

OPERATIONAL GUIDANCE NOTE

UKRAINE

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1. **Introduction**

- 1.1** This document evaluates the general, political and human rights situation in Ukraine and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Ukraine Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 23 July 2003 Ukraine is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 23 July 2003 by someone who is entitled to reside in Ukraine is refused, caseowners should certify it as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

Source documents

- 1.5** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** Ukraine is a republic with a mixed presidential and parliamentary system, governed by a directly elected president and a unicameral Rada (parliament). A presidential election was held in October 2004, followed in November 2004 by a second-round run off between Prime Minister Viktor Yanukovich and opposition leader Viktor Yushchenko. Massive fraud during the run off election triggered the largest non-violent protest movement in the country's modern history, known popularly as the Orange Revolution. The Supreme Court ruled the run-off to be invalid and ordered that a repeat run-off election take place in December 2004. The December 2004 run-off, which Yushchenko won, and the short campaign preceding it were substantial improvements on the previous elections. In 2006, the civilian authorities generally maintained effective control of the security forces.¹
- 2.2** Parliamentary elections were held on 26 March 2006 and were conducted largely in line with international standards. Viktor Yanukovich's Party of Region's won the highest number of votes, but the elections failed to form a majority government. A lengthy coalition building process followed, but initial attempts by President Viktor Yushchenko's Our Ukraine, Bloc Yuliya Tymoshenko, and the Socialists to form an 'Orange' coalition failed. On 3 August a coalition was formed by the Party of Regions, Communists and Socialists, with Viktor Yanukovich as PM. Before nominating Yanukovich as Prime Minister, President Yushchenko secured his agreement to the "Universal" – a Declaration of National Unity, which lays out the policy framework for the new Government. Its aims include continuing Ukraine's European integration policy with EU membership the future goal, developing a working partnership with NATO with a view to membership and maintaining the Ukrainian language as the sole official language. The co-habitation between President Yushchenko and Prime Minister Yanukovich has been uneasy. Differing interpretations of the constitution have led to disagreements over the respective roles of President, Prime Minister, Cabinet and Parliament on some areas of policy and on appointments and dismissals of Ministers.²
- 2.3** While the Government's human rights performance significantly improved in important areas, most notably in freedom of expression in a number of respects it remained poor during 2006. Some of the problems reported included torture in pre-trial detention facilities, arbitrary detention, lengthy pre-trial detention and long trial delays, serious corruption in all branches of government and the military services and violence and discrimination against women.³
- 2.4** However, there have been notable improvements following the Orange Revolution of December 2004. There was increased accountability by police officers in 2006 and prison conditions continued gradually to improve. The mass media also made significant gains in independence. Interference with freedom of assembly also largely ceased in 2005, and most limitations on freedom of association were lifted. In 2005 and 2006, the Government moved to reduce its role in the sphere of religion. A wide variety of domestic and international human rights groups generally operated without government harassment in 2006 and the Government has also increased its investigation and prosecution of suspected human traffickers.⁴
- 2.5** While the law prohibits torture and ill-treatment, the police frequently employed severe violence against persons in custody during 2005 and 2006. The national human rights ombudsman has campaigned vocally to end the practice of torture and ill-treatment in

¹ U.S. Department of State Country Report on Human Rights Practices (USSD) 2006 (Introduction) & The Foreign and Commonwealth Office (FCO) Country Profile 2007: Ukraine

² Home Office COI Service Ukraine Country of Origin Information Bulletin - Election of new Prime Minister and Government, August 2006 (paragraphs 2.01 - 2.06) & FCO Country Profile 2007: Ukraine

³ Home Office COI Service Ukraine Country of Origin Information Report 2006 (Human Rights Issues: General) & USSD 2006 (Introduction & Section 2)

⁴ Home Office COI Service Ukraine Country of Origin Information Report 2006 (Human Rights Issues: General) & USSD 2006 (Introduction, Section 1, Section 2, Section 4 & Section 5)

Ukrainian police detention facilities and prisons, but the problem persisted in 2005 and 2006.⁵

- 2.6** However, during 2006 the authorities stepped up efforts to prosecute police officers who abused persons in detention. The Ministry of Interior confirmed 385 cases of police officers violating the rights of detainees, including 23 torture cases, 152 cases of bodily injury and other types of violence, and 57 cases of unlawful detention during the first ten months of 2006. According to the Ministry of Interior, 359 police officers were subject to disciplinary measures.⁶
- 2.7** The law provides for an independent judiciary, but in practice, the judiciary remained subject to various forms of pressure from the executive and legislative branch during 2006. Pressure included political interference in the form of phone calls to judges by government officials. In May 2006, the president issued a decree for the improvement of the judiciary in order to ensure fair trials in line with European standards. The decree sets out goals over the next ten years to improve impartiality, transparency, and independence of the judiciary. Still, the judiciary continued to suffer from corruption and inefficiency during 2006.⁷

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Ukraine. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the IND website at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

⁵ COI Ukraine Country Report 2006 (Human Rights Issues: Torture), USSD 2005 (Section 1), USSD 2006 (Section 1) & Human Rights Watch World Report 2007: Ukraine

⁶ COI Ukraine Country Report 2006 (Human Rights Issues: Torture) & USSD 2006 (Section 1)

⁷ COI Ukraine Country Report 2006 (State Structures: Judiciary) & USSD 2006 (Section 1)

3.6 Involvement with political organisations

- 3.6.1** Some claimants will claim asylum or make a human rights claim based on their fear of opposing political organisations either at a local or national level.
- 3.6.2** *Treatment.* Ukraine is a republic with a mixed presidential and parliamentary system, governed by a directly elected president and a unicameral Rada (parliament). A presidential election was held in October 2004, followed in November 2004 by a second-round run off between Prime Minister Viktor Yanukovich and opposition leader Viktor Yushchenko. Massive fraud during the run off election triggered the largest non-violent protest movement in the country's modern history, known popularly as the Orange Revolution. The Supreme Court ruled the run off to be invalid and ordered that a repeat run off election take place in December 2004. The December 2004 runoff, which Yushchenko won, and the short campaign preceding it were substantial improvements on the previous elections.⁸
- 3.6.3** The parliamentary elections held on the 26 March 2006 were according to the Organisation for Co-operation in Europe (OSCE) conducted in line with OSCE, Council of Europe and other international standards for democratic elections. Overall, fundamental civil and political rights, such as freedom of expression and assembly, were respected. An inclusive candidate registration and a vibrant media environment provided for genuine competition and equal conditions. This enabled voters to make informed choices between distinct alternatives and to freely and fairly express their will.⁹
- 3.6.4** A new Government was formed in Ukraine on 4 August 2006, after four months of negotiations following the March elections. The new Government is a coalition of the Party of the Regions, Our Ukraine, the Socialist Party and the Communist Party. Viktor Yanukovich, the leader of the Party of the Regions, is Ukraine's new Prime Minister. The major political groupings in the Ukraine are Our Ukraine (led by President Yushchenko), the Yulia Tymoshenko Bloc, the Party of the Regions, the Socialist party, the Lytvyn Bloc, the Communist party, and various other parties and blocs.¹⁰
- 3.6.5** The law provides for freedom of association and the Government generally respected this right in practice during 2006, however some restrictions remained. Registration requirements for organisations were extensive, but there were no reports that the Government used them during 2006 to disband existing legitimate organisations or prevent new ones from forming. The law places restrictions on organisations that advocate violence or racial and religious hatred or that threaten the public order or health. There were no reports during 2006 that the authorities used these criteria to restrict the activities of legitimate organisations that opposed the Government.¹¹
- 3.6.6** Two major opposition political parties associated with the previous government, the Social Democratic Party of Ukraine (United) and Party of the Regions of Ukraine, complained that thousands of their supporters were dismissed from their government jobs during 2006 simply because of their association with anti-Yushchenko political parties. However, widely respected human rights organisations rejected the characterisation of the dismissals as discrimination, noting that only approximately 5 percent of the country's 450,000 civil servants had been dismissed and replaced by supporters of the Yushchenko administration.¹²
- 3.6.7** The Committee of Voters of Ukraine (CVU) criticised President Yushchenko's 22 September 2005 decision to introduce an amnesty law that could include individuals who participated in electoral fraud during the 2004 presidential election. The proposed amnesty was part of a

⁸ USSD 2006 (introduction) & FCO Country Profile 2007: Ukraine

⁹ COI Ukraine Country Report 2006 (History: Parliamentary elections March 2006)

¹⁰ Home Office COI Service Ukraine Country of Origin Information Bulletin - Election of new Prime Minister and Government, August 2006 (paragraphs 2.01 - 2.06) & FCO Country Profile 2006: Ukraine

¹¹ COI Ukraine Country Report 2006 (Human Rights Issues: Freedom of assembly and association) & USSD 2006 (Section 2)

¹² COI Ukraine Country Report 2006 (Human Rights Issues: Freedom of assembly and association) & USSD 2006 (Section 2)

broad political deal with Yanukovych that helped secure parliamentary approval of Prime Minister Yekhanurov. The CVU said that such an amnesty would allow individuals who committed violations in 2004 to serve again on polling station commissions. On the other hand, opposition politicians connected to the previous regime and the head of the CEC welcomed the step. The media reported on 30 September 2005 that, according to Presidential Chief of Staff Oleh Rybachuk, the amnesty would not cover the organisers of the electoral fraud; he specifically mentioned former Kuchma chief of staff Viktor Medvedchuk and former CEC Chairman Serhiy Kivalov as individuals not covered by the proposed amnesty. Observers also noted that under Ukrainian law, 2006 would be the earliest that the parliament could consider such an amnesty.¹³

- 3.6.8 Sufficiency of protection.** The authorities do not legislate against, prosecute or persecute those associated with opposition political parties although some problems may exist at a local/regional level between opposing parties. However, there is no evidence that individual members of any political party would not be able to access protection from the authorities should they need it.
- 3.6.9 Internal relocation.** The law provides for the right of freedom of movement, and in 2006 the Government generally respected this right in practice, however, there were some limitations. A new system of registration was introduced during 2005, replacing most elements of the 'propyska' system that previously had inhibited the free movement of individuals. Under the new system, citizens have the right to live, work and receive services anywhere in the country. There was no indication during 2006 that individuals were denied access to services because they were not registered where they resided.¹⁴
- 3.6.10** The most important thing that has changed under the new system is that, according to the New Law, an individual, who wants to be registered at a new address, need not ask for permission to do so. If all of the required documents are filed by such individuals, and if such documents meet the requirements of the law, then the relevant authorities must register this individual at the new address and may not require any additional documents or reject his/her registration application. If an individual's right of free movement and/or the procedures for the registration of his/her place of residence are violated by any illegal actions or acts of local authorities and/or officials, or by their inactivity, then such actions/inactions may be appealed to the relevant Ukrainian court by the interested party.¹⁵
- 3.6.11** Changes to the Propiska/registration system means that a Ukrainian citizen may now live, work and receive services anywhere in the Ukraine without having to seek the permission of the authorities prior to relocating. Therefore, those who fear local opposition political parties can internally relocate to another area of the Ukraine where they will not face any problems. The IAT found in **[2004] UKIAT 00242 VS** (see below) that the need to register or pay bribes if required were not sufficient to prevent internal relocation or make it unduly harsh.

3.6.12 Caselaw

[2005] EWHC 2460 (Admin) CO/6159/2004 5th October 2005. The claimant was involved in the activities of the Rukh party distributing leaflets in educational establishments, organising talks with young people and collecting signatures which demanded the resignation of the then President Kuchma. It was this that led to problems with the police, which commenced in about August 2003.

The court considered the expert report of Dr Robert Chenciner which formed the basis of the appellant's case, and found that it was unable to accept the way the report was put together and its conclusions. The court found that it was wholly speculative in many respects, and it really is not credible that, even if the claimant had been, as the court assumed he had, ill-treated in the way that he describes because of his activities on behalf of Rukh before the

¹³ COI Ukraine Country Report 2006 (Human Rights Issues: Political activists)

¹⁴ COI Ukraine Country Report 2006 (Human Rights Issues: Freedom of movement) & USSD 2006 (Section 2)

¹⁵ COI Ukraine Country Report 2006 (Human Rights Issues: Freedom of movement)

elections, the situation now would mean that he would be subject to such ill-treatment were he to be returned.

The court had the very strongest doubts as to whether there would be any risk at all in the claimant's old home area, having regard to the situation as it is there. It is highly unlikely, that the local police, however pro-Russian they may have been, would, in an area where the overwhelming majority of people were in favour of the present regime, act in a way which targeted those who were supportive of the new regime. But even if that were the situation, the court could not see that there is any ground to suggest that it is at all likely that there is any real risk that he would be targeted if he were to relocate to another part of the Ukraine. It is a large country, it has a population of around 50 million, and there are plenty of places where he could relocate to. The fact, (if it is a fact) that the claimant is required to de-register and to re-register with the police is not likely at all to mean that he gets into trouble wherever he may go in the Ukraine.

[2004] UKIAT 00242 VS (Registration on Relocation) Ukraine CG Heard 11 August 2004, Promulgated 1 September 2004. The Appellant, a member of the Ukrainian Orthodox Christian Church claimed to fear persecution from members of the Greek Catholic Church. The Tribunal found that the old propiska system of registration has been replaced by a similar system requiring a person moving to a new area to de-register with the police in his old area and then re-register in the new one.

The need for registration relates essentially to access to public services but many Ukrainians do not register. Small bribes are paid to avoid problems. The Tribunal rejected Counsel's unsupported assertions that the levels of bribe required would be a practical hindrance to satisfying the necessary registration requirements to relocate outside the Appellant's home in West Ukraine. The payment of small bribes is a normal part of everyday life in Ukraine. The need to register or pay bribes if required is not sufficient to prevent internal relocation or make it unduly harsh. The Tribunal found that the Appellant would be more able than most to afford the small sums required to internally relocate especially when compared with the cost of smuggling himself and his family out of the country.

3.6.13 Conclusion. Ukraine is a mixed presidential and parliamentary democracy and although there have been serious flaws in the past, the election process has improved significantly in recent years. Opposition political parties are able to register and participate in elections and the authorities do not legislate, prosecute or persecute those associated with opposition political parties although some problems may exist at a local level. However, the authorities are willing to offer sufficiency of protection in such cases and there is the option of internal relocation. Claims from this category of claim are unlikely to qualify for a grant of asylum or Humanitarian Protection and are likely to be clearly unfounded.

3.7 Organised crime and corruption

3.7.1 Many claimants will claim asylum or make human rights claim based on ill-treatment amounting to persecution at the hands of organised criminal gangs and that due to corruption the authorities cannot offer protection.

3.7.2 Treatment. The two key agencies that have the main responsibility in the fight against organised crime in Ukraine are the Security Service of Ukraine (SBU) and the Ministry of Interior (MOI). In 2005, the bodies and sub-divisions of the MOI stopped the activities of 551 organised criminal groups. In relation to organised crime, 332 cases were actually prosecuted in Ukrainian courts and of these cases, 315 were returned with a guilty verdict. The SBU neutralised 45 organised criminal gangs in 2005 and evidence from the SBU was used to convict 987 persons.¹⁶

3.7.3 On 31 January 2006, the Ministry of the Interior of Russia reported the arrest of members of the one of the bloodiest and the most powerful Ukrainian gangs, known as the 'Donetsk Brigade'. The arrest took place in Moscow, following a two year joint Russian/Ukrainian

¹⁶ COI Ukraine Country Report 2006 (Human Rights - Other Issues: Organised crime)

investigation. According to Ukrainian security services, members of the 'brigade' are responsible for at least 50 solved contract murders.¹⁷

- 3.7.4** Although there is a law dating from 1994 providing for a Witness Protection Programme, the law has not been properly implemented and levels of witness protection in Ukraine are weak. The law only provides for witnesses to be relocated within Ukraine and as a consequence it is not uncommon for people in fear of their safety to hire their own protection.¹⁸
- 3.7.5** During 2006, politicians, politically active businessmen, and journalists were the victims of attacks that sometimes were fatal and 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.¹⁹
- 3.7.6** In December 2005, court proceedings began against twelve alleged members of the 'werewolves', a gang of rogue officers of the Ministry of Internal Affairs, who had been involved in previous years in killings and kidnappings connected to organised crime.²⁰
- 3.7.7** Corruption remained a serious problem in the executive, legislative, and judicial branches of the government, including the armed services during 2006. The Security Service of Ukraine (SBU) reported that it launched 167 criminal investigations of bribery and uncovered 1,795 incidents of corruption, including 35 by high-ranking state officials, during 2006. The SBU fired 76 employees and disciplined another 300 persons for corruption-related offences in the first ten months of the year.²¹
- 3.7.8** Although weeding out corruption from government was a theme of the Orange Revolution, the Yushchenko Government has made little progress in prosecuting former officials suspected of corruption. Party of Regions member Boris Kolesnikov avoided prosecution following his 2005 arrest on extortion charges and became a member of the parliament after the elections of March 2006. On 4 April 2006, parliament abolished immunity for locally elected officials resulting in 12 criminal cases against officials in one region alone, although many cases that had begun before the immunity decision were not subsequently pursued.²²
- 3.7.9** **Sufficiency of protection.** The Ukrainian authorities have made efforts to crack down on corruption and organised crime in recent years, although convictions have been chiefly at lower levels. In 2005, the authorities stopped the activities of 551 organised criminal groups and of the 332 cases actually prosecuted in Ukrainian courts a guilty verdict was recorded in 315 cases which resulted in 987 convictions. In addition, the Security Service of Ukraine (SBU) reported that it launched 167 criminal investigations of bribery and uncovered 1,795 incidents of corruption, including 35 by high-ranking state officials, during 2006. The SBU fired 76 employees and disciplined another 300 persons for corruption-related offences in the first ten months of the year. However, despite these improvements organised crime remains a problem in the Ukraine and the high levels of corruption within society may limit the effectiveness of any protection that the authorities are able or willing to offer.
- 3.7.10** **Internal relocation.** Please refer to paragraphs 3.6.9 and 3.6.10 for details of the registration system in Ukraine. Changes to the Propiska/registration system mean that a Ukrainian citizen may now live, work and receive services anywhere in the Ukraine without having to seek the permission of the authorities prior to relocating. Therefore, those who

¹⁷ COI Ukraine Country Report 2006 (Human Rights - Other Issues: Organised crime)

¹⁸ COI Ukraine Country Report 2006 (Human Rights - Other Issues: Organised crime)

¹⁹ COI Ukraine Country Report 2006 (Human Rights - Other Issues: Organised crime) & USSD 2006 (Section 1)

²⁰ COI Ukraine Country Report 2006 (Human Rights - Other Issues: Organised crime) & USSD 2006 (Section 1)

²¹ USSD 2006 (Section 3)

²² COI Ukraine Country Report 2006 (Economy: Government Attempts To Combat Corruption) & USSD 2006 (Section 3)

fear local criminal gangs who have no connections with the authorities can internally relocate to another area of Ukraine where they will not face any problems. The IAT found in **[2004] UKIAT 00242 VS** (see above) that the need to register or pay bribes if required is not sufficient to prevent internal relocation or make it unduly harsh. However, the IAT subsequently found in **[2005] UKIAT 00095 IB** (see below) that internal relocation may not be an option in cases where the applicant has a fear of the authorities and organised criminal gangs who have connections with the police.

3.7.11 *Caselaw.*

[2005] UKIAT 00095 IB (Propiska-update and corruption) Ukraine Heard 15 February 2005, Promulgated 18 February 2005. The Appellant claimed he had grown vegetables on a state run collective farm. He had reported his Chairman for bribery and everyone had ganged up against him and had set the Mafia on him. The Tribunal found that the Appellant will need to register with the police wherever he decides to relocate in the Ukraine. This case is distinguished from the Country Guidance case **VS (Registration on Relocation) Ukraine CG [2004] UKIAT 00242** which stated relocation was possible as the Appellant in that case had no fear of organised criminal gangs unlike IB. The Tribunal in IB agreed with the expert that despite the recent election victory of President Yuschenko, progress in reforming the organs of the state, with their endemic corruption, is likely to be slow and does not at present remove a real risk to the Appellant should he return to the Ukraine.

3.7.12 Conclusion. The Government has set out to tackle corruption and organised crime as one of its top priorities, however, they both continue to remain serious problems in Ukraine. If organised criminal gangs have connections and influence with the local police force or other state agents then claimants may not be able to seek the protection of the authorities or be able to internally relocate to another area of Ukraine. In a very small proportion of cases where both adequate state protection and internal relocation are not feasible, the grant of Humanitarian Protection may be appropriate. However, the majority of claimants are unlikely to qualify for Humanitarian Protection, but due to the limited availability of sufficiency of protection and the limitations on internal relocation claims in this category are unlikely to be clearly unfounded.

3.7.13 In cases of low level criminal activity perpetrated by criminal gangs at a local level (for example: street robbery/extortion) in which there are no links with the authorities, the claimant will be able to seek the protection of the authorities or internally relocate to another part of Ukraine. Therefore, it is unlikely that these cases will qualify for a grant of asylum or Humanitarian Protection and are likely to be clearly unfounded.

3.8 Trafficking in persons

3.8.1 Some claimants will claim asylum or make a human rights claim based on their fear of being trafficked or their fear of those who trafficked them if they return to Ukraine.

3.8.2 Treatment. Ukraine is primarily a source country for men, women, and children trafficked internationally for the purposes of sexual exploitation and forced labour. The Government does not fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. In 2005, Ukraine increased its law enforcement capacity, proactively investigated trafficking, and strengthened its anti-trafficking criminal code. In the first six months of 2006, over half of the individuals convicted for trafficking received prison sentences rather than probation.²³

3.8.3 In the first half of 2006, the number of investigations and prosecutions of suspected traffickers did not increase relative to the same period in 2005. This stagnation was attributed to the adoption of tougher anti-trafficking legislation in February 2006 and the need for police officers and prosecutors to familiarise themselves with the new code. In September 2006, the Ministry of Internal Affairs reported that 282 cases had been filed involving 296 victims, including 35 minors. The authorities broke up 21 organised criminal rings involved in human trafficking during the same period in 2006. In the first six months of 2006, 50 court cases were

²³ COI Ukraine Country Report 2006 (Human Rights Issues: People trafficking) & USSD 2006 (Section 5)

completed, 37 of which resulted in the conviction of 40 defendants. Of the 40 persons convicted, 19 received suspended sentences, 5 were given up to 3 years in prison, 8 received 3 to 5 year sentences, 6 received 5 to 8 year sentences, 1 received an 8 to 10 year sentence, and 1 was given a 10 to 15 year sentence.²⁴

- 3.8.4** During 2006, the Ministry of Internal Affairs continued to strengthen the professional capabilities of its department for combating trafficking by introducing specialisations. The department has branches in each of the ministry's 27 regional directorates, with approximately 600 officers dedicated exclusively to combating trafficking.²⁵
- 3.8.5** However, corruption in the judiciary and police continues to impede the Government's ability to combat trafficking. In 2006, NGOs asserted that local police and border guards received bribes in return for ignoring trafficking, as did judges for lighter sentences for traffickers. The authorities did not disclose official statistics on corruption related to trafficking. The low number of prosecutions of government officials for such activities raised questions about whether the Government was willing to take serious disciplinary action against high-level officials.²⁶
- 3.8.6** The Government continued to rely on NGOs and international organisations to provide the bulk of victim assistance and protection in 2006. Through its consulates abroad, the Ministry of Foreign Affairs repatriated 271 Ukrainian trafficking victims in 2006. In 2005, law enforcement authorities continued to co-operate with NGOs at the port of Odessa and Boryspil airport to screen and refer victims repatriated or deported from abroad.²⁷
- 3.8.7** Under an amendment to article 303 of the Criminal Code, responsibility for prostitution has been transferred to the administrative code, which means that trafficking victims can no longer be convicted for prostitution if they have been forced into it.²⁸ Although some victims testified against traffickers during 2006, victims were often reluctant to seek legal action against them. This reluctance was due largely to lack of trust of law enforcement agencies, negative public opinion toward trafficking victims, and the insufficient protection offered to witnesses as a result of budgetary considerations.²⁹
- 3.8.8** In 2006, the International Organization for Migration (IOM) operated a comprehensive medical centre and shelter for victims of trafficking in Kiev that provided medical and psychological services, including vocational counselling, and seven shelters located in major cities and funded by the European Commission with local administrations providing the premises at a nominal fee. In addition, 27 local NGOs provided reintegration assistance to trafficking victims. In 2006, the IOM disbursed funds to more than 50 civil society and faith based organisations to raise trafficking awareness among vulnerable segments of society.³⁰
- 3.8.9** **Sufficiency of protection.** As noted above, whilst trafficking in persons, especially women, is clearly a problem in Ukraine, the Government has taken steps to curb this, introducing increasingly stringent laws and safeguards for those who may face trafficking. In 2006, there were numerous examples of the prosecution and conviction of traffickers and while some received suspended sentences others were jailed for between 5-8 years. Considering the above, there is in general a sufficiency of protection for victims or potential victims of traffickers.

²⁴ COI Ukraine Country Report 2006 (Human Rights Issues: Efforts to combat people trafficking) & USSD 2006 (Section 5)

²⁵ COI Ukraine Country Report 2006 (Human Rights Issues: Efforts to combat people trafficking) & USSD 2006 (Section 5)

²⁶ COI Ukraine Country Report 2006 (Human Rights Issues: Efforts to combat people trafficking) & USSD 2006 (Section 5)

²⁷ COI Ukraine Country Report 2006 (Human Rights Issues: Protection for victims of trafficking) & USSD 2006 (Section 5)

²⁸ FCO Human Rights Annual Report 2006 (page 149)

²⁹ COI Ukraine Country Report 2006 (Human Rights Issues: Protection for victims of trafficking) & USSD 2006 (Section 5)

³⁰ COI Ukraine Country Report 2006 (Human Rights Issues: Support for victims of trafficking) & USSD 2006 (Section 5)

3.8.10 Internal relocation. Please refer to section 3.6.9 and 3.6.10 for details of the registration system. Changes to the Propiska/registration system mean that a Ukrainian citizen may now live, work and receive services anywhere in Ukraine without having to seek the permission of the authorities prior to relocating. In general, whilst there may be some difficulties accessing local services internal relocation to escape a threat from invariably-localised traffickers will not be unduly harsh. However, internal relocation may not be an option in cases where the applicant has a fear of the authorities and organised criminal gangs who have connections with the police.

3.8.11 Conclusion. Trafficking continues to be a significant problem in Ukraine which has yet to meet the minimum standard for eliminating this issue. However, the Government has taken significant steps to meet this criteria including efforts to curb the activities of traffickers and to ensure that victims or potential victims can obtain protection from the authorities. In 2006, there were numerous examples of the prosecution and conviction of traffickers and while some received suspended sentences others were jailed for between 5-8 years. Trafficking victims from Ukraine are not members of a particular social group and will not qualify for asylum. Although there may be some cases where a grant of Humanitarian Protection is appropriate, there is generally a sufficiency of protection for individuals in this category and most applicants will be able to relocate to escape localised threats from traffickers. Therefore, in most cases a grant of Humanitarian Protection will not be appropriate and cases are likely to be clearly unfounded.

3.9 Prison conditions

3.9.1 Claimants may claim that they cannot return to Ukraine due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Ukraine are so poor as to amount to torture or inhuman treatment or punishment.

3.9.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.9.3 Consideration. Although prison conditions remained poor, they continued to improve slowly during 2006 as a result of reforms in the penal system. Experts on prison medical conditions from the Council of Europe stated in October that overcrowding remained a major problem; however, prison officials reported that, due in part to the decriminalization of many offences and the increasing use of alternative sentencing practices, there was a reduction in the number of inmates in prison, which eased overcrowding. Nevertheless, prisons and detention facilities were sometimes overcrowded or lacked adequate sanitation and medical facilities.³¹

3.9.4 Conditions in pre-trial detention facilities were harsher than in low and medium security prisons during 2006. On 10 August 2006, the Ministry of Internal Affairs announced that over 200 of the country's 500 pre-trial detention centres had been brought into compliance with international standards. Still, there were reports in 2006 that inmates in pre-trial facilities were sometimes held in investigative isolation for extended periods and subjected to intimidation and mistreatment by jail guards and other inmates.³²

3.9.5 According to official statistics from the State Penal Department (SPD), there were 708 deaths in prisons and 159 deaths at pre-trial detention facilities during 2005. Although tuberculosis in prisons continued to be of concern during 2006, officials stated that mandatory screening of all

³¹ COI Ukraine Country Report 2006 (State Structures: Prison and prison conditions) & USSD 2006 (Section 1)

³² COI Ukraine Country Report 2006 (State Structures: Prison and prison conditions) & USSD 2006 (Section 1)

new inmates for the disease had reduced infection rates. The SPD also reported that the number of deaths caused by tuberculosis decreased by 27 percent during 2006. In the same year, SPD officials stated that inmates with tuberculosis were isolated from the general population and treated at one main prison hospital complex in Kharkiv Region. However, human rights groups noted that only convicted criminals, and not persons in pre-trial detention, had access to specialised tuberculosis care during 2006.³³

- 3.9.6** In 2006, the Government allowed prison visits by human rights observers, but observers reported difficulties in getting full access to prisons and pre-trial detention facilities in some cases. The Ukrainian Red Cross Society said that it had no problems in all of its pre-trial detention centre access. However, domestic human rights organisations, such as the Ukrainian-American Human Rights Bureau, reported that the penal system had become more closed since the Orange Revolution, lacked effective oversight and access to prisons by journalists and human rights activists were more limited. In 2006, prisoners and detainees were permitted to file complaints with the ombudsman for human rights about the conditions of detention, however some human rights groups reported that prisoners were sometimes punished for doing so.³⁴
- 3.9.7** In May 2005, the parliament passed an amnesty for 17,000 prisoners that the president had proposed. The amnesty covered prisoners who were minors when they committed their crimes, parents with small children or children with disabilities. Also included were pregnant women, women over the age of 50, men over the age of 55, war veterans, persons with serious disabilities, prisoners with active tuberculosis, prisoners with cancer, and those infected with HIV/AIDS.³⁵

3.9.8 Caselaw.

[2006] UKAIT 00016 PS (prison conditions; military service) Ukraine CG Date of hearing: 30 November 2005 Date Determination notified: 22 February 2006. The AIT looked into the two issues of prison conditions and military service. The AIT decided that by virtue of the fact that they had before them as much relevant background evidence as seems to be available, they decided that the conclusions on these two issues can stand as country guidance.

As regards prison conditions, the AIT found that imprisonment in Ukraine is likely to expose a detainee to the real risk of inhuman or degrading ill-treatment that would cross the Article 3 threshold. The AIT recognised that the background materials placed before the Tribunal contained some lacunae, but equally that they were all that was seen to be relevant after considerable efforts had been taken by the parties to gather evidence. Accordingly, the AIT considered that on the general issue of prison conditions in Ukraine, the conclusion as above can stand as country guidance. This determination supersedes the case **[2004] UKIAT 00222 TV (Ukraine – Prison conditions) Ukraine.**

- 3.9.9 Conclusion.** Despite recent improvements, prison conditions in Ukraine are severe and taking into account the conclusion of the AIT in **[2006] UKAIT 00016 PS** conditions in prisons and detention facilities in Ukraine are likely to reach the Article 3 threshold. Where caseowners believe that an individual is likely to face imprisonment on return to Ukraine they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseowners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Ukraine, and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

³³ COI Ukraine Country Report 2006 (State Structures: Prison and prison conditions) & USSD 2006 (Section 1)

³⁴ COI Ukraine Country Report 2006 (State Structures: Prison and prison conditions) & USSD 2006 (Section 1)

³⁵ COI Ukraine Country Report 2006 (State Structures: Prison and prison conditions)

4. **Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Ukraine the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Claimants may claim they cannot return to Ukraine due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** According to the World Health Organisation (WHO) health expenditure as a percentage of GDP was 5.7% in 2003 and there were 2.95 physicians per 1,000 people.³⁶
- 4.4.3** In 2005, the World Health Organisation noted that as many as 416,000, or 1.7% of adults aged 15 to 49, were estimated to be living with HIV/AIDS in Ukraine. Injecting drug use remains the primary source of HIV transmission - 72% of reported cases among adults. However, there are now increasing numbers of cases among the heterosexual partners of injecting drug users and among children.³⁷
- 4.4.4** As of July 2005, there were twenty-five regional HIV/AIDS centres throughout Ukraine and seven HIV/AIDS centres in the cities with high rates of HIV/AIDS including Kyiv and Sevastopol. Antiretroviral therapy was available at fifteen of the regional centres, while people living with HIV/AIDS outside of those regions have the option to seek antiretroviral therapy at the Gromashevskiy National Institute of Infectious Diseases Clinic (Lavra AIDS Clinic) in Kyiv.³⁸
- 4.4.5** According to the World Health Organisation (WHO), a mental health policy was initially formulated in the Ukraine in 1988. The components of the policy are prevention, treatment and rehabilitation.³⁹ However, mental health is a part of primary health care system. Actual

³⁶ The World Health Organisation (WHO) – Countries: Ukraine

³⁷ COI Ukraine Country Report 2006 (State Structures: Medical Services – HIV/AIDS)

³⁸ COI Ukraine Country Report 2006 (State Structures: Medical Services – HIV/AIDS)

³⁹ COI Ukraine Country Report 2006 (State Structures: Medical Services – Psychiatric treatment)

treatment of severe mental disorders is not available at primary level. Regular training of primary care professionals is not carried out in the field of mental health. There are no community care facilities for patients with mental disorders. There are some polyclinics which take care of ambulant psychiatric patients, but no other psychiatric institution exists.⁴⁰

- 4.4.6** The following drugs are generally available at the primary health care level of the country: carbamazepine, ethosuximide, Phenobarbital, phenytoin sodium, sodium valporate, amitriptyline, chlorpro-mazine, diazepam, fluphenazine, haloperidol, lithium, levodopa. In place of biperiden other anti-parkinsonian drugs are used.⁴¹
- 4.4.7** Where a caseowner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Ukrainian nationals may return voluntarily to any region of Ukraine at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Ukraine. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Ukrainian nationals wishing to avail themselves of this opportunity for assisted return to Ukraine should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

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