state may not insist on a particular assignment (Goddi vs. Italy (1984) 6 EHRR 457; see also Spaniol, M.: Das Recht auf Verteidigerbeistand im Grundgesetz und in der Europäischen Menschenrechtskonvention. Berlin 1990). The view that free choice of defence council should prevail is consistent also with the United Nations Basic Principles on the Role of Lawyers (http://www.unhcr.ch/html/menu3/, adopted at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 28 August 1990 to 7 September 1990), which state that all persons are entitled to the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings (See also Position paper submitted by the ICDAA: Freedom of Choice of the Defence Counsel. Documents presented during the United Nations Preparatory Conference on ICC Rules of Procedure and Evidence, 26 July-13 August 1999).
As a rule, the accused has to remain free from detention until the court delivers a judgment. The accused can be held in custody only if there is no possibility to secure attainment of the objectives of justice by other means. In case of pre-trial detention the accused is to be granted additional guarantees, in particular, the right to an obligatory participation of the defence attorney.	
The parties shall have equal access to expert opinions. Selection of experts shall entirely be within parties' discretion.	If selection of experts shall be entirely within the parties' discretion, a rule of the adversarial criminal justice model is adopted that does not lead to satisfying results as experiences show. The European Court on Human Rights has not extensively dealt with questions of experts (but see for example Mantonavelli vs. France,

	ECHR, 18. March 1997; Brandstetter v. Austria, (1993), 15, E.H.R.R., 378; Bönisch v. Austria, (1987), 9, E.H.R.R., 191). However in several decisions the Court has confirmed that the general principle of the fair trial applies also for rules and practices with regard to experts. This means that accused/defence as well as prosecutor must have had an opportunity to get information about the evidence provided by the other party and must have had the opportunity to examine such evidence. Independent of the type of procedure model (adversarial or inquisitorial) it is necessary that the expert evidence could be examined by both parties. If there is reason to assume that an expert (who was appointed by the court) is not neutral the European Court demands that the accused/defence must have the right to introduce expert evidence under the same conditions as the state/prosecution. Persons should be excluded from the expert status, which have contributed to establishing a case (suspicion) against the suspect/accused. According to the European Courts decision Art. 6 ECHR does not demand that the accused consents to the courts decision on who should be appointed as expert. Current practice in Europe and elsewhere shows that courts have lists of experts (that are licensed or otherwise officially appointed through particular procedures). Recently, there is a trend to concentrate certain forensic tasks in forensic institutes or laboratories which are either operated through the state or accredited/licensed by the state (see Nijboer, J.F., Sprangers, W.J.J.M. (Hrsg.): Harmonisation in Forensic Expertise. An Inquiry Into the Desirability of and Opportunities for International Standards. Amsterdam 2000). European countries tend to introduce special legislation for expertise on DNA. Such regulations require (organisational) distance between law enforcement agencies and laboratories certified for DNA-examination. As regards the differences in the position of experts in the adversarial and inquisitorial systems of justice there are signs of convergence. In inquisitorial systems there is a trend toward granting the accused more rights in the choice of experts (which are appointed by the court). In adversarial systems we find a tendency to move toward a more neutral position of the expert in the trial. The Australian Supreme Court has in 1998 for the first time issued guidelines for forensic experts. These guidelines say that experts are not representing the parties of the trial and that he main duty of experts concern the support of the judge in making decisions in specific areas where the court has not the knowledge required

	to answer relevant questions.
2.3. Procedures for *court control at the stage of the pre-trial proceedings* need to be further improved. Constitutional rights and fundamental freedoms of the person can be temporary limited only upon court's sanction. The judge will:	In principle, all acts and decisions during the pre-trial proceedings that infringe upon rights of the suspect should be made reviewable in a separate, interlocutory procedure.
• sanction carrying out of special investigative activities (interception of information from the communication channels, instalment of covert devices for surveillance over a place or a person, review and seizure of correspondence, etc.);	Special investigative methods deserve particular attention from the viewpoint of human rights protection. It should be envisaged to regulate all special investigative methods comprehensively and in a uniform way. Special investigative methods have particular relevance for human rights as they are covert and have a high potential of intrusion into the core of privacy of individuals (Art. 8 ECHR). Special investigative methods concern Wire tapping/telecommunication surveillance Surveillance in the public space by means of covert methods (observation, videotaping etc.) Data mining Telecommunication traffic data retention and access to traffic data Informants Controlled delivery Undercover police Listening (audio/video) devices in private premises International instruments (for example Anti-Corruption Conventions, Transnational Crime Convention 2000) urge ratifying states to introduce such special investigative methods. Recently, the European Union has issued a directive that requires telecommunication traffic data retention (including internet connections) (see also the Cybercrime Convention of the Council of Europe) for a minimum period of 6 months. The situation in Europe displays in the area of rules on special investigative methods vast variation. However, the goal of effective protection of human rights according to European Court of Human Rights decisions as well as decisions of European constitutional courts requires beside a warrant issued by an independent

	judge that other conditions are met in order to justify intrusion in privacy. (1) Investigative methods heavily intruding into privacy must be restricted to the investigation of serious crime. This condition is normally met with providing for a catalogue of offence statutes to which for example wire taps may be applied (other methods concern limitations through minimum penalties or mixtures of catalogue and minimum penalties). (2) Such investigative methods must be authorised only temporarily and for narrowly defined periods of time (three months seems to be the average time allowed in many European countries for wire taps, lower periods apply for listening devices in private premises) (3) The application of special investigative methods must be available only as a last resort (ultima ratio) in the investigation of a serious criminal offence. (4) Privileged communication (lawyer-client etc.) must not be placed under surveillance (except the lawyer etc. is an accomplice to the crime). Where information has been retrieved from privileged communication such information may not be admitted as evidence and must be immediately destroyed. (5) As covert methods tend to generate information that can be used also for launching further criminal investigations it must be guaranteed that such information is only used for criminal proceedings where in general such special investigative methods could have been applied. (6) Persons who have been placed under surveillance must be notified after surveillance (and investigation) has been terminated in order to be able to bring such surveillance before a court. (7) Data coming from special investigative methods have to be earmarked in order to avoid their being laundered. (8) Data resulting from covert surveillance have to be destroyed after a statutorily set period of time. (9) Special records should be maintained for special investigative methods and published in the form of statistics which allow for transparency and for evaluation.
• choose preventive measure (pre-trial detention, bail, written undertaking not to leave a place, etc.) and sanctioning of other measures of the procedural coercion,	

connected to the temporary restriction of personal and proprietary rights of the person (property arrest, removal from office, temporary ban to participate in commercial activities). The issues of application of the measures of procedural coercion must be decided at the court hearing with adherence to equality and adversarial principles with obligatory participation of the parties of prosecution and defence;	
• fixate information as evidence in separate instances (e.g., interviewing of the seriously ill witness or of the witness whose life and health are in danger in the course of pre-trial investigation);	
• review complaints on actions of the investigator, prosecutor during the pre-trial proceedings, etc.	
The judge who participated in the pre-trial proceedings will have no right to consider criminal case at the stage of the court proceedings.	
It is also necessary to improve *the procedure for the judicial consideration of criminal cases at first instanc*e. This procedure should be harmonised with civil and administrative adjudication in part where there should be no discrepancies based on the subject and task of the criminal adjudication. All cases of crimes and criminal misdemeanours at first instance should be considered exclusively by local courts with criminal circuit courts existing therein to consider the especially grave crimes.	
In the circuit criminal courts a jury trial shall be functioning, whereby a panel of jurors will issue a verdict in the criminal cases on the issues of fact only (for example, whether the deed took place, whether it was committed by the accused, whether he/she is guilty of committing this deed), and a person presiding in the process (professional judge) on the basis of the verdict will decide on the issues of law (qualification of a deed, determination of the type and measure of punishment, etc.).	
The judge will study only the indictment and the registry of materials, documents and statements which may be used as evidence. Materials, documents and information about testimony shall be provided to the court directly by the parties of defence and prosecution.	
At the same time it is necessary to introduce an institute of the recognition in the courts of facts which are not disputed by the parties, instead of their scrutiny during the judicial consideration of the case.	
It is necessary to significantly widen the scope of application of the procedures of restorative justice (mediation), in accordance with which the judge will make a	Restorative justice, mediation and restitution should in principle be organised outside the courts and outside criminal proceedings. Though, restorative justice,

decision as to the agreement on pleading guilt or reconciliation between the accused and the victim.	mediation reconciliation etc. point to different approaches, in principle this should be organized by civil society. Substantive and procedural rules should then permit to take mediation, restitution etc. into account with allowing for example for non-prosecution, mitigated punishment etc. However, compensation of the victim may be an option as a condition for non-prosecution or as a sentencing alternative (possibly also as a condition coming with the suspension of a prison sentence).
In order to provide the court with information on social characteristics of the person, who is being accused or is found guilty of committing a crime, in order to make a decision on selection of the most adequate preventive measure for this person or type of punishment, the probation service shall prepare and submit to the court materials on the social evaluation of the person with relevant recommendations.	It should be considered to establish a uniform probation service responsible for collecting information necessary for the sentencing decision, the supervision of offenders placed under probation as well as the supervision of offenders required to do community service.
Special juvenile justice procedures shall be improved which will allow for better consideration of the rights and interests of the minors. Criminal cases in which the accused are minors shall be considered by the court comprising a professional judge and two people's assessors.	It should be considered to establish a separate system of juvenile justice. International instruments speak strongly in favour of separating juvenile justice from adult justice (Bejing Rules, Minimum Rules for Juvenile Justice 1985; Minimum Rules for Youth Detention 1991; Minimum Rules for the Prevention of Juvenile Delinquency, Riyadh Rules 1991, Child Convention 1989). The principles to be derived from the UN instruments are found also in Recommendations etc. of the Council of Europe. It is then in particular three approaches that should be implemented in juvenile criminal justice: Diversion, De-penalisation, Education and Rehabilitation, De-carceration (prison as a last resort).
In individual cases (for example, when the person who is accused of committing a criminal misdemeanour can not attend the court hearing due to certain circumstances) it is necessary to provide for a court hearing *in absentia*. In such cases participation of the defence attorney is obligatory.	
It is also required to envisage an order proceeding, whereby the judge, without holding a court hearing, delivers an order of court on the punishment of a person for commission of the criminal misdemeanour if the person pleads guilty of its commission and does not oppose the penalty which can be ordered by the judge. The person can be held criminally liable through the order proceeding only if he/she has a defence attorney and only if the opinion of the victim is taken into consideration, as	Here, a penal order procedure should be considered that is for example implemented in the Danish and in the German criminal procedural law (as well as in other European countries). According to that, a simplified procedure may be initiated by the public prosecutor, which consists of mere written proceedings (penal order procedure). If the public prosecutor concludes that the case is not complicated in terms of proving guilt and that a fine is a sufficient punishment,

well as the opinion of the prosecutor in the cases of the public accusation.	then, a penal order may be forwarded to the judge in which besides the indictment, the public prosecutor proposes a fine (according to the day fine system). If the court agrees with the proposal a penal order is mailed to the suspect who may appeal against the order within a period of two weeks. If an appeal is filed, then, ordinary proceedings take place. The procedural option of simplified procedures was extended drastically in 1993. Now, the public prosecutor may propose in a simplified procedure a suspended sentence of imprisonment of up to one year if the offender is represented by a defense counsel. As only 6 % of all criminal penalties meted out in the FRG by criminal courts today concern prison sentences of more than one year, in theory a full trial could be restricted to a negligible part of criminal cases. It is most probably not feasible to make a penal order system dependent on the opinion of the victim. Victims are in general not that interested in following up cases if the crime was not serious. Moreover, powerful victim (shoplifting etc.) may exert an influence which ultimately could turn out to be to the disadvantage of justice. In many cases (victimless crime) there will be no victim anyway.
Particularities of the closed hearings and special procedures for consideration of the evidence (for example, interrogation as a witness of the person who is under the protection) will be defined.	In case of victim protection (or witness protection), the Art. 6 right to examine all evidence becomes particularly relevant. In any case the defendant must have had an opportunity to examine the witness in a way that – when taking into account all aspects of the case – leads to the assessment that a fair trial has been granted.
With the view of respecting the presumption of innocence it is necessary to abrogate the possibility for courts to remit a case for additional investigation.	There should be an intermediary procedure which allows the court to examine the indictment. The only possible decisions here are: rejection of the indictment or admission and trial.
The *procedure for review of the court judgments in criminal cases* should be improved. Appellate courts should function only as courts of appeal instance. The courts of the first instance should be deprived of the right to decide on the further fate of the appeals.	
To review cases in cassation, it is necessary to set up the High Criminal Court. The subject of the cassation review will be violation of rules of substantive and procedural law with the aim of ensuring unified court practice.	
The Supreme Court of Ukraine shall review court decisions in criminal cases only under exceptional circumstances.	
Opening of the case based on the newly discovered circumstances shall be carried out	Re-opening of criminal cases that have been concluded by final judgements

upon decision of the court. Prosecutors should be deprived of the exclusive right to initiate review of criminal cases based on the newly discovered circumstances. Such a right should belong to all parties to the proceedings and persons whose interests are affected by the judgment in the case.	interferes with the basic interest in a final termination of criminal cases (within due time). This interest in finally terminating criminal cases is explained by the need to restore peace in society after a criminal offence has been committed and with the pursuit of general prevention. However, there are also other interests at stake. Society and individuals may be interested in having wrongful judgements removed or altered. Insofar, the need to terminate criminal cases without prospects of being tried again on the one hand and interests in pursuing justice when it was recognized that a judgement was wrong after the judgement became final have to be balanced against each other and the rules concerning re-opening of criminal cases reflect societies` basic decisions in balancing such interests. **There exist different approaches in dealing with finalized criminal cases** Modern criminal justice systems have developed so far three approaches in dealing with finalised criminal cases. These approaches differ in the reasons that initiate interests in altering criminal judgements and/or its enforcement process. However, these approaches are all interfering with a final judicial decision and they go beyond what is provided for in the ordinary systems of appeal and cassation. The approaches concern ● *Amnesty* ● *Clemency* ● *Re-opening of criminal proceedings* Amnesty usually is entrusted to the legislative power and the form it takes is that of a general law. The reasons for granting an amnesty vary, the most important, however, are amnesties that respond to basic social conflicts (e.g. conflicts that resulted in civil war, civil unrest or a general uprising) that brought with them widespread violence or other criminal offences. In fact, a well founded amnesty requires that application of criminal law or enforcement of criminal sentences would not serve the goal of reaching peace in society but most probably would lead to an escalation of conflicts. An (political) amnesty thus responds to a need to resolve conflicts by way of restricting enforcement of criminal law and is therefore wider as it allows stopping initiation of criminal proceedings altogether. However, amnesties are also implemented with what is called celebration amnesties (e.g.

	amnesties granted to convicted and sentenced offenders at the occasion of high public holidays and the like). The power of granting clemency is entrusted to the head of state. With the power of clemency the head of state (or those to whom the power of clemency was transferred or delegated) that is the head of the executive power may intervene into judicial decisions to the effect that either prevent that such decisions are enforced or that further enforcement of criminal judgements is brought to a premature end. Although, seen from a formal perspective, clemency usually must not be justified, it is clear that a clemency decision must based on sound grounds and that clemency usually responds to a situation which for the sake of justice demands for an alteration of the judgement itself or the course of its enforcement. The power of re-opening criminal proceedings is entrusted solely to the judiciary. Here, it is the interest in removing or altering judgements that are evidently wrong which allow the judiciary itself to interfere in final judicial decisions. When looking for example at the German system of re-opening criminal proceedings (which in a certain way represents a standard model of the civil law system) a first characteristic concerns that a difference is made between re-opening of criminal proceedings to the advantage and re-opening of criminal proceedings to the disadvantage of the defendant. The reasons for making such a difference lies in the different rights and legal interests that are stake with allowing re-opening of proceedings to the advantage and disadvantage of the defendant. In general, German procedural rules allow for a broader range of grounds for re-opening to the advantage of the defendant. This is justified as with a wrongful judgement that carries a conviction and a sentence to the disadvantage of the defendant it is not only the general interest in justice but also individual interests in basic rights (freedom, life, property) of those who may be punished and loose basic rights that have to be considered. On the other hand, re-opening of criminal proceedings to the disadvantage of a convicted and sentenced offender aims at protecting the interest in justice alone. However, such differentiation is not always made. So, e/g. the Dutch criminal procedural law in Art. 457 lists three grounds which allow re-opening of criminal proceedings in case two judicial decisions contain a contradicting factual basis or if the court has not recognized during the trial facts that would have led to an

	acquittal, to the in-admissibility of the indictment or to the application of a criminal statute that carries a lesser punishment. Re-opening is possible also if a judgement contains evidence that a criminal offence has been committed although the accused has not been convicted for such criminal offence.
3. Reform of the bodies of criminal justice system and law enforcement agencies	
Reform of the bodies which carry out pre-trial investigation and/or secure public order shall be focused on the improvement of their operations in order to raise the level of human rights and fundamental freedoms protection, to reinforce fight against criminally punishable offences, and to increase public confidence in their work. Such reforming is supposed to ensure unified approaches, coherence and consistency of measures improving performance of these bodies, to harmonise forms and methods of their operation with European standards.	There must be clear separation of intelligence services on the one hand and law enforcement agencies (police) on the other hand; as has been mentioned above, the relationship between "order police" and "criminal police" has to be separated, too. Separation should be also envisaged between internal security services and intelligence services operating abroad. From a viewpoint of law enforcement powers or investigative powers, intelligence agencies should never have powers that amount to the investigation of crime. They should be restricted to the collection of strategic intelligence. Since 9/11/2001 there have been numerous changes in the relationship between external and internal intelligence services as well as intelligence services and law enforcement bodies (changes affect also customs, tax authorities etc.). Most relevant issues here concern: The establishment and operation of uniform information systems, and The exchange of information between intelligence and law enforcement. Exchange of information with foreign security and law enforcement agencies The exchange of (personal information) in these fields carries a high risk of intrusion into privacy rights (with far reaching consequences). Particular emphasis therefore should be laid on the statutory basis for establishing integrated information systems respectively the mutual access to such information systems.
Reforming measures shall cover, in particular, the bodies of:	
• *Prokuratura*;	
• Security Service of Ukraine;	

• Ministry of the Interior of Ukraine;	
• State Criminal Execution Service of Ukraine;	
• State Border Guards Service of Ukraine;	
• State Customs Service of Ukraine;	
• State Tax Service of Ukraine;	
• Military Service of Order in the Armed Forces of Ukraine.	
The reforming of the said bodies will include changes in the forms and methods of their operation and their institutional reorganisation aimed at:	
• delineation of the political and professional leadership;	
• development and implementation of the professional standards of conduct of employees of the law enforcement agencies;	
• demilitarisation of the system of the law enforcement agencies, namely reduction in the number of posts which can be filled by military servicemen and persons of lower and higher military ranks;	
• carrying out of activities to secure public order in co-operation with the civil society through various forms of such co-operation;	
• changing approaches to the evaluation of the effectiveness of work of the criminal justice system bodies.	
3.1. Pre-trial investigation of crimes and criminal misdemeanours will be carried out by bodies of the inquiry and of the investigation, which shall in the future be transformed into bodies of the pre-trial investigation.	
Investigators of these bodies will gather materials about circumstances having significance for the case which will be fixated as evidence by the court.	
The role of the prosecutor will lie in the control over the pre-trial investigation through sanctioning of the continuation or termination of the investigation, in conducting criminal prosecution of the person and in support of the public prosecution in court.	See above and Prosecution services should also have the power to terminate criminal cases if such cases are petty in nature and the interest of justice can be served by making non-prosecution dependent on the payment of a transaction fine or community service. Most European criminal justice systems provide for such powers.

	Such powers of non-prosecution may be justified through
	• The nature of criminal offence: petty offences
	• Proportionality
	• Saving public Resources
	• Public Interest and Goals of Punishment
	  • individual prevention
	  • general deterrence
	• Avoiding stigma and labelling, in general negative side effects of criminal justice
	
	Such powers are particularly important in the juvenile justice system where diversion (see above) should be organized through the public prosecutors office.

To ensure the adversarial principle and procedural equality of the parties of prosecution and defence, it is necessary to complete the establishment of the Bar as an independent self-governing profession which exercises the function of defence in the criminal proceedings, and to foresee a possibility to set up and regulate the operation of detective agencies (private detectives).	It is recognized that the sector of private security should be regulated separate from the regulation of commerce. What is then also important concerns the relationship between private and public security, for example questions that address the admissability of evidence that has been collected by private security companies.
3.2. It is necessary to bring constitutional functions and principles of organisation of the *Prokuratura* in line with European standards (according to the opinions of the Venice Commission and recommendations of the Parliamentary Assembly and Committee of Ministers of the Council of Europe).	
The Soviet model of the *Prokuratura* shall be transformed into the system of public prosecution which will be comprised of prosecutors with independent status and which will be headed by the Prosecutor General. Public prosecution shall be defined on the constitutional level to be a part of the justice system.	There are different models of organisation of public prosecution services Independent body, accountable to Parliament Public prosecution services fall under the authority Ministry of Justice (most common) **Duties of the state as regards safeguarding the functions of public prosecution** Adequate legal and organisational conditions

	Adequate budgets Conditions of work should be established in close cooperation with public prosecutors. **Internal Organisation** Assignment and re-assignment of cases should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where a prosecutor believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement. **Relationships with the Political System (Government/Ministry)** • In most systems and as a consequence of the hierarchical structure of public prosecution the minister of justice is empowered to issue general guidelines and to interfere in individual cases. The problem arises in general of • How to establish safeguards against political interests replacing legal considerations, political pressure and abuse of powers. and • To what extent should public prosecutors be independent? Undue influence may be exerted through internal directives given through superior public prosecutors for example: • re-assignment of cases • superior him-/herself takes up the case In some systems the Ministry of Justice may give directives in the form of • general guidelines • individual directives If such powers exist, then

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

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

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

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

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

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

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

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

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

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