

1101973 [2011] RRTA 524 (31 May 2011)

DECISION RECORD

RRT CASE NUMBER:	1101973
DIAC REFERENCE(S):	CLF2010/83601
COUNTRY OF REFERENCE:	Ukraine
TRIBUNAL MEMBER:	Tony Caravella
DATE:	31 May 2011
PLACE OF DECISION:	Perth
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Ukraine, most recently arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2009. He applied to the Department of Immigration and Citizenship for a Protection visa [in] June 2010. The delegate decided to refuse to grant the visa [in] February 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] March 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate’s decision, and other material available to it from a range of sources.

Background and claims

20. In an *Application for a Protection (Class XA)* visa (Form 866C) lodged with the Department [in] June 2010 the applicant claims that he was born in [year deleted: s.431(2)] in Ukraine. He claims he is a Ukrainian citizen.
21. The Department’s movement records show that the applicant first entered Australia [in] July 2006 as the holder of a Sponsored Family visa subclass 679. He departed Australia [in] October 2006.
22. The applicant re-entered Australia as a Sponsored Family visa [in] January 2009 and departed [in] April 2009.
23. The applicant returned to Australia as a student visa holder [in] August 2009. That particular visa ceased [in] April 2010. The applicant lodged a Protection visa application [in] June 2010.
24. The Tribunal summarises the applicant’s written claims in the following paragraphs. The applicant writes in the application form that he had to leave Ukraine because he was worried about his safety and his life. He claims that for a number of months prior to leaving Ukraine he had been a victim of a vicious blackmailing campaign and he was threatened. He claims he has been attacked on three occasions. He claims that on one occasion he was abducted, blindfolded, threatened, beaten and tortured and locked up in “dacha” where he claims he was kept for two days without food or water. He claims ransom money was demanded from his mother. He claims he was released when his mother paid the ransom.
25. The applicant claims that his life will be in danger if he returns to Ukraine and that he has been told several times that he is a “dead man” He claims that he had to leave his home before leaving Ukraine because of the threats and that his mother continues to receive threatening telephone calls and unwanted visits during the night. He claims his girlfriend has been stopped on her way to work and threatened so that she would give information about the applicant’s whereabouts. He claims that he has been told that his “debt” had doubled to \$100,000 and is increasing at the rate of \$10,000 per month.
26. The applicant claims that his persecutor is the Ukrainian Mafia. He claims that he was approached in a bar by a man who he later found out to be a SBU (Sluzhba Bespeky

Ukrayiny) agent. He claims that after a few drinks he was asked if he was interested in making some cash. He claims that the man told him they were recruiting new informers and because the applicant had previously travelled overseas he was a good candidate. The applicant writes how he was surprised about how much information the man had about him.

27. The applicant claims that over the next few weeks he again met with the man and a couple of other people and they would drink together and they would tell him various stories. He said they told him about the level of corruption in the Ukrainian government and how some of the SBU agents were involved in mafia deals. The applicant claims that one story that upset him was about young girls who were told they were going abroad to work or study but in reality were sold into slavery as sex slaves. He claims that he decided to go to the place mentioned where the girls would be to have a look. He claims that when he attended the particular bar where the girls were he realised that the girls were barely 16 years of age. He claims he recognised one of the girls and decided after a couple of days to tell her about the sex-trade scheme (the scheme). He claims that the girl later spoke to other girls resulting in the applicant becoming a target for the mafia. He claims that he started receiving threatening phone calls and was told he owed the organisers money. He claims on one occasion on his way home from work a car pulled up beside him and four men jumped out and attacked him and told him he owes them \$10,000 per girl. He claims that as a result of the attack he was covered in bruises and his face was swollen and he was attended to by his then girlfriend who is a nurse. The applicant claims he was subsequently again contacted and told that the only way out of his predicament was to join the SBU. The application describes a series of claimed incidents of harassment and intimidation.
28. The applicant claims that his sister who lives in Australia had sent money to his family for the purpose of investing in real estate in Ukraine. He claims that his upon receiving a ransom demand for the release of the applicant his mother contacted his sister and sought permission, which was given, to use the money to pay a ransom for his release after he was abducted.
29. The applicant claims that he subsequently spoke to his sister who lives in Australia who advised him to leave the country. She paid for the applicant's Australian student visa. He claims that just before he was to leave Ukraine he received a call from the SBU agent who the applicant claims knew his plans to leave the country. The agent again tried to recruit the applicant to be an SBU agent and also told the applicant they needed him to deliver a small package to their agent in Australia. The applicant claims he agreed to deliver the package and was approached at the airport prior to his departure by two men who gave him a small package. He claims he was told a woman would approach him at the Perth airport and he was to give her the package. The applicant claims that as he had decided he did not want to be a part of the SBU he went to the toilet before boarding his flight and threw the package away in the disposal. He claims he does not know what was in the package.
30. The applicant claims that he would not be protected by the authorities in Ukraine because they are corrupt. He claims that the SBU is the most powerful organisation and the SBU agents and informers are deeply integrated in the society. He claims that people who are trying to oppose the government are silenced very quickly.

Delegate's decision

31. The delegate's reasons for refusing to grant the applicant a Protection visa are set out in the delegate's decision record dated [in] February 2011. The Tribunal read this decision and extracts the following key findings and reasons from it:

- After setting out the applicant's migration history, the applicant's claims, and the relevant law, the delegate concludes that there is nothing to indicate that the applicant's fear of harm has anything to do with the applicant's race, nationality, political opinion, religion or membership of any particular social group. The delegate finds the applicant fears harm because of a dispute with criminal elements who claim he has caused them to lose money;
- The delegate states that irrespective of the veracity of the applicant's claims, there is nothing to suggest that the applicant is specifically targeted for a Convention reason and the threats he claims to have experienced have their basis in personal matters or criminal matters and are not motivated by grounds in the Refugees Convention;
- The delegate does not accept that the state would fail to protect the applicant for a Convention related reason;
- The delegate concludes that the applicant does not have a well founded fear of persecution in respect of returning to Ukraine.

Application for review.

32. [In] March 2011, the applicant lodged an application for the review of the delegate's decision by this Tribunal

Tribunal hearing.

33. The applicant appeared before the Tribunal [in] May 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [Ms A], the applicant's sister. The Tribunal hearing was conducted with the assistance of an interpreter in the Ukrainian and English languages.
34. The Tribunal invited the applicant to explain why he fears returning to Ukraine. He began by saying it was difficult to discuss because it is a difficult situation. He said that people beat him and took him away to a holiday house and kept him there and demanded a ransom before releasing him. He said he is sure the people who attacked him and who threaten him are involved with the government and the police. He said he could not see how he could be safe or how his family could be safe. The applicant said that he cannot see how he can go home or to some other place in Ukraine.
35. The applicant explained how he comes from the city of [city deleted: s.431(2)] in West Ukraine which the applicant advised is some [distance deleted: s.431(2)] from Kiev. He said he is a [tradesman] and also learned to do driving when he was in the army. He told the Tribunal he has only one sister and his father died about four years ago.
36. The applicant told the Tribunal that he thinks the name of the SBU agent he claims he met in a bar is [Mr B]. The applicant seemed unsure about the name. He said he met him in the middle of spring 2009. He explained he met him on other occasions subsequent to his first meeting.
37. The Tribunal asked the applicant what he meant in his written claim where he wrote that the SBU were recruiting new informers. He replied that he had told [Mr B] that he had been overseas to visit his sister in Australia and he had also been to Germany when he was in the army. The Tribunal asked the applicant what he understood he would be required to do if he

was “recruited” The applicant said that [Mr B] did not actually explain what he would be expected to do for the SBU. He added that perhaps he would take photos. He added it seemed he would not have to do much. He said he understood it would also involve overseas work and that he would be paid for this.

38. The applicant said how [Mr B] knew some of the people the applicant knew. He said [Mr B] told him he worked for the SBU. The Tribunal asked the applicant why [Mr B] would openly tell him that he was an agent with the SBU and that it was involved in corrupt activities. He replied that this happened after a few meetings and drinking.
39. The Tribunal asked the applicant why [Mr B] would raise the issue of the girls and recruiting them for the sex industry. The applicant replied that perhaps [Mr B] wanted the applicant involved in it. He said that he was shocked to hear about this but he did not show his shock.
40. The Tribunal asked the applicant why he went to the bar to see the girls if he was shocked and disapproved of the activity. He replied that he felt sorry for the girls as many of them were under 18 years of age. He said that when he went to the bar he saw one of the girls who he recognised from his neighbourhood. He said he knew she was 16 years old and that she did not have parents at home. He said her mother worked overseas and her father did not live with her. He then told the Tribunal that he did not know why he went to the bar and later added he went there out of curiosity. Asked by the Tribunal to name the bar, the applicant replied that he does not remember the name but it was not far from where he lives.
41. Asked by the Tribunal whether he could remember the name of the girl he claims he recognised at the bar, he replied that he could not recall it but then suggested it was “[Ms C]” or “[Ms D]” Asked by the Tribunal how he knew her, he replied that he knew her from the neighbourhood as she lived in the same area. Asked by the Tribunal as to his claimed meeting with her subsequent to seeing her at the bar, the applicant said he met her on the street and asked her what she was doing at the bar with the other girls. He told the Tribunal that she told him that she had been made an offer to go overseas for work. The applicant said he told the girl that the offer is not what she thinks it is. He told the Tribunal that he managed to convince the girl that the proposal was a scheme to lure her and the other girls to work in the sex industry. He said that the girl later had a conversation with the other girls and told them about the scheme. He said this would have been around May-June 2009.
42. The applicant told the Tribunal that the next day after telling [Ms C] or [Ms D] about the scheme, he received a threatening phone call. He said the caller told him that he had put his nose where it was not supposed to be and told him he owed them for the girls who had declined to go ahead with the offer to go overseas to work. He told the Tribunal that he was told if there was no money then he would be dead. He said that he tried to talk to [Mr B] about this and [Mr B] told the applicant that if he worked for [Mr B] things would be OK. [Mr B] again did not tell the applicant what was involved in the job he wanted the applicant to do. The applicant told the Tribunal that he did not accept the offer to work in the organisation because he realised what they were involved in.
43. Asked to provide more information about the claimed attack where the applicant claims that four men assaulted him on his way home from work, the applicant said this occurred at the beginning of summer 2009. He said the four men jumped from their car and attacked him on the street. He said there were other people around on the street but no one stopped the men. He said that the following day [Mr B] telephoned the applicant and became aggressive and again offered him a job. Again the applicant claims he did not ask about what was involved

in the job because he thought the conversation would go the same way as on previous occasions.

44. The applicant told the Tribunal that he believes that the girl he informed about the scheme, that is [Ms C] or [Ms D], sought assistance or protection from the police but was then subsequently beaten. He said that he met her subsequent to the time when he informed her about the scheme and she had been beaten by that time. The applicant said that she did not want to tell the applicant more about this because she was scared and she could not get help. He added that the girl told him that the police accused her of somehow being responsible for being in this situation.
45. The Tribunal asked the applicant whether he reported the assault and intimidation to the police. He replied that he reported it to the police at the local police centre. He said he told them his problem and that he was beaten up and that he received threatening phone calls. He said the police told him to document it all but they did not follow it up because he was unable to provide a name of the person or persons who attacked or threatened him. The Tribunal suggested to the applicant that normally police would inquire irrespective of whether a person reporting was able to provide names. The applicant replied that he thought the police did not do anything. The applicant said that he did not report the subsequent kidnapping incident to the police because he claims his kidnappers told him that if he went to the police they would kill him.
46. The applicant told the Tribunal that about 2 weeks before he left Ukraine for Australia, [Mr B] called him and said that he knew he was going to Australia. The applicant said he did not know how [Mr B] came to know about this. Asked by the Tribunal about the package he claims he was given to deliver to Australia, he said he left it at the Boris Berg Airport in Kiev. Asked whether he opened it or knew what was inside, he replied he did not but simply threw it away. He said that there was no approach by anyone upon his arrival at the Perth airport where someone was meant to meet him to take delivery of the parcel.
47. The applicant explained how he lived with friends for a time because his persecutors were calling him at his home. He described how this has affected his mother's health and how she had to go and stay with her relatives. The applicant described how his sister provided ransom money and arranged a student visa for him. He said that when the student visa expired he contacted his ex-girlfriend who told him that people were still looking for him. He said how his ex-girlfriend had problems because of the applicant. The applicant said he is not sure what those problems are because the ex-girlfriend is scared to talk about it.
48. The Tribunal asked the applicant whether since arriving in Australia he has had contact with [Mr B]. The applicant told the Tribunal that he has not had any contact with [Mr B] however added that [Mr B] and others associated with him have called his mother and threatened that the applicant would be killed.
49. The Tribunal referred to the applicant's written statement where he wrote that people who are trying to oppose the government and the government organisations are silenced very quickly. The Tribunal asked the applicant whether he was claiming persecution under the Convention ground of political opinion. The applicant replied that he is not a member of a political party and he is not seeking protection due to his political opinion. He said he does not know if there is a political connection between the SBU, criminals and the police.

50. The Tribunal asked the applicant why he did not apply for a Protection visa sooner than when he did. The applicant replied that he did not plan to ask for protection because he wanted to stay in Australia legally and try to extend his student visa. He said he thought he could extend his student visa to study for 2 or 3 years.
51. The Tribunal invited the applicant to comment on the delegate's decision where the delegate found the applicant's claim appeared to fail to meet the requirement that the fear persecuted be for one or more of the Convention grounds. The applicant replied that he acknowledges his case does not fall within one of the five grounds.
52. The Tribunal asked the applicant to comment on the reasonableness of relocation within Ukraine if he was concerned about going back to his home city. He replied that he has never lived in another place but thinks that there is a criminal connection between criminals. Asked if he would be concerned about not finding work in another part of Ukraine, the applicant replied that he did not know because he has never tried.
53. [Ms A], the applicant's sister told the Tribunal that the mafia have threatened the applicant's ex-girlfriend for information. She also told the Tribunal that when the applicant was abducted she arranged the ransom money. [Ms A] told the Tribunal that the mafia got upset at what her brother had done to warn the girls about the sex slave scheme. She said she believes the mafia wanted to use her brother as an example to others so that others would not cross or interfere with the mafia activities.
54. The Tribunal asked [Ms A] how she knew her brother was actually involved with the claimed criminals. She replied that her mother telephoned her in late June 2009 and told her that people were going to her home and she was worried about what the applicant had become involved in. She added that she would probably have done the same thing by trying to stop the girls getting into the sex trade. She said that she thinks the girls probably told the organisers worse things than what the applicant actually did. She said she believes the girls may have given the organizers of the scheme the impression that the applicant wanted to expose the whole operation.
55. [Ms A] said that her family is quite comfortable in Ukraine. She said that she is a real estate agent in Australia. She said that she knows her brother is not trying to get a visa for a better lifestyle.
56. [Ms A] said he had sent \$38,000 to Ukraine as she was looking for a property there. She said that she had sent the money over a period of 6 or 7 years. She said her mother would place the money in a safe. She wanted to purchase property in Ukraine because she believes the real estate market will improve there. She explained how her family lost money when the Ukraine separated from Russia and they do not trust the banks.

Post hearing Submission

57. [In] May 2011, the Tribunal received a one page handwritten letter from the applicant. It states that the applicant has not been able to provide a letter from his ex-girlfriend about the applicant's past experience in Ukraine to support his claim. He writes that his ex-girlfriend promised to write a letter, however, she decided not to as she is afraid that the SBU would find out about it. He states his ex-girlfriend is a registered nurse and as she has regular access to drugs she has to be on the SBU register. She is worried that if she writes the letter the information would get back to the SBU.

Independent Country Information,

Background information on Ukraine, including demographics, population, government, and the racial, ethnic and religious groups in that country.

58. Ukraine has a population of approximately 46 million people, nearly eighty percent of whom are ethnic Ukrainian. Ethnic Russians are the largest ethnic minority, constituting approximately seventeen percent. Ukraine also has a number of other Slavic and non-Slavic minorities, including Crimean Tatars.
59. The majority of Ukrainian citizens are nominally adherents of Orthodox Christianity, divided between the Moscow Patriarchate, the Kiev Patriarchate, and the Ukrainian Autocephalous Orthodox Church. There are also minorities of Greek-Ukrainian Catholics, Jews and Muslims.
60. In February 2010, Viktor Yanukovich, the so-called ‘villain’ of the Orange Revolution in 2004/5, was elected President in elections described by the US Department of State as free and fair. Since then, many of the democratic reforms of the Orange Revolution have been reversed and the pre-revolutionary constitution has been reinstated, recreating a strong Presidency. Critics argue that Yanukovich has co-opted the institutions of authority to “neutralise” opposition figures and critics.
61. In 2004, Viktor Yanukovich, the handpicked successor of Leonid Kuchma, was accused of mass fraud and intimidation in presidential elections. The public response culminated in the so-called Orange Revolution, led by Viktor Yushchenko and Yulia Tymoshenko. In fresh elections, Yushchenko was elected President and Tymoshenko became Prime Minister.¹ Ukraine’s political system looked to Western Europe for models and Ukrainian foreign policy turned towards the European Union and NATO; much to the chagrin of Russia.²
62. The Orange Coalition proved to be fragile; rivalry and infighting between Yushchenko and Tymoshenko led to the collapse of the Tymoshenko government, allowing Viktor Yanukovich to collate significant support in the unicameral parliament (Verkhovna Rada) to form a government. Parliamentary support for the Yanukovich government collapsed in 2007, allowing Tymoshenko to once again head a coalition government; Yushchenko and Tymoshenko resumed their rivalry, precipitating a collapse in support for the Yushchenko presidency.³ In the first round of the 2010 presidential elections, Viktor Yushchenko ran a distant third, enabling Tymoshenko and Yanukovich to contest a run-off election. In February 2010 Viktor Yanukovich narrowly won the presidency in elections described by the US Department of State as free and fair.⁴
63. Since coming to power in 2010, Yanukovich has re-orientated Ukraine’s political system back towards a presidential style executive, with critics arguing that Ukraine is drifting towards authoritarianism. In October 2010, the Constitutional Court reinstated the 1996

¹ US Department of State 2011, *Background Note: Ukraine*, 25 April <http://www.state.gov/r/pa/ei/bgn/3211.htm> – Accessed 27 April 2011

² ‘Ukraine Country Profile’ 2011, *BBC News*, 29 March http://news.bbc.co.uk/2/hi/europe/country_profiles/1102303.stm – Accessed 27 April 2011

³ ‘Ukraine Country Profile’ 2011, *BBC News*, 29 March http://news.bbc.co.uk/2/hi/europe/country_profiles/1102303.stm – Accessed 27 April 2011

⁴ Pfifer, S. & Taylor, W. 2011, ‘Yanukovich’s First Year’, *Unian*, source: *The New York Times*, 1 March <http://www.unian.net/eng/news/news-423955.html> – Accessed 13 April 2011

constitution, strengthening the powers of the president, “including authority to dismiss unilaterally the prime minister and other government ministers.”⁵ Unlike the February 2010 presidential elections, oblasts (regional) elections held in November 2010 were heavily criticised; Freedom House subsequently downgraded its freedom rating for Ukraine from ‘free’ to ‘partly free’.⁶ A January 2011 report on the oblasts elections states that there is a growing perception in Ukraine that it is now in danger of developing “Belarusian-style authoritarianism”.⁷

64. A characteristic of any slide towards authoritarianism is the elimination of serious political opponents. There is some evidence that the Office of Public Prosecutions and the judiciary are being co-opted by Yanukovich for such a purpose. Since his inauguration, Viktor Yanukovich has appointed his friend and political ally Valery Khoroshkovsky as both head of the Sluzhba Bespeky Ukrainy (SBU), Ukraine’s most important state security/investigative organ, and the High Council of Justice (also referred to as the Judiciary Supreme Council), the body that hires and fires the country’s judiciary.⁸ In November 2010 Yanukovich appointed another ally, Viktor Pshonka as the country’s chief prosecutor.⁹
65. Since February 2010, high profile opposition figures are being investigated or charged. Yulia Tymoshenko, Viktor Yanukovich’s main political rival, is currently under investigation for corruption, an investigation some observers believe to be politically motivated. Charges have also been lodged against Tymoshenko’s former Economics Minister, Bohdan Danylyshyn. Consequently, Danylyshyn has been granted political asylum in the Czech Republic on the grounds that “he would be unfairly prosecuted by a corrupt, politically-driven judiciary in Ukraine.”¹⁰ The former Interior Minister has also been arrested.¹¹
66. Viktor Yanukovich’s Party of Regions draws much of its support from regions of the Ukraine dominated by Russian speakers.¹² Andreas Umland, writing for Open Democracy, claims that it is a party run by oligarchs, the extremely wealthy tycoons that abound in post-Soviet political and economic space. Ironically, a major coalition partner is what remains of the communist party.¹³ This ideologically disparate coalition appears to be united by their reluctance to embrace political and economic reform, as well as their favourable view of the Russian Federation. Viktor Yanukovich is a native Russian speaker, who did not learn

⁵ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

⁶ Pfifer, S. & Taylor, W. 2011, ‘Yanukovich’s First Year’, *Unian*, source: *The New York Times*, 1 March <http://www.unian.net/eng/news/news-423955.html> – Accessed 13 April 2011

⁷ Rekiw, R. 2011, ‘Impressions of an Election Observer in Sevastapol’, in *Ukraine Analyst*, Vol 3, no.1, 31 January, p.2 http://www.gwu.edu/~ieresgwu/assets/docs/Kuzio_book_review.pdf – Accessed 15 April 2011

⁸ Human Rights Watch 2011, *World Report – Ukraine*, 24 January

⁹ Levy, C. 2011, ‘Ukraine Raises the Pressure on Opposition Leaders’, *The New York Times*, 9 February http://www.nytimes.com/2011/02/10/world/europe/10ukraine.html?_r=1&partner=rss&emc=rss – Accessed 15 April 2011

¹⁰ Pfifer, S. & Taylor, W. 2011, ‘Yanukovich’s First Year’, *Unian*, source: *The New York Times*, 1 March <http://www.unian.net/eng/news/news-423955.html> – Accessed 13 April 2011

¹¹ Levy, C. 2011, ‘Ukraine Raises the Pressure on Opposition Leaders’, *The New York Times*, 9 February http://www.nytimes.com/2011/02/10/world/europe/10ukraine.html?_r=1&partner=rss&emc=rss – Accessed 15 April 2011

¹² Kuzio, T. 2009, ‘Ukrainian Presidential Candidate Viktor Yanukovich: Foreign Policy Priorities’, *Eurasia Daily Monitor*, Jamestown Foundation, Vol. 6, Issue 202 http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=35687 – Accessed 13 April 2011

¹³ Umland, U. 2011, ‘Ukraine right-wing politics: is the genie out of the bottle?’, Open Democracy website, 3 January <http://www.opendemocracy.net/od-russia/andreas-umland/ukraine-right-wing-politics-is-genie-out-of-bottle#> – Accessed 14 February 2011

Ukrainian until he embarked on a political career in his fifties. Mykola Azarov, the Ukrainian Prime Minister, was born in Russia and is said to speak Ukrainian poorly.^{14 15} Since Yanukovich was inaugurated President in February 2010, Ukraine's relationship with Russia has reportedly "improved significantly". Russian President Dmitry Medvedev stated in 2010 that he hoped the "'black page' in relations between Russia and Ukraine following the Orange Revolution of 2005 would be turned."¹⁶

General information on organised criminal activities in Ukraine.

67. Organised crime is major concern in Ukraine. So-called Ukrainian mafia gangs are involved in drug and human trafficking, including the trafficking of women and young girls for work in prostitution rings throughout Europe. Credible sources also argue that Russian mafia figures are involved in Ukraine's lucrative gas transportation industry.
68. According to the Central Intelligence Agency (CIA), Ukraine is the site of "limited cultivation of cannabis and opium poppy... some synthetic drug production for export to the West", as well as a "transshipment point for opiates and other illicit drugs from Africa, Latin America, and Turkey to Europe and Russia".¹⁷
69. The US Department of Labor reported in 2010 that the commercial sexual exploitation of children in Ukraine remains a significant problem. Ukraine remains a centre for both child prostitution (including for sex tourism) and child pornography; both Ukrainian and international law enforcement authorities claim that "a large amount of child pornography on the Internet comes from Ukraine." Many children continue to be trafficked into Europe from Ukraine to work as prostitutes and beggars.¹⁸
70. The US Department of State reported in April 2011 that corruption in government and society in Ukraine in 2010 was "widespread".¹⁹ In a diplomatic cable leaked to Wikileaks in 2010, the US ambassador to Ukraine states that gas supplies to Ukraine and EU states are linked to the Russian mafia. Former prime minister and main opposition leader Yulia Tymoshenko, herself under investigation for corruption, has stated that she has "documented proof that some powerful criminal structures are behind the RosUkrEnergo (RUE) company" The person both the US Ambassador and Tymoshenko are referring to at the centre of the allegations is Russian crime boss, Semyon Mogilevich.²⁰
71. In another Wikileaks document, a Spanish diplomat is quoted describing Ukraine to US officials as one of several "mafia states" in Eastern Europe. Valentyn Nalyvaichenko, the former head of the Sluzhba Bespeky Ukrayiny (SBU) and current leader of the Our Ukraine

¹⁴ Harding, L. 2010, 'Ukraine's new government puts final nail in coffin of the Orange Revolution', *The Guardian*, 11 March <http://www.guardian.co.uk/world/2010/mar/11/ukraine-government-yanukovich-azarov> – Accessed 15 April 2011

¹⁵ 'Ukraine Country Profile' 2011, *BBC News*, 29 March http://news.bbc.co.uk/2/hi/europe/country_profiles/1102303.stm – Accessed 27 April 2011

¹⁶ Human Rights Watch 2011, *World Report – Ukraine*, 24 January

¹⁷ 'Ukraine' 2011, The World Factbook, CIA website, 8 March <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html> – Accessed 14 April 2010

¹⁸ US Department of Labor 2010, *2009 Findings on the Worst Forms of Child Labor – Ukraine*, 15 December <http://www.unhcr.org/refworld/docid/4d4a681717.html> – Accessed 12 April 2011

¹⁹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

²⁰ Harding, L. 2010, 'WikiLeaks cables link Russian mafia boss to EU gas supplies', *The Guardian*, 1 December <http://www.guardian.co.uk/world/2010/dec/01/wikileaks-cables-russian-mafia-gas> – Accessed 13 April 2011 –

political party, argues that while he does not believe that Ukraine is a mafia state, he does state that corruption among state officials and bureaucrats is “endemic” and constitutes “the biggest threat to Ukraine”.²¹

72. In July 2010, the Finland based Ukrainian Helsinki Human Rights Union (UHSPL) described Ukraine as a “feudal state”, in which politicians and businessmen had become intertwined, allowing corruption and human rights violations to increase. The executive director of the UHSPL, Volodymyr Yavorskiy, states that complaints by Ukrainians concerning corruption have “greatly increased”. Most complaints concern the conduct of “public prosecutors, mayors, and police – people whose first duty is to ‘protect human rights and uphold the law’”²²
73. A journalist writing in the *Kyiv Post* in 2009 states that mafia-style gangs “run” the country; “Ukraine...is run by a few competing gangs. Smaller gangs stop at nothing to grow bigger and more powerful. They kill. They lie. They forge documents and diplomas. They bribe judges. Then they take over other people’s properties and territories. Some of them even molest children along their way, just because they can.” The author argues that at times, senior police have controlled criminal gangs and cites the arrest of “eight senior police officers in Kharkiv who created a multi-national illegal drug network. The deputy chief of the police’s narcotics unit was allegedly in charge of the criminal ring, while the chief of the city’s department for fighting youth crime allegedly built a distribution network among the young”.²³
74. The US Department of State reported that in 2006 “politically active businessmen and journalists were the victims of sometimes fatal attacks that may have been politically motivated; however, business, government, and criminal activities were intertwined to such an extent that it was often difficult to determine the motives. For example, on August 20, the body of Roman Yerokhin, the former deputy head of the Ministry of Internal Affairs’ organized crime directorate in Donetsk, was found in the Kyiv region almost a month after he disappeared.” Yerokhin had been investigating economic crimes, however the head of the anti-corruption fund, Borys Penchuk accused Yerokhin of also being engaged in criminal activity.²⁴ In March 2009, Penchuk himself was sentenced to eight years in prison for corruption.²⁵

Information on the Sluzhba Bespeky Ukrayiny (SBU). Information on whether its members are involved in the trafficking of people for work in the sex industry.

75. The SBU is the primary state security organ in Ukraine and is divided into a number of subunits, each responsible for particular security concerns. The SBU has proven to be an effective authority, however there is strong evidence that since 2010, the SBU senior ranks have willingly assisted President Viktor Yanukovich harass and “neutralise” senior members

²¹ ‘Nalyvaichenko, former SBU chief, talks about corruption, shady gas trade, Gongadze murder’ 2010, *Kyiv Post*, 10 December <http://www.kyivpost.com/news/nation/detail/92518/> – Accessed 13 April 2011

²² ‘Helsinki Group Says Ukraine Becoming ‘Feudal State’ 2010, *Radio Free Europe/Radio Liberty*, 28 July http://www.rferl.org/content/Ukrainian_Helsinki_Group_Says_Rights_Violations_Increasing/2111844.html – Accessed 13 April 2011

²³ Gorchinskaya, K. 2009, ‘This bad mafia movie is, sadly, all too real’, *Kyiv Post*, 15 October http://www.kyivpost.com/news/opinion/op_ed/detail/50770/ – Accessed 13 April 2011

²⁴ US Department of State 2007, *Country Reports on Human Rights Practices 2006 – Ukraine*, 6 March

²⁵ ‘Lutsenko suggests Regions Party to deal with Piskun, who sanctioned proceedings against Kolesnykov’ 2009, *Kyiv Post*, 3 March <http://www.kyivpost.com/news/nation/detail/36646/> – Accessed 13 April 2011

of the opposition. No information has been located implicating the SBU in the trafficking of women or children.

76. No recent information has been located indicating the typical amounts of money paid to recruiters of sex workers. A 2006 source revealed that one Ukrainian ‘recruiter’ was paid approximately US\$1000 after supplying a woman to human traffickers in Turkey.
77. Formed in 1990, the Sluzhba Bespeky Ukrayiny (SBU), or the Security Service of Ukraine, is the republic’s successor to the Soviet Union’s KGB. According to Global Security.Org, the SBU “is responsible for state security (including secret police tasks), external security and non-military intelligence, counterintelligence, ‘crimes against state and people’ (counter-terrorism, smuggling, weapons trade, etc.), as well as the personal security of the President, the Verkhovna Rada (Parliament), and other officials and institutions.”²⁶
78. The SBU is divided into several subunits. Some of these include: the Golovne Upravlinnaya Borotbi z Koruptsieyu I Organizovanoyu Zlochinnistyu (GUBKOZ), referred to in English as the Main Intelligence Directorate (GUR), which is responsible for fighting organised crime, terrorism, drug trafficking, and arms smuggling; and Administration A group, also known as the “Alpha” unit, which is modelled on the old KGB Alpha unit and is responsible for both counterterrorism and witness protection.²⁷
79. While no recent information has been located on the effectiveness and professionalism of GUR or the Alpha unit, a 2004 report by the Conflict Studies Research Centre states that between 1994 and 2004, the Alpha unit conducted “over 3,400 special operations including 980 preventions of dangerous crimes, arrests of armed criminals, and liberations of hostages”.²⁸
80. The SBU has not been without controversy in recent years. Significant controversies include:
 - Andriy Kyslynskiy, the former deputy chief of the SBU and close confidant of former President Viktor Yushchenko, was dismissed from his post when it was discovered that he had forged his university degree and lied about his education.²⁹
 - The current head, Valeriy Khoroshkovsky, is described as the “de facto owner of Inter Media Group (IMG), the parent company of Inter TV, the most popular news and entertainment channel in the country.”³⁰ After Khoroshkovsky’s appointment, two rival stations, TVi and 5 Kanal, had their licenses to broadcast stripped from them after IMG lodged complaints about them. In December 2010, Ukraine’s supreme court examined appeals by TVi and 5 Kanal, however Reporters Without Borders highlights the fact that Khoroshkovsky is also a member of the Judiciary Supreme

²⁶ ‘Sluzhba Bespeky Ukrayiny (SBU) Security Service of Ukraine’ 2005, Global Security.Org, 26 April
<http://www.globalsecurity.org/intell/world/ukraine/sbu.htm> – Accessed 12 April 2011

²⁷ ‘Ukraine, Intelligence and Security’ (undated), Espionage Information website
<http://www.faqs.org/espionage/Te-Uk/Ukraine-Intelligence-and-Security.html> – Accessed 14 April 2011

²⁸ Bennett, G. 2004, ‘The SBU – The Security Service of Ukraine’, Central & Eastern Europe Series 04/25, Conflict Studies Research Centre, September, p.9 –

²⁹ Gorchinskaya, K. 2009, ‘This bad mafia movie is, sadly, all too real’, *Kyiv Post*, 15 October
http://www.kyivpost.com/news/opinion/op_ed/detail/50770/ – Accessed 13 April 2011

³⁰ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April, Section 2.a www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

Council, “which appoints and dismisses judges.”³¹ Under the leadership of Khoroshkovsky, the SBU has been accused of assisting President Viktor Yanukovich to “neutralise” Yulia Tymoshenko as a political force.³²

- In 2005, the then head of the SBU and confidant of Yulia Tymoshenko, Oleksandr Turchynov, ordered that a dossier on the involvement of Russian mafia boss Semyon Mogilevich in the Ukrainian gas industry be destroyed. His successor, and now the leader of Our Ukraine, Valentyn Nalyvaichenko, suggests that the dossier was destroyed because it implicated Tymoshenko with Mogilevich.³³
 - In September 2010, the SBU was accused of exerting “pressure and intimidation” on a Ukrainian NGO called the Democratic Alliance. The US Department of State reports that the Parliamentary Assembly of the Council of Europe (PACE) has “expressed concern” about the level of involvement the SBU has had in Ukrainian politics. PACE accuses the SBU of pressuring a number of “journalists, politicians, and civil society activists”.³⁴ There are suggestions that at least one SBU senior official may have been involved in the August 2010 disappearance of journalist Vasyl Klymentyev. *The Guardian* reported in September 2010 that “[s]hortly before his disappearance, Klymentyev had been preparing a story about the mansions of four top officials, one from Ukraine’s security service [SBU].”³⁵
81. There is no compelling evidence indicating a systemic link between the SBU and the recruitment and trafficking of young girls/women for prostitution rings in Europe or elsewhere. However, the US Department of State criticises the Government of Ukraine for not fully complying “with the minimum standards for the elimination of trafficking” While not implicating the SBU in trafficking, the Department accuses the Ukrainian government of “not vigorously address[ing] official complicity in facilitating trafficking” Traffickers have been convicted in Ukrainian courts, however some judges do not impose custodial sentences.³⁶
82. There are some within the SBU that appear to act both impartially and professionally. In 2008, the SBU launched an anticorruption campaign called ‘On the Way to Integrity’. The then government of the Ukraine claimed that within 10 months of launching the campaign, the SBU “detected 1243 crimes in the sphere of official activities” and some 1333 officials/civil servants “were brought to administrative responsibility for corrupt actions.” Together with the General Prosecutor’s Office of Ukraine, the SBU disclosed the “corrupt actions of 8 judges of District Court and the Appellate Court in Lviv Oblast.”³⁷

³¹ Reporters Without Borders 2010, ‘Spy chief’s vice closes on two TV stations’, UNHCR Refworld, 15 December <http://www.unhcr.org/refworld/docid/4d0b18a51a.html> – Accessed 14 April 2011

³² ‘SBU Targets Opposition in Ukraine’ 2010, *Eurasia Daily Monitor*, Jamestown Foundation, Volume: 7 Issue 158, 16 August <http://www.unhcr.org/refworld/docid/4c6cfbdc2.html> – Accessed 12 April 2011

³³ Nalyvaichenko, former SBU chief, talks about corruption, shady gas trade, Gongadze murder’ 2010, *Kyiv Post*, 10 December <http://www.kyivpost.com/news/nation/detail/92518/> – Accessed 13 April 2011

³⁴ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April, Section 1.d www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

³⁵ Harding, L. 2010, ‘Missing, presumed dead: disappearance of Ukrainian journalist deepens media fears’, *The Guardian*, 8 September <http://www.guardian.co.uk/world/2010/sep/08/ukraine-press-freedom> – Accessed 13 April 2011

³⁶ US Department of State 2010, *Trafficking in Persons Reports – Country Narratives T-Z*, June, p.332

³⁷ Bielov, O.F, et al 2008, *White Book – Security Service Of Ukraine*, SSU website, p.8 <http://ssu.kmu.gov.ua/sbu/doccatalog/document?id=86628> – Accessed 14 April 2011

83. The SBU has recently arrested senior members of Ukrainian drug syndicates, including policemen. In 2009, the SBU arrested eight senior policemen in Kharkiv for their involvement in a local drug network.³⁸ In 2010, the SBU arrested five police officers in the Rozdilna District of Odessa after two local residents claimed that they were tortured. According to the US Department of State, during their prosecution it was established that “the victims had been beaten and electrocuted”.³⁹
84. No recent information has been located on the amount of money paid to people who ‘recruit’ children or women for prostitution purposes. In 2006 Salon.com reported that a sex trafficker named Vlad was paid US\$1000 after he sold a 21 year-old married woman named Katia to a pimp in Istanbul.⁴⁰
85. In 2007 it was reported that 10 percent of all victims of human trafficking out of Ukraine are children between the ages of 13 and 18, with approximately half being sent to neighbouring countries such as Russia. According to the Ukrainian Institute of Social Investigation, 11 percent of prostitutes in Ukraine are children between the ages of 12 and 15, and a further 20 percent are children between the ages of 16 and 17.⁴¹

Information on the relevant state authorities, including the police service, and their effectiveness in providing protection to potential victims of organised criminal activity.

86. The SBU ‘Alpha’ unit is the primary authority responsible for state protection, particularly the protection of witnesses in criminal prosecutions. No recent information has been located on the effectiveness of SBU protection. No sources have been located reporting that witnesses have suffered harm whilst enjoying SBU protection.
87. The Ukrainian police have been accused of providing inadequate protection to people at risk of harm by criminal organisations or dismissing requests for protection altogether. Furthermore, there are reports of the police failing to prosecute perpetrators of threats and intimidation, even when evidence and witnesses have been provided. In one such case, a journalist ‘disappeared’ soon after seeking protection from the police. Sources also confirm that corruption within the Ukrainian police force remains an ongoing problem, with some police implicated in serious crimes.
88. There is evidence that senior judges in both the District and High Courts are guilty of both corruption and partisanship. Since coming to power, Viktor Yanukovich has appointed a number of political allies to senior positions within the Department of Public Prosecutions and the courts. Yanukovich’s friend, ally and chief of the SBU, Valeriy Khoroshkovsky, has been appointed to the Judiciary Supreme Council (also referred to in some sources as the High Council of Justice), the body responsible for the appointment and dismissal of judges.

³⁸ Gorchinskaya, K. 2009, ‘This bad mafia movie is, sadly, all too real’, *Kyiv Post*, 15 October http://www.kyivpost.com/news/opinion/op_ed/detail/50770/ – Accessed 13 April 2011

³⁹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April, Section 1.d www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

⁴⁰ Havrilesky, H. 2006, ‘They didn’t see us as humans’, *Salon.com*, 7 February http://www.salon.com/ent/tv/review/2006/02/07/sex_slaves/ – Accessed 7 February 2006

⁴¹ ‘Flourishing of child prostitution in Ukraine’ 2007, ForUm, 22 March <http://en.for-ua.com/news/2007/03/22/130101.html> – Accessed 23 March 2007

89. The Sluzhba Bespeky Ukrayiny (SBU) subunit, Administration A, also known as ‘Alpha’ unit, is the main state authority responsible for witness protection.⁴² The Conflict Studies Research Centre refers to the same unit as ‘Main Directorate A’ or ‘Alfa’, reporting that between 1994 and 2004 the Alfa team conducted “over 3,400 special operations including 980 preventions of dangerous crimes, arrests of armed criminals, and liberations of hostages”.⁴³ No recent information has been located on the effectiveness of the Alpha/Alfa unit regarding the provision of state protection.
90. While there is no compelling evidence that the SBU suffers from systemic corruption or perpetrates serious human rights abuses, there are sources which suggest that individual members of the SBU are corrupt, with at least one example of an SBU senior official possibly being involved in the disappearance of investigative journalist, Vasyl Klymentyev. *The Guardian* reported in September 2010 that “[s]hortly before his disappearance, Klymentyev had been preparing a story about the mansions of four top officials, one from Ukraine’s security service [SBU].”⁴⁴
91. As mentioned previously, there are accusations that the SBU has reverted to playing a partisan political role in Ukraine since President Viktor Yanukovich appointed Valeriy Khoroshkovsky as its chief. Journalists, bloggers, and other critics claim that they are being intimidated and threatened. In 2010, a report in the Jamestown Foundation’s *Eurasia Daily Monitor* claimed that the SBU are assisting Yanukovich to “neutralise” Yulia Tymoshenko as a political force.⁴⁵
92. Members of the police force have been implicated in organised crime. In 2010, Czech police arrested the so-called Ukrainian mafia boss Valery Pritoku, who was once a Ukrainian and Soviet police officer.⁴⁶ As reported previously, in 2009 the SBU arrested eight senior police officers in Kharkiv behind a “multi-national illegal drug network”. Its chief was the also the deputy chief of the Kharkiv narcotics unit.⁴⁷
93. Journalists who have been the victims of threats of serious harm have complained that they do not receive adequate state protection. In August 2010 Vasyl Klymentyev, the editor-in-chief of Kharkiv-based *Noviy Stil* went missing and is presumed dead. According to Human Rights Watch, *Noviy Stil* is “known for its critical coverage of the authorities... Klymentyev investigated several high-profile corruption cases involving local officials.” Before his disappearance, Klymentyev had reported several death threats.⁴⁸

⁴² ‘Ukraine, Intelligence and Security’ (undated), Espionage Information website

<http://www.faqs.org/espionage/Te-Uk/Ukraine-Intelligence-and-Security.html> – Accessed 14 April 2011

⁴³ Bennett, G. 2004, ‘The SBU – The Security Service of Ukraine’, Central & Eastern Europe Series 04/25, Conflict Studies Research Centre, September, p.9

⁴⁴ Harding, L. 2010, ‘Missing, presumed dead: disappearance of Ukrainian journalist deepens media fears’, *The Guardian*, 8 September <http://www.guardian.co.uk/world/2010/sep/08/ukraine-press-freedom> – Accessed 13 April 2011

⁴⁵ ‘SBU Targets Opposition in Ukraine’ 2010, *Eurasia Daily Monitor*, Jamestown Foundation, Volume: 7 Issue 158, 16 August <http://www.unhcr.org/refworld/docid/4c6cfbdc2.html> – Accessed 12 April 2011

⁴⁶ ‘Police catch Ukrainian mafia boss near Karlovy Vary’ 2010, *Prague Daily Monitor*, 1 December <http://praguemonitor.com/2010/12/01/police-catch-ukrainian-mafia-boss-near-karlovy-vary> – Accessed 13 April 2011

⁴⁷ Gorchinskaya, K. 2009, ‘This bad mafia movie is, sadly, all too real’, *Kyiv Post*, 15 October http://www.kyivpost.com/news/opinion/op_ed/detail/50770/ – Accessed 13 April 2011

⁴⁸ Human Rights Watch 2011, *World Report – Ukraine*, 24 January

94. In March 2007 a Ukrainian journalist reported to police death threats made by a businessman. However, the Committee to Protect Journalists (CPJ) reported that the local prosecutor dismissed due to lack of evidence, despite “several witnesses and some photographic evidence”.⁴⁹
95. Also in 2007, Reporters Without Borders (RWB) reported that the editor of the weekly *Dzerzhynets* in Dniprodzerzhynsk, Margarita Zakora, “was hounded personally and by legal officials over several months.” RWB suggests that this harassment was due to the paper’s popular campaign against official corruption. As a consequence, Zakora has been the subject of nineteen “almost-identical lawsuits” by officials. Furthermore, shots were reportedly fired at her apartment “after the paper had criticised a businessman, Aleksander Spektor.” RWB states that following the printing of a second critical article, “Spektor distributed pornographic leaflets about her and her 20-year-old daughter, including their addresses.” RWB states that the authorities ignored Zakora’s request for protection, “despite solid evidence of this harassment”.⁵⁰
96. At least one anti-corruption campaigner has himself been sentenced to prison. In 2009 the then Ukrainian Interior Minister Yuriy Lutsenko stated that the conviction and sentencing of the anti-corruption campaigner Borys Penchuk “looks like a cynical punishment of a man who dared to publish a book called the ‘Donetsk Mafia’”.⁵¹
97. The Ukrainian Helsinki Human Rights Union (UHSPL) reported in 2010 that the largest number of complaints it receives are from Ukrainians complaining about corrupt public prosecutors, mayors, and police.⁵²
98. Essential to the provision of effective state protection is an independent, uncorrupted judiciary. Historically, this has not always been the case in Ukraine and judges continue to be investigated and, occasionally, arrested for corruption; as reported previously, the SBU uncovered eight corrupt District Court judges in Lviv Oblast in 2008 alone.⁵³
99. Since coming to office, President Yanukovich has vowed to implement judicial reform in compliance with European standards and in close consultation with relevant Council of Europe bodies. Human Rights Watch, however, argued in its January 2011 *World Report – Ukraine* that judicial reform in the Ukraine “is being conducted hastily and without apparent consideration of the [Venice] commission’s opinions and recommendations... In July 2010 the government signed the bill into law without implementing the Council of Europe’s recommendations. The law significantly reduces the power of the Supreme Court and increases the authority of the High Council of Justice, a body criticized for lacking independence.” As mentioned previously, in July 2010 Viktor Yanukovich appointed Valery

⁴⁹ ‘Independent journalist receives death threat in Ukraine’ 2007, *Committee to Protect Journalists*, 19 March <http://www.cpj.org/news/2007/europe/ukraine19mar07na.html> – Accessed 2 November 2007

⁵⁰ Reporters Without Borders 2007, ‘Ukraine – Annual Report’, 1 February http://www.rsf.org/article.php3?id_article=20829 – Accessed 1 November 2007

⁵¹ ‘Lutsenko suggests Regions Party to deal with Piskun, who sanctioned proceedings against Kolesnykov’ 2009, *Kyiv Post*, 3 March <http://www.kyivpost.com/news/nation/detail/36646/> – Accessed 13 April 2011 –

⁵² ‘Helsinki Group Says Ukraine Becoming ‘Feudal State’’ 2010, *Radio Free Europe/Radio Liberty*, 28 July http://www.rferl.org/content/Ukrainian_Helsinki_Group_Says_Rights_Violations_Increasing/2111844.html – Accessed 13 April 2011

⁵³ Bielov, O.F., et al 2008, *White Book – Security Service Of Ukraine*, SSU website, p.8 <http://ssu.kmu.gov.ua/sbu/doccatalog/document?id=86628> – Accessed 14 April 2011

Khoroshkovsky, friend, media mogul and head of the SBU, to the High Council of Justice, the body that appoints and dismisses Ukraine's judges.⁵⁴

Whether the Ukrainian police service would withhold protection from a particular group of persons on the grounds of race, religion, nationality or political opinion.

100. No information has been located that suggests that state protection from criminal gangs (mafia) in Ukraine would be withheld from individuals on the basis of his or her race, religion, nationality or political opinion. However, Human Rights Watch (HRW) has reported that some Ukrainian police stand accused of racial profiling and non-violent harassment of non-Slavic minorities. HRW adds that the "authorities' commitment to combating hate crimes weakened significantly in 2010."⁵⁵
101. The US Department of State reported that Ukrainian law "prohibits discrimination based on race, gender, language, social status, or other circumstances; however, both governmental and societal discrimination persisted, and the government did not effectively enforce the prohibitions."⁵⁶
102. The far-right Svoboda (Freedom) political party enjoyed a surge in its popularity in oblast (regional) elections in November 2010, particularly Lviv, Ternopil and Ivano-Frankivsk regions. Svoboda's leader, former surgeon Oleh Tyahnybok, was expelled from Viktor Yushchenko's Our Ukraine party in 2005 after he launched an on-air "diatribe in which he praised Ukrainian partisans who fought 'Ruskiies, the Krauts, Jewishness and other unclean elements'." Tyahnybok claims that a "Russky-Kike mafia" runs Ukraine.⁵⁷

Information on the treatment of opponents, including opposition parties, of the government by the government/state authorities. Whether the government, or allies of the government, target particular individuals for harm.

103. As discussed above, a number of critics argue that since Viktor Yanukovich was inaugurated President in 2010, Ukraine has been reverting to its pre-Orange Revolution authoritarianism.^{58 59 60}
104. Critics suggest that one characteristic of this new 'authoritarianism' is the political elimination of significant opponents; the re-opening of an investigation into gas deals undertaken by former Prime Minister Yulia Timoshenko is cited as one such attempt.^{61 62}

⁵⁴ Human Rights Watch 2011, *World Report – Ukraine*, 24 January

⁵⁵ Human Rights Watch 2011, *World Report – Ukraine*, 24 January

⁵⁶ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April, Section 2.a www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

⁵⁷ 'Ukrainian Appeals To Anti-Semitism In Election Win' 2010, Kiev Ukraine News Blog, 5 November <http://news.kievukraine.info/2010/11/ukrainian-appeals-to-anti-semitism-in.html> – Accessed 14 February 2011

⁵⁸ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ukraine*, 8 April www.state.gov/g/drl/rls/hrrpt/2010/eur/154456.htm – Accessed 11 April 2011

⁵⁹ Pfifer, S. & Taylor, W. 2011, 'Yanukovich's First Year', *Unian*, source: *The New York Times*, 1 March <http://www.unian.net/eng/news/news-423955.html> – Accessed 13 April 2011

⁶⁰ Rekniv, R. 2011, 'Impressions of an Election Observer in Sevastapol', in *Ukraine Analyst*, Vol 3, no.1, 31 January, p.2 http://www.gwu.edu/~ieresgwu/assets/docs/Kuzio_book_review.pdf – Accessed 15 April 2011

⁶¹ Parfit, T. 2010, 'Ukraine's Yulia Timoshenko denies corruption charge', *The Guardian*, 20 December <http://www.guardian.co.uk/world/2010/dec/20/yulia-timoshenko-ukraine-corruption-charges> – Accessed 13 April 2011

Hryhoriy Nemyria, Timoshenko's deputy, warned in September 2010 that there is a "growing concentration of unrestrained power" in the hands of Yanukovich, and states that several members of the former Orange government have been arrested.⁶³

105. In February 2011, *The New York Times* reported that a campaign of targeting opposition leaders began in November 2010, following Yanukovich's appointment of Viktor Pshonka as chief prosecutor; "[o]f course, I am a member of the president's team". The report states that "[p]rosecutors appointed by the president, Viktor F. Yanukovich, are carrying out many investigations of opposition leaders, including the former prime minister, Yulia V. Tymoshenko". Other opposition members cited by *The New York Times* as being pursued by the authorities include the former interior minister, Yuriy V. Lutsenko, who was apparently arrested while walking his dog; "[p]rosecutors accused him of, among other things, hiring an official driver whose age exceeded the limit under government rules. In a statement from a detention center Mr. Lutsenko labelled the charges bizarre and described himself as a political prisoner." Former economic minister, Bohdan M. Danylyshyn, has been granted asylum in the Czech Republic.⁶⁴
106. In February 2011, Yulia Timoshenko reportedly "told journalists in front of the prosecutor's office that President Viktor Yanukovich, the security service (SBU), and Prosecutor-General Viktor Psonka 'terrorize the relatives of opposition activists'"⁶⁵
107. Hryhoriy Nemyria argues that "[t]he first victims of authoritarian regimes are always journalists" While there is no evidence that the regime has perpetrated harm against journalists, the disappearance of investigative journalist Vasyl Klymentyev in August 2010 has been linked to corrupt officials, including a senior official from the Sluzhba Bespeky Ukrayiny (SBU). Klymentyev's friends presumed that he has been killed; *The Guardian* reported in September 2010 that "[s]hortly before his disappearance, Klymentyev had been preparing a story about the mansions of four top officials, one from Ukraine's security service [SBU]."⁶⁶
108. There is also a suggestion that judicial allies of Yanukovich and oligarchs have also sought to silence civil society critics; the gaoling of anti-corruption campaigner Borys Penchuk for eight years on charges of providing false evidence such an example.⁶⁷ Ukrainian trade union activist Andrei Bondarenko was scheduled to undergo a psychiatric assessment by the courts, despite having voluntarily undergone a number of previous psychiatric examinations, all of which declared him sane. In January 2011, Amnesty International reported that the authorities

⁶² Tkachuk, V. 2010, 'Ukraine is failing the democracy test', *The Guardian*, 22 August <http://www.guardian.co.uk/commentisfree/2010/aug/22/ukraine-failing-eu-democracy-test> – Accessed 15 April 2011

⁶³ Harding, L. 2010, 'Missing, presumed dead: disappearance of Ukrainian journalist deepens media fears', *The Guardian*, 8 September <http://www.guardian.co.uk/world/2010/sep/08/ukraine-press-freedom> – Accessed 13 April 2011

⁶⁴ Levy, C. 2011, 'Ukraine Raises the Pressure on Opposition Leaders', *The New York Times*, 9 February http://www.nytimes.com/2011/02/10/world/europe/10ukraine.html?_r=1&partner=rss&emc=rss – Accessed 15 April 2011

⁶⁵ 'Tymoshenko Says Opposition Relatives Being 'Terrorized'' 2011, ECOI, source: *Radio Free Europe/Radio Liberty*, 21 February http://www.ecoi.net/local_link/155276/257332_en.html – Accessed 15 April 2011 –

⁶⁶ Harding, L. 2010, 'Missing, presumed dead: disappearance of Ukrainian journalist deepens media fears', *The Guardian*, 8 September <http://www.guardian.co.uk/world/2010/sep/08/ukraine-press-freedom> – Accessed 13 April 2011

⁶⁷ 'Lutsenko suggests Regions Party to deal with Piskun, who sanctioned proceedings against Kolesnykov' 2009, *Kyiv Post*, 3 March <http://www.kyivpost.com/news/nation/detail/36646/> – Accessed 13 April 2011

did not enforce a scheduled compulsory examination, which both Bondarenko and Amnesty attest to “public and international pressure”.⁶⁸ It is not clear why Bondarenko continues to be the subject of such an order, despite previous clean bills of mental health.

FINDINGS AND REASONS

Country of Reference.

109. The Department’s file holds a certified true copy of a passport issued in the name of the applicant by the Minister of Foreign Affairs of Ukraine. It identifies the applicant as a national of Ukraine. The Tribunal has no evidence before it to suggest the passport is not authentic or that it has otherwise been issued without authority. The Tribunal finds the applicant is a national of Ukraine and therefore assesses his claims against independent country information in respect of circumstances in Ukraine.

110. The applicant has declared (in his application for a Protection visa, Form 866C) that he does not have a right to enter or reside, whether temporarily or permanently in any country or countries other than his country of nationality. The Tribunal finds the applicant does not have a present right to enter or reside in the third country.

Assessment of claims.

111. The essence of the applicant’s claim is that he fears returning to Ukraine because he says he fears that members of organised criminal elements in that country will target him for serious harm because he revealed to prospective recruits the details to lure young girls and women into a scheme which would result in them being enslaved into sexual servitude. He also claims that he has been approached to join the SBU and has been asked to become an agent for the organisation and through that he would be somehow involved in the female trafficking scheme. The applicant claims that he has been subject to a campaign of blackmail and that he has been physically attacked and beaten because of his action to inform one of young girls of the criminal’s scheme. He claims that on one occasion he was abducted and taken to a dacha and kept there until a ransom of \$50,000 was paid to his kidnappers. He claims that he has been told that he owes the organised criminals \$10,000 for each girl who decided against taking up the offer that was made to her. He claims he has been told his “debt” is increasing at the rate of \$10,000 per month. The applicant claims that he would not be protected by the Ukrainian authorities and that relocation within Ukraine would not be an effective means to achieve protection from those he claims wish to persecute him.

112. The Tribunal accepts that “applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.” The Tribunal also accepts that “if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt” (The United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, 1992 at para 196). However, the Handbook also states (at para 203) “The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to

⁶⁸ Amnesty International 2011, ‘Urgent Action: Trade Union Activist Still Facing Examination’, AI website, 7 January <http://www.amnesty.org/en/library/asset/EUR50/001/2011/en/97c01e0f-1e4c-44e1-a7f1-95c7ddd9168b/eur500012011en.pdf> – Accessed 15 April 2011

the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts". The Tribunal finds that these principles are relevant in aspects of the evidence in this particular case, including in respect of the applicant's claim that he will be targeted for harm because of his tipping off of the young women who were being procured by organised criminals for the sex trade.

113. The Tribunal observes that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that the applicant satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)
114. In determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims the applicant has made. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
115. On the other hand, as stated previously, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
116. Upon considering all the evidence before it, including the written evidence and the applicant's and his sister's oral evidence given at the Tribunal hearing, the Tribunal concludes with serious reservations about the reliability and credibility of the applicant's evidence and claims. In addition to the inconsistencies in important parts of the evidence presented to the Tribunal, the details of which will be discussed below, the applicant was vague in his recollection or description of other aspects of his evidence. Aspects of the applicant's evidence were found to be rather implausible or unsupported by independent country information as will also be discussed below.
117. The Tribunal considered the applicant's sister's evidence. The Tribunal found the applicant's sister appeared to be motivated, understandably, by her desire to assist and support her brother. The Tribunal found her evidence as to her knowledge of her family's general circumstances in Ukraine and her evidence on the remittal of funds to Ukraine for the purchase of real estate there to be credible. However, the Tribunal finds her evidence where

she claims the mafia want to use her brother as an example to others, and her evidence that the girls to whom the applicant spoke may have told the criminal organisation that the applicant wanted to expose the whole operation to be unsupported speculation. Accordingly, the Tribunal placed little weight on those aspects of the evidence by the applicant's sister.

118. The following is a summary of the Tribunal's consideration of the applicant's claims and also sets out why the Tribunal concluded that the evidence of substantial parts of the applicant's claim is unreliable:
- a) The applicant claims that he was approached in a bar by someone who claimed to be an agent of the SBU and who made offers to him to become an agent or informer for the SBU. The applicant was unsure about the person's name but eventually settled on it being "[Mr B]". The Tribunal has doubt that an SBU agent, and especially one who the applicant alleges is involved with organised criminal activities in people trafficking, would disclose that he was a SBU agent to someone who had just met in a bar. The Tribunal is not satisfied as to the genuineness of the applicant's claim that the SBU agent had information about the applicant.
 - b) The applicant claimed that he was asked on more than one occasion to become an agent for the SBU yet claimed he had not been provided with detail about the role he was expected to take. The Tribunal finds it implausible or at least highly improbable that no details of the role and duties the applicant would be expected to perform would be discussed. The Tribunal considered that if an offer of a job or a position of some kind had been made to the applicant he would have pressed the person offering the job for more detail. The applicant claims he did try to get more information about this but gave up when the details were not forthcoming from [Mr B]. The Tribunal rejects his claim that he did not know what the job he was offered involved. When asked for more information, the applicant told the Tribunal that he thought he might be required to take photographs. On the evidence before it, the Tribunal finds it is not satisfied that the applicant was in fact asked to become an SBU agent at all. Alternatively, the Tribunal finds that the applicant has not been forthcoming in providing details about the role he was to play. The Tribunal therefore places little weight on the applicant's claim that he was asked to work for or take a role in the SBU.
 - c) The applicant claimed that even though he was shocked about what he was told concerning the sex-trade scheme he nonetheless went to the bar where the girls would be. At first he said he did not know why he went to the bar even though he disapproved of the scheme and did not decide to get involved in it, but later said he went to the bar out of curiosity. While recognising there might be some inconsistency in such a claim and that it might be argued that if the applicant disapproved of the sex-trade scheme he would have simply walked away from it without going to the bar to see the girls, the Tribunal is prepared to accept that the applicant did go to the particular bar out of curiosity despite disapproving of the scheme. The Tribunal notes however the applicant said he could not recall the name of the bar which again raises some concern about this claim, however the Tribunal decided to give the applicant the benefit of the doubt on this point.
 - d) The applicant claimed that he was given a small parcel to deliver to someone who would approach him at the Perth airport. The Tribunal finds the applicant's evidence in this respect is very vague and inconsistent. Apart from claiming there was a package and that he would be approached by a woman at the Perth airport, and the claim that he disposed of the package at the airport in Kiev, the applicant could provide no further detail. The applicant's claim that he disposed of the package without opening it is inconsistent with the applicant's previous demonstrated curiosity whereby he went to the bar to sight the girls who were being

propositioned for the scheme. In addition to this, the Tribunal finds it is most unlikely that the applicant's claimed persecutors would entrust the applicant to deliver a package when they were, according to the applicant, aware that he did not intend to work for, or cooperate with, them and that he was in fact fleeing the country while still owing them a substantial amount of money. In respect of the applicant's claim that he was told a woman would approach him at the Perth airport, when asked by the Tribunal whether anyone did actually approach him the applicant replied that no one did. He added that there was no opportunity to do so as he was met at the airport by his sister and left promptly. The Tribunal rejects the applicant's claim in this respect and considers that if the applicant was indeed to carry a parcel and was to be met by someone that some attempted approach would have occurred upon the applicant's arrival. Weighing up all the evidence on the question of the request of carriage and delivery of a parcel, the Tribunal rejects that this occurred as claimed by the applicant and finds this part of the applicant's claim is a fabrication for the purposes of enhancing the applicant's claim.

- e) The Tribunal considered the applicant's claim that he reported at least one of the incidents of claimed assault to the local police. The applicant told the Tribunal that upon lodging a complaint to the local police he was asked to document his complaint but that he did not pursue it or document his complaint because he did not know the names of his attackers and intimidators. The Tribunal rejects the applicant's claim on this point because the Tribunal considers the applicant would have provided whatever detail he had so that the police could make their own inquiries in an attempt to determine the identity of those who he claims attacked and intimidated him. The Tribunal finds the failure on the part of the applicant to pursue a complaint to the local police casts some doubt on whether the claimed attacks and intimidation occurred at all. The Tribunal however gives the applicant the benefit of the doubt and is prepared to accept that there was at least one attack as claimed.
119. The Tribunal considered the post hearing submission received by the Tribunal [in] May 2011. In this submission which is signed by the applicant, the applicant claims that his ex-girlfriend promised to write a statement about the applicant's past experience in Ukraine but then decided she would not do so because she is afraid that the SBU would find out about it. He writes that his ex-girlfriend is a registered nurse and as she has regular access to drugs she must be on the SBU register. The submission states that the applicant's ex-girlfriend is worried if she writes a letter the information may be back to the SBU. The Tribunal accepts the applicant's claim that his ex-girlfriend may not wish to provide a written statement for the reasons the applicant claims in that submission. The Tribunal considered this submission, however, in light of the Tribunal's ultimate finding that the applicant's claims of fear of harm lack the necessary nexus with one or more of the Convention grounds, that Tribunal decided it was not necessary to rely on this submission or to draw any inference, adverse or favourable, from it.
120. Having considered the constituent parts of the applicant's claims and having made findings set out above where the Tribunal rejects the specified parts of the applicant's claims, the Tribunal nonetheless accepts that the applicant has somehow come into association with individuals involved in the trafficking of young girls for the sex-trade and that he has had a conflict with those people resulting in his being beaten and abducted and held for a ransom. The Tribunal is also prepared to accept the applicant's claim that his ex-girlfriend has been threatened by the same person or people who have intimidated the applicant and she has been asked about the applicant's whereabouts. The Tribunal finds it does not accept some of his claims as truthful as discussed above, and also finds that the applicant has fabricated at least

one aspect of his claims, that is the claim he was asked to deliver a package. The Tribunal nonetheless finds the applicant does hold a subjective fear of harm that he will be harmed at the hands of organised criminals if he returns to Ukraine. However, the Tribunal finds on the evidence presented to it that the underlying motivation on the part of those people who the applicant claims will harm him if he returns to Ukraine is a criminal, personal or financial. In other words, the Tribunal finds that the motive of the applicant's claimed persecutors is to recover the amount of money the applicant claims he caused the sex trade scheme organisers lose. The Tribunal finds that the reason why the applicant may be targeted, if he is to be targeted at all, is not because of his race, nor because of his nationality, and nor because of his religion. The Tribunal also finds the targeting would not be because of the applicant's political opinion. The Tribunal considered whether the applicant might be regarded as falling into a particular social group and finds that there is not a particular social group of which the applicant might be characterised as a member in the circumstances of this case and the Tribunal concludes that he does not face a real chance of serious harm for membership of a particular social group. The Tribunal notes that the applicant acknowledged at the hearing that his case does not fall within one of the five Convention grounds. The Tribunal therefore finds that the applicant's fear of serious harm at the hands of organised criminals or the SBU, or both, is not harm which is related to one or more of the Convention grounds. The Tribunal therefore finds that the applicant's application fails to satisfy s.91R(1)(a) of the Act which requires that the Article 1A(2) of the Refugees Convention does not apply in relation to persecution for one or more of the reasons in that Article unless the reason is the essential and significant reason, or those reasons are the essential and significant reasons for the persecution.

121. Having found that the harm the applicant fears is not persecution for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion – the Tribunal then considered whether the applicant faces a real chance of a denial, or of a withholding, of police or state protection. The Tribunal accepts that the threat of serious harm by a non-state actor and which is not motivated by a Convention ground may still amount to persecution for the purposes of the Convention if state or police protection in the particular country is denied or withheld for one or more of the Convention grounds. In this particular case, the Tribunal finds that the applicant did report his assault to the local police centre as claimed by the applicant. The Tribunal also finds that the police told the applicant to document his complaint but he did not do so because he claims he did not know the names of the attackers or those who threatened him. The Tribunal is satisfied that there is no evidence before it to conclude that the police would deny or withhold their assistance or protection from the applicant, or from his ex-girlfriend for that matter, generally or for one or more of the Convention grounds. In this respect, the applicant's own evidence was that the police asked him to document his complaint and the implication from this is that the police would then investigate the complaint. The Tribunal had regard to the country information referred to above which while suggesting a degree of police and SBU corruption, and that the SBU is partisan to the government, it does not suggest that the corruption is systemic. For example see above references: Bennett, G. 2004, *The SBU – The Security Service of Ukraine*, Central & Eastern Europe Series 04/25, Conflict Studies Research Centre, September, p.9; Harding, L. 2010, *Missing, presumed dead: disappearance of Ukrainian journalist deepens media fears*, The Guardian, 8 September <http://www.guardian.co.uk/world/2010/sep/08/ukraine-press-freedom> – Accessed 13 April 2011; *'SBU Targets Opposition in Ukraine'* 2010, Eurasia Daily Monitor, Jamestown Foundation, Volume: 7 Issue 158, 16 August <http://www.unhcr.org/refworld/docid/4c6cfbdc2.html> – Accessed 12 April 2011; and

'Police catch Ukrainian mafia boss near Karlovy Vary' 2010, Prague Daily Monitor, <http://praguemonitor.com/2010/12/01/police-catch-ukrainian-mafia-boss-near-karlovy-vary> – Accessed 13 April 2011.

122. For the above reasons, the Tribunal finds that the applicant does not have a well founded fear of serious harm amounting to persecution for one or more of the grounds enumerated in the Convention.

CONCLUSIONS

123. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

124. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.