



# **Reform of the Civil Registration System in Ukraine**

## **Project Report 2001**

*The OSCE ODIHR wishes to thank the Government of  
the United Kingdom for its generous contribution to this project.*

*The views expressed in this report do not necessarily represent the official views of the  
Government of the United Kingdom.*

## **Acknowledgements**

We would like to take this opportunity to thank the National Association of Local Authorities of Denmark (NADAL) for its continuing outstanding co-operation. Danish experience of population registration has been used in several ODIHR programmes on reform of the registration system in the NIS. The ODIHR has been co-operating with NADAL, whose experts participated in a number of workshops and round tables organised in the framework of ODIHR projects, as well as provided expertise on legislation concerning population registers and protection of personal data. We would especially like to thank NADAL for their kind assistance during the training visit of a group of Ukrainian government officials to Denmark. We appreciate the fact that NADAL provided all the necessary logistic support and that all stages of the visit were carefully prepared. In this respect, we thank in particular Mr. Hans Sylvest, NADAL's Administrative Director and Mr. Nils Zeeberg, NADAL's Consultant for their time and hospitality.

The ODIHR wishes to thank the Department on Information Technologies of the Government of the Republic of Moldova for the kind assistance that the ODIHR received during the visit of the delegation of Ukrainian government officials to Moldova. We would like to express our appreciation for the great deal of attention that the delegation received during the training session at the Department on Information Technologies. In this regard, special thanks go to Mr. Vladimir Molojen, Director of the Department and his deputy Mr. Leonte Suholitco.

In addition, we would like to thank Mr. Grigore Iovu, Deputy Head of the General Directorate for the Documentation of Population of the Department on Information technologies for having served as an expert in this project. Mr. Iovu's experience, professionalism and excellent interventions were highly appreciated by all of the participants of the workshop, as well as by its organisers.

Finally, the project would not have been possible without the kind assistance of our colleagues from the Office of the OSCE Project Co-ordinator and the OSCE Mission in Moldova. The ODIHR would like to particularly acknowledge Mr. Folkert Milch, Mr. Dmytro Tretiakov, Mr. Gottfried Hanne and Ms. Alina Brashoveanu. The support of the OSCE Project Co-ordinator in Ukraine, Ambassador Peter Burkhard, has been crucial in gaining political support necessary for implementing the project.

## **Background: Reforming population registration system in the Newly Independent States**

For the last few years the ODIHR has been assisting a number of the Newly Independent States of the former Soviet Union (NIS) to move away from the Soviet-era *propiska* system to population registration systems that guarantee freedom of movement and choice of place of residence. Given that in the Soviet period the *propiska* system served as an instrument for state control over internal migration and tied a number of political, social, and economic rights to a particular state-approved place of residence is a prerequisite for transition to democracy.

In view of the enormous complexity of this problem in the post-Soviet region, the ODIHR initiated and carried out round-table discussions on the subject of registration in the CIS countries in Ukraine (Kyiv, 1998), Armenia (Yerevan, 1999), Kazakhstan (Almaty, 2000), and Kyrgyzstan (Bishkek, 1999). The round tables created a favourable public opinion towards the reform, primarily in the human rights community and the media, and kicked off a dialogue on the issue with government officials and parliamentarians. Currently, the ODIHR Migration Unit is carrying out projects on reform of the *propiska* system in Armenia, Kyrgyzstan, and Ukraine.

### **ODIHR project in Ukraine**

In June 2001 the President of Ukraine signed a Decree which formally abolishes the registration with the Ministry of Interior of foreign nationals travelling in Ukraine for stays shorter than three months. The Decree also laid down the ground for a step-by-step abolition of the *propiska* system. At the same time, a number of draft laws related to freedom of movement and choice of place of residence (including laws on the population registration system and state register of physical persons) were developed and are currently being discussed by the Parliament. During a visit of the ODIHR Migration Unit to Ukraine in July 2001, Ukrainian government officials explicitly stated that this process is *a direct result of the ongoing ODIHR project* on reform of the registration system in Ukraine.

The idea of this programme came from the Administration of the President of Ukraine. The project was drafted and implemented in close co-operation with the Citizenship Department of the Presidential Administration. As a first step, a working group, composed of representatives from the Presidential Administration, Ministry of Interior, Parliament and Ministry of Justice, was created to develop the legislative framework for a new registration system. At the same time a local NGO, the Migration Problems Research Centre, conducted a study of the existing legislation on registration in Ukraine with a view to elaborate proposals for its reform.

In order for the working group members to get acquainted with international standards and 'best practices', a training programme was organised by the ODIHR and its partners. The programme included study visits to Denmark, which has a highly efficient system of population registration, and Moldova, a pioneer in reforming the Soviet-era *propiska* system. In both countries the working group members met with officials from key institutions dealing with civil registration and identified elements which could serve as models for the reform efforts in Ukraine.

Following the completion of the draft laws, a round table with participants from all relevant governmental agencies and NGOs was organised by the ODIHR and the Presidential Administration on 27-28 September in Odessa with assistance from the Office of the OSCE Project Co-ordinator in Ukraine. The round table covered the main issues related to the reform of the registration system in Ukraine, such as international standards on freedom of movement and choice of place of residence, main deficiencies of the existing *propiska* system, overview of the latest legislative developments, and practical experiences of the local Visa and Registration Offices of the Ministry of Interior which currently are responsible for registration. Special focus was put on the analyses of various draft laws on the registration of citizens of Ukraine, which were under discussion in Parliament. The seminar has drawn a concrete framework for future co-operation, including regular meetings of informal working groups, training activities for government officials and ODIHR legal assistance.

The following parts of this report will describe in more detail the ODIHR's activities in the framework of the project, such as training visits to Denmark and Moldova and the inter-agency round table on findings and recommendations.

## **Phase I: Training visits**

### **A) Denmark**

Denmark presents an example of a highly efficient system of population registration based on long-lasting traditions. The Danish experience of the Centralised Civil Register, based on the use of personal identification numbers and the system of the protection of personal data, has been used in several ODIHR programmes on reform of registration system in the NIS.

In the framework of the ODIHR project on the reform of the registration system in Ukraine, a training visit of a group of Ukrainian government officials was organised on 29 March – 2 April 2001. The purpose of the visit was to get acquainted with the population registration system of Denmark.

Ukrainian delegation included representatives of major state bodies involved in the reform of the registration system such as the Presidential Administration, Ministry of Justice, Ministry of Interior and Ministry of Foreign Affairs.

#### **Program of the visit**

The program of the visit, which lasted three working days, included:

- First-hand experience in the functioning of the Registration Office of the Municipality of Copenhagen (responsible for the registration of persons living in Copenhagen);
- Presentations by the employers of the Copenhagen Metropolitan Police Office on the registration of data in the context of combating crime and on use of different registers during the criminal investigation and crime prevention;
- A visit to the Data Protection Agency, where the delegation got acquainted with the basic features of the Danish system of protection of personal data;
- A short presentation at the National Social Appeals Board under the Ministry of Social Affairs;
- A presentation at the Danish Immigration Service, who are responsible for collecting basic data on foreigners legally residing in Denmark.

An overview of the Danish system of population registration, as well as the general conclusions of the visit are presented below.

#### **Basic Features of Civil Registration System of Denmark**

The public authorities of Denmark base the performance of their duties on a system of centralised registers. The Civil Registration System (CPS) is one of them. It contains general personal data on persons residing (or on those who are registered) in Denmark or Greenland. The CPS was created in 1968 by copying the contents of the manually kept civil registers. The CPS administers a system of Personal Identification Numbers (PINs) and general personal data collected and forwarded to CPS by municipal registration offices. Furthermore, the CPS provides information to

interested parties in accordance with the law. The CPS is administered by the Ministry of Interior.

The personal data in the CPS contains information about a person's PIN, name, address, marital status, place of birth, citizenship, kinship (parents/children), declaration of incapacity, profession, membership in the Lutheran Church of Denmark, voting rights, registration notes and date of death.

Most Danish citizens are registered in the CPS and receive PINs at birth. A foreigner who comes to Denmark and lives legally for a certain amount of time should be registered and receive a PIN. A foreigner working legally in Denmark should be registered in the CPS and receive a PIN within a short period of time after he/she officially starts to work. The CPS receives most of its information about foreigners staying in Denmark CPS from the Immigration Service.

Under the National Registration Act every person should notify national registration offices of any changes of address when moving within the country and when moving or returning from abroad. In this case, the person should come to the registration office of the municipality to which s/he moved and fill out a special form. The form contains name, PIN, previous and current addresses, and current telephone number. In principle, an applicant cannot be denied registration. In the case, when a large number of tenants already live in the premises to which the person has moved, an employee of the registration office may ask for a lease contract. If the person has one, he/she will be registered immediately.

In addition, the CPS updates its files using information, which it receives from public institutions responsible for collecting basic data, such as birth, change of name, marriages, adoptions and divorces.

Daily extracts from the CPS database are sent by subscription. Among the subscribers are: the civil tax register, the pension register, the municipal registers, the public statistical register, etc. Specially defined extracts are, inter alia: voter's lists for general, local and EU elections, and extracts for research and statistics.

Private persons or private enterprises may obtain the information from the local registration offices using the combination of a person's name and either address, PIN or date of birth, unless this person requested that the information on his/her address be kept confidential. However, this does not apply to enquiries from this person's creditors.

### **Data used by the Police**

Every police office has access to an index, containing a number of registers. This so-called "white" list of registers includes the CPS, the registers of driving licences, passports, vehicles, hunting permission and registration of weapons. Furthermore, the so-called "black" list of registers includes registration of criminals at the national level, the Schengen database, the register of stolen goods and other data.

According to Danish legislation, certain personal data on individuals may be kept by the police only for a limited period of time (data on misdemeanours), other data may be kept forever (data on serious crimes committed).

### **Role of Immigration Service**

The Immigration Service is one of the most important data-supplier for the CPS concerning foreigners residing in Denmark. The Immigration Service provides information concerning immigration to and emigration from Denmark, asylum applications, grants of asylum and refugee status, residence permits, repatriation and acquisition of Danish citizenship. Once the data are entered by the Immigration Service, they are introduced into the centralised registration system. Through this system, foreigners with residence permits in Denmark receive their PINs and can enjoy the benefits of the Danish social protection system.

### **Data Protection Agency**

To guarantee the necessary protection of the individual's private life and personal integrity in connection with the creation and utilisation of public and private registers, as well as any other kind of processing, a special institution – Datatilsynet (Data Protection Agency) was created. Its primary responsibility is to supervise all processing of data covered by the Act on Processing of Personal Data<sup>1</sup>. The Agency is a public institution, its budget is mainly based on resources from the state budget. The Minister of Justice appoints its decision-making body – the Council. The chairman of the Council is a Supreme Court judge. The Act on Processing of Personal Data guarantees independence and impartiality of the Data Protection Agency. The decisions of the Agency cannot be appealed to any other administrative authority, but only can be brought to the Court.

The main functions of the Datatilsynet are:

- To give *opinions* on draft legislation. When the legislation, which is being drafted, contains provisions of importance for the protection of privacy – the ministry involved should ask for the opinion of the Data Protection Agency.
- To give *opinions* and *authorisations* with regard to data processing by public institutions and private enterprises. Both public authorities and private enterprises should, with some exceptions, notify the Agency of their processing of data.
- To carry out inspections. The Data Protection Agency does not need the Court decision to carry out inspection but should present a proof of identity. In public sector, all premises from which processing is carried out, can be inspected, while in private sector it concerns the processing which should be notified to the Data Protection Agency.

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<sup>1</sup> Act No.429 of 31 May 2000. This Act implements Directive 95/46EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

## **Conclusions: the Danish registration system as an example to follow?**

The effectiveness of the Danish system consists not only of a well-designed legal framework and its strict implementation by all the relevant public and private institutions, as well as a high level of computerisation, but also and what is even more important, of a *mutual trust* of the public in state authorities and vice versa. The principle of *presumption of innocence* seems to dominate all stages of the administration. In this regard it is interesting to note the surprise of Copenhagen Registration Office's staff, at the question posed by Ukrainian visitors how the person should prove that s/he lives at that address, what happens if the person lies. In Denmark, obviously, there is a society's consent on the necessity of registration, as well as public trust in public authorities. Thus, generally people do not give false information about their place of residence. Moreover, since registration cannot be denied or used for nefarious purposes, there are no reasons to give false information.

The Danish example shows once again that the reform of any system, including registration, is not only about changing laws, it is also about changing the basic outlook on relations between the state and individuals. This is commonly referred to in countries in the former Soviet Union as *mentality*. In this respect, exposing the delegation to this experience can be considered as one of the most significant achievements of the visit.

As a result of the visit, key elements of the Danish system, which can serve as guidelines for the new Ukrainian legislation, were identified:

- Registration at all levels and stages cannot be denied by the state and thus cannot obstruct people's full enjoyment of their rights, especially the right to freedom of movement and choice of place of residence;
- Database on all persons legally residing in the country should be centralised;
- Collection and use of personal data should be limited, and the legislation on state registers and data processing should have a clause on protection of the right to privacy.



## **Phase I: Training visits: B) Moldova**

The visit to Moldova was the second training visit for the group of Ukrainian officials. Contrary to Denmark with a well-functioning long-lasting registration system, Moldova presents a different example, that of the country with an ongoing reform of the registration system.

As in the visit to Denmark, the Ukrainian delegation included representatives of the major state bodies involved in the reform of the registration system.

On the Moldovan side, the visit was organised by the Ministry of Foreign Affairs of Moldova and the OSCE Mission to Moldova.

### **Program of the visit**

The program of the training visit, which lasted three working days, included:

- Visit to the Constitutional Court of Moldova where the delegation was briefed on the Court's decision on the non-compliance of the Soviet-style *propiska* system with the Constitution.
- Visit to the Department on Information and Documentation of Population under the Government of Moldova, the central state body dealing with population registration and with issue of national identification documents.
- First-hand experience of the functioning of the Registration Office of Chisinau (responsible for the registration of persons living in Chisinau).
- Visit to the State Enterprise "Registru" (the Centre of Registration and Documentation of Population), which is tasked to produce national identification documents and to maintain the State Register of Population.
- Visit to the Training Centre of the Department of Registration and Documentation of Population, which offers computer and language training courses for government officials.

The summary of the information on the Moldovan experience in reforming the population registration system, as well as the general conclusions of the visit, are presented below.

### **Background to the Reform: the Decision of the Constitutional Court of Moldova**

In February 1997, the Head of the Commission on Human Rights and National Minorities of the Parliament of Moldova, Mr. Vladimir Solonari, appealed to the Constitutional Court to recognise the *Regulation on Procedures for Documentation and Issue of Identity Documents in Accordance with the National Passport System* adopted by the Government of Moldova in June 1975 as unconstitutional. This Regulation requires a person to be registered at his/her place of residence (to have a *propiska*) in order to receive identity documents. The Constitutional Court declared that provisions in this Regulation, as well as any provisions of other laws or

regulations mentioning the *propiska*, are non-compatible with the constitutional right to freedom of movement and choice of place of residence and thus null and void.

One year later, the Government of the Republic of Moldova amended and supplemented the Decision by the Government of June 1975 and abolished all provisions on procedures of registration.

### **General features of the Moldovan system of civil registers**

The legal basis for population documentation in Moldova are the Laws *On Identity Documents (1994)*, *On Registers (1997)* and *On Citizenship (2000)*.

The primary task of issuing identity documents for the population lies with the Department of Registration and Documentation of the Population of the Ministry of Interior, which was created in 1996. At the same time, the first version of the State Register of the Population was put into operation and Moldovan citizens started to receive new documents. These were identity documents of the National Passport System, certificates of vehicle registration and driver's licences, all of which are produced in accordance with international standards and are well protected from forgery. The following are the identity documents of the National Passport System:

- *Passport* (passport of the citizen of the Republic of Moldova, diplomatic passport, service passport, passport for an foreigner residing in Moldova).
- *Personal Identity Card* (Identity Card of the citizen of the Republic of Moldova, issued from the day of birth and changed several times at certain ages, for use both inside and outside Moldova in accordance with international treaties. Identity Card for foreigners, residing in Moldova for use inside the country only).
- *Residence Permit* (issued for foreigners permanently or temporarily residing in Moldova, as well as for expatriates temporarily residing in Moldova)

According to the decision by the Government of Moldova of June 2001, the Department has been renamed the Department on Information Technologies (hereinafter "Department"). At the same time, the Department was entrusted with supervision of the ZAGS<sup>2</sup> and the Registration Board<sup>3</sup> (previously within the structure of the Ministry of Justice), as well as the Directorate on Information of the Ministry of Transport. Thus, a centralised registration system was established with one government body responsible for collecting information. The Department is composed of four sections: the Directorate for Registration and Documentation of the Population (civil register), the Directorate for Vehicle Registration, the Registration Board (register of legal entities) and the State Enterprise "Registru" (Register). The Department is also tasked with preparation of draft legislation in the field of information, use of data and new information technologies.

The Directorate for Registration and Documentation of the Population is responsible for registering legal entities and issuing identity documents of the

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<sup>2</sup> State body responsible for registration of Acts of Civil Status: births, marriages, divorces, deaths.

<sup>3</sup> Responsible for the registration of legal entities

National Passport system. The Directorate collects information and issues documents through local Offices of Registration and Documentation of the Population (successors of the OVIR<sup>4</sup>).

All documents are produced by the State Enterprise “Registru”. In addition, “Registru” is responsible for producing any other documents that might be required by the Government, as well as for keeping the Central Database updated, which includes registers of physical persons, legal entities, vehicles and drivers. Moreover, the Enterprise produces documents for private use and the proceeds from this activity are the main source of financial support for the Enterprise itself and the whole Department.

The process of reforming the registration system, the creation and maintenance of the State Register of the Population, as well as the introduction of new technologies and equipment, requires constant training of personnel. For this purpose, in June 1996 the Department opened its Training Centre. At present, the Centre offers computer and language training courses for the staff of the Department and other government bodies.

Registration of the place of residence is carried out by the local Offices for Registration and Documentation of the Population. To be registered, a person should bring the following documents: his identity card and proof of residence (lease contract, property certificate or another document, in case of a state-owned room/apartment). The procedure is much more restrictive in the case of state-owned houses where a person needs the agreement of all adults already registered in the residence and, in specific cases, of the housing authorities. The registration at the place of residence is no longer linked to any sanitary norms<sup>5</sup>. The applicant fills out a form stating both his previous and new addresses. If the documents are in order, the applicant is de-registered from the previous place of residence and registered in the new one. At the same time, he receives a registration stamp on the official paper attached to his ID<sup>6</sup>. The new information on the person goes to the Central Database and thus to the State Register of Physical Persons, while the paper version goes to the so-called Address Bureau. The latter is an institution, which keeps track of all documents with information on people’s places of residence<sup>7</sup>.

### **The ongoing character of the reform**

To ensure the continuity of the reform, the Department is working on a number of draft legislative acts, in particular:

- In the field of personal data protection and an individual’s access to the information that is kept on them. Draft laws *On Personal Data* and *On*

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<sup>4</sup> Department for Visas and Registration under the Ministry of Interior, legacy of the Soviet system.

<sup>5</sup> In the Soviet system of *propiska*, according to the so-called “minimal sanitary norms,” a person could not be registered until they had secured the necessary living space depending on their category (at least 6 square meters).

<sup>6</sup> Attached to the ID is a piece of paper on which the registration stamp is put. This paper can be changed very easily if lost or damaged. The ID should not be changed in this case.

<sup>7</sup> According to the Law On Registers, all the information should be kept both in electronic as well as paper versions.

*Information and Protection of Data* are currently under discussion within the relevant state bodies.

- Amendments to the procedure of registration of the place of residence. This is to ensure that registration cannot be denied and that a person should not need to ask *permission* to move to a new place of residence, but rather simply *notify* the relevant governmental body. In countries of the former Soviet Union, this has been particularly a problem for people living in state-owned apartments. At the same time, new legislation should abolish the procedure of de-registration and should ensure that, when changing the place of residence, a person should need to apply only to the Registration Office of his new location.

It is still against the law to live in a location other than that where a person is registered or not to have any registration (art.186 of the Administrative Code). In practice, according to Moldovan officials, this provision of the law is no longer applied.

### **Conclusion: the importance of Moldovan experience**

There is no doubt that it is much easier in smaller states than in larger states to follow population movements and to create an efficient civil registration system. Thus, registration of Moldova's population of 4 million is not the same as having to create a state register for the 50 million people living in Ukraine. At the same time, Moldovan experience is obviously of a high interest and importance for Ukraine and other former Soviet Union countries for the following main reasons (mentioned by the Ukrainian delegation itself):

- Moldova and Ukraine had similar starting conditions. First of all, their more than 70 year-old Soviet legacy of the *propiska* system. The *propiska* system not only seriously violated international human rights standards, but had an omnipresent character in almost all fields of social and political relations of the individual to the state.
- Secondly, both countries face limited budgetary resources. In this regard, the experience of self-financing system introduced by the State Enterprise "Registru" is worth particular attention.
- Finally, since the government of Moldova has been working on registration reform since the mid-90s, the training visit has been extremely useful to learn about the successes and errors of the process, in particular in preparing the necessary legislative framework, as well as in creating the relevant administrative structure to ensure the practical implementation of the new legislation.

## **Phase II: Round table in Odessa on findings and conclusions**

On 26-29 September the ODIHR and the Presidential Administration of Ukraine with the assistance of the Office of the OSCE Project Co-ordinator in Ukraine and the Administration of the Odessa Region organised a round table *Registration system in Ukraine: current status and prospects for reform*. The seminar was the last ODIHR activity for the year 2001 in the framework of the project on registration.

The seminar had two major objectives: (1) to analyse and assess the work done in the field of reform of the registration system, and (2) to discuss further practical steps on the basis of experience gained. The list of participants included representatives of the Presidential Administration, Parliament, Constitutional Court, Ministry of Interior, Ministry of Justice, State Committee on Border Protection, Directorate on Ethnic Groups and Migration of the Odessa region, Migration Problems Research Centre (a local NGO and one of the ODIHR's partners in this project), an expert from the Moldovan government (Department of Information Technologies), the ODIHR Migration Unit and the Office of the OSCE Project Co-ordinator.

On the first day, the participants covered theoretical issues, such as international standards on freedom of movement and choice of place of residence and the main deficiencies of the *propiska* system. Special attention was given to how the *propiska* system affects other human rights such as freedom of association and election processes, in particular registration of candidates and creation of electoral lists, as well as on registration of foreigners. The second day consisted of an overview of the latest legislative developments, analyses of the draft laws, which are currently discussed by the Parliament, presentations on the Moldovan experience of legal and administrative reform of registration system, as well as on the practical experience of the local Visa and Registration Offices of the Ministry of Interior. One of the main topics of the discussion was what kind of registration system could replace *propiska*, taking into account 'best practices' and the current conditions in Ukraine. Participants of the seminar had a lot of questions on how to preserve the existing level of social and economic protection and the rights guaranteed to Ukrainian citizens by the Constitution and further legislation, in particular the right for housing and pension payments, which are still connected to the *propiska* system, while reforming registration system.

The seminar underlined once again that creation of a new legislative basis in the field of registration requires a co-ordinated *multi-agency* response and that many problems may be caused by the lack of co-operative and co-ordinated efforts between different state bodies.

## **Recommended follow-up measures**

The participants of the seminar drew up a concrete framework for future co-operation. Among the possible further activities, the following steps were proposed:

- Starting in November-December 2001, meetings of an informal working group twice a month under the OSCE/ODIHR umbrella (representatives of the state agencies involved in the reform) with the assistance of the Office of the OSCE Project Co-ordinator in Ukraine.
- ODIHR assistance with legal expertise (review of draft laws, comments on adopted laws, further study of 'best practices'), as well as in preparation and publishing of commentaries on new laws, which have been recently adopted by the Parliament (such as Law on Immigration and/or Law on Citizenship).
- Training for Border Guards Service with respect to their new function of registering foreigners as they enter Ukraine

In addition, one of the proposals made by the participants was to organise a round table on administrative reform in the field of registration. It was proposed that such a round table be organised by the ODIHR and the Presidential Administration with the assistance of the Office of the OSCE Project Co-ordinator in Ukraine. All these proposals are under discussion by the ODIHR and its partners.

## **In the place of closing remarks: the reform continues**

Less than two months after the Odessa round table, on 20th November the Constitutional Court of Ukraine declared that the Interior Ministry's regulations on propiska are contrary to the Constitution of Ukraine. The Constitutional Court's decision, which is binding and not subject to appeal, came in response to a motion by a group of parliamentarians who argued that the propiska system violates constitutional rights of freedom of movement and choice of place of residence. As the reform process progresses, the ODIHR has been officially congratulated by the Ukrainian authorities for its outstanding work and requested to continue its assistance.